



VICTORIAN CASA FORUM SUBMISSION TO THE VICTORIAN LAW REFORM COMMISSION REVIEW OF THE VICTIMS OF CRIME ASSISTANCE ACT 1996
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Centres Against Sexual Assault work with victims of sexual assault and family violence. Only a small number of our clients have satisfactory outcomes in the criminal justice system. This is because only a small number of people report sexual assault to the authorities and, of these, an even smaller number manage to negotiate the legal system. In addition, the majority of our sexual assault clients come for counselling about historic abuse, usually perpetrated in their childhood, and they have not disclosed their abuse to anyone prior to accessing a CASA. We encourage our clients to apply to the Victims of Crime Assistance Tribunal (VOCAT) especially when there has not been a conviction in a criminal case or contact with the authorities, as a way for them to receive an acknowledgement from the State of the crime committed against them. We often assist them in making a report to the Police for this purpose. We understand, for those clients who have had a conviction found against their offender, that there are the options of restitution and compensation orders under Part 4 of the Sentencing Act or pursuing a civil action against an offender for an award of damages. However, both of these courses of action rely on the offender having assets that can be seized.

Is VOCAT the Right Model?

A judicial model should be retained because it allows lawyers to advocate for victims of crime in complex situations. Many of our clients have a disability, are semi-literate and do not have English as their first language. For them to advocate for themselves is extremely difficult and not having a legal advocate would disadvantage them.

However, in relation to the workings of the Tribunal there should be a specialist list comprised of Magistrates who wish to undertake VOCAT work and who have an understanding of sexual assault and family violence. An empathetic Magistrate has the opportunity to provide our clients with an acknowledgement of the injury they have sustained. Magistrates have been known to say “I have no doubt that this happened to you and the State will provide you with the following assistance to help you recover.” This is the most acknowledgement from an official source that many of our clients will ever receive. It is extremely important to them to hear this and helps them move on in their lives. At present there is an inconsistency of approaches from the Magistrates towards victims, and an inconsistency in financial awards. This sometimes leads to victims feeling they have committed a crime rather than engaging in a therapeutic process.

On occasions the Tribunal hearing is delayed to allow the Criminal Court to hear a case and hand down a sentence. In these cases, which are in the minority for CASAs, the evidence from the trial should be available for the Tribunal. This would lessen the need for another complex application.

In relation to improving the efficiency and timeliness of the Tribunal hearings, the majority of matters are already dealt with under section 33. Victims who do not wish to have a hearing are not obliged to have one. The Tribunal needs to be resourced adequately to enable it to hear cases in a timely fashion and avoid long delays for victims who do not want to be dealt with under section 33.

Many, if not all, of our clients would have difficulty self-advocating. Whilst those involved with the legal system see Tribunals as less formal and the paperwork requirements as less onerous than Courts, for most of our clients the system is seen as intimidating and complex.

We would have serious concerns about an administrative system where assistance for clients is provided by the same body that is responsible for financial assistance. New South Wales has Support Co-ordinators to help people apply for financial assistance but this seems to be a conflict of interest given they are employed by the actual body that makes the award. Legal fees under the Act are not high compared to legal fees in other areas. They have, however, become a larger proportion of the Tribunal expenses. This is not surprising as there has not been an increase in entitlements since the Victims of Crime Assistance (Amendment) Act 2000 (Vic). Loss of earnings entitlements has not increased since 1997. The amounts of financial compensation, special financial assistance and items awarded under the “Other” section of the Act requires an increase.

Notification of Offender

Family violence victims find the notification of an offender distressing, as do victims of sexual assault. It faces them with the possibility that they could run into a person they have been trying to avoid, either for safety reasons or general discomfort with facing their abuser. If offenders continue to be notified there should be arrangements for them to attend on separate occasions.

Time Limits

There should be no time limits on the reporting of childhood sexual abuse. The Royal Commission into Institutional Responses to Child Abuse noted that the time from offence to disclosure was an average of 22 years. The Royal Commission has the largest body of information that has been available on these issues in Australia. There is no logic to having a two year limit if the 22 years is an accepted figure.

Victims With a Disability

People with disabilities who experience crime experience particular obstacles to accessing the Victims of Crime Assistance Tribunal. SECASA has a specific program for victims with a cognitive impairment or communication difficulty. Victim/survivors of sexual assault or family violence who have disabilities may not be aware of their right to apply to VOCAT. This is particularly evident for people who have high support needs and may not be able to independently get access to information about this process, and who are also at much higher risk of being targeted for sexual and other forms of violence. Some people have put in applications years after the offender was convicted as they did not know they were eligible for VOCAT at the time of the trial. Deadlines for submitting applications in this situation create additional obstacles to access. Outreach legal services such as the Springvale Monash Legal Service have an important part to play in ensuring people get access to information opportunities to make applications.

VOCAT has a powerful role to play in assisting the recovery of victim/survivors of sexual assault who have disabilities, and in many cases experience significant financial disadvantage in their lives and fewer opportunities to work due to entrenched disability discrimination. As a result the importance of a scheme like VOCAT in assisting people in their recovery in ways they cannot independently afford is priceless.

For many people who have high support needs, there are very few opportunities for choice and control in their day-to-day lives, so the impact of VOCAT in allowing them scope to make some choices about management of their recovery from trauma is very empowering. Additionally, people with disabilities who experience sexual assault are far less likely to have the crimes they report taken to court. Whilst this is an example of disadvantage and discrimination in the justice process that needs resolution, until this is achieved, the opportunity to be able to be heard and acknowledged by the Government of Victoria through a setting such as the Victims of Crime Assistance Tribunal is highly validating.”

Family violence/Sexual Assault Applications



There is a large difference between the awards made for a victim of sexual assault and a victim of family violence. CASAs work with both classes of victims. Many family violence victims are deeply traumatised by their situations and are going to require assistance to get their lives into order given the level of violence they have endured.

Victims of family violence may require trauma counselling throughout their recovery. For some women processing the impact of family violence takes a number of years. They may go through many cycles of recovery. Setting up a new life can be difficult leading some women, particularly those without support and counselling, to think about reunification with a partner who has been violent. For many women there will be numerous reconciliations before she will finally leave. Remaining in a therapeutic relationship throughout these cycles provides women with a space to reflect and process. Leaving a relationship in the context of family violence is a complex and multilayered procedure. It is suggested that women leave an average of 7 times before they make the final break. Questioning an allocation of a financial award where a victim has reunited should remain the discretion of the tribunal with the exclusion of counselling expenses.

Sections of the Act which require the tribunal to reflect on the conduct of the applicant negate the complexity of family violence and paths to recovery. It is important that the tribunal is aware of the nuances of family violence.

The victim categories need to be re written. The original categories were organised due to the politics surrounding the introduction of the Act in 1996. However, there is now the Family Violence Protection Act 2008 (Vic) which has different definitions of an act of violence. There seem to be anomalies in dealing with victims of family violence which do not occur with sexual assault victims.

A number of devastating family violence situations are not considered a crime. However, they can impact on victims of family violence to a greater extent than behaviour considered a crime. This is particularly so if the behaviour has continued over a number of years. Non-criminal family violence behaviours such as psychological and emotional abuse and death threats should fall within the definition of an act of violence for the purpose of compensation. With breaches of family violence intervention orders, which are punishable if convicted by a jail sentence, there is a two tier system in force. If the intervention order is breached for a non- criminal act of family violence, the woman is eligible for VOCAT. If there is no breach of the family violence intervention order it is possible there would be no grounds for a VOCAT application. This does not seem equitable.

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