



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION

GENEVA

3 December 2020

Ms Beatriz Balbin
Chief
Special Procedures Branch
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
Palais de Nations
1211 Geneva 10
Switzerland

Dear Madam

Re: Joint Communication of 8 October 2020 from Special Procedures mandate holders regarding the NSW Victims Support Scheme (Ref# AL AUS 4/2020).

I refer to the joint communication dated 8 October 2020 from the Special Rapporteur on violence against women, its causes and consequences; the Independent Expert on the enjoyment of all human rights by older persons; and the Working Group on discrimination against women and girls.

The Australian Government acknowledges the matters raised in the joint communication and has the honour of providing the following response to the requests for information and comment.

Additional information about the NSW Victims Support Scheme (Question 1)

1. The Victims Support Scheme (established under the *Victims Rights and Support Act 2013* (NSW) (**VRSA**)) provides a package of support to meet a victim's needs. The Victims Support Scheme provides four pillars of support:
 - 1.1. Free counselling through approved counselling services;
 - 1.2. Financial assistance for immediate needs (including the Immediate Needs Support Package [INSP] for domestic violence victims);
 - 1.3. Financial assistance for economic loss; and
 - 1.4. Recognition payments to acknowledge the act of violence and trauma experienced.

Overall accessibility of the Scheme

2. The Scheme, administered by Victims Services within the NSW Department of Communities and Justice (**Victims Services**), provides highly accessible support to victims of violent crime.

3. Victims are easily able to access support without assistance. Victims can lodge a claim for support using simple application forms at no cost. Approximately three-quarters of applications are made without caseworker support or legal representation and 70% of applications are submitted online. Paper forms are also available for those that are unable to access online forms.
4. Victims Services operates email enquiry and telephone support lines for victims who require assistance with the application process. These include the Victims Access Line and the Aboriginal Contact Line, with minimal wait times usually under one minute. Both lines are accessible through the National Relay Service, for those with a hearing or speech impairment, and the Translating and Interpreting Service, for those who require an interpreter.

Statutory time limits for making applications under the VRSA

5. The VRSA prescribes the time limits for making financial support and recognition payment applications, including the extended time limits that apply for victims of domestic violence, sexual assault, and child abuse.¹
6. Under the VRSA an applicant may continue to make claims under a duly made application for a period of 5 years.² For example, a domestic violence victim who makes a valid application for financial assistance within 10 years after the act of violence has a further 5 years from the date of a claim to claim financial reimbursement for any expenses incurred related directly to that act of violence.
7. In addition, the legislation provides that an application lapses if 12 months has passed since the applicant was first requested to provide evidence to support the application.³ If an application lapses, the victim can still submit a new application, if they remain within the statutory time limits.

Consistency of the Scheme with Australia's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

8. Australia, as a State party to CEDAW has an obligation to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.
 - 8.1 Gender is no barrier at law or otherwise to accessing victims support. As has been noted, women are disproportionately affected by gender-based crimes such as domestic violence and sexual assault. Since the commencement of service changes, Victims Services has continued to receive thousands of applications each month for victims support. The vast majority (80%) of these applications are in relation to these crimes.⁴
 - 8.2 It is acknowledged that standardised administrative processes have the potential to disadvantage vulnerable cohorts of victims. The service changes implemented by Victims Services have been accompanied by additional supports and mitigation measures as will be outlined below.
 - 8.3 Australia, as a State party to CEDAW, has an obligation pursuant to Article 2(b) to adopt appropriate legislative and other measures,

¹ *Victims Rights and Support Act 2013 (NSW) (VRSA) s 40.*

² VRSA s 40(6).

³ VRSA s. 41A

⁴ Victims Services internal data for the period 1 July 2020 – 30 September 2020, covering a 3 month period after service changes commenced.

including sanctions where appropriate, prohibiting all discrimination against women.

9.

- 9.1 The Committee on the Elimination of Discrimination against Women has issued non-binding General recommendations regarding the provision of remedies pursuant to CEDAW. General recommendation No. 28 aims to clarify States' obligations with respect to Article 2 of CEDAW and notes that Article 2(b) gives rise to an obligation to provide remedies that should include different forms of reparation.⁵ Further, General recommendation No. 33 recommends that States parties to CEDAW provide remedies that are promptly attributed and proportionate to the gravity of the harm suffered.⁶
- 9.2 It is acknowledged that women, including Indigenous women and children, older women, and women with disability, are disproportionately affected by domestic violence, sexual violence, child abuse and child sexual abuse. Victims of all these crimes are eligible for support under the Scheme and higher recognition payments are granted to victims of sexual assault and child abuse to recognise the gravity of this particular type of harm.
- 9.3 The VRSA further recognises the unique and long-term barriers faced by these victims by providing extended time limits on applications. Victims of domestic violence and sexual assault have ten years in which to lodge their application, victims of child abuse have ten years from the date of their 18th birthday and victims of child sexual assault have no time limits.⁷ In addition, victims of child sexual assault or physical abuse are eligible for unlimited free counselling.
- 9.4 The Scheme provides different forms of assistance, including counselling, financial assistance for immediate needs and economic loss, and recognition payments to recognise the trauma that has been suffered. Financial assistance is flexible and victims can access support to help meet the costs of any services they require to secure their safety, health and wellbeing following an act of violence.

Rationale and measures to assist vulnerable victims (Questions 2 &3)

Improving processing times for recognition payments

10. The key driver of the service changes is to achieve faster processing of complete applications for recognition payments, which currently take an average of more than 12 months to determine. Incomplete applications cannot be determined until evidence is received.
11. The changes were informed by the demonstrated success of the Immediate Needs Support Package (INSP) reforms in delivering timely financial assistance to domestic violence victims. Under the INSP, victims may receive up to \$5,000 to

⁵ The Committee on the Elimination of Discrimination against Women, Recommendation No. 28, para 32.

⁶ The Committee on the Elimination of Discrimination against Women, Recommendation No. 33, para 19 (b).

⁷ VRSA s 40.

help secure their safety, health and wellbeing. The processing time for this package of support is an average of 10 days. Prior to the introduction of this process the processing time for financial assistance took an average of 73 business days.

12. The key to this significant improvement in response times was having victims provide proof of identity, a police report or event number or a letter from a support service, and bank account details with their application upfront.
13. The service changes support progress toward faster determination of claims for victims support, ensuring victims of gender-based violence are promptly compensated in line with Australia's obligations under CEDAW.

Evidentiary requirements for recognition payments are supported by additional measures

14. The service changes encourage behaviour change that benefits victims overall through quicker determination of claims. At the same time, the additional measures and supports available mean that the changes do not impose a rigid barrier to access for victims in exceptional circumstances who face genuine barriers.
15. Victims Services has encouraged clients and advocates to contact the Victims Assistance Line in circumstances where a time limit is approaching and the client may not have the ability to lodge their claim.
16. The VRSA requires that an application for financial assistance for economic loss and recognition payments, be accompanied by documentary evidence (s 39(1)). This evidence must demonstrate, on the balance of probabilities that the applicant was the victim of an act of violence and that they suffered an injury as a result of that act of violence.⁸
17. Section 39 of the VRSA requires the following forms of evidence to be provided for recognition payments:
 - 17.1 A police or government/government-funded organisation report documenting the act of violence against the applicant; and
 - 17.2 Medical, dental or counselling reports documenting the resulting injury to the victim.
18. Access to both forms of evidence is widely available at no cost to clients through publicly-funded health and support services.
19. Victims Services also supports victims to gather evidence through the following arrangements:
 - 19.1 Police report - Where a victim has reported the crime to police, Victims Services is able to access the police report directly at no cost to victims, due to an information sharing agreement between Victims Services and the NSW Police Force. This avoids victims having to review and potentially be re-traumatised by the evidence contained in the police report.

⁸ VRSA s 39.

- 19.2 Evidence of injury – Where a victim is being supported an Approved Counsellor for a psychological injury, Victims Services covers the cost of a report prepared by their Approved Counsellors.
20. The new application process requires an applicant to gather the supporting evidence within a 12 month period of lodging an application. The legislation provides that an application lapses if 12 months has passed since the applicant was first requested to provide evidence to support the application.⁹
21. Victims Services also remains available through its support lines to assist any victim that faces a barrier to accessing the Scheme – whether it is gathering evidence, supplying identification, selecting a counsellor, or any other difficulty.
22. It is also relevant to note the evidentiary requirements for other forms of support under the Act:
- 22.1 For counselling – no evidence is required.
 - 22.2 For financial assistance for immediate needs – one form of evidence is required which establishes that the person was the victim of an act of violence.
 - 22.3 For financial assistance for economic loss – two forms of evidence (one establishing the act of violence and one proving injury) and evidence of lost income and expenses related to the crime.
23. The joint communication states that “costs for obtaining [supporting evidence] would no longer be covered by Victims Services and must be met by the victim-survivor”. As part of the service changes, Victims Services also introduced the Certificate of Injury form. This form is not mandatory and is intended as a tool to assist applicants who cannot obtain copies of contemporaneous medical records. Victims Services did not previously meet the costs of completing medical reports, rather previous practice was for Victims Services to request copies of documentation such as discharge notes from hospitals. If a victim is required to pay a fee for accessing copies of such notes, Victims Services will reimburse that fee to the victim when their claim is approved.

Applications for counselling

24. Applicants for counselling must provide a form of government-issued identification. There is no requirement for it to be photo identification.
25. Under the VRSA, while an application for victims support lapses if 12 months has passed since the applicant was first requested to provide evidence, the Commissioner may also authorise an extension of time where there are valid reasons why a victim cannot provide evidence.¹⁰

Identification requirements for all applications are reasonable and flexible

26. It is a reasonable and common requirement for identification to be provided to access government services (e.g. to enrol in universal health care or make a social security claim).
27. The identification requirements to access the Victims Support Scheme are much less onerous and non-prescriptive than for many other similar services. For

⁹ VRSA s. 41A

¹⁰ VRSA, s 41A(1).

example, to receive an emergency social security one off payment in circumstances of domestic violence, an applicant must provide 100 points of identification, typically three different documents, one of which must be photographic. In contrast, the Victims Support Scheme only requires one government issued document which does not need to be photographic.

28. Victims Services requires identification to confirm that applicants are who they say they are and consent to Victims Services making enquiries to relevant agencies to validate evidence. These enquiries often relate to sensitive personal information about applicants (for example, police reports accessed directly by Victims Services) and so it is critical that a claimant's identity is verified before proceeding with assessments.
29. Victims Services accepts all State or Commonwealth government-issued identification without prescribing any particular form of identification. The Victims Support Scheme Detailed Guide for applicants, published on the Victims Services website, clearly states examples of identification that may be accepted, including (but not limited to) a driver's licence, passport, Medicare card, or card issued by Centrelink.¹¹
30. Victims Services has not published an exhaustive list of acceptable identification types as on balance the better approach is to keep the requirement simple and open so as not to risk unintentionally excluding identification types that might otherwise be accepted. For example, Victims Services regularly accepts unique custodial identification numbers as proof of identity for clients in NSW correctional facilities.
31. In the exceptional circumstances where a victim may not be able to access any government issued identification, victims can contact Victims Services for assistance and concessions can be made.

Bank details are necessary for making payments in a timely way

32. The service delivery changes improve the time from decision to payment.
33. Victims Services is subject to obligations that apply to all public agencies under data retention and privacy regulations and operates in compliance with these obligations when collecting bank account details.
34. The requirement to provide a bank account to Victims Services with applications is not a new requirement, and providing these details upfront enables prompt payment of support within days of a decision, without further effort on the part of the victim. It is a key part of the service reform and aligns with the process already in operation for the Immediate Needs Support Packages.
35. Clients can also easily notify Victims Services of any change in bank details by calling the Victims Access Line or Aboriginal Contact Line, both of which have wait times of under one minute to speak to a staff member. The application form clearly advises clients to do so should there be any change in circumstances, specifically including bank details.

Counsellor information is accessible and victims are supported to make a choice of provider

¹¹ *Victims Support Scheme: Detailed Guide*, available at https://www.victimsservices.justice.nsw.gov.au/Documents/pt21_vss-guide-quick.pdf, p. 10.

36. The changes to the counsellor allocation process reflect the principle of victim choice and agency as it allows victims to access counselling at a time that works for them, and with a counsellor that suits their needs.
37. Approved counsellor details are listed on the Victims Services website with improved search functionality to include counsellor demographics such as location, gender, languages, specialities and availability. The website also indicates which counsellors provide services via telephone or Audio-Visual Link (AVL) which improves accessibility for regional and rural victims.
38. Victims can contact Victims Services to request assistance should they face any barriers to accessing counsellor information or choosing a counsellor.
39. Victims Services, as part of the NSW Department of Communities and Justice, has a responsibility to ensure the counsellor allocation process is impartial and meets probity requirements. Counsellors are contractors who are engaged by Victims Services on behalf of clients. Victims Services must avoid the risk of actual or perceived bias in counsellor selection and client choice mitigates this risk.

Measures to support victims participation in the review (Question 4)

40. Targeted consultation through correspondence and meetings occurred in the finalisation of the service improvement changes with key stakeholder groups including the Victims Advisory Board, Victims of Crime Interagency, and with Community Legal Centres.
41. Victims Services will review data on the lodgement and processing of applications at six months from implementation and will consult further with key victims support stakeholders at that time on specific issues arising as a result of the service changes.
42. The six month review process will include formal consultation with key stakeholders including the Victims Advisory Board, Victims of Crime Interagency, and with Community Legal Centres.

Information on the statutory review (Question 5)

43. The VRSA must be reviewed at intervals of not less than three years and not more than five years. The previous statutory review of the VRSA commenced in June 2016. The next review is required to commence by June 2021.
44. The duration of the previous statutory review was two years. After commencing in June 2016, it was tabled in Parliament in June 2018.
45. As per the process for the previous statutory review, the Department of Communities and Justice will coordinate a public consultation process to support the review. When the review commences, interested individuals and organisations will be invited to make submissions.

Information on steps to evaluate impacts on access (question 6)

46. Victims Services will review data on the lodgement and processing of applications at six months from implementation. This review is intended to identify any practical impediments to applying for victims support caused by the changes and consider any further mitigations that may be necessary.
47. Victims Services is also working on improvements to data collection and reporting, including how best to use that data to improve outcomes for victims of crime.

Concluding remarks

The legislative and administrative settings of the NSW Victims Support Scheme are designed to facilitate simple and timely access to support for victims of violent crime. At the same time, it is necessary for reasonable requirements to be established for accessing support to ensure proper administration of public resources.

I trust the information will be of assistance to the Special Procedure mandate holders. I reiterate the Australian Government's longstanding commitment to cooperating with the United Nations and to upholding its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women.

Yours sincerely

A handwritten signature in blue ink that reads "Sally Mansfield". The signature is written in a cursive style and is contained within a thin black rectangular border.

Her Excellency Sally Mansfield
Ambassador and Permanent Representative
Australian Permanent Mission to the Office of the United Nations and Conference on
Disarmament