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Victorian Law Reform Commission
333 Queen Street
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30 October 2017

Dear Sir/ Madam

Submission on the Review of *Victims of Crime Assistance Act 1996* (Vic)

We write this submission in response to the Victorian Law Reform Commission's review of the *Victims of Crime Assistance Act 1997* (Vic) (**the Act**) for all victims of crime, including victims of family violence. Inner Melbourne Community Legal (**IMCL**) welcomes the opportunity to contribute to law reform in Victoria.

Inner Melbourne Community Legal

IMCL is a not-for-profit community organisation that provides free legal assistance, education and advocacy to marginalised people in the City of Melbourne area (North Melbourne, West Melbourne, the Central Business District, Carlton, Parkville and Docklands). Our mission is to promote social justice through advocacy, education and casework delivered by a passionate and talented team.

IMCL has a team of ten staff members, a number of secondees and a pool of volunteers and carries out pioneering and innovative work through its co-located community partnerships, health justice partnerships, extensive community legal education program and innovative projects.

IMCL focuses its resources towards assisting some of the most disadvantaged members of the community including individuals experiencing homelessness, mental illness, disability, substance dependency and individuals from culturally and linguistically diverse backgrounds. IMCL promotes social justice and aims to improve the health and wellbeing of the community through the provision of high level, accessible legal advice. Acting on the findings of the Legal-Australia Wide survey,[1] IMCL is committed to collaborations and partnerships, and conducts legal outreach programs at Ozanam Community Centre, the Royal Women's Hospital, the Royal Children's Hospital, the Royal Melbourne Hospital, the Centre Against Sexual Assault and at the Carlton Housing Estate.

Additionally, since 2016 IMCL has received funding from the State Government to provide a family violence duty lawyer service at the Melbourne Magistrates Court three days per week. As part of this funding, we also provide an Early Intervention Legal Advice Service for clients seen as part of the duty lawyer service. This Service is not directed towards giving advice, or appearing in Intervention Order hearings. Rather IMCL provides general legal advice to

[1] Christine Coumarelos et al 'Legal Australia-Wide Survey: Legal need in Australia' (Report, Law and Justice Foundation of New South Wales, August 2012).

clients affected by family violence by phone, where a lawyer will be available to give advice on related legal issues such as family law, child protection, criminal law, debt, fines, tenancy, victims of crime or other legal problems clients are facing.

Casework and advice to victims of crime

We see victims of crime, particularly family violence victims, at a number of our legal outreach programs. We provide advice and casework assistance regarding the Victims of Crime Assistance scheme (**scheme**) at the:

- **Royal Women's Hospital** – we commonly assist women during and after their pregnancy when they have experienced family violence and are either considering leaving, or have left a violent relationship;
- **Royal Children's Hospital** – we assist child victims of sexual abuse and their families accessing support and assistance from the Gatehouse Clinic;
- **Royal Melbourne Hospital** – we assist victims of family violence who are receiving urgent medical treatment and rehabilitation following a violent crime;
- **CASA House** – we assist victims and survivors of sexual assault;
- **Ozanam Community Centre** – at their drop in-centre which provides supports for people experiencing homelessness or at risk of homelessness, and/or who are socially excluded. For some of these people, they are experiencing homelessness and social exclusion as a result of their experiences of family violence; and
- **Melbourne Magistrates Court** – we advise victims of family violence who have related Intervention Order proceedings about the scheme.

We are well placed to comment on what we believe have been the unintended and negative impact of the Act on the most vulnerable members of our community.

Submissions

Given the breadth of materials provided in both the initial consultation paper and supplementary consultation paper, and questions posed therein, the focus of these submissions is on addressing issues with the current Act and not whether there is a need for broader reform.

Our responses have been informed by a number of case studies that we have gathered over a number of years of working in this area and from the experiences of our Senior Lawyer Jessica de Vries, who has been doing this work for over five years.

For some of our clients, applying for assistance through the scheme was not a therapeutic process. It was traumatic, and they had to fight hard to get assistance and recognition for what they had suffered. As one client, Grace, described to us:

> *"VOCAT traumatised me on a completely different level."*

Making their applications often came at an enormous personal cost, physically and emotionally. Grace recounted that when she went before the Tribunal member, she felt as though that she was treated with "*suspicion*". These feelings arise as it can be difficult for clients to understand that the Tribunal must be satisfied that certain thresholds are met, before an award can be made. Grace said that all she felt was that "*they didn't believe me*." She would come away from hearings feeling as though she had been "*grilled*" and "*cross-examined*". She considered abandoning her application because:

> *"It was damaging me to participate and I didn't want to participate in my own abuse."*

Her comments have been echoed by a number of our clients. Even in circumstances where we are confident that clients would be eligible for a higher award of financial assistance, they are willing to walk away with little or nothing at all, knowing that they could not continue with a process that was destructive and ultimately harmful to them. This is clearly at odds with the purpose and objective of the Act.

In our submissions we recommend:

- Amending the victim categories;
- Amending the definition of 'act of violence' and injury;
- Removing the requirement that applicants must prove that an act of violence caused their psychological injury;
- Providing greater guidance and direction as to how quantum of award should be calculated, and expanding the categories of assistance;
- Greater recognition of the impact of cumulative harm, and more assistance for victims that been the victim of serious and sustained offending over a long period of time;
- Greater guidance about how maximum and minimum awards of special financial assistance are made;
- Increasing the time limits for applying under the Act for some categories, and removing any time limits for child victims;
- Clarifying what can constitute a report to Police;
- Removing requirements that victims must provide reasonable assistance to Police and Prosecution;
- Amending the provisions in relation to character and disposition of an applicant;
- Improving the processes for applying for variations;
- Streamlining and fast tracking applications to avoid excessive delays in determining applications; and
- Removing requirements for offender notification, and restricting access to Tribunal records.

Eligibility for assistance

Victim Categories

The criteria for eligibility for assistance need to be amended.

The current victim categories in the Act are too narrow. They do not adequately reflect victim's experiences, and those of other people impacted by crime.

Either some victims of crime are completely precluded from accessing any financial assistance, or they have difficulty establishing that the threshold criteria for making an award are met. This means that different categories of victims, who could benefit from the scheme and who cannot access assistance or support elsewhere, may not succeed with their application (if it is made at all).

For the vast majority of clients we see, they would not be able to make a claim against a perpetrator either under the *Sentencing Act 1991* (Vic) or a civil claim, for the simple fact that the perpetrator will not have the financial capacity to meet any judgement made against

them. This often leaves victims and their families with no other opportunities for redress or recognition of the harm they suffered.

Children

Children who have been exposed to family violence, are not regarded as victims in their own right if they have only witnessed, heard or been exposed to the effects of family violence. This significantly disadvantages child victims who may be equally impacted by the family violence as if they were a primary victim.

As well as re-defining the victim categories, there needs to be greater guidance about when children can make applications to the scheme in their own right without the assistance of a parent or guardian. In our experience the approach taken by different Tribunal Registries has been inconsistent, as to when they will accept an application made directly by a child without the assistance of their parent or guardian. In the case of one client, Tiffany, she was seventeen years of age when she sought assistance with making an application. She had been sexually assaulted as a child (the offender was not related to her), and had a complicated relationship with her parents. While we were satisfied that she had capacity, and it was important for her own recovery that she be part of the process, the Registry would not accept an application signed by her. We then had to arrange for her parent to sign the application, but she did not prioritise attending appointments so that the application could be finalised. Eventually the application was signed, but it caused unnecessary delays.

If a lawyer assesses that the child has capacity to give instructions, then they should be able to apply in their own right. This would be of great benefit to children who have been removed from their parent's care by the Department of Health and Human Services (**DHHS**), who could benefit from counselling and support while they are in out of home care. Given that representation in Children's Court Family Division proceedings begins from the age of 10 years, most of these children would have had ongoing contact with a lawyer as part of these Children's Court proceedings. If those same lawyers had the ability to assist their child clients to apply for assistance from the Tribunal, then they would have the benefit of accessing wrap around support for their legal needs.

Adults with Disabilities

There also needs to be support for adults with severe disabilities to obtain assistance to apply, or to be able to apply themselves so that they can participate in what can be a therapeutic process.

We have assisted a number of clients, whose affairs are being administered by a Guardian or Administrator, to make claims. While there can be issues around their capacity to give instructions and to sometimes understand the process, they have still been able to participate in the process and identify what help they need.

Amending the definition of act of violence

The current definition of 'act of violence' should be changed, so that it fully encompasses a range of criminal and non-criminal offences. As well as encompassing criminal acts committed in Victoria that result in injury, we submit that act of violence should encompass:

- family violence as currently defined in section 5 of the *Family Violence Protection Act 2008* (Vic);
- trespass, property offences and contraventions of Intervention Orders in the context of family violence;

- the entire range of sexual offences that can be prosecuted in Victoria, including 'non-contact' offences:
    - procuring and grooming offences;
    - obtaining, distributing or threatening to distribute intimate images;
    - production of child pornography (where produced in Victoria with a minor); and
- child abuse and neglect.

As recognised in the supplementary consultation paper, there is a growing recognition of the harm caused to victims from so called 'non-contact' sexual offences such as grooming. In the case of one of our clients, she was groomed as a child by a perpetrator over a five year period before he began sexually assaulting her at a later age. The grooming behaviour had such a severe impact on this client, that she described it as "*brainwashing*", the effects of which were "*long-lasting*" and took her some ten years to recover from. Not being able to take into account the grooming behaviour as an act of violence, diminishes her experiences as a victim and does not adequately reflect the impact of the offending.

Expanding the definition to encompass non-criminal forms of behaviour such as child abuse and neglect, takes into account the impact of abuse and neglect on victims, particularly for children where it can have lifelong impacts on their development. It would allow children, where DHHS have intervened on their behalf in the Children's Court of Victoria, the ability to also access financial assistance also. We also submit that if the definition of act of violence is broadened to include child abuse and neglect, then the Tribunal should have the ability to rely on any findings in any Children's Court proceedings to prove that an act of violence occurred. This is important as in most cases Victoria Police will not charge the parents or carers of a child with a criminal offence, causing problems for applicants in proving their overall case.

We also recommend that there be further guidance or direction as to what elements need to be met, for an applicant to establish that an 'act of violence' has occurred. That is, do they need to establish that each element of a criminal offence is made out in order to meet this test or are there other minimum thresholds that need to be satisfied? This is particularly relevant for contact based sexual offences, where consent is an issue. The vast majority of complaints in relation to sexual offences will not result in charges being authorised, or criminal prosecutions will be unsuccessful, because an offender may be able to successfully argue that they reasonably believed that an applicant was consenting. If the Tribunal is to be satisfied that the 'act of violence' occurred by reference to each individual element of a criminal offence, then this has the potential to adversely impact on applicants who have been the victim of sexual assault as it can completely call into question their experiences and whether they have been believed. We submit that where consent is an issue, that the Tribunal should have the ability to decide this question based on the applicant's own evidence of whether they consented at the time of the offending rather than by reference to an offender's reasonable belief regarding consent.

We otherwise submit that expanding the definition of 'act of violence' beyond these parameters to include property offences could make the scheme unworkable and unsustainable as a whole.

The definition of injury

For primary victims to access financial support under the scheme, establishing that they have suffered an injury, is onerous and sometimes difficult. This is particularly so in the context of family violence, where the victim may not have been able to seek immediate medical assistance for treatment of any physical injuries and instead need to rely on providing that there has been a resulting psychological injury. However, the process of undergoing formal psychological assessments needed to prove the injury can be difficult and expensive. The difficulties involved can be so great, that they prevent victims from accessing financial assistance under the scheme at all because they do not have the capacity to undertake all the assessments and attend appointments required for their claim. It can also be re-traumatising for clients if they have to see a psychologist or psychiatrist to obtain an independent assessment, where they have to re-tell their story in the absence of any ongoing, therapeutic relationship.

This is illustrated by the case of Phuong, who we assisted to make a claim under the scheme. She had come to Australia on a spousal visa from Asia, but shortly after her arrival her partner began physically and sexually assaulting her. She later fell pregnant, separated from her partner and moved into a refuge after disclosing to hospital staff where she was receiving treatment, that he had assaulted her. When she gave birth many months later, she was incredibly isolated with no family or friends to support her here in Australia. She was then hospitalised in a Mother and Baby Unit for treatment of anxiety and depression. In order to finalise her claim, we needed to obtain a counselling report. We could not obtain one from the psychologist she had been seeing during her pregnancy, because they required upfront payment of their report costs and could not wait till her claim was finalised to receive payment from the Tribunal. As a Community Legal Centre, we could not pay these costs upfront on behalf of Phuong, and as she was only receiving limited benefits from Centrelink, she could not pay for the cost of the report either. We could not obtain a report from the treating staff at the Mother and Baby Unit, as they simply did not have capacity to assist in this regard. The only remaining option for her was to see an independent psychologist, who was prepared to defer payment of their fees. But the thought of having to attend appointments while she was still coming to grips with the demands of caring for a newborn infant as a single parent was too overwhelming for her.

In order to address these issues and the other issues identified in the supplementary consultation paper, we submit that:

- the definition of ‘injury’ should be amended to include other forms of harm; and
- the requirement for proof of ‘injury’ should be removed altogether for victims of certain crimes.

It would be impossible to exhaustively list the types of harm that victims can suffer, as result of their experiences. However, if the definition of injury was expanded to include forms of harm that victims may suffer, which fall short of a diagnosed psychiatric illness, it could go some way towards addressing some of these issues. It could also address the cumulative harm that victims of family violence may have experienced, where the behavior has been ongoing over a number of years.

It would also be appropriate that the requirement for proof of psychological injury, be removed altogether where the applicant has been the victim of physical assault or sexual offence.

Removing the requirement for causation

For some of our clients, establishing the links between the psychological injuries and the act of violence that has been committed can be challenging. In the case of Rita, she had been sexually assaulted by her husband and subsequently made the decision to terminate the resulting pregnancy. After she left the marriage she made a report to Police, but they never charged her husband. In support of her application to the scheme, we submitted a report from her counsellor outlining that she had been diagnosed with depression and Post Traumatic Stress Disorder as a result. When the matter was listed for a direction hearing before the Tribunal Member, concerns were raised about our client's ability to prove that the sexual assaults had caused her psychological injury. The Member questioned whether the psychological injury was related to the act of violence, or a result of her having to decide to terminate the pregnancy. We were directed to obtain further reports from a number of treating professionals. The effort that was needed to prove her claim - when the original evidence from her counsellor was clear - led to her questioning whether she could continue with her claim at all. When in fact the issue of causation was clear, had she not been sexually assaulted and fallen pregnant, she would not have had to make the heartbreaking decision to terminate the pregnancy. Both the sexual assault and the grief over terminating the pregnancy are inextricably linked and our client should not have been forced to go to these lengths to prove her claim. This case highlights how the approach taken by the Tribunal can be traumatizing for clients and rather than assisting their recovery, can actively impede it.

Proving causation can also be problematic, where victims have had previous traumatic experiences or events in their life or long term mental illness. For example, it can be hard to distinguish how an act of violence has impacted them, when they may have been the victim of sexual assault previously. In our submission, any requirement to prove *direct* causation between an act of violence and the injury that is suffered should be removed so that there is a rebuttable presumption that the injury or harm was caused by the act of violence.

Assistance available

Total financial assistance available

We note that the maximum amounts of financial assistance available for primary victims under the current scheme, is consistent with other statutory compensation schemes across Australia. The issue for many applicants is not that the maximum amounts are too low, but rather that the average quantum of awards made is comparatively low. There needs to be better direction as to how the total quantum of award should be calculated, so there is greater consistency and reliability for applicants.

Categories of award

Generally, the current categories of assistance are still appropriate for primary victims. However, we would suggest that to ensure greater clarity for potential applicants about what can be claimed, the following additional categories be included:

- **Relocation costs** that can encompass emergency accommodation, moving and storage costs;
- **Resettlement costs** that can enable applicants to re-establish them and their family in a safe environment (such as furniture);
- **Property loss or damage** where the applicant has no recourse under any insurance or other schemes;

- **Income support** where applicants are precluded from obtaining income support, or lose access to existing financial supports;
- **Re-education and employment support** to enable applicants to either learn or gain new skills and education so that they enter the workforce.

These additional categories of support would greatly assist victims of family violence and their families. While applicants are often able to claim relocation costs and emergency accommodation as part of their overall claim generally as a safety related expense, we have identified that when many victims of family violence leave the relationship they are unable to get access to their furniture and personal effects. The reasons for this are complex, but the end result for victims is that they are often forced to start again and rebuild their lives when they often do not have the financial resources to do so. Providing assistance to purchase furniture and personal effects left behind, removed or destroyed, would greatly assist many victims of family violence.

Moreover, income support for some victims of family violence who do not qualify for Centrelink benefits due to their visa or residency status, and where their partner was their sole means of financial support, could assist them to leave the relationship safely earlier and still care for their children. Often the lack of financial support and assistance can act as a huge barrier to victims of family violence and their children who are trying to escape an unsafe environment.

While we acknowledge that this a key area necessitating federal social security reform many of our clients who are not an Australian citizen or resident, can get little to no income support. In the case of our client Veronica, she was a New Zealand citizen with dependent children. We enabled her to apply for an Intervention Order against her husband, who had been emotionally and physically abusive throughout their 18 year marriage. She made the decision to leave her husband after he had sexually abused one of her children, and was concerned about the risks to her children if she remained. Her husband had been the sole source of financial support for the family while she raised their children, and on leaving him she was only eligible for the Family Tax Benefit. She is currently supporting herself and her three children on what she receives from the Family Tax Benefit and Child Support, and is living well below the poverty line.

Access to educating and training support, could also assist victims in their long-term recovery from acts of violence and to gain financial independence, particularly, where they cannot access help elsewhere (for example through the Commonwealth Government schemes such as HECS and FEE HELP). While the majority of applicants we assist are able to potentially claim these costs as items to assist recovery, better clarity around what they can generally claim would assist applicants to understand their entitlements.

Additional awards to assist recovery and the need for exceptional circumstances

As well as recognizing these new categories of assistance, we submit that the requirement that other items to ‘assist recovery’ be awarded only in ‘exceptional circumstances’ be removed to create greater certainty for all applicants. The application of this discretion by Tribunal Members is very inconsistent in our experience, and it can be challenging for clients to show that exceptional circumstances exist.

Removing ‘reasonable’ requirement

The requirement that all expenses be ‘reasonable’, particularly in the context of future counselling and medical expenses should be removed. Currently for our clients, if the Tribunal is not satisfied that the counselling expenses sought are reasonable, they are left

with accepting what is awarded and later considering applying for variation of their award to access further assistance. This process is cumbersome, and expensive. It also does not take into account the lifelong impacts that acts of violence can have.

Interim awards

For our clients, the fear of having to reimburse interim awards that may be paid to them if their overall application is rejected can stop them from applying for much needed assistance. Given the other issues around timeliness and the delay in making interim awards, we would recommend giving Tribunal Registrars greater power to make interim awards. This would allow the scheme to adopt a similar model to New South Wales for immediate payments to be made without the need to create an administrative system such as they have.

Recognising cumulative harm and vulnerability

Awards for special financial assistance do not adequately represent the cumulative patterns of harm that all victims of crime can experience irrespective of whether they are victims of family violence. Offending that takes place over a long period of time, often disproportionately impacts children and people with disabilities. Conversely, for victims of family violence who have experienced a history of violence over a long period of time, if the most severe offence is a category C or category D offence, the award for special financial assistance will not adequately reflect the trauma they have experienced.

By focusing on the most extreme act of violence committed against a victim, it can diminish their experiences and the trauma that they suffer over extended periods of time. Rather than focusing on the severity of a single offence, it should focus on the pattern of offending, particular vulnerabilities of the victim and resulting impact of the offending on the victim. Accordingly, we recommend that the special financial assistance regulations be amended rather than the category of awards being removed altogether. We submit that uplift should be available to category A, where a victim:

- has suffered serious physical injury;
- been infected with a very serious disease;
- has been the victim of a series of related criminal acts, including family violence, sexual assault or elder abuse;
- was a child at the time the offences were committed against them;
- has a cognitive impairment, acquired brain injury or diagnosed mental illness;
- has a disability; or
- was in a relationship with the perpetrator where the perpetrator is in a position of power, trust or authority.

Discretion for minimum and maximum awards and increasing amounts of special financial assistance available

There needs to be guidance about how the Tribunal calculates, when the maximum and minimum amounts of special financial assistance should be paid. Again there needs to be greater guidance about how this discretion is exercised, so that there is greater consistency for victims. In practice we have seen that when making awards, Tribunal Members may start with the maximum as the starting point, and then discount from there the amount of special financial assistance to be paid if there are threshold issues under section 52 and 54 of the Act. We submit either the amount of special financial assistance for each category should be

set at one amount, rather than providing a range of minimum and maximum awards. Or alternatively, in considering whether the maximum award should be made, the Tribunal should have to consider a range of factors such as:

- whether the victim is a child, elderly or suffers from disability;
- circumstances of the offence or offences (including severity); and
- nature of the injury.

Extending the availability of special financial assistance beyond primary victims should also be a primary objective, so that children who have experienced family violence and parents or carers of children that have been primary victims, can access assistance also.

We also agree that the maximum and minimum amounts of special financial assistance payable should be increased, particularly given that the amounts have not changed since 2007.

Additionally there needs to be guidance and direction about how vulnerable victims can access awards for special financial assistance, where their financial affairs are administered by a third party such as State Trustees.

Treatment of related criminal acts

Under the current definition of 'related criminal acts', years of serious child sex abuse and family violence is reduced down to a single act of violence rather than being recognised as a pattern of harm that can occur over long periods of time. As noted above, there needs to be greater definition and flexibility when making awards to take into account the impact of cumulative harm, and re-defining the definition of 'related criminal acts' is just one aspect of the Act that needs to be amended to take this into account.

In our submission the first option tabled in the consultation paper does not adequately address the problems that have been caused from the current definition of 'related criminal acts'. Removing any reference to the 'same perpetrator' and requiring that the acts share a 'common factor' in order to be considered a 'related criminal act', will not necessarily recognise the long-term cumulative impact of family violence and other serious offending that can occur over longer periods of time. That is because each instance of offending may always shares common factors, whether it is the relationship between the perpetrator and the victim, or the nature of the offence. Adopting the second option that is outlined, which is modelled on the *Victims of Crime (Financial Assistance) Act 2016* (ACT), would provide greater recognition of victims of long term abuse and the harm that they have suffered. However, it needs to be coupled with other provisions that increase the amount of assistance that is available for victims that have been the victim of serious and sustained offending over a long period of time.

Time Limits

Time limits are a barrier for victims of crime and their families in applying to the scheme.

There are considerable barriers for all child victims that prevent them from making an application within the current time limits. Children sometimes do not have the means or capacity to make an application without the assistance of an adult. Moreover, where they are reliant upon a parent, carer or guardian to make the application, those persons may not be able to apply on a child's behalf. A clear example of this are children that have been removed from their parents care as a result of protective intervention in the Children's Court of Victoria - there is usually no one in that circumstance that can make the application on

behalf of the child. Accordingly, in our view, there should not be any time limits where the victim was a child at the time the act of violence was committed.

In relation to adult victims, particularly victims of family violence, they too may struggle to bring an application within the two year time limit. In our experience they tend to have other related legal matters that stem from the end of their relationship, which are more pressing and that need to be resolved first. It can be stressful for clients to manage multiple legal matters at once, whilst also still being able to go about their daily lives. Aside from the related legal matters that need to be resolved, they may also struggle to make an application in time when their own personal circumstances are precarious or do not otherwise allow them to engage in the process. A prime example of this is our client Haley. Haley was in her early twenties, and her teenage years had been characterised by extensive periods of homelessness and substance abuse. From the age of 17 years she was in a violent relationship that lasted approximately 5 years. She had two children with her partner, and finally separated from him when her youngest child was still an infant after a violent assault. Her partner was charged and subsequently convicted of the assault, and an Intervention Order was made on behalf of her and her children. She became pregnant with her third child shortly after the criminal prosecution had ended and once her third child was born, she was struggling to care for three children under the age of three years on her own with limited family and social supports. She had multiple legal problems that needed resolving, that included: formalising safe care arrangements for her children; applying to extend the Intervention Order; a number of outstanding infringements and also a charge of drive while suspended. Ultimately she had to prioritise the care of her children and finding suitable accommodation for them; together with her other legal matters, over applying for assistance under the scheme. This meant she could not apply within the two year time limit.

We support the time limit being extended from two to 10 years in all applications made by victims of sexual assault (where they were not a child at the time of the offending) and family violence, together with greater certainty about when an application may be heard out of time.

Even with extended time periods for child victims and victims of family violence, there may be instances where victims apply for assistance outside of these periods given the significant barriers and complexities surrounding family violence. We submit that section 29(3) of the Act should be amended so that the Tribunal must take into account the following additional considerations:

- the nature of the relationship between the applicant and perpetrator, whether they are a family member or in an intimate personal relationship;
- whether the applicant has experienced family violence;
- whether the applicant has experienced homelessness;
- whether the applicant has diagnosed medical condition which impacted on their ability to make an application; and
- when the applicant learned of the scheme and their entitlement to apply.

We also support any move towards greater transparency of decisions made by the Tribunal under section 29, so that there is greater certainty about what factors the Tribunal will take into account.

Making an award

Requirement to report to Police in reasonable amount of time and provide reasonable assistance

While victims of crime should feel encouraged to report any crimes to Police, the reality is that there can be lengthy delays before they are reported or they may go unreported altogether. Different segments of the community have had problematic relationships with Police historically, most notably Aboriginal and Torres Strait Islander peoples, which have impacted on their ability to engage with Police. This should not serve as a barrier to any victims accessing support and compensation.

The case law shows that the application of section 52(a) is inconsistent, and that where it is narrowly construed it often precludes victims of serious crimes (including sexual offences) from obtaining assistance which can compound the trauma that they have already experienced. It is very common for our clients to disclose that they fear retaliation from the perpetrator if they report an act of violence to Police. However, fear of reprisals has not been considered to be out of the 'ordinary' and the scant case law suggests that it is only considered as a factor where the perpetrator has a serious criminal history for violent offences. This does not take into account the fact that people do commit violent crimes that are either never reported to Police or successfully prosecuted. It also discounts the genuine fears and concerns that victims have, and unfairly penalises them if they do not feel safe reporting incidents to Police.

By way of example, we advised Samia that she was eligible to make an application to the scheme for financial assistance. She had reported a family violence incident to Police, after her partner had assaulted her and damaged her property. While Police had information about the incident that had been immediately reported to them, they did not obtain any information from her about the past history of family violence which included sexual assaults. Police never took a formal statement from her, but they did apply for an Intervention Order on her behalf. She was homeless as she did not feel safe returning to their rental property, and was living in emergency accommodation with her infant son. We discussed with her the possibility of immediately applying to the scheme for an interim award so she could obtain assistance with housing, but advised her she would have to make a statement to Police and co-operate with any investigation and prosecution. Even in such a precarious situation where she did not know if she had anywhere safe to stay with her son, Samia was too frightened to take any further action against her partner. He had previously threatened that if she ever disclosed what had happened to her, that he would obtain 'custody' of their son and have her deported from Australia because she was on a spousal visa. Despite our assurances that his threats were baseless, her fears persisted. This was part of the emotional and psychological control he exerted over her, and the conditioning remained even after she had left the relationship. Samia could not contemplate making an application and going through the arduous process of talking about her experiences, given that there were no guarantees that her application would not be rejected under section 52(a). She ultimately decided not to make any application because her fears of being forced to leave Australia and her son were so great. These fears and concerns are shared by many migrant women in Australia, where their visa and residency status is uncertain. So much so that a strict interpretation of section 52(a) would most likely see this as not being 'out of ordinary'. So that the scheme is more responsive to victims and their individual experiences and concerns, even where they share some commonalities such as fear of reprisals, we submit that the Tribunal should only have to consider a victim's concerns subjectively, and not objectively.

Section 52(a) of the Act and the way that it is applied, presumes that victims feel adequately supported and assisted by Police when we know this is not the case. As the *Royal Commission into Family Violence* highlighted, in attending family violence incidents Police often do not always correctly apply a risk assessment and sometimes identify the wrong perpetrator. This situation has continued in spite of the recommendations made by the Royal Commission. This has led to some of our clients being wrongly excluded from their home by an Intervention Order applied for by Police, or wrongly charged with criminal offences arising out of the family violence incident. It can take a considerable amount of time and money for these clients to rectify these issues, and several court appearances before Police will withdraw charges against them. How then can these clients be expected to then feel confident about making a statement to Police, when there initial experiences were traumatic?

In the case of another client, she had reported to Police assaults committed by her former partner but not the sexual assaults. She was pregnant at the time and tried on five separate occasions to make a statement, only to have the appointments cancelled or rescheduled. After she gave birth to her child, she was overwhelmed by caring for an infant on her own with no family or social supports and was diagnosed with anxiety and depression. To ask her to continue to try and make contact with Police, when she is already struggling to cope in her everyday life would be too onerous for her.

While there have been several attempts to reform systems and processes for reporting certain offences, such as sexual assault, we know that some victims still cannot contemplate engaging in the criminal process if an perpetrator is prosecuted. They may make a statement to Police, but ultimately will make a statement of no complaint if they consider that they cannot engage in the process. For our client Yi, she had reported to Police an assault and sexual assaults committed by a co-worker but could not contemplate having to give evidence or details about her matter for fear of being reported in the media. She was so ashamed and felt tremendous guilt about what had happened to her, and had not even disclosed to her husband and family what had happened. She was terrified that if the perpetrator was prosecuted he would either take revenge on her by contacting her family, or that details of the offending would be made public in some way. Accordingly, she decided to make a statement of no complaint. Her fears are shared by many victims of crime, particularly victims of sexual assault. She had difficulty even engaging with us to provide us with instructions about her matter. As the Tribunal considered that she did not have a special circumstance for not cooperating with Police, she received a particularly low offer from the Tribunal (in terms of quantum for the nature of the offending) under section 33 that she chose to accept because she could not continue with the process. She could not sleep, and was suffering from persistent migraines as well as experiencing severe anxiety. Rather than being a therapeutic process for Yi that could enable to her to begin to recover from the acts of violence committed against her, engaging with the VOCAT process only compounded the trauma she experienced.

We submit that the sections need to be amended so that:

- a ‘report’ to Police can include those cases where no formal statement is made to Police but details of the incident have been relayed to them in some form (for example in 000 call);
- it includes those cases where victims genuinely believe that they have made a report but there is no record of this;
- in cases where the victim has experienced family violence or sexual assault, that they be exempted from making a report to Police where they can demonstrate that:

- they genuinely fear for their safety or are fearful of reprisals;
- making a report to Police or cooperation with prosecution would adversely impact their physical or mental health; and/ or
- they have reported their experiences to other agencies or organizations.

Character and behaviour considerations

The supplementary consultation paper amply illustrates how consideration of past criminal history in making awards can disproportionately impact vulnerable victims of crime, and that it fails to take into account the links between victimisation and offending behavior. It also fails to take into account those cases where a victim may have been acting in self-defence and is later charged and convicted. As noted above Police can and have incorrectly charged victims of family violence, failing to hold the actual perpetrator to account.

In the case of Brad, he had witnessed his partner murder someone. He assisted them to hide the murder weapon and initially made a false statement to Police about who had committed the murder. He only admitted that his partner murdered the victim, after Police began investigating him as a potential suspect. Further complicating his claim to VOCAT, Brad also had a criminal history which in part stemmed from his history of alcoholism and because he had an acquired brain injury. He really needed to access the scheme, so that he could access ongoing counselling because he was diagnosed with Post Traumatic Stress Disorder as a result of what had happened. Again a strict application of section 54 of the Act, would have potentially excluded him from assistance when he really needed counselling to address what had happened that was beyond what could be provided under any Medicare scheme.

For the sake of greater clarity, we also submit that the provisions which require the Tribunal to take into account the 'condition or disposition' of the victim should include greater direction about whether they would have to take into account the victim's state of intoxication or if they are affected by prescription or illicit drugs. We also agree that there needs to be greater clarification of how a perpetrator can directly or indirectly benefit from an award, because as noted in the paper it can disproportionately impact on victims of family violence who need assistance when they have not yet left the relationship.

We submit that rather than awards being refused on the basis of a victim's criminal history that the provisions should give greater guidance as to the discretion exercised by the Tribunal. This could include consideration of:

- when the prior criminal offences occurred;
- the seriousness of the offences;
- the circumstances of the offences (if known);
- the age and personal circumstances of the victim at the time of the offending, including but not limited to whether they had an acquired brain injury, mental illness or other disability; substance abuse or experiences of homelessness or family violence; and
- the pattern of past offending (including regularity).

We further submit that the requirement to take into account the 'character and behaviour' of the victim be removed.

The Tribunal should have power to make limited awards which would assist victims to recover from an act of violence, where there are relevant considerations under section 54.

This could be limited to obtaining assistance with counselling and medical expenses for example or reduction in the overall quantum of award.

While we agree that the provisions that prevent a perpetrator from benefiting from an award unfairly disadvantage victims (who for whatever reason are still in a relationship or contact with a perpetrator), there is still the possibility that the perpetrator can abuse any financial assistance as part of an any existing patterns of financial or economic abuse, or control. Where there is the potential for a perpetrator to benefit from an award, the Tribunal should have the ability to put controls in place for access to the award. In the case of special financial assistance, it may include these monies being administered by a trustee as is the case with children.

Review, variation and refund of awards

Variations

We submit that the window for making variation applications should be extended, to take into account the long-term needs of victims of crime. Particularly in cases involving children, and sexual assault, there should not be any limitation periods for seeking variation.

Any consideration of whether the variation periods are removed would also need to take into account the "cap" in compensation that is made on financial assistance under the scheme. This could ameliorate any concerns about the viability of the scheme, if certain categories of victims would not be restricted in the timing of making variation application.

There also needs to be reduction on the administrative burden on victims in making variation applications. In some circumstances they may need to obtain the same amount of reports and invoices needed for an initial application making it a time consuming process. Where victims are seeking ongoing counselling or medical expenses, those claims (and the documentary requirements) should be simplified. Adopting a similar approach to the Enhanced Primary Care Scheme administered by Medicare could simplify the process greatly, if for example the form could be completed via a General Practitioner with only brief information being required about the underlying need.

Variation applications should also take into account whether an applicant has accessed (in whole or in part) their original award, as it may be that their circumstances have changed and they no longer require the assistance that has been awarded in the first instance. Giving the Tribunal power to amend the original award, so that the financial assistance awarded can be re-directed elsewhere should be considered. By way of example, if a victim is awarded a family holiday at the cost of $10,000 that is not used, the award could be removed and put towards another form of assistance.

Refunds

While anecdotally we do not have any cases or client experiences with refunds to be able to speak to this issue, our clients quite often indicate that they are concerned about the possibility of having to refund an interim award if their overall application is not successful.

We submit that in the case of victims of family violence and sexual assault, these categories of victim should be exempt from refunding an award. If this is not considered appropriate, any refund provisions should be contingent upon a victim's capacity to pay and where they are solely in receipt of Centrelink benefits should be deferred entirely.

Timeliness of awards

Practice direction to expedite decision making

In our experience the determination of applications under the scheme is not timely, or prompt. It can take up to 6 to 12 months for applications to be finalised, and this is not taking into account the time it can take to obtain all the necessary documents required to support a statement of claim or applications where criminal investigations or prosecutions are ongoing. Even where clients accept determinations under section 33, it can take weeks for the award to be finalised.

These delays directly impact on the availability of private practitioners, willing to provide medical or counselling reports needed to support a statement of claim, as it can take several months for them to receive payment. We can say anecdotally that many practitioners will not undertake any work for clients because of the delays they have experienced previously for payment of their costs. They may also seek a guarantee from the Tribunal that their costs will be reimbursed, which cannot be given. As we are a Community Legal Centre we do not have the financial capacity to outlay these costs and seek reimbursement from the Tribunal either, and neither do our clients who are typically on low incomes and in most cases solely in receipt of Centrelink benefits.

The inability to guarantee repayment of these costs to private practitioners often also means that they cannot undertake this work on behalf of their own clients, where they have an ongoing therapeutic relationship with them. Understandably, many of our clients are reluctant to engage with an independent psychologist or counsellor for the purposes of preparing a report, and their preference is to see their own counsellor but we often cannot accommodate this because their costs cannot be paid up front.

While amendments to section 32(3) and 41, or a practice direction, could improve delays they are not likely to resolve all these issues. There needs to be a greater devotion of resources to the Tribunal so that applications can be heard and determined quickly and importantly that there are guarantees that professional costs will be reimbursed in a timely manner.

While it would require the creation and maintenance of specific information technology infrastructure, one option would be to create an online payments system that could be integrated with an applicant's initial online application for assistance. Similar to Victoria Legal Aid's ATLAS program, legal practitioners that undertake work on behalf of clients could be allocated secure credentials to access the system. Through the system they could then submit claims for payment on behalf of practitioners who have provided reports, and to even cover other expenses such as costs of Freedom of Information requests. If practitioners are required to certify that claims are valid, and meet any other requirements under the Act or applicable Practice Directions, then the Tribunal would only have to then pay the claims. Potentially payment of minimum legal costs in preparing an application could also be made through the system to ensure the financial viability of firms and Centre's that undertake this work also. Where applicants are self-represented the system could allow them (or any practitioner undergoing any work for them) to claim payments for medical practitioners and counsellors also, with added safeguards that the claims are reviewed by staff member at the Tribunal before payment is made.

Triaging, co-location or specialist streams

We would welcome the appointment of Magistrates that would only sit in VOCAT matters, as well as ensuring greater consistency of outcomes, it would allow for additional and specialist training to be provided to Magistrates dealing with sensitive and vulnerable applicants. If

more resources are also devoted to registrars and administrative staff to assist Magistrates, matters could be triaged and dealt with alongside other related legal matters such as Intervention Order applications and criminal matters. This would allow staff to engage with victims at Court to ensure that their immediate needs are met, and that they are also referred to further supports including legal and counselling to finalise their overall application.

An administrative model

Although there would be some benefits for applicants if they were allocated a case manager that could assist applicants to obtain supporting documents (such as police statements), these functions are often carried out by legal practitioners when assisting applicants to make their application. Legal practitioners are better equipped to identify any evidentiary or threshold issues that need to be addressed in order for applicants to prove their claims, such as where there was no prosecution or there are issues in relation to section 52 and 54 matters.

Importantly for a lot of our clients, if their claims were managed administratively and not by judicial officer, they would miss out on the validation they receive from a Magistrate which can be essential to their recovery. This is even more crucial where Police never charged a perpetrator, or there was no successful prosecution. The recognition and feeling of being believed, is incredibly powerful for our clients. Its importance can never be underestimated. While the scheme is not designed to make offenders individually accountable, one of our clients described her application as a "*way of holding him accountable*".

Hearing VOCAT matters during civil and criminal matters

We agree that there would be considerable benefits for applicants if Magistrates sitting in family violence and criminal matters, had the ability to make interim awards. However, given the difficulties experienced by many of our clients with perpetrator notification (as outlined below), there would need to be some safeguards to ensure that a perpetrator was not part of this process or indeed aware of it. It could compromise the process if a perpetrator, especially in cases involving family violence, became aware that a victim was received assistance to relocate for example. One option may be to allow for registrars to sit and observe these matters, and then meet confidentially with a victim afterward to discuss the need for any interim award. This would not compromise victim's privacy and safety.

Evidentiary matters for counselling and medical expenses

The evidentiary requirements for counselling and medical expenses, together with other evidence required by applicants to prove their claim, need to be relaxed. We have outlined in detail above, the difficulty in obtaining these reports. Victims should be able to submit documents and reports from other services, such as social workers and family violence support workers that can be used to substantiate their claims.

For many of our clients that have experienced family violence, they will not be able to access medical records that substantiate the injuries that they suffered. This is often for the simple reason that they either could not access medical assistance in the first instance, or when they received treatment they did not feel safe to disclose how they became injured.

Moreover for loss of earnings claims, many victims may not have felt comfortable disclosing to their employer the reasons for their absence or even alerting them to it after the fact when seeking details from them when making their claim. If they had to take unpaid leave, then they will not have necessarily obtained a medical certificate to explain their absence either.

Allowing victims to submit other 'supporting documents', which do not necessarily have to include expert reports, would ameliorate some of these problems.

VOCAT hearings - notification, appearance and open court provisions

The notification provisions are completely at odds with the objectives of the Act, given that it is to provide financial assistance to victims to recover from crimes, and is a form of symbolic expression and recognition, of the community's sympathy and condolences for their experiences.

Perpetrator notification directly impacts on a victim's willingness to take part in the scheme and acts as a strong deterrent. Our clients have expressed concerns for their safety and have been significantly distressed at the prospect of a perpetrator attending at a hearing which is meant to be focused on their experiences and intended to assist with their recovery. By notifying a perpetrator of an application, there is a risk that it may provoke further threats and retribution by the perpetrator towards the applicant. We have encountered numerous instances where our clients have decided not to proceed with an application due to the risk that the perpetrator may be notified, and they cannot access any assistance elsewhere.

The detrimental consequences of notification was recognised by the Supreme Court of Victoria in *P v Crimes Compensation Tribunal*, which involved consideration of an equivalent section relating to notification of the perpetrator under the now repealed *Crimes Injuries Compensation Act* (1983). In that case, Hampel J made an order prohibiting the Tribunal from notifying the alleged perpetrator, and in doing so said that:

> *It may well be that in some cases any interest which the alleged offender may have in the determination of the application will be outweighed by a serious risk to an applicant. The notion that an applicant is informed of the decision to notify the alleged offender merely to enable her to withdraw her application is offensive. It contemplates that a person may be put in a position of having to abandon a genuine claim because of fear without the opportunity of being heard on the issue whether, in her circumstances, the notification of the alleged offender is "appropriate".*

As noted in the first consultation paper, the broad policy intent of VOCAT was to develop an assistance model which maximises the potential for a victim's recovery from the psychological and physical effects of a violent offence. The focus of VOCAT should be on the victim and their recovery. Any award made by the Tribunal will not deprive the alleged perpetrator of 'some right or interest or legitimate expectation of a benefit'[2] that means that they should be afforded procedural fairness or natural justice. Consequently, VOCAT need not be concerned with denying the alleged perpetrator with a right to be heard. Rather the need to afford a perpetrator with procedural fairness should be outweighed by the impact on the victim and the potential risk to their safety.

Notification places the safety and wellbeing of the applicant at risk. It is not just actual notification that causes applicants distress, but the idea that they may be *potentially* notified. In the case of one of our client's, they experienced loss of sleep, psoriasis, and an increase in anxiety symptoms at the idea of having to face their assailant in a hearing. She suffered from Schizoaffective disorder and was terrified that she would have a psychotic episode. Eventually, the Tribunal decided not to notify the perpetrator, but arguably significant harm had already been done to the applicant.

It can potentially involve conducting a quasi-criminal hearing without any formal protections, which is likely to involve cross-examination. Where the applicant would not have protections afforded to complainants under the *Criminal Procedure Act 2009* (Vic). The Tribunal is not an alternative to the criminal justice system. Rather the scheme provided in the Act is intended

[2] *Kioa v West* (1985) 159 CLR 550, 582 (Mason J).

to complement other services provided by the government to victims of crime.[3] The Tribunal may make an award where it is satisfied an act of violence has occurred; this is not defined by reference to a person being charged, prosecuted or convicted of a criminal act. It is important that the Tribunal's proceedings remain distinguishable from that of the criminal courts, with the standard of proof being on the balance of probabilities. Often there is sufficient evidence in the application which enables the Tribunal to be satisfied that the act occurred on the balance of probabilities making perpetrator notification unnecessary.

For many clients, particularly in the context of family violence, they have already been involved in different legal proceedings involving a perpetrator before they make an application under the Act. Litigation is stressful and time consuming, without having the added burden of another party trying to abuse the system to further perpetuate their control and domination of their victim. For our client Jillian, the thought of her father being notified about any potential claim she made completely deterred her from applying to the scheme. Her father had sexually abused her as a child and teen, and Police never charged him after she made a formal complaint as a young adult. She had been diagnosed with various mental illnesses following multiple hospitalisations after she had self-harmed or attempted suicide. She had to apply for an Intervention Order against her father after he repeatedly tried to make contact with her, against her express wishes. There were six separate hearings held in the Magistrates Court, before the matter was listed for contested hearing. Her father sought frequent adjournments and prolonged the proceedings, because it provided him with the only opportunity to have contact with her. He had the money and resources to be able to do this. Before each hearing she experienced severe anxiety and sometimes would self-harm, and the proceedings were clearly impeding her recovery and treatment. He tried repeatedly to get access to her counselling records, which was very distressing for her and completely undermined her ability to trust and confide in her treating practitioners. She eventually had to withdraw her application because she could not cope with the stress of the proceedings. If Jillian were to make an application under the scheme, and her father was notified she would have similarly experienced the same trauma and anxiety that she had before.

For another client she was disillusioned with the entire VOCAT process, after the Tribunal decided to notify the perpetrator. After she was sexually assaulted, separate criminal proceedings in the Magistrates Court and County Court were unsuccessful and the perpetrator was never convicted. Our client had to give evidence in both proceedings, and was cross-examined. In our submissions on behalf of our client, we outlined that she had made good progress in her recovery from the impacts of violence over the last two years and the prospect of perpetrator notification was likely set back her recovery in her circumstances where she had been diagnosed with symptoms that were consistent with acute post-traumatic stress. We argued that any interests that the perpetrator may have had in the determination of the application was outweighed by the risk to the applicant's safety, and her emotional wellbeing. In spite of our client's safety concerns, the Tribunal determined that it was still appropriate that the perpetrator be notified. Ultimately, he chose not to participate, but the damage had already been done.

In the case of Layla, the Tribunal proceeded with perpetrator notification even though the application was made after she was the victim of a number of sexual assaults. As a result of her experiences, she was diagnosed with chronic post-traumatic stress disorder as well as depression and suffered from intrusive experiences such as nightmares and emotional distress. The perpetrator was never charged, and after he was notified he attended the directions hearing where he indicated that he would seek legal representation and would call

[3] Section 1(4) *Victims of Crime Assistance Act 1997* (Vic).

fifteen witnesses at a final hearing to prove that our client was drunk at the time of the offences and acting 'flirty'. As a result of this, our client chose to withdraw her application.

Sadly, we have many more clients who had similar experiences with perpetrator notification, which completely deprived them of any therapeutic benefit and actively hindered their recovery. We submit that perpetrator notification is completely unnecessary, and that the provisions for notification should be removed. If they are not removed, then there should be a legislative presumption that notification will not take place unless the Tribunal is unable to determine whether the act of violence occurred on the evidence available before it. Even then there should be further controls that:

- a perpetrator will not be notified if the applicant can demonstrate that they would suffer emotional or psychological distress, or their safety would be at risk;
- a perpetrator would not be notified in cases involving family violence and sexual assault; and
- a perpetrator would not be notified in cases where a victim is a child, or suffers from a disability or other form of vulnerability.

These case studies highlight the need for the Tribunal to adopt a trauma informed approach, and the need to ensure that any processes do not compound the grief, stress and trauma already suffered by victims.

Evidentiary and procedural protections for vulnerable witnesses

If the provisions in relation to notification are significantly reformed as outlined above, then the need for evidentiary and procedural protections for vulnerable witnesses will not be required. However, if the notification provisions remain, then there should be restrictions on cross-examination of all vulnerable witnesses and victims of sexual abuse and family violence. A similar approach to the *Family Violence Protection Act 2008* (Vic) should be adopted, to prevent children from having to give evidence.

Restricting access to and the use of VOCAT records

We strongly submit that the access and use of VOCAT records should be restricted, and that they should not be admissible as evidence in criminal, family law or child protection proceedings. The experiences of victims can be directly obtained in the form of affidavits, and by way of oral evidence in other proceedings. Similarly, medical and/ or counselling records or reports may be obtained where they pertain to a fact in issue. VOCAT records pertain directly to victim's recovery, and any proposal to release these records without their consent, runs contrary to this.

Improving the transparency and consistency of VOCAT processes and decision making

There needs to be greater transparency and consistency of all VOCAT processes and decision making, but that is not to suggest that there is any benefit to all decisions being published or for hearings to be conducted in open court. For individual applicants, whether their case is determined on the papers or at a hearing, they should be able to request a statement of written reasons.

There could also be the collation of materials similar to the bench books created by the Judicial College of Victoria, which provides guidance on how discretions are to be exercised and specific provisions applied. That could also include summaries of particular decisions or awards made, just as the Victorian Sentencing Manual provides a comparison of sentences made for particular offences.

Given that the vast amount of awards are made on the papers and without a hearing, we submit that it should always be clear which Magistrate has made a decision and has determined a case. At present the only way to do this is to make enquires with the Registry.

We otherwise do not agree that the process should be shifted towards administrative determinations; a hearing based system is part in parcel of the therapeutic process for victims.

Awareness of VOCAT and accessibility

As a general rule with our clients, where they have disclosed that they have been the victim of an act of violence we discuss with them their eligibility to apply to the scheme. However, awareness of VOCAT can be greatly improved, including the dissemination of VOCAT information to victims from:

- Police;
- Hospital staff;
- Staff within Multi-Disciplinary Centres;
- Court Registrars;
- Magistrates; and
- Social workers.

Combining victim support and financial assistance scheme

The integration of financial assistance schemes within existing victim support services could avoid the duplication of resources, and provide a wraparound service for victims, but there are a number of drawbacks to this.

Some of our clients make a conscious choice not to apply for assistance under the Act, and access only other resources under the other victims support scheme. This is often because they have concerns about: making reports to Police; perpetrator notification; or there are other threshold issues that will not be met for assistance under the scheme (for example their past criminal history). In the case of one of our client's, who had a prolonged history of child protection involvement and needed financial assistance with medical expenses from an assault, it was more preferable for her to seek assistance from the Family Violence Flexible Support Packages than to apply for assistance under the Act. That way she did not run the risk of any assault she reported to Police, being reported to DHHS and potentially derailing any reunification with her children.

It also presumes that all victims can access victim support services and state funded family violence support services, when we know that there are high demands for these services placing people on long waitlists. By providing access to an alternative scheme under the Act, the issues with demand for services and waitlists can be avoided.

Reducing reliance on lawyers

Legal representation is crucial in complex matters, and it can proportionately affect the quantum of any award thereby getting victims better results. While the standard of work that is delivered can vary, and access to legal assistance is difficult in regional and remote areas, overall legal representation benefits victims and the resulting award they can receive.

There are also other benefits, with legal representatives being able to assist clients with other related legal problems such as intervention orders, family law, child protection, criminal law, and fines.

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Providing victim friendly and accessible information

Whether the system is reformed to make it easier to navigate without legal representation, information and forms need to be overhauled to make them easier to use.

Client information brochures should be readily accessible in other languages and in other formats for applicants with disabilities.

Feedback

If the Commission would like to discuss these submissions in further detail, please contact our Senior Lawyer Jessica de Vries on 9328 1885.

Yours sincerely

Jessica de Vries

Senior Lawyer

Daniel Stubbs

Chief Executive Officer