

11 July 2022

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

By email only: policy@justice.nsw.gov.au

Dear Officer,

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

We thank the NSW Department of Communities and Justice for the opportunity to comment on the terms and operation of the *Victims Rights and Support Act 2013* (NSW) (**the Act**) and *Victims Rights and Support Regulation 2019* (the **Regulation**) (together, the **Victims Support legislation**).

We give Victims Services permission to publish our feedback and for our feedback to be provided to those undertaking the statutory review. For all case studies in this feedback, names and identifying information have been changed to protect confidentiality.

About Kingsford Legal Centre

Kingsford Legal Centre (**KLC**) provides free legal advice, casework, and community legal education to our local community in south-east Sydney since 1981. We are part of the UNSW Sydney Law Faculty and provide clinical legal education to over 500 of its students each year.

We have extensive experience in providing assistance and representation to people applying under the Victims Support Scheme. In 2021, we gave 57 victims compensation advices and provided intensive assistance with 11 victims compensation matters.

Key issues for comment

Issues with changes to process implemented by Victims Services on 1 July 2021

We refer to our **enclosed** letter to the Commissioner of Victims Rights, Michelle Vaughan, dated 5 March 2021 on key issues with the changes to process implemented by Victims Services on 1 July 2020.

All of the issues raised in that letter remain key issues in need of urgent action. In particular, for the reasons set out in that letter, we recommend:

1. Removing the requirement for applicants to provide their bank details at the time of making applications (other than for the Immediate Needs Support Package – **INSP**).
2. Removing the requirement for applicants to collect all evidence to support their claims prior to submitting their applications, or within 12 months of submitting their applications. This requirement is not trauma-informed or possible in many cases, including due to significant delays in gathering evidence from government and other bodies and professionals.
3. Requiring Victims Services to provide counselling applicants with the details of one to three counsellors with appropriate experience for their needs to choose from (in addition to referring them to the Victim Services ‘Find an approved counsellor’ webpage).
4. Requiring Victims Services to, with the consent of applicants, collect evidence on their behalf or pay for the collection of evidence. Should Victims Services continue to require applicants to collect evidence themselves, there should be a process established by which disbursements are paid by Victims Services directly to providers or to applicants as costs arise.
5. Requiring Victims Services to not make decisions until they have all the relevant evidence. There should be a process established in which Victims Services confirms with applicants that they have all the relevant evidence on file before proceeding to list claims for determination.
6. Requiring Victims Services to ensure that Computerised Operational Policing Service (**COPS**) reports are made easily accessible and free of charge to applicants and their authorised legal representatives. It is a fundamental denial of procedural fairness for Victim Services to make decisions based on police documentation that is not made readily available to applicants and their authorised legal representatives.

Ongoing opportunities for law and policy reform

We also make the following comments and recommendations on the Victims Support legislation and associated policies.

Need to significantly increase recognition payment amounts

KLC is concerned about the limited amount available for recognition payments under the Victims Support scheme. Current recognition payments are inadequate and have not been increased since the scheme was reformed in 2013, almost 10 years ago.

KLC is also concerned about the paltry amounts available for recognition payments given that applicants are often required to expend considerable energy, time, and costs in collecting evidence for these claims under the present scheme. As noted above, such

hurdles are not only difficult from a practical point of view, but are also deeply re-traumatising for victim-survivors of violence.

KLC recommends a review of the amounts available for recognition payments under the scheme, with a view to significantly increasing these amounts.

Need to reform approach to injury for recognition payments

KLC is concerned by the requirement for certain applicants to prove injury for recognition payments under the Act. We consider that evidence of certain acts of violence should be sufficient to warrant recognition payments, with amounts differing based on the nature of the violence.¹ This is particularly important for recognition payments for child sexual abuse, sexual violence, child abuse, domestic violence, and modern slavery, since this violence in itself causes injury.²

The burden should not fall on these victim-survivors to prove their additional injuries to receive any or maximum recognition payments, particularly in circumstances where injuries can manifest in complex ways and take years to formally diagnose.

Further, we are concerned by large discrepancies under the present scheme for payments based on severity of injury. For example, we note the large \$5k difference between category B and category C recognition payments for sexual assault based on whether an assault causes ‘serious bodily injury.’ Such a large difference is unjustifiable and also sends a false message to society that certain forms of sexual assault can only cause minimal bodily injury, and that psychological injury is not as serious as bodily injury.

Case Study

Imani recently experienced sexual assault. KLC agreed to assist her in collecting the necessary medical and psychiatric information required for an application for a recognition payment. KLC was authorized to communicate with Imani’s doctor and counsellor to collect the required information. Victims Services decided to award Imani a \$5,000 category C recognition payment. Imani considered seeking a review of the decision for a larger category B payment of \$10,000, but ultimately decided against this given the amount of work required to provide evidence for serious bodily harm and the possibility of an adverse decision. Imani’s psychological injuries were serious by their very nature, but the scheme placed a heavy onus on her to collect extensive evidence to show this. This process is time-consuming, costly, and emotionally taxing for many victim-survivors.

Case Study 2

¹ WLS NSW, *WLS NSW Submission to Victims Services - Review of Victims Services Changed Implemented From 1 July 2020* (5 March 2021) [65] – [67].

² *Ibid* [68].

Cora is an Aboriginal woman who was sexually assaulted on multiple occasions as a child by someone known to her family. Cora never reported the sexual assault to anyone. The impacts of the abuse on her life have been profound. Decades later, Cora is considering applying for a recognition payment for the acts of violence. In addition to needing to complete a Sexual Assault Reporting Option (SARO) Questionnaire to provide a police report for the violence, she will also need to attend several counselling sessions to obtain a certificate of injury for the violence. Cora will need to recount her story on multiple occasions to multiple professionals to apply for a recognition payment. This process has a retraumatizing impact on Cora which is not consistent with the aims of the scheme.

Lastly, we are concerned by continued confusion from applicants as to whether ‘serious bodily injury’ and ‘grievous bodily harm’ includes serious psychological injury. While case law has found that serious psychological injury can amount to grievous bodily harm³ and serious bodily injury includes serious psychological harm,⁴ the Act does not make this clear. This is a serious omission from the legislative framework that fails to recognise psychological harm in its own right. Applicants should not need to consult a lawyer in order to understand that their psychological harm counts as injury under the scheme.

KLC recommends the removal of the requirement for applicants to prove injury for recognition payments under the Act for child sexual abuse, sexual violence, child abuse, domestic violence, and modern slavery.

At minimum, KLC recommends that the Act is revised to ensure that a Category B recognition payment is available for all victim-survivors of sexual assault and ‘grievous bodily harm’, and ‘serious bodily harm’ are defined to include ongoing psychological injury.

KLC also recommends that Category B recognition payments are expanded to include domestic violence involving violence that is one of a series of related acts.

Need for greater legal support to help victim-survivors apply for Victims Services

Key priorities of the new Victims Support legislation in 2013 were for the application process to be simplified⁵ and for Victims Support caseworkers to be able to provide support to applicants.⁶ This was also part of the rationale in removing payments to legal practitioners to assist with applications. This has not occurred.

The application process for all Victims Support items has only become more onerous and inflexible. The onus is on the applicant to provide all relevant evidence, and Victims Services

³ *BWQ v Commissioner of Victims Rights* [2015] NSWCATAD 197.

⁴ *CRT v Commissioner of Victims Rights* [2017] NSWCATD 174 [33] – [35].

⁵ Second Reading Speech, Victims’ Rights and Support Bill 2013, Hansard, *Legislative Assembly*, 21 May 2013 at p 20531 (Mr Chris Patterson, MP).

⁶ *Ibid.*

is almost non-interventionist in assisting applicants to collect their evidence. This means that applicants need even more support than before the changes. The process is confusing, burdensome and upsetting for many victim-survivors.

Many clients come to KLC after they have already applied for Victims Services via a non-legal support service. We have had clients come to us after a non-legal support service has submitted an application for them based solely on the most recent act of violence. In domestic violence situations, this often is the most recent assault. In many cases, not enough care has been taken to gather full instructions patiently and carefully from the applicant about their situation to make sure all acts of violence are included in their application, and the best possible claim is put forward by the client. Flexibility should be built into the Victims Services application process to reframe complaints after they are made if the person has later had legal advice.

If Victims Services will not fund legal services to support applicants to apply as before, the NSW Government should, as a minimum, provide greater funding to legal services to assist applicants in making claims. Victims Services should approach the assessment and processing of applications with an awareness that many victim-survivors will not have fully disclosed all the acts of violence or framed their application in the most advantageous way under the scheme.

Case study

Delia came to KLC as a victim-survivor of domestic violence. Delia had experienced multiple acts of violence by her former partner over a number of years, including after extended periods of separation from her former partner. After one particular act of violence which left Delia in hospital, Delia made an application to Victim Services for an INSP with the assistance of a non-legal support service. Delia was then referred to KLC, where it became apparent to us that Delia's application, which was made only in respect of the one particular act of violence, did not adequately reflect the whole of Delia's experience. Delia needed a lawyer to help her make multiple claims under the Victims Services Scheme to properly account for the multiple acts of violence she experienced.

KLC recommends increased and sustained funding for community legal centres and other legal assistance services to assist victim-survivors in making applications under the Victims Services scheme.

KLC also recommends that greater flexibility is built into the Victims Services application process to enable applicants to reframe claims, including by separating claims, after they have received legal advice and support.

The INSP should be extended to primary victims of sexual assault and modern slavery

The INSP is aimed at providing a grant of financial assistance to primary victims of domestic violence to meet their immediate needs following an act of violence.⁷ In particular, the INSP is designed to assist primary victims of domestic violence to urgently relocate as a direct result of the act of violence and/or install security at their homes.⁸

The Act defines ‘domestic violence’ as an act resulting in injury that occurred in the commission of a personal violence offence against a person who: is or was a spouse or de facto spouse of the offender, is or was in an intimate personal relationship with the offender, lived with the offender at the time of the violent act (including as a long-term resident in the same residential facility), at the time of the offence had a relationship involving dependence on ongoing paid or unpaid care by the offender, or was the parent, guardian, step-parent, child, step-child, brother, sister, half-brother, half-sister, step-brother or step-sister of the offender.⁹

At present, the INSP is not available for primary victims of sexual assault or modern slavery who have not experienced domestic violence. This is problematic given that some victim-survivors of sexual assault and modern slavery could greatly benefit from an INSP. For example, some victim-survivors of sexual assault and modern slavery may also need to urgently re-locate, change locks, and install security cameras and alarm systems for safety reasons, or purchase new household items due to old items being destroyed through acts of violence. It may not be safe or appropriate for these victim-survivors to have to wait for items to be approved under the financial assistance for immediate needs package.

KLC recommends that eligibility of the INSP is extended to primary victims of sexual assault and modern slavery under the Act.

Need for a beneficial approach to distinguishing acts of violence for victim-survivors

KLC is concerned by how the Act’s definition of act of violence as including a series of related acts disadvantages many victim-survivors but, particularly victim-survivors of child sexual abuse, sexual violence, child abuse, domestic violence, modern slavery, and gender-based violence.

Under the Act, ‘act of violence’ is defined as including ‘a series of related acts’, which is defined as two or more acts that are related because they were committed against the same person, and in the opinion of the Commissioner or Tribunal, they were committed at approximately the same time, over a period of time by the same person, or for another reason are related to each other.¹⁰

⁷ Victim Services, *INSP Fact Sheet*, Revision 02/2021, p. 1.

⁸ Ibid.

⁹ Section 19(8)(f).

¹⁰ Section 19(4).

In our experience, victim-survivors of child sexual abuse, sexual violence, child abuse, domestic violence, modern slavery, and gender-based violence often experience multiple acts of violence by the same perpetrator, and as such run the risk of having all these acts regarded as related for the purposes of the scheme.

Victim-survivors of ongoing sexual and domestic violence are the most vulnerable clients we see, and very often experience debilitating acts of violence over a long period of time. The assumption in these cases is that they can only make one application for Victims Support, rather than having the reality of the harm done to them assessed for what it is. This approach only exacerbates trauma. These victim-survivors bear the onus of writing to Victims Services to explain why acts of violence should be regarded as distinct acts, therefore enabling them to make separate claims for support instead of one claim. This places a heavy burden on these victim-survivors and entrenches gender inequality, as women are more likely to experience ongoing sexual assault and domestic violence than men.¹¹ Women are also more likely to experience other forms of violence than men, such as sexual harassment.¹² This approach also ignores the cumulative harm done by ongoing acts of violence.

Case study

Roza lived with her husband for 5 years. They had 2 children together. During the time they lived together, Roza's husband assaulted her physically, verbally and emotionally. Roza did not call the police after each incident, although she did speak to her doctor. On one occasion Roza feared for her life after her husband punched her in the face and she lost some teeth. She called the police, went to hospital and then ended the relationship at that point. Roza's husband found her a year later, and again physically assaulted her, stalked her and sent her harassing messages. A few months after that he tried to force himself into her house. KLC made separate applications for recognition payments and economic loss for Roza. Only one has been successful. This outcome does not fairly and justly reflect Roza's experience and the harm she has suffered.

KLC recommends that the Act and/or policy of Victims Services is revised to provide greater guidance on when acts of violence may be regarded as separate acts for the purpose of financial assistance and recognition payments. Any approach should also be designed to be beneficial to victim-survivors, including victim-survivors of child sexual

¹¹ Australian Bureau of Statistics, *Sexual Violence – Victimization* (24/08/2021) <<https://www.abs.gov.au/articles/sexual-violence-victimisation>>; Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia* (2018) <<https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/summary>>.

¹² Australian Human Rights Commission (2018) *Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces*, p.26 (Figure 4).

abuse, sexual violence, child abuse, domestic violence, modern slavery, and gender-based violence.

Need to respect victim-survivors' views on restitution orders

If an applicant receives financial support or a recognition payment, the Victims Services Commissioner (**the Commissioner**) can make an order for restitution against the perpetrator of the act of violence if they were convicted of a relevant offence.¹³ In our experience, there are many valid reasons why victim-survivors of violence may not want the Commissioner to pursue restitution in their case.

For example, victim survivors may not want perpetrators to know that they made applications and may hold serious safety concerns should perpetrators find out. This can be particularly the case for victim-survivors of sexual, domestic, and family violence and modern slavery. Other victim survivors may also not want restitution orders if they still maintain a close relationship with perpetrators or the family or friends of perpetrators, are restoring relationships, or do not want perpetrators to suffer the financial costs and/or other legal implications of a restitution order.

Under the current scheme, there is no clear process for the Commissioner to consider requests about restitution orders. This leaves many victim-survivors choosing not to apply for much needed financial support and recognition payments for fear that restitution orders will be made in their case. It can also leave victim-survivors in a difficult position if they receive financial support or a recognition payment but do not want to accept the money without a guarantee that restitution will not be pursued in their matter. This is particularly concerning given that a key goal of restitution under international law should be restoring the liberty of victim-survivors in an attempt to restore them to the original situation they were in before the human rights violation occurred.¹⁴

Case study

KLC recently acted for a local Aboriginal woman who was assaulted by her son. Her son was convicted with assault causing grievous bodily harm from the incident and served a prison term. Our client was reluctant to lodge a recognition payment application for the matter as she was trying to rebuild her relationship with her son and was fearful of the repercussions from her son and her family, as well as the financial and legal implications of a potential restitution order against him.

¹³ *Victims Rights and Support Act 2013* (NSW), s59.

¹⁴ United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, General Assembly Resolution 60/147 (16 December 2005), article 19.

KLC recommends that the Act is revised to include a presumption that restitution is not pursued in circumstances where victim-survivors request for this not to occur.

To facilitate this, KLC recommends that the primary application form is revised to enable applicants to record if they do not want restitution to be pursued in their matters and to provide any reasons for this. A decision should then be made by the Commissioner before or at least at the time any decision is made awarding a recognition payment and/or financial assistance as to whether restitution will not be pursued.

KLC also recommends that guidelines are developed and published by Victims Services which outline this process and the factors the Commissioner is to consider before making decisions about restitution orders.

Need to improve access to claiming lost earnings

The *Victims Rights and Support Regulation 2019* (NSW) enables primary victims of an act of violence to claim up to \$20,000 if they can “demonstrate loss of actual earnings.”¹⁵ To assist applicants with claiming loss of earnings, Victims Services has a template ‘Certificate of Earnings Form’¹⁶ that applicants can lodge with their primary application or after.

In our experience, very few people are able to successfully establish claims for loss of earnings under the Victims Services scheme. This is particularly the case for applicants who have had casual employment, rolling fixed term contracts, income from self-employment or other forms of precarious work impacted by acts of violence. In the absence of clearer legislative guidance as to the meaning of “loss of actual earnings”, these workers often have lost income claims rejected due to the less regular nature of their work in comparison to part-time and full-time employees. We are concerned that this unfairly impacts those in more precarious work, and exacerbates gender inequality, as more women are in casual employment and other forms of precarious work than men.¹⁷

Case study

KLC had a client who was working as a casual employee when she experienced an act of violence. As a result of the violence, the client needed to take time off work and suffered lost income. We assisted the client to put in a claim for lost income, but the client’s claim was rejected on the basis that her income as a casual employee wasn’t regular enough to meet the test of actual lost income.

¹⁵ Section 10(3).

¹⁶ Victims Services, ‘Certificate of Earnings Form’, Revision 11/2020.

¹⁷ Australian Bureau of Statistics, Gender Indicators, Australia (2020)

<https://www.abs.gov.au/statistics/people/people-and-communities/gender-indicators-australia/latest-release>.

Another key issue with the scheme is the requirement for applicants to obtain documentation from employers showing lost income.¹⁸ Many victim-survivors of violence may be unable or unwilling to obtain documents from employers or others showing lost income for a variety of valid reasons.

For example, victim-survivors may feel uncomfortable disclosing histories of violence to employers, or feel unsafe to do so, especially when acts of violence have occurred by employers or other employees in the workplace. Victim-survivors of modern slavery may also understandably not wish to obtain work documentation from employers or companies which may substantiate modern slavery claims.

We recommend that there is clarification and simplification of the approach to loss of actual earnings under the Victims Support legislation and that this approach is beneficial to all workers, including casual employees and those in other forms of precarious work.

Further, we recommend that the Victims Support legislation is revised to enable other forms of evidence, such as bank records, employer correspondence, medical evidence, and statutory declarations, to be used to establish lost income.

Need to make victims services more accessible to victim-survivors of violence at work

Lastly, as specialists in sexual harassment and discrimination at work, we often encounter clients who have experienced acts of violence at work and who could benefit from certain forms of support through Victims Services.

While some clients may pursue remedies through the Fair Work Commission, the Australian Human Rights Commission and Anti-Discrimination NSW, many could benefit from knowledge about the Victims Services Scheme as an alternative pathway for accessing financial support, recognition payments and/or free counselling. However, we often encounter clients and other employment and discrimination law specialists with limited knowledge of the Victims Support Scheme and how it intersects with employment law and anti-discrimination jurisdictions.

Case study

KLC had a client who experienced sexual harassment at work which included physical assaults. The client was seriously impacted psychologically from the violence and sought advice about her options. KLC advised the client on potential employment law and discrimination law remedies and is in the process of also advising her about the Victims Services Scheme so that she understands all the options available to her as a victim of violence.

¹⁸ *Victims Rights and Support Act 2013* (NSW), s39(4)(b).

We recommend that Victims Services collaborates with the Fair Work Commission, the Australian Human Rights Commission and Anti-Discrimination NSW, to develop and publish resources on how the Victims Support Scheme interacts with these jurisdictions.

If you have any questions about this letter, please contact Emma Golledge at legal@unsw.edu.au.

Yours faithfully,

KINGSFORD LEGAL CENTRE



Emma Golledge
Director



Dianne Anagnos
Principal Solicitor



Madeleine Causbrook
Law Reform Solicitor/Clinical Supervisor



5 March 2021

Michelle Vaughan
Commissioner of Victims Rights
Victims Services

By email only: VS@dcj.nsw.gov.au

Dear Commissioner,

Consultation on Victims Services Changes

We write to provide feedback on the changes to processes implemented by Victims Services on 1 July 2020. We understand that Victims Services is undertaking a review of the first six months of operation of the revised application requirements and the process for victims to choose their own counsellor.

We welcome the preliminary review, but any findings at this stage can only be preliminary as we do not have the longitudinal data to observe the real impacts of these changes.

We give Victims Services permission to publish our feedback and for our feedback to be provided to those undertaking the statutory review. For all case studies in this feedback, names and identifying information have been changed to protect confidentiality.

About Kingsford Legal Centre

Kingsford Legal Centre (KLC) provides free legal advice, casework and community legal education to our local community in south-east Sydney since 1981. We are part of the UNSW Sydney Law Faculty and provide clinical legal education to over 500 of its students each year.

We have extensive experience providing assistance and representation to people applying under the Victims Support Scheme. In 2020, we gave 37 victims compensation advices and provided intensive assistance with 8 victims compensation matters.

Key Issues for Comment

Applicants to provide government issued identification and whether this has created any barriers to accessing support

KLC is concerned that there are significant barriers for some victim-survivors providing government issued documentation, which may include those in custody and those who are homeless or transient with limited documentation available. Elderly people who are digitally illiterate may also have difficulty scanning or digitalising a copy of their identification card.

Rhonda's Story

Rhonda recently came to KLC for assistance to apply under the new application process for the Victims Support Scheme. Rhonda only recently escaped domestic violence and has a

long history of trauma. Rhonda was in the fortunate position where she was connected to a support service who were able to refer her to KLC for assistance. We are assisting Rhonda to collect the necessary government issued identification and bank details, as well as supporting evidence, but without our help we do not believe Rhonda would have followed through on this process on her own. She does not have access to printers or scanners and expressed to us that the process was overwhelming and that she could not imagine collecting this documentation on her own.

KLC is aware that not all applicants will have the benefit of a support system or legal assistance. There are also barriers to marginalised people accessing the internet or having access to scanners, which could particularly cause barriers for the elderly, homeless or those in prison. As is further demonstrated by other case studies below, we are concerned that requiring government issued identification at the time of application creates a further barrier to victims-survivors accessing Victims Support.

We recommend that providing government issued identification should be removed from the application form. Identification should be allowed to be provided after an application has been made.

Applicants to provide bank account details with applications for financial support and recognition payment and whether this has created any barriers to accessing support

KLC is concerned with the requirement that all applicants must provide bank details at the time of application for Victims Support (other than for the Immediate Needs Support Package – INSP) as it is a further barrier to accessing Victims Support. It may be difficult for applicants living in closed institutions such as prisons who may have limited access to their bank details.

We also believe that it could create a false expectation that all applications are successful, and for those which are not Victims Services will hold private and personal information that it does not need to have.

Given that there is also some time between the application being made and a final decision, during this time an applicant's bank details may change. It may cause further difficulties for victims-survivors who are escaping domestic violence and have a joint bank account with the perpetrator.

We believe that a more appropriate approach would be for Victims Services to request an applicant's bank details after a successful decision has been made.

We recommend the requirement to provide bank details be removed from the application form and that these details be requested after a successful decision has been made and payment is being arranged.

Evidence to be provided supporting a claim for a recognition payment within 12 months of submitting an application

Requiring an applicant to collect all evidence to support their claim prior to application submission or within 12 months will mean that some applicants, particularly the most vulnerable, will miss out on Victims Support due to failing to meet strict time limits. Many victim-survivors and particularly victims-survivors of domestic violence, sexual assault, child abuse and child sexual abuse need support to collect evidence.

Freida's Story

Freida came to KLC for help applying under the Victims Support Scheme prior to the process changes made in July 2020. Freida approached us in May 2019 following an assault in 2017. We submitted the application quickly due to time limit constraints, but then spent significant time and energy chasing up multiple specialists she had visited. As a result of facial injuries, she had attended multiple dentists, psychologists and doctors. We continued to assist Freida during COVID-19. Due to work from home arrangements, stay at home orders and the client's other medical issues she did not feel safe accessing the community. It would have been incredibly difficult for her to source the evidence she needed independently.

Armen's Story

Armen is a victim-survivor of extremely violent crimes, which caused Armen severe physical injuries and post-traumatic stress disorder. He was unable to work for a period of time due to the immediate impact of the violent crimes and has struggled to maintain consistent employment. He also needed to take time off work to participate in the criminal trial, which did not happen until over a year after the violence occurred. Armen wanted to make a Victims Support application and asked us for help with the process. He was not referred to us until after the criminal trial was over, and this was almost two years after the violence happened. We explained that under the new rules he needed to provide evidence of his lost income at the time of the application if he wanted to claim for economic loss. This was difficult for Armen to collect given the trauma he was still experiencing, the limited time he had to collect the evidence and the fact that he was an independent contractor and could not just ask an employer for payslips.

Bella's Story

Bella, a young Aboriginal woman, submitted an application to Victims Services on her own in 2020, following a sexual assault in early 2019. She came to our centre for assistance to collate her evidence and for help communicating with Victims Services. Since assisting Bella, KLC has needed to contact a variety of different health services including a psychologist. Getting these reports have not been a simple process. The psychologist advised that their organisation had introduced new practices for report writing associated with changed with Victims Services and that also as an organisation they do not provide a Certificate of Injury. We have been assisting Bella for over 7 months and have still been unable to collect all the evidence we need. It is simply not feasible to expect vulnerable clients like Bella to collect these documents on their own or in tight timeframes.

As the above case studies demonstrate, there can already be significant barriers to victims-survivors accessing Victims Support. Requiring applicants to provide all information and documentation up front, or within 12 months, causes further significant and unnecessary stress. This is of particular concern given that the Victims Support scheme is intended to operate without the need for legal assistance.

We recommend that Victims Services assist applicants to collect their evidence, including medical reports and accessing police records. We acknowledge that the decision around access to COPS records may be outside of Victims Services control, but we support it advocating with NSW Police on this issue.

The process for victims to choose their own counsellor from a listing on the Victims Services website

Changing the process of allocation so that victim-survivors must choose their own counsellors may cause delays or act as a deterrent in them accessing counselling services. We note that there is often complexity in victims-survivors' lives and it is important to ensure they have easy and accessible access to counselling. This change in process could have an even greater impact on regional, rural and remote communities where there may be fewer counsellors.

The process of choosing a counsellor via the Victims Services website may be difficult for those who are elderly, digitally illiterate or who do not have ready access to the internet. It may also be overwhelming if there are too many options to choose from.

We recommend that Victims Services provide applicants with the details of one to three counsellors with appropriate experience for their needs to choose from.

The process for reimbursement of expenses associated with accessing contemporaneous medical evidence following a successful determination

KLC is concerned about the burden now placed on victim-survivors to not only collect their own medical evidence, but to pay for the cost of such evidence up front. We believe this will be a further barrier to accessing Victims Support. Many applicants are low income or

receiving Centrelink benefits due to unemployment caused by the trauma from the violence they have experienced.

Huda's Story

Huda is a victim-survivor of serious and ongoing domestic violence. She receives Centrelink as she is unable to work due to the trauma of her experience and lives week to week. Huda came to us for help to make applications for victims support. She needed medical evidence from a number of different services. For one set of hospital records, she had to pay disbursement costs of \$120.00. We are assisting her to submit claims for other incidents which will result in further costs that Huda must pay up front. Huda also had to apply for her own COPS report which was another additional cost. To further complicate things, due to Covid-19 we were unable to meet with Huda face to face meaning there were delays in submitting her applications as she did not have access to a printer or scanner and could not provide us with copies of her identification documents. The time consuming nature of having to apply for records and pay for them up front has been a great source of stress for Huda, and our service was only just able to make the deadline for submission. Without the help of our service Huda would not have been able to do this on her own.

We believe that requiring victims-survivors, like Huda, to pay for the expense of collecting their evidence up front and with a delay for reimbursement will cause many applicants to not complete the application process, leaving them without the financial support they are entitled to and need.

We recommend that Victims Services should assist applicants to gather their medical evidence, and to cover the costs of such collection. If Victims Services will still require applicants to gather their own evidence, then we respectfully submit that disbursements should be paid by Victims Services directly to the provider or directly to the applicant as the costs arise.

Timeframes for determination and payment of an application

We are aware that the decision making process seems to be occurring more quickly. There have been concerns raised by other community legal centres that this has resulted in a number of internal reviews in circumstances where it should not have been required due to evidence not being closely examined by decision makers in the first instance, or where decisions have been made before evidence could be provided.

If an incorrect decision is made, KLC is concerned that applicants who do not have legal assistance may be unable to lodge appeals on their own or may not fully understand it is an option if they receive a negative decision in the first instance.

Renee's Story

Renee came to KLC for help after she had escaped a long and traumatising domestic violence relationship. Renee came to us about other issues but had made a Victims Support application on her own without any legal advice, and recently received a decision that she was eligible for a \$1500 recognition payment. We looked at Renee's evidence and the decision and helped her to appeal it on the basis that we thought she should be eligible for a \$5,000 recognition payment as the violence amounted to grievous bodily harm. We made submissions for Renee, which she would not have been able to do on her own. The appeal was successful and Renee received a \$5,000 recognition payment.

As Renee's story demonstrates, mistakes in an initial decision can cause unnecessary stress and work for applicants.

No access to vetted COPS reports

We understand that NSW Police are no longer able to provide vetted Computerised Operational Policing Service (COPS) reports to applicants or legal representatives and that they must be applied for directly. Our position is that NSW Police should provide vetted COPS reports to applicants in a timely manner and free of charge. This should also be extended to applicants' advocates or legal representatives with the authority of the applicant.

As Huda's story above demonstrates, requiring a victim-survivor to make a number of applications for various records and at their cost causes stress and is an unnecessary burden during an already upsetting and traumatic time. It can also cause delays, as in our recent experience it has taken a number of months to receive COPS reports and has involved numerous correspondence around the scope of the request.

It is important that vetted COPS reports are easily accessible to applicants and/or their authorised legal representative as they could be relevant to reasons for not approving or reducing financial support under section 44 of the *Victims Rights and Support Act 2013* (NSW).

We recommend that COPS reports be made easily accessible and free of charge to victims-survivors or their authorised legal representative. We support Victims Services in advocating with NSW Police around this issue.

Kingsford Legal Centre is concerned that ultimately these changes are creating further barriers to victims-survivors accessing Victims Support, as can be detailed by our client case studies provided above.

We respectfully ask that you pause the changes that have been effected and undertake a proper consultation on these processes where the outcome is not predetermined. It may be appropriate for these changes to be further considered in the upcoming statutory review.

If you have any questions, please contact me at e.golledge@unsw.edu.au.

Yours Faithfully
KINGSFORD LEGAL CENTRE



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