

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

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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 categories for eligibility for victim assistance render some family members ineligible who are also directly affected by the crime, such as parents who assume the care of their adult child who has become incapacitated or severely disabled as a result of the crime. In some cases this forces the carer to cease paid work. This also applies in cases where a victim's partner's life circumstances are also directly impacted by the crime. The "secondary victim" category excludes these people. Children who have witnessed family violence over a long period of time, and been consistently traumatised are considered neither primary nor secondary victims, despite the evidence that the violence has very real impact.

2 Should the victim categories in the Act be amended? If so, what changes should be made to the Act?

The victim categories should be expanded to include those who at present are ineligible as per question 1, and include:

- Parents who become a carer of the primary victim as a result of the crime
- partners of a victim whose life circumstances have been directly impacted by the crime, and
- children who have witnessed multiple events of family violence.

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 definition excludes victims of family violence, especially where perpetrators are charged and convicted of breaches of an intervention order, not necessarily involving an act of physical violence. Although the breaches may impact significantly on the victim of the violence, they are not eligible to apply for financial assistance, even for security related or counselling expenses.

4 Should the definition of ‘act of violence’ in the Act be amended to include other offences? If so, what offences should be included?

The definition of ‘act of violence’ should be amended to include a wider range of family violence acts. In addition to physical forms of violence, the definition should include other forms of violence, as designated in the definition contained in the Family Violence Protection Act, 2008, such as stalking and home invasions where someone was present.

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?

The requirement to prove an injury can be a cumbersome and re-traumatising process for victims of crimes such as sexual assault. The failure of the criminal justice system to produce an outcome for victims of sexual assault can add to their injury, and the requirement to produce evidence of a psychological injury can work against a victim’s recovery from the crime. In our experience psychological injury as a result of an act of violence should be assumed, rather than needing to be proven, especially when the police investigation results in charges being laid, but not necessarily a conviction. Some crimes can be particularly injurious to victims, such as burglaries in their homes when they were present but asleep, and may result in a psychological injury. Prolonged periods of emotional, psychological and other abuse in the context of a relationship can cause significant psychological injury. The requirement to prove psychological injury could act as a disincentive to victims considering applying for assistance.

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?

Psychological harm over an extended time period, especially for children who have witnessed family violence 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 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?

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 of assistance available to those who are severely and profoundly injured during the act of violence are inadequate. While VOCAT is not intended to fully compensate victims for the effects of the crime, a limit of \$70,000 where victims have significant and life changing injuries does little to assist these victims. The maximum amounts have changed little since the Legislation was enacted and are not reflective of the costs potentially incurred by victims of crime.

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 concept of a pool of assistance for related victims should be removed. The pool of \$100,000 is inadequate, particularly when funeral and counselling expenses are deducted, and means that for large families, the individual assistance given can be minimal. If there are eligible children aged under 18 years of age (in a lot of cases where a parent is the primary victim of the crime), financial assistance put aside in trust for the children in the future should be separately awarded . In addition, financial assistance should be awarded to the surviving parent to assist with supporting the children. This is particularly true where the parent who died was the sole provider. Amounts payable for funeral expenses should reflect the differing cultural requirements for funerals, and thus may need to be increased accordingly. Where those cultural requirements include the provision of food to those attending, this should be claimable, as the cost of a funeral can place an added burden on those with limited resources during one of the most difficult times of their life. By way of example, young adult children, with very limited income, whose mother was a victim of homicide recently organized her funeral, and had to meet these cultural requirements. Another example is where cultural requirements demand a family member travel with a body being repatriated.

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?

Funeral expenses should be kept separate from the available pool of assistance. Having deducted funeral expenses and counselling for one or more family members, the remaining pool to be divided among several family members can be very small. In addition, the amount should be increased to more adequately reflect the real cost of funeral expenses incurred.

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?

The amounts available to victims are inadequate, particularly the category of Special Financial Assistance, for victims who have “suffered a significant adverse effect as a result of a crime being committed against them”, being “payment to a victim on behalf of the community in recognition of the harm suffered by the victim as a direct result of a violent crime”. Most victims suffer an adverse affect as a result of the crime, either emotional or physical. The amounts available, especially the amount of \$130 - \$650 for a Category D

offence, is a very small sum considering the process the victim has to undergo, such as consultation with a lawyer and accessing a psychologist to prove a psychological injury. In addition the long wait to receive this assistance, may negate the effect of “recognition of the harm suffered”. The amounts of \$4667 - \$10,000 for cases of attempted murder or rape do not adequately reflect the seriousness of the crime against the person, and should be increased.

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?

It is appropriate for certain expenses to be reasonable, and reflective of the nature of the crime. However, clients experience diverse reactions to crimes, and it is important to ensure assessments of what is ‘reasonable’ take into account an individual’s situation. A crime that may be considered by others to be ‘minor’ may, depending on a person’s vulnerability or history of previous trauma, require a greater number of counselling sessions.

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?

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?

The provision of interim awards has not reflected the nature of these requests in terms of timeliness for many years. In the past Victim Support Workers could approach VOCAT Registrars and make an application for an interim award, which was approved within days. This is no longer possible, and applications for interim awards for urgent expenses such as relocation or dental treatment can

take months to be approved. In the past there was a provision in the Act for Registrars to approve amounts of up to \$5000 without oversight by the Magistrate, especially for costs such as counselling expenses. Current practice suggests that every application for an interim award needs to be determined by a Magistrate, and calls to the Registrar to ascertain the progress of an application are often met with the response “the application is with the Magistrate awaiting their consideration”. In one recent instance this response was the same over several months. If victims were to have interim awards approved in a timely manner this could hasten their recovery and maybe render further assistance or counselling unnecessary. An example is a young woman who was a victim of sexual assault waiting for several months to have her application for counselling expenses approved, despite the accused being found guilty of the offence. Her mental health deteriorated, resulting in her deferring her tertiary studies. A timely approval of the request for an interim award for counselling expenses may have prevented this.

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?

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?

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

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?

<p>The adequacy of amounts of special financial assistance available</p> <p>22 Should the amounts of special financial assistance in the Act be increased? If so, what should the amounts be?</p>
<p>Treatment of ‘related criminal acts’</p> <p>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?</p>
<p>24 Should the Act be amended to give victims an opportunity to object if claims are to be treated as ‘related’?</p>
<p>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?</p>
<p>Chapter 7 Time limits for making an application</p>
<p>Is the time limit a barrier for victims of crime?</p>
<p>Increasing the application time limit</p> <p>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?</p>
<p>Removing the 2 year time limit would assist more vulnerable victims to make an application, who otherwise may think they are ineligible. Lawyers are able to request out of time applications when there are genuine reasons for the delay, such as recovering from injury, or when the victim was a child at the time of the crime. Anecdotal evidence suggests some victims don’t bother applying when</p>

they realise the two years have expired, especially if they have been previously unaware of their eligibility.

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?

Time limits are not appropriate where a child is the victim of crime. The evidence of the Royal Commission into Institutional Responses to Child Sexual Abuse found that victims of childhood sexual assault take an average of 30 years to disclose the crime, and even then could still be reluctant to report.

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?

Factors such as cognitive impairment, history of substantial mental health issues, recovery periods from serious injury and age of the victim should be taken into consideration when determining whether to hear an application out of time.

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?

The Western Region Victims Assistance Program at cohealth (formerly Western Region Health Centre) has provided case management support to victims of violent crime since 2006. In our experience, victims of family violence and sexual assault crimes are often reluctant to report these crimes to police, although they may seek support in relation to the crimes. An acknowledgement of the difficulty in reporting this type of crime is appropriate to consider. Provision should be available when victims are fearful of reporting, but have sought assistance from other professionals, such as a sexual assault service or a medical practitioner.

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?

In crimes of sexual assault and family violence where victims are reluctant to provide reasonable assistance to police due to fear of repercussions. This requirement prevents making an application for financial assistance, and should be removed. An example is when a client reported to police, but was advised that a former partner (not the perpetrator) was to be questioned in relation to the historical sexual assault. The victim was reluctant for this to occur, and made a statement of no complaint. As a result she was advised by the VOCAT lawyer that she was ineligible to apply for financial assistance.

Specifying additional factors for consideration in determining reasonable assistance

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

These requirements could, and have, prevented victims from seeking VOCAT assistance, with possible financial and emotional impacts on their recovery from the act of violence. There is an onus on victims to be a "perfect" or "ideal" victim, and police interpretation of reasonable assistance can be influenced by their perceptions of victims.

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?

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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?

Section 54 provisions can have an adverse effect on victims where they have been unfairly denied assistance. This could be as a result of past offending behaviour, which may have occurred a long time ago, and not be relevant to the current crime in which they were a victim. While we acknowledge that care should be taken to ensure those involved in habitual criminal behaviour do not benefit from a crime, assistance must be able to be provided for victims where previous criminal behaviour is unrelated to the current crime.

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?

Provocation which is not an act of violence should not be a relevant factor in the consideration of awards, particularly in instances when the act of violence was disproportionate to the act of “provocation”. Example: a victim suffered a serious head injury as a result of being hit on the head with a baseball bat, and was deemed to have provoked the act of violence as the victim had pushed a tip jar off a counter which he then walked behind in a bar. This victim was significantly disadvantaged, as he had been unable to work due to a brain haemorrhage as a result of the crime, and was deemed ineligible for financial assistance

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?

The six year time period for variation of the award should be extended where the victim is a child, as it may not be obvious at the time of the crime what their future needs will be, especially in relation to counselling.

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?

Awards already made should not have to be returned, particularly in the case of related victims of homicide where a victim has a claim under TAC or Worksafe. The amount awarded by VOCAT is quite small, especially when divided between a number of applicants. As the purpose of VOCAT in these matters is "a symbolic expression by the State of the community's sympathy, condolence for, and recognition of, significant adverse effects experienced or suffered by victims of crime" it has a different purpose than payments made by other agencies, even those payments with a "pain and suffering" component.

41 When might victims seek review of a VOCAT award? Are there any barriers to seeking review of an award? If so, how should these barriers be addressed?

By the time victims receive a VOCAT award, they have often started to move on, and/or recover from the crime, especially where the crime has been determined

to be at the lower end of the spectrum. The time factor is probably the most significant barrier to seeking a review of the award.

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?

For an award to be of any value it needs to be timely, particularly to meet a victim's out of pocket expenses as a result of the crime, or urgent needs such as relocation expenses, loss of earnings, and other things sought through requests for an Interim Award. This also applies to counselling costs. The lengthy delays currently experienced by victims render the sections of the Act with regard to "speedy determinations" a misnomer, and can hinder victims' recovery. It is difficult to know what difference a Practice Direction would make in the current regime.

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?

Unless some administrative processes were changed it is questionable what difference specialist streams would make to expedite the resolution of claims.

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?

In general, an administrative model should be adopted. Exceptions would be cases where a victim identifies they would benefit from being present at a judicial hearing, perhaps for the awarding of special Financial Assistance, or where a victim feels the need for the impact of the crime to be acknowledged by the court on behalf of the community. An administrative model would be more likely to provide a timely response to victims, and avoid the issue of VOCAT files awaiting approval from a Magistrate for long periods of time. The Queensland model allows for urgent, immediate and "reasonable" expenses to be paid using a grant of up to \$6,000, with applications being assessed, and expenses paid for, as soon as possible. This requires evidence of urgent and immediate expenses (e.g. medical treatment plans, receipts, invoices and quotes), loss of

earnings information such as payslips and medical certificates. This is a much more straightforward timely process for victims. Should assistance be available more quickly, the likelihood of victims retaining receipts, or being able to access information from their employer would be enhanced. An example is a victim who is unable to include loss of earnings payments in her claim, as she has changed employers and seeking the relevant information from her former employer added an unnecessary challenge to lodging her claim.

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?

There could be some benefits to victims should magistrates be enabled to make interim VOCAT awards at the same time as hearing other matters. However given the lack of timeliness of the justice process, the situation may not be improved at all.

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?

Victim Support Workers at Victim Assistance Programs (VAP), especially those who hold relevant qualifications, should be approved to supply reports, based on their interaction with and assessment of the victim.

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?

Perpetrators should only be notified and have a right to appear where there may be some doubt that a crime has been committed, the police have not seen fit to charge the offender, and there is a need to hear from the alleged perpetrator for the purposes of clarification. Perpetrators do not seem to be called to, or notified of hearings on a regular basis, and given the tendency of VOCAT to withhold

determinations in many cases until the criminal justice process is finalised it could be assumed this is not necessary. There are instances where it would be a threat to victims' safety for the perpetrator of the crime to be present.

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?

cohealth strongly supports the inclusion in the Act of a guiding principle to protect victims from undue trauma, intimidation or distress during VOCAT hearings. This would ensure that, in the event a perpetrator needs to be called, they should be prevented from having contact with the victim, either through the use of video link for giving evidence, or hearing from the parties on a different day. Consideration should also be given to situations where there is conflict amongst applicants for a share of the related victim allocation, and all parties are required to be present. Due to the heightened emotions surrounding the crime, forcing people together can re-traumatise victims.

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?

Victims learn about the availability of VOCAT through: a) Being informed about eligibility by a Victim Support Worker, either through the Victims Support Agency (VSA) Helpline, or Victims Assistance Program. b) Provision of information by members of Victoria Police. However, this information is not always accurate, and police regularly distribute business cards for particular lawyers. c) Using the internet to search under "Victims of crime". However, this term has been appropriated by a currently deregistered "Psychologist", which may divert victims to their website and associated legal practices. Victims also learn about VOCAT from agencies such as Witness Assistance Service, Magistrates or Court staff and other agencies, such as family violence and sexual assault services, and Community Legal Centres. Victims should be informed of their eligibility for assistance at the time of reporting the crime, and advised to call the VSA Helpline for further information.

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?

As victim support services already manage a significant brokerage fund on behalf of the Department of Justice, and are responsible for assessing and responding to victims immediate needs, it could be an option to integrate the state funded financial assistance with this support. Currently funding is provided to lawyers to assist victims to make an application. Were this spending to be made available to VAPs to assist to meet victims immediate support needs, a lot of time could be saved, further trauma avoided and victims needs responded to in a timely manner. Legal assistance would still be required in complex situations, and perhaps to apply for Special Financial Assistance (SFA), however, if the funds for SFA in less complex matters were to be managed

elsewhere, Magistrates' workload could be reduced considerably, and more importantly victims' needs could be responded to in a timely manner.

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?

The VOCAT system can be navigated by some victims without the assistance of lawyers. However, most victims require a consultation with a legal representative to prepare a statement of claim as victims are not aware of what assistance they can claim, or the documentation required to support this claim. If victims were able to make a claim directly to a person who could assist them at the same time as assessing the claim, this would save time for the victim and a lot of work for VOCAT magistrates.

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?

The removal of reliance on lawyers through the use of an administrative process, particularly when victims support services are involved, could simplify the process for all victims of crime. Victims Support Workers already use interpreters when providing information and support, and include this information as a component of the suite of services offered. Assessments are made with regard to victims' needs for small amounts of brokerage, so expanding this for larger amounts to meet victims' immediate needs would not be difficult, and could provide victims with a seamless service.

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?

Victims of crime require their immediate needs for financial assistance to be responded to in a timely manner, without having to consult a lawyer, re-tell their story, or prove psychological injury, which could be assumed for the majority of violent crimes. Victims should not have to attend a psychologist to apply for a reasonable number of counselling sessions; wait an inordinate time for assistance; to relocate because of the crime; have dental treatment for injuries

resulting from the crime; or make themselves and their families safe following an aggravated burglary. They should not be disadvantaged to the point of becoming homeless due to the crime, by virtue of being unable to work and pay their rent or mortgage repayments. State funded financial assistance should be responsive so as to assist immediately in these circumstances. Research shows that where victims' practical needs are met they recover psychologically with sometimes little need for counselling. Victims' practical needs should be met in a timely manner requiring minimal administrative and other hoops to jump through, potentially hastening their recovery. Having a central point through which to apply for assistance, where decisions are made quickly, and are not dependent on magistrates having time in their busy work days to review applications would streamline the process, and potentially minimise victims' need for formal acknowledgement through the judicial process.

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?

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?

The focus of the Act should be on supporting victims of crime, and recovery would be maximised by the provision of appropriate and timely support. Assistance to meet immediate needs of victims would be supportive, and assist recovery.

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?

Those currently not recognised as victims who are significantly affected by crimes are: 1. Children who have witnessed prolonged periods of family violence 2. Parents of young adult children who are significantly injured as a result of crime and return to the care of their parents to recover or for permanent support. 3. Partners of those who have been seriously and permanently

injured as a result of a crime, and take on the role of carer as a result, especially where the victim has been the primary earner. 4. Victims of family violence over a prolonged period when there has been no reported physical violence. 5.

Victims of breach of family violence intervention orders, where the psychological injury is significant and the victim continues to live in fear.

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 it would be more appropriate for this assistance to be re-classified, as it may be clearer to victims what the purpose of the payment is.

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?

We are not aware how often offenders are actually pursued for financial compensation for the victim, even in cases where offenders are known to have assets. It would not be surprising if victims were reluctant to pursue this, even if it were available, as they already fear repercussions from offenders, especially when the offender is known to them.

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?

An across the board levy against offenders could be imposed, but only if it was contributed to by offenders as part of a general pool, rather than awarded directly to the person harmed by the crime. Fines imposed by magistrates could be paid into a fund, but it would be preferable if collection of these funds did not

have any connection to the payment of financial assistance to victims, but was rather a revenue raising measure to supplement the pool of funds available to victims.

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?

The current scheme does not meet the objectives specified in its current form, and consideration should be given to implementing a different model which is more responsive to victims' needs. A more timely response would minimise trauma and maximise therapeutic effect for victims, and potentially reduce the demand for counselling expenses in some cases. An example of this was where a counsellor informed VAP they could no longer continue to provide counselling to the victim until the pain caused by the required dental treatment was attended to, as the victim's level of pain was hindering the therapeutic process, some months after the crime. Should this dental treatment have been funded in a timely way, the number of counselling sessions required may have been reduced.

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

The use of lawyers and the requirement for written reports to approve even minimal amounts of counselling is not an efficient way to manage support for victims.

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?

State funded financial assistance provided as a component of victim support case management would be a more efficient way to deliver financial assistance to victims. This could be delivered as a component of the support provided, and would negate the need for lawyer involvement in many instances, and the cost of reimbursing psychologists for reports to justify the provision of even the most basic financial assistance.

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?

For related victims a judicial or independent decision maker would be required as related victims are often being supported across a number of VAPs, depending on their geographical locations, and it would be outside of the realm of the provision of support to make decisions about the distribution of the “pool” of funding currently available. These cases are complex and often require a judicial decision. Should the pool be removed and an amount available to individual related victims based on their relationship with the victim this would still require decisions to be made by a judicial or other decision maker. More complex matters would also need to be referred on.

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?

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

The availability of a hearing should still be an option for complex matters, or if victims are dissatisfied with an administrative decision.

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?