

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

<b>Submission ID Number</b>	5
<b>Organisation</b>	Anglicare Victoria Victims Assistance Program

<b>Chapter 5: Eligibility for assistance</b>
<b>The victim categories</b>
<b>1 How do the victim categories in the Act impact on people applying to VOCAT for financial assistance?</b>
The classification of primary and secondary does not allow any discretion for the victims. For example a mother who's children have been sexually assault is a secondary victim and the impact on her emotionally and financially can be huge . However she is not entitled to special financial assistance and only limited funding.
<b>2 Should the victim categories in the Act be amended? If so, what changes should be made to the Act?</b>
Introducing a sub classification of Primary in certain circumstances. Parents of child sexual abuse
<b>The definition of an 'act of violence'</b>
<b>3 How does the definition of 'act of violence' in the Act impact on people applying to VOCAT for financial assistance?</b>
The requirement to prove that injury directly resulted can impact on applying for VOCAT, especially psychological injury.
<b>4 Should the definition of 'act of violence' in the Act be amended to include other offences? If so, what offences should be included?</b>

Act of violence should include offences such as Arson and consistent breaches of IVO.

**5 Should the definition of ‘act of violence’ in the Act be amended to include non-criminal behaviour? If so, what forms of non-criminal behaviour should be included?**

I don't think it should include non-criminal behaviour.

**The definition of ‘injury’**

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

The definition of psychological injury " mental illness or disorder" impacts on people apply as they require a diagnosis of this from a psychologist. Of ten the victim is not wanting to be see a psychologist and are concerns about the impact of being diagnosed. They don't feel that they have a mental illness they are just traumatised Perhaps the act should reflect more of the symptoms of trauma. Social workers and VAP workers can identify symptoms of trauma and provide evidence for this , however the requirement to be diagnosed requires a psychologist report. This would decrease the counselling expenses for the tribunal

**7 Should the definition of ‘injury’ in the Act be amended to include other forms of harm? If so, what forms of harm should be included?**

it should be amended to reflect trauma symptoms, emotional and grief and loss

**8 Should the requirement for injury in the Act be removed for victims of certain crimes? If so, for which categories of victim should the requirement be removed?**

The requirement for injury should be removed from the Related Victims category. It is traumatising for these victims to attend a psychologist for a diagnosis of injury.

**The causation requirement**

**9 How does the requirement for victims to establish that their injury was the ‘direct result’ of the act of violence impact on people applying to VOCAT for assistance? Should this causation requirement be amended? If so, what changes should be made to the causation requirement?**

This impacts on clients when there is a pre existing injury and proving that this injury is exacerbated becomes difficult. This is extremely difficult when the has been repetitive crimes, such as family violence or numerous assaults. Historical sexual assault is also difficult as often individuals report in adulthood and how to you connect or prove psychological injury is as a result of something that happened in childhood. I believe there has to be some connection to the crime and the effects but how you do this without traumatising the victim. Often the process of obtaining evidence to support the injury re triggers the past and more trauma occurs.

## **Chapter 6: Assistance available**

### **Quantum of awards**

#### **Total financial assistance available**

**10 Are the maximum amounts of financial assistance available under the Act adequate to meet the needs of victims? If not, what should the maximum amounts be?**

The amounts of financial assistance in both categories are adequate. There needs to be more consistency in awards and better use of the \$60,000 available to aid are primary victim.

#### **Cap on quantum available for related victims**

**11 Should the Act be amended to remove the pool of assistance for related victims? If not, should the total maximum cumulative amount of assistance available for a pool of related victims be increased?**

The pool is ensures that all related victims have access and is sufficient. It might be of benefit to remove the funeral expenses from the pool and have a separate pool of money for this.

**12 Should the Act be amended to reflect the rising cost of funerals? If so, what amendments should be made? Should funeral expenses be excluded from the total maximum cumulative amount of assistance available under the Act for a pool of related victims?**

Yes the funeral expenses should be reflected from the pool. It should be reviewed to reflect the cost of funerals , however still have restricted amounts. Perhaps headstones should be consider to be included, in working with related victims this causes an extreme amount of stress trying to find the money to fund this. A head stone offers closure.

**Categories of award**

**Are the current categories of award under the Act still appropriate?**

**13 Are the current categories of award under the Act still appropriate to meet the needs of victims of crime? If not, how should the categories of award under the Act be amended and what should be included?**

**Requirement for certain expenses to be 'reasonable'**

**14 Is it appropriate for the Act to require that the costs for certain expenses, such as counselling services, be reasonable? If not, what changes should be made to the Act?**

The act should have set fees for counselling expenses to avoid abuse to the system. However it should have scope to recognise the difference in qualifications such as generalist psychologist vs psychiatrists . Security has become an area of increased requests for security camera systems. Some quotes have become extremely high , if there is not a "reasonable costs" then the people are able to take advantage of this. How do we fund it if we don't set a reasonable cost.

**Additional awards to assist recovery and the need for 'exceptional circumstances'**

**15 Is it appropriate for the Act to limit awards for recovery expenses to 'exceptional circumstances'? If not, what changes should be made to the Act?**

Exceptional circumstances is ambiguous and left up to interpretation. Out comes for my clients have been in consistent and often reflective of what magistrate determine the application and how good the solicitor argues. Perhaps setting some guidelines around this would be an option

**16 In addition to the financial assistance available under the Act, are there other ways to promote the recovery of victims from the effects of crime? If so, is there a need for these other ways to be supported by the Act?**

**Interim awards**

**17 Are the interim awards available under the Act adequate to meet victims' needs including with respect to quantum and timeliness? If not, how should they be improved?**

Interim awards are difficult to have awarded. Certain registrars can award up to \$5000 (I think ) however this is often not awarded. Some magistrates won't make interim awards until the criminal court process is completed. Interim awards should be made for emergency funding. Often solicitors do not know about interim awards and do not apply unless the VAP worker request that they submit an interim award. Approval should be done quickly and by the court registrar who is accessible .

**Limitations of the special financial assistance provision**

**Recognising cumulative harm**

**18 Should the special financial assistance formula be amended to take into account the cumulative harm of a series of related criminal acts? If so, how should the formula be amended?**

Yes cumulative harm should be taken into account, especially for child sexual assault , family violence and assaults by multiple offenders.

**19 Should the special financial assistance formula be amended to take into account the experiences of vulnerable victims, including child victims, elderly victims, victims with disability and victims of an act of violence perpetrated by someone in a position of power, trust or authority? If so, how should the special financial assistance formula be amended?**

Yes, but also taking into account the impact on these victims

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

Primary Victims and Secondary Victims of a Minor at the time of VOCAT lodgement

**VOCAT discretion and the prescribing of minimum and maximum amounts for each category of special financial assistance**

**21 Should the prescribed maximum and minimum amounts of special financial assistance be removed and replaced with one amount for each category? If so, what changes should be made to the Act and what should the amounts be?**

One amount for each act would reduce the inconsistencies. Who is to say one person is worth this much and another is only worth this much.

**The adequacy of amounts of special financial assistance available**

**22 Should the amounts of special financial assistance in the Act be increased? If so, what should the amounts be?**

**Treatment of 'related criminal acts'**

**23 Should the definition of 'related criminal acts' be amended to have regard to the cumulative harm of long-term abuse? If so, what should the definition be?**

Yes.

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

yes the victims should have the ability to express or provide evidence why they should not be treated as a related act.

**25 Should there be a higher maximum for awards of financial assistance under the Act for victims of a series of related criminal acts? If so, what changes should be made to the Act?**

Yes

**Chapter 7 Time limits for making an application**

**Is the time limit a barrier for victims of crime?**

**Increasing the application time limit**

**26 Is the two-year time limit to make an application to VOCAT under s29 of the Act still appropriate? If not, what would be an appropriate application time limit? Alternatively, should different application time limits apply for different types of crime?**

2 years to make an application is sufficient for recent crimes such as assault. The time should be extended for child sexual assault, rape, adult sexual assault and family violence. Often these victims are not in a place to make the

application and then to apply for exceptional circumstances to have a successful application can cause stress.

### **Removing the application time limit**

**27 Should some types of crime be excluded from application time limit provisions entirely? Should some time limits start after a victim turns 18? Alternatively, should some components of victim support and financial assistance not have a time limit?**

Child Sexual Assault time should start after the victim turns 18 years of age as they then have the ability to lodge the claim themselves. Family Violence is often impacted on the time limit. Do we need a time limit, does the tribunal decline an out of time application that is supported by good reasons ?

### **Granting an extension of time—is there a need for additional considerations?**

**28 Are the factors VOCAT may currently consider in determining whether to hear an application out of time sufficient? Should other factors be included in the Act? If so, what additional factors should be included?**

The factors are very broad and most victims would fit under one of those factors .

### **Improving transparency in the decision-making process**

**29 Should VOCAT be required to publish data and reasons for decisions made in relation to section 29 of the Act? If yes, what data should be provided and how should it be published?**

Yes , How many are denied and the reasons .

## **Chapter 8 Making an award**

### **Requirement to report to police within reasonable time**

#### **Removing the requirement to report to police entirely**

**30 Should the requirement to report incidents to police be explicitly excluded for some types of crime? Alternatively, should reports made by victims to other professionals or agencies be recognised? If so, how would this work in practice?**

FV and Sexual Assault by family members or person of power and there is a safety concern should have the opportunity to be excluded. Reports made to

agencies such as DV and CASAS should be included. It would need to be substantiated by a report from a recognised person at the agency.

### **Requirement to provide reasonable assistance to police and prosecution**

#### **Removing the requirement to provide reasonable assistance for some victims**

**31 Should the requirement to provide reasonable assistance to police and prosecution be explicitly excluded for some categories of victim? If yes, what categories?**

Possibly for Family violence and SA from family members or person in power and there is a safety concern

#### **Specifying additional factors for consideration in determining reasonable assistance**

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

this is subjective, who decides what is reasonable. I believe we need some guidelines.

**33 Should the Act be amended to improve the operation of the 'reasonable assistance' provisions for victims of crime? If so, what changes should be made to the Act?**

### **Character and behaviour considerations**

#### **Providing more guidance in the Act about relevant section 54 factors**

**34 What are the effects of the section 54 considerations for victims? Are they operating fairly and appropriately? Should the Act continue to consider the 'character and the behaviour' of the victim 'at any time' as currently required under section 54 (a) of the Act, or at all? If not, what changes should be made to the Act to address this?**

Yes they should continue to consider this. But have the ability to consider changes to the victims situation or character over time.

#### **Removing consideration of some section 54 factors**

**35 Are there some section 54 factors, such as whether the applicant provoked the act of violence or the applicant's past criminal record, which should no longer be relevant for the consideration of award applications?**

should still be relevant but have the ability to identify any changes or since the last criminal act

#### **Removing the perpetrator benefit provisions**

**36 How do the perpetrator benefit provisions under section 54 of the Act currently affect some categories of victim? Are these provisions operating fairly and appropriately? If not, what changes should be made to the Act to address this?**

This effects Family Violence victims and needs to be carefully considered. Inconsistency occurs in this decision making

#### **Chapter 9 Review, variation and refund of awards**

##### **Amending the variation 'window'**

**37 Should the six-year time period for variation of an award be extended to account for victims of crime with long-term needs? If yes, how long should the time limit be extended and should this be for specific crimes or specific types of award only?**

Yes. extend up to 10 years. especially for victims with long term injuries and child victims.

##### **Reducing the administrative burden and delay in seeking variations**

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

The variation process delays clients seeking assistance, they often do not know about it or forget that it is available after time.. There is much confusion in regards to if it is six years from the time of the crime or six years from the time of the award. The requirement to provide fresh evidence, change of circumstances and other materials also delays the process. In regards to therapy they need to seek a subsequent report which increase the costs for the tribunal and the client

**39 Is there a need to make the variation process more accessible and timely for victims? If so, what changes should be made to the Act and/or VOCAT processes?**

Needs to be made more timely. The time to seek a variation can vary depending on the court in which it is heard, when the magistrate is available. Some matters are directed to be heard by the same magistrate and therefore takes longer as the magistrate may be sitting in another court in the state. The shift into an administrative tribunal based at an agency like DOJR would make this more timely, consistent and accessible. .

### **Review and refund provisions**

**40 In what circumstances are VOCAT awards refunded? Is it appropriate for the Act to require the refund of awards in certain circumstances and if so, in what circumstances?**

I am not aware of a victim being asked to pay back an award. Does the tribunal actively chase this up. How are they notified a victim receives other payment. The tribunal does not finalise awards until such agencies as TAC and Work cover are exhausted.

**41 When might victims seek review of a VOCAT award? Are there any barriers to seeking a review of an award? If so, how should these barriers be addressed?**

The process of applying to VCAT to have the final decision reviewed is a barrier for victims. This then becomes at their own expense and it needing a solicitor to act for them this can become costly. The application must be made within 28 days, is this long enough for victims to consider and understand the process of review. Perhaps a review panel outside of the court system would be an option

### **Chapter 10 Timeliness of awards**

#### **Practice Direction to expedite decision making**

**42 Is there a need to amend section 32(3) and section 41 of the Act to clarify the need for speedy determinations? Alternatively, would an appropriate Practice Direction provide sufficient guidance?**

A vast number of victims' VOCAT applications are not finalised until after the criminal proceedings. This delays the process for the client and can be detrimental to their recovery. It is understood that there are certain cases where it is warranted to delay the process to the court outcome but it is my experience that this is becoming common practice. Family violence, safety-related and emergency medical procedures are cases that would benefit from a practice direction.

#### **Triaging, co-location or specialist streams**

**43 What benefits would be achieved for victims if initiatives such as triaging, co-location or specialist streams were introduced?**

Speedier determination. Currently magistrates review files and make determinations when they have a break in their normal scheduling. Therefore a busy court can find it difficult to address VOCAT applications.

**An administrative model**

**44 As an alternative approach, should an administrative model be adopted? If yes, what benefits would be achieved for victims through the adoption of an administrative model? How would this work in practice? What would be the disadvantages of an administrative model?**

Administrative model sitting with in an agency such as DOJR would be streamline the process. Advantages: more consistent decisions, speedy results, easier access. less legal costs, Disadvantage: limit access to the criminal process, possibly victims feeling less validated outside of the court system.

**Hearing VOCAT matters during other civil and criminal hearings**

**45 What benefits would be achieved by enabling all magistrates to make interim VOCAT awards at the same time as hearing other matters? How would this work in practice? Would there be disadvantages?**

**Evidentiary requirements for counselling and medical expenses**

**46 Should applicants be able to support their applications with documentary evidence other than medical and psychological reports? If so, what other documentation should applicants be able to provide?**

Yes, not all clients need to attend counselling, they may just need good trauma debriefing and education. Documentation, letters and reports not diagnosing from VAP, CASA , DV workers who have the continued relationship with the victim and are on the ground working day in and day out with them . A document similar to a Victim Impact Statement for the victim to express their impact

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

Evidentiary requirements are confusing for victims, so more assistance would be of benefit.

**Chapter 11 VOCAT hearings Perpetrator notification and right to appear**

**Removing the perpetrator notification provision**

**48 How do the rights of perpetrators—to be notified or appear—fit with the purpose of the Act, which is to provide assistance to victims of crime?**

Victims do not understand the notification process. They do not understand that that they will be notified and then they have 21 days to respond to the tribunal why the perpetrator should not be notified and then the tribunal will get back to them with a decision and then they can still with draw application. Once this is explained to them they feel better about the process. Most victims receive the letter and go into panic

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

Yes the only time a perpetrator should be notified is if there are no reports to police and not charges. As a perpetrator the should have the right to know of the alleged offence and have the opportunity to defend themselves. However an executional circumstance should be included for victims to state why they have not reported , this can be supported by documentation form workers such as DV, VAP and CASA

**Enhancing safety considerations in the Act**

**50 Should the notification provision be amended to recognise the safety concerns of victims more specifically? If so, what changes should be made to the Act?**

This should be changed. On to the barriers for family violence and sexual assault victims when told that the perpetrator is going to be notified is fear and safety. They then withdraw the application as they are scared.

**51 Given the aim of the Act is to assist victims of crime, should the Act be amended to include a guiding principle protecting victims from undue trauma, intimidation or distress during VOCAT hearings?**

Most certainly.

**Evidentiary and procedural protections for vulnerable witnesses**

**52 Should the Act be amended to include increased protections for victims during VOCAT hearings? If so, what procedural and evidentiary protections should be provided?**

Use of remote witness rooms , or separate times for the victims and the accused to attend the hearing .

### **Restricting access to and the use of VOCAT records**

**53 Should VOCAT application materials be admissible as evidence in criminal or family law proceedings? If not, how should the Act be amended?**

No these should not be used in evidence in these proceedings. The act should be amended to restrict the use of these materials. There seems to be a increase in defence lawyers submitting subpoenas for this information from the VAP's and other services.

### **Improving the transparency and consistency of VOCAT processes and decision making**

**54 How could transparency and consistency in VOCAT processes and decision making be improved?**

Having dedicated magistrates, or shifting to an administrative tribunal.

### **Chapter 12 Awareness of VOCAT and accessibility**

#### **Combining victim support and the financial assistance scheme**

**55 How do victims learn about the availability of VOCAT? When, how and by whom should victims be informed of their potential eligibility under the Act?**

Victims knowing about he VOCAT process often relies on how well they are connected into services. They should be informed by someone who has a good understanding o f the process. Often this is the Victims Assistance Program.

**56 Should the provision of state-funded financial assistance be integrated with victim support services? If so, how should financial assistance be integrated with victim support?**

Administrative tribunal sits at the DOJR who administers the Special Financial Assistance , The The VAP program uses there current brokerage for the immediate and crisis support and then applies to the Administrative Tribunal for the other expenses, counselling, medical, loss of earnings, safety related and etc. that are beyond the immediate crisis work. The VAP have good connections with VIC POL with co-locations, courts and OPP in order to substantiate the crime and liaise for the victim

### **Reducing reliance on lawyers**

**57 Is the VOCAT system easy to navigate without legal representation? If not, why? Should the system be changed to make it more accessible for victims without legal representation? If so, what changes should be made to the Act and/or VOCAT processes?**

The process appears to be easier to navigate , but victims often get confused by the follow up paper work, statement of claims. The victims could easily be supported through the process by a worker such as a VAP case manager who has a good understanding of the process. Money saved paying the solicitor could be put back into the system.

### **Providing victim-friendly and accessible information**

**58 Is there a need to make VOCAT more accessible for victims? If so, what changes should be made to the Act and/or VOCAT processes to make VOCAT more accessible for victims, including those speaking languages other than English?**

Increase access of interpreters especially in the rural areas. Plain English materials.

### **Chapter 13 Victim needs**

**59 Having regard to the impacts of crime on victims, what are victims' needs and how should they be met through a state-funded financial assistance scheme?**

Victims needs are often the immediate response , such as travel , medical, food, housing , psychological support, debriefing. Access VOCAT quickly and after hours is difficult. Interim applications vary in the time taken to approve. Victims also need validation for the crime.

### **Chapter 14 Approach 1: Reforming the existing scheme The purpose and objectives of the Act**

**60 Is the Act achieving its purpose and objectives? If not, in what respects?**

The act is achieving its purpose and objectives , however these are not consistent and to many variables in decisions

### **Amend the Act to focus on support**

**61 Should the focus of the Act be on supporting victims of crime rather than on assisting their recovery? If so, what changes should be made to the Act?**

The two things go hand in hand. By supporting a victim you aid in their recovery.

**Recognising appropriate people as victims**

**62 Does the Act recognise appropriate people as victims? If not, what changes should be made to the Act to better recognise appropriate people as victims? Are there circumstances where some victims should not be recognised by the scheme? If so, in what circumstances?**

**Amend the Act to remove the focus on ‘certain victims of crime’**

**63 Is it appropriate under the Act that only ‘certain victims of crime’ are entitled to financial assistance as a symbolic expression of the community’s sympathy, condolence and recognition? If so, how should this be expressed in the Act?**

**Reconceiving ‘financial assistance’ and ‘special financial assistance’**

**64 Would ‘special financial assistance’ be better classified as a ‘recognition payment’ as in the New South Wales and Australian Capital Territory schemes?**

Recognition payment would clarify that it is not compensation. Special financial assistance is ambiguous in its title and victims are confused . we often see comments by victims stating "is that all I am worth"

**Requiring offenders to contribute**

**65 What is the practical operation of section 51 of the Act which enables a victim to assign their rights to the state to recover from the offender? Should a State-funded financial assistance scheme retain ‘offender recovery’ provisions as a parallel process to other reparation mechanisms?**

**66 Should Victoria's state-funded financial assistance scheme be amended to include a victims' levy payable by offenders? If so, how and on whom should the levy be imposed?**

**Chapter 15 Approach 2: Is there a need for a different model?**

**Is the current scheme meeting the outcomes specified in the supplementary terms of reference?**

**67 Is the current scheme meeting the outcomes for victims specified in the supplementary terms of reference, namely, does it achieve outcomes for victims that: (a) are fair, equitable and timely(b) are consistent and predictable(c) minimise trauma for victims and maximise the therapeutic effect for victims?**

The current model is not timely or consistent or predictable. The outcome for the client relies heavily on the what magistrate is hearing he matter. There is vast different out comes with in the same court and hugely difference with in courts across the state of Victoria. As a worker I can not predict what outcome a client will receive and or if they would receive the same outcome in a different part of the state. The process often re-traumatise the victim and the does not maximise the therapeutic effect for victims. there is so much reliance on diagnosis of injury. For example a related victim is going through the normal grief and loss process , yet needs to prove a diagnosis of injury to satisfy the VOCAT application. Often the therapeutic need of client is forgotten and lost in trying to prove an injury .

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

Not sure of the figures, but I would assume that with the increase of crime in society , there is an increase in awards. Is this sustainable in the future , possible not . perhaps there is a need to re- coop money from offenders as other states do.

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

**Financial assistance as part of case management /victim support**

**70 Is state-funded financial assistance to victims of crime better provided as part of victim support case management? If so, why, and how should this operate?**

Financial assistance to the victims maybe better funded in this way. The current VAP model has some brokerage attached to it and is managed by the service. This is available quickly and is easier accessed. Perhaps the money's available for recovery are managed through a program such as this and the SFA is award by a administrative tribunal sitting at the Department of Justice.

**71 Alternatively, should some components of Victoria's state-funded financial assistance scheme for victims of crime be provided as part of victim support case management and others by a judicial or other independent decision maker? If so, what components, and how should this operate?**

As above.

**Financial assistance as a restorative justice opportunity**

**72 Should restorative justice principles be further considered as a voluntary component of a state-funded financial assistance scheme? Alternatively, should a victims' financial assistance scheme provide a more direct pathway to restorative justice practices constituted elsewhere in the justice system?**

**A new decision maker?**

**73 What are the benefits and disadvantages of retaining judicial decision making for the provision of state-funded financial assistance for victims of crime? Are there alternative decision-making models that should be considered? If so, which?**

The benefit of a judicial decision is access to the criminal court process and outcomes . Victims feel that they have been listen to and received justice (at times) when handed down by a judge If moving out of this system it would need to ensure that the decision makers have some status or power to acknowledge the crime and remorse from the state

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

Hearings can be powerful for the victims in having their opportunity to tell their story and the effect it has had on them. This again relies on the personality of the members holding the hearing. I have experienced some good ones and some terrible ones where the victim has walked out feeling worse.

**Victim financial assistance as a specialist field of expertise**

**75 Should state-funded financial assistance to victims of crime be undertaken by other specialised decision makers, to improve knowledge and awareness of victim needs and to enable a trauma-informed approach? If so, how should this operate?**

There would be benefit for VOCAT to sit outside of the magistrate court and have an administrative tribunal. The VSA and the VAP programs have a very good understanding of the victims' needs and operate from a trauma-informed approach.