

**Queensland Government Submission**  
**The Royal Commission into Institutional Responses to Child Sexual Abuse Issues**  
**Paper 7 – Statutory Victims of Crime Compensation Schemes**

The Queensland Government welcomes the opportunity to make a submission in response to Issues Paper 7 released by the Royal Commission into Institutional Responses to Child Sexual Abuse (the commission). This submission provides a general overview of the support available to victims of violent crimes in Queensland, including child victims of sexual abuse, through the State's statutory victims of crime compensation scheme, Victim Assist Queensland (VAQ).

**Background**

VAQ provides victims of acts of violence (including sexual assault) committed in Queensland with financial assistance and access to specialised support services to help them recover from the physical and psychological effects of a violent crime. VAQ aims to provide a tailored, needs-based response and allows for earlier intervention in the victim's recovery.

VAQ is part of the Queensland Government's Department of Justice and Attorney-General and administers the financial assistance scheme under the *Victims of Crime Assistance Act 2009* (VOCAA). VAQ commenced on 1 December 2009, replacing the criminal compensation schemes previously provided for in *Criminal Offence Victims Act 1995* and the *Criminal Code 1899*.

The purposes of VOCAA is to declare fundamental principles of justice to underlie the treatment of victims by government entities dealing with them and to provide financial assistance to eligible victims of acts of violence.

**VOCAA**

The key objectives of the scheme under VOCAA include:

- helping victims of acts of violence to recover from the acts by giving them financial assistance
- giving primary victims amounts of compensation representing a symbolic recognition by the State of the injuries suffered by them
- adding to other services provided by government to victims of acts of violence.

Section 25 of VOCAA defines an 'act of violence' as a crime or a series of related crimes committed in Queensland by one or more persons that has directly resulted in an injury to, or death of, one or more persons.

For the purposes of VOCAA, an 'act of violence' includes sexual assault and rape, with injury specifically defined as bodily harm, mental illness or disorder, intellectual impairment, disease, or the adverse impacts suffered by a person as the result of a sexual offence. Under VOCAA, such adverse impacts include sense of violation; reduced self-worth or perception; lost or reduced physical immunity; lost or reduced physical capacity (including the capacity to have children), whether temporary or permanent; increased fear or increased feelings of insecurity; adverse effect of others reacting adversely to the person; adverse impact on lawful sexual relations; adverse impact on feelings; and/or a combination of these injuries (including a pregnancy as a result of the act of violence).

### **Financial assistance**

VOCAA establishes a scheme for financial assistance to a victim of an act of violence to pay for, or reimburse, the costs of goods and services they need to recover from the effects of a violent crime. Grants of financial assistance under the scheme are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise.

VOCAA provides financial assistance to the following victim types:

- primary victim – a person who is injured as a direct result of an act of violence being committed against them
- related victim – a close family member, or dependant, of a person who has died as a result of an act of violence
- witness secondary victim – a person who is injured as a direct result of witnessing an act of violence, by seeing it and/or hearing it
- parent secondary victim – a parent of a child who is injured as a direct result of the act of violence being committed against them, and who is injured as a result of becoming aware of the act.

If the victim is a child, an application for assistance may be made by:

- the child's parent on behalf of the child; or
- the child, if the child is at least 12 years old and is represented by a lawyer; or
- someone else approved by the scheme manager of VAQ.

### **Amounts and components of assistance**

The type and level of assistance provided to a victim depends on the individual circumstances of each victim, including the victim category, the injury or injuries sustained, the type and seriousness of the crime involved, and the cost of the goods and services needed to recover from the crime and its effects.

Of relevance to the commission, a primary victim of an act of violence can apply for a package of financial assistance up to a maximum of \$75 000. Parent secondary victims can apply for financial assistance of up to \$50 000. Assistance available to a parent secondary victim forms part of a pool of assistance available to all parent secondary victims (\$50 000). Witness secondary victims can apply for up to \$50 000 for a more serious act of violence (murder or manslaughter) or up to \$10 000 for all other acts of violence.

While the expenses for which assistance is provided are different for each victim, primary victims of an act of violence including sexual abuse may apply for assistance under the following components:

- counselling expenses
- medical and dental expenses
- the cost of obtaining medical or counselling reports to support their application, including travel expenses
- incidental travel expenses
- travel expenses incurred to obtain medical or counselling reports
- damage to clothing
- a recognition lump sum payment known as special assistance of up to \$10 000
- loss of earnings (up to \$20 000)
- other expenses that might be required to significantly assist in recovery of the victim. In the case of child victims of sexual abuse this might include school fees if a child has moved school due to the abuse, new bedding if the act of violence occurred in their bedroom, tuition fees if the child has missed school due to the act of violence or relocation costs.

Parent secondary victims of an act of violence may apply for assistance under the following components:

- counselling expenses
- medical expenses
- incidental travel expenses
- the cost of obtaining medical or counselling reports to support their application, including travel expenses
- loss of earnings (up to \$20 000)
- damage to clothing
- other expenses that might be required to significantly assist in recovery.

In addition, a payment of up to \$500 is available for legal expenses incurred in making an application for assistance.

An applicant may apply for an amendment to their grant of assistance if their circumstances change for a period of up to six years and in the case of child applicants, before the child turns 24. In this way, the package of assistance can be tailored over time to meet the changing needs or circumstances of the victim.

#### **Other sources of assistance and compensation**

VAQ only provides financial assistance for the costs of goods and services not covered by other financial assistance schemes. Section 86 of the VOCAA provides that where an applicant has received or is likely to receive assistance from another source (for example, compensation, insurance, civil claim), this payment must be taken into account in the assessment of application, and the financial assistance grant reduced accordingly.

#### **Conditions on eligibility and assistance**

In order for a person to be eligible for financial assistance, they must meet certain requirements set out in VOCAA. Section 81 of VOCAA states that a person cannot be granted assistance in relation to an act of violence if:

- a. the act of violence has not been reported to
  - i. a police officer; or
  - ii. — for an act of violence against a special primary victim — a police officer or the victim’s counsellor or psychologist or doctor; and
- b. the government’s assessor is reasonably satisfied there is no reasonable excuse for the report not being made.

A special primary victim means:

- a. a primary victim of an act of violence
  - i. involving a sexual offence; or
  - ii. committed by a person who was in a position of power, influence or trust in relation to the primary victim when the act was committed; or
- b. a primary victim of an act of violence who
  - i. was a child when the act was committed; or
  - ii. has an impaired capacity, whether or not it existed when the act was committed; or
- c. a primary victim of an act of violence who is being threatened or intimidated by the person who committed the act, or by someone else.

To be eligible for assistance under VOCAA, victims must also have assisted in the investigation and/or conviction of the alleged perpetrator of the act of violence. Section 82(1) provides that a person cannot be granted assistance in relation to an act of violence if the person has not given reasonable assistance to the police in the arrest or prosecution of the person who allegedly committed the act of violence. However, in recognition of circumstances of special primary victims, Section 82(2) states that Section 82(1) does not apply if the government assessor, responsible for considering the application for assistance, is reasonably satisfied that the person had a reasonable excuse for not providing the assistance.

Additionally, for acts of violence committed after 1 December 2009, financial assistance can be provided by VAQ regardless of whether or not the person who committed the act of violence has been identified, arrested, prosecuted or convicted in relation to the act of violence. However, for acts of violence which occurred before 1 December 2009, a victim must meet the eligibility criteria for the old criminal injury compensation scheme under the *Criminal Offence Victims Act 1995*, to receive financial assistance.

This usually means a victim is not eligible for assistance until the offender has been convicted in the District or Supreme Court, or the victim has received notification that the offender cannot be convicted. Further information about situations where the act of violence occurred before 1 December 2009 is available by contacting Victims LinkUp on telephone 1300 546 587.

Eligibility for assistance is also not transferable. If a victim entitled to assistance dies, their entitlement to assistance does not survive for the benefit of their estate. As such, if a person applies for assistance but dies before the application is decided, or if a person is granted assistance but dies before the assistance is paid, the person's application lapses.

#### **Time limits for applying for assistance**

Generally, an application should be made within three years of the act of violence or, if the victim is a child, within three years of the day the child turns 18. There are provisions for extending this time limit. A person's age when the act of violence was committed, the physical or psychological effect of the act of violence on the person, and whether the person who allegedly committed the act of violence was in a position of power or trust, are included as relevant considerations in deciding extensions of time.

#### **Appealing a VAQ decision**

Under specific circumstances, a person seeking financial assistance through VAQ is entitled to seek a review of decisions in relation to their application if they are unhappy with the outcome of the scheme's assessment. Section 124 provides that, within 28 days of the learning of the decision, a person aggrieved by a certain decision may apply to the scheme manager to have certain decisions reviewed.

In addition, if the applicant is not happy with the result of the internal review, they can also appeal to the Queensland Civil and Administrative Tribunal (QCAT) to review a decision of the manager of the VAQ scheme. An application may also be made for QCAT to order a stay of the scheme manager's decisions.

The types of decisions that may be sought to be reviewed are listed in schedule 1 of VOCAA, and include refusing an application for assistance, deciding not to extend time for making an application, imposing a condition on the grant of assistance, the types of support for which assistance is payable and the amount of assistance provided.

### **Other types of support for victims of child sexual abuse**

In addition to providing financial assistance, VAQ provides a range of other services to assist victims of crime, such as information and referrals, the provision of victim support including court support, and administration of the Fundamental Principles of Justice for Victims of Crime in Queensland.

VAQ's Victims LinkUp service is a telephone information and referral service that can provide information and referrals to specialist government and non-government support services. Victims LinkUp also assists victims to apply for financial assistance, including providing help to complete application forms. Victims LinkUp does not provide legal advice.

The Fundamental Principles of Justice for Victims of Crime in Queensland (the principles) are set out in Chapter 2 of VOCAA and outline the treatment victims of crime can expect to receive from all government agencies. The principles include:

- the right to fair and dignified treatment
- privacy of a victim's personal information
- the provision of information about relevant services available for victims of crime
- the provision of information about the investigation and prosecution process, including a victim's role as a witness
- the right to minimal exposure to and contact with the offender
- the right of a victim to give details of the impact and harm caused to them, via a victim impact statement.

VAQ is responsible for the promotion of the principles and can, where requested, facilitate complaints. If a victim feels a government agency, person or persons within the agency have engaged in conduct that is not consistent with the principles, they have a right to complain.

A victim can complain directly to the relevant government agency, or alternatively can make the complaint to VAQ to refer on to the government agency on their behalf. The government agency is then responsible for conducting an investigation into the complaint and VAQ informs the victim of the final outcome.

VAQ's Local Area Victim Coordination Officers (VCOs) are located in Ipswich, Rockhampton, Cairns and Townsville and can, where no other service provider exists, support victims of crime with high and complex needs as they go through the criminal justice system. Support may include assistance in completing a Victim Impact Statement, assistance in applying for financial assistance, supported referral pathways to specialised organisations and other intensive court support services.

VCOs additionally work with the local support services to promote victims' rights and build capacity within the sector to provide effective and appropriate service provision to victims of crime.

VAQ also funds a number of specialist non-government services that support victims of crime, including:

- Relationships Australia (Qld) Inc which provides free counselling to victims of violent crime
- PACT which provides a volunteer specialist child witness service
- WWILD which assists victims of sexual assault with an intellectual disability
- Anglicare's Living Well which supports male victims of sexual assault.

### **Review of VOCAA**

VOCAA requires the Attorney-General and Minister for Justice to undertake a review of VOCAA within five years of VOCAA's commencement. This review is currently underway and a report of its outcomes will be tabled in the Queensland Legislative Assembly once it is completed.