

1 May 2020

Ms Michelle Vaughan
Commissioner Victims Rights
By email: Michelle.Vaughan@justice.nsw.gov.au

Dear Commissioner,

Further consultation on Victims Support Scheme

Thank you for meeting with representatives from Community Legal Centres NSW Domestic Violence Victims Support Subcommittee on 30 April 2020.

We found the meeting productive and acknowledge we all share a common goal of wanting to ensure all victims-survivors and particularly the most marginalised in our society are able to easily access the Victims Support Scheme.

We also appreciated discussion on related issues, such as the content of Victims Services correspondence and are pleased to hear of the commitment of yourself and Victims Services staff to making these letters more accessible.

We appreciated you agreeing to reflect on yesterday's discussion and to come back to us within the next couple of days with some ideas about ways forward. To assist with this, we have taken the opportunity to share with you our own reflections on the meeting and added some supplementary information for your consideration.

Application process

During the meeting we identified some key concerns with the proposed changes:

- That requiring an applicant to collect all evidence to support their claim before they could submit an application would mean some applicants will miss out on Victims Support due to failing to meet strict time limits.
- That many victims-survivors and particularly victims-survivors of domestic violence, sexual assault, child abuse and child sexual abuse need support to collect evidence.

When the Victims Support Scheme was established in May 2013 a key reason for the reforms was it would be easy for victims-survivors to access and there was no longer a need for lawyers to assist. Legal fees and disbursements were removed. Case co-ordinator roles were established within Victims Services to assist victims-survivors.

We propose that Victims Services continues to accept all applications, but the application form include two pathways to accessing Victims Support.

The first pathway is where the applicant submits an application form with all the necessary evidence attached. We recommend Victims Services develop a communication strategy so that applicants understand if they submit all their evidence with their application it will assist to have their matter determined. This should provide an incentive for those who are able to collect all the necessary evidence on their own to do so.

The second pathway is for victims-survivors who need assistance in collecting evidence for their applications. These victims-survivors would complete and submit an application form (preserving their right to access Victims Support) and could opt for support to collect evidence. In the first instance, Victims Services would be responsible for the collection of evidence as is the current practice. Victims Services would ask the applicant to list all the services to whom they reported the act of violence and injury, as is the current practice. If Victims Services do not receive the evidence requested from the service provider, they make several additional written requests and follow up with phone calls to the service provider(s) over a minimum 12 month period. Victims Services would also pursue other sources of evidence – for example, if multiple sources of evidence were identified by the applicant.

If an applicant is represented/supported by a community legal centre/advocate/support person and this person is listed as the contact on the Victims Support application, after extensive attempts at trying to obtain evidence, Victims Services could then contact this person, outline the steps they have taken in trying to obtain evidence and request the community legal centre/advocate/support person seek the necessary evidence.

Cost of Collecting evidence

You have acknowledged where a person or their support worker is accessing documents they need to be reimbursed for these expenses.

Consideration should be given to a mechanism that provides payments of disbursements at the time they arise to assist the community legal centre/advocate/support person to do this.

Such a mechanism could also benefit those who may be able to collect their own evidence but do not have the money to pay such expenses upfront. In this circumstance, such applicants should be able to submit their application form, nominate on the form they can collect their own evidence but that they need assistance with disbursements as they arise.

The difficulties in having victim-survivors collect evidence

Community legal centres primarily work with victims-survivors who have experienced domestic violence, sexual assault, child sexual abuse and/or child abuse. Often victims-survivors have experienced violence perpetrated by a number of people in a relationship of trust, including multiple ex-partners, family members or family friends over many years. Many of the victims-survivors with whom we work have experienced complex trauma. As you know trauma impacts on memory. This means the victims-survivors with whom we work often make poor historians. They find it difficult to recall dates of acts of violence and the names of services to whom they reported violence.

We do not agree that it would be easier for victims-survivors to access evidence of act of violence and injury, particularly victims-survivors who have experienced domestic violence, sexual assault, child sexual abuse and/or child abuse. Community legal centres and other support services and organisations assisting victims-survivors are only too familiar with the difficulty in helping victims-survivors access evidence of act of injury and violence, including the lack of response on the part of some service providers to written correspondence and phone calls seeking such evidence. We do not believe the answer is to shift the burden to victims-survivors to find this evidence on their own. If there are victims-survivors whom Victims Services are assisting, and they are not otherwise supported, after Victims Services undertake extensive efforts in trying to obtain evidence, if they have been unable to locate evidence, there should be consideration of referral pathways to community legal centres and other support services/organisations and advocates. We note the Victims Support Scheme does not currently provide funding for services to provide such support. Funding for this support would also need to be considered.

We are aware many have shared their concerns about these issues – the community legal sector; victims-survivors and their advocates; family members of primary victims; sexual, family and domestic violence, child sexual abuse and child abuse and women's health services and peaks; Aboriginal and Torres Strait Islander organisations; people with disability and their advocates; migrant and refugee organisations; women in prison advocates; LGBTIQ organisations; organisations working with people who are homeless or transient; people in regional, rural and remote areas; organisations working with children and young people; organisations working

with older people including victims-survivors of child sexual abuse. It is vitally important to consult with all these groups and others affected by the proposed changes, including on our proposed alternative and any other proposals. We note that our proposal is one developed in a rushed environment and would benefit from careful consideration and wider input.

Consultation with government and non-government organisations

We also recommend consultation with government and non-government prescribed bodies and people who can provide evidence of act of violence and injury under the Victims Support Scheme. It would be helpful to hear the reasons why some are reluctant or unable to provide evidence to support an applicant. Identifying the barriers on the part of service providers may help to resolve the issue to the benefit of victims-survivors, advocates and Victims Services.

INSP v Recognition payment

We congratulate you and your staff on the success of the Immediate Needs Support Package for victims-survivors of domestic violence and welcome consideration of this being rolled out for other categories of victims-survivors, including victims-survivors of sexual assault.

We believe it would be useful to consider why it is so successful. We posit this is at least in part because:

- the act of violence is recent
- there are lower evidentiary requirements than a recognition payment
- the evidence is readily available, for example through a Police COPS report
- if a female victim-survivor is attending Local Court for first mention relating to an apprehended domestic violence order, she will likely receive assistance from a Women's Domestic Violence Court Advocacy Service worker who can provide a pro forma support letter and submit the application
- there is a maximum payment of up to \$5000.

In considering the elements that could be adopted with respect to recognition payments, we question the need to have two separate forms of evidence to establish act of violence and act of injury. A police report, an ambulance report, a doctor's report, a hospital's record or another report could include both evidence of act of violence and injury. It is trauma informed practice to limit the times a victim-survivor must repeat their experience of violence. Further, training of these professionals to record this information would also be beneficial.

We further submit that sexual assault, including child sexual abuse, domestic violence and child abuse, by their very nature result in an injury. We therefore advocate for the removal of the requirement to prove injury in cases of sexual assault, including child sexual abuse, domestic violence and child abuse, except when necessary to establish aggravating circumstances for a higher category of recognition payment, that is, 'serious bodily injury', 'offensive weapon', 'carried out by 2 or more persons', 'one of a series of related acts', or 'grievous bodily harm'.

We also recommend better recognition of domestic violence, sexual assault, child abuse and child sexual abuse through higher recognition payments. Many victims-survivors consider \$1,500 to be a paltry sum and in many cases an insult that this is considered 'recognition' of decades of domestic violence. While in some domestic violence applications victims-survivors may be able to establish grievous bodily harm, this is not always the case. Many domestic violence victims-survivors do not consider it worth going through the process of applying for a recognition payment, being retraumatised as they share their story yet again, as they struggle to recall the services with whom they have engaged and may be able to provide evidence of act of violence and injury.

We acknowledge these proposals require legislative change and advocate for broader consultation of how the Victims Support Scheme can be improved including through legislative and practice changes. We note that a statutory review of the *Victims Rights and Support Act* is required to take place any time between May 2019 to 2021.

Accessing counselling

We acknowledge the proposal for a victim-survivor to choose their own counsellor will remove the administrative burden on the victim-survivor and Victims Services when a counsellor needs to be reallocated. However, we remain concerned that there will be significant delays in victims-survivors accessing counsellors. We are aware there are significant delays in accessing counselling in Newcastle, Hunter area, Moree, Penrith and Dubbo. In some areas, such as Broken Hill, there are no counsellors and clients have to travel several hours to Mildura.

We are concerned about delays in areas, particularly but not exclusively in regional, rural and remote areas where there may be very few counsellors. If a victim-survivor has to access a counsellor on their own and they are told there is a long wait, they may give up on accessing counselling. For many, it will be too difficult to access a counsellor on their own.

We propose the application form regarding counselling includes the option of choosing your own counsellor via a list on the Victims Services website for those who are able to do this or nominating Victims Services to allocate a counsellor for those who need support in locating a counsellor.

We welcome the commitment mentioned yesterday to having more Approved Counsellors. While acknowledging it is important to have thorough processes in appointing Approved Counsellors we are concerned that the approval process takes over 12 months. Concerns have also been raised about the need for adequate remuneration for Approved Counsellors, which may be impacting on the number of counsellors available, adding to delays. It is important the number of Approved Counsellors increases broadly and particularly in regional, rural and remote areas. Additionally, we advocate for the recruitment of more Aboriginal and Torres Strait Islander counsellors and further support of other forms of culturally safe healing.

It would be helpful to explore other options in accessing counselling. For example, applicants could nominate their preferred timing for counselling on the applications form – immediately, 3 months etc. We note the complexity of victims-survivors lives means they may nominate to access counselling immediately but when contacted may choose not to access immediately. We reiterate the importance of consulting with other stakeholders who may also provide some alternative proposals. It is also important there be an option for people to be allocated Approved Counsellors with particular specialisation. Further information should be available about Approved Counsellors including the counsellor's experience, speciality, mode of delivery, therapy type.

Government identification document

The issue of requiring all applications to be accompanied by a government identification document is an issue raised by a number of our members and other services and organisations.

While we accept government identification documents are required to open a bank account and an applicant needs to provide bank details for payment in a successful Victims Support claim, there are significant barriers for some victims-survivors providing such documentation.

Some victims-survivors may have lost such documents as they are homeless or transient.

Others, including victims-survivors of domestic violence, sexual assault, child abuse and child sexual abuse may have lost these documents in the chaos of life.

Some victims-survivors may have limited access to government identification documents. For example, while victims-survivors who are in custody are provided an identify card there can be significant barriers to obtaining a copy of the card.

For others, including older victims-survivors and many victims-survivors who do not have access to the internet a computer or other technology or are not digitally literate, there may be difficulties in scanning or digitalising a copy of the identification document.

We are hearing from members, including members in regional, rural and remote areas and members that auspice Women's Domestic Violence Advocacy Services, that Immediate Needs Support Package applications

are being rejected because Victims Services are unable to open the identification document or a bank statement or that the document is unsigned (digital licences are a government document but are unsigned). They are being told they have to resubmit their application and all supporting evidence again. While a support worker may be able to resubmit such an application, if a person making an application on their own is faced with this message, we fear they will give up on their application.

We oppose the blanket requirement of a government identification document for all applications.

Should you have any questions please contact Kathy Keat or Liz Snell on ph 02 8745 6900.

We look forward to meeting with you again soon to hear your response to these and any other proposals raised. We would also welcome the opportunity to provide input on any new forms proposed to be developed.

Yours faithfully,

Tim Leach

Executive Director

Community Legal Centres NSW