



Submission to the Victorian Law Reform Commission Review of the Victims of Crime Assistance Act 1996

Introduction

The South Metropolitan Integrated Family Violence Executive welcomes the opportunity to provide a submission to the Victorian Law Reform Commission's (VLRC) Review of the Victims of Crime Assistance Act 1996.

The South Metropolitan Integrated Family Violence Executive is responsible for the implementation of the Government's family violence reform agenda and the integration of family violence services in the southern region of metropolitan Melbourne, covering approximately twenty-five percent of the Victorian population. The Executive also has oversight of the Southern Melbourne and Bayside Peninsula Integrated Family Violence Partnerships. Membership of the Executive includes senior representatives of the Department of Health and Human Services, the Department of Justice and Regulation, the Department of Education, Magistrates Courts, Victoria Police, family violence services, Aboriginal and Torres Strait Islander services, women's services, child and family services, drug and alcohol services, health services, community health, perpetrator services, CALD services, legal services, homelessness services and sexual assault.

The Royal Commission into Family Violence (Victoria) 2016 revealed major systemic and institutional inadequacies in the way we perceive and respond to family violence. Immense reform is under way to address these inadequacies and the timing and opportunities afforded by this review to improve responses to victims of family violence crimes in Victoria is most welcome.

We submit that the Victims of Crime Assistance Act written principally to assist victims of single incident stranger-inflicted crimes is not fit for purpose for victims and survivors of family violence. We wish to make a number of recommendations for making the system more accessible and responsive for adults and children.

The Victims of Crime Assistance Act and Family Violence

The Victims of Crime Assistance Act was written at a time in the mid 1990s when family violence was not recognised as a crime and the harm it causes, and in particular cumulative harm, were not adequately contemplated. The Act as it stands, overlooks the spectrum of family violence and treats family violence as a single incident or a 'related criminal act'.

A victims of crime assistance scheme is, however, vital to providing victims of family violence with the opportunity to be heard and validated, to have their 'day in court', as well as providing for financial compensation. The hearing can be powerfully therapeutic for a victim's recovery. Many victims describe their hearing as a healing process. The face-to-face nature of the hearings is an important strength of our current system. Many Tribunal members verbally acknowledge and recognise the suffering of the victim and, often, apologise on behalf of the State for the crime that has occurred. The scheme also plays an important role in signalling to the broader community that crimes of family violence are unacceptable and helping to prevent further violence.

The current system is not timely enough (applications can take between 12-18 months to process, which can deter victims from applying); it does not always operate from a victim-centered approach (resulting in some victims feeling that they are 'on trial'); it does not result in predictable and consistent outcomes; and it is often re-traumatising.

The definitions of 'act of violence' and 'injury' and the current structuring of the Act limit the financial assistance that is available. This means that most applications made by survivors of family violence fall into the least serious 'C' and 'D' categories that attract the lowest maximum and minimum award payments. The 'special financial assistance' category does not adequately recognise cumulative harm and needs to respond to the impact of family violence rather than the type of crime.

The impacts on children from witnessing family violence are significant and enduring. Children and young people need to be recognised as victims and survivors of family violence in their own right under the Act.

The two-year time limit disadvantages adult and children who are victims of family violence. We know from the Royal Commission into Family Violence and from our work with victims and survivors, that it may take years for victims to recognise their experience and to be ready and able to seek support and compensation.

Perpetrator notification is a significant deterrent for victims of family violence and the current requirement undermines the purpose of a compensation scheme. It also potentially creates another avenue through which perpetrators can manipulate systems to harm and control their victims. There is no current opportunity under the scheme for perpetrators to be held to account.

Recommendations

1. Changes to the Act

We make the following recommendations for ensuring that Victims of Crime Assistance Act is as responsive as possible to children and adults who are victims and survivors of family violence:

1. Increase the ease of application and the eligibility to access to financial assistance to assist victims of family violence with their recovery.
2. Amend the definition of 'act of violence' to reflect the nature of family violence and cumulative harm as defined by the Family Violence Protection Act 2008 (Vic).

3. Amend the definition of 'injury' in the Act to include the psychological injury caused by family violence.
4. Remove the requirement for 'exceptional circumstance' for victims of family violence.
5. Exclude applications involving family violence from the 'related criminal acts' provision to ensure the rights of victims of family violence are not undermined.
6. Remove the requirement for a police report, as many victims choose not to report to police, and accept family violence reports from a range of service providers.
7. Expand the types of financial assistance to include the needs of family violence victims, not just expenses.
8. Recognise that the needs of family violence victims vary and change over time. They require both more immediate and longer-term financial assistance. The categories of awards should be flexible and responsive to the lived experience of survivors.
9. Include greater recognition of and support for children and young people who are the primary victims of, and witnesses to, family violence. Include children in the category of primary victim regardless of age.
10. Enable child victims' applications to be heard in tandem with their parent's application.
11. Create a more inclusive categorisation of secondary victims to respond to family and friends who may witness and / or provide support in cases of family violence. This definition should also include kinship relationships for Aboriginal and Torres Strait Islander victims.
12. Continue to allow for advocacy and legal representation.
13. Remove the requirement for perpetrators to be notified of the application as this may cause further trauma or increase the risk for victims.
14. Consider ways to make perpetrators financially obligated and held to account under the scheme. The State's role in victim compensation is important, but making perpetrator's accountable is an opportunity for both symbolic and practical reform. More applications could be enabled under S85 for compensation against perpetrators, but it would require a system for collection and enforcement.

2. Retaining and Strengthening the Current System and Judicial Model

We do not support a change to an administrative model and believe there is little advantage in splitting the system. We recommend that the current judicial model be retained, and strengthened to be more specialist, efficient and to adopt a more trauma-informed approach to the nature, dynamics and effects of family violence and the cumulative harm that it causes.

We believe VOCAT should be a specialist jurisdiction, with sufficient time allocated to deal with these matters. For example, VOCAT assigned magistrates could be allocated a minimum day a month to undertake VOCAT work. Additional magistrates may be required to resource the scheme to this level. A lead magistrate role would be needed in a specialist VOCAT response.

Applications need to be as simplified and made as easy to access as possible. Victims are often traumatised and may suffer from a range of mental health issues, making navigating simple processes challenging. Support workers and interpreters trained in family violence would support this process. Applications need to be fast tracked and timely and efficient determinations need to be made as to whether a hearing should take place. Many registrars are now lawyers who could potentially take on some of the case management responsibilities, similar to the Coroner's Court.

The interim application mechanism provided for under section 56 of the current Act allows for urgent assistance where needed. The scheme requires additional resources to ensure interim applications are heard in a timely manner.

We maintain victims' right to a hearing, where their recovery is of paramount importance and their experience is a therapeutic one. The validation and therapeutic benefits afforded by the justice system cannot be understated. The current Act allows for efficiencies and flexibility, including the avoidance of a hearing where appropriate. Under the current system, approximately 86% of matters are dealt with administratively under S33. VOCAT Magistrates find the flexibility of the current legislation to be very much exercised in the victim's favour.

Victims need access to independent legal advice and support to ensure the system is accessible, fair and equitable for all. A scheme without sufficiently resourced legal representation is likely to disproportionately affect the most vulnerable victims such as Aboriginal and Torres Strait Island victims, victims from a culturally and linguistically diverse (CALD) background, clients with a disability, and those living in a rural area.

Comprehensive training for decision makers in understanding family violence and sexual abuse and the treatment of vulnerable witnesses is essential, and will increase the consistency in the administration of the scheme.



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