



Federation of  
Community Legal Centres  
VICTORIA

## **Improving Access to Justice for Victims of Crime**

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## **Proposal:**

This paper recommends that recurrent Victorian Government funding be provided to establish specialist community legal services to improve access to justice for victims of crime.

## **Rationale:**

Crimes compensation under the *Victims of Crime Assistance Act 1996 (Vic)* (VOCAT Act) provides important support and assistance to victims of crime to help them recover from the physical, emotional and financial impacts of the crimes committed against them.

Yet, it is becoming increasingly difficult for victims of crime to access justice through VOCAT applications.

This is occurring because of the increasing reluctance of the legal profession to conduct VOCAT work, due to its unprofitability. It is getting harder for victims of crime to find a lawyer willing to conduct a VOCAT application for them.

Lawyers can only recover fees for VOCAT work through an award of costs from the Tribunal. They cannot otherwise charge clients for preparing VOCAT applications. This means that while victims of crime do not themselves have to pay for legal costs associated with the VOCAT claim, their lawyers can only recover those costs that are awarded by the Tribunal.

The low level of costs being awarded by the Tribunal, compared with the amount of work involved in a VOCAT application, is resulting in lawyers increasingly withdrawing from this area of practice. It also increases the likelihood of lawyers avoiding complex cases or clients with complex needs, and increases the prospect of poorly prepared applications.

It appears that this is having an impact on both the number of VOCAT applications being made, and the total amount of financial assistance being awarded to victims of crime.

In 05/06 (the latest data publicly available):

- the total number of VOCAT cases dropped by over 1,000 or around 13% compared with the previous year.
- the total amount of compensation awarded by the Tribunal dropped by around \$5 million or 18% from the previous financial year.

Both the total number of cases and the amount of compensation awarded in 05/06 were also significantly below 03/04 levels.

The Tribunal has also expressed to us concerns over:

- the quality of applications being brought before the Tribunal;
- the need to develop a body of knowledge and best practice resources for VOCAT matters;
- the need to conduct law reform around victims of crime legal issues;
- the need for better community legal education on victims of crime issues.

This paper proposes addressing these issues by providing funding to establish specialist community legal services to improve access to justice for victims of crime.

The funding would be used to provide a range of services in relation to VOCAT applications, but also more broadly around legal issues relevant to victims including the implementation of the *Victims Charter Act 2006 (Vic)*, support around criminal justice processes, rights to compensation under the *Sentencing Act 1991 (Vic)* and advice about civil claims.

### **About VOCAT applications**

Victims of violent crime in Victoria can apply to the Victims of Crime Assistance Tribunal for financial assistance under the VOCAT Act. Under the Act, primary victims can receive \$60,000 plus up to \$10,000 special financial assistance.

For primary victims, in broad terms, financial assistance can include:

- payment or reimbursement of counselling expenses;
- payment or reimbursement of medical expenses;
- up to \$20,000 loss of earnings;
- compensation for loss or damage to clothing; and
- in exceptional circumstances, an amount for other expenses incurred to assist the victim in their recovery from the violence (eg: security expenses such as new locks, safety lighting or an alarm system, self defence or gym courses, study expenses etc).

These financial benefits, while in some cases very modest compared with the impact of the crime, can provide important support and assistance to victims to help them recover from the effects of the crime and improve their quality of life. Further, the simple fact of receiving financial assistance and acknowledgement can have significant therapeutic benefits (particularly where no offender was ever convicted of the crime).

Victims of crime applying for assistance from the Tribunal are entitled to be represented by a lawyer. The Tribunal can award the lawyer their costs and disbursements in any application.

The Tribunal has published Guideline No 1 of 2007 which provides guidance on the amount of costs to be awarded to lawyers. For example, for an “Application of Greater complexity”, the Guideline prescribes \$780-\$990 for preparation of the application and \$670-\$875 for the appearance.

Lawyers can only recover fees for VOCAT work through an award of costs from the Tribunal. They are otherwise prohibited from charging clients for conducting VOCAT applications.

More information can be found at [www.vocat.vic.gov.au](http://www.vocat.vic.gov.au).

### **Other legal issues relevant to victims of crime**

There are a range of other legal issues relevant to victims of crime.

Safety issues are often of primary concern to victims of crime, particularly in relation to family violence and sexual assault. In certain circumstances, victims of crime may be entitled to protection through intervention orders against offenders.

Victims often need legal advice and support before deciding to report crimes to police. Once the crime is reported, the criminal justice processes can be technical and confusing. Victims often need legal advice and support to properly understand

criminal justice issues like bail, options for giving evidence, why they may receive a subpoena forcing them to give evidence, the role of victim impact statements etc.

When a court sentences an offender, under Part 4 of the *Sentencing Act 1991* (Vic), it can order that the offender pay compensation to a person who suffered injury as a result of the crime. It can also make restitution orders returning or providing compensation for stolen goods. These applications may be made by the victim or, depending on the court, the Director of Public Prosecutions or the police.

Victims of crime will normally also be entitled to bring civil claims for damages against offenders, although offenders often have no capacity to pay any significant compensation.

Once an offender is sentenced, victims of crime may be entitled to go onto the victims register established under the *Corrections Act 1986* (Vic) to receive information about an offender's prison sentence and to make submissions in relation to parole for an offender.

In late 2006, the *Victims Charter Act 2006* (Vic) came into force. This Act spells out the rights of victims of crime in relation to the criminal justice system and victims agencies. While it does not create a cause of action in itself, it is an important advocacy tool to promote adherence to these rights.

Similarly, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) sets out important human rights protections relevant to victims of crime including the right to life, to liberty and security of person, to recognition and equality before the law, to privacy and reputation and the protection of families and children.

To properly realise the rights afforded to victims of crime, and to ensure that they understand the criminal justice processes affecting them, victims of crime need ready access to legal information, advice and representation.

### **About community legal centres**

Community legal centres are independent, community organisations that provide free legal services to the public. Community legal centres provide free legal advice, information and representation to more than 100,000 Victorians each year.

Generalist community legal centres provide services on a range of legal issues to people in their local geographic area. There are generalist community legal centres in metropolitan Melbourne and in rural and regional Victoria.

Specialist community legal centres focus on groups of people with special needs or particular areas of law (eg: mental health, disability, consumer law, environment etc).

Community legal centres receive funds and resources from a variety of sources including state, federal and local government, philanthropic foundations, pro bono contributions and donations. Centres also harness the energy and expertise of hundreds of volunteers across Victoria.

Community legal centres provide effective and creative solutions to legal problems based on their experience within their community. It is our community relationship that distinguishes us from other legal providers and enables us to respond effectively to the needs of our communities as they arise and change.

Community legal centres integrate assistance for individual clients with community legal education, community development and law reform projects that are based on client need and that are preventative in outcome.

Community legal centres are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia.

The Federation of Community Legal Centres (Victoria) Inc is the peak body for Victoria's 52 community legal centres.

More information can be found at [www.communitylaw.org.au](http://www.communitylaw.org.au)

### **Barriers to access to justice for victims of crime**

It is becoming increasingly difficult for victims of crime to access justice through VOCAT applications.

This is occurring because of the increasing reluctance of the legal profession, including personal injury firms, to conduct VOCAT work.

Victims Assistance and Counselling Programs (VACP) and Centres Against Sexual Assault have reported that they are finding it increasingly difficult to refer victims of crime to private lawyers willing to conduct VOCAT applications. The Tribunal has also expressed concerns about the lack of preparedness of lawyers to conduct VOCAT work.

We believe that lawyers are moving away from providing VOCAT services to victims because of the low level of costs being awarded by the Tribunal compared with the amount of legal work involved in properly preparing a VOCAT application.

From 2003-2005, Women's Legal Service Victoria (WLSV) surveyed around 150 private practitioners who had received VOCAT training through the Victims Support Agency and/or who were on the referral lists of the VACPs. WLSV is a state-wide specialist community legal centre that provides legal services to women with a focus on relationship breakdown and violence against women.

The results of the telephone surveys confirmed anecdotal evidence that private practitioners felt there was a lack of balance between the amount of work required to properly prepare a VOCAT case and the legal costs ultimately awarded by the Tribunal. The surveys revealed that this was causing practitioners to either withdraw from doing VOCAT work altogether or to reduce their VOCAT work so as to only take on a very few files as a 'community service.'

WLSV also analysed three of its own VOCAT cases, to compare the legal costs that were awarded by the Tribunal against the costs that would have been awarded had the case files been assessed under the Magistrates' Court scale. The results were as follows:

Case	Activity on the File	Costs assessed on Magistrates' Court Scale	Costs awarded by VOCAT
1.	15+ months (20/11/03 – 4/3/05)	\$7,455.30	\$1,320.00
2.	38+ months (12/4/02 – 21/6/05)	\$9,066.70	\$1,700.00
3.	37+ months (21/11/00 – 14/1/04)	\$13,820.90	\$1,200.00

Source: Women's Legal Service Victoria, 2007

It appears that the reluctance of lawyers to perform VOCAT work is having an impact on the number of cases being brought before the Tribunal and the total amount of compensation being awarded.

The following table, compiled from VOCAT data, shows that in the 05/06 financial year:

- the total number of cases dropped by over 1,000 or around 13% compared with the previous year. It was also significantly below 03/04 levels.
- the total amount of compensation awarded by the Tribunal dropped by around \$5 million or 18% from the previous financial year. It was also significantly below 03/04 levels.

	03/04	04/05	05/06
<b>Number of cases</b>	7164	7758	6727
<b>Applications finalised</b>	4525	5160	4188
<b>Total compensation awarded</b>	\$24,109,000	\$27,400,060	\$22,525,312
<b>Legal costs awarded</b>	\$2,380,290	\$2,430,750	\$2,375,251

Source: VOCAT annual reports: [www.vocat.vic.gov.au](http://www.vocat.vic.gov.au)

There may be a number of factors giving rise to these figures, including changes in the rate and type of violent crime in Victoria. For the reasons outlined above however, we believe that the withdrawal by lawyers from this area of practice is a significant cause and that this is impeding access to justice for victims.

### **Quality of legal services provided to victims of crime**

The Tribunal has also expressed concerns to us over the quality of VOCAT applications being brought by lawyers and also by victims themselves with the support of non-legal services like VACPs.

These concerns are supported by our own anecdotal evidence around the cost pressures on private lawyers performing VOCAT work arising from the amount of work involved in VOCAT cases compared with the limited financial return.

Given the low cost returns, to conduct a profitable VOCAT practice, a private law firm would need to:

- focus on simple VOCAT applications (simple either in strict legal work or in supporting client needs);
- conduct high volumes of applications;
- rely heavily on junior or paralegal staff in conducting the applications.

This, in turn, increases the prospect of poorly prepared applications. It makes it less likely that lawyers conducting VOCAT matters will have significant knowledge or expertise. It also increases the likelihood that little time will be spent on managing the complex emotional issues for clients in VOCAT applications (particularly victims of sexual abuse and family violence).

Further, despite the fact that the amount of work required on a VOCAT matter can vary greatly and the amount of assistance awarded to a victim of crime can vary from a negligible amount to over \$60,000, there is comparatively little difference in the range of costs awarded to lawyers. For example, under the VOCAT Costs Guideline, the recommended legal costs for preparation of an application “of modest complexity” is \$680-\$780 while the recommended costs for preparation an application “of greater complexity” are only slightly higher at \$780-\$990.

This limited cost range increases the likelihood of private lawyers:

- favouring simple applications and avoiding complex cases or clients;
- conducting the minimal amount of work possible on files; and
- avoiding pursuing significant benefits for victims involving additional work such as “other expenses” claims or lost income, in favour of pursuing relatively straight forward special financial assistance benefits.

We understand also that in some cases unqualified VACP workers are assisting victims of crime with VOCAT applications, presumably because of the inability of the VACPs to find a lawyer willing to conduct the VOCAT application. This is undesirable and will further increase the likelihood of poorly prepared applications.

In addition to expressing concerns over the quality of applications, the Tribunal also stated to us that there was a need:

- to develop a body of knowledge and best practice resources for VOCAT matters;
- to conduct law reform around victims of crime legal issues;
- for better community legal education on victims of crime issues.

### **VOCAT applications and community legal centres**

Community legal centres provide extensive assistance to victims of crime, both in terms of information, advice and representation for individual clients, and also in relation to community legal education and law reform.

Many community legal centres conduct VOCAT applications for clients, particularly in family violence and sexual assault cases. However, the bulk of legal work performed by community legal centres for victims of crime is focussed on safety issues (intervention orders and referrals to support services) and support through the criminal processes against the offender (supporting victims to report crimes to police and providing advice and support around criminal justice processes).

For example, in 06/07, Victorian community legal centres who record data using the CLISIS program, conducted 2,919 cases and provided 3,894 advices where the legal problem was “family/domestic violence” (eg: intervention order applications). However, only 389 cases and 887 advices were provided where the legal problem was “injuries compensation” (which includes VOCAT applications).

From informal consultations conducted with centres, we believe centres are often reluctant to do VOCAT work because:

- centres believe that as private lawyers are awarded costs by VOCAT, victims of crime are able to obtain “free” private legal representation for their VOCAT application. Accordingly, given the high demand for services, community legal centres prefer to refer VOCAT claims to private practitioners and focus their scarce resources on legal areas where clients are unable to obtain alternative legal assistance;
- VOCAT applications are time consuming both in terms of strict legal work and client support. While the community legal centre will normally receive an award of costs for the work, the awards are low compared to amount of work involved in a complex application.

Centres could attempt to conduct more VOCAT matters. However, without any increase in funding to resource centres to conduct this additional work, this is unlikely to have any significant impact on the issues identified in this paper. It would require centres to divert resources away from other priority service areas. While the work would be partly self-funding, the experience of centres has been that the recovery of costs is slow, unpredictable and provides only very limited funding compared to the actual work involved in properly conducting a VOCAT application, particularly a complex application.

Despite this, community legal centres are well placed to address the issues raised above around access to justice for victims of crime.

In particular, community legal centres:

- are experts in dealing with complex victims of crime issues such as family violence and sexual assault. Centres are also experts in dealing with victims with diverse or complex needs including indigenous and culturally and linguistically diverse victims and victims with a disability or mental illness;
- have strong relationships with other legal, welfare and community service providers and are able to make effective referrals that provide holistic support to victims of crime;
- conduct community legal education and law reform as part of their core service activities. Community legal centres are experts at using their client work to inform and develop these activities;
- are not for profit and accordingly are better able to provide proper legal support for victims of crime within the current costs parameters; and
- deliver value for money services through the effective use of volunteer and pro bono contributions.

### **Ensuring better access to justice for victims of crime**

We believe that the best way to address the issues outlined in this paper is by providing funding to establish specialist community legal services to improve access to justice for victims of crime.



We have considered other options including a significant increase in the costs awarded by the Tribunal to lawyers who conduct VOCAT applications to encourage more lawyers to conduct VOCAT applications. Overall, however, we believe our preferred proposal better addresses the issues and does so in a more cost-effective manner for Government. For example, while a significant increase in costs may increase the willingness of some private practitioners to conduct VOCAT applications and may impact on the quality of representation, it would not address the need to promote community legal education and law reform around victims' issues or the need to develop best practice materials. It is also unlikely to significantly affect the willingness of private practitioners to conduct complex cases.

### **Proposal: specialist community legal services for victims of crime**

Providing funding to establish specialist community legal services for victims of crime will address the issues set out in this paper in a cost-effective manner that will improve access to justice for victims of crime.

The model for the services will depend upon the level of funding available and should only be determined after more detailed consultations with community legal centres, government and other agencies.

However, we believe that the following services should be provided:

- providing information and advice on VOCAT applications and conducting VOCAT applications for clients with a focus on complex applications or applications for clients with complex needs (sexual assault, family violence, clients with a disability, clients requiring interpreters etc);
- providing legal information, advice, casework and referrals to victims of crime on other legal issues relevant to victims including support around criminal justice processes, rights under *Victims Charter Act 2006* (Vic), rights to compensation under the *Sentencing Act 1991* (Vic) and advice about civil claims;
- developing best practice materials for VOCAT applications to resource other community legal centres and other lawyers across Victoria to better conduct VOCAT applications;
- providing secondary consultations and assistance to community legal centres, VACPs and other organisations assisting victims of crime about legal issues relevant to victims of crime;
- providing referrals to appropriate non-legal victims support organisations;
- conducting community legal education on legal issues relevant to victims (including workshops, media, brochures etc) and resourcing other community legal centres across Victoria to conduct similar community legal education;
- conducting law reform activities to promote changes to the legal system so that it better responds to the needs of victims of crime.

The services could harness volunteer and pro bono contributions to enhance their capacity. In particular, the services could incorporate a pro bono program under which private law firms conduct VOCAT applications referred to them through an organised referral program. We have had some preliminary discussions with a national commercial law firm which conducts a pro bono victims of crime program in NSW. The firm has strategies in place to ensure that the matters are handled sensitively and appropriately. A similar program in Victoria would assist in addressing problems in finding appropriate referrals and ensuring the quality of the applications (the pro bono program is, by its nature, not profit driven).

One attractive option would be to establish a centralised service, attached to an existing CLC, that delivered the full range of services identified above with a focus on

the resourcing/capacity building activities. This would then be supplemented by positions established in existing generalist CLCs in metropolitan Melbourne and rural and regional Victoria providing more direct client services but also conducting some resourcing/capacity building activities. This option could be established in phases with the central service established in the first year and additional positions throughout Victoria established in subsequent years.

## **Funding**

Recurrent funding for state-wide specialist community legal centres under the joint Federal and State Community Legal Services Program (CLSP) currently varies from around \$130,000 to \$755,000. The capacity and impact of these centres is largely influenced by their funding levels. The Elder Abuse Prevention Community Education and Older Persons Legal Centre, which was recently put out to tender by the Victorian Government, has been funded annually at \$880,000. This centre will have a strong focus on education and awareness raising.

Victoria Legal Aid in 07/08 is funding a 1 EFT metropolitan-based community legal centre lawyer position at \$93,175. Rural and regional positions are being funded at \$102,500. These funding levels include some overheads and administrative support but assume that the positions are being added to existing community legal centre premises and infrastructure.

Accordingly, recurrent funding of around \$700,000 would enable:

- the establishment of a centralised service with staffing of 2-3 EFT positions providing legal advice and casework, community legal education and policy work with administrative and paralegal support and pro bono and volunteer coordination; and
- 4 EFT lawyers to be located in generalist community legal centres, 2 in metropolitan Melbourne and 2 in rural and regional Victoria.

Additional lawyer positions could be added for around \$100,000 per position.

## **Expected outputs and outcomes**

It is difficult to accurately predict the expected outputs of the service. There is no benchmark for assessing outputs against community legal centre funding as the outputs vary considerably depending on a range of factors including the types of services offered, the types of matters undertaken, the extent of assistance provided in matters, client demographics, rent costs and the level of pro bono and volunteer contributions.

We have conducted a preliminary analysis of outputs levels versus funding in the CLSP and we have examined some public data in CLC annual reports and other information from Victoria Legal Aid.

We believe that with funding of around \$700,000 provided to existing community legal centre infrastructure and good pro bono and volunteer contributions, it is reasonable to expect annual activity outputs of at least the following:

- 1000 information and referral activities;
- 250 new medium or major cases opened (more than 6 hours work);
- 250 minor cases (0-5 hours work);
- 1250 legal advice activities.
- 25 community legal education and law reform and policy projects.

If costs for VOCAT cases are recovered from the Tribunal, this will increase the overall funding for the services and will impact positively on activity levels. Greater focus on community legal education and capacity building activities would reduce the activity outputs in individual client service delivery.

The expected outcomes of the funding would be:

- increased access to justice for victims of crime resulting in increased financial assistance for victims of crime to assist them to recover from the effects of the crimes;
- increased therapeutic benefits for victims of crime through receiving financial assistance and acknowledgment through VOCAT and other processes and by establishing better referrals to counselling and medical services;
- increased confidence in the justice system;
- improved protection and enforcement of victims rights;
- improved safety for victims of crime through better access to legal protections (eg: intervention orders), other safety services (eg: referrals to refuge accommodation) and financial assistance to improve safety (eg: VOCAT awards for security lighting, alarms, security doors etc);
- community strengthening and improved social capital through increased volunteer and pro bono contributions;
- improvements to laws and practices relating to victims of crime through law reform and policy work giving a greater voice to the needs of victims of crime;
- improved understanding and awareness of victims rights and legal processes through community legal education; and
- better and more efficient VOCAT and court applications through dissemination of best practice materials and community education around legal processes.

### **Monitoring and evaluation**

Most community legal centres operate under the CLSP which has standard service agreements and monitoring and evaluation standards which are administered in Victoria by Victoria Legal Aid. Centres record activity data in common software and report periodically on expenditure and progress against agreed work plans.

The most efficient option to monitor and evaluate additional funding for victims of crime legal services, would be to incorporate those services into the CLSP, with any additional specific accountability requirements to be determined by the Department of Justice after consultation with stakeholders.

### **Further information**

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