

5 March 2021

Ms Michelle Vaughan  
Commissioner Victims Rights

By email: [VS@dcj.nsw.gov.au](mailto:VS@dcj.nsw.gov.au)

Dear Commissioner

**Review of Victims Services changes implemented from 1 July 2020**

1. Women's Legal Service NSW (**WLS NSW**) thanks you for the opportunity to comment on the impact of the changes to Victims Services implemented since 1 July 2020.
2. WLS NSW is a community legal centre established for over 35 years that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. For over twenty years WLS NSW has provided a statewide First Nations Women's Legal Program (**FNWLP**). This program delivers a culturally safe legal service to First Nations women, including regular engagement with communities across NSW. We provide a First Nations legal advice line, casework services, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for First Nations women.
4. An Aboriginal Women's Consultation Network guides the FNWLP. It meets quarterly to ensure that we deliver a culturally safe service. The members include regional community representatives and the FNWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.
5. Women's Legal Service NSW, along with a range of other community-based organisations working with and supporting victim-survivors of violence and abuse, has repeatedly expressed concern that the agency which instituted changes so strongly opposed by victim-survivors and their advocates is the same agency undertaking a review of these changes, and argued that the review should be undertaken by an independent body.
6. We have recommended that in addition to this review, the issue of the impact of the changes implemented since 1 July 2020 be considered by the statutory review of the *Victims Rights and Support Act*. This is important as the impact of the changes will likely not be fully apparent until the passing of 12 months since victim-survivors have lodged their Victims Support applications. For this reason, we remain hopeful that the impact of the July 2020 changes will be incorporated and further considered in the statutory review.



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7. We refer to the joint letter dated 17 July 2020 by Women's Legal Service NSW and Community Legal Centres NSW addressed to the Commissioner, in which we outlined the base line data and ongoing data collection relating to the Victims Support Scheme that we believe must be published at regular intervals. We note the last time data was published on the Victims Support Scheme was in 2017-18.<sup>1</sup> There needs to be greater transparency and accountability about the operation of the Victims Support Scheme as there was under the previous Victims Compensation Scheme when the Chairperson of the Victims Compensation Tribunal published detailed data analysis annually.<sup>2</sup>
8. In summary we recommend:
  - 8.1 Provision of Government issued identification must not be a requirement to apply for Victims Support. There should be exceptions, for example, for victim-survivors who are homeless, for those who have had to flee violence and left without or have lost their Government issued identification and those in institutional settings. The exceptions should include a non-exhaustive list. In the event identification remains a requirement, it should not be a pre-requisite to application and could be provided at a later date but before any payments are made and should include a broader list of identification documents than is currently allowed.
  - 8.2 Victims Support applicants should be able to choose whether or not they provide their bank details when they lodge their Victims Support application. A failure to provide bank details upfront should not preclude applicants from having their Victims Support application accepted.
  - 8.3 Victims Services support applicants as they did prior to 1 July 2020 and as recommended by the Government commissioned report in 2012 by collecting the evidence to support a Victims Support application. There can be two pathways for applicants – one where they opt to collect their own evidence and one where they can opt for Victims Services to collect evidence on their behalf.
  - 8.4 In consultation with Approved Counsellors, victim-survivors and their advocates and Victims Services, explore establishing a specialist team within Victims Services dedicated to co-ordinating the allocation of counselling, particularly in relation to sexual assault, child sexual abuse, domestic abuse and child abuse.
  - 8.5 Victim-survivors have access to counselling while in custody.
  - 8.6 As a matter of procedural fairness, Victims Services provide Victims Support applicants with copies of all evidence they hold and rely upon or refer to in making their decisions, including vetted COPS reports.
  - 8.7 Victims Support forms be updated in consultation with victim-survivors and their advocates and with input from the people who are intended to complete the forms, such as health practitioner providing feedback on the Certificate of Injury form.
  - 8.8 Appointment of an independent Commissioner Victims Rights.

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<sup>1</sup> See Victims Services NSW website at:

[https://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs\\_publications\\_brochures\\_reports/vs-pub-data-profiles.aspx](https://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_publications_brochures_reports/vs-pub-data-profiles.aspx)

<sup>2</sup> Chairperson's Report, Victims Compensation Tribunal accessed at:

[https://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs\\_publications\\_brochures\\_reports/vs-pub-annual-reports.aspx](https://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_publications_brochures_reports/vs-pub-annual-reports.aspx)

## Importance of Victims Support

9. Under international human rights, States are required to act with due diligence to protect, promote and fulfil their human rights obligations.<sup>3</sup> Part of these obligations includes individual reparations for violation of human rights, a right “*firmly enshrined in the corpus of international human rights and humanitarian instruments.*”<sup>4</sup>

*Given the disparate and differentiated impact that violence has on women and on different groups of women, there is a need for specific measures of redress in order to meet their specific needs and priorities. Since violence perpetrated against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalization, measures of redress need to link individual reparation and structural transformation. Additionally, women who experience violence have traditionally encountered obstacles to accessing the institutions that award reparations.*<sup>5</sup>

10. Additionally, in 1985 Australia endorsed the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Basic Principles)*.<sup>6</sup> While not legally binding, by endorsing this Declaration, States, including Australia, have committed to:
- 10.1 Endeavour to provide financial compensation to victim-survivors who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (Article 12(a))
  - 10.2 The establishment, strengthening and expansion of national funds for compensation to victim-survivors; (Article 13)
  - 10.3 Strengthening judicial and administrative mechanisms to enable victim-survivors to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible; (Article 5)
  - 10.4 Taking measures to protect [a victim’s] privacy and ensure their safety from intimidation and retaliation; (Article 6(d))
  - 10.5 Training for police, justice, health, social service and other personnel concerned to sensitise them to the needs of victims, and guidelines to ensure proper and prompt aid (Article 16).

<sup>3</sup> Human Rights Committee, *General Comment No. 31*, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, *General Comment No. 5*, CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4 (2000), para. 33.

<sup>4</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*, Human Rights Council, A/HRC/14/22 accessed at:

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.22.pdf> See also: the *Universal Declaration of Human Rights* (Art. 8), the *International Covenant on Civil and Political Rights* (Art. 2, para. 3), the *International Convention on the Elimination of All Forms of Racial Discrimination* (Art. 6), the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Art. 14), the *Convention on the Rights of the Child* (Art. 39), CEDAW General Comment 19 at paragraphs 9, 24(i), 24(t)(i).

<sup>5</sup> Ms Rashida Manjoo Note 4 at paragraph 24.

<sup>6</sup> *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, General Assembly Resolution 40/34 of 29 November 1985, accessed at:

<https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>

11. The Victims Support Scheme plays an important role in acknowledging harm perpetrated against a victim-survivor and to assist with their healing and recovery. Survivors often tell us of the importance of Victims Services decisions validating their experience – they feel they have been heard and believed. But to achieve this, Victims Support must be accessible, trauma informed and victim-survivor centred for all, but particularly to the most marginalised.

#### **Government issued identification requirement is a barrier**

12. The requirement to provide Government issued identification is a particular barrier for women in custody wishing to access Victims Support. In our practice this requirement is leading to delays in lodging Victims Support applications as it can take some time to obtain a copy of this identification document. This is a concern also raised by several other community legal centres.
13. The usual practice to obtain a copy of Government issued identification when a person is in custody is through the Services and Program Officers (**SAPO**) in Correctional Centres. The client either requests the SAPO to provide a copy of their MIN card (identify card when in prison) or instructs WLS NSW to request this from the SAPO. However, it is important to note that this impinges a person's right to privacy as the person in custody is generally required to explain why they need a copy of their MIN card. Similarly, legal representatives making a request direct to the SAPO are generally required to provide a reason for the request of a copy of a person's MIN card. Further, it also relies on being able to contact a SAPO to make the request and may also depend on relationships built with Corrective Services staff. There have been some instances where Corrective Services staff have refused to make a copy of a MIN card available, leaving an inmate who has no other form of identification, effectively unable to apply for Victims Support.
14. In correspondence to Ms Fallon, Senior Manager Client and Legal Services, Victims Services on 28 July 2020 we raised these concerns about the impingement on a person's right to privacy and proposed an alternative solution. We recommended, at least in the short term, that an advocate upload a signed statement on letterhead, confirming the applicant is currently in custody and providing their name, MIN and location and that this be accepted as Government issued identification. We understand our concerns were forwarded to the Commissioner for consideration but to date, our suggestion has not been adopted.
15. Challenges to providing Government issued identification is not limited only to our clients who are incarcerated. It also affects women who have fled their homes due to violence and who have no Government issued identification documents and who want to apply for an immediate needs support package but are barred because of the identification requirements, victim-survivors who are homeless and First Nations victim-survivors who do not have identification.
16. We remain concerned that this new requirement is a barrier for the most marginalised, denying them access to the support they are entitled to and need.
17. We recommend that provision of Government issued identification is not a requirement to apply for Victims Support.
18. There should be exceptions to providing Government issued identification and the exceptions should be clearly communicated – for example for people who are homeless, people who have had to flee violence and left without or have lost their Government issued identification and people in institutional settings. The exceptions should include a non-exhaustive list.

19. Providing discretion to waive the requirement for Government issued identification and exercising this discretion in a manner that is beneficial for victim-survivors who are traumatised and marginalised is important to ensure people are able to access the support they are entitled to and need to recover from trauma. We are concerned that current practices are unnecessarily compounding trauma, in addition to creating a barrier to access.
20. In the event identification remains a requirement, it should not be a pre-requisite to application and could be provided at a later date but before any payments are made and should include a broader list of identification documents than is currently allowed.

#### **Requirement of providing banking details upfront is a barrier**

21. We are concerned that the requirement to provide banking details is a barrier to access. For example, many of our incarcerated clients do not know their bank details, are unable to access their bank details because they can not call their bank from prison and some do not even have a bank account. Other clients who have recently fled a violent relationship do not have a bank account in their own name.
22. We do not believe that the provision of bank account details upfront should be contingent on a person applying for Victims Support. Their provision should be an option but not a requirement which precludes the accepting of a Victims Support application.
23. When it is not possible to provide banking details, our clients have had mixed results in providing a third party's bank details or making alternative arrangements for payments to be made.
24. We are also concerned about the significant possibility that the requirement to provide bank details up front may result in financial abuse occurring where, for example, the bank account provided at the time of making an application was a joint account with the perpetrator.
25. Further, the requirement to provide bank details upfront prior to the successful determination of a matter sets up a false expectation that applicants will be successful in their application.
26. It also fails to acknowledge the impact of trauma on memory and the at times chaos of everyday life for victim-survivors so that even though the Victims Support application form requires them to update their bank details, they may not remember to do so.

#### **Burden of evidence gathering is a barrier**

27. We strongly oppose the shifting of the burden of evidence gathering onto victim-survivors and the services assisting them, which are already overstretched and underfunded.
28. To our knowledge there has been no additional funding provided to services supporting victim-survivors to undertake this work.
29. When the Victims Support Scheme was introduced in 2013, its key feature was to be its accessibility. There was no longer a need to pay lawyers' fees to complete applications or to cover the cost of gathering evidence because Case Co-ordinator roles were established within Victims Services to assist victims-survivors. The Government commissioned report recommended:

*Victims Services provides claimants with a case coordinator to assist the claimant with immediate needs, navigating the various government and community support services relevant to the victims needs and to help claimants through the claims process.*<sup>7</sup>

The report further recommended:

*dedicated case co-ordinators for victims from backgrounds that require greater help in seeking assistance such as Aboriginal and Torres Strait Islanders, culturally and linguistically diverse communities, rural and remote communities, the homeless and people with disabilities.*<sup>8</sup>

The Government commissioned report also acknowledged “a problem that has been identified with providing financial assistance is the reliance on victims keeping receipts and records.” “To avoid this problem” the Government commissioned report recommended “one of the roles of case coordinators ... would be to assist by directly settling invoices for items such as medical and dental treatment as an alternative to reimbursement of receipts.”<sup>9</sup>

30. The Government commissioned report clearly states:

*Any changes to the scheme should ensure that all claimants have an equal opportunity to receive support with completing and submitting their applications. The scheme should also ensure that claimants are provided with the assistance they need in order to navigate the criminal justice system, the legal system, Centrelink, Medicare and other government agencies and non government organisations that victims rely on for support.*<sup>10</sup>

31. The recommendations made in the Government commissioned report are just as relevant today. The changes that have been implemented since 1 July 2020 fail to ensure “all claimants have an equal opportunity to receive support with completing and submitting their applications”.
32. Our staff who have been supporting women to make Victims Support applications since 1 July 2020 have regularly commented it is very time consuming and taking them away from other important work they would otherwise be doing.
33. They describe having to make several appointments with a victim-survivor to obtain the necessary information to complete the application form and to identify the relevant agencies/bodies/organisations they need to contact to request supporting evidence.
34. They further describe that there are differing requirements and processes across different agencies with respect to requests for records and that it is not only confusing, but also time consuming to navigate and engage with agencies regarding their respective processes. We fear that if these processes are proving challenging for legal representatives, it is likely to prove even more challenging, if not impossible for unrepresented applicants.
35. In seeking evidence to support a claim, requests for access to documents often need to be refined to limit the costs. This too takes time.

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<sup>7</sup> PricewaterhouseCoopers, *NSW Department of Attorney General and Justice Review of the Victims Compensation Fund*, 2012, Recommendation 36 accessed at:

[https://www.victimsservices.justice.nsw.gov.au/Documents/tp\\_report\\_pwc-vcf-review-final.pdf](https://www.victimsservices.justice.nsw.gov.au/Documents/tp_report_pwc-vcf-review-final.pdf)

<sup>8</sup> Ibid, Recommendation 38.

<sup>9</sup> Ibid, p 60.

<sup>10</sup> Ibid, p 69.



36. Our staff have expressed concern that the process is traumatising for their clients and also for themselves.
37. Victim-survivors have contacted our service because they tried to complete the Victims Support application on their own but found it too overwhelming – the questions are difficult to answer, or they do not have internet access, or have run out of credit on their phone, or they lack the digital literacy to be able to access the form, or they do not have an email address. This is an experience echoed by other services.
38. On a recent rural trip several services raised with our First Nations Women's Legal Program staff that there has been no training to help them complete Victims Support applications and expressed worry that it is not clear what information is being sought or what evidence is required to result in a successful outcome for their client. They too commented on the time-consuming nature of the work and their concern that the process is traumatising for their clients and for themselves.
39. Every barrier put in a victim-survivor's way will deter them from accessing the support they are entitled to and need.
40. Further, the additional burden of time and money imposed on services who are representing or assisting clients to make a Victims Support application to obtain evidence to support their application leads to that service having to reduce the numbers of clients it can assist. This is certainly true for WLS NSW.
41. We recommend that Victims Services support victim-survivors as they did prior to 1 July 2020 and as recommended by the Government commissioned report in 2012 by collecting the evidence to support a Victims Support application.
42. We recommend that victim-survivors be able to choose a pathway to make their application for Victims Support: they can opt to collect their own evidence where they are able to do so or they can opt for Victims Services to collect evidence on their behalf. This is outlined in more detail in the Community Legal Centre NSW submission to the Commissioner outlining an alternative proposal to the one the Commissioner put forward.<sup>11</sup>
43. It is particularly important that victim-survivors of sexual assault, child sexual abuse, domestic abuse, child abuse or other victim-survivors with complex trauma or needs have the option to obtain assistance in evidence gathering from Victims Services should they seek it.

### **Process for reimbursement of expenses**

44. In addition to our concerns regarding the upfront cost to applicants or the organisations supporting them in obtaining evidence to support a claim, we are also concerned that the cost of disbursements, which will only be paid following a successful determination, will be limited to the evidence which is deemed by the Commissioner to be relevant. We are concerned the prohibitive costs of seeking evidence coupled with the risk of not being reimbursed for these expenses will lead to applicants not seeking all of the evidence available to support a claim or, even prevent applicants from applying for the support they are entitled to and need.

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<sup>11</sup> Community Legal Centres NSW, Further consultation on Victims Support Scheme and alternative proposal, 1 May 2020 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/Letter-to-Commissioner-Victims-Rights-010520-fa.pdf>

45. In this regard, we refer to the recommendation made by the Government commissioned report to address the challenge of victim-survivors retaining receipts and records, which was to recommend that Victims Services “*directly settl[e] invoices*”.

*In one matter we sought health records from a government service. We were asked to pay over \$800 for these records. To avoid paying this fee we had to limit our request to 80 pages. Noting that complex trauma can impact on memory we are not confident that the limited timeframe we provided would cover the act of violence.*

46. It is also unclear what mechanism Victims Services has for ensuring agencies are directly repaid the disbursements paid by them in representing a client. It is inappropriate that an agency should have to seek those reimbursements from their client.
47. We strongly oppose the shifting of the burden of evidence gathering onto victim-survivors and the services assisting them which are already overstretched and underfunded as discussed above. This responsibility should be undertaken by Victims Services again, consistent with a trauma informed, client centred approach.

#### **Failure to provide access to vetted COPS reports is a barrier**

48. It is an ongoing problem that applicants and/or their legal representatives are no longer given access by Victims Services to vetted Computerised Operational Policing System (**COPS**) reports.
49. We understand this is due to a change in NSW Police Force practice which means only a very small group of people at Victims Services (assessors) can view COPS reports and only at the time of making a determination. We understand Victims Services is not permitted to download the COPS reports nor provide vetted COPS reports to an applicant and/or their advocate. Further, we understand Victims Services are failing to provide police reports to the Tribunal as they are required to do pursuant to section 58 of the *Administrative Decisions Review Act 1997 NSW (ADRA)*.
50. This is contrary to procedural fairness and in breach of section 58 of the *ADRA*.

#### **Failure to provide access to Court and other documents is a barrier**

51. We recently requested documents in Victims Services' possession in a matter for internal review. Victims Services indicated that they had obtained Local Court records but that the Court prevented them from sharing these documents with the applicant or their legal representative.
52. In another matter, Victims Services advised that documents obtained from Corrective Services were unable to be provided to the applicant or legal representatives. Where this is the only record of either act of violence, a report to government agency or injury, this is particularly problematic.
53. We are concerned by this lack of procedural fairness. There must be an urgent resolution to ensure Victims Services can release such documents to the applicant or their legal representative.

#### **Denial of procedural fairness**

54. The principle of procedural fairness obliges a decision maker to provide a copy of all of the evidence it has before it in considering an application so that the applicant has an opportunity to consider and



comment on that evidence, particularly that evidence which may be used to make an adverse decision or finding.

55. The failure on the part of Victims Services to provide copies of the evidence held to an applicant or their legal representative amounts to a denial of procedural fairness.
56. It is imperative that Victims Services take urgent steps to resolve the issues it is facing in making these records available to applicants and their legal representatives.
57. For all of the reasons outlined above, it is not the solution to require applicants to incur the cost, time and challenges of obtaining their own copies of evidence, particularly in circumstances where Victims Services also holds copies of that very same evidence.

### Concern about the Certificate of Injury

58. We repeat our concerns raised in the joint letter from Women's Legal Service NSW and Community Legal Centres to the Commissioner dated 16 July 2020 about the Certificate of Injury. We are concerned that several of the questions are unnecessary. Some questions ask about inconsistencies. We are concerned that an unintended consequence of these questions is to convey the message to the victim-survivor that they are not believed, which undermines the purpose of Victims Support – to provide support.
59. We also question the relevance of including Part D Question 4: *'List all known or disclosed pre-existing conditions that have been aggravated by this incident'*.
60. We note in the matter of *CRT v Commissioner of Victims Right* [2017] NSWCATAD 174 the Tribunal considered the issue of the causal link between an act of violence and injury and confirmed that whilst the Act requires an applicant to establish on the balance of probabilities that they suffered injury as a direct result of the act of violence, the act of violence does not have to be the sole cause of the injury (at [31] and [36]).
61. We recommend the removal of Part D Question 4.
62. It is also not clear to us why it is necessary to include a section – Part E – on follow up.
63. Some counsellors have raised with us that the Certificate of Injury form is not fit for purpose and that the wording and format can be a barrier depending on their professional practices and / or level of training. For example, "*diagnosis*" should be amended to "*diagnosis/assessment*". It is important that Victims Services seeks feedback from a range of medical and allied health professions.
64. We also raise generally the need for Victims Services to consult victim-survivors and their advocates on the development of new forms prior to their introduction. It is problematic, for example, that an applicant cannot lodge an application for Victims Support in relation to sexual assault or domestic violence in the alternative.

### Removal of injury requirement

65. We take this opportunity to again raise the removal of the requirement to separately prove injury. While this requirement is currently a legislative requirement, we view it as unnecessary and a carry-over from the Victims Compensation Scheme when severity of injury was assessed and relevant to the award of compensation.

66. 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. This means there is generally no need for any assessment of the severity of the injury.<sup>12</sup> Financial assistance for economic loss is based on actual losses, not severity of injury.
67. We argue that the fact the violent crime was committed should be enough to warrant “recognition”. This is relevant for all violent crimes.
68. The long-term impacts of child sexual abuse, sexual assault and domestic abuse 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.<sup>13 14 15</sup>
69. To no longer require separate proof of injury would send a clear and powerful message to the broader community that abuse is unacceptable.
70. We seek support from the Commissioner Victims Rights in advocating for the removal of the requirement to separately prove injury for the purposes of a Victims Support application during the statutory review of the *Victims Rights and Support Act*. In our experience this requirement often unnecessarily compounds existing trauma for people who have experienced violence. The removal of this requirement would reflect trauma informed and client centred approaches as well as provide efficiency in the operation of the Victims Support Scheme.

### Compounding trauma by Victims Services' decisions to dismiss

71. We are concerned by several decisions since 1 July 2020 where matters have been dismissed where it is clear the evidence provided has not been considered by Victims Services or where a matter has been determined without asking the applicant if all evidence had been provided and it is well within the 12 month period for providing evidence.
72. We are concerned that in an effort to improve the timeframes within which Victims Services makes decisions, the time taken to properly consider an application and all of the evidence and the quality of decisions is being affected. This means that Victims Services is effectively limiting victim-survivors appeal avenues in circumstances where an internal review has to be used unnecessarily because of what appears to be a focus on speed and efficiency rather than on the quality of the decision.
73. Decisions which dismiss an application for failure to prove act of violence or injury or which find a lesser category of injury than the one which the applicant submits they are eligible for, compounds trauma

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<sup>12</sup> The victim-survivor may still need to provide evidence of injury to establish aggravation. This would be relevant for cases of sexual assault that have resulted in serious bodily injury or assault that have resulted in grievous bodily harm. In these cases, the victim-survivor is eligible for a higher category of recognition payment if the aggravating circumstances are proved. This approach is similar to criminal law, where injury does not need to be established unless it is an element of the charge laid, such as assault occasioning actual or grievous bodily harm.

<sup>13</sup> Judith Cashmore and Rita Shackel, The long-term effects of child sexual abuse, *CFCA Paper No. 11*, January 2013 accessed at: <https://aifs.gov.au/cfca/publications/long-term-effects-child-sexual-abuse/introduction>

<sup>14</sup> Lori Haskell and Melanie Randall *The Impact of Trauma on Adult Sexual Assault Victims*, Canada: Justice Canada, 2019 p 8 accessed at: [https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma\\_eng.pdf](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf)

<sup>15</sup> Royal Commission into Family Violence *Summary and Recommendations*, 2016, p 158 – 164 accessed at: [http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV\\_Full\\_Report\\_Interactive.pdf](http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf); Sara McLean, The effect of trauma on the brain development of children, CFCA Practice Resource, 2016 accessed at <https://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca-practice-brain-development-v6-040618.pdf>

for victim-survivors and causes real harm; it sends a message that victim-survivors are not believed. This is particularly problematic where a decision is made in circumstances where Victims Services failed to consider all evidence provided by an applicant or where a decision was made before giving an applicant the chance to provide all relevant evidence.

74. We are also concerned that victim-blaming assumptions are being made about evidence and applicants. For example, there may be many reasons why a survivor of sexual assault might say they will make a further statement to police and then not make a statement. Adverse inferences should not be drawn from this. Adverse inferences should also not be drawn because an applicant may have been under the influence of drugs or alcohol at the time of the offence, or because she may have had criminal convictions for past offences.
75. As a matter of procedural fairness, if Victims Services intends to draw adverse inferences on the evidence before it, Victims Services should advise the applicant or their legal representative and ask if there is further evidence to submit or submissions to be made with respect to the issue in question. In our experience, Victims Services is failing to provide procedural fairness in this regard.
76. There have also been times when we have requested that Victims Services obtain additional records and Victims Services makes a determination prior to providing these additional records to the legal representative. Victims Services should automatically provide legal representatives with all documents they are relying on or have before them in their assessment of a claim prior to the making of the determination.
77. For these reasons, and for reasons of procedural fairness, it is essential that Victims Services informs applicants or their legal representatives of the earliest date by which a decision will be made.

***Lack of procedural fairness***

*Jenny\* submitted her Victims Support application for financial assistance and a recognition payment. Evidence was not submitted at the time of lodging the application as we were in the process of obtaining it. Within a month of lodging the application a decision was made to dismiss the application on the basis of a failure to establish act of violence, despite having 12 months to provide the evidence. The decision was made without notice of the earliest date by which Victims Services intended to make a decision. The decision was based on police evidence which Victims Services could not provide to us. Jenny is seeking an internal review.*

*\*Not her real name*

**Victims Support internal review – change to practice is a barrier to justice**

78. Until recently, applicants had 90 days from receiving the decision within which to lodge a request for internal review. Applicants could provide (or amend) grounds and any further relevant evidence at a later date.
79. The Commissioner has recently determined that the 90 day timeframe within which to seek an internal review includes the timeframe within which all grounds, evidence and submissions in support of the review must be filed. The grounds cannot be amended once the application is lodged and no further evidence can be provided by the applicant. We note that this does not preclude Victims Services deferring a decision while it seeks further information.

80. We disagree with the Commissioner's legislative interpretation. We note the NSW Civil and Administrative Tribunal does not require all evidence and/or submissions to be submitted within the timeframe for lodging an appeal of a Victims Services decision and grounds for an appeal can be amended.
81. Beyond what we believe to be an incorrect legislative interpretation, the practical application of this interpretation is that this limits the time available to an applicant to collect any additional evidence required to support an internal review application. This is particularly an issue where a decision has been made without providing procedural fairness as outlined in Jenny's case study above.
82. We are particularly concerned for applicants who are not legally represented who are traversing an application for internal review.

### Access to counselling

83. Counselling can play a very important role in a victim-survivor's recovery. It is essential that counselling is available when a victim-survivor needs it, and it is easy to access. It is also important that counselling is culturally safe and that a person can access counselling from someone with expertise in the issues they are experiencing.
84. The importance of access to counselling is reflected in the Charter of Rights which states:

*A victim will have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.*

85. Shifting the responsibility to access counsellors from Victims Services onto victim-survivors has proved very challenging.

#### **Women's experiences of accessing counselling**

*Women have sought our assistance to help them locate a counsellor. Some women have expressed feeling overwhelmed by having to choose a counsellor from a long list. Others have limited digital literacy and do not know how to navigate the system.*

*We have tried to call counsellors to make appointments and often our calls are not returned. We fear if victim-survivors are trying to find a counsellor on their own that they would give up if a counsellor doesn't return the call.*

*For those who might be able to access the Victims Services website, they have told us it was very difficult to search the list via a mobile phone.*

86. The comments above are not a criticism of the counsellors, but of the system.
87. In consultation with Approved Counsellors, victim-survivors and their advocates and Victims Services, we recommend exploring the establishment of a specialist team within Victims Services dedicated to co-ordinating the allocation of counselling, particularly in relation to sexual assault, child sexual, domestic abuse and child abuse. These staff could build relationships with the Approved Counsellors, identify Approved Counsellors with relevant expertise and so allocate a client to an appropriate counsellor, including being aware of Approved Counsellors with experience in working with First Nations women, refugee and migrant women, people with disability, LGBTIQ+ communities, women

in custody, older people, children and young people, victim-survivors who have experienced complex trauma and be aware of workloads so as not to refer a client to an Approved Counsellor who is not currently available. Through consulting with Approved Counsellors there may be ways that referrals could be streamlined in a manner that does not put the burden on the person accessing the counselling and is trauma informed. Victims Services could help facilitate initial contact between the victim-survivor and the Approved Counsellor. Victims Services Approved Counsellors need to feel supported in their work and Victims Services has an important role to play in this.

88. We further recommend the following:
  - 88.1 at least every three months, Victims Services contact Approved Counsellors to ask if they are still accepting Victims Support counselling work and ask about waiting times;
  - 88.2 at least every six months, Victims Services conduct client satisfaction surveys which should include questions such as:
    - 88.2.1 Was it easy to find a counsellor?
    - 88.2.2 What would make it easier for you to attend counselling?
89. There are limited options to access bilingual counsellors. Several of our clients have sought access to a counsellor who can speak their language. Access to culturally safe, trauma informed counselling is vital. There needs to be more bilingual Approved Counsellors.
90. There also needs to be more First Nations Approved Counsellors.
91. We are particularly concerned by the very limited access to Victims Services counselling for women in custody and submit that counselling should be readily and regularly available to women who are incarcerated.
92. The review of the pilot of counselling for women in Dillwynia and Wellington Correctional Centres was very positive.<sup>16</sup>
93. The majority of women in custody have complex histories of sexual and physical abuse starting in childhood.<sup>17</sup> The rates of previous victimisation are highest for First Nations women, with some studies suggesting that up to 90% of First Nations women in custody are survivors of family abuse and other violence.<sup>18</sup> First Nations women are also 35 times more likely to be hospitalised due to family abuse

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<sup>16</sup> Thomas Dornan and Elyse Aird, *An evaluation of the counselling in prison trial* (NSW Government, Parramatta, 2015) accessed at: [https://www.victimsservices.justice.nsw.gov.au/Documents/eval\\_counselling-in-prison.pdf](https://www.victimsservices.justice.nsw.gov.au/Documents/eval_counselling-in-prison.pdf)

<sup>17</sup> Australia's National Research Organisation for Women's Safety, *Women's imprisonment and domestic, family, and sexual violence: Research synthesis* (ANROWS Insights, 03/2020), accessed at <https://www.anrows.org.au/publication/womens-imprisonment-and-domestic-family-and-sexual-violence/>; M Stathopoulos and A Quadara, *Women as offenders, Women as victims: The role of corrections in supporting women with histories of sexual abuse*, A report for the Women's Advisory Council of Corrective Services NSW, 2014, accessed at <https://www.correctiveservices.justice.nsw.gov.au/Documents/women-as-offenders-women-as-victims-the-role-of-corrections-in-supporting-women-with-histories-of-sexual-assault.pdf>

<sup>18</sup> Australian Law Reform Commission, *Pathways to justice: Inquiry into the incarceration rates of Aboriginal and Torres Strait Islander Peoples*, 2018, accessed at <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/11-aboriginal-and-torres-strait-islander-women/drivers-of-incarceration-for-aboriginal-and-torres-strait-islander-women/>

related assaults, than non-First Nations women.<sup>19</sup> Access to counselling is therefore important. Helping women to recover from trauma may also reduce recidivism.

94. Further, the only evidence of act of violence or injury might be evidence from a counsellor's report. Failure to provide access to counselling in prison may preclude some victim-survivors of complex trauma from obtaining Victims Support.

#### Data collection

95. We again refer to the joint letter dated 17 July 2020 by Women's Legal Service NSW and Community Legal Centres NSW addressed to the Commissioner, in which we outlined the base line data and ongoing data collection relating to the Victims Support Scheme that we believe must be published at regular intervals. This data is imperative for accountability, transparency and also to see the true impact of the 2020 changes.

#### Independent Commissioner Victims Rights

96. We recommend the establishment of an independent Commissioner Victims Rights. We are concerned that it is a conflict of interest to have the Executive Director, Victims Services also in the role of Commissioner Victims Rights.

We give permission for this submission to be published and we request that this submission be made available to those undertaking the statutory review of the *Victims Rights and Support Act 2013*.

If you would like to discuss any aspect of this submission, please contact me or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

**Women's Legal Service NSW**

**Philippa Davis**  
**Principal Solicitor**

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<sup>19</sup> Productivity Commission Steering Committee for the Review of Government Services, *Overcoming Indigenous Disadvantage: Key Indicators 2009* (2009) 26.