



**Western NSW
Community Legal
Centre Inc**



**WESTERN WOMEN'S
LEGAL SUPPORT**

11 July 2022

[REDACTED]
Commissioner of Victim Rights
Victim Services
Locked Bag 5000
Parramatta NSW 2124
policy@justice.nsw.gov.au

Dear Commissioner

Re: Review of the Victims Rights and Support Act 2013

Western NSW Community Legal Centre Inc (**WNSWCLC**) is a community-based, not-for-profit organisation located in Dubbo that provides free legal services to people in Western NSW who experience social, economic and/or geographic disadvantage. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres, bordered by Mudgee in the east, the Queensland border to the north, and Bourke and Cobar in the west. WNSWCLC also engages in community legal education, law reform, collaboration of services with local community service organisations and offers media comment on issues of importance. WNSWCLC also provides legal advice and assistance to two local maximum security correctional centres (Wellington Correctional Centre and Macquarie Correctional Centre), servicing approximately 1,500 inmates.

Western Women's Legal Support (**WWLS**) is WNSWCLC's specialist domestic violence unit. WWLS was established in 2015 after the Commonwealth Government identified Western NSW as having some of the highest rates of family and domestic violence in the country. WWLS provides holistic legal and non-legal support to female victim-survivors of family, domestic and sexual abuse and their children. WWLS covers the same geographic area as WNSWCLC but has recently broaden its area to include Forbes, Parkes, West Wyalong, Lake Cargelligo and Condobolin. WWLS is the only specialist family and domestic violence legal service-based west of the Blue Mountains that assists all demographics of society, including First Nations, culturally and linguistically diverse, gender and sexually diverse and homeless people.

WNSWCLC and WWLS welcome the opportunity to provide the below feedback on whether the policy objectives of the *Victims Rights and Support Act 2013 (NSW) (the Act)* remain valid and whether the terms of the Act remain appropriate for securing those objectives.

 **Western NSW Community Legal Centre Inc.**

Tel: 6884 9422 • Fax: 6884 9397 • Free Call: 1800 655 927 • Email: legalhelp@wnswclc.org.au • ABN: 28 830 050 437

Address: 51 Bultje St DUBBO NSW 2830 • PO Box 1493 DUBBO NSW 2830

1. Requirement for victim-survivors to provide evidence in support of their claim within 12 months of submitting an application

In order for an applicant to be eligible for Financial Assistance for Economic Loss and/or a Recognition Payment under the Victim Support Scheme (Scheme), an applicant must not only evidence that they were a victim-survivor of an act of violence but also that they sustained an injury as a result of that violence. This must be proven on the balance of probabilities and can only be established through medical, dental or counselling records.

WNSWCLC and WWLS continue to advocate for the removal of a requirement to provide evidence of injury in domestic violence, sexual assault matters (including historic sexual assault matters, child sexual assault matters and adult sexual assault matters) and modern slavery.

The requirement to prove this injury imposes a significant barrier and burden on victim-survivors who are accessing the necessary supports available to them. This requirement often involves the victim-survivor being re-traumatised by having to re-disclose the violence and trauma to additional people (including but not limited to a counsellor) solely for the purposes of demonstrating injury in the legislatively prescribed manner.

Beyond the burden and barriers imposed on victim-survivors of truly personal violent acts, it is well documented and acknowledged that by the very virtue of having experienced domestic violence, sexual abuse or modern slavery the victim-survivor has been injured. It is in no way a trauma informed practice to require victim-survivors to demonstrate they have suffered an injury and does not put the victim-survivor's interest at the forefront of the scheme.

The prescriptive categories of financial support available under the Recognition Payment support package generally no longer require an assessment as to the severity of an injury to determine the amount of compensation awarded. This was overhauled with the closure of the Victims Compensation Scheme and the establishment of the Scheme, whereby under the previous scheme an assessor was required to determine the amount payable to an applicant over an expansive financial range (e.g., a victim of a series of sexual assaults could receive a payment of between \$25,000 and \$50,000).

Therefore, the establishment of a violent acUs having been committed against the applicant should be sufficient evidence required to warrant a Recognition Payment.

The requirement to establish separate evidence of an injury often results in victim-survivors being found ineligible for financial support under the Scheme and disproportionately affects marginalised members of society. It creates significant and often too difficult hurdles and barriers for applicants to access support and exacerbates their trauma in the process, as the below case study demonstrates.

Case Study: Samuel

Samuel was the victim of historic childhood sexual assault. He accessed our service when he was in his late 40's and disclosed the sexual abuse he endured by his uncle when he was a child between the ages of 7 and 14.

Samuel reported the sexual abuse to police when he was 28 years old but due to the significant trauma he endured and the burdensome and retraumatising nature of criminal prosecution of childhood sexual assaults, Samuel decided he could not continue with the investigation and prosecution of his uncle.

Samuel decided some years later to make a claim for support under Victim Services for Recognition payment. He felt he had the strength to do so at the time because his uncle had recently passed away and he was no longer worried about retaliation if his uncle somehow found out.

Whilst Samuel had evidence of a report of the act of violence to a government agency he did not have evidence of the injuries he endured as he had never sought medical treatment or counselling support for the violence. Samuel was still not ready to access counselling as he did not want to relive the violence he endured and was concerned doing so would negatively impact on his mental health and wellbeing.

Samuel therefore was not able to make a claim for Recognition Payment, despite the well-known fact that being sexually assaulted as a child causes an injury. As Samuel did not have medical or counselling records and did not want to engage in counselling for a non-therapeutic reason he went without vital support he deserved and was entitled to. He did not feel the horrific violence he endured as a child was recognised or acknowledged. He felt let down by the system.

We therefore, recommend the removal of the requirement to separately prove injury for both Recognition Payments and Financial Assistance for Economic Loss.

On this basis we recommend an amendment to s 19 of the Act, to delete "injury" as an element of the "act of violence" and further consequential amendments. This would remove the requirement to prove injury for all applicants. In the alternative, we recommend that as a minimum, s 19 be amended so that the requirement to prove injury not be required for victim-survivors of sexual assault (including childhood and adult), domestic violence, child abuse and modern slavery. Further amendments would also need to be had to subsequent sections in addition to s 19, including s 39 of the Act.

In practice the latter amendment would establish that an act of sexual assault, domestic violence, child abuse and/or modern slavery, by its very nature results in an injury, removing the need to separately prove an injury occurred.

We further support and endorse the Joint Position Statement of Women's Legal Service NSW and over 70 other organisations titled '*The case for removing the requirement to separately prove injury in NSW Victim Support applications*'. Particularly in reference to the need for the abovementioned amendments and removal of requirement to prove injury to be implemented as a matter of priority. These crucial amendments cannot and should not wait until the outcome of the statutory review noting the consequential further traumatisation and harm caused to applicants if there is a delay in the resolution of this issue.

If evidence of injury is required and the abovementioned recommendations are not accepted and implemented the following must occur as a matter of priority and urgency:

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A) Victim Services returns to collecting evidence of injury as accounted for under s 12 of the Act

Prior to policy changes of Victim Services in July 2020, Victim Services would collect evidence in support of an applicant's claim, with the applicant's consent. This was predominately relevant in respect of evidence of injury. In July 2020, Victim Services changed their practice and subsequently no longer assist victim-survivors beyond accessing NSW Police records.

The burden now placed on victim-survivors to collect their own medical evidence of injury has resulted in a significant shift within Victim Services processes. Victim-survivors of domestic and family abuse including sexual abuse already suffer significant trauma and the onus placed on applicants to collect this evidence has had and will continue to have a detrimental impact.

The shift is not trauma informed and further disadvantages already vulnerable individuals. Victim-survivors of marginalised groups, such as First Nations peoples, people with disabilities and people in rural and remote communities are also facing greater challenge in accessing support under what is meant to be a beneficial scheme that upholds and recognises the trauma and injury suffered by victims of violent offences.

These changes have not resulted in more efficient collection of medical evidence but have instead made it entirely burdensome and restrictive for individuals with complex trauma and disadvantage. The process of determining the location of where records are housed, the financial implications of accessing those records and the difficulty of accessing those records due to barriers such as limited literacy and limited access to technology, is often far too cumbersome on victim-survivors and many simply decide the challenge and trauma suffered as a result of doing so is far greater than the support they deserve, need and are entitled to.

There are additional specific barriers for applicants who are in correctional centres in accessing medical evidence. Many government agencies will not accept GIPA applications where the sole identification available is a Corrective Services ID, as this does not meet their identification requirements. We have in some cases been able to continue with attempts to obtain medical evidence on behalf of a correctional client, in circumstances where we can rely on other forms of identification such as birth certificates that have been provided by family members who are in the community and have access to these documents. Unfortunately, a large number of our clients are completely estranged from family members, therefore often there is no ability to obtain copies of any other form of identification and these applicants are simply prohibited on this basis from access to their medical records and consequently, support under the scheme. In these circumstances it becomes virtually impossible for these applicant's to provide evidence of injury within the 12 month limitation period.

The burden has also been heavily shifted to services who support victim-survivors; services which are often underfunded and already under resourced. We note we strongly opposed the introduction of these substantial changes and highlighted the negative impacts they would have on the ability of applicants to access support under the Scheme prior to their introduction.

We call for a repeal on this change due to the barriers and limitations it provides for already vulnerable and disadvantaged people who have been the victims of violent crimes. On this basis we seek Victim Services collect evidence of medical records and injury on behalf of applicants were requested by the applicant to do so.

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8) Expansion of documentary evidence able to demonstrate injury

The Act currently prescribes the form of evidence required to prove an applicant was injured as a result of the act of violence. This prescription is limited to medical, dental or counselling records. This imposes extremely limited scope of evidence available to applicants for them to rely on. Many of our clients for a myriad of reasons do not access medical treatment at the time of the act of violence; including but not limited to, fear of retaliation, shame, concerns for confidentiality particularly so in our very remote and regional towns, shock, parental responsibilities with no supports to care for children, lack of insight into the extent of injuries at the time, lack of services for treatment or assessment, fear of community backlash.

In this respect we also seek to make reference to the disproportionality of a rejection decision in cases where an applicant does not have medical, dental or counselling records of injury, but the offender has been convicted of 'Assault occasioning actual bodily harm'; an offence that by its nature requires a physical injury proven to the criminal standard. This is not an uncommon experience of our applicants.

Case Study: Lilian

Lilian was the victim of domestic violence perpetrated by her step-dad Bob. While at their family home one evening Bob verbally abused Lilian by threatening to harm her. After which point, he spat in her face and called her derogatory names before punching her face. Lilian immediately suffered an injury including significant pain to the site, bruising to her left eye and a bleeding nose.

Police were called and attended their home. Police sighted the injuries and charged Bob with a criminal offence as a consequence of the violent act. Lilian did not attend the local hospital or seek treatment from a counsellor or her general practitioner. She didn't do so at the time for a number of reasons, predominately because she resides in a very small remote town in Western NSW and was fearful of community gossip and backlash. Bob is very well known and liked in the community, Lilian did not feel safe reporting her injuries or seeking treatment, instead she minimised the significance of her injuries and dealt with immense shame of being a victim of family violence. There are no local counsellors (or local based Victim Services counsellors) in her area and she does not feel safe talking about the abuse on the phone.

However, Police took photographs of her injuries and the police evidence available before the Local Court resulted in a successful conviction against Bob. Bob was convicted of 'Assault occasioning actual bodily harm' and was sentenced accordingly.

Despite there being sufficient evidence of injury available to meet the criminal burden of a criminal offence that has a required element of injury when Victim Services determined Lilian's application for Recognition Payment her application was dismissed as there were no prescribed medical, dental or counselling records. Victim Services were unable to rely on the police evidence of injuries and she did not receive the financial assistance she deserved and was entitled to, simply because the Act currently does not account for evidence of injury beyond the prescribed medical, dental or counselling records.

We submit photographic evidence of injury held by police and or other evidence of injury held within police records which are sufficient to prove actual bodily harm to the criminal burden are more than sufficient evidence for the purposes of a beneficial scheme such as this and should be able to be relied upon for a successful application for support. The current prescribed forms of evidence do not allow for such documents to be relied upon.

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We therefore recommend legislative amendment to s 39(2)(b)(ii) of the Act, to either remove the prescriptive forms of evidence and/or at the very minimum expand the forms prescribed.

C) Review of s 41A of the Act

Following the 2016 statutory review of the Act, s 41A was introduced which allows the Commissioner to lapse an application if supporting evidence was not lodged within 12 months, unless there was a sufficient reason for the delay and the Commissioner had attempted to contact the applicant on at least three occasions. At the time this allowed Victim Services additional time to collect evidence.

However, the July 2020 policy change (discussed above) shifted the burden of evidence gathering to applicants. As a result, Victims Services now 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", (see below case study) which is inconsistent to the operation of s 41A of the Act.

Case Study: Jane

We assisted Jane in lodging an application for counselling, INSP and Recognition Payment. Jane was granted counselling and INSP. Later, we received a decision for Recognition Payment which was dismissed on the grounds that there was no evidence of medical injury. Jane acknowledged there would not be as she didn't access the counselling at that time because speaking about the violence was too difficult. However, she was now willing to engage in counselling. We rang Victim Services to confirm if Jane was able to reapply in the future for Recognition Payment for the same acts of violence given the application had been dismissed.

We were originally told by Victim Services, they do not dismiss applications where there is no evidence of injury - to which we demonstrated in this case they had not. We explained our understanding and experience with Victim Services was that where the evidence was insufficient the application would lapse and not be dismissed. Under this approach s 41A of the Act would be invoked and Victim Services have the legislative requirement to make 3 separate requests to our client for this evidence to be provided before lapsing the decision.

Victim Services confirmed no correspondence or follow up requests were made to the client and no pre-lapsing letter was sent to her. Victim Services advised the dismissing of the application is now the process since the July 2020 changes.

We were further advised Jane was not able to reapply for Victim Services with the same act of violence once the application had been dismissed and the 90 day internal review period had passed. We were advised the only remedy available to our client is to lodge an internal review (and hope a counsellor can make an assessment on injury in 90 days) and/or file in NCAT.

To ensure proper application of section 41A, it is essential there be a presumption to extend the time to provide evidence beyond the 90 day critical date for internal review where requested, 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.

D) Reimbursement of expenses associated with accessing medical evidence

The onerous burden (both in a wellbeing sense and financially) now shifted onto victim-survivors in requesting their own medical evidence has placed undue demand on already underfunded and under resourced services, including our own.

Our victim-survivors are already accessing our service by virtue of being extremely disadvantaged, either socially, financially or geographically. Many of our clients cannot afford the requisite fees for GIPA applications. This has resulted in our service outlaying the cost for these applications and requesting reimbursement from Victim Services to us, given we are the parties who effected payment. This was usual practice and we were previously successful in this respect prior to the changes in July 2020.

Since the changes have been effected, we have had not been reimbursed in any of the applications we assisted with despite our requests to Victim Services to have the money reimbursed to us directly. Instead in all of the cases in which a decision has been made in respect to Recognition Payment or Economic Loss, the expense associated with accessing medical evidence has been either reimbursed to the applicant directly or more recently not reimbursed at all on grounds that the applicant did not incur the costs themselves.

In evidencing this issue we refer to the following two case studies.

Case Study

The first refers to an applicant who we assisted in submitting her application for support and also in accessing medical evidence through the GIPA process. As an organisations, we carried the financial burden of these applications and sought reimbursement from Victim Services directly when a successful determination was to be made. Despite our requests, the reimbursement monies were paid to the applicant at the same time as her recognition payment was deposited.

We contacted Victim Services requesting this be amended and the monies be reimbursed to our service, we were notified by Victim Services that this was in fact an error, however Victim Services were unable to rectify the incorrect payment. We were advised to seek reimbursement from the applicant directly and further advised that an error such as this would not occur again.

Case Study

Despite the above assurance, we have experienced a very similar approach to the above taken in this case study. The applicant made an application for victim support with our assistance including our aid in collecting medical evidence of injury. Once again the applicant did not have the financial means to make the appropriate GIPA applications, so our service met the associated fees.

Within her successful notice of decision, the Assessor made specific reference to reimbursement stating "(The applicant has sought financial assistance for \$33.00 being the costs incurred in securing documents from NSW Ambulance. I advise that I have approved [the applicant] the amount sought as the documents have been provided and they supported her application. The receipt provided indicates that this money was paid by a third-party service. (The applicant is responsible for ensuring that any monies owing to the third-party service who covered the costs of the fees associated are repaid at the earliest.)"

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In light of the changes made by Victim Services in July 2020, our service set aside a limited amount of resources to enable us to assist our extremely vulnerable and disadvantaged clients to ensure they receive support they are entitled to and deserve. Without having these funds reimbursed to our service directly we are financially unable to continue to support victim-survivors in this way. Nor do we have the resources or capacity to chase successful applicants for incorrect reimbursement that they have already received.

If and when services like our own reach a financial burden that cannot be overcome, victim-survivors who are currently benefiting from our assistance and brokerage will be left with no recourse through Victim Services and will simply be ineligible for vital support that they are entitled to. They will be ineligible simply by virtue of simply not being able to afford the government fees associated with collecting their own evidence.

As aforementioned in order to address this significant burden imposed on victim-survivors, we strongly seek that Victim Services recommence collecting this evidence on behalf of the applicant to ensure vulnerable and disadvantaged members of our community who have been the victims of violent offences are not further disadvantaged and disempowered by a scheme that was designed to be beneficial.

Furthermore, in addressing this barrier, we recommend there be legislative amendment to the Act to allow for and ensure payment for reimbursement to third parties who have outlaid costs in assisting an applicant to obtain evidence in support of their claim including but not limited to *Government Information (Public Access) Act 2009*, access to information expenses.

2. Broaden scope of Recognition payment categories to acknowledge domestic violence, child abuse, sexual violence and modern slavery including increasing all Recognition payments

We note the current Recognition Payment categories have not been amended since 2013. The Recognition Payment categories currently differentiate the payments to be awarded to victim-survivors (or family members) based upon the nature of the violence committed against them. In our submission, s 35 of the Act, needs to be amended to reflect the ever-changing nature of domestic violence, child abuse, sexual violence (and modern slavery) and the totality of violent acts that arise from the context of the whole of the violent relationship (e.g., emotional abuse, coercive control, etc.).

The acts of violence set out in Category C should be expanded to include 'choking, suffocation, strangulation or attempted choking, suffocation or strangulation'. These acts in themselves are extremely violent in nature and a well-established precursor to homicide.

The acts of violence set out in Category B should be expanded to recognise the cumulative effect of domestic violence, in the case of domestic violence incidences that are one of series of related acts. We submit these should be captured appropriately under Category B instead of Category D.

It is disappointing there has been no increase in these payments since the Scheme was introduced in May 2013. We acknowledge no amount awarded will ever truly compensate the act of violence and injury suffered on a victim. However, the current Recognition Payments are not satisfactory.



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The payments fail to take into consideration the impacts the act of violence has on a victim-survivor, the future costs and the increase in the cost of living since 2013. Further, the payments awarded are at the lower scale in comparison to the payments awarded to victim-survivors in other state and territory victims' compensation scheme as at today's date (see table on next page).

We recommend the Recognition Payments be increased (including indexed annually) and be consistent to the other states and territories victims' compensation schemes.

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Table of State and Territory Victims Compensation Scheme for Recognition payments

Nsw ¹			ACT ²	QLD ³	WA ⁴	NT ⁵	TAS ⁶	VIC ⁷	SA ⁸															
The following victim-survivors are entitled to claim "Recognition Payments" as follows:			Victim-survivors (primary victim) may receive a Recognition Payment (depending on severity of offence and circumstances of aggravation or serious injury likely to be suffered ranges from \$1, 058 to \$30,456.	No "Recognition Payment" but victim-survivors may be entitled to the following financial compensation:	No "Recognition Payment" but victim-survivors may be entitled to the following financial compensation:	Eligible victim-survivors may claim be entitled to the following financial compensation.	No "Recognition Payment" but victim-survivors may be entitled to the following financial compensation:	Primary victim may be entitled to an amount within the following ranges for injury or mental illness suffered due to the act of violence	The Act provides for a sliding scale (1 to 60) of severity to determine a victim-survivor's entitlement to compensation for non-financial loss.															
Cat	Person	Max.						<table border="1"> <thead> <tr> <th>Cat</th> <th>Min.</th> <th>Max.</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>\$4667</td> <td>\$10,000</td> </tr> <tr> <td>B</td> <td>\$1300</td> <td>\$3250</td> </tr> <tr> <td>C</td> <td>\$650</td> <td>\$1300</td> </tr> <tr> <td>D</td> <td>\$130</td> <td>\$650</td> </tr> </tbody> </table>	Cat	Min.	Max.	A	\$4667	\$10,000	B	\$1300	\$3250	C	\$650	\$1300	D	\$130	\$650	
Cat	Min.	Max.																						
A	\$4667	\$10,000																						
B	\$1300	\$3250																						
C	\$650	\$1300																						
D	\$130	\$650																						
A	Primary victim	\$10,000																						
A	Child*of primary victim who dies	\$5,000		<ul style="list-style-type: none"> Primary victims: \$75,000; Secondary victims between \$10,000 and \$50,000 (depending on the seriousness of the violence) Related victims: \$50,000 less any funeral expenses. 	<ul style="list-style-type: none"> Single offence - \$75,000 Multiple related offence - \$150,000 Multiple unrelated offences - \$150,000. 	Eligible victim-survivors may claim be entitled to the following financial compensation.																		
A	Family victim (financial dependent)	\$7,500				Compensable violent acts between:	<ul style="list-style-type: none"> Primary victim: \$30,000 to \$50,000 (depending on number of offences). Secondary victim: \$20,000 Related victim: \$10,000 																	
A	Family victim (financial dependent) where funeral expenses claimed	\$5,000 or \$9,500				• Category 1: \$7,500 and \$10,000; or																		
B	Primary victim	\$10,000				• Category 2: 10,000 and \$25,000; or																		
C	Primary victim	\$5,000				• Category 3: \$25,000 and \$40,000.																		
D	Primary victim	\$1,500				Compensable injuries between:																		
						<ul style="list-style-type: none"> category 1: \$7,500-\$15,000 category 2: \$25,000-\$40,000. 																		

¹ *Victims' Rights and Support Act 2013 (NSW), Victims' Rights and Support Regulation 2019 (NSW)*

² *Victims of Crime (Financial Assistance) Act 2016 (ACT), Victims of Crime (Financial Assistance) Regulation 2016 (ACT)*

³ *Victims of Crime Assistance Act 2009 (Qld)*

⁴ *Criminal Injuries Compensation Act 2003 (WA), Criminal Injuries Compensation Regulations 2003 (WA)*

⁵ *Victims of Crime Assistance Act 2006 (NT), Victims of Crime Assistance Regulations 2007 (NT)*

⁶ *Victims of Crime Assistance Act 1976 (Tas), Victims of Crime Assistance Regulations 2010 (Tas)*

⁷ *Victims of Crime Assistance Act 1996 (Vic), Victims of Crime Assistance (Special Financial Assistance) Regulations 2011 (Vic)*

⁸ *Victims of Crime Act 2001 (SA), Victims of Crime (Statutory Compensation) Regulations 2019 (SA)*



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3. Allow victim-survivors under the age of 18 years to access their Recognition payment

We recommend Victim Services consider implementing a discretionary process which allows victim-survivors under 18 years old to access their Recognition Payment in circumstances of financial hardship.

We appreciate the current policy is any victim-survivors under 18 years who are awarded a Recognition Payment this money is held on trust until they turn 18 years. We note a parent and guardian can request to access the funds in exceptional circumstances and if it is for the needs of victim. In our view, this provision acts like a protective mechanism restricting parents and guardians from access the funds.

A concern we have is the policy does not take into consideration, in regional and remote areas, victim-survivors under the age of 18 years who do not have a parent or guardian and are responsible for themselves. It would be beneficial in these instances, for Victim Services to implement a discretionary process which allows victim-survivors under 18 years to access their Recognition Payment, subject to providing proof of financial hardship.

4. Implement an Immediate Needs Support Package for sexual violence

The Immediate Needs Support Package (**INSP**) is currently limited support available only to victim-survivors of domestic violence, by which the Act defines domestic violence as a violent offence committed by an offender who is a spouse of, is in an intimate personal relationship, lives with or is a parent, guardian, child or sibling of the applicant. Therefore, the INSP, does not fully encapsulate victim-survivors of sexual assault.

Whilst some sexual assault victim-survivors may be eligible for support under the INSP, this is not the case in circumstances where a victim-survivor was sexually assaulted by someone who is not an intimate partner or who is outside their immediate family and/or household. For example, a victim-survivor who was sexually assaulted by an uncle, aunt, cousin, grandparent, friend or extended family member (that they don't reside with) or an acquaintance or complete stranger, is not eligible for support under INSP.

We strongly recommend the INSP should be legislatively expanded to include victim-survivors of sexual assault (child and adult) to ensure their safety and wellbeing through the use of this scheme. Sexual assault similarly to domestic violence often requires assistance for a victim-survivor to access security measures and/or relocation expenses (including clothing, household items, whitegoods, etc.), by nature of the very intimate and debilitating violence perpetrated.

These costs are often extremely financially burdensome and many applicants do not have the financial means to outlay costs associated with relocating or obtaining additional security measures and require these items as a matter of urgency to ensure their wellbeing and safety.

Case Study: Cooper

Cooper is 18 years old and was sexually assaulted by his cousin between the ages of 16 and 18. He has recently reported his cousin to police for these acts. He did not live with his cousin at the time of the acts of violence. Now he has reported his cousin, Cooper is gravely concerned for his safety. He does not have security cameras and his windows do not lock. Cooper is concerned his cousin will come and physically assault him as he has threatened in the past.

Cooper does not work as he recently left school and has no family support as they have chosen to support Cooper's cousin instead of Cooper. Cooper has no means to financially purchase security cameras or to change install locks to his windows. He is not eligible for the INSP as pursuant to the act this is not defined as domestic violence.

We submit it is in the spirit of the Immediate Needs Support Package to expand the support to not only victim-survivors of domestic violence but also sexual assault more broadly that do not occur in the context of domestic violence.

5. Requirement to provide government issued identification

We welcome the changes to the categories of identification which are now accepted by Victim Services. The acceptance of non-photographic identification, i.e. Medicare and Centrelink cards has greatly improved the burden placed on our victim-survivors who otherwise may not have had access to photographic identification.

Notwithstanding this great improvement, the requirement to provide government issued identification has increased the burden on clients who are incarcerated. This burden has placed significant limitations on their ability to access support as a result.

Many clients who are incarcerated only have access to their 'Corrective Services identification card'. These identification cards can easily become lost or damaged as they are often, merely, a piece of paper, which is potentially laminated and does not have sealed edges. If this identification card is damaged or lost there is a significant delay in the client being able to obtain a new copy of their identification, restricting their ability to access support under the scheme. This is particularly oppressive when the identification cannot be obtained prior to the limitation period.

Furthermore, the limitation imposed by this requirement was exacerbated during the COVID 19 pandemic, in which all correctional centres prohibited visitors including legal practitioners from attending the centres in person. In our experience we were unable to attend one of our local correctional centres to obtain these identification documents and to assist inmates with completing Victim Service applications for a total period of 12 months.

In the above circumstances we believe Victim Services should broaden the range of identity documents to be provided to include an applicant's MIN.

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6. Simplify the application process

Victim-survivors often cite as a barrier in accessing support through the Scheme, the burdensome process to do so. Victim-survivors are often confused and left perplex as to the convoluted application process and the number of application forms required. This is relevant specifically to victims of domestic violence who are required to complete two separate application forms when applying for Immediate Needs Support.

The current process which requires an applicant to complete an online primary application form and a subsequent form for the immediate needs support package (which needs to be uploaded in the primary application or emailed to Victim Services) is extremely time consuming, difficult to navigate and places a further burden and barrier for victim-survivors who are already dealing with complex trauma. This is further exacerbated for victim-survivors who have a disability, where English is their second language and/or who experience difficulty with reading and/or writing.

In order to ensure the Scheme is accessible to all victims in the beneficial manner it was devised and to ensure the objectives of the Act remain valid and effective, we recommend the simplification of the application process and development of one form that is clear and concise be of priority.

7. Improve access to Victim Services counselling

It is our experience that there are insufficient victim services counsellors in rural and remote towns particularly across Western NSW.

According to the Victim Services list of approved counsellors (see table below) there are a limited number of locally based counsellors in remote and regional towns. As stated in the introduction of this submission WNSWCLC and WWLS cover a service area of approximately 200,000 square kilometres. The remote towns have limited community services, record the highest rates of domestic violence, prominent low socio-economic statuses and have a high First Nations population.

We acknowledge victim-survivors may have access to counselling support via phone or online video appointments based outside of their local area, however this is simply not sufficient nor adequate for victim-survivors in regional and remote regions. The table below depicts how the vast majority of our catchment area are without a local approved Victim Services counsellor.

Town	Number of approved locally based Victim Services counsellors
Dubbo	3 (1 of which does not provide assistance to victims of domestic/family violence)
Bourke	1
Brewarrina	0
Cobar	0
Nvnoan	0
Lightning Ridge	1
Walgett	1
Warren	0
Coonamble	0
Coonabarabran	1

Gilgandra	0
Narromine	0
WellinQton	0
Mudgee	3

From our experience our clients prefer face to face appointments, they are not comfortable with phone or online video appointments, and they often do not have the ability to access phone or online video conferencing, hence why we provide outreach services to these towns. The limited access to locally based Victim Services counsellors is a barrier to our clients accessing these services and defeats the purpose of the Scheme.

The provision of only phone and online video appointments is not a trauma informed practice and does not assist in the facilitation of rapport building and trust which is crucial for victim-survivors of complex trauma.

A further correlating consequence is that victim-survivors in these towns not only have no access to on site therapeutic and restorative assistance and support they are also practically left with only the ability to rely on evidence of physical injuries, as there are no services available to demonstrate the psychological injury they sustained.

Whilst we appreciate the practical difficulties that exist with engaging and retaining suitably qualified individuals to provide these vital supports, we recommend there be a significant and urgent focus on increasing 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.

Furthermore, in order for a counsellor to provide services inside a correctional centre they must have a VIN (a clearance check from Corrective Services NSW). There are no Victim Services counsellors in the Central-West region who have this clearance. Further, it is our understanding from sector consultation there are no Victim Services approved counsellor's state wide that have a VIN. Therefore, applicants who are currently incarcerated are not able to access a Victim Services approved counsellor.

It is our experience that many of our correctional clients have significant histories of domestic violence, sexual abuse and other violence that they experienced throughout childhood and/or as young adults. Many of these clients wish to engage with counselling for both therapeutic purposes (including, resolving trauma and reducing recidivism) and for purposes of establishing proof of injury.

In other instances, it is a barrier to access that means inmates are not able to access compensation, because they cannot show proof of psychological injury. The unrelated criminality of inmates does not affect their legal entitlement, and should not affect their practical access, to compensation from Victim Services; if the act of violence is unrelated to their crime, then their standing for the purposes of Victim Services is same as any other member of the community.

The practical effect of the present model is that applicants are, mostly, only able to rely upon evidence of physical injury. This is a harmful reality that entrenches historical conceptions of 'act of violence', and diminishes the importance of victim-survivor's experiences of psychological harm.

A) Extend allocation of counselling hours

Our clients are extremely grateful they have an entitlement to up to 22 hours of free counselling, subject to eligibility. In the context of domestic violence and sexual assault (childhood or adulthood), 22 hours of counselling is often not sufficient, especially when the abuse suffered has not been addressed and has resulted in significant injury. In these circumstances the hours of free counselling should be increased to 44 hours and where appropriate further extended as required.

8. Procedural fairness

A) Legislate removal of time limits for victim-survivors of sexual, domestic and family violence and modern slavery Victims Support applications

In highlighting the importance and extreme value of a lack of time limit for victim-survivors of childhood sexual assault in the case of Recognition Payments, we seek to recommend the removal of time limits for Recognition Payments in cases of domestic violence, adult sexual assault, child abuse and modern slavery.

There are many reasons why victims-survivors of these acts require and should be entitled to the removal of time limits for claims of Recognition Payment. It is common for victim-survivors of these violent acts to not identify they have experienced domestic violence, sexual violence, child abuse, or modern slavery. Many victim-survivors may still be fearful of their perpetrator, find it too difficult to disclose the violence, and/or be suffering the long-term mental and physical effects of the trauma.

Offences of this nature are inherently extremely personal and implicitly cause complex trauma. Removing the time limits for these acts of violence ensures all victim-survivors of these denounceable and horrid offences are accounted for and acknowledged under the Scheme.

Furthermore, injuries (both physical and psychological) can take quite some time to appear in the same manner of which expenses take time to accrue, particularly so in the cases of domestic and sexual violence, child abuse and modern slavery. On this basis support available under the financial assistance packages particularly in respect to medical and dental expenses and loss of income need not be limited by a strict 2 year time limit for violence of this kind.

The time limits do not take into account the long-term effects and impacts of these acts of violence and victim-survivors are often burdened with expenses incurred and assessed well after the 2 year time limit. This is further exacerbated for victim-survivors in regional towns who have little to no access to services (specifically medical and dental) and may not be assessed and/or treated within the requisite 2 year period.

Case Study: Jasmyn

Jasmyn was the victim of regular and consistent domestic violence. Over the course of 5 years her ex-boyfriend would repeatedly physically assault her by punching her to the mouth. Jasmyn as a result suffered significant and permanent dental injuries which resulted in her needing all teeth to be removed and work on her jaw to be conducted.

The persistent infections she sustained due to the physical assaults, years later resulted in chronic rotting of her teeth. Jasmyn was unable for over 12 months to access dental specialists in her remote town and when she was finally provided with the almost \$20,000 quote for the dental work to be carried out she was out of time to claim this under Victim Services.

We, therefore, recommend in the case of domestic and sexual abuse, child abuse and modern slavery the time limits for financial assistance claims also be removed or at the very least substantially increased.

B) Changes to the Internal Review process

In July 2020, it was announced the internal review process policy had changed. We were advised applicants who seek a review of a decision had to submit all evidence before the 90 day limitation period.

This policy change was not published, service providers and applicants themselves were not advised of this internal policy change. Such a change is ineffective, detrimental and does not afford justice to applicants. This is particularly the case in rural and remote communities where access to medical services including counselling, psychological and psychiatric services is abysmal. For example, in Dubbo, the wait-time for an appointment with a female GP is often two to three weeks, the wait for an urgent legal appointment can be three to four weeks, and the wait for a public psychologist or psychiatrist appointment is three to six months.

Consequently, it is almost impossible for applicants to be able to collect additional supporting evidence for their internal review request within the 90 day limitation period. We urgently seek Victim Services return to the previous policy position in which applicants are afforded the opportunity after the review request is lodged to have the decision deferred to allow for more time to collect critical supporting evidence.

C) Legislate the requirement for Victims Services to provide detailed reasons of decision including the evidence considered

Since the July 2020 policy changes, we have observed Victim Services are extremely brief and do not provide detailed reasons on determination of applications for support. They often do not reference the evidence available to the decision maker at the time of assessment nor the evidence considered.

Victim-survivors commonly note that the decisions are convoluted and they do not understand the decision or the reasons relied upon. The difficulty faced by not only applicants but also their representatives when a decision is handed down without reasons or with extremely brief reasons and a lack of reference to evidence or material relied upon is the lack of ability to identify grounds for internal or external review.

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To ensure procedural fairness it is imperative the requirement for Victim Services to reference all evidence available and considered as well as providing detailed reasoning for their decision. We also continue to advocate for the need of all correspondence from Victim Services to applicants and their advocates to be in plain language, particularly when the scheme does not account for the need for legal representation.

D) Legislate amendments to the Act to remove the time limit for internal review, or in alternative provide out of time provisions for internal review for all Victim Support

The Act does not currently legislate for a discretionary finding for out of time applications or out of time internal reviews. It is worth noting there is discretion to apply for out of time external reviews but this is not accounted for within the Act in respect of internal reviews.

We broadly recommend legislative amendment to allow for discretionary out of time applications for all packages, but failing that at the very least for out of time internal review requests.

The strict 90-day time limit for internal review is often a significant barrier for victim-survivors. While victim-survivors may be informed they can seek a review, many do not understand what this means and what is required of them to do so. Some may not seek legal advice until very close to the end of the time limit or even outside the time limit.

It is not uncommon for the complexities of trauma from these violent acts to make it extremely difficult or almost impossible to read and understand decisions of Victim Services but also to actively review the decisions within the strict deadlines. Noting external review avenues account for the need and vitality of discretionary grounds for out of time applications we recommend there be a legislative amendment to account for this within the internal review mechanisms.

E) Access to Police records

Victim Services have informed they are no longer able to provide applicants or their representatives with access to police records relied upon in a determination. In order to afford an applicant procedural fairness, it is imperative they are afforded access to all other records including police records that have been relied upon when making a determination. Access to these records and all records/evidence is crucial in an applicant's internal review or appeal to the NCAT.

We additionally recommend a policy amendment which would allow Victim Services to share Police reports (and copies of all other evidence relied upon) with the applicant, their advocate or legal representative when requested.

9. Legislate amendments to the Act to ensure external review is available for all claims

Whilst the Act accounts for an external review avenue in respect of Recognition Payment applications, there is no legislative right to external appeal in financial assistance claims including INSP, Immediate Needs and Economic Loss.

Therefore, victim-survivors who make applications for financial assistance and have that application dismissed are only able to request an internal review. There is no mechanism for external review. It

is crucial applicants are entitled to and able to have any decision made by Victim Services externally reviewed.

We therefore recommend legislative amendment to s 51 of the Act to include a provision that an applicant who is aggrieved by a decision of Victim Services in respect of INSP, Financial Assistance for Immediate Needs and Financial Assistance for Economic loss can apply for an external review of the decision.

10. Timeliness of restitution waiver decisions & reversing presumption of restitution being sought

Victim-survivors of domestic violence, sexual assaults, childhood abuse and modern slavery are regularly faced with a substantial barrier in accessing support on the basis of Victim Services pursuing restitution from offenders; by which the extremely violent offender is notified of the applicant having made the application and the monetary value of the support she/he received.

A large number of victim-survivors, particularly women, we advise and assist in respect to Victim Services desperately need the assistance but due to fear of retaliation and/or by virtue of continued breaches of court orders for their protection or significant threats to their lives seek not to do so because of this adversarial process of Victim Services. These women unfortunately miss out on support they desperately require and are entitled to because the system does not offer them protection and could put them at greater risk of danger.

In circumstances where we have assisted applicant's in making requests for restitution to be waived, the waiver has not been approved because the offender is still before the court and has yet to be convicted, or more concerning, a decision on the waiver has not been made before determination on the substantive application.

There are evident public policy considerations in reducing the risk of women who are experiencing domestic violence. The safety of victim-survivors is also inherently tied to their welfare, respect and needs as expounded in section 6 of the Act (**'the Charter'**).

We submit that by seeking restitution in circumstances where the applicant is extremely concerned for their safety should restitution be sought, the tribunal is effectively forcing the applicant to choose between remaining and/or feeling safe, and their entitlement of being adequately compensated for (in accordance with 6.17 of the Charter). Rigidly enforcing restitution against an offender is therefore contrary to the public interest and accordingly the remedial purpose of the legislation.

Furthermore, given the INSP is included in the packages for which restitution can be sought, decisions on waivers cannot and should not be reserved until the offender is convicted or sentenced. The purposes of the INSP is to provide domestic violence (and hopefully sexual assault) victim-survivors with urgent, proactive and responsive assistance to flee the violence. It is counterintuitive to delay decisions on waivers until after an offender has been convicted. This either entirely deters the victim-survivor from making an application for this support or forces the applicant to increase the risks to their long-term safety to secure urgent assistance, see below case study.

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Case Study: Jada

Jada made a restitution waiver request one day after her application for support was lodged. 15 days later Victim Services advised her they could not make a decision on waiving restitution as the charges against her ex-husband were not 'finalised'.

In this case the offender had been convicted at this time but was not yet sentenced. Jada made a further request for restitution to be waived months later once the offender had been sentenced as instructed by Victim Services. Despite these requests the Jada received a positive decision on her recognition payment and the amount was deposited into her account, without a decision in respect to waiving restitution and without the applicant having to sign an acceptance of payment.

Jada was petrified for her safety and that her ex-husband was going to retaliate due to her seeking support.

By virtue of the packages having been paid to the applicant prior to a decision on restitution and without her having to sign an Acceptance of Payment, the applicant was not afforded the opportunity to make the above choice and her hands were effectively tied for her.

Beyond simply the timeliness of decisions on waiver applications, a large proportion of our victim-survivors elect not to apply for support solely on the basis of significant concerns for their safety with the possibility of restitution being sought. This is either because the risks are far too grave and/or the requirement for victim-survivors to demonstrate "sufficient" circumstances that warrant a discretionary waiver of restitution further compounds complex trauma of the victim-survivor. As a further deterring factor, a request to waive restitution also often delays a victim-survivors access to support under the Scheme while a determination is being made on their request, see below case study.

Case Study: Samantha

Samantha has been the victim of horrific long-term domestic violence from her ex-partner whom she had been in a relationship with for 21 years. Samantha fled the relationship and her home with her 5 young children after the most recent act of violence in which the offender strangled Samantha and threatened to kill her and the children.

After fleeing Samantha and her children were placed in emergency accommodation before securing a new rental property in a neighbouring rural town. Samantha reported the violence to police and her ex was charged and an ADVO placed for Samantha's protection.

Samantha's ex learnt of her new address and attended the property in breach of the ADVO. The charges and ADVO are still before the court and he has not been convicted of acts of violence against Samantha yet. Samantha's back door does not lock properly and she is frightened of being alone with her 5 children in the home. She desperately needed support under the Scheme for security items and assistance financially now she has had to flee the family home with nothing. The children and Samantha are sleeping on the floor on mattresses as she cannot afford household items. Samantha would like to apply for an INSP but the risks of restitution being sought are far too high.

Samantha's ex has in the past told her if she ever took him for child support or made the government chase him for money he would burn her house with her and her children inside. Samantha was forced to decide against support through Victim Services simply because the risk to her safety and most importantly to Samantha, the safety of her children should restitution be sought was far too significant. Samantha is left with inappropriate safety and cannot sleep as she is concerned her and her children are not safe. Her trauma has been exacerbated and she feels there is no support available for her.

Western NSW Community Legal Centre Inc.

Tel: 6884 9422 • Fax: 6884 9397 • Free Call: 1800 655 927 • Email: legalhelp@wnswclc.org.au • ABN: 28 830 050 437

Address: 51 Bultje St DUBBO NSW 2830 • PO Box 1493 DUBBO NSW 2830

We submit that in circumstances of domestic violence, sexual abuse, childhood abuse and modern slavery there should be a legislative presumption against the seeking of restitution due to the inherent risks to safety, further traumatisation and non-trauma informed approach currently applied. Victims should not have to choose between electing not to receive vital support (usually necessary to further ensure their safety) and limiting causational retaliation from the offender.

Put simply, in cases of domestic and sexual violence, childhood abuse and modern slavery the presumption should be that restitution is not sought unless the applicant elects for Victim Services to pursue restitution. On this basis we recommend legislative amendment to this effect.

11. Prohibit use of Victim Support payments to service debt

Section 6.17 of the Charter prescribes the right for a victim-survivor of a sexual assault or other personal violence to make a claim for financial assistance under the Scheme. However, application of s 45 of the Act, to allow any Immediate Needs, INSP or Recognition Payment to be used to offset or pay any kind of debt, including an order for restitution, contradicts s 6.17 of the Charter and creates a barrier to any person considering making a claim for financial assistance.

The purpose of the financial assistance payments under the Scheme is to assist victim-survivors with urgent immediate needs for their safety and recovery, and or to acknowledge the traumatic and violent experience they have been through, see below case study.

Case Study: Mary

Mary is a victim-survivor of horrific domestic violence, grievous bodily harm and threats to kill (including other violent acts). We assisted Mary in making a claim for INSP and a Recognition Payment. Mary was awarded \$5,000 INSP, which was paid directly to her. Mary was then awarded a \$5,000 Recognition Payment. Victim Services automatically applied the whole amount to a restitution debt.

Victim Services did not inform Mary there was a debt payable and it would be paid out with her Recognition Payment. Mary did not receive any Recognition Payment which was intended to acknowledge the violence she experienced and the injuries she sustained. It's a package designed to help victims move through the recovery process - in this case none of that was acknowledged.

If an Immediate Needs, INSP or Recognition payment is to be used to offset, pay any kind of debt or order for restitution, it should only be at the request of a victim-survivor. This amendment needs to be legislated in s 45 of the Act.

If a victim-survivor makes an application for a Recognition payment and they have an existing order for restitution, there should be a requirement for Victim Services to notify the victim-survivor of the debt at the time the application is lodged. We propose the obligation to be placed on Victim Services to make the notification as it is often the case with our clients, they are not aware if any debt or restitution is owing. We also seek for Victim Services to advise applicants and their legal representative/advocate (if any) if the debt has been transferred to Revenue NSW and provide information about Work Development Order programs available, to allow the applicant the opportunity to reduce any debts by that scheme.

12. Remove the policy requirement to provide bank details in the application forms

We recommend Victim Services remove the policy requirement to provide bank *account* details in the application forms at first instance. The requirement to provide bank account details could cause issues where a victim-survivor is fleeing domestic violence or experiencing financial abuse including where a perpetrator could benefit from a Victim Support payment as they share a joint bank account with the victim-survivor.

Also, the provision of bank account details upfront does not take into account circumstances where a victim-survivor's bank details may change between the time of lodging an application and payment.

In our view, applicants should be provided the option to 'opt in' to provide bank account details at the application stage, in the event there are risks due to domestic violence.

13. Increase transparency and accountability

We appreciate the Scheme was established in 2013, conducted a statutory review in 2016 and 2018, and implemented policy changes in July 2020. We acknowledge there has been some opportunity to comment on the Scheme and the proposed changes.

Since, the initial statutory review, all organisations who interact with this Scheme have sought for the regular annual publishing of comprehensive data about the operation of the Scheme, yet there has been no change. The last set of data published was in 2017-2018. It is now four years later, in which a pandemic has occurred, the cost of living has increased, the acts of violence and injuries suffered have evolved. The Scheme needs to be reflective of current societal attitudes and constantly evolve. Otherwise, if it does not, the objectives of the Scheme cease to exist.

Further, the publishing of comprehensive data about the operation of the Scheme is important for transparency and accountability. It is very difficult to comment on the Scheme, its operation, if *'the policy objectives of the Act remain valid'* and *'if the terms of the Act remain appropriate to meet the policy objectives'* (as requested in this statutory review). On this basis much of the comments we can provide are limited to our experience and client's experience interacting with the Scheme.

We recommend there be legislative amendment accounting for the need of Victim Services to publish policies and guidelines they rely on to make decisions. It is acknowledged all victim-survivor applications are assessed on their individual factual circumstances and evidence. However, it would be beneficial we had a copy of the framework Victim Services adopts when making their decision.

14. Improve consultation

To properly assess and address the two questions posed by this review of the Act, Victim Services needs to improve its consultation. The failure of Victim Services to consult before

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implementing the July 2020 changes contradicts the objects of the Act, being "to recognise and promote the rights of victims of crime". This is a concern shared by our clients and colleagues.

It is important there are strong consultative mechanism between the Commissioner Victim Rights, Victim Services, victim-survivors and their representatives, to work collaboratively to ensure a trauma informed, culturally safe response to victim-survivors to ensure victims-survivors can access to the support they need.

Following this review, we respectfully request the Commissioner and Victim Services conduct proper culturally safe consultations to hear firsthand, 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.

Conclusion

WWLS and WNSWCLC thank the Commissioner and Victim Services for the opportunity to put the above comments forward in response to this review.

Whilst we have not had the opportunity to read our fellow Community Legal Centre's responses to this review, we do support the comments they put forward, particularly in areas where we have limited experience.

[REDACTED]

Yours faithfully
Western NSW Community Legal Centre Inc
Western Women's Legal Support
Per:

[REDACTED]
Principal Solicitor, WWLS

Senior Solicitor, WWLS

Solicitor, WNSWCLC

On behalf of

[REDACTED]
Principal Solicitor, **WNSWCLC**



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