

Submission 27 – name withheld

Submission to: the ‘Review of the Victims of Crime Assistance Act 1996’

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?

They fundamentally need to ensure that all those affected are able to access recovery supports. The current ways the victim categories are described potentially restricts various of those who are close to the primary victim from availability of recovery supports.

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

Rewrite to ensure no affected person could be excluded.

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?

Consider that ‘3.1.a occurred in Victoria’ should instead be to the effect of ‘3.1.a impacted a victim at that time in Victoria’; that is, the Victim should be in Victoria albeit the perpetrator potentially being in any other Australian (Law) jurisdiction.

*act of violence means a criminal act or a series of
related criminal acts, whether committed by
one or more persons, that has—
(a) occurred in Victoria; and
(b) directly resulted in injury or death to
one or more persons, irrespective of
where the injury or death occurs;*

is proposed to change to the effect of:

act of violence means a criminal act or a series of related criminal acts, committed by one or more persons, that when occurring—

- (a) the offender was in Australia or its territories (or is stated some other way to the effect of was in Australian Legal jurisdiction); and*
- (b) the victim was in Victoria; and*
- (c) did directly result in injury or death to one or more persons, irrespective of where the death or injury occurs;*

Rationale: the present legislation states ‘a) occurred in Victoria’, suggesting that both the victim and the offender must have been in Victoria at the time of the criminal act/s. If it is reasonable for criminal acts of violence to be perpetrated from elsewhere, then the current ‘(a) occurred in Victoria’ limitation should only be for the victim, and the offender say, within Australian legal jurisdiction. Example Use Case: offender in NSW via online means criminally traumatises/threatens/etc and causes suicide of a victim in Victoria.

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

I propose that ‘act of violence’ should also include where a perpetrator does impose (or cause to be imposed) psychological distress that causes the victim to engage in detrimental (to themselves or others) activities.

I’m not sure how it would be worded, however some Use Cases might include: bullying, domestic abuse/violence, from the victim being drugged, etc. Perhaps also following a person’s injury or death where they had been supplied and had consumed illicit narcotics that had contributed to the cause of injury or death, where despite the victim having had a hand in it, they ordinarily wouldn’t have been seeking their own death, and same wouldn’t have occurred (in the manner it did) without the criminal act of the supplier.

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?

Refer to (4) above re bullying, domestic abuse/violence etc.

The definition of ‘injury’

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

Current legislation appears either ambiguous or too restrictive insofar as “*but does not include injury arising from loss of or damage to property*”; Perhaps its meant to exclude a person considering themselves injured merely because a perpetrator damaged their property... although the current wording would also unreasonably exclude say during the committing of an act of violence, a structure is damaged and say collapses onto and injures a person; or say where an offender is abusing/intimidating/traumatising a victim via the purposeful destruction of their property/assets.

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?

As is (i.e. allowing for physical and psychological injury)

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?

As is; to my mind, one wouldn't be a vicxtim if one hadn't sustained a physical or psychological injury (and the Act isn't there merely to compensate/replace assets)

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?

s10A.1 “exceptional circumstances” should be clarified in some way to ensure that recovery support is available to a “family member” who is considered sufficiently impacted; would include removing 10A.1.c, as an arbitrary age number as it does not reasonably or suitably distinguish the extent or nature of impact to the family member that requires the recovery assistance.

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?

I don't believe the maximum amounts are adequate under 'exceptional circumstances', or that any of the primary or secondary/related victim pool maximums are sufficient... and I propose that each maximum amount be at least double or tripled to ensure a victim is supported through their recovery; This does not presume that all awards per se would be increased, however it would allow discretion that would remove discrimination towards those fewer victims of crime whose injuries require greater assistance.

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?

There is little merit in having a pool maximum for related victims, other than to discriminate against large families or complex crimes/incidents. The Act should remain true to its intended purpose regarding recovery supports and not facilitate contradictory mechanisms. Insofar as extending the assistance to related victims, I propose a bereavement award below in Categories of Award.

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

I believe the Act already provides a method for adjustment to the cost associated with funerals by way of: "15 Assistance available to person incurring funeral expenses for primary victim" and 50.b and 46.2.d and 48.2.a. ...not to say though that that method isn't flawed.

The Act does not 'compel' in 46.1 that any increases need ever occur! I proposes changes to the effect that rising costs SHOULD be reflected as appropriate in the relevant awards per 46.1, with the Governor in Council being compelled to annually review their relevant published Scale of Costs, for example against CPI... or some other such method of ensuring costs/scale remain consistent with reality.

Funeral expenses should NOT impact (i.e. should be separate from) the related victim pool.

Categories of award

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

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

I propose that the categories of award should be greatly extended, given that current categories give discriminatory prominence/preference to such things as loss of income which does apply for a significant proportion of the population, and that current categories do not adequately promote or support victims' recovery, let alone provide towards victims' regaining a pre-injury status.

Particularly, Australian society is comparatively violence-free, relying on the compact between the Government and the people, within which the people agree to give up their right to for example, bear arms for personal defence - on the understanding that the Government will provide systems to maintain order and that it will provide adequate assistance towards recovery/remedy for any person who becomes a victim of such crime.

The categories of award do need expanding... either by introducing new categories or by describing the nature of supports available such that whichever Agency that administers the Act (e.g. VoCAT or some fit-for-purpose agency) can use adequate discretion. This begs the question as to whether the Court/judicial system (VoCAT) is at all suitable to administer supports that are ostensibly of a medical/recovery nature. Frankly, VoCAT and its inherent systems, limitations and expense does not at all effectively deliver supports, irrespective of the current categories, and insofar as what should/might change, it all begs the real-terms effectiveness and ability to deliver it in the first place.

The current Act discriminates against those victims of crime who are not working and therefore not eligible for loss of earnings award... for example, those who are actively looking for work or are within the education system or whose time is spent towards the care of others. And furthermore, there is no award to support a person seeking to regain their former societal standing (such as in adequacy of education and/or employment) following their recovery from injury.

Accordingly, I propose that if a person was on a trajectory towards work (such as demonstrably looking for work or undertaking education), then they should also be supported to the same maximum amount as provided by loss of earnings award. Such an award (or alteration of of the loss of earnings award) would provide for example for registered vocational courses and course materials, and for those victims still within the education system, it would provide for remedial support (e.g. tutoring, etc) and suitable registered courses and materials. Such awards could provide support until/to where the victim would reasonably have regained the standing they would have attained on the trajectory they were on had they not sustained the injury, or say 3 years following when their health permitted commencement of such award supports.

I also propose that an award be available to assist where the victim had or would reasonably likely have had 'carer commitment' to a 'family member' (as described in 10A.3 and 10A.4.b) and can not fulfil that commitment for a period while injured. Such support service could alternatively be delivered by the same manner as carer services say TAC and/or Workcover.

I also propose a new class of award per 'family member bereavement award'. The family member bereavement award would be made available to those persons described as 'family member' in 10A.3 and 10A.4.b in relation to a primary victim who died as a direct result of an act of violence.

The purpose of this is to advocate and support social cohesion and mutual support, and to help mitigate victims' otherwise perhaps unnecessary escalation to secondary- or related- victim Applications. This manifestly supports the Act's 1.2.a (to assist victims of crime to recover...) and the social ethic we purportedly collectively advocate.

Application for the family member bereavement award would be implemented independent of the primary, secondary or related victim Application mechanism. Should a person applying for this award subsequently have their injuries determined to be to the extent appropriate for an Application as a secondary or related victim (or is a primary victim in their own right in relation to the same crime/incident albeit would be a secondary or related victim to another primary victim who died as a result of that isame crime/incident), any bereavement award already provided would be considered in any awards through such new Application in that category and pro-rotta reduce the respective class of victim pools or maximums otherwise available. Applying for this award would be required within a short period of time following the of the death of the victim from the act of violence (say, 2 months) and would include related victims requirements per 27A and also impact/change Part 4 Division 2. Similarly, the bereavement award would be available for a victim with an existant application I relation to that crime/incident, including where the primary victim's death was not immediate albeit was precipitated by the crime/incident.

The Act should, for the purposes of the family bereavement award, provide a register for such persons to personally apply to – a process which is not administered by VoCAT and thus not encumbered by the existing and onerous Application framework (which in any event can cost more to administer than it actually delivers in support to victims – i.e. no need for a solicitor needed for the Application, no delays from Tribunal scheduling, significantly less expensive to administer, etc). The register would be administered for example by Victim Support Agency (VSA) bearing in mind also that they are ordinarily the initial contact point for victims of crime.

It is anticipated that the family member bereavement award would take from its own purpose-specific pool, and as mentioned, and the victim then applies as a primary, secondary or related victim, the bereavement award would pro-rata reduce from the class of victim pool and/or related award maximums. It would for example fund counselling/psychologist sessions to say a maximum of 10 per adult and 15 per juvenile, and require a psychologist report from say every 5th session, and would award a set value of say \$500 to account for expenses of funeral attendance and interacting with other family, etc.

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?

Yes it is appropriate that such costs be 'reasonable', however it isn't reasonable that 'reasonable' is dependent on a scale maintained by the Governor in Council only "may" change and which has nothing to compel it to be consistent with actual/real costs. 'Reasonable cost' shouldn't relate in

any manner as to 'whether' the victim legitimately needs such recovery supports – and be subject to being denied appropriate recovery support..

And, taking the VLRC example of counselling services, bear in mind also that VoCAT additionally requires the counsellors/psychologists to be subject to further forms/reports/effort that again they cannot adequately recover costs for at their otherwise 'to the public' rates. It is obvious that if the better service providers have enough general public clients, that they can and do decline taking VoC Act-funded clients – unless the clients/victims pay additionally from their own pocket and therefore create a class distinction between those victims who can/can't afford recovery cost gaps!

NOTE: what particularly isn't 'reasonable' is that victims of crime within the current Act and VoCAT system are denied access to urgent and reasonable recovery support services (such as counselling), irrespective of their considered/cost, while their Application is stuck waiting on VoCAT and it's notoriously slllooooooww method and systems. And when or if a victim of crime can pay from their own pocket for more ready support in the mean time, the victim can (empirically) then wait for years and years before being reimbursed by VoCAT, if at all, and then with VoCAT able to quibble over what is 'reasonable' for those costs to have been way back when the support was needed and should have been provided for by them. And that is despite it being well known that early intervention does mitigate the effects upon victims of crime, their families and to our society as a whole. Hospitals don't make the injured wait to that extent for emergency service – let alone put it back onto the injured party that the cost of their emergency treatment may be too high, nor do other statutory bodies such as TAC or Workcover behave so crudely – so why should the Act and VoCAT be allowed, as the enabler of such recovery supports, to continue to cause such problems to the relatively small number of and therefore typically unseen/unheard victims of crime?! VoCAT needs to radically change, and to an extent that appears fundamentally incompatible with the function of the judicial system – and therefore the need for a separate body take over the administration of recovery supports...

It might be 'reasonable' to change the Act to ensure that recovery supports such as counselling and any special/exceptional circumstance' can and are made available with commensurate priority and specifically as 'interim' awards (and thus be considered with 'reasonable' costs at that time of their need), and only under special circumstances be able or forced to wait and be combined into final awards; awards such as for 'loss of income' can be made in due course (and aren't an imperritive for urgent immediate health care – i.e. the loss is for an already past period); the fact that VoCAT can delay the former to bundle with the latter, and delay for years and years, is frankly absurd and reflective of VoCAT's (lack of) suitability or fitness-for-purpose to be a health care facilitator, and particularly when their consideration of 'reasonable' costs doesn't take on board additional costs the victim would encounter waiting on VoCAT for some action on the matter (that renders as unreasonable what would have been reasonable costs if attended to expeditiously).

What might be considered part of 'reasonable costs' is that when VoCAT does not make available reasonable recovery supports in a manner that is consistent with public expectation towards particularly s32.1.c, that there is some means of oversight, and redress for the victim such as support towards additional/as a result incurred costs. Be assured though, for VoCAT there is no effective oversight or redress, and that raising any issue is done in the same manner as would a criminal to the Courts – The Court self-regulates, and then if you're not satisfied, you can then appeal to VCAT or maybe communicate the issue to the Attorney General... save that the AG can't actually expedite/etc VoCAT in relation to your particular matter (other than say, to request a review by Victorian Law Reform Commission, such as this one to address systemic issues and shortcomings in relation to Victims of Crime Assistance) ... or from some oversight or negligence from your lawyer (who have similar lack of oversight and/or redress), and your matter has to just carry on taking as long as it takes, and what happens to you while the waiting goes and your own costs compound (unreasonably), remains irrelevant to all but you/ the victim, and that's despite that

sort of systemic issue and consequence to the victim being contrary to the principles espoused in Victoria's Victims' Charter Act.

A change to the Act should be more than playing with already known-to-be systemic issues, it should be a reaffirming the whole 'recovery supports for victims of crime' objective and removing VoCAT/lawyers/etc. from the administrative function.

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?

That depends on the interpretation of 'exceptional' ... while its common use is to mean an exception or uncommon, it can and does get incorrectly perceived and used as a superlative, to indicate an extreme degree of comparison. And even so, how should 'uncommon' be interpreted? (e.g. type of claim? Frequency of such a type of claim? A particular aspect of the claim?, etc etc – all far too subjective and at risk of misinterpretation).

A more suitable term might be the adjective 'special', as in 'surpassing what is common', that 'common' are the claims/expenses the Act already/alternately provides for, and presumably (reasonably) what may have been intended all along – so long as it refers to the context of that particular claim rather than that claim in comparison to all others) ... I.e. 'special' might still allow for the same degree of discretion yet without imply the circumstance needs to be extreme ... and if that's still too much at risk of narrow or misinterpreted scope, the how about merely 'other' [circumstances].

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?

No, interim awards, or at least the method that VoCAT implements is wholly inadequate... as it remains able to be perverted by the total free reign to take as long a time to process as VoCAT wish and by the overall mechanisms of the Judicial system and the need for a special lawyer to assist in applying, etc, etc, and, having no means of expediting or redress.

To quote from my own experience in this regard, I have an initial 'interim award' requested for 'exceptional circumstances' to provide for initial and urgent recovery treatment/support, requested

by a respected clinical medical practitioner in VoCAT's prescribed report form and by the lawyers necessary for lodging such an application; yet actually receiving the funding, and therefore the actual support, has been caught up in the VoCAT process for well over two and a half years (since provision to VoCAT of said urgent medical request for interim award support) – and I'm still waiting! Actually, I've already received offer/advice that they (VoCAT) have 'allowed' the initial 'exceptional circumstances' award, but VoCAT don't seem to understand the notion of 'urgent' and have it bundled it up for inclusion into a final award/order, and the latest wait has been to get it separated out and available for the urgent medic-requested urgent support urgently required. Something in VoCAT's system/method doesn't acknowledge or enable response to the notion of 'urgent', even when presented by eminently qualified medical practitioners, so, as to how interim awards should be improved, I'd say best to remove the actual problem process for such interim awards – i.e. remove the function from VoCAT/the Judicial system and its need for months of waiting for attention and the need for lawyers and the massive expense to the public purse, etc. Reassignment of administrative responsibilities to for example VSA would resolve it, and besides, VSA are the anticipated first contact point AND referrer to potential other support services e.g. Victims Assistance Program/VAP; then again, perhaps VAP could do it, but who delivers what for victims of crime (.com.au) seems rather obfuscated, but the most suitable new/restructured agency would become apparent after at least acknowledging the core/fundamental framework of VoCAT is incompatible with delivering support and particularly medical/recovery-related support. Another example: I was once referred by a VoCAT Judicial Member to look to CISP for some recovery support during a hearing that I understood was to facilitate an interim award; that (CISP thing) came without explanation as to why/etc, and when I looked into who/what CISP was, I found it to be a service for 'criminals'! Are you kidding! The Member inexplicably referring a 'victim' of crime to a criminals service! So, while its nice to provide ideas and suggestions, the actual, real and on-the-record experiences of victims of crime endeavouring to get legitimate and legislated-for recovery supports via VoCAT and the Act in its current form, confirms why this VLRC review is so long overdue and necessary.

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?

I'd suggest that the 'special financial assistance' is such a pittance that it is an insult to victims of crime for such a \$value can be construed in any way as acknowledging and reflective of the distress and consequences they may have suffered. The Act reasonably describes it in s1.2.b as "...a symbolic expression". Furthermore, by categorising the act of violence and an award ranging from \$130, has no regard to the actual or assessed impact on the victim, and in the scheme of things, a victim's primary concern is (or at least should be) towards their recovery and mitigating any further or compounding losses or health consequences. If the Government has cash to give away, isn't it better spent towards a victim regaining their former health and standing, rather than paying a pittance token to them based on someone else's perception of what constitutes an increasingly serious crime irrespective of any disproportionate effect the crime may have had on the victim – let alone any trauma metered out by VoCAT to the victim in the processing their application. So I'd suggest that special financial assistance can be dispensed with and that the Act and whoever

awards support actually delivers that support and expeditiously, to enable suitable recovery. Or perhaps the special financial assistance might be redirected as compensation back to the victim as compensation where the victim has been subject to further taxes and imposts etc from the Government while they languish waiting and waiting and waiting for slow-to-be-delivered recovery supports where that (tax/impost/etc) wouldn't have been incurred if recovery support had been provided for as expeditiously and to the extent the legislation actually purports it should have been.

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?

Not necessarily, as it could be dispensed with in lieu of proper and timely recovery supports for the victim to at least attempt to regain their former standing. With this question relating to Special Financial Assistance, what exactly is the "assistance" given by some prescribed payment based on a type of crime/incident?! Like I suggest, the assistance can best be provided by adequate recovery support in the first instance.

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

No one, if such assistance is merely a prescribed token payment rather than an emphasis on recovery support/assistance.

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?

Again, fix the recovery support aspect before contemplating token payments.

The adequacy of amounts of special financial assistance available

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

Again, fix the recovery support aspect before contemplating token payments.

Treatment of ‘related criminal acts’

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

Yes. And the definition could start with just that, having ‘regard to the cumulative harm of long term abuse’.

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

Yes, but it wouldn’t matter if they were treated as related and collapsed into a single claim so long as the objective and priority was to provide recovery supports with the objective of the victim reasonably attaining their former standing. And this might also include keeping the (State) tax-man and other statutory costs off their back while they are recovering; i.e. as opposed to the current method of VoCAT stymieing and delaying recovery supports/awards for as long as it wants while the State is clawing potentially well in excess of that amount back out of the victim while they languish waiting.

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?

Not necessarily, the maximum should be increased and the appropriate discretion exercised in the recovery supports provided. After all, it is recovery from, rather than reward for, being a victim that should be the objective.

Chapter 7 Time limits for making an application

Is the time limit a barrier for victims of crime?

Increasing the application time limit

26 Is The Two-year Time Limit To Make An Application To VOCAT Under S29 Of The Act Still Appropriate? If Not, What Would Be An Appropriate Application Time Limit? Alternatively, Should Different Application Time Limits Apply For Different Types Of Crime?

No, 2 years is ridiculous! Maybe 10 years, and longer with good reason? Although any delay in application should require a commensurately suitable reason for such a delay. Consider that while its a legislated requirement that the Police do advise a victim of crime of VoC supports being

available to them, there is no guarantee that the Police actually will or do provide that advice (and there is no repercussion to the Police – just to the victim potentially being out of time to apply by the time they realise!). It is reasonable to have delay, e.g. a juvenile at the time of their becoming a victim may have settled into a diminished life without knowing they should have had those supports available – and their education and prospects etc would no doubt have suffered, and they could do with still being able to access the necessary supports to overcome the impact the crime/incident had caused for them. Or, a victim may have withdrawn into severe depression and post traumatic stress disorder and not have had the fortitude to even get themselves up in the morning let alone tackle the VoCAT system! Or a multitude of other very real reasons that would be considered on their merit, and which still requires adequate substantiation (such as for an application that is out of time), albeit it is unnecessary to imply that the victim and their circumstance is suddenly not worthy of any recovery support.

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?

So long as there was a suitably long application time limit and suitable scrutiny of the application circumstances in any event, then there would be no need to invent ridiculous timing boundaries, and so long as also there was commensurate regard for the victim having been a minor and the consequences that that experience has had on them during such a critical developmental period of life.

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?

S29.3 should be considered in any event towards the merit and suitability of any claim – not be specifically reserved for delayed applications... and it should need suitable medical/etc practitioner support that the victim has/is suffering detrimental health consequences, and similar for financial consequences such as for loss of earnings, or education consequences, etc etc.

Frankly, the most suitable approach would be by re-factoring the whole VSA/VoCAT support delivery method... and its consistent with my suggestion (above) regarding initial ‘interim awards’ a.k.a. get something done straight away rather than let it get worse... by enabling say VSA, VAP or some such suitable initial responder has the provision to facilitate recovery supports that would otherwise have necessitated urgent interim awards via solicitors and VoCAT.

It would be beneficial to have an Agency such as Victims Support Agency (VSA) or those running the Victims Assistance Program (VAP) or whoever that are one of the initial contact points, commence to establish the VoC claim (call it what you will), i.e. forms and processes to determine detail of the crime, the victim, AND specifically, to appoint a trained counsellor/support worker as a case manager to be responsible for coordinating the victim through the various processes of logging and potentially establishing a claim.

I propose also during that process, the victim is obliged to undertake a psychologist visit where an initial assessment is reported back from the psychologist, and that the victim is automatically entitled to up to a further 5 counselling or psychologist sessions, and a further report is provided after the last of those; that latter report, or a report from any of the preceding sessions, along with any other necessary supporting information (medical, education, security, etc, etc) could then be assessed to provide early intervention for what would presently require the arduous, time consuming and delaying VoCAT interim award application (actually a full application followed by seeking an interim award for the specific urgent thing needed). By the time the 6 sessions had concluded and other circumstances/support-needs data was available, there should be well-established understanding of the veracity of the application/claim or what similar immediate supports might be needed to establish such understanding... and particularly, the victim would have been and would have felt supported through this process, and the benefits of early intervention would be available.

During this process the support worker/case manager would also be able to convey to the victim all of the considerations around their context as a victim of crime, including, how such things as potentially being a witness/etc in a criminal prosecution might impact them. The details and nuances of such a process can be worked through, but it wouldn't take much to be an order of magnitude improvement on the current VoCAT system. This initial phase of an application would undoubtedly reduce cost at intake, provide more robust data as to the circumstances and impact to the victim for assessment for any more formal application as a primary, secondary or related victim, and the emphasis on support at the outset would likely head off potential ambit/frivolous applications/claims. As a victim of crime myself, I can attest to the negative, detrimental and costly impact of the current system as regards its seeming disregard, lack of support, mystery around how it functions and what's in store for one as a victim of crime needing recovery supports. Furthermore, as a victim of crime, I can confirm that I would not want to subject to for example psychologist and other appropriate medical etc attendances that are trying to help and support, if I was just 'making it all up'. And such a framework could readily process the earlier-proposed family member bereavement award applications... and the entire process might be funded from the savings of a significant proportion of solicitors costs, let alone the wasted cost of the cogs unnecessarily churning within the VoCAT/Judicial system and the compounding resourcing and scheduling issues it suffers. There may still be some role for VoCAT contribution to some award determinations, although that may be able to be at best avoided or at worst reduced to minimal numbers of 'edge cases'. There are still matter of the issues of managing the victims of crime through any criminal proceedings, although that's separate from recovery support awards. As regards items for example under Part 5, there don't appear to be any functional considerations that aren't already managed via legislation in the likes of the TAC or Workcover Acts, for agencies/organisations who respectively administer the effect of recovery support awards.

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?

Related data should always be captured, and it should be de-personalised and available for statistical analysis and the likes and to also contribute to process improvement.

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?

No, it shouldn't be excluded, although it's reasonable that consideration to such reporting is less important for some crimes/circumstances than others. Related data should always be captured, and it should be de-personalised and available for statistical analysis and the likes and to also contribute to process improvement.

There is merit in capturing any other reporting incidences of other reporting to professionals/agencies (to cater to the needs of particular crimes/incidents that the victim reasonably isn't comfortable 'reporting to the Police'). In practice this would function as part of the data gathering exercise assisted by the initial support worker/case manager, and such data would be available for consideration towards the overall veracity of any ensuing formal primary/secondary/related victim application/claim.

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?

Presumably 52.a.ii ... is somewhat onerous and subjective to summarily reject an application... particularly if the victim has cause for concern for consequences to themselves or that they are/were particularly traumatised at the time, or that appropriate supports and method of conducting such assistance-seeking were not adequately considerate of the victim's psychological state and circumstance, or if they had not had made clear to them their associated rights and obligations, and that it isn't clear what tests that are applicable in the Tribunal's consideration of "...unless the tribunal considers that special circumstances...", or if there is no straight forward, readily accessible and reasonable mechanism for disputing such finding, or of raising complaint or issue of any considered inappropriate/insensitive/inconsiderate manner in the seeking of such assistance from the victim, ... and any number of other plausible reasons.... So, if it can't be made sufficiently well defined and adequately considerate of the victims state/circumstances and without causing secondary victimisation, then scrap it until such time as it can be.

Specifying additional factors for consideration in determining reasonable assistance

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

Frankly, if a victim has issue with providing ‘reasonable assistance’, then they should first have the opportunity to have their concerns heard by a suitably qualified, independent and empowered party (who have no obligation to report same on to the Police). If they have no plausible concerns and they are merely being obstructive or for example avoiding risk of being found to have colluded with an offender, then sure, enforce the requirement and throw their VoC application out, and throw the book at them while you’re at it.

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?

See response to 32 above.

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?

Some aspects, such as s54.a “...or attitude of the applicant at any time...” seem ridiculous at face value; perhaps someone had a particular thought in mind at the time of drafting and those accepting the draft had no thoughts, but it appears that that quoted aspect is far far too subjective to enforce (as in “must have regard”) a their snap personality judgement of a potentially traumatised/other issues victim of crime to have an effect of the merit or extent of some particular award. Those considerations per 54.b i, ii and iii should not in and of themselves entitle a particular attitude towards an award application, rather, if there is any cause for concern in those areas, that that is investigated with its own due process, and if nothing illegal/inappropriate is found to have occurred intended to influence the award application, then it shouldn’t impact the application in any manner, and if the contrary is found, then disregard the application and prosecute the applicant accordingly.

Furthermore, a victim’s disposition or condition shouldn’t in any manner be cause to endorse or lessen the fact of a violent/criminal act having been committed against the victim and their entitlement to recovery/etc awards. A different matter entirely if the victim did intentionally provoke the act, but that’s already covered in (c).

Removing consideration of some section 54 factors

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

Removing the perpetrator benefit provisions

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

A victims past activities and/or spent convictions should not diminish the fact of them being a victim of a violent/criminal act and/or of their entitlement to recovery/etc support. Such suggestions only serve to promote or suggest an assumption by the judicial system and an expectation of (if not set up for) recidivism by it.

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?

Absolutely yes; it should not have an upper limit other than that achieved by timely and adequate recovery support having been afforded and/or if the victim's injury/condition has stabilised and they have been afforded necessary environmental and/or circumstance adjustments to support themselves going forward, and they have exhausted an already raised limit to the \$value of supports available.

The notion of impact to the victim being specifically and significantly different for different types of crimes is flawed, rather than it being about the legitimate and assessed degree of impact to the victim irrespective. Not everyone likes the same things you do or must react in the same way you do or want them to.

Reducing the administrative burden and delay in seeking variations

38 How does the variation process impact on victims of crime?

By the time it gets to 'variations', assuming we're referring to the limited period after an award other than 'interim' is granted, one would anticipate variations to be for the main part

medical/recovery-related and that their merit would be straight-forwardly assessed... and any more complex/edge cases that randomly occur can be assessed on their merits with engagement of suitably qualified professions in the relevant field. Instead, its just more churn and burn and waste of time/resources/money/etc by the VoCAT et. at. process. It should be a suitably moderated, medically assessed needs-based award mechanism, rather than expensive to implement via VoCAT/solicitors/etc, and an impactful grovel by the victim to pursue.

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?

See response per per 38. Changes would require the comprehensive re-factoring of the Act to reduce, if not remove the significant proportion of VoCAT involvement as I've described variously through in my responses.

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?

Refunds should occur in all circumstances where the claimant received money without being entitled to it or they had intentionally or inadvertently or through procedural timings 'double-dipped' and received the same support or in lieu from elsewhere. And again, it would be expected that any contemporary administrative system would capture appropriate incident data for analysis.

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

The 'issues' one might need reviewing can become rather convoluted regarding whether they need a review of the administrative activity iof VoCAT, judicial review or a VCAT review... merely review of an Award is somewha limiting when considering the issues victims can encounter when dealing with VoCAT. What happens when VoCAT plainly takes far far far to long to get around to processing a matter - who does one take that to for review? Or what if its a matter of VoCAT applying the Governor in Council's 'scale' that may just happen way way out of date or inadequate to pay for necessary medical treatment, and then if all the Review does is determine whether an order was made within the law – who loses? The victim, again! All this does is further compound matters for the victim of crime who for the main part is merely trying to recover from injury and get back to their former life if at all possible – and provide more and more work for the lawyers.

As to how barriers might be addressed... perhaps if the Act/legislation was less prescriptive in various of the issues that would lead to a review (irrespective of whether the victim had the money and fortitude actually pursue it). I note various instances of review (via VoCAT for example) mentioned in the consultation paper – arguing points of law for example around the victims' timliness on various things, seemingly without for the fact they were a victim of crime! If the legislation and administrative systems were overwhelmingly about recovery outcomes for victims

of crime, then there would naturally be less incidence/time/money/victims' health/etc wasted arguing/reviewing onerous or restrictive points of law.

In my own experience, I found suffered significant issues with the VoCAT process; delays, delays and more delays... I've even had circumstance where the Member didn't allow me to attend a hearing via phone as I did not have the health fortitude to attend their physically; despite my requesting answers regarding why, I've never been told! Those sort of allow/disallow orders need some ability to review – or at the very least some oversight... as there is for other judicial 'orders' about Awards but aren't yet the 'actual' awards... for example, for me, VoCAT inappropriately bundled urgent medical/recovery supports up with such things as special financial assistance awards, into a 'final award offer', and wouldn't/couldn't/didn't/who know's why make available the interim award/funding for the urgent medical treatments prior and as a priority, rather than stalling the whole lot until I had accepted their offer of the final award and its restrictions on future variations/etc to enable treatment – ridiculous!! The matter then entered a bureaucratic circus between VoCAT, the lawyers and me (trying to have the urgent medical treatments urgently separated out for urgent interim awards urgently!). VoCAT demonstrated zero capacity for concern towards recovery... or for what one might presume is the intent of the current legislation requiring expediency in such matters. So, to whom does one take issues of delivery against the legislation itself? Such things are taken to VoCAT themselves... via the Courts' complaint-raising process – where is subjected to the Magistrates' Court Complaints Policy (re staff, process or service provision etc issues), or to the Judicial Complaints Process (if the Member may have neglected to have address matters thoroughly or you don't consider what was ordered was reasonable, etc) – just the same as if you were a career criminal or a disgruntled civil litigant! The system has absolutely no regard for the fact that you are a victim of crime who is merely trying to recover from the effect of crime via the supports apparently legislated for. I've requested such reviews and only received dismissive responses to the effect of: VoCAT are attending to things, VoCAT can do no wrong, and things will take as long as they take.

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?

There is no point amending or having Practice Directions if there is no oversight for VoCAT to answer to anyway... irrespective of any practice directions or clarifications or whatever, VoCAT (Members) can and will continue to take as long as they like to attend to things with zero need for concern for oversight or redress – they're in fact protected/insulated from redress. That reflects one of the core problems with having the judicial system attempting to fulfil the role of what is ostensibly a health care service administrator supposedly with an interest in the issues/concerns of victims of crime (as for example TAC is for traffic injuries and Workcover is for workplace injuries). The fundamental problems of expense, delays and poor outcomes for victims (therefore society as a whole) will perhaps morph slightly but will remain problematic and detrimental to effective recovery for victims as long as the judiciary and its intrinsic methods and processes and lack of reasonable external oversight remains as the administrator of recovery supports for victims of crime.

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?

Not sure what exactly is being suggested here, but I take it as an endorsement of what I've been reiterating in that VoCAT and their methods/limitations are inappropriate to deliver the necessary outcomes to victims of crime that the VoC Act (and not to forget the Victims' Charter Act) stipulate. Your notion of 'triaging' reflects my suggestion of a front-end service (e.g. via VSA or VAP) for early support intervention and supporting the gathering of sound data in respect of a/potential claim. Your notion of 'specialist streams' perhaps reflect my suggestion that that early intervention/triage aspect would leverage trained professionals for early intervention and to feed back information that supports the veracity of any claim.

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?

Yes, an administrative model should be adopted. Benefits such as: lower cost; improved outcomes for victims of crime and society; an administrative system that isn't in the first instance steeped in and/or encumbered by Courts of Law and the Legal Profession; oversight; capacity for process improvement; purpose-trained service-delivery administrators; etc etc etc

How would it work? Delivery of services against the Act would be wrested from the judiciary and done by a suitable administrative body, perhaps most straight-forwardly achieved as an extension of VSA; there may still be circumstances where the judiciary could assist, but perhaps only in extreme/edge cases of dispute resolution or where there are particular issues need to be addressed to manage the victim of crime in relation to an offender/prosecution.

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?

No benefit at all. Insofar as disadvantages: adding to the cost and complexity of skills/resources in the already laggy judiciary and more work for the hovering lawyers; that it thrusts victims of crime into a Court context that can conflict with victims' trauma and other issues. And if I'm understanding the suggestion correctly per 'at the same time as hearing other matters', wouldn't that be in the typical public forum of the Magistrates Court? – a place where a victim's often personal and traumatic health/etc particulars most certainly shouldn't be aired!

If the administrative function was wrested from VoCAT into an administrative body, the necessary business processes would easily be put in place to enable the effect of interim awards (or at least a category of discretion that can dispense urgent recovery interventions and supports).

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?

Yes and no. Insofar as ‘no’, fundamental to the context of being a victim of crime is that one has suffered an injury, and fundamental to that is the veracity of the claim that is best attended to with early medical and/or psychologist intervention and feedback from same to the claim administration. That said though, the administrative system (e.g. currently VoCAT) has onerous and unfinancial (for the health-care provider) and untimely and unresponsive processes around the delivery of awards/support for such counselling/medical needs; that MUST fundamentally change before quibbling over what content/format/origin of documentation is of any consequence at all.

Insofar as ‘yes’, there are most certainly other contributors of ‘documentary evidence’ that would support an application, for example if there are issues around the victim’s security... any disabilities, or their financial state or other personal beliefs/issues. Applicants should be able to provide whatever documentation they consider relevant in order to establish or bolster the veracity of their claim for a recovery support, and so long as that documentation itself is subject to any appropriate veracity tests and all the usual consequences if it is misleading or fraudulent.

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

Yes. As I’ve already proposed (and which aligns with the above-suggested notion of triage), in that a support worker/case manager would assist a victim from the outset of their approach for victims of crime recovery supports. This is a straight-forward mechanism to ensure adequate detail and assistance is provided to a victim for all relevant information-gathering. Don’t let VoCAT and the need for armies of lawyers anywhere near the function at all – it would merely exacerbate the current systemic disastrous outcomes for victims of crime and put even more load on the public purse; The judiciary has no experience or capacity to be a care-giver or giver of assistance/advice to persons on matters that the judiciary itself would then hear/order an outcome for... its not geared for that sort of service or conflict of interest.

Again, the issue could be attended to via the assigned support worker/case manager; There may be a presumed allowance of a finite amount of time the case manager can assist such activity, with extensions to that being easily able to be applied for under particular requirements/circumstances, and not forgetting that victims of crime suffering trauma and other issues are not necessarily personally capable of the administration tasks necessary to assemble and format the evidence as necessary. From personal experience, it became a 5-ring circus when I applied for loss of earnings award, with excruciating and costly back and forth between myself, my accountant, the necessary lawyer to fill in the application page for VoCAT, the VoCAT Member and the VoCAT admin staff – and over a year of multiple submissions/hearings until finally an award was offered, albeit I’m still

waiting (over another year later) for VoCAT to actually provide the money, because they bundled the offer up with other unrelated awards so there is still to-and-fro over detail of the other awards (particularly for urgent medical treatments), so everything stalls – even reimbursement of medical expenses needed to be paid from my own pocket while VoCAT cogs churn and churn and churn – and all without any mechanisms to raise the issue for effective oversight! So its little wonder why the Act and its implementation via VoCAT is here to be considered for an overhaul!

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?

I don't believe the VoCA Act indicates anything in this regard other than some loose indication that it 'may' give notice to persons that may include the perpetrator... although the Victims' Charter Act outlines various aspects around interaction with offenders, albeit that Act lacks in enforcement capability.

In any event, a victim (in respect of interest of this Act) should not be required to interact with the perpetrator in relation to their application hearings, or to have any of their circumstances communicated to the perpetrator or any party other than those with a 'need to know' to process the application, save for anything reasonably required under some other appropriate Acts such (e.g. Evidence Act). Perhaps the Act should default to not allowing such notifications, albeit also provide provide a specific mechanism allow some such notification/s that are determined by an appropriate hearing (in the purpose-specific judicial function of the remnants of VoCAT) that would assess any need/risks/impacts/consequences/remedies/etc.

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

Refer last paragraph in response per 48 above.

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?

Refer response per 49 above.

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?

Yes, including towards any potential secondary victimisation by the criminal justice system. In any event, getting rid of VoCAT from managing general recovery support administration would greatly assist here.

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?

Yes and no. No in that seemingly adequate provisions are already available within the Act; Yes in that VoCAT has significant discretion in the manner in which it functions.

Does your question relate either or both protections from other witness/etc parties at the hearing or protections from exacerbation of issues/trauma from the manner in which the hearings are conducted? From my personal experience (and an example of the latter) I declined to be physical present at a hearing (advising the lawyer accordingly), yet was available all that time via phone; the Member refused to allow me to appear via phone (in that I sought to ask some questions and would have been able to answer any they had for me); There was NO explanation provided to me as to why, including no response after writing to the Chief Magistrate (as is necessary for any issue with a Member) – and still no reason provided; so again, with no reasonable oversight, flagrant discretionary disregard can and will continue while it remains as a service run by the judiciary. Again, the Victims' Charter outlines various desired protections etc, but again, note that it lacks any reasonable enforcement capability.

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?

The Act currently restricts such materials as inadmissible (in other proceedings) via s65, although s65.2 allows them an arbitrary and subjective mechanism (merely to a test “in the interests of justice”) to rule any such material as admissible.

The Act should be amended to be somewhat more prescriptive in respect of that test, and there should be some consideration towards personal/sensitive detail regarding the victim being restricted, and if any such information is still allowed as admissible, then it should be limited to a closed hearing and restricted persons ‘need to know’ and have severe penalty for misuse/leaking of such information and an accessible and straight-forward mechanism to instigate enforcement against such misuse/leaking.

In any event, the administrative systems supporting the operation and delivery of awards/supports via this Act should (must) be able to provide comprehensive depersonalised data about every

relevant piece/type of data gathered or used in the administration of supports for victims of crime; such depersonalised data should be available for analysis and review and process improvement. (again, something that VoCAT intrinsically does not have the capacity for).

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?

VoCAT is systemically incapable of being transparent, given its limitations and operation within the judicial system, along with the similar ‘privilege’ afforded to the hordes of lawyers and prosecuting agencies.

In addition to transparency, VoCAT would also require transparent and accessible oversight – again, something the judicial system (or the allied legal profession) does not have the intrinsic capacity for.

Decisions can only be improved from a recognition and acceptance of the problems, and a willingness and means and capacity to change (again, none of which the judicial system or legal profession can or would do, merely in the interests of victims of crime).

A recognition of problems/issues for transparency and process improvement can most straightforwardly be achieved via adequate collection and analysis of appropriate data (again something unachievable in the current landscape).

So, the short answer is to implement the ‘triage’ and other alternate (to VoCAT) mechanisms for the administration of victims of crime claims, and build into that system the mechanisms for capture of appropriate data (suitable for transparency, analysis, governance reporting, and process improvement).

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?

This is already provided for within the Victims’ Charter Act, s8; HOWEVER, that Act is merely a ‘suggestion’ of principles and lacks any reasonable enforceability.

For example, its ;s7 Information to be given to persons adversely affected by crime; – stipulating Investigatory agencies, prosecuting agencies and victims’ services agencies ...to provide adequate and necessary information to victims. However, that’s all useless without adequate oversight and any enforcement capability. (note that Act’s s22 Legal rights not affected).

Again from personal experience as victim to unprovoked violent crime: following one crime incident, I was given a brochure by the Police who followed up that incident after initial attendance.

On two other occasions after Police initial attendance, they provided no information and neither did they provide any follow-up (despite my repeated calls to them) let alone information regarding their intentions and/or prosecution of the offenders.

Therefore, such issues might only be able to be addressed if there is a straight-forward and accessible provision available in an appropriate Act (e.g. VoCA or Victims' Charter) and any such provision is actually legislated as enforceable, and there is a clear/straight-forward mechanism for such enforcement!

So yeah, that wheel has already been invented, so consider the provisions already available in the Victims' Charter Act, and get them able to be adequately enforceable rather than merely a box-tick to acknowledge our intentional support for human rights!

Anyway, all that is may be mute, given the current VoCA Act clearly states that VoCAT 'must not' help you ... per VoCA Act s29.4 explicitly stating "The Tribunal must not decide to further hear and determine an application made out of time only because the applicant was unaware of this Act or of the...".

AND, please also do something about the law firms/etc touting for business via deceptive/misleading Web sites that to the unwary, look like they are official Government victims of crime support services... yet they are for the main part just the likes of ambulance chasers touting for business for profit, to suck in and solicit personal data from victims under the false pretext – further adding to the distress and abandonment of victims in their outreach for assistance.

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?

Considering the reference to 'victim support' as the empirically ineffective services of VSA, et. al., say that accessible via victimsofcrime.vic.gov.au, I'd say a resounding YES. I suggest they are to date for the main part empirically ineffective, as they have limited resources and capacity, and serve little more than a referral point to other support agencies; and those other support agencies themselves are little more than under-funded referral agencies to further agencies (Agencies as defined in Victims' Charter Act), in that they sympathetically listen and the refer you on perhaps to a firm of lawyers to work on the VoCAT claim, or offer advice towards counselling or psychologist services and perhaps indicate one that is geographically convenient for you... and perhaps to write emails to those lawyers to help hurry along the otherwise slloooowwww processes of VoCAT/lawyers/etc.

NOTE: interested persons might want to check out the Victorian Government publication: ISBN 1921028394, titled: Standards for the Provision of Services to Victims of Crime in Victoria; authorised by the Victorian Government and printed by the Victims Support Agency (VSA).

It was published in 2011, and is presently available via:

<https://www.victimsofcrime.vic.gov.au/standards-for-the-provision-of-services-to-victims-of-crime-in-victoria>

Its a comprehensive document, obviously prepared by well-intentioned people; although it clearly sets the bar way to high given the issues of VoCA Act and VoCAT and the Victims's Charter Act, and

the historical inadequate funding commitment towards victims of crime and relevant services/agencies overall by the Government (at least beyond that soaked up by VoCAT administration and lawyers). That document also suggests that VSA has the experience and position to deliver victims support services (after suitable Act changes and removal of VoCAT from the administration functions, and implementation of triage and administrative functions etc into VSA).

Unfortunately though, VSA fall short when it comes to their ability to address issues/complaints. Perhaps its a lack of clarity of exactly whi is responsible for what and/or what mechanisms of recourse are available. If you have problems with a particular Agency or victims service, then call the complaints line... which just so happens to be the same line as VSA's new customer (victim) enquiry line; the phone attendant will listen to the issue but they have never (at least in my experience) been able to have any complaint issues attended to – any wonder though, given that the lion's share of problems arise from the VoCAT, which requires navigating the judicial system's own self-regulated complaint process... or call Legal Services Board Commissioner is its about the lawyers, or directly to medical practitioner boards/etc, etc, etc, etc. So it would be great to have a single entity whose brief is to facilitate recovery supports and assist the victim of crime through their recovery process.

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?

No, VoCAT is NOT easy to navigate without legal representation. As to why, it is ostensibly that the whole process is wrapped up in the mystique and industry of the Courts and the legal profession, and will remain so while the administration of victims' recovery support awards/etc is with VoCAT. To mitigate that problem (of not only the accessibility, but also the expense), remove that function from VoCAT as discussed many times above. And presently, when clarification questions are asked of VoCAT regarding aspects and mechanisms of the application of the VoC Act, they ordinarily abrogate from answering with "they don't provide advice".

As regards the lawyers, their industry (a.k.a. the legal profession) has its own methods and rules and self-regulation and protections including legislated protections for enforcement for their accounts receivable (and who else other than the Government and toll road operators have that?!). And furthermore, there are no intrinsic protections or guarantees that the lawyers have the requisite care, skill or responsibility when representing you at VoCAT. Empirical evidence indicates that if one encounters any issues with the lawyers handling of your VoCAT application, your only recourse is to follow the usual standard process to raise a complaint – either pull out your own wallet and pay for other lawyers to deal with the other lawyers, or raise a complaint to the Legal Services Board Commissioner (LSBC) indicating, as appropriate, breaches of the Uniform Law solicitors conduct rules; however, expect that you will be told that little victims of crime issues arising from delays or negligence from solicitors, are "most unlikely" to sufficiently meet their criteria to actually have anything done about them (i.e. LSBC need sufficiently big/important issues before allocating their limited funding to bringing an issue against the lawyers at VCAT - apparently). Tuff. Not only that, but you will also be told by LSBC that they have no ability to consider matters of breach of the Victims Charter Act, despite the lawyers being an Agency with responsibilities under that Act. All

excessively convoluted and an excessive impost on the public purse... and hardly anything that the public should expect they would have to indulge in if they through no desire of their own, became an unfortunate victim of crime.

So again, the resolution is to wrest the administration of delivery of recovery supports from VoCAT/lawyers.

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?

VoCAT, as a tribunal within the justice system, and a training ground for staff who deal for the main part with criminals, infringement offenders and various other adversarial litigants, with their structure and processes set up to reflect that ... and that's diametrically opposed to the needs of victims and the health-care and recovery issues they face.

It would be throwing good money after bad to attempt to fix that small part of the judicial system to run differently within the rest of the judicial system (let alone for example to then have other Magistrates operate within that different model within the same judicial system if they were to assume some of the load re interim awards as queried for comment above).

A fit-for-purpose administrative body would have the necessary agility for responsiveness towards the issues raised in this request for comment.

Chapter 13 Victim needs

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

Chapter 14 Approach 1: Reforming the existing scheme

The purpose and objectives of the Act

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

[emphasis added] No, it isn't reasonably achieving its purpose and objectives.

And regarding in what respects, fundamentally the Act both causes and suffers from issues of VoCAT's lack of fitness for purpose - and inherent convolutions, costs and delays and issues. Adding to that the issues discussed in the pages above, regarding particular changes necessary to have the Act itself address particular issues, and the overall issues and recovery needs of victims (irrespective of delivery via VoCAT or an alternate and fit for purpose administration).

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?

To support victims of crime IS in fact to assist their recovery. And the method of doing same would include to acknowledge them and that what has happened to them actually does matter, and that their injury/health recovery is accommodated along with ensuring any injury incapacity doesn't further reduce their standing (e.g. support for loss of earnings, education &c) and for 'special circumstances' services or facilities to be provided for (e.g. security, etc, even support for tasks that due to their injury they are unable to adequately fulfil and/or other issues arising from the circumstance of their injury).

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?

I believe the Act adequately defines it – save for changes I'd mentioned in responses above, e.g. in the way it should allow for victims where the perpetrator is anywhere within Australian legal jurisdiction and the victim is in Victoria – to account for crimes perpetrated remotely (such as an example I'd suggested of a perpetrator via remote means torments and traumatises a victim such that they are compelled to suicide or self harm or some other (in)appropriate act), or in the scope of victim for a bereavement award.

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?

No it isn't appropriate, however the notion itself of a token gift of money is flawed, and should be removed altogether.

There is no way a victim could be adequately financially compensated for the impact upon them including any consequential health or financial losses suffered. It would be better get rid of the special financial assistance altogether, and to allow for appropriate discretion to award under 'special circumstances' a monetary amount to a victim where that victim has demonstrably suffered a financial loss impact (beyond merely loss of earnings), such that it might help mitigate that loss.

That discretion would consider the circumstances and impact to that victim, irrespective of the category of victim or type of crime.

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?

I’d suggest scrapping ‘special financial assistance’ altogether as per response to 63 above, and focus on recovery supports incl mitigating financial impacts attributable to the crime/injury/incident – rather than having a generic cash payment for being a victim.

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?

This again is a convoluted aspect that I’d anticipate would be quite case dependent.

The ‘practical use’ of s51 would only be if the State was actually assigned such right that the State did then pursue it. It would be interesting to see statistics around the context in which such assignment is offered or requested, and whether it gets exercised, and the return.

It would be suitable to retain that provision as is – and perhaps such assignment should be more often offered or sought AND more often pursued!

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?

No. The notion of victims of crime support is or at least should be a responsibility of our society as opposed being directed at any particular individual. Offenders are not necessarily sufficiently financial to afford such a levy, so it would create further costs and issues in collection, and besides, its our society that creates the socio-economic and other conditions that can give rise to such offending in the first place. I’d suggest that it would be an unwieldy and unnecessary extra activity to set up and administer, as merely a source of funding from offenders, and it would be more appropriate to secure and exercise s51 assignments more frequently and as appropriate and where there is a considered threshold likelihood of success in the action itself and recovery of money.

Otherwise, if sources of funding are a significant concern, then apply a levy across our society – as its our society who should have the desire for reduced crime rates and that we (presumably) all

would like to receive adequate support if we suddenly became a victim of crime (and so long as we knew that any such levy wasn't just being predominantly spent on VoCAT churn and lawyers).

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?

A resounding NO.

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

A resounding NO.

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

A resounding YES. A model such as I've discussed at length in the responses above that includes wresting the administrative functions from VoCAT and solicitors... i.e. a fit-for-purpose administrative function run by fit-for-purpose staff, for example under the auspices of the Victims Support Agency (VSA), and a system that provides early triage and intervention and better targeted supports.

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?

A resounding YES. It would provide better outcomes and lower costs. Briefly again, and as mentioned in various of my responses above, a social worker/case manager (CM) would be assigned from the initial point of contact by a new client (victim of crime); CM would assist in facilitating triage and appropriate early intervention medical/psychologist engagement and in the capture of the victim's necessary data. That early engagement with professional supports would

result in immediate availability of reliable data regarding the nature and extent of the victim's injury, from which ready understandings would be available as to likelihood of the matter concluding after a few psychologist sessions (and/or initial medical assistance) or progressing to more extensive supports... and things can be planned and managed and supported, rather than be frustrated and dragged out through an expensive-to-administer VoCAT/lawyers model that empirically adds to the distress/trauma and the extent of recovery supports ultimately necessary yet inadequately provided.

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?

VoCAT or however its redefined to be could provide dispute resolution function for disputed awards made by via the administrative model (or that could defer perhaps to VCAT – so long as the victim of crime isn't then faced with application and/or lawyer costs); however and such dispute resolution escalation should be set up in such a manner as to not enable frivolous dispute resolution escalation. The remnants of VoCAT or some alternate fit-for-purpose Government agency would pursue s51 assignments.

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?

Restorative justice could certainly have a place as a voluntary component; this is another aspect where the remnants of VoCAT (after administrative functions transition from them) might be fit for purpose. There should however be no presumption that a victim of crime must have the capacity, fortitude and/or desire to participate in more direct practice.

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?

Only for dispute resolution, and even then only in such a manner that it didn't impose any access or cost obstacles to victims of crime. And required stages of mediated dispute resolution should exist before any judicial intervention.

Any other retaining of such decision making capacity or utilising it in a greater role (regarding applications/awards) would be retaining the cost, timeliness and necessity for solicitors etc and other issues typical of the current framework.

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

Consider that the majority of assistance could be managed via the victim's assigned case manager; in circumstances where there may be complexity or potential disagreement, a review/dispute resolution process might then be facilitated to include other/different/senior (administrative) staff for an attempted reasonable negotiated resolution; failing that, escalation for a hearing via the revised VoCAT or VCAT as mentioned above. Again, care should be taken in process design to ensure frivolous escalations would not occur.

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?

In the model I've discussed in responses above, there would be early intervention and requirements for victims to participate in counselling/psychologist sessions for any distress/trauma/such-like issues; similar would occur for physical injuries albeit it reasonable to presume there would be greater utilisation of traditional hospital/health-care services; all such specialised services would be required to provide assessments of the subject victim's health status and recovery prognosis and any associated issues; Similarly, there would be improved and more consistent capture of associated data (e.g. the subject crime/incident/s, associated victims). The administrative body should also have the intrinsic capacity to mobilise particular resources in response to significant incidents involving many potential victims; this would also assist in cost containment. It is the rigour/robustness/veracity of data collected/maintained and collective experience through the victims' applications that would enable the trauma-informed approach and thus improved planning and decision making capability, and the decision makers would become increasingly skilled via the more consistent and authoritative descriptions within such data.