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The Honourable P.D. Cummins AM
The Chair
Victorian Law Reform Commission
GPO Box 4637
Melbourne Victoria 3001
DX 144 Melbourne VIC

10 October 2017

Dear Phillip,

Re: Family Violence and the Victims of Crime Assistance Act 1996 Original Reference and Supplementary Terms of Reference - Consultation Paper June 2017

I refer to your letters dated 19 June 2017 and 11 July 2017 enclosing both the original and supplementary terms of reference in respect of Family Violence and the *Victims of Crime Assistance Act 1996* (the Act) and further, seeking written submissions in respect of the two references by 31 October 2017. Thank you for the opportunity to provide feedback on these proposals.

As you are well aware, I prosecute serious (indictable) criminal matters, including the many and varied offences that may be captured under the broad term 'family violence offences', for the state of Victoria and the Office of Public Prosecutions (OPP) institutes, prepares and conducts criminal prosecutions in the County and Supreme Courts on my behalf. Family violence offences cannot be defined simply as violent offences committed against the person such as causing injury or serious injury intentionally or recklessly, threats to kill or to inflict serious injury and stalking; or sexual offences against the person such as rape. Family violence offences may also include offences not against the person such as fraud and blackmail, criminal damage to property and intimidation and reprisals relating to witnesses.

Eligibility for Assistance

Definition of 'act of violence' in the family violence context

As stated above, a criminal offence committed in the context of family violence is not confined to physical or sexual (violent) offences against the person. Family violence offences are much broader in nature. The Act, however, currently restricts eligibility to victims of physical or sexual violence, a threat of injury or stalking.

It is clear that courts are now acknowledging that the effects of family violence are not confined to physical injury (see *Pasinis v R* [2014] VSCA 97 at [54]). In my view the definition of 'act of violence' under the Act should be reformed to address the contemporary understanding of family violence. This approach is generally consistent with Family Violence Intervention Orders in recognising threats and property damage as 'acts of violence'.

Consequently, I respectfully submit that a family violence offence, for the purpose of eligibility for compensation assistance under the Act, should not be limited to criminal offences involving physical and sexual violence committed against a person.

Time limits and the making of awards

I respectfully submit the VLRC should re-consider the 2 year application time limit.

While a prosecution is subjudice the OPP does not encourage victims to pursue a VOCAT award. There have been instances where VOCAT materials have been subpoenaed by defence and victims have been cross-examined on their VOCAT application materials. In a recent case, a complainant started the VOCAT process before the criminal prosecution was finalised and the victim's VOCAT materials were subpoenaed by defence. The VOCAT materials were then used by defence to secure a re-trial and that re-trial resulted in an acquittal because of inconsistencies in the complainant's evidence at trial and the VOCAT materials. In this context, the OPP notes the importance of protecting both the prosecution process and victims in respect of future VOCAT applications and, consequently, would discourage a victim from filing a VOCAT application prior to the conclusion of the criminal prosecution. VOCAT applications made while a criminal prosecution is subjudice may prejudice the proper administration of justice.

I also strongly support a VOCAT system that is modelled on evidence-based research and in this regard I submit that the 2 year application time limit does not properly take into account the evidence in respect of delayed reporting in sexual crimes. 'Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners', published by the Australian Institute of Family Studies, Commonwealth of Australia in September 2017, recently reported that that the majority of victims who experience rape and sexual offences delay disclosing and/or reporting, or never disclose/report their experiences. This fact is also reflected in the *Jury Directions Act 2015* (Vic), s 52(4) providing that delay in making a complaint in respect of a sexual offence is a '*common occurrence*'.

I also respectfully submit that evidence-based research in respect of delay in reporting/lack of reporting by victims of sexual offences should also be taken into consideration when considering 'eligibility', as the Act does not currently allow VOCAT to make an award of assistance if the 'act of violence' is not reported to police within a reasonable time, unless special circumstances exist (s 52 of the Act).

Awareness and accessibility: Interaction with victims of family violence

Committal, trial and appeal stage

The OPP is involved with victims of family violence crimes during the prosecution stage of a criminal matter, primarily through the informant (at pre-committal stage) and our Witness Assistance Service (WAS) (post-committal stage).

Support for victims and witnesses in Victoria is delivered predominantly through government agencies and government-funded programs administered by community organisations including the OPP's Witness Assistance Service (WAS). Your consultation paper specifically identifies the limited role the OPP's Witness Assistance Services (WAS) plays in providing assistance for witnesses:

"Where family violence victims are potentially able to get assistance through the witness assistance service, this service only provides assistance for witnesses in prosecutions pursued by the Director of Public Prosecutions" (page 30, Consultation Paper).

I confirm WAS' limited role in facilitating referrals to Victims Assistance Programs (VAPs) for VOCAT assistance. WAS usually informs and refers victims for assistance with VOCAT (and other forms of compensation) after the sentence and any subsequent appeal/appeal period has expired, unless urgent expenses are required by way of an interim award with VOCAT. WAS does not help victims prepare applications for assistance under the Act.

There may be limited interaction with a witness beyond the sentence and appeal period, however the limited scenarios are identified and discussed below.

Sentencing stage

The *Sentencing Act* 1991 (the Sentencing Act) empowers Victorian sentencing judges to make three separate kinds of compensatory orders against persons found guilty of criminal offences, including family violence offences. These three orders are restitution of stolen property (section 84), personal injury compensation (section 85A-M) and property loss compensation (section 86). Further, section 21B of the *Crimes Act* 1914 (Cth) empowers sentencing judges for Commonwealth offences to make reparation orders.

The sentencing judge does not have any involvement in compensatory relief applications filed by a victim of family violence under the Act. These are not matters for the sentencing judge. Similarly, these are not matters for the OPP. My role in prosecuting family violence offences ceases at the conclusion of the criminal prosecution and subsequent appeal period. The OPP ceases to have any involvement with a victim of family violence and does not play any part in assisting victims with making applications for compensatory relief under the Act.

Once an application for assistance has been filed under the Act

It is noted, however, that in determining the amount to be awarded to an applicant the Victims of Crime Assistance Tribunal must take into account any compensation order made by the sentencing court (s 16 of the Act). In this regard the OPP may have **limited** interaction with a victim of family violence at the conclusion of a criminal prosecution. A victim of family violence who initiates a VOCAT claim for assistance may contact the OPP to ascertain whether or not they are eligible, or may be eligible, for financial assistance from the offender, by reason of such a compensatory order being made by the sentencing judge.

Information and document requests under section 40(1)(b) of the Act

Finally, I acknowledge one discrete interaction between the OPP and VOCAT in the context of applications for assistance under the Act.

The OPP is regularly served with a written notice under section 40(1)(b) of the Act to provide information or documents relevant to a victim's application for assistance to a VOCAT Registrar within a specified period of time. The OPP has a statutory obligation to provide such information or produce documents relevant to the application under section 40(1)(b) of the Act. I note that this process also raises issues with potential prejudice to the proper administration of justice when a criminal prosecution is subjudice. I confirm, however, that this procedure does not fall within the scope of the terms of reference.

Concluding remarks

In conclusion, although I prosecute many family violence offences, the OPP do not have any involvement in VOCAT applications for assistance other than in the following discrete ways:

- to make victims aware of their rights to seek compensation under the Act and to refer them to organisations who may be able to assist them;
- to advise a victim of family violence as to whether or not the court has made an order for compensation under the *Sentencing Act 1991* at the conclusion of a criminal trial, for the purpose of assisting the Tribunal; and
- process section 40(1)(b) notices from VOCAT requesting certain information and/or documents to assist the decision-maker in assessing the application for assistance.

Consequently, I do not propose to comment further on the consultation paper.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Champion', with a long horizontal line extending to the right.

John Champion S.C.
Director of Public Prosecutions