



Women's Domestic Violence Court Advocacy Service NSW Inc

The NSW Department of Justice review of the *Victims' Rights
and Support Act 2013 (NSW)*.

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About WDV CAS NSW Inc.

Established in 1996, Women's Domestic Violence Court Advocacy Service NSW Inc. (WDVCAS NSW) is the peak body for the state-wide Women's Domestic Violence Court Advocacy Services who provide services to assist women and children seeking legal protection from domestic violence. WDV CAS NSW is an incorporated association comprising representatives from 28 individual WDV CAS¹ that operate in 114 local courts throughout metropolitan, regional and rural New South Wales.

Each WDV CAS is auspiced and works locally in collaboration with government agencies, non-government organisations and the private sector to deliver an integrated service to clients.

As of the 1st July 2015, WDV CAS services are the central referral service for NSW Police following family and domestic violence incidents. NSW Police send an automatic referral to the local WDV CAS office for every woman who was the victim on a family or domestic violence incident. The WDV CAS worker then contacts the victim to offer safety information, advice, information and referral options.

In 2015/6, the 28 WDV CAS provided 76,473 services to 27,526 clients across NSW. The WDV CAS made a total of 44,642 referrals, and assisted 3,168 Aboriginal clients and 5,123 culturally and linguistically diverse (CALD) clients.

In 2010/2011, the 28 WDV CAS provided 73,765 services to 21,219 clients across NSW (a 25% increase on the last year and a 78.7% increase since program expansion on 1 July 2009). There was a 55% increase in the number of interim and final orders obtained since the expansion of the program. The WDV CAS made a total of 39,200 referrals, and assisted 1,407 Aboriginal clients and 4,499 culturally and linguistically

¹ Blue Mountains, Burwood, Central Coast, Central West, Far South Coast, Far West, Hunter, Hunter Valley, Illawarra, Macarthur, Macquarie, Mid-North Coast, New England, North Coast, North West, North West Sydney, Northern Rivers, Northern Sydney, Riverina, South Coast, South Eastern, South West Sydney, Southern, Southern Sydney, Sydney, Wagga Wagga, Western, Western Sydney

diverse (CALD) clients.

In 2009/2010, the 28 WDVCAS provided services to female clients in 56,770 domestic and family violence related matters. 18,060 of these clients had children under the age of 16.

The purpose of WDVCAS NSW is to:

- advocate in social, legal and political settings on behalf of women and children who have experienced domestic violence;
- collaborate and consult with key stakeholders; as well as
- formulate recommendations for systemic policy and law reform.

The specific aims of WDVCAS NSW Inc. are to:

1. identify and respond to emerging issues associated with domestic violence, with a focus on systemic policy and law reform;
2. promote a cooperative and integrated approach to working in domestic violence to ensure effective service delivery;
3. collaborate with local courts, NSW police, referral support services and other relevant bodies where appropriate;
4. promote dialogue and debate on issues associated with domestic violence; and
5. identify, analyse and disseminate up to date research.

Members of WDVCAS NSW exchange information and discuss social, legal and procedural issues impacting on their services. In identifying and discussing systemic issues and developing strategies to address these issues, WDVCAS NSW acts as a strong advocate for legal and social policy reform for women and their children experiencing domestic violence.

The WDVCAS NSW is funded by Legal Aid NSW through the Women's Domestic Violence Court Advocacy Program.

Introduction

WDVCAS NSW Inc. welcomes the opportunity to provide comment upon the question's 'do the policy objectives of the *Victims Rights and Support Act 2013* (NSW) remain valid and are the terms of the Act are appropriate for securing those objectives?' As a state wide specialist domestic violence service who receives referrals directly from Police for any female aged over 16 in NSW who has received support from Police in relation to domestic or family violence, WDVCAS is in an advantageous position to provide feedback on the reported experience of female victims of domestic and family violence in accessing the support of Victim's Services.

Evidence requirements under s39 of the Act

WDVCAS workers have reported that the requirement under s 39 (2) (b) of the Act for documentary evidence of the incident of violence from Police or other government department can act as both a deterrent and an unreasonable barrier to female victims of violent crimes in accessing much needed financial support or financial recognition. The many reasons for victims of violence in not accessing support from government agencies, particularly Police are well documented.²

WDVCAS NSW Inc. believe that evidentiary requirements under the Act should be reviewed to be inclusive of evidence capable of meeting the civil standard of proof from both government and non-government agencies. Such an amendment would ensure the provisions of the Act were better able to meet the policy objective of recognising and promoting the rights of victims of crime. A victim's rights to recognition and financial redress for harm suffered should not be curtailed simply because she/he is fearful of reporting the violence to a government agency. Such an amendment would also ensure access to supports for a greater number of victims and therefore facilitate greater equity among victims of violent crime.

² Birdsey, Emma & Snowball, Lucy 'Reporting Violence to Police: A Survey of Victims attending Domestic Violence Services', *NSW Bureau of Crime Statistics and research* (2013).

Case Study – Emilia (Identifying features changed)

Emilia is 26 years old and has 2 children aged 3 and 18 months. Emilia lives with her 2 children and her partner Robert. Robert is 38 years of age and has ties to an outlaw motorcycle gang. Neighbours of Robert and Emilia call the Police after hearing loud banging noises in the home and the sound of the children screaming. When Police arrive Emilia refuses to give a statement. No further action is taken by Police. An automatic referral is sent to WDV CAS. WDV CAS make contact with Emilia who discloses that she is terrified for her safety and the safety of her children. Emilia further discloses that Robert routinely hits her and screams abuse at her in front of their children. Emilia says that she did not make a statement to Police about this as Robert has threatened to have her killed if she talks to Police.

WDV CAS discuss reporting the violence to Police but Amelia is adamant that to do so would further jeopardise her safety. WDV CAS safety plan with Amelia and refer her to the domestic violence line for refuge accommodation for her and her children far away from Robert. The refuge assists Emilia to submit an application for counselling through Victims Services which is approved. Emilia is however unable to make an application for a recognition payment to victims services as she did not report to or seek assistance from a government agency and therefore does not have the required evidence to support her application.

Emilia is denied access to the financial assistance she so desperately requires as she does not feel safe to report the violence to a government department.

Discretion to Recover Monies Paid Under the Scheme from the Guilty Party

WDV CAS NSW Inc. understands the need to hold perpetrators of violence responsible for their actions and to attempt to place the economic burden of the consequences of violent acts in the hands of those who committed the acts. WDV CAS NSW Inc. is however concerned that the possibility of a perpetrator being made to repay the costs of recognition payments or other payments under the

scheme may dissuade or prevent victims from seeking financial assistance or recognition payments under the scheme.

Victims of domestic and family violence may be fearful of further acts of violence, threats of violence or harassment from the perpetrator should the perpetrator be made to repay the cost of their recognition payment through the Victims Support Scheme. Under the Charter of Victims' Rights, victims have a right to be protected from the perpetrator. The ordering of the perpetrator to repay recognition payments or other payments under the scheme may place the victim at greater risk of future violence from the perpetrator and hence may negate their right to protection and safety.

Whilst WDVCS NSW Inc. support the retention of the discretion to order the perpetrator to repay the monies paid through the Victim's Support Scheme, we suggest that this discretion should be limited to instances where the victim identifies that the making of such an order would not place them at a greater risk of future violence from the perpetrator. A victim should be consulted prior to the exercise of this discretion and should be empowered with the right to veto such an order being made.

The object of the Act allowing the Commissioner of Victim's Rights the discretion to seek restitution from the perpetrator may at times be in conflict with the object of the Act to recognise and promote the rights of victims of crime as an order requiring restitution may jeopardise the safety of the victim. WDVCS NSW Inc. propose that when such a conflict between objects is identified the object 'to recognise and promote the rights of victims of crime' should be considered paramount and should therefore triumph over other objects of the Act.

Whilst WDVCS NSW Inc. believes that the provisions of the Act are capable of meeting the object of the Act to allow discretion to seek restitution from the perpetrator, they are incapable of adequately meeting the object of recognising and promoting the rights of victims. The Act should be amended to assure victims considering making an application for financial assistance under the scheme that

they maintain the power to veto any decision to seek restitution from the perpetrator.

Such an amendment would permit victims of violent crimes who most fear further acts of violence from the perpetrator to seek financial assistance under the scheme without the fear that the perpetrator may be ordered to repay the costs of the payment made which may trigger them to commit further acts of violence against them.

Legal Advice/Assistance Required for Most Vulnerable in accessing Financial Assistance/Recognition Payment

WDVCAS workers have expressed the view that funds need to be made available under the scheme for the most vulnerable victims of violent crimes to receive free legal assistance when seeking financial assistance or recognition payment through Victims Services. WDVCAS workers report instances where vulnerable clients or those with complex needs are unable to effectively advocate for themselves or navigate the system in order to receive the assistance they desperately require or the financial recognition they deserve.

WDVCAS workers note that whilst non-legal support services can offer a degree of support to vulnerable clients seeking financial recognition or support under the scheme they may not have the same degree of knowledge of the legislation as legal professionals who are well versed in the application of the provisions of the Act.

To ensure equal access to redress for the most vulnerable victims of violent crimes, WDVCAS NSW Inc. believes that resources must be made available to provide fee free legal advice to disadvantaged victims accessing assistance under the scheme.

Time Limits Imposed Under the Scheme

WDVCAS workers have expressed concern regarding the time limits imposed upon victims of violent crimes in regards to the submission of an application for financial assistance or recognition under the Act. WDVCAS workers have recounted the

stories of women who have been prevented from applying for financial support or recognition under the scheme as the time period as set down in s 40 of the Act has passed.

WDVCAS workers have advised that it is frequently not until a woman feels safe from further abuse and is offered support that she may be comfortable and able to seek assistance from Victims Services. As there are many, complex barriers to women finding safety from domestic and family violence, the time limits in place under the scheme act as another barrier to victims of domestic and family violence receiving the financial support and recognition that they both need and deserve.

The time limits imposed under the Act work to undermine the policy objective of the recognising and promoting the rights of victims of crime. The recognition and rights of a victim should not be lost or ignored simply because a specified period of time has elapsed. If the applicant is able to meet the civil standard of proof in relation to the occurrence of the violent incident, their application should not be dismissed due to the timing of their application.

The harmful and traumatic effects of domestic and family violence can continue to impact upon a victim for many years after the occurrence of the violence.³ The provisions of the Act should be amended to recognise the long term impacts of violent crimes (including domestic and family violence) and the many valid reasons for delayed applications under the scheme. Such an amendment would see the removal or significant extension of the time limits for making a recognition payment application under the Act.

Recommendations

1. The evidentiary requirements under the Act should be reviewed to be made inclusive of all evidence capable of meeting the civil standard of proof from both government and non-government agencies.

³ Morgan Anthony & Chadwick Hannah, 'Key Issues in Domestic Violence' *Australian Institute of Criminology* (2009).

2. The discretion to order the perpetrator to repay the monies paid through the Victim's Support Scheme should be limited to instances where the victim identifies that the making of such an order would not place them at a greater risk of future violence from the perpetrator. The provisions of the Act should be amended to ensure that a victim is consulted prior to the exercise of this discretion and empowered with the right to veto such an order being made.
3. Provision should be made under the scheme to ensure resources are made available to provide fee free legal advice to disadvantaged victims accessing assistance under the scheme.
4. The provisions of the Act should be amended to recognise the long term impacts of violent crimes (including domestic and family violence) and the many valid reasons for delayed applications under the scheme. Such recognition could be expressed in the Act through the removal of time limits for the making of a recognition payment application under the scheme.