



29 March 2019

Director, Legal Policy
Department of the Attorney-General and Justice
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Dear Director of Legal Policy

RE: VICTIMS OF CRIME REFORM – NTWLS SUBMISSION

We refer to the Northern Territory's invitation for submissions on the *Discussion Paper: Victims of Crime Reform* (November 2018).

The following is a joint submission of the three Northern Territory Women's Legal Services, collectively known as 'the NTWLS'. The NTWLS includes the Central Australian Women's Legal Service (CAWLS), the Top End Women's Legal Service (TEWLS) and Katherine Women's Legal Services (KWILS). The views put forward in this submission are informed by our direct professional experience assisting victims of domestic, family and sexual violence.

The NTWLS is part of a national network of community legal centres specialising in women's legal issues. Our services provide free and confidential legal information, advice and representation to women across the Central Australian, Barkly, Katherine and Top End regions. We primarily deliver services to women at risk of or experiencing domestic and family violence, as well as related legal issues including family law, discrimination, child protection, housing and victims of crime compensation. A large majority of our clients identify as Aboriginal and Torres Strait Islander and do not speak English as their main language. Almost all women we assist experience financial disadvantage.

Given the high volume of applications from Aboriginal women experiencing domestic, family and sexual violence, any amendments to the Victims of Crime scheme must address the needs of these victims as a priority. Therefore, in reviewing the scheme, we urge the government to give full consideration to the perspective of the NTWLS and other specialist services working in the domestic and family violence sector.

We set out our response to select questions of the Discussion Paper as follows:

Question 1. Should the VOCA and VOCRAS Acts be consolidated into one new Act?

The NTWLS support incorporating the proposed charter within the new legislation, similar to section 7(2) of the *Victims Right and Support Act 2013* (NSW).

Question 11. Should the CVSU use a 'case management' approach to victims support? If so, how should this be implemented?

The NTWLS recognise the unique challenges faced by victims of domestic and family violence and the need for improved case management across the Territory. However, we are concerned there is no evidence base for the proposed introduction of CVSU caseworkers. The NTWLS submit that local, culturally appropriate NGOs would be better placed than the CVSU to deliver case work services to victims of crime. This is particularly the case for our clients in remote areas, and those across the Central Australian, Barkly and Katherine regions, where there are no permanent CVSU staff. The NTWLS submit that the scheme should seek to strengthen and support existing services for victims of crime, such as those specialised in working with Aboriginal and Torres Strait Islander people, and victims of domestic, family and sexual violence. For example, the NTWLS recommend extending resources to support additional specialist domestic and family violence counsellors at Women's Shelters across the NT, Alice Springs Domestic and Family Violence Court, the Sexual Assault Referral Centre, the Ruby Gaea Darwin Centre and NPY Women's Council.

Question 12. Do stakeholders support the creation of the domestic and family violence specialist worker and/or the Aboriginal and Torres Strait Islander specialist worker roles? If so, what functions should these specialist workers have? If not, is there a better way to support victims of domestic and family violence and Aboriginal and Torres Strait Islander victims in the Territory?

See answer to question 11.

The NTWLS support funding specialist domestic and family violence and Aboriginal case workers, however it is imperative that all workers undertake training in these areas to ensure service delivery is culturally safe. Given that 38% of applications in 2015-16 for financial assistance under the current scheme were related to acts of domestic and family violence (Discussion Paper, p. 7), the NTWLS doubt whether a single CVSU domestic and family violence specialist worker would be sufficient to meet the needs of victims of domestic and family violence across the Northern Territory. Similarly, the finding that 68% of applicants in 2015-16 identified as Aboriginal or Torres Strait Islander indicates that a single CVSU Aboriginal and Torres Strait Islander specialist worker would not be sufficient to meet the needs of Aboriginal and Torres Strait Islander victims of crime.

The NTWLS suggest further consultation with victims and Aboriginal controlled organisations take place in order to address concerns around accessibility and cultural safety.

Question 13. Should the Victims Register be retained under the new scheme?

The NTWLS support the retention of a Victims Register. However, we submit that there needs to be greater education and publicity about the Register across the Territory to empower victims to use the register, and enable all service providers to best assist victims of crime. Furthermore, there needs to be improvements in plain English communication of information with victims, particularly those from non-English speaking backgrounds. Information such as offender release dates is critical to a victim's safety planning, and needs to be appropriately and carefully communicated in a timely manner. Limiting administration of the scheme to office hours fails to recognise the needs of victims of domestic and family violence, especially those living in remote locations.

Question 16. Should the definition of a 'violent act' be broadened to include non-criminal acts of domestic violence? If so, should 'domestic violence' be defined in the same way as it is in the Domestic and Family Violence Act?

The NTWLS support broadening the definition of a 'violent act' to include non-criminal acts of domestic violence. For the sake of consistency, we also support defining 'domestic violence' according to section 5 of the *Domestic and Family Violence Act 2007* (NT). The NTWLS acknowledge the practical difficulties associated with incorporating non-criminal acts of domestic violence under the scheme. However, we submit that the significant harm of many non-criminal acts of abuse, including acts of financial and emotional abuse, is well documented and should be compensable. The NTWLS suggest that victim impact statements, letters of support from GPs, counsellors and domestic violence

specialist workers, domestic violence orders and statutory declarations be used to establish the existence and impact of non-criminal acts of violence.

Question 19. Should the definition of 'injury' be broadened to include, for the purposes of non-criminal acts of domestic violence, matters such as the totality of: a sense of violation; a reduced sense of self-worth; increased fear or feelings of insecurity; and adverse impacts on lawful sexual relations?

The NTWLS support broadening the definition of 'injury' in this way.

Question 20. Should the psychological harm aspect of the current definition of 'injury' be broadened for the purposes of all violent acts (not just acts of domestic violence), for example by replacing 'a recognisable psychological or psychiatric disorder' with 'psychological harm'?

Overall, NTWLS support this proposal. The NTWLS submit that the requirement to establish a 'recognisable psychological or psychiatric disorder' requires victims to undergo onerous assessment and sets an unreasonably high standard for psychological harm. Under the current definition of 'injury', many of our clients from remote and CALD communities struggle to access the necessary services to substantiate claims. These clients face challenges such as travelling long distances to access mental health services and records, and undergoing culturally inappropriate assessments.

However, more fundamentally, the NTWLS submit that the 'recognisable psychological or psychiatric disorder' concept fails to recognise different cultural responses to trauma and the significant impact of psychological harm. In practice, the NTWLS has found that many Aboriginal and CALD women are disadvantaged from making psychological injury claims due to alternative understandings and treatments of mental health. Further, we have found that the scheme's current model disadvantages women who are able to move on with their lives despite psychological suffering, or experience complex compounding trauma, where the assessment opinion is restricted to the time of assessment. This is the reality for many victims of domestic, family and sexual violence. The NTWLS submit that broadening the definition of psychological harm is essential for enabling varied understandings and experiences of psychological suffering to be recognised under the scheme.

Question 21. Should a 'threshold' be placed on the definition of 'injury', for example to the effect that an injury must be more than transient or trifling?

The NTWLS consider such a threshold to be unnecessary.

Question 24. Should the categories of victims be further amended, or amended differently, to that proposed above?

The NTWLS submit that a broader definition of "secondary victim" is required than the one currently proposed. Including more persons closely connected with victims, such as extended family members and close friends, is necessary to recognise the significant, far reaching effects of victimisation. The NTWLS submit that this is particularly the case for Aboriginal kinship family structures.

Question 26. Does the counselling scheme require any other amendments?

The NTWLS support increasing the accessibility of counselling services for victims. However, the NTWLS submit that the scheme needs to better support and strengthen remote and culturally appropriate counselling capabilities. The NTWLS note that under the current scheme, many of our remote clients are unable to attend city regions for counselling. Telephone counselling is not a viable alternative to face-to-face therapeutic treatment, and there are barriers in many remote locations due to limited phone coverage.

As such, we are concerned that the proposed increase to counselling will similarly not be utilised by or benefit the majority Aboriginal women experiencing domestic, family or sexual violence. In order to be effective, the scheme must offer more remote face-to-face counselling services and include Aboriginal mental health workers and traditional healers, such as the Ngangkari of Central Australia. This, we acknowledge, would require substantial resourcing and further consultation, which may be beyond the scope of this particular legislative reform. Therefore, we are doubtful that the proposed amendments to the scheme will in fact offer improved support or aid victim recovery.

Overall, a western model of counselling is inappropriate for many of our Aboriginal and Torres Strait Islander clients. The NTWLS recommend renaming counselling assistance as 'counselling/healing assistance' to encompass a broader, culturally inclusive approach to therapeutic rehabilitation.

Question 28. What categories of expenses should be allowed to be claimed as part of an interim payment?

The NTWLS support broadening the categories of expenses claimable under interim payments to include financial assistance with property damage, housing and relocation expenses. This would accord with the legislative intention and support victim safety and recovery. Widening the range of expenses covered would appropriately recognise the financial barriers to escaping domestic, family or sexual violence in the aftermath of a

violent act. These barriers are magnified for our clients living in remote communities. While each victim's needs are unique, a vast majority of our clients would benefit if interim payments could cover costs such as:

- Replacement mobile phone;
- Assistance buying or repairing a car;
- Assistance with bond or rent money;
- Emergency accommodation such as hostels, for victims and children;
- Assistance with other relocation expenses such as bus tickets or flights;
- Payment of outstanding bills which may affect access to safe housing;
- Personal property such as clothing or furniture.

Question 30. Should claims for property damaged in the context of domestic and family violence be allowed?

See Question 28 above.

The NTWLS strongly support the inclusion of claims for property damage in the context of domestic and family violence, as this is a common form of domestic and family violence.

Question 31. Do stakeholders support changing the terminology from an 'immediate payment' to an 'interim payment'?

The NTWLS support changing the terminology of "immediate payment" to "interim payment" to assist with managing victims' expectations around delay, as this remains an ongoing concern for our clients. We submit that further consideration be given to adopting a different plain language word instead of "interim".

Question 33. Do stakeholders support extending the availability of funeral expense payments to any person who pays or is required to pay the costs of a funeral of a primary victim who dies as a result of a homicide?

The NTWLS support extending the availability of funeral expense payments in this way.

Further review of the funding allocated for funerals is necessary, particularly given the varied costs associated with funerals across regional and remote locations in the Northern Territory.

Question 35. Should the definition of 'medical services' be broadened to include mainstream allied health services?

The NTWLS support broadening the definition of 'medical services' to include mainstream allied health services. The NTWLS also recommend that Aboriginal health workers and traditional healers are included in the definition.

Question 36. Do stakeholders support the provision of recognition payments instead of lump sum awards for compensable injuries?

The NTWLS do not support this proposal and submit that more consultation is needed on its potential impact. The NTWLS appreciate that the proposed scheme attempts to recognise more victims, including those who may not reach the minimum threshold under the current legislation. However, we anticipate that many of our most vulnerable clients will lose out under the proposed scheme, eligible for little other than significantly smaller recognition payments. We are concerned that the proposed model will not meet the objectives of the legislation and submit that victim-oriented language obfuscates the unjust outcomes of the proposed reforms.

The NTWLS submit that lump sum payments are an integral part of the current scheme, as they recognise the pain and suffering experienced by victims of crime. If recognition payments are so much smaller than the amounts currently available for very serious or permanent compensable injuries, they will do little to vindicate the pain and suffering experienced as a result of violent acts.

A major criticism of this proposal is that it substantially lowers the award limit for domestic and family violence injuries, which is currently \$7,500-\$10,000, and has already been criticised by various legal services as being too low for the type of violence. For example, clients who have experienced a series of related domestic violence offences will most likely fall into category C – with a recognition payment of \$5,000. However, clients who may only experience a single serious domestic assault could fall into category C or D depending on whether or not a factor of aggravation applies.

If the recognition payment proposal succeeds, the NTWLS submit that there should be an extended general discretion to increase recognition payments, particularly where there have been multiple serious or permanent injuries resulting from a series of violent acts. The NTWLS submit that to do otherwise would disproportionately disadvantage women experiencing domestic and family violence. For example, it would be unfair for women who endure years of serious domestic violence and sexual assault to be only eligible for a

small recognition payment, whereas a person who is injured from two assaults by different perpetrators could make two applications for recognition payments.

The NTWLS submit that increasing counselling and economic loss compensation will not offset the overall decrease in financial assistance available for many domestic and family violence victims. We are concerned that these victims will receive significantly less financial assistance overall, due to issues of remoteness, unemployment and the limited availability of culturally appropriate counselling. The NTWLS are deeply concerned that the proposed reforms will favour victims from higher socio-economic backgrounds.

Question 38. Are the amounts proposed for each category of recognition payment appropriate? If not, how could this be improved?

See answer to question 36.

Furthermore, we emphasise that all the offences in Category D are of a serious nature and a recognition payment of \$1,000 is grossly insufficient. For example, a payment of \$1,000 to a victim of kidnapping would do very little to recognise the injustice, violation of rights and lasting impact of such an act.

The NTWLS recommend expanding the discretion to increase payments depending on the nature of the violent act and the relative seriousness of the resulting injury. In circumstances where injuries are very serious or permanent, there should be scope for increasing payments from the base level award, as in the ACT.

Overall, we call for further consultation on this issue.

Question 43. Should the different categories of support and financial assistance be made available to victims in the manner proposed above? If not, how could this aspect of the proposal be improved?

The NTWLS are philosophically opposed to reducing the provision of lump sum payments on the alleged basis that providing lump sum payments to some vulnerable people facilitates a cycle of victimisation which may *“place those individuals at risk of exploitation by people in a position of influence over them, or enable ongoing drug or alcohol issues* (Discussion Paper, p. 7), should therefore disentitle all victims. The NTWLS submit that this rationalisation entrenches disadvantage and fundamentally denies the agency of victims. In our work, we have seen that real victim rehabilitation requires the restoration of victim autonomy, which includes autonomy over how money is used.

The NTWLS acknowledge that there are some cases where lump sum payments are provided to victims with limited financial literacy. The NTWLS suggest that application forms are amended to include a box that applicants can tick to indicate whether they would like to be referred to financial counselling prior to receiving any payments of financial assistance. This would give victims the opportunity to raise issues with legal representatives and discuss financial matters with trained financial counsellors at an early stage. It would also better accord with the National Financial Literacy Strategy and Australia's Financial Inclusion Action Plan Program, which support a collaborative approach to improving the financial literacy of Australians that are vulnerable to financial hardship.

Question 49. Should failure to inform the Director about a subsequent 'relevant payment' be an offence?

The NTWLS submit that a failure to inform the Director about a subsequent 'relevant payment' should not be an offence. The NTWLS do not support increasing offences for vulnerable persons and submit that other responses may be more appropriate. For example, the NTWLS recommend that the NT adopt a similar scheme to that of Queensland, where government assessors are responsible for obtaining relevant information from the Insurance Commissioner and Workers Compensation CEO, and accounting for relevant payments (see *Victims of Crime Assistance Act 2009* (Qld) ss 77, 86, 106A-C). The NT scheme could also follow NSW in providing that victim's compensation claims are, subject to the discretion of assessors, postponed until other relevant applications have been determined (see *Victims Rights and Support Act 2013* (NSW) s 44). These reforms could avoid most instances of uncounted relevant payments.

The only Australian jurisdiction with a scheme similar to that proposed in the Discussion Paper is the ACT (see *Victims of Crime (Financial Assistance) Act 2016* (ACT) s 63-64). The NTWLS submit that a scheme involving a reporting obligation on the victim does not appropriately consider access issues faced by many of the Aboriginal and Torres Strait Islander people, such as language barriers and an inability to access mechanisms to notify the Director. In recognition of these issues, the NTWLS submit that if there is an obligation on the victim to report an uncounted relevant payment, it should not be considered an 'offence' not to report. This would be in line with jurisdictions such as NSW under the *Victims Rights and Support Act 2013* (NSW) s 48.

Finally, the NTWLS submits that for whatever model is chosen, applications for immediate assistance should be exempt from refunds, as recommended by the *Victorian Law Reform Commission's Review of the Victims of Crime Assistance Act 1996* (July

2018). This is vital to ensure the safety of victims and avoid deterring claims for fear of potential refunds. For the same reasons, there should be a finite time for refund notices to be issued. For example, in Queensland no refunds can be sought 6 years after payment (*Victims of Crime Assistance Act 2009* (Qld) s 106A). Lastly, the NTWLS submit that if any refund provisions are implemented, the assessor should have a discretion to determine if payback is required. In making a decision, an assessor should be allowed to consider the time between a relevant payment and the receipt of assistance, as well as any financial hardship suffered by the victim.

Question 52. Should special reporting provisions similar to those in QLD be incorporated into the Territory's new scheme?

The NTWLS support repealing section 43 of the *Victims of Crime Assistance Act* (NT). There are many well documented and well-founded reasons why women, particularly Aboriginal and Torres Strait Islander women, do not report domestic and family violence to police. These reasons include fear, shame, historically fraught relationships with police, concerns about child protection and increasing trends with police issuing reciprocal DVOs against both parties. If section 43 is not repealed, the NTWLS support expanding special reporting provisions for victims of domestic and family violence, similar to those in Queensland.

Question 53. Should the limitation period for violent acts that involve domestic, family or sexual violence and where the victim is an adult at the time of the violent act be extended to 10 years after the violent act occurs?

The NTWLS support removing altogether the limitation period for violent acts that involve domestic, family or sexual violence and where the victim is an adult at the time of the violent act. The NTWLS notes current significant impediments to the lodgement of applications such as geographic remoteness, language barriers and limited knowledge of the scheme.

Question 54. Should the limitation period for violent acts in which the victim is a child at the time the violent act occurs be extended to 10 years after the child turns 18?

The NTWLS also support removing altogether the limitation period for violent acts in which the victim is a child at the time of the violent act.

Question 55. Should the limitation period for sexual assault offences where the victim is a child at the time the violent act occurs be removed altogether?

The NTWLS support this proposal.

Question 56. Should provisions with respect to limitation periods be further amended, or amended differently, to that proposed above?

The NTWLS support extending the time limit for lodging applications for other offences to three years.

Question 57. Should applications for support and financial assistance be determined by the Director and/or the Director's delegates, rather than legally trained assessors?

The NTWLS consider legally trained assessors most appropriate for the assessment of applications for financial assistance. In our view of the proposed reforms, we are concerned that non-legally training delegates of the Director may inappropriately categorise recognition payments. For example, a non-legally trained assessor may not have the legal skills required to weigh evidence according to different standards of proof, particularly where offenders have accepted a plea deal. Such administrative errors could then result in increased unnecessary, costly and time-consuming litigation, contributing to ongoing stress and trauma for victims.

We note that our services have been involved in litigation of this nature under the scheme as it currently operates. Although we acknowledge the proposed reforms seek to minimise disputes around the assessment of injuries, the issue of assessing evidence in light of the categorisation of recognition payments may become increasingly contentious. Thus, we support legal assessment at an early stage.

Question 59. If a 'reasonable likelihood' standard is preferred, should this be adopted for all offence types, or apply to certain offences only, for example child sexual abuse?

The NTWLS submit that 'reasonable likelihood' should be the standard for domestic violence, sexual assault and child abuse offences.

Question 61. Do stakeholders consider that the scheme should allow for portions of financial assistance to be paid to third party service providers rather than to the applicant directly? If so, do stakeholders support the 'pre-approval' process suggested above?

The NTWLS is only open to this proposal on the basis that victims expressly consent to their money being paid to third party service providers. A number of jurisdictions provide

for the possibility of payment of financial assistance to persons other than applicants. For example, the ACT, NSW, and WA schemes provide for the option of payments to take the form of a direct payment of an invoice or refund of expenditure (*Victims of Crime (Financial Assistance) Act 2016* (ACT) s 48, *Victims' Rights and Support Act 2013* (NSW) s 30(1), *Criminal Injuries Compensation Act 2003* (WA) s 44). In Victoria and QLD, payment can also be made to the applicant, or to another person for the benefit of the applicant (*Victims of Crime Assistance Act 1996* (Vic) s 55(1)(a), *Victims of Crime Assistance Act 2009* (QLD), s 93). However, a significant issue with these provisions is that they do not require the consent of victims for third party payments. The NTWLS submit that express victim consent to third party payments is vital to the restoration of victim autonomy and safety.

Question 65. Do stakeholders support an administrative rather than court based approach to debt recovery? If so, could this aspect of the proposal be improved in any way? If not, is there a better way to simplify the current process and make it more resource efficient?

The NTWLS appreciate that debt recovery can promote accountability, however, it is fundamental that it not be pursued without the informed consent of victims and after conducting thorough risk assessments. These mechanisms are essential to ensure the safety of victims of domestic, family and sexual violence. The NTWLS is particularly concerned about the effect of this proposal on its clients from remote communities who have experienced domestic and family violence, and may be unable to avoid future contact with offenders. Many of our clients indicate that fears around debt recovery are a major deterrent to lodging applications for financial assistance.

The NTWLS recommend that application forms be amended to include a box that victims can tick to indicate whether or not they support debt recovery in their case. We also recommend revising the legislation and guidelines to provide greater certainty about the debt recovery process, including indicating what circumstances debt recovery will be considered. The NTWLS submit that these changes are necessary to better protect victims from uncertainty and re-victimisation.

Question 71. Should sexual and family violence offences be expressly excluded from the proposed scheme?

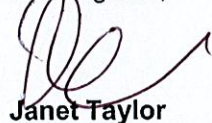
The NTWLS support the express exclusion of domestic, family and sexual violence offences from the victim-offender conferencing proposal. However, the NTWLS recognise that victim-offender conferencing may be a favourable option in certain domestic violence situations, such as where the violence involves broader family members (e.g. aunts, cousins, siblings etc). In our experience, mediation can offer a successful mechanism for resolving conflict in these cases, but submit that this option only be used with express victim consent and the availability of support persons for victims. Overall we support further review of the proposed restorative justice scheme and the adoption of a staged approach with periodic evaluation within two years.

Question 84. Should the Sentencing Act be amended to remove the requirement for a victim's consent in relation to the making of a restitution order for property loss or damage? Alternatively, should the provision be amended in some other way, for example, in a similar way to Victoria?

In respect to the making of restitution orders, the primary consideration must be victim safety. The NTWLS do not support the removal of the requirement for a victim's consent in relation to the making of restitution orders for property loss or damage. The NTWLS are concerned that the removal of this requirement will expose victims to harm as a result of offenders seeking retribution. Although competing policy concerns exist for removing this requirement (such as creating a clear and coherent regime and ensuring that the public interest is taken into account), we submit that these should not outweigh concerns of victim safety and autonomy. For these reasons, the NTWLS support the inclusion of a provision such as section 86(1B) of the *Sentencing Act 1991* (Vic), to ensure that the Court can only make a compensation order where the victim expressly consents to the order.

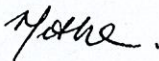
Please let us know if you have any questions.

Kind regards,



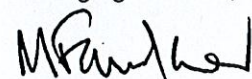
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