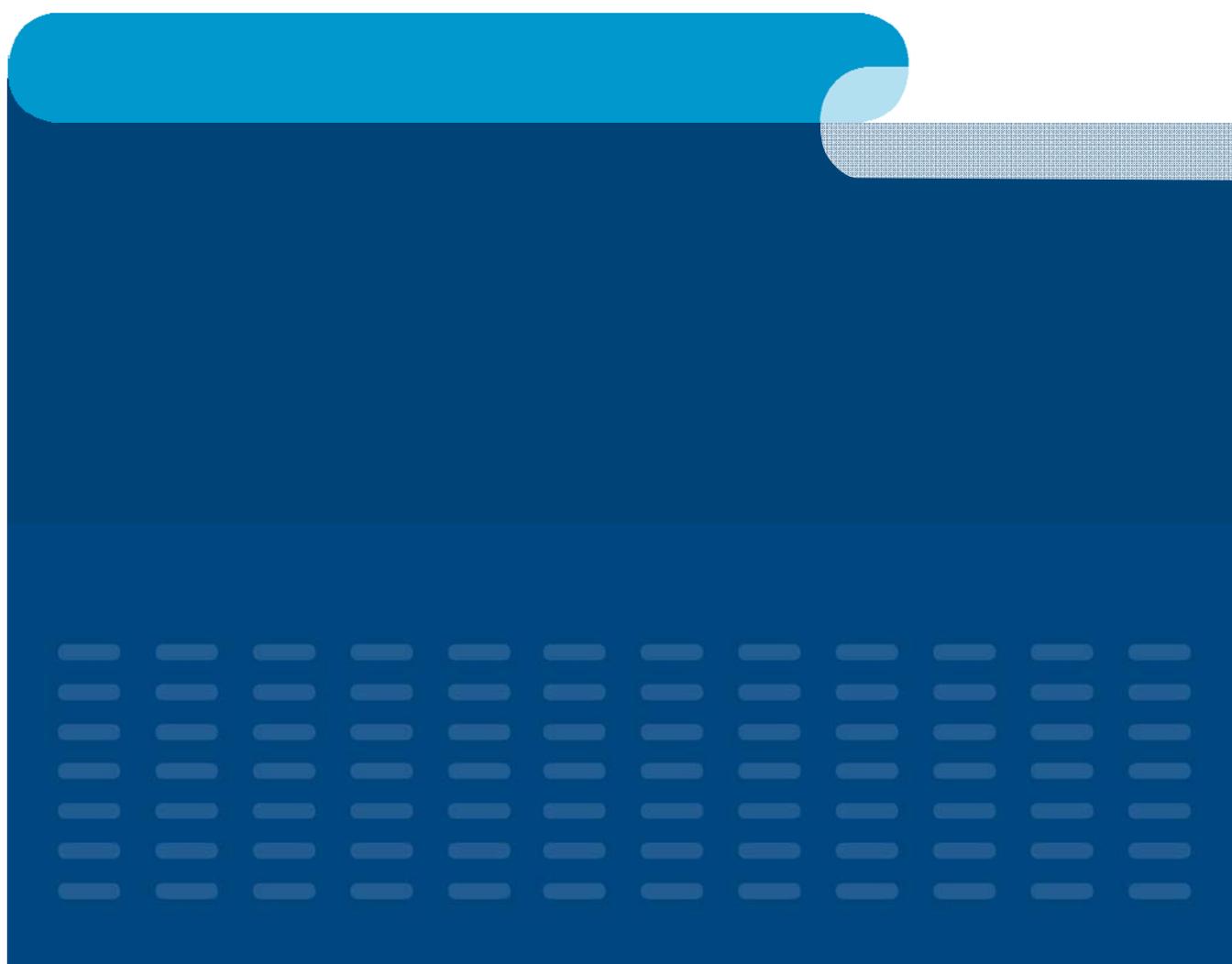


# Review of the Victims of Crime Assistance Act 1996

Victims of Crime Commissioner



## Contents

<b>1</b>	<b>Introduction</b> .....	<b>4</b>
<b>2</b>	<b>Document purpose</b> .....	<b>4</b>
<b>3</b>	<b>Scope</b> .....	<b>4</b>
<b>4</b>	<b>Current Support for Victims of Crime in Victoria</b> .....	<b>5</b>
4.1	The Victims Support Agency (VSA) and the Victims Assistance Program (VAP).....	5
4.2	Victims of Family Violence.....	5
<b>5</b>	<b>The Victims of Crime Assistance Act 1996</b> .....	<b>5</b>
5.1	The Victims of Crime Assistance Tribunal (VOCAT).....	5
5.2	The importance of financial assistance for victims of crime .....	7
<b>6</b>	<b>Comparisons with other jurisdictions</b> .....	<b>7</b>
6.1	The NSW Experience .....	7
6.2	The ACT Scheme .....	8
<b>7</b>	<b>Recommendations</b> .....	<b>9</b>
7.1	Change to an administrative model .....	9
7.1.1	Establishment of a pillar system to ensure scheme is transparent and equitable .....	9
7.1.2	No time limit on claiming medical expenses.....	11
7.1.3	Inbuilt option for victim acknowledgment.....	11
7.1.4	Centralised operation.....	11
7.1.5	Financial assistance as part of case manager/victim support .....	11
7.1.6	Specialised assessors and cost .....	12
7.1.7	Eliminating need for legal representation .....	13
7.2	Introduction of a Victims Levy .....	13
7.2.1	Legislation in other jurisdictions.....	13
7.2.2	Possible Victim Levy Application in Victoria .....	15
7.3	Collection of financial assistance from convicted offenders .....	16
7.4	Chapter 5: Eligibility for assistance considerations .....	17
7.4.1	Primary, secondary and related victims.....	17
7.4.2	Only victims of an act of violence .....	17
7.4.3	Specific Family Violence Issues .....	18
7.5	Chapter 6: Assistance available .....	19
7.5.1	Quantum of awards .....	19
7.5.2	Categories of awards.....	20
7.6	Chapter 7: Time limits for making an application.....	21
7.7	Chapter 8: Making an award.....	22
7.8	Chapter 9: Review, variation and refund of awards .....	22
7.8.1	Refund of Awards .....	22
7.9	Chapter 10: Timeliness of awards .....	22
7.10	Chapter 11: VOCAT hearings.....	22
7.10.1	Notification of application to alleged perpetrator .....	23
7.11	Chapter 12: Awareness of VOCAT and accessibility .....	23
7.11.1	Use of the fact of a VOCAT application or documents in criminal proceedings.....	23
7.12	Chapter 13: Victim needs .....	24

7.13 Charter 14: Reforming the existing scheme ..... 24

7.14 Chapter 15: Is there a need for a different model? ..... 24

**8 Conclusion..... 24**

**Appendix 1 List of Recommendations ..... 25**

# 1 Introduction

Family Violence is one of the most significant criminal law issues in not just the State of Victoria, but in Australia. In March 2016, the Victorian Royal Commission into Family Violence published their Report into the matter. Included in the Report were 227 recommendations 'directed at improving the foundations of the current system, seizing opportunities to transform the way that we respond to family violence, and building the structures that will guide and oversee a long-term reform program that deals with all aspects of family violence.'<sup>1</sup>

In its report, the Royal Commission identified a number of issues with the Victorian State based financial assistance scheme for victims of family violence, administered by the Victims of Crime Assistance Tribunal (VOCAT). In particular, the Report noted that VOCAT awards are only payable for victims of an 'act of violence.' An act of violence is defined in the Victim of Crime Assistance Act 1996 (VOCA) as a 'criminal act or a series of criminal acts which result in injury or death.'<sup>2</sup>

Many victims of family violence suffer from acts that are not 'criminal,' yet they cause great harm. Others suffer from numerous violent acts over a series of time, yet because the acts are deemed 'related criminal acts,' only one VOCAT claim can be made.

Recommendation 106 of the Royal Commission Report requested that the Victorian Law Reform Commission (VLRC) either consider the VOCAT issues raised in the report when preparing their own report on The Role of Victims of Crime in the Criminal Trial Process, or to ensure that a separate review be carried out.

On 22 December 2016, the Attorney General requested the VLRC to consider the operation and effectiveness of the Victims of Crime Assistance Act 1996 for family violence victims. In June 2017, the Victorian Law Reform Commission released its first consultation paper on the matter.

As a result of community feedback, including feedback from this Office, on 7 July 2017 the Attorney General announced that the review of the Victims of Crime Assistance Act 1996 was extended to its application to **all** victims of violent crime, given that non family violence victims also encounter difficulties and delays in accessing and receiving state based financial assistance. In August 2017, a supplementary consultation paper was released.

## 2 Document purpose

This document contains the Victorian Victims of Crime Commissioner's submission in response to the two consultation papers published by the VLRC in relation to a review of the VOCA.

In conjunction with this written submission, the Victims of Crime Commissioner also relies upon the conference held with representatives from the VLRC on 20 September 2017.

## 3 Scope

While recognising the particularly difficulties for victims of family violence, all victims of violent crime deserve an efficient, effective and fair State financial assistance scheme. The VLRC has produced two extensive consultation papers for consideration. Given the specialist area of family violence and the specialist services and departmental units who work in this area, this report concentrates on the general VOCAT issues that affect all victims of violent crime.

---

<sup>1</sup> Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (2016) 14

<sup>2</sup> *Victims of Crime Assistance Act 1996* s 3(1)

## **4 Current Support for Victims of Crime in Victoria**

### **4.1 The Victims Support Agency (VSA) and the Victims Assistance Program (VAP)**

The Victims Support Agency (VSA) provides access to services for people affected by crime, coordinating a whole-of-government approach to services for victims. The agency operates the Victims of Crime Helpline, and funds state wide services to provide victims with practical assistance, counselling and support through the justice system.

The main program provided by the VSA is the Victims Assistance Program (VAP). This program is delivered through various community organisations throughout Victoria. However, only victims of violent crime are eligible for the program. Once eligibility has been established, a victim is allocated a case worker, who assists the victim navigate through the available support services and the legal process. The case worker can also assist the victim to make an application for financial assistance to VOCAT, although in most cases, the case worker refers the victim to a local solicitor.

### **4.2 Victims of Family Violence**

Female victims of family violence can be referred by the VSA to various support services provided by the Department of Health and Human Services (DHHS). This is so the victim can more easily receive support in different areas of need, such as housing, education and with immediate needs.

If funds are required for urgent needs, then the funding can be provided by the support services approved by the DHHS. For example, if a female victim of family violence requires immediate financial assistance for safety purposes, those funds can be provided by the family violence support service.

Male victims of family violence are assisted by the Victims Support Agency, as are other victims of violent offences.

The receipt of urgent funds from other support services does not infringe upon a family violence victim's right to apply for financial assistance from VOCAT.

## **5 The Victims of Crime Assistance Act 1996**

The Victims of Crime Assistance Act 1996 sets out all of the processes and eligibility criteria for victims of crime who wish to make application for state based financial assistance in Victoria. Only victims of 'an act of violence' are eligible for financial assistance

The entire Act came into operation on 1 July 1997.

Over the past 20 years, there have been a number of substantial amendments to the Act. In particular, the addition of a 'special financial assistance' category for primary victims in 2000 was crucial. This 'special financial assistance' payment is similar to that of recognition payments in other jurisdictions. However, in Victoria, the amount of financial assistance a victim can receive in this category is not a 'fixed' amount. Rather, the amount awarded will be dependent upon the seriousness of the 'significant adverse effects' suffered by the victim as a result of the offence.

An extensive and detailed explanation of the VOCA is contained in both supplementary papers.

### **5.1 The Victims of Crime Assistance Tribunal (VOCAT)**

The Victims of Crime Assistance Tribunal was established in 1996. While VOCAT is formally a separate entity from the Magistrates' Court, given that Tribunal members are either Magistrates or Judicial Registrars and that VOCAT operates in all Magistrates' Court venues across Victoria, many victims of crime believe the Magistrates' Court and VOCAT are one and the same.

In recent years, the workload of the Magistrates' Court of Victoria has increased substantially. Magistrates are now busier than ever with criminal cases and family violence matters.<sup>3</sup> While judicial registrars assist in determining certain VOCAT claims, it is clear that further resources and staff will be required to ensure that VOCAT can victims of crime into the future.

Undoubtedly, VOCAT provides a valuable service to victims of violent crime. Every year, thousands of victims receive much needed funds to assist them recover from the often traumatic and long lasting effects of crime.

Notwithstanding the assistance VOCAT provides to victims of violent crime, there have been concerns with the processes and timeframes for a number of years. In 2009, the Department of Justice in Victoria released a discussion paper, titled *Reviewing Victims of Crime Compensation: Sentencing Order and State-funded Awards*. Many of the questions posed by the VLRC in both their consultation papers was contained in the 2009 discussion paper, such as:

- What principles should a victim compensation scheme aim to achieve;
- Whether the system should be centralised;
- Whether an administrative scheme should be introduced;
- Whether a victim's levy ought to be introduced; and
- Whether the State should assist in enforcing compensation orders made in favour of victims.

Submissions in response to the discussion paper were made by numerous organisations that assist victims of crime, such as the Federation of Community Legal Centres (Vic) Inc, the Victorian Aboriginal Legal Service and Centre Against Sexual Assault. Many of the submissions made by these organisations complained of the delays experienced victims in receiving awards and of the difficulty evidentiary provisions.

Unfortunately, a Final Report was not published and hence, eight years have passed and the same questions are being posed.

Given that a description of VOCAT is contained within both consultation papers, it is unnecessary to provide a detailed explanation about VOCAT processes in this submission. However, the following information is noteworthy:

- ◆ An applicant does not need a lawyer to act on their behalf, however if an applicant chooses to engages the services of a lawyer, then the lawyer's fees are paid by VOCAT.
- ◆ In the 2015-16 financial year, a total of \$41,151,633 in financial assistance was paid out to victims of crime. In addition, a further \$5,095,278 was paid to solicitors in legal fees, for filing applications on behalf of applicants.<sup>4</sup>
- ◆ The fact that VOCAT operates at each Magistrates' Court means that the number of applications (6,221 in the 2015-16 financial year) are spread throughout the State. However, some of the disadvantages of this system is that many regional Magistrates' Courts only sit 1 or 2 days per week and country Magistrates' may travel and be responsible for a number of Courts. This then can lead to substantial delays in matters being finalised.
- ◆ Applications for financial assistance can be filed in numerous ways, with online applications being first made available on 29 September 2014.<sup>5</sup> It is noteworthy that in 2017, VOCAT upgraded its website and subsequently made it easier for applications to be filed online. In the 2015-16 VOCAT Annual Report, it is claimed that the number of online applications had increased by 161% from the previous year.<sup>6</sup> If the numbers of online applications continue to increase, then having a centralised approach to dealing

<sup>3</sup> See, for example Kinniburgh, C., 'Legal Aid soars on crime wave,' *Herald Sun*, 2 November 2017 pg 3

<sup>4</sup> Victims of Crime Assistance Tribunal Annual Report 2015–16, p56

<sup>5</sup> Victims of Crime Assistance Tribunal Annual Report 2014–15, p24

<sup>6</sup> *Ibid* 4, p3

with applications may streamline matters and enable victims to receive financial assistance in a more timely manner.

## 5.2 The importance of financial assistance for victims of crime

For victims of crime, financial assistance is about more than money. Many victims see it as recognition by the State that a wrong has been committed against them and also as an acknowledgement that the victim has suffered an injury from that wrong. Financial assistance from the State assists victims in redressing the loss, damage or injury suffered as a result of a crime.

## 6 Comparisons with other jurisdictions

Most other States and Territories in Australia have an administrative, rather than judicial model to provide financial assistance to victims of violent crime. An administrative model removes the need for a formal hearing to be conducted and the decisions are made by specialist assessors, rather than by judicial officers. Generally speaking, victims have the right to request a review of the decision.

The advantages of an administrative model over that of a judicial model include:

- Less salary costs incurred for those who make the decision (i.e. not paying judicial salaries);
- Specialist assessors who only assess claims for victims financial assistance;
- Key performance indicators (including the number of applications finalised) can be incorporated into an assessor's performance plan, thus ensuring accountability and compliance with time frames; and
- Faster turn-around times for victims in having their applications assessed and then receiving their awards (if granted).

South Australia is the only other Australian state apart from Victoria, where a judicial model is still in place. But in South Australia, Crown Solicitors first assess the claim and negotiate a payment with the victim. It is only when the Crown Solicitor and the victim cannot agree upon a figure that the victim must then commence proceedings in the District Court, where both the offender and the State become the defendants in the action.

### 6.1 The NSW Experience

In August 2011, the NSW Department of Attorney General and Justice requested Price Waterhouse Coopers (PwC) to undertake a review of the NSW Victims Compensation Fund. In July 2012, PwC provided a comprehensive and detailed report, recommending significant changes to the Victim Compensation Fund.

The purpose of the review was "to provide an independent assessment of the Victims Compensation Scheme with a view to delivering faster and more effective financial support to victims of violent crime."<sup>7</sup>

The NSW government commissioned the review not only due to lengthy delays experienced by victims of crime in obtaining compensation, but because the financial forecast of the then current compensation scheme was dire. Ironically, the delays were found to be significantly contributing to the financial issues. The review found that the best way forward was to redesign the entire scheme.

The new scheme was introduced in June 2013 and has dramatically reduced the waiting times for victims to receive compensation. In June 2014, the average time for an application

---

<sup>7</sup> Department of Attorney General and Justice (NSW), *Review of the Victims Compensation Fund*, (PricewaterhouseCoopers, Australia, 2012) 10. Available at: [www.victimsservices.justice.nsw.gov.au/Documents/tp\\_report-pwc-vcf-review.pdf](http://www.victimsservices.justice.nsw.gov.au/Documents/tp_report-pwc-vcf-review.pdf)

under the Act to be processed was 87 days.<sup>8</sup> As at 30 June 2016, the average time for a financial support application to be determined was 26 working days.<sup>9</sup>

Currently in NSW, 19 assessors deal with more than 16,000 applications received per year. There are 3 senior assessors who conduct internal reviews.

The NSW financial assistance system prescribes a longer timeframe for applications to be lodged by victims of family violence (10 years after the act of violence) and also has special provisions for victims who were children at the time of the offence.<sup>10</sup>

A key part of the NSW legislation is the recovery of funds from the very person who committed the offence. Where an offender is convicted of the offending, the Commissioner for Victims Rights can obtain a provisional order to recover the amount of the financial assistance paid to the victim, directly from the offender. Not only does this provide additional revenue for the operation of the scheme, it also holds the offender financially responsible for the effects of his or her crime on the victim.

Accordingly to figures provided by the NSW Commissioner for Victims Rights, a total of \$13.96M has been recovered from offenders in the period 1 June 2013 to 30 June 2016.

In addition, the single 85 page NSW Act contains provisions in relation to the following:

1. The Charter of Victims Rights
2. The Commissioner of Victims Rights
3. Victims Support Fund
4. Victims Support Scheme, including:
  - a. Recovery of victims support payments from offenders;
  - b. Restraining orders and orders relating to the disposition of property by offenders
5. Compensation awarded by court
6. Victims support levies
7. Victims Advisory Board.

The fact that all of the key legislation affecting victim's rights is found in the one Act makes it much easier for service providers, legal practitioners, judicial officers and of course, victims of crime to understand the rights that victims of crime have.

In Victoria, there are **five** separate Acts of Parliament dealing with these same issues (*Victim Charter Act 2006*, *Victims of Crime Commissioner Act 2015*, *Victims of Crime Assistance Act 1996*, *Sentencing Act 1991* and the *Confiscation Act 1997*).

## 6.2 The ACT Scheme

On 1 July 2016, a new financial assistance scheme commenced in the ACT. This system is similar to that operating in NSW, in that Victims Support ACT administers both the support services scheme and the financial assistance scheme.

As noted in the supplementary paper, "Victim Support ACT describes the new scheme as reducing barriers for victims of crime by separating the process from the court system and *reducing reliance on legal representation*."<sup>11</sup>

<sup>8</sup> NSW Government Submission: Royal Commission into Institutional Responses to Child Sexual Abuse – Issues Paper 7 Statutory Victims of Crime Compensation Schemes, pg 5. Available at: <https://www.childabuseroyalcommission.gov.au/getattachment/.../11-New-South-Wales>

<sup>9</sup> NSW Victims Services Data Profiles: Applications for support received by victims 2015/16, pg 5.

<sup>10</sup> *Victims Rights and Support Act 2013* (NSW) s 40(5)

<sup>11</sup> Supplementary Consultation Paper, Review of the Victims of Crime Assistance Act 1996, VLRC, August 2017, pg 25

## 7 Recommendations

The current judicial Victim of Crime Assistance Tribunal model must be changed. It is simply too convoluted, costly and time consuming for the very people it is meant to assist - victims of crime. Financial assistance needs to be easier for victims to access and issues such as eligibility, evidentiary requirements and entitlements for various categories of assistance need to be clear and enshrined in legislation.

The primary recommendation made by the Victims of Crime Commissioner is to replace the judicial model of VOCAT with an administrative model (such as that in place in NSW) that also actively seeks to recover financial assistance directly from offenders and to introduce a Victim's Levy.

There are also a number of other recommendations which involve legislative additions and changes.

### 7.1 Change to an administrative model

Victoria should adopt an administrative model, similar to that implemented by NSW in 2013. This model has significantly reduced the time it takes for both a decision and an award to be made to victims. This model is partially financially supported by those persons who are responsible for the damage done to victims of crime. It is also a model that does not impinge further on an already stretched Magistrates' Court jurisdiction. And perhaps, most importantly, a model that incorporates victims services together with victims financial assistance.

It is pertinent to note that NSW victims of crime were facing the same, if not worse delays, compared to those currently experienced by victims in Victoria, in 2011, at the time the government sought the review. To this end, the then NSW Attorney General announced a review and an independent assessment of the Victims Compensation Scheme, "with a view to delivering faster and more effective financial support to victims of violent crime."<sup>12</sup>

Since the implementation of the new scheme, the time taken for victims to receive financial assistance has dramatically reduced. In the 2015-16 financial year, the average time for a determination to be made on applications for financial support was 26 days.<sup>13</sup> This is what Victoria should aim to replicate.

#### 7.1.1 Establishment of a pillar system to ensure scheme is transparent and equitable

One of the difficulties with the current State based financial assistance payment system, is that the amounts awarded can significantly differ from one victim to the next. Of course, one victim's medical expenses may be significantly higher than another's, however in all matters, victims are required to provide either receipts or quotations of the expenses, which ensures that each victim's medical needs are met.

But special financial assistance awards are not fixed amounts. Rather, a range is provided and the amount of the award is at the presiding Magistrates' discretion.

In addition, in exceptional circumstances, a victim can apply for an award for "other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the primary victim to assist his or her recovery from the act of violence." This provision has resulted in some victims having been awarded holidays or cars, while other victims' claims under the same provision have been refused, perhaps due to simple differences in the discretion being exercised by Tribunal members.<sup>14</sup>

In order for a financial assistance scheme to be equitable and just, it must be transparent. It is therefore recommended that a 'pillar' system of awards be introduced, similar to that as in operation in NSW.

An example of such a pillar scheme as in operation in NSW, is highlighted below:

---

<sup>12</sup> Ibid 7

<sup>13</sup> Ibid 9

<sup>14</sup> Ibid 11, pg205

Assistance Type	Benefits	Benefit cap	Who is eligible	Evidence Required
Information, support & referral	As stated	N/A	All victims of crime	None
Counselling (Pillar 1)	Initial 10 hours  Further 12 hours if required	N/A	All victims of violent crime	A simple application form
Financial assistance for Immediate needs (Pillar 2)	Relocation costs  Safety measures  Crime scene clean  Funeral costs	\$5000    \$8000 (separate)	Primary victims  Immediate family of homicide victims	A report from police or government agency  Evidence of injury  Evidence of expenses being claimed
Financial assistance for Economic loss (Pillar 3)	Reasonable travel expenses  Medical and dental expenses  Assistance with cost of living (rent, furniture, child care)  Expenses associated with damage to personal effects  Justice-related expenses  Loss of actual earnings	\$5000 cap   \$1500 cap  \$5000 cap  \$20,000 cap  <b>\$30,000 TOTAL</b>	Primary victims  Parents of a child victim  Immediate family members of homicide victims can access justice-related expenses	A report from police or government agency  Evidence of injury  Evidence of expenses being claimed
Recognition Payment (Pillar 4)	Financially dependent family of homicide victims  Non-financially dependent parents of homicide victim  Sexual assault involving serious bodily injury, multiple offenders or use of an offensive weapon or pattern of sexual or indecent assault	\$15,000  \$7,500  \$10,000	Primary victims  Dependent family members and parents of homicide victims	A report from police or government agency  Evidence of injury

	Sexual assault, attempted sexual assault	\$5,000		
	Indecent assault, robbery, assault	\$1,500		

### 7.1.2 No time limit on claiming medical expenses

Victims of violence often suffer serious and life-long injuries. Many victims require medical treatment, including operations, long after the offence. Recently, this Office was contacted by two victims who are still incurring medical costs up to 21 years after the offending. One of the victims suffered severe and serious injuries during the Port Arthur massacre, while the other victim sustained serious injuries to his jaw in an armed robbery in 2005. Both victims have ongoing medical needs and are required to pay these costs themselves. When one of the victims queried with the responsible agency in charge of financial assistance if she could recover her medical costs, she was advised that she should use her 'health care card,' due to the mistaken belief that she was receiving Centrelink payments.

It is noted that this very issue has been raised by other stakeholders in the course of consultations.<sup>15</sup>

Victims of crime should never be out of pocket for medical expenses incurred as a result of an offence committed against them. It is unfair for some victims to have their medical expenses covered indefinitely (such as the primary victims of the Bourke Street tragedy, who are eligible for financial assistance from the Traffic Accident Commission), while others will need to pay for treatment themselves, either after reaching the tariff or after 6 years in Victoria (with 6 years being the current time limit to seek a variation of an award).

### 7.1.3 Inbuilt option for victim acknowledgment

Many victims of crime feel vindicated and respected by VOCAT comments that are made to them in the course of VOCAT hearings, as opposed to the criminal hearings. One concern identified with the administrative model is the fact that hearings would become obsolete and victims would not have an opportunity to receive either written or verbal vindication from a judicial officer.

To combat this, it is suggested that a victim's conference could be arranged, whereby victims could request to speak with a senior government or judicial representative at the conclusion of their matter.

### 7.1.4 Centralised operation

Rather than the current situation where VOCAT operates at each individual Magistrates' Court venue in the State, under an administrative scheme, all applications should be centralised and dealt with administratively in the one location. This would enable a more equitable distribution of case files amongst the administrators and improve efficiency in the consideration and finalisation of applications.

### 7.1.5 Financial assistance as part of case manager/victim support

Victims of crime can experience great frustration and difficulty in trying to access the right support and information. While the current system involving the Victims Support Agency and the Victims Assistance Program states that they provide assistance for victims making VOCAT claims, in practice, this usually involves the victim being referred to a local solicitor, specialising in this area of law.

<sup>15</sup> Ibid 11, pg205

Many victims who have contacted this Office have stated they find it somewhat overwhelming to be given, essentially, a list of telephone numbers and organisations to contact, in order to arrange various appointments. At each appointment, the victim is usually required to explain their story to the relevant person, which can re-traumatise the victim as well as make them feel somewhat exasperated. Again, NSW victims of crime were also experiencing this frustration prior to the merging of their victim support services in 2013.<sup>16</sup>

It would therefore be of great benefit to victims if state based financial assistance could be provided as part of victim support case management. The case worker could liaise with the assessor, or at the very least, arrange for reports to be provided from treating doctors or counsellors and provide this to the assessors, thereby reducing this responsibility from the victim, reducing costs and lessening waiting times. This is because if counselling is being provided through and paid by the Victims Assistance Program, then there should be no additional costs required for the preparation of a report for the purposes of supporting a claim for financial assistance.

### 7.1.6 Specialised assessors and cost

Assessors who are trained in the area of victim trauma may not necessarily be required in the administrative model described above. This is because of the transparency of the system. However, having specialised assessors in this area would promote consistency in decision making and such assessors could undergo trauma counselling and education in order to provide a more personal and effective service to victims, in the event that the victim wanted to participate in a victim conference.

Further, specialised assessors, whether they be employed by government (as part of the VSA) or by an independent office, such as the Victims of Crime Commissioner, would be much more cost effective for the government.

For example, in NSW there are 19 assessors and 3 senior assessors. In the last financial year, these 21 assessors dealt with a total of 19,573 unique applications, up from 16,821 applications in the previous year.<sup>17</sup>

In Victoria, there were 6,221 applications filed with VOCAT in the 2015/16 financial year.

The operational costs of VOCAT as reported in the annual reports produced by VOCAT do not include the salaries of the Tribunal members, as Magistrates are paid out of the Consolidated Fund.<sup>18</sup> Therefore the total operating costs of VOCAT were reported as being \$2,841,031 in 2015/16.<sup>19</sup>

If Victoria introduced a similar model to that as NSW and introduced an administrative model, comprising of assessors as the decision makers, then this would result in considerable savings, notwithstanding the fact that VOCAT Magistrates are not paid out of VOCAT's operating budget.

For example, given the number of VOCAT applications filed in the 2015/16 year, Victoria may need (conservatively), ten assessors and two senior assessors. If the ten assessors were VPS Grade 6.1 employees, then their salaries combined would total \$1,322,920. The two senior assessors were VPS Grade 6.2 employees, then their salaries combined would total \$302,852, making a total salary bill for the assessors \$1,625,772. Assuming the operating costs remain similar to what was reported in the 2015/16 year (being \$2,841,031), then the true total operating costs for an administrative model would be in the vicinity of \$4,466,803.

Interestingly, this amount is more than \$500,000 less than VOCAT is currently paying in legal fees for applicants, which is discussed further below.

---

<sup>16</sup> Ibid 11, pg207

<sup>17</sup> NSW Victims Services Data Profiles: Applications for support received by victims 2016/17, pg 1. Note however, that the total number of applications includes all individual applications for counselling, financial support and recognition payments. In circumstances where a victim has applied in all three categories, that has been counted as three separate applications.

<sup>18</sup> Ibid 4, pg 64

<sup>19</sup> Ibid 11, pg 65

### 7.1.7 Eliminating need for legal representation

If the application process is transparent and easy to navigate, then the need for legal representation when making an application would be removed. At the moment, legal representation is recommended for applicants because a) it does not cost the applicant anything and b) a self-represented applicant may not be aware of all of the available claims to make and may miss out on what they are entitled to.

This complexity of the Act and the recommendation to be legal represented in a VOCAT matter is well known.<sup>20</sup>

In the 2015-16 financial year, 4161 VOCAT awards for financial assistance were finalised.<sup>21</sup> Given that \$5,095,278 was paid out by VOCAT to lawyers for their legal fees, this works out to be an average of \$1,224.53 of legal fees spent on each claim.

If the financial assistance scheme was transparent, equitable and easy to navigate, then there would be no need for applicants to engage lawyers to make claims on their behalf. This is the current situation in NSW and various other states who have administrative schemes in place.<sup>22</sup>

If an administrative model was introduced and clear instructions, eligibility criteria and evidence required to support the application were documented, then legal representation would not be required, thus creating an almost \$6M saving to the public purse. Alternatively, this money could be used to provide further services to victims of crime in Victoria.

**Recommendation 1:** The Victims of Crime Tribunal should be abolished and replaced with an administrative model, similar to that as implemented in NSW and the ACT. The system should incorporate a “pillar” system, such as that described above, to promote transparency and fairness.

**Recommendation 2:** There should be no time-limit to claim medical expenses if the injuries are a direct result of the crime committed against the victim.

## 7.2 Introduction of a Victims Levy

### 7.2.1 Legislation in other jurisdictions

Several State Governments in Australia fund victims of crime support schemes through victims support levies, imposed on both infringement notices and court imposed penalties. Only Victoria and Western Australia **do not** have victims levy systems in place. The various schemes are summarised in the table below:

<sup>20</sup> Ibid 11

<sup>21</sup> Ibid 4, pg51

<sup>22</sup> Ibid 11, pg212

Jurisdiction	Legislation	Infringement notice levy	Court penalty levy
South Australia	<i>Victims of Crime Act 2001 (SA)</i>	\$60	\$160 - Summary offence \$260 - Indictable offence  * Certain prescribed offences result in the doubling of the applicable levy pursuant to the <i>Victims of Crime (Fund and Levy) Regulations 2003</i> Schedule 1(3). Some serious indictable offences attract a quantum of \$520.
Queensland	<i>Penalties and Sentences Regulations 2015 (QLD) s 10</i>		\$118.80 – Magistrates Court \$356.40 – District or Supreme Court
NSW	<i>Victims Rights and Support Act 2013 (NSW) s 106</i>	N/A	\$69 – Summary offence \$156 – Indictable offence
Tasmania	<i>Victims of Crime Compensation Levy 1994 (TAS) s 5</i>		\$20 – any offence before the Court of Petty Sessions. \$50 – In any other case
ACT	<i>Victims of Crime Act 1994 (ACT) s 24</i>		\$60 – any offence by an adult
Northern Territory	<i>Victims of Crime Assistance Act (NT)</i>		Adult <ul style="list-style-type: none"> <li>• \$150–Indictable offence</li> <li>• \$120- Summary offence</li> </ul> Child <ul style="list-style-type: none"> <li>• \$50 any offence</li> </ul> Body Corporate <ul style="list-style-type: none"> <li>• \$1000 any offence</li> </ul>
New Zealand			\$50 – All offenders convicted, any offence
Canada			30% of any fine imposed \$100 Summary conviction \$200 – Indictable conviction

The levies imposed add a very small cost to those who commit criminal and other offences, including those that cause road related injury and trauma. Yet the levies provide considerable additional funding which would not otherwise be available from existing Government resources.

It is, of course, a “voluntary” levy and is not a particularly expensive one. There is no requirement for anyone to contribute unless they commit an offence (and are found to have done so, either by a finding of guilt in a court or by the acceptance and payment of a Penalty Notice).

## 7.2.2 Possible Victim Levy Application in Victoria

### Victorian Statistical Modelling

In the 2014-2015 Financial Year, 5.32 million infringement notices were issued in Victoria.<sup>23</sup> More than 96,251 criminal sentences were imposed, in combination between the Magistrates’ and County Courts<sup>24</sup> (and *excluding* the Children’s Court, which does not form part of this proposal).

Using these figures (factoring an assumed and very high noncompliance component of 20%) and using amounts of \$20.00 per infringement notice and \$50.00 per court sentence, **the following revenues could be generated** in Victoria (based on preliminary calculations):

Levy Derived From	Number issued	Levy Rate	Estimate Revenue
Court Penalties	96,251	\$50.00	\$4,812,550
Infringement Notice	5,320,000	\$20.00	\$106,400,000
<b>Total</b>			<b>\$111,212,550</b>
Less assumed 20% non-compliance (this includes matters where it would be clearly impractical to seek cost recovery e.g. matters involving prisoners serving extended sentences, the criminally insane etc).			- \$22,242,510
<b>Adjusted Total</b>			<b>\$88,970,040</b>

This revenue could be used to subsidise and support funding for the Victims of Crime Assistance Tribunal, or an alternative administrative model, as well as victims of crime support initiatives, and to expand the duties and responsibilities of the Victims of Crime Commissioner’s office, in the event that recommendations 5, 11, 12, 13 and 14 of the VLRC Report into The Role of Victims of Crime in the Criminal Trial Process are implemented.

<sup>23</sup> Attorney Generals Annual Report of the Infringement System 2014-2015.

<sup>24</sup> Sentencing Advisory Council, *Court Statistics* <<http://www.sentencingcouncil.vic.gov.au/landing/about-sentencing/sentencing-statistics/court-statistics>>.

**Recommendation 3:** A Victim's Levy should be introduced in Victoria, an example of which is detailed above.

### 7.3 Collection of financial assistance from convicted offenders

Currently, section 51 of the VOCA provides that any person who receives an award from VOCAT may assign their rights to recover damages or compensation from the offender (by way of civil proceedings) to the State.

There is no evidence to suggest that any victim of crime in Victoria has ever assigned their rights to the State of Victoria, or to suggest that the State has ever commenced proceedings to recover money from an offender.

Part 4 of the *Sentencing Act* 1991 deals with other orders a court can make in addition to sentencing an offender. This part contains provisions dealing with compensation and restitution that may be ordered to be paid by the offender to the victim. A victim can make an application pursuant to section 85B for pain and suffering. However, the victim is usually required (although it is not mandatory), to engage solicitors to make this application, which is often costly. In addition, an offender cannot be forced to satisfy the compensation order – if a compensation order is made and the offender refuses to pay, then the victim is required to commence their own enforcement proceedings, which is costly and continues to traumatise the victim.

As well as facing significant legal fees, section 85I of the *Sentencing Act* 1991 provides that a court **must** reduce the amount compensation ordered to be paid by an offender to a victim, by the amount of any award the victim received from VOCAT. This is to ensure that the victim is not being over compensated.

In addition, section 87A of the *Sentencing Act* 1991 provides that if a compensation order is made against an offender personally in favour of a victim, then the State may apply to the court for an order that the **offender pay to the State an amount equal to the whole or any specified part of the assistance awarded by VOCAT to the victim.**

Once again, there is no evidence to suggest that the State has ever sought such an order from a court. This may be due to the fact that the State (whether that be the OPP, Victoria Police or VOCAT) has generally no involvement or standing in compensation orders sought against the offender by the victim. What generally occurs is that if the victim has received an award from VOCAT, then the court will reduce the amount an offender is ordered to pay a victim by the same amount VOCAT paid the victim.

Given that the recovery of compensation from convicted offenders was an issue (among many other relevant issues) that was raised in the discussion paper released by the Department of Justice (Victoria) in 2009, it is unfortunate that a Final Report was not prepared.<sup>25</sup>

Offenders should be held not only criminally responsible for their actions, but financially as well. It is iniquitous that law abiding citizens have to pay to compensate victims of crime (through the payment of their taxes), when the person who caused the injuries is absolved from financial responsibility. This is particularly the case when the offender's income is Centrelink benefits, which under Victorian law, cannot be garnisheed (unlike in NSW where it is regularly done).

If the collection of compensation paid to victims from offenders became the responsibility of a government entity, then this service could also be extended to victims of property crime, who have obtained *Sentencing Act* compensation or restitution orders against the offender (i.e. enforcement of the order).

<sup>25</sup> See footnote 25 in Chapter 9, paragraph 9.16 of *The Role of Victims of Crime in the Criminal Trial Process*, Report, Victorian Law Reform Commission (2016) pg230 and at pg242.

**Recommendation 4:** Attempts should be made to recover funds from convicted offenders, where a VOCAT compensation payment has been made to the victim of the offence. In NSW it is the Commissioner of Victims Rights who has the responsibility of recovering funds from offenders after the offender has been convicted of the offence. The same recovery process should be implemented in Victoria, whether the responsibility for collecting the compensation belong to this office or another area.

## 7.4 Chapter 5: Eligibility for assistance considerations

### 7.4.1 Primary, secondary and related victims

Not all victims of crime are currently eligible to receive financial assistance from VOCAT. Only primary, secondary and 'related victims' of *acts of violence* are eligible for specific forms of financial assistance. The categorisation of primary, secondary and related victims is fairly consistent across all Australian States and Territories.

However, children of primary victims who are injured as a direct result of or upon subsequently becoming aware of an act of violence committed against a parent or guardian are not (without the existence of exceptional circumstances), classified as secondary victims. This is also the same for domestic partners of primary victims. This seems to be an anomaly in the Act, given that parents of a child primary victim are *automatically* classified as secondary victims.

**Recommendation 5:** Children of primary victims should be included automatically in the category of secondary victims.

### 7.4.2 Only victims of an act of violence

In order to receive financial assistance from VOCAT, the applicant victim is required to prove that the act of violence caused an injury, death or significant adverse effect. Victims of property offences including burglary, theft and fraud are not eligible for any monetary assistance.

Traditionally victims of property offences have not been eligible as it has long been assumed that a victim of a property offence should have insurance to cover the expenses of repairing damaged property or replacing stolen items. If a victim does not have insurance or they are the victim of an internet scam, then there is, unfortunately, no State based assistance scheme to assist them to recover from the effects of the offence. While the cost to the State of compensating victims of property crime would be astronomical, victims of property crime, including fraud, can suffer psychological and emotional injuries.<sup>26</sup> Perhaps they should be entitled to receive, at the very least, counselling provided by the State.

Victims of property crime can, of course, seek financial assistance and restitution orders upon the conviction of the offender. Such orders are commonly made in the Magistrates' Court. However difficulties arise if the offender refuses to satisfy the order. The victim is then required to take civil action themselves to enforce the order. In many cases, the civil action costs more than the amount of the order. As discussed in 7.3 above, if Victoria implemented a system whereby the government (or some other statutory body) enforced compensation and restitution orders on behalf of a victim, then this would greatly assist non-violent crime

<sup>26</sup> See, for example, Cross, C., Richard, K., & Smith, R., 'The Reporting Experiences and Support Needs of Victims of Online Fraud,' *Trends & Issues in Crime & Criminal Justice* No 518, AIC August 2016.

victims receive compensation. It is noted that the Sentencing Advisory Council is currently conducting a review into this area, with a report due to be provided to the Attorney-General by 1 September 2018.<sup>27</sup>

Concerns have been raised as to how victims of family violence access financial assistance through VOCAT. The particular difficulties faced by family violence victims often revolve around the definitions of ‘acts of violence’ and ‘injury.’

### 7.4.3 Specific Family Violence Issues

#### Definition of act of violence

In the *Victims Rights and Support Act 2013* (NSW), an act of violence means an act or series of related acts that has occurred in the course of the commission of an offence, involving violent conduct against one or more persons, which has resulted in injury or death to one or more persons.<sup>28</sup> ‘Violent conduct’ is defined to include sexual assault and domestic violence.

#### Inclusion of definition of family violence

In an attempt to more adequately compensate victims of family violence, NSW legislation specifically categorises and defines ‘sexual assault and domestic violence.’ While this definition includes such offences as rape and indecent assault, it also includes ‘self-manipulation’ and “any other act resulting in injury that occurred in the commission of a personal violence offence.”<sup>29</sup> A personal violence offence is defined in a separate Act and includes offences such as murder, manslaughter and assault, however it also includes recording or distributing intimate images without consent, stalking or intimidating with the intent to cause harm, damaging property and breaching an apprehended violence order.

#### Definition of Injury and inclusion of psychological harm

A major difference between the definition of ‘injury’ as between Victoria and NSW in this area is that in the NSW legislation, ‘injury’ includes psychological or psychiatric harm.<sup>30</sup> In Victoria, the legislation is more restrictive, in that injury means “actual physical bodily harm, mental illness or disorder, whether exacerbation of a mental illness or disorder, whether or not flowing from nervous shock or pregnancy or any combination of those matters arising from an act of violence.”<sup>31</sup>

While it is noted that in past cases, the Victorian Civil and Administrative Tribunal has ruled that the presence of anxiety symptoms without an anxiety disorder can amount to a mental injury, the definition of injury should be more broad at first instance.

**Recommendation 6:** Family violence, as defined in the *Family Violence Protection Act 2008* (Vic) should be included in the current definition of ‘acts of violence’ within the VOCA. In addition, the definition of ‘injury’ should be expanded and should include ‘psychological or psychiatric harm, including injury arising from loss or damage to property.’ It should be emphasised that it is not the value of the property lost or damage that is being compensated, rather it is the (presumably) psychological harm that the lost property has caused that is being addressed.

<sup>27</sup> Details are available at: <https://www.sentencingcouncil.vic.gov.au/projects/restitution-and-compensation-orders>

<sup>28</sup> *Victims Rights and Support Act 2013* (NSW) s 19(1)

<sup>29</sup> *Victims Rights and Support Act 2013* (NSW) s 19(8)(f)

<sup>30</sup> *Victims Rights and Support Act 2013* (NSW) s 18

<sup>31</sup> *Victims of Crime Assistance Act 1996* s 3

## 7.5 Chapter 6: Assistance available

### 7.5.1 Quantum of awards

Currently, victims of violence in Victoria can receive up to \$70,000 in financial assistance. However, a large portion of that amount is only available to victims in exceptional circumstances, “for other expenses actually and reasonably incurred or reasonably likely to be incurred, by the primary victim to assist his or her recovery from the act of violence.”<sup>32</sup>

While intending to assist those victims who need it the most, the inclusion of the ‘exceptional circumstances’ category arguably contributes significantly in delaying matters and discriminating between victims.

The other complicating factor in the current legislation is the amounts that can be awarded under the ‘Special Financial Assistance’ categories. It appears that the Special Financial Assistance categories are Victoria’s version of ‘recognition payments,’ however the amount available to a victim is within an applicable range (depending on how serious the offending was and how badly the offending affected the victim).

The ranges provided in s8A(5) are as follows:

Category of Act of Violence	Offence type	Minimum Amount	Maximum Amount
A	Attempted Murder or Sexual Penetration of a Person	\$4667	\$10 000
B	Any offence that involves— attempted sexual penetration of a person or an indecent act with, or indecent assault against, a person; or armed robbery or aggravated burglary or the deprivation of liberty of a person for the purpose of— sexual penetration; or demanding any ransom for their release.	\$1300	\$3250
C	Any offence that involves— an attempt to commit a category B act of violence or a threat of death; or conduct endangering life or inflicting serious injury or robbery.	\$650	\$1300
D	Any offence that involves— an attempt to commit a category C act of violence or a threat of injury or an assault against a person or an attempted assault or the deprivation of the liberty of a person, excluding a category B act of violence or an act of violence not otherwise specified as a category A, B, C or D act of violence.	\$130	\$650

Despite the categorisation of the offences above, a victim of a category B, C or D act of violence can receive up to \$10 000 if they

- suffered a very serious physical injury; or
- been infected with a very serious disease; or
- been the victim of a series of related criminal acts being acts of indecent assault or sexual penetration.

Likewise, the victim of a category C or D act of violence can receive up to \$3250 if they

- suffered a serious injury; or
- been the victim of related criminal acts of violence; or
- suffered a deprivation of their liberty— and at the date of the occurrence of the act of violence or, in the case of related criminal acts of violence, any of those acts, the victim was a child under the age of 18, elderly or impaired.

<sup>32</sup> *Victims of Crime Assistance Act 1996* s 8(3)

And finally, a victim of a category D act of violence can receive up to \$1300 where:

- a) as a result of the act of violence, the victim has been the victim of related criminal acts of violence; or
- (b) at the date of the occurrence of the act of violence or, in the case of related criminal acts of violence, any of those acts, the victim was a child.

To get the maximum amount, the *onus is on the victim* to prove the act of violence was a *serious example of that offence*. This seems to be incredulous. A victim already has to provide receipts or quotations in order to receive financial assistance for medical expenses and injuries. So in practice, a victim of an aggravated burglary (a category B offence), in which the offender enters their home and confronts them, may only receive \$1300 as per special financial assistance. One wonders what additional psychological trauma a victim of aggravated burglary must have in order to receive \$3000.

Any State based financial assistance system needs to be fair and equal. As such, the current maximum amount available to victims of \$70,000 should remain, but be categorised into the different pillar system. Of course some victims will require more support than others and those requirements can be accounted for within specific categories (such as medical expenses) through the pillar system.

Many victims of crime who have contacted this office have expressed frustration at the current system that requires a victim to prove the extent of the harm the offence caused them, in order to receive a special financial assistance payment. Within a six month period, more than five separate victims have told this Office that because the onus is on them to prove how the crime affected them, they feel like they are the criminal. Victims should not have to feel that they need to justify or prove their *trauma* to receive, what is effectively, a recognition payment. Therefore, to address this issue, it is recommended that Special Financial Assistance payments be replaced with fixed recognition payments.

### 7.5.2 Categories of awards

In relation to the requirement of expenses incurred to be 'reasonable,' the pillar cap system helps to justify this. Alternatively if a victim wishes to attend a psychologist who charges double the average, then the victim should be eligible to attend this specific psychologist until the benefit cap is reached.

As mentioned above, the 'exceptional circumstances' category of awards should be removed, in order for the system to be more effective, efficient and transparent. The removal of this category should also alleviate the need for victims to instruct lawyers to file their claims, thus saving the state the added expense of paying legal fees.

#### Interim Awards

Interim awards are necessary and an extremely important component of the system. Many victims require urgent assistance at or just after the offending against them.

Many victims pay for urgent medical needs out of their own funds and claim for the reimbursement of these costs from VOCAT. However, current evidentiary requirements and waiting times for interim payments to be considered make it extremely difficult and frustrating for victims to get the support they need, at times when they need it the most.

This Office is aware of one victim who sought an interim payment for a total of less than \$2000, more than 2 years after her offender was sentenced. The application was made because the victim was experiencing extreme financial difficulty whilst awaiting the finalisation of her TAC claim and it was believed that because TAC had already refused to pay for the items (valued at \$2000), then VOCAT could reimburse her.

The interim application was filed with VOCAT in May 2017. To date, the claim has not yet be actioned. The first delay was due to VOCAT requesting a copy of the police brief, notwithstanding that the offender had been sentenced to a total effective sentence of 5 years imprisonment in October 2016.

Subsequent delays have been due to the provision and consideration of the 2 applicable receipts.

If there is delay with the actioning of interim awards, then they are effectively not of very high value or use. Interim awards need to be considered and actioned swiftly. There needs to be clear and unequivocal guidelines and practice notes as to what evidence is required to be provided to the Tribunal for the making of the award. This can be similar to the NSW requirements for payments for immediate needs, being a report from police or government agency, evidence of injury and evidence of expenses being claimed. It is hoped that an administrative model would be able to process interim awards in a significantly faster timeframe what is currently occurring.

**Recommendation 7:** The 'Special Financial Assistance' payments should be fixed amounts and renamed Recognition Payments. If victims require additional compensation for serious injuries, then that compensation can be claimed under a separate and distinct pillar.

**Recommendation 8:** The ability to claim additional assistance in 'exceptional circumstances' should be removed from the Act.

## 7.6 Chapter 7: Time limits for making an application

Currently, a victim must make an application for financial assistance within 2 years of the act of violence, although the application can be determined if it is made out of time, taking into account the particular circumstances of the matter.<sup>33</sup>

Generally speaking, it is very rare for the Tribunal to refuse to consider a matter even when the claim has been made several years after the applicable 2-year period. Providing that the victim can provide an adequate explanation for the delay, the matter will generally proceed.

It is noted that most other Australian jurisdictions impose a time limit of 3 years after the act of violence or offence (ACT, QLD, SA, Tasmania and WA).

However, there should be protections enshrined in the legislation specifically for child victims of sexual assault and also for domestic violence victims. This is the case in NSW. In that state, the applicable time limit for an application in respect of domestic violence, child abuse or sexual assault is 10 years. Where the victim is a child at the time of the act of violence, then child victim can make an application for financial assistance within 10 years after the day on which the child turns 18.<sup>34</sup>

**Recommendation 9:** Time limits for family violence victims should be extended from the current 2 years limit to 10 years. In addition, if a victim was a child when the act of violence occurred, then an application should be able to be made within 10 years after the day on which the child turns 18. The current protection of extending the time limit, taking into account the particular circumstances of the matter should also be maintained.

<sup>33</sup> *Victims of Crime Assistance Act 1996* s 29(1) and (2)

<sup>34</sup> *Victims Rights and Support Act 2013* (NSW) s 40(5)

## 7.7 Chapter 8: Making an award

It should still be a requirement that a victim must report the incident/offence to the police in order to be eligible to receive financial assistance. If the extended timeframe for victims of domestic violence, child abuse and sexual assault is implemented, then not only should the requirement to report the matter to police not be a barrier for victims, but the requirement to provide reasonable assistance to police and prosecution should not create additional difficulties.

## 7.8 Chapter 9: Review, variation and refund of awards

Once an award is made, an applicant can currently seek a review or variation of the award. Any variation to an award must be made within 6 years. For reasons advanced in 7.1.2, variations in respect to medical expense payments ought not be confined to a 6 year period. This extension should apply to all victims and all crimes.

With an administrative model, the variation process should be as easy as making an initial application, thereby eradicating the need for legal representation.

As an example, this office has been contacted by a victim who instructed solicitors to make a variation application on his behalf. The application was subsequently refused, due to being out of time. Notwithstanding the refusal, the victim was still charged approximately \$500 in legal fees for the variation application, such costs not being recoverable from VOCAT.

### 7.8.1 Refund of Awards

Awards for financial assistance should only be required to be refunded by victims where the victim has submitted fraudulent receipts or made a false complaint or report to police.

## 7.9 Chapter 10: Timeliness of awards

Many complaints made to this Office about VOCAT are in relation to inordinate delays encountered by victims in having their application considered and finalised. It appears that delays commonly occur due to further evidence being requested by the Tribunal member to consider a claim or due to the Tribunal awaiting the outcome of the prosecution.

Unfortunately, these delays also extend to urgent interim payments, for the same reasons.

This is one of the main reasons why this Office recommends that a new administrative model replace the current judicial model. As noted above, the administrative model could be centrally located and assessors would be specialised in not only the area of victim financial assistance, but also in being able to assess victims needs and communicate with victims effectively.

If the evidentiary criteria were particularised, then there may not be as much need to await the final outcome of a criminal prosecution before finalising a matter, which causes significant delays to victims. It seems somewhat contrary to the aims and purposes of the current Act for the accepted practice to be to wait until the criminal matter is concluded, before finalising an application. Under the current scheme, a victim can make an application regardless of whether criminal charges are filed and with a lower evidentiary burden in place. Why then, should victims in matters where a person has been charged with the offence, be required to await the determination of guilt before receiving a final payment?

**Recommendation 10:** Interim awards should be finalised within 2 weeks of receipt of the required (stated) evidentiary material.

## 7.10 Chapter 11: VOCAT hearings

VOCAT hearings are arguably necessary at present due to the wide discretion given to Magistrates to determine claims, especially when applications are made in exceptional

circumstance categories. Having said that, in the 2015-2016 financial year, a total of 23.1% of matters were determined at hearings.<sup>35</sup>

### 7.10.1 Notification of application to alleged perpetrator

Even in the event that any award is made to the victim, one struggles to identify any detriment to the alleged perpetrator. This Office does not believe that the lack of notification creates an issue or offends the principle of procedural fairness, as the finding and award does not affect the alleged perpetrator's criminal or otherwise status in any way. While some stakeholders informed the Commission that it is only fair that alleged perpetrators be notified, given that there are no criminal sanctions or consequences for an unconvicted offender, it is difficult to understand why notice is required to be given.

The current notification provisions contained in the Act appear to be contrary to the aims and purposes of the Act, in that notifying a perpetrator of a pending application could cause the victim further anxiety and trauma and may actually endanger the victim of suffering from further violence at the hands of the offender.

Recently, this office was contacted by a victim of rape, who, after reporting the matter to police and with the accused man being interviewed by police, was advised that there was insufficient evidence to charge the accused. Compounding the victim's disappointment and trauma at this time, was notification sent to her by VOCAT advising her that VOCAT intended to contact the alleged perpetrator and advise him of the application for financial assistance. In her correspondence to this Office, the victim described this as another blow at a time when she was already struggling and further made her feel unsafe.

In the event that an award, say, is made to this victim, then one struggles to identify any detriment to the alleged perpetrator.

Alternatively, the names of alleged perpetrators who are not convicted or found guilty of any crime, could be anonymised, so that there is no public record available of any order made in favour of a person who made an allegation against them.

**Recommendation 11:** Alleged perpetrators should not notified of an application or hearing unless a victim so requests.

## 7.11 Chapter 12: Awareness of VOCAT and accessibility

### 7.11.1 Use of the fact of a VOCAT application or documents in criminal proceedings

If a victim is advised by either Victoria Police or the OPP or any other victim support agency of their rights to make a VOCAT claim and they do so, then this is a matter that can be raised and essentially used against them in cross-examination during the criminal hearing of the matter.

And given the current delays in obtaining interim and final awards, sometimes it is therefore in the best interests of the victim in respect of the criminal matter, to wait for the criminal matter to be finalised before making their application. Of course, this delay in making an application and subsequently receiving an award may be detrimental to the victim in terms of receiving medical and emotional support when it is most needed.

In order to overcome this issue, this Office wholeheartedly supports recommendations 50 and 51 of the VLRC's report into the role of victims of crime in the criminal trial process.

In terms of the accessibility of VOCAT, it is noted that the new online application process and VOCAT website does assist victims of crime in understanding their rights and with making an application. However, due to the wide discretion of Tribunal members and lack of clear

<sup>35</sup> Ibid 3, pg 36

evidentiary requirements in the applicable legislation, it is very difficult for a victim to make a full claim without the assistance of a solicitor. It is therefore hoped that if an administrative model is adopted which has clear, transparent and fair pillars of assistance in place, this will negate the need for solicitors to prepare applications of victims' behalf and therefore save the scheme in excess of \$5M per year in legal fees.

**Recommendation 12:** Recommendations 50 and 51 of the VLRC Report on The Role of Victims of Crime in the Criminal Justice Process should be implemented and protected by legislation, such as the current *Victims of Crime Assistance Act 1996*.

## 7.12 Chapter 13: Victim needs

Victims of crime have a variety of needs. Some victims of crime will require significantly more support and assistance than others. However, all victims need to feel as if they matter. They need to feel respected and acknowledged. To expect a State financial assistance scheme alone to achieve this is completely unrealistic.

Instead, applying for and receiving financial assistance from the State should be as simple and fair as possible. That is why the financial assistance scheme needs to be fast, efficient, transparent and fair to all. I believe that this can be best achieved through the creation of an administrative scheme, discussed in section 7 above.

## 7.13 Charter 14: Reforming the existing scheme

See sections 7.1 and 7.2.

## 7.14 Chapter 15: Is there a need for a different model?

See sections 7.1 and 7.2

# 8 Conclusion

Monetary financial assistance for victims of crime will very rarely, if ever, right the wrongs committed and place the victim in the position they were in prior to the offending. However, financial assistance can assist most victims in their recovery from some of the effects, whether they be physical or emotional, of the crime.

Given that, overwhelmingly, complaint to this Office relate to delays victims of violent crime experience under the current financial assistance scheme, it is clear that delay is one of the major problems with the current system.

It is therefore difficult to see how the current judicial/tribunal system could be improved without major changes being made to the composition of the tribunal and the relevant legislation.



**Greg Davies APM**

**Victims of Crime Commissioner**

## Appendix 1 List of Recommendations

**Recommendation 1:** The Victims of Crime Tribunal should be abolished and replaced with an administrative model, similar to that as implemented in NSW and the ACT. The system should incorporate a “pillar” system, such as that described above, to promote transparency and fairness. In addition, there should be no time-limit to claim medical expenses if the injuries are a direct result of the crime committed against the victim.

**Recommendation 2:** There should be no time-limit to claim medical expenses if the injuries are a direct result of the crime committed against the victim.

**Recommendation 3:** A Victim’s Levy should be introduced in Victoria, an example of which is detailed above.

**Recommendation 4:** Attempts should be made to recover funds from convicted offenders, where a VOCAT compensation payment has been made to the victim of the offence. In NSW it is the Commissioner of Victims Rights who has the responsibility of recovering funds from offenders after the offender has been convicted of the offence. The same recovery process should be implemented in Victoria, whether the responsibility for collecting the compensation belong to this office or another area.

**Recommendation 5:** Children of primary victims should be included automatically in the category of secondary victims.

**Recommendation 6:** Family violence, as defined in the *Family Violence Protection Act 2008* (Vic) should be included in the current definition of ‘acts of violence’ within the VOCA. In addition, the definition of ‘injury’ should be expanded and should include ‘psychological or psychiatric harm, including injury arising from loss or damage to property.’ It should be emphasised that it is not the value of the property lost or damage that is being compensated, rather it is the (presumably) psychological harm that the lost property has caused that is being addressed.

**Recommendation 7:** The ‘Special Financial Assistance’ payments should be fixed amounts and renamed Recognition Payments. If victims require additional compensation for serious injuries, then that compensation can be claimed under a separate and distinct pillar.

**Recommendation 8:** The ability to claim additional assistance in ‘exceptional circumstances’ should be removed from the Act.

**Recommendation 9:** Time limits for family violence victims and victims who were children at the time of the offence should be extended from the current 2 years limit to 10 years. The current protection of extending the time limit, taking into account the particular circumstances of the matter should also be maintained.

**Recommendation 10:** Interim awards should be finalised within 2 weeks of receipt of the required (stated) evidentiary material.

**Recommendation 11:** Alleged perpetrators should not notified of an application or hearing.

**Recommendation 12:** Recommendations 50 and 51 of the VLRC Report on The Role of Victims of Crime in the Criminal Justice Process should be implemented and protected by legislation, such as the current *Victims of Crime Assistance Act 1996*.