

MAKE A SUBMISSION TO THE REVIEW OF THE VICTIMS OF CRIME ASSISTANCE ACT 1996

Submission ID Number	13
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Chapter 5: Eligibility for assistance
The victim categories
1 How do the victim categories in the Act impact on people applying to VOCAT for financial assistance?
The classification by the crime can have inequitable results as the impact of some crimes with a low rating can be greater than the effects of more serious crimes.
2 Should the victim categories in the Act be amended? If so, what changes should be made to the Act?
there should be a discretion for the Magistrate to provide an uplift or increased payment where it is apparent that the effects of the crime are significant.
The definition of an 'act of violence'
3 How does the definition of 'act of violence' in the Act impact on people applying to VOCAT for financial assistance?
the defication of "act of violence" is very restrictive, particularly for victims of Stalking and Burgularies. In some cases the injured do not come in direct contact or direct threat from an offender but suffer injury which should be compensated under the general objects of hte Act.
4 Should the definition of 'act of violence' in the Act be amended to include other offences? If so, what offences should be included?

stalking and Burgularies where the victims are resident in the home but not directly injured by an act of violence.

5 Should the definition of 'act of violence' in the Act be amended to include non-criminal behaviour? If so, what forms of non-criminal behaviour should be included?

The definition of 'injury'

6 How does the definition of 'injury' in the Act impact on people applying to VOCAT for financial assistance?

Injury has been widely interpreted in my experience and is usually appropriately applied.

7 Should the definition of 'injury' in the Act be amended to include other forms of harm? If so, what forms of harm should be included?

8 Should the requirement for injury in the Act be removed for victims of certain crimes? If so, for which categories of victim should the requirement be removed?

The very serious crimes that have a high category classification at the present time.

The causation requirement

9 How does the requirement for victims to establish that their injury was the 'direct result' of the act of violence impact on people applying to VOCAT for assistance? Should this causation requirement be amended? If so, what changes should be made to the causation requirement?

the definition should exclude the word "direct" as in other compensation schemes, "a cause" is sufficient to enable benefits to be received.

Chapter 6: Assistance available

Quantum of awards

Total financial assistance available

10 Are the maximum amounts of financial assistance available under the Act adequate to meet the needs of victims? If not, what should the maximum amounts be?

The amounts awarded for Special Financial Assistance are inadequate in almost every instance. some amounts are so low that they become an insult to decent people who have suffered but receive a message that what they have encountered is barely registerable. the quantum should at least revert to the period in which the maximum was \$20,000 and not regimented so severely according to the type of crime. The \$60,000 often quoted by politicians is fictional as it covers assistance that is barely awarded. I anticipate statistics should reflect this.

Cap on quantum available for related victims

11 Should the Act be amended to remove the pool of assistance for related victims? If not, should the total maximum cumulative amount of assistance available for a pool of related victims be increased?

the assistance for related victims is good. the inequity arises where there are big families and the pool is divided amongst many. in my experience the \$100,000 limit is rarely exceeded despite the discretion contained within the Act. there should be a limit per death based upon the number of applicants.

12 Should the Act be amended to reflect the rising cost of funerals? If so, what amendments should be made? Should funeral expenses be excluded from the total maximum cumulative amount of assistance available under the Act for a pool of related victims?

I believe the rising cost of funerals should be considered when looking at the amount payable to relatives. Associated expenses should be also examined when looking at funeral costs. I have not experienced any concerns by relatives with funeral expenses being paid from the pool.

Categories of award

Are the current categories of award under the Act still appropriate?

13 Are the current categories of award under the Act still appropriate to meet the needs of victims of crime? If not, how should the categories of award under the Act be amended and what should be included?

Perhaps special financial assistance could be expanded to include parents of children who have suffered sexual abuse.

Requirement for certain expenses to be 'reasonable'

14 Is it appropriate for the Act to require that the costs for certain expenses, such as counselling services, be reasonable? If not, what changes should be made to the Act?

In all compensation schemes in Victoria, costs are required to be reasonable. The amount that is regarded as reasonable is really the issue and there should be a wide discretion given to the Tribunal as some circumstances are exceptional.

Additional awards to assist recovery and the need for 'exceptional circumstances'

15 Is it appropriate for the Act to limit awards for recovery expenses to 'exceptional circumstances'? If not, what changes should be made to the Act?

I believe it would be appropriate to award assistance in "special" circumstance rather than "Exceptional" circumstances. In my experience, the interpretation of "exceptional" has been inconsistent and further definition around the term may also be of assistance.

16 In addition to the financial assistance available under the Act, are there other ways to promote the recovery of victims from the effects of crime? If so, is there a need for these other ways to be supported by the Act?

Interim awards

17 Are the interim awards available under the Act adequate to meet victims' needs including with respect to quantum and timeliness? If not, how should they be improved?

I have not experienced interim awards being widely made.

Limitations of the special financial assistance provision

Recognising cumulative harm

18 Should the special financial assistance formula be amended to take into account the cumulative harm of a series of related criminal acts? If so, how should the formula be amended?

if there are a series of offences resulting in cumulative harm, there should be an upgrading in the amount of assistance available.

19 Should the special financial assistance formula be amended to take into account the experiences of vulnerable victims, including child victims, elderly victims, victims with disability and victims of an act of violence perpetrated by someone in a position of power, trust or authority? If so, how should the special financial assistance formula be amended?

Special financial assistance should have a discretion and less formula provided to the Tribunal to award appropriate financial assistance based upon the level of injury and experiences of the victim.

20 Who should be eligible for special financial assistance under the Act?

those who have suffered injury, either physical or psychological as a result of a crime. this should extend to parents or guardians or immediate family.

VOCAT discretion and the prescribing of minimum and maximum amounts for each category of special financial assistance

21 Should the prescribed maximum and minimum amounts of special financial assistance be removed and replaced with one amount for each category? If so, what changes should be made to the Act and what should the amounts be?

the discretion previously provided when there was a maximum of \$20,000 for special financial assistance should be re-instated.

The adequacy of amounts of special financial assistance available

22 Should the amounts of special financial assistance in the Act be increased? If so, what should the amounts be?

The amounts provided are currently an insult to some victims who have suffered badly. The maximum for special financial assistance should be increased to \$30,000 and indexed each year with a rounding up to the nearest \$100.

Treatment of 'related criminal acts'

23 Should the definition of 'related criminal acts' be amended to have regard to the cumulative harm of long-term abuse? If so, what should the definition be?

Related criminal acts are " criminal actions against the same person over a period of time causing injury either from an individual incident or series of incident.

24 Should the Act be amended to give victims an opportunity to object if claims are to be treated as 'related'?

yes, although a discretion to increase the payment would obviate this need.

25 Should there be a higher maximum for awards of financial assistance under the Act for victims of a series of related criminal acts? If so, what changes should be made to the Act?

The Tribunal should be given discretion to increase the award where cumulative acts have occurred with a maximum of 200% of an individual act.

Chapter 7 Time limits for making an application

Is the time limit a barrier for victims of crime?

Increasing the application time limit

26 Is the two-year time limit to make an application to VOCAT under s29 of the Act still appropriate? If not, what would be an appropriate application time limit? Alternatively, should different application time limits apply for different types of crime?

It would be appropriate to extend the time limit to 3 years in line with the Transport Accident Act and Wrongs Act. there should be an extension of time provision as there is now.

Removing the application time limit

27 Should some types of crime be excluded from application time limit provisions entirely? Should some time limits start after a victim turns 18? Alternatively, should some components of victim support and financial assistance not have a time limit?

the time limit for children should be as appears in the Transport Accident act. Extensions should be permitted as currently legislated.

Granting an extension of time—is there a need for additional considerations?

28 Are the factors VOCAT may currently consider in determining whether to hear an application out of time sufficient? Should other factors be included in the Act? If so, what additional factors should be included?

I believe the current factors are adequate and well administered/applied.

Improving transparency in the decision-making process

29 Should VOCAT be required to publish data and reasons for decisions made in relation to section 29 of the Act? If yes, what data should be provided and how should it be published?

Chapter 8 Making an award Requirement to report to police within reasonable time

Removing the requirement to report to police entirely

30 Should the requirement to report incidents to police be explicitly excluded for some types of crime? Alternatively, should reports made by victims to other professionals or agencies be recognised? If so, how would this work in practice?

Reporting to Police is an important ingredient in the Victim assisting the Police. if there is an occurrence of sexual abuse from the past of an infant or person under a disability, the requirement should be deleted.

Requirement to provide reasonable assistance to police and prosecution

Removing the requirement to provide reasonable assistance for some victims

31 Should the requirement to provide reasonable assistance to police and prosecution be explicitly excluded for some categories of victim? If yes, what categories?

No

Specifying additional factors for consideration in determining reasonable assistance

32 How do the 'reasonable assistance' requirements impact on victims of crime?

33 Should the Act be amended to improve the operation of the ‘reasonable assistance’ provisions for victims of crime? If so, what changes should be made to the Act?

yes

Character and behaviour considerations

Providing more guidance in the Act about relevant section 54 factors

34 What are the effects of the section 54 considerations for victims? Are they operating fairly and appropriately? Should the Act continue to consider the ‘character and the behaviour’ of the victim ‘at any time’ as currently required under section 54 (a) of the Act, or at all? If not, what changes should be made to the Act to address this?

Removing consideration of some section 54 factors

35 Are there some section 54 factors, such as whether the applicant provoked the act of violence or the applicant’s past criminal record, which should no longer be relevant for the consideration of award applications?

Removing the perpetrator benefit provisions

36 How do the perpetrator benefit provisions under section 54 of the Act currently affect some categories of victim? Are these provisions operating fairly and appropriately? If not, what changes should be made to the Act to address this?

Chapter 9 Review, variation and refund of awards

Amending the variation ‘window’

37 Should the six-year time period for variation of an award be extended to account for victims of crime with long-term needs? If yes, how long should the time limit be extended and should this be for specific crimes or specific types of award only?

Reducing the administrative burden and delay in seeking variations 38 How does the variation process impact on victims of crime?
39 Is there a need to make the variation process more accessible and timely for victims? If so, what changes should be made to the Act and/or VOCAT processes?
Review and refund provisions 40 In what circumstances are VOCAT awards refunded? Is it appropriate for the Act to require the refund of awards in certain circumstances and if so, in what circumstances?
41 When might victims seek review of a VOCAT award? Are there any barriers to seeking a review of an award? If so, how should these barriers be addressed?
Chapter 10 Timeliness of awards
Practice Direction to expedite decision making 42 Is there a need to amend section 32(3) and section 41 of the Act to clarify the need for speedy determinations? Alternatively, would an appropriate Practice Direction provide sufficient guidance?
Triaging, co-location or specialist streams 43 What benefits would be achieved for victims if initiatives such as triaging, co-location or specialist streams were introduced?

An administrative model

44 As an alternative approach, should an administrative model be adopted? If yes, what benefits would be achieved for victims through the adoption of an administrative model? How would this work in practice? What would be the disadvantages of an administrative model?

Hearing VOCAT matters during other civil and criminal hearings

45 What benefits would be achieved by enabling all magistrates to make interim VOCAT awards at the same time as hearing other matters? How would this work in practice? Would there be disadvantages?

Evidentiary requirements for counselling and medical expenses

46 Should applicants be able to support their applications with documentary evidence other than medical and psychological reports? If so, what other documentation should applicants be able to provide?

47 Should more assistance be provided by VOCAT to help victims satisfy the evidentiary requirements?

Chapter 11 VOCAT hearings Perpetrator notification and right to appear

Removing the perpetrator notification provision

48 How do the rights of perpetrators—to be notified or appear—fit with the purpose of the Act, which is to provide assistance to victims of crime?

49 Should the Act be amended to include a legislative presumption against perpetrator notification? If so, how should the Act be amended?

Enhancing safety considerations in the Act

50 Should the notification provision be amended to recognise the safety concerns of victims more specifically? If so, what changes should be made to the Act?

51 Given the aim of the Act is to assist victims of crime, should the Act be amended to include a guiding principle protecting victims from undue trauma, intimidation or distress during VOCAT hearings?

Evidentiary and procedural protections for vulnerable witnesses

52 Should the Act be amended to include increased protections for victims during VOCAT hearings? If so, what procedural and evidentiary protections should be provided?

Restricting access to and the use of VOCAT records

53 Should VOCAT application materials be admissible as evidence in criminal or family law proceedings? If not, how should the Act be amended?

Improving the transparency and consistency of VOCAT processes and decision making

54 How could transparency and consistency in VOCAT processes and decision making be improved?

Chapter 12 Awareness of VOCAT and accessibility

Combining victim support and the financial assistance scheme

55 How do victims learn about the availability of VOCAT? When, how and by whom should victims be informed of their potential eligibility under the Act?

56 Should the provision of state-funded financial assistance be integrated with victim support services? If so, how should financial assistance be integrated with victim support?

Reducing reliance on lawyers

57 Is the VOCAT system easy to navigate without legal representation? If not, why? Should the system be changed to make it more accessible for victims without legal representation? If so, what changes should be made to the Act and/or VOCAT processes?

Providing victim-friendly and accessible information

58 Is there a need to make VOCAT more accessible for victims? If so, what changes should be made to the Act and/or VOCAT processes to make VOCAT more accessible for victims, including those speaking languages other than English?

Chapter 13 Victim needs

59 Having regard to the impacts of crime on victims, what are victims' needs and how should they be met through a state-funded financial assistance scheme?

Chapter 14 Approach 1: Reforming the existing scheme The purpose and objectives of the Act

60 Is the Act achieving its purpose and objectives? If not, in what respects?

the low awards mean the Act is not achieving its objective

Amend the Act to focus on support

61 Should the focus of the Act be on supporting victims of crime rather than on assisting their recovery? If so, what changes should be made to the Act?

Recognising appropriate people as victims

62 Does the Act recognise appropriate people as victims? If not, what changes should be made to the Act to better recognise appropriate people as victims? Are there circumstances where some victims should not be recognised by the scheme? If so, in what circumstances?

Amend the Act to remove the focus on ‘certain victims of crime’

63 Is it appropriate under the Act that only ‘certain victims of crime’ are entitled to financial assistance as a symbolic expression of the community’s sympathy, condolence and recognition? If so, how should this be expressed in the Act?

Reconceiving ‘financial assistance’ and ‘special financial assistance’

64 Would ‘special financial assistance’ be better classified as a ‘recognition payment’ as in the New South Wales and Australian Capital Territory schemes?

yes

Requiring offenders to contribute

65 What is the practical operation of section 51 of the Act which enables a victim to assign their rights to the state to recover from the offender? Should a State-funded financial assistance scheme retain ‘offender recovery’ provisions as a parallel process to other reparation mechanisms?

I have not seen it in operation

66 Should Victoria’s state-funded financial assistance scheme be amended to include a victims’ levy payable by offenders? If so, how and on whom should the levy be imposed?

the administration and collection of a levy would far outweigh the benefits recovered.

Chapter 15 Approach 2: Is there a need for a different model?

Is the current scheme meeting the outcomes specified in the supplementary terms of reference?

67 Is the current scheme meeting the outcomes for victims specified in the supplementary terms of reference, namely, does it achieve outcomes for victims that: (a) are fair, equitable and timely (b) are consistent and predictable (c) minimise trauma for victims and maximise the therapeutic effect for victims?

Outcomes are generally fair but awards are too low. variations in magistrates' attitudes prevent proper consistency.

68 Is the current scheme efficient and sustainable for the state?

I believe the current scheme is reasonably efficient but I am unable to indicate if it is sustainable as this is a budgetary issue.

69 Are there other models that would deliver assistance more effectively? If so, which?

Financial assistance as part of case management /victim support

70 Is state-funded financial assistance to victims of crime better provided as part of victim support case management? If so, why, and how should this operate?

71 Alternatively, should some components of Victoria's state-funded financial assistance scheme for victims of crime be provided as part of victim support case management and others by a judicial or other independent decision maker? If so, what components, and how should this operate?

Financial assistance as a restorative justice opportunity

72 Should restorative justice principles be further considered as a voluntary component of a state-funded financial assistance scheme? Alternatively, should a victims' financial assistance scheme provide a

more direct pathway to restorative justice practices constituted elsewhere in the justice system?

A new decision maker?

73 What are the benefits and disadvantages of retaining judicial decision making for the provision of state-funded financial assistance for victims of crime? Are there alternative decision-making models that should be considered? If so, which?

I believe the Tribunal works well but there should be a consistency of adjudication. perhaps Magistrates be allocated to VOCAT for longer periods.

74 Should hearings remain an available option, either at the request of the victim or the decision-maker?

yes. hearings in front of a compassionate Magistrate can be of enormous benefit to victims of crime.

Victim financial assistance as a specialist field of expertise

75 Should state-funded financial assistance to victims of crime be undertaken by other specialised decision makers, to improve knowledge and awareness of victim needs and to enable a trauma-informed approach? If so, how should this operate?

Magistrates do a good job generally