

Submission to Victorian Law Reform Commission: Review of the Victims of Crime Assistance Act

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Authorised by:

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1. Introduction

About safe steps Family Violence Response Centre

safe steps Family Violence Response Centre (“**safe steps**”) is Victoria’s state-wide first response service for women, young people and children experiencing family violence. We are committed to ensuring all women and children are able to live free from abuse, and our ultimate goal is the elimination of family violence. We work towards this through a Respond-Recover-Prevent framework, which is underpinned by our three strategic pillars of empowerment, influence and sustainability as outlined in our strategic plan).

RESPOND: We empower women, young people and children experiencing family violence and secure their safety through our 24/7 phone response and specialist support services

PREVENT: We work towards a community free from family violence through education, system reforms and by fostering social change initiatives

RECOVER: We support survivors to overcome trauma so they can thrive in their communities and continue to live free from violence.

We are firmly grounded in a feminist framework, and recognise that family violence is inherently gendered, perpetrated in the vast majority of instances by men against women. However we also recognise the intersectional ways in which power, control and privilege impact across diverse cohorts which result in increased levels of family violence.

safe steps also has a national reach through our membership of SafeNET Australia, the network of state-wide domestic and family violence crisis services across Australia. SafeNET Australia’s aim is to increase the efficiency and validity of services provided to all Australian women and children experiencing domestic and family violence.

In partnership with fellow statewide providers DV Connect Queensland and Women’s Safety Services South Australia, **safe steps** is also a provider of specialist trauma counselling on behalf of the national sexual assault, domestic and family violence counselling service, 1800 RESPECT.

Our approach

safe steps welcomes the opportunity to contribute to the review of the Victims Of Crime Assistance Act Review (“the Review”) and to continue to give voice to the experiences of women and children whom we represent. **safe steps** draws on its experience delivering services to women, young people and children, and the experiences of its partner

organisations in the preparation of this submission. The names of all women in the case studies have been changed to protect their privacy.

To inform this submission, we:

- invited our Volunteer Survivor Advocate network to provide comment via email
- invited our over 5,000 Facebook followers to share their stories of their experiences with The Victims of Crime Assistance Tribunal (VOCAT or the Tribunal)
- consulted with internal staff with experience assisting victims to access the Victims of Crime Assistance scheme (“the scheme”).
- reviewed the Victorian Law Reform Commission’s first and supplementary consultation papers
- undertook a literature review of relevant government and non-government publications.

We have used the term ‘victim’ in our submission to describe those people covered by the Victims of Crime Assistance Act for ease of reading and to maintain consistency with the language of the Act, but note our preference for the term ‘victim survivor’. ‘Victim’ recognises the systemic injustices which perpetuate violent behaviours and ‘survivor’ points to the resilience and agency of those who survive family violence, or indeed any other forms of harm.

About this submission

safe steps notes that the Victorian Law Reform Commission (the Commission) was initially asked to consider the operation and effectiveness of the Victims of Crime Assistance Act 1996 (VOCA Act, or the Act) for family violence victims in response to Recommendation 106 of the Royal Commission into Family Violence, and was subsequently asked to expand the Review to cover all victims. Our submission predominantly addresses how the Victims of Crime Assistance scheme (the scheme) in Victoria might better serve family violence victims, but recognises that many of the challenges faced by victims of family violence also apply to other victims accessing the scheme, for example, those who have experienced sexual abuse.

We praise the Commission’s comprehensive critique of the current scheme in relation to family violence victims as outlined in its two consultation papers. The recommendations we have made aim to address the following issues identified by the Commission:

- In its current form, the Act disadvantages certain victims, including those who have experienced family violence, as it is best suited to deal with single acts of violence.
- The Act’s definitions of a ‘victim’, an ‘act of violence’ and an ‘injury’ are narrow and operate to exclude or disadvantage women and children experiencing family violence.

- The scheme’s administrative and evidentiary requirements are onerous, cause delays and fail to acknowledge the realities of family violence situations. The process is often re-traumatising for women and children experiencing family violence.
- VOCAT’s practice of notifying perpetrators about hearings can be problematic for victims.
- The awards available fail to recognise the cumulative harm of individual acts of violence and access to urgent financial assistance to ensure victim safety and wellbeing takes too long.
- There is a lack of flexibility in awards, with awards often failing to recognise that women are the best judges of what they need.
- There is inconsistency in VOCAT decision making with respect to victims of family violence, which results in victims feeling confused and traumatised by the legal system.
- There is limited awareness of the scheme and issues around its accessibility for victims, including people from culturally and linguistically diverse (CALD communities).
- The scheme is often the only source of financial assistance family violence victims are able to access, as obtaining compensation from the perpetrator is usually unlikely to be successful, and civil trials are costly.

The above findings were supported by feedback we received from victims who had accessed the Victims of Crime Assistance scheme during our consultation. The major themes raised were:

- The long delays in determining VOCAT applications and receiving awards.
- The lack of flexibility in awards, particularly with regard to recovery expenses.
- Difficulties providing sufficient evidence to satisfy VOCAT requirements, particularly with regard to proving breaches of Family Violence Orders.
- The process was not therapeutic – there was a lack of support and they did not feel heard.
- Uncertainty and unpredictability; feeling like they were being given the “run around”.

Based on the Commission’s findings and our consultation with women, it appears that many aspects of the scheme as it currently stands operate counter to victims’ needs and do not promote women and children’s safety and recovery. As such, **safe steps** supports significant changes to the VOCA Act to ensure that the focus of the scheme is providing victims with timely, therapeutic and flexible support. We believe that many of the problems with the current scheme would be improved if Victoria were to transition to an administrative scheme, which is likely to reduce delays, allow victims to be better supported through the application process without the need to engage lawyers, and to receive access to counselling and immediate financial assistance to secure their safety.

We have responded to many of the questions posed by the Commission in our submission, including recommendations relevant to reforming the existing model; however we note that many of these reforms may not be relevant or necessary if Victoria transitions to an administrative model as we have recommended in part 9 of our submission.

Summary of Recommendations

1. Amend the definition of 'primary victim' to include:
 - children who hear, witness or are otherwise exposed to violence
 - family members who provide assistance to victims in a manner that does not currently amount to 'aid' in section 7(2) and, in addition, specify that section 7(2)(c) applies to aid and assistance rendered both at the time of the act of violence and afterwards, as long as there remains a causal connection between the aid and assistance and the act of violence.
2. Amend the definition of 'secondary victims' to include the children, spouse and parent or guardian of a primary victim who is aged over 18 at the time of the act of violence.
3. Amend the definition of 'close family member' for the purposes of being a 'related victim' to include:
 - domestic partners
 - grandchildren and grandparents; and
 - if the primary victim was an Aboriginal person or a Torres Strait Islander person, a person who is regarded, in accordance with the primary victim's Aboriginal community or Torres Strait Islander community, as one of the listed types of close family member.
4. Remove the need for 'domestic partners' to prove that they have an 'intimate personal relationship' with a victim.
5. The Act should maintain the category of 'intimate personal relationship' to ensure the Act can cover other relationships not explicitly included in the 'related victim' definition.
6. Define 'family violence' in the Act as it is defined in the *Family Violence Protection Act 2008* (Vic) and include:
 - non-violent criminal acts such as breaches of family violence intervention orders (without the requirement for the breach to involve assault, injury or threat of injury)
 - crimes against property (those perpetrated by a family member or carer only)
 - violence perpetrated by people within a residential facility or in a relationship of dependence.

7. Amend the definition of relevant offences to include all sexual offences in the common law, the Summary Offences Act 1966 (Vic) and The Crimes Act 1958 (Vic), without distinction as to subdivision.
8. Change the definition of mental injury to 'psychological or psychiatric harm', as it is defined in the Victims Rights and Support Act 2013 (NSW) ; and
9. Amend the Act to expand the category of injuries for victims of family violence and sexual abuse to encompass harms including a sense of violation, a reduced sense of self-worth, increased fear or feelings of insecurity, and reduced capacity to participate in sexual activity.
10. Remove the requirement of proof of injury for victims of family violence and sexual abuse.
11. The Victims of Crime Assistance scheme should improve data collection and recording.
12. Revise the main categories of awards in the Act to better align with support of victims, to recognise a broader conception of 'violence' and reduce reliance on generous and discretionary judicial interpretations of existing provisions.
13. Expenses to assist recovery should be available to all victims under section 8 and not only awarded in 'exceptional circumstances'; recognising that such expenses are beneficial for all victims.
14. Amend section 8(4) to include expenses related to property loss or damage for victims of family violence.
15. Childcare expenses should be included in section 8 awards to ensure victims can plan for their safety and attend medical and counselling appointments.
16. Define 'reasonable' in relation to expenses for counselling services or remove this requirement to ensure ensures that the focus is on the benefit to the applicant rather than a tangible improvement in health.
17. In relation to interim awards, adopt NSW's approach of granting primary victims awards for immediate needs.
18. More flexibility in evidence required to prove costs incurred by victims as a result of the crime/s.
19. Amend the categories of special financial assistance to mirror the approach taken by the ACT Act, as discussed at 6.183-4 of the Supplementary Consultation paper. Alternatively,

we would recommend adopting the Tasmanian approach of setting a higher amount for the total financial assistance available for a victim of a series of related criminal acts.

20. Remove the time limits completely under the Act for victims for information provision, victim support and referral services, as well as counselling to assist recovery, but maintain two-year time limits for financial loss and recognition payments, except for:
 - victims of family violence
 - victims of sexual assault who were children at the time of the offence
21. Increase transparency of VOCAT decisions under section 29, as discussed in 7.51 of the supplementary paper.
22. Amend section 54 to include reporting to other recognised agencies or professionals, including family violence services, doctors and social workers.¹ This should apply to all victims accessing the scheme.
23. Remove the requirement for victims of family violence to provide reasonable assistance to police and prosecution.
24. Limit considerations about a victim's character only to whether the victim was committing an offence at the time of the act of violence, or colluding with an alleged perpetrator.
25. Remove the perpetrator notification provisions and the perpetrator benefit provision under section 54(e).
26. VOCAT applications and supporting documentation should no longer be admissible as evidence in criminal trials and other types of legal proceedings.
27. Allow a broader range of supporting documentation, such as letters from support workers and medical practitioners, to support victim applications.
28. Replicate the procedural and evidentiary protections in place in the Criminal Procedure Act and the Family Violence Protection Act for vulnerable victims, and include a guiding principle that 'in determining the procedure of hearings and the giving of evidence, VOCAT is to have regard to the fact that measures should be taken to limit the trauma, intimidation and distress suffered by victims when giving or hearing evidence'.

¹ This approach has been taken in the ACT, NSW and QLD schemes.

29. Revise the application form to be simpler, more accessible to victims and to capture the changes to the scheme; and ensure the form and other information regarding the scheme are available in more languages other than English.
30. Transition to an administrative scheme under the Victims of Crime Commissioner and administered via case management as part of the victim support system, rather than via the Tribunal.
31. Change the purpose and objectives of the Act to focus on victim support, rather than 'recovery'.
32. Change the wording in the Act from 'special financial assistance' provisions to 'recognition payments'. This change would better reflect the intended purpose of these awards as a symbolic gesture on behalf of the community and the state that recognizes harm caused to victims by crime.
33. Increase the amount of special financial assistance awarded so that 'recognition' payments more adequately recognise the harms caused by the overall impact of long-term abuse.
34. Remove the reference to 'certain victims of crime' from section 1(2)(b).
35. Mandate specialist training in victim needs and trauma-informed practice for all decision makers under the scheme.
36. Maintain a hearing option conducted by the Victims of Crime Commissioner and include voluntary restorative justice options for victims.
37. The scheme should include a peer support program to assist new applicants.

2. Eligibility

Victim categories

There are a number of issues with the victim categories in the Act as they relate to the family violence context.

Children

Children's exposure to family violence can lead to significant emotional and psychological trauma that is ongoing and long-lasting. **safe steps** notes that the Act in its current form deems children who witness family violence 'secondary victims' and excludes completely children who hear or are otherwise exposed to family violence.

To ensure the impact of children's exposure to violence is recognised in the Act, we recommend amending the definition of primary victim to include children who hear, witness or are otherwise exposed to violence. As discussed in the consultation papers, this change would align the Act with the *Family Violence Protection Act 2008* (Vic) and the Commonwealth *Family Law Act 1975*, support the Royal Commission's view that 'children and young people experiencing family violence should be recognised as victims in their own right', and ensure that child victims receive appropriate financial awards under the Act.

Other victims

safe steps also supports the following amendments suggested in the supplementary consultation paper:

- Amend the definition of 'primary victim' to include people, including family members, who provide assistance to victims in a manner that does not currently amount to 'aid' in section 7(2) and, in addition, specify that section 7(2)(c) applies to aid and assistance rendered both at the time of the act of violence and afterwards, as long as there remains a causal connection between the aid and assistance and the act of violence. This change would ensure that the Act recognises the mental health impacts to family members who provide assistance after an act of violence has taken place.
- Amend the definition of 'secondary victims' to include the children, spouse and parent or guardian of a primary victim who is aged over 18 at the time of the act of violence.
- Amend the definition of 'close family member' for the purposes of being a 'related victim' to include:
 - domestic partners
 - grandchildren and grandparents; and
 - if the primary victim was an Aboriginal person or a Torres Strait Islander person, a person who is regarded, in accordance with the primary victim's Aboriginal

community or Torres Strait Islander community, as one of the listed types of close family member.

- The Act should maintain the category of 'intimate personal relationship' to ensure the Act can cover other relationships not explicitly included in the 'related victim' definition.
- Remove the need under the Act for domestic partners to prove they have an 'intimate personal relationship' with a victim. This ensures there is no discrimination against non-married or LGBTIQ couples, and would bring the legislation up to date with contemporary social values and legal definitions elsewhere.

The definition of an 'act of violence'

As discussed in both consultation papers, the narrow definition of an 'act of violence' fails to cover the range of criminal and non-criminal forms of abuse experienced by family violence victim survivors, victims of elder abuse, abuse of people with disability and child abuse. The definition as it is currently framed is intended to cover single acts of violence where the victim and perpetrator are not known to each other, and is out of step with current community conceptions of violence, which increasingly recognise non-physical forms of harm such as psychological and financial abuse as violent.

Accordingly, the definition should be expanded to explicitly include 'family violence'. As suggested in the consultation papers, family violence could be defined as it is in the Family Violence Protection Act and include non-violent criminal acts such as breaches of family violence intervention orders (without the requirement for the breach to involve assault, injury or threat of injury), crimes against property (those perpetrated by a family member or carer only), and violence perpetrated by people within a residential facility or in a relationship of dependence.

safe steps notes the concerns raised by the Magistrates' Court and the Children's Court that broadening the definition to include non-criminal acts might have unintended consequences such as making cases more difficult to determine and increasing notification of alleged perpetrators. We believe that these risks would be mitigated by other reforms we have suggested in our submission, such as shifting to an administrative scheme, which should reduce the time taken to gather evidence and process claims. We discuss the perpetrator notification provision below.

The above changes would remove the discrepancy between how the VOCA Act and the Family Violence Protection Act (and other Acts) define violence and better accommodate victim survivors of family violence.

Our submission does not explore in detail how other offences can be adequately captured by the Act, however we note our support for amending the definition of relevant offences to include all sexual offences in the common law, the Summary Offences Act 1966 (Vic) and the Crimes Act, without distinction as to subdivision.

The definition of 'injury' and the causation requirement

We recommend amending the narrow definition of 'injury' under the Act. To align with the changes to the definition of an 'act of violence' discussed above, **safe steps** proposes expanding the types of injury listed in the Act to include non-physical and psychological harms - including cumulative harm - commonly suffered by family violence victims and victims of sexual abuse.

safe steps notes that the requirement for victims to provide medical and psychiatric reports to prove injuries can often be challenging, and is a non-therapeutic process aimed at satisfying the requirements of the legal process. We support:

- changing the definition of mental injury to 'psychological or psychiatric harm', as it is defined in the NSW Act
- amending the Act to expand the category of injuries for victims of family violence and sexual abuse to encompass harms such as those recognised in ACT and QLD legislation; for example, a sense of violation, a reduced sense of self-worth, increased fear or feelings of insecurity, and reduced capacity to participate in sexual activity
- removing the requirement of proof of injury for victims of family violence and sexual abuse (as has been done in the Northern Territory) to remove the difficulties for these victims to prove causation – i.e. that their 'injury' was a 'direct result' of the violence suffered.

3. Assistance available

Improving collection, recording and publication of data

safe steps notes that applications for assistance under the Act in relation to family violence tend to be less successful than those made in relation to other criminal acts. We also note that there is limited data on the amount of financial assistance usually received by victims of family violence.²

safe steps would recommend that the Victims of Crime Assistance scheme improves the way it collects and records data. For example, it would be more beneficial if identification of family violence applicants was not based on self-reporting. Gaining an accurate picture of

² Victorian Law Reform Commission, *Family Violence and the Victims of Crime Assistance Act 1996*, Consultation Paper (June 2017).

the scheme's applicants and their journey through the process, including the awards they receive, will be crucial to any further evaluation of any changes to the award structure. Accurate and comprehensive data collection is important more generally to enable measurement of any amendments to the Act and the scheme.

Changes to Awards

"[The financial assistance was] grossly insufficient for the cost of housing relocation; repairing the property damage in the rental where we had lived as a so-called family; the additional child care costs so I could attend doctor, lawyer, court appointments; the medical consultations and medications; and the medical report writing..."

—Laura

On average, victims receive \$7784 in awards from VOCAT, which is one tenth of the total award maximum amount of \$70,000 available³, suggesting that the current award structure may not be adequately meeting the needs of victims.

It seems likely that if the eligibility criteria were amended as discussed above, some of the challenges currently faced by victims of family violence in relation to awards would be removed. For example, if the definition of primary victim is expanded, children who hear, witness or are exposed to violence will also be able to access special financial assistance under the Act.

We recommend the following changes to the Act, which should further improve access to awards for family violence applicants and benefit all victims:

- Revise the main categories of awards in the Act to better align with support of victims, to recognise a broader conception of 'violence' and reduce reliance on generous and discretionary judicial interpretations of existing provisions.
- Expenses to assist recovery should be available to all victims under section 8 and not only awarded in 'exceptional circumstances'; recognising that such expenses are beneficial for all victims.
- Section 8(4) should be amended to include expenses related to property loss or damage for victims of family violence. This would reflect the proposed expansion of the definition of 'act of violence'.
- Childcare expenses should be included in section 8 awards to ensure victims can plan for their safety and attend medical and counselling appointments.

³ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*, Supplementary Consultation Paper (August 2017), 79 [6.75].

- Define 'reasonable' in relation to expenses for counselling services or remove this requirement to ensure ensures that the focus is on the benefit to the applicant rather than a tangible improvement in health.
- In relation to interim awards, adopt NSW's approach of granting primary victims awards for immediate needs. This would require Victoria to shift to an administrative model of financial assistance (discussed below).
- More flexibility in evidence required to prove costs-incurred.

Greater flexibility in financial assistance awarded to meet victim needs

We received feedback from victims indicating that more a more flexible, tailored approach to expenses awarded under the scheme would better support victim's needs:

"We were given no say in whether we wanted this counselling or how much. I feel it would have been better to ask what we wanted or (had we) been able to spend the money on other therapeutic things not just straight counselling"

— Natalie

"Instead of a cash payment or a holiday... I asked the Tribunal to fund my out of pocket expenses for a Diploma in Community Services in which I was enrolled, as I believe and still do to this day, that course gave me the self confidence to be able to hold my head up high again"

— Yvonne

A more flexible approach acknowledges that not all applicants are alike and that their needs may change over time. This is the way Flexible Support Packages are administered to victims of family violence: case managers work with clients to ensure support is tailored to their specific needs.⁴

Recognising cumulative harm: amending related acts and categories of special financial assistance

As noted in the consultation papers and discussed in The Victorian Royal Commission into Family Violence (the Royal Commission), the persistent and protracted violence suffered by victims of family violence is not adequately taken into account by the current award structure in the Act.⁵

The categories of special financial assistance are based on the severity of a single offence. As an example, acts of violence covered by Category A include attempted murder and sexual penetration, Category B includes indecent assault and aggravated burglary, Category C

⁴ Department of Health and Human Services (Vic), *Program requirements for the delivery of Family Violence Flexible Support Packages* (2016).

⁵ Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016), vol 4, 78.

includes a threat of death or conduct endangering life, and Category D includes assault, threat of injury and deprivation of liberty. The maximum award possible under Category A is \$10,000 and the maximum under Category D is only \$650.

The related acts provision views a series of related criminal acts as a single criminal act if they 'occurred over a period of time and were committed by the same person or group of persons'. However, victims of family violence commonly experience purportedly 'less serious' acts of violence in the lower categories over a protracted period of time. As noted in both consultation papers, the practical effect of the existing categories and the related acts provision is therefore to disproportionately disadvantage victims of family violence by significantly reducing the awards available, unless they have been victims of criminal acts in the higher categories.

In order for the Act to recognise the cumulative harm suffered by family violence victims, and indeed victims of child abuse, elder abuse, and abuse of people with a disability, **safe steps** supports amending the categories of special financial assistance to mirror the approach taken by the ACT Act, as discussed at 6.183-4 of the Supplementary Consultation paper.⁶ This would require decision-makers to have regard to the nature of the crime and the severity of the totality of the harm suffered to victims when making an award.

Alternatively, we would recommend adopting the Tasmanian approach of setting a higher amount for the total financial assistance available for a victim of a series of related criminal acts.

4. Time limits for making an application

safe steps notes the discussion in the consultation papers around the issues caused for victims by the time limit requirements under section 29 of the Act. In particular, we agree that the time limits:

- create barriers for victims of family violence, victims of child sexual assault, victims of abuse or neglect in care, victims with disability and adult victims of sexual assault; and that other factors such as culture or ethnicity, socio-economic status or the victim's past interactions with authorities may also influence whether someone reports a crime within the time limits.
- fail to acknowledge the nature of the harm suffered by these victims and the difficulties they often face identifying and disclosing their abuse.
- restrict victims' opportunity to pursue compensation via other legal avenues like the Sentencing Act or via a civil trial before accessing VOCAT.

⁶ Victorian Law Reform Commission, above n 3, 95-6.

safe steps supports adopting a similar approach to that taken by the NSW legislation. We recommend removing time limits completely for the provision of information, victim support and referral services, as well as counselling to assist recovery, but maintain two-year time limits for financial loss and recognition payments, except for:

- victims of family violence
- victims of sexual assault who were children at the time of the offence

We also support increasing transparency of VOCAT decisions under section 29, as discussed in 7.51 of the supplementary paper.⁷ As touched upon above, **safe steps** supports improved collection and publication of data by the scheme more generally, to inform future reviews and provide guidance to applicants and their support workers or legal representatives.

5. Making an award

safe steps agrees that sections 52-54 of the Act currently operate to unfairly limit some victims from accessing awards. In particular, victims of family violence:

- are often unwilling or unable to report abuse to police due to fear, perceptions of shame, or economic disadvantage
- may have issues reporting to police within a 'reasonable time'
- may not meet the requirement under section 52(a)(ii) to provide reasonable assistance to police and prosecution
- may themselves have a criminal history, which can result in awards for financial assistance being refused by VOCAT on grounds of character.

Section 52 - Mandatory refusal of application

Removing requirement to report to police within a reasonable time

As discussed by the Commission, the requirement for victims to report acts of violence to police within a reasonable time under the Act is problematic in the family violence context for many reasons. One woman highlighted some of these issues to **safe steps**:

“psychological, emotional and financial abuse, you can't get a police report to submit with the application - especially as my case is across borders - QLD and Vic. Abuse doesn't recognise boundaries”

— Marcela

We note that there is currently limited guidance in the Act and in case law for decision-makers as to what constitutes a report to police, and that there are differing interpretations

⁷ Victorian Law Reform Commission, above n 3, 105.

of what is considered a 'reasonable' amount of time in the context of family violence. This results in significant uncertainty for applicants.

safe steps supports amending the Act to replace the requirement to report to police with a requirement to make a report to either police or other recognised agencies or professionals, including family violence services, doctors and social workers.⁸ This should apply to all victims accessing the scheme.

Removing requirement to provide reasonable assistance for some victims

Similarly, we recommend removing the requirement for victims of family violence to provide reasonable assistance to police and prosecution. This is to account for the challenges victims may face in cooperating with authorities due to the nature and complexity of the circumstances surrounding family violence. This might also apply to other classes of victims, such as victims of historical childhood sexual abuse, family violence, sexual assault and violence in care facilities.

Section 54 - Matters to which Tribunal must have regard

Under section 54, VOCAT has broad discretion to consider the character, behaviour or attitude of an applicant when making a decision about a victim's eligibility for awards. There is little guidance for VOCAT when considering these matters, which has led to inconsistent decision-making. Moreover, as noted by the Commission, the character consideration can often mean a victim's criminal history is used against them, although it has resulted from disadvantage and/or trauma associated with previous victimisation.

The consultation papers highlight the way that this can disadvantage victims of family violence, who often have more contact with the criminal justice system due to self-medication of mental health and trauma with drugs and alcohol, or being inaccurately identified by police as 'primary aggressors', particularly in situations where they have used violence in self-defence.⁹ Further, it was noted by the Royal Commission that a substantial majority of Victorian female criminal offenders had experienced family violence.¹⁰

Given the above, and the fact that the case law indicates that there is currently a tendency for community expectations of what constitutes an 'ideal victim' to inform decision-making, **safe steps** supports limiting considerations about a victim's character only to whether he or she was committing an offence at the time of the act of violence, or colluding with an alleged perpetrator (this is the approach taken in QLD and the Northern Territory). This would also

⁸ This approach has been taken in the ACT, NSW and QLD schemes.

⁹ Victorian Law Reform Commission, above n 3, 123.

¹⁰ Royal Commission into Family Violence, above n 5, vol 5, 239.

remove the 'contributory' conduct and 'provocation' considerations under section 54, which have the potential to result in victim-blaming.

Removing the perpetrator benefit provision

We also support the removal of section 54(e), which is particularly relevant in the family violence context. At present it may unfairly disadvantage these victims if they are still in a relationship with, or in contact with, an alleged perpetrator.

6. Review, variation and refund of awards

"The only downside was the 12 counselling sessions. It wasn't enough. I was told that I could apply for more, but in the end I didn't feel up to asking because I didn't want to have to beg for more and go through another process. I would like to see more sessions being granted at the start and less bureaucracy."

— Andrew

As discussed above, **safe steps** supports more flexibility and simplicity in the way financial assistance is awarded to victims under the scheme. Accordingly, in relation to variation of awards under VOCAT, **safe steps** would like to see changes to the scheme that do not require victims to repeatedly engage lawyers to vary existing awards if circumstances change; for example if victims require further counselling sessions. These issues should be partially resolved if Victoria adopts an administrative scheme.

7. Timeliness of awards, VOCAT hearings and evidentiary processes

A number of key themes arose during our consultation process regarding VOCAT processes. Victims reported substantial delays in their applications being finalised and in receiving awards, and they described the process as confusing and, in some cases, distressing.

"The paperwork was traumatizing and expensive. Like all other systems I was caught in, I had to do the research and case preparation which re-triggered me as I had to prove the crime and its consequences...my psychiatrist required immediate payment [for a medical report] and would not wait for VOCAT to decide if it would pay or not..."

— Laura

"The award for [counselling] didn't come to us until... 10 months after [my daughter's] death, and although we could attend counselling earlier than that in light of the fact that it would eventually be covered by VOCAT, it was all very confusing, as we had to get permission from VOCAT in regards to which counsellors we could go to."

— Natalie

“The...application is still in progress after commencing in June 2016 (that’s now 17 months and counting). This lengthy process has resulted in me ceasing trauma treatment because I cannot afford this essential care.”

— Laura

“The process is far too long, I gave up knowing how long it was going to take. My continued desire to achieve well-being was worth more than what I’d have been ‘maybe’ awarded.

A bit like leaving [domestic violence] really, the system is so flawed and full of more trauma inducing attitudes and procedures, it’s easier to stay, and try and work through it, for many people.”

— Lily

Timeliness

safe steps notes that VOCAT has reported an increase in the complexity of applications, particularly relating to family violence, and that many applications have proceeded to hearing due to their complexity, which causes further delays because the hearing process takes longer than when matters are decided ‘on the papers’.¹¹

The Commission notes some other reasons for delays that are relevant to family violence victims:

- VOCAT usually awaits the outcome of any criminal investigation, trial or inquest before finalising an applicant’s claim.
- More complex matters usually require more information, particularly where the alleged perpetrator has not been charged or convicted, or there is little corroborating evidence. Information is also sought from police to help determine whether a crime occurred, as well as the criminal history of the alleged offender and the victim. It also seeks information about a victim’s injuries via medical records or from police.

The effect of these delays on victims can be significant, particularly where they are awaiting financial assistance for urgent expenses, such as security upgrades and relocation, or for counselling. It is often during legal processes when the financial burden on victims is at its greatest and so delaying financial assistance until after the outcome fails to recognise this stress. As noted by the Commission and reported to **safe steps** during our consultation, time delays can deter victims from accessing the scheme, or result in them reaching a decision to quit the process.

¹¹ Victorian Law Reform Commission, above n 3, 143.

Evidentiary requirements

Feedback we received from victims about the difficulties they have had meeting the evidentiary requirements under the scheme support the assertion that family violence matters are complex and onerous for victims and decision-makers. In particular, proving that an act or acts of violence occurred in the family violence context can prove difficult as most incidents occur in private settings and there may be little evidence available to corroborate the victim's story. One woman explained her frustration around providing evidence that the perpetrator had breached a Family Violence Order:

"[I requested] that a security system be installed so evidence could be obtained – preventing victims continually being told 'it is your word against [theirs], there is nothing we can do"

— Yvonne

We also note that such difficulties would apply to other classes of victims, such as victims of childhood sexual abuse.

The current system requires victims to submit evidence to support their application within four months. The documentation required under the scheme includes reports from medical practitioners or psychologists to support the victim's claims that they have suffered an injury, a 'significant adverse effect' and 'distress'. As noted by the Commission, these reports are costly to obtain and have the potential to re-traumatise victims as their intended purpose is not therapeutic.

safe steps proposes transitioning to an administrative scheme that would see most of VOCAT's documentation and evidentiary processes undertaken by case managers, rather than by VOCAT. As noted by the Commission, administrative schemes remove some of the burden on victims of having to provide supporting documentation as decision makers are responsible for seeking documentation from police, institutions and medical practitioners. We envisage that this system would therefore result in more timely and efficient processes and reduce the pressure on the applicant to provide their own evidence.

In addition, Victoria could adopt a more flexible and less prescriptive approach to the evidence required of applicants, which would allow a broader range of supporting documentation, such as letters from support workers and medical practitioners, rather than formal medico-legal reports. This would be less costly for the scheme and help reduce re-traumatisation of victims.

If an administrative model is not implemented in Victoria, we would support the introduction of a specialised family violence stream within VOCAT. This could operate in a less formal manner, with procedural flexibility and a case management approach to processing claims similar to the Koori List. If Victoria maintains its judicial scheme or

introduces a hybrid scheme, we would support VOCAT-only magistrates with training in trauma-informed practice and family violence.

Hearings and perpetrator notification provisions

safe steps notes that only 25 per cent of VOCAT matters are determined via hearing. The majority are finalised “on the papers”. Whether or not a hearing occurs depends on preference of the applicant and if VOCAT decides it needs one.

Although VOCAT is less formal than a court and is not bound by the rules of evidence, much of its processes mirror that of the adversarial system. VOCAT must give a party to the matter a reasonable opportunity to call or give evidence, examine, cross-examine or re-examine witnesses and make submissions and section 34(2) states that 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, including the perpetrator of the violence.

As noted in the consultation papers, this is a discretionary duty and Tribunal members must first allow the applicant to be heard on whether or not the perpetrator should be notified. Members may decide not to call a witness to attend the hearing if doing so would adversely affect wellbeing of the applicant.¹² However, given that alleged perpetrators are more likely to be notified by VOCAT when the applicant has not reported the incident to the police or where there is little evidence to support an applicant’s claim, these provisions in the Act disproportionately affect family violence victims and victims of sexual assault and abuse.¹³

Two victims noted the impact these provisions had on them during their interaction with the scheme:

“I had an absolutely horrible experience with VOCAT in the mid to late 90’s as a result of family violence and abuse issues. It scarred me for quite a long time because they wanted to call the perp to a hearing, and I refused to allow this because I did not feel safe. So the application failed.”

— Andrew

“At first they said he would not be informed, then he was informed, then they said he would not be at the hearing, then they tried to bully me into attending the hearing despite the fact I would have to have been cross-examined by his barrister.”

— Julia

We agree with the Commission that these provisions are very problematic in the context of family violence. Even if perpetrator notification only occurs rarely, it may deter victims from accessing the scheme. Further, it raises safety concerns for victims and is likely to be re-

¹² Victorian Law Reform Commission, above n 3, 151.

¹³ Victorian Law Reform Commission, above n 3, 158.

traumatising for victims where it occurs. It is also at odds with the purpose of the scheme, which is about providing assistance to victims and aiding in their recovery.

safe steps recommends removing the perpetrator notification provisions entirely. We note the concerns raised by some that this would not allow perpetrators with procedural fairness if a significant finding is made against them in the matter; however, we note that VOCAT findings do not go on a perpetrator's criminal record, and submit that if VOCAT applications and supporting documentation are no longer admissible as evidence in criminal trials and other types of legal proceedings, such as matters relating to family law, procedural fairness will be less of an issue.¹⁴

Evidentiary and procedural protections for vulnerable victims

We support:

- Replicating the procedural and evidentiary protections in place in the Criminal Procedure Act and the Family Violence Protection Act for vulnerable victims in the VOCA Act.
- Including a guiding principle in the Act that 'in determining the procedure of hearings and the giving of evidence, VOCAT is to have regard to the fact that measures should be taken to limit the trauma, intimidation and distress suffered by victims when giving or hearing evidence'.

8. Awareness of accessibility of VOCAT

Accessibility of the scheme: revising the application form

safe steps supports revising the application form to be simpler, more accessible to victims and to capture the changes to the scheme, in particular to the definitions of victim, acts of violence and recognition of cumulative harm.

In addition, in order to acknowledge the diversity of victims, the form should be available in more languages other than English. We note that, although brochures for victims regarding aspects of the VOCAT process are available in Arabic, Chinese, Greek, Italian, Macedonian, Polish, Turkish and Vietnamese, the VOCAT application form is currently only available in English online.

This is an important step toward acknowledging that violence can often be experienced by people who experience multi-layered and intersectional aspects of disadvantage, and that access should be available to all members of our diverse and multicultural community.

¹⁴ VOCAT evidence is regularly subpoenaed for criminal proceedings and used to challenge credibility of a victim.

9. New Victims of Crime Assistance model

"I didn't want money out of my claim, I wanted psychological help, and I ended up worse off psychologically"

— Julia

"Although we were given a victim support worker, she was from Merri Health, not directly from VOCAT, and I remember it was confusing at the time of who we should contact about what, and what we should be applying for on the forms etc...let alone the fact that we were asked to do all this a month after my daughter had been murdered"

— Natalie

Didn't feel heard - "Not once was I asked by phone mail or in person how the crimes committed against my children and myself had affected our lives"...

"I would like to be given a voice, to be able to explain to the people making these decisions, how much of an impact the crimes committed have had upon my Childrens' and my life"...

"victims need to be given their voice back, and they need to be heard"...

— Yvonne

Financial assistance as part of victim support case management

Much of the feedback **safe steps** received in response to consultation around this submission emphasised victims' desire for support, certainty and to have their voice heard in the process. This is consistent with feedback **safe steps** receives in regard to any number of legal processes which those who have experienced family violence may encounter, including in proceedings within the Family Court. Noting that women and children who have experienced family violence may often be drawn into complex and expensive legal proceedings across a range of areas, there is an important opportunity to adapt the VOCAT process to be as therapeutic and ultimately victim-centric as possible.

As discussed previously in this submission, **safe steps** supports the transitioning of the VOCAT process to an administrative scheme. We note that as most applications are currently determined "on the papers", VOCAT is already effectively operating as an administrative system although it is technically embedded within a tribunal-based system. We support the proposal discussed in Chapter 15 of the Commission's supplementary consultation paper in which the financial assistance scheme provided under the Act is administered via case management as part of the victim support system, rather than through the Tribunal.

New decision maker: Victims of Crime Commissioner

Further, **safe steps** believes that decision making should be vested independent of government and the courts, in the Victims of Crime Commissioner, and bound by the *Victims' Charter Act* (2006). This independence is particularly important in light of the fact that the scheme is funded by government.

As the proposed model would closely mirror the Victims Support Scheme introduced in NSW in 2013, we recommend awaiting the findings of NSW's review into its scheme. This would ensure that Victoria could reflect upon lessons learned by NSW before finalising the detail of its own scheme.

Specialist training in victim needs and trauma-informed practice

The Royal Commission was consistent in its findings that professionals operating in workplaces that work with family violence victims and matters of family violence should receive specialist training conducted or informed by those with a lived experience of family violence. Consistent with this, only decision makers with specialist training and expertise in victim needs and trauma-informed practice should preside over victim compensation decisions or hearings. Ideally, case managers should also be legally trained so that they are able to provide the best advice to victims accessing the scheme regarding their options under the Act.

Retaining hearing option for victims

"[Attending the VOCAT hearing] was one of the pivotal moments in my family violence journey. I felt so affirmed and supported by the Magistrate's insight into my matter, she accepted my sworn written summary of the types of family violence I had experienced and the trauma this caused me and my 3.5 year old son. I had never felt believed by an authority figure until that day".

— Laura

As noted by the Commission and described to **safe steps** via our consultation process, a benefit of the current judicial scheme in Victoria for victims is the opportunity to tell their story and receive judicial validation and acknowledgement. While **safe steps** believes that the benefits to victims of having a case manager assisting them throughout the process is likely to outweigh the other problems posed by the current scheme and possibly remove the need for recognition via a hearing, we would support retaining a hearing option for victims if possible. To this end, we recommend a predominantly administrative system that maintains a hearing option for victims conducted by the Victims of Crime Commissioner. That way, victims could elect to have their matter heard in a formal setting if this was important to them.

Restorative justice options

In addition, to ensure the scheme is victim-centred, applicants should also have the option to participate in a restorative justice process. We note, however, that this should only be taken up by victims voluntarily, as such processes have the potential to re-traumatise victims.

Peer support workers

To further improve the experience of victims accessing the scheme, **safe steps** would recommend employing people who have been through the application process to support new applicants. This recommendation is based on feedback we received during our consultation process that peer support throughout the Victims of Crime Assistance process would be beneficial for applicants who have experienced family violence.

Outcomes of the new Victims of Crime Assistance scheme

safe steps believes that this new system would:

- Allow victims to feel supported and listened to through the process
- Better provide immediate financial assistance for victims, including safety and relocation expenses
- Allow a more holistic, flexible and tailored approach, particularly with regard to expenses to assist recovery, counselling, and whether they participate in a hearing or restorative justice option
- Reduce barriers for victims of crime by separating the process from the court system
- Reduce reliance on legal representation
- Remove some of the administrative burden on victims of having to provide documentation to support their application
- Increase transparency and the clarity of guidelines for eligibility
- Reduce inconsistent decision-making and outcomes for victims
- Free-up judicial resources and potentially reduce costs associated with the scheme.

Reforms relevant to purpose and objectives of the Act

safe steps also supports:

- Changing the purpose and objectives of the Act to focus on victim support, rather than 'recovery'.
- Changing the wording in the Act from 'special financial assistance' provisions to 'recognition payments'. This change would better reflect the intended purpose of these

awards as a symbolic gesture on behalf of the community and the state that recognizes harm caused to victims by crime.

- Increasing the amount of special financial assistance awarded so that 'recognition' payments more adequately recognise the harms caused by the overall impact of long-term abuse.
- Removing the reference to 'certain victims of crime' from section 1(2)(b).

9. Conclusion

safe steps welcomes the opportunity to provide comment on the Victorian Law Reform Commission's review of the Victims of Crime Assistance scheme. We believe that the changes we have recommended to the current scheme, if implemented, would result in a fairer, more therapeutic, accessible and efficient system for women and children experiencing family violence, and for all victims.

safe steps would be happy to provide further feedback in relation to the review if requested.

For further information, please contact Annette Gillespie, **safe steps** CEO at Annette.g@safesteps.org.au or ring (03) 9928 9622.

References

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