



*Victim Survivors' Advisory Council (VSAC)
Submission to the Review of the Victims
of Crime Assistance Act 1996*



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INTRODUCTION

The Victim Survivors' Advisory Council ('VSAC') is the world's first committee comprising victim survivors of family violence informing an expansive reform agenda for a family violence system.

VSAC informs the Victorian state government, the national family violence sector and the Australian community's understanding of family violence.

VSAC is created as an initiative of the Victorian Government, following the Royal Commission into Family Violence which made a specific recommendation that the voices and views of victim survivors should be captured in the service design and reform of the family violence system.

RECOMMENDATION 201

The Victorian Government and agencies that respond to family violence identify and develop safe and constructive ways to ensure that the voices of victims are heard and inform policy development and service delivery [within two years].

FOREWORD

The Victim Survivors' Advisory Council ('VSAC') includes representatives from a variety of age groups, cultural and socio-economic backgrounds who share the traumatic lived experience of family violence.

As victims of family violence we have been betrayed of our personal power, our voices and our safety. There is great power in the lived experience of victims and survivors and that sharing our stories is important.

Silencing victims protects the perpetrator, condones their behaviour and robs victims and survivors of their dignity. This is the time to hear our voices and break the silence.

The Victorian Government has recognised that by working together we can create systems that support people who are affected by family violence.

We know what it's like to be ignored. We know what it's like to experience system shortcomings. We know what it's like to be victim blamed.

Yet the painful reality of the family violence which we have endured is that it can happen to anyone, regardless of their cultural, ethnic and socio-economic background. We know this. We feel this.

As the Victim Survivors' Advisory Council, we are leading the way. Our most vulnerable days are behind us and we are driving cultural change. Some voices have been permanently silenced. To those who have died through family violence, our community apologises for failing you. We do this work in your honour.

We are representative of all ages, genders and demographics, from children adolescents, and young people, to culturally and linguistically diverse communities, people with a disability, LGBTI communities, and elders.

Our drive, passion and voices are jointly dedicated to contributing as a powerful group to ending family violence.

Historically, victims of family violence have been failed by systemic shortcomings and cultural attitudes that have enabled our plight and caused us to suffer silently.

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PREAMBLE

VSAC was requested by the Hon. Philp Cummins AM, the Chair of the Victorian Law Commission on 17 August 2017 to make a submission to the Commission, concerning the review of the Victims of Crime Assistance Act 1996. The review of the Act has arisen from Recommendation 106 of the Victorian Royal Commission into Family Violence.

This submission examines, but is not limited to, the eligibility of victim survivors to access VOCAT, safety and wellbeing of victim survivors throughout the VOCAT process, definitional elements regarding family violence and the scope of the current VOCAT provisions, and the two-year VOCAT application limit for applicants.

VSAC submits that as the VOCAT system is modified and tailored to better support victim survivors of family violence we must address the failings of the past. The historical context and legacy of not acknowledging victim survivor experiences in VOCAT must be recognised and validated as part of a future system that is human-centred.

In reading this submission, VSAC reminds the Victorian Law Reform Commission that the statistical majority of family violence is perpetrated by males against female victims.

ELIGIBILITY

DEFINITION

The current definition of an 'act of violence' is narrow & excludes recourse for many survivors.

The current definition is defined as a 'criminal act' or a 'series of related criminal acts' that occurred in Victoria that 'directly resulted in injury or death to one or more persons'. Criminal acts include assault, injury, threats, sexual offences, stalking, kidnapping, conspiracy and any attempts of these offences. As an extension of this restrictive definition, all categories for eligibility require the aforementioned act of violence.

The definition needs to be expanded to include family violence as per the Family Violence Protection Act (Vic) 2008.

Family Violence Protection Act 2008 No. 52 of 2008

Meaning of family violence

(1) For the purposes of this Act, family violence is

(a) behaviour by a person towards a family member of that person if that behaviour

(i) is physically or sexually abusive; or

(ii) is emotionally or psychologically abusive; or

(iii) is economically abusive; or

(iv) is threatening; or

(v) is coercive; or

*(vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person;
or*

(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a)

(e) that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.

The justification for an expansion of the definition of an 'act of violence' is that it will encompass all forms of violence as per the Family Violence Protection Act (Vic) 2008, which will recognise the broader effects of family violence.

Eligibility is further compromised for those whose right it should be to access VOCAT by the limited definition of injury. The current definition of injury as per the Victims of Crime Assistance Act (Vic) 1996, includes the following: actual physical bodily harm, formal diagnosis of a mental illness or disorder, (or exacerbation of) and pregnancy.

With regard to a mental illness or disorder, there is an onus on the survivor to establish a diagnosis of mental illness or disorder which has arisen as a direct consequence of IPV. The ramifications of such a narrow definition of injury makes these assessments non-therapeutic which could result in further trauma for the survivor. This is an overwhelming barrier in obtaining VOCAT assistance.

It also represents implications for those victims who are navigating what we know is a very broken family law system, which is now being acknowledged by the parliamentary inquiry into the family law system following the announcement on 23 August 2017 by Federal Attorney-General George Brandis.

Female survivors are loathe to reach out for psychological treatment for fear of being diagnosed with a mental illness and/or disorder which may affect family law outcomes and child protection involvement in the cases where children are involved.

In light of the above, what the current definition excludes is injury arising from property loss or damage, psychological, behavioural, and social effects which are a direct consequence of the intimate partner violence that is being committed.

An expansion of a definition of injury in the Act, will make a reformed VOCAT scheme accessible to survivors of family violence who have not been diagnosed with a mental illness or disorder and who wish to access assistance. Furthermore, it removes the strict definition of an injury needing to be exclusively of a physical nature.

ELIGIBILITY AND VICTIM CATEGORIES

CATEGORIES

The categories of victims and survivors are also problematic for eligibility. For example, children who hear, witness or are otherwise exposed to violence are rarely categorised as primary victims and are merely viewed as secondary victims alongside their mothers. Children who witness family violence can suffer significant harm, and the Act does not currently acknowledge this experience of children.

DEFINITIONS

Narrow definitions of victims therefore currently exclude children as mentioned above, those people known to the victim who assist in the aftermath of an act of violence, family members who are

themselves injured by becoming cognisant of the act of violence and those who are not deemed as family members under the current related victims' category.

SAFETY & WELLBEING

VICTIM CENTRED RESPONSES

Given the experience of victim survivors, it is paramount that the VOCAT process does not re-traumatise and cause further psychological damage to the victim.

The current scheme relies on being an adversarial system rather than adopting a 'trauma-informed', 'victim-centred' or 'human-centred' response.

This point is further supported by research that indicates that some victims can be distressed by having to recount details of the crime and can be traumatised by Tribunal member comments.

To this end, ensuring the safety and wellbeing of victim survivors engaging in the VOCAT system requires properly-trained, trauma-informed practitioners within the Tribunal system.

PERPETRATOR NOTIFICATION

The fact that perpetrator notification currently occurs may function as a deterrent for victims. VSAC supports the position of Women's Legal Service Victoria that there 'is a level of inconsistency in decision making by magistrates sitting on VOCAT, which can leave victims confused and further traumatised.'

Notifying perpetrators heightens the risk of further injury and damage on the victim survivor. The context of separation is recognised as being the most high-risk time for victim survivors, and notification to the perpetrator of a VOCAT hearing unnecessarily compromises the safety and wellbeing of victim survivors.

¹ *Royal Commission into Family Violence: Report and Recommendations*, p. 81.

TWO YEAR APPLICATION LIMIT

The two-year application limit does not account for the victim survivors' experience of the judicial system. Due to concurrent court cases on foot, the victim is disadvantaged by having to run a VOCAT claim whilst going through criminal, civil and associated legal matters.

The restrictive time limit places undue stress on victim survivors, children impacted by family violence, the family unit, and increases trauma at a time of heightened vulnerability.

Further, this does not respect that victim survivors may not be in a position to disclose or identify the abuse and violence within the two-year period.

For child victims, who have lived with family violence and its effects, they may not identify the violence and abuse of their childhood until they are adults. The two-year application limit precludes them from seeking support.

Sections 52-54 of the Act require, amongst other things, VOCAT to consider the 'character, behaviour or attitude of the applicant at any time'. In the context of family violence, these sections need to be re-examined as they engage in victim blaming and completely disregard the nuances of the abuser-victim relationship and patterns of abuse.

VSAC submits that the two-year application limit must be removed so that barriers for all to seeking support are unequivocally eliminated.

CURRENT MODEL

VOCAT cannot be a therapeutic avenue for applicants without a recognition of the historical failings of the system that did not enable victim survivors to seek support and be heard.

The current model is not a therapeutic model. Victim survivors are not engaging with appropriately trained individuals with an understanding of family violence. This raises the issue that victim survivors are not heard, their abuse is not acknowledged and that they as victim survivors are not validated.

The VOCAT process would be better positioned to the needs of victim survivors if it had a restorative justice framework without a judicial underpinning.

An alternative model represents a considerable departure from the current model, however such a move has credence in other jurisdictions. For example, the NSW model foregoes a judicial process in favour of a holistic, inclusive model. VSAC submits that this approach would be better suited to victim survivors than the current model, which is not trauma-informed or victim-centred.

RECOMMENDATIONS & CONCLUSIONS

Victim survivors of family violence are resilient, powerful and courageous individuals. Most often, they do not find themselves in want of sympathy, however they do want to be heard and have their experience of abuse and violence be properly acknowledged, recognised and validated.

Financial assistance via VOCAT is an initial relief mechanism that is imperative for survivors to progress from crisis to recovery. VSAC submits that the recommendations made above be considered by the Victorian Law Reform Commission as part of the review of the Victims of Crime Assistance Act 1996.

Ultimately, VSAC submits that a future system that responds to family violence must be victim-centred. This can be achieved by ensuring that victim survivors are central to the co-design and co-design process from infancy to implementation.

VSAC welcomes the opportunity for further collaboration with the Victorian Law Reform Commission in achieving our shared vision of a future free from family violence.