



Aboriginal Family
Violence Prevention
& Legal Service Victoria
**Standing Firm Against
Family Violence**

FVPLS Victoria

Submission to the VLRC
Inquiry into the *Victims of Crime
Assistance Act 1996*

November 2017

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INTRODUCTION

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) welcomes the opportunity to provide a submission to the Victorian Law Reform Commission (the Commission) review of the *Victims of Crime Assistance Act 1996* (the Act). This submission responds to issues raised in both the initial consultation paper of June 2017 and the supplementary consultation paper of August 2017, but necessarily focuses on family violence and the questions raised in initial consultation paper (Consultation Paper).

In addition to the comments and recommendations contained within this submission, we refer the Commission to our previous relevant submissions, including:

- FVPLS Victoria’s 2015 submission to the Victorian Royal Commission into Family Violence;¹
- FVPLS Victoria’s 2014 submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, Issues Paper 7: Statutory Victims of Crime Compensation Schemes;²
- FVPLS Victoria’s 2010 Policy Paper Series³ which set out foundational principles that remain relevant today.

Throughout this submission case studies are used to demonstrate the lived experiences of the victims/survivors with whom we work –predominantly Aboriginal women and their children. Names and identifying details have been changed and, in some instances, multiple stories have been amalgamated in order to protect the privacy and confidentiality of our clients.

Finally, we note that the Consultation paper uses the term victim. Throughout this submission, the term ‘victim/survivor’ is used. This is FVPLS Victoria’s preferred terminology. In our view, it recognises not only that a person has been wronged, but also the capacity to move past victimhood to healing and flourishing – and the courage, resilience and strength this entails.

Warning: This submission contains case studies which may be distressing for some readers.

¹ Available at <http://fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>.

² Available at <http://fvpls.org/images/files/RC%20Submission%20re%20Issues%20Paper%207%20-%20with%20coversheet.pdf>.

² Available at <http://fvpls.org/images/files/RC%20Submission%20re%20Issues%20Paper%207%20-%20with%20coversheet.pdf>.

³ Available at: <http://fvpls.org/Policy-and-Law-Reform.php>. See in particular, pages 89 to 102 of *Paper 3: Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault*.

EXECUTIVE SUMMARY

FVPLS Victoria

FVPLS Victoria is an Aboriginal Community Controlled Organisation which provides holistic, culturally safe services and supports to Aboriginal and Torres Strait Islander (hereafter **'Aboriginal'**) victims/survivors of family violence and sexual assault. Established 15 years ago, FVPLS Victoria operates the only legal assistance service in Victoria which is exclusively dedicated to assisting Aboriginal victim/survivors of family violence and sexual assault – predominantly women and children. FVPLS Victoria also designs and delivers early intervention prevention programs and undertakes policy and law reform work to improve access to justice, strengthen Aboriginal women's resilience and reduce vulnerability to violence. FVPLS Victoria's legal services are not gender exclusive, however at least 93% of our clients are Aboriginal women.

Assisting victims/survivors of family violence to make applications under the Act is a core area of FVPLS Victoria's work. FVPLS Victoria's lawyers, assisted by paralegal support workers, provide advice, court representation and ongoing casework throughout the entire duration of a client's VOCAT application and, in many instances, we maintain engagement with the client long after the legal matter has been finalised in order to support clients to navigate the processes required to access and make full use of their award. This submission draws on our frontline expertise and the voices of the Aboriginal women and children with whom we work through our legal service provision, early intervention prevention and community engagement work across Victoria. Recommendations made throughout this submission are directed towards improving the system's capacity to meaningfully recognise and respond to the impacts of family violence and sexual assault against Aboriginal people.

Further information about FVPLS Victoria can be found in Appendix 1.

Experiences of Aboriginal victims/survivors

This inquiry is of particular importance to Victorian Aboriginal people – especially Aboriginal women and children who are disproportionately impacted by family violence. Nationally, Aboriginal women are 32 times more likely to be hospitalised for family violence⁴ and 10 times more likely to die as a result of violent assault.⁵ In Victoria, where family violence occurs Aboriginal women are 25 times more likely to be killed or injured than non-Aboriginal women.⁶ Family violence is a leading contributor to Aboriginal women's homelessness, poverty, criminalisation, incarceration, mental and physical ill health, and drug and alcohol abuse.⁷

⁴ Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander people*, 2006, page 66 available at <http://www.aihw.gov.au/publication-detail/?id=6442467912>.

⁵ Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander people*, 2006, page 66 available at <http://www.aihw.gov.au/publication-detail/?id=6442467912>.

⁶ Royal Commission into Family Violence, Volume V, Report and Recommendations, March 2016, pg. 13, available at <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>.

⁷ National Mental Health Commission, *The Mental and Social and Emotional Wellbeing of Aboriginal and Torres Strait Islander Peoples, Families and Communities* (2013) 17; Australian Institute of Health and Welfare, *Specialist Homelessness Services 2011-2012* (2012) 13, 38.

Family violence also has profound impacts on Aboriginal children as both primary and secondary victims. Out of the 2,135 family incident reports made by Aboriginal people in Victoria in 2013-14, around one third had children recorded as present. The number of family violence incidents at which at least one child was recorded as present increased approximately 66 per cent between July 2008 and June 2014 from 424 to 704.⁸

Family violence is also one of the single biggest drivers of Aboriginal children being removed from their families and placed in out-of-home care⁹, which increases the likelihood of Aboriginal children coming into contact with the criminal justice system (as both victims and offenders) and being dislocated from culture, community and identity which are strong protective factors.

An Act in Need of Reform

The Act was not designed to respond to family violence and is in dire need of reform. It was created at a time when family violence was not properly recognised or understood, and Aboriginal women largely invisible to legislators and policy makers. Through our frontline work with Aboriginal women, FVPLS Victoria routinely sees how the VOCAT system is failing to provide timely, just, trauma-informed and culturally safe outcomes for Aboriginal victims/survivors of family violence and sexual assault.

A new fit-for-purpose, culturally safe, trauma-informed and family violence-specific, victims of crime assistance scheme has great potential to contribute to victims/survivors' validation, recovery and healing and, in turn, to contribute to reducing the impacts and inter-generational trauma of family violence against Aboriginal women and children. This submission makes recommendations which in our view will assist to create such a scheme.

Recommendations

In this submission, FVPLS Victoria recommends the following key reforms:

- An overhaul of the *Victims of Crime Assistance Act 1996* to enable it to fully acknowledge and respond to the impact of family violence on Aboriginal victims/survivors;
- The creation of a new family violence-specific, culturally safe and trauma-informed scheme for victims/survivors of family violence. We recommend this be an administrative scheme, which allows victims/survivors to 'opt-in' to a judicial hearing if they so wish and contains in-built safeguards and wrap-around support including (funded) culturally safe and specialist legal assistance for Aboriginal victims/survivors. We further recommend this scheme be subject to other reforms and safeguards outlined in this submission; and
- Improved cultural competency across the system.

⁸ Royal Commission into Family Violence, Volume V, Report and Recommendations, March 2016, 11, available at: <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>.

⁹ Commission for Children and Young People, *Always Was, Always Will Be Koori Children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, (2016) 11, available at <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>.

We also make the following recommendations which should be incorporated into any newly created scheme or made to the existing regime in the event that the proposal for a new, family violence specific model is not adopted:

- Invest in the delivery of the Koori VOCAT List to ensure it has the resourcing, capacity, structural and legislative reforms to achieve its aims;
- Introduce a schedule of Koori VOCAT List regional visits, similar to the Federal Circuit Court model whereby the Koori VOCAT List visits key regional courts at least three to four times per year;
- Increase compensation amounts to accurately reflect the cumulative impact and consequences of family violence with a presumption of awards being paid directly to victims/survivors, unless a victims/survivor elects for payments to be held on trust or paid directly to a service provider;
- Replace the special financial assistance award with a flexible recognition payment that is not prescribed by categories and subject to a significantly increased maximum;
- Expand definitions of ‘act of violence’ and ‘injury’ to fully recognise and accommodate the nature and experience of family violence and remove the Act’s inherent bias towards stranger-based violence;
- Exempt cases of family violence from the operation of section 4 concerning ‘related criminal acts’;
- Treat children witnessing family violence as primary victims in their own right;
- Consider, including through extensive stakeholder consultation, developing an administrative process whereby victims/survivors receive an automatic award upon the sentencing of a perpetrator for a family violence-related offence. For example, a default award could be made unless the Magistrate believes there are exceptional circumstances to not make an award and gives written reasons for that decision;
- Remove the requirement to notify, or consider notifying, the perpetrator in cases concerning family violence and sexual assault;
- Remove the requirement of ‘mandatory refusal’ (section 52) in cases of family violence and sexual assault to ensure victims/survivors are not penalised where they have not made a timely report or provided assistance to police, and broaden categories of evidence which may be accepted to establish violence on the balance of probabilities;
- Expand the types of admissible evidence in family violence cases and broaden the professionals and services from whom records and reports can be adduced;
- Refine the application of section 54, including removing consideration of the ‘character’ and criminal history of the victim/survivor, and whether the victim/survivor ‘provoked’ or ‘contributed’ to the violence;
- Explicitly preclude refunds in cases involving family violence;

- Remove the two year time-limit for claims relating to family violence or sexual assault;
- Invest in culturally safe and specialist community legal education and early intervention programs to build Aboriginal victims/survivors' awareness of and access to entitlements under the Act; and
- Promote Aboriginal family violence victims/survivors' access to culturally safe and specialist legal assistance, including through adequate resourcing for Aboriginal Community Controlled legal assistance services who specialise in assisting victims/survivors and strengthened referral protocols across the sector.

As outlined in the Consultation Paper, the Act was created at a time when family violence was not properly recognised or understood, and Aboriginal women largely invisible to legislators and policy makers. Through our frontline work with Aboriginal women, FVPLS Victoria routinely sees how the system is failing to provide timely, just, trauma-informed and culturally safe outcomes for Aboriginal victims/survivors of family violence and sexual assault. While models such as the Koori List are to be commended, they have lacked the resourcing, and surrounding legislative and structural reforms to provide a truly supportive and trauma-informed process for Aboriginal victims/survivors.

The unique nature, severity and prevalence of family violence necessitates the creation of a new scheme. FVPLS Victoria recommends that a new family violence-specific model be created which has cultural safety and the experiences of victims/survivors at its core. We propose a model with the following features:

- An administrative scheme administered by specialist decision-makers with family violence expertise and regular training;
- Capacity for victims/survivors to ‘opt-in’ to a judicial hearing if they so wish;
- Cultural competency in-built in all elements of the scheme. This would require:
 - close consultation during design and implementation with ACCOs with expertise assisting victims/survivors of family violence and the Victorian Aboriginal community more broadly, and regular reporting to and accountability for the ongoing functioning of the scheme to the Aboriginal community through the Aboriginal Justice Forum and Indigenous Family Violence Partnership Forum;
 - a requirement for all decision-makers and staff operating within the scheme to undertake mandatory and regular cultural awareness training, with such training to include specific content on the experiences of and barriers faced by Aboriginal victims/survivors of family violence;
 - a well-resourced ‘Koori List’ (or equivalent Aboriginal-specific stream) with culturally safe processes at every step, including all applications by Aboriginal victims/survivors being dealt with by specialist decision-makers and staff; and
 - access to culturally safe, holistic and specialist legal assistance (such as that provided by FVPLS Victoria) for all Aboriginal victims/survivors applying through the scheme, supported by sound referral protocols and funding arrangements;
- Expanded definitions of ‘act of violence’ and ‘injury’ which fully recognise and accommodate the complex nature, lived experience and cumulative impact of family violence;
- Removal of the requirement to notify, or consider notifying, the perpetrator;
- Removal of the requirement for victims/survivors to report to and provide assistance to police, and broadened categories of admissible evidence to substantiate violence and its consequences;
- Refinement of the application of section 54, including removing consideration of the ‘character’ and unrelated criminal history of the victim/survivor, and whether the victim/survivor ‘provoked’ or ‘contributed’ to the violence;
- Removal of the two year time-limit for claims relating to family violence or sexual assault;

- In-built safeguards and wrap-around support including (funded) holistic, culturally safe, legal assistance for victims/survivors;
- Where an Applicant who lives in a regional area has elected a judicial hearing, judicial officers should conduct the hearing at a venue closest to where the Applicant lives; and
- Where an Applicant from a regional area is required to personally attend upon an administrative or judicial decision maker in Melbourne, travel and accommodation expenses should be paid in advance.

We note that other key players within the sector, such as Women’s Legal Service Victoria and Domestic Violence Victoria, have proposed similar models.

Administrative determination, with ‘opt-in’ judicial hearing

For some victims/survivors the opportunity to give evidence in Court and have a Judicial Officer recognise the violence and harm suffered can be profoundly validating and healing. (A case study and further discussion of this point is provided at 38 below.) For many of the women we work with, however, the VOCAT process is re-traumatising, alienating and emotionally exhausting. The often lengthy process, multiple court events and evidentiary requirements for a victim to ‘prove’ a claim or provide further and better particulars can leave victims/survivors feeling disbelieved, blamed, and humiliated – their agency and privacy violated. Problematic processes such as perpetrator notification can not only cause immense anxiety and terror for victims/survivors, they also increase the risk of further violence being perpetrated against the victim/survivor by way of retaliation and provide new opportunities for perpetrators to silence and exert control over victims/survivors. All of this can be profoundly destabilising and risk derailing a victims/survivor’s journey of healing at a time where she is trying to rebuild her life. Where a victim/survivor is struggling with mental health issues, caring for children (including children who are also dealing with the trauma of family violence), and/or is under the scrutiny of child protection, as many of our clients are, the impacts can be severe.

Accordingly, we recommend an administrative scheme be established, presided over by culturally competent, highly qualified, family violence and trauma-informed professionals. However, we strongly recommend retaining an option for victims/survivors to ‘opt-in’ to a judicial hearing at the conclusion of their matter to respect the wishes of victims/survivors who would like that form of validation whilst still ensuring there is not a requirement to attend multiple directions hearings. Resourcing must ensure that where a victims/survivor does opt-in to a judicial process this is available in regional locations and does not require victims/survivors to travel long distances to access this right.

The following case studies illustrate some of the lived experiences behind this recommendation and the need for a more trauma/family violence informed scheme.

Case Study

Janine was a 26 year old Aboriginal woman who endured repeated physical, psychological and financial abuse from her former partner. With support from FVPLS Victoria, Janine made a claim for financial assistance through the Koori VOCAT List.

FVPLS Victoria submitted final documents and received no response from VOCAT for 8 months.

VOCAT then wrote notifying the victim/survivor that she would need to attend a hearing to give evidence. The letter did not include any details as to the nature or purpose of the hearing. FVPLS Victoria's lawyer contacted Registry staff to seek clarification and was informed that the matter was listed as either a directions or interim hearing and could be just to 'check in with how the client was going', but that we should prepare final submissions as the Tribunal Member may make a final determination on the day.

Our lawyer specifically asked whether the alleged perpetrator would be notified in this matter, as this had been flagged in previous correspondence from the Tribunal which FVPLS Victoria had strongly opposed. The registry advised that the Tribunal Member had decided not to notify the offender at this stage; and that they would confirm whether the decision had been made to not contact the perpetrator at all, or just not for this hearing. No further communication was received.

It therefore came as a great shock to Janine and FVPLS Victoria when, at the subsequent hearing, the Tribunal Member indicated that one of the primary purposes of the hearing was to determine whether or not the perpetrator should be notified. Janine was called to give evidence about why she opposed this, which included having to recount the abuse he had perpetrated against her in significant detail.

While our client's evidence was ultimately accepted and the perpetrator was not notified, the process took a significant (and in our view unnecessary) toll on our client, particularly as she had not been given notice of the possibility of having to do this and had not been able to prepare herself mentally and emotionally.

Case study

Korina was sexually abused by a cousin when she was 8 years old. She told her parents the following morning and the matter was immediately reported to police who interviewed the people present in the house at the time of the assault – all of whom were children. No charges were laid. Korina was deeply traumatised by the event and suffered ongoing distress, anxiety and depression.

Three years later, FVPLS Victoria supported Korina to make an application to VOCAT.

The Tribunal determined that the police statements of Korina, the alleged offender and the witnesses conflicted and that there would need to be a Hearing. This was despite evidence that witnesses had later admitted lying to police because they had been told to do so. The Tribunal nevertheless requested Korina's instructions concerning the inconsistencies of her version of events with that of the alleged offender and witnesses. The Tribunal also requested submissions regarding notifying the alleged offender.

Korina was eleven years old and experienced great distress whenever she was asked to discuss the incident. In FVPLS Victoria's view requiring Korina to give evidence of the sexual assault at a hearing, or pressing her for further instructions, was likely to result in further traumatisation and was contrary to the best interests of the child.

The Tribunal's actions forced FVPLS Victoria, Korina and her mother to carefully consider whether or not to abandon the application for the sake of Korina's wellbeing. At the time of writing, this matter remains unresolved.

If recommendations for a new scheme are adopted, it will be crucial to ensure that Aboriginal victims/survivors still have access to culturally safe and specialist legal assistance to support them through the process. Safeguards will be required to ensure that any move to an administrative, or quasi-administrative system, is not viewed as an opportunity to force parties to be self-represented, or result in applications becoming a purely bureaucratic process with awards reduced or applied in an overly simplistic or one-size-fits all approach.

Cultural Competency – Koori List

The history of colonisation and oppression of Aboriginal peoples through the justice system – including police and the courts – has left a profound and ongoing legacy. While some positive steps are being taken, the relationship between police and the Aboriginal community remains marred by distrust and fear, and systemic discrimination continues. Aboriginal people are over-criminalised and over-incarcerated¹⁰ and Aboriginal children disproportionately represented in the child protection system, with Victorian Aboriginal children now being removed from their families at higher rates than at any time since white settlement.¹¹ Indeed, fear of child removal is one of the greatest deterrents preventing Aboriginal women from reporting family violence. In this context, it takes a significant leap for Aboriginal victims/survivors of family violence or sexual assault to voluntarily seek assistance from police and the justice system, including through making a claim to VOCAT.

The Koori VOCAT List was established in 2006 in recognition that the Aboriginal community was under-utilising VOCAT. It aims to improve VOCAT's accessibility for Aboriginal victims of crime and strengthen the Tribunal's ability to respond to the unique needs and disadvantages of Aboriginal people in a culturally appropriate and respectful manner. Under the Koori List project, Tribunal members underwent specialised cultural awareness training and subsequently adopted particular approaches to interpreting relevant legislation, hearing and court processes, and dealing with claimants in a way that was culturally appropriate and cognisant of the complexity of their applications. A designated Koori List registrar was also appointed and equipped with appropriate skills and training.

While FVPLS Victoria strongly supports the aims of the Koori VOCAT List and the efforts made by the Tribunal to date, in recent years a number of our clients' experiences of the system have not differed markedly from the general administration of the Act. For example, FVPLS Victoria have observed that Tribunal members often remain seated at the bench rather than joining the victim/survivor and her legal

¹⁰ Human Rights Law Centre and Change the Record Coalition, *Over-represented and Over-looked: the Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-imprisonment*, May 2017, citing Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016* (2016), figure 4.13.1. For further detail see FVPLS Victoria, *Submission to the Royal Commission into Family Violence*, 2015, pp 23-27, available at <http://fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>.

¹¹ Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, (2014) 37 available at <http://www.cyp.vic.gov.au/downloads/annual-reports/ccyp-annual-report-2014.pdf>.

representative at the Bar Table, and aside from providing an acknowledgement of country at the commencement of proceedings (which is a positive and welcome step), matters are often run in a fashion that resembles normal court proceedings, being quite formal and legalistic and held in what is normally used as a criminal court. In addition, FVPLS Victoria has observed an increase in Tribunal members requiring victims/survivors to give evidence in court, proposing to notify perpetrators (including in cases where it is not safe or appropriate to do so, or in circumstances where the offender has already been found guilty and sentenced), and seeking further evidence in relation to a failure to make a full report to police or to assist police with prosecution.

Case Study

Shayla is a mother of five and lives in a regional area several hours from Melbourne. After suffering significant violence over a number of years, Shayla sought FVPLS Victoria's support to apply for assistance under the Act through the Koori VOCAT List.

The hearing in Shayla's matter took place in Melbourne. Shayla travelled many hours to be there.

At the hearing, the Tribunal member stayed sitting at the Bench rather than joining Shayla and her lawyer at the Bar Table. The Tribunal member apologised for this stating they had too much paperwork spread out on the bench.

At the conclusion of the hearing, Shayla was awarded \$1,300 by way of Special financial Assistance (category C) and told this was in recognition of the harm she had suffered – a minimal sum given the years of violence she endured.

Shayla was left feeling 'unimportant', as though her pain did not matter. She was dismayed that she could not have received a meaningful acknowledgment of her injuries from her own community.

In addition, the Koori VOCAT List is significantly under-resourced with only one Registrar and long delays are common. While delays can arise on account of traumatised clients disengaging from the system or timeframes associated with obtaining expert reports, FVPLS Victoria has acted in matters where there are excessive delays between filing final documents and receiving a response from the Tribunal. FVPLS Victoria has noticed that in regional areas these delays are particularly pronounced, with especially long wait times for hearings. Indeed, in some cases clients wait six months or more for a response only to be asked to provide evidence or submissions on matters which in FVPLS Victoria's view should not be required in cases of family violence – such as cooperation with police, or the level of intoxication of the client at the time of the crime.

Case study

Final documents were submitted in June 2016 with extensive submissions on 'items to assist recovery'. No response was received from the Tribunal until October 2016, when the Tribunal wrote requesting submissions that had already been filed.

When FVPLS Victoria corrected this error, the Tribunal listed the matter for a Directions Hearing in February 2017 with no indication of what was in issue.

At the Directions Hearing, the Tribunal member raised concerns that the crime had not been reported to police – an issue which could have been raised six months earlier.

Importance of Culturally safe and specialist Legal Assistance

A critical component of achieving the culturally competent administration of the Act, is ensuring Aboriginal victims/survivors have access to culturally safe and specialist legal assistance from an Aboriginal Community Controlled Organisation with expertise supporting victims/survivors of family violence, such as FVPLS Victoria, as well as holistic and wrap-around support to minimise the potential for proceedings to be re-traumatising.

The legal complexity, administrative burden, potential re-traumatisation and “emotional load” associated with making a claim under the Act (which may take years to conclude), means that VOCAT is simply not accessible for the vast majority of self-represented litigants. This is especially true for Aboriginal victims/survivors who already face a range of complex barriers to accessing justice.¹²

Given the highly sensitive nature of family violence and sexual assault and the complex barriers Aboriginal victims/survivors of family violence face to reporting violence, Aboriginal Community Controlled legal service providers with expertise in family violence are best placed to establish the trust and confidence necessary for an Aboriginal victim/survivor to feel safe disclosing the full circumstances of the violence she has experienced. FVPLS Victoria often assists clients who have experienced many years of violence before coming forward, or have sought crisis assistance for physical violence, but have not revealed sexual or other forms of violence until engaging with FVPLS Victoria.

See the body of the submission below for discussion of the importance of reforming definitions of ‘act of violence’ and ‘injury’, perpetrator notification, mandatory refusal and s 54 considerations.

¹² For further detail see FVPLS Victoria, Submission to the Royal Commission into Family Violence, 2015, pp 23-27, available at <http://fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>.

RESPONSE TO CONSULTATION PAPER QUESTIONS

With respect to the specific questions posed in part two of the Consultation Paper concerning refining the existing scheme, we provide a number of responses and recommendations below. We strongly encourage these recommendations be implemented alongside the establishment of a new family violence-specific scheme such as the one we suggest above.

Eligibility for Assistance

Improving the eligibility structures under the Act is a key step in addressing the needs of Aboriginal victim/survivors of family violence. The Act's current eligibility requirements, particularly definitions of 'act of violence' and 'injury', fail to recognise and account for the full range and nature of family violence and the many pervasive, nuanced and life-long impacts it can have. This can result in Aboriginal family violence victims/survivors feeling that their suffering is not taken seriously. This is also the case with children, who will often be deeply affected by family violence but may be left ineligible for compensation. It is however important to recognise that there are also a number of non-legislative barriers which prevent Aboriginal family violence victims/survivors from accessing the Act and these must be dealt with in conjunction with the legislative changes.

FVPLS Victoria recommends that new and separate eligibility criteria are needed specifically for family violence victims/survivors and that there should be a new family violence-specific model created, as outlined at page 9 above. Eligibility criteria under this new model must be designed to fully recognise the nature and impacts of family violence and incorporate a human-centred, therapeutic approach that puts victims/survivors' experiences at the heart of the scheme.

Expanding the definition of an 'act of violence' (Questions 4-6)

The Act defines an 'act of violence' as 'a criminal act or a series of criminal acts' which has 'directly resulted in injury or death...'¹³ This means that certain forms of family violence, which do not meet the threshold of a criminal act, fall outside of the scheme despite causing significant injury. This includes recognized and highly harmful forms of violence such as emotional or psychological abuse, economic abuse, harassment, threats and other patterns of behavior designed to control and cause fear. FVPLS Victoria recommends the Act be amended to incorporate the definition of family violence contained in the Family Violence Protection Act 2008 (Vic) with this definition also considered in the development of our newly proposed family violence-specific victim assistance scheme.

Expanding the definition of 'injury' (Questions 7 to 8)

The Act currently defines injury as 'actual physical bodily harm, mental illness or disorder or an exacerbation of a mental illness or disorder..., pregnancy' or any combination of these 'directly caused' by an act of violence. This definition fails to account for the cumulative and insidious emotional and psychological harm caused by family violence which may be significant yet difficult to distill into a diagnosable mental illness or causally link to specific acts of violence.

The reliance on diagnosable mental illness is particularly problematic for Aboriginal victims/survivors. Some Aboriginal people may experience western psychiatry as unhelpful and inconsistent with Aboriginal understandings of social and emotional health and wellbeing. Where a victim/survivor does

¹³ *Victims of Crime Assistance Act 1996 (Vic)*, s 3(1).

have a diagnosable mental illness, she may not have engaged with a psychiatrist or psychologist and the Act therefore forces victims/survivors to establish new therapeutic relationships in order to recount their experience of family violence in minute detail, which may be unnecessarily re-traumatising. While FVPLS Victoria supports our clients to access culturally safe counseling as a routine part of our service, there are limited Aboriginal or culturally competent psychologists and psychiatrists practicing in Victoria, particularly in rural and regional areas.

Accordingly, FVPLS Victoria recommends that the Act be amended to incorporate a broader understanding of the impacts and consequences of family violence that fall short of a diagnosable mental illness and also allow evidence to be adduced from counselors or other culturally relevant healing services, in lieu of expert reports from psychiatrists.

Establishing causation can also be a significant barrier for Aboriginal victims/survivors. Many of the women FVPLS Victoria works with have lived with inter-generational trauma and experienced a range of forms of violence perpetrated by multiple people or institutions over their lifetime. This may include for example, witnessing family violence in the home while growing up, experiencing child abuse, state-sanctioned abuse (such as imprisonment) and/or systemic or institutional abuse (such as police brutality, or abuse within residential care, juvenile detention) all before finding herself in a violent relationship as an adult. The requirement to prove direct causation in these circumstances penalises Aboriginal victims/survivors and stands in the way of recognizing and appropriately supporting the lived experiences of victims/survivors. As discussed above, FVPLS Victoria recommends the creation of a new culturally safe and trauma-informed family violence-specific model. Such a model, if designed from a human-centred and culturally competent approach, could embed the level of flexibility and understanding needed to properly respond to the lived experiences of Aboriginal victims/survivors.

Recognising children as victims

In addition, eligibility criteria should be expanded to allow more comprehensive recognition of the household-wide effects of family violence. Distinctions between primary, secondary and related victims are not suited to responding to family violence – particularly where children are involved. In most cases, where family violence occurs in a household, children will be affected regardless of whether or not they are a target of the abuse. The Act currently recognises that parents of child victims/survivors can be affected by family violence against their children, but it does not properly acknowledge that children are often profoundly affected by family violence against their parents/carers. This problem is of particular importance for Aboriginal children who are statistically more likely to grow up in a household where family violence occurs. The definitions of secondary and related victims/survivors need to be broadened to better allow children to be supported by the Act and to support a culturally safe, therapeutic approach which allows children to address and heal from the harm they have suffered and not carry it through into adulthood.

To this end, FVPLS Victoria recommends that children witnessing family violence be treated as primary victims in their own right.

Other (non-legislative) barriers to access (Questions 9 and 10)

What non-legislative barriers to access exist?

One of the key non-legislative barriers for victims/survivors is awareness. Many victims/survivors of family violence are not aware of the Act, their legal rights or entitlements. This is particularly so for Aboriginal victims/survivors many of whom face a number of barriers, including lower levels of formal education and limited knowledge of legal rights and options and the legal system more broadly. For more discussion of accessibility and awareness of VOCAT refer to our discussion of chapter 13 below.

A second issue is a belief in the community that a claim cannot be made without police prosecution or reports. As family violence is often not reported, this leaves many victims/survivors thinking they are unable to lodge a claim.

A further issue relates to the ability of self-represented victims/survivors to navigate the system. In FVPLS Victoria' experience, the Tribunal is simply not possible for most Aboriginal victims/survivors to navigate without a lawyer. Notwithstanding legal complexity and the administrative burden, self-represented victims/survivors often become emotionally drained and overwhelmed, finding it too difficult to pursue matters to completion without an advocate. This is particularly an issue for Aboriginal victims/survivors for whom the experience of colonisation and systemic oppression through police and the law have wrought a deep mistrust of and reluctance to engage with the justice system. The Legal Australia-Wide Survey has previously reported that Aboriginal and Torres Strait Islander people have lower incidents of finalising legal problems, compared with non-Aboriginal and Torres Strait Islander people. For further discussion of this issue, see page 36 below.

The current operation of the Act also poses a number practical issues such as the fact that items awarded to assist recovery are more difficult to access for claimants from low socio-economic background as the scheme requires that the items are either paid for upfront or an invoice provided to the Tribunal to pay the service provider directly.

How should non-legislative barriers to access be addressed?

Investing in culturally safe and specialist community legal education and early intervention programs are critical to building Aboriginal victims/survivors' awareness of entitlements under the Act, and awareness of legal rights and options more broadly. Following the establishment of the Koori VOCAT List in 2006, FVPLS Victoria collaborated with Magistrates Susan Wakeling and Felicity Broughton to deliver community forums and community legal education across Victoria which contributed to a significant increase in applications made by Aboriginal claimants for a period. This kind of approach could be replicated to further promote awareness, engagement and understanding between VOCAT and Victorian Aboriginal communities. Such an approach would be particularly beneficial if it were rolled out alongside the implementation of any new family violence-specific compensation scheme as recommended in this submission.

Promoting Aboriginal victims/survivors' access to adequately resourced, culturally safe and specialist legal advice and representation, such as that provided by FVPLS Victoria, is also essential. Key agencies that provide services to victims/survivors of family violence should ensure they have culturally appropriate processes and procedures in place, including referral protocols with Aboriginal Community

Controlled Organisations with expertise in family violence and strengthened understanding of and capacity to identify where a referral for culturally safe and specialist legal advice should be offered.

Developments such as the Koori VOCAT List (discussed above) are also positive in breaking down some of the legislative barriers and making the Tribunal more accessible for Aboriginal victims/survivors of family violence.

Barriers to access for Aboriginal victims/survivors living in regional areas could be addressed by introducing a schedule of Koori VOCAT List regional visits, similar to the Federal Circuit Court model. The VOCAT Koori List should visit key regional courts three to four times per year.

[‘Related criminal acts’ \(Questions 11-14\)](#)

Family violence victims/survivors often experience multiple assaults and forms of violence over an extended period of time. In these circumstances, the operation of the ‘related criminal acts’ provision¹⁴ can lead to victims/survivors receiving fewer and lesser awards of financial assistance than victims/survivors of other kinds of crime. In addition, in the case of sexual assaults where the assaults are perpetrated by the same offender, the Tribunal will often determine the acts of violence to be related so that one award of financial assistance is given for the ‘one act of violence’. The ‘related criminal acts’ provisions create an inherent bias within the Act towards once-off, or stranger-based incidents and fail to appropriately recognise the cumulative and serious harm caused by family violence.

FVPLS Victoria recommends the Act be amended so that cases of family violence (including sexual violence) are excluded from the operation of the ‘related criminal acts’ provision.

As outlined above, FVPLS Victoria recommends a new model should be established with separate provisions dealing with family violence, outside of the current compensation criteria. This should include flexible provisions which enable the full consideration of the pattern of violence endured and compensation commensurate with the cumulative harm caused. For further detail, see our discussion of expanding the definitions of ‘injury’ and ‘act of violence’ above.

In addition, FVPLS Victoria notes that if the limits on financial assistance were lifted the operation of the ‘related criminal acts’ provisions would be less problematic. Raising the cap on awards would give the tribunal more discretion to increase compensation where victims/survivors have been subjected to repeated family violence. In addition, legislative amendments should be made requiring the Tribunal to consider the cumulative impact of the violence that has occurred.

[Special Financial Assistance](#)

[Special Financial Assistance and cumulative harm \(questions 15-17\)](#)

In FVPLS Victoria’s experience, the special financial assistance categories are unhelpful in relation to family violence because of the fact that family violence often consists of a sequence of incidents. While there is currently some recognition in the Act that ‘related criminal acts’ can cause more harm than an isolated event of the same level, this needs to be improved.

¹⁴ *Victims of Crime Assistance Act 1996* (Vic), s 4.

We have had the opportunity to review a draft of the joint submission made to this inquiry by Women's Legal Service and Domestic Violence Victoria. In that submission, the authors recommended that Special Financial Assistance be replaced by a 'recognition payment' as described below:¹⁵

We believe the focus of the scheme and recognition payment should be victim rather than offence-centred, focusing on the level of cumulative impact the offence has had on the victim rather than the presumed level of seriousness of the offence. A recognition payment as a symbolic gesture of the community's remorse for the grief and trauma the victim of crime has experienced can be central to the emotional and psychological recovery of a survivor of family violence.

... To assist specialist decision-makers with their discretion in determining award amounts, the implementation of the recognition payment could be supported by guidelines, minimum standards for decision-making, and education on the immediate and long-term impacts of all forms of family violence. It is our contention that in making recognition award decisions in this way, it is vital that the decision-maker's discretion is family violence and trauma informed, and imbued with an understanding of the values and attitudes that have historically disadvantaged and discriminated against survivors of family violence.

We support this approach and add the importance of cultural awareness training to support a nuanced exercise of discretion which considers all of the factors contributing to the severity of the cumulative impact on Aboriginal victims/survivors of family violence.

In the alternative, if special financial assistance is retained in the Act, FVPLS Victoria recommends that wherever there are a series of acts constituting family violence, the Tribunal should have discretion to award up to the maximum special financial assistance payment. This does not mean that every victim will receive the maximum, but it would allow the Tribunal to better recognise the cumulative harm of family violence.

In addition, the recommended broadening of the eligibility criteria (outlined above) should flow through to also broadening the special financial assistance categories in the Act. However, as outlined above, FVPLS Victoria submits that the categories are an unhelpful construct in relation to family violence. If the cumulative harm of family violence is going to be properly recognised, the Tribunal should be given more discretion to make awards outside of the rigid categories and grant special financial assistance commensurate with the harm suffered.

Special financial assistance and child victims/survivors of family violence (questions 18-19)

Special financial assistance should be available to all child victims/survivors of family violence in order to appropriately recognise the profound and wide-ranging impacts family violence can have on children's lives, including their physical, social and emotional health, wellbeing and development. FVPLS Victoria

¹⁵ Womens Legal Service Victoria and Domestic Violence Victoria, Joint submission to the review into the Victims of Crime Assistance Act, 2017, 29.

recommends that children witnessing family violence be deemed primary victims, which is consistent with contemporary understandings of the impact of family violence on children from other jurisdictions such as the FVP Act, the Children Youth and Families Act and Family Law Act.

In the alternative, FVPLS Victoria recommends the Act be amended to enable secondary or related child victims/survivors to be eligible for special financial assistance. The Act should also be amended to grant children an automatic uplift to category A in all cases. The Tribunal could then be given the discretion to determine what amount up to the maximum is appropriate to grant in each particular case by reference to the conduct which occurred and the impact it has had on the particular child.

Recommendations:

1. A new family violence-specific set of criteria and definitions be created to guide the establishment of a new scheme specifically designed to compensate victims/survivors of family violence as a separate class of victim, regardless of whether the violence was strictly criminal. This should include an expanded concept of 'injury' that takes into account the complex dynamics of family violence and the wide-ranging, serious and cumulative harms it can cause.
2. In the meantime, or in the alternative if recommendations for a new model are not adopted, section 3(1) of the Act should be amended so that 'act of violence' is defined to include 'family violence, a criminal act or a series of related criminal acts...' With a new definition of family violence inserted into the Act which mirrors the definition in the *Family Violence Prevention Act 2008 (Vic)*.
3. Children witnessing family violence should be treated as primary victims in their own right.
4. Invest in culturally safe and specialist early intervention prevention programs and community legal education to building Aboriginal victims/survivors' awareness of entitlements under the Act, and awareness of legal rights and options more broadly
5. Promote Aboriginal victims/survivors' access to culturally safe and specialist legal advice and representation throughout VOCAT matters, including through adequate resourcing and strong referral relationships.
6. Invest in and strengthen initiatives directed towards improving cultural safety and accessibility of the scheme for Aboriginal people, such as the Koori VOCAT List.
7. Introduce a schedule of Koori VOCAT List regional visits, similar to the Federal Circuit Court model. The VOCAT Koori List should visit key regional courts three to four times per year.
8. Amend the Act so that cases of family violence are excluded from the operation of section 4 concerning 'related criminal acts'.
9. Increase the quantum of awards payable to victims/survivors of family violence to be commensurate with the wide-ranging, profound and cumulative harms caused by family violence.
10. Replace the special financial assistance award with a flexible recognition payment that is not prescribed by categories and subject to a significantly increased maximum.

Chapter 8 Form and timing of applications

Form of application (Question 20)

The VOCAT application form is indicative of the scheme's general incompatibility with family violence and poses a number of barriers to Aboriginal victims/survivors. For example, the VOCAT application form asks for the 'act of violence/offence'. As outlined above, family violence typically involves a pattern of conduct over a prolonged period of time, and one client may have experienced multiple forms of violence. This can create misperceptions about what can or cannot be the subject of a claim and may deter victims/survivors from accessing the scheme. Victims/survivors of family violence often feel shame, worthlessness and self-blame. Articulating the violence experienced can be challenging and potentially re-traumatising – indeed deliberately undermining a victims/survivors' capacity to call out violence and seek help can be a particular tactic employed by perpetrators. It is therefore crucial that additional obstacles for victims/survivors are not created by an inaccessible application process.

The form also reveals a presumption that matters will be reported to police and requires an explanation and statutory declaration where this has not occurred. This fails to recognise the complex dynamics of family violence and may discourage victims/survivors from lodging a claim if they feel they did not have a 'good' reason for not reporting the violence. This is of particular concern for Aboriginal victims/survivors who, as outlined above, face a range of complex barriers to reporting violence and frequently receive poor police responses that diminish their trust and reliance on police for help. Reasons for non-reporting by family violence victims/survivors are discussed further at pages 25-26 below.

Accordingly, we recommend that the form be amended to better reflect the nature of family violence and be designed from a client-centred perspective.

However, it is important to recognise that regardless of the simplicity or accessibility of the application form, Aboriginal victims/survivors still require culturally safe and specialist legal representation to navigate the VOCAT process and access their legal rights. For further discussion on this point, see pages 13 and 36-27.

Timing of application (questions 21-22)

FVPLS Victoria recommends there be no time limits in place for applications arising out of family violence or sexual assault. This would recognise the fact that the dynamics of family violence and sexual assault can be very complicated for victims/survivors. For example, if a victim still has a relationship with the perpetrator they may not feel comfortable seeking compensation close to the time of the incident. Further, the effects of family violence manifest at different rates and evidence indicates that it can take many years for victim/survivors to disclose their experiences. Similarly, child victims/survivors may not realise until much later in life the harm they have suffered from family violence.

Aboriginal Victims/survivors of family violence may also feel distrust towards the legal system, which can deter them from making a prompt application. As outlined above the history of colonisation and ongoing systemic discrimination faced by Aboriginal people means that it takes a significant leap of faith

for an Aboriginal victim/survivor to voluntarily access the legal system and trust that she will be believed, respected and supported.

Victims/survivors who make an application a long time after an incident already face barriers in terms of gathering evidence and having their evidence believed. While the current two year time limit is often not enforced in cases of family violence, abolishing it would reduce complexity and send an important message that Victoria is willing to support victims/survivors of family violence in all circumstances.

Recommendations

11. The application form be re-designed from a victim-centred perspective to better reflect the nature and impacts of family violence.
12. The two year time limit be abolished in cases of family violence and sexual assault.

Chapter 9 VOCAT hearings—notification, appearance and open court provisions

The notification provision (questions 23-24)

FVPLS Victoria strongly recommends that the Act be amended so that perpetrator notification provisions do not apply to cases of family violence and sexual assault. These provisions are potentially dangerous, re-traumatising and act as a major deterrent to family violence victims/survivors accessing VOCAT. Notifying a perpetrator in a VOCAT matter involving family violence may seriously compromise the safety and wellbeing of the victim/survivor. In many cases, it would increase risk to the victim/survivor and may trigger further violence by way of retribution. It also provides another avenue of abuse and opportunities for perpetrators to continue to attempt to control and silence the victim/survivor.

Notification is more likely to occur in cases where the offender has not been prosecuted. This is particularly problematic in family violence and sexual assault cases, because the nature of these crimes frequently means that they are hidden and victims/survivors silenced through direct threats, psychological and emotional manipulation, guilt and shame. Through our frontline work with Aboriginal victims/survivors, FVPLS Victoria routinely sees the fear and anxiety that the prospect of perpetrator notification creates and we have worked with clients who ultimately disengage and withdraw their application for fear of further violence and retribution from the perpetrator and/or his family.

The mere fact of the Tribunal raising the prospect of perpetrator notification and seeking submissions on the point can be highly anxiety-provoking for victims/survivors, puts a burden on Tribunal and legal representatives' time, and creates yet another obstacle for victims/survivors, which runs counter to a trauma-informed, family violence sensitive system. For example, FVPLS Victoria assisted a client who allegedly had her hair set on fire and VOCAT proposed to notify the perpetrator of the hearing date. Other case studies including examples of child sexual abuse in which perpetrator notification is wholly inappropriate are outlined at page 10-11.

In FVPLS Victoria's view, a perpetrator's participation in a hearing should not be necessary for VOCAT to reach a decision on the balance of probabilities. Under the Act, the notification provision is discretionary and where our FVPLS Victoria lawyers are involved, we can often convince the Tribunal of the danger and inappropriateness of notifying perpetrators. However victims/survivors who don't have access to culturally safe and trusted legal representation may find this impossible.

One rationale that has been raised in favour of the notification provision is that that the perpetrator should be notified because the state has the right to recover against the perpetrator. However the right of recovery presents a danger and a disincentive to victims/survivors of family violence because of the fear that the perpetrator may retaliate against the victim with further violence. The safety and recovery of the victim/survivor must be paramount in all aspects of VOCAT proceedings.

Protection of victims/survivors of family violence (Question 25)

FVPLS Victoria supports the proposals for reformed evidentiary and procedural protections outlined in the Consultation paper.¹⁶ In particular, we note the suggestion of inserting a guiding principle into the Act that requires the Tribunal to “have regard to the fact that measures should be taken that limit, to the fullest practical extent, the trauma, intimidation and distress suffered by victims when giving evidence”. FVPLS Victoria supports this but recommends it go further by requiring the Tribunal to *take measures* to limit trauma, intimidation and distress *throughout all steps* of the claim process.

However, as discussed earlier in this submission, FVPLS Victoria recommends that a new family violence-specific administrative scheme be developed which is victim-centred and trauma-informed in all aspects of its design. This would make many of the procedural requirements unnecessary, save for those cases where a victim/survivor elects to opt-in to a judicial hearing.

Such a scheme would also address some of the issues with the breadth of the discretion and investigative powers currently afforded to Tribunal members which in FVPLS Victoria’s experience can sometimes result in Aboriginal victims/survivors being subject to unnecessarily intrusive questioning or requests for further evidence.

Case Study

Kalinda is a young Aboriginal woman who was raped by her partner’s brother, one week after the death of her partner. She reported the crime to police and made a statement. The perpetrator was charged with rape.

Several weeks later, Kalinda found out she was pregnant. After the birth of her child, Kalinda took a DNA test to find out if her partner was the father of her child – the test indicated he was not. On Kalinda’s evidence, her pregnancy was therefore resulted from the rape.

With support from FVPLS Victoria, Kalinda made an application to the Victims of Crime Assistance Tribunal for the pain, suffering and ongoing psychological distress she had experienced as a result of the rape and, while she loved her child, the trauma of raising a child born in these circumstances.

Despite having done one DNA test, produced police records and her own sworn evidence, and charges having been laid, the Tribunal required Kalinda to undergo further DNA testing to provide better evidence that the alleged rapist was the father of her child.

Recommendations

13. The Act should be amended so that perpetrator notification provisions do not apply to cases of family violence and sexual assault.

¹⁶ See page 91.

Chapter 10 Making an award

Mandatory refusal (questions 26-30)

FVPLS Victoria recommends that the mandatory refusal provisions be explicitly excluded for victims/survivors of family violence.

Section 52 of the Act requires the mandatory refusal of claims where the matter has not been reported to police, or the victim/survivor is deemed not to have cooperated with a police investigation. To overcome this hurdle, the victim/survivor must prove that there are 'special circumstances' to justify the failure to report or cooperate. In FVPLS Victoria's experience this burden is substantial. Section 52 fails to take into account the relationship of power and control that characterises family violence. It can operate to unduly preclude victim-survivors from redress in circumstances where they did not report due to fear of reprisal, trauma and/or fear of not being believed or otherwise alienated from their community. Similarly, victim/survivors may be reluctant to testify in criminal prosecutions where to do so would require them to face the perpetrator, relive traumatic experiences and be cross-examined about intensely personal and painful experiences. Under the Act, refusal to testify could be deemed a failure to cooperate with police thereby triggering the mandatory refusal of a claim. In addition, as stated by Women's Legal Service Victoria and Domestic Violence Victoria in their joint submission to this inquiry, section 52 fails to recognise that "for many victims avoiding police is part of their safety plan to not arouse further abuse from the perpetrator."

This provision is a particular issue for Aboriginal victims/survivors of family violence given evidence indicates as much as 90% of violence against Aboriginal people goes unreported. Aboriginal victims/survivors face additional barriers to reporting and assisting police which stem from a range of issues, including:

- Systemic racism and discrimination;
- inter-generational trauma from the legacy of colonisation, dispossession of country, forced assimilation, institutionalised racism and the Stolen Generations;
- ongoing mistrust of police and State authorities given the over-representation of Aboriginal and Torres Strait Islander peoples in the child protection and criminal justice systems;
- fear that reporting family violence will result in children being taken from their homes - a very real fear given that Aboriginal children in Victoria are 12 times more likely to be in out-of-home care through the child protection system than other children; and
- poor and/or discriminatory police responses to Aboriginal women seeking protection from family violence, including police disbelieving Aboriginal women, minimising or trivialising their experiences, or labelling family violence as reciprocal.¹⁷

That Aboriginal victims/survivors are particularly disadvantaged by this provision is highly problematic given that Aboriginal women are 32 times more likely to be hospitalised from family violence and ten times more likely to be killed as a result of violent assault than other women in Australia.

¹⁷ For further detail, see FVPLS Victoria, 2015, Submission to the Royal Commission into Family Violence, pp 46 to 53, available at: <http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>.

This requirement also poses an additional administrative burden on applicants which prolongs matters and places additional burdens on legal assistance services, such as FVPLS Victoria, who are already under-resourced and unable to address high levels of unmet demand. Previously, in FVPLS Victoria's experience of the Koori VOCAT List, the Tribunal would generally accept evidence of a police statement as sufficient. However, Tribunal members are now increasingly requesting parties go away and compile further evidence of police cooperation. FVPLS Victoria is concerned that this new practice is culturally inappropriate and insensitive to the dynamics and trauma of family violence and Aboriginal peoples' fraught relationship with police. In one example, a Tribunal member took issue with the fact that a client who had made multiple statements to the police, had not returned a victim impact statement booklet.

Alternative reporting options

FVPLS Victoria recommends that where a police report has not been made, evidence should be admissible from other sources such as medical records, witness statements, intervention orders, family court orders, copies of family violence risk assessments, records of counsellors, schools, child protective services or indeed the victim/survivor herself.

Is family violence a 'special circumstance'?

31 Should family violence be expressly considered 'special circumstances' for the purpose of the mandatory refusal provisions? If so, how should family violence be treated?

As discussed above, FVPLS Victoria recommends that the mandatory refusal provisions be explicitly excluded for claims arising out of family violence and sexual assault, meaning the consideration of 'special circumstances' would be irrelevant to family violence cases.

If this recommendation is not adopted then FVPLS Victoria would recommend that the definition of 'special circumstances' be amended to expressly include family violence and sexual assault. By explicitly stating that family violence is a 'special circumstance' the burden on victims/survivors, legal representatives and the Tribunal would be substantially reduced as the Tribunal would only need to be satisfied that family violence brought about the non-compliance with the reporting requirements.

Section 54 considerations (questions 32-36)

Section 54 provides a broad discretion to the Tribunal member to inquire into the circumstances of the crime and the victim/survivor's actions, including:

(a) the character, behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence;"

...

(c) whether the applicant provoked the commission of the act of violence and, if so, the extent to which the act of violence was in proportion to that provocation;

(d) any condition or disposition of the applicant which directly or indirectly contributed to his or her injury or death;

(e) whether the person by whom the act of violence was committed or alleged to have been committed will benefit directly or indirectly from the award;

(f) any other circumstances that it considers relevant.

In our view, these considerations are wholly inappropriate in the case of family violence and can invite misinformed views about ‘deserving’ and ‘undeserving’ victims. While Tribunal members often make appropriate final determinations, this provision can create a situation where victims/survivors are questioned and required to produce evidence on these issues in order to satisfy the Tribunal. This can be unnecessarily intrusive, delay the resolution of matters, and re-traumatise victims/survivors who feel they are being forced to prove they are not ‘to blame’ for the violence they have experienced.

Case Study

Kira was raped at age 13 while living in residential care. She made statements to Police at the time of the assault and was taken to Hospital for testing. In her police statement, Kira said she was intoxicated at the time of the rape but was able to recall a number of very specific details that were consistent with the forensic evidence.

When making a claim under the Act some time later, the Tribunal member said she had to consider s54(a) in relation to Kira’s level of intoxication at the time of the rape. This was despite the considerable police and medical evidence available to establish on the balance of probabilities that the assault had occurred.

When Kira was informed of the Tribunal’s approach she was visibly distressed and responded by saying, ‘it’s not like I was asking for it.’

With respect to criminal history, section 54(a) impacts disproportionately on Aboriginal victims/survivors and amounts to an indirect form of discrimination against Aboriginal applicants. As discussed above, Aboriginal people are over-policed and face entrenched and systemic racism and discrimination across the justice system. Indeed, Aboriginal women are now the fastest growing prison population in Victoria and Australia¹⁸ – a fact which can be linked to Aboriginal women’s disproportionate experience of violence given studies indicate as many as 90% of women in prison have experienced violence or abuse,¹⁹ and many women in prison directly or indirectly link their experience of violence with their imprisonment.²⁰

¹⁸ Human Rights Law Centre, ‘New stats reveal that Aboriginal and Torres Strait Islander women are one of the most incarcerated groups in the world’, Media Release, (16 September 2014)

¹⁹ See Australian Institute of Family Studies, *Addressing women’s victimisation histories in custodial settings* (2015) Canberra, Australian Government, available at <http://www.aifs.gov.au/acssa/pubs/issue/i13/i13b.html>; K. P. Moloney, B. J van den Bergh & L.F. Moller ‘Women in Prison: The central issue of gender characteristics and trauma history’ (2014) 123 *Public Health*, 426-430; Holly Johnson, *Drugs and Crime: A Study of Incarcerated Female Offenders, Research and Public Policy Series* (2014) No. 63, Canberra, Australian Institute of Criminology; WIPAN (2014) Women in Prison - Primary Document for a Public Forum surrounding Women in Prison being hosted by WIPAN, Community Justice Coalition (CJC) and the International Commission of Jurists (ICJ) at NSW Parliament House on 13 August 2014, 16.

²⁰ See Kilroy, D. *The over-representation of Aboriginal and Torres Strait Islander women in prison*, Sister’s Inside, April 2013, 3.

On its face, s 54(a) can mean that women who have been seriously assaulted and traumatised may be denied desperately needed financial support because of an unrelated past mistake, or because of criminal conduct which stemmed from the abuse itself. This belies a failure by the Act to understand the relationship between family violence and crime, particularly for Aboriginal women. As articulated by Women’s Legal Service Victoria and Domestic Violence Victoria in their submission to this inquiry (a draft copy of which we had the opportunity to review):

This is also relevant to the increasing trend of misidentification of victims as perpetrators where Victoria Police have not undertaken primary aggressor assessment and/or have arrested both parties. Analysis by No To Violence/Men’s Referral Service shows that police in Victoria are wrongly identifying up to 375 women every month as perpetrators (Respondents) on Family Violence Intervention Orders.²¹ Police misidentification of victims as the primary aggressor/perpetrator in family violence incidents can heavily influence outcomes in other legal proceedings, such as VOCAT.

Case Study

Allira was in a violent and controlling relationship with Ryan who was addicted to ice. Ryan forced Allira into criminal activities to support his drug use. And then, terrified of retribution from him, Allira took responsibility when Ryan got caught.

After separating from Ryan and with support from FVPLS Victoria, Allira made an application for victims of crime assistance to help rebuild her life. The Tribunal initially denied Allira’s claim because of her drug-related criminal history.

Our lawyer referred the Tribunal to the findings of the Victorian Royal Commission into Family Violence which clearly linked the impact of family violence on Aboriginal women with drug and alcohol substance abuse issues. The claim was ultimately successful – an outcome which Allira would not have been able to achieve without culturally safe and specialist support.

The provocation consideration in section 54(c) is completely inappropriate in all situations involving family violence and sexual assault. Provocation is an out-dated concept which amounts to victim blaming and undermines the message that family violence and sexual assault are never an acceptable.

The consideration in section 54(e) as to whether the perpetrator will benefit directly or indirectly from the award can also be problematic in situations of family violence. Family violence is different to one off random crimes in that the perpetrator and victim often have an ongoing relationship – for example, even where parties have long separated their lives may still be enmeshed through children or other family members. Consideration as to whether the perpetrator may directly or indirectly benefit in family violence situations is not relevant to whether the victim has in fact suffered from family violence and is in need of assistance.

²¹ Nathan de Guara, Policy Consultant, *No to Violence: Male Family Violence Prevention Association*, Interview with WLSV, 21 August 2017.

We note the suggestion posed in the Consultation Paper of including family violence as a factor that VOCAT must have regard to in exercising its discretion under section 54 to make an award. FVPLS Victoria does not support this suggestion. It would not overcome the problems posed by the other considerations of section 54 which would continue to undermine the capacity of VOCAT to take a trauma-informed, culturally safe and family violence-sensitive approach. If Tribunal members were required to weigh up family violence as one factor against other matters such criminal offending or perceptions of ‘provocative’ behavior, this could result in additional legal complexity, evidentiary requirements, delays and inconsistent decision-making and application of awards.

Even if family violence were a mandatory consideration, as long as the current mandatory considerations remain in place, the concerns around delays in determination and intimidation and distress of victims/survivors will continue to exist. Where these factors remain mandatory considerations in family violence and sexual assault cases, there is still a risk that applications will be unfairly denied on these grounds.

Recommendations

14. Family violence cases should be exempt from ‘mandatory refusal’ (section 52) on the basis of not having made a report or provided assistance to police.
15. Family violence cases should be exempt from the application of section 54(a) – (e) making considerations of the character, behavior, attitudes and criminal history of the victims/survivor irrelevant, along with suggestions of ‘provocation’ or ‘contribution’ by the victims/survivor to the violence and injury sustained.

Chapter 11 VOCAT procedures and time frames for the making of awards

Timeframes (Questions 37-38)

In many family violence applications, time is imperative. Victims/survivors of family violence often need immediate financial support to leave a violent relationship and establish safety and security. The experience of family violence can send women below the poverty line and into homelessness. Many victims/survivors of family violence lose jobs as a result of the stress of the violent relationship and increased absenteeism as a result of sick days, hospital visits and other appointments and court dates. Family violence victims/survivors may be forced from their homes, and find themselves at risk of homelessness and/or in significant debt incurred by their violent partner.

VOCAT proceedings are complex and time-consuming and do not respond adequately to these immediate financial needs. Even 'urgent financial assistance' in order to escape a violent relationship frequently takes four to six weeks or more to achieve. To navigate these delays, victims/survivors are often encouraged to pay for services upfront then apply for reimbursement. However, this is just not an option for many of our clients who are living paycheck to paycheck or remain in a violent relationship with little control over the finances.

Case Study

Lenah was being stalked and threatened by her ex-partner, Leon, who had subjected her to years of violence and abuse during their relationship. Lenah urgently wanted to move with her children to a new home where Leon would not find her. She applied to VOCAT and received an interim award of 'urgent financial assistance' to pay for a removalist.

The removalist could not provide an invoice as the final cost would not be determined until the removalist saw Lenah's house on the day of moving. As Lenah could not afford to pay upfront, FVPLS Victoria paid for the removalist on her behalf. The removalist ended up charging more than the amount awarded by the Tribunal, and FVPLS Victoria was not reimbursed the difference.

In FVPLS Victoria's experience, non-urgent applications under the Act frequently take years. We note that the Consultation Paper states the average 'waiting period' before a final VOCAT determination is made is 'frequently between nine and 12 months'. FVPLS Victoria's clients often have complex matters and are required by the Tribunal to attend directions hearings and adduce additional evidence. Major delays can be incurred. In some instances the time from seeking initial advice from FVPLS Victoria to receiving a final award from the Tribunal is more three years. During this time, clients may become entrenched in financial hardship or circumstances may change requiring women to undergo additional psychiatric assessments which can be anxiety-provoking, re-traumatising, time-consuming and add additional pressure in circumstances where a victims/survivor is struggling to regain stability for herself and her children.

A key goal of the new culturally safe, trauma informed and family violence-specific model proposed by FVPLS Victoria should be to providing timely and efficient assistance to victims/survivors which is

commensurate with the level of injury suffered. With respect to the kinds of delays that can ensue, FVPLS Victoria refers the Commission to the case studies and examples given on pages 8-13.

39 Do section 32(3) and section 41 require legislative change to better accommodate family violence victims/survivors' need for speedy determinations? Or could a Practice Direction provide sufficient guidance?

If the Tribunal were less constrained by the various legal thresholds, including through the adoption of FVPLS Victoria's recommendations concerning excluding the operation of a number of problematic provisions of the Act, it would be able to provide more speedy determinations for victims/survivors of family violence. Expanding the types of evidence admissible in relation to 'injury' could also reduce delays and streamline the process. For example, where a victim/survivor is already engaged with a counselor, support worker or healing program records or reports from those professionals could be adduced in lieu of formal expert reports. Paying awards directly to clients as a lump sum (unless a client elects otherwise) would also streamline and fast-track processes by removing the time-consuming, administrative burden of sourcing and presenting multiple quotes and receipts for the Tribunal's consideration. However, FVPLS Victoria maintains that a truly efficient and trauma-informed approach would be best achieved by adopting a new family violence specific and predominantly administrative scheme (with an option for victims/survivors to opt-in to a judicial hearing if they so wish), as outlined on page 9 of this submission.

In addition, while FVPLS Victoria strongly supports the Koori VOCAT List, Aboriginal victims/survivors should not be precluded from seeking urgent financial assistance from local courts (instead of through the Koori VOCAT List) if this is the most expedient way to attain urgently required assistance. At present, there are only seven judicial members in Victoria who can preside over the Koori VOCAT List and matters are overwhelmingly heard in Melbourne, with exceptions to this being rare and ad hoc. This presents real obstacles for victims/survivors in regional areas and/or in need of urgent assistance.

Procedures (Questions 40-41)

40 What benefits could be achieved for victims/survivors of family violence by initiatives such as specialisation or a separate VOCAT family violence list?

As discussed above, FVPLS Victoria recommends the creation of a new family violence-specific model. In our view this is preferable to the creation of a family violence list which would still operate within the same structures and overall legislative framework of the Act which is not well suited to determining matters involving family violence.

41 What benefits might 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?

As discussed above, FVPLS Victoria recommends the creation of a new family violence-specific model which recognises that many victims/survivors of family violence and sexual assault will not report to police or pursue criminal proceedings for a variety of reasons.

However, in instances where a perpetrator has been charged and sentenced in a family violence-related matter a VOCAT award could be made on the day of sentencing with the victims/survivor then having a right to apply to vary the award as required. To negate the need for victims/survivors to attend or participate in a hearing on the day of sentencing (which may expose them to heightened risk and re-traumatisation), a default award could be established which may, for example, include ten counseling sessions and a lump sum payment of \$10,000 as a gesture of acknowledgment by the State of the violence and harm suffered. A default award should be made unless the Magistrate believes there are exceptional circumstances to not make an award and gives written reasons for that decision.

The victim/survivor would then have a right to vary the award through VOCAT (or a newly created scheme) in the usual way. This kind of a process would reverse the onus on the victim to apply and increase awareness of VOCAT among victims/survivors. Careful consideration and consultation would be required however to ensure that such a process did not have unintended adverse consequences, such as increasing risk of further violence towards victims/survivors by perpetrators seeking to recover payments.

It is pertinent to note that the prosecution already has the power to apply under the Sentencing Act for restitution or compensation on behalf of the victim/survivor, however in FVPLS Victoria's experience this rarely happens. Indeed such a process is limited, given any restitution or compensation ordered must be paid by the perpetrator who may not have the resources to do so.

Recommendations:

16. Consider, including through extensive stakeholder consultation, developing an administrative process whereby victims/survivors receive an automatic award upon the sentencing of a perpetrator for a family violence-related offence.
17. Expand the types of admissible evidence in family violence cases and broaden the professionals and services from whom records and reports can be adduced.

Chapter 12 Review, variation and refund of awards

Refunding awards (Question 42)

In FVPLS Victoria's experience it is rare for victim/survivors of family violence or sexual assault to be required to refund an award. However, technically, the Act permits the Tribunal to force a victim/survivor to refund an award if she reconciles with the perpetrator. FVPLS Victoria believes this is inappropriate in circumstances of family violence and the Act should be amended to explicitly preclude refunds in these circumstances. The capacity to force a refund from a victim/survivor who reconciles with a perpetrator fails to acknowledge the complex dynamics of family violence and the fact that a victim/survivor may reconcile with a perpetrator under duress or threat of further violence, because she was unable to access alternative housing or financial support for herself and/or her children, or for a variety of other complex reasons. Evidence demonstrates that victims/survivors are often at most risk at the point of separating from a violent partner, or shortly thereafter, and it usually takes a number of attempts before a victim/survivor is able to successfully end a relationship. Moreover, reconciliation whatever the circumstances, does not negate the impacts of violence on the victim/survivor nor the unacceptability of family violence.

Variation of awards (Questions 43 and 44)

The capacity to seek a variation of an award and the broad discretion and flexibility within the Act is of great benefit to victims/survivors of family violence. FVPLS Victoria frequently assists Aboriginal victims/survivors – predominantly women – to vary their awards, for example to obtain additional counseling sessions, or respond to changing personal circumstances.

However, the process for variation – while flexible – remains unnecessarily legalistic, time-consuming and burdensome for victims/survivors, legal representatives and the Tribunal alike. In FVPLS Victoria's view some of this difficulty arises from the prescriptive nature of VOCAT awards and could be avoided if awards were paid directly to victims/survivors in a lump sum unless a victim/survivor elected to have the award paid on trust to a designated person or entity, or directly to a service provider. We note that lump sum payments are made in a number of other jurisdictions. In addition to being administratively burdensome, the failure to award payments directly to victims/survivors can be viewed as unnecessarily paternalistic. It denies victims/survivors a degree of respect and autonomy that may be profoundly healing after enduring what may have been years of violence, control, subordination and denigration.

In addition, FVPLS Victoria's proposed family violence-specific (and predominantly administrative) model could develop streamlined procedures for the variation of awards as required, which avoid unnecessarily legalistic hurdles and evidentiary requirements. While this would substantially reduce the complexity and time taken to seek a variation, such a process would not negate the critical importance of holistic, culturally safe and specialist legal assistance for Aboriginal victims/survivors of family violence, the majority of whom would still require support to successfully navigate the process.

Awards for counseling (Question 45)

FVPLS Victoria has had the opportunity to review a draft of the joint submission to this inquiry made by Women's Legal Service Victoria and Domestic Violence Victoria. We support their recommendation that awards for counseling expenses should be generous and accessible. Specifically, they recommend:

Insert provisions into the Act that allow applications by survivors of family violence to vary awards to be simplified, including giving consideration to contingency award options for additional counselling to avoid delays in accessing counselling for survivors of family violence.

We otherwise refer to our comments above about the difficulties faced by Aboriginal victims/survivors in accessing culturally competent counseling, particularly in regional areas where there are especially limited options. In recognition of these issues, awards for counseling expenses for Aboriginal victims/survivors should be generous, flexible and expanded to also include travel costs if a victims/survivor is willing and able to travel to access a more qualified and culturally safe professional, as well as cover costs of other forms of therapy and healing programs which may be more culturally appropriate or effective for Aboriginal victims/survivors of family violence.

Recommendations

18. The Act should be amended to explicitly preclude refunds in cases involving family violence.
19. Awards should be paid in a lump sum directly to the victim/survivor, unless she elects to have an award paid on trust to a designated person or entity, or directly to a service provider.
20. Awards for counseling should be generous, flexible and broadened to be able to cover travel costs, as appropriate, and other forms of therapy such as culturally safe healing programs designed and delivered for Aboriginal people.

Chapter 13 Awareness of VOCAT and accessibility for family violence victims

Many victims/survivors of family violence are not aware of the availability of VOCAT or their potential entitlements under the Act. FVPLS Victoria has recognized an information gap regarding VOCAT for many years and works hard to build awareness and access to VOCAT for Aboriginal victims/survivors – particularly women - across Victoria.

Awareness and Access (Questions 47 and 48)

Most Aboriginal victims/survivors of crime are not aware of their entitlement to claim financial assistance through VOCAT, and most women we work with only become aware of their eligibility to make a claim after engaging with FVPLS Victoria in relation to other legal matters or through participating in our community engagement activities or early intervention prevention programs, such as *Sisters Day Out*. Some victims/survivors also become aware of their eligibility through local family violence support workers.

While the police can also be an important resource for informing victims/survivors of their potential eligibility under the Act, FVPLS Victoria clients have had varying experiences. Sexual assault victims/survivors are more likely to be informed by police of their right and this is likely due to the establishment of specialised police initiatives in the area of sexual assault. FVPLS Victoria clients have also occasionally been informed of their entitlement under the Act by Magistrates. However, due to Aboriginal women's historic and current poor experiences with police and fear of reporting, many Aboriginal victims/survivors are unlikely to access their entitlements without support from a trusted, culturally safe Aboriginal Community Controlled Organisation such as FVPLS Victoria.

This highlights the importance of investing in and adequately resourcing culturally safe and specialist legal assistance and holistic community education programs, such as those designed and delivered by FVPLS Victoria, which break down barriers to disclosing violence and increase access to VOCAT for Aboriginal victims/survivors of family violence.

Sisters Day Out

Sisters Day Out is a one-day workshop that engages with Koori women to reduce and prevent family violence by facilitating community networks to reduce social isolation, raising awareness of family violence and its underlying causes and impacts, and providing information and tools to promote community safety – including access to legal advice and assistance on a range of issues such as VOCAT.

The workshop provides a culturally welcoming and safe space for Koori women to come together and participate in a range of activities including beauty therapies, relaxation therapies and exercise activities. These activities attract community participants and place an emphasis on self-care and well-being. Included within the workshop is an information session about family violence presented by an FVPLS Victoria lawyer.

FVPLS Victoria invites a range of local service providers to participate in the event and would welcome attendance by VOCAT staff. FVPLS Victoria lawyers are also available throughout the day for any participants requiring advice. A counsellor is also available for any participants requiring a personal conversation about their circumstances.

Since 2007, FVPLS Victoria has delivered 111 Sisters Day Out workshops across Victoria, reaching more than 9,750 Aboriginal women.

Legal Representation (Questions 49 to 51)

FVPLS Victoria does not support changes to the VOCAT system expressly aimed at encouraging victims/survivors to be unrepresented. While we support initiatives to make the process less legalistic and convoluted and increase victims/survivors access to timely awards, no process of simplification would in our view reduce the essential need for Aboriginal victims/survivors to have access to culturally safe and specialist legal assistance throughout the process. Our 15 years of frontline work and engagement with Aboriginal victims/survivors across Victoria demonstrates that the vast majority of Aboriginal victims/survivors require assistance to navigate the VOCAT process for a variety of reasons, including:

- the application process is convoluted and lengthy and can sometimes take several years to complete. Applicants often need support and encouragement to persist with what may feel like a never ending and emotionally draining process with no guaranteed outcome;
- For victims/survivors of family violence, the process is emotionally draining at best, and re-traumatizing at worst. Aboriginal victims/survivors need holistic, culturally safe and trauma informed support through this process to ensure the efficiency of the process and minimize the trauma it causes;
- The process of applying for police or medical records through Freedom of Information can be complicated and technical in itself and often requires legal assistance. Appeals are sometimes

necessary. Delays are often caused by issues accessing supporting documents through the Freedom of Information process; and

- Most applicants are not aware of the kinds of awards available to them, in particular ‘expenses to assist recovery.’ Without legal representation many applicants would not be aware of what expenses to assist recovery might reasonably entail and might not apply for items that could significantly contribute to their recovery.

While some of these issues would be resolved by adopting the recommendations contained throughout this submission, the reality remains that many of our clients are:

- single mothers with full time caring responsibilities and few supports, having recently left violent partners;
- in crisis and focused on day-to-day safety and survival;
- homeless or living in unsafe situations as a result of family violence;
- facing racism and systemic discrimination;
- likely to find the process culturally unsafe, alienating or intimidating;
- struggling with trauma, mental illness, drug and alcohol abuse or other issues arising from the experience of violence;
- geographically or socially isolated; and/or
- less able to effectively advocate for themselves on account of having had less access to formal education and lower levels of literacy.

In these circumstances, the vast majority of victims/survivors would find it impossible to dedicate the time and energy required to manage a VOCAT application without the support of a lawyer, even if the process were simplified. As outlined above, it is crucial that Aboriginal victims/survivors have access to culturally safe, holistic and specialist legal assistance and non-legal support from Aboriginal Community Controlled Organisations such as FVPLS Victoria.

We note that FVPLS Victoria’s service model contains many of the features of integrated support suggested within the Consultation Paper. For example, FVPLS Victoria provides holistic legal advice and assistance coupled with non-legal support from paralegal support workers (many of whom are Aboriginal women) alongside other culturally safe services and programs that can support victims/survivors healing and recovery, such as *Dillybag*²² and activities evolving out of our new Koori Women’s Place. In addition, we are also the state-wide provider of Flexible Support Packages for Aboriginal victims/survivors of family violence.

For further details about our holistic model and the role of our paralegal support workers, see Appendix A.

Learnings from the Koori VOCAT List (Question 52)

See pages 12 to 13 and 27 above.

²² For a discussion of the Dilly Bag program, see FVPLS Victoria, 2015, Submission to Royal Commission into Family Violence, pp 36 – 37, available at: <http://fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>.

Chapter 14 VOCAT—beyond financial assistance for victims/survivors of family violence?

Capacity for VOCAT to be therapeutic (Question 54 to 60)

VOCAT can be therapeutic and profoundly validating for victims/survivors where it allows women to feel acknowledged by the justice system. For some victims/survivors this may be more important than any financial award. Judicial acknowledgment can be especially important for victims/survivors who have not gone through the criminal process and feel the perpetrator has not been held to account. However, as discussed above, VOCAT can also be an anxiety-provoking and emotionally taxing process which re-traumatises victims/survivors. For example, perpetrators being notified of a hearing or a victim's claim being doubted by the Tribunal member can lead to further pain for victims/survivors, as discussed in more detail above.

In some instances, the VOCAT process can be interpreted as paternalistic and leave Aboriginal women feeling alienated or disrespected, as if the State is continuing to repress their agency and self-determination. For example, the extensive paperwork, quotes and receipts required to obtain minimal sums, or in situations where the Tribunal uses its investigative power and broad discretion to question how special financial assistance will be spent or why the victims/survivor has made particular choices. Aboriginal victims/survivors of family violence may be particularly sensitive to these issues after enduring prolonged periods of humiliation and control by a perpetrator, and/or entrenched inequality, systemic discrimination and racism over their lifetime.

Ultimately, whether VOCAT is therapeutic depends on the individual circumstances of the victims/survivor and how they are treated by the Tribunal during the process. This is particularly the case for child victims/survivors who may or may not feel sufficiently prepared to confront the harm they have suffered. The following case study provides a positive example of how the VOCAT process can be therapeutic.

Case Study

Brenda suffered significant family violence from her partner, Adam, over many years.

Brenda applied for numerous intervention orders against Adam, which he repeatedly breached. Brenda tried to report the breaches to police, but police took no action telling Brenda it was all 'he said, she said' and too difficult to prove. Adam's violence continued.

As a result of Adam's violence against Brenda, Child Protection became involved with Brenda's family, at one point removing her children from her care. This exacerbated Brenda's well-founded fear and distrust of police and the legal system. She stopped reporting the violence for fear of her children being permanently taken away.

Eventually, Brenda was hospitalized with head injuries after a particularly savage attack and Adam went to jail. Brenda began a long process of attempting to heal and rebuild her life.

Brenda sought FVPLS Victoria's support to apply for assistance under the Act through the Koori VOCAT List. She elected to attend her hearing, instructing her lawyer that she wanted to attend because 'I don't like people talking about me behind my back' and 'I want to be there to hear what happens first hand.'

The Tribunal Member opened the hearing by giving an acknowledgment of country. She sat around a table at the same level as Brenda and made an effort to help Brenda feel comfortable. The Tribunal member listened respectfully to Brenda’s story and acknowledged all that Brenda had gone through.

At the end of the hearing Brenda told her lawyer that this had been her first positive experience of the legal system. She had elected to attend the hearing because she had no trust in the system, but the hearing had provided an unexpected opportunity for healing, validating her experience and allowing her some “closure.” Brenda said this was the first time she felt like an authority figure genuinely cared about her recovery and understood the impact Adam’s behavior had had on her. It allowed Brenda to move forward from feelings of anger at having been failed by the system when she sought protection and support in the past.

In order to strengthen VOCAT’s capacity to provide a therapeutic and trauma-informed process and improve access for Aboriginal victims/survivors of family violence, FVPLS Victoria refers to our recommended new model discussed above at pages 9-14.

APPENDIX 1: BACKGROUND ON FVPLS VICTORIA

Established over 15 years ago, FVPLS Victoria is an Aboriginal Community Controlled Organisation which provides culturally safe and holistic assistance to Aboriginal victims/survivors of family violence and sexual assault. FVPLS Victoria provides frontline legal assistance and early intervention/prevention, including through providing community legal education to the Aboriginal community, the legal, Aboriginal and domestic violence sectors.

With support from philanthropic sources, FVPLS Victoria also undertakes policy and law reform work to identify systemic issues in need of reform and advocate for strengthened law and justice outcomes for Aboriginal victims/survivors of family violence and sexual assault.

FVPLS Victoria is open to Aboriginal men, women and children who have experienced or are at risk of family violence or sexual assault, as well as non-Aboriginal carers of Aboriginal children who are victims/survivors of family violence. FVPLS Victoria is not gender specific, however at last count 93% of our clients were Aboriginal women.

In 2016-17, FVPLS Victoria provided 1265 legal services and 515 non-legal support services to Aboriginal victims/survivors across Victoria. Our early intervention and prevention programs reached 990 women across the State.

FVPLS Victoria's legal services include advice, court representation and ongoing casework in the areas of:

- family violence intervention orders;*
- child protection;*
- family law;*
- victims of crime assistance; and*
- where resources permit, other civil law matters connected with a client's experience of family violence such as: police complaints, housing, Centrelink and infringement matters.*

FVPLS Victoria has a holistic, intensive client service model where each client is assisted by a lawyer and paralegal support worker to address the multitude of interrelated legal and non-legal issues our clients face. FVPLS Victoria's paralegal support workers, many of whom are Aboriginal women, provide additional emotional support, court support and referral to ensure our clients are linked into culturally safe counseling and support services to address the underlying social issues giving rise to the client's legal problem and experience of family violence. This may include for example assistance with housing, drug and alcohol misuse, social and emotional wellbeing, parenting, financial and other supports.

As an Aboriginal Community Controlled Organisation, FVPLS Victoria is directed by an Aboriginal Board and has a range of systems and policies in place to ensure we provide culturally safe services in direct response to community need.