

MAKE A SUBMISSION TO THE REVIEW OF THE VICTIMS OF CRIME ASSISTANCE ACT 1996

Submission ID Number	35
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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?
<p>The current victim categories exclude a number of persons who are directly affected by violent crimes. The definition of secondary victims is particularly narrow. I have had a number of matters where children of victims or siblings of victims have been unable to access assistance where it is desperately needed. In particular, where a sibling has been sexually assaulted, other siblings usually become aware of the situation in some respects and it can be ought to be able to access assistance via counselling or other means.</p>
2 Should the victim categories in the Act be amended? If so, what changes should be made to the Act?
<p>Yes, secondary victims should be widened to include family members such as siblings or children of primary victims and other close relatives who may be affected.</p>
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?

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

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?

The definition of ‘injury’

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

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?

Perhaps economic harm could be considered. Particularly for domestic violence victims, this can be quite significant.

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?

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?

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?

Generally yes, although the loss of earnings cap should perhaps be reconsidered periodically as most victims who are unable to return to work for a long period of time will exceed the cap within 6 months of the date of injury.

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?

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?

Yes, it should be reconsidered in line with rising costs. This could perhaps take the form of practice directions similar to legal costs and counselling costs.

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?

No, not unless the secondary victims category is widened as above.

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 but the Tribunal needs to be aware that some victims do need a substantial amount of counselling, particularly where the incident occurred when they were a child. And this should be dealt with in a sensitive manner by the Tribunal Member. Where the cap has not been reached, if the counselling is supported by

appropriate documentation from the treating practitioner, counselling should be awarded as a matter of course.

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?

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, but this is often due to the workload of the Tribunal. The blanket rule that costs paid out by victims are not recoverable as interim awards is particularly harsh. Often victims cause themselves financial stress to outlay for relocation or safety expenses and these ought to be able to be quickly recouped.

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?

Yes, if the series of events is being dealt with as a single Application. Either by way of uplift or a percentage on top - similar to legal costs for multiple claims.

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?

Yes, perhaps as an uplift amount for the lower categories and a fixed amount or percentage for category A.

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

Primary victims and perhaps some secondary victims in exceptional circumstances where significant harm has been caused to the secondary victim by virtue of the act of violence.

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?

No, there needs to be some room to move where Applicant's circumstances dictate that they should not be allowed the maximum.

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?

This should be revisited in line with inflation or a fixed amount provided that in doing so, there is funding for this to occur.

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

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

Yes, it is important for victims voices to be heard.

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?

Yes, perhaps similar to the formula for legal costs for multiple claims.

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?

This is very difficult because victims of child sexual abuse typically take a very long time to come forward. Provided that the Tribunal has some discretion to allow out of time applications it may still be workable as is. It would be preferable for a time limit of 2 years from the incident or the date on which criminal proceedings are finalised (whichever is the later) to apply.

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?

Yes, it should always only start from when a victim turns 18.

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?

Yes, the nature and effect of the incidents - some victims are too traumatised or frightened to make an Application within time.

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?

Yes but only if all identifying information is redacted.

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?

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?

Specifying additional factors for consideration in determining reasonable assistance

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

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?

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?

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?

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?

Reducing the administrative burden and delay in seeking variations

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

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?

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?

Only in cases of fraud or serious misrepresentation.

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?

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?

Yes a Practice Direction would be appropriate.

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?

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?

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?

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?

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

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?

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

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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

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

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?

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?

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?

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?

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

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?