

30 October 2017

Dear Sir/ Madam,

Submission regarding the Family Violence and the Victims of Crime Assistance Act Consultation Paper June 2017 and Review of the Victims of Crime Assistance Act 1996 (Vic) Consultation Paper August 2017

The Centre for Excellence in Child and Family Welfare ('the Centre') is the peak body for child and family services in Victoria. For over 100 years we have advocated for the rights of children and young people to be heard, to be safe, to access education and to remain connected to family, community and culture. We represent over 150 community service organisations, students and individuals throughout Victoria working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care.

The Centre welcomes the opportunity to contribute to the Victorian Law Reform Commission's (VLRC) review of the *Victims of Crime Assistance Act 1996* (the Act), and supports reforms aimed at removing the barriers to financial assistance for victims of family violence and abuse, currently available to victims of other forms of violence. The Centre acknowledges the work of the Commission in highlighting the many shortfalls of the Act which prevent access to state-funded financial assistance for most family violence victims, as set out in the VLRC's consultation papers:

- *Family Violence and the Victims of Crime Assistance Act 1996 Consultation Paper June 2017*
- *Review of the Victims of Crime Assistance Act 1996 Supplementary Consultation Paper August 2017*

('VLRC Consultation Papers').

1. Children

The Centre believes that there is a great need for financial assistance for child victims of violence and crime in Victoria. These needs are both immediate, following the violent incident, and ongoing. Examples of immediate needs are where children must move to live with relatives following the homicide of a parent, thus immediately requiring a bigger car, or house to accommodate the children. Similarly, where property such as a house or car has been damaged as a result of the crime or violent incident, it may need immediate replacement to provide care for the children. In terms of ongoing needs, trauma can affect many areas of a child's physical and emotional development. These effects can be long standing, requiring ongoing medical, psychological and counselling assistance to assist the child victim to cope with the trauma they experienced. These needs are not time limited and may reoccur into adulthood.

It is the Centre's understanding that the current the Victims of Crime Assistance Tribunal scheme ('VOCAT') does not allow for these children's needs to be met, nor does any other scheme in Victoria, apart from the very limited services provided by VAP, brokered through AMF. The Centre submits that urgent changes are required in Victoria to address these needs, whether through the

alteration of the current VOCAT scheme, or the introduction of a new victim assistance scheme. Any such scheme needs to be child focussed, victim focused and trauma informed.

In preparing our submission the Centre consulted with its member organisation, the Alannah and Madeline Foundation ('AMF'). The Centre understands that AMF is currently the only organisation that provides assistance to child victims of crime in Victoria, through Victim Assistance Program (VAP) and is making its own submission to the VLRC.

2. VOCAT and Family Violence

We know from our members that a large proportion of children and families assisted by community service organisations have direct experience of family violence. Many of these children and families are currently excluded from seeking assistance from VOCAT. The Act does not allow for the provision of state-funded financial assistance to most family violence victims for a variety of reasons, as set out in the VLRC Consultation Papers. Some of these issues are addressed below.

Eligibility

As identified in the VLRC Consultation Papers, eligibility is a significant issue facing victims of family violence. The Centre understands there are several eligibility issues, including victim categories, the definitions of 'act of violence' and 'injury', and the causation requirement.

Eligibility: Victim Categories

In terms of victim categories, the Centre agrees that the current distinction between primary, secondary and related victims does not reflect all victims' experience of violent crimes or their needs. The Centre is particularly concerned that it excludes children who hear, witness or are otherwise exposed to violence from claiming assistance.

It is well established that children who are exposed to violence, including family violence, can suffer serious psychological and developmental trauma and consequences. Further, it is not necessary for victims to be the direct subject of violence for the exposure to have detrimental effects. Other types of exposure to violence such as hearing and witnessing violence can be equally as damaging. In addition, it is well established that the cumulative effect of exposure to many instances of less serious acts of violence or abuse, can be just as damaging as a 'one off' exposure to an extreme act of violence or abuse, particularly for children and young people.

The Centre submits that the Act needs to be amended to specifically address the use of victim categories, to ensure that all victims of domestic violence in its many forms and with its wide ranging impacts, are recognised.

Eligibility: 'Act of violence' and 'injury' ; Causation requirement

As outlined in the VLRC Consultation Papers, the current definitions of 'act of violence' and 'injury' do not recognise the significant harm caused by exposure to many types of family violence or abuse. Family violence includes any violent, threatening, coercive or controlling behaviour that occurs in current or past family, domestic or intimate relationships. This may include economic, emotional or psychological abuse.

It has also been established that victims of violence and abuse experience trauma in different ways and at different intervals of time from when the violence occurred. The definition of 'injury and the causation requirements under the Act do not allow for this, thereby excluding access to awards by victims of family violence and child abuse.

The Centre believes the Act needs to be amended to recognise the current understandings of violence, abuse, trauma and their effects, in the context of family violence and child abuse.

Assistance available under the Act

The VLRC Consultation Papers highlight some significant issues with respect to the amounts and types of assistance currently offered, and how awards are calculated. The Centre supports amendments to the Act to ensure the assistance provided is more equitable and reflects the needs of children and victims of family violence. In particular, the term 'related acts' needs to be redefined, to prevent disadvantage to victims of family violence and child abuse in accessing financial awards.

In addition, awards under the Act should recognise the cumulative harm caused by repeated acts of abuse, and that the traumatic impact of violence can often be ongoing and long-term. It is proposed that a new category of award be established to recognise the unique pattern of repeated abuse and multiple acts of violence featured in most cases of family violence. These categories of award should be recognised as warranting the highest levels of assistance. Consideration should also be given to recognising acts of violence other than physical, for example psychological abuse through the killing of pets, or the destruction of family homes through fire.

Time limits for making an application to Victims of Crime Assistance Tribunal (VOCAT)

The Victorian Royal Commission into Family Violence specifically identified the time limit in making an application to VOCAT as a potential barrier for victims of family violence. As discussed in the VLRC Consultation Papers, it is now known that victims of violence and abuse can take many years to report the abuse, with some victims of child sexual abuse taking decades to disclose the abuse. The Royal Commission into Institutional Responses to Child Sexual Abuse identified many barriers for child victims of abuse to report their abuse. These can be feelings of shame, embarrassment, guilt, fear, humiliation and disgust. Further, young children may not be capable of understanding the abuse is wrong and should be reported. Children may not have the skills to communicate the abuse. Perpetrators may play on these emotions and factors to inhibit children from reporting abuse at the time that it is occurring.¹

The Centre is concerned that the VOCAT time limits prevent child victims of violence and abuse accessing assistance. Reforms should remove this barrier, and in so doing should reflect that victims should not have to rely on statutory *exceptions* to time limits to access awards. That is, exceptions to time limits should not need to be relied upon to address inadequacies of time limits. This change would be consistent with the reforms to Victorian civil litigation in 2015, which completely removed the limitation periods that apply to civil actions founded upon child abuse, with both retrospective and prospective effect, together with the removal of the 12-year long-stop limitation period for wrongful death actions in relation to child abuse brought by dependants of a deceased victim.

¹ The Hon. Justice Peter McClellan AM, Chair, Royal Commission into Institutional Responses to Child Sexual Abuse, Australia and New Zealand Association of Psychotherapy Conference, 30 September 2017

Making a VOCAT award to victims of crime

As outlined in the VLRC Consultation Papers, sections 52 and 54 of the Act present some significant and inherent difficulties for victims of family violence and abuse from accessing assistance.

The reporting and cooperation requirements of section 52, and character and behaviour consideration of section 54 must be reviewed and amended to allow family violence victims access to assistance without these unrealistic and onerous barriers. Such amendments may include broadening the pool of professionals from whom reports are accepted as evidence of the violence or abuse, such as from medical and allied health practitioners, social workers, psychologists and support services. At the same time, current reporting requirements should be eased or removed.

Where those charged with administering the assistance scheme, whether by tribunal or other means, have discretionary decision making powers and are bound to consider certain factors, they should be trained in family violence and child abuse, and the inherent issues of these particular types of violence and abuse. If applications are to be heard by VOCAT, the Centre supports the creation of a specialist family violence and child abuse stream of VOCAT, with specialist members and registry staff trained in family violence and child abuse. Similarly, if an administrative scheme were to be established, it should be staffed by practitioners specialising in family violence and child abuse practice.

Review, variation and refund of awards by VOCAT

The Centre supports changes to the Act that will expedite the making of claims, and provide a scheme that is realistic in its provision of assistance. This includes reflecting the need for flexibility in the type of assistance, and assistance to address both urgent, immediate needs, as well as long term ongoing assistance such as counselling.

Timeliness of awards made by VOCAT

The Centre supports changes to the scheme that will make it easier for victims of violence and abuse to access assistance. It is apparent from the VLRC Consultation Papers that only a very small proportion of those entitled to awards currently make applications, and that only low amounts of awards are made. The Centre supports a system where all victims of violence in Victoria can access assistance in a timely manner, and without the heavy burden of procedural delays and legal costs impeding their application.

Further, the Centre is aware that often victims of family violence require urgent financial assistance to address immediate safety concerns, and to reduce the traumatic impact of the violence. The Centre would encourage a system where funds could be accessed quickly in urgent circumstances.

VOCAT hearing and evidentiary processes

As outlined in the VLRC Consultation Papers the perpetrator notification provisions in the Act give rise to significant issues of victim safety. These are of particular concern for victims of family violence, and would most certainly deter many victims from accessing assistance. On this basis the Centre would support removing perpetrator notification requirements for family violence matters and all matters involving child applicants, unless exceptional circumstances apply.

Further, the Centre is concerned that in the current system applicants are re-traumatised by having to recount details of their experiences of violence and abuse, and having to endure the scrutiny of those accounts by VOCAT members. The Centre supports a shift towards a scheme that is victim focussed and uses a trauma informed approach. It is contended that this could be achieved through the creation of a specialised family violence and child abuse stream, consisting of decision makers who have been specifically trained in these areas.

The Centre also supports reforms aimed at making the current system more transparent and consistent.

Awareness and accessibility of VOCAT

The Centre supports changes to make the assistance scheme more accessible to victims of violence and abuse. Changes that reduce the adversarial and legalistic nature of the system are supported by the Centre, such as creating an administrative scheme which is embedded as part of the victim support system (as opposed to the criminal justice system). It is proposed that a dual system offering the choice of a hearing for victims who desire the opportunity to tell their story publically, or in private hearing, together with an administrative scheme. The Centre understands such a system must provide procedural fairness for all parties. Further, the scheme must provide assistance to applicants to enable them to put their best case forward when applying for assistance, and should be staffed by decision makers and support staff who are trained in using a victim focused and trauma informed approach. A scheme that works as part of the broader victim support system should be considered.

VOCAT – beyond financial assistance

The Centre applauds the work of the VLRC in reviewing the Act, and the VLRC Consultation Papers' discussions of the current inadequacies of the Act in recognising family violence '*or to conceive of family violence itself as an act of violence*'. The Centre agrees that this remains one of the fundamental challenges of the Act.

The Centre agrees that the operation of a scheme to recognise and compensate victims of family violence and abuse is needed in Victoria, not only to assist this specific class of victims but also to '*make a statement to the community about the unacceptability of family violence*' as stated in the VLRC Consultation Papers. Opening the assistance scheme to victims of family violence and child abuse will help recognise a victim's experience as traumatic, and as worthy of compensation as victims of other crimes currently provided for under the Act.

The Centre would like to see a scheme that provides a therapeutic process for victims of violence and abuse. This might be in the form of an acknowledgement of the harm done to the victim. This is especially important where a criminal conviction has not been obtained. There are many reasons why this might happen, such as a lack of evidence to meet the high threshold of 'beyond reasonable doubt' standard of proof, or the passage of time in matters of historical child abuse so the perpetrator or witnesses have died. The Royal Commission into Institutional Responses to Child Sexual Abuse found that a direct personal response is important to survivors of sexual abuse, and is recommended by it as part of a redress scheme for survivors of abuse.² In addition the Royal

² Royal Commission into Institutional Responses to Child Sexual, Redress and Civil Litigation Report p 136

Commission into Institutional Responses to Child Sexual Abuse recommends the provision of counselling and psychological care for victims of abuse through a redress scheme.³ The Centre would support their inclusion in a reformed victim compensation scheme in Victoria.

Options for Broader Reform

Whether the current tribunal system is reformed or replaced by an administrative model, the Centre would like to see a system that promotes straightforward access for victims of family violence and child abuse, and that reflects the current understandings of the nature and impact of family violence and child abuse.

It is hoped that in so doing the assistance scheme will be seen as assisting not just those traditionally considered as victims of violence, but also some of the most vulnerable victims in the Victorian community.

3. Redress

The Centre takes this opportunity to raise the issue of redress for child survivors of abuse in an institutional setting.

The Victorian Government's 2013 Betrayal of Trust report on the parliamentary inquiry into the handling of child abuse allegations within religious and other non-government organisations recommended that the Government consider creating another way for survivors of institutional child abuse to bring claims of abuse against institutions, instead of requiring them to bring their claims to court. The Government undertook a consultation process about a Victorian redress scheme in 2015, to which the Centre made a submission. However at this stage it is unknown whether such a redress scheme will be introduced in Victoria.

In November 2016, the Federal Minister for Social Services announced that the Commonwealth Government intends to establish a national redress scheme in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. While the enabling legislation is yet to be enacted, it seems that this redress scheme will be very limited, only available to survivors of child sexual abuse in Commonwealth institutional settings. Further, the Federal Government is yet to achieve the participation of all institutions such as churches and charities in the redress scheme.

The Centre believes there is a real need for a redress scheme for survivors of all types of child abuse. It may be that reforming VOCAT, or establishing a new administrative scheme for assisting victims of family violence and child abuse in Victoria, will provide an opportunity to encompass a redress scheme for survivors of all types of child abuse.

Thank you for the opportunity to provide this submission.

³ Ibid, p 177

Yours sincerely,

A handwritten signature in cursive script, appearing to read "D. Tsorbaris".

Deb Tsorbaris