
Summary

Introduction

- 1 On 22 December 2016, pursuant to section 5(1)(a) of the *Victorian Law Reform Commission Act 2000* (Vic), the Attorney-General, the Hon. Martin Pakula MP, asked the Victorian Law Reform Commission (the Commission) 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* (Vic) (the Act). The first terms of reference are set out at page ix of this paper.
- 2 On 7 July 2017, pursuant to section 5(2)(a) of the *Victorian Law Reform Commission Act 2000* (Vic), the Attorney-General asked the Commission to review and make recommendations on supplementary terms of reference in relation to the operation and effectiveness of the Act and the Victims of Crime Assistance Tribunal (VOCAT) for all victims of crime. The supplementary terms of reference are set out at page ix of this paper.
- 3 This consultation paper supplements the Commission’s first consultation paper, *Family Violence and the Victims of Crime Assistance Act 1996*, published in June 2017. Although it builds on the first terms of reference, it introduces new considerations relevant to the broader operation of the Act and VOCAT for all victims of crime as required by the supplementary terms of reference.
- 4 There are three parts to this supplementary consultation paper. Key issues and options raised in each part are summarised below. Detailed discussion of these issues and options is set out in Parts Two and Three.
- 5 Part One considers victims’ rights, the victim assistance system and the history of state-funded financial assistance schemes for victims of crime. It also provides a summary of recent relevant reviews and reforms and introduces the Act and VOCAT.
- 6 Part One provides background and contextual information only, and does not raise specific consultation questions.
- 7 Part Two discusses substantive issues with the Act and the current processes and procedures of VOCAT as raised by the supplementary terms of reference.
- 8 Part Three addresses broader questions in relation to the existing Act and scheme. In particular, and as required by the supplementary terms of reference, Part Three considers whether there are other models that would more effectively deliver assistance to victims, for example an administrative or quasi-administrative model.

Matters addressed in Part Two

- 9 In addition to extending the first terms of reference to all victims of crime, the supplementary terms of reference specify eight matters for consideration. These matters are referred to below. This summary follows the structure of this supplementary consultation paper rather than the structure of the supplementary terms of reference.

Eligibility for assistance by VOCAT

- 10 The second, third and fourth matters of the supplementary terms of reference ask the Commission to consider whether the Act recognises the appropriate people as victims, the tests for eligibility for assistance and the definition of ‘act of violence’ under the Act. This is discussed in detail in Chapter 5.
- 11 A person is eligible for financial assistance under the Act if they are the primary, secondary or related victim of an act of violence, and that act of violence directly results in injury, death or, for primary victims, a significant adverse effect.
- 12 Different categories of victims are eligible for different kinds of assistance. However, all categories require an act of violence. This 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, child stealing, kidnapping, conspiracy and attempts of these offences.
- 13 In addition, the Act requires the act of violence to directly result in injury—that is, actual physical bodily harm, mental illness or disorder (or exacerbation of) and pregnancy. ‘Injury’ does not include injury arising from property loss or damage.
- 14 Additional special financial assistance can 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.

Issues with eligibility

- 15 The main issues facing victims of crime with respect to the eligibility criteria are the victim categories, the definitions of act of violence and injury, and the causation requirement. The narrow definitions of victim, act of violence and injury in the Act can make it difficult for victims of crime to successfully claim for assistance.
- 16 The distinction between primary, secondary and related victims may not always reflect victims’ experiences of violent crime or account for their needs. Indeed it can sometimes operate to exclude people, such as:
- children who hear, witness or are otherwise exposed to violence
 - people who assist in the aftermath of an act of violence
 - family members who are injured by becoming aware of the act of violence
 - family members who do not constitute close family members under the related victims category.
- 17 Children who witness violence are classified as secondary victims rather than primary victims under the Act. This fails to acknowledge some victims’ lived experiences of crime and also impacts the categories and quantum of award for which they are eligible.
- 18 People who provide care and assistance to victims after an act of violence, such as family members, can also be excluded as the Act has been interpreted narrowly to require proactive and substantial aid at the time of the act of violence or immediately after.

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- 19 In addition, most family members of a primary victim are not considered secondary victims and the definition of ‘related victim’ excludes some family members, such as grandparents and aunts. Moreover, the Act does not explicitly include domestic partners as related victims. This means domestic partners must prove they have an ‘intimate personal relationship’ with a victim, which has been interpreted narrowly by VCAT.
- 20 The narrow definition of an act of violence under the Act also may not recognise the harm experienced by some victims of non-physical criminal offences including:
- forms of financial abuse and psychological abuse
 - causing a child to hear, witness or be exposed to forms of violence
 - non-contact sexual offences
 - property offences.
- 21 Some of these forms of abuse are most commonly experienced by vulnerable members of the community, including victims of family violence, children, the elderly and people with a disability.
- 22 The narrow definition of injury can also be a further barrier to assistance. In particular, the need to establish a mental illness or disorder means other psychological, behavioural, interpersonal and social effects are not recognised. Further, the requirement for psychiatric assessments to establish such injuries can also be a deterrent for some victims. Such assessments are a non-therapeutic assessment tool and may cause further distress to a victim.
- 23 The explicit exclusion of property loss or damage under the Act means that awards of financial assistance under the Act may not always meet victims’ needs following an act of violence. In addition, some victims of crime may encounter difficulties in establishing that their injury was a direct result of the act of violence.
- 24 To address the above eligibility issues, the Commission will consider how the victim categories should be amended to better accommodate broader classes of victims. Options include expanding the definitions of primary victim, secondary victim and related victim, and clarifying the meaning of rendering aid or assistance after an act of violence.
- 25 Additionally, the Commission will consider whether the definition of an act of violence under the Act should be expanded to accommodate broader classes of victims by, for example, including specific forms of violence and abuse in the definition. The Commission will also consider whether victims of non-criminal forms of family violence, non-contact sexual offences and some property offences should be able to access awards under the Act.
- 26 The Commission will consider whether the definition of injury in the Act should be expanded to make the scheme more accessible to victims of crime who do not suffer from a recognised mental disorder or illness. Related to this issue, the Commission will examine whether the requirement for proof of injury should be retained. The Commission will also consider ways in which the causation test could be reformed to overcome difficulties experienced by some victims in establishing a causal connection between the act of violence and their injury.

Assistance available under the Victims of Crime Assistance Act

27 Matters four, five and six of the supplementary terms of reference ask the Commission to consider whether:

- the categories of assistance and structure of awards in the Act are appropriate and adequate to account for harm
- the formula used to quantify special financial assistance in the Act is appropriate
- whether it is appropriate and fair to award assistance to aid recovery in exceptional circumstances
- whether there are other ways to promote the recovery of victims from the effects of crime.

These matters are discussed in detail in Chapter 6.

28 The maximum award for primary victims is \$60,000 plus \$10,000 of special financial assistance. The maximum award for secondary victims and any one related victim is \$50,000.

29 There are three main categories of award for primary victims:

- expenses actually incurred or reasonably likely to be incurred
- in exceptional circumstances, an amount for other expenses actually incurred or reasonably likely to be incurred to assist in recovery
- special financial assistance.

Expenses must be 'reasonable' or 'reasonably incurred'.

30 Primary victims can be awarded special financial assistance, which is a lump sum awarded as a symbolic expression by the state of the community's sympathy and recognition of harms suffered. Special financial assistance is classified into four categories, A, B, C and D, based on the severity of the act of violence, with Category A covering the most serious offences and Category D the least.

31 Awards can be reduced as a result of the 'related criminal acts' provision which enables such acts to be treated as a single act of violence. These include circumstances where they were committed against the same person and occurred at the same time or share some other common feature.

Issues with financial assistance available

32 The main issues facing victims with respect to financial assistance available are:

- the quantum (amount) of awards, including the total financial assistance available to an applicant
- the categories of awards
- the reduction of awards for related criminal acts.

33 The maximum amount of financial assistance potentially available under the Act for primary victims (\$70,000) may no longer be adequate to meet victims' needs. Moreover, the average award granted by VOCAT (approximately \$7784) is much lower than the overall maximum available.

34 The Act also limits the maximum amount of financial assistance payable to a pool of related victims to \$100,000, which can result in some victims being adversely impacted by the cap. The related victims pool can also be reduced by an award being made in respect of funeral expenses, expenses which have dramatically increased since the amounts of assistance under the Act were set.

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- 35 While the categories of award available under the Act may appear to meet victims' needs, for example, through generous interpretations of 'medical expenses' and 'counselling', the exclusion of assistance for expenses incurred through loss or damage to property as well as childcare expenses can result in some awards being inadequate.
- 36 Furthermore, the requirement that expenses be reasonable can be problematic. This may be particularly the case for some victims who may not be able to overcome some injuries, such as psychological harm. Some expenses, such as counselling, may be deemed unreasonable because of a lack of improvement in an applicant's health.
- 37 While VOCAT has wide discretion to grant additional financial assistance to assist recovery in exceptional circumstances, such broad discretion can also result in inconsistency in awards. In addition, VCAT's interpretation of exceptional circumstances as 'out of the ordinary' means that only victims who suffer an unusual or uncommon reaction seem to be eligible for an award for recovery expenses. This means that awards for recovery expenses may not always be awarded to those who need them the most.
- 38 Currently, special financial assistance is only available to primary victims. Furthermore, the special financial assistance categories may not account for the impact of cumulative harm caused by persistent and protracted patterns of abuse. This is because the categories are based on the severity of a single offence, rather than the overall impact of a pattern of abuse. This may be particularly problematic for victims who experience protracted periods of repeat violence. Furthermore, under the Act, related criminal acts can be treated as a single act of violence, which can further disadvantage victims of long-term abuse.
- 39 To address the above issues, the Commission will consider whether the categories and quantum of awards under the Act are still appropriate to meet the needs of victims, including the maximum amounts for primary victims and the pool available for related victims.
- 40 Additionally, the Commission will consider whether the scheme should define 'reasonable' for the purposes of certain expenses, such as counselling, and consider whether the focus should be on assistance rather than recovery.
- 41 The Commission will also consider whether the Act should limit the discretion of the decision maker when making awards in exceptional circumstances, for example, by embedding guiding principles, defining 'exceptional circumstances' or removing this provision entirely.
- 42 The Commission will consider whether amendments should be made to the special financial assistance categories so that a higher award might be available for broader categories of victims, and consider whether eligibility should be expanded beyond primary victims. The Commission will also consider how the Act defines 'related acts' so that victims may not be disadvantaged where acts of violence share common factors.

Time limits for making an application to VOCAT

- 43 The first, second and fourth matters in the supplementary terms of reference require the Commission to consider:
- whether the Act can be simplified to make it easier for applicants to understand all their potential entitlements and quickly and easily access the assistance offered by the scheme without necessarily requiring legal support
 - whether the Act recognises the appropriate people as victims
 - whether the time limits are appropriate and adequate to account for harm, including harm caused by multiple acts such as family violence, or where there is a significant delay in reporting a crime.

These matters are discussed in detail in Chapter 7.

- 44 Under section 29 of the Act, an application for financial assistance must be made within two years of the act of violence occurring. VOCAT must strike out applications made outside this time limit unless 'it considers that, in the particular circumstances, the application ought not to be struck out'. In making this decision, VOCAT must have regard to a number of prescribed factors, including:
- the age of the applicant when the act of violence occurred
 - whether the applicant is intellectually disabled or mentally ill
 - whether the perpetrator of the act of violence was in a position of power, influence or trust in relation to the applicant.

Issues with time limits

- 45 The time limit requirements can create specific barriers for some classes of victims, who may take more than two years to identify, disclose and report violence and abuse. Additionally, the time limit for making an application can be a barrier for more vulnerable groups of the community who face other barriers to disclosing and reporting abuse. Although VOCAT may frequently grant extensions of time, the mere existence of the time limit may be a barrier for some victims.
- 46 In addition, the factors VOCAT must have regard to when considering whether the application ought not be struck out have been interpreted narrowly in some circumstances.
- 47 Furthermore, while VOCAT must have regard to 'whether the applicant was a child at the time of the occurrence of the act of violence and the application was made within a reasonable time after he or she reached the age of 18', this provision is unlikely to assist child victims who may not identify or disclose abuse until later in life. For some victims, some acts of violence may not be disclosed until much later in life. Recent research found some victims of child sexual abuse took an average of 33 years to disclose the abuse.
- 48 To address the above issues with the application time limit, the Commission will consider whether the two-year time limit should be increased, either generally or specifically for certain crime types. The Commission will also consider whether the application time limit should be removed entirely for some victim groups or whether additional factors should be prescribed in the Act to account for particular vulnerabilities. The Commission will also consider whether there should be time limits for some components of assistance, like special financial assistance, but not for others, like medical expenses.
- 49 Additionally, the Commission will consider ways in which the transparency of decision making under section 29 of the Act could be improved, for example, through publication of decisions and data.

Making a VOCAT award to victims of crime

- 50 The first, second and fourth matters in the supplementary terms of reference require the Commission to consider:
- whether the Act can be simplified to make it easier for applicants to understand all their potential entitlements, and quickly and easily access the assistance offered by the scheme without necessarily requiring legal support
 - whether the Act recognises the appropriate people as victims
 - whether the structure and timing of awards are appropriate and are adequate to account for harm, including harm caused by multiple acts such as family violence, or where there is a significant delay in reporting a crime.

These matters are discussed in detail in Chapter 8.

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- 51 VOCAT may award financial assistance to a victim of crime where it is satisfied:
- that an act of violence has occurred
 - that the applicant is a victim of that act of violence
 - that the applicant is eligible to receive the assistance.
- 52 However, under section 52 of the Act the Tribunal must, unless there are special circumstances, refuse to make an award of assistance if VOCAT is satisfied that:
- an act of violence was not reported to police within a reasonable time, or
 - the applicant failed to provide reasonable assistance to any person or body engaged in the investigation, arrest or prosecution of the perpetrator (the investigatory or prosecutorial body).
- 53 In determining whether an act of violence was reported to police within a reasonable time the Act provides that VOCAT ‘may have regard to any matters that it considers relevant’. This includes some factors specified in the Act such as the age of the victim at the time of the act of violence, whether the victim has an intellectual disability or mental illness, whether the perpetrator was in a position of power, influence or trust in relation to the victim, and whether the victim was threatened or intimidated by the perpetrator.
- 54 In addition, section 54 of the Act requires VOCAT to consider a number of further matters before determining whether or not to make an award, or in determining the amount of the award. These include ‘the character, behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence’, ‘whether the applicant provoked the commission of the act of violence and, if so, the extent to which the act of violence was in proportion to that provocation’, ‘any condition or disposition of the applicant which directly or indirectly contributed to his or her injury or death’, and ‘whether the person by whom the act of violence was committed will benefit directly or indirectly from the award’.

Issues with sections 52 and 54 of the Act

- 55 The main issues in relation to section 52 of the Act relate to what constitutes a reasonable time for reporting, what might result in special circumstances mitigating an unreasonable delay, and what might constitute reasonable assistance to police or prosecution. There is also some uncertainty about what actions a victim must take in order to report a matter to police.
- 56 Case law reveals varying interpretations of what circumstances might give rise to an unreasonable delay as well as what might subsequently be interpreted as special circumstances mitigating an unreasonable delay. ‘Special circumstances’ is not defined in the Act. However, case law indicates it must be something ‘out of the ordinary’.
- 57 In addition, there are no prescribed positive actions a victim must undertake to satisfy reporting a matter to police or in providing reasonable assistance to police or prosecution. However, VOCAT usually expects victims to make a formal report and sworn statement to police. Due to the nature and dynamics of some types of crime, such as family violence and sexual assault, these requirements can be problematic. Such requirements may be more applicable to one-off acts of stranger violence rather than acts of violence that involve multiple incidents over a period of time and no single crime scene.
- 58 Moreover, it can be common in circumstances where perpetrators of violence exercise power and control over a victim, for victims to report a matter to police, then fail to assist with prosecution by withdrawing the complaint or refusing to give evidence in court.

- 59 The main issues with respect to section 54 of the Act relate to character and behaviour considerations which require a victim's character and behaviour to be scrutinised, particularly with respect to prior criminal offending, current or previous drug and alcohol use, and other lifestyle factors interpreted as problematic, as well as the victim's 'contributory conduct' or 'provocation'.
- 60 The broad discretion afforded to VOCAT to consider the character, behaviour or attitude of the applicant 'at any time, whether before, during or after the commission of the act of violence' under section 54 can lead to inconsistencies in determinations. Some victims with past criminal records and/or who use drugs and alcohol may find it difficult to secure an award of assistance. This illustrates that a victim's eligibility for financial assistance is not solely based on the act of violence. The Act requires consideration of broad discretionary factors in relation to the character and behaviour of the victim to inform decision making. These factors appear to be a reflection of community expectations that the victim must be an appropriate recipient of sympathy. 'Provocation' or 'contributory conduct' clauses may also be problematic because of their potential for victim blaming.
- 61 To address the above issues with the requirement to report to police within a reasonable time, and provide reasonable assistance to police and prosecution, the Commission will consider whether more guidance should be provided in the Act about what constitutes a report to police. The Commission will also consider whether the requirement to report to police should be removed entirely for all or some victims, or be replaced with a requirement to make a report to either police or other recognised professionals.
- 62 Additionally, the Commission will consider whether the Act should be amended to remove the requirement to provide reasonable assistance to police and prosecution for some categories of victims, or specify additional factors the Tribunal must consider in determining whether the applicant has provided reasonable assistance.
- 63 The Commission will also consider whether some of the discretion under the Act with regard to character and behaviour considerations should be limited. Additionally, the Commission will consider whether some considerations should be removed entirely, such as broad character and behaviour considerations, provocation provisions, or limiting such considerations to whether the applicant was committing an offence at the time of the act of violence.

Review, variation and refund of awards by VOCAT

- 64 The first, fourth and eighth matters in the supplementary terms of reference require the Commission to consider:
- whether the Act can be simplified to make it easier for applicants to understand all their potential entitlements and quickly and easily access the assistance offered by the scheme without necessarily requiring legal support
 - whether the time limits and structure and timing of awards are appropriate
 - whether any processes, procedures or requirements under the VOCA Act cause unnecessary delay to the provision of assistance to victims.
- These matters are considered in Chapter 9.
- 65 Any person whose interests are affected can apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a final VOCAT decision. There are relatively few reviews, with only 11 applications for review made to VCAT in the 2015–2016 financial year.
- 66 The Act also enables VOCAT to require applicants to refund some or all of the financial assistance awarded to them if they later receive other payments. Limited data is available on how often refunds are required.

67 VOCAT has broad discretion to vary awards ‘in any manner that the Tribunal thinks fit’. VOCAT must have regard to any fresh evidence, any change of circumstances, any other payments received by the applicant and any other relevant factors. VOCAT must not vary an award if the application for variation is made more than six years after the original award, unless the applicant was then under 18 years of age.

Issues with respect to variations

- 68 The main issues with respect to variations are:
- The variation process—most variations require the applicant to file additional paperwork via lawyers and other professionals, increasing delays and limiting flexibility and continuity in provision of services such as counselling.
 - The variation window—the Tribunal must not vary an award if the application for variation is made more than six years after the original award was made, unless the applicant was then under 18 years of age, reducing assistance available to victims over a longer period of time.
- 69 To address the above issues with the variation process, the Commission will consider whether variations should be made simpler for certain types of assistance, such as counselling or medical expenses. Consideration will also be given to whether variation processes should be supported by other broader reform options such as implementing case ‘triage’ or case management functions, and whether a state-funded financial assistance scheme should provide assistance for longer periods of time.

Timeliness of awards made by VOCAT

- 70 The first, third and eighth matters in the supplementary terms of reference require the Commission to consider:
- whether the Act can be simplified to make it easier for applicants to understand all their potential entitlements and quickly and easily access the assistance offered by the scheme without necessarily requiring legal support
 - whether the evidence required to meet eligibility tests can be simplified to avoid unnecessary or disproportionate costs being incurred
 - whether any processes, procedures or requirements under the Act cause unnecessary delay to the provision of assistance to victims, having regard to other models that would more effectively deliver assistance, for example an administrative or quasi administrative model.

These matters are considered in Chapter 10.

- 71 VOCAT applications commence by way of a written application accompanied by documentary evidence. There are significant supporting documentation requirements, such as providing medical or psychological reports. Each category of assistance has different supporting documentation requirements and VOCAT requests that all such documentation be provided within four months.
- 72 VOCAT may determine an application without conducting either a directions hearing or a final hearing depending on the preference of the applicant as well as the Tribunal’s need for a hearing. In practice, many straightforward applications are decided without the need for a hearing.

- 73 While the Act requires VOCAT to act ‘expeditiously’ (that is, promptly) to determine applications, VOCAT must also have regard to matters that can sometimes affect the time it takes to finalise an application, such as awaiting the outcome of a criminal trial. VOCAT is guided by section 32(3) of the Act, which enables VOCAT to make awards even if there is a pending civil trial, or if a court is going to decide a matter concerning compensation or restitution under the *Sentencing Act 1991* (Vic), as well as section 41 of the Act, which empowers VOCAT to adjourn consideration of an application if a related trial is likely to be decided within six months.
- 74 In practice, the operational effect of sections 32 and 41 is that a VOCAT application will often be adjourned until related matters in the civil and criminal courts have been decided.

Issues with timeliness

- 75 In June 2017, the Victorian Community Safety Trustee released an interim report on the implementation of the Victorian Government’s Community Safety Statement. It considered delays of nine months to finalise an application as warranting a review of the VOCAT process.
- 76 VOCAT has implemented a number of initiatives to improve timeliness. However, VOCAT has also observed an increase in the complexity and number of applications being made. Increased complexity affects the Tribunal’s timeliness because more information may be required and the Tribunal may decide a hearing is necessary to determine the matter.
- 77 Lawyers cite obtaining relevant supporting documentation for VOCAT applications as one of the principal difficulties of running a VOCAT case and one of the primary reasons for delays and cost increases. The documentation and evidentiary requirements can also be potential sources of re-traumatisation for victims, and increase the scheme’s vulnerability to fraudulent claims by external parties.
- 78 To address the above issues, the Commission will consider whether initiatives such as application triaging and co-location of victim support workers could improve timeliness. The Commission will also consider whether a Practice Direction would provide more guidance about when expediting a VOCAT application is preferable. Consideration will be given to whether VOCAT matters should be heard at the same time as other related civil and criminal hearings, and whether the evidentiary and documentary evidence requirements of the Act should be amended.
- 79 Additionally, consideration will be given to broader reforms such as specialist streams, specialist decision makers and whether other models might provide increased efficiency and timeliness.

VOCAT hearings and evidentiary processes

- 80 The first, seventh and eight matters raised in the supplementary terms of reference require the Commission to consider:
- whether the Act can be simplified to make it easier for applicants to understand all their potential entitlements and quickly and easily access the assistance offered by the scheme without necessarily requiring legal support
 - whether it is appropriate in certain circumstances (as is currently the case) for alleged perpetrators of a crime to be notified of applications to VOCAT or be called to give evidence
 - whether any processes, procedures or requirements under the Act cause unnecessary delay to the provision of assistance to victims.

These matters are considered in Chapter 11.

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- 81 VOCAT may determine an application without conducting a hearing where the applicant consents and VOCAT does not require a hearing. Where a hearing is requested or required, VOCAT may inform itself in relation to the application in any manner that it thinks fit. While VOCAT hearings are less formal than court hearings and VOCAT is not bound by the rules of evidence, VOCAT’s procedures remain a legal process bound by the provisions of the Act.
- 82 Under the Act, VOCAT may give notice of the time and place for a hearing to any other person whom it considers to have a legitimate interest in the matter. This can include the alleged perpetrator. Before doing so, VOCAT must allow the applicant an opportunity to be heard on whether this should occur.
- 83 The Act also identifies people who are entitled to appear at a hearing, including the alleged perpetrator. VOCAT is able to direct that alternative arrangements be made for the giving of evidence by a witness, direct the hearing be closed to members of the public and restrict the publication of VOCAT material. However, VOCAT records can be subpoenaed and used by the defence in criminal hearings.
- 84 Where VOCAT determines an application without conducting a hearing, this is referred to as making a determination ‘on the papers’. Applications are determined on the papers in the majority of VOCAT matters—approximately 75 per cent in 2015–2016.
- 85 While all hearings conducted by VOCAT are digitally recorded, there is no such process for determinations on the papers. Therefore the only decisions available to the public relate to VCAT review decisions, which are rare (there were only 11 reviews in 2015–2016). This lack of transparency in the decision-making process results in a high degree of uncertainty.

Issues with VOCAT hearings and evidentiary processes

- 86 The main issues raised with VOCAT hearings and evidentiary processes relate to:
- perpetrator notification and right to appear
 - evidentiary and procedural protections for victims
 - the therapeutic effect of Tribunal hearings
 - the use of VOCAT documentation in criminal proceedings
 - the transparency and consistency of decision making.
- 87 The perpetrator notification provisions raise questions about victim safety and the therapeutic effect of VOCAT hearings. Alleged perpetrators are more likely to be notified when the applicant has not reported the incident to the police or where there is little evidence to support an applicant’s claim. Victims of certain types of crimes associated with low reporting rates, such as sexual assault, may therefore be more vulnerable to the perpetrator notification requirements. However, these victims are often more vulnerable to intimidation, threats to their safety, or re-traumatisation through contact with an alleged perpetrator.
- 88 Even if perpetrator notification occurs rarely, the fact that it exists at all can be a deterrent for some victims.
- 89 Evidentiary and procedural protections for protected witnesses in criminal proceedings and intervention order matters do not explicitly extend to VOCAT hearings. While the Act gives VOCAT the discretion to put in place these kinds of evidentiary protections, such protections are not explicitly articulated in the Act. Accordingly, this may lead them to be underused or used inconsistently.
- 90 Victoria is one of the few Australian jurisdictions that enables victims to elect to attend a hearing and utilises judicial decision makers. This provides a unique opportunity for victims to be heard and acknowledged. However, some victims may not want to participate

in a VOCAT hearing. Moreover, research indicates that some victims can be distressed by having to recount details of the crime and can be traumatised by Tribunal member comments.

- 91 In its 2016 report *The Role of Victims of Crime in the Criminal Trial Process* the Commission recommended that VOCAT documentation should be inadmissible as evidence in criminal legal proceedings. As the Act's purpose is to assist victims, the Commission concluded that it is not appropriate for such materials to be used to discredit a victim in a criminal trial.
- 92 Given the practical operation of the section 33 process, when decisions are made by VOCAT on the papers, there is neither the transparency afforded by the usual open court process, supplemented by the publication of judicial decisions, nor a clear administrative decision-making framework as would be the case if the decision making was embedded within government service delivery. This raises questions about the consistency in practice, approach and the quantum of awards being made.
- 93 To address the above issues, the Commission will consider whether the perpetrator notification provision should be removed either entirely or specifically for vulnerable victims. The Commission will also consider whether safety considerations should be enhanced under the Act, for example, by including a legislative presumption against perpetrator notification unless required to reach a fair decision, as well as extending evidentiary and procedural protections for vulnerable victims and witnesses.
- 94 Consideration will be given to whether it is appropriate for hearings to remain as an available option, and to how the therapeutic effect of hearings could be improved if they are to be retained.
- 95 The Commission will consider ways to improve the transparency and consistency of the VOCAT process, including consideration of written decisions, limiting some broad discretion under the Act, as well as options to streamline VOCAT decision making, for example, by requiring all applications to be determined the same way.

Awareness and accessibility of VOCAT

- 96 The first matter specified in the supplementary terms of reference requires the Commission to consider whether the Act can be simplified to make it easier for applicants to understand all their potential entitlements and quickly and easily access the assistance offered by the scheme without necessarily requiring legal support. These matters are discussed in Chapter 12.
- 97 Analysis of Crimes Statistics Agency data suggests approximately nine per cent of all potentially eligible victims of crimes against the person are resulting in applications for financial assistance.
- 98 Research suggests that there may be a general lack of awareness and understanding of VOCAT and the financial assistance process in Victoria.

Issues with awareness and accessibility

- 99 The relatively low numbers of VOCAT applications compared to victims of crimes against the person raise questions regarding awareness and accessibility of the scheme. Research suggests a low awareness of VOCAT and state-funded financial assistance. This is consistent with findings in other jurisdictions regarding awareness of comparable financial assistance schemes.
- 100 Accessibility issues have been linked to the legalistic nature of the VOCAT scheme and its inaccessibility as part of the justice system rather than the victim support system.

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- 101 Accessibility issues include practical matters such as the application form and documentation requirements, including that the form does not account for varying victim experiences and a lack of information in accessible formats.
- 102 To address issues associated with victims' awareness of, and access to, VOCAT, the Commission will consider whether improved awareness and accessibility of the scheme could be achieved through combining the victim support and financial assistance system. This option will also be considered, within the context of reducing reliance on legal representation, by improving victim case management to incorporate financial assistance through the victim support system.
- 103 Consideration will be given to whether a hybrid administrative and judicial system should be implemented, with the victim support system administering payments for expenses incurred such as counselling or medical expenses, while retaining the provision of special financial assistance—or 'recognition payments'—as a judicial decision. These broader issues about a model to more effectively deliver assistance are also considered in Part Three.
- 104 The Commission will also consider whether the suite of forms and information available for victims making an application should be improved for accessibility.

Part Three: options for broader reform

- 105 Part Three begins by considering victim needs. Chapter 13 considers the impact of crime on victims, the needs of victims following an act of violence, and the importance of financial assistance as a component of victim support. This places victim needs at the centre of any reform considerations.
- 106 Chapters 14 and 15 then pose two overarching approaches for reform:
- Approach 1: Reforming the existing scheme
 - Approach 2: Is there a need for a different model?

Approach 1: Reforming the existing scheme

- 107 The purpose of the Act is to provide assistance to victims of crime. The Act also has a number of further objectives, discussed in detail in Chapter 14.
- 108 The first stated objective of the Act is to 'assist victims of crime to recover from the crime by paying them financial assistance for expenses incurred, or reasonably likely to be incurred, by them as a direct result of the crime'. The Commission considers that a number of provisions of the Act can make it difficult for the Act to assist victims to recover from crime. These include the eligibility criteria, application time limit, the ability of VOCAT to refuse and reduce awards, the quantum of awards, the flexibility afforded to VOCAT in making awards, as well as VOCAT delays.
- 109 The second stated objective of the Act is to 'pay 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'. The Commission considers that certain provisions of the Act narrowly conceptualise who may be certain victims under the Act, this includes by limiting payments only to primary victims who are 'appropriate' or 'deserving' victims, such as victims that report to police in a timely way, assist police and prosecution, do not contribute to the circumstances of victimisation and do not have a criminal history.
- 110 The Act also states that victims should have recourse to financial assistance where compensation for the injury cannot be obtained from the offender or other sources. The Act presumes that compensation or financial assistance is available to victims from the offender or other sources. However, in practice, it appears that VOCAT is often the only

source of compensation for many victims, rather than being a supplement to other forms of compensation.

- 111 A further object of the Act is to 'complement other services provided by government to victims of crime'. However, VOCAT sits separately to other victim support services and it appears that there are limited referral pathways. Victims often need to engage a lawyer to access VOCAT. The fragmented nature of the victim support system can cause victims frustration and may be limiting the scheme's ability to complement the other support services available to victims of crime.

Discussion of Approach 1

- 112 The Commission will consider options to improve the current model and approach through legislative and procedural reform. This includes possible changes to the Act's eligibility requirements and the availability of awards to better meet the purpose and objectives of the current Act.
- 113 The Commission will consider whether the focus of the Act should be on supporting victims rather than only assisting recovery, to better reflect victims' lived experiences of crime and assist with longer term needs.
- 114 The Commission will consider whether the Act should be amended to better recognise appropriate people as victims. This could involve reducing some of the differential treatment under the Act by amending eligibility requirements and relevant considerations of the decision maker. It will also consider whether the Act should recognise the changing nature of violence by recognising family violence, some forms of psychological and financial abuse and non-contact sexual offences. The Commission will also consider options to reform the Act's focus on 'certain victims of crime' to ensure the Act recognises appropriate people as victims.
- 115 In addition, the Commission will consider whether the Act should distinguish between financial assistance (for expenses incurred, or likely to be incurred) and lump sum payments which acknowledge and recognise the harm caused to victims by crime.
- 116 Finally, the Commission will consider whether victims' levies should be introduced to supplement the funding of Victoria's financial assistance scheme.

Approach 2: Is there a need for a different model?

- 117 Chapter 15 discusses whether there is a need for a different model to more effectively deliver assistance to victims of crime.
- 118 The supplementary terms of reference ask the Commission to bear in mind that a state-funded financial assistance scheme should seek to achieve outcomes for victims that:
- are fair, equitable and timely
 - are consistent and predictable
 - minimise trauma for victims and maximise the therapeutic effect for victims.
- 119 The supplementary terms of reference also state that a financial assistance scheme must also be efficient and sustainable for the state.
- 120 With respect to the extent to which the current scheme is fair, equitable and timely, it is noted that current eligibility requirements mean that some victims' experience of crime may not be adequately recognised under the Act and that some victims may be excluded, although they may be appropriate recipients. This may be because of the narrow victim categories or because of the narrow definition of act of violence or injury. In some cases, the broader harms of violence suffered by victims may not be recognised under the Act or may be difficult for victims to prove. The categories and quantum of awards, and the ways in which these are determined under the Act, may also result in outcomes that do not sufficiently recognise the harms suffered by certain victims.

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- 121 Furthermore, the strict time limits for making an application under the Act may not recognise that the effects of crime can contribute to delayed applications. VOCAT can also refuse to make an award of assistance due to character and behaviour considerations even where a victim is otherwise eligible.
- 122 Current concerns about delays and increased application numbers also impact on the timeliness of assistance provided to victims.
- 123 With respect to the extent to which the current scheme is consistent and predictable, varying approaches of Tribunal members can result in different decisions in areas of the scheme with broad discretion. Combined with a lack of access to written decisions, this can result in a lack of transparency and uncertainty. This raises concerns about the current scheme's consistency and predictability for victims.
- 124 With respect to the extent to which the current scheme minimises trauma and maximises therapeutic effect for victims, delays in securing awards can operate so as to impact victims' recovery time and worsen distress. Furthermore, the Act does not provide for assistance to victims with longer term injuries, even if they continue to incur expenses directly related to the act of violence. Questions arise as to whether some considerations, such as the mandatory character and behaviour considerations, may re-traumatise victims and lead to some victims feeling shame, or that they are undeserving of compensation. The legal approach of the Tribunal can re-traumatise some victims, for example, through having to re-tell their story or as a result of Tribunal members' comments.
- 125 With respect to the extent to which the current scheme is efficient and sustainable for the state, the fragmented nature of the victim and witness support system raises questions about duplication and inefficiency. In particular, some components of financial assistance and victim support are provided through the victim support system, while other components are available through VOCAT. Many supports—practical and financial—provided by generalist or specialist victim support services can overlap with the assistance available through VOCAT, such as financial assistance for security measures or counselling.
- 126 Further aspects of the current scheme's design may be creating inefficiencies, such as the significant costs associated with obtaining medical reports to support applications and award variations. From a funding perspective, it is also possible the scheme could be supplemented by other revenue streams, such as a victims' levy, to help ensure its longer term sustainability.

Discussion of Approach 2

- 127 The Commission will consider whether alternative models, or components of alternative models, would better meet the outcomes specified in the supplementary terms of reference.
- 128 Consideration will include whether financial assistance should be part of the victim support system through an administrative model. The Commission will also consider whether a hybrid administrative and judicial system should be implemented. For example, the victim support system could administer awards for assistance through a case management approach, with lump sum awards remaining a judicial decision with the option of hearings should a victim elect to do so.
- 129 The Commission will consider whether judicial decision making remains appropriate and sustainable, and will consider models like a decision maker independent of government and the courts, such as a victims' commissioner or a victims' compensation commissioner.
- 130 The Commission will also consider whether a financial assistance scheme should incorporate restorative justice opportunities, either within its scheme design, or through appropriate referral pathways, and whether victim compensation or financial assistance should be a specialised field.