



Transforming
Justice
Australia

14 July 2022

By email: policy@justice.nsw.gov.au

Attention: [REDACTED]
[REDACTED]

Dear [REDACTED] and Statutory Review Panel,

Re Statutory Review of the Victims Rights and Support Act 2013 (NSW)

We are writing to provide a submission in relation to the statutory review of the Victims Rights and Support Act 2013 (NSW). We appreciate that this submission is late and the closing date was 11 July, however due to factors outside our control, this submission has been delayed. We respectfully request leniency your leniency to make a late submission.

We note that this issue was canvassed recently at the NSW Victims Advisory Board meeting, and we appreciate the time you took to explain the attempts to ensure inclusion of a range of voices and views, and with that in mind, we hope that our submission as one of the few community-based restorative practices for sexual abuse matters, can be included in the review.

At the outset we wish to indicate our broad support for the positions developed by the NSW Women's Alliance and especially, the recommendations which have been developed and submitted by Women's Legal Service and Mid North Coast Legal Centre, DV NSW and its member organisations, NGO members of the Victims of Crime Interagency, Women's Health NSW, Full Stop Australia, People with Disability Australia, NSW Women's Alliance members, Western Sydney University Justice Clinic and other organisations supporting victim-survivors.

In addition to this, we wish to make the following submissions:

- 1. The existing legislation and policy context in NSW makes no reference to the importance of restorative frameworks; particularly in response to serious harms such as sexual abuse and child sexual assault, which is inconsistent with national and international evidence which supports restorative practices in such matters.**

Restorative approaches are currently and increasingly used as valuable and appropriate mechanisms for addressing harm – and operate within, alongside and outside of the criminal legal system. In practice, restorative processes include those whereby all the parties with a stake in a particular offence come together to acknowledge the impacts and resolve collectively how to deal with the aftermath of the offence, including the implications for the future. In New South Wales, current and past statutory applications of restorative include Youth Justice Conferencing, the post-conviction conferencing provided by the Victims Support Unit (within NSW Corrective Services), Forum Sentencing, the Defence Abuse Response Taskforce and the ongoing

*Transforming Justice Australia is a community-based restorative practice
for survivors of sexual abuse, persons responsible, families and community*

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Transforming Justice is auspiced by Community Restorative Centre ABN 75 411 263 189

Direct Personal Response allowed by the National Redress Scheme (in response to the Royal Commission into Institutional Response to Child Sexual Abuse).

Restorative justice has many decades of evidence-based effectiveness and meets the needs of survivors and their families in ways in which traditional justice cannot; while holding those responsible to account in ways that are meaningful and specific to the needs of the survivor.

Evidence drawn from national and international practices supports the application of restorative practices and justice in response to gendered harms; either in the community as standalone interventions or to augment a formal criminal justice response and we note that survivor-oriented practices such as ours at Transforming Justice Australia provide a framework for referrals pre-report (community referrals); post report (from Police); pre plea (from courts and ODPP); and post sentence – which aligns with best practice for sexual assault matters as identified by .

We draw attention to the the Victorian Royal Commission into Family Violence and the Victorian Law Reform Commission report into response to sexual offences, **both of which have recommended adoption of restorative justice initiatives to address sexual and family domestic violence.** We note the VLRC report made extensive recommendations in relation to the principles and practices which best support restorative justice and the Royal Commission found:

"The Commission is persuaded that, with robust safeguards in place and as an additional option for (not a substitute or precondition for) pursuing action through the courts, a restorative justice process should be made available to victims who wish to pursue such an option. Restorative justice processes have the potential to meet a broad range of victims' needs that might not always be met through the courts and to help victims recover from the impact of the abuse they have suffered.

The development of a restorative justice approach should proceed cautiously. In consultation with victims' representatives and experts in restorative justice, the Department of Justice and Regulation should develop a framework and pilot program for the delivery of restorative justice options for victims of family violence that are victimdriven, incorporate robust safeguards, are guided by international best practice, and are delivered by suitably skilled and qualified facilitators..."¹

The Victorian Law Reform Commission noted that restorative justice can and should supplement existing responses to sexual violence, and that the use of restorative justice is supported by 4 evidence, has strong support, gives survivors more choices, can be part of healing and importantly – holds those who are responsible to account. It recommended the establishment of a restorative justice scheme in legislation which would apply to all offences, as is the case in New Zealand.

The VLRC recommended that the following principles should guide restorative justice for sexual violence in the restorative justice scheme:

- voluntary participation
- accountability
- the needs of the person harmed take priority
- safety and respect
- confidentiality
- transparency
- the process is part of an 'integrated justice response'
- clear governance

¹ <https://www.lawreform.vic.gov.au/project/improving-the-response-of-the-justice-system-to-sexual-offences/>

The VLRC found that the:

“...restorative justice scheme should be adequately resourced to ensure: a. victim survivors and people responsible for harm have independent, professional support throughout the process b. participants have access to independent legal advice...”

And that *“Victoria’s Aboriginal communities should be supported to design accredited restorative justice programs for Aboriginal people. ...”*

We can observe that the ACT’s Restorative Justice Unit (RJU), a government funded unit, provides an excellent example of best practice implementation of such recommendations. Since 2018, the RJU has been working with people impacted by family violence and sexual offences under a legislation that is founded on the United Nations principles for running restorative justice conferencing and has guidelines developed especially for these types of offences. Evaluation of this program shows that for people who choose restorative justice, satisfaction rates remain at 97% regardless of the type or seriousness of offence.

This is because its trauma informed, consent based voluntary processes ‘empower’ prospective participants to make decisions about their potential involvement in an environment of high support, high information provision, sensitivity and confidentiality. In 2021 the ANU convened a Symposium on Survivor Initiated-Restorative Justice as a Pathway to Justice for Sexual Assault which featured established and emerging practice approaches from across Australia. The aim of the Symposium was to highlight the role that restorative justice can play in addressing the needs of survivors of sexual assault. Practitioners and programs identified at the event (Open Circle, RMIT and Transforming Justice Australia) were already applying recognised best practice standards, and advocated for such practices to be applied more widely, within and alongside existing legal structures.

Recommendation: We note that the use and application of restorative approaches to sexual harm matters is being practiced in the community and may be introduced progressively over the coming decade by other agencies. However, as the only NSW-based community based organization offering restorative practices to victims-survivors in sexual harm matters (and in the absence of Government funding) we seek the Commissioner’s view on the use of the justice-related expenses payment to be applied to practices such as ours.

Access to this (\$5000) payment for our clients would go a small way to covering the costs of our experienced and highly trained sexual harm restorative practitioners – but moreover would recognize the agency and choices of survivors of sexual abuse who for many reasons, wish to explore restorative rather than the traditional justice approaches.

As such, the Commissioner’s view is sought in relation to the application of the justice related expenses payment for restorative practices in community managed programs, and we invite Victims Services to meet with our Directors to explore this approach and restorative approaches be integrated within existing justice mechanisms, as occurs in other comparable jurisdictions.

2. Changes to evidence requirements

Since the change to the application process in July 2020, the process of victim-survivors having to collate and submit their own evidence has put enormous strain on services such as the Victims of Crime Assistance League.

As Victims Services casemanagers and team leaders would fully appreciate, many victim-survivors find it difficult to navigate these processes (getting certificate of injury, collating expenses already paid as well as proving economic loss); and we note that these changes were introduced with no community consultation –

a slight on the important role that NGOs provide in supporting victim-survivors navigate the justice and administrative responses to crime.

The administrative pressure it has put on services such as VOCAL has been debilitating and an extraordinary amount of time is taken up advocating and providing this added assistance to their clients. We note that the shift over the past decade towards the expectation that survivors can, are or should be able to navigate complex service responses such as the VSRA is not trauma-informed or good practice. In closing on this point, we note that VOCAL has not had a funding increase since 2016, and yet the expectations placed on this service, and similar NGOs has not been commensurate with increases in funding for the sector.

3. Group therapy/education and treatment

We note that the recent changes to the counseling provisions has hampered funding for group work in NSW as well as the benefits of group work. We note that the value of peer to peer support, group therapy and associated education and engagement opportunities provide a unique opportunity for those directly (and also indirectly) impacted by harm to come together in non-judgmental and peer settings to receive support, education and mentoring and that services such as SAMSN have been seriously disabled due to this ill-considered reform.

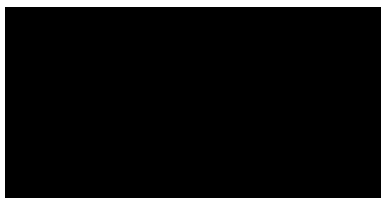
We note that the model developed by SAMSN is wholly aligned with best practice in understanding the community and familial impacts of child sexual abuse and sexual assault, and SAMSN's practice model recognizes the significant harm caused by vicarious trauma on friends, family members, partners and community of those directly harmed by sexual violence. High quality, specialized support for those impacted through secondary trauma by sexual abuse is essential and SAMSN is unique in recognizing this impact, and providing highly specialist support services to attend to this need.

Furthermore, by providing a culturally safe and holistic service, the model developed by SAMSN provides opportunity for supporters of survivors and survivors themselves, to benefit from peer mentoring, support and education – and thereby provide the opportunity for vicarious resilience and personal recovery and growth. Indeed, the relational approach developed by SAMSN is consistent with a restorative approach to understanding the importance and safety found within human relationships, which is especially associated with recovery and healing after trauma. We endorse and support their approach and recommend immediate review to the guidelines which has inhibited SAMSN's, and alike services, eligibility for the counselling payments to cover their costs associated with group work.

In closing, we encourage the Commissioner (through this review process) to engage with the literature (attached) supporting restorative practice frameworks and would be pleased to meet in order to explore restorative opportunities in NSW for those impacted by sexual abuse.

Thank you again for your consideration of this belated submission.

Yours faithfully,



Director and Practice Lead
Transforming Justice Australia

