



DAREBIN COMMUNITY LEGAL SERVICE INC.

Submission to Victorian Law Reform Commission:
Review of the *Victims of Crime Assistance Act 1996 (Vic)*

Submission of Darebin Community Legal Centre

31 October 2017

Darebin Community Legal Centre

Darebin Community Legal Centre (DCLC) welcomes the review of the *Victims of Crime Assistance Act 1996* (Vic) (“the Act”) and the opportunity to provide submissions in relation to the reform. DCLC thanks the Victorian Law Reform Commission for undertaking consultation in relation to the review.

DCLC has assisted clients with Victims of Crime Assistance Tribunal (“VOCAT”) applications for over 10 years and has worked with a range of clients, including many victims of gendered violence from diverse backgrounds. DCLC runs a specialist family violence service, including a duty lawyer service in the specialist Family Violence Intervention Order List at Heidelberg Magistrates Court. A significant number of our VOCAT clients first come into contact with our centre through this specialist court list.

Preamble

We use the word ‘victim’ in this submission to reflect the language of the Act, whilst also recognising the strength and resilience of people who have experienced violence.

In our experience the most straight-forward and more successful applications for assistance under the Act are ones where random acts of violence are committed in a public context, generally by a stranger. The presumption underlying the Act and the framework and practices of VOCAT is that violence and harm in the community occurs within this context, whereas statistics indicate quite starkly that most acts of violence occur within contexts where the victim and perpetrator are known to each other.

One-off random crime, occurring in the community and in isolation, perpetrated by a stranger is experienced predominately by men. Women are the overwhelming victims of family and/or sexual violence, which often involves private, targeted, ongoing patterns of behaviour occurring in the context of a domestic relationship.

This submission seeks to highlight the inadequacy of the Act in addressing family violence, and, in particular, in recognising and addressing the complexities of sustained violence, imbalances of power, the nature of gendered violence, and cultural and emotional issues present in family relationships. We also argue that Act’s very narrow definitions of ‘acts of

violence' and 'injury' are such that it cannot appropriately recognise the cumulative harm caused to victims by family violence.

Overall, our experience is that victims of family violence feel undermined, marginalised and further victimised by the VOCAT process. This submission will summarise recommendations to make the process more empowering for family violence victims and to recognise the cumulative harm caused to victims of family violence. It will then address relevant terms of reference individually.

Recommendations

1. It is recommended that 'family violence' be a defined, specific 'act of violence' that can be relied upon to make a VOCAT application. It is suggested that the definition be modelled on the definition in the *Family Violence Protection Act 2008* and expanded to include further behaviours such as forced marriage as per the recommendations of the Royal Commission into Family Violence (Victoria) ("Royal Commission"). This will act to acknowledge that family violence is a specific form of violence that can cause cumulative harm to victims.
2. It is recommended that the Application Form be amended to remove the requirements to list a specific date, time and location of the act of violence. It is recommended that more space for police reporting be included.
3. It is recommended that the prescription amount for Special Financial Assistance in the regulations be amended and that family violence be considered as means for uplift to category A to reflect its cumulative harm.
4. It is recommended that alleged offenders are in no circumstances notified that a person has made a VOCAT application. Alternatively, that there is a presumption against perpetrator notification in circumstances of family violence, sexual assault or any offence which involve a power imbalance between the perpetrator and the victim.

5. It is recommended that section 52 of the act is removed and that a new section is inserted which allows victims of family violence, sexual assault and offences which include a power imbalance between the perpetrator and the victim to report to persons or bodies alternative to the police, including counsellors, domestic violence support workers and other health professionals. Further in circumstances where a Family Violence Intervention Order is obtained, that substantial weight is given to this in meeting the 'balance of probabilities' threshold.
6. It is recommended that Section 54 of the act is removed. Alternatively, that having experienced family violence is an automatic exception to consideration under this section.
7. It is recommended that VOCAT is subject to prescribed time frames to respond to applications. For example, 7 days to make a finding in relation to an application for interim assistance and six weeks to make a finding on a final application once all material is filed.
8. It is recommended that the 'exceptional circumstances' requirement be removed for an award for 'items to assist recovery'. In the alternative, that the act be amended to include that offences where there is a significant power imbalance between the victim and the perpetrator, such as family violence and sexual offences, as automatically meeting the 'exceptional' threshold.
9. It is recommended that practice directions are provided to guide and inform Magistrates on alternate forms of therapy and recovery.
10. It is recommended that VOCAT are required to provide a statement of reasons which justifies their decision.

1. VOCAT eligibility test

Under the current Act you are only eligible for assistance from VOCAT if you are the victim of an 'act of violence'. This is defined, as a criminal act, which constitutes an offence against the person that is punishable by imprisonment.¹ Essentially this means that it covers some sexual offences, physical assaults, threats to commit physical assaults, stalking, armed robbery and aggravated burglary.

This narrow definition excludes behaviour that is now widely accepted to be family violence.² For example, behaviour such as financial abuse, harm to pets, controlling or demeaning behaviour or threats, which do not convey direct harm to the person (i.e. threats to harm members of their family or to publish material about them), burglary, financial abuse, emotional abuse and 'revenge porn' are not considered acts of violence. Criminal acts such as breach of an intervention order or even persistent breaches of an intervention order which do not meet the definition of stalking in section 21A of the *Crimes Act 1958* (Vic) are also not considered an 'act of violence' for the purposes of VOCAT assistance.

Further, acts of violence, which are most commonly experienced by persons from culturally and linguistically diverse backgrounds such as forced marriage or using migration or visa status as a tool of coercion, are not recognised under the Act.

This definition ignores the proliferation of research into the nature of family violence and the varied behaviour, which includes activity that is not currently recognised as 'criminal'. As put to the Royal Commission numerous times, this non-criminal behaviour can cause deep psychological harm to victims. Non-recognition by VOCAT can exacerbate this harm, as it is another process that indicates that what has happened to them is not necessarily wrong or unfair, leaving victims to feel further invalidated and isolated by the system and compound guilt felt by victims who experience family violence.

Further, they may be limited or unable to access any other support systems (such as the family violence safety package) and to exclude them from accessing VOCAT may mean that

¹ *Victims of Crime Assistance Act 1996* s 3.

² For example, behavior that is now included in the definition of family violence in the *Family Violence Protection Act 2008* (Vic).

they have no access to acknowledgement of the harm caused and assistance in recovering from the harm, through services such as counselling or no avenue to protect their safety.

Case examples

1. Our client's partner threatened to her that he would harm members of her family. Our client reported this to the police, however VOCAT would not accept her application and suggested that her family members were the 'victims' in this circumstance.
2. Our client had obtained an intervention order against the perpetrator who consistently drove past her house or had his friends drive passed her house. One day she returned home to find that her pets had been killed. Although the offender was charged with breaching the intervention order, VOCAT found that there was no act of violence for VOCAT purposes.
3. Our client obtained an intervention order to have the offender removed from her house. Following this, she returned home from work and found that all of her belongings had been stolen. Our client reported this to the police and the police used CCTV evidence and charged the offender with theft and breach of an intervention order. VOCAT refused this application on the grounds this behaviour did not constitute an 'act of violence' under the Act.
4. Our client had been the victim of ongoing family violence for a period of over 10 years. This included numerous physical and sexual assaults which were not reported to the police. The relationship ended when another family member called the police and an Intervention Order was obtained. VOCAT made an award in relation to the last act of violence which was substantiated by police evidence. However, they indicated that to consider any of the sexual offences, the police and perpetrator would need to be notified. This would involve her resuming contact with the perpetrator. We were instructed to accept the award which only acknowledged that she had been the victim of a one-off assault.

2. Quantum of awards

The current framework results in the amounts awarded by VOCAT being inconsistent with the cumulative psychological harm caused by violence in the community. This is particularly the case in relation to the cumulative harm caused by family violence. For most victims, family violence includes prolonged patterns of behavior, which escalates and de-escalates within the period of a relationship, rather than a one off incident. The effects of family violence on psychological health are complex and interrelated.³

Many common forms of family violence are not captured by the VOCAT legislation. Other types of family violence, including physical violence and threats, which convey physical violence, are captured, but are treated as lower-level offences which are assumed to cause minimal harm.

The physical and psychological impacts of family violence are often extremely severe, difficult to diagnose and may not appear directly after the act of violence. As established by the Royal Commission, the trauma of family violence can lead to

‘poor mental and physical health outcomes, an increased risk of clinical depression, anxiety disorders and post-traumatic stress disorders, loss of self-confidence and misuse of alcohol and drugs’.⁴

This trauma is often compounded by the limited amount of support services available and difficulties accessing the justice system.⁵ The Royal Commission detailed that a common condition that presents as a result of family violence is complex trauma, which involves compounded psychological conditions and manifests in different ways and at different times and is often extremely difficult to diagnose and treat.⁶

The current framework requires that the person demonstrate that a particular psychological injury is attributable to a particular incident. It requires that a person has taken the steps to seek counseling/medical treatment and that steps have been taken towards addressing the injury. In our experience, this often requires psychologists/counselors to make artificial links

³ Victoria, Royal Commission into Family Violence, Summary and Recommendations, *Report* (2016) p 17 (*‘RCFV’*)

⁴ RCFV vol 4, 65.

⁵ *Ibid.*

⁶ *Ibid* 68.

between specific incidents and psychological conditions, where the reality is often much more complex. This can negatively impact a person's recovery and take time away from the work that a counselor/psychologist is trying to do to help a person work through their trauma.

The current framework treats violence as occurring as an isolated incident, most commonly by a person unknown to the victim. The application form only provides space to list one act of violence and one statement made to the police. It requires the applicant to list the specific date, time and location of an incident. Often family violence situations involve numerous acts of violence and/or continuous police involvement. For victims navigating this system without legal representation, it is highly confusing and likely to result in the Tribunal not hearing the applicant's complete story.

Further, the act provides for 'related acts of violence' to be treated as one act of violence. The consideration for related acts, includes considerations such as the date/time of the offence, whether the perpetrator was same and 'any other common factor'.⁷ In our experience, in almost all cases where the perpetrator is the same, the Tribunal will treat the acts as related. This disproportionality impacts victims of family violence, restricting acknowledgment of the long-term harm that they have suffered by treating an experience of family violence as equal to a one-off crime.

A key misconception about VOCAT by applicants is that it aims to compensate victims, when rather it provides a small recognition payment to victims to acknowledge that they have experienced violence. This notion can be offensive to victims who are provided with a very small monetary amount, which in no way reflects the level of harm caused. It is the role of legal professionals to manage this expectation but also a responsibility of the Tribunal when making awards and marketing itself.

⁷ *Victims of Crime Assistance Act 1996* (Vic) s 4.

2.1 Special financial assistance

Special Financial Assistance (lump sum payment) amounts are prescribed by the *Victims of Crime (Special Financial Assistance) Regulations*.⁸ Most applications made in relation to family violence are often only considered category D (max \$650.00) or Category C (max \$1300.00) offences for the purposes of special financial assistance. The *Victims of Crime (Special Financial Assistance) Regulations 2008* allow an uplift if a person is the victim of 'related acts', however this is only allowed from category D to C. 'Related acts' is not considered in uplifting to any categories above C. This minimizes the experiences of women who have experienced prolonged family violence. For example, if a person has experienced family violence over a period of 20 years, including multiple physical assaults, numerous threats, which conveyed harm to her and her family and other forms of family violence she is only likely to be eligible for Category C Special Financial Assistance maximum.

Comparatively, a person who is the victim of a one off assault by a person unknown to them is eligible for the same amount of Special Financial Assistance and a person who has experienced isolated incidents of physical assault and a threat to convey physical harm by unrelated offenders would be entitled to double this amount. Further a victim of an armed robbery or aggravated burglary is automatically eligible for category B Special Financial Assistance (\$3250.00). The current framework is entirely prescriptive and leaves little discretion for the decision-maker, even in circumstances where they acknowledge that there is serious family violence and that the victim has suffered prolonged harm.

A victim of an offence involving sexual penetration is entitled to category A Special Financial Assistance. Although this could have a serious and ongoing psychological impact on the victim, this may have been a one off random assault, and to assume that the harm caused is more significant than pro-longed family violence is arbitrary. Further, sexual assault is prevalent in family violence situations, however the sensitive and intimate nature of sexual assault within the context of family violence compounds the difficulties of reporting sexual assault to the police so it may go entirely unrecognized by VOCAT.

⁸ *Victims of Crime (Special Financial Assistance Regulations) 2011* (Vic) reg 9.

3. Perpetrator notification

Under the legislation, in circumstances where an act of violence has not been reported to the police or no charges have been laid, the Tribunal will almost always set a date for a hearing and notify the perpetrator. Perpetrator notification can also occur when charges have been laid and the matter has proceeded to court but the perpetrator has been acquitted. As now widely acknowledged, crimes which involve a significant power imbalance between the offender and the victim, such as sexual assault and family violence, victims are far less likely to notify police of the violence and charges are far less likely to be laid due to the intimate, private nature of these types of offences, particularly where there has been family violence. This means that perpetrator notification is frequent in these circumstances, despite the representation on the VOCAT website that perpetrator notification is rare.⁹

In our experience, although there is a process that allows for the applicant to object to perpetrator notification, it is construed very narrowly and thus extremely difficult to overcome. In circumstances of severe family violence, where there is an Intervention Order but Victoria Police has not pursued charges, the Tribunal is reluctant to consider offender notification is a safety-risk let alone consider that this process may exacerbate the psychological harm caused to the victim. Often, this is the exact reason why the victim did not proceed with reporting the family violence to the police. Further, in some circumstances this process provides family violence perpetrators a platform to commit further family violence. In circumstances where the matter has already proceeded through trial, the victim may again have to face their abuser the in the context of a court process.

Often, making a VOCAT application is a last resort for victims, for example if they are precluded from making a compensation application under the Sentencing Act or taking civil action against the offender. This may be because there has not been a conviction, the victim's assets are tied up with the offenders or pursuing action against the offender directly is too confronting. The offender notification procedure excludes victims who are too confronted to face the offender.

⁹ Victims of Crime Assistance Tribunal, Government of Victoria, (21 September 2016) *Notifying the Offender* <<https://www.vocat.vic.gov.au/determining-application/notifying-offender>>

Our experience with the offender notification process is that as the offender is not compelled to attend, they often don't attend. However, circumstances of family violence are specifically when the offender does attend, as it is a further opportunity to cause psychological harm to the victim and make them feel unsupported and invalidated.

Many clients instruct us to withdraw their applications when the Tribunal indicates that they may notify the perpetrator. Our experience is that this often impacts the most vulnerable victims who are most in need of support and recognition.

It is recommended that there should be a presumption against perpetrator notification in circumstances where there has been family violence or sexual assault or any offence where it is arguable that there is a significant power imbalance between the parties. Further it should be presumed that in the context of family violence or sexual offences that by notifying the perpetrator, the Tribunal is creating a safety risk for victims.

4. The matters giving rise to refusal of an application except in special circumstances

Pursuant to section 52 of the Act, the Tribunal must refuse to make award of assistance if the act of violence was not reported to the police in a reasonable time or the applicant failed to provide reasonable assistance to anybody (most often the police) involved in the investigation of the act of violence, unless special circumstances can be illustrated.¹⁰ This section is raised by the Tribunal in the majority of applications regarding family violence. In our experience the Tribunal's interpretation of this section requires a victim to make a formal statement, which is clear and concise, and for the police to take steps to investigate the matter and charge the offender. As police have a large amount of discretion in responding to allegations, this can lead to inconsistent and unfair outcomes at VOCAT. In many circumstances, the police will attend as they have been contacted by the victim/family member of the victim/neighbor etc. and make their own record and do not request that the victim make a formal statement. For a person unfamiliar with the police process, calling the police and asking them to attend the scene is a significant step and they believe that the

¹⁰ *Victims of Crime Assistance Act 1996 (Vic) s 52.*

police have knowledge of their situation and thus have done all that is required. A person will often have no knowledge and there will not be communication from the police that they are required to do anything further.

This may then lead to VOCAT interpreting that they have not provided 'reasonable' assistance to the police as no charges have been laid. On the other hand, in circumstances where a victim does report a matter to the police and makes a formal statement, but where the matter is complex and difficult, for example involves a sexual offence which occurred at home in the context of a domestic/family relationship, and the police take minimal steps to proceed with the matter due to lack of evidence, a report to police can intensify the violence/behavior without any benefit to the victim.

In these circumstances, the victim may contact the police often requesting updates and may become angry/frustrated with the police for their lack of action. The police may feel frustrated with this behavior and may interpret this to mean that the victim is lying or not telling the truth.

Further where the police may feel that it will be too difficult to charge the offender (for example if he has left the country) they may encourage the victim to sign a statement of no complaint. Often the presence of a statement of no complaint may result in VOCAT raising that the applicant has not done all that they can to assist the police. This will often require substantive submissions by the applicant to overcome.

When VOCAT requests the police brief, it is open to the police to communicate their interpretation of the applicant's behavior/character to the Tribunal. The context of the legislation and the lack of understanding of family violence, means that often the Tribunal Member takes this material seriously and the applicant will then have to disprove any comments made by the police. As outlined in the Royal Commission, there remain numerous issues within the police regarding attitudes towards family violence, women, culture and sexual orientation.¹¹ When a victim already feels confused and afraid about reporting, a negative police attitude is likely to further isolate them from the system.

¹¹ RCFV, above n, 3 p 25.

Victims of family violence and sexual offences are far less likely to contact the police, than victims of random crime. This is for numerous reasons however commonly due to fear of the offender's response, the complexity of the relationship with the offender, previous history/trauma with the police, wanting to protect/shield children and cultural and/or language barriers. Further, sexual offences, particularly sexual assault within a family when the victim is a young person, are the most underreported forms of violence.¹² Victims of family violence and sexual offences often feel highly isolated and have little confidence in being able to be removed from their situation by authorities. It is extremely important that victims of these offences, when they cannot be acknowledged by the criminal justice system, are acknowledged by the state in some way and that victims are assisted by the state to recover, for their own personal wellbeing but also for the benefit of the community more generally.

In our experience, 'special circumstances' is construed extremely narrowly. Further, by using the word 'mandatory' in this section, the process for illustrating 'special circumstances' is often very drawn out and difficult for victims. It is often required that they draft a statutory declaration to the Tribunal which details the reasons why they did not report the matter to the police straight away, accompanied by legal submissions. In our experience, it is extremely rare that the Tribunal will accept this. Most often, the Tribunal will call a hearing and begin the offender notification process. It is at this stage that most often, we are instructed with withdraw applications.

In our experience, a power imbalance between a victim and a perpetrator is not considered on its own to constitute 'special circumstances', something further is required. Often, it is only when there has been a direct (not implicit) threat to the victim's safety which is then later reported to the police.

It is suggested that evidence that a victim has reported the matter to persons or bodies alternative to the police, including counsellors, domestic violence support workers and other health professionals. These professions have substantive training in relation to family violence and often provide a safe, private space for information to be disclosed. They can also offer incentives for the

¹² Ibid 24.

victim to report as they may be able to provide a service (for example counselling or support packages).

5. Procedural matters to expedite the making of an award

The current framework contains a limited time frame for victims to apply and prepare their VOCAT applications, however is entirely silent on the time frame in which VOCAT is required to make a finding regarding the application. Further there is little transparency regarding the process and why some matters proceed extremely slowly.

Although the current framework provides for an interim award process, this process is often significantly time consuming and does not recognise the urgency that family violence safety and support needs require. In our experience, the making of an interim award, even for counseling, requires that the Tribunal have viewed all police material in relation to the matter. This process often takes 6+ weeks and sometimes when we enquire with the Registrar why our interim award has not been considered, we are told that the police have not responded to their information request and they are thus restricted from making a determination.

Often the VOCAT process is the final process that a victim takes when removing themselves from a family violence situation. The delay in the VOCAT process can prolong harm and delay the recovery process.

Further there is no requirement for Tribunal Members to provide a statement which details how they reached their decision. Often a decision is in the form of a Section 33 Advice which states in abbreviated form what the Tribunal is offering with no reason why a particular item claimed has been refused. This is inconsistent with the purpose of the act in that it fails to make victims feel that the harm caused to them is acknowledged. This also makes it difficult for legal professionals to provide merits advice regarding decision reviews.

The NSW quasi-administrative model, provides detailed statement of reasons which addresses each requirement that needs to be established by the victim. Our experience is that this helps the victim feel that their harm has been acknowledged.

Submissions re supplementary terms of reference

6. Assistance to aid recovery

The current system allows victims to make a claim for ‘items to assist recovery’.¹³ This essentially allows victims to claim for items which do not fall within one of the other prescriptive categories. Under this section, we often receive instructions from clients to claim for moving costs, transport costs, gym memberships, yoga classes, other forms of alternative therapy, technology, education courses and/or holidays. To be awarded an item under this section you must prove that there are ‘exceptional circumstances’ and that the item in question will directly assist the victims recovery from the specific act of violence relied upon in the application.

Exceptional circumstances are not defined in the VOCAT act and thus it is entirely at the discretion of the presiding Tribunal Member to determine what constitutes ‘exceptional’ in the circumstances. Although case law is not binding on the Tribunal, there has been a VCAT decision, which found that as family violence is so common it couldn’t constitute ‘special circumstances’ for the purpose of failing to report to the police.¹⁴ Although this was in relation to a different section, it reflects the general attitude VOCAT has towards family violence. We lodge a large number of applications at a specialist family violence court. Our experience with this is that often Tribunal Members have been exposed to severe family violence situations and have become somewhat de-sensitised and thus the threshold for what constitutes ‘exceptional’ or ‘special’ increases significantly. When we have made applications at regional courts that see far less VOCAT applications, we found that Members have a lower threshold when making awards under this section.

As outlined above, it must also be illustrated that the item claimed would assist the applicant’s recovery from the specific act of violence claimed. Like illustrating an injury this is often an arbitrary connection to make, and fails to acknowledge the individuality of applicants. Our experiences are that decisions in this category can often be quite paternalistic and make assumptions about what would be most appropriate to assist the recovery of the victim. Resistance is still apparent in alternative forms of treatment, such as

¹³ *Victims of Crime Assistance Act 1996 (Vic)* s 8.

¹⁴ *Nichol v VOCAT* [2000] VCAT 840 [22]-[23].

yoga, acupuncture etc. with Tribunal Members refusing to accept the link between these items and recovery.

It is suggested that the 'exceptional circumstances' requirement be removed and the practice directions are provided to guide and inform Tribunal Members on alternate forms of therapy and recovery. In the alternative, that the act be amended to include that offences where there is a significant power imbalance between the victim and the perpetrator, such as family violence and sexual offences, as automatically meeting the 'exceptional' threshold.

7. Character considerations

Section 54 of the Act states that the Tribunal 'must' consider the applicant's 'character' including previous criminal history or their 'contribution' to the act of violence. We submit that this section is highly problematic and requires reform.

In our view, section 54 relies on a false dichotomy of victim and perpetrator and creates a notion of a 'perfect victim' which distinguishes victims from those who are deserving and undeserving of assistance, and by implication, therefore deserving and undeserving of harm.

'Character' and 'behaviour' in the section is not defined, however there is a negative emphasis, providing that past criminal history and 'attitude' are all matters to be taken into account. In our experience, there is sometimes a reliance on police material to form a view as to attitude, behaviour and character of the victim, and allegations that have not been proven against the victim, such as drug use, can sometimes form a basis for negatively construing a person's character.

The emphasis on past criminal history disregards a huge body of research and anecdotal evidence which very clearly links past experiences of trauma with criminalisation for both men and women.¹⁵ In particular, the links between women's criminalisation and their experiences of trauma from family and sexual violence, are well documented, with many women being criminalised in the process of fleeing violence, in the context of poverty

¹⁵ For example, the 2013 Royal Commission into Institutional Responses to Child Sexual Abuse, has heard and documented countless stories of violence experienced by imprisoned men and women

related to homelessness and financial abuse, in the context of self-defence or defence of children, and in the context of drug and alcohol use as a means to self-manage trauma and psychological injury.¹⁶

This section exacerbates the structural inequalities that cause people who experience particular marginalisations to have contact with the criminal justice system (such as poverty, race-based inequality and discrimination and mental health and cognitive disability) and does not adequately recognise the link between criminalisation and past and future experiences of violence. For example, there is a clear and documented causal link between homelessness and experience of violence, such that people experiencing violence (and in particular women and young people experiencing family violence) are often forced into homelessness due to violence in the home. People who experience homelessness are more likely to come into contact with public officials such as police simply because they are forced to be visible and to spend more time in public space. At the same time, due to lack of safe housing to retreat to, people experiencing homelessness are also more at risk of being exposed to violence on the streets.

Whilst section 54 creates a wide discretion for such matters to be taken into account, and doesn't mandatorily preclude assistance, it is incumbent on the applicant to make submissions justifying that they are deserving of recognition as a victim from the state, in addition to the threshold hurdles of proving that they were a victim of crime and suffered resultant injury. Given that the financial assistance is awarded "as a symbolic expression...of the community's sympathy and condolence"¹⁷, denying payment on character grounds and forcing a victim to justify that they are worthy of payment, reinforces stigma and marginalisation and can be re-traumatising.

This plays out in the context of family violence context, where section 54 operates as a victim-blaming mechanism to scrutinise a woman's role in causing the family violence. Making women justify their responses to violence can compound existing guilt that is often felt for having put themselves in a situation where they have had to endure violence.

¹⁶ See for eg. K Maloney et al, "Women in Prison: The Central Issue of Gender Characteristics and Trauma History" (2009) Public Health 426

¹⁷ Victims of Crime Assistance Tribunal, Government of Victoria, (28 September 2016) *Our role* <<https://www.vocat.vic.gov.au/about-tribunal/our-role>>

In our experience, section 54 is often raised by the Tribunal where allegations are made by both parties and/or family violence intervention orders which protect both parties are in place. Not only does this section require that women who experience family violence be 'perfect' victims, it also fundamentally fails to understand that responses to abuse are varied and can involve anger and frustration, retaliation or self-defence.

This section fails to acknowledge the wider power imbalances between men and women in the context of very complex domestic relationships. It also fails to acknowledge that in some circumstances family violence also includes coercing women to commit crimes, for example driving or drug-related offences.