

**VLA v Victims of Crime Assistance Tribunal (Review and Regulation) - [2020]  
VCAT 1470**

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**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**REVIEW AND REGULATION LIST**

VCAT REFERENCE NO. Z857/2019

**CATCHWORDS**

Review and Regulation List – *Victims of Crime Assistance Act 1996 (Vic)*, s 52 – Whether applicant failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence.

**APPLICANT** VLA

**RESPONDENT** Victims of Crime Assistance Tribunal

**WHERE HELD** Melbourne

**BEFORE** R. Tang AM, Member

**HEARING TYPE** Determination on the papers

DATE OF HEARING 22 December 2020

DATE OF ORDER AND REASONS 23 December 2020

CITATION VLA v Victims of Crime Assistance Tribunal (Review and Regulation) [2020] VCAT 1470

### ORDERS

1. Under section 51(2)(c) of the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*, the decision of the respondent of 19 September 2019 refusing an award of assistance is set aside and substituted with a decision that the applicant be awarded assistance as follows:
  - (a) under section 8 of the *Victims of Crime Assistance Act 1996 (Vic)*, up to 15 counselling sessions at the rate of \$170 per session, to be reimbursed or paid on presentation of a tax invoice from the psychologist; and
  - (b) under section 8A of the *Victims of Crime Assistance Act 1996 (Vic)*, an amount of \$1,300 as special financial assistance.
2. Under section 48 of the *Victims of Crime Assistance Act 1996 (Vic)*, the respondent must pay the applicant an amount of \$1,045 in respect of the applicant's costs relating to the application for assistance.
3. Costs of the proceeding are reserved. The parties have liberty to file consent orders within 30 days of this decision.

R. Tang, AM  
Member

#### WRITTEN SUBMISSIONS:

For Applicant Ms E George, solicitor

For Respondent Ms E Frawley of Counsel

On 24 October 2019, the Tribunal made the following orders:

1. The applicant in this proceeding must be referred to as VLA.
2. Any report of the whole or any part of this proceeding or information derived from this proceeding to the extent that it would disclose the name and address of VLA must not be published or otherwise disclosed.
3. These orders apply throughout Australia. The Tribunal's reasons for decisions are published on the AustLII website, which is accessible throughout Australia.
4. This order operates until the death of the applicant.

### **REASONS**

1. By application dated 15 October 2019, VLA seeks review of a decision of the Victims of Crime Assistance Tribunal (**VOCAT**) denying her application for assistance under the *Victims of Crime Assistance Act 1996 (Vic)* (**VOCA Act**) in respect of an act of violence committed by an unknown person or persons at VLA's home in the early hours of 6 July 2018 (**Relevant Act of Violence**).
2. The Relevant Act of Violence involved the unknown person or persons entering the driveway of VLA's home, shooting and killing a dog owned by VLA's grandson, shooting at and damaging VLA's Hyundai sedan parked in the driveway and, likely by reason of a ricochet, breaking VLA's front lounge room window. A LEDR Mk2 Summary Report created by (then) Senior Constable Heath Davidson and dated 6 July 2018 (**VicPol Report**) records the offence with which the offender would be charged (if known) as 'reckless conduct endanger (ing) life'. [\[1\]](#)

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[\[1\]](#) The VicPol Report is included in the material filed by the respondent in accordance with section 49 of the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* (**s 49 Material**).

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3. In her application to the VOCAT, VLA sought the following amounts:[\[2\]](#)
  - Special financial assistance, as assessed by the VOCAT, which was submitted 'should be in a high category A amount'.
  - \$645 in respect of a report dated 5 September 2019 (**Psychological Report**), which was prepared for the VOCAT matter by Ms Lidija Trpcevska, a clinical psychologist.

- \$2,550 in respect of 15 recommended counselling sessions with Ms Trpcevska at \$170 per session, to address the PTSD which Ms Trpcevska indicates was caused by the Relevant Act of Violence.
- Legal costs of \$1,045.

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[2] Final statement of claim lodged by applicant with VOCAT dated 10 September 2019 (**Final SoC**).

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4. On 19 September 2019, the VOCAT (constituted by Magistrate Burns) issued a notice of refusal to make an award of assistance (**Decision**). [3] The Decision indicates that the application for assistance was ‘mandatorily refused under s. 52 of the [VOCA Act] for failure of the applicant to assist the investigation’. In a subsequent handwritten note, headed ‘Statement of Reasons’, the Magistrate indicated that ‘[t]he circumstances as outlined in the materials make it clear that this applicant has failed to assist the police’. [4]

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[3] The Decision is included in the s. 49 Material.

[4] The handwritten notice is included at the bottom of a request for advice issued by the VOCAT to the Magistrate on 25 November 2019, which is included in the s. 49 Material.

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5. For the reasons which follow, I am not satisfied on the evidence before the Tribunal that VLA did not render ‘reasonable assistance’ to Victoria Police in relation to the investigation of the Relevant Act of Violence and that the Decision should therefore be set aside and replaced with a decision that the applicant be granted assistance as specified in the orders. In addition, I have awarded costs under the **VOCA Act**, and reserved costs in respect of these proceedings pending the filing of consent orders by the parties.

### Legislative framework

6. The **VOCA Act** was enacted in 1996. The purpose of the **VOCA Act** is to provide financial assistance to victims of crime. [5] VLA submits, and the VOCAT accepts, that the **VOCA Act** is beneficial legislation and should be construed broadly in light of that objective. [6]

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[5] **VOCA Act**, s.1(1).

[6] See, for example, *Will v Victims of Crime Assistance Tribunal - Geelong* [2011] VCAT 1739 [18].

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7. The VOCAT is a tribunal established to hear and determine claims for assistance under that Act. [7]. Broadly speaking, the VOCAT may award assistance to an applicant where satisfied that an act of violence has occurred and the applicant is eligible to receive the assistance. [8].

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[7] VOCA Act, s 19.

[8] VOCA Act, s 50.

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8. An ‘act of violence’ is defined as a criminal act that has occurred in Victoria and directly resulted in injury or death to one or more persons. [9]. Injury includes mental illness or disorder or an exacerbation of a mental illness or disorder. [10].

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[9] VOCA Act, s 3.

[10] VOCA Act, s 3.

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9. Unless there are special circumstances, the VOCAT *must* refuse to make an award of assistance in certain circumstances, including where the ‘applicant failed to provide reasonable assistance to any person or body duly engaged in the investigation of the act of violence’. [11].

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[11] VOCA Act, s 52(a)(ii).

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10. Section 8 of the VOCA Act sets out the assistance that is normally available, and section 8A provides for special financial assistance where the primary victim experiences or suffers a ‘significant adverse effect as a direct result of [the] act of violence’. The assistance that may be offered under either provision is subject to certain caps and limitations.

11. The special financial assistance available under section 8A of the VOCA Act depends on the ‘category’ of the act of violence concerned. Despite the original application referring to special financial assistance under category A, the applicant concedes that the Relevant Act of Violence falls within category C, [12] for which the minimum assistance is \$650 and the maximum assistance is \$1,300. [13].

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[12] Applicant Response to Respondent’s Table of Contentions dated 3 September 2020 (**Applicant’s Reply**). [4].

[13] Refer to the table in VOCA Act, s 8A(5).

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12. A person whose interests are affected by a decision of the VOCAT refusing to make an award of assistance is entitled to apply to VCAT for review of such a decision. [\[14\]](#). On review, VCAT has all the functions of the VOCAT, and may affirm, vary or set aside (and substitute or remit) the decision under review. [\[15\]](#). VCAT provides a review on the merits, considering the matter afresh, with a view to making the correct or preferable decision.

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[\[14\]](#) VOCA Act, s 59.

[\[15\]](#) *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*, s 51.

13. In assessing any question of fact, the relevant standard of proof is the balance of probabilities. [\[16\]](#).

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[\[16\]](#) VOCA Act, s 31.

#### **Evidence regarding the investigation of the Relevant Act of Violence**

14. The Tribunal's orders of 4 October 2020 record that, at the parties' request and having received an 'agreed Index of Material', the application was to be determined 'on the papers'. The agreed Index of Material relevantly includes:

- the material filed by the respondent in accordance with section 49 of the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)* (**VCAT Act**), including the VicPol Report, a handwritten statement initialled by VLA (**VLA Statement**) and an email from Detective Senior Constable Branka Jurilj dated 16 September 2019 (**Jurilj Email**); [\[17\]](#) and
- the material provided with VLA's final statement of claim provided to the VOCAT on 10 September 2019, which includes the Psychological Report and a tax invoice from VLA's solicitors.

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[\[17\]](#) All of these materials are included in the s 49 Material.

15. In light of the parties' request and the consequential orders of the Tribunal, I have accepted that material as providing an accurate account of the circumstances surrounding the Relevant Act of Violence and the subsequent investigation, even though there are no formal witness statements from VLA or any of the police officers involved in the investigation.

16. In the VLA Statement, VLA explains that she went to bed around 11.30pm on the night prior to the incident. At approximately 2.00am, the power went off in the house and VLA heard 'multiple loud gunshots' at the front of the house. She grabbed her mobile phone and jumped out of bed, yelling out 'what are you's [sic] doing you bastards', after which she heard a vehicle drive away. She says she did not see the vehicle or any of the people outside, but rather only heard them. After that, VLA went into her grandson's room 'to get the number to call the Melton police station'. The police arrived around 5 to 10 minutes after she called them.

17. The VicPol Report records that:

- At the time of the Relevant Act of Violence, there were three 'victims' who were all in bed asleep at the time, being VLA, her grandson and his partner (who I will refer to as Person O).
- VLA's grandson had 'recently struck up a relationship with [Person O] and they have been residing with [VLA] while they look for other appropriate accommodation'.
- When Senior Constable Davidson attended the house (with Detective Senior Constable Symons), they spoke with VLA and Person O who '[b]oth stated no other person was home'. However, VLA's grandson was subsequently 'located hiding under blankets in bed'. VLA's grandson indicated this was because he had eight warrants for his arrest in relation to other matters.
- VLA's grandson and Person O were 'unco-operative and refused to give a full account in fear for their life should they make a statement'. Senior Constable Davidson goes on to express the opinion that 'it was clear to investigators they knew who the offender/s were and the reasons behind the incident'.

18. It appears from an email by Detective Acting Sergeant Davidson to the VOCAT dated 13 September 2019 that the conduct of the investigation was handed over to Detective Senior Constable Jurilj. In her email of 16 September 2019, Detective Senior Constable Jurilj indicates that the 'investigation has not been completed due to insufficient information provided by the victims'. She goes on to say that:

- VLA is the grandmother of a secondary victim 'who was not co-operative with the police and did not want to provide us with any information'; and
- VLA 'could not really helps [sic] us with our investigation as we believe the target was her grandson'.

19. While it is slightly ambiguous, when read in context it is apparent that the person referred to in the first bullet point as not being co-operative was VLA's grandson, rather than VLA herself. VLA did, of course, provide information in the form of the VLA Statement, albeit that she could not identify the people involved in the Relevant Act of Violence.

#### **Did VLA provide reasonable assistance?**

20. VLA submits that she did provide reasonable assistance, pointing to the following matters: [\[18\]](#)



- She assisted as best she could, noting that this was limited because she was not the target and her grandson and Person O were unco-operative.
- She called the police ‘moments after’ the incident and met with the officers.
- She allowed the police to enter her home and conduct a search.
- She provided the VLA Statement to the police.

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[18] Submissions of Applicant dated 27 February 2020 (VLA’s Submissions).[6].

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21. VLA contends that assistance can be reasonable even if it is limited or delayed. [19].

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[19] Referencing *Gray v Victims of Crime Assistance Tribunal* [2014] VCAT 1002 [27]

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22. The VOCAT says that it ‘sees its role [in these proceedings] as being to assist VCAT in reaching the correct and preferable decision rather than defending the original decision’.[20] Nevertheless, the VOCAT contends that section 52 requires the assistance to be ‘reasonable’ rather than being of ‘some or limited’ assistance. [21].

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[20] Respondent’s Table of Legal Contentions dated 30 March 2020 (VOCAT Submissions).

[21] VOCAT Submissions [26].

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23. The VOCAT points to VLA’s initial statement to police that no-one else was at the home apart from her and Person O, and the subsequent discovery of her grandson, as relevant to the assessment of whether VLA’s assistance was reasonable.[22].

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[22] VOCAT Submissions [28(c) and (d)].

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24. VLA seeks to explain this on the basis that she was ‘afraid and upset due [to] the occurrence and nature of the incident’. [23]. However, it is contended that, if she was really trying to hide her grandson, she would not have called the police immediately.

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[23] Applicant’s Reply.[6].

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25. While the lie to police about the people in the house reflects adversely on VLA, there is no evidence to suggest that this impacted on the police investigation regarding the Relevant Act of Violence. It is clear from the Jurilj Email that the reason that the investigation has not been completed is the lack of co-operation of VLA’s grandson and Person O in identifying the person or persons involved. There is no suggestion that VLA knows who that person or persons are, or that she has withheld from the police any relevant information known to her.
26. Section 52(a)(ii) of the VOCA Act only provides for mandatory refusal where the VOCAT (or VCAT stepping into its shoes) is satisfied that *the applicant* failed to provide reasonable assistance. This cannot require the provision of information that is unknown to the applicant. Accordingly, assistance can be reasonable even if the assistance is limited due to limitations in the applicant’s knowledge or awareness of the facts and circumstances surrounding an act of violence.
27. In these circumstances, I am not satisfied that VLA failed to provide reasonable assistance to the police. It is therefore unnecessary to consider whether there were ‘special circumstances’ that brought about that result.

#### Is VLA eligible for assistance?

28. At section 5.1 of the Psychological Report, Ms Trpcevska indicates that VLA ‘meets the criteria for diagnosis of PTSD’ and for ‘Insomnia Disorder’. She goes on, at section 5.3, to confirm the link between those diagnoses and the Relevant Act of Violence, noting that:[24]

[a]s a direct result of being a victim of the alleged act of violence, [VLA] has suffered a new psychological injury, that of PTSD and a significant adverse effect as a result of exacerbation of her pre-existing Insomnia Disorder.

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[24] Emphasis added.

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29. In light of that evidence, I am satisfied that VLA is a person who has been injured as a direct result of an act of violence, is therefore a ‘primary victim of an act of violence’, and has also suffered a ‘significant adverse effect’. Accordingly, VLA is entitled to assistance under both sections 8 and 8A of the VOCA Act.

## What assistance should be granted?

### Counselling

30. The main claim made by VLA is for \$2,550 in relation to psychological counselling. In terms of addressing her injury, Ms Trpcevska states, at section 5.3 of the Psychological Report, that VLA:

will likely suffer significant impairment in the management of anxiety and trauma related symptoms in the short to medium-term future. Her prognosis is dependent on receiving adequate treatment.

31. The number of sessions proposed (ie. 15) is consistent with recommendations of the American Psychological Association which suggest that 50% of patients with PTSD will recover with 15-20 sessions of treatment.[\[25\]](#)

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[\[25\]](#) Psychological Report at section 6.4.

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32. Section 8(2)(a) of the **VOCA Act** provides that amounts can be awarded ‘for expenses actually incurred, or reasonably likely to be incurred by the primary victim for reasonable counselling services’.
33. I am satisfied that the course of counselling proposed is reasonable and that VLA should be awarded assistance for up to 15 counselling sessions at the rate of \$170 per session, to be reimbursed or paid on presentation of a tax invoice from the psychologist.

### Special financial assistance

34. The parties are in agreement that the Relevant Act of Violence is within category C. As previously observed, the minimum award of special financial assistance is \$650 and the maximum is \$1,300.
35. The Psychological Report reveals that the Relevant Act of Violence was distressing for VLA. VLA ‘feared for her life and that she would be shot’.[\[26\]](#) Since that time, VLA has been ‘hypervigilant’ in relation to noises outside her home and frequently checks her surroundings, looking outside her windows and trying (but not succeeding) to sleep with the lights on.[\[27\]](#) She sometimes stays with her sister or granddaughter, which helps her to sleep through the night.[\[28\]](#) VLA has become ‘further isolated socially’, having ‘developed a mistrust of others’ and because she spends much of her daylight hours sleeping (due to the difficulties she has sleeping at night).

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[\[26\]](#) Ibid at section 3.1.

[\[27\]](#) Ibid at section 5.1.

[28] Ibid.

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36. Having regard to the significant impact of the Relevant Act of Violence on VLA, I consider it appropriate to award the maximum amount of special financial assistance of \$1,300.

Costs of the VOCAT application

37. Section 48(1) of the *VOCA Act* provides that the costs of, and incidental to, all proceedings in the VOCAT are in the discretion of the Tribunal.
38. I consider it appropriate that the VOCAT pay the legal and report costs incurred by VLA in bringing her VOCAT claim.
39. There is evidence the Psychological Report cost \$645.[29]

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[29] Counselling and Report Fee Invoice attached to the Psychological Report.

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40. In the Applicant's Reply, it is submitted that 'the solicitors were paid \$500 for their work on the original application'.
41. On this basis, I will award costs of \$1,045.

Costs of VCAT proceedings

42. VLA seeks the costs of her solicitor's preparation and appearance at VCAT under section 109 of the *VCAT Act*, specifically referring to sections 109(3)(c) and (e).[30]

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[30] VLA's Submissions [8(d)].

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43. The VOCAT notes that, in *PTR v Victims of Crime Assistance Tribunal (Costs)*, [31] costs were awarded in favour of the applicant in relation to the successful review of a decision of the VOCAT. [32] In that case, costs were awarded based on the County Court scale on a standard basis, with the costs to be assessed by the Victorian Costs Court if the parties could not reach agreement. Nevertheless, the VOCAT indicates a preference for an 'agreed amount of costs for the VCAT review [to be] fixed by way of consent order'. [33]

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[31] [2019] VCAT 1644.

[32] VOCAT's Submissions [40].

[33] Ibid [41].

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44. While VLA has indicated she is 'open to an order for costs by way of a consent order', [34] no amount has been specified by her (or the VOCAT).

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[34] Applicant's Reply [20].

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45. In the circumstances, I will reserve costs and give the parties liberty to file a consent order (which may either fix an agreed amount of costs or otherwise propose an order for the costs to be determined) within 30 days.

R. Tang, AM  
Member

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### Cited by:

*SDI v Victims of Crime Assistance Tribunal (Review and Regulation)* [2021] VCAT 642 (18 June 2021) (E Wentworth SM)

22. As the case of *VLA v Victims of Crime Assistance Tribunal* [3] illustrates, s 52 does not require the provision of information that is unknown to the applicant. In that case the applicant had made a statement to police about an alleged shooting. She told police she did not know the attackers' identity and had not seen them or their vehicle. There was no suggestion that she withheld from the police any relevant information known to her. The Tribunal held she had not failed to provide reasonable assistance to police.

*SDI v Victims of Crime Assistance Tribunal (Review and Regulation)* [2021] VCAT 642 (18 June 2021) (E Wentworth SM)

22. As the case of *VLA v Victims of Crime Assistance Tribunal* [3] illustrates, s 52 does not require the provision of information that is unknown to the applicant. In that case the applicant had made a statement to police about an alleged shooting. She told police she did not know the attackers' identity and had not seen them or their vehicle. There was no suggestion that she withheld from the police any relevant information known to her. The Tribunal held she had not failed to provide reasonable assistance to police.

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[3] [2020] VCAT 1470 per Member Tang AM.

