

Our Ref: MM:WGS

12 May 2023

Ms Katherine Jones PSM
Secretary
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Via email: sexual.violence.responses@ag.gov.au

Dear Secretary,

Consultation on the development of specialised and trauma-informed legal services for victims and survivors of sexual assault

Thank you for providing knowmore legal service (knowmore) with the opportunity to participate in the recent virtual workshop about the specialised and trauma-informed legal services pilot for victims and survivors of sexual assault. We appreciated the opportunity to learn more about the pilot, to hear the perspectives of various stakeholders and to share our experience as a nation-wide, multidisciplinary, free and independent service for victims and survivors of child sexual abuse.

In this letter, we provide for your consideration some further information to inform the development of the legal services pilot.

The legal and support needs of victims and survivors throughout their engagement with the criminal justice system

One of the areas of greatest legal need for victims and survivors of sexual assault is for trauma-informed assistance to navigate the criminal legal system. For many victims and survivors of sexual assault, including our client cohort who have experienced child sexual abuse, the criminal justice system is essential to seeking justice for the harm committed against them, holding the perpetrator accountable for their criminal offending, reducing the

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

knowmore Legal Service Limited | ABN 34 639 490 912 | ACN 639 490 912. knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

risk of the perpetrator offending against other victims and increasing community awareness of the nature, extent and impacts of sexual offending.

However, criminal justice responses to sexual assault are often ineffective. For example, the Royal Commission into Institutional Responses to Child Sexual Abuse highlighted that child sexual abuse crimes have lower reporting rates, higher attrition rates, lower charging and prosecution rates, fewer guilty pleas and fewer convictions when compared to other offences.¹ In addition, many victims and survivors who have sought to engage with the criminal justice system have experienced further harm and trauma.

We shared the experiences of some of our clients in a recent submission to the Legal Affairs and Safety Committee of the Queensland Parliament, which is currently inquiring into the support provided to victims of crime:

A common experience reported by some of our clients who have sought a criminal justice response to their child sexual abuse is a feeling of being marginalised or excluded from the process. Some clients have perceived that their interests were given little consideration and that the system itself is unfairly weighted in favour of alleged perpetrators.

In our experience, survivors are often particularly frustrated by their inability to meaningfully participate in police and prosecution processes. Key concerns survivors have raised include:

- *not having anyone to contact or not being given meaningful information about the progress of the police investigation*
- *not being consulted about charging and prosecution decisions, including decisions to withdraw or downgrade charges or accept pleas of guilty to lesser charges*
- *having difficulties understanding the process and the reasons for certain decisions*
- *having no voice to raise concerns or ask questions, or simply not knowing the right questions to ask because of a lack of understanding of relevant legal issues.²*

In knowmore's view, these problems are compounded by a lack of appropriate, dedicated and truly independent support for victims and survivors throughout their engagement with the criminal justice system. We therefore strongly support initiatives such as the proposed pilot, which seek to provide victims and survivors with access to free, independent, trauma-

¹ See further discussion in Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Criminal justice report: executive summary and parts I-II*, 2017, pp. 9-11 and 164-169, <www.childabuseroyalcommission.gov.au/criminal-justice>.

² knowmore, *Inquiry into support provided to victims of crime: Submission to the Legal Affairs and Safety Committee*, 12 April 2023, pp. 5-6, <<https://documents.parliament.qld.gov.au/com/LASC-C96E/ISVC-98C6/submissions/00000028.pdf>>.

informed and culturally safe legal assistance and wraparound support throughout their engagement with the criminal justice system.

knowmore also supports the pilot focusing on groups that are overrepresented among victims and survivors of sexual assault and are known to experience additional barriers to engaging with the criminal justice system, including children and young people. There is a critical need for children and young people who have experienced child sexual abuse to have access to wraparound and holistic legal and other support throughout their engagement with the criminal justice system. In our experience, criminal justice processes can be particularly daunting, difficult to understand and navigate, and re-traumatising for children and young people. This is especially the case for children and young people experiencing heightened marginalisation, including Aboriginal and Torres Strait Islander children and young people, children and young people with disability and children and young people who reside in institutional and/or closed settings.

Our views on the most effective model to support victims and survivors

As outlined above, we consider that giving victims and survivors access to free, independent, trauma-informed and culturally safe legal assistance throughout their engagement with the criminal justice system is critically important for enabling victims and survivors to meaningfully participate in the process. While elements of this already exist, our strong view is that victims and survivors need to have access to specialist assistance at every stage of the criminal justice response.

We envisage victims and survivors being supported and assisted to exercise their rights and protect their interests, including in relation to:

- disclosing their experiences of sexual assault and making an informed decision about whether to report their abuse to police
- their engagement with the police and prosecution, including being consulted about prosecution decisions
- their rights and privileges in relation to evidence, for example, the availability of special measures which may assist them to give their best evidence
- their rights to privacy and the disclosure of identifying information, for example, prohibitions against publishing complainants' identifying information and the right of complainants to tell their stories publicly or to consent to publication of their information by third parties such as the media
- their right to make a Victim Impact Statement as part of sentencing
- their options for redress and compensation, including financial assistance under victims of crime schemes. This is another key area of legal need and of critical

importance in the justice-making options available to victims and survivors of sexual assault.

Based on our experience as a multidisciplinary service, we consider it essential for this legal assistance to be delivered by dedicated services that can provide wraparound support. We also consider it important for any service delivering this assistance to be free from conflicts arising from the concurrent representation (including the funding or representation) of alleged perpetrators, to ensure victims and survivors have trust and confidence in the service.

We note the statement made by the Standing Council of Attorneys-General in the Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027 that:

'barriers to justice are complex and interrelated, and the result of a variety of social and economic factors. Victim-survivors may be required to continuously retell their story without dedicated legal advocacy, support or guidance, and are at risk of facing their alleged perpetrators in court room settings. These circumstances can be highly confronting and compound victim-survivors' trauma'.³

During the recent consultation workshop, members of our Legal team and our Aboriginal and Torres Strait Islander Engagement team spoke about the benefits of knowmore's multidisciplinary service which brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide truly wraparound support for victims and survivors. In our view, this model promotes trust among victims and survivors and their communities, reduces the risk of victims and survivors having to retell their stories, and provides them with holistic support to address their legal, healing, cultural and financial needs.

The following are key features of knowmore's service delivery model that we recommend be embedded as good practice in the delivery of free, independent and trauma-informed legal assistance to victims and survivors:

- a targeted service that ensures funding is first used to assist those with the most need and who are least able to otherwise access legal assistance
- an integrated, multidisciplinary team that brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide a holistic, comprehensive response to clients' legal and associated non-legal needs
- a supportive, client-centred culture that focuses on empowering victims and survivors and providing them with assistance at a pace that is suitable for them

³ Meeting of Attorneys-General, *Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027*, 12 August 2022, <<https://www.ag.gov.au/crime/publications/work-plan-strengthen-criminal-justice-responses-sexual-assault-2022-27>>.

- staff and systems built on an understanding of the profound and life-long impacts of complex trauma on clients' lives, to drive responses that are trauma-informed and appropriate
- a framework of Aboriginal and Torres Strait Islander cultural safety, which has an appreciation and conceptualisation of Aboriginal and Torres Strait Islander cultural knowledge as its own discipline at its centre.

knowmore delivers targeted, joined-up, timely, appropriate, survivor-focused, trauma-informed and culturally safe legal assistance and other support to victims and survivors of child abuse. We consider that our service model offers a valuable and feasible model for supporting victims and survivors of sexual assault throughout the criminal justice system.

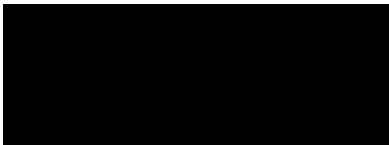
We note that at the recent workshop there was some discussion about the possible approach of co-locating what might be a primarily legal service with other services that can provide related, non-legal support services to victims and survivors. We do not favour such an approach, in comparison to a truly-integrated, multidisciplinary and trauma-informed model as outlined above. The reasons for this view include:

- Foreseeable difficulties in practice that will arise from the potential involvement of multiple persons employed by separate agencies (rather than all relevant persons being employed by a legal service), in managing and resolving issues of client confidentiality and privilege; including:
 - initial conflict checking;
 - protection of client confidentiality and information (which is very often an issue of key importance to victims and survivors of sexual assault), particularly in the face of access demands by third parties;
 - lack of access to timely and relevant information for those working across different agencies to support the victim and survivor; and
 - resolving issues around the timely disclosure of information for the purposes of, for example, mandatory reporting and to prevent an imminent risk of serious harm to the client or another.
- Difficulties in establishing and building trust with victims and survivors to support service delivery, which by its nature in such a model will be more linear and compartmentalised, and more confusing and confronting for victims and survivors to engage with. The need for victims and survivors to retell their stories will be heightened.
- Such a model is unlikely, in the view of our Aboriginal and Torres Strait Islander Engagement team, to be perceived as culturally safe by Aboriginal and Torres Strait Islander victims and survivors.

- Limitations and delays will arise in seeking to plan, co-ordinate and deliver services in any outreach situation (such as where a survivor with disability who requires face-to-face services cannot readily attend the service hub).
- Loss of opportunity for the enhancement of skills across all supporting discipline workers that can be derived from working in a more integrated, collaborative and multidisciplinary way with clients.
- Dilution of opportunities for making timely and fully-informed contributions to policy and law reform initiatives that might affect systemic change to benefit victims and survivors.
- Heightened risks for workers, including psychosocial risks arising from the nature and constancy of the work required.

Thank you for the opportunity to provide additional information to inform the development of the legal services pilot. We welcome the establishment of the pilot and look forward to future opportunities to contribute.

Yours faithfully,



WARREN STRANGE

Chief Executive Officer