

2017

VICTIMS OF CRIME ASSISTANCE ACT 1996 SUPPLEMENTARY TERMS OF REFERENCE

PROJECT RESPECT

PREPARED BY
TEGAN LARIN, MARNIE BALL, ABIGAIL STONE & RACHEL REILLY
info@projectrespect.org.au

Victims of Crime Assistance Act 1996: Supplementary terms of reference

1. *the VOCA Act can be simplified to make it easier for applicants to understand all their potential entitlements and quickly and easily access the assistance offered by the scheme without necessarily requiring legal support.*

The complexities of legislative text can be challenging for the general public, and even more so for those who speak English as a second language or have had limited education. In order to practice self-determination and autonomy it is integral for women to fully understand their legal rights and entitlements. Women in the sex industry (WISI) and survivors of trafficking report a multitude of barriers to access legal help or services. They are often fearful of law enforcement and of reaching out for help in the broader legal sphere. This can be due to many reasons such as past stigma and mistreatment from police, language or cultural barriers and fear of reprisal from pimps and traffickers.

Women from CaLD backgrounds are highly represented in the sex industry. More than 80% of the women Project Respect meets during outreach to licensed brothels are from ethnically diverse backgrounds, and all women supported who are survivors of trafficking, who make up over 65% of Project Respects client base, are from CaLD backgrounds. Project Respect submits that a simplified version of the VOC Act should be made available in English, Mandarin, Thai, Korean, and Malaysian.

2. *N/A*

3. *the tests for eligibility for assistance and the evidence required to meet those tests can be simplified to avoid unnecessary or disproportionate costs being incurred*

In order to establish that a victim is eligible, the Tribunal must be satisfied on medical or psychological evidence that treatment or counselling is required as a result of trauma associated with an act of violence.

For WISI, it often isn't one isolated incident of violence, but the repeated acts of violence experienced due to their involvement in the industry. WISI are unlikely to disclose their involvement in the industry due to the stigma and discrimination. This can therefore act as a barrier in meeting the evidentiary requirement pursuant to section 3 of the Act.

Psychiatric assessments, which are distinct from psychological counselling, are a non-therapeutic tool used to assess the level of mental injury. If administered poorly, there is a risk that psychiatric assessments could re-traumatise victims.¹ Project Respect submits that the evidentiary requirement to prove injury be expanded to include statements made by the victim and any individual who has a substantial knowledge of the abuse, including case workers and social workers. Records from counselling sessions should be admissible as evidence.

¹ Isobelle Barrett Meyering, *Victim Compensation and Domestic Violence: A National Overview*, Stakeholder Paper No 8 (Australian Domestic and Family Violence Clearinghouse 2010) 5

In addition to this, Project Respect submits that the definition of mental injury should be expanded. Currently, the Act defines mental injury as ‘mental illness or disorder’. This has been interpreted by VCAT to mean mental injury that constitutes a recognised psychiatric or psychological disorder.

Project Respect submits that this definition is too narrow and does not include other forms of mental harm stemming from abuse. WIS and victims of sexual offences often report feeling violated and reduced feelings of self-worth. While these types of mental harm do not constitute a mental illness or disorder, they nonetheless impact upon a victim’s mental well-being and should be included in the definition.

4. *the definition of ‘act of violence’, the time limits, categories of assistance and structure and timing of awards are appropriate and are adequate to account for harm, including harm caused by multiple acts such as family violence, or where there is a significant delay in reporting a crime*

The narrow definition of an ‘act of violence’ under the Act means that only people who are victims of crimes against the person are eligible for financial assistance under the Act. However, as VOCAT noted in its Annual Report 2014–15, there are ‘changing notions about what may constitute a violent crime and the possible ways in which a person can be victimised’.² Behaviours that may constitute a pattern of non-criminal behaviour resulting in physical or psychological injury include, but are not limited to: psychological abuse, financial abuse, non-contact sexual offences and property offences. Project Respect submits that the definition of an ‘act of violence’ be expanded to include these non-criminal behaviours that results in physical or psychological injury.

Women in the sex industry experience unique patterns of violence and subsequent trauma that often goes unacknowledged and unaddressed. These patterns of non-criminal violence are prevalent in the legal and illegal sectors of the sex industry and are often normalised and justified as being “just part of the job”.

Negotiated sex act modified without consent

As per the Sex Work Act 1994, it is illegal to have oral or penetrative sex without a condom, however, many male purchases of sex remove condoms during the course of the act without consent. Women report this to Project Respect during outreach, however, there is often no recourse to justice when this form of sexual assault happens as it is often normalised as a risk of the “job”. Women don’t report this to police for a number of reasons, including normalising this sexual violence as a risk of the job, due to the fear of being “outed”, the stigma and discrimination they may experience when reporting, the fear they won’t be believed or, the legal system will not recognise this as the assault it is. Further compounding the lack of reporting is unsupportive managers and/or owners who will not contact police when this happens. While this is a physical act of violence, it is also has ongoing psychological impacts due to concerns around their sexual health, and their capacity to continue to work if their sexual health has been impacted due to this act.

Financial abuse

² Victims of Crime Assistance Tribunal, *Annual Report 2014–15* (2015) 23.

Sex buyers often capitalise on the economic hardship experienced by WISI, and use their economic privilege as a means to coerce women into engaging in sex acts they would not have otherwise engaged in. For instance, sex buyers may offer more money for a sex act to be performed without a condom. It is reported to Project Respect by WISI that they feel financially obliged to do this for financial benefit, but also if she declines she may lose the client or that he is likely to disregard her boundaries and remove the condom anyway.

Non-contact sexual offences

Victims of non-contact sexual offences may experience difficulties establishing eligibility under the Act due to the narrow definition of an 'act of violence'. Through outreach, Project Respect can confirm that women in the sex industry are particularly vulnerable to technologically facilitated sexual violence, which is a non-contact sexual offence. In particular, women in the sex industry have reported that the non-consensual filming and sharing of images and videos is prevalent. These images are often used as a way to shame or coerce the woman involved.

Additionally, there are many blogs set up to rate and review women in the sex industry. These blogs provide the working name and location of the woman, which can have negative impacts on her as an individual, as well as her capacity to earn if the review is negative.

Physical or Psychological Injury Caused by Non-Criminal Behaviour

The alarming rates of post-traumatic stress disorder (PTSD) experienced by WISI suggest that non-criminal behaviour can cause physical or psychological injury and therefore the definition of 'act of violence' should be expanded to include such behaviour. 68% of WISI meet the diagnostic criteria for PTSD compared to approximately 5% of the general population³. This is more than double the incidence of PTSD experienced by Vietnam veterans.

The eligibility test should be expanded to recognise a pattern of non-criminal behaviour which results in physical and psychological injury. Additionally, the sex industry should be recognised for the high levels of criminal and non-criminal physical and psychological injury which WISI experience, which largely goes unreported due to the stigma and discrimination which women face, combined with the fear of being "outed" with their involvement in the industry.

5. the basis of the formula in section 8A of the VOCA Act used to quantify special financial assistance is the most appropriate way to calculate the amount payable by the state for harm arising from crime

WISI and survivors of trafficking need to be recognised as a special cohort of the female population that require special assistance in the provision of victims of crime compensation. WISI and Women Trafficked (WT) often experience sexual offences over an extended period of time from several months to several years. As a result of this, a significant number of WISI and WT experience ongoing mental and physical health conditions such as PTSD. The compensatory scheme should be adapted to reflect the cumulative nature of the harm suffered by WISI and WT.

³ <http://www.prostitutionresearch.com/Farley%26Barkan%201998.pdf>

The state of Victoria should be held accountable for the violence and harm experienced by women in the sex industry. The sex industry has been recognised as a high-risk industry for exploitation and abuse. In light of this, Victoria has implemented legislation and regulations to protect WISI. However, it is evident that the state has not met this obligation. In the last four years WorkSafe has made a total of nine visits to licensed brothels in Victoria to check for compliance. This complete lack of enforcement of the regulations places women at increased risk of workplace exploitation and abuse, and exposes women to unsafe working environments. The laws and regulations in place need to be better enforced to ensure women's safety. The state has failed WISI and WT and therefore should compensate WISI who have experienced violence and harm and WT the highest amount payable.

6. it is appropriate and fair to award assistance to aid recovery in exceptional circumstances (as allowed by section 8 of the VOCA Act) and whether there are other ways to promote the recovery of victims from the effects of crime

As has been noted throughout this submission, WISI and women trafficked need to be recognised as a specific cohort who have unique experiences of crimes and trauma. Thus, WISI and women trafficked should qualify for recognition in exceptional circumstances.

It has been observed that workplace laws that exist in other legalised work industries to protect employees do not apply for WISI. WISI are incorrectly employed as independent contractors and not covered under the Fair Work Act 2009. This excludes women from protection such as regulations for minimal wage, work health safety, maximum duration of working shifts and work cover. Women employed in the sex industry often do not have superannuation, and because of the precarious nature of the work, women often survive financially by living week to week.

Women rely on the sex industry economically to survive. This places WISI and WT in a situation where they are forced to choose between staying in a high-risk environment where they regularly experience violence, or living in financial and housing stress, where the potential of being re-trafficked is high. Because of the special circumstances that WISI and WT face, crime compensation needs to be appropriate for these realities. A once off lump sum payment is inadequate for this cohort of women. WISI experiencing violence and WT require ongoing aided recovery not only in the form of financial support but also through linking women into support services and organisations like Project Respect that can guide women through a realistic pathway to exit the sex industry and promote the recovery of victims.

7. it is appropriate in certain circumstances (as is currently the case) for alleged perpetrators of a crime to be notified of applications to VOCAT or to be called to give evidence

Project Respect believes that it is never appropriate for alleged perpetrators of a crime, especially of a sexual offence, to be notified of applications to VOCAT or to be called to give evidence. As stated above (term 4), sexual offences, especially those that occur in the sex industry often go unreported. We strongly believe that the fact that the perpetrator may be notified of applications to VOCAT acts as a deterrent for WISI who are already unlikely to report these crimes.

The perpetrators of sexual offences against WISI and WT are mostly sex buyers, pimps and brothel owners. Sex buyers are likely to know where the woman works as that is likely to be the place of the

offence. Notifying the perpetrator when the perpetrator is a sex buyer would put the woman in an unnecessary amount of danger, especially if the woman has not reported the offence to the police.

In Victoria, there are known links between organised crime and brothel owners and pimps, placing WISI in extreme danger if the perpetrators are notified. Brothel owners and pimps are also in a position of power over WISI and WT. They are known to use coercion and abuse to control women that work for them. Women we have worked with have expressed fear of reprisals from brothel owners and pimps and have received threats to their family, and threats of exposing their status as WISI. Women have also reported that pimps and brothel owners possess sexually explicit photographs of them that they threaten to make public or send to family members.

It is for these reasons that we believe that perpetrators, especially of sexual offences against women, should not have the right to be notified of applications to VOCAT or to be called to give evidence. WISI and WT need to have their particular circumstances, and the reality of reprisals recognised and taken seriously. Women will only report crimes perpetrated against them when it does not put themselves or their family at risk.