

# Helping victims of crime recover

Submission to the Victorian Law Reform Commission's  
Review of the *Victims of Crime Assistance Act 1996*

October 2017



## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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# Introduction

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to provide input to the Victorian Law Reform Commission (VLRC) on the Review of the *Victims of Crime Assistance Act 1996* (the Act).

The Victims of Crime Assistance Scheme is an important way to offer justice to people recovering from the effects of crime. While no amount of compensation can ever make up for the losses people experience or make people feel safe again when they have been victimised, the Victims of Crime Assistance (VOCA) process can help people feel heard and understood, and provide some real recognition of the harm experienced.

Financial assistance can make a real difference to people's recovery, practically and as a powerful acknowledgement and validation of their experience. It can help people meet their medical expenses, access counselling or make their house safe. The broader 'recovery' expenses allow people to identify what might help them feel safe and well, including education and training, fitness classes and recreation activities.

VCOSS has been working with our members and the Victorian Government to inform the response to the Royal Commission into Family Violence. We are aware that the VOCA scheme may be inaccessible or unsuitable for family violence survivors. To deliver people the best results, the VOCA scheme needs to be therapeutic and non-traumatising, and provide people with accessible and timely assistance.

Some elements of the Act are outdated, failing to reflect our modern understandings of family violence and sexual assault and the cumulative harms and distress such crimes cause. Broad powers to consider the victim's 'character' can discriminate against vulnerable victims of crime, including those with long histories of abuse and disadvantage. Perpetrator involvement in hearings can act as a barrier to people even applying for assistance.

VCOSS supports providing victims of crime with choice about how their matters are heard and decided. Some people will value the opportunity to tell their story in a public court setting and others will find a hearing a traumatising process and prefer a decision made 'on the papers.'

We look forward to continuing to work with the VLRC, the Government and the community sector in building a safer, more accessible and therapeutic victims of crime scheme.

# Recommendations

## Restructure the scheme

- Consider providing timely assistance administratively, without a judicial process, by introducing a hybrid scheme
- Strengthen links between the Victims of Crime Assistance Scheme and victims support services
- Retain the Koori List for Aboriginal victims of crime
- Consider developing a specialised family violence and sexual assault victims list

## Improve eligibility

- Align the definition of family violence in the VOCA Act with the *Family Violence Protection Act 2008*
- Include non-physical forms of family violence, including emotional and economic abuse and damage to property
- Update the definition of 'related victims' to reflect modern understandings of families, including domestic partners, grandparents, and kin
- Include non-physical forms of family violence, including emotional and economic abuse and damage to property

## Reform awards

- Provide victim support services with flexible funds for immediate victim expenses
- Increase the maximum and minimum amounts of special financial assistance in each category
- Include assistance for expenses incurred through loss or damage to property as a result of family violence or sexual assault
- Allow people to claim assistance to cover childcare expenses incurred as a result of the act of violence
- Allow 'recovery expenses' to be claimed if the victim experienced family violence or sexual assault, or if the harm was severe
- Increase the maximum and minimum amounts of special financial assistance in each category
- Include assistance for expenses incurred through loss or damage to property as a result of family violence or sexual assault
- Remove the cap on assistance for related victims
- Reconsider 'reasonableness' requirements for medical and counselling expenses

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### **Reduce barriers to assistance**

- Allow people to choose between a hearing or a decision 'on the papers'
- Publish information on VOCAT application results and the reasons for decisions
- Require VOCAT Members to undertake regular professional development about family violence, sexual assault and trauma
- Remove the option to notify the perpetrator in cases of family violence or sexual assault.
- Remove the requirement for family violence and sexual assault victims to report to and provide ongoing assistance to police
- Restrict consideration of character and behaviour of the victim to when it is directly relevant to the act of violence

# Restructure the scheme

## Provide assistance administratively

### Recommendations

- Consider providing timely assistance administratively, without a judicial process, by introducing a hybrid scheme

VCOSS agrees with the scheme's aims to achieve results that:

- are fair, equitable and timely
- are consistent and predictable
- minimise trauma and maximise the therapeutic effect for victims.

Victoria is the only Australian state or territory retaining a judicial victim's assistance scheme. Other states and territories have adopted administrative or hybrid schemes, which do not require a hearing by a Magistrate to access assistance.

VCOSS members report some people do not find the VOCAT process therapeutic. People face long waits for limited assistance, and some feel judged or that they must justify their emotions.

VCOSS members report VOCAT's complexity means most people need legal assistance to navigate the process, apply for assistance, and advocate on their behalf. This can be a barrier to people accessing assistance. Community legal centres have limited resources, and there is limited access to private lawyers with VOCAT experience, especially in rural and regional areas. A simplified administrative scheme could reduce the need for legal assistance.

However, some people value the acknowledgement and validation of their experience VOCAT provides. VCOSS members have mixed opinions, on whether the scheme must be judicial, or that acknowledgement must come from a Magistrate. People may be equally satisfied with acknowledgement from another senior decision maker, such as an Administrator, Panel Member or Commissioner.

A non-judicial scheme could relieve pressure on an already stretched judicial system by reducing delays in the Magistrates Court. A specialist victim support decision-maker or panel could have specific expertise in working with victims, including people from CALD and Aboriginal backgrounds, and people who have experienced violence and abuse.

VCOSS members warned an administrative scheme may face the same delays and complexities. Any fundamentally different scheme must address the eligibility and access issues we identify.

## Connect the scheme with support services

### Recommendation

- Strengthen links between the Victims of Crime Assistance Scheme and victims support services

Many people do not know they are eligible for assistance, or are reluctant to access it due to stigma or marginalisation. Additional resources for victim support and other community organisations can allow them to reach out to vulnerable groups, provide information about victim assistance, and help them engage.

Some VCROSS members supported a hybrid scheme where victim's support services can administer assistance for expenses, especially immediate expenses. People could subsequently still choose to apply for a lump sum award through a judicial process.

VCROSS would welcome consistency with the proposed National Redress Scheme for child sexual abuse, which is likely to include:

- a direct personal response from the institution where the abuse occurred (for example, a formal apology from a current leadership representative);
- counselling and psychological care;
- and a monetary payment.<sup>1</sup>

These elements are based on the evidence and deliberations of the Royal Commission into Institutional Responses to Child Sexual Abuse. They are an effective way to offer compensation and redress to victims of historical sexual abuse.

## Retain and expand specialised lists

### Recommendations:

- Retain the Koori List for Aboriginal victims of crime
- Consider developing a specialised family violence and sexual assault victims list

In 2006, The Koori VOCAT List was established to increase awareness of victims of crime assistance, boost applications from Aboriginal people, and improve the Tribunal's cultural competency. There are several Magistrates working extensively as part the Koori List who have developed specialised expertise and more deeply understand Aboriginal victims' experiences. Introducing the Koori List has produced more applications from Aboriginal people and shorter

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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse *Redress and Civil Litigation* Commonwealth of Australia 2015 p. 129

waiting times. For example, processing for Aboriginal applicants took 31 months, on average, prior to the Koori List's creation, compared with 14 months afterwards.<sup>2</sup>

VOCAT could introduce other specialised lists, including a family violence and sexual assault victims list. This would develop more expertise among Magistrates in working with victims of family violence and sexual assault, and help provide a more welcoming and safe environment for applicants. Further professional development could be done in tandem with the Magistrates' Court Specialist Family Violence Service expansion, announced in May 2017.

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<sup>2</sup> Victims of Crime Assistance Tribunal, *Koori VOCAT List Pilot: Review and Recommendations*, VOCAT, February 2010, p. 17

# Improve eligibility

## Reform the 'act of violence' requirements

### Recommendations

- Align the definition of family violence in the *VOCA Act* with the *Family Violence Protection Act 2008*
- Include non-physical forms of family violence, including emotional and economic abuse and damage to property

The Act requires people to identify a single violent act to trigger assistance. This assumes violent crimes are single, one-off events. However, people who experience family violence are often subject to patterns of abuse over a long time period. The resulting distress and injury can be cumulative, and not attributable to a single event.

The scheme should be modernised to include family violence and sexual abuse, and to recognise patterns of abuse and violence, by bringing it in line with the *Family Violence Protection Act*.

Non-physical forms of family violence and sexual abuse, such as emotional or economic abuse or sexual grooming are not considered 'acts of violence', under the *VOCA Act*. VCOSS members found this especially excluded older people, who are at higher risk of economic abuse than other Victorians.

Children who witness family violence are not considered primary victims under current legislation. In contrast, the *Family Violence Protection Act 2008* recognises causing a child to hear, witness or be exposed to the effects of family violence is itself a form of family violence.

VCOSS members find requiring victims to identify a single violent act can make victims focus on the 'worst' instance. This can both re-traumatise victims, and fails to reflect the totality of their experience, leaving them feeling unheard.

For example, one VCOSS member described a woman victim's case. She received a facial injury from a violent act. She later was raped by several perpetrators. She was required to identify only one rape in her assistance application. During the single assault she identified, she endured further injury to her face, resulting in a permanent disability. VOCAT determined the disability was partly resulted from pre-existing condition (from the earlier violent act), so reduced the amount of her award.

The scheme views each of the woman's experiences as separate, one-off acts, when for her the trauma and physical injury compounded.

People are ineligible for assistance if their only loss is to property. Destruction and damage to property is a common form of family violence, and can cause significant psychological distress and trauma for victims.

A VCOSS member gave an example of a family violence victim who was not eligible for assistance after her ex-partner burnt down the family home, with herself and her children inside. The woman and her children were fortunate to experience no serious physical injuries. However, they experienced significant distress.

VCOSS recommends Victoria adopt an approach similar to the ACT, where people are eligible for assistance when a property offence is related to family violence.

### Update the 'family member' definition

#### Recommendations:

- Update the definition of 'related victims' to reflect modern understandings of families, including domestic partners, grandparents, and kin

Many family members, including grandparents and aunts, are not considered 'related victims' by the legislation. This means people deeply affected by injury or a loved one's death cannot apply for assistance, or must go to additional lengths to prove they fit within the definition of related victim.

For example, a VCOSS member described a case of a parent with primary care of four children who was killed by an act of violence. The VOCAT member made assumptions about the relationship between the parent and her children, and two children received a lesser assistance payment because they were not biological children. This created unnecessary tensions and distress within the family, at an already difficult time.

The exclusion or differential treatment of aunts and uncles, grandparents, step-children and same-sex partners does not reflect diverse family structures. In particular it doesn't reflect different cultural understandings of family, including in Aboriginal and CALD communities.

The 'related victims' definition should be expanded to include other family members, including explicit reference to domestic partners. VCOSS recommends including a clause similar to the ACT legislation which recognises a person who is regarded in Aboriginal and Torres Strait Islander tradition or custom as a close family member.

## Review injury requirements

### Recommendations

- Include non-physical forms of family violence, including emotional and economic abuse and damage to property

To be eligible for assistance, people must have experienced a physical injury, mental illness or disorder. This definition of mental illness or disorder requires a formal psychiatric assessment. Some people are reluctant or unable to undergo an assessment for reasons including cost, stigma, trauma, or lacking access to psychiatrists in rural areas.

People experience powerful feelings after a crime. Some can be devastating and significantly affect their enjoyment of life, work and participation in the community. However, these impacts of trauma are unlikely to be recognised as psychiatric disabilities. These can include fear of being alone, feelings of violation and developmental delays in children. This requirement fails to recognise some mental distress and trauma can manifest a long time after a crime was committed, especially in sexual assault cases or when the victim was a child at the time of the crime.

The discussion paper suggests one option is to remove the requirement to prove injury in cases involving sexual abuse and family violence. VCOSS supports this more compassionate approach. In addition, the scheme could consider reports from GPs, social workers or counsellors, and the impact on the victim's quality of life, as evidence of injury, instead of requiring psychiatric assessment.

# Reform awards

## Improve immediate assistance access

### Recommendation

- Provide victim support services with flexible funds for immediate victim expenses

People who have been the victim of a violent act often require immediate assistance to cover short-term expenses including medical treatment, counselling or home safety. The full VOCAT hearing process can take months. Although people can apply for interim awards to assist with short-term expenses, VCOSS members report people are often waiting two weeks or more even for interim awards.

If a person is experiencing family violence, delays in securing the home or arranging the family's relocation can put their safety at risk. People experiencing disadvantage often don't have room in the budget for emergency expenses. If they have to wait for reimbursement from VOCAT, they may have to sacrifice other essentials, like school costs, rent or paying energy bills.

Community organisations report they are often paying for immediate expenses themselves, then seeking reimbursement from the court, which can take months, years or never arrive. This is an unreasonable burden on underfunded community services.

Victim support services should have access to a pool of funds to cover immediate expenses incurred by victims of crime. These expenses could then be taken off the award eventually received, similar to current arrangements.

## Recalibrate award amounts

### Recommendation

- Increase the maximum and minimum amounts of special financial assistance in each category

VCOSS members note maximum and minimum amounts of special financial assistance people can receive has not increased in many years, decreasing in real terms. In some categories, the minimum amounts are too low to make a meaningful difference. For example, the minimum award for Category D acts of violence is \$130, which includes assault and deprivation of liberty. The minimum amounts for each category should be at least \$1000, to be a meaningful recognition of harm experienced.

Awards should be commensurate with a crime's seriousness, and its potential for long-lasting effects on the victim. For example, when:

- the act of violence is part of a pattern of violence
- the victim is particularly vulnerable, such as a child, older person or person with a cognitive impairment or disability
- the perpetrator is in a position of trust or authority in relation to the victim.

Some VCOSS members are more concerned about the actual awards made than the maximum limits. VOCAT rarely makes awards close to the upper threshold; the average award is \$7,784, around one tenth of the maximum award available.<sup>3</sup>

The Royal Commission into Institutional Responses to Child Sexual Abuse reviewed monetary payments in their report *Redress and Civil Litigation*. Based on the evidence, they arrived at \$10,000 as a minimum payment, \$65,000 as the average payment and \$200,000 as the maximum payment. The final amount would be calculated by allocating a "value" across three elements: severity of abuse (1-40); impact of abuse (1-40); and additional elements (1-20).<sup>4</sup>

### Make more forms of compensation available

#### Recommendations

- Include assistance for expenses incurred through loss or damage to property as a result of family violence or sexual assault
- Allow people to claim assistance to cover childcare expenses incurred as a result of the act of violence
- Allow 'recovery expenses' to be claimed if the victim experienced family violence or sexual assault, or if the harm was severe

VCOSS members report excluding property damage compensation limits the ability of people to recover from the impacts of crime. Excluding assistance for expenses incurred as a result of loss or damage to property means many people are not being adequately compensated for the loss they have experienced.

Damage to property is a common form of family violence. Property replacement or repair can be an important part of the recovery process. For example, VCOSS members gave examples of replacing the bedroom furniture in the room where the violence or sexual assault had taken place being essential for the victim survivor's wellbeing. Failing to do so can be an ongoing trigger for re-traumatisation.

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<sup>3</sup> VOCAT, *Annual report 2015-16*, 2016, p. 33.

<sup>4</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *op.cit.* 2015 p. 245 and p. 252.

People should be able to claim expenses incurred through loss or damage to property if the loss was the result of family violence or sexual assault.

VCOSS supports including childcare expenses as an expense claimable under an interim or final award. Childcare provides time for making housing and safety arrangements, or attending legal and medical appointments.

VCOSS members strongly support a wider discretion to make awards for 'recovery expenses.' Recovery expenses allow victims to claim expenses otherwise unable to be paid for, and allow them to consider changes able to make a real difference to their lives. Recovery expenses are only available in 'exceptional circumstances,' which can limit its availability to some people. The Act can be amended so all victims of family violence or sexual assault can claim recovery expenses, or to extend access to all situations when an act of violence resulted in severe harm or loss.

### Uncap family assistance

#### Recommendation

- Remove the cap on assistance for related victims

Under existing legislation, related victims can be awarded a maximum of \$100,000 combined, including for funeral expenses. This can unintentionally pit family members against each other to receive assistance. It can be a disincentive to some people experiencing distress; for example, a grandparent may not claim assistance, for fear of taking assistance away from their grandchildren.

The cap also disadvantages family members whose trauma does not manifest until months or years after the act of violence. By the time the true extent of need is assessed, the funds may have been exhausted.

### Reconsider reasonableness requirements

#### Recommendation

- Reconsider 'reasonableness' requirements for medical and counselling expenses

The 'reasonableness' requirement for expenses has resulted in some problems in interpretation, as it requires a subjective assessment by the Magistrate. VCOSS members report determinations of reasonableness are inconsistent and differ depending on the Magistrate hearing the application.

The discussion paper provides an example of counselling expenses not being considered reasonable, because the person's mental health had not 'improved' through the counselling sessions. Some people may continue to experience trauma as a result of the violence or abuse they experienced for years or decades. Indeed the redress scheme proposed by the Royal

Commission into Institutional Responses to child Sexual Abuse includes unlimited 'counselling and psychological care'.

If the individual is deriving benefits from the counselling or support they are receiving, the court should not prevent accessing on the grounds it is 'not working'. Similarly, a person should not be prevented from receiving medical treatment reducing pain or improving their quality of life, even if it is not 'curing' their medical issue.

VCOSS supports changing the requirement for medical and counselling expenses to be reasonable to avoid this problem.

### **Principles for providing counselling and psychological care**

- Counselling and psychological care should be available throughout a survivor's life.
- Counselling and psychological care should be available on an episodic basis.
- Survivors should be allowed flexibility and choice in relation to counselling and psychological care.
- There should be no fixed limits on the counselling and psychological care provided to a survivor.
- Without limiting survivor choice, counselling and psychological care should be provided by practitioners with appropriate capabilities to work with clients with complex trauma.
- Treating practitioners should be required to conduct ongoing assessment and review to ensure treatment is necessary and effective. If those who fund counselling and psychological care through redress have concerns about services provided by a particular practitioner, they should negotiate a process of external review with that practitioner and the survivor. Any process of assessment and review should be designed to ensure it causes no harm to the survivor.
- Counselling and psychological care should be provided to a survivor's family members if necessary for the survivor's treatment.

Source: Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*

# Reduce barriers to assistance

## Give people choices in the way their application is reviewed

### Recommendations

- Allow people to choose between a hearing or a decision ‘on the papers’
- Publish information on VOCAT application results and the reasons for decisions
- Require VOCAT Members to undertake regular professional development about family violence, sexual assault and trauma

People should be able to choose between a hearing in person before a Magistrate, or a decision ‘on the papers’. Hearings can be a validating experience for some victims of crime. Some people appreciate the opportunity to tell their story and be heard by the Court. Others find the process traumatising or overwhelming.

The quality of interactions with the justice system is crucial in helping people heal and recover, and preventing further traumatisation. The way a VOCAT hearing is conducted can have significant positive or negative effects on a person. VOCAT members should receive regular training on family violence, trauma-informed care and working with victims of crime.

When formal hearings are not conducted, little information is publically available about the reasons for the decision. More information about decision-making would help people predict the result of their application and provide more certainty to victims and their support people. It would provide Magistrates with guidance in the form of precedent. More information would help us understand if there are any systemic barriers to applying for assistance, either structural or cultural.

## Stop notifying family violence and sexual assault perpetrators

### Recommendation

- Remove the option to notify the perpetrator in cases of family violence or sexual assault.

VCOSS strongly advocates for removing provisions allowing VOCAT to notify the perpetrator about the application and hearing, especially in cases of family violence and sexual assault.

There is no clear justification for notifying the perpetrator or for the perpetrator to be present at a hearing. A VOCAT hearing is not a trial – there is no requirement for ‘both sides’ to be heard and their stories weighed. VOCA principles include minimising trauma and maximising therapeutic

effect. Notifying perpetrators is likely to undermine these goals and risks making the hearing process much less therapeutic. Some people are less likely to even apply for assistance knowing the perpetrator may be notified.

VCOSS members report perpetrators are most often notified in situations in which a conviction has not been obtained, and the circumstances are complex. These are likely to be victims experiencing serious and ongoing harm, without the resolution of a criminal conviction.

## Respect family violence and sexual assault victims' decisions about police involvement

### Recommendation

- Remove the requirement for family violence and sexual assault victims to report to and provide ongoing assistance to police

Under the existing scheme, in determining whether or not to make an award and what amount, VOCAT is required to consider whether:

- an act of violence was reported to police within a reasonable time
- the victim provided reasonable assistance to police.

If VOCAT determines the victim did not report the issue to police or failed to provide reasonable assistance to police, they must refuse to grant an award of assistance, unless there are special circumstances.

VCOSS is concerned these provisions can discriminate against some victims. Requiring people to report to and assist police can discriminate against family violence and sexual assault victims. Family violence is significantly underreported. People don't report family violence to police for many reasons, including shame, stigma, fear for their own or their family's safety, concern they will not be believed, a failure to recognise family violence or a desire to keep the family together.

There are similar reasons that victims of sexual assault avoid reporting to the police, including concern that they will be blamed or that they will bring shame to their family. The Australian Institute of Criminology has estimated less than 30 per cent of sexual assaults are reported to police.<sup>5</sup> Only a small proportion result in arrests and convictions.

Aboriginal and Torres Strait Islander victims are particularly unlikely to report to police. This may be due to long histories of discrimination and distrust, and the legacy of the Stolen Generations. The Royal Commission into Family Violence suggested approximately 90 per cent of violence experienced by Aboriginal and Torres Strait Islander women is not brought to the attention of

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<sup>5</sup> Australian Institute of Criminology, *Guilty Outcomes in Reported Sexual Assault and Related Offence Incidents*, 2007

authorities.<sup>6</sup> Complex family dynamics can reduce reporting rates, including if the victim is an older person experiencing elder abuse or a person with disability abused by a carer.

Eligibility for assistance based on reporting to police places an unreasonable burden on victims of victims of family violence or sexual assault.

The provision goes even further, requiring people to provide ongoing assistance to police during the investigation and trial (if it proceeds). There is no acknowledgement doing so could make the victim and their family less safe. VCOSS supports removing this provision. Instead of a police report, the Court could consider other evidence of the violent act, including reports from health care professionals or support services.

### Only consider victims' character and behaviour when relevant to the crime

#### Recommendation

- Restrict consideration of character and behaviour of the victim to when it is directly relevant to the act of violence

Under the existing scheme, in determining whether or not to make an award and what amount, VOCAT is required to consider:

- The character, behaviour (including past criminal activity) or attitude of the victim at any time, before, during or after the act of violence
- Any contributory conduct or provocation by the victim.

VOCAT should not be required to consider the victim's unrelated criminal history or behaviour.

Victoria's character and behaviour provisions are much broader than in other jurisdictions. In NSW, matters can only be considered if they 'directly or indirectly contribute to the injury or death sustained.' In the ACT, character and behaviour are only relevant if the person conspired with the perpetrator, was involved in a serious crime when the act occurred or was involved in contributory conduct.

The reasons people commit crimes are often linked to their histories of abuse, disadvantage and poverty. Denying assistance on the basis a victim has a criminal history risks discriminating against people from low socio-economic or Aboriginal and Torres Strait Islander backgrounds who have higher rates of contact with the criminal justice system. Similarly, addiction histories should not make someone ineligible for assistance; addiction is a health problem people should not be further punished for. Many people with drug and alcohol problems have histories of victimisation and abuse and have turned to drugs and alcohol as a form of self-medication.

VCOSS recommends VOCAT only consider whether the victim contributed to the injury or death directly, or was engaging in criminal activity themselves at the time the violent act occurred.

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<sup>6</sup> State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol V, Parl Paper No 132 (2014-16) p. 28.

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