

The Hon P D Cummins AM
Chair
Victorian Law Reform Commission
GPO Box 4637
Melbourne, Victoria 3001

Initially via email law.reform@lawreform.vic.gov.au

31 October 2017

Dear Mr Cummins,

Submission to the review into the Victims of Crime Assistance Act

Women's Legal Service Victoria and Domestic Violence Victoria welcomes the opportunity to contribute to the Victorian Law Reform Commission's review.

Victims of crime assistance (VOCA) schemes have the potential to play a powerful role in recovery processes for family violence victims. However, Victoria's VOCA system was developed to respond primarily to one-off stranger based crime and does not respond adequately to circumstances of family violence.

Please find attached a joint submission which includes 22 recommendations for reform.

Yours sincerely,



Helen Matthews
Director – Legal and Policy
Women's Legal Service Victoria



Fiona McCormack
CEO
Domestic Violence Victoria

Acknowledgements

We would like to thank and acknowledge the brave and resilient women who agreed to be interviewed for this submission so that women's voices could be heard.

Women's Legal Service Victoria would also like to thank and acknowledge pro bono partners Colin, Biggers and Paisley lawyers and Baker & McKenzie. Lawyers from both firms have been taking on clients over the past year as part of WLSV's VOCAT project – Rebuilding Strength. We would also like to acknowledge and thank VOCAT advisory group members who have been providing their valuable time to assist with the project.

Domestic Violence Victoria would like to thank its members for their contribution to this submission and their participation in the consultation workshop with the Victorian Law Reform Commission.

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List of Abbreviations

| | |
|--------|--|
| ALRC | Australian Law Reform Commission |
| CALD | Culturally and linguistically diverse |
| CLC | Community Legal Centre |
| DV Vic | Domestic Violence Victoria |
| FSP(s) | Flexible support package(s) |
| LGBTQI | Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex. |
| SFA | Special Financial Assistance |
| VLRC | Victorian Law Reform Commission |
| VOCA | Victims of Crime Assistance |
| VOCAA | Victims of Crime Assistance Act 1996 |
| VOCAT | Victims of Crime Assistance Tribunal |
| WLSV | Women's Legal Service Victoria |

1. Executive Summary

Women's Legal Service Victoria (WLSV) and Domestic Violence Victoria (DV Vic) have collaborated to produce this submission on the Victorian Law Reform Commission (VLRC) on the review of the *Victims of Crime Assistance Act 1996* ("the Act") as it pertains to family violence.

It is easy to recognise that, in its current form, the Act is not fit for purpose in relation to assisting survivors of family violence. As has been identified in the consultation paper, the Act was written at a time when family violence was not fully understood. Proposals for reform outlined in this submission will substantially assist the Act to be more responsive to adult and child survivors of family violence.

The submission reflects critical analysis of the key issues raised in the consultation paper, learnings from WLSV's VOCAT project *Rebuilding Strength* (refer p. 12 below for further information) consultation with DV Vic's members, and interviews with survivors of family violence.

Overall, 22 recommendations for legislative reform have been made:

Recommendation 1: A new model

A new and reformed Victims support system should move to an administrative model, with one of two options:

- a. Opt-in to a judicial hearing for a recognition payment (WLSV preferred), or
- b. Opt-in to a symbolic hearing (DV Vic preferred).

Administration of the system to be underpinned by a victim support case management trauma informed approach, managed by a fully funded specialist government agency with a specialist team of decision makers and case managers trained in family violence.

This recommendation is subject to the safeguards listed at page 16, in particular fully funded independent legal advice and assistance, and the subsequent recommendations contained herein.

Recommendation 2: Expand the definition of 'act of violence'

It is recommended that the definition of 'act of violence' in the Act is expanded to recognise family violence as defined in the *Family Violence Protection Act 2008* (Vic).

Further, it is recommended that the definition of 'act of violence' be expanded as it pertains to family violence to fully encompass the ongoing, patterned nature of family violence (rather than as a series of one-off and/or unrelated incidents or acts), and that this be reflected throughout the victims of crime assistance scheme, including in application forms; making, timing and quantum of awards; and award categories.

Recommendation 3: Expand the definition of 'injury'

Expand the definition of 'injury' in the Act as it pertains to family violence to acknowledge that psychological injury caused by family violence is broader than the Act's definition of 'mental illness or disorder'. Further, it is recommended that the definition of 'injury' take as a given that survivors of family violence will have experienced psychological injury as a direct result of the family violence,

regardless of whether the act of violence is physical or non-physical, criminal or non-criminal, or whether there is medical evidence available to support this. The expansion of the definition of injury should recognise the cumulative harm of family violence as distinct from that of one-off incidents of violence.

Recommendation 4: Recognise children and young people as primary victims of family violence

Include children who have experienced family violence perpetrated by their father against their mother in the category of primary victim, making them eligible for awards within this category.

Recommendation 5: Enable joint applications for women and their children

Child victim applications to be considered alongside any application for a parent. Child victim applications should be considered on the basis of the allegations and evidence brought by an adult or parent on their behalf.

Recommendation 6: Expand the definition of secondary victim to include kinship relationships.

Within Indigenous and other collective cultures in Australia, familial relationships, connectedness and closeness extends beyond the standard family members recognised by European Australian culture. People who are recognised as kin to Aboriginal Australians should be subject to secondary victim provisions of the Act.

Recommendation 7: Amend the Act to create one expenses award category

The category should not be strictly prescribed.

Recommendation 8: Exclude family violence from the 'related criminal acts' provision

Family violence matters be excluded from the 'related criminal acts' provision. Section (s4) should not operate to reduce the quantum of the award in family violence related applications.

Recommendation 9: Introduce a recognition payment

The special financial assistance award should be replaced with a recognition payment that is not prescribed by categories, and amount payable in recognition of the harms experienced by victims of crime should be increased overall.

Recommendation 10: Update the application form to be consistent with other reforms that recognise family violence as ongoing and causing cumulative harms

The application form should be accessible online and in hardcopy in plain English and a range of community languages and allow for user testing and evaluation by victims prior to implementation.

Recommendation 11: Allow for a broader range of evidentiary materials.

Evidentiary materials and supporting documents allowed should include medical or psychological reports, intervention orders, family court orders, copies of family violence risk assessments, and/or statutory declarations detailing the history and impacts of violence from the victim herself as well as other supporting friends or family members, case workers and other relevant professionals.

Recommendation 12: Remove time-limit for applications made for cases of family violence and sexual assault

This includes for both child and adult victims, including victims who were children at the time when the violence and abuse occurred.

Recommendation 13: Remove requirements for perpetrator notification from the legislation.

Ensure that applicants are fully informed that perpetrators will not be involved in the process whatsoever

Recommendation 14: Victims of crime assistance scheme records are protected.

Documents should not be subject to subpoena in other matters involving a family violence victim and a perpetrator.

Recommendation 15: Exempt family violence applications from requirement to report and/or assist to police.

Family violence related applications should not be rejected in the absence of a police report or criminal prosecution, or in circumstances where the applicant has been unable to provide reasonable assistance to police. Applications for compensation should accept that victims of family violence make reports of violence to other bodies and agencies, and that consideration be given to other forms of evidence and supporting materials from relevant professionals and the victim herself.

Recommendation 16: Family violence matters be exempted from mandatory refusal requirements

The current provisions for mandatory refusal under sections 52 and 54 unfairly disadvantage survivors of family violence and do not adequately reflect the nature of the experience of family violence.

Recommendation 17: Generous award of expenses for counselling

Insert provisions into the Act that allow applications by survivors of family violence to vary rewards to be simplified, including giving consideration to contingency award options for additional counselling to avoid delays in accessing counselling for survivors of family violence.

Recommendation 18: Exempt awards made to survivors of family violence from refund provisions.

Provisions that allow for refund of awards must not apply to survivors of family violence where this would place them at risk of further family violence and/or exacerbate the effects of family violence on their lives.

Recommendation 19: Simplify processes to expand range of acceptable services and professionals to whom victims can report.**Recommendation 20: Increase cost awards to more accurately reflect costs of running matter.****Recommendation 21: Improve information and referral pathways between support services, practitioners, and the victims of crime assistance scheme.**

This should include training for CALD services regarding the victims of crime assistance scheme and provision of translated materials, as well as training for awards decision makers on issues affecting vulnerable and marginalised groups of survivors of family violence.

Recommendation 22: Accept evidence and reports from a broader range of services.

This can enable clients to continue with their current counsellor/psychologist/ support worker in order to complete requisite counsellor's reports and recommendations. Reports or evidence are only necessary to meet the requisite standard of proof.

2. Introduction

Women's Legal Service Victoria (WLSV) and Domestic Violence Victoria (DV Vic) have collaborated to produce this submission on the Victorian Law Reform Commission (VLRC) on the review of the *Victims of Crime Assistance Act 1996*, as it pertains to family violence. The main aim of this submission is to ensure that the nature and dynamics of family violence and the effects and cumulative harm it results in are accounted for. The current scheme does not adequately acknowledge the experience of survivors of family violence. We propose recommendations for reform that will extend the reach of the Act and make it easier for survivors of family violence to apply for and access financial assistance to support their recovery. We believe that the primary purpose of the victims of crime assistance scheme should be to recognise and validate the experiences and harms suffered by all victims of crime, particularly all survivors of family violence and support them in their journey to recovery. The victims of crime assistance scheme can offer this to victims of crime via a considered and meaningful combination of reimbursement for expenses, financial award in recognition of harm and suffering, support through specialised case management and in the end an opportunity to be heard and validated.

Further, and as noted in the consultation paper, victims of crime assistance schemes provide clear messages to the community about the unacceptability and seriousness of violent crimes and their impact, particularly family violence, including sexual assault, and the responsibility the state takes for failing to prevent family violence from occurring. The formal and public acknowledgement of 'the injury and suffering' that was 'unjustly inflicted'¹ that comes from victims of crime assistance schemes contributes to the prevention of violence against women while also providing '*restoration of the breach between the traumatised person and the community ...*'² This can further contribute to the family violence survivor's personal sense of justice and healing.

We commend the VLRC for undertaking this review and for their extensive consultation on the key issues. We are pleased to be able to provide this contribution to the reforms of this scheme, which we believe will enable the scheme to be a more victim-centred, validating, and therapeutic experience for survivors of family violence. Key recommendations include:

- Creation of a new specialist administrative scheme, underpinned by a case management approach with inbuilt safeguards (refer to p.18), including independent legal advice and assistance (funded). Include the right to opt into a hearing. WLSV and DV Vic have alternate views on the best administrative model, therefore there are two models outlined. However, both models are consistent with the subsequent recommendations included in this submission;
- Expansion of the definitions of 'act of violence' and 'injury', to fully account for the nature and experience of family violence;
- Inclusion of children and young people who are survivors of family violence in the primary victim category;
- Reformulation of the categories of expenses that can be claimed into one general expenses category;

¹ Brahe, CR. 1993. *Victims Compensation: Summary of the Review of the Victims Compensation Act (The Brahe Report)*, NSW.

² Herman, J. 1997. *Trauma & Recovery: From Domestic Abuse to Political Terror*, Basic Books, New York, p. 70.

- Creation of a new recognition payment to replace special financial assistance;
- Exclusion of family violence applications from perpetrator notification and mandatory refusal provisions;
- Removal of the requirement to report to and assist with police;
- Removal the time limit provisions for applications involving family violence;
- Improved information and referral pathways between support services, practitioners, and the victims of crime assistance scheme.

2.1 About Women's Legal Service Victoria (WLSV)

WLSV provides legal information, advice, referrals and representation to women across Victoria. We specialise in issues arising from relationship breakdown and violence against women. We also work to develop and deliver family violence training and education programs and advocate for legal policy and law reform.

We represent our clients and their children in pursuing their VOCAT applications. The majority of these matters are family violence related applications. We also have an ongoing partnership with two private law firms, Baker McKenzie and Colin Biggers & Paisley, whose lawyers have been representing WLSV clients in their VOCAT matters, on a pro bono basis.

2.2 About Domestic Violence Victoria (DV Vic)

As the peak body for family violence services in Victoria, DV Vic has a broad membership of over 80 state-wide and regional family violence agencies across Victoria, which provide a variety of responses to women and children who have experienced family violence, including every specialist family violence service in Victoria. Our members also include community and women's health agencies, some local governments and other community service agencies. DV Vic holds a central position in the Victorian integrated family violence system and its governance structures.

Since our establishment in 2002, DV Vic has been a leader in driving innovative policy to strengthen sectoral and system response to family violence as well as building workforce capacity and representing the family violence sector at all levels of government. DV Vic provides policy advice and advocacy to the Victorian Government about family violence response and systems reform, and drives best practice through our role in the development and support of the statewide Risk Assessment and Management Panels (RAMPs).

3. Methodology

In addition to critical analysis of the issues highlighted in the consultation papers, WLSV and DV Vic have used the following methodologies to inform this submission.

3.1 WLSV's VOCAT Project – *Rebuilding Strength*

WLSV commenced the VOCAT project- *Rebuilding Strength* in June 2016, in collaboration with Colin Biggers & Paisley and Baker McKenzie law firms. The project aims are to:

- assist more disadvantaged women with VOCAT claims

- use casework to identify and highlight systemic VOCAT problems for family violence victims
- leverage pro bono casework to lobby for law reform.

This submission draws on qualitative data from existing literature, action research in the form of applications run by our pro bono partners, and from interviews with past clients to discuss their experiences. De-identified case studies included in this submission provide a snap shot of some of the experiences of our clients.

In March 2017, WLSV undertook a survey of practitioners from private practice and community legal centres who practice in this jurisdiction. We also consulted with other state Women's Legal Services around Australia. Our earlier literature review has also previously also been provided to the VLRC. This literature review confirms that the systemic barriers we identify in this submission are supported by authors in this field. The results of the practitioner survey similarly confirm and build upon our findings in relation to the issues and inadequacies of the current VOCAT system in responding to family violence-related applications.

Practitioner survey

Responses to the practitioner survey were sought between 20 and 31 March 2017.

Practitioners were drawn from a sample of both private solicitors and Community Legal Centre lawyers who undertake VOCAT matters. Approximately half of participants (>48%) identified as private practitioners, and about one quarter identified as working in Community Legal Centres (>24%). All responses have been de-identified to protect the privacy of participants.

As at 3 April 2017, 58 responses from practitioners were recorded. The vast majority of practitioners who responded (>93%) had made VOCAT applications concerning an act/acts of family violence. Of those, 75% estimated that family violence incidents accounted for more than a quarter of their VOCAT work.

Survey participant responses, under pseudonyms, are incorporated into the submission to illustrate key points where relevant.

3.2 VLRC consultation with DV Vic members

DV Vic invited VLRC to a members' meeting on October 4th, 2017 to directly consult with representatives from metro and regional specialist family violence services and regional family violence integration committees. Thirty participants represented the following organisations:

- Berry Street Northern Family and Domestic Violence Service
- Boorndawan William Aboriginal Healing Service
- Centre for Non-Violence
- Crossroads Salvation Army Family Safety Response
- Domestic Violence Resource Centre Victoria
- Eastern Domestic Violence Service
- Gippsland Integrated Family Violence Steering Committee
- Bayside Peninsula Family Violence Program (Good Shepherd Australia New Zealand)
- Goulburn and Ovens Murray Integrated Family Violence Committee

- In Touch Multicultural Centre against Family Violence
- Mallee Family Violence Executive
- No To Violence
- PartnerSpeak
- Quantum Family Violence Service
- Safe Futures Foundation
- Southern Metro Integrated Family Violence Partnership
- Star Health Family Violence Services
- WRISC Family Violence Support Service
- Women's Liberation Halfway House
- Women with Disabilities Victoria

VLRC provided a presentation with an overview of the VOCAA reform process, terms of reference and the key questions for consultation based on the following themes:

- Awareness and accessibility
- Eligibility for assistance and assistance available
- Safety and wellbeing
- Is VOCAT the right model?

Participants organised for table discussions to respond to the thematic questions. Notes were taken by scribes from DV Vic and WLSV which were handed over to VLRC to analyse and write up. The notes were sent back to DV Vic and WLSV to check for accuracy before finalisation with VLRC. The notes and discussions held at the consultation inform the recommendations of this submission.

3.3 Key informant interviews

To support this submission and ensure the voices of survivors of family violence are heard in the review process, in-depth qualitative interviews were conducted with three women who are survivors of family violence and who have experience with VOCAT. All three women were aged between 30 and 50 years of age. One woman was American Australian and the other two were European Australian. Between the three participants they have had experiences of family violence that include physical, sexual (including image-based sexual violence), financial, psychological and emotional violence perpetrated by their partners. Their responses have been integrated into this document.

3.4 A note on framework and language

This submission is based on a framework that compensation for victims of family violence should be underpinned by principles of transitional and therapeutic justice that recognises the dynamics of family violence and its widespread perpetration in Australian society.

Family violence is a manifestation of the broader endemic issue of male violence against women and children. Most commonly, family violence occurs in intimate partner relationships and household family settings with men being the primary perpetrator using tactics of violence, abuse, coercion and intimidation against women and children. Collated data from Our Watch shows that, in Australia:

- 1 in 4 women have experienced physical or sexual violence by an intimate partner;
- on average, 1 woman is killed every week by a partner or former partner;

- rates of violence are known to be higher for Aboriginal women and woman with disabilities;
- more than half of women who have experienced violence had children in their care; and
- between 50-70 per cent of children who witness violence at home also suffer physical abuse.

Family violence occurs across all cultures and backgrounds, and is perpetrated by family members and other carers who provide support for people with disabilities; adult children against their elderly parent/s; people in LGBTQI relationships as well as violence towards LGBTQI people by non-LGBTQI family members; siblings and other extended family members, such as in Aboriginal and Torres Strait Islander communities. Compensatory reparation for the harms of family violence is therefore a symbolic and meaningful process for addressing the preventable social problem of men's violence against women and children and the endemic power imbalances and social inequities impacting on marginalised peoples. An empowering, transformative and family violence literate compensatory scheme can provide pragmatic and meaningful support for individual victims, and can also contribute to broader social and cultural shifts to transform community attitudes about family violence and the issues of gender inequality, male privilege, and social power imbalances that underpin it.

Congruent with this analysis, the terms 'victim,' 'survivor,' and 'victim-survivor' have been used interchangeably throughout this document to refer to women, children and others who have experienced or are experiencing family violence in any of its forms. Further, in acknowledgement of the gendered nature of family violence, survivors are referred to as women and children and perpetrators are referred to as men.

4. An alternative model

4.1 WLSV - A new hybrid administrative and judicial system

The current system is in desperate need of reform for family violence victims.

The current VOCAT system is not addressing the many immediate and long terms needs of victims that enable victims to recover in that it:

- is not fair, equitable and timely;
- leads to inconsistent and unpredictable outcomes; and
- often re-traumatises victims leading to longer recovery times.

In fact, as we will outline throughout this submission, delays, the discretion members have to notify the perpetrator, having to "prove" the family violence through police reports, waiting for decisions on applications that are out of time and not knowing which category of SFA a victim will be awarded, are all factors that weigh on the mind of a family violence victim journeying through the system.

In its submission to the Victorian Royal Commission into Family Violence, the Magistrates' Court stated there had been a 337 per cent increase in VOCAT's case load between 2001–02 and 2013–14. In 2015–16 there were 6221 applications to VOCAT, representing an increase of 2.8 per cent from 2014–15. In 2015–16, there were 4161 awards of financial assistance. This is a decrease of 6.7 per cent from the

previous financial year.³ It is well documented that VOCAT applications can take anywhere from one year to 18 months to process. This has certainly been the experience of WLSV practitioners dealing with VOCAT files. These delays can contribute to a victim's decision not to pursue an application or delay the recovery of a victim as they await decisions, particularly in relation to whether the perpetrator will be notified or not.

The experience of having to gather quotes for everything to support their claim is also time consuming and can be overwhelming for victims and also under-resourced CLC practitioners. Contacting multiple tradespeople, who are usually male, and negotiating with them to get quotes and other necessary documentation to submit to the tribunal, in combination with all the other stress going on in the woman's life, can sometimes be too much. Client 3 when interviewed by WLSV explained:

"the process of the quotes and doing all that type of thing was a bit demanding"

"[it was] more time consuming and stressful having to go around and collect quotes and bring them back to the [government] for approval"

"My ex had control of everything, I mean I had to learn how to bank again, it was overwhelming, it was the last thing on my list"

An administrative system that is well designed and takes into account the necessary safeguards, learning from other jurisdictions, can overcome these problems and serve the needs of victims more.

We submit that moving to an administrative system for financial assistance aimed at supporting a victim to recover, underpinned by a specialist case management approach will more effectively fulfil the purpose and objectives of the Act. We acknowledge that an administrative system, as evidenced by the Community Legal Sector NSW submission into the *NSW Department of Justice's Review of the Victims Rights and Support Act*, needs to be carefully designed to ensure that the current barriers and issues that we are trying to address are not simply transferred. After carefully examining other administrative systems, in particular that of NSW's, we list below the safeguards, we believe need to be included. We are in the fortunate position of being able to learn from other jurisdictions, in particular the NSW system and have taken into the account the submissions raised in that review.

4.1.1 Safeguards of an administrative system

An effective administrative system of victim's compensation would require:

- Adequate funding arrangements;
- Minister to undertake review of the Act after 2 years and every 3-5 years thereafter;
- access to independent legal advice and assistance, funded by the scheme;
- victim centred processes aimed at support and recovery;
- efficient and transparent processes and systems underpinned by procedural fairness;
- timely decisions and accountability for delays;
- simplified application process with trained family violence support worker assistance and triage for high risk and vulnerable applicants;
- assistance to complete application form for victims who require interpreters, support service assistance or disability advocates;

³ VLRC supplementary consultation paper 4.23, 4.24

- education and awareness of the scheme;
- confidential outcomes and comprehensive explanation of decisions;
- provision of fair and predictable compensation outcomes;
- avenues for internal review and external appeal without restrictive time limits.

4.1.2 Addressing current barriers in administrative models

The table at appendix A of the secondary consultation paper provides a brief overview of the different systems operating in other states around Australia. It is clear that although no single VOCA model exists, each exhibits a similar cross-section of statutory barriers in regards to its treatment of family violence related applications. For example in QLD and NSW, both administrative systems, mandatory refusal applies if an applicant failed to give assistance to police (refer to p.38 for submissions arguing for the removal of mandatory refusal in this situation).

WLSV interviewed a practitioner from Women's Legal Service NSW about how the scheme operates for WLSNSW clients. Through this interview it was revealed that while there are problems and issues with the administrative system in NSW, the eligibility problems and barriers to accessing the system and being awarded adequate amounts of financial assistance are similar to those in the current tribunal system in Victoria such as cooperation with police (mandatory refusal), perpetrator notification and low awards for recognition payments. Significantly the WLSNSW practitioner cited that despite working with clients through the application process, this CLC work was not being funded.

This has led us to the conclusion that the eligibility issues and barriers we have outlined and provided recommendations and safeguards for, must also be addressed in a new system to ensure that the system is fair equitable and timely and does not serve to re-traumatise victims, thus breaching the purpose and objectives of the Act.

4.1.3 The need for independent legal representation

WLSV practitioner interview in NSW revealed that the Women's Legal Service NSW is still assisting and advocate for clients in the administrative system.

The NSW CLC submission to the review into the NSW system confirmed this practice⁴. The submissions stated that CLC's have been providing independent legal advice and assistance under the Victims Support scheme in NSW, which has not been funded.

In order for an administrative system to be fair, accessible and equitable it should include adequate funding for independent legal advice and assistance.

4.1.4 The judicial hearing

Under the current system applicants can elect either to have their application decided in their absence or to attend a hearing. Many WLSV clients report that the VOCAT hearing is a healing and validating process for them. This is the main reason why we support a hybrid model and not a purely administrative model.

⁴ Statutory review of the *Victims Rights and Support Act 2013* (Community Legal Centres NSW submission)

Evidence has demonstrated that the judicial hearing can have a powerful therapeutic impact on a victim's recovery.

WLSV client interview:

'... all the things he put me through and always having to fight to tell the truth, it was really the recognition of those things happeningI wanted to be heard ... I felt that it was part of my healing ... this was the only place where I had a platform to speak.'

The Federal Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Organisations (the Victorian Parliamentary Inquiry) reported that a victim telling their story is a healing process, especially for victims of childhood sexual abuse.

Hearings also serve a particular therapeutic purpose for victims of sexual assault. We have had the opportunity to view the submission of Springvale Monash Legal Service to this inquiry. We support the following statement in their submission:

*As The Honourable Justice Peter McClellan AM states 'For some survivors telling their story to a Commissioner in a private session is the first time they have disclosed their abuse. For others it is the first time in their life they have been believed. For many survivors, private sessions can be a powerful and healing experience.'*⁵ *Or as a survivor of childhood sexual abuse stated 'I have waited 30 years to tell this story.'*⁶

For victims of sexual assault, especially those who have not been through the criminal justice system, the therapeutic value of the VOCAT hearing itself cannot be under-stated. So many of our clients report that the hearing itself is the most beneficial part of the process. The fact that Victoria has retained hearings is a strength in our system. Through our long standing work with victims of sexual assault, we believe it would be a disservice to Victorian victims if we were to do away with the face-to-face nature of hearings. The human acknowledgement and recognition that comes with a hearing can be a powerful and life changing experience for many survivors.

If the scheme is going to contribute to the healing of victims, it is imperative that the right to a hearing is maintained and that those hearing the application are motivated to make the experience a therapeutic one for a victim.

We recommend retaining the human centred approach to victims of crime, in particular victims of sexual assault, of maintaining a private, somewhat informal tribunal hearing in a specialist family violence court. At least, hearings should remain an available option, based on recommendations of victims, and the decision maker. It should be determined early on in proceedings if a hearing will take

⁵ The Honourable Justice Peter McClellan AM, speech addressing the International Society for the Study of Trauma and Dissociation, 2015, "Broken Structures, Broken Selves: Complex Trauma in the 21st Century". International Society for the Study of Trauma and Dissociation, New South Wales

⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, 2015, What We Are Learning About Responding to Child Sexual Abuse Interim Report Volume 1, <http://www.childabuseroyalcommission.gov.au/about-us/our-reports/interim-report-html>

place. We would also add that a hearing should only take place at a time when the victim feels ready to apply for a hearing.

4.1.5 The hearing and specialisation

VOCAT consists of tribunal members, who are magistrates. It comprises the Chief Magistrate and all magistrates and reserve magistrates under the *Magistrates' Court Act 1989* (Vic). Each VOCAT hearing is constituted by a single tribunal member.⁷ The provisions in the Act also afford magistrates a wide discretion to determine how hearings are conducted, such as determining when the perpetrator is notified. These two factors combine to contribute to inconsistencies in decision making and subsequent processes. Having all Magistrates deal with hearings can lead to inconsistent outcomes for victims. In some cases, victims feel misunderstood and ignored. This can serve to undermine the therapeutic purpose of hearings.

The following case study and client interview points to two very different experiences of VOCAT by WLSV clients.

A recent WLSV Practitioner interview has highlighted how members who do not adopt a trauma informed approach can negatively affect a victim's experience of VOCAT:

"..... client required protection by the police and court personnel from her ex-husband at every court hearing she attended, whether it was for IVOs in the Magistrate's Court, or family law matters in the Federal Circuit Court. We submitted evidence of this and the emergency hearings and indefinite IVOs ordered by the courts to VOCAT. We also submitted evidence to VOCAT about the custody orders handed down by the Family Court awarding sole custody to our client and specifically mentioning the danger in the ex-husband having contact with her or her children. We submitted further evidence to VOCAT about the Family Court orders placing our client's children on the Airport Watch List with the Australian Federal Police to prevent the ex-husband removing the children from our client. We also advised VOCAT that our client had applied to the Department of Health and Human Services for relocation of residence due to constant fear for her and her children's safety. Nonetheless, VOCAT refused to accept our client's objection to their notification of her ex-husband and intends to notify him of her VOCAT application. Now our client has to make the decision whether or not to pursue her application, which has taken her many months of evidence gathering. She has had to relive much trauma and has shown so much courage to get this far but it may all be for nothing now."

In contrast to this, a WLSV client when interviewed about her experience at VOCAT had this to say:

"I was lucky to have a magistrate who was very understanding" "[the magistrate] really tried to relate with me" "making that statement, I recommend everyone to do that [it was the] most cathartic part of the entire thing"

Hearing applications could be better served in a specialised stream in the specialist family violence courts situated in the Magistrate's courts or a specialist family violence list. In this stream, hearings should be conducted by specialist family violence decision-makers.

⁷ VLRC supplementary consultation paper para 4.9

4.2 DV Vic – An administrative model with symbolic ‘hearing’

DV Vic’s preference for an alternative model is similar to the administrative model outlined above by WLSV, but without the judicial hearing. In this model, *all* decision making related to the application for victims of crime assistance (both financial assistance and recognition payments) would be done ‘on the papers’ by professionals with specialised knowledge and understanding of family violence resulting from comprehensive training and professional development, within a case managed administrative system, and including the safeguards referred to by WLSV above. However, survivors of family violence would be given the option of participating in a symbolic ‘hearing’ and increased support to make a fully informed decision about this. This symbolic hearing would provide survivors of family violence with the opportunity for validation and recognition through the telling and acknowledgement of their experiences by a person/s⁸ in positions of authority. In developing this model, we believe the symbolic ‘hearing’ should be based on principles of transitional and restorative justice.

It is our position and that of our members that this model would address several barriers to accessing victims of crime assistance faced by survivors of family violence and other types of crime that arise from decisions being made in the judicial setting, without any loss in significance of the process. For example, it would remove any concerns a survivor of family violence might have about being subject to a judicial process for victims of crime assistance following a traumatic experience of the judicial setting in relation to criminal justice matters. We believe it will also increase consistency in decision-making and awards. A participant in the key informant interviews contended that survivors of family violence should not ‘have to face court twice,’ and went on to say that the system should be streamlined into ‘one process instead of it being a step process’ involving different phases (Participant 1) – something we think can be achieved in this model. Retaining an optional symbolic ‘hearing’ resonates with the experience of another interview participant, who read a statement written by her daughter who was in attendance at the hearing.

“... that empowered her, having her story told and recognised” (Participant 2).

This model would simplify the application process – including for applications for variation of rewards - and remove the need for legal representation in all but the most complicated cases. Additionally, if the survivor of family violence is already being supported by a specialist family violence case manager, this model will make it easier for that support to continue into the victims of crime setting and for referrals and sharing of information between specialist family violence services and the victims of crime scheme, resulting in improved case management and support for the survivor of family violence.

Further, we believe this model provides an opportunity for greater transparency and accountability in decision making through monitoring, evaluation and performance management of application case managers and decision-makers. This proposed model, could also lend itself more flexibly to further reform in the victims of crime process and/or contribute to reforms in other areas through the collation of themes from victim’s experiences, in ways a judicial process cannot.

⁸ It is not our intention to fully discuss where this symbolic hearing should sit in this submission, but options could include within a panel of administrative decision makers, with a Commissioner, or with a Magistrate operating in a non-judicial capacity.

This model is innovative yet consistent with those that have emerged in other Australian jurisdictions in recent times. The model is congruent with trends towards an administrative model, yet reflects learning from anecdotal reviews of models in other jurisdictions by retaining applicant choice regarding whether they want to participate in additional transitional justice processes. Together with other reforms outlined in this submission, we are confident this model will lead to improved processes and outcomes for survivors of family violence.

4.3 Recommendations

Recommendation 1: A new model

A new and reformed Victims support system should move to an administrative model, with one of two options:

- a. Opt-in to a judicial hearing for a recognition payment (WLSV preferred), or
- b. Opt-in to a symbolic hearing (DV Vic preferred).

Administration of the system to be underpinned by a victim support case management trauma informed approach, managed by a fully funded specialist government agency with a specialist team of decision makers and case managers trained in family violence.

This recommendation is subject to the safeguards listed at page 16, in particular fully funded independent legal advice and assistance, and the subsequent recommendations contained herein.

5. Eligibility for assistance

As described in the consultation paper/s, the current eligibility criteria pose many problems for victims of crime, particularly survivors of family violence. The 'narrow definitions' of 'act of violence' and 'injury' do not reflect the nature of family violence and exclude and/or deter many survivors of family violence from accessing the victims of crime assistance scheme.

5.1 The definition of 'act of violence'

Currently, the Act defines an 'act of violence' as a 'criminal act' or 'series of criminal acts'. This presents difficulties in some circumstances of family violence, as it ignores the reality that not all tactics used by perpetrators of family violence that cause injury reach the threshold of a crime, even where the perpetration of that violence is ongoing. As a result, women who are acknowledged as being survivors of family violence according to widely used definitions can be excluded from access to victims of crime assistance.

Conversely, survivors of family violence experience a web of concurrent and overlapping criminal and non-criminal tactics of power and abuse over time that cause cumulative harm and injury to them. Yet the Act requires victims to distil the violence perpetrated against them into a discrete criminal offence. This invalidates the overall experience of survivors, and reinforces the attitude that some experiences of family violence are more 'valid' than others. Further, the focus on criminal 'acts' goes against current trends in family violence policy and practice which recognises family violence as more than a series of

one-off acts or isolated events. The Royal Commission into Family Violence acknowledged that family violence is a pattern not an event:

It is a pattern of behaviour that involves an escalating spiral of violence. This can include physical and sexual abuse, as well as psychological, emotional and financial abuse – all designed to intimidate, undermine, isolate and control. It can also include violence or threats of violence against children, other members and pets.

The focus and reliance on the narrow definition of an 'act of violence' fails to recognise the complete and complex nature and dynamics of the perpetration, and experience of family violence, which then escalates into a failure to fully comprehend the risks and harms caused. This then permeates throughout the victims of crime assistance scheme, impacting on timeliness of awards, types of expenses and awards granted, and the process of making an award.

The Act goes further to define act of violence as a series of related criminal acts. A vast array of tactics of family violence are not included in this definition, including those that are listed in the definition under the *Family Violence Protection Act 2008* (Vic).⁹ For example, psychological and emotional abuse is experienced by almost all survivors of family violence, yet it is not recognised in the definition of 'act of violence' under the Act. Victims of these forms of family violence are therefore excluded from the operation of the Act, despite their experience being defined under the *Family Violence Protection Act 2008* (Vic) and having lasting and damaging effects.

Emotional abuse is a very specific and deliberate form of emotional damage, designed to destroy any feelings of independence or self-worth and thereby make someone easy to control and manipulate (State of Victoria, 2014-2016)

The WLSV practitioner survey confirmed that a broad range of practitioners identified issues related to the definition of 'acts of violence' as the most significant faced by practitioners in making family violence-related VOCAT applications. Approximately half of participants (48.9%) encountered issues regarding client eligibility for VOCAT. They identified issues relating to the definition of an 'act of violence' as a criminal act or a series of related criminal acts, and issues arising from the difficulty of fitting family violence into that definition. Many cited emotional, psychological and economic abuse as contributing to the circumstances of family violence which were not recognised for the purpose of the VOCAT award.

5.2 The definition of 'injury'

The Act currently defines 'injury' as 'actual physical bodily harm, mental illness or disorder, and/or pregnancy,' or any combination of these directly arising from an act of violence. As outlined in the consultation paper/s, this definition of 'injury' excludes many survivors' experiences of family violence

⁹ In Victorian legislation, family violence is defined as behaviour by a person towards a family member that is physically or sexually abusive, emotionally or psychologically abusive, economically abusive, threatening, coercive, or in any other way controls or dominates the family member and causes the victim to feel fear for their (or another person's) safety or wellbeing, and includes causing a child to witness the behaviour or effects of the above abuse (*Family Violence Protection Act 2008*, §5).

from recognition under the Act. Further, psychological injury is inherent to the experience of coercive power and patterned domination tactics that constitute family violence, and is broader than a 'recognised psychological disorder.' However, many survivors of violence who experience trauma will not have sought medical assistance or psychological support and therefore will not have the 'evidence' required to support their victims of crime assistance applications or be able to demonstrate the direct causal link between their experience of family violence and the psychological injury.

Therefore, the understanding of injury in the Act should be broadened to reflect the full range of physical, social, psychological and cognitive harms of family violence that are experienced by survivors over time, and take a prima facie position to psychological injury. In addition to this, the understanding of injury under the Act should reflect the cumulative nature of harm experienced by survivors of family violence on account of their experience of a patterned set of abusive, controlling and violent behaviours over time. This understanding of injury should apply to all categories of victims. This further reflects the shift in understanding of family violence away from a series of incidents to a pattern of coercive control that we suggest should be mainstreamed throughout the victims of crime assistance scheme.

As a final note on both the definition of act of violence and injury, it is our position that a more nuanced definition of each will assist the victims of crime scheme to support the proper identification of the predominant aggressor in cases where perpetrators of family violence present as victims.

5.3 Categories of victims

Finally, the victim categories do not adequately reflect the experience of family violence, particularly for children. WLSV and DV Vic members have experienced occasions where applications for the children of adult family violence survivors who have been affected by family violence have been rejected. This has occurred when children have not made disclosures to psychologists for the purpose of the requisite counsellor's report, and when the Member decided the young age of the toddler prevented them from being consciously aware of the violence they had been exposed to¹⁰. This is not consistent with current knowledge in the family violence sector regarding the impact of family violence on children.

It has been well established via international instruments,¹¹ research and practice literature that the impacts on children from witnessing family violence are broad, cumulative, and lasting.¹² However,

¹⁰ WLSV practitioner interview

¹¹ For example, UN Convention on the Rights of the Child (1989), UN Convention on the Elimination of All Forms of Discrimination Against Women (1979), Beijing Platform for Action (1995).

¹² See Australian Childhood Foundation. 2013. *Safe and Secure: A trauma informed practice framework for understanding and responding to children and young people affected by family violence*, Eastern Metropolitan Region Family Violence Partnership, accessed 17 October 2017, < <https://professionals.childhood.org.au/resources> >; Campo, M. 2015. 'Children's exposure to domestic & family violence: Key issues and responses,' *CFCA Paper*, no. 36, Australian Institute of Family Studies, accessed 17 October 2017, < >; Delima, J. & Vimpani, G. 2011. 'The neurobiological effects of childhood maltreatment,' *Family Matters*, no. 89, Australian Institute of Family Studies, accessed 17 October 2017 < <https://aifs.gov.au/publications/family-matters/issue-89/neurobiological-effects-childhood-maltreatment> >; Richards, K. 2011. 'Children's exposure to domestic violence in Australia,' *Trends & issues in crime & criminal justice*, Australian Institute of Criminology, accessed on 17 October 2017, < http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi419.pdf >; Tsavoussis, A. et al. 2014. 'Child-Witnessed Domestic Violence and its Adverse Effects on Brain Development: A Call for Societal Self-Examination

policy and practice has largely failed to take this into account, resulting in insufficient support to children and young people who are survivors of family violence.¹³ As a result of the continuously emerging research and the family violence reforms stemming from the Royal Commission into Family Violence, supporting children and young people is now considered to be 'central to family violence policies' and children and young people are to be recognised as survivors of family violence in their own right.¹⁴ To be congruent with these contemporary understandings of family violence and state-wide reforms in policy and practice which accept women and children are both primary victims of family violence, even though children's experience of victimhood may not be as a result of direct experience of interpersonal violence perpetrated against them by the perpetrator, the Act should include children in the category of primary victim regardless of age.¹⁵

Additionally, it is anticipated that expanded definitions of 'act of violence' and 'injury' that appropriately reflect the nature and dynamics of family violence will result in a more inclusive categorisation of secondary victims. For example, improved recognition of the cumulative psychological impact of family violence will expand the category of secondary victim to encompass a broader range of family and friends who are present at the scene of an act of violence. A more inclusive categorisation also facilitates the inclusion of family members as defined by 'families of choice' within LGBTQI communities. Broadening of the secondary victim category will also align with the definition of 'family member' as enshrined in the *Family Violence Protection Act 2008* (Vic).

Finally, we recommend that the definition of secondary victim be expanded to include kinship relationships as understood within Indigenous and other collective cultures being practiced in Australia. Within Indigenous and other collective cultures in Australia, familial relationships, connectedness and closeness extend beyond the standard family members recognised by European Australian culture. Those who are in kinship relationships with primary victims within Aboriginal and/or Torres Strait Islander Australian culture can experience the same type of impact from the violence perpetrated against their relative as that experienced by parents, siblings and so on within European Australian culture, and should therefore be subject to secondary victim provisions of the Act.

5.4 Recommendations

Recommendation 2: Expand the definition of 'act of violence'

It is recommended that the definition of 'act of violence' in the Act is expanded to recognise family violence as defined in the *Family Violence Protection Act 2008* (Vic).

Further, it is recommended that the definition of 'act of violence' be expanded as it pertains to family violence to fully encompass the ongoing, patterned nature of family violence (rather than as a series of one-off and/or unrelated incidents or acts), and that this be reflected throughout the victims of crime assistance scheme, including in application forms; making, timing and quantum of awards; and award categories.

and Awareness,' *Front Public Health*, vol. 2, accessed 17 October 2017, <
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4193214/>>

¹³ The Royal Commission into Family Violence, 2014 - 2016.

¹⁴ Ibid.

¹⁵ Ibid, Vol II, p.142

Recommendation 3: Expand the definition of 'injury'

Expand the definition of 'injury' in the Act as it pertains to family violence to acknowledge that psychological injury caused by family violence is broader than the Act's definition of 'mental illness or disorder'. Further, it is recommended that the definition of 'injury' take as a given that survivors of family violence will have experienced psychological injury as a direct result of the family violence, regardless of whether the act of violence is physical or non-physical, criminal or non-criminal, or whether there is medical evidence available to support this. The expansion of the definition of injury should recognise the cumulative harm of family violence as distinct from that of one-off incidents of violence.

Recommendation 4: Recognise children and young people as primary victims of family violence

Include children who have experienced family violence perpetrated by their father against their mother in the category of primary victim, making them eligible for awards within this category.

Recommendation 5: Enable joint applications for women and their children

Child victim applications to be considered alongside any application for a parent. Child victim applications should be considered on the basis of the allegations and evidence brought by an adult or parent on their behalf.

Recommendation 6: Expand the definition of secondary victim to include kinship relationships.

Within Indigenous and other collective cultures in Australia, familial relationships, connectedness and closeness extends beyond the standard family members recognised by European Australian culture. People who are recognised as kin to Aboriginal Australians should be subject to secondary victim provisions of the Act.

6. Assistance available

6.1 Categories of award

Under the Act, there are three main categories of award for primary victims – expenses actually incurred or reasonably likely to be incurred (with a list of prescribed expenses); in exceptional circumstances, an amount for other expenses actually incurred or reasonably likely to be incurred to assist in the primary victim's recovery; and special financial assistance.

The needs of family violence victims are variable and can change over time. Family violence victims require both urgent short term and longer-term assistance when dealing with family violence. Urgent financial assistance most readily required by women affected by family violence often includes counselling and childcare, urgent relocation costs and replacement of essentials (clothing, personal belongings), and bond and rent in advance. Longer term assistance concerns often include establishing financial independence and wellbeing by way of securing new or maintaining existing housing or accommodation, paying bills, personal and/or professional development courses, gym memberships, further counselling, and/or family holidays. This was acknowledged in the Royal Commission into

Family Violence as the 'three pillars' of recovery that are 'essential' to survivors of family violence.¹⁶ Victims of crime awards are used in various ways to meet these needs and rights of survivors of family violence, and there have been many occasions where VOCAT has shown flexibility in awards for primary victims under the first two categories to pay for these expenses. However, practitioners have found that broad discretion in relation to 'exceptional circumstances' in the second category leads to inconsistent outcomes for and between survivors of family violence.

We wish to take this opportunity to raise two objections to the categories of award under the Act. Firstly, we find that the categories of award are too prescriptive and require women's experiences of family violence to be 'retro-fitted' to suit the Act. It is our opinion that the opposite case is preferred - that the categories of awards and the types of expenses that can be applied for should be flexible, and correspond to the lived experience of survivors of family violence. To this end, we propose that there be one category for expenses and that this not be strictly prescribed. Alongside this, we propose that the qualification of 'exceptional circumstance' be abandoned in relation to family violence, enabling all reasonable actual and/or future expenses that occur as a result of a woman's experience of family violence to be awarded without having to demonstrate the expenses fall under 'exceptional circumstance'. As referred to above, this change should be supported by comprehensive training and standards to equip specialist decision-makers with a knowledge and understanding of family violence to enable them to make informed award judgements based on needs for recovery. We also feel the process could be improved by reducing the evidentiary burden regarding expenses, which reduces the experience and impact of family violence on survivors to a series of expense transactions.

Secondly, we propose that the objectives of the Act be further clarified to distinguish the categories of VOCA awards from the financial assistance and support that is or should be provided by the government within the family violence service delivery system. For example, flexible support packages (FSPs) up to \$10 000 are currently a feature of the family violence response, designed to meet a wide array of costs imposed on survivors of violence as a result of the violence perpetrated against them such as the cost of relocating, bond and rent, furniture and whitegoods, personal security devices and systems, counselling and other health and wellbeing activities. To a large extent, FSPs have superseded the need for urgent interim awards under the Act. However, recovery and recognition 'costs' remain and the long-term provision of FSPs is uncertain. Therefore, while we believe the option of applying for awards to reimburse a survivor of family violence for costs incurred should remain, we caution against the awards made under the victims of crime assistance scheme displacing and substituting government responsibility for and investment in family violence service delivery.

6.2 Related criminal acts

As referred to in the consultation paper, survivors of family violence have been found to 'receive fewer awards and lesser amounts of assistance' through the victims of crime assistance process than other victims of crime. This is largely seen to be the result of the way in which family violence is currently treated under the 'related criminal acts' provision within the Act – as related based on the circumstance of being 'committed against the same person over a period of time and by the same person or groups of people'.

¹⁶ The Royal Commission into Family Violence, Victoria, Summary, p.29

As articulated in the consultation paper/s, and demonstrated by the case study below, this has created 'a hierarchy of victimhood' whereby awards made to survivors of family violence are disproportionate to the awards made to victims of one-off, incident-based crimes. Further, this fails to fully acknowledge the cumulative impact and harm that family violence causes. This provision may be relevant to an incident of violence between strangers, however it can also seriously undermine family violence victims' rights and access to appropriate awards where a survivor may have experienced a wide range of psychological, physical and sexual abuse over an extended period of time perpetrated by the same person.

Practitioners surveyed cited issues regarding treatment of multiple family violence incidents as 'related' for the purpose of awards. These included psychological and financial impacts, reducing client confidence in the process and as well as the awards made, specifically in relation to the SFA component.

"What can often [happen] is that offending that occurs over a lengthy period of time, is captured under one single related offence and most often does not capture the seriousness of the offending or its long-term impacts. Clients also sometimes struggle to understand why one offence is elevated or distinguished from others, when that has not been their experience of the

Figure 1: Case Study - Amy

Amy

Amy migrated to Australia from her home country as a young woman. She has a disability and cares for her four children. Amy was the victim of severe family violence throughout her long marriage to Michael, which was not reported to police. Just prior to separation, Michael struck Amy to the head causing facial lacerations. He then used the force of his body to immobilise and strangle her. This attack by Michael went for almost half an hour and was witnessed by their children. Amy was able to escape when one of the children sought assistance from the neighbours. She hid and hitch-hiked to the nearest police station. The police applied for a family violence intervention order (FVIO) to protect Amy and the children. The FVIO excluded Michael from the family home.

Separation caused Amy great financial difficulty. Michael's business folded and the family home had to be sold, with almost all the proceeds of sale being used to service his debts. Michael forced Amy to agree to split the little that was left equally and without legal advice.

VOCAT Award

VOCAT made an interim award of 15 counselling sessions to Amy, which were critical for her mental health recovery. At the final hearing, Amy was awarded an additional 15 counselling sessions. Amy was also awarded \$1300 of Special Financial Assistance under category C, and about \$1800 for reimbursements.

The 'act of violence' that the VOCAT application referred to was the single assault reported to police. Amy had however, suffered physical and psychological abuse throughout her long marriage, as well as significant financial loss with respect to debts accrued by Michael. However, these incidents had not been reported out of fear and Michael's control over her and were not taken into consideration in the award decision.

offending. Family violence that occurs over a lengthy period of time, often cannot be reduced down to one single related act of assault or rape. It is simply not representative of people's lived experiences, and if the focus is on recognition and recovery from an act of violence, then this negative experience of the process can be counterproductive.” Rosanne, CLC Lawyer

“Tribunal only considered the Attempted Murder charge (despite prolonged, 20-year history of Family Violence). Applicant felt that the related history was not acknowledged compared to when he tried to kill her and she was hospitalised for months.” Helen, Lawyer

“[It’s] very distressing for the clients. It seems that their suffering is not really acknowledged, and they often feel that they are the ones on trial.” Patricia, Private Practitioner

“Treating multiple acts as one related act is unjust. Just as victims of separate acts of violence by unrelated offenders are eligible to make separate applications, so too should family violence victims and sexual assault victims.” Gina, Private Practitioner

This resonates with the issue raised earlier that the Act does not account for the long-term, cumulative and patterned nature of family violence. Addressing the definition of ‘act of violence’ and ‘injury’, and reforms to the special financial assistance categories recommended earlier will go some way to addressing this, as will establishing a model where decisions are made by family violence and trauma informed decision makers

6.3 Special financial assistance

The disparity between family violence applications and those for other victims of crime is also accounted for through the limitations of the ‘special financial assistance’ (SFA) category.

Section 8A of the Act allows for the award of SFA as a lump sum payment as a ‘symbolic expression by the state of the community’s sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered’ as victims of crime. An award of SFA can be of great assistance to a victim of family violence in her recovery through recognising the injustice that has been perpetrated upon her. However, the current SFA maximum awards are considered inadequate, and the classification of violent acts into four categories of award - which are organised according to the level of seriousness in criminal law (Forster, 2013) and based on an understanding of violence as a single incident - are problematic for victims of family violence.

Despite the widely accepted devastating and cumulatively traumatic impact of family violence, practitioner experience is that family violence victims find it difficult to establish that they fall within the most serious categories (A or B) of SFA, which include rape, indecent assault or murder. Most applications made by survivors of family violence fall within the least serious categories of C and D, which have the lowest maximum and minimum award payments (maximum for category D is \$650 and for category C is \$1300). This is a consequence of the single-incident focus of the Act which overlooks the spectrum of family violence and treats it as a singular incident or a ‘related criminal act’ for the purposes of making an award. As a result, another victim of crime who makes an application after experiencing a single or isolated incident of violent crime that falls into Category A or B can be awarded a payment greater than that received by a survivor of family violence who has experienced ongoing and cumulative incidents and effects of violence over a prolonged period of time. As it stands, the nature

of family violence as a course of terrorising conduct over a period of time is not recognised as 'serious' for the purpose of awards for SFA, which should be rectified through the abolishment of award categories. Further, Tribunal practices of awarding relatively low pay-outs comparable to the available capped limits further reduces restitution actually received.

In response to this and the matters raised above, it is our belief that SFA would be better classified as a 'recognition payment' which is not confined by the existing SFA award categories and responds to the impact of the family violence rather than the type of crime that was perpetrated. Evidence of the impact could be provided from the same range of sources as described in Recommendation 5). To assist specialist decision-makers with their discretion in determining award amounts, the implementation of the recognition payment could be supported by guidelines, minimum standards for decision-making, and education on the immediate and long-term impacts of all forms of family violence. It is our contention that in making recognition award decisions in this way, it is vital that the decision-maker's discretion is family violence and trauma informed, and imbued with an understanding of the values and attitudes that have historically disadvantaged and discriminated against survivors of family violence.

It is believed that the proposed administrative model will serve as a highly flexible, transparent and accountable process for achieving this. This proposal is similar to that outlined in point 7.88 of the consultation paper and consistent with other positions described in this submission.

In fact, it is proposed that this element of the victims of crime assistance scheme should be elevated in importance for primary victims (which should include all children and young people who have been exposed to family violence in the home) - its primary purpose being the validation of a victim's experience and the provision of a transformative justice experience - and that the quantum of award for recognition of trauma, harm, grief and loss as a result of the experience of violence should be significantly increased). We believe the focus of the scheme and recognition payment should be victim rather than offence-centred, focusing on the level of cumulative impact the offence has had on the victim rather than the presumed level of seriousness of the offence. A recognition payment as a symbolic gesture of the community's remorse for the grief and trauma the victim of crime has experienced can be central to the emotional and psychological recovery of a survivor of family violence. Forster describes compensation for family violence victims as having multiple personal and community benefits¹⁷, including assisting survivors of family violence in recovery from 'medical, psychological, cultural, vocational and relational consequences' of the family violence. Forster further argues:

In a broader sense, the presence of a compensatory framework that operates effectively to compensate victims of family violence provides a clear statement of the unacceptability of such behaviour in the community.¹⁸

¹⁷ Forster, C. 2013. 'Victims of Crime Compensation Schemes: Compensating victims of family violence', *Precedent*, no. 16, pp. 40 – 44.

¹⁸ *Ibid*, p. 40.

The value of recognition payments is further reinforced by Gubbay who drew on client experiences to demonstrate that receipt of compensation is linked to a feeling of 'finally' being believed.¹⁹ This resonates with our own anecdotal experience of many survivors of family violence reflecting that acknowledgment and validation are the most valued outcomes from their participation in the victims of crime assistance scheme.

Crystal's story below demonstrates how family violence is not adequately recognised in the current SFA award system.

Figure 2: Case Study - Crystal

Crystal

Crystal moved to Australia from overseas to be with her husband John. They married in Australia in April 2013. Throughout her marriage Crystal was not allowed to leave the house without his permission. He would not let her attend English classes or watch television in either English or her native language. She could not contact her relatives or have any money of her own. If she did anything he did not like, he hit her. She had limited English, and with Visa restrictions she had no means of employment and was not entitled to Centrelink benefits. John also had a girlfriend, and this caused conflict in their marriage. During one argument John assaulted Crystal, threatening to kill her and telling her to get out of the house. Crystal had nowhere to go. He continued to scream and verbally abuse her that day.

When Crystal disobeyed John one morning, he grabbed her by the neck and started choking her. She screamed and he punched her in the face. He then hit her in her stomach. During the assault John threatened, again and again, to kill her.

Crystal decided it was too dangerous to stay there but did not call the police straight away as she thought John might hear her and become angry again. She called a family friend to come and pick her up. Her relatives then took her to the Police station where she made a statement, and an Intervention Order was granted. After reporting the assault Crystal realised she was severely injured and required hospitalisation.

VOCAT Award

VOCAT made an interim award for payment for the medical services Crystal received after the assault. The final award was made about 12 months after the initial application and included Category C SFA of \$1300, as well as various awards to assist recovery and legal fees.

Multiple physical assaults and threats to kill were made over an extended period of time. These were treated as 'related' acts for the purpose of the award and so one single SFA payment was made.

6.4 Recommendations

Recommendation 7: Amend the Act to create one expenses award category

¹⁹ Gubbay, I. 1996. 'Victims compensation for NESB women who are victims of sexual crime and/or violence at home, paper presented to *Many Voice, Different Stories: a conference on speaking out about cultural diversity and sexual assault*, Liverpool, p. 137.

The category should not be strictly prescribed.

Recommendation 8: Exclude family violence from the 'related criminal acts' provision

Family violence matters be excluded from the 'related criminal acts' provision. Section (s4) should not operate to reduce the quantum of the award in family violence related applications.

Recommendation 9: Introduce a recognition payment

The special financial assistance award should be replaced with a recognition payment that is not prescribed by categories, and the amount payable in recognition of the harms experienced by victims of crime should be increased overall.

7. Form and timing of applications

7.1 Form of application

The current form used for applying to VOCAT itself is an indication of the problematic aspects of the current system. As discussed in the consultation paper, the main concern with the form comes down to requesting information related to a singular act of violence, thereby not accounting for family violence contexts that typically involve multiple incidents and many different types of violence and abuse occurring over lengthy periods of time.²⁰

Our own analysis of the hardcopy and online versions of the form alongside discussions with family violence service providers identified other problems including:

- references to different types of 'victims' (primary, secondary, related) that require explanation and legal advice as to who might fall into these categories and what this means for their entitlements;
- requests that victims tick whether they have received financial assistance from other sources such as Workcover, Transport Accident Commission, and Insurance – this raises concern that victims will be disadvantaged if they have applied for funds from other sources that could impact on their right to reparation for the harms of family violence;
- expectations that matters are reported to police with the suggestion that not doing so is a 'failure' on the part of the victim, when indeed for many victims not involving police is part of their safety plan to not arouse further abuse from the perpetrator and/or related to their past negative experiences and mistrust of police and other authorities, as is especially the case for victims from marginalised backgrounds; and
- the lack of translated application forms in non-English languages – while the VOCAT website does provide brochures in other languages, these are not easily accessible and there are no translations of the application form itself.

Representatives from family violence services recommended that the application form should be accessible and easy enough for most victims to complete the applications themselves, or with the assistance of their current case manager or lawyer (if already accessing legal services for other matters). Given that not all victims are able to access or are eligible for case management or legal services, we also recommend that victims are able to seek assistance with completing the form from the administrative body that will be responsible for our recommend administrative scheme.

Applications should be available in plain English and a range of other common language groups both online and in hard copy. The form should allow for victims to document multiple family violence incidents and types of violence and abuse over periods of time. Victims should be able to record specific dates of significant incidents if they are able to do so. However, given the patterned, ongoing conditions of family violence, they should also be able to state that they were subjected to a different types of family violence behaviours between a range of dates. Victims should also be able to record if they were subjected to family violence from one or multiple perpetrators (as is the case in some extended family settings) and document the cumulative impacts of violence not only on themselves but also on their children and other related victims.

Evidentiary requirements associated with the form should allow for victims to include different types of materials from a range of sources and not put limitations on accepting only certain types of documentation. This should allow victims to record multiple types of information such as medical or psychological reports, intervention orders, family court orders, copies of family violence risk assessments, and/or statutory declarations detailing the history and impacts of violence from the victim herself as well as other supporting friends or family members, case workers and other relevant professionals. Related to this, victims should be able to record key contacts that are relevant to their evidentiary documents such as police officers, case workers, counsellors, doctors and lawyers.

Regarding whether victims have made claims for cost from other sources (such as Workcover or insurance), we recognise that there is certainly an interest in ensuring that applicants are not receiving funds for the same costs through multiple avenues. However, the form does not indicate that only successful claims from other sources will be considered, nor that victims may have additional costs they are claiming through the victims of crime assistance scheme. This implies that victims will be disadvantaged in terms of their rights to compensation and reparation for the harms of family violence if they have received financial assistance from another source. We suggest that the form and the Act is more specific regarding the relationship between awards and other sources of financial compensation or assistance so that victims are fully informed when noting their claims under the expenses category. Case management of the application within the administrative model can then clarify whether the same claims were made in other schemes, if those claims are pending, successful or denied, if there are additional claims made through the VOCAA application before the application is forwarded for a decision. The form should also advise that outcomes of claims in other schemes will not impact on their recognition payment.

Further to this, the form should reflect any of the other accepted recommendations that change the delivery mechanism of VOCAA from a tribunal to an administrative system, and other key changes including that children are recognised as primary victims, the inclusion of definitions of family violence, and removal of references to time limitations, perpetrator notifications, and expectations that offences were reported to the police.

7.2 Timing of application

It is well-documented in the consultation paper that the two-year time limit disadvantages adult and child victims of family violence and sexual assault/abuse for several reasons, primarily relating to the considerable amount of time it can take victims to recognise their experiences and then feel ready to disclose and seek formal assistance.²¹ Other reasons relate to fear of reprisal from perpetrators, distrust of authorities and the legal system, experiences of systemic discrimination, feelings of shame, and whether they were children at the time of the violence and abuse. It is acknowledged that some population groups will have experienced multiple forms of systemic discrimination, thus further compounding their experiences of violence, and experiences with the justice system.

The WLSV practitioner survey found that over 75% of the participants had filed family violence-related VOCAT applications outside the two-year time limit. Consultations with family violence services described how the two-year time limit is a barrier as it can take a long time for victims to regain stability from the cumulative effects of family violence and understand how to describe what has happened to them. Additionally, victims may be involved in other civil, criminal and/or family law court processes that take time to resolve before they might even consider seeking compensation. The following case study demonstrates the problems that family violence victims face when lodging applications out of time:

²¹ pp. 78-9.

Figure 3: Case Study - Kali

Kali

Kali married her husband Richard in Africa in 2008. Richard came to Australia and sponsored Kali to come over in 2010 to live with Richard and his extended family

Whilst living in Richard's family's home, Kali was repeatedly harassed by family members for not having children. They took her to a doctor to see if there were any health problems explaining why she was not yet pregnant.

Richard's brother Tim sexually assaulted Kali on multiple occasions. He often attempted to pull Kali's clothes off, and grabbed her forcefully, bruising her body and her genitals. On one occasion he grabbed Kali around the throat and kissed her on the mouth, forcing her onto a bed in the family home. She pushed him away and told him she was his brother's wife and he should not touch her. Tim threatened to kill Kali if she told anyone.

Richard frequently assaulted Kali. She was isolated, frightened and prevented from leaving the house other than to go to church. Kali was not allowed to learn English or have any friends, or any money of her own. Her situation worsened drastically when her husband expelled her from the home without any money or belongings.

Kali was made homeless and developed severe depression, symptoms of trauma, constant fear and isolation from her community. She felt that her community would shame her for being rejected by her husband. Consequently, Kali has been too ashamed to tell her own family what has happened to her since she arrived in Australia.

When Kali sought assistance for family violence, she made an application for VOCAT through WLSV. VOCAT initially requested Kali fill out an extension of time application because of the section 29(2) two-year time limit on the basis that the first assault was out of time. WLSV made submissions that the application should be accepted as within the two-year time because the most recent assault was within time limit. VOCAT accepted this and subsequently withdrew the request.

While the Tribunal can decide not to strike out the application having regard to particular circumstances set out in section 29(3) of VOCAA, including the perpetrator's position of power, influence or trust or the physical or psychological effect of the act of violence on the applicant, this section does not specifically list family violence as a consideration in allowing the application to proceed out of time. The current list of exceptional circumstances also does not explicitly allow for persons who were children at the time of the violence to seek exemption to the time limitation.

Other states specifically name family violence as an exemption to their two or three-year time limit, such as the Northern Territory which allows for an extension with no specified time limit, or New South Wales which allows family violence cases an extension of up to ten years. We believe that Victoria should provide for a similar exemption, and in fact, should go further by specifically stating that there is no time limit in cases of family violence and sexual assault/abuse for child and adult victims. In line

with other recommendations in this submission, accessing compensatory entitlements should be based on the harms and impacts of violence experienced, not on the basis of time.

7.3 Recommendations

Recommendation 10: Update the application form to be consistent with other reforms that recognise family violence as ongoing and causing cumulative harms

The application form should be accessible online and in hardcopy in plain English and a range of community languages and allow for user testing and evaluation by victims prior to implementation.

Recommendation 11: Allow for a broader range of evidentiary materials.

Evidentiary materials and supporting documents allowed should include medical or psychological reports, intervention orders, family court orders, copies of family violence risk assessments, and/or statutory declarations detailing the history and impacts of violence from the victim herself as well as other supporting friends or family members, case workers and other relevant professionals.

Recommendation 12: Remove time-limit for applications made for cases of family violence and sexual assault.

This includes for both child and adult victims, including victims who were children at the time when the violence and abuse occurred.

8. VOCAT hearings – notification, appearance and open court provisions

8.1 Perpetrator notification

Perpetrator notification is a significant deterrent in family violence-related applications. The consultation paper details the substantial evidence of this problem from reports made by WLSV, the Magistrates' Court, the Children's Court, the Royal Commission and in case law examples demonstrating the inconsistent application of VOCAT's discretionary powers to not pursue perpetrator notification.

Consultation with family violence services provided strong support for removing perpetrator notification as it undermines the purpose of the compensatory scheme and causes distress, fear, and re-traumatisation for family violence victims. Service representatives noted that perpetrator notification deters victims from making applications or results in victims choosing to withdraw their

applications in progress. Concerns were also raised that notifying perpetrators about a VOCAT application creates yet another opportunity for perpetrators to manipulate systems against victims, attempt to take the funds if they are awarded, and seek to further undermine victims' attempts to remove themselves from his control. Some victims accessing compensation may have gone to great lengths to cut off all ties with perpetrators to protect themselves and their children, and perpetrator notification may put them at significant risk. In this way, perpetrator notification colludes with ongoing perpetration of family violence. As one participant in the interviews we conducted put it:

'It's very slow, it takes a long time to get through the process when women just want to move on but have a long drawn out legal process where the perpetrator uses the system to continue to abuse her. It's not an even playing field, perpetrators have more power.' (Participant 1).

She felt strongly that perpetrators had no place in victims of crime processes and should definitely not be able to appeal an award. Another interview participant captured the deterring effect of perpetrator notification that prevents women accessing their entitlements under the Act:

'If he was there, I would have been worse afterwards, I wouldn't have done it ... I think I would have had a mental breakdown if he had been there' (Participant 3).

Notifying perpetrators also does not align with the purpose of the Act as their interests and rights are not impacted by the compensatory outcome. While procedural fairness may be considered an issue by

Figure 4: Case Study - Lanfen

Lanfen

Lanfen was married to Zhang for a few years before she contacted police out of fear of Zhang's escalating perpetration of violence towards her. Over the final year of the marriage, Zhang repeatedly physically assaulted Lanfen. Zhang also refused to provide Lanfen with access to a phone, transportation and money.

Lanfen did not want police to press charges against Zhang as she was under family and community pressure not to support criminal charges. Her family told her she should not leave the relationship and was wrong to keep a father from his children. Lanfen felt that the community shamed her for leaving the relationship, and seeking outside help from police. She decided not to support the police application for a family violence intervention order to protect herself and the children.

As a result of Zhang's chronic abuse Lanfen suffers from depression and post-traumatic anxiety. This is exacerbated by her physical exhaustion, having to travel a long distance between her two jobs to provide primary care for her children.

When Lanfen was ready to make a VOCAT application she documented the countless physical assaults she endured from Zhang. The Tribunal sought to notify Zhang, despite objections made to oppose it.

Further to this, the Tribunal member hearing objections to perpetrator notification was also of the opinion that under s52(a)(ii), Lanfen would not be entitled to any VOCAT assistance because she did not press charges, and requested submissions otherwise.

some, we believe that this is a matter for other legal jurisdictions that impact more specifically on alleged perpetrators' liberties. Furthermore, the administrative system that we are proposing would remove the necessity for perpetrator notification as victims' applications would be assessed on the basis of the evidence and supporting documentation provided that demonstrate the harms and impacts of the violence.

Over 75% of the participants in the WLSV practitioner survey received notice that the Tribunal intended to notify the perpetrator in their VOCAT matters. Participants who made an objection to perpetrator notification, experienced significantly more unsuccessful than successful results. This caused some victims to withdraw their VOCAT applications. When the Tribunal proceeded with perpetrator notifications despite objections, some perpetrators did not attend the hearing, but when they did attend, they contested victims' experiences, with detrimental outcomes. Refer to p. 19 for a case study which highlights the problems associated with perpetrator notification and judicial discretion.

In order to create a compensatory scheme that is accessible, trauma-informed and family violence literate, perpetrator notification should not be a discretionary option: it should be removed from the legislation altogether.

8.2 Evidentiary and procedural protections for vulnerable witnesses

The improvements for evidentiary and procedural protections suggested in the consultation paper may assist to improve victims' experiences with VOCAT if the judicial model is retained. However, our foundational recommendation in this submission is that Victoria transitions to an administrative model, thus making such judicial reforms unnecessary. Furthermore, determination without hearing or 'on the papers' would also be an unnecessary provision within the administrative system.

Further, access to and use of records related to VOCA application should be restricted and protected from subpoena due to the sensitive nature of the information stored within.

8.3 Recommendations

Recommendation 13: Remove requirements for perpetrator notification from the legislation.

Ensure that applicants are fully informed that perpetrators will not be involved in the process whatsoever

Recommendation 14: Victims of crime assistance scheme records are protected.

Documents should not be subject to subpoena in other matters involving a family violence victim and a perpetrator.

9. Making an award

9.1 Reporting to police and providing reasonable assistance

Victims of family violence are negatively impacted by current requirements under Section 52(a) that they report violence to the police in a reasonable time frame, and provide support and assistance to

police and prosecution. The dynamics of family violence alongside various intersectional factors impacting on marginalised and/or stigmatised communities creates numerous barriers that prevent victims from engaging with police. Ostensibly, this disadvantages family violence victims, further limiting their access to justice.

Non-engagement with police is not uncommon in family violence contexts. There is research estimating that less than half of family violence incidents may be reported to police.²² It is highly likely that there is a significant number of unreported incidents of family violence, given the particular barriers for Aboriginal and/or Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, women working in the sex industry, women with disabilities, people from LGBTIQ communities, and women living in rural or remote areas.

We recognise that for many victims avoiding police is part of their safety plan to not arouse further abuse from the perpetrator. Past negative experiences and mistrust of police and other authorities also factors into family violence contexts, especially for Aboriginal and Torres Strait Islander communities, LGBTIQ communities, and persons from immigrant and refugee backgrounds. Victims and their children may also be financially dependent on perpetrators and are therefore reluctant to cooperate further with authorities for fear that they will be economically disadvantaged.

As described on page 31 of this submission (form and timing of applications) victims may not recognise their experiences of family violence or feel safe or ready to seek formal support until after a long period of time. Family violence service representatives reported working with clients who accessed support ten years or more after the family violence occurred. These issues of timing and readiness also mean that victims may not have contacted police while they were dealing with family violence situations in the past. Victims who did not contact police during a two-year time frame should not be penalised or restricted from accessing VOCAT when their readiness to pursue support and recover came many years later. This should also be considered in circumstances where the applicant was a child victim when they experienced family violence or sexual assault.

Even when victims contact police, the primary motivating factor is often to stop the violence and seek safety at the time of an incident. Further civil and criminal actions are not necessarily congruent with these motivations, leaving some victims reluctant to cooperate further with policing and prosecution responses. This is also related to managing safety and fear of retaliation from the perpetrator and sometimes other family members. Perpetrator tactics to control, threaten to harm or threaten to kill victims who report abuse to police or other authorities is common in family violence contexts.

Furthermore, sometimes contact with police does not necessarily result in police action. WLSV surveyed practitioners about the most significant issues they encountered in VOCAT applications in relation to police engagement. Their responses centred on circumstances where police themselves decided not to make a report, refused to take a statement, failed to make a formal record of reports, or did not pursue criminal charges. Issues for VOCAT applications also arose when police statements were limited to one specific incident under police investigation, and failed to detail other and further incidents of family violence. Practitioners in the survey identified a common experience that police refused to take statements about what they describe as 'historical' family violence incidents. An example of this is

²² Birdsey, E. & Snowball, L. (2013). *Reporting Violence to Police: A Survey of Victims Attending Domestic Violence Services, Issue Paper no 91*. Sydney: New South Wales Bureau of Crime Statistics and Research.

provided in the consultation paper regarding the family violence related case of *Frost v VOCAT*.²³ These issues negatively impact on VOCAT applications in terms of eligibility, evidence available, reduction of award, and potential for perpetrator notification.

As stated previously, family violence victims may, on occasion, be unsupportive of the prosecution of criminal charges for a range of reasons. Police requests for those victims to sign statements of no complaint can undermine eligibility for victims of crime assistance, where the tribunal considers the matter 'unreported' or questions applicant cooperation with police. Practitioners surveyed also cited the complications that follow where clients are not 'cooperative' with police, such as reduction or rejection of awards. In our experience, victims' cooperation is also questioned by the tribunal in circumstances where the prosecution of criminal charges does not proceed, colliding with discriminations based on notions of 'deserving' and 'non-deserving' victims. This can lead to issues of perpetrator notification described on page 35. In our experience, without finalised criminal prosecution, the Tribunal is more likely to propose perpetrator notification, regardless of the circumstances.

The case studies in this section demonstrate the difficulties clients can face in reporting their experience of family violence to police.

As discussed on page 31 (form and timing of applications) police are not the only source of evidence and supporting information about a victims' experiences of family violence and we recommend that a range of other sources are included in applications. A reformed compensatory scheme, using an administrative system, should recognise that information can come from many sources, including the victim herself. If a report is made to police at any time, this should be accepted as sufficient irrespective of whether the victim supported police action or prosecution.

9.2 Character and behaviour considerations

The consultation paper details the many problematic and victim-blaming aspects of section 54 related to scrutiny and assumptions about the victims' character, behaviour, and attitude, as well as judgements about provocation and concerns about perpetrators potentially benefiting from the award.²⁴

²³ p. 96.

²⁴ p. 100.

Understandably, such provisions are intended to safeguard against situations that undermine the purpose of the Act where violent offenders may seek compensation that is not in the public interest. However, section 54 puts family violence victims at a disadvantage particularly as their experience of violence is wrapped up in complex relationships with perpetrators alongside contexts of social disadvantage, marginalisation, colonisation, poverty, and historic, and in some instances, continuing experiences of systemic abuse. As such, the provisions in section 54 are inherently victim-blaming and divorced from social realities. Provocation and contributory considerations in the current Act also feed into this victim-blaming narrative failing to recognise that victims are not at fault for the violence they are subjected to and may sometimes respond to perpetrator's threats through defensive and/or protective behaviours. Subjective judgements about character and provocation should not factor into a trauma-informed compensatory scheme and should be removed from the legislation.

Figure 5: Case Study - Victoria

Victoria

Victoria moved away from family and friends to live with her boyfriend, Cameron. During the relationship, Cameron was extremely controlling and increasingly psychologically and physically abusive. Cameron's violence escalated and he often spat on Victoria, punched holes in the walls of their rented unit, and smashed her possessions. On one occasion, he strangled Victoria. In the final assault, Cameron punched Victoria in the eye several times, leaving her with a black eye.

The police photographed Victoria's injuries and encouraged her to support police action to press charges against Cameron. Victoria was too terrified to proceed due to fear of retribution as Cameron had previously threatened her if she reported him to police.

After many months of counselling, Victoria returned to the police station ready to make a statement. Police would not take her statement, telling her that too much time had passed. Victoria wanted to make a statement but did not want police to press charges. Police did not agree to this and Victoria left without making a statement.

In Victoria's matter, the tribunal member was concerned that Victoria had not made a police statement and had not assisted police in pursuing criminal charges against Cameron. WLSV were able to demonstrate special circumstances. The police were supportive of Victoria's application for VOCAT assistance and provided an affidavit to assist WLSV in making the application on Victoria's behalf. However, despite affirming Victoria's application, the police denied that Victoria had attempted to make a report, which meant that Victoria was unable to access the full award.

Victoria received Category D special financial assistance of \$650. WLSV unsuccessfully argued that the offence should be upgraded to a Category C offence. The tribunal was not satisfied, given the absence of medical evidence, as well as the absence of a finding of guilt in a criminal court, that the offence could be categorized as a Category C offence. This illustrates the incapacity of VOCAT legislation to recognise the seriousness of family violence in circumstances where no criminal charges are laid.

Furthermore, a victim's own criminal history should not preclude her from receiving compensatory awards, particularly as the criminalisation of family violence victims is not uncommon as discussed in the consultation paper and in the Royal Commission.²⁵ This is also relevant to the increasing trend of misidentification of victims as perpetrators where Victoria Police have not undertaken primary aggressor assessment and/or have arrested both parties. Analysis by No To Violence/Men's Referral Service shows that police in Victoria are wrongly identifying up to 375 women every month as perpetrators (Respondents) on Family Violence Intervention Orders.²⁶ Police misidentification of victims as the primary aggressor/perpetrator in family violence incidents can heavily influence outcomes in other legal proceedings, such as VOCAT.

A legal narrative that demands victims act 'rationally', leave abusive relationships, report violence, and not fight back or have substance abuse issues, in order to be entitled to redress, fails to understand the nuances and dynamics of family violence.²⁷ The multiple obstacles women face in leaving an abusive relationship or reporting abuse are well reported.²⁸ Women as victims of family violence are judged as deserving or undeserving, innocent or complicit.²⁹ Legislative barriers to family violence victims' access to VOCAT inhibit that schemes' capacity to genuinely assist victims of family violence recovery.

9.3 Perpetrator benefit

In 2010, DV Vic made a joint submission to the Australian Law Reform Commission (ALRC) review of family violence legal responses where we highlighted our concerns about section 54(e) of the Act noting that refusing VOCAT applications on the basis that perpetrators may potentially benefit is a failure to work from a victim-centred lens that accounts for the complex dynamics of family violence, as well as the importance of financial stability for women's decisions to stay or leave relationships.³⁰ Consider, for example, that refusing a victim's application on the basis that a perpetrator might benefit, is potentially refusing an opportunity for a victim to obtain the finances necessary to safely exit the relationship and pursue formal support and safety options for herself and her children.

It is also important to recognise that some victims retain some form of contact with perpetrators for many complex reasons including family pressures and obligations, childcare and parenting arrangements, common places of worship and/or work, or joint property ownership and forced contact resulting from family law orders. Many women are often forced to remain tied to the perpetrator as they attempt untangle complex financial relationships being leveraged by the perpetrator to perpetrate financial abuse, power and control in the post-separation space. Unlike incidents of stranger violence, victims of family violence are often required to remain in contact with perpetrators as a matter of

²⁵ p. 108.

²⁶ Nathan de Guara, Policy Consultant, *No to Violence: Male Family Violence Prevention Association*, Interview with WLSV, 21 August 2017.

²⁷ Stubbs and Wangmann (2015) above n 59 at 110–112. The authors also note competing demands on victims, especially as mothers, in different jurisdictions, and the way in which meeting the requirements of each domain may be inconsistent see p113.

²⁸ Forster (2014) above n 3 at 118–119. CALD and ATSI women face multiple additional barriers to reporting and to access to justice. See also NSW Ministry of Health, 'Safety and Justice' (Women in NSW Report Series 2006) available at

²⁹ Forster (2014) above n 3 at 110.

³⁰ Australian Law Reform Commission and New South Wales Law Reform Commission (2010). *Family Violence—A National Legal Response: Final Report, ALRC Report No 114 and NSWLRC Report No 128*. Canberra, Sydney: ALRC/NSWLRC, pp. 1393-4.

managing their safety even after separation – it has been well-established that the period immediately following separation is amongst the most dangerous for survivors of family violence. Even where victims have severed relationships with perpetrators, abusive, stalking and harassing behaviours may continue for many years.

It is the responsibility of the state via statutory and community-based services, including police, courts, corrections and men's behaviour change programs to pursue interventions and hold perpetrators accountable for violent behaviour. Victims should not be excluded, blamed, disadvantaged or penalised by the compensatory scheme even where they continue to reside with, maintain contact, or manage complex relational circumstances with the perpetrators. As such Section 54(e) should be amended to remove references to perpetrator benefit for family violence related applications.

Related to issues of perceived perpetrator benefit is the mandatory refusal provision in section 52 of the Act regarding applications that may be made in collusion with a perpetrator. Again, similar to the issues associated with beliefs about perpetrator benefit under section 54, victims should not be excluded if there is an assumption of collusion. Section 52 and 54 should be amended to recognise the complex relational dynamics of family violence and perpetrators' shifting coercive and controlling behaviours.

We believe that it is better to put safeguards in place that prioritise victim's rights to access the crimes compensation scheme whilst also managing any potential adverse outcomes that may arise from the perpetrator becoming aware of her application or awards. In this sense, changes to the Act should establish a trauma-informed process but also an informed consent, risk management approach that is integral to best practice in family violence responses. This means that administrators in our proposed model would consult with the victim directly about how the funds could be provided in a way that is safe and relevant to her circumstances. As suggested by the ALRC and described in the VLRC Consultation Paper, this could include options for payments to be made on the basis of expenses incurred, which is already a common practice and supported by legislation in Victoria.³¹

9.4 Recommendations

Recommendation 15: Exempt family violence applications from requirement to report and/or assist to police.

Family violence related applications should not be rejected in the absence of a police report or criminal prosecution, or in circumstances where the applicant has been unable to provide reasonable assistance to police. Applications for compensation should accept that victims of family violence make reports of violence to other bodies and agencies and that consideration be given to other forms of evidence and supporting materials from relevant professionals and the victim herself.

Recommendation 16: Family violence matters be exempted from mandatory refusal requirements.

The current provisions for mandatory refusal under sections 52 and 54 unfairly disadvantage survivors of family violence and do not adequately reflect the nature of the experience of family violence.

³¹ Page 103

10. Review, variation and refund of awards

10.1 Variation of awards

Survivors of family violence regularly require variation of awards and, in the current system, may be unable to complete the necessary variation application documents without legal assistance. This issue is compounded by solicitors often being unwilling or unable to assist in the absence of adequate funding. As a result, many clients who rely on victims of crime assistance for access to counselling can face delays in access to counselling when an award is exhausted. We support Forster's (2013, p.44) vision that:

... the provision of counselling should be generous, allocated on the basis of need and independent of the compensatory sum ... [that] provides a symbolic message to the victims and the community that the state is concerned about its impact and can provide valuable therapeutic assistance to victims and their families.

Simplification of applications to vary awards and reductions in delays is also expected to be an outcome of transitioning to a specialist administrative model, where each application is case managed by a family-violence informed case manager and decisions are made without the need for a burdensome evidentiary process.

10.2 Refund of awards

We wish to be clear that we do not support any provisions under the Act that enable the forced refund of awards from survivors of family violence that would increase the risk of harm to them by the perpetrator of the violence or would exacerbate the effects of family violence in their lives. In particular, the Act should state that primary victims of family violence should not ever have to refund any award based on 'reconciliation' with the offender based on the presumption that this could place her at risk, is not necessarily a reconciliation by choice, and that the 'reconciliation' does not nullify her experience of family violence.

10.3 Recommendations

Recommendation 17: Generous award of expenses for counselling

Insert provisions into the Act that allow applications by survivors of family violence to vary rewards to be simplified, including giving consideration to contingency award options for additional counselling to avoid delays in accessing counselling for survivors of family violence.

Recommendation 18: Exempt awards made to survivors of family violence from refund provisions.

Provisions that allow for refund of awards must not apply to survivors of family violence where this would place them at risk of further family violence and/or exacerbate the effects of family violence on their lives.

11. Awareness of VOCAT and accessibility for family violence victims

11.1 Access to legal assistance

Access to VOCAT is limited in a legal industry in which few private lawyers provide this service, and community legal services lack capacity.

A cost/time analysis of VOCAT matters has identified the real cost of running a VOCAT application, in comparison with remuneration for legal services under VOCAT awards. Relatively low awards reduces the number of solicitors willing to offer these services, which impacts the accessibility of legal assistance for family violence victims.

WLSV has experienced difficulty in securing barristers with VOCAT expertise, or experience working with traumatised clients and this disadvantages family violence victims. Counsel familiar with VOCAT may for example, be more successful in seeking uplift of 'special financial assistance' category.

These issues highlight points made elsewhere in this submission that legal assistance for VOCAT applications needs to be adequately funded.

11.2 Providing victim-friendly and accessible information

Potential applicants can have limited awareness of victims of crime assistance, especially those for whom English is a second language, or in newly arrived communities. Many WLSV and DV Vic member agency clients had been unaware of the victims of crime assistance scheme until advised by family violence caseworkers, police or lawyers. Victims from recent language groups are not able to access victims of crime assistance material translated into their own languages. Women from CALD communities face multiple barriers to accessing victims of crime assistance. Cultural stigma or isolation is exacerbated by a lack of accessible information on services to aid recovery.

The risk of re-traumatising victims through the application and hearing process can also deter women from making applications. Potential applicants may face other more pressing issues around access to housing or safety, which may not be addressed through the victims of crime assistance process with the necessary expedience.

These barriers to accessibility were all raised by DV Vic members at the VLRC DV Vic consultation.

11.3 Recommendations

Recommendation 19: Simplify processes to expand range of acceptable services and professionals to whom victims can report.

Recommendation 20: Increase cost awards to more accurately reflect cost of running matter.

Recommendation 21: Improve information and referral pathways between support services, practitioners, and the victims of crime assistance scheme.

This should include training for CALD services regarding the victims of crime assistance scheme and provision of translated materials, as well as training for awards decision makers on issues affecting vulnerable and marginalised groups of survivors of family violence.

Recommendation 22: Accept evidence and reports from a broader range of services.

This can enable clients to continue with their current counsellor/psychologist/ support worker in order to complete requisite counsellor's reports and recommendations. Reports or evidence are only necessary to meet the requisite standard of proof.



31 October 2017

The Hon P D Cummins AM
Chair
Victorian Law Reform Commission
GPO Box 4637
Melbourne, Victoria 3001

Dear Mr Cummins

RE: Submission to the review of the Victims of Crime Assistance Act

No To Violence incorporating the Men's Referral Service (NTV/MRS) welcomes the opportunity to contribute to the Victorian Law Reform Commission's review of the Victims of Crime Assistance Act.

NTV/MRS have reviewed and endorse the joint submission prepared by Women's Legal Service Victoria (WLSV) and Domestic Violence Victoria (DV Vic), which includes 22 recommendations for reform.

NTV/MRS believes that the current victims of crime assistance scheme does not adequately acknowledge and respond to the experiences of survivors of family violence. In reforming the Victorian response it is essential any new scheme is timely, consistent, victim-centred and trauma-informed. NTV/MRS endorse WLSV and DV Vic's key recommendations, including:

- Creation of a new specialist administrative scheme, underpinned by a trauma-informed case management approach with inbuilt safeguards. NTV/MRS recognise that WLSV and DV Vic have alternate views on the best administrative model and NTV/MRS supports either model's implementation on the condition that appropriate funding and safeguards are met;
- Expansion of the definition of 'act of violence' to recognise family violence as defined in the *Family Violence Protection Act 2008* (Vic) to ensure the ongoing, patterned nature of family violence is fully recognised;
- Expansion of the definition of 'injury' to acknowledge the psychological injury and cumulative harm caused by family violence;
- Inclusion of children and young people who are survivors of family violence in the primary victim category;
- Exclusion of family violence applications from perpetrator notification, which has historically been a significant deterrent in family violence-related applications;
- Removal of the requirement to report to and assist police, with the inclusion of other forms of evidence and supporting materials to support survivors' applications;
- Removal of the time limit provisions for applications involving family violence.

NTV/MRS is committed to supporting the development and establishment of a comprehensive assessment tool for the identification of primary aggressors of family violence. NTV/MRS has already advanced its work in this area and continues to advocate for the adoption of a state-wide tool. Such a tool would ensure consistent, safe and quality practices and outcomes across the family violence service system, acting as a safeguard for a reformed Victims of Crime Assistance scheme.

I am happy to discuss any or all of these aspects further at any time.

Best Regards,

A handwritten signature in black ink, appearing to read 'Jacqui Watt', with a stylized, flowing script.

Jacqui Watt
Chief Executive Officer

31 October 2017



Good Shepherd
Australia New Zealand

The Hon P D Cummins AM
Chair
Victorian Law Reform Commission
GPO Box 4637
Melbourne, Victoria 3001

6 Paterson Street
PO Box 182
Abbotsford VIC 3067
T +61 3 9270 9700
F +61 3 9419 4472
E vicadmin@goodshep.org.au
www.goodshepherd.com.au
ABN 61 354 551 576

Dear Commissioners,

Letter of Endorsement: DV Vic and Women's Legal Service Victoria submission – Family
Violence and the *Victims of Crime Assistance Act 1996* review

Thank-you for the opportunity to make a submission to the Victorian Law Reform Commission's review of family violence and the *Victims of Crime Assistance Act 1996*. As a member of DV Vic, the peak body for specialist family violence services for women and children, we endorse the submission prepared by DV Vic in collaboration and partnership with Women's Legal Service Victoria (WLSV), and its 22 recommendations.

Our endorsement of the DV Vic and WLSV submission is underpinned by the recognition that family violence has profound, and often, long-lasting impacts on victims/survivors, an overwhelming majority of whom are women and children. We strongly believe that victims compensation schemes, like that provided in Victoria, play an important role in supporting victims of crime, as well as offering a symbolic recognition of the harms done to an individual. As it currently stands, the *Victims of Crime Assistance Act 1996* excludes many women and children who are victims/survivors of family violence, creating a 'hierarchy of victimhood'. We support the expansion of the *Victims of Crime Assistance Act 1996* to explicitly include *all* victims/survivors of family violence so as to provide equal access to this legal remedy, as well as a clear statement to the community of the unacceptability of men's use of violence against women and children.¹

Good Shepherd Australia New Zealand is a community services organisation that aims to disrupt the intergenerational cycle of disadvantage, especially for women and girls. We provide services that address social and economic exclusion and promote policies that reduce poverty, disadvantage and gender inequality. Good Shepherd Australia New Zealand is part of a global network of services and advocates established by the Congregation of the Good Shepherd, with representation at the United Nations as a Non-Government Organisation.

Yours sincerely

Dimity Fifer
CHIEF EXECUTIVE OFFICER
GOOD SHEPHERD AUSTRALIA NEW ZEALAND

¹ Forster, Christine, 2013, Victims of crime compensation schemes: Compensating victims of family violence, *Precedent*, Issue 116, May/June 2013, p. 40. <http://www.austlii.edu.au/au/journals/PrecedentAULA/2013/41.pdf>