



## **Submission by Eastern Community Legal Centre to the Victorian Law Reform Commission on the “Family Violence and the Victims of Crime Assistance Act 1996”**

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### **Box Hill Office**

Suite 3, Town Hall Hub  
27 Bank Street  
Box Hill VIC 3128  
Tel: (03) 9285 4822  
Fax: (03) 9285 4833  
Monday - Friday

[www.eclc.org.au](http://www.eclc.org.au)

### **Boronia Office**

Suite B, 6 Floriston Road  
(PO Box 747)  
Boronia VIC 3155  
Tel: (03) 9762 6235  
Fax: (03) 9762 9751  
Monday - Thursday

ABN 89 833 124 364

### **Healesville Office**

Healesville Community Link  
110 River Street (PO Box 79)  
Healesville VIC 3777  
Tel: (03) 5962 1665  
Free call: 1300 79 70 88  
Tuesday - Thursday

Reg. No. A4904N

## **About us**

Eastern Community Legal Centre (ECLC) is located in the Eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Shire of Yarra Ranges. ECLC offers free legal advice from its offices in Box Hill, Boronia and Healesville during the day, at night and also through various outreach locations across the East, with a priority being given to those who are disadvantaged. Having operated for over 40 years, the ECLC is one of Australia's most established community legal centres.

The Eastern Region has a number of areas of significant disadvantage. Healesville, in the Shire of Yarra Ranges, is home to the second most populous indigenous population in Victoria. The cities of Whitehorse, Maroondah and Knox host large communities of migrants to Australia, particularly from the Horn of Africa and Burma.

In addition to direct legal services, ECLC also focuses on community development and education activities that empower clients, workers and the general community. It raises awareness of its service, new legal developments and human rights through various projects.

ECLC welcomes the opportunity to be able to provide its views on this area of the law that directly impacts upon our communities. ECLC has operated a family violence intervention order duty lawyer service at the Ringwood Magistrates Court for over fifteen years. ECLC assists applicants and respondents of family violence intervention orders to provide advice, negotiation and representation on mention days in the family violence list. The Centre also provide advice and casework to family violence victims and respondents outside of the court mention days. The ECLC has also assisted clients with Victims of Crime Assistance Tribunal ("VOCAT") applications for over 20 years including providing advice and representation in these matters.

One of ECLC's main priorities is to advocate against family violence, particularly as it affects women and children. Apart from the generalist legal program, ECLC also manages a number of family violence specific programs where advice and casework is provided in VOCAT matters. The programs include:

### **MABELS Program** - Mothers and Babies Engaging & Living Safely

MABELS is a multi-disciplinary collaboration working in the Maternal & Child Health setting. The program is a partnership collaboration between the community legal, mainstream and Aboriginal family violence and community health (local government) sectors. The aim of this program is to intervene and respond to family violence within the Maternal and Child Health context by improving the responses of maternal and child health, legal and support services in a

co-ordinated and integrated manner, with a focus on mothers engaging with Maternal and Child Health services.<sup>1</sup> ECLC is the lead agency in this program.

### **SAGE** - Support, Advice, Guidance & Empowerment

SAGE is innovative in its approach to integrated and holistic service delivery, based on learnings from Health Justice Partnerships both in Australia and internationally. Women experiencing family violence often face barriers to accessing services. They also rarely receive a co-ordinated response that addresses their intertwined health, social and legal needs in seeking safety from family violence. SAGE strives to increase accessibility and engagement for women by providing an intensive, wraparound service that is integrated with specialist services. SAGE utilises a co-case management approach combining the skills and experience of a family violence lawyer and family violence advocate to work with women to increase their safety and capacity to pursue their legal options when responding to family violence.<sup>2</sup>

SAGE also works to build strong partnerships with specialist organisations in order to provide a service that provides a better response to the diverse needs of women and their children. For example, SAGE is not only co-located but integrated with Boorndawan Willam Aboriginal Healing Service. This means that ECLC are not only seeing appointments on site at the healing centre and participating in community events but the program is also committed to achieving cultural safety and trust so that SAGE is responding appropriately to the needs of Aboriginal families.

This submission will address a number of questions raised in the consultation paper and is informed by ECLC's direct service provision experience.

#### **1. *How do the eligibility requirements of the Act impact on family violence victims, including child victims?***

The eligibility requirements on child family violence victims has the ability to underestimate the harms caused to child victims who witness family violence.

The Family Violence Protection Act (2008) (Vic) makes clear that children who witness family violence are also considered to have experienced family violence.<sup>3</sup> However, the current eligibility requirements of the Victims of Crime Assistance Act ("VOCAA") does not, on its face, consider that children who witness family violence are direct victims of family violence, and hence eligible for primary applicant status under the VOCAA. This omission is no doubt due to the fact that the VOCAA was written decades before the creation of the Family Violence Protection Act and hence, there was limited understanding of family violence and its effects.

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<sup>1</sup> MABELS program is funded by the Legal Services Board. For more information see: [www.lsb.vic.gov.au](http://www.lsb.vic.gov.au)

<sup>2</sup> SAGE is funded by the Commonwealth Government's Women's Safety Package managed by the Attorney-General's Department

<sup>3</sup> Family Violence Protection Act (2008) section 5

ECLC recommends that the VOCAA eligibility requirements be reformed to expressly include the category of primary applicant to include child victims who witness family violence. In doing so, the VOCAA is then in line with current Victorian family violence legislation recognizing the harms caused to children witnessing, and therefore experiencing family violence.

**2. *Should the eligibility criteria be broadened to take into account the unique dynamics and characteristics of family violence? If so, how?***

It is ECLC's experience that the dynamics of family violence is not well understood by all decision makers within the justice system. Furthermore, as family violence is not recognized as a 'criminal act' or 'act of violence' pursuant to the *Crimes Act*, it can also be unclear that family violence may be considered an act of violence under the VOCAA. The underlying forces of power and control that manifest in a myriad of insidious manners in family violence situations (such as threats, emotional and psychological abuse, coercive behaviours) need to be well understood by decision makers, including VOCAT members. As a basic starting point, it is recommended that definition of family violence under the Family Violence Protection Act be applied to VOCAT matters.

If family violence is well understood by decision makers, then subsequently, more understanding of family violence as a recognized 'act of violence' will enable more victim/survivors to be able to access the scheme. It will also provide the clear message to the community that perpetrating family violence causes recognised harms as acknowledged within the justice system.

In light of the myriad of ways that family violence can manifest, specialised understanding of the dynamics of family violence should be understood by VOCAT members. ECLC recommends that there be a specialised stream of VOCAT members who deal mainly with family violence VOCAT applications so that a consistent response is provided by the Tribunal. Currently, there are a negligible amount of reportable judgments in VOCAT that define family violence (or indeed, address family violence) and as such, it is at the discretion of individual Tribunal members as to whether family violence is considered an 'act of violence' pursuant to the VOCAA. A specialised stream of VOCAT members who dealt primarily (or mainly) with family violence VOCAT matters would contribute towards the creation of important jurisprudence in this area of law.

**3. *How should the Act deal with patterns of non-criminal behaviour that result in injury? Should the definition of 'injury' be expanded to include the non-physical and/or psychological injuries often experienced by victims of family violence? Should the definition of 'act of violence' be amended to include family violence?***

It is ECLC's contention that family violence be expressly included as an 'act of violence' in the VOCAA. Furthermore, particularly in matters where family violence is considered the 'act of violence,' patterns of behaviour by the perpetrator that constitute family violence should all be viewed as 'acts

of violence.’ This includes behaviour such as threats to harm animals or pets, using technology to abuse and intimidate, property damage (with the intention to prevent someone from leaving a violent relationship), verbal, psychological, financial and emotional harm.

The long-term psychological injury that results from these forms of family violence can be life-long. It is the view of some of ECLC’s clients, that the legal system’s inability to recognise and acknowledge the harms caused by family violence can also exacerbate further injuries that were originally caused by family violence. The non-physical injuries that are experienced by victim/survivors of family violence should be included in the definition of ‘injury’ under the VOCAA. In family violence matters, there should be an ability for Tribunal members to expand the definition of ‘injury’ over time as more understandings of the harms caused by family violence develop.

**4. *Should the definition of injury be amended to better reflect the cumulative impact of family violence over time? Should the definition of ‘related criminal acts’ be amended to have regard to the cumulative impact of family violence on victims? If so, how?***

The cumulative impact of family violence on a victim/survivor should be taken into account in making awards under VOCAT. The cumulative impact of family violence can affect a person’s ability to even seek assistance from family members or external supports as victim/survivors are made to feel that they will be punished if they speak out about the violence occurring. Behaviour by perpetrators such as continually telephoning the victim/survivor during the day to exert control over her behaviour and movements is insidious. If a victim/survivor has been subjected to the monitoring of her movements to this extent over an extended period of time, the impact upon the victim/survivor’s mental and physical health can be deleterious, particularly if she is forced to isolate herself from family and friends (as it often the case in family violence situations). It is imperative that the Tribunal understand and recognise the impact of the cumulative impact of family violence. It is suggested that Tribunal members who sit in a specialised stream of the VOCAT will be able over time, to assess awards reflecting the cumulative impact of family violence. Prior to this body of jurisprudence being gathered, a suggested starting point is that VOCAT acknowledge that the cumulative impact of family violence is harmful and includes all forms of family violence.

The definition of ‘related criminal acts’ is problematic for victim/survivors of family violence due to the cumulative impact of family violence mainly being perpetrated by the same perpetrator. This is problematic for two reasons: a) the incidents of family violence are considered a ‘single act’ under the VOCAA notwithstanding how many times family violence occurred, or for how long it occurred and; b) in considering family violence incidents as ‘related acts’, the extent of the family violence experienced by the victim/survivor (either measured over time/ numbers of incidents of violence) diminishes and trivialises the experience of the victim/survivor.

It is recommended that family violence ‘act of violence’ be considered separately if they are perpetrated over a period of time and take a number of specific forms. For example, if a

victim/survivor has been subjected to financial, emotional and psychological abuse over a period of time, it is recommended that the Tribunal consider her application as three separate 'acts of violence' which are able to all receive a separate award of special financial assistance should the Tribunal deem this appropriate. Whilst this suggested formula is by no means perfect, it may go some way towards recognising a victim/survivor's experience of family violence. It is further recommended that if the acts of violence are perpetrated over an extended period of time, that this be recognised in higher awards of special financial assistance to victim/survivors in recognition of the harms caused over this extended period.

5. ***Is the notification provision a deterrent for family violence victims in making applications under the Act? Should the police reporting requirement be amended to recognise reports made by victims of family violence to other persons? If so, what other reporting should be recognised? Should the requirement to provide reasonable assistance to police and prosecution be explicitly excluded for victims of family violence?***

It is ECLC's experience that the notification provision acts as a deterrent for victim/survivors to make applications under the current VOCAA. This is due to the fact that currently, it is a Tribunal Member's discretion as to whether family violence is considered an act of violence under the VOCAA. Furthermore, in circumstances where there has been no police report made (because sometimes some police do not support the victim/survivor's account due to a lack of understanding about the dynamics of family violence), then it is ECLC's experience that it is highly likely that the Tribunal will consider making a mandatory notification to the alleged perpetrator. In such cases, ECLC's clients have been known to withdraw their applications out of fear that the alleged perpetrator will locate them and cause further harm. It is ECLC's experience that clients often choose to make VOCAT applications as a way to 'heal' and to obtain 'closure' from the acts of violence that have occurred. Contacting an alleged perpetrator undermines a victim/survivor's ability to move forward in her life.

It is acknowledged that the Tribunal must be satisfied that some 'act of violence' (howsoever defined) has occurred on the balance of probabilities. It is recommended that instead of requiring the notification of the alleged perpetrator, the Tribunal could obtain evidence of family violence 'acts of violence' having occurred by receiving reports from specialist family violence agencies, family violence counsellors, specialist family violence lawyers and other professions who work closely with people experiencing family violence. These professions understand the dynamics and nuances associated with the perpetration and experience of family violence. The Tribunal may seek to request reports addressing specific issues raised by the Tribunal to establish that the acts of violence occurred and to substantiate the subsequent injury that is suffered.

It is ECLC's experience that not all members of the police force appreciate the complexities associated with family violence. It is ECLC's experience that victim/survivors of family violence are

unfortunately misidentified by the police as perpetrators of family violence. This may be due to language or cultural issues, presentations at police call-outs (ie: if the victim/survivor is angry or distressed she can be portrayed as 'violent' or 'hysterical') or if a victim/survivor has a disability and is misunderstood. As a result, there are a number of situations where the police have been known to not support a victim/survivor's statement of family violence. There are also situations where the victim/survivor does not co-operate with the police in relation to criminal charges that may be laid against the alleged perpetrator due to fear of repercussions. It is recommended therefore that there should not be a mandatory requirement in family violence VOCAT applications.

#### **6. *Awareness of and accessibility of VOCAT for family violence victims***

It is ECLC's experience that family violence victim/survivors are often reluctant to engage in VOCAT applications due to feeling 'unworthy' of accessing the system and also due to a fear of having to engage in invasive court proceedings. This is especially the case if the victim/survivor has already had experience with any court system. It is ECLC's recommendation that information about VOCAT, particularly as it may relate to family violence victim/survivors should be made available at all locations where information about government entitlements and schemes are widely distributed. This includes at hospitals, community health organisations, police stations, Centrelink offices, Medicare offices, community houses, community organisations, train stations, various government departments and the like. The information should be disseminated in written form in a variety of community languages and also in media and social media advertisements.

It is ECLC's experience that the VOCAT system is not easy to navigate without legal assistance. This is due to the need to interpret definitions of 'injury', 'primary/secondary/related applicant categories, and also to provide evidence of the harms caused. The complexities associated with family violence require legal assistance to advocate in VOCAT.

In the absence of legal assistance, ECLC recommends that there should be number of VOCAT family violence applicant support workers placed at each Tribunal to assist potential applicants to apply for VOCAT and to assist them to navigate through the system, including assisting clients to feel safe at the Tribunal. A similar position exists at the Victorian Civil and Administrative Tribunal. The VOCAT family violence support worker could also utilise interpreters to assist victim/survivors from CALD backgrounds.