

Victims of Crime Assistance Tribunal
The Magistrates' Court of Victoria
The Children's Court of Victoria

Joint submission to the Victorian Law Reform
Commission's review of the *Victims of Crime
Assistance Act 1996*

Part 2 of 2

20 December 2017



**Victims of Crime
Assistance Tribunal**



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Background

In response to the findings and recommendations of the Royal Commission into Family Violence (RCFV), the Attorney-General, the Honourable Martin Pakula MP, asked the Victorian Law Reform Commission (VLRC) on 22 December 2016 to review and report on the provision of state-funded financial assistance to victims of family violence under the *Victims of Crime Assistance Act 1996* (the Act).

The VLRC released the consultation paper 'Family Violence and the *Victims of Crime Assistance Act 1996*' in June 2017, inviting written submissions by 28 July 2017.

On 7 July 2017, the Attorney-General, by supplementary terms of reference, asked the VLRC to expand its review to consider the operation and effectiveness of the Act and the Victims of Crime Assistance Tribunal (VoCAT) for all victims of crime. The VLRC released the supplementary consultation paper 'Review of the *Victims of Crime Assistance Act 1996*' in August 2017, inviting written submissions on both consultation papers by 31 October 2017.

The Magistrates' Court of Victoria (MCV), VoCAT, and the Children's Court of Victoria (CCV) welcome the expanded terms of reference for the review and are pleased to provide the following joint submission.

The expanded terms of reference provide for the first comprehensive review of the Act in its 20 years of operation. This provides a platform for a close examination of the legislative, policy, operational and administrative barriers to the efficient operation of VoCAT, and opens discussion on options for reform across these areas. The MCV and VoCAT see the review as a critical opportunity to improve VoCAT's role in assisting victims of crime seeking financial assistance and recognition of their experience of violence as part of their recovery journey.

Joint Submission in 2 Parts

MCV, VoCAT and the CCV are grateful to the VLRC for accommodating a request by the Working Group to lodge a joint submission in 2 parts:

- Part 1 (which was lodged with the VLRC on 14 November 2017) consisted of a thematic analysis of issues and considerations raised in the consultation papers. It also included a summary overview of key issues for the review to consider; and
- Part 2 (this submission) provides a more in-depth appraisal of legislative, administrative and system configuration aspects of VoCAT's operation that warrant consideration for reform, and offers options for consideration. Part 2 will be lodged with the VLRC on 20 December 2017.

Submission structure

This submission has been prepared in six parts:

- Chapter 1 Executive summary
- Chapter 2 Victim's journey
- Chapter 3 Eligibility
- Chapter 4 Categories of awards
- Chapter 5 An improved specialised assistance model
- Chapter 6 Accountability, consistency and transparency.

A note on data: all figures and charts in the submission have been drawn from CourtLink (the joint MCV and VoCAT case management system) and VoCAT Annual Reports, including the 2016-17 Annual Report. For this reason, specific source references are not included in the body of the submission.

Submission governance arrangements

VoCAT is an administrative Tribunal that operates within the MCV – a quasi-judicial model. The Chief Magistrate is



responsible for the arrangement of VoCAT's business and accordingly this submission has been endorsed by Chief Magistrate Peter Lauritsen, VoCAT Supervising Magistrates Johanna Metcalf and Andrew Capell, and the President of the Children's Court, Judge Amanda Chambers.

A Working Group provided oversight for the preparation of Parts 1 and 2 of the submission, with representation from:

- VoCAT;
- MCV;
- CCV;
- Court Support Programs;
- the Family Violence Programs and Initiatives Unit of the MCV; and
- Courts Services Victoria.

The Working Group was supported in its work by a Project Team, which consisted of Registry, policy and administrative staff from all areas represented in the Working Group. A full list of Working Group and Project Team membership is at [Attachment 1](#).

1. Executive summary

1.1 Purpose of this joint submission

VoCAT was established by the Victims of Crime Assistance Act 1996 (the Act) to replace the Crimes Compensation Tribunal which had been operating since 1973. This represented a seismic shift away from an emphasis on cash payments for pain and suffering, to a restorative model, which prioritised the victim's recovery from the harm they suffered. The intent of the restorative model was to be responsive to a victim's individual circumstances and experience of the harm they suffered, and recognise that support to assist in a victim's recovery needs to be tailored to each individual victim's specific needs.

Over the 20 years of its operation, the Act has been amended in a piecemeal fashion in response to factors such as government policy changes, the sustainability of the Tribunal as a state-funded scheme, and evolving community expectations. This comprehensive review of the Act is long overdue and provides a unique opportunity to assess whether the Act is fulfilling its intent, the extent to which reforms are required to improve the operation of the Tribunal, and how reflective the Act and the operation of the Tribunal are of evolving community understanding and expectations around, for example, what constitutes a crime, injury, harm and recovery.

Factors such as steadily growing demand, increasing complexity of cases, and resourcing not keeping pace with these changes are contributors to an erosion of the Act's intent over the past 20 years. This is reflected in constraints on VoCAT's capacity to provide a truly therapeutic, victim-centric avenue through which victims can obtain assistance to help them in their recovery journey. Working within the constraints of given resources and the parameters of the Act, however, the Tribunal has adapted administrative processes, operational procedures and stakeholder engagement approaches to help mitigate the impact of increasing system pressures.

The joint parties to this submission strongly hold the view, however, that legislative, administrative, operational, and other system-wide reform opportunities exist and should be considered. It is imperative that the Tribunal is not only sustainable, but is a truly victim centric model - one which is helpful, responsive and practical, but can also be meaningful and 'have a heart' - giving effect to the purposes of the Act.

1.2 Re-cap of submission part 1

Part 1 of the joint submission provided an overview of the background to VoCAT's establishment, its current service delivery model and aspects of the Act that would benefit from review, in order to ensure the intent of the Act is being fulfilled and that VoCAT is a sustainable state-funded scheme into the future. Part 1 discussed in greater detail:

- the establishment of VoCAT as a fair and equitable mechanism through which victims of crime can seek financial assistance to aid them in their recovery journey;
- the benefits of VoCAT's unique 'quasi-judicial' model in being an administrative Tribunal embedded in a Court, with specialisation being a key feature of its service delivery model;
- historical and projected system demand pressures, which, absent additional resources, indicate an unsustainable upward trend in applications (on current resourcing levels) driven by: major recent justice reforms, such as implementation of RCFV recommendations; the commencement of online applications; and growing community rejection of the cultural 'normalisation' of family violence;
- how shifting VoCAT's currently diffused service delivery model to a 'hub and spoke' model could deliver a sustainable, truly victim-centric, therapeutic service for victims of crime; and
- a summary overview of some of the pressing areas for legislative, administrative and system reform, which this submission discusses in greater detail.

These observations and findings discussed in Part 1 of the submission form the basis of this (Part 2) submission, and the lens through which Part 2 should be read.

1.3 Themes from Part 1 of the submission expanded upon in Part 2

1.3.1 Victims of crime must be at the centre

The abiding principle by which VoCAT should be assessed is the extent to which it fulfils its purpose to provide a therapeutic avenue through which victims of crime can seek financial support to help with their recovery. In order to meet this obligation, the process of obtaining assistance through the Tribunal must reflect a victim-centric approach. That is to say, the scheme should be responsive to the unique circumstances and experience of harm suffered by each individual victim in order to offer practical support in their recovery journey.

There must be flexibility within the system to tailor consideration of each application – from a relatively straight forward ‘one-punch’ nightclub assault (which can be assessed administratively and within a quicker time-frame), to the deeply complex and sensitive applications involving cumulative harm, such as family violence, sexual assault or those involving child victims. Such complex applications take time and require the expertise and discretion of a Magistrate to consider. Neither a purely judicial model nor a purely administrative model possesses the nuanced adaptability necessary to be responsive, therapeutic, timely and consistent. The victims’ journey is discussed in detail in Chapter 2.

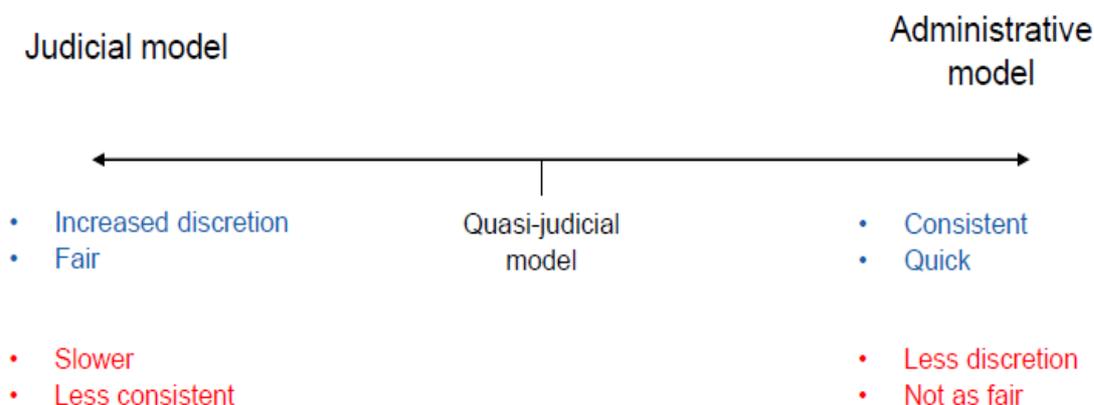
1.3.2 Benefits of the quasi-judicial model

Part 1 of the joint submission clarified that VoCAT is a quasi-judicial model, - otherwise referred to as a hybrid of a judicial and administrative model, which incorporates the safe-guard of Magistrates’ discretion to consider more complex applications and review less complex decisions. It is also appropriate that Magistrates review decisions made at a lower level of decision making. This builds in the flexibility needed to be a truly victim-centric service delivery model. It provides the benefit of quick, consistent administrative decisions (for the more straight-forward cases), and the discretion necessary to fairly consider more complex cases – which takes longer but is fairer.

A particular benefit of the quasi-judicial model is that it has built-in capacity to adapt to changes in demand, which is essential to the sustainability of a state-funded scheme. For example, the Chief Magistrate’s powers of delegation are an effective lever available to adjust the spread of work in response to increasing demand – freeing up Magistrates to focus on the complex cases.

As the diagram below shows, the quasi-judicial/hybrid model provides a ‘sliding scale’ that can be adjusted in either direction in response to, for example, increases in specific types of case-loads or general demand pressures. This is a feature neither a fully administrative or fully judicial model possesses.

Diagram 1 – A Victim-centric service delivery model



The perception for some that the VoCAT process is overly legalistic is partly due to VoCAT’s location within a Court rather than within the victims’ service system, and also because of the need for applicants to meet thresholds and



requirements set out in the governing legislation. In some cases, a lack of understanding of the VoCAT process and a need to rely on lawyers to navigate the system are real barriers to accessibility. A range of elements discussed in Chapter 2 discussed options to address this.

1.3.3 Best practice elements of a specialised assistance model

Part 1 of the joint submission introduced discussion of best practice elements of an effective service delivery model for a state-funded financial assistance scheme for victims of crime. The premise is not that legislative reforms and other improvements cannot be made to VoCAT without introducing more substantive systems reforms. Rather, this submission encourages consideration of an improved specialised assistance model as the foundation likely to give best effect to potential reforms the review may consider

Chapter 5 discusses a revised specialised assistance model which could improve VoCAT's effectiveness for victims of crime. Consideration should be given to shifting from the current diffused operating model (operating at 51 locations across Victoria) to a 'hub and spoke' arrangement that also incorporates flexible and technology-enabled service delivery channels. Specialist Judicial Registrars, and administrative staff could be co-located at the 'hub', allowing a single entry point for, and the triaging of, all VoCAT applications. The 'spoke' element of such a model would ensure that victims living in rural and regional areas could still use local Magistrates' Courts to access VoCAT support. Where a hearing is requested or required, specialist VoCAT Magistrates could conduct these physically on circuit, or via digital and audio visual online service channels.

Part 1 of the joint submission indicated that key elements of an effective 'hub and spoke' operating model for VoCAT would include:

- retaining the quasi-judicial model (to ensure responsiveness and fairness) but establishing a smaller pool of specialised VoCAT Magistrates, Judicial Registrars, and administrative staff (to improve consistency in decision making);
- co-location of VoCAT's administration, offering a single entry point for VoCAT applications (to promote predictability and transparency); and
- triage and case-management from first contact (significantly improving victims' therapeutic experience, reducing reliance on lawyers – and in turn, increasing victims' sense of agency).

These elements, and how they would work in practice are discussed further in Chapter 5. The submission also discusses technical improvements to the legislation that would reduce inefficiency by simplifying the scheme and what must be provided by victims in order to qualify for a grant of assistance.

1.3.4 System interdependencies

Part 1 of the joint submission touched on the view that a system-wide approach is required for this review of VoCAT. While areas for reform can be broadly categorised as 'legislative', 'administrative', 'procedural' or 'structural', these – and their varying components – necessarily overlap. The system-wide implications of reform options, and particularly any unintended consequences of these, must inform the analysis of the viability of any reform options – with the overarching consideration being improving the therapeutic experience for victims seeking assistance through VoCAT.

There are a number of factors that shape and influence a victim's experience of VoCAT, including:

- its accessibility;
- the prescribed eligibility criteria;
- the available categories of awards;
- timeliness of awards;
- the evidentiary requirements required to support an application; and
- the ease with which victims can navigate the Tribunal's administrative procedures and processes.

The multiple interdependencies across these factors makes it difficult, and inadvisable, to identify singular issues for reform, or definitively describe what that reform could look like in isolation. The areas of eligibility criteria and structure of award categories, for example, are inextricably linked and cannot be considered independently of each other or adjusted separately. A broadening in eligibility, for example, is likely to affect the quantum of awards. This is considered further in Chapters 3 and 4.



Specialised assistance service delivery, together with the flexibility provided by a quasi-judicial model would ideally position VoCAT to manage the ‘ebb and flow’ of system interdependencies, and respond to the impact of changes in demand, by, for example, increasing delegation to make final determinations in less complex cases. Chapters 3 and 4 discuss system interdependencies further.

1.3.5 Accountability and transparency

Part 1 of the joint submission discussed an aspect of VoCAT’s operation that can have an adverse impact on a victim’s therapeutic experience and threaten the sustainability of the system as a state-funded scheme. VoCAT has not been resourced to allow the development of robust accountability systems to enable effective monitoring of the quality and suitability of the services provided to victims via VoCAT awards.

The absence of a regulatory framework to ensure providers of legal services and other support services are accredited and accountable renders victims vulnerable to inadequate assistance, which can be detrimental to their recovery. VoCAT has developed guidelines and practice directions to assist applicants to better understand how the Tribunal might approach the making of discretionary awards. However, the lack of a guidelines or expert advice for decision makers on, for example, what quantum of costs is reasonable, and what is truly needed for recovery, fosters a procurement environment vulnerable to abuse. Options to address this lack of accountability and transparency are discussed in Chapter 6.

2. Victim's journey

2.1 Why 'journey'?

The impact of violent crime on a victim, and the path to recovery from the harm suffered is unique to each and every victim. Whether the violent crime was a single event (such as a one-off assault) or a protracted experience (as in many cases of family violence), the impact will not be linear, predictable or fixed over time.

For some victims the harm suffered can have life-long consequences and support needs will change over time. Years after the crime, for example, a change in a victim's circumstances could trigger the need to resume counselling, or it might take months or years before a victim is ready to seek assistance to re-skill and seek employment as part of their efforts to reclaim or establish their independence.

Recovery is not a 'destination' for a great many victims of crime, but an ongoing 'journey', and this premise lies at the heart of a truly victim-centric, therapeutic support scheme.

2.2 Purpose of the Act

The purpose of the Act is to provide assistance to victims of crime by:

- assisting victims in their recovery by paying them financial assistance for expenses incurred, or reasonably likely to be incurred by them as a direct result of the crime, where compensation for the injury cannot be obtained from the offender or other sources;
- paying certain victims of crime financial assistance (including special financial assistance) as a symbolic expression by the State of the community's sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime; and
- providing referral pathways to other support services provided by government to victims of crime, to assist them in their recovery journey.

The VLRC review has indicated that the key criteria that will be used to assess whether VoCAT and the Act are fulfilling these objectives include the extent to which victims experience VoCAT as:

- fair, equitable and timely;
- consistent and predictable; and
- minimising trauma for victims and maximising the therapeutic effect for victims.

This focus necessarily extends to assessing the long-term sustainability of VoCAT's service delivery model as a state-funded financial assistance scheme.

2.3 Primacy of a therapeutic approach

What constitutes a 'therapeutic experience' for victims of crime seeking financial assistance to aid in their recovery journey cannot be defined exhaustively. This is because one victim's support needs will differ from another's. Similarly, an individual victim's experience of whether the support they received was 'therapeutic' will depend on many factors, including the individual circumstances of that person. VoCAT believes, however, that there are some key features of a 'therapeutic approach' in its processes and practices that are relevant to all victims seeking assistance.

Significant determinants of a therapeutic experience include a victim's eligibility for assistance and the quantum of awards available to be paid. The consistency of decisions and predictability of outcomes are also key. These will be considered in Chapters 3 and 4.

This section focuses instead on aspects of VoCAT processes and procedures that may present barriers to a therapeutic experience for victims of varying backgrounds, and options to address these.

2.4 Accessibility

Approximately 9 per cent of all victims of crimes against the person apply to VoCAT for financial assistance. This low figure may be due to a general lack of awareness of VoCAT and the financial assistance process in Victoria, or reflect the difficulty for applicants to understand their potential entitlements and quickly and easily access the assistance offered by the scheme, without legal support. The many threshold requirements and eligibility tests built into the Act add complexity.

In Chapter 6, the submission discusses a proposal to insert a review provision into the Act. If this was implemented, consideration could be given to how the accessibility of the VoCAT scheme for victims of violent crime might be measured. One option would be to adopt the user-satisfaction survey method used by VCAT.

The commencement of online application capability in 2016 resulted in a 17 per cent jump in applications, indicating that the need to lodge a physical application might have deterred some victims from seeking VoCAT assistance. Chapter 5 details how a 'single entry point' for applications could potentially further improve VoCAT's accessibility.

Victims may be deterred from seeking financial support because of a perception (and reality for some) that the system is too complex to navigate on their own, and that legal representation is essential. This is particularly the case for victims from Culturally and Linguistically Diverse (CALD) communities, who often face the additional burden of insufficiently accessible information. While a legal representative can advocate on a victim's behalf and identify areas of eligibility that a victim may not have appreciated, engaging a lawyer may also add to cost and delays. VoCAT funds the reasonable legal costs of victims who apply to the scheme, adding to the overall costs of the Tribunal. In the absence of a regulatory framework governing legal services (discussed in Chapter 6), the quality of the legal support provided to victims can vary, and may result in assistance outcomes that do not fully address a victim's recovery needs.

Simplifying the administrative processes involved in lodging and progressing VoCAT applications is an important part of improving the scheme's accessibility. Simplified procedures combined with a triaging of applications, could assist in reducing the evidentiary burden placed on victims, particularly if the proof requirements in the Act were simplified or streamlined.

An aspect of the application process that can present a barrier to accessibility and potentially re-traumatise victims is the volume of documentation that can be required to establish matters that the Act requires to be proved. If victims were case-managed from their first point of contact with VoCAT, the process of gathering and presenting any relevant evidence could be streamlined.

2.5 Evidentiary burden

In order to meet various criteria set out in the Act, significant supporting documentation such as medical or psychological reports are often required. Each category of assistance has different supporting documentation requirements and victims are asked to file all necessary documents within 4 months of lodging an application. The need to assemble documentation is often a source of delays and frequent requests for extensions of time to allow the filing of documents, which adds to VoCAT's administrative costs.

The evidence required to support particular applications is not prescribed by the Act. Instead, applicants are informed what documentation will be required by the Tribunal, based on Tribunal procedure and practice directions.

These evidentiary requirements, and the way they are communicated to applicants, could be simplified to make the application process easier for victims to understand, without the need to seek legal advice. Again, a case-management approach whereby the evidence needed to support a particular application could be identified and discussed with a victim at the outset could alleviate the need to engage legal representation.

The Act effectively mandates the provision of certain documents in particular claims. For example, where the injury suffered by a victim is not physical, expert evidence from a psychologist or medical professional is required to establish a mental injury as a direct result of the act of violence. This is a particularly complex undertaking if the victim suffered a pre-existing mental illness. Consideration should be given to the current evidentiary requirements of the scheme to ensure that only what is needed to make a fair judgement and in the interests of the victim is necessary. Greater flexibility could be built into the Act, for example, by expanding the discretion Tribunal Members have about what documentation they need, on a case by case basis. In some circumstances it may be appropriate to dispense with some documentation requirements (unless specifically requested by a Tribunal Member), such as the provision of a counselling report to support an application for counselling expenses. The value of requiring a psychologist or

psychiatrist report to prove an injury should be assessed against the undue harm an independent assessment may cause the victim.

2.6 Victims being heard

The quasi-judicial/hybrid model embodies one of the most important components of a therapeutic approach – the option for victims to have a hearing before a Tribunal Member. Around three quarters of applications are finalised each year without a hearing occurring, in accordance with the wishes of the victim. However, for some victims, their recovery journey includes having their ‘day in Court’, to have their experience formally acknowledged and to have their story believed.

For some victims, the perception that VoCAT is overly legalistic because of its location within a Court may indicate that they are unaware that the hearing setting is informal and that the Magistrate or Judicial Registrar is not bound by the usual rules of evidence. Having this explained better at the outset would assist with this misperception, particularly for victims with CALD backgrounds.

While many victims who opt for a hearing find it to be a transformative experience, the hearing process could be more trauma-informed. For example, currently, s 37(2) of the Act provides that the Tribunal can direct that alternative arrangements be made for the giving of evidence by a witness. This could be expanded upon by inserting additional procedural and evidentiary protections in the Act for certain proceedings, such as those involving family violence, sexual assault, or child victims. The Act could be amended to adopt the special arrangements that apply to sexual assault complainants and protected witnesses under the Criminal Procedure Act 2009 and the Family Violence Protection Act 2008.

Chapter 5 discusses in more detail the introduction of other innovations to assist victims’ recovery journey and the role VoCAT could play in this, including access to restorative justice options via VoCAT, without necessarily linking this to an application for financial assistance.

2.7 Alleged offender notifications

It is apparent that the mere potential for an alleged offender to be notified about an application can deter some victims from submitting an application. The Act requires VoCAT to consider notifying any other person that the Tribunal “considers to have a legitimate interest” in an application and the time and place of the hearing. VoCAT must not notify a alleged offender, however, without first giving the applicant an opportunity to be heard on whether or not notice should be given. The notion that the very person who harmed the applicant might be told about the application, and choose to participate in a hearing, can be an intimidating prospect, particularly for victims of family violence and sexual assault.

In weighing up whether or not an alleged perpetrator should be notified, the Tribunal Member considers a range of factors, including any safety concerns expressed by the applicant. However, the Act provides no guidance whatsoever about the factors to be considered when deciding whether or not to notify an alleged offender.

In practice, alleged perpetrators are notified infrequently, and only rarely do they choose to participate in a hearing. However, consideration should be given to inserting greater protections into s 34 to ensure that an alleged offender is only notified of a hearing in appropriate circumstances and where no specific safety risks are present. This could be achieved by making the presence of family violence, sexual assault or other specified offences an explicit factor that the Tribunal must have regard to in determining when an alleged offender should be notified - and only in cases where Tribunal Members are unable to make a fair decision without notifying the alleged offender. Such protections would need to be consistent with the Family Violence Protection Act 2008 and the Criminal Procedure Act 2009.

Consideration should also be given to explicitly extending the evidentiary and procedural protections for protected witnesses in criminal proceedings and intervention order matters to VoCAT hearings. While the Act gives VoCAT the discretion to put in place special arrangements, such as hearing evidence via videolink or prohibiting in-person cross-examination of an applicant, the absence of an explicit provision in the Act can lead to this option being underused or used inconsistently. Chapter 5 goes into more detail about the benefits of specialised VoCAT Magistrates, which, if supported, would also minimise the risk of hearings re-traumatising a victim.

2.8 Time limits for applications and variations

Part 1 of the joint submission discussed the current requirement under the Act for a VoCAT application to be lodged within 2 years of the act of violence. This can be problematic for victims of family violence, sexual assault and child victims of crime (particularly child sexual abuse). A fixed time-limit reduces VoCAT's accessibility for victims in these categories, given the particularly distressing circumstances of such crime and the varying capacities of victims to come forward to disclose it – particularly for those who may not be able or willing to disclose for years, or much later in life.

Section 29 of the Act permits the Tribunal to accept applications outside of the prescribed 2 year time limit, and subsection (3) sets out a non-exhaustive list of factors to be considered when deciding whether or not to allow an application made out of time to proceed, such as:

- the age of the applicant when the act of violence occurred;
- whether the applicant is intellectually disabled or mentally ill; and
- whether the perpetrator of the act of violence was in a position of power, influence or trust in relation to the applicant.

In practice, many applications for extensions of time are granted after considering these factors.

The 2013 Betrayal of Trust report highlighted the difficulties that survivors of organisational child abuse face in recovering compensation for the devastating harm they have suffered – noting that survivors of child abuse often take years to recognise the harm inflicted on them and report their abuse. The Report concluded that limitation periods that apply to different avenues for seeking justice can particularly disadvantage victims of child abuse, and specifically recommended that the 2 year time limit for making an application to VoCAT should be removed for this category of victim. The Justice Legislation Amendment (Victims) Bill 2017 is currently before the Victorian Parliament (at the Second Reading stage as at 19 December 2017) which will amend the Act to remove the 2 year time limit on applications for financial assistance relating to child sexual and physical abuse, irrespective of whether the abuse occurred in an organisational setting.

Consideration could be given to adopting a time limit of 3 years for applications other than those referred to above (to bring Victoria closer in line with most other Australian jurisdictions), combined with expanding the matters the Tribunal must have regard to under s 29(3) of the Act to include specific regard for the presence of family violence or sexual assault.

Currently applications to vary a final award of assistance must be made within 6 years of the date of the original award, unless the victim was under 18 years of age at the time the award was made. Even then, the age cut-off to apply for a variation is 24 years. When deciding whether to grant a variation application, VoCAT must have regard to any fresh evidence, any change of circumstances, any other payments received by the applicant and any other relevant factors. If a time limit upon variation applications is to be retained, consideration should be given to expanding the matters the Tribunal must have regard to under s 60 of the Act to include specific regard for the presence of family violence, sexual assault or child abuse.

2.9 Timeliness

Delays in the final resolution of an application or a variation can lead to significant distress and a sense for victims that they 'can't move on'. The time taken to make a final award in an application can be due to a variety of factors, including the complexity of a case, evidentiary requirements and the need to await the outcome of a related criminal investigation, trial or inquest.

The ability to make interim awards of assistance ensures that the therapeutic experience for victims is not derailed by delay, and provides for the immediate financial needs of victims. Part 1 of the submission included data that shows that, in line with increasing demand, there has been a significant upward trend in the total number of interim financial assistance awards made since 2012-13. A therapeutic, victim-centred approach can be complex and can take time. Interim awards of assistance, and the ability to vary final awards when circumstances change, are fundamental to a victim's recovery journey.

It should be noted that available metrics regarding average times taken to finalise an application are not a true measure of VoCAT's responsiveness, as they do not reflect the role interim awards play in providing timely assistance



to applications. Similarly, the increasing number of pending cases and overall throughput metrics does not directly correlate with VoCAT's efficiency and responsiveness. Consideration should be given to meaningful metrics required to accurately assess VoCAT's performance in this critical area, including some recognition of delays driven by factors outside of the Tribunal's control – such as the outcome of criminal investigations, trials or inquests, or a delay in the provision of necessary documentation.

The challenge in addressing delays in a scheme intended to provide a therapeutic approach is balancing being responsive to individual victims' circumstances, which takes time, and a process that resolves applications in a timely manner, without taking a 'tick-box' approach. Consideration should be given to assisting in striking this balance alleviating administrative burdens, system road-blocks and evidentiary requirements and initiatives such as, for example, increasing delegation of less complex cases to a third tier decision maker in the form of an 'Assessing Registrar' (this is discussed further in Chapter 6).

Delays in determining VoCAT applications, particularly for victims of family violence, can have profoundly adverse impacts on them. Financial hardship can be a significant consequence of family violence and the economic impacts of family violence can impede a victim's ability to leave an abusive relationship and obtain safety. Increasing VoCAT's specialisation (as discussed in Chapter 5), together with effective integration of VoCAT with Specialist Family Violence Courts (SFVCs) would provide priority access and processing for victims with particularly complex and distressing applications.

Part 1 of this submission provided a detailed list of the many recent operational steps taken by VoCAT to reduce delays. However, more substantive system reforms, such as those discussed in Chapter 5 (e.g. triaging and case-management from 'first point of contact') would make a material difference to the delays currently experienced by victims. Case-management would, for example, make the processing of applications more seamless – particularly the interface between the financial assistance component of support and support service referral pathways.

Improvements to simplify the legislation also have a role to play in promoting timely outcomes.

3. Eligibility

A person is eligible to receive financial assistance from the Tribunal if they can establish that they are a 'primary', 'secondary' or 'related' victim as defined in the Act. In order to be considered a victim within one of these categories, an 'act of violence' must have taken place, defined as a 'criminal act' or a series of 'related criminal acts' that occurred in Victoria and which 'directly resulted in injury or death to one or more persons'. Special financial assistance may also be claimed if a primary victim has suffered a 'significant adverse effect', defined as 'any grief, distress, trauma or injury' as a direct result of the act of violence. Eligible criminal acts include assault, threats, sexual offences, stalking, kidnapping, conspiracy and attempts to commit any of these offences.

This submission acknowledges that a state-funded assistance scheme funded by government requires clear eligibility criteria, with an eye to ensuring that the scheme is sustainable in the long term. These parameters are for government to set. This submission does not adVoCATE for or against particular reforms, but rather refers to our experience of how some provisions tend to operate in practice, and also to point to possible consequences of some of the changes under discussion.

This submission refers in particular to the definitions of 'injury' and 'act of violence', the structure of categories of victims under the Act, and how the ss 52-54 mandatory refusal and behaviour considerations are framed. This section will also briefly consider the eligibility of emergency service workers and other groups of employees who may be injured in the course of their duties.

3.1 The definition of 'injury'

Establishing 'injury' under the current definition can lead to complexities and delays in some applications, and may result in ineligibility for some victims, despite having suffered harm or distress as a result of an act of violence.

For primary and secondary victims, the Act requires the act of violence to result in actual bodily harm, mental illness or disorder or an exacerbation of mental illness or disorder, or pregnancy. The definition explicitly excludes injury arising from loss of or damage to property. The requirement for an applicant to establish a mental illness or disorder as a direct result of the act of violence is an obstacle for victims who have suffered other interpersonal, behavioural, and social impacts as a result of a crime. The need for applicants to undergo psychological assessment to determine if the act of violence has caused a recognised mental injury is costly (as the Tribunal pays for the costs of such reports), leads to delays in the application process, and may cause further distress and re-traumatisation for victims. The need for primary and secondary victims to establish that they have suffered a mental illness or disorder is also arguably out of kilter with the less stringent criteria applicable to related victims, who may be awarded financial assistance for suffering 'distress', which requires no expert assessment or opinion to establish.

A narrow definition of injury fails to take into account the variety of distinct ways in which victims may internalise their experience of an act of violence. This may cause particular difficulty for victims of family violence and sexual assault who may have suffered in ways other than sustaining a bodily injury or recognised mental illness or disorder. Examples may include a reduced sense of self-worth, fears for personal safety and distrust of others.

Consideration should be given to broadening the definition of injury for all victims of crimes against the person, or for particular classes of such victims, to cover mental harms falling short of a recognised mental illness. This would simplify proof requirements under the Act.

Further, even in circumstances where an applicant has suffered a recognised injury, they may encounter difficulty demonstrating that their injury was caused as a direct result of the act of violence. This causation requirement is problematic in instances where the impact of a violent act may be felt in the context of other factors that contribute to the injury suffered.

To address these issues, consideration could be given to easing the causation requirement in the definition of 'injury', either for all classes of victims, or for particular classes, such as victims of family violence and sexual assault. This could be achieved by varying the causation requirement to allow recognition of injuries that the act of violence contributed to, but may not have been the sole or direct cause of.

This submission notes that expanding eligibility to include a cohort of applicants who are currently not recognised under the Act is likely to lead to increased demand, possible additional delays due to increased application numbers,

and may have implications for the scheme's sustainability.

3.2 The definition of 'an act of violence'

The current definition of an 'act of violence' does not capture those who have experienced forms of abuse such as financial, emotional and psychological abuse. Particular non-contact sexual offences such as image-based abuse, including taking and distributing intimate photographs of individuals, are also excluded from the act of violence definition.

This is an area of the Act that warrants modernisation. Consideration should be given to expanding the definition of 'relevant offences' to explicitly include non-contact and image-based sexual offences. Such an expansion could be drafted to operate within defined parameters and would not appear to pose the same kind of challenges as would incorporating the definition of family violence from the Family Violence Protection Act 2008 (as discussed below).

3.2.1 Non-criminal family violence

The exclusion of financial and psychological abuse is a particular concern for victims of family violence and elder abuse, where these behaviours are often manifested as a means of controlling an affected family member. One way of addressing this concern would be to embed the definition of family violence from s 5 of the *Family Violence Protection Act 2008* within the definition of 'an act of violence' so as to expand eligibility to these victims.

This potential change would however:

- mark a departure from the Act's overarching requirement that a criminal offence is established before eligibility for assistance arises;
- may result in a marked increase in the number of applications made to the Tribunal;
- may increase the complexity for applicants in trying to prove that the act of violence has occurred;
- may impact adversely on the timeliness of awards by increasing the complexity of decision-making, as Tribunal Members would have greater discretion to determine if the act of violence should be recognised;
- increase the risk that a perpetrator may be eligible for assistance in some cases. Due to the complexity of family violence incidents, it is not uncommon for police to incorrectly identify the primary aggressor and primary victim. Altering the act of violence definition to include these expanded forms of family violence could increase the possibility that an incorrectly identified primary victim could access VoCAT assistance; and
- increase the potential for misappropriation of VoCAT assistance by perpetrators of financial abuse, where a victim's award of assistance becomes another vehicle for oppression (the Tribunal does not have the capacity to monitor how awards are spent, except for those limited circumstances in which assistance may be managed by Funds in Court).

Some of these concerns may be addressed by moving towards a more specialised VoCAT. Family violence related VoCAT applications would be triaged into the SFVCs, where possible, and specialised family violence Magistrates with an in-depth understanding of the dynamics of family violence would be determining these applications. Specialist Magistrates would be well-equipped to discern whether an act of family violence has occurred, and in particular, to determine the primary victim and aggressor in a family violence matter.

Rather than incorporating the s 5 *Family Violence Protection Act 2008* definition into the Act's current definition of 'act of violence' it could be included elsewhere in the Act to guide the exercise of discretion. The purpose of the definition would then be to provide clarity for decision-makers on the different forms of family violence that victims may experience. This would explicitly require Tribunal Members to interpret the Act, with regard to the broader context of abuse and the cumulative harm that can be suffered. This will be explored in more detail in the 'related criminal acts' in Chapter 4.

3.3 Victim categories

The classification of victims into the categories of primary, secondary and related victims must be understood in the context of the Act's objective to provide financial assistance where compensation cannot be obtained from other sources (see s 1(2) (c) and s 16). These provisions are intended to ensure the sustainability of the scheme.

3.3.1 Child victims exposed to family violence

Currently, the Act recognises children who witness family violence as secondary rather than primary victims despite the fact that children who experience family violence in this indirect sense can suffer severe psychological and developmental trauma. This classification fails to acknowledge the devastating impact that the lived experience of family violence can have on children. It also adversely impacts on the quantum of award that such victims are eligible to receive because secondary victims may only receive assistance of up to \$50,000 and are not eligible to receive any special financial assistance.

As a general observation, it is probable that the number of children harmed as a result of being exposed to family violence is far greater than the small number of applications that the Tribunal receives in this category.

The Act could be amended to specifically recognise children who witness family violence as primary victims. However, in considering this potential amendment, particular attention must be drawn to the role of special financial assistance. Special financial assistance provides symbolic recognition of the community's sympathy and condolence for the adverse effects experienced by victims of crime. The significance of this recognition cannot be overlooked. Yet, in the case of younger victims, special financial assistance awarded by VOCAT is paid into Funds in Court and cannot (generally) be accessed until the applicant reaches the age of 18 and - thus may not actually provide any therapeutic benefit for child victims in the immediate aftermath of violence. Financial assistance in this context might therefore be more usefully targeted towards addressing the harm caused by witnessing family violence through the provision of services focused on a child victim's capacity-building, such as on-going counselling and funding of educational needs.

It may be appropriate to amend the Act to recognise children who witness family violence as primary victims while simultaneously excluding eligibility for special financial assistance, instead making available assistance aimed at helping the child to recover from their experience of family violence. This is ultimately a question of striking the right balance between a paternalistic approach where the Tribunal manages how awards are spent – for instance on capacity-building pursuits – and an approach that empowers the victim by giving them agency to determine for themselves how to spend the award.

In making any changes to the way the Act responds to child victims who have witnessed family violence, it is crucial that the role of government in supporting vulnerable children, via, for example, the Department of Health and Human Services (DHHS) is not displaced as the first point of assistance. Many children exposed to family violence will live in families where DHHS is involved, and it is vital for the sustainability of the scheme that child protection services provide necessary support, thus ensuring that VoCAT remains an avenue of assistance only in circumstances where this cannot be obtained elsewhere.

3.4 Mandatory refusal and behavior considerations

3.4.1 Section 52 mandatory refusal

Under s 52 of the Act, the Tribunal must decline to award an applicant assistance if they have failed to report the act of violence to police within a reasonable time, or in circumstances where the applicant has failed to provide reasonable assistance to the police or a prosecutorial authority. An exception to the mandatory refusal criteria currently exists where the Tribunal considers that 'special circumstances' exist. This term is not defined in the Act. The provision also requires the Tribunal to refuse an application made in collusion with the perpetrator of an act of violence, or if an earlier application has already been made in respect of a particular act of violence.

The requirement to report to police within a reasonable timeframe and provide reasonable assistance to authorities fails to recognise the specific difficulties that particular victims may face. These include the well-documented failure for many victims of child abuse, sexual, and family violence, to disclose their experiences until some time has passed, which may be years after the abuse. There are a variety of reasons why victims may fail to report the act of violence promptly or assist in the investigation and prosecutorial process. These may include personal safety concerns in relation to feared retribution by the perpetrator, the age or other vulnerability of the victim, and distrust of authorities such as the police.

3.4.2 Section 54 behaviour considerations

When considering whether to award assistance, and how much to award, s 54 of the Act requires Tribunal Members to consider the character, behaviour (including past criminal activity) and attitude of the applicant before, during, and after the act of violence. This includes any activity on the part of the applicant that the Tribunal considers may have provoked the act of violence, or a 'condition or disposition' of the applicant that may have contributed to their injury. VOCAT must also consider whether it is possible that a perpetrator will benefit from the award if made.

The s 54 considerations may be construed as a form of victim blaming, by delving into the behaviour of the victim, their possible contributory conduct, and deliberations about whether they are deserving based on their own criminal history. This may be problematic for family violence victims who may have been misidentified as the primary aggressor at some stage in the context of a complex history of family violence. If this misidentification is considered to form part of the victim's own criminal history, it could potentially preclude the Tribunal from awarding the individual assistance.

3.4.3 Proposed changes to ss 52-54

There are legitimate reasons for retaining the ss 52-54 provisions, including to ensure that fraudulent claims are discouraged, and perpetrators are prevented from benefiting under the scheme. However, the concerns identified above could be addressed by broadening the range of authorities to whom victims of family violence, sexual violence, and child abuse can report the act of violence to for the purposes of s 52. Other reporting bodies could include health service providers, counsellors and similar support agencies. Further, explicit reference to the nature and dynamics of family violence, sexual assault, and child sexual abuse could be made in ss 53-54 to ensure that Tribunal Members take these factors into account when exercising the discretions under ss 52-54 of the Act. More guidance could also be provided to decision makers in relation to how s 54 considerations should inform a Tribunal Member's ultimate determination on the amount of assistance to be awarded, if any. This could be provided in the form of examples written into the Act or in guidelines issued by the Chief Magistrate under s 45 of the Act.

This submission notes that these changes would expand eligibility under the Act, allowing applications in circumstances where assistance may have been previously refused, with consequent demand and cost implications.

3.5 Emergency services and other workers

Section 7(2) of the Act makes it clear that a police officer or other first responder will be considered a primary victim of an act of violence if they are injured or die trying to arrest someone, attempting to prevent the commission of an act of violence, or trying to aid a victim of an act of violence. The Tribunal has seen a recent increase in the number of applications received under s 7(1) from emergency services and other first responder workers who have been injured in the course of their duties. As an important distinction, applications made under s 7(1) are eligible for special financial assistance, while applications made under s 7(2) are not. This is due to the fact that no act of violence has actually been committed against the worker themselves, which is a prerequisite for special financial assistance under s 8A(2)(a).

Further, s 16(a)(ii) of the Act states that any award made by the Tribunal must be reduced to take into account any amounts of compensation or other forms of assistance received by an applicant. Section 16(b)(i) states that the Tribunal may consider amounts received, and reduce the VoCAT award of assistance by the total amount received from:

'...any compensation, assistance or payments of any kind under any scheme, whether statutory or non-statutory, including that managed by the Transport Accident Commission and the Victorian WorkCover Authority and that established by the Police Assistance Compensation Act 1968 and any predecessor of any such schemes.'

Section 1(2)(c) of the Act provides that one of the Act's key objectives is to allow victims of crime to have recourse to VoCAT assistance where compensation for their injury cannot be obtained from the offender or other sources. The increasing number of applications being received by the Tribunal from emergency services and other similar workers – particularly those under s 7(1) – has serious implications for the sustainability of VoCAT where other assistance schemes such as WorkSafe are available and may provide more appropriate assistance for such individuals.



In practice, the complex interaction between VoCAT and other schemes that may provide overlapping services, in conjunction with the Tribunal's legislative requirement to provide financial assistance as a last resort, can lead to delays in the finalisation of applications.

Navigating the s 7(2) and s 16 provisions can be a source of ambiguity for police officers, emergency services and similar applicants, as evidenced by the 2013 Independent Broad-based Anti-corruption Commission (IBAC) review of Victoria Police applications to VoCAT. The review confirmed that some officers had applied to VoCAT for injuries sustained in the course of their duties that duplicate their WorkSafe and other available entitlements. As a result, IBAC recommended that the entitlements of police injured at work, including their entitlement to VoCAT assistance, should be clearly outlined, and that VoCAT applications by police officers should be subject to independent review.

In recent years, amendments have been made to other Acts to deal with the entitlements of workers in certain fields injured in the course of their duties. For instance, the Transport Legislation Amendment Act 2007 made provision for the Director of Public Transport to grant financial assistance to train drivers following fatal incidents. This led to the insertion of s 16(ac) into the Act to state that any amount awarded by VoCAT must be reduced in accordance with the amount received from the Director of Public Transport.

All of these concerns suggest that the provision of VoCAT assistance to emergency services and other workers injured in the course of their duties is in need of review. In particular, consideration should be given to whether Parliament intends for such workers injured in the course of their employment to be entitled to special financial assistance. Consideration may also be given to whether VoCAT is a suitable avenue for such workers to receive financial assistance, and whether other assistance schemes such as WorkSafe could function more effectively as the exclusive avenue of assistance available in these circumstances.

3.6 Miscellaneous technical improvements

Certain aspects of the legislation cause administrative inefficiency and should be addressed as part of the review of the Act.

3.6.1 Strike out orders

Section 29A allows applicants the right to withdraw an application for assistance prior to a final determination having been made, and requires the Tribunal to strike out the application. However, because an order striking out an application for assistance is not a curial determination on the merits, the order simply removes the application from the list of current matters before the Tribunal, rather than terminating the application altogether. An applicant can apply for re-instatement of a struck out application at any time, and it would not be a proper exercise of discretion to refuse to reinstate such an application.

The effect of these provisions is that the Tribunal holds a large volume of files (presently in physical hard copy form in boxes) that must be retained and stored, effectively in perpetuity, because of the possibility that a victim might apply to have their application reinstated. The Act provides no method to finally determine a struck out application, other than upon an application for reinstatement. This should be addressed.

On more than one occasion a review to VCAT from VoCAT has focused on whether a VoCAT application which has been 'struck out' is sufficiently final for the purposes of s 59 of the Act. Consideration should be given to clarifying the meaning of the term in ss 29 and 29A.

Administrative disposals for failure to comply with the directions of the Tribunal are common at VoCAT. These matters are 'struck out' with a right of reinstatement. This power is necessary for the administrative management of files because a failure to do so would mean that applications that are abandoned retain the indefinite status of 'active'. This power to strike out a matter for failure to comply with directions is not contained explicitly in the Act. The VLRC should consider adding this power to the Act and calling the finalisation something different to a 'strike out' so as to avoid any confusion with s 29 or s 29A.

3.6.2 File retention

The file retention obligations of the Tribunal should be reviewed and addressed. The current Retention and Disposal Authority for VoCAT was published in 2004, requiring every file ever created in VoCAT is retained in hard copy.



Currently, administrative inefficiencies occur because of applications to access old files held by the Tribunal, which must be retrieved from storage, and then referred to a Tribunal Member for determination about what should or should not be released. There are also costs associated with the need to archive and store large quantities of physical files.

3.6.3 Power to revoke or vary an existing order

The Act does not provide an own motion power for the Tribunal to vary or revoke an existing interim order.

An example of where such a power would be useful is in the case of an interim award in a 'related victim' application. Interim awards in these applications reduce the total pool of funds available to all applicants. In some cases, a counselling award may be made in favour of a victim, but the sessions are not used, or a smaller number of sessions than the number awarded proves to be sufficient. It would be useful if the Tribunal could direct the re-prioritisation of that unused funding so that it is returned to the 'pool' available to all applicants. Consideration should be given to adding an explicit power to revoke or vary an interim award or order without the need for an application to be made.

A power to revoke or vary could also be used to cure an incorrect or ambiguously worded order. This power does not currently exist. It is conceivable that the Tribunal may be bound to pay out on an award that is beyond the intention of the Tribunal Member, where an error has been made, beyond the power authorised by the Act.

3.6.4 Tribunal may restrict publication of material

Section 43 of the Act stipulates a criminal penalty for any person who publishes material used in a VoCAT claim except "in accordance with an order under this section". Some Judicial officers in higher jurisdictions have interpreted this to require a VoCAT member to make an order under s 43(3) every time VoCAT material is subpoenaed to that higher Court. This is based on an interpretation that the Prothonotary or Registrar would be publishing that material if it is released to a subpoenaed party in that Court, even in circumstances where there is an order made by the Judge under Rule 42A(10) of the *Supreme Court (General Civil Procedure) Rules 2015*.

It is difficult for a Tribunal Member to assess and weigh the probative value of VoCAT material when they have no access to the related proceeding in the higher jurisdiction. Consideration should be given to whether VoCAT material can be subpoenaed at all. If VoCAT material continues to be subject to being subpoenaed for criminal and civil Courts, the VLRC should consider clarifying what is meant by 'published' in s 43 of the Act.

4. Categories of awards

Awards available under the Act are intended to assist victims with expenses actually or reasonably likely to be incurred as a result of the crime, awards made in the case of 'exceptional circumstances' and amounts provided in the form of special financial assistance. Whether these different types of awards are available to any particular applicant is dependent on whether they are classified as a 'primary', 'secondary' or 'related' victim. This classification is in turn dependent on whether an applicant satisfies the eligibility criteria of being injured as a direct result of their experience of a particular 'act of violence' as defined in the Act. This framework is complex, with the categories of available awards inextricably tied to the Act's eligibility criteria. This complexity results in applicants being heavily reliant on legal assistance to try and fit the particular act of violence perpetrated against them into a recognised 'relevant offence' under the Act.

Amending the Act to recognise an expanded range of offences as suggested in Chapter 3 would make it easier for victims to identify where the particular act of violence perpetrated against them fits within the scheme, and would improve applicants' understanding of the forms of assistance they may be eligible to receive.

Consideration should be given to amending the related victims, special financial assistance, and exceptional circumstances provisions to ensure that VoCAT is equipped to provide assistance that is equitable, timely, and consistent, while maximising the therapeutic effect for victims. Simplifying the scheme would make it easier for applicants to navigate without the current level of reliance on legal assistance.

4.1 Related victims

4.1.1 Removing the pool

Currently, the Act limits the combined amount of financial assistance available to all related victims of a death to a total pool of \$100,000 (\$50,000 being the cap for any one related victim). This results in some victims being adversely impacted by the cap, and can lead to inconsistent amounts being awarded. In circumstances where the deceased victim had multiple close family members, each related victim will necessarily receive less than related victims who are part of a smaller family unit, because the pool will be divided between more individuals. The relativities of the amounts that may be provided to related victims may also be considered disproportionate when compared to the amounts of special financial assistance available to primary victims of very serious acts of violence.

In practice, the structure of the related victim provisions means that these are amongst the most time consuming and complicated to resolve, even where there is no question that a death from an act of violence has occurred and that loved ones left behind are suffering and in need of assistance. Grieving family members can become pitted against one another and the process can become very damaging. Currently, questions concerning the appropriate percentage of the pool that should be allocated to each family member involves complex decision-making for Tribunal Members, leading to delays in the finalisation of awards because of the need to accord procedural fairness to all applicants.

These issues of inconsistency and disproportionality would be addressed if the \$100,000 pool of assistance for related victims was removed, and replaced by an appropriate fixed maximum amount payable to any related victim, as an acknowledgment of the distress caused by the loss of their close family member. Such an approach would lessen delays in resolving these sensitive applications, and reduce the need for legal representation, and be fairer.

4.1.2 Reviewing the definition of 'related victims'

There may be concerns about the sustainability of the scheme should the pool of funds for related victims be replaced by discrete amounts. This could be mitigated by reviewing the definition of a related victim under s 11 of the Act, and tightening it. The meaning of a 'close family member' under s 11(1)(a), for example, could be restricted to immediate family members such as spouses, de facto partners, parents, brothers, sisters, step-brothers, step-sisters, and children of the primary victim. An 'intimate personal relationship' under s 11(1)(c) could also be restricted, for example, to those in an established relationship with a primary victim in the nature of a guardian or carer. In principle, this relationship should be analogous to that of an immediate family member, and to produce greater clarity for guardians of child primary victims, this definition could be cross-referenced to the definition of 'parent' in the Children, Youth and Families Act 2005. The submission supports the operation of dependency claims pursuant to s 11(1) (b) continuing in their current form for

children and spouses/de facto partners of a primary victim.

The introduction of greater certainty around who qualifies as a related victim, coupled with a fixed amount that may be awarded to all related victims, would reduce the need for the Tribunal to convene hearings for family members to advance arguments about the proximity of their relationship with the primary victim. It would also eliminate the need for related victims to advance arguments concerning the proportion of the pool that they should receive. These amendments would promote fairness, consistency and timeliness, avoiding the need for complex decision-making.

Introducing a fixed amount for related victims to recognise 'distress' may lead to a proliferation in related victim applications claiming 'other expenses' in accordance with s 13(2)(e). Section 13(2)(e) is very broad, however, and could be narrowed to ensure the sustainability of the scheme. 'Other expenses' under a narrowed s 13(2)(e) for related victims could, for example, include the cost of flights and accommodation for close family members to attend the funeral of a primary victim. Consideration could also be given to capping this assistance.

4.1.3 Removing funeral and counselling expenses from the pool

Currently funeral expenses are awarded from the pool of assistance available for all related victims, and so such awards reduce the quantum available to be divided amongst all family members.

Funeral expenses have increased substantially since the amounts of assistance under the Act were set in 1996, resulting in funeral costs absorbing increasing proportions of the cumulative pool currently available to related victims. Consideration should be given to treating funeral costs as a separate category of assistance, available to those persons who are responsible for the funeral expenses of a deceased victim, whether or not the "pool" is retained.

A similar issue arises in relation to interim and final awards for counselling expenses, which also deplete the total pool available for all related victims. Victims who require counselling in the aftermath of a tragic death, or during the course of the application being determined should be able to have their reasonable counselling expenses provided, without this affecting the quantum of award available to others.

4.2 Special financial assistance

Special financial assistance awards were introduced into the Act in 1997. The transitional provisions relating to the availability of special financial assistance for offences that occurred before the introduction of the changes (found in s 77), are complex and poorly understood. For many victims of crime, there will be no eligibility at all for special financial assistance for offences that occurred before 1 July 2000. The exception is the availability of special financial assistance for sexual offences committed against victims who were children at the time, but only if an offender has been charged and the subject of court proceedings. In practice, these provisions operate to substantially restrict the availability of special financial assistance for victims of "historic" offences.

There are a number of additional issues with the current formulation of special financial assistance under the Act, including inconsistency and undue complexity resulting from the maximum and minimum amounts prescribed for each category, the quantum of assistance in each category, and an arguable failure to appropriately recognise the cumulative harm arising out of 'related criminal acts'.

4.2.1 Fixing the amounts of special financial assistance

The ranges currently available in each of the four categories of special financial assistance mean that it can be difficult for applicants to predict the amount of the award they can expect, and also may result in inconsistent and delayed awards of assistance. Further, the requirement to demonstrate 'psychological injury' as a qualification for receiving the higher amount of special financial assistance in accordance with s 8A (4)(b) requires applicants to obtain psychological reports – the cost of which is almost always borne by VoCAT.

Consideration should be given to replacing the current ranges with a single fixed amount per category, so that applicants are provided with certainty regarding their entitlements under the Act. The amounts currently awarded are nominal and may fall short of fulfilling the intent of special financial assistance as an expression of the community's sympathy for the significant impact of an act of violence on the lives of victims. The quantum of special financial assistance has not increased since 1 July 2007. Consideration could be given to increasing the amounts within each category and indexing

the fixed amounts so that special financial assistance keeps pace with the needs of victims and community expectations.

If s 54 is retained, a Tribunal Member would retain the ability to reduce a final award in appropriate cases, notwithstanding the creation of fixed amounts of special financial assistance.

The costs of increased special financial assistance could be moderated by reviewing the operation of 'exceptional circumstances' awards, and simplifying the requirements of the scheme.

4.2.2 Removing the need to show psychological injury

Consideration should be given to removing the current requirement to show 'psychological injury' for the purposes of s 8A. In its place, the provision could provide implicit acknowledgement of the emotional distress experienced by primary victims of violent crime. Removing the requirement to prove 'injury' as defined in s 3(1) would also reduce costs and delays associated with obtaining psychological reports.

4.2.3 Related criminal acts & responding to cumulative harm

Special financial assistance as currently formulated under the Act also causes difficulty for applicants who have been victims of persistent and protracted patterns of abuse. The framework of the Act is oriented towards responding to the harm caused by a single offence, rather than the overall impact of a pattern of abuse. Section 4(1) of the Act permits the Tribunal to treat 'related criminal acts' as a single act of violence, thereby reducing the amount of financial assistance awarded. The effect of this provision is particularly pronounced for victims of long-term family violence, where the cumulative impact of repeated acts of violence, sometimes occurring over many years, is treated under the Act in a similar fashion to the impact of a single act of violence.

Some family violence applicants lodge multiple applications for separate acts of violence they have endured that form part of a larger history of abuse, in part because the victim may perceive the quantum for available assistance is insufficient. The need to prepare multiple applications for any one applicant is a burden for the victim and leads to an increased workload for Tribunal Members, resulting in delays.

To address the current failure of the Act to properly recognise the cumulative harm of long-term abuse for victims of family violence, consideration should be given to inserting an uplift category into the Victims of Crime Assistance (Special Financial Assistance) Regulations 2011 to enable Tribunal Members to uplift special financial assistance awards for victims of repeated acts of family violence to the highest category of special financial assistance.

In practice, this would involve retaining the related acts provision, but creating a system whereby a Tribunal Member could uplift to special financial assistance category 'A', where there is a history of family violence. Evidence will therefore still be required to prove the triggering act of violence on the balance of probabilities. However, once this threshold requirement is met, the Tribunal would be able to consider the history of family violence in its entirety. This process would be particularly beneficial for family violence victims who must currently contend with proving allegations in circumstances where evidence is not readily available, as in the case of unreported sexual violence within a relationship.

This amendment may require a definition of family violence being inserted into the Act, such as a cross-reference to s 5 of the Family Violence Protection Act 2008. It is desirable, however, that an act of violence against the person remains a threshold requirement for eligibility under the Act. This would mean that a property offence committed in the context of family violence would not qualify as an event triggering assistance under the Act.

Provided some form of cross-checking for these applications is put in place to ensure that multiple applications are not made covering the same history of abuse, these changes would reduce the workload of the Tribunal associated with considering several applications for a single victim. These amendments would therefore improve the timeliness of awards while also lessening the evidentiary burden for victims of family violence.

These changes would necessarily allow Tribunal Members discretion to determine when it is appropriate to uplift for a history of family violence. Concerns regarding the potential for inconsistency in the exercise of this discretion may be alleviated by the establishment of specialist VOCAT Magistrates within a specialised assistance model. Chapter 5 discusses the proposal that a smaller number of specialised Magistrates exercising the Tribunal's jurisdiction would help to create consistency in decision-making.

4.3 'Exceptional circumstances' and special financial assistance

Under s 8(3) of the Act, in exceptional circumstances a primary victim may apply for an amount for 'other expenses actually and reasonably likely to be incurred...to assist his or her recovery from the act of violence'. A general cap of \$60,000 is applied to the financial assistance that can be claimed under this category.

The current operation of 'exceptional circumstances' awards is problematic. Arguably, because the amounts of special financial assistance available under the Act have failed to keep pace with community expectations, most VOCAT applicants also apply for an 'exceptional circumstances' award. This is understandable, as every victim of an act of violence will face their own unique challenges in trying to recover from the impact of the crime and will no doubt consider the circumstances of the offence and its impact to be exceptional. The Act does not define or provide examples of what may constitute exceptional circumstances, leaving applicants to try and make their case by leading detailed evidence of psychological injury. Contrary to the purpose of this provision to assist the victim in their recovery, this process may actually serve to pathologise their experience. If an 'exceptional circumstances' award is then denied by the Tribunal, the victim's experience is devalued.

The items claimed under the 'exceptional circumstances' category can vary widely, and it is not uncommon for such claims to appear excessive or inflated, or for funds sought for items whose connection to recovery is unclear. Exceptional circumstances applications are frequently complex, involving the exercise of broad discretion and resulting in concerns about inconsistent decision-making. This complexity may occasion delays and victims may feel the need to seek legal assistance in order to make meaningful submissions based on available case law, thereby increasing costs to VoCAT. The Tribunal may be required to convene a Directions Hearing or Hearing solely to determine the legitimacy and reasonableness of the items claimed under this category. The purpose of exceptional circumstances awards is not to duplicate special financial assistance, and yet they appear often to be treated in this way. These issues could be addressed by revisiting eligibility for exceptional circumstances awards.

4.3.1 Defining exceptional circumstances

One way to address these issues could be to amend the Act to provide a definition of 'exceptional circumstances' in a similar form to s 28 of the Victims of Crime Assistance Act 2009 (Qld). Section 28 of the Queensland Act provides that exceptional circumstances exist if 'because of the victim's circumstances or the nature of the act, the act has had an unusual, special or out of the ordinary effect on the victim'. Section 28 also provides examples of when exceptional circumstances may exist. Narrowing the category of exceptional circumstances, with well-defined parameters, would help provide guidance for applicants about their eligibility for this form of assistance. A consequential reduction in 'exceptional circumstances' applications and awards could also mean that assistance previously awarded under 'exceptional circumstances' could be reprioritised to supplement the pool of funds available for special financial assistance, potentially allowing for an increase in the amounts for each category.

4.3.2 Creating a new category of award

If the definition of exceptional circumstances were to be narrowed, an additional category of award could also be created for other therapeutic expenses linked to the act of violence. This could include the costs of mobility aids or home renovations to make the applicant's place of residence wheelchair accessible. It could also include amounts to assist in recovery from loss of self-worth occasioned by an act of violence, or loss of opportunity for education, as in the case of a family violence victim who has been prevented by a perpetrator from pursuing this opportunity. To ensure there is certainty around what expenses may be covered by this category, examples could be inserted into the Act. Further, the assistance available could be made subject to a cap and be included within the total amount of assistance available to a primary victim (currently \$60,000), exclusive of special financial assistance.

Such amendments would reduce the inconsistency that exceptional circumstances awards currently produce, and reduce the awards made by the Tribunal for legal costs and expert report costs. These changes would also reduce delays associated with the complexity of exceptional circumstances decision-making and bring the focus of this provision back to the victim's recovery.

5. An improved specialised assistance model

Part 1 of the submission discussed some of the ways in which the structure of VoCAT's current service delivery model may contribute to system inefficiencies and therapeutic short-comings - and potentially reinforce many of the identified administrative and procedural barriers to fulfilling the Act's intent.

VoCAT currently operates as a diffused scheme, with 110 Magistrates and 12 Judicial Registrars supported by generalist MCV registry staff, operating across 51 MCV locations. Some of the key disadvantages of this model include:

- the VoCAT workload is one of many daily competing priorities across MCV, and Court appearances necessarily take precedence over the administrative jurisdiction of VoCAT;
- administrative inefficiencies caused by VoCAT matters being handled by a generalist MCV registry (which has high levels of rotation and turnover) meaning that any specialist VoCAT expertise is difficult to maintain and build on ;
- in the absence of a regulatory framework for service providers, difficulties in maintaining oversight of practice which ensures financial accountability and transparency in relation to support service providers across multiple locations;
- the system lacks the flexibility to effectively manage fluctuating or changing demand pressures and spread of work across the 51 locations; and
- inefficiencies due to process duplication and the high dependency of VoCAT's operations on MCV resources.

5.1 Building best practice elements into VoCAT's operating model

This review provides a timely opportunity to take a broader view of strengthening VoCAT's long term sustainability and fulfilling the intent of the Act, beyond the most pressing legislative and administrative reforms required. Drawing on the demonstrable therapeutic and administrative benefits of VoCAT's Koori List , and the specialised approach underpinning the SFVC service delivery model, a number of 'best practice' elements adopted by these initiatives could be considered for wider application across VoCAT.

Many of the reform proposals discussed in the preceding chapters could be given effect without requiring substantive changes to VoCAT's operating model. There is a case, however, that the full benefit of the many legislative, administrative and procedural reform proposals would be enhanced by extending elements of the Koori List and SFVC approaches to VoCAT more broadly.

Just like the system interdependencies discussed earlier, the following best practice elements are also interdependent, meaning that, collectively, they provide a more solid foundation for reform than a selective approach to their application.

In summary, the suite of best practice elements this submission encourages the review to consider as part of VoCAT reform options include:

- retaining the quasi-judicial model (to ensure responsiveness and fairness) but establishing a smaller pool of specialised VoCAT Magistrates, Judicial Registrars, Registrars and administrative staff (to improve consistency in decision making);
- co-location of VoCAT's administration, offering a single entry point for VoCAT applications (to promote predictability and transparency); and
- triage and case-management from first contact (significantly improving victims' therapeutic experience and reducing reliance on lawyers – which in turn enhances victims' sense of agency).

Collectively these reform elements provide a strong foundation for a specialised assistance model that is victim-centric, efficient, and adaptable to shifting demand.

5.2 How a specialised assistance model could work in practice

5.2.1 A specialised quasi-judicial model

The foundation for VoCAT's long-term sustainability is premised on retaining the quasi-judicial model at its core. The

benefits it provides in being responsive to victims, fair and being adaptable to demand changes over time have been discussed above. Expanding its specialised approach, however, (beyond the Koori List), is an element that would deliver a higher capacity to simultaneously improve VoCAT's therapeutic outcomes, improve consistency in decision making and yield cost savings and efficiency gains.

A more specialised VoCAT model would be characterised by a smaller pool of dedicated VoCAT Magistrates supported by specialised Judicial Registrars, and administrative staff. Further specialisation within this pool of Magistrates could include particular expertise in family violence, which would strengthen VoCAT's integration with the SFVCs. In practice, this would mean several tiers of decision making capability, with strong continuity and consistency in decision making and practice, whether an application is at the most straightforward end of the scale (the administrative end) or at the most complex end (the judicial/discretionary end of the scale).

Delegations to make final determinations along the 'sliding 'scale' of the quasi-judicial model would mean Magistrates could focus predominantly on the most complex applications, involving, for example, homicides, family violence, sexual assault and child victims. Judicial Registrars could manage all but the most complex of matters, and Registrars would continue to provide administrative support to the Magistrates and Judicial Registrars. Consideration is given in Chapter 6 to broadening the Chief Magistrate's existing delegation power to allow administrative finalisation of straightforward non-family violence related assault matters, in cases where a hearing is not sought or required. This would make use of the flexibility of the 'sliding scale' built in to VoCAT's quasi-judicial operating model.

5.2.2 Drawing on existing specialisation – the Koori VOCAT List

VoCAT's Koori List which was established in 2006, is a best practice example of a tailored process for people who identify as Aboriginal or Torres Strait Islander. It prioritises:

- experienced and culturally aware Magistrates, Registrars and administrative staff;
- continuity in the management of each application (the same Magistrate manages an application from start to finish);
- culturally appropriate venues and communication; and
- a strong community engagement element to raise awareness of the List and to encourage dialogue with communities.

Importantly, the list is supported by a Koori Family Violence and Victims Support Program which includes Koori Family Violence Practitioners who assist in removing barriers for victims and provide culturally appropriate and targeted assistance. The effectiveness of the Koori List is reflected in the 114 per cent increase in applications between 2010-11 and 2016-17 (from 143 to 307 respectively). This increase is attributable to implementing some of the recommendations (within available resources) made in the 2010 VoCAT review of the Koori List, including, tailored plain-language correspondence, culturally appropriate hearing venues, culturally appropriate and sensitive hearings, early directions hearings to identify and address any issues with applications, community engagement to increase awareness of the List and provision of specialised support to applicants.

The benefits of the Koori VoCAT List could be further strengthened if additional resources were provided to ensure that the Koori community was able to have a stronger voice in designing and leading enhancements to the model. This would allow initiatives such as the involvement of elders and respected persons in VoCAT hearings and better linkages with the koori support services system to be progressed.

This specialised approach is highly applicable and transferable to VoCAT's operation more broadly in order to benefit other groups to whom the Tribunal is currently insufficiently responsive, particularly, victims from CALD and LGBTQI communities (particularly in relation to family violence). A compelling example of an additional specialised assistance element for VoCAT is establishing an effective triage process that would allow VoCAT applications to move into specialist Courts and lists, as part of VoCAT's integration with the SFVCs.

5.2.3 Shifting VoCAT to a 'hub and spoke' model

Specialisation would be strengthened by shifting VoCAT's currently diffused operating model to a 'hub and spoke' operational model, incorporating flexible and technology enabled service delivery channels.

Under a 'hub and spoke' model, decision makers, registry services and administrative staff would be co-located at one



location, providing a single entry point for all VoCAT applications. While the bulk of applications would be processed at the 'hub', victims living in rural and regional areas (the 'spokes') could still access local Courts for support in accessing their VoCAT entitlements. This could include specialist VoCAT Magistrates conducting hearings on circuit. Digital and audio visual online service channels would be of particular benefit to victims living in rural and regional areas and those with disabilities, and ensure access to VoCAT equal to that of victims located in metropolitan areas.

The detailed design of this model should include: drawing on some of the themes arising from reforms to the Coroner's Court and Children's Court practice; best practice therapeutically-based case management models in other assistance schemes; and emerging themes arising from restorative justice initiatives.

5.2.4 Triage and case-management

A single entry point for applications would facilitate one of the most important elements of a tailored therapeutic approach to victim support – triage and case management. For victims, the therapeutic benefits of a more timely and effective response facilitated by triage and case-management are improved accessibility, predictability and consistency, and a reduced reliance on lawyers to navigate the system. It would also provide the infrastructure on which to build stronger referral pathways between VoCAT and other support services for victims who are in contact with the criminal justice system.

Some Australian states and territories have combined victim support and compensation/financial assistance schemes which aim to connect information, support and financial assistance. While VoCAT has close links with support agencies, formal support mechanisms are not integrated with VoCAT. The Tribunal's Koori List demonstrates, however, that the quasi-judicial model on which VoCAT is based is well placed to build on integrating service and financial assistance within VoCAT. This is a preferable approach to exploring separating the financial and support service arrangements altogether, which would intensify the disjointed experience some victims can experience currently in securing the appropriate counselling support at the appropriate time in the recovery journey.

Case managers' strong links with the service sector, particularly services that are relevant to the type of cases they manage, would serve to strengthen the integration of support services and financial assistance for victims. These links could be underpinned by establishing strong information sharing protocols between case managers and relevant service providers, and regular participation of case managers in key service providers' coordination meetings.

A particularly significant benefit of introducing case management is that greater emphasis could be made on the capacity building of victims – equipping victims to increase their sense of agency along the recovery journey. In practice this would mean additional emphasis on extending referral pathways beyond counselling and material support, to facilitating skills acquisition, financial planning skills or building parenting skills.

While case-management is a resource-intensive initiative, other efficiency measures, such as reducing reliance on lawyers and delegating final determination powers, would contribute to off-setting additional investment in case-management.

5.2.5 A platform for further innovation – restorative justice

A shift to specialisation, triage and case-management, based on a 'hub and spoke' operating model would also provide a strong platform for future innovations, such as introducing restorative justice options for victims as part of their recovery.

A therapeutic experience for victims is necessarily a restorative one, and a therapeutic specialised approach to recovery from harm is consistent with the aims of restorative justice. The growing adoption (and proven efficacy) of restorative justice practices in a range of justice contexts warrants consideration of how VoCAT might provide some victims with the opportunity to be heard, without it being tied to an application for financial assistance.

There are numerous restorative justice approaches, the most widely known being restorative justice conferencing. This involves a victim and offender and/or their representatives (in some cases, their families too) all consenting to a mediated meeting at which it is collectively decided how to repair the harm to the victim by an act of violence – beyond financial assistance and counselling.

A restorative justice option is currently being considered as part of the Department of Justice and Regulation's Family Violence Restorative Justice pilot project. One option under consideration is to provide victim survivors with the opportunity to meet with representatives of the system to talk about their experiences.

Consideration could be given to VoCAT Judicial officers' involvement, for example, in a panel that could hear victims' VoCAT and broader justice system experiences.

5.3 SFVCs and a specialised assistance model for VoCAT

The Courts' response to family violence occurs within the broader context of government and community factors, and each component must be integrated to achieve an effective and high quality wraparound service for family violence victims.

On 25 November 2017, the MCV launched its new Family Violence Vision Statement which provides a roadmap that enhances the Court response to ensure those experiencing family violence have equal access to safe justice responses, and perpetrators are held accountable for their behaviour. The Vision Statement clearly articulates victim-centric guiding principles, key priorities and strategies, which will be implemented as the Family Violence Reform Program is progressed and evolves.

Significant Government investment in relation to the Family Violence Reform Program within MCV establishes key areas of opportunity to intrinsically link VoCAT to an improved service delivery model, which achieves greater safety and recovery of victims.

Part 1 of this submission outlined the SFVC service delivery model and detailed a number of initiatives underway to support victim-centric systems reform. Since 2005, VoCAT has been part of the Family Violence Court Division, operating at Ballarat and Heidelberg Magistrates' Courts. The critical and defining element of the Division is that a Magistrate can hear a number of family violence related matters at the same time as Family Violence Intervention Orders, including bail applications and pleas in criminal cases, family law cases and victims of crime applications. Having matters heard by one Magistrate limits trauma to victims by not having to re-tell their story to a number of parties. The policy intent of the Division also includes providing a range of support services available to victims to support them at Court and in the community.

In response to the RCFV, the 2017-18 Victorian State Budget funded 5 SFVCs, at Ballarat, Frankston, Shepparton, Moorabbin and Heidelberg. The Victorian Government has also signaled commitment to further expand the roll-out of SFVCs in the 'Ending Family Violence Victoria's Plan for Change'.

In the first five initial SFVC sites, there is opportunity for enhanced VoCAT procedures that align with specialisation, information-sharing and a trauma-informed, victim-centric approach.

The SFVC (including VoCAT) is a key element of Victoria's broader service delivery reform strategy, which includes new information sharing legislation, development of the new Multi-Agency Risk Assessment and Management Framework (MARAM), Risk Assessment Management Panels (RAMPs), the implementation of the Central Information Point, the Safety and Support Hubs (Safety Hubs) and Family Violence Contact Centre (FVCC).

Effective integration between the Safety Hubs and the SFVC is essential. Both have discrete roles in meeting victims' need for safety and connection to services, as well as a shared role in navigating victims through the system. VoCAT's effective integration with this will be important.

Under new information sharing legislation, Courts will soon be able to wholly participate on RAMPs and the Family Violence Central Information Point. Multiagency risk assessment information provided to the Courts and other agencies will mean a better service to victims. In relation to VoCAT, Magistrates will be able to discuss what supports have been put into place for victims and tailor additional assistance accordingly.

A 'hub and spoke' specialised assistance model for VoCAT would align well with the establishment of a centralised and specialised FVCC (as per RCFV Recommendation 63). Its aim is to improve the service provided to court users and to introduce a number of new online and digital service channels so that court users have a number of options when contacting the Court. The FVCC will have specialised staff who can respond quickly to queries and who are trained to assess risk and respond to victim survivors of family violence. Staff within the Contact Centre will be able to respond to queries in relation to family violence intervention orders and applications to VoCAT. Detailed planning and design is underway to consider the service delivery model for the FVCC, accommodation and investment in enhanced digital technology.

Current planning also includes considering co-locating VoCAT staff with the FVCC and leveraging technology to provide an additional digital service to victims. In addition to face-to-face VoCAT services, victims could potentially then have the

option to interact with the Court online. Access to this type of service could then improve timely access to VoCAT services and reduce the time taken to progress applications.

5.4 Additional steps towards sustainability

The sustainability of the VoCAT service delivery model extends from ensuring it fulfils the intent of the Act, to ensuring its ongoing viability as a state-funded entity. Part 1 of the submission detailed some of the key demand drivers on VoCAT, which are placing significant pressure on its sustainability, including:

- the increasing demand and complexity of cases, which take longer and contribute to delays;
- VoCAT's operational budget not keeping pace with demand;
- a disproportionate component of the budget spent on legal expenses as a proportion of award payments (11 per cent – almost twice the amount of VoCAT salaries and operating expenditure);
- reliance on MCV resources subsidising VoCAT operations within an increasingly restrictive fiscal environment for MCV;
- the impact of major justice reforms such as those flowing from the RCFV; and
- systemic inefficiencies across the VoCAT service delivery model.

Arguably, a review of VoCAT's budget is long overdue with new funding critical to VoCAT's capacity to deliver on its role in implementing the Government's Community Safety Statement and roll out of the SFVCs. Demand modelling is required to anticipate projected demand for VoCAT. Significant data gaps exist, however, which need to be addressed as part of the reforms to VoCAT. This is critical to VoCAT's long term sustainability.

The significant data gaps make it difficult to assess the full cost savings and efficiencies a 'hub and spoke' operational model would deliver. Nonetheless savings and efficiency gains can be expected to flow from:

- allowing for the capacity to collect meaningful data that would enable demand modelling, evaluation of performance and strategic and workforce planning across the system;
- freeing up MCV resources currently supporting VoCAT operations at 51 locations across the State;
- removing duplication of VoCAT processes currently occurring across 51 locations;
- ensuring interaction and integration with specialist Courts and lists (particularly the Koori List and SFVCs) is consistent, particularly in locations that do not have a SFVC; and
- reducing VoCAT staff turnover through the incentive of specialist training and recognition of expertise.

This submission also supports further government consideration of:

- an audit of all state government funded support services available to victims, in order to identify overlaps between VoCAT and other generalist or specialist victim support services that could be streamlined; and
- options for other revenue streams, such as a victims' levy.

6. Consistency, transparency and accountability

Public confidence in a state-funded victims of crime assistance scheme is dependent on effective accountability and transparency mechanisms being in place, and predictability in its operation – particularly for those seeking financial assistance through that scheme.

VoCAT has a number of consultative forums in place to assist in its continual improvement, such as VoCAT Coordinating Committees, User Groups, and dedicated Koori VoCAT Judicial and User Groups. These meet regularly to review a broad range of matters, including Tribunal processes and procedures, workforce capability issues, consistency in decision making, and allocation of time and resources. These deliberations then inform Practice Directions or Guidelines which are issued by the Chief Magistrate.

This review provides a valuable opportunity, however, to examine systemic, legislative and administrative barriers to consistency, accountability and transparency in VoCAT processes and decisions that are beyond the remit of the above-mentioned forums.

6.1 Guidelines and definitions

There is a risk of inconsistent decision making in relation to awards and interpretation of broad areas of discretion for multiple decision makers with varying levels of VoCAT experience, operating across 51 locations. This can foster unrealistic expectations on the part of victims about likely award outcomes, and the perception that the system is not fair.

Limiting discretion, however, is not supported as it would have an adverse impact on VoCAT's ability to be responsive to individual victim circumstances and make just awards of assistance.

Greater clarity around definitions within the Act, together with shifting to a smaller pool of specialised Tribunal Members, would improve consistency in decision making where broad discretion exists. What constitutes 'exceptional circumstances' or what is 'reasonable' assistance, for example, are areas of necessary discretion. An overly narrow interpretation of these, however, could lead to eligibility exclusions and differing quantum of awards for victims with more complex applications, particularly those involving family violence. In such cases, what constitutes 'reasonable', 'timely' and 'exceptional' may differ from more straight forward applications, and just decisions should reflect this.

The development of more guidelines would also improve consistency and predictability in a number of other areas of broad discretion, including determining, for example, what constitutes a 'reasonable' award to replace material goods; and what goods and services are reasonable and specific to recovery.

Guidelines around, for example, the average costs of replacing commonly sought items would assist decision makers to take a more consistent approach, with an emphasis on what is needed or reasonable to assist in a victim's recovery.

6.2 Regulatory framework

Priority consideration should be given to establishing a robust administrative and regulatory framework to support the Tribunal in exercising its discretion in relation to making awards for expenses for goods and services. This could include a combination of accreditation, research capacity, guidelines and the development of procurement strategies in relation to expenses which are commonly awarded by the Tribunal.

Adopting an accreditation framework for security, legal and counselling services, would provide improved accountability in relation to the quality of services provided to vulnerable victims. In the absence of a robust accreditation framework, recommendations to Tribunal Members about the type and amount of counselling, for example, can be made by practitioners without relevant qualifications or expertise, or without proper regard for industry standards of practice. This not only risks fraudulent practice among some providers, but risks undermining or winding back victims' recovery.

A dedicated research capacity for VoCAT decision makers would support the development of relevant quality assurance mechanisms and an evidence base which is in line with evolving contemporary understanding and practice. This would also support the development of relevant guidelines for the awarding of expenses.

In addition to making awards in relation to service provision, the Tribunal also makes awards for goods. This includes goods such as furniture and whitegoods to support re-establishment after relocation, or a computer to support capacity building through education as expenses to assist recovery in exceptional circumstances.



The development of a procurement strategy, particularly in relation to some goods which are commonly awarded, would simplify the process for the awarding of these expenses, improve accountability and provide better value for money.

It would also improve decision makers' ability to judge what is reasonable, fair and appropriate. This would improve consistency, predictability and public confidence in the investment made in financial assistance for victims of crime, and improve therapeutic outcomes for victims.

The Tribunal anticipates that the costs associated with this aspect of the reforms would be relatively modest, given the opportunity to leverage off other government regulatory frameworks and services.

6.3 Automatic review

Consideration should be given to amending the Act to include an automatic review provision, similar to s 119 of the *Victims Rights and Support Act 2013* (NSW), to enable a systematic and regular process for reviewing the operation of the Act.

Many of the adverse impacts of current provisions of the Act can be linked to a failure of the Act to keep pace with changes in community understanding and expectations about what constitutes an act of violence or injury, and what recovery means or involves for victims of violent crime. Most notably, the absence of reference in the Act to family violence is reflective of the time the Act came into effect, when community understanding about and tolerance for family violence was vastly different from today.

An automatic review provision would assist the legislation to be more responsive to the impact of significant government policy reforms (such as those flowing from the RCFV), keep better pace with the evolving body of expert knowledge and understanding around victim support, and would better reflect community expectations as they evolve.

While the nature of the automatic review provision, and the appropriate entity tasked with undertaking regular review, is a matter for government, it is essential that such a mechanism can meaningfully assess whether the application of the Act is keeping pace with its intent over time, and is informed by relevant performance criteria, ongoing data collection, trend analyses, and forecasting capacity.

6.4 Efficiency through delegation

New applications lodged with the Tribunal increased by 17.5 per cent in 2016-17 and this upward trend shows no sign of abating. Managing this increasing workload cannot be sustained on current resourcing levels, and if left unaddressed, will lead to greater delays in finalising applications – along with all the concomitant adverse impacts on victims.

In 2010, s 24(3) was inserted into the Act giving the Chief Magistrate power to delegate to Judicial Registrars the power to determine certain less complex matters. It has proven to be an effective mechanism through which to redistribute work load and reduce delays. Prior to the commencement of the delegation, the number of pending cases peaked at over 7,000. Less than 2 years later, that figure dropped to 5,600.

Consideration could be given to a third tier of administrative decision-maker (called, for the purposes of this submission, an 'Assessing Registrar'). An Assessing Registrar could, for example, make final determinations around straightforward non-family violence related assault cases, but only where a hearing is not required or sought by the applicant. In cases where the applicant does not accept a suggested award, or seeks a hearing, the matter would be referred to a Judicial Registrar or a Tribunal Member for determination.

This would utilise the benefit of the sliding scale offered by the quasi-judicial model by tipping less complex cases further towards the administrative 'end', while preserving the therapeutic function that a hearing before a Judicial officer can provide a victim at the other (discretionary) 'end'.

Additionally, consideration could be given to amending the *Victims of Crime Assistance (Delegation) Regulations 2003* to increase the prescribed maximum amount for interim awards determined by a delegate (Registrars of VPS 3 or above) from \$5,000 to \$10,000. Doing so would reduce the number of interim applications referred to Judicial officers and reduce the waiting times for victims of crime to access urgent financial assistance.

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