

# South West Sydney LEGAL CENTRE

(Operating as Justice Support Centre  
since Dec 2022)

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## Submission in response to the Statutory Review of the *Victims Rights and Support Act 2013*

**South West Sydney Legal Centre**

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South West Sydney Legal Centre acknowledges the Traditional Custodians of the Country on which we operate and their continuing connection to land, waters and community.

Our head office is located on the land of the Cabrogal Clan of the Darug nation. We pay our respects to their Elders past, present and emerging, and to our Aboriginal and Torres Strait Islander clients and staff and to Aboriginal and Torres Strait Islander people in our community.

## Introduction

South West Sydney Legal Centre thanks the NSW Department of Communities and Justice for the opportunity to contribute our expertise to the Statutory Review of the *Victims Rights and Support Act 2013* (the Act).

### Our submissions focus on the Victims Support Scheme (Part 4 of the Act)

We acknowledge that this is a wide-ranging review of the entire Act. However, for the most part, we have focused our submissions on the Policy Objectives and the terms of Part 4 of the Act establishing the Victims Support Scheme (“VSS” or “the Scheme”), as this is the area most relevant to our work and our clients.

The objective of Part 4 of the Act is to establish a scheme, the VSS, for the provision of support for victims of acts of violence and modern slavery. For the purposes of our submissions, our focus is on victims of acts of violence.

The Background Paper to this Review<sup>1</sup> notes that the total number of applications for victims support increased by 131% between 2014 and 2021. In the same period, the proportion of applications by victims of domestic and family violence (“DFV”) increased from 41% to 58%. This means that **nearly 3 in 5 applicants to the Scheme are DFV victims.**

The work we do at South West Sydney Legal Centre mirrors the increasing demand for support to victims of violence in general, and victims of DFV in particular.

### We work with victims of domestic and family violence who apply to the Victims Support Scheme

South West Sydney Legal Centre (“SWSLC”) was founded in Liverpool in 1986, to provide free legal services so local people can improve their access to justice. We are now also one of the larger frontline providers of DFV services in NSW.

Our services support many thousands of clients every year and serve some of the state’s most disadvantaged local government areas. We support women affected by DFV to make safety plans, access protection from the courts and connect with services like housing, counselling and legal advice.

We operate multiple specialist services, all of which work with victim-survivors of DFV:

1. South West Sydney Community Legal Service
2. South West Sydney Women’s Domestic Violence Court Advocacy Service
3. Sydney Women’s Domestic Violence Court Advocacy Service
4. Bankstown Domestic Violence Service
5. Liverpool and Fairfield Staying Home Leaving Violence Service
6. Financial Counselling Service for women affected by DFV.

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<sup>1</sup> NSW Department of Communities and Justice, [Background Paper: Statutory Review of the Victims Rights and Support Act 2013](#), (April 2022), p 12.

Last year, our DFV services assisted nearly 8,000 women and demand increases every year. In 2020-21, there was a 20% increase in the number of referrals to our legal service of women experiencing DFV.

In the same year, women at risk of or experiencing DFV accounted for 72% of clients accessing our legal representation services. The vast majority of those representation services relate to assisting clients to access support under the Scheme.

**Since changes were made to the operation of the VSS in 2020, our legal team has seen a spike in the number of hours required to support women affected by DFV applying to access support under the Scheme.** In the 2020 financial year, we gave legal advice to about 500 clients about their rights under the VSS and assisted about 170 clients to lodge claims. This was a significant increase from the previous year. The 2021 financial year also saw an increase in the number of clients we assisted to access financial support under the VSS.

## The Policy Objective of the Victims Support Scheme remains relevant

The increasing demand for support under the VSS (as evidenced in the *Background Paper* and in our client data) speaks to the ongoing validity of the Policy Objective of Part 4 of the Act and the ongoing value of the Scheme.

**We cannot overstate the positive effect the VSS has for our clients.** We see this consistently in our work, when the VSS functions as it should. Our clients are overwhelmed with gratitude and relief when funds from the Scheme enable them to move from unsafe housing and give their kids a safe home. They are better able to begin their recovery when they have the security to buy their medications without overwhelming the family budget, or when they can finally speak to a counsellor after years silence.

For many clients, the Scheme plays an important role in acknowledging the pain and trauma they have suffered. One of our clients recently recounted their experience reading their Notice of Decision, which brought them to tears: the Assessor, a stranger to them, acknowledged their impossibly difficult experience. Our client read the Decision with gratitude. To us, the value of the VSS is very clear in a practical and symbolic sense. The VSS has an inherent restorative significance. However, in its current form, there are many barriers to victim-survivors accessing Victims Support in NSW.

**Alternatives to the Scheme will be insufficient to meet its Policy Objective.** While the immediate needs of victim-survivors can be partially serviced by increased funding to domestic violence services, housing, early intervention initiatives and other schemes (such as the Escaping Violence Payment),<sup>2</sup> there remains a critical need for the VSS in NSW. It provides a unique avenue for recognition of the harm caused by violence and the individual impact of each act of violence.

Without the Scheme, the only avenue for seeking compensation or to recover damages as a victim of violence is under Part 6 of the Act (compensation awarded by court) or through separate civil proceedings. However, in the 2021 financial year, Victims Services was only able to secure \$7.9 million for victims through restitution orders via court, which is about 10%<sup>3</sup> of its total \$73.97 million in financial assistance and recognition payment.<sup>4</sup> If such is

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<sup>2</sup> Other support available to victims are detailed in NSW Department of Communities and Justice, [Background Paper: Statutory Review of the Victims Rights and Support Act 2013](#), (April 2022), pp 5-8.

<sup>3</sup> NSW Legislative Council, [Budget estimates 2021-22 Supplementary Questions: Attorney General and Prevention of Domestic and Sexual Violence](#), 2021, p 7.

<sup>4</sup> NSW Department of Communities and Justice, [Background Paper: Statutory Review of the Victims Rights and Support Act 2013](#), (April 2022), p 12.

the recovery rate of Victims Services, it would be difficult to imagine that individual victims could have any greater success. Apart from the likely re-traumatisation of victims throughout any Part 6 proceedings or the highly adversarial nature of civil litigation, only victims with sufficient financial capacity, mental resilience and legal help would have the capacity to lodge proceedings against their perpetrator. Those with the greatest needs and greatest disadvantage would simply miss out.

The Scheme is *essential* to support victim-survivors of violence. It fills a unique gap and is not made redundant by increasing funding for other critical support or services.

## Achievable revisions to the terms of the Act would facilitate the policy objectives of the VSS

While the policy objectives of the VSS remain valid, the terms of the Act require revision and clarification to more effectively and consistently realise the objectives.

There are provisions in Part 4 of the Act that are vague or unclear, susceptible to narrow interpretation and application by Victims Services Assessors or that place onerous hurdles on victim-survivors. These provisions hinder the Scheme from meeting its own objectives and generate a legislative and administrative environment that does not align with research evidence about trauma-informed practices. They also run contrary to the established case law confirming the beneficial nature of the Scheme and that the Act should be interpreted in favour of the grant of benefits to a claimant. (See *Elena Harvey v Victims Compensation Tribunal & Anor* [2001] NSWSC 604 (revised 17/10/2001) at paragraph 41 and *BMF v Commissioner of Victims Rights* [2020] NSWCATAD 97 at paragraphs 78 & 111)

Our submissions support **14 recommendations** to improve the terms or implementation of Part 4 of the Act. These achievable reforms would enable Victim Services NSW to better meet the policy objective that established the Scheme: to support victims of violence.

In these submissions, we generally position women as victim-survivors of DFV and men as perpetrators. This is not to suggest that men and people of diverse gender expression do not experience DFV, or that DFV is not present in LGBTQIA+ relationships. These issues are part of a larger conversation but for present purposes, from our organisation's experience and consistent with the research and data about DFV, these submissions adopt that general language.

These submissions are also made on behalf of and in the interests of all of our clients at the 6 specialist services of South West Sydney Legal Centre.

## Endorsements

Despite extensive experience with Victims Services casework, we have limited capacity to make submissions on all aspects of the Act. We have focused our submissions to issues most relevant to our client case studies. Accordingly, we also support wider submissions made by sector peak bodies, including Domestic Violence NSW, Community Legal Centres NSW and Women's Legal Service NSW.

In particular, we endorse the following recommendations:

- The appointment of an **independent** Commissioner of Victims Rights
- Regular publishing of **comprehensive data** about the VSS
- Publication of **internal guidelines**
- Improving **public consultation mechanisms**, with a minimum requirement of consulting prior to making change

- Legislative changes to enact a presumption against restitution unless a victim-survivor elects for restitution to be pursued

We urge the Department to consider submissions made by these trusted organisations on these matters.

### **This is a public submission that relies on de-identified case studies**

This submission recounts many common experiences of our staff and clients. It is informed by the expertise of our staff, who can speak to the challenges of their clients and are witness to repeated problems. All of the case studies are anonymised to protect the identity of our clients and names have been changed. In some of the case studies we have altered circumstances to ensure de-identification and we have noted where we have merged similar case studies. We authorise the use of these case studies in any report or response by Victims Services.

For transparency, we encourage publication of these submissions and other submissions by stakeholders. We also encourage a public response by Victims Services to the issues raised by this Statutory Review.

If you would like further information or input on matters raised in this submission, please contact the CEO of South West Sydney Legal Centre, Yvette Vignando at [yvette@swslc.org.au](mailto:yvette@swslc.org.au).

# Submissions relating to Part 4 of the Act

## Summary of recommendations

### a) Improve NSW Victims Services strategies for implementing Part 4 of the Act

**Recommendation 1:** Improve access to counselling through the Victims Support Scheme and ensure that the list of approved counsellors includes those with diverse backgrounds, language skills and experience.

**Recommendation 2:** NSW Victims Services should assign greater weight to evidence from specialist domestic violence support workers (pursuant to section 39(2)(a) and 39(2)(b)(i) of the Act) when determining if the applicant was a victim of an act of violence.

**Recommendation 3:** Amend policy to expand the availability of Immediate Needs Support Payments (INSP) to applicants who experience violence, especially sexual violence, by a known offender.

**Recommendation 4:** Increase funding for services to assist clients in obtaining evidence.

**Recommendation 5:** NSW Victims Services should launch a campaign for the health sector (supported by accessible fact sheets) to educate health professionals on how and when to complete a Certificate of Injury for patients who are victims of violent crime.

### b) Amend the Act to improve the functionality and accessibility of the Victims Support Scheme

**Recommendation 6:** Remove the requirement to separately prove injury (per section 39(2)(b)(ii) of the Act) in Victims Support applications for domestic violence and sexual violence.

**Recommendation 7:** Ensure procedural fairness by giving claimants access to the evidence to which Victims Services Assessors have access.

**Recommendation 8:** Strengthen internal review rights of Victims Support claimants.

**Recommendation 9:** Strengthen external review rights of Victims Support claimants.

**Recommendation 10:** Amend section 19 of the Act to enact the guidance for “series of related acts” provided in *DKJ v Commissioner of Victims Rights* (2018) NSWCATAD 270.

**c) Amend the Act to provide greater clarity and certainty**

**Recommendation 11:** Improve access to economic loss payments by resolving legislative ambiguity and providing policy guidance.

**Recommendation 12:** Expand the definition of “act of violence” in section 19 of the Act to ensure that intimidation and patterns of violent conduct are included.

**Recommendation 13:** Expand the definition of “domestic violence” to include all of the domestic relationships as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

**Recommendation 14:** Clarify the time limits referred to in subsection 40(6) of the Act and their applicability to recognition payments.

## Detailed Submissions

### a) Improve NSW Victims Services strategies for implementing Part 4 of the Act

**Recommendation 1:** Improve access to counselling through the Victims Support Scheme and ensure that the list of approved counsellors includes those with diverse backgrounds, language skills and experience.

- 1.1. In South West Sydney, our community is diverse. English is not the first language for many of our clients.<sup>5</sup> While NSW Victims Services offers translation services, our clients have reported they do not feel comfortable having counselling with a third-party present, especially in the context of first-time disclosures or discussing sexual violence. Clients have given us feedback that building a connection and trust through an interpreter is very difficult.
- 1.2. The case study below illustrates the severe shortage of counselling services appropriate for people from culturally and linguistically diverse (CALD) backgrounds. We encourage further recruitment of Victims Services counsellors, particularly from CALD backgrounds, to ensure that counselling is accessible to all victim-survivors, not only those with English as their first language.

#### Client case study – Hoa could not access counselling in her language

Hoa and her two children experienced domestic violence. Hoa sought Victims Services counselling for herself and her children. Hoa did not speak English and expressed her need for a Vietnamese speaking counsellor. Initially, Victims Services found a Vietnamese-speaking counsellor near Wollongong, far from Hoa's home in the Liverpool area. That one counsellor did not want to provide counselling for the whole family, citing issues of conflict.

As at 2 June 2022, from our searches, there are no Vietnamese counsellors on the NSW Victim Services database.

- 1.3. When our centre has assisted clients to choose a counsellor, we have found that the database of approved counsellors was not up to date, as illustrated by the following case study. We understood that the availability of counsellors was to be refreshed “each weekend to ensure victim-survivors have access to the most up to date information.”<sup>6</sup>

#### Caseworker case study – Incorrect information about availability

I am a caseworker with South West Sydney Legal Centre's Bankstown Domestic Violence Service. After going through the process of selecting a Victims Services approved counsellor in-person with one of my clients, we discovered that the list of approved available counsellors was not updated. We had to contact about 5 counsellors to find one that was actually available within the coming weeks/month.

- 1.4. There may be an issue with Victims Services not updating their list or counsellors not updating Victims Services with their availability and current practice. It is draining and

<sup>5</sup> In particular, other than English, 11.8% of South West Sydney speak Vietnamese at home: <https://www.abs.gov.au/census/find-census-data/quickstats/2016/127>

<sup>6</sup> Email from Michelle Vaughan to Women's Legal Services NSW, 26 June 2020.

discouraging for victim-survivors to call around to many different counsellors to find one who can help. For some clients with language barriers, they do not have many choices of counsellors.

- 1.5. The counselling support database must be properly resourced to remain updated. Reduced access to counselling services will extend the already significant cost of mental ill-health in Australia, as outlined by the Productivity Commission (2020).<sup>7</sup> Under-resourcing in this area creates greater costs over a longer period of time, including human costs and economic burdens on the drug and alcohol support sector, criminal justice, unemployment and health sectors.
- 1.6. Counsellors are also often an importance source of supporting medical evidence for claims. The inability to access timely counselling services can, in turn, impact the ability of applicants to lodge evidence of injuries within 12 months of first submitting their application.

**Recommendation 2:** NSW Victims Services should assign greater weight to evidence from specialist domestic violence support workers (pursuant to section 39(2)(a) and 39(2)(b)(i) of the Act) when determining if the applicant was a victim of an act of violence.

- 2.1. The capacity of Victims Services to identify whether an applicant is a genuine victim of domestic and family violence is compromised by the practice of preferencing Police records over information and evidence supplied by DFV specialist support workers with decades of experience.
- 2.2. As we noted in our recent submission to the Audit Office of NSW in their review of *Police responses to domestic and family violence*, our legal team has observed significant misidentification of female victims in DFV matters as primary aggressors, based on isolated incidents of violence rather than as victims of ongoing long-term patterns of abuse. The Audit Office review supports this concern, finding:

*There is benefit in the NSW Police Force mandating training on key domestic violence concepts for all frontline police. For example, research indicates that police forces across Australia, and internationally, have difficulty in identifying the primary aggressor, and practices are inconsistent.*<sup>8</sup>

- 2.3. We commonly see matters where an ADVO is taken out to protect a male in a DFV matter, who:
  - directly expresses to the Police that they do not feel fear
  - continues to contact the victim to harass and threaten them
  - continues to stalk the victim physically
  - benefits from power in the relationship dynamic, by being physically larger than their female partner, having financial resources or speaking English as their first language.
- 2.4. In our experience, this problem arises when inadequately trained General Duties Officers make an initial assessment of the situation and wrongly identify the perpetrator of violence. It can then be difficult for our lawyers and domestic violence specialists to advocate to the Officer In Charge or Police Prosecutor to deviate from that initial assessment. This can

<sup>7</sup> Productivity Commission, [Inquiry Report No.95: Mental Health](#), 2020, p 149.

<sup>8</sup> Audit Office of NSW, [Police Responses to domestic and family violence](#), 2022, p 25.

contribute to 'systems abuse', where male perpetrators use the threat of arrest or prosecution to exert power over the victim-survivor as part of a larger pattern of abuse.<sup>9</sup>

- 2.5. Misidentifying a victim as a perpetrator can prevent victims from accessing critical social and financial DFV services through the VSS. For example, a victim may apply for financial assistance to relocate or install security measures to protect themselves and their children. To determine if someone is a victim of violence, Victims Services views Police records completed by General Duties Officers who identify the victim and perpetrator. If someone has been wrongly recorded as a perpetrator of violence, they risk a reduction in compensation or a rejection of their claim entirely.
- 2.6. Often, there is a necessity for INSP claims to be submitted quickly. Victims Services aims to process these applications within 14 days. However, for a female claimant (incorrectly) named as a defendant, the process of defending charges and removing the ADVO comes much later. This means that the initial, untested factual assessments by Police are prone to being replicated throughout the Victims Services process, thereby compromising the assessment of claims for essential support. This situation is compounded by the fact that, in our experience, Victims Services decision makers tend to preference or give greater weight to the evidence, or lack of evidence, in Police records over the letters of support of specialist DFV support workers with decades of experience.

**Client case study – Kate’s claim was rejected because of an incorrect police allegation**

Kate experienced abuse by her husband. Police attended the parties' home on multiple occasions. On some of these occasions, Kate was identified as the perpetrator by the Police. An ADVO was put in place with Kate as the defendant.

Kate disclosed to our casework team that her husband had been controlling and emotionally abusive. She experienced physical and psychological domestic violence. During an initial assessment with one of our caseworkers, Kate's husband rang her multiple times demanding to know her location and who she was with. She lied and said she was at a Mothers Group with their son. Our caseworker saw Kate shaking and becoming increasingly fearful as the calls continued.

Kate spoke to a Police officer to make a statement about the abuse she suffered. The officer said to her, "Don't waste our time."

After the ADVO was put in place to protect Kate's husband, he taunted her about it. He used the ADVO to further control her behaviour. The Police did not take any further action to protect Kate as they believed she had no evidence and because she was previously identified as the perpetrator.

Kate eventually left the relationship and moved to a women's emergency shelter with her son. Kate applied for the Victims Services Immediate Needs Support Package to assist her in relocating to a safe location. With her application, Kate's caseworker from South West Sydney Legal Centre included a letter detailing the domestic violence she experienced. Kate's caseworker had worked with victims of DFV for 12 years and conducted a risk assessment. It was her professional opinion that Kate was a victim of violence. The caseworker had also witnessed the husband's control over the phone.

Kate's application was rejected at first instance and later upon request for internal review. Despite the evidence of the DFV caseworker and a counsellor both raising concerns for Kate as the primary victim of acts of violence, and even though Kate was defending all criminal allegations against her (and was ultimately found not guilty after

<sup>9</sup> National Domestic and Family Violence Bench Book 2021, [Systems abuse](#), last updated June 2021.

a defended hearing), Victims Services relied only on police records that identified her as the alleged perpetrator of violence against her husband.

**Client case study – Farika’s domestic violence reports were treated as mental health issues <sup>10</sup>**

Farika experienced ongoing verbal and emotional abuse by her husband who was diagnosed with schizophrenia. His behaviour was very violent towards Farika and their 4 children. Farika eventually called the Police. She had limited English and did not know the right words to describe her experience of domestic violence.

The Police questioned her about her fears. The COPS reports state that she called Police because of his schizophrenia, not domestic violence. Farika told them she got legal advice and the lawyer said to report his behaviour. The Police records show they believed this was to get an advantage in the Family Court.

Farika saw a specialist DFV caseworker shortly after, who told her what constitutes domestic violence. The caseworker provided a 2-page letter describing instances of very serious physical and verbal abuse.

Farika’s application was rejected as Victims Services preferred the Police COPS reports over the evidence of the DFV caseworker to find that she was not a victim of violence.

2.7. **It is clear from section 39 of the Act that legislators intended the VSS to acknowledge the highly-skilled work that domestic violence caseworkers do in determining whether a person is a primary victim of violence. However, in practice, we observe that their support letters are regarded secondary to Police records.**

2.8. Specialist domestic violence workers are experts in recognising the types and patterns of abuse, risk factors and how abuse presents itself.

For example, when a client first engages with our Staying Home Leaving Violence service, a caseworker conducts an initial assessment to determine if the client is a primary victim of domestic violence, and thereby eligible for the service. This assessment involves completing an extensive intake and risk assessment with the client to identify and establish (among other things) the elements of DFV issue and the client’s support-needs profile.

2.9. Specialist domestic violence workers play a critical role in characterising the experience of victim-survivors for communities who historically have had negative experiences with the Police. For example, women from CALD backgrounds are less likely to report violence to the Police.<sup>11</sup> Layered on top of this, for people who face social exclusion linked to aspects of their identity, the risks of DFV are greater.<sup>12</sup>

2.10. The simplistic practice of Victims Services Assessors accepting Police evidence at face value, and dismissing additional evidence from experts in the sector, undermines and overlooks the specialist skill of DFV workers and goes against the intention of the

<sup>10</sup> This is a combination of a few different matters.

<sup>11</sup> [Hearing her voice: report from the kitchen table conversations with culturally and linguistically diverse women on violence against women and their children](#) report and [eSafety for Women from Culturally and Linguistically Diverse Backgrounds](#) report.

<sup>12</sup> NSW Ministry of Health, [NSW Domestic and Family Violence Prevention and Early Intervention Strategy 2017 – 2021](#), 2016, p 7.

legislators. It also creates risks for vulnerable communities and unnecessarily absorbs the resources of Victims Services and those of services such as ours, via lengthy internal reviews to consider overlooked evidence.

- 2.11. **Under this recommendation, we call for an amendment to section 39 of the Act to ensure that where there is inconsistency between police reports and reports by an agency that provides specialist support services to victims of crime (such as the DFV services provided by South West Sydney Legal Centre) greater weight is to be placed upon reports of the specialist agency.**
- 2.12. An amended provision to this effect not only recognises the specialist nature of agencies that provide support services to victims of crime (as opposed to the generalist skills of a General Duties police officer), but is also consistent with **case law principles that the Scheme and the Act should be interpreted beneficially in favour of a claimant.**<sup>13</sup> This amendment would also ensure that the Part 4 provisions operate to meet the policy objectives of Part 2 of the Act, which is intended to recognise and promote the rights of victims of crimes.

**Recommendation 3:** Amend policy to expand the availability of Immediate Needs Support Payments (INSP) to applicants who experience violence, especially sexual violence, by a known offender.

- 3.1. Section 30 of the Act gives power to the Commissioner of Victims Rights to approve financial assistance generally, or in a particular case or class of cases, in different forms, such as a grant or reimbursement of expenses. Accordingly, the Commissioner has packaged financial assistance for victims of domestic violence into the Immediate Needs Support Payment (INSP) grant.
- 3.2. Currently, INSP is available only to primary victims of **domestic violence**. In summary, the Act defines “domestic violence” as a violent offence committed where the offender (section 19):
- is or was the applicant’s spouse or de facto spouse
  - is or was in an intimate personal relationship with the applicant
  - lived with the applicant at the time of the violent act, or
  - Is the applicant’s parent, guardian, child or step-child, sibling, half-sibling or step-sibling.
- 3.3. While victims of violence not arising within the context of domestic violence (as defined above) have access to financial assistance for immediate needs, they do not benefit from the assurance of receiving a grant within the same timeframes as the INSP to meet their urgent needs to secure their safety, health and wellbeing.
- 3.4. However, **where victims have experienced violence by a known offender**, whether physical, sexual or through other forms of violence such as stalking or intimidation, **we submit that the immediate needs of these victims are akin to the immediate needs of domestic violence victims**. This includes relationships in a school, work, neighbourhood, church or community context. Victims of violence arising from these contexts by a known offender face a very imminent threat to safety, as the offender may know the victim’s home address, school, work or other personal details, which exposes them to daily risk.

<sup>13</sup> See *Elena Harvey v Victims Compensation Tribunal & Anor* [2001] NSWSC 604 (revised 17/10/2001) at paragraph 41 and *BMF v Commissioner of Victims Rights* [2020] NSWCATAD 97 at paragraphs 78 & 111.

- 3.5. Accordingly, we believe that it is appropriate to expand the class of victims who may be eligible to make an INSP claim to victims who have experienced violence by a known offender.
- 3.6. We understand that Assessors have discretion to approve the equivalent of an INSP grant when warranted in situations where the claimant is not a victim of domestic violence for the purposes of section 19. However, we submit that victims' rights should not be dependent upon subjective discretion, but rather enshrined within the legislation in definitive terms or through clear policy guidelines that are made publicly available.

**Case study – Feray was not eligible for immediate support to relocate away from a known offender<sup>14</sup>**

Feray is a young woman who experienced violence by her cousin's ex-husband. The marriage had ended several years ago. Feray met the offender when she was a child through family events. They stayed in touch through the local cultural and church community.

Feray became pregnant after she was sexually assaulted by the offender. This was very difficult for her within her small community. Feray was reluctant to report the incident to Police, as she felt they had not listened to her previously.

Feray was anxious about ongoing violence due to news of the pregnancy. The offender knew Feray's address and had often attended her family home. She did not have the financial resources to relocate, but was not eligible for INSP as the violence was not strictly "domestic violence".

**Client case study - Georgie received financial assistance when stalked by her neighbour**

Georgie was stalked by her neighbour in her apartment complex. He wanted a relationship with her, but she was not interested. After he continued to turn up at her doorstep in breach of an ADVO, she decided she wanted to move.

She was scared because he had access to her security door in the apartment complex and his advances were of a sexual nature. Although she was not technically eligible, we assisted Georgie to apply for INSP as she had no other financial resources to move.

The Assessor used the section 30 discretion to grant Georgie the equivalent of INSP under financial assistance for immediate needs. Without legal assistance, Georgie would not have known she could do this.

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<sup>14</sup> Details of this case study have been significantly altered to protect the identity of our client.

**Recommendation 4: Increase funding for services to assist clients in obtaining evidence.**

- 4.1. This recommendation is made subject to Recommendation 6 below, that the requirement to separately prove injury be removed. However, while this requirement remains, we urge an increase in funding for services to assist clients gather evidence.
- 4.2. We have previously made submissions that applicants should not be required to collect their own evidence and should be given the option for Victims Services to collect this evidence on their behalf. We advocated for the former *Consent to release information* to be re-introduced.<sup>15</sup>
- 4.3. Our position remains that the requirement for applicants to collect their own evidence of injuries within 12 months of submitting an application is burdensome on a section of the population least able to tolerate the burden. Our clients require very intensive legal and counselling assistance to obtain evidence for their claims. With the changes to evidence gathering in July 2020, the vital role of assisting victim-survivors to gather evidence shifted from Victims Services to organisations like ours.
- 4.4. A Review in 2012 by PricewaterhouseCoopers (PwC), as commissioned by the Attorney General, recommended the change that victims supply their own evidence.<sup>16</sup> This was later implemented by Victims Services in July 2020.

However, **the PwC recommendation went further and recommended that funding be provided for case coordinators to assist victims to gather their own evidence.** Case coordinators would “assist the claimant with immediate needs, navigating the various government and community support services and to help claimants through the claims process.”<sup>17</sup> They would “help with the collection of the required evidence and lodgement of the claim application.”<sup>18</sup>

**That recommendation was not implemented. Instead, the burden of case coordination has essentially fallen to government funded legal and social services to help clients gather evidence.** Without being centralised, this support is immensely time consuming and costly.

- 4.5. One of the principal barriers that our clients face (particularly those with multiple socio-economic disadvantages and affected by the trauma of DFV) is not having the capacity to gather all required evidence themselves and not being able to frame their requests appropriately and within time.
- 4.6. There will always be a cohort of victim applicants who are capable of complying with procedural requirements. These applicants always had the ability to gather their own evidence and ensure that all supporting documents were lodged at the time of application. However, many clients have never reported the violence or injuries sustained from the violence due to fear, shame or cultural expectations. Many have ultimately come to the attention of authorities due to neighbour reports or hospital reports after being admitted for significant injuries.

<sup>15</sup> South West Sydney Legal Centre submissions to Victims Services, March 2021.

<sup>16</sup> PwC review of the Victims Compensation Scheme, 2012.

<sup>17</sup> PwC, review of the Victims Compensation Scheme, 2012, page 70.

<sup>18</sup> PwC, review of the Victims Compensation Scheme, 2012, page 70.

**Client case study – Nicole didn't understand why Police records weren't enough to prove her injuries**

Nicole experienced DFV at the hands of her ex-partner; she was injured in a physical assault, and for months after was stalked and threatened by the offender. Her son was present during the physical assault and was also assaulted.

At the time we were providing Nicole with legal advice, she was homeless and faced difficulties accessing technology to read or sign draft Victims Services forms. She also had a compromised email account due to stalking by the offender. After several workarounds, our Centre was able to lodge the forms. She successfully received her INSP payment, although after some delay.

The next step for Nicole was to provide proof of injury to Victims Services for a recognition payment. Nicole's injuries were noted in the Police records as she was taken by an ambulance on the night of the assault. Nicole had photos of the injuries, and was confused and upset about why this was "not enough" for Victims Services to see the injuries to her face and lips. We prompted Nicole about proof of injury by email. Nicole responded to that email as follows:

*"now [you] just keep asking for more more stuff the police have got photos of what happened okay I'm not gonna bother about it because I'm not gonna keep reliving it because you keep asking me to do things I've got a email saying yep no worries at all done... now do you want me to go and fill out these two forms blah blah blah forget it I'm done okay I don't wanna keep reliving the shit..."*

We responded that we understood her frustrations at the process and hurdles to jump through to access government support and explained the help a counsellor can provide. We assisted Nicole in understanding the need for counselling. We found a counsellor and helped her make an appointment for herself and her children. We then requested a Certificate of Injury from the counsellor directly as Nicole did not know what to ask.

**Client case study – It took months to secure a Certificate of Injury for Mirza**

Mirza experienced violence by her ex-husband and was suffering severe depression as a result. She had never reported the violence to a medical practitioner, and felt reluctant to speak with her GP as she, the perpetrator and the GP were in the same community in South West Sydney. She knew other people who went there and didn't want anyone to find out. Mirza had two young children and was relocating due to the violence, so getting to the doctor's office was also logistically difficult.

We encouraged Mirza to speak with her GP about the violence and told her about patient-doctor confidentiality. Mirza attended the GP, but did not understand how to frame her psychological injuries. The GP wrote "no injuries" on the form.

We contacted the GP on Mirza's behalf to discuss whether psychological injuries had been reported to the GP. They declined to complete a further Certificate of Injury and replied by email: "Stated on the previous certificate, Dr Smith has no further information following the alleged incident."

We advised Mirza that she could attend counselling. Mirza was reluctant to begin because the concept of therapeutic counselling was new to her. She did not understand that the sessions were confidential and that the counsellor would not tell the Police what happened to her. Mirza was supported by her caseworker and decided to do counselling.

Mirza tried to call a few counsellors, but none of them had any availability and did not speak her native language. She felt discouraged by this. She asked us for help. We called around several counsellors for Mirza and she was able to get an appointment in 4 weeks' time.

The counsellor eventually completed the Certificate of Injury after several months. This case study is intended to show the intensive legal and casework support required to obtain evidence of injury.

- 4.7. As a community legal centre, our clients typically face multiple, layered barriers to accessing justice – they are often experiencing financial hardship that prevents them from accessing paid services, are single parents pursuing safety for their children, require an interpreter or culturally appropriate services, or may not have access to technology or need assistance to operate digital platforms. The seemingly simple task of obtaining a blank Certificate of Injury form – taking it to their medical or therapy provider and asking them to complete it, returning it to our Centre for us to submit on their behalf – is far from a simple task in reality.
- 4.8. For example, we received an email from a client last year who lodged an application for recognition payment with Victims Services months prior, but was yet to submit medical evidence. We forwarded a Certificate of Injury to the client again, who replied saying, “I am sorry I have been going through a lot since the whole assault happened and I haven't been able to get myself to the doctors.” She asked that we contact her medical practitioner on her behalf. Knowing that our clients will not be able to gather evidence for themselves, our legal team have felt the burden of needing to gather the medical evidence on behalf of these clients, often at the loss of support hours they could be providing to another client. **Without funding to expand, the hours our legal team spend gathering this evidence reduces the hours available to support other potential clients to access justice.**
- 4.9. **The burden of gathering evidence has effectively shifted to our Centre, and to other community legal centres and community workers. We have not been offered additional resources to manage this. Our capacity to provide legal assistance to our community more broadly has been greatly impacted.**
- 4.10. **If there is to be a shift in the allocation of the burden, there must be a similar shift in the allocation of funding.** Any savings generated by the increased efficiencies and improvements in Victims Services processes should be redistributed to community legal centres and community organisations, without increasing their output targets for other legal services, to ensure that they can provide the necessary assistance to these disadvantaged clients.

**Recommendation 5:** NSW Victims Services should launch a campaign for the health sector (supported by accessible fact sheets) to educate health professionals on how and when to complete a Certificate of Injury for patients who are victims of violent crime.

- 5.1. We often receive feedback from medical practitioners who feel cautious in completing Certificates of Injury, not completely understanding the purpose for which it is required.
- 5.2. Without the context of the VSS, practitioners do not know which details of the violence are relevant to note, for example, the occurrence of a sexual assault or the seriousness of a PTSD diagnosis.

- 5.3. Another recurring issue is the confusion about recording psychological injuries. For example, we have received a Certificate of Injury from a GP who wrote “no injuries” despite organising a mental health care plan to manage the patient’s depression due to domestic violence.
- 5.4. We suggest that Victims Services should create a fact sheet, webpage and information pack with a sample Certificate of Injury to aid practitioners to understand the requirements.

## b) Amend the Act to improve the functionality and accessibility of the Victims Support Scheme

**Recommendation 6:** Remove the requirement to separately prove injury (in section 39(2)(b)(ii) of the Act) in Victims Support applications for domestic violence and sexual violence.

- 6.1. South West Sydney Legal Centre has endorsed the July 2022 Joint Position Statement calling for the removal of the requirement to separately prove injury in NSW Victims Support applications. We do not intend to repeat those submissions here. Instead, we annex those submissions for consideration alongside our own.
- 6.2. In addition to the Joint Position Statement, we make the following submissions based on our own experience working with many victim-survivors of domestic and/or sexual violence.
- 6.3. In particular, we believe that there are two key areas where Victims Services can improve efficiency and find costs savings by removing evidentiary requirements:
  - 6.3.1. For Category D recognition payments relating to domestic violence.
  - 6.3.2. For cases involving sexual violence.
- 6.4. The shift from a legal compensation process under the previous Victims Compensation Scheme to an administrative needs-based process has been described in the *Background Paper* to this Review as well as in the annexed Joint Position Statement.
- 6.5. Holder et al. state that moving away from the terminology of compensation was:
 

*also accompanied by language that signalled a shift in the purpose of the legislation. Rather than compensation designed to return an applicant to their pre-victimisation status through a ‘civil remedy surrogate’ (Miers 2014a: 119), the financial assistance payments were to ‘assist recovery’.*<sup>19</sup>
- 6.6. The importance of lump sum payments was noted by PwC in their 2012 report:
 

*[L]ump sum payments are an important part of the rehabilitation process both symbolically and practically. Lump sum payments are viewed by claimants as an acknowledgement that they were a victim and can help provide closure to the incident. A lump sum payment gives victims a degree of financial independence,*

<sup>19</sup> Dr Holder, R et al, [Project assisting Victims’ Experience and Recovery \(PAVER\) Review: Final Report](#), Australian National University, 2021.

which can be empowering where the victims are financially dependent on the offender.<sup>20</sup>

6.7. Having regard to this shift in the objectives of the VSS, and to the extensive research about the impact of domestic and sexual violence and trauma-informed practice, **there is no justifiable basis for maintaining a definition of “act of violence” that contains an element of resulting injury nor for maintaining a requirement to prove injury in addition to proving violence.**

6.8. **In relation to Category D payments relating to domestic violence:**

6.8.1. We refer to Recommendation 4 and the associated case study, illustrating the intensive legal and casework required to assist victim-survivors to gather evidence of injury. Services like ours are funded by the Department of Communities and Justice to assist claimants to adhere to this requirement. This involves a significant number of hours at a significant cost.

6.8.2. There is a cost to government of administering this requirement. While we are not privy to all internal budgets that cover these processes, we know that these must include the following costs at the very least:

- Administering the queue for recognition payments
- Sending 3 lapsing notices for each matter within 12 months following up evidence of injury
- Additional counselling sessions that may be required by claimants for the sole purpose of obtaining a Certificate of Injury
- If evidence of injury is not provided at the time of INSP, the cost of making a second and separate decision in relation to the same act of violence

6.8.3. Quite apart from policy and research bases justifying the removal of the requirement to separately prove injury, it is evident that **there is no commercial sense in maintaining such a time-intensive and cost-intensive requirement**, relative to the \$1,500 Category D recognition payment.

6.9. **In relation to recognition payments for sexual violence:**

6.9.1. While each survivor of sexual assault has a unique experience, sexual assault is, by its very nature, a traumatic experience. It is a violation of a person’s human rights and undermines the autonomy of their body. That a person suffers psychological impact is a reality of the aftermath of sexual violence.

6.9.2. The effects of sexual violence on a person are clearly documented.<sup>21</sup> Although there is no set list of diagnosis or symptoms, sexual violence can have psychological, emotional, physical, social and financial impacts. As Boyd writes:

*“impacts [of sexual violence] are profound, affecting the physical and mental health of victim/survivors, and their interpersonal relationships with family, friends, partners, colleagues and so on. More than this, the impacts of sexual assault go beyond the individual, to have a collective impact on the social wellbeing of our communities.”<sup>22</sup>*

<sup>20</sup> PwC, review of the Victims Compensation Scheme, 2012 report, page 61.

<sup>21</sup> See [ANROWS research work on sexual violence](#) and [The impacts of sexual assault on women](#) (2011) by the Australian Institute of Family Studies.

<sup>22</sup> Boyd, A, [The impacts of sexual assault on women](#), published by the Australian Institute of Family Studies, 2011, page 7.

- 6.10. **The categories of recognition payments are not predicated on injury, but rather upon the type of violence.** Additionally, there is no “grading” of seriousness of injury within the categories of violence. The type of violence can be established from other evidentiary sources (for example police records and government funded DFV service reports). Accordingly, we submit that **the further requirement to separately establish injury is redundant and inconsistent with the underlying objective and purpose of the recognition payments support regime.** A further fallout of this approach is the distress to victims of crime generated by having to unnecessarily repeat details of the violence to multiple practitioners. Many practitioners will not complete a Certificate of Injury without a full history, which requires victim-survivors to repeat their story multiple times.

**Client case study – Incomplete GP records meant Sarai had to disclose sexual violence multiple times to access a recognition payment**

Sarai experienced domestic and sexual violence throughout her marriage. Sarai told her GP about what happened and the GP helped her begin counselling with a psychologist. Sarai disclosed that she had experienced sexual violence.

After a serious incident of domestic violence, Sarai called the Police. She told them about what happened that night and the history of violence, but only said he made her do things she didn't like, as Sarai did not feel comfortable talking to the Police and did not have an interpreter present. She ended the marriage after this incident.

After a year of working with a Family Support service focused on DFV, Sarai made disclosures to her caseworker of sexual violence. The caseworkers referred Sarai to us for assistance with a recognition payment application.

The caseworker provided a support letter with very detailed incidents of sexual violence. We assisted Sarai with contacting her GP and counsellor for evidence of injury. Because of the passage of time, the GP had moved to another practice and the medical centre declined to complete the Certificate of Injury because the only note on the file referred to “marriage troubles”, rather than domestic and sexual violence. The counsellor that Sarai spoke to during her marriage did not respond to any requests for information.

Sarai had a new GP she liked and asked them to fill out a Certificate of Injury. The GP declined to complete a Certificate of Injury as they did not see Sarai at the time of the violence. We reached out to the GP to clarify the requirements of the Certificate. Instead, they provided a letter that stated they had given the patient a mental health referral, but it did not refer to sexual violence.

We assisted Sarai to begin counselling for a Certificate of Injury. She was initially reluctant to do this as she did not feel she was ready to talk about the violence again. Sarai disclosed the sexual violence to the counsellor, who provided a Certificate of Injury.

Sarai was forced to disclose details of the sexual violence to the Police, her DFV caseworker and us as a legal service. We attempted to avoid further disclosure by asking her old GP and counsellor for evidence of injury, however, they could not provide this. Sarai then disclosed the sexual violence to a further two practitioners to obtain a Certificate of Injury.

Sarai was forced to speak about her experienced of sexual violence with 7 different services.

- 6.11. We concede that where applicants may need to prove aggravation (such as PTSD caused by domestic violence which amounts to grievous bodily harm = category C), there may be a need to provide further evidence of injury.
- 6.12. We submit that if there is evidence that domestic or sexual violence occurred, this evidence speaks for itself, i.e. the victim-survivor was harmed. Recognition payments are important because they acknowledge harm caused to victim-survivors. Requiring proof of harm erodes that purpose and undermines the dignity of victim-survivors. It goes against the object of the Act and undermines the object of the VSS.

**Recommendation 7: Ensure procedural fairness by giving claimants access to the evidence to which Victim Services Assessors have access.**

- 7.1. Procedural fairness is the hallmark of administrative decision-making.
- 7.2. Victims Services has access to the DCJ Central Referral Point (“CRP”) database, through which they can access police reports. This information is not available to claimants nor their representatives.
- 7.3. The only way for claimants to obtain NSW Police records is through an application made to NSW Police under the *Government Information (Public Access) Act 2009* (a “GIPA application”).
- 7.4. This has been confirmed by Victims Services to us in writing. When we have asked Victims Services for Police documents they have relied on to make a Decision, the response was:

*Please note, we are unable to provide records that may have been provided to Victims Services by NSW Police. Those records may be obtained directly from the NSW Police Information Access Unit. For more information, please visit [police GIPA website].*

**Client case study – Rhanía did not have access to information about her own experiences of violence**

Rhanía instructed us with details about the psychological violence she endured by her husband during the period June 2020 to March 2021. We lodged an INSP application for Rhanía based on this violence.

When the Assessor made the decision, they found:

*“In support of the application for a recognition payment, Ms [redacted] has provided the required documentary evidence, being a police report or a report to a government agency or a report by an agency that provides support services to victims of crime and a medical, dental or counselling report. The documentary evidence is sufficient to find that it is more probable than not that Ms [redacted] was the victim of domestic violence at [redacted], New South Wales. I have also considered a report that establishes that Ms [redacted] was injured as a direct result of that act. This harm has caused an impact to her health and wellbeing. Having regard to this documentary evidence, I find on the balance of probabilities, that Ms [redacted] is the primary victim of an act of violence, that occurred between [redacted] **2016 and March 2021**. I also find that the act of violence is considered a series of related acts, as two or more acts were committed against the victim, by the same offender over a period of time.”*

**The Assessor extended the period of violence by 4 years. The Decision did not include any details of the evidence upon which this finding was based.**

Because neither the claimant nor we had access to evidence the Assessor relied upon, we could not properly advise Rhania about her exact entitlements under the Scheme and whether she might be eligible for more than one recognition payment. We were also unable to advise her on the merits of lodging a request for internal review with regard to the Assessor unilaterally extending the period of violence.

We could not reliably advise Rhania nor formulate potential review grounds, until receipt of information under a GIPA application. The delays with the GIPA system and the 90-day period within which a request for internal review must be lodged, places strain on resources and distress for claimants.

- 7.5. Many of our clients face significant barriers in accessing their own information held by the Police. This is due to a range of reasons, including:
- language difficulties
  - the shock and trauma of a violent incident, leading to memory gaps
  - delay in making a Victims Services application (but within the time limits)
  - multiple police reports to different stations and officers, common in the case of very serious domestic violence
  - lack of funds to pay for upfront GIPA fees and additional costs if documents are lengthy
  - poor customer service at the Police Station front desk.<sup>23</sup>
- 7.5.1. It is concerning to us that **victims do not have access to the information and evidence before decision makers and that they may be forced into an onerous GIPA application process to secure a right that should have been initially afforded to them, pursuant to the principles of procedural fairness.**
- 7.6. When requesting information (such as the Provisional ADVO, which protects our client), Police often refer us to making a GIPA. In circumstances of an application for immediate needs, we respond that the GIPA process is entirely unsuitable. It is complicated, requires upfront payment and can take up to 4 weeks (within 20 working days). In our experience, the NSW Police Force InfoLink Unit regularly asks for extensions beyond this time frame. Between October 2021 – May 2022, the Infolink Unit have asked for extensions in 75% of GIPA applications that we have lodged in relation to Victims Services claims.
- 7.7. **Not only is this unsatisfactory situation in serious contravention of the principles of procedural fairness, it is in clear violation of the Charter of Victims Rights**, under which, among other things, victims are to be treated with respect for their rights and dignity, victims are to have access to legal assistance responsive to victims' needs and victims are to have access to certain information about police investigations, prosecutions, the trial process, bail applications and conditions and details of release from custody.<sup>24</sup>
- 7.8. To draw a parallel, the Royal Commission into Institutional Responses to Child Sexual Abuse made findings about information sharing in their final report. The Commission found that *“obstructive and unresponsive processes for accessing records created further*

<sup>23</sup> This has been reported to us by DFV clients and was also noted in Domestic Violence NSW's report, [Policing of Domestic and Family Violence in NSW: Insights from Specialist Domestic and Family Violence Services](#), April 2022.<sup>23</sup>

<sup>24</sup> Part 2 of the Act and the [Charter of Victims Rights](#)

difficulties for survivors seeking information about **their** lives.”<sup>25</sup> and that this “exacerbated distress and trauma for many survivors”.<sup>26</sup>

- 7.8.1. The Commission noted that past inquiries such as those resulting in the *Bringing them home* and *Forgotten Australians* reports:

*made recommendations to simplify the processes by which people in Australia access records about themselves and make these processes less distressing and frustrating for individuals. However, we have heard numerous accounts of the enduring complexity and inconsistency of those processes and the frustration this causes for survivors.*<sup>27</sup>

- 7.8.2. In response to the findings, the Commission made a final recommendation about victims accessing information about themselves governed by the following principle:

*Principle 5: Individuals’ existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.*

*Individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.*

*Individuals should be made aware of, and assisted to assert, their existing rights to request that records containing their personal information be amended or annotated, and to seek review or appeal of decisions refusing access, amendment or annotation.*

**Client case study – Mikayla reported violence to the police years ago, but her GIPA request to access those records was denied<sup>28</sup>**

Mikayla experienced serious violence by her ex-husband. She planned to move to Queensland to escape the violence, as the offender was to be released from custody imminently. Mikayla experienced violence over a long period of time, including being held hostage and a sexual assault. It took Mikayla several conversations with our specialist worker to disclose the sexual assault. Mikayla made a claim for INSP on the basis of a current ADVO. In the Decision, the Assessor made reference to a history of violence in the Police records, but provided no detail.

She was traumatised by the historical incidents, and was sure she told the Police about everything, but was not sure what station had been called, or which officers had attended. She did not accurately remember the year of the sexual assault, as there had been so many incidents. Without knowing what had been reported, it was impossible for us to advise what Mikayla was entitled to under the VSS. Mikayla had a calling card for one police officer. We requested Court Attendance Notices (CAN) and AVOs against the offender. The officer replied with a copy of one CAN, but stated they could not provide any further information as they were not the officer in charge of the other matters.

We assisted Mikayla to make a GIPA request. As Mikayla had memory gaps and had experienced violence over a 10-year period, we requested all information relating to

<sup>25</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report – Preface and Executive Summary](#), 2017, page 31.

<sup>26</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report – Preface and Executive Summary](#), 2017, page 31.

<sup>27</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, [Final Report - Volume 8: Recordkeeping and information sharing](#), 2017, page 88.

<sup>28</sup> This case study is a combination of a few different matters.

domestic violence incidents involving the victim and offender. Infolink asked for an extension on the application, increasing the wait time. When a decision came, the GIPA officer deemed the request too wide. **Mikayla found this process very discouraging, and felt that she could not access her own personal information. It resulted in unnecessary delay, cost and re-traumatisation for Mikayla.**

- 7.9. Our client base in South West Sydney is comprised of clients from low socio-economic communities, who cannot easily afford the cost of a GIPA application or support from a private lawyer to make the application. In 2020-21, 60% of our legal service clients were from CALD backgrounds and more than half of the women and children who contacted our Bankstown Domestic Violence Service in that same period were born outside of Australia. We observe that adult literacy is also an issue among our clients. For these victims, completing a GIPA application without legal assistance would not be possible.
- 7.10. Delay in obtaining Police information, and therefore delay in making an INSP application, can pose a serious threat to the safety and housing security of victims and their children.
- 7.11. **We recommend that the Act be amended to include information sharing provisions, similar to the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*. Part 13A Information Sharing (ss 98D-98H) allows disclosure by agencies (including Health and Police) of information about victims for the “purposes of arranging/providing support to the victim, and where there is a domestic violence threat.”<sup>29</sup>**
- 7.12. This would allow easier access to information for applicants and their representatives, and allow applicants access to evidence upon which Victims Services Assessors make their determinations. Early access to Police information is critical to the safety of victims of violence.
- 7.13. It is also a practical suggestion, saving the time and expense of the Police Infolink unit, and that of government-funded legal services, such as ourselves, in making such applications.

### Recommendation 8: Strengthen internal review rights of Victims Support claimants.

- 8.1. Section 49 of the Act provides for the **internal review** of a decision in relation to an application for victims support. Subsection (2) provides that “*The application must be made within 90 days after the day on which the applicant is given notice of the... decision*” and subsection (3) requires that the “*application for an internal review must be in writing and state fully the grounds of the application*”.
- 8.2. Nowhere in section 49 or elsewhere in the Act is there a requirement for all submissions and evidence in support of an application for an internal review to be lodged within 90 days. It is only the application itself, stating fully the grounds of the application, that must be lodged within 90 days of receiving a decision.
- 8.3. However, the *Application for an internal review: Fact sheet and form* (Form VS REV 01/2021) states that “*All supporting information, including further documents and submissions you would like considered as part of the review, must be lodged before the 90 day period ends*”.<sup>30</sup>

<sup>29</sup> National Domestic and Family Violence Bench Book 2021, [Information sharing](#), last updated June 2021.

<sup>30</sup> NSW Victim Services, [Application for an internal review: Fact sheet and form](#), 2021.

- 8.4. We submit that this stated requirement is *ultra vires* and has no legislative basis. It is in direct contrast to authority establishing that where an application is incomplete or additional information is foreshadowed, Victims Services must make a request for additional information (see *Elena Harvey v Victims Compensation Tribunal & Anor* [2001] NSWSC 604 (revised 17/10/2001) at paragraph 43).
- 8.5. In a situation where Victims Services rejects an application for internal review for failing to lodge all supporting submissions and evidence within 90 days, an applicant would be able to make an application to the NSW Civil and Administrative Tribunal (NCAT), where the applicant would be entitled to lodge further supporting documents and evidence (see Section 9 for our submissions regarding external review).
- 8.6. Allowing applicants further time to lodge supporting submissions and/or evidence once an application (fully stating the grounds of the application) is duly lodged within 90 days, is consistent with principles of procedural fairness, consistent with the beneficial nature of the Scheme and with trauma-informed practice. Additionally, it would avoid (unnecessary) applications to NCAT from victims unable to meet the current conditions.
- 8.7. **As a minimum**, we recommend that the *Application for internal review* form be updated to comply with the law, and for the avoidance of any doubt, section 49 should be amended to clearly provide that, once an application is duly lodged within time, further supporting material can be lodged prior to a Review Decision being made.
- 8.8. However, more significant reform would produce better outcomes. We submit that **the preferred and most appropriate course of action is for an amendment to section 49 that:**
- 8.8.1 extends the time limit within which to lodge applications for internal review from 90-days to at least 12 months from the date a decision is received; and**
- 8.8.2 permits applications for internal review to be made out of time.**

By way of example, situations that may qualify for late lodgement may include:

- where victims have not received decisions until much later because of relocations or deletion of email addresses for security reasons;
- where victims have not had capacity (physical, psychological or technological) to access health professionals to report either the violence or injuries from the violence (if this requirement is not removed in accordance with Recommendation 6 above).

Such an amendment, recognises the trauma experienced by victim-applicants, who are experiencing layers of life stressors and disadvantage. It would also recognise that victim-applicants are not able to easily access the necessary services and technologies to gather additional supporting material.

- 8.8.3 We note that there is provision in the *Civil and Administrative Tribunal Act 2013* (NSW) for NCAT to accept applications lodged out of time. A similar provision in the Act would achieve consistency across the Victims Support framework.

**Recommendation 9:** Strengthen the external review rights of Victims Support claimants.

- 9.1. An applicant may seek **external review** of a decision by application to the NSW Civil and Administrative Tribunal (NCAT) only in relation to a decision about a recognition payment (see section 51 of the Act). **This restriction prevents applicants seeking external review of decisions concerning significant financial assistance.**
- 9.2. Excluding INSP and financial assistance for medical and dental expenses from external review has serious consequences for the safety and recovery of victims. We hold particular concern for women who are wrongly misidentified by the Police as the perpetrator of violence, who are then excluded from Victims Services applications without the right of appeal, thereby having further systems abuse perpetrated against them.
- 9.3. If an application for financial assistance is refused at the internal review stage, the only possible avenue for appeal is through the Supreme Court of NSW to demonstrate that there has been jurisdictional error or error at law. The majority of self-represented victims and community legal centres do not have capacity to run Supreme Court matters. **The Act should be amended to allow all decisions about financial support to be externally reviewed by NCAT**, which would not require jurisdictional error or error of law.
- 9.4. The current regime of review/appeal rights/pathways is contrary to the beneficial nature, objectives and spirit of the Scheme.

**Client case study – We supported Raha through a lengthy appeals process<sup>31</sup>**

Raha experienced ongoing physical violence by her husband and she called the Police one evening. She had limited English and when the Police arrived, the offender spoke with the police in English and showed them a video of Raha yelling. The Police then misidentified Raha as the perpetrator of violence. They issued an ADVO to protect the husband and charged her with intimidation offences.

Raha left the home with her child and was staying in a refuge. When a caseworker applied for INSP for her, the Assessor accessed the Police records and made a finding that she was not a primary victim of violence, despite evidence from the caseworker that she was.

Raha approached us for assistance with Internal Review. We lodged an Internal Review presenting further evidence from the caseworker that Raha was a victim of violence. The review was unsuccessful.

In the meantime, the ADVO proceedings were heard and dismissed. The charges were also dropped. We made an application to NCAT on Raha's behalf and made lengthy submissions about recognition payment only, although her real needs were rent assistance and security measures.

Victims Services offered to settle the matter by declaring Raha a primary victim of violence and paying Raha a \$1,500 recognition payment. They also offered to submit the INSP application Raha for decision again, which was successful. This was a good outcome for Raha, but it was an exception that our Centre took this matter to NCAT, as we usually do not have capacity.

<sup>31</sup> This case study is a combination of a few different matters.

- 9.5. The above case study showcases the roundabout process required to challenge an INSP decision – which can often be beyond the resources of applicants and the service providers supporting them. In the interests of transparency and accountability, we recommend this process be formalised through an **amendment of legislation to allow all decisions about financial support to be externally reviewable by NCAT**.

**Recommendation 10:** Amend section 19 of the Act to enact the guidance for “series of related acts” provided in *DKJ v Commissioner of Victims Rights (2018) NSWCATAD 270*.

- 10.1. Many of our clients experience violence over a long period of time, in varying degrees of seriousness and intensity and through different methods. We provide advice to them about their eligibility for multiple recognition payments.
- 10.2. Subsections 19(4)-(6) of the Act provide guidance on the concept of related acts of violence by the same offender. In particular, section 19(5) gives discretion to regard acts of violence as distinct.
- 10.3. In the case of *DKJ v Commissioner of Victims Rights [2018] NSWCATAD 270* (“**DKJ**”), a victim was subjected to 12 incidents of domestic violence from the same offender over five years, with 5 of the incidents occurring after an Apprehended Domestic Violence Order was in force to protect the victim.
- 10.4. Having regard to subsection 19(5), Senior Member McAteer provided guidance about how such discretion can be properly exercised:

At paragraphs 39-40:

*... the incidents all involve violent conduct, and it appears that some of them have a clear character which separates them from the others. Whilst all involve the same parties and involve violent conduct, the incidents on 21 January 2014, 20 February 2014, 28 December 2014, 29 April 2015 and 8 February 2017 are in my view distinct from the other seven incidents*

*The five incidents referred to in [39] all occurred in circumstances where an enforceable Apprehended Violence Order was in place protecting the Applicant. On two of these the perpetrator was convicted of breach AVO offences, and in respect of the 30 September 2013 incident he was convicted of a stalk / intimidate intend physical harm type offence. Further on 10 May 2016 another Order was applied for in response to the perpetrators actions on that day. The 9 February 2017 incident resulted in breach AVO matters also being before the Court*

At paragraph 41:

*Contrary to the submissions of the respondent, these instances involve different particular circumstances when contrasted with the other incidents. The particular circumstances being that these matters occurred in circumstances where there was an Order in force and as a result constitute a prima facie breach of that Order and its ensuing conditions*

- 10.5. Senior Member McAteer then referred to the objects of the *Crimes (Domestic and Personal Violence) Act 2007* at paragraph 43, highlighting that:

*The legislature was mindful of the need to treat domestic and personal violence matters separate from ordinary offending behaviour and recognise the particular significance and impact of these behaviours on victims.*

- 10.6. Subsection 9(2) of the *Crimes (Domestic and Personal Violence) Act 2007* provides how that Act aims to achieve those objects, including by:

*empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation (including harassment) and stalking...*

- 10.7. A victim of domestic violence should be entitled to rely on the protection afforded by an enforceable order.

- 10.8. To suggest that it would be an “arbitrary exercise of the discretion contained in section 19 to sever any particular incident” in circumstances where there is an enforceable order of the court, as was suggested by the Commissioner in DKJ, would effectively minimise the utility and effect of enforceable orders. Such a decision would also be contrary to the objects of the *Crimes (Domestic and Personal Violence) Act 2007*.

**Client case study – Duy experienced new trauma and mistrust when her abuser breached the ADVO**

Duy experienced violence from the same offender over a period of time. In January 2021, an ADVO was issued to protect Duy. In May 2021, the offender breached the ADVO several times. The violence prior to January 2021 was extremely serious and of a physical nature. The breaches of the ADVO involved threats and stalking.

Having reported the violence and an ADVO being issued against the offender for Duy’s protection, she felt a sense of relief, power and protection. The violation of the ADVO on at least three occasions by the offender brought on additional trauma and mistrust. Further psychological injuries ensued.

We assisted Duy to apply for two recognition payments for historical violence to January 2021, and the breaches of ADVO in May 2021. The Assessor dismissed the latter application and held it to be a series of related events.

**Client case study – When Allira’s abuser was released from prison, the violence continued**

Allira experienced violence by her ex-partner and applied for INSP for security measures to protect herself. After the offender was released from prison, the violence continued despite an ADVO. Allira felt that she was not protected by the ADVO, felt at serious risk of harm and sought to apply for INSP to relocate to Queensland. She was encouraged to do this by the Police.

We assisted Allira to apply for INSP again. She was granted \$5,000 to relocate.

However, when evidence of injury was submitted for both applications, the Assessor found that the violence was a series of related acts. Despite granting two sets of INSP in recognition of distinct violence and different immediate needs, no regard was had to the violence after the ADVO and its different character.

10.9. **Violence that is continued in the face of an enforceable ADVO is particularly egregious and impactful for victim-survivors, as it undermines any protection that may be granted by an ADVO.**

10.10. **We submit that section 19 of the Act should be amended to compel decision makers to have regard to any enforceable ADVO in place at the time.** This is to recognise the significant impact that violence has after an ADVO and validates the idea that a victim of domestic violence should be entitled to rely on the protection afforded by an enforceable order.

10.11. Further in support of our submissions, we refer to subsection 19(6) of the Act which provides that:

*An act is not related to any earlier act in respect of which support is given under this Act if it occurs after the support is given.*

10.12. In the above case studies, had Duy and Allira made timely applications for victims support with all relevant supporting evidence as soon as they experienced the violence triggering the ADVO protections, then pursuant to subsection 19(6) Victims Services' Assessors could not regard the subsequent acts of violence as related to the earlier acts.

10.13. Victims who have sufficient resources, access to information and presence of mind after escaping one set of violent circumstances and after an enforceable order has been made, would be entitled to claim and receive victims support. If such victims then experienced further violence by the same perpetrator, these victims would be entitled to have the later acts of violence distinguished from the earlier acts of violence pursuant to subsection 19(6) of the Act.

10.14. It cannot be the intention of the legislature nor the beneficial nature of the Scheme for subsection 19(6) to operate so superficially as to reward only victims who make timely applications and disadvantage victims who have neither the knowledge, emotional capacity nor the resources to make such timely applications.

### **c) Amend the Act to provide greater clarity and certainty**

**Recommendation 11: Improve access to economic loss payments by resolving legislative ambiguity and providing policy guidance.**

11.1. There are a number of issues with the legislative provisions around financial assistance for economic loss that need to be clarified, as set out below.

#### **11.1.1. The meaning of clause 10(3)(b) of the Regulations:**

11.1.1.1. The limits of economic loss payments are contained in clause 10(3) of the *Victims Rights and Support Regulation 2019* ("the Regulations"). That clause provides limits:

- (a) if the victim can demonstrate loss of actual earnings--\$20,000,
- (b) if the victim cannot demonstrate loss of actual earnings--\$5,000 for out-of-pocket expenses....

- 11.1.1.2. In our experience, paragraph (b) has been interpreted to cover economic loss suffered by the applicant by paying for out of pocket expenses.
- 11.1.1.3. In a practical sense, there is no relationship between loss of earnings and out of pocket expenses. Those costs arise in different circumstances. For example, a person may lose work, but they may also need security cameras (not covered by or exceeding the limits of immediate needs assistance) to keep safe.
- 11.1.1.4. It is confusing and unnecessary to include the phrase “*if the victim cannot demonstrate loss of actual earnings*” in clause 10(3)(b) and the intention of the legislature should be clarified.

#### 11.1.2. Whether economic loss can be paid as a grant:

- 11.1.2.1. Generally, Victims Services will approve economic loss as a reimbursement. However, in the case of medical or dental treatment plans, Victims Services has paid the amount upfront as a grant. We request clarity on this issue.
- 11.1.2.2. We say section 30 of the Act allows out of pocket expenses under financial assistance for economic loss to be paid as **a grant**. In subsection 39(4), the documentary evidence required for economic loss claims allow for substantiation of expenses “*to be incurred*”.
- 11.1.2.3. The subsection is worded oddly. That is, it refers to actual expenses (which implies the money has to be spent) but acknowledges it can be incurred in future.
- 11.1.2.4. If Victims Services has the power to grant funds for medical or dental treatment plans, it has the power to grant funds for other expenses, such as security upgrades, which exceed the INSP cap. The following case study illustrates how this can impact on the safety of victims.

#### **Client case study – Mei was not granted sufficient INSP funds to install security measures at her home<sup>32</sup>**

Mei experienced serious violence by her ex-partner. He made continued threats and told her that if she left him, he would find her. They shared a child, so Mei was scared he would use the child to find out where she lived. Mei wanted to relocate, but she also wished to install security measures and wanted a personal security device to carry with her at all times.

Mei was approved \$5,000 through INSP for relocation and a removalist, and some security measures. With the application, she included a quote for a personal security device and a security upgrade to her new home. It was \$2,100 above the INSP cap.

The assessor declined to pay Mei the \$2,100 as an upfront grant because Mei did not have a receipt for expenses already incurred. Mei did not have the funds to purchase a personal security device upfront, and the time it would take her to save that amount of money presented an unacceptable risk.

<sup>32</sup> Details of this case study have been significantly altered to protect the identity of our clients.

- 11.1.2.5. There should be clear guidelines under the Act about claims for economic loss that have not yet been incurred and when they will be approved as grants. This can include a non-exhaustive list of examples, such as for immediate needs exceeding the INSP cap.

**Recommendation 12:** Expand the definition of “act of violence” in section 19 of the Act to ensure that intimidation and patterns of violent conduct are included.

- 12.1. Section 19 of the Act provides the meaning of “act of violence”. There are 8 subsections in section 19 and the meaning of “sexual assault and domestic violence” extends to a number of provisions contained in the *Crimes (Domestic and Personal Violence) Act 2007* and the *Crimes Act 1900*.
- 12.2. Relevantly, section 19 provides as follows:
- (1) *In this Act, “act of violence” means an act or series of related acts, whether committed by one or more persons--*
    - (a) *that has apparently occurred in the course of the commission of an offence, and*
    - (b) *that has involved violent conduct against one or more persons, and*
    - (c) *that has resulted in injury or death to one or more of those persons.*

...
  - (3) *For the purposes of this section, violent conduct extends to sexual assault and domestic violence.*

...

  - (8) *In this Act--“sexual assault and domestic violence” means any of the following--*

...

    - (f) *any other act resulting in injury that occurred in the commission of a personal violence offence (within the meaning of the Crimes (Domestic and Personal Violence) Act 2007) against any of the following persons—*
      - (i) *a person who is or has been married to the person who committed the offence...*
- 12.3. Section 4 of the *Crimes (Domestic and Personal Violence) Act 2007* defines “personal violence offences” to include:
- (a) *an offence under, or mentioned in, section...61...of the Crimes Act 1900, or*
  - (b) *an offence under section 13...of this Act...*
- 12.4. Section 61 of the *Crimes Act 1900* creates the offence of common assault. An assault may be established by proof of an act which “intentionally or recklessly causes another person to apprehend immediate and unlawful violence”.<sup>33</sup>

<sup>33</sup> *R v Knight* (1988) 35 A Crim R 314 at 316–317; *Barton v Armstrong* [1969] 2 NSWLR 451 at 454–455; *R v Venna* [1976] QB 421; *R v McNamara* [1954] VLR 137.

- 12.5. Section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* creates the offence of stalking or intimidation of another person with the intention of causing the other person to fear physical or mental harm.
- 12.6. Section 7 of the *Crimes (Domestic and Personal Violence) Act 2007* provides for the meaning of “intimidation”, which includes:
- (1)(c) *any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.*
- (2) *For the purposes of determining whether a person’s conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person’s behaviour*
- 12.7. Section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* provides for the meaning of “domestic violence offence” to include:
- (1)(c) *an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).*
- 12.8. **The above provisions make clear that the meaning of “act of violence” in the Act can be interpreted widely so as to include intimidation and patterns of violent behaviour.**
- 12.9. **We submit that the legislation should be amended to make this clear** without a long exercise of statutory interpretation referable to several different pieces of legislation.

**Recommendation 13:** Expand the definition of “domestic violence” to include all of the domestic relationships as defined in the *Crimes (Domestic and Personal Violence) Act (2007)*.

- 13.1. As noted in under Recommendation 12, “domestic violence” is defined in the Act at subsection 19(8)(f), with reference to the *Crimes Act 1900* and the *Crimes (Domestic and Personal Violence) Act 2007*. It includes a list of domestic relationships, although the list is more limited than the other Acts mentioned above.
- 13.2. However, there are many other relationships not listed that attract the same level of proximity, risk and exposure. For example, extended family members and in-laws who do not live with the applicant. We refer to the case studies below and those listed under Recommendation 3.

**Client case study – Collen was experiencing domestic abuse from her mother-in-law<sup>34</sup>**

Collen had separated from her husband who was incarcerated due to domestic violence offences. They shared children together and Collen looked after them full time. Her husband’s mother wanted to assume parental responsibility for the children.

The mother-in-law sent Collen a series of threatening text messages calling her a liar and an unfit mother. The mother-in-law turned up at the house and tried to enter it. She kicked the front door in and damaged it. She called the Police several times to report

<sup>34</sup> This case study is a combination of a few different matters.

welfare issues of the children that were untrue and on one occasion she called them to falsely report that she had seen a home invasion occurring. The Police arrived and burst through the door with guns and lights, traumatising the children.

Collen wanted security cameras to prove that the mother-in-law had been stalking her and to protect the children. Collen in this case is not eligible for INSP.

- 13.3. While we have largely had success in arguing that the Commissioner's delegates use their discretion to grant financial assistance for immediate needs to people outside of the list in section 19, we believe this should be formalised to increase transparency and certainty about their eligibility for support in the form of a grant. Without legal assistance, many applicants may not know that this support is available to them to access assistance urgently to meet their immediate needs arising from the violence.
- 13.4. We submit that expanding the definition of "domestic violence" to include all of the domestic relationships as defined in the *Crimes (Domestic and Personal Violence) Act 2007* will enable victims to access to critical support. In particular, the definition should include a person who "is or has been a relative of the other person".

**Recommendation 14:** Clarify the time limits referred to in subsection 40(6) of the Act and their applicability to recognition payments.

- 14.1. Time limits for making claims are contained in s40 of the Act. In particular, subsections 40(5)-(7) read:
- 40(5) An application for a recognition payment in respect of an act of violence involving domestic violence, child abuse or sexual assault must be duly made within 10 years after the relevant act of violence occurred or, if the victim was a child when the act of violence occurred, within 10 years after the day on which the child concerned turns 18 years of age.
- 40(6) Claims may continue to be made under an application that is duly made in respect of an act of violence until whichever of the following first occurs--
- (a) the expiration of the period of 5 years after the application is made,
  - (b) the total maximum amount of financial support that the victim is eligible to receive under this Act in respect of that act of violence has been given.
- 40(7) This section (other than subsection (6)) does not apply to an application for financial support, being for financial assistance of a kind specified in clause 8(2) (b) or (d) of the *Victims Rights and Support Regulation 2013*, or a recognition payment for a person who is a primary victim of an act of violence that occurs in the course of the commission of a sexual offence against the person when the person is under 18 years of age. There is no time limit on when such an application can be made.
- 14.2. A beneficial reading of this legislation (and the one that our Centre has adopted) is that the 5-year limitation (in s40(6)) is triggered by and applies only to claims for financial assistance. The 10-year time limit for recognition payment is therefore a standalone time limit and remains unaffected by the lodgement of financial assistance claims in relation to the same act of violence.

- 14.3. However, there is an alternative reading of subsections 40(6) and 40(7) that the 10-year time limit for recognition payment is reduced to a 5-year time limit if any claims are made in relation to that act of violence.
- 14.4. We do not believe this is a plausible interpretation of the Act, as it would produce absurd outcomes. For example, if a client applies for counselling, their time limit to apply for recognition payment is reduced by up to half. Similarly, if a victim of domestic violence applies for a recognition payment at the end of their 10-year time limit, then the operation of subsection 40(6) would effectively extend the 2-year time limit for making financial assistance claims by 13 years.
- 14.5. We have received unclear correspondence from Victims Services on this question:

**Comparative case study – Conflicting advice on time limits from Victims Services**

Amanda applied for counselling and recognition payment only. In her Acknowledgment letter from Victims Services, it stated: *“Application closure: Claims on your application for victims support can be made up to five years after the application was received. Your application will close to new claims on 18 May 2026.”*

Bronwyn applied for counselling, INSP and recognition payment. Her Acknowledgment letter from Victims Services stated: *“Further claims on this application: You can continue to make claims for financial assistance for 5 years. Please use the Expense Form on our website to send us any new costs you want to claim. The last day for you to make claims is on 18 November 2027.”*

Cara applied for recognition payment. Cara’s Acknowledgment letter did not mention any further time limits.

Amanda, Bronwyn and Cara were all advised of effectively different time limits.

- 14.6. Likewise, there is no guidance from NCAT or the judiciary clarifying these time limits.
- 14.7. This presents difficulty for services like ours, which are required to interpret complex time limits for our clients. It also presents an issue for Professional Indemnity Insurance, particularly affecting the provision of legal advice and our professional obligations.
- 14.8. We suggest that subsections 40(5)-(7) be amended to clarify whether the 5-year limitation (from the date of the claim) in subsection 40(6) applies to recognition payments.
- 14.9. Without this clarification, the time limits of the VSS (which take into account delays in disclosure due to trauma) are undermined. A poor interpretation of the time limits would disadvantage clients who apply for INSP within 2 years as they have urgent safety needs, but who may not be ready to begin counselling and report the violence in full. Time is especially important for young victims of violence.

## Conclusion

The policy objectives of the Victims Support Scheme not only remain valid – they are critical.

Not simply because the Scheme provides for the immediate support needs of victim-survivors of violence – their safety, health and security – but also because there is restorative value in recognising the trauma they have experienced.

The sheer increase in the volume of successful claims being delivered by the Scheme speaks to the ongoing need from victim-survivors for this kind of recognition and support.

However, there are aspects of the legislation and its administration by Victims Services that constrain and hinder the fulfilment of the policy objectives. We have made 14 recommendations to detail achievable reforms that would enable NSW Victims Services to better meet policy objectives, align with trauma-informed practice and be true to the intended beneficial nature of the Scheme.

We are hopeful that parliament will be open and responsive to the many voices of victim-survivors in South West Sydney, who we represent, and deliver them a Scheme that reflects their experience.

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

### **Joint Position Statement**

**July 2022**

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

### **Current requirements for Victims Support – economic loss and recognition payment**

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

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

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

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

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

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

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

<sup>2</sup> *Victims Rights and Support Act 2013* s 39(2)(b)(i)

<sup>3</sup> *Victims Rights and Support Act 2013* s 39(2)(b)(ii)

<sup>4</sup> *Victims Rights and Support Act 2013* s 39(3) and s39(4)

## Barriers to separately proving injury

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Proposed amendment**

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

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

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

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

### **Aggravated injuries**

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

We strongly advocate there be an exception to this for “sexual assault resulting in serious bodily injury” in relation to child sexual abuse. For the purposes of the Victims Support Scheme all child sexual abuse should be deemed to result in serious bodily injury. Evidence of such harm is well known<sup>10</sup> and should be acknowledged by only requiring (1) proof of the act of violence and (2) the age of the child at the time of the alleged offence.

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

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

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

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

### **Why the need to make this change now**

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

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

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

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

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

### **Organisations**

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

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

## Individuals

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

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

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

#### **19 Meaning of “act of violence”**

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

**sexual assault and domestic violence** means any of the following—

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

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