

31 October 2017

Our ref: D17/310292

Victorian Law Reform Commission
GPO Box 4637
MELBOURNE VIC 3001

Dear Victorian Law Reform Commission,

Review of the *Victims of Crime Assistance Act 1996*

Thank you for the opportunity to comment on the review of the *Victims of Crime Assistance Act 1996* (VOCA Act). The Office of the Victorian Information Commissioner (OVIC) administers the *Privacy and Data Protection Act 2014*, which is designed to protect all information held by the Victorian public sector, including personal information about individuals. I recognise the importance of the VOCA scheme in the wider restorative justice process, and would like to take this opportunity to highlight how privacy-enhancing measures can underpin the desired victim-centric reforms of the scheme.

The right to privacy is an enabling human right, necessary for the realisation of other human rights, including the right to life, the right to liberty and security of person, and the right to protection of families and children, all of which are enshrined in Victoria's human rights framework. The review of the VOCA Act raises a number of significant concerns relating to the safety and recovery of victims of crime. The protection of victims' privacy is an essential component in ensuring the future safety of victims seeking assistance under the VOCA scheme. As noted on page 183 of the Supplementary Consultation Paper (the Consultation Paper) the provision of financial assistance to victims of crime can facilitate their recovery through providing economic independence or access to therapeutic services. I am of the view that these outcomes can be greatly enhanced where the privacy of the victim has also been assured.

My comments specifically address Questions 49 and 50 of the Consultation Paper, relating to the current practice of the Victims of Crime Assistance Tribunal (VOCAT) notifying perpetrators or alleged perpetrators of a victim's hearing, under s 34(3) of the VOCA Act. This practice currently requires the VOCAT to balance the right of the perpetrator or alleged perpetrator to be notified, with the safety and protection of the victim.

While s 34(3) provides that the victim must be given the opportunity to be heard before the perpetrator or alleged perpetrator is notified, the guiding practice direction, *Practice Direction No. 4 of 2008 – Notification of Alleged Offenders and Third Parties* (Practice Direction), does not explicitly direct the VOCAT to consider the safety or privacy, of the victim in deciding whether to notify a perpetrator or alleged perpetrator of proceedings.

Under the current scheme, the potential for victims to be re-traumatised when seeking financial assistance is high, and the notification of the perpetrator or alleged perpetrator may deter applicants from making an appearance or pursuing an application for financial assistance. Additionally, where the privacy of victims cannot be assured, victims may be deterred from lodging an application for assistance entirely, such as victims of violent offences with a low-reporting rate (for example, sexual assault), for fear of additional contact with the perpetrator.

For these reasons, in response to Question 49, I recommend including a legislative presumption against perpetrator notification. Such a presumption would operate to favour the privacy and safety of the victim, unless it can be shown by the VOCAT that notifying the perpetrator is *both* necessary and proportionate on the facts. This approach would better protect victims' safety and privacy, and give them confidence to approach the VOCAT.

Falling short of an express legislative presumption against perpetrator notification, in response to Question 50, I would suggest the insertion of a threshold provision within s 34 of the VOCA Act, requiring the VOCAT to make an assessment whether the notification of the perpetrator or alleged perpetrator is, on balance, both necessary and proportionate. In the absence of guidance under the current Practice Direction informing the VOCAT's decision to notify perpetrators and alleged perpetrators, I envisage that this option would require the drafting of accompanying guidance, such as the inclusion of a decision-making framework for Tribunal Members in the Practice Directions.

I thank you again for the opportunity to make a submission to this review, and will be watching its progress with interest.

Yours sincerely,



Sven Bluemmel
Information Commissioner