



This fact sheet summarises the Ask LOIS webinar on this topic presented on 3 June 2020 by Kellie McDonald, Senior Solicitor, Women's Legal Service NSW  
To view this webinar for free, or to access other resources, visit [www.asklois.org.au](http://www.asklois.org.au)

### This factsheet will cover the following:

- [Recent updates to the Victims Support Scheme](#)
- [Possible further reforms](#)
- [Immediate Needs Support Package \(INSP\)](#)
- [Maximising recognition payments by:](#)
  - making multiple applications, and
  - understanding the meaning of serious bodily injury, offensive weapon, series of related acts and grievous bodily harm.
- [Case Study](#)
- [Where to get help](#)

### Updates to the Victims Support Scheme

Since 14 January 2019:

- There is unlimited counselling hours available to victims of child sexual assault;
- Victims Services (VS) can make a victim's existing counsellor a VS approved counsellor;
- Current spouses or de facto partners of homicide victims who were not financially dependent on the victim, are now eligible for recognition payments of \$7,500;
- The maximum amount payable for funerals has been increased to \$9,500;
- The time to lodge an internal review has been increased from 28 days to 90 days;
- Victims can now rely on a report of an act of violence to a non-government agency funded by the Government to help victims of crime;
- Victims no longer need to explain why they may have delayed in reporting violence to the Police.

### Possible upcoming changes to Victims Support Scheme

Victims Services is considering requiring applicants to collect and submit the evidence they need to support their application with their application.

We oppose these changes because victims may not be able to obtain the necessary evidence before their time limit expires. There is no option to submit an application out of time. We also believe it can be difficult and potentially

retraumatizing to victims to obtain and upload their own evidence.

If you oppose these changes, we invite you to sign onto an Open Letter to the NSW Commissioner Victims Rights <https://www.clcsw.org.au/open-letter-proposed-changes-nsw-victims-support-scheme>

### Call for further reforms

A statutory review of the Victims Rights and Support Act is due to take occur before May 2021 with the purpose of determining whether the policy objectives of the Act remain valid and the terms of the Act are still appropriate for securing those objectives. We are calling for the immediate commencement of the statutory review and for the following reforms:

- That one form of evidence be sufficient to establish act of violence and injury;
- That evidence of injury not be required for victims of domestic violence, sexual assault, child abuse or child sexual abuse.

### Immediate Needs Support Package

Aimed at providing financial assistance to victims of domestic violence to meet their immediate needs following an act of violence.

Includes a grant of up to \$5,000, without receipts, on the condition the money is spent on the following: security, relocation, furniture and household expenses and basic clothing and toiletries.

Applicants have two years from act of violence to apply. To apply you need to submit an Application for Support for Primary Victim and complete and sign the INSP form and email it to [vsin@justice.nsw.gov.au](mailto:vsin@justice.nsw.gov.au) along with the evidence required.

### Evidence required

- Government-issued photo ID
- Bank statement showing the name of the account holder, BSB and account number.
- Evidence to establish an act of violence has occurred, e.g., a report to the Police, a government agency or a government-funded service provider, medical or dental evidence or a counselling report.
- Do not need to submit quotes, receipts or invoices with the application

- Keep receipts – you may be audited within 5 years

### Immediate needs payment breakdowns

Package		Amount \$
Rent Assistance	GMR	3150
	Outside GMR	2100
Household items		1650 + 300 per child
Clothing & toiletries		300 + 300 per child
Whitegoods and appliances		1550
Change of locks		300
Security Cameras		2300
Security windows/doors		2000
Alarm System		900
Storage		600
Removalist		700

### Maximising recognition payments

You may be able to increase the amount of money your clients receive under the Scheme by:

- making multiple applications; or
- arguing the violence resulted in 'serious bodily injury', or
- arguing the violence involved an 'offensive weapon', or
- arguing the violence did or did not involve violence that was one of a 'series of related acts', or
- arguing the violence resulted in 'grievous bodily harm'.

### Making multiple applications

Many of our clients experience different types of violence during relationships and violence from numerous people in their lives. For example, many of our clients have experienced childhood sexual abuse *and* physical and sexual violence during their adult relationships. You can submit an application for each perpetrator. That is, a separate application for the perpetrator of childhood sexual abuse and for each violent partner a person has been in a relationship with as an adult. Your clients will need to show they suffered an injury, either physical or psychological, as a result of the violence perpetrated against them by each person.

You can lodge two applications for one client in relation to one perpetrator if the perpetrator inflicted both physical and sexual violence – one application in relation to the physical violence and one in relation to the sexual violence.

The client will need to have evidence that they suffered an injury as a result of both types of violence.

It's often easiest to rely on physical injuries for physical violence and psychological injuries for sexual violence, if available. However, they can rely on psychological injuries for both types of violence if they speak to a counsellor about both the physical and sexual violence.

### Arguing "serious bodily injury"

If a person is sexually assaulted on one occasion they are usually entitled to a Category C recognition payment of \$5,000. However, if they suffered a 'serious bodily injury' as a result the sexual assault, they will be entitled to a Category B recognition payment of \$10,000. We have successfully argued that giving birth as a minor as a result of a child sexual assault amounts to serious bodily injury.

The law and case law has found 'bodily injury' includes psychological injury. Case law says the injury 'must be more than trifling and/or give cause for apprehension.'

Psychological injuries that have had a serious and long term impact on a person's mental health and ability to function have been found to constitute a 'serious bodily injury'. We have successfully argued serious bodily injury in cases involving one childhood sexual assault, where the psychological effects continue to impact our client's life.<sup>1</sup>

### Arguing "offensive weapon"

If a person is sexually assaulted on one occasion they are usually entitled to a Category C recognition payment of \$5,000. However, if they can show that the sexual assault involved an 'offensive weapon', they will be entitled to a Category B recognition payment of \$10,000.

The *Crimes Act* defines an offensive weapons as:

- a dangerous weapon, or
- any thing that is adapted for offensive purposes, or
- any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm.<sup>2</sup>

Victims Services has found that a pillow used by an offender to smother a woman while he sexually assaulted her was an offensive weapon.

### Arguing a "series of related acts"

<sup>1</sup> CRT v Commissioner of Victims Rights [2017]

<sup>2</sup> Section 4

A 'series of related acts' is two or more acts of violence that are related because:

- they were committed against the same person, and
- were committed at approximately the same time, or
- they were committed over a period of time by the same person or group of persons, or
- they were, for any other reason, related to each other.

If multiple acts of violence are found to be a 'series of related acts', a person is only entitled to one recognition payment.

However, an act of violence is not related to another act of violence if VS, having regard to the particular circumstances of those acts, decides they ought not to be treated as related.

For example, if a woman is assaulted numerous times by her partner during their relationship, she will usually only be entitled to one Category D recognition payment of \$1,500 or a Category C recognition payment, if she suffered GBH as a result of the violence. However, if you are able to satisfy VS that, having regard to the particular circumstances of her case, the violence she experienced should not be treated as related, she may be entitled to two recognition payments. We have successfully argued that violence perpetrated during a relationship and then again after the end of a relationship, by the same person, should not be treated as related acts, therefore entitling our client to two Category D recognition payments.

However, there are sometimes good reasons for asking different acts of violence to be treated as a 'series of related acts'. For example, clients will be entitled to a Category B recognition payment of \$10,000 if they were a victim of a sexual assault, sexual touching or a sexual act or an attempted sexual assault involving violence that is one of a series of related acts. For example, we successfully argued that a client who was a victim of two acts of sexual touching by a work colleague was entitled to a Category B payment of \$10,000. Had we argued that this violence should not be treated as a series of related acts, the client would have only been entitled to two Category D recognition payments totalling \$3,000.

### Case Study

*Lee is referred to your service after the Police applied for an ADVO to protect her from Jordan after he slammed her arm in a door fracturing her arm. She wants to end her relationship with him and move somewhere safe. When she was being treated at RPA she told the social worker that Jordan had forced her to have sex with him numerous times during their relationship. Lee also tells you that she was raped by a neighbour when she was 14 years old. She told her mum about it at the time and remembers being interviewed by a DOCS worker. She has been seeing a psychologist for some time to help her manage the nightmares and flashbacks she continues to have about the childhood abuse. She is taking medication to manage her depression, anxiety and PTSD. She's also talked to the psychologist about recent domestic violence she's been experiencing.*

**What recognition payments would you help Lee apply for? Is she entitled to any other financial support?**

*In relation to the violence perpetrated by Jordan:  
Category B \$10,000 for sexual assaults that are a 'series of related acts' relying on the report to the public hospital social worker and the psychological injury documented by her psychologist;*

*Category C \$5,000 for the physical assault arguing the injury constitutes GBH relying on the Police report and the RPA hospital medical records of physical injuries; and  
Apply for the INSP for removalist costs and rent assistance  
Lee has 10 years from the last act of physical or sexual violence to apply for the recognition payments and 2 years from the last act of violence to apply for the INSP.*

*In relation to the childhood sexual assault:  
Category B \$10,000 for a sexual assault resulting in 'serious bodily injury', relying on historical DOCS records (if there are no records, you or her psychologist could assist Lee make a report to the Police or complete a Sexual Assault Reporting Options Questionnaire) and rely on her psychologist records to show 'serious bodily injury'.  
Apply for reimbursement for any out-of-pocket expenses.  
For example, the cost of any pharmaceutical drugs not covered by Medicare.*

*There is no time limit to apply for a recognition payment, out of pocket expenses or expenses associated with criminal or coronial expenses in relation to childhood sexual abuse.*

### **Arguing “grievous bodily harm”**

If a person is assaulted on one occasion they are usually entitled to a Category D recognition payment of \$1,500. However, if they suffered ‘grievous bodily harm’ (GBH) as a result of the assault, they will be entitled to a Category C recognition payment of \$5,000.

The *Crimes Act* defines GBH to include any permanent or serious disfigurement. Whether an injury is ‘grievous’ is a question of fact to be decided by the Commissioner. Case law says the way GBH may be inflicted varies and can be assessed by reference to the viciousness of the attack and seriousness of the consequences. For example, VS found GBH where a perpetrator charged at our client with a knife, cutting her face, requiring 12 stitches and leaving a permanent scar.<sup>3</sup>

A Category B, C or D recognition payment can be awarded for assaults that result in psychological or psychiatric injury/harm. At the lower end, injury or harm could be mental and/or emotional reactions such as anxiety, difficulty sleeping, memory problems, poor concentration, difficulties with trust and intimacy. In order to satisfy the test of GBH, evidence in the form of an expert report from a psychiatrist or clinical psychologist giving a diagnosis of a disorder will be necessary.<sup>4</sup>

### **Where can I get help?**

#### **Women’s Legal Service NSW**

**Women’s Legal Advice Line** – 02 8745 6988 or 1800 801 501

Tuesdays – 1:30PM to 4:30PM

Thursdays – 9:30AM to 12:30PM

**Domestic Violence Legal Advice Line** – 02 8745 6999 or 1800 810 784

Mondays – 1:30PM to 4:30PM

Tuesdays – 9:30AM to 12:30PM

Thursdays – 1:30PM to 4:30PM

#### **Victims Services – 1800 633 063**

<sup>3</sup> *BMF v Commissioner of Victims Rights* [2016], *BQG* [2015] & *BWQ* [2015].

<sup>4</sup> See *BXB v Commissioner of Victims Rights* [2015]