

31 October 2017

The Honourable Phillip Cummins AM
Commissioner
Victorian Law Reform Commission
Level 3
333 Queen Street
MELBOURNE VIC 3000

Dear Commissioners,

**VICTIMS OF CRIME ASSISTANCE ACT
A SUBMISSION FROM THE
HUME RIVERINA COMMUNITY LEGAL SERVICE (HRCLS)**

1. The Hume Riverina Community Legal Service ("HRCLS) thanks the Victorian Law Reform Commission for the opportunity to provide a submission to the review of the Victims of Crime Assistance Act
2. We would like to acknowledge the importance of a state funded comprehensive victim support scheme and we believe it is vital that victims of violent crime can access counselling and practical and financial support in a timely manner to assist with their recovery.
3. While this submission focuses on areas for improvement, we acknowledge the role of the Victim Support Agency, the Victims of Crime Assistance Tribunal and the ongoing commendable work towards improving the lives of those impacted by crime in Victoria.

ABOUT HUME RIVERINA COMMUNITY LEGAL SERVICE ("HUME RIVERINA CLS")

4. HRCLS is uniquely positioned as a cross border community legal centre¹. Based in Wodonga on the Victorian/New South Wales border, the centre receives Commonwealth, Victorian and a small portion of New South Wales funding to provide generalist legal services to a vast catchment area of 17 Local Government Areas (LGA's) in North East Victoria and the Southern Riverina of New South Wales.
5. The Victorian catchment area encompasses 7 LGA's being Wodonga Council, Wangaratta Rural City Council, Towong Shire, Mansfield Shire, Indigo Shire,

¹ Murray Mallee Community Legal Service is the only other cross-border community legal centre in Victoria.



Benalla Rural City and Alpine Shire. This covers towns such as Wodonga, Wangaratta, Benalla, Mount Beauty, Myrtleford, Bright and Corryong.

6. Services provided include legal advice and casework assistance with family law issues (child contact, property disputes, child support and spousal maintenance), family violence, victims of crime assistance tribunal (VOCAT) applications, child protection, credit and debt problems, fines, motor vehicle accidents, criminal law issues, consumer law issues, neighbourhood disputes, wills and estates, employment issues and tenancy issues.
7. Hume Riverina CLS focuses on assisting disadvantaged people who are not eligible for legal aid, yet cannot afford to pay for a private lawyer.
8. The clients assisted by our service are very often also victims of violent crime. The majority of these clients are vulnerable with a range of complex legal and non-legal needs. Many of our client are significantly affected by their experiences of violence, whether this be in the context of family violence, child sexual assault or other violent crimes compounding their issues, including mental health, drug and alcohol dependence, involvement with the child protections system or other such impact.
9. Matters involving family violence make up a large percentage of our work at Hume Riverina CLS. In the 2015/2016 year 38% of our cases opened were in relation to family violence protection orders.
10. Overall, however, a larger number of clients consulting our service disclosed that family violence was a factor in relation to their legal problem (whether that legal problem related to intervention orders, family law, credit and debt issues, housing issues or other legal issues). 55% of the clients we provided casework assistance to in 2015/2016 had family violence indicators and family violence was the second highest legal problem we provided advice on.

SUMMARY OF RECOMMENDATIONS

11. In summary we recommend:

- 11.1. The victim categories should be amended so that children who are exposed to, or witness, family violence are included as primary victims
- 11.2. The definition of an 'act of violence' should be expanded to include the definition of family violence under the *Family Violence Protection Act 2008*

- 11.3. Remove the requirement to prove an 'injury' when the act of violence is of a sexual nature, including child sexual assault, or in circumstances of family violence, including child abuse
- 11.4. Provide clear legislative guidelines regarding factors a Tribunal member must take into account when making a determination for assistance in 'exceptional circumstances' and what is a 'reasonable expense'
- 11.5. Victims of related offences as a result of family violence should be eligible for a Category A offence
- 11.6. We support the removal of a minimum or maximum amount for categories of Special Financial Assistance, and recommend that the maximum amount to be adopted in each circumstance
- 11.7. Time limits should be removed for victims of childhood sexual assault, child abuse, sexual assault and family violence.
- 11.8. That Victoria should adopt a similar approach to Queensland, taking into consideration why not all victims report crime, with a category of victim that does not need to report the matter to police, being 'special primary victims' which include children, persons with impaired capacity, victim of a sexual offence or an act of domestic and family violence, a victim of an offence committed by a person in a position of power and/or trust over them or a victim being threatened or intimidated by the person who committed the violence, or by someone else. We would also recommend that the 'special primary victim' category be extended to include Aboriginal and Torres Strait Islander people and people from CALD backgrounds. A special primary victim must still report the crime but they may report it to a doctor, counsellor, psychologist or specialist worker.
- 11.9. That the victims who fall under the 'Special Primary Victim' Category be exempt from providing reasonable assistance to police to be eligible for assistance from VOCAT.
- 11.10. That there be a legislative presumption against perpetrator notification, especially when the act of violence is sexual in nature or the perpetrator is a family member or committed family violence
- 11.11. There should not be a limitation period for a variation providing victims can prove a direct link between their need for assistance and the act of violence

- 11.12. The fees for counselling be reviewed and there be consistency between VOCAT fees and private practice fees.
- 11.13. That there should be discretion for interstate applicants to file in the Registry closest to their residential address.
- 11.14. That funding should be allocated to community legal services for the purpose of promoting and providing community education for services available for victims of crime, in particular the VOCAT process
- 11.15. We support funding for community legal services to provide services directly to the clients of regional VAP services through a health-justice partnership.

THE VICTIM CATEGORIES

12. We submit that the victim categories should be amended so that children who are exposed to, and witness, family violence are included as primary victims. It is well recognised that children exposed to family violence are at greater risk of developing emotional, behavioral, social and educational problems. It is submitted that by including children victims of family violence as primary victims it would better recognise the significant adverse effects experienced or suffered by them as victims of crime and if adequate assistance is provided, as primary victims, at the earliest opportunity it may assist to break to cycle of the long-term effects of trauma on children.

THE DEFINITION OF AN 'ACT OF VIOLENCE'

13. For many women and children who experience family violence the trauma-related injuries are significant and ongoing. We are regularly approached by clients with high needs, suffering significantly from the trauma they have experienced as a result of being subjected to behaviors that constitute 'family violence' under the *Family Violence Protection Act 2008*, but these behaviors are not sufficient to meet the criteria of a 'act of violence' to enable them to seek assistance from the Victims of Crime Assistance Tribunal.
14. We submit that the definition of an 'act of violence' should be expanded to include the definition of family violence under the *Family Violence Protection Act 2008*.

THE DEFINITION OF INJURY

15. The need for victims to establish an 'injury' as defined in the Act is prohibitive for many victims of crime and we submit that this raises barriers, especially for

victims of crime living in regional and remote Victoria. To be eligible for assistance a victim must prove either a physical injury or psychological injury. In the absence of a physical injury victims are required to submit a report from a psychologist, psychiatrist or other medical practitioner to prove a psychological injury.

16. VOCAT was established to acknowledge and provide financial assistance to victims of crime committed in Victoria and to assist them in their recovery from crime². It is vital that victims do not suffer more harm whilst accessing supports from VOCAT resulting in system-induced trauma. The need to attend upon a psychologist to prove an 'injury' for those who are not ready to access counselling or who have supports in place that are not approved by VOCAT may result in further harm, rather than assist with recovery.
17. As well as the impact on the victim there are also practical considerations in proving a psychological injury. Our service is aware of the considerable wait lists and difficulties faced by those in the Hume region, including Mansfield, Benalla, Wangaratta, Myrtleford, Bright and Wodonga, accessing VOCAT approved psychologists due to a high demand and lack of available services in the area. It is further submitted that there are very few psychologists working in the Hume region that will provide a report and then continue therapeutic treatment on the basis of VOCAT funding. In our dealings with psychologists it is reported that the fee funded by VOCAT for both the report and ongoing counselling is significantly lower than their usual rate. Pursuant to Guideline No 2 of 2017 the current hourly rate for a registered psychologist is \$160, being significantly lower than the usual hourly rate.
18. In the Hume region psychologists already have wait times for initial appointments, often being 6-8 weeks due to high demand and accordingly there is little if any incentive for them to undertake VOCAT funded counselling when the current rate is less than they can achieve elsewhere. This results in victims of crime in regional areas being disadvantaged by lengthy delays in finalising their VOCAT matters and then if an award is made, difficulties in obtaining the services they need to recover, despite an award being made.
19. We recommend that the fees for counselling be reviewed and there be consistency between VOCAT fees and private practice fees.
20. It is noted that related victims do not need to prove they have sustained an injury in order to be eligible for an award of distress as there is a recognised presumption that losing a loved one results in trauma related mental illness. We believe that presumption should be extended to victims of particularly traumatic acts of violence.

² VOCAT Website, <https://www.vocat.vic.gov.au/about-tribunal>

21. We submit that for an act of violence that is of a sexual nature or in circumstances of family violence there should be a presumption that the act of violence resulted in a psychological injury, being grief and stress and therefore the victim is not required to obtain a report from a psychologist to be eligible for assistance.

QUANTUM OF AWARDS

22. The HRCLS is of the view that the current maximum of financial assistance available under the Act

ADDITIONAL AWARDS TO ASSIST RECOVERY AND THE NEED FOR 'EXCEPTIONAL CIRCUMSTANCES'

23. Since the introduction of the Victims of Crime Assistance Act in 2006 we have seen a conservative shift regarding the interpretation of 'exceptional circumstances' by Tribunal members, resulting in victims receiving far less than victims in similar situations in the past.
24. Furthermore, we are also aware of discrepancies in awards made under this category dependent upon the Tribunal member who determines the application. There is no legislative guidelines to assist Tribunal member when making a determination as to what is a 'reasonable expense' when the test for exceptional circumstances has been met.
25. This gives rise to victims becoming aware that those in a similar circumstance to themselves received a very different award. The danger with this is it may result in victims feeling less worthy or cause more harm to their recovery.
26. We submit that there is a need for equity and consistency in awards made. There should be more onus on Tribunal members to clearly summarise their reasoning for decisions.
27. It is submitted that there should not be a limit for recovering expenses in 'exceptional circumstances', but there should be clear legislative guidelines regarding factors a Tribunal member must take into account when making a determination for assistance in 'exceptional circumstances' and how they determined was is a 'reasonable expenses'. This would assist victims and provide clarity on what they might be able to claim

LIMITATIONS OF THE SPECIAL FINANCIAL ASSISTANCE PROVISION

Recognising cumulative harm

28. The HRCLS is of the view that the special financial assistance formula does not appropriately recognise the harm caused to victims of sexual related

offences and victims of family violence, nor does it adequately address the significant trauma of ongoing violence or the practical costs associated with fleeing a violent relationship.

29. For many of our clients who have been subjected to pervasive and ongoing family violence over a significant period of time they are only eligible for a Category D payments of \$650, being an assault against the person. At times we may be able to obtain an uplift to a Category C when the violence has been ongoing, however, this is dependent upon whether they have reported the previous offences. These victims have often endured years of belittling, abusive, control behaviours that have crushed their self-esteem and left them with ongoing trauma related issues. Often, they have also had to flee their home, with little or no belongings and re-establish themselves and their children. Despite this, the narrow focus on the criminal act itself precludes them from obtaining any real monetary assistance that could assist them to rebuild their lives.
30. We recommend victims of related offences as a result of family violence should be eligible for a Category A offence.

CASE STUDY:

Mary (not her real name) was from a non English speaking country. She moved to Australia at the insistence of her Husband, they were in a relationship for 6 years and had one child together. Her husband committed family violence throughout the six year relationship, however Mary did not report this as she feared for her safety and believed her Husband would have her sent back to her birth country. Her Husband assaulted her in 2016 and she was taken into refuge. She was seven months pregnant at this time.

She made a statement to police about the last incident, her Husband was charged with reckless causing injury and convicted. Despite six years of ongoing verbal threats, physical assaults, financial abuse and overall control and coercion Mary was only eligible for Special Financial Assistance of Category D (being an offence that involved an assault against the person), with an uplift to a Category C as a result of being the victim of related criminal acts of violence. She received Special Financial Assistance of \$1,300.

She was forced to relocate with her three young children, leaving behind her support network. She is a single mother, English is her second language and she is trying to recovery from the trauma of six years of relentless abuse. She had to rebuild her life, including all new furniture, white goods and belongings.

Acknowledging experiences of vulnerable victims

31. It is also highlighted in our work with vulnerable clients that their reaction to a violent crime, and their ability to recover, is very often far more significant than those who do not have the same barriers as many of our clients face. The current formula focuses purely on the offence committed, not the victim to whom the crime was committed against.
32. We submit that the Special Financial Assistance formula does not go far enough to support and recognise each victim's unique experience of crime and their personal recovery.
33. We submit that providing consistency for victims of crime is vital for their recovery. The present system does not require an explanation regarding why a maximum amount was not prescribed, this may cause unnecessary harm to a victim and leave the victim feeling they were less worthy than others who had experienced the same crime.
34. We support the removal of a minimum or maximum amount for categories of Special Financial Assistance, and recommend that the maximum amount to be adopted in each circumstance.

TREATMENT OF 'RELATED CRIMINAL ACTS'

35. The current legislation discriminates against women subjected to family violence by limiting assistance provided to these victims by treating all the violence committed against them as one 'act of violence' pursuant to section 4 of the Act.
36. It is well documented that the harm caused by family violence is more pervasive and broader than harm attributed to a single act of violence. Family violence is usually a pattern of abuse that involves control and coercion by a close family member, committed over a period of time. It is submit that victims subjected to this level of pervasive family violence may require more substantial support to assist with their recovery than those of one instance of violence and that this should be reflected in the Act. The impact of family violence of women and children is all encompassing, it affects all aspects of their life including their financial security, housing, social connections as well as their emotional and mental wellbeing.
37. The HRCLS recommends that Category A payments should be available to victims of ongoing family violence

TIME LIMITS FOR MAKING APPLICATIONS

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38. Currently there is a two year time limit when making an application to VOCAT pursuant to s29 of the Act, or within two years of turning 18 for child victims. There is no specific exceptions for certain victims of crime, including child sexual abuse and family violence. In NSW there are no time limits for victims of sexual assault who were under 18 at the time of the offence. Further, victims of sexual assault and family violence have ten years from the act of violence to claim recognition payment in NSW.
39. Given what we know about the nature of family violence and sexual assault, and the substantial impact on victims, we believe the time limits have the potential to discriminate against women and children experiencing family violence and victims of childhood sexual assault
40. We recommend that time limits be removed for victims of childhood sexual assault, child abuse, sexual assault and family violence.

REQUIREMENT TO REPORT TO POLICE WITHIN REASONABLE TIME

41. It is noted that the Tribunal must refuse an application if the act of violence was not reported to police within a reasonable time. We acknowledge that the Tribunal will consider whether special circumstances existed which hindered the victim reporting the act of violence at an earlier stage, however, we do not believe this goes far enough.
42. The Act does not take into account that most incidents of family violence and sexual violence are not report to police for a variety of valid reasons, including the fear of not being believed and a lack of trust that the criminal justice system will deliver the desired outcome. It is also well reported that children who are sexually abused are hesitant to report the abuse due to a fear of family breakdown that they perceive is their own doing⁴.
43. There is also the potential for Aboriginal and Torres Strait Islander Communities and those form CALD communities to be further discriminated against due to their hesitation to report to police. The Australian Institute of Criminology reports that 90 per cent of violence involving Indigenous Australians is not reported, leaving victims unable to get the help and support they need⁵, so while Aboriginal and Torres Strait Islander people are being subjected to violent crimes at significantly higher rates than non-Indigenous people, they are often unable to access supports provided to non-Indigenous people.

⁴ Australian Institute of Family Studies, <https://aifs.gov.au/publications/adult-victimsurvivors-childhood-sexual-assault>

⁵ Australian Institute of Criminology website, http://www.aic.gov.au/crime_types/in_focus/indigenousjustice.html

44. We are of the view that Victoria should adopt a similar approach to Queensland, taking into consideration why, with a category of victim that does not need to report the matter to police, being 'special primary victims' which include children, persons with impaired capacity, victim of a sexual offence or an act of domestic and family violence, a victim of an offence committed by a person in a position of power and/or trust over them or a victim being threatened or intimidated by the person who committed the violence, or by someone else. We would also recommend that the 'special primary victim' category be extended to include Aboriginal and Torres Strait Islander people and people from CALD backgrounds. A special primary victim must still report the crime but they may report it to a doctor, counsellor, psychologist or specialist worker. We submit that this approach adequately supports the needs of victims whilst ensuring State funds are being spent appropriately.

REASONABLE ASSISTANCE TO POLICE AND PROSECUTION

45. Pursuant to section of the Act the Tribunal must refuse an application when the applicant failed to provide reasonable assistance to any person investigating the act of violence, in the arrest or prosecution of any person by whom the act of violence was allegedly committed unless the Tribunal considers that special circumstances exist.

46. As with the requirement to report to police, we submit that this excludes many victims, especially victims of offences of a sexual nature, child victims, victims of family violence and victims from CALD and ATSI communities.

47. We submit that the 'Special Primary Victim' Category suggestion at paragraph 44 above be exempt from providing reasonable assistance to police to be eligible for assistance from VOCAT.

CHARACTER AND BEHAVIOUR CONSIDERATIONS

48. We submit that by having regard to a victims past behaviours and characters, regardless of whether such behaviour was in any way linked with the act of violence giving rise to the application, unfairly disadvantages specific people within our community. It is well documented that those from CALD communities and Aboriginal and Torre Strait Islander communities are statistically more likely to come in contact with police and the court system.

49. Further, those who have complex needs, such as people with mental health issues, previous victims of crime, people with drug and alcohol problems or those that find themselves homeless, are also more likely to have had dealings with the police and criminal justice system in their lives. Their ability to access supports to overcome the trauma of being the victim of crime should not be hindered by circumstances that they have had little or no control of in the past.

AMENDING THE VARIATION WINDOW

50. It is submitted that the need to assist victims of crime does not have an expiry date. Each victim's recovery is unique dependent upon their own circumstances. It is submitted that an arbitrary time limit does not take the uniqueness of each person's individual circumstances into account and may result in victims being discriminated against, or some victim not recovering resulting in not only their own personal ongoing trauma but ultimately further costs to the State. Provided the victims can adequately prove a link between their current need for assistance and the act of violence we submit that there should not be a limitation as to the variations being sought.

PERPETRATOR NOTIFICATION AND RIGHT TO APPEAR

51. It is submitted that just the mere thought of a perpetrator being notified or invited to participate in a hearing is enough deterrent for many genuine, legitimate victims of crime to not make an application.
52. We support a legislative presumption against perpetrator notification, especially when the act of violence is sexual in nature or the perpetrator is a family member or committed family violence.

INTERSTATE APPLICANTS/ KOORI APPLICANTS

53. As a cross-border service we are regularly approached by individuals facing issues as a result of varying state legislation. Our clients regularly relocate from one border town to the other. Currently, a victim of crime who lives outside of Victoria must file their application with the Melbourne Registry. Accordingly, for victims who have relocated 5 minutes from Wodonga to Albury they cannot file in their local Court. This places an unnecessary burden on them and may result in them having to travel from Albury/Wodonga to Melbourne for hearings or to have their matter finalised.
54. Likewise, for applicants who identify as Aboriginal or Torres Strait Islander their application must be lodged in Melbourne as part of the Koori List. Whilst we acknowledge the benefit of being able to collect data regarding Koori applicants and ensuring the process is culturally sensitive, we submit that Applicants should have the right to opt out of the List and have their application heard in the Tribunal closest to them should they wish to.
55. It is submitted that there should be discretion for interstate and Koori applicants to file in the Registry closest to their residential address.

AWARENESS OF VOCAT AND ACCESSIBILITY

56. Currently, there is very little public knowledge about VOCAT or its eligibility requirements, especially in regional and rural Victoria. There is significant onus on the Victims Assistance Program and Victoria Police to ensure that all victims of crime are aware of their rights regarding the VOCAT process. The Hume Riverina Community Legal Service has found many clients who are unaware of their right to seek assistance through the Victims of Crime Assistance Tribunal. They are unaware of the existence of financial support in Victoria. Often, when they do become aware, the two year time limit has expired. The Act expressly states that “The Tribunal must not decide to further hear and determine an application made out of time only because the applicant was unaware of this Act”. Therefore, due to no fault of their own, a victim may be refused assistance simply because no one had informed them of their right to make an application.
57. It is assumed when a victim reports a crime against the person to Victoria Police that Victoria Police will make a referral to the Victims Assistance Program. This presumption is flawed for a number of reasons. It is the role of the Victims Assistance Program to provide timely information and referrals so that victims of violent crime are aware of their rights, including their right to make an application to the Victims of Crime Assistance Tribunal
- 57.1. The referral is voluntary. If the victim does not consent to the referral it cannot be made. Making a report to police is a highly stressful, traumatic experience for many women and children escaping family violence. Their priority and focus is their immediate safety. Their ability to retain information and make choices is severely inhibited by their heightened anxiety and stress. If they decline the referral they potentially would ‘fall through the gaps’ so that they do not receive the state funded support and assistance of the Victims Assistance Program.
- 57.2. Not all police make the referral. There is a need for ongoing training and support of Victoria Police to ensure referral pathways are consistently being made. It is submitted that making a referral to Victims Assistance Program a mandatory task when investigating a crime against the person would assist to ensure more victims of crime are aware of their rights.
- 57.3. Not all Victims report the crime. Above we discussed the issues around non reporting, if victims have not reported a crime they would not be referred to the Victims Assistance Program
- 57.4. Many victims of family violence are referred to a specialist family violence service instead of the Victims Assistance Program
58. It is submitted that community education is required to better promote VOCAT within the community. Community legal services are well placed to deliver this education to the community. They are well trained, have strong networks and relationships built in the local communities and are trusted by the community,

in particular CALD and Aboriginal communities, as a result of years of working within these communities. Community legal services have established relationships with health organisations, with a growing number of health justice partnerships emerging across the state. These partnerships are instrumental at promoting VOCAT amongst health professionals and others who work closely with victims of crime in settings outside the usual legal pathways.

59. We submit that funding should be allocated to community legal services for the purpose of promoting and providing community education for services available for victims of crime, in particular the VOCAT process.

INTEGRATING STATE-FUNDED FINANCIAL ASSISTANCE WITH VICTIM SUPPORT SERVICES

CASE STUDY:

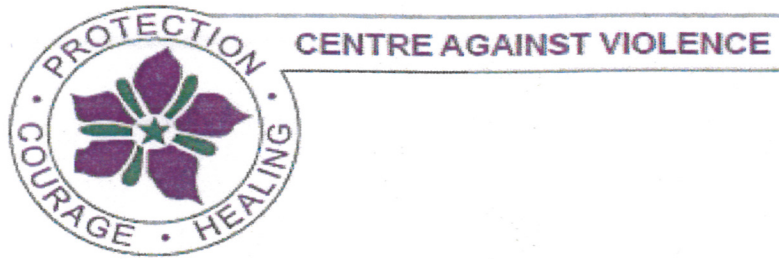
A woman who was in refuge as a result of family violence attended upon a lawyer at the specialist family violence service for the purpose of a VOCAT Claim to assist with safety related expenses, including security cameras and alarms.

During the initial interview the lawyer identified that the woman required advice and assistance in relation to registering an intervention order interstate and obtaining parenting orders regarding her two children. The woman was able to obtain this advice quickly, without the need to retell her story.

60. There is merit in streamlining the VOCAT process so that victims of crime are not continually traumatised by having to retell their story to victim support workers, lawyers, psychologists and potentially Tribunal members. We support the notion of integrating state-funded financial assistance with the Victims Assistance Program.
61. We submit, however, that lawyers have a vital role in the current system. Many victims of crime are vulnerable with a multitude of needs, when they attend upon a lawyer for the purpose of assistance with their VOCAT application there are often other legal issues that are identified during this process.
62. The benefits of lawyers working in partnership with non-legal services are well documented. The HRCLS currently operates several health justice partnerships with local organisations so that clients get legal as well as other support that they need.
63. One such partnership is with the local specialist family violence service, the Centre against Violence, funded by the Department of Justice and Regulation.

This program employs a lawyer to provide advice and casework to victims of family violence at the Centre against Violence, along with providing legal education and support to workers at the service. During the time this program has been in operation the lawyer has assisted clients on a range of issues, including VOCAT, family violence, family law and debts and infringements.

64. We support funding for community legal services to establish a partnership with the regional VAP services and provided advice and casework directly to the client's that access that service. This would ensure strong relationships between lawyers and victim support workers, streamlining the services of victims while ensuring all the legal needs of a victim, who are often vulnerable and facing a range of complex issues, were being addressed.



31 October 2017

The Honourable Phillip Cummins AM
Commissioner
Victorian Law Reform Commission
Level 3
333 Queen Street
MELBOURNE VIC 3000

Dear Commissioners

Hume Region Community Legal Service (HRCLS) is an organisation we, the staff of Centre Against Violence, work with through a very close partnership to ensure that victims of family violence and sexual assault are provided with strong legal support at key points in their journey from risk to recovery.

We have read their submission to the Victorian Law Reform Committee into the Victims of Crime Assistance Act and seek to provide our endorsement of their work. It is work we regard as a strong and relevant form of advocacy that has the capacity to improve responses to victims of crime in the State of Victoria.

Kind Regards

Kerry Burns
BSW (Hons) GAICD

