

# Proposed financial assistance scheme – key recommended changes

We welcome the reforms to the financial assistance scheme for victims of crime and support the shift from a court-based system to an administrative scheme which is more victim-centred. This is an important area of reform for the Community Legal Centre (CLC) sector which has significant experience and expertise working with victims of crime in a trauma-informed and holistic way. We would welcome further opportunities to be involved in the implementation of the new scheme and the development of the regulations and guidelines underpinning the scheme.

There are a number of changes to the financial assistance scheme in the *Victims of Crime (Financial Assistance Scheme) Bill 2022* (the **Bill**) which we support, including:

- The shift from a court-based to an administrative scheme.
- The increase in time limits for making applications.
- The inclusion of children exposed to family violence in the category of primary victims.
- The broadening of the definition of ‘close family members’ for related victims of deceased victims so this recognises closer personal relationships.
- The removal of the related victim pool with a total maximum cumulative cap of \$100,000 for multiple victims.
- The inclusion of more sexual offences in the Bill, such as upskirting, grooming and image-based sexual offences.
- The introduction of victim recognition statements and recognition meetings.
- The removal of considerations around whether the applicant provoked the act of violence and whether the alleged offender will benefit from the award (which are in the *Victims of Crime Assistance Act 1996* (**VOCAA**)).
- The removal of provisions which allow the offender to be notified about the application by VOCAT.

We also welcome the recognition in the Bill that applicants may be legally represented and a mechanism to grant reasonable legal costs for assistance with applications. We would be keen to provide input into any guidelines for the grant of legal costs with the aim of ensuring there is sufficient flexibility to reflect the level of work involved and the complexity of the matter.

We support key changes being made to the Bill to ensure further alignment with the Victorian Law Reform Commission’s *Review of the Victims of Crime Assistance Act 1996* (the **VLRC Report**).

Our key recommended changes are:

- *Police reporting requirements:* The removal of the requirement to report acts of violence to the police.
- *Character grounds:* The removal of the ground of refusal based on character and past criminal activity.
- *Financial assistance framework:* Alignment of the framework for providing financial assistance (i.e., the streams, types and levels of financial assistance) with the VLRC recommendations and in particular, the removal of the threshold of ‘exceptional circumstances’ for recovery-related expenses.

Other suggested changes include:

- *Proof of injury*: There should be exemptions to prove injury for certain groups set out in the Bill, including victims of family violence and sexual assault and child victims (i.e., this should not be left to the regulations).
- *Interim assistance*: There should not be a requirement to repay interim assistance where the final application is unsuccessful.
- *Variations for counselling*: Variations should be allowed for health-related expenses beyond the 10-year time limit.
- *Variations of VOCAT awards*: There should not be any limits on the number of times that substantive variations can be made for VOCAT awards under the transitional provisions.

We would also be keen to understand the anticipated case management framework under the scheme and who is likely to conduct victim recognition meetings, as well as the general composition of the new administrative body.

We highlight that other key VLRC recommendations have not been reflected in the Bill, such as removing the hierarchy between primary, secondary and related victims by having a single definition of victim, extending the criminal offences covered by the scheme to more offences related to family violence and relaxing the test for causation so the act of violence does not have to '*directly*' result in injury or death. While we have not provided additional detail in relation to these aspects, we would have also liked to see these VLRC recommendations reflected in the Bill. However, we appreciate that some of these changes would require a more extensive re-work of the Bill.

## Key recommended changes

We have set out further details on key recommended changes below.

### Police reporting requirement

In line with the VLRC recommendations, we do not support the requirement in the Bill to report acts of violence to the police. Under the Bill, the failure to report an act of violence to the police within a reasonable time or to provide assistance with an investigation, arrest or prosecution can be a ground for refusal of an application. Applicants are also required to provide a statutory declaration if a police report cannot be provided alongside the application.

As recognised in the VLRC Report, there can be significant barriers for victims in reporting and providing ongoing assistance to police, including due to fear of authorities, feelings of shame, distress and trauma, past negative interactions with authorities, fear of child protection involvement and removal of children, particularly for Aboriginal and Torres Strait Islander families, and fear of retaliation or further violence.

Certain groups can face significant barriers in engaging with police due to their cultural background (such as, victims from Aboriginal and Torres Strait Islander communities and refugee and migrant communities), age, experiences of homelessness, mental illness or disability and LGBTIQ+ status. Engagement with the police can be particularly challenging for victims of family violence and sexual assault given the deeply personal and traumatic nature of these criminal acts.

While we recognise that the regulations can exempt certain categories/circumstances from this requirement, we would like to see this requirement removed from the legislation itself. However, if this provision is retained in the Bill, then we would support broad exemptions to the police reporting requirements in the regulations and would be keen to provide input into these exemptions.

## Grounds for refusal - character and past criminal activity

In line with the VLRC recommendations, we would like to see the mandatory ground for refusal based on character and past criminal activity removed from the Bill. Like the VOCAA, this allows for broad consideration of the victim's character, behaviour (including, any past criminal activity or convictions) or attitude (at any time) in determining whether to grant financial assistance. It also extends to the deceased primary victim in applications by related victims.

The VLRC Report considered that these factors result in subjective assessments of whether victims are innocent or deserving of assistance. The VLRC recommended that the decision maker limit consideration of an applicant's current or past criminal behaviour to activities which were the primary reason for the criminal act that is the subject of the application, and only in relation to the provision of a recovery (lump sum) payment.

This ground of refusal is problematic given the well-established nexus between criminalisation and victimisation which can be seen in the high rates of women in prison who have experienced family violence. It is also problematic given the high incidence of misidentification of victims as perpetrators of family violence. CLCs have found that this ground of refusal has led to inconsistent decision-making under the VOCAA.

If this provision is retained, we would support an acknowledgement about the nexus between criminalisation and victimisation in the legislation and detailed guidance for assessors to ensure fair and consistent decision-making. We would be keen to provide further input into any relevant guidelines.

## Financial assistance framework

We would support the framework for providing financial assistance (i.e., the caps, streams and types of assistance) aligning with the VLRC recommendations, in particular:

- The inclusion of an expanded list of expenses covered under the category of practical assistance (with a \$80,000 cap).
- The replacement of special financial assistance payments based on the category of offence with a lump sum recovery payment based on the victim's circumstances.
- The removal of the threshold of 'exceptional circumstances' for recovery-related expenses.

However, if the framework for financial assistance in the Bill is retained, then as a priority we would like to see the threshold of 'exceptional circumstances' being removed for recovery-related expenses. A key objective of the Bill is to assist victims in their recovery from acts of violence by providing financial assistance. The requirement to prove 'exceptional circumstances' to obtain recovery-related expenses appears to be out of step with the key overarching purpose of the scheme.

## Other suggested changes

We have set out more detail about other suggested changes to the Bill.

### Proof of injury

The Bill requires proof of injury subject to any exemptions set out in the regulations. The VLRC recommended that victims of sexual offences and family violence and children exposed to these criminal acts should be exempt from providing evidence of injury. We support these exemptions being included in the legislation itself recognising the barriers such victims face in obtaining this evidence and the potential for re-traumatisation. However, if this provision is retained, then we would seek that the regulations include these exemptions.

## Interim assistance

In line with the VLRC recommendation, we support there being no requirement to repay interim assistance where the final application is refused. This can result in a cycle of debt, particularly for victims who are already experiencing disadvantage, and could exacerbate feelings of victimisation and trauma. If this requirement is retained, then repayment should only be pursued in circumstances of fraud.

## Variations for health-related expenses at anytime

We welcome the extended timeframes for variations set out in the Bill. In line with the VLRC recommendation, we would support variations still being allowed in exceptional circumstances for additional health-related expenses (without the need to re-establish eligibility) beyond the 10-year time limit. This recognises the need for ongoing health-related, counselling and wellbeing support as part of the recovery process. If this is not included in the Bill, then we would support this being set out in the regulations.

## Limits on substantive variation of VOCAT awards

The transitional provisions in the Bill provide that substantive variations to VOCAT awards can only be made once. The variation power is intended to be flexible in recognition of the fact that the needs of victims may change over time. However, this flexibility is not accorded to victims with VOCAT awards (as opposed to other applicants) which could impede their recovery process. We would support this limitation being removed.

## Areas for clarification

### Case management

The VLRC recommended that case management should be an essential component of the scheme which includes providing assistance to victims, or their representatives, in meeting scheme requirements. To simplify the process for victims, the VLRC Report proposed that the scheme's case managers should assist victims with the collection of documentary evidence and the forms. A case management framework has not been set out in the Bill and we would be keen to understand how this is intended to be operationalised.

### Scheme decision-maker and staff – expertise and skills

The VLRC Report recognised the importance of victim recognition and the need for victim conferences to be conducted only by suitably qualified persons of sufficient standing and authority, to ensure they are victim-centred, trauma informed and viewed with appropriate importance. The VLRC recommended that the scheme decision maker may delegate the power to conduct victim conferences and to provide recognition statements to deputy decision makers only (and not to all staff).

We would be keen to understand who is likely to be appointed to conduct victim recognition meetings and the anticipated expertise, skills and training of the administrative scheme's staff more generally.

For more information, please contact:

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