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The Hon. Philip Cummins AM
Chair
Victorian Law Reform Commission
www.lawreform.vic.gov.au

Thursday 24 August 2017

Dear Philip

Re: VLRC Consultation Paper on Family Violence and the Victims of Crime Assistance Act 1996

Thank you for seeking the comments of the Judicial Advisory Group on Family Violence (JAGFV) on the Victorian Law Reform Commission (VLRC) Consultation Paper on *Family Violence and the Victims of Crime Assistance Act 1996*.

At a recent meeting of the JAGFV meeting held on 27 July 2017 comments on the following issues were raised.

- Extension of eligibility for assistance to cover non-criminal acts of family violence
- The provisions covering 'related criminal acts'
- Form and timing of applications
- VOCAT hearings-notification of perpetrators
- Factors relevant to making an award
- Failure to provide reasonable assistance
- VOCAT awareness and accessibility.

Extension of eligibility for assistance

At our 21 June 2017 JAGFV meeting there was little support for expanding the operation of Victims of Crime Assistance Tribunal (VOCAT) to cover non-criminal family violence which causes financial or psychological injury. At our meeting on 27 July 2017 the same view was expressed. JAGFV was concerned such an extension would create anomalies, because no compensation would be provided for other psychological or financial harms not involving family violence (for example, non-criminal sexual harassment would not create an entitlement to compensation). Overcoming this anomaly by covering a broader range of non-criminal acts which cause harm could potentially swamp VOCAT with a very large number of claims. There was however some support for a special scheme to cover expenses incurred by family violence victims in obtaining psychological counselling in response to

non-criminal forms of family violence. This may be particularly important for children who have witnessed family violence, even if it does not include a criminal assault.

Related criminal acts

Members of JAGFV were critical of the anomalies which arise under the *Victims of Crime Assistance Act 1996*, because the combined effect of the definition of 'related criminal acts' in s4 and the categories which determine the amount of special financial assistance, is that a single serious criminal act may sometimes qualify an applicant for a higher level of special financial assistance than the amount payable to an applicant who has suffered family violence over many years (although under s 4(1) there is a discretion to treat criminal acts as unrelated in some circumstances). There was support for providing a higher amount of special financial assistance for persistent family violence, involving a series of criminal acts, possibly by incorporating persistent family violence into the highest category. Some members also expressed support for removing the statutory categories and leaving it to the discretion of VOCAT to determine awards up to a maximum amount.

Form and timing of the application

If the related criminal acts provisions are amended to deal with family violence, the application form will require redrafting (see also the comments on the application form in my letter of 10 July 2017).

Support was expressed for making family violence an explicit factor which must be taken into account, when exercising the discretion to accept a late claim.

Notification of perpetrators

The JAGFV supported the approach proposed in para 35 of the Summary, which would require listed safety factors pertaining to family violence to be taken into account when VOCAT is considering whether to notify an alleged perpetrator.

It was pointed out that about 70% of applications for intervention orders are now made by the police, which may make it easier for VOCAT to assess safety implications, if the police information is made available to the Tribunal.

Factors relevant to making an award

The JAGFV would support a provision requiring VOCAT to consider the nature and dynamics of family violence when considering whether the behaviour of the applicant (for example not notifying the police) should reduce the amount of the award.

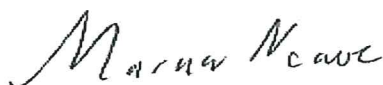
VOCAT awareness and accessibility

The Royal Commission into Family Violence recommended that family violence related matters be decided in specialist courts, which would hear among other things, VOCAT applications, as well as applications for intervention orders. Specialist courts could help to make victims of criminal family violence more aware of the availability of compensation under the *Victims of Crime Assistance Act 1996*. They would also help to ensure greater consistency in decision-making, particularly if VOCAT is given greater discretion in the areas discussed above.

Finally, members of JAGFV commented that the maximum amount of special financial assistance awards had not increased for a long time and that in some cases was grossly inadequate.

I hope that the VLRC finds these comments helpful.

With best wishes



THE HON MARCIA NEAVE AO

Chair of the Judicial Advisory Group on Family Violence