

The case for removing the requirement to separately prove injury in NSW Victims Support applications

Joint Position Statement

July 2022

We, the undersigned, call on the NSW Government to introduce legislation to remove the requirement to separately prove injury in NSW Victims Support applications by the end of 2022. We also call on the NSW Government to legislate better recognition of sexual violence, child sexual abuse, domestic violence, child abuse and modern slavery through higher recognition payments by 2023. The case for this is outlined below.

Current requirements for Victims Support – economic loss and recognition payment

The NSW Victims Support Scheme provides counselling and financial support to victim-survivors of violent crime in NSW.

In order to receive a “recognition payment” and/or financial assistance for economic loss, a victim-survivor must prove:

1. that they were the victim of an “act of violence”¹, and
2. that they were injured as a result. Injury can be physical or threats of physical injury and / or psychological injury or harm.

The applicant must prove their claim on the balance of probabilities. As a part of their application, applicants are required to produce two different sources of documentary evidence:

1. a report of the act of violence to police, government agency or a non-government organisation funded to provide support to victims of crime;² and
2. a medical, dental or counselling report to verify actual injury has been sustained.³

Additionally, to be successful with an application for financial assistance for economic loss full particulars of any economic loss must be provided.⁴

¹ Section 19 of the *Victims Rights and Support Act 2013*, setting out the Meaning of “act of violence” is reproduced below

² *Victims Rights and Support Act 2013* s 39(2)(b)(i)

³ *Victims Rights and Support Act 2013* s 39(2)(b)(ii)

⁴ *Victims Rights and Support Act 2013* s 39(3) and s39(4)

Barriers to separately proving injury

The requirement to prove injury imposes a barrier upon victim-survivors accessing the support they are entitled to and need. This obligation to lodge two separate forms of documentary evidence means victim-survivors have to repeat their story to multiple people, compounding trauma, particularly for those who have experienced sexual violence, child sexual abuse, domestic violence, including child abuse or modern slavery. Further, the obligation causes delay in a process which could otherwise provide necessary and more timely supports to those who have sufficient evidence to prove they were the victim-survivor of an act of violence. Finally, it is offensive to ask a victim-survivor of, for example, sexual violence, child sexual abuse, domestic violence including child abuse or modern slavery, to prove that they were injured as a result of these acts or act of violence.

A trauma informed response should limit the requirements to prove eligibility for a scheme of supports to evidence which is absolutely necessary (that is, evidence of a standard of proof of reasonable likelihood of the acts of violence)⁵ and provide a fast and responsive scheme. Further, a trauma informed response should focus on counselling for a therapeutic purpose which is important for many in their healing and recovery process and limit the times necessary for a victim-survivor to repeat their story.

The requirement to prove injury in Victims Support claims is no longer relevant or appropriate

The requirement to prove injury is an inheritance from the former Victims Compensation Scheme which included a compensation range for certain types of acts of violence and the ultimate payment based on an assessment of the severity of the injury. For example, a series of sexual assaults could receive a payment of between \$25,000 to \$50,000.

In 2013 the State's provision of support to victims of crime was radically overhauled. The Victims Compensation Scheme was closed and replaced with a new Victims Support Scheme. The new scheme is a break away from a compensation model, and amongst other goals aimed to better provide for the immediate needs of victim-survivors of violent crimes.⁶

In the current scheme, there is now a set amount awarded for each category of recognition payment, which is based on the type of crime committed (see table below). This means there is generally no need for any assessment of the severity of the injury. Financial assistance for economic loss is based on actual losses, not severity of injury.

The fact the violent crime was committed should therefore be sufficient to warrant “recognition”.

This is particularly important in relation to sexual violence, child sexual abuse, domestic violence, child abuse and modern slavery.

The long-term impacts of child sexual abuse, sexual violence, domestic violence, child abuse and modern slavery are well established. By their very nature, these crimes result in an injury. Injury can include harm to mental health, physical harm and impact on social, sexual and interpersonal functioning.^{7 8 9}

⁵ The standard of proof of ‘reasonable likelihood’ is the standard of proof for the National Redress Scheme for Institutional Child Sexual Abuse

⁶ New South Wales, *Parliamentary Debates*, Legislative Assembly, 7 May 2013, 32 (The Hon. Brad Hazzard)

⁷ Judith Cashmore and Rita Shackel (2013) [The long-term effects of child sexual abuse](#), *CFCA Paper No. 11*.

⁸ Lori Haskell and Melanie Randall (2019) [The Impact of Trauma on Adult Sexual Assault Victims](#), Canada: Justice Canada, p8

⁹ Royal Commission into Family Violence (2016) [Summary and Recommendations](#), p 158 – 164; Sara McLean, (2016) [The effect of trauma on the brain development of children](#), *CFCA Practice Resource*

The requirement to separately prove injury silences some victim-survivors and leaves them ineligible for Victims Support payments. It also disproportionately impacts on the most marginalised in society who may struggle to obtain evidence of injury. Finally, the requirement to separately prove injury delays many claims for Victims Support because it creates further hurdles and barriers to accessing a recognition payment, and ultimately exacerbates trauma.

We call on the NSW Government for the urgent removal of the requirement to separately prove injury.

Proposed amendment

The change could be achieved by amending section 19 of the *Victims Rights and Support Act* to delete “injury” as an element of the “act of violence” and making consequential amendments. This would impact all claimants, not just victim-survivors of sexual violence, child sexual abuse, domestic violence, child abuse and modern slavery.

In the alternative and at an absolute minimum, the change could be implemented by amending the definition of “act of violence” in section 19 of the *Victims Rights and Support Act 2013*, by which “sexual assault and domestic violence” and “modern slavery” are deemed to be “violent conduct” for the purposes of the definition of act of violence. We note child abuse is currently included within the definition of “sexual assault and domestic violence” in reference to section 19. We recommend child abuse be specifically named in the description of the definition so it reads “sexual assault and domestic violence and child abuse” to help further increase awareness of child abuse and to support the increasing focus on specifically considering the needs of the child or young person in their own right.

The amendment we propose would deem an act of sexual assault and/or domestic violence and/or child abuse and/or modern slavery to have resulted in an injury, removing the need to separately prove such injury.

The documentary evidence requirements outlined in section 39 of the *Victims Rights and Support Act* would need to be amended to remove the requirement for documentary evidence to establish injury. In the alternative and at an absolute minimum there would need to be an amendment that section 39 documentary evidentiary requirements to establish injury do not extend to victim-survivors of sexual assault, domestic violence, child abuse and modern slavery.

Aggravated injuries

If the victim-survivor wishes to access a recognition payment where there is an aggravating factor, for example, for a case of sexual assault that results in serious bodily injury or assault that has resulted in grievous bodily harm, the victim-survivor may still need to provide evidence of injury to establish aggravation. In these cases, the victim-survivor is eligible for a higher category of recognition payment if the aggravating circumstances are proved.

We strongly advocate there be an exception to this for “sexual assault resulting in serious bodily injury” in relation to child sexual abuse. For the purposes of the Victims Support Scheme all child sexual abuse should be deemed to result in serious bodily injury. Evidence of such harm is well known¹⁰ and should be acknowledged by only requiring (1) proof of the act of violence and (2) the age of the child at the time of the alleged offence.

We further advocate Category B recognition payments should be expanded to include domestic violence involving violence that is one of a series of related acts. This would mean victim-survivors of domestic violence can focus on proving act of violence, rather than also having to prove injury, such as grievous bodily harm.

¹⁰ Judith Cashmore and Rita Shackel (2013) [The long-term effects of child sexual abuse](#), CFCA Paper No. 11.

Alternatively, the need to provide evidence to establish aggravation could be removed if the categories of recognition payment were overhauled. We have previously made submissions arguing that the recognition payments should better recognise child sexual abuse, sexual violence, domestic violence, child abuse and modern slavery. Overall, the financial awards are too small to recognise the devastating violence that has occurred. This would require a more significant legislative change.

We propose a phased approach, with the NSW Government introducing legislation to remove the requirement to separately prove injury in Victims Support applications by the end of 2022. In the second phase, the NSW Government legislates the better recognition of sexual violence, child sexual abuse, domestic violence, child abuse and modern slavery through higher recognition payments by 2023.

Why the need to make this change now

This matter needs to be addressed as a matter of priority and can not wait until the outcome of the *Victims Rights and Support Act* statutory review.

It is clear that sexual violence, child sexual abuse, domestic violence, child abuse and modern slavery always cause harm to the victim-survivor. It is also clear that the requirement to separately prove injury in Victims Support matters causes harm and trauma. It is also the case that in many applications for Victims Support, the need to separately provide injury causes delay in the resolution of a claim for Victims Support.

A solution which is both trauma-informed and efficient is to remove the need to separately prove injury for all matters, or at the very least for claims for sexual violence, child sexual abuse, domestic and family violence and abuse, child abuse and modern slavery.

For further information please contact Liz Snell, Women's Legal Service NSW on ph: 8745 6900.

This joint statement has been developed with input across multi-disciplines and sectors. It is endorsed by:

Organisations

1. Women's Legal Service NSW
2. ACON
3. Anti-Slavery Australia
4. Australian Centre for Disability Law
5. Australian Graduate Women
6. Blacktown Women's and Girls' Health Centre
7. Bondi Beach Cottage
8. Bonnie Support Services Ltd
9. Central Coast Community Legal Centre
10. Central Coast Community Women's Health Centre
11. Central Tablelands and Blue Mountains Community Legal Centre
12. Community Legal Centres NSW
13. DV NSW
14. Enough is Enough Anti Violence Movement Inc.
15. Far West Community Legal Centre
16. Far West Women's Domestic Violence Court Advocacy Service
17. Fighters Against Child Abuse Australia
18. Full Stop Australia
19. Good Shepherd Australia New Zealand
20. Homicide Victims' Support Group
21. Homelessness NSW
22. Hunter Community Legal Centre
23. Kingsford Legal Centre

24. Intellectual Disability Rights Service
25. knowmore
26. Liverpool Women's Health Centre
27. Lokahi Foundation
28. Macarthur Legal Centre
29. Marrickville Legal Centre
30. Maternity Choices Australia
31. Mid North Coast Legal Centre
32. Mission Australia Court Support Service
33. MSI Australia
34. Multicultural Disability Advocacy Association
35. Muslim Women Australia
36. National Aboriginal & Torres Strait Islander Women's Alliance
37. National Older Women's Network
38. National Rural Women's Coalition
39. National Women's Safety Alliance
40. Northern Rivers Community Legal Centre
41. Northern Rivers Women and Children's Services
42. North Western Sydney Women's Domestic Violence Court Advocacy Service
43. NSW Council Of Social Service (NCOSS)
44. Older Women's Network NSW
45. People with Disability Australia
46. Public Interest Advocacy Centre
47. Redfern Legal Centre
48. School of Law, Western Sydney University
49. Seniors Rights Service
50. Settlement Services International
51. Shoalcoast Community Legal Centre
52. Shoalhaven Women's Health Centre
53. South West Sydney Legal Centre
54. Staying Home Leaving Violence Broken Hill
55. Staying Home Leaving Violence Wentworth
56. Survivors and Mates Support Network (SAMSN)
57. The Australian Psychological Society Limited
58. The Immigrant Women's Speakout Association of NSW
59. The Salvation Army Trafficking and Slavery Safe House
60. The Shopfront Youth Legal Centre
61. The Women's Cottage
62. University of Newcastle Legal Centre
63. Victims of Crime Assistance League (VOCAL)
64. Warra Warra Legal Service
65. Western NSW Community Legal Centre
66. Western Sydney Community Legal Centre
67. Western Sydney Network for Law and Human Rights
68. Western Sydney University Justice Clinic
69. Western Women's Legal Support
70. Warringa Baiya Aboriginal Women's Legal Centre
71. Women's and Girls' Emergency Centre (WAGEC)
72. Women's Health NSW
73. Women's Justice Network
74. Youth Action
75. Youth Law Australia

Individuals

1. Luke Addinsall
2. Jasmine Baker
3. Tracey Booth, Professor, UTS Law
4. Professor Anna Cody, Dean School of Law, Western Sydney University
5. Associate Professor Azadeh Dastyari, Western Sydney University
6. Miranda Kaye, UTS Law Health Justice Centre
7. Honorary Associate Professor Lesley Laing, Sydney School of Education and Social Work, University of Sydney
8. Assoc Prof Terri Libesman, UTS Law
9. Amanda Morgan, Survivor Advocate and Founder of Make A Seat Australia
10. Jacqueline Price, National Union of Students Women's Department
11. Professor Catherine Renshaw, Western Sydney University
12. Dr Amie Steel and Dr Abela Mahimbo, Public Health Association of Australia Women's Health Special Interest Group
13. Catalina Valencia
14. Dr Jane Wangmann, Associate Professor, UTS Law

Categories of recognition payments		
	Amount	Act of violence
Category A	\$15,000	Act of violence or act of modern slavery that apparently occurred in the course of the commission of a homicide: <ul style="list-style-type: none"> • Payable to a family victim who, immediately before the death of the primary victim, was financially dependent on the primary victim. • Payable to each child of a primary victim who immediately before the death of the primary victim was under age of 18 years
	\$7,500	<ul style="list-style-type: none"> • Payable to each parent, step-parent or guardian of a primary victim who died. • Payable to the spouse or the de facto partner who died.
Category B	\$10,000	Payable to a primary victim of act of violence or act of modern slavery of the following kinds: <ul style="list-style-type: none"> • a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by 2 or more persons, • a sexual assault, sexual touching or sexual act or attempted sexual assault involving violence that is one of a series of related acts.
Category C	\$5,000	Payable to a primary victim of act of violence or act of modern slavery involving any of the following: <ul style="list-style-type: none"> • a sexual assault other than one referred to above, • an attempted sexual assault resulting in serious bodily injury, • an assault resulting in grievous bodily harm, • physical assault of a child that is one of a series of related acts.

Category D	\$1,500	Payable to a primary victim of act of violence or act of modern slavery involving any of the following:: (a) sexual touching or sexual act, (b) an attempted sexual assault involving violence other than one referred to above, (c) a robbery involving violence, (d) an assault (not resulting in grievous bodily harm).
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Victims Rights and Support Act 2013

19 Meaning of “act of violence”

- (1) In this Act, **act of violence** means an act or series of related acts, whether committed by one or more persons—
 - (a) that has apparently occurred in the course of the commission of an offence, and
 - (b) that has involved violent conduct against one or more persons, and
 - (c) that has resulted in injury or death to one or more of those persons.
- (2) For the avoidance of doubt, the reference to an offence in subsection (1) (a) extends to conduct of a person that would constitute an offence were it not for the fact that the person cannot, or might not, be held to be criminally responsible for the conduct because of the person’s age or mental illness or impairment.
- (3) For the purposes of this section, violent conduct extends to sexual assault and domestic violence.
- (4) Except as provided by subsections (5) and (6), a **series of related acts** is two or more acts that are related because—
 - (a) they were committed against the same person, and
 - (b) in the opinion of the Tribunal or the Commissioner—
 - (i) they were committed at approximately the same time, or
 - (ii) they were committed over a period of time by the same person or group of persons, or
 - (iii) they were, for any other reason, related to each other.
- (5) An act is not related to another act if, in the opinion of the Tribunal or the Commissioner, having regard to the particular circumstances of those acts, they ought not to be treated as related acts.
- (6) An act is not related to any earlier act in respect of which support is given under this Act if it occurs after the support is given.
- (7) For the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes a single act of violence.
- (8) In this Act—

sexual assault and domestic violence means any of the following—

 - (a) sexual intercourse (within the meaning of Division 10 of Part 3 of the [Crimes Act 1900](#)) with a person without his or her consent or with consent obtained by means of a non-violent threat,
 - (b) sexual intercourse (within the meaning of Division 10 of Part 3 of the [Crimes Act 1900](#)) with a child under the age of 16 years or with a person having a cognitive impairment (within the meaning of that Division),
 - (c) self-manipulation (within the meaning of section 80A of the [Crimes Act 1900](#)) which a person is compelled to engage in because of a threat (within the meaning of that section),
 - (d) sexual touching (within the meaning of Division 10 of Part 3 of the [Crimes Act 1900](#)) of a person without his or her consent or sexual touching of a child under the age of 16 years or the carrying out of a sexual act (within the meaning of that Division) with or towards a child under the age of 16 years,
 - (e) participation with a child under the age of 18 years in an act of child prostitution (within the meaning of section 91C of the [Crimes Act 1900](#)) or the use of a child under the age of 18 years for the production of child abuse material (within the meaning of section 91FB of the [Crimes Act 1900](#)),
 - (f) any other act resulting in injury that occurred in the commission of a personal violence offence (within the meaning of the [Crimes \(Domestic and Personal Violence\) Act 2007](#)) against any of the following persons—
 - (i) a person who is or has been married to the person who committed the offence,
 - (ii) a person who is or has been a de facto partner of the person who committed the offence,

- (iii) a person who has or has had an intimate personal relationship with the person who committed the offence, whether or not the intimate relationship involves or has involved a relationship of a sexual nature,
- (iv) a person who, at the time of the offence, was living in the same household as the person who committed the offence,
- (v) a person who, at the time of the offence, was living as a long-term resident in the same residential facility as the other person (not being a facility that is a correctional centre within the meaning of the [Crimes \(Administration of Sentences\) Act 1999](#) or a detention centre within the meaning of the [Children \(Detention Centres\) Act 1987](#)),
- (vi) a person who, at the time of the offence, had a relationship involving his or her dependence on the ongoing paid or unpaid care of the person who committed the offence,
- (vii) a person who is or has been a parent, guardian or step-parent of the person who committed the offence,
- (viii) a person who is or has been a child or step-child of the person who committed the offence, or some other child of whom the person is the guardian,
- (ix) a person who is or has been a brother, sister, half-brother, half-sister, step-brother or step-sister of the person who committed the offence.