



Western Sydney
COMMUNITY LEGAL CENTRE LIMITED
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The NSW Department of Communities and Justice
Policy, Reform and Legislation
Locked Bag 5000, PARRAMATTA NSW 2124

Via email

policy@justice.nsw.gov.au

25 July 2022

To whom it may concern,

RE: Statutory Review of the Victims Rights and Support Act 2013

Background of Western Sydney Community Legal Centre (WSCLC)

We aim to provide seamless legal and legal adjacent social services that meet the legal needs of the most vulnerable members of the Western Sydney community.

The Community Legal Centre Program team offers a range of legal services targeted toward priority client groups who experience barriers to accessing justice, including people from culturally and linguistically diverse backgrounds, Aboriginal and/or Torres Strait Islander people, people with a disability, inmates in Correctional Centres, people experiencing domestic/family violence and people receiving low incomes who live in Western Sydney.

A significant portion of our legal advice, legal tasks and representation files involves domestic/family violence and access to the Victims Support Scheme.

In collaboration with Community Legal Centres NSW, we present the following list of recommendations:

Recommendations that the NSW Government implements by end of 2022

- 1) Legislating the removal of the requirement to separately prove injury in VS applications -
AGREED

WSCLC - Discussion

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WSCLC Ltd provides many ways for the community of Western Sydney to access legal advice and services.

Please visit <https://www.wsclc.org.au/how-can-we-help/general-legal-practice/> for further information.



We have recently signed a Joint Statement to remove the requirement to separately prove injury in NSW Victims Support applications for recognition payments. This statement robustly discusses the problems with requiring the victim/survivor to prove injury. The requirement of injury is not a trauma-informed request. We have seen the detrimental effects of victims/survivors firsthand who have been required to prove evidence of their suffering.

The need to seek further justification for the payment is arguably perpetrator centric. The Victims Support Scheme is not a civil law personal injury case – evidence of injury is an onerous task that prevents many victims/survivors from accessing the Scheme.

Case Study at WSCLC – Susan*

Susan was provided legal advice during a legal clinic at Dillwynia Women’s Correctional Centre. Susan was in a relationship with her perpetrator for 23 years and was married to him. Susan was incarcerated due to multiple driving offences, some of which occurred when escaping the perpetrator with her 3 children. The perpetrator was also in custody for attempting to drown Susan in the bath and was, serving a sentence of attempted murder. Susan had an ADVO protecting her and wanted to submit a VS application. Susan had evidence of the crime, Police documents and the ADVO, however no access to a Counsellor as she was incarcerated. She also stated she “was not ready to go down that [counselling] path yet”. Susan made a statement to us with words to the effect that she “felt triggered talking about the domestic violence” and “was having nightmares” about the events. We stayed connected with Susan for some time after she was released, urging her to secure the requisite certificate of injury. However, Susan stated it was “too hard” and did not keep in contact after she changed her mobile number. We believe that Susan did not proceed with the VS application due to the need for the certificate of injury. We believe the main hurdle for this woman in accessing the scheme, who had survived over a decade of domestic violence and attempted murder, was the need to prove her injury.

Case Study at WSCLC – Jasmine*

Jasmine was a 17-year-old Muslim woman who suffered a series of sexual assaults and attacks – these all included brutal violence which caused grievous bodily injury and complications from multiple chokings that required hospitalisation. Jasmine also suffered ongoing trauma from the violence and experienced several psychotic events, again requiring hospitalisation. She was a young person, multicultural, at risk of family violence, a victim of serious crime and at risk of homelessness. The events occurred in January 2021 and Jasmine sought legal advice from us in early July 2021. We applied for an Immediate Needs payment (INSP) and very quickly received a Notice of Decision for Immediate Needs (INSP) on 22 July 2021, which assisted Jasmine greatly. The evidence provided was strong as the Police were prosecuting the perpetrator for multiple serious offences. To pursue the recognition payment, evidence of injury was required and we organised a VS-approved Counsellor so that the evidence could be obtained. Unfortunately, Jasmine did not attend 2 sessions and when we followed up Jasmine said words to the effect of “I don’t have the headspace...I’m just trying to get by each day”. Jasmine was struggling with episodes of psychosis, auditory disturbances, suicidal ideations, visual disturbances, body paralysis and was medicated heavily due to nightmares and flashbacks, all whilst completing her HSC. Jasmine did obtain a certificate of injury in January 2022, and a recognition payment was received in June 2022. However, the need to prove the injury was a clear hindrance for Jasmine in proceeding with an application for a recognition payment.

Case Study at WSCLC – Beth*

Beth was referred to WSCLC from the International Social Services Australia Legal Service (another CLC), after her daughter was illegally taken to Lebanon by her ex-husband. She was a person in need of assistance with reading, writing and numbers, a separated parent, a person living with a disability, a victim of serious crime, incarcerated and experiencing social isolation. Beth was incarcerated at

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Dillwynia Correctional Centre with a release date of April 2022. Beth was motivated to submit a Victim Services application about an incident in January 2013 when her roommate tried to push her off a 4th-floor balcony apartment.” Beth has been able to gather all evidence to submit an application for support for primary victims, with the exception of the certificate of injury. In May 2022 we assisted Beth in submitting an application for counselling to enable her to obtain the injury evidence, but unfortunately, we have been unable to contact Beth to date. Due to the fact that the 10-year limitation date is January 2023, we have serious doubts that this application will be made within the critical time. The evidence of injury is the only outstanding part of the application.

WSCLC - Discussion

In the practice of WSCLC, it is our experience that the need to prove injury is a hurdle for many clients. It disproportionately affects those more disadvantaged in the community. It delays most applications significantly and precludes many from being submitted at all. For primary victims of crime in custody, only those who both stay in touch with our service and are motivated, submit applications in a timely manner.

Since the 2020 changes, WSCLC has had to significantly change the legal advice that it delivers to clients in the community and particularly those in custody. An extremely small portion of inmates of Dillwynia Correctional Centre receive counselling despite a considerable number of requests and lengthy waitlists. To the best of our knowledge, there are three Corrections/Justice and VS-approved counsellors for the state’s largest female correctional centre. We assist clients in preparing the application for the Victims Support Scheme however we often cannot progress to submitting the application due to the need for the certificate of injury. We encourage the client to reconnect with our service months or at times years later after seeing a counsellor. This seldom happens. Being released from custody is an extremely stressful event. Avoiding homelessness, avoiding recidivism, and re-linking with family are the primary concerns of a newly released inmate. Attending counselling appointments, to possibly access a potential future payment, is not a priority. For inmates with short sentences who are not linked with a counsellor, we frequently provide an overview of the scheme and advise the client to reconnect when released as it is extremely unlikely that they are able to collect the necessary evidence whilst incarcerated. In assisting with applications, the main hurdle is the required evidence of injury.

Recommendations that the NSW Department of Communities and Justice implements by end of 2022

Adopt a trauma-informed, survivor-centric, culturally safe approach and increase accessibility

2) Improve access to counselling:

- a) Increase the number of suitably qualified Victims Services Approved Counsellors available, including in regional, rural and remote areas. This includes counsellors who are culturally safe, disability aware, LGBTIQ+ aware, trauma-informed, with expertise in working with particular priority populations and expertise on particular issues. **AGREED**

On Apprehended Domestic Violence Order (ADVO) list days in local courts in Western Sydney, WSCLC has provided a service assisting female victims/survivors to link with the Victims Support Scheme. This has been an extremely successful initiative as in the ‘safe room’ we work with ‘The Women’s Domestic Violence Court Advocacy Program (**WDVCAP**) and the Police Domestic Violence Liaison Officers (**DVLO**) who are specialist police officers trained in the dynamics of domestic and family violence. The main hurdles are obtaining the evidence of injury (discussed above) and the appropriateness of counsellors.

Feedback from our Aboriginal Legal Access program team at WSCLC have stated that the perception by the clients of the counsellors is that they feel that their lived experience cannot be understood and will be whitewashed. The general consensus appears to be that non-Indigenous counsellors can't understand the healing journey that Aboriginal people are on, and they do not feel comfortable with non-Indigenous counsellors.

Case study at WSCLC – Priya*

Priya came into contact with WSCLC in the 'safe room' on ADVO day at the local court through the Women's Domestic Violence Court Assistance Scheme (**WDVCAS**). She was a multicultural woman from a rural Indian village and believed that her husband had not committed any crime in assaulting her. The behaviour was only identified to her as domestic violence when an AVO was applied for by the Police after she was physically assaulted by her husband. When Priya was advised about the availability of VS counselling, Priya commented that she had not heard of counselling as a profession, and that in her Indian dialect, there was no word for "counselling". Priya was reluctant to attend because she did not want to talk to a stranger about "our business".

Numerous multicultural clients, particularly from the Indian subcontinent, have rejected the Victims Support Scheme due to the need for counselling. Counselling therefore needs to be culturally appropriate and safe.

- b) Provide more information to victim-survivors about the expertise of counsellors and Victims Services assists victim-survivors to access a counsellor when they request this help. **AGREED**
- c) Provide access to culturally safe healing. **AGREED**
- d) Open approval applications to suitably qualified 'organisations' that have the required values, skills and accreditations which would automatically qualify their employed counsellors. The primary relationship would remain with the organisation, not the individual staff members but would increase the availability of counselling to Victims Services. **AGREED**

Case Study at WSCLC – Sandra*

Sandra was referred to WSCLC from a private mental health hospital in January 2019, after an ex-partner held her captive for 3 days, and sexually assaulted her over 9 times. She was an Aboriginal woman, a person in need of assistance with reading, a person living with a disability, at times homeless sleeping in a tent, a victim of serious crime, and experiencing social isolation. Sandra was linked with 5 workers from highly respected and qualified not-for-profit organisations. The workers included counsellors, Aboriginal social workers, and Domestic Violence Specialists. However, none of these workers were VS-approved and therefore could only provide small discrete assistance to Sandra in relation to the VS Scheme. It took substantial time to link Sandra with the requisite VS-approved counsellor for ongoing assistance whilst services that provided valuable support were unable to assist. Sandra was initially denied VS payments however upon internal review with the assistance of WSCLC was awarded a \$10,000 recognition payment. To achieve this payment significant resources across the not-for-profit/community organisations were expended.

WSCLC - Discussion

Some of the solicitors who work at WSCLC and provide legal assistance about the Victims Support Scheme have spoken to specialist workers who can complete the VS government-funded organisation reports. Anecdotally, many of our clients wish to continue working with these specialist support workers. Clients have built a professional relationship with these workers throughout the violence and

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the subsequent proceedings in the criminal justice system. There is trust in the skills and support that these organisations provide. We strongly support recommendation 2(b) for the above reasons.

WSCLC was assisting a client with accessing counselling. We rang around the list of the authorised VS counsellors. After a couple of unavailable responses, we asked why, and a counsellor stated words to the effect “it’s too hard and too much paperwork and I make almost no money on it”. Dedicated NFP organisations can be better motivated to provide this service than small businesses or sole traders. NFPs also have high turnover rates and if the qualification rested with the Organisation, VS approval would be more common.

- e) Develop policy and procedures that recognise the need to apply extended hours of counselling allocation up to 44 hours where appropriate with further extensions as required and there be a presumption in favour of approving the application. **AGREED**

Case study at WSCLC – Hope*

Hope was referred to WSCLC from WDV CAS after her perpetrator threatened Hope (whilst pregnant) and her 3 children with a knife after he broke into their home. She was a young person (under 24y/o), pregnant, a separated parent, caring for a person with a disability and experiencing social isolation. Her psychologist stated: “Hope has described symptoms consistent with PTSD and anxiety... Since the time of the event, Hope has reported having difficulty with sleep, consistent and repeated nightmares, and significant weight loss (60 kg since the time of the event) due to anxiety. In addition, Hope has been experiencing intrusive memories and flashbacks. Hope has scored 55 on the PCL-5, consistent with a diagnosis of PTSD. In addition, Hope has scored extremely severe on the DASS21 for depression, anxiety, and stress. Hope and I have discussed treatment options. Hope may require long-term psychological support for trauma treatment.” Despite surviving years of domestic violence and the strong recommendation of her psychologist, Hope was found not eligible for further hours after her initial 22 hours were spent.

Case study at WSCLC – Lucy*

Lucy came into contact with WSCLC in the WDV CAS ‘safe room’ on ADVO list day at the local court. Lucy had three children and was in prolonged family law proceedings with the father of her children, with whom she had been married to for over 7 years. Her ex-husband/perpetrator had used their children to pass along death threats. Lucy had already utilised her 22 hours of VS counselling. Despite the psychologist report stating further hours were needed, and VS’ ability to approve an extension, VS did not extend Lucy’s counselling hours.

- f) Victims Services reviews approved models of counselling philosophy to ensure holistic approaches are employed along with the other values and requirements for appointment. This is to ensure appointed counsellors do not insist clients only talk about the part of their reaction that the counsellor has perceived as being about the “Crime Event”. Trauma-informed practice and models of counselling philosophy understand reactions to trauma are complex. **AGREED**

Case study at WSCLC – Kendall*

Kendall was provided legal advice during a legal clinic at Dillwynia Women’s Correctional Centre. She was a person in need of assistance with reading, writing and numbers, a separated parent, at risk of family violence, a victim of serious crime, incarcerated and experiencing social isolation. At her first advice session in April 2021, all components of a victim services primary application had already been completed. Kendall was one of the rare inmates that was receiving counselling by a service-approved counsellor whilst incarcerated. I spoke to the counsellor asking her to prepare evidence, however she

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was wary to put anything in writing to a solicitor and stated that she needed more time with the client. The counsellor stated that she would continue working with Kendall after released from the Centre. Despite both Kendall and WSCLC (in writing) attempting to contact the counsellor to provide the certificate of injury, the counsellor has not returned over 5 phone calls and 3 emails. WSCLC has 2 complex representation files open currently pending the injury evidence. Since being released Kendall has seen 2 different mental health professionals. One person who provided support for Kendall wasn't qualified to write a certificate of injury as a "sexual health support worker", even though this worker has helped Kendall through her trauma significantly. With the second VS-approved counsellor, Kendall did not feel comfortable. In July 2022 Kendall relayed that she was over having "to cry out her story again" to a new counsellor. Kendall is not able to tell the counsellor which perpetrator caused her what symptoms. We believe that Kendall has trauma fatigue and having to relive the trauma of a childhood sexual assault over and over has precluded her from being able to submit the applications to date.

Case study at WSCLC – Kellie*

Kelly was referred to WSCLC from a Women's Aboriginal Community Legal Service when she was unable to prove with evidence her Aboriginality. Kellie had been removed from her mother at a young age and had lived with multiple families and group homes until the age of 18. While she was in the care of DCJ Governor, she was a victim of multiple acts of violence, including sexual assault. Kellie began a series of multiple unhealthy relationships where she became caught in a cycle of abuse, becoming a victim/survivor of DV again and again. When we commenced advising Kellie, she had identified multiple perpetrators including one unknown perpetrator where she was abducted and sexually assaulted over four days. Kellie was able to discuss her trauma with her psychologist but was unable to allocate her trauma to the various perpetrators as VS requires. Kellie was unable to discuss the trauma as linked to specified perpetrators, meaning her counsellor was unable to provide certificates of injury that pertain to just one event or perpetrator.

- g) Adequately remunerate Victims Services Approved Counsellors. **AGREED**

WSCLC - Discussion

At times, the solicitors at WSCLC need to speak to the counsellors in order to obtain the evidence of injury. Solicitors have heard from counsellors' words to the effect, VS work is "not worth it", "almost passion work", and "not about the money".

- h) Reinstate funding for group work in NSW. Individual counselling is not a substitute for victims wishing to benefit from facilitated peer support group work. **AGREED**
- i) Increase access to counselling for victim-survivors of crime while they are in custody. **AGREED**

Case Study at WSCLC – Britney*

Britney was referred to WSCLC by one of the Services and Programs Officers (**SAPOs**) at Dillwynia Correctional Centre to progress her victim services application. The VS application was pending the evidence of injury. Britney put her name down at least 3 times on the "list", after being advised by us in May 2021. In December 2021 she had still not been assigned a counsellor. WSCLC solicitors followed up with a senior advisory worker in the Women's Services in NSW correctional centres and words to the effect were stated "Britney was approved for counselling in 2019...I have not been managing the waitlist...unsure how this was missed...this name was mentioned before...I have added her previously."

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WSCLC asked Victim Services for an extension of time and Britney received a letter stating, *"the requested documents/information [certificate of injury was due] no later than 11 January 2022...the claim may be closed...as your client still has ample time to secure a counselling report"*. WSCLC wrote back to VS requesting an extension of time due to the lack of counsellors and extenuating circumstances and was advised again *"At this stage, we cannot grant further time beyond 12 months from the date the application was lodged as your client still has ample time to secure a counselling report. I also note the claim is for domestic violence offences and as such your client can reodge the claim any time before 31 August 2027 (10 years from turning 18)"* Brittany's claim will be closed due to the lack of counsellors in Correctional Centres, victim-survivors involved with the criminal justice system are essentially precluded from the Victims Support Scheme.

WSCLC Discussion

WSCLC receives many referrals from Correctional Centres in Western Sydney. A Services and Program Officer working within the Dillwynia Correctional Centre, one of the largest women's prisons in NSW, has commented that there are only three VS-approved counsellors available to provide support to the female inmates. We have been informed that there is a waitlist of over 6 months to access a counsellor. After 6 months, one woman followed-up her request for counselling, only to be told that she was never on the list. When in custody, victims often have time to work on their VS application, as some clients have informed us that when they are outside *"there are so many other things to think about that are more important"*. However, a significant number of female inmates are in custody for short periods less than 6 months, and so no progression on their application can be made with a waiting list of over 6 months and at times longer.

- j) Victims Services to provide professional support (including vicarious trauma support) to counsellors and opportunities for professional development and training. **AGREED**

WSCLC - Discussion

There are significant gaps in the knowledge of the victim services scheme counsellors. WSCLC have spoken to counsellors who were shocked that they were required to write reports for the victim/survivors they are treating. Frequently WSCLC brings the counsellor's attention to the 'VS approved counselling service – operating guidelines' where a *"maximum of 30 mins can be claimed for preparing a report in line with section 4.3 (Operating Guidelines on Reporting). When invoicing for a certificate of injury select service type 'Report Writing' and report type 'Ad Hoc'... and also clearly state in the comments field on the invoice line item that it is for a Certificate of Injury."*

Also, the law in relation to domestic and family violence is constantly evolving. We bring your attention to the recent NSW consent laws that changed on 1 June 2022 by the Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021. We believe that counsellors need professional development and training in these, among other areas of law.

- k) Remove the two-session "no show rule" so that victim-survivors who are unable to attend appointments for reasons beyond their control can continue to receive counselling. **AGREED**

- 3) VS returns to collecting evidence or funds services to undertake this work and reimburses services for associated costs. **AGREED**

Case study at WSCLC – Kylie*

Kylie was provided legal advice whilst incarcerated at Emu Plains Correctional Centre. In September 2018, Kylie was the victim of a break-and-enter and brutal attack. The assault was carried out by multiple people, and caused grievous bodily injury, including the loss of Kylie's baby in utero. This

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happened during a particularly traumatic part of Kylie's life, and she had little memory of the act of violence. Though it was reported to the police, Kylie did not have access to an Event number or any records. She didn't have \$30 to do a GIPA application (as she was incarcerated) to access the records, and she was not granted a waiver of the \$30 fee despite WSCLC's application for a waiver under the Government Information (Public Access) Act 2009. As a result, Kylie was never able to provide any evidence of injury or that there was an act of violence. This is a direct result of the fact that VS no longer assists victims in collecting evidence or funds services to undertake the work.

Since July 2020, Victims Services has required victim-survivors to collect evidence to support their application (primarily about harm suffered as a result of the act(s) of violence). This places an unnecessary burden on trauma survivors who may re-experience their trauma as a result of being asked to collect evidence to support their application. Placing this burden on victim-survivors is contrary to the principles of trauma-informed practice. Many unrepresented applicants are unable to collect evidence without support and they therefore may decide not to make an application or have their application dismissed without the evidence required. This change has curtailed victim-survivors ability to access the scheme. Further, it has shifted the work of collecting supporting evidence to services such as Community Legal Centres and other support services without the increased resources for services to provide that support.

- 4) Remove the requirement to provide banking details in the application form consistent with recommendation 3.6 of the final report of the Second Year Review of the National Redress Scheme. **AGREED**
- 5) Simplifying identity checks:
 - a) Victims Services adopts a more flexible approach to identity documents, accepting a wider range of identity documents and enabling applicants to provide identification documentation at a later time rather than at the time of application. **AGREED**
 - b) Victims Services allows the identification documentation required to be waived in appropriate circumstances. For example, for First Nations people, for homeless people, for trans people (binary and non-binary) who were born in NSW and who have not undergone gender affirmation surgery, cannot update their gender markers on identity documents. This can cause challenges in having ID documents that match gender experience. **AGREED**
- 6) Ensure procedural fairness
 - a) Victims Services informs the applicant/legal representative/advocate in writing of the earliest date by which a matter will be determined. **AGREED**

Victims Services does not currently advise applicants or their representatives of the earliest date of when they will determine a matter. This has led to matters being determined before all supporting evidence is lodged. Applicants are then required to seek an internal review of the decision to have their further evidence considered. The lack of due process can further traumatise victim-survivors. The issue is easily rectified by Victims Services informing the applicant when their matter is due to be determined and allowing the applicant the opportunity to provide further supporting evidence.

WSCLC - Discussion

This would be helpful recommendation to adopt. The prolonged process of accessing a recognition payment under the Victims Support Scheme can delay the healing journey of the victim-survivor.

Clients have reported that they would “really like to put this behind them” and “start [their] recovery now”, that they feel that their matter is not important, and they're feeling worried and anxious given the long timelines and the uncertainty of the application.

- b) Applicant/legal rep/advocate has access to all evidence upon which VS relies to make a decision **AGREED**

Victims Services is no longer able to provide applicants access to police records. Applicants are unable to address any issues arising from the police report of the act of violence without reading the relevant report. On appeal to the NSW Civil and Administrative Tribunal, Victims Services do not automatically provide the police records as evidence they rely on to make their decision. Procedural fairness requires an applicant to be able to see the evidence relied upon by Victims Services in making their decision. To access the documents, a Summons is required to be issued which causes delays in proceedings. This issue could be addressed by a policy allowing Victims Services to share police reports with the applicant/legal representative/advocate at no charge.

- c) VS adopts a more trauma-informed approach to auditing of immediate needs support package DV (INSP- DV) **AGREED**

Case study at WSCLC – Charlotte*

Charlotte came into contact with WSCLC in the ‘safe room’ on ADVO day at the local court through the WDV CAS. Charlotte had previously received an immediate needs payment, but she was planning on relocating to a safer premises. She made a secondary application for an INSP-DV. However, Charlotte was not able to produce the adequate evidence of expenditure for CCTV in her initial payment, and so was found ineligible for a second grant.

Victims Services has commenced auditing INSP-DV on a random basis and also requires the provision of receipts before second and subsequent INSP claims are considered. There is little flexibility for victim-survivors to demonstrate how they have spent funds. Victim-survivors will often not have access to receipts as they have fled violence and left belongings. Victims Services should provide other options for victims to explain the expenditure of INSP grants.

- 7) Increase transparency and accountability:
 - a) Require Victims Services or its managing agency or Minister to publish policies and guidelines they rely on to make decisions. **AGREED**
 - b) Require Victims Services or its managing agency or Minister to regularly publish comprehensive data annually about the operation of the Victims Support Scheme as occurred under the Victims Compensation Scheme and also provide quarterly reports. **AGREED**
- 8) Improve consultation
 - a) Commissioner Victims’ Rights improves consultation mechanisms by requiring that proper consultation is undertaken before Victims Services makes change. These consultation processes must include ensuring the Victims Advisory Board (VAB) works collaboratively with the Victims of Crime Interagency (VoCI) and other appropriate mechanisms with avenues for community organisations to raise issues at VAB meetings and the publishing of VAB and VoCI minutes. **AGREED**

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Several changes have been implemented by Victims Services without consultation. Changes that took effect from 1 July 2020 were initially announced by email to stakeholders as changes that would commence within a week. Following many organisations raising significant concerns, there was a period of consultation.

It is important that there are strong consultative mechanisms between the Commissioner Victims' Rights, Victims Services and victim-survivors and their advocates to work collaboratively to ensure a trauma-informed, culturally safe response to victim-survivors and so victim-survivors can access the support they need.

- b) Ensure proper consultation in this review to hear about the experiences of priority populations, including First Nations people, refugee and migrant communities including people on temporary visas experiencing violence, people with disability, LGBTIQ+ communities, people who are homeless, people with lived experience of prison, people in regional, rural and remote areas, older people and younger people and for priority populations and the services supporting them to have input into proposed solutions and be consulted on proposed solutions. **AGREED**

Recommendations that the NSW Government implements by 2023

Trauma-informed, survivor-centric, culturally safe and increasing accessibility

- 9) Remove all time limits for victim-survivors of sexual, domestic and family violence as well as victim-survivors of modern slavery about Victims Support applications
 - a) Remove upper time limits on recognition payments for victims of domestic violence, sexual assault and child abuse as well as victim-survivors of modern slavery. **AGREED**
 - b) Remove the 2-year time limit for financial assistance for victim-survivors of domestic violence, sexual assault, child sexual abuse and child abuse as well as victim-survivors of modern slavery including for loss of actual earnings and medical and dental expenses. **AGREED**
- 10) Provide greater recognition of domestic violence, including child abuse and sexual violence and modern slavery through higher recognition payments. These payments should increase in value with the current categories shifted to higher categories

Case study at WSCLC – Hope*

Hope, as above, was pregnant when her perpetrator broke into her home with a knife and threatened to kill her and her three children. Even considering this, Hope was only awarded a recognition payment of \$1,500. The default payment of \$1,500 for severe crimes and harm was entirely inadequate and represents a failure by VS to Hope and her children.

- a) Choking, suffocation, strangulation or attempts to choke, suffocate or strangle should be specifically included at a minimum as a Category C recognition payment. **AGREED**
- b) Category B recognition payments should be expanded to include domestic violence involving violence that is one of a series of related acts. **AGREED**
- c) Better recognition of modern slavery through higher recognition payments. **AGREED**

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- d) Acts of violence currently resulting in a Category B recognition payment should be elevated to Category A (\$15,000). **AGREED**
- e) Payments need to be indexed annually and should not ever decrease despite indexation (There has been no increase in these payments since the Victims Support Scheme was introduced in May 2013). **AGREED**

11) Amend the definition of “victim of crime” and “act of modern slavery” in the Victims’ Rights and Support Act to include all forms of modern slavery. This requires:

- a) The definition of “victim of crime” in s5(1) of the Victims Rights and Support Act specifically referring to sections 5(1)(a) and 5(1)(b) of the Modern Slavery Act 2018 (NSW). **AGREED**
- b) The definition of “modern slavery” in s19A of the Victims Rights and Support Act be amended so an ‘or’ exists between s19A(1)(a) and s19A(1)(b) rather than an “and” or it reads “and/or”. **AGREED**

12) Legislate standard of proof of “reasonable likelihood” consistent with the National Redress Scheme for people who have experienced institutional child sexual abuse. **AGREED**

13) The form of evidence to support a Victims Support application should not be prescribed. **AGREED**

14) Improve access to economic loss payments

- a) Victim Services actively supports victim-survivors to evidence claims of economic loss or provide appropriate referrals when they are unable to do so. **AGREED**

Case study at WSCLC – Jenny*

Jenny was referred to the multicultural legal service within WSCLC. She had suffered significant domestic violence, including verbal, psychological, physical, and financial abuse by her ex-husband. Her ex-husband threw away most of her belongings and promised that he would replace those belongings when they moved house. Jenny left due to domestic violence, but when she moved away from her ex-husband, he refused to replace any of her belongings. She received an INSP-DV payment which she spent in accordance with the VS decision primarily on rent. However, Jenny incurred further expenses for the household, obtaining removalist services and bedding through Facebook Marketplace, and was not provided with receipts. VS denied her application to be refunded under economic loss for the items as the documentary evidence could not be produced in the manner set out in s39 of the *Victims Rights and Support Act 2013* (NSW). Jenny was endeavouring to spend responsibly by purchasing second-hand goods, but instead remains out of pocket for these expenses. She plans to submit an internal review within the next month.

Case study at WSCLC - Georgina*

Georgina came into contact with WSCLC in the ‘safe room’ on ADVO day at the local court through the Women’s Domestic Violence Court Assistance Scheme (**WDVCAS**). Georgina came to WSCLC unsure of how to proceed with her out-of-pocket expenses due to an unfavourable decision on economic loss made in September 2021 rejecting her application for out of pocket, medical, physiotherapy and dental expenses. She had been in a long-term relationship with her perpetrator, which was categorised by physical violence. She had multiple AVOs over the years of their relationship. Her perpetrator made death threats to her including a threat to “throw you to the pigs at pig farm as they eat anything, and no one will know where to find you.” Georgina again had further expenses of

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economic loss due to the act of violence, however due to the narrow definitions of evidence, it is unlikely that these new expenses will be approved.

- b) Improve access to economic loss payments for victim-survivors engaged in casual work. **AGREED**

Case study at WSCLC – Jasmine*

As above, Jasmine was a 17-year-old Muslim woman who suffered a series of sexual assaults and attacks – these all included brutal violence which caused grievous bodily injury and complications from multiple chokings that required hospitalisation. Jasmine also suffered ongoing trauma from the violence and experienced several psychotic events, again requiring hospitalisation. She was a young person, multicultural, at risk of family violence, a victim of serious crime and at risk of homelessness. These acts of violence occurred at her workplace and as a result, Jasmine was unable to work for over 12 months. She was unable to recoup her economic loss, not only because she was unable to work due to psychiatric problems, but also because she was unable to evidence her regular casual work. As a member of the Middle Eastern community, Jasmine was reluctant to go to her employer – a prominent person of the Middle Eastern Community in that suburb, to request evidence of the assault.

- c) Clarification and simplification of the calculation of loss of actual earnings and that the method of calculation is embedded in the victim’s support legislation. Further consultation specific to this issue is required. **AGREED**
- d) The type of evidence is not stipulated as this can be a barrier to access, for example, where the employer is the alleged perpetrator. **AGREED**

15) Improve access to the Victims Support Scheme for family victims where there has been a homicide.

Case study at WSCLC - Tilly*

Tilly received advice from WSCLC at a legal clinic at Emu Plains Correctional Centre. She was incarcerated, suffered from mental health conditions and had her NSW housing tenancy terminated and her personal belongings disposed of. Three years before she came into contact with WSCLC, Tilly’s husband was murdered in front of her. She was assisted by a social worker at the time, including in making a VS application. Tilly wanted legal assistance in following up on her application. When WSCLC followed up, it was discovered that the social worker had only applied for counselling and was out of time for a recognition payment for dependents of victims of homicide. When she was released from prison, we lost contact with Tilly, and it was unlikely that an out-of-time application would be accepted.

- a) Remove time limits on funeral payments to accommodate matters where the victim’s body has not been found or where the victim’s body has not been released for any reason. **AGREED**
- b) Remove time limits for justice-related expenses to accommodate matters that do not get resolved within the current period. **AGREED**
- c) Allow additional justice-related payments over and above the current limit to accommodate matters that go to retrial and multiple appeals. **AGREED**
- d) Remove time limits on applications for justice-related expenses for family victims. In the alternative, though less preferred, the time limit should start from the day charges are laid about the homicide. These expenses should be made available for all homicide-related court

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matters - including mentions, trials, appeals and Coronial Inquests, Mental Health Review Tribunal hearings and State Parole proceedings. **AGREED**

- e) Improve access to Victims Support Approved Counsellors in rural areas, especially where family victims choose to have face-to-face counselling or may not have access to adequate online services. This will require the active recruitment of counsellors by Victims Services. **AGREED**
- f) Reinstate option for payment of support person expenses for court or other related needs. **AGREED**
- g) Remove time limits or hours restrictions on counselling for family victims who will need to return to counselling at other stages in their life e.g., appeals, retrials, parole hearings etc. **AGREED**

16) Legislate amendments to enable Victims Services to pay third parties for Government Information (Public Access) Act 2009 (access to information) expenses and other evidentiary requirements such as medical reports separate to financial assistance. **AGREED**

WSCLC and other legal and support services may need to pay the costs of obtaining medical evidence if the client is unable to fund the expense. Currently, Victims Services will not reimburse third parties for these expenses.

Case study at WSCLC – Kylie*

As previously discussed, Kylie was provided legal advice whilst incarcerated at Emu Plains Correctional Centre. In September 2018, Kylie was the victim of a break-and-enter and brutal attack. The assault was carried out by multiple people, and caused grievous bodily injury, including the loss of Kylie's baby in utero. This happened during a particularly traumatic part of Kylie's life, and she had little memory of the act of violence due to the massive trauma suffered. Although the Police attended this crime scene, Kylie had no idea how to get the evidence that showed an act of violence. Kylie didn't have \$30 to do a GIPA application (as she was incarcerated) to access the records, and she was not granted a waiver of the \$30 fee despite WSCLC's application for a waiver under the Government Information (Public Access) Act 2009. As a result, Kylie was never able to provide any evidence of the act of violence. This is a result of VS's current position that they will not fund services to undertake the work.

17) Add a new Victims Support payment called a Disability and Domestic and Family Violence Crisis payment. **AGREED**

18) Introduce INSP – sexual violence (following the success of INSP – DV) **AGREED**

19) The independent Commissioner Victims' Rights and Victims Services regularly consult organisations to ensure cultural safety and to remove barriers to accessing Victim's Support with the independent Commissioner Victims' Rights publishing an annual report which reports on such issues. **AGREED**

20) A discretionary process for victim-survivors under 18 years old to be able to receive their recognition payment rather than it being held on trust. – **SILENT ON THE RECOMMENDATION**

21) Victims Services to advocate Services Australia for amendments to the Social Security Guide that will protect recipients of Special Benefit and allow them to get the full benefit of Victims Support (or

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equivalent) payments without their Special Benefit being affected. This is particularly important for victim-survivors of domestic violence, sexual violence, child abuse, child sexual abuse and modern slavery. **AGREED**

22) Expand eligibility for Victims Support to people who are victims of crime whilst incarcerated. **AGREED**

Case study at WSCLC – Molly*

Molly received advice from WSCLC while incarcerated at Emu Plains and then Dillwynia Correctional Centres. She was participating in the ‘Mothers and Children Program’ at Jacaranda Cottages attached to the Emu Plains Correctional Centre. Molly was assaulted in custody by two other inmates, resulting in a broken arm, swollen right eye, kicked in the head, other broken bones and possible other visual disturbances that could not be diagnosed due to the poor health care in custody. She had very low prospects of success on a personal injury claim, or a claim against NSW Corrections, but she was ineligible for VS due to s 25(4) of the *Victim Rights and Support Act 2013* (NSW) because the act of violence occurred “while imprisoned as a convicted inmate”.

Currently, a person in custody is not eligible for Victims Support if they are a victim of crime while in custody unless there are special circumstances, or they are in prison for failure to pay a fine. This appears to convey the message that violence in prison is condoned and victim-survivors should not be supported. All victim-survivors of crime should be able to access the support they need to help them to recover.

23) Strengthen the Charter of Victims’ Rights **AGREED**

24) In circumstances of sexual, domestic and family violence and modern slavery, legislate a presumption not to pursue restitution unless the victim-survivor elects Victims Services to pursue restitution. **AGREED**

Case study at WSCLC – Chloe*

Chloe was a warm referral to WSCLC from another CLC. She had been in a relationship with her ex-husband for 7 years. Her ex-husband was charged with common assault and an ADVO was taken out by Police to protect her. This was after an incident of violence where the perpetrator punched her jaw and choked her multiple times. She was scared to pursue VS because she was terrified of what her ex-husband would do if he received a restitution order. She believed it would inflame her ex-husband to commit further acts of violence as revenge. Chloe only got halfway through an application for VS before she abandoned it, which we believe was because Chloe was apprehensive when advised about restitution. A presumption against pursuing restitution likely would have encouraged Chloe to complete her application.

Case study at WSCLC – Lucy*

As above, Lucy had three children and was in prolonged family law proceedings with the father of her children, with whom she had been married for over 7 years. Her ex-husband/perpetrator had used their children to pass along death threats. He was a wealthy, high-profile person with contacts in the police. Lucy was worried that a restitution order would complicate the ongoing parenting relationship between the two and the family law proceedings if her ex-husband/perpetrator found out that she had reported and sought a VS payment. Lucy stated she would not pursue a recognition payment with VS.

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Victim-survivors often identify a major barrier to accessing the Victims Support Scheme is the fear that the perpetrator will be subject to an order of restitution which means they will be alerted to the application being made. This may cause safety concerns for the victim-survivor. These safety concerns may prevent victim-survivors from applying for the support they need and are entitled to. Further, requiring the victim-survivors to prove circumstances to substantiate the waiver of restitution can compound the trauma of the victim-survivor as well as delay their access to the Scheme whilst the waiver is considered.

A safer and more trauma-informed approach is that in circumstances of sexual, domestic and family violence, a presumption not to pursue restitution unless the victim-survivor elects Victims Services to pursue restitution is legislated.

WSCLC has been informed by numerous clients that they will not pursue a recognition payment under the Victims Support Scheme due to the likelihood of VS pursuing restitution. Where victim/survivors need to have an ongoing relationship with the perpetrator due to co-parenting and other family responsibilities, VS seeking a restitution order can adversely impact and inflame the situation.

25) Prohibit the use of Victims Support payments to service debt – **AGREED**

- a) Immediate Needs payments are intended to help victim-survivors with urgent immediate needs for their safety and recovery. Financial assistance for economic loss also assists with recovery. Financial assistance for Immediate Needs payments, including the Immediate Needs Support Package, as well as for economic loss must not be used to offset or pay off any kind of debt, including an order of restitution. **AGREED**
- b) A recognition payment is made to acknowledge a traumatic and violent experience. Recognition payments must not be used to offset or pay off any kind of debt, including an order of restitution. The only exception should be when the victim-survivor requests this to occur. **AGREED**

26) If a person makes an application to Victims Services for a recognition payment and they have an existing order for restitution (debt), Victims Support must notify them about the debt at the time of the lodging of the application. Victims Services should also advise as to whether that debt has been transferred to Revenue NSW and provide information about Work Development Order programs available, so the applicant has the opportunity to reduce any debts by that scheme. **AGREED**

27) Uniformity of processes within Victims Services and Revenue NSW about debt collection. **AGREED**

28) Victims Services and Revenue NSW provide a list of Work Development Order programs available in the area where the person lives when advising about enforcement/debt. **AGREED**

Ensure procedural fairness

29) Amend the Act to provide out-of-time provisions for internal review for all aspects of Victims Support or alternatively remove the time limit for internal review altogether. **AGREED**

The strict 90-day time limit for internal review can be a barrier. While victim-survivors may be informed they can seek a review they may not understand what this means and what they need to do. Some may not seek legal advice until very close to the end of the time limit.

There is already discretion to apply out of time for external reviews. There also should be discretion to accept applications for internal review out of time.

30) Amend the Act to ensure the external review is available for all claims for financial assistance, including immediate needs and economic loss **AGREED**

31) Section 41A (lapsing provision) be reviewed and if it continues there be a legislative presumption that people applying for more time to provide evidence will be granted more time, particularly victim-survivors of domestic violence, sexual violence, child abuse, child sexual abuse, modern slavery as well as family victims **AGREED**

Following the 2016 statutory review of the Victims Rights and Support Act, a recommendation was made to: "Include a new section of the Act to empower the Commissioner to lapse an application for which the supporting evidence was not lodged within twelve months of the last correspondence unless there is a good reason for the delay, provided that the Commissioner has first attempted to contact the applicant on at least three occasions."

This provision allowed more than 12 months for the collection of evidence. Firstly, Victim's Services were responsible for collecting evidence and if they were unable to locate evidence they would request evidence from the victim-survivor. Importantly, there was discretion to allow further time beyond this.

Since the changes were implemented on 1 July 2020, the burden now falls to victim-survivors to collect their own evidence. Further, Victims Services states in their publications about Victims Support that if supporting evidence is not provided within 12 months of lodging an application "Your application will be closed".

If s41A of the Victims Rights and Support Act is to continue, more than 12 months should be provided to lodge evidence and it is essential there be a presumption to extend the time to provide evidence, particularly in relation to requests by applicants who are victim-survivors of domestic violence, sexual violence, child abuse, child sexual abuse, modern slavery as well as for family victims.

32) Legislate the requirement for Victims Services to note all evidence considered and provide reasons for their decisions ensuring that decision-makers provide applicants with detailed information to justify their decision in plain language and that the reasons outline the evidence relied upon to reach the decision. **AGREED**

33) An independent Commissioner of Victims' Rights. **AGREED**

Recommendations that the NSW Department of Communities and Justice implement by 2023

34) Ensure all supports available to victim-survivors of crime are promoted on a centralised website. **AGREED**

[Redacted signature area]

Yours Sincerely,

[Redacted name]

[Redacted name]

[Redacted name]

Solicitor

[Redacted name]

Acting Principal Solicitor

Western Sydney Community Legal Centre

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