

The Hon. Philip Cummins AM
Chair
Victorian Law Reform Commission
www.lawreform.vic.gov.au

6 December 2017

Dear Philip

Re: Supplementary Consultation Paper on Review of the Victims of Crime Assistance Act 1996

Thank you for seeking the views of the Judicial Advisory Group on Family Violence (JAGFV) in relation to the Supplementary Consultation Paper on the *Victims of Crime Assistance Act 1996*, published in August 2017.

You will recall that on 24 August 2017 we forwarded comments on the VLRC Consultation Paper on Family Violence and the Victims of Crime Assistance Act 1996, published in June 2017. This letter adds to these earlier comments. Our response is confined to family violence cases, since this is the area in which the JAGFV operates.

Because we have already expressed our views on the other main issues, we respond only to questions 15 and 16 (form of assistance available), 27 and 29 (time limits), 37 (variation of awards) and 70-73 (different models).

Form of assistance available (Questions 15 and 16)

As we commented in our previous letter, the amount of special financial assistance available has not increased for many years and is now grossly inadequate in some cases. In that letter we also supported changes to take account of the cumulative harm arising from a series of criminal acts, for example, separate physical assaults.

The Royal Commission Report argued that greater emphasis should be placed on measures which assist victims who have been exposed to family violence to recover from its effects. Consistent with that approach, we would not limit the award of recovery expenses in family violence cases to 'exceptional circumstances'. An important aspect of recovery is that the victim does not continue to feel that she/he is under continuing threat from the perpetrator. This may require modification to houses, for example, the installation of safety cameras and changing of locks. I and Deputy Chief Magistrate Broughton were told about a case in which this was refused, on the basis that there was no jurisdiction to award it. If that account was accurate, it is regrettable that the victim did not receive any funding for that service. It might be useful for the legislation to make it clear that such expenses are covered. Other support should include psychological and coaching support for children who have to move house and change schools because of family violence.

Time limits (Questions 27 and 29)

Although there is provision for an extension of time, the existing time limit provisions could potentially deprive victims of family violence of compensation, particularly where the violence took the form of sexual assault by a family member. We note that in *FG v VOCAT*, Hampel J extended time to allow an application by a victim who had been sexually assaulted by her grandfather when she was between 5 and 10, but we understand there are decisions which have taken a narrower view about whether the particular circumstances requirement is satisfied.

The Report of the Royal Commission into Institutional Responses to Child Sexual Abuse demonstrates that children who were sexually abused frequently tell no one of the abuse for many years, even after they become adults. It is now widely accepted that delay in reporting sexual assault is a common pattern of behaviour, particularly where the perpetrator is a family member. People who are victims of family violence do not always recognise that what has happened to them is family violence and may not tell anyone about the violence for many years before they leave the relationship. They may face practical problems, such as finding housing after leaving a violent relationship, which make it difficult for them to make their VOCAT application within time. In these circumstances the two year time limit and the requirement to prove exceptional circumstances is unjust to many people who have suffered from serious criminal acts in the family context. We would support a longer time period, for both categories of cases. The New South Wales time limit of 10 years seems appropriate and in the case of institutional abuse we would support the removal of the time limit.

We note the apparent inconsistencies in decisions about whether a late application should be struck out. If the time limits were retained we would support the publication of data on applications struck out and the reasons for doing so. This should help to increase consistency and would be fairer for victims.

Variation of awards (Question 37)

We would answer yes to this question. Some family violence victims suffer serious and long term physical and psychological effects. For example, they may suffer serious spinal or other physical injuries, brain injury, or serious hearing loss as a result of being hit around the head. It will be necessary to consider how VOCAT compensation interacts with other compensation schemes which provide support to people with physical disabilities.

We note that the current time limit for variation is longer than that in some other jurisdictions and the suggestion that the period could be extended only for certain types of crime. This would appear to be inequitable as variation may be necessary to meet the needs of any crime victim. We would however support variation for only some types of assistance, for example, medical and long-term care costs for seriously injured victims.

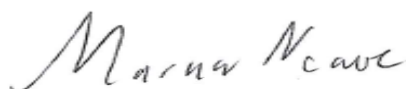
Is there a need for a different model? (Questions 70-73)

The JAGFV notes that some victims appreciate the opportunity to 'tell their story' before a Tribunal, rather than having their entitlement to compensation determined through an administrative process. After discussion of alternative ways of providing financial assistance to victims of crime, members of the JAGFV did not wish to express a view on this issue.

The JAGFV also supports the development of a referral pathway for restorative justice conferences, rather than doing this within VOCAT, assuming that VOCAT is retained.

I hope that these observations are helpful.

Yours sincerely



THE HON MARCIA NEAVE AO

Chair of the Judicial Advisory Group on Family Violence