



Victims of Crime Assistance Tribunal  
**Koori VOCAT List Pilot**  
**Review and Recommendations**



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# 1. Executive Summary

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## 1.1 Introduction

The Koori VOCAT List (List) has been operating within the Victims of Crime Assistance Tribunal (Tribunal) for the past three years. It developed as an initiative of certain Tribunal Members and registrars who, through their involvement with the Koori community, were aware that the Tribunal was not receiving the number of applications for assistance by Koori victims of crime they would have expected.

The List was the Tribunal's attempt to understand why this was happening, to become involved with the Koori community, and to try and develop procedures that would increase the number of Koori victims of crime accessing the assistance they were entitled to under the *Victims of Crime Assistance Act 1996* (VOCA Act).

The Tribunal realised that, while it maintained a large volume of statistics about the applications it received, it did not have any information about applications by Koori victims of crime. It did not know where these applications were coming from, how many it was receiving (if any), whether applicants had legal representation, or whether victimisation between Koori and non-Koori people differed. Importantly, the Tribunal did not know the nature of Koori victims' experiences and/or their concerns as victims of crime.

To address this, the Tribunal organised a series of community forums to invite discussion about the Tribunal's response to Koori victims of crime, to understand the experiences and concerns of Koori victims of crime and to build a relationship between the Tribunal and the Koori community. The forums took place in 2004 and 2006 and led to the inclusion of an Indigenous identifier question on the Tribunal's *Application for Assistance* form, enabling it to gather statistics about applications by Koori victims of crime, and to the introduction of the Koori VOCAT List.

The List was originally set-up as a two-year pilot project but, due to its success, will continue as an ongoing part of the Tribunal's operations. The List provides an administrative framework for managing applications by Koori victims of crime; applications are still determined according to the legislative requirements set out in the VOCA Act. What the List does do, however, is direct the Tribunal to promote flexible practices in relation to applications by Koori applicants.

The Tribunal's intentions in setting up the List, particularly the centralisation of its administration at the Tribunal's Principal Registry at Melbourne, was to enable it to identify common trends amongst List applications and to develop appropriate and consistent procedural innovations to meet the particular circumstances of Koori victims of crime.

Over the last three-years, the Tribunal and the Koori VOCAT List Registrar have responded to issues they have identified in List applications and have developed practices that have not only benefited the operation of the List, but which have been applied across the general administration of the Tribunal. These initiatives have been undertaken with only a small amount of additional funding and within the existing staffing and resources of the Tribunal.

## 1.2 Department of Justice Indigenous initiatives

The List, while it was an initiative of the Tribunal, is consistent with wider Victorian Government initiatives and reforms regarding the over-representation of Koori people in the Victorian justice system. The List is consistent with the Department of Justice's strategic objectives to reduce the

negative impact the high rate of victimisation has on Koori individuals, their families and their communities,<sup>1</sup> in particular:

- Growing Victoria Together 2 – the List contributes to achieving the Growing Victoria Together 2 outcomes: *Building Friendly confident and safe communities*, and *A fairer society that reduces disadvantage and respects diversity*;
- A Fairer Victoria – the List contributes to the strategy *improving access to justice*; and
- *Justice Statements 2004-2014* – which includes the vision statements for justice outcomes.

The List has enabled the Tribunal to address the issue of Koori engagement and improve its responsiveness to Koori victims of crime. Through the List, the Tribunal has adopted a proactive and problem solving approach to the relatively low number of applications for assistance by Koori applicants (2.7 per cent of all applications lodged with the Tribunal since 1 July 2006).

### **1.3 Purpose of report**

This report looks at the background to the development of the List, the current operation of the List, feedback and suggestions from participants at the Tribunal's Koori VOCAT List Engagement Forum held on 30 March 2009 about the operation of the List and recommendations for future development (a list of all participants at the Engagement Forum is contained in Appendix Two of this report).

The report was developed in consultation with the Koori VOCAT List Steering Committee, which comprises Magistrate Susan Wakeling, Deputy Chief Magistrate Felicity Broughton, Deputy Chief Magistrate Jelena Popovic, Mason Atkinson, Manager of the Koori Court Unit, Graeme Chirgwin, Manager Specialist Courts, Samantha Adrichem, Mereana White and Fergus Dunipace, all of the Victims of Crime Assistance Tribunal.

In preparing this report, the Tribunal acknowledges that there is a dearth of information about responses to indigenous victims of crime in the justice system. The lack of guidance about how to deliver an effective service for Koori victims of crime has been one of the challenges the Tribunal has faced during the List's pilot period. The observations and recommendations contained in this report reflect the Tribunal's attempts to adapt its processes to respond to the particular circumstances and requirements of Koori victims of crime.

Because the particular circumstances and requirements of Koori victims of crime are not homogenous, the Tribunal has chosen to maintain maximum flexibility in its approach to the operation of the List. The success of the List relies on a case-by-case approach to management and a willingness by the Tribunal to adapt its procedures to the individual experience.

### **1.4 Summary of recommendations**

The recommendations contained in Section 5 of this report are informed by the Tribunal's experience of the operation of the List over the last three and a half years, as well as the feedback and suggestions received from participants present at the Engagement Forum. Some of these recommendations can be implemented relatively easily by the Tribunal; others will require further development and consultation amongst Koori service providers and community representatives, some will require additional funding.

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<sup>1</sup> Victorian Aboriginal Justice Agreement Phase 2 (Department of Justice, June 2006).

Please note that since the Engagement Forum, the Tribunal has already been able to implement some of the recommendations put forward by participants. Refer to Section 5 of this report for more information and context in respect to each of these recommendations.

#### **Recommendation One – Extension of Koori VOCAT List Pilot**

- extend the Koori VOCAT List beyond the pilot phase and establish it as an ongoing part of the Tribunal’s operations
- **please note** that this recommendation was implemented in June 2009 – see the Chief Magistrate’s Practice Direction No.2 of 2009 – *Koori VOCAT List*

#### **Recommendation Two – Koori VOCAT List Registrar**

- establish the Koori VOCAT List Registrar position as a permanent ongoing position
- **please note** that this recommendation was implemented in June 2009

#### **Recommendation Three – Koori Liaison Officer**

- that the Tribunal investigate the possibility of having a designated Koori Liaison Officer role for the Koori VOCAT List, with responsibility for providing cultural and service information to the Tribunal Member, linking Koori applicants to Indigenous service agencies, and liaising with those Indigenous service agencies
- **please note** that this position is dependent on the Tribunal developing a position description for the role and obtaining appropriate funding

#### **Recommendation Four – Tribunal correspondence and information**

- that the Tribunal simplify its written correspondence sent to Koori applicants so that they can better understand what information the Tribunal requires from them, and so that they can understand how to access their award of assistance
- that the Tribunal produce appropriate and easy to read guidelines or information brochures that explain the Tribunal process in simple, easy to understand language

#### **Recommendation Five – Culturally appropriate hearing venues**

- that the Tribunal’s Hearing Room at the Melbourne Magistrates’ Court is set up in a culturally specific way, including conducting Tribunal proceedings around an oval table or bar table where all participants are seated, displaying the Aboriginal, Torres Strait Island and the Australian flags in the Hearing Room, and displaying local Koori artwork in the Hearing room
- that the Tribunal investigate the possibility (and appropriateness) of conducting Koori VOCAT List hearings in regional locations in a Koori Court courtroom
- **please note** that the Tribunal has purchased the Aboriginal, Torres Strait Island and the Australian flags and these are displayed in the Tribunal’s Hearing Room One in Melbourne

#### **Recommendation Six – Culturally appropriate and sensitive hearings**

- ensure that all Tribunal Members (magistrates) who sit in the Koori VOCAT List have undertaken cultural awareness training
- encourage Tribunal Members sitting in the Koori VOCAT List to request advice of any cultural matter that might require the assignment of the application to a Tribunal Member of a particular gender (men's and women's business)
- encourage Tribunal Members sitting in the Koori VOCAT List to conduct their hearings (as far as possible) in an informal and culturally sensitive manner, for example conducting the hearing around an oval table or bar table where all participants are seated
- allow Koori applicants the time and the space to explain to the Tribunal Member the incident of violence, the history that gave rise to it and the impact that the incident has had on them

#### **Recommendation Seven – Directions hearings**

- that the Tribunal try and address the length of time involved in finalising a List application by utilising directions hearings early in the application process, for example a directions hearing with the applicant/applicant's lawyer could identify any issues or deficiencies in the applicant's application, identify what supporting documentation is required, and set a time line for filing all supporting documentation

#### **Recommendation Eight – Post hearing/award support**

- that the Tribunal focus on the support and assistance it gives to a Koori applicant after their application for assistance has been finalised and an award made, including assisting them to understand what the award means and how they can access the assistance awarded
- that the Tribunal send a personalised letter to the applicant along with their award of assistance acknowledging that the Tribunal – on behalf of the State of Victoria – is sorry for what they have suffered (this is particularly important where the application is determined without a hearing)

#### **Recommendation Nine – Relationship with other agencies/support services**

- that the Tribunal develop its relationships with Indigenous service providers and victim support services so that it is aware of the range of culturally appropriate services available to Koori victims of crime (and that those service providers are aware of the assistance that the Tribunal can provide)
- that the Tribunal develop relationships and protocols with Koori and mainstream sexual assault services to ensure that its processes for dealing with allegations of sexual offences are consistent with protocols adopted by other agencies (see the *Victorian Sexual Assault Reform Strategy*)

## 2. Background

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### 2.1 Introduction

The Koori VOCAT List (List) was an initiative of the Tribunal. It developed because Tribunal Members (who are also Magistrates), registrars and Indigenous service providers were aware of the high number of Koori people represented in family violence and criminal proceedings, but were not seeing this representation reflected in the number of applications to the Tribunal by Koori victims of crime for financial assistance. Certainly, the number of applications did not reflect the incidence of victimisation understood to be occurring in the Koori community.

In establishing the List, the Tribunal acknowledged that the historical relationship between the Koori community and the criminal justice system has had an impact on the capacity and inclination of Koori people who are victims of crime to engage with a State funded victims' assistance scheme. Many Indigenous Australians have experienced the legal system as hostile, inaccessible and to be avoided.

The development of the List was needed to give Koori victims of crime an opportunity to participate in the Tribunal process, to emphasise healing by allowing the stories of victims to emerge, and to enable the Tribunal to engage with the Koori community. Through observing the experience of the Koori Court, the Tribunal has learnt that culturally appropriate court processes can significantly improve a Koori participant's perception that the legal system is just and accessible.<sup>2</sup>

### 2.2 Koori victims of crime – social and economic disadvantage

Koori victims of crime experience particularly high levels of social, economic and psychological disadvantage and vulnerability. This level of vulnerability and disadvantage underpins the over-representation of Indigenous people (both juvenile and adult) in the various criminal justice jurisdictions across Australia.<sup>3</sup> It also increases the complexity of matters involving Koori people (both as defendants and victims) that come before the courts. Anecdotally, the Tribunal has observed that the alleged offender of an offence committed against a Koori victim of crime is also often a Koori person.

A report compiled by the Productivity Commission, Steering Committee for the Review of Government Service Provision titled '*Overcoming Indigenous Disadvantage*' (2009), found that Indigenous people were markedly disadvantaged when compared to non-Indigenous people against the three measured headline dimensions – education, labour force participation and income. The report also found that Indigenous imprisonment rates had increased by 46 percent for women and 27 percent for men between 2000 and 2008 and that Indigenous people were 13 times more likely than non-Indigenous people to be imprisoned.<sup>4</sup>

The report also highlights the nexus between disadvantage and criminal behaviour when it states, "[p]overty, unemployment, low rates of education attainment and lack of access to social services are associated with high crime rates and high rates of imprisonment."<sup>5</sup> These factors impact on the

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<sup>2</sup> The Koori Court was established under the *Magistrates' Court (Koori Court) Act 2002*. It operates as a division of the Magistrates' Court, which sentences Indigenous defendants. The Children's Koori Court was established under the *Children, Youth and Families Act 2005*.

<sup>3</sup> *Overcoming Indigenous Disadvantage Key Indicators 2009* (Commonwealth of Australia, 2009).

<sup>4</sup> *Overcoming Indigenous Disadvantage*, pg 25, 63, May 2009.

<sup>5</sup> *Ibid*, pg 23.



number of Koori victims of crime and, as the Tribunal has experienced, the number of Koori victims of crime seeking assistance from the Tribunal.

## **2.3 Community engagement**

To help it understand the barriers Koori victims of crime were encountering when making applications for financial assistance, the Tribunal – through the efforts of a small number of Tribunal Members and registrars – got involved with Koori community representatives, victim service providers and policy developers and organised (with the support of the Victims Support Agency) a series of forums.

An initial forum was held in Melbourne in August 2004 with subsequent metropolitan and regional forums held in April, May and June 2006. The forums sought to ascertain the current experience of Koori applicants to the Tribunal, explore potential means of improving that experience and increase the number of Koori victims of crime accessing their entitlements under the VOCA Act.

The forums were attended by Koori community representatives, victim service providers, policy developers, lawyers, Aboriginal Court Liaison Officers and Tribunal Registrars, and the Tribunals' current and past Supervising Magistrate. One of the key issues identified at the forums was the lack of awareness amongst the Koori community of their rights to victim support and assistance. Discussion also centred on the disincentives to participate in the Tribunal process created by the VOCA Act, for example, requirements that the alleged act of violence must be reported to the police within a reasonable time and the possibility that the Tribunal would notify an alleged offender of a right to participate in the proceedings.

Whilst discussion at the forums ranged broadly, there was strong support for:

- the inclusion of a question identifying Indigenous applicants on the Tribunal's *Application for Assistance* form;
- the appointment of a Koori liaison officer in the Tribunal's Principal Registry at Melbourne to act as a point of contact between the Tribunal and Koori applicants;
- the consistent use of less formal, more inclusive procedures in the Tribunal as seen in the Koori Court (particularly in relation to hearings);
- consideration by the Tribunal of the role of the community elder or respected person in providing information to the Tribunal about the circumstances of the applicant in the Koori community; and
- the development of a directory of services available to support Koori victims of crime.

## **2.4 Indigenous identifier question**

The Tribunal responded to feedback received at the forums by including an Indigenous identifier question on its *Application for Assistance* form.<sup>6</sup> These forms were introduced at the start of 2006. The Indigenous identifier question enabled an applicant to identify as an Indigenous person, and perhaps more importantly, it enabled the Tribunal to start recording and tracking statistics about the applications it received from Koori victims of crime. For example, since 2006, the Tribunal has

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<sup>6</sup> The form of the Tribunal's *Application for Assistance* form is prescribed by statute and in the *Victims of Crime Assistance (Procedure) Rules 2007*. These Rules were specifically amended to cater for the inclusion of the identifier question on the application for assistance form.

received 508 applications from persons identifying as either Indigenous or Torres Strait Islander.<sup>7</sup> The ability to identify these applications enabled the Tribunal to introduce the Koori VOCAT List from 1 July 2006 and allocate resources to its development.

Please note that the Indigenous identifier question asks applicants whether they are of Aboriginal or Torres Strait Islander origin, and the Tribunal includes all applications made by an Aboriginal or Torres Strait Islander in the List. For the purposes of this report however, and for ease of consistency, reference will be made to Koori applicants and Koori victims of crime.

Prior to the introduction of the Indigenous identifier question, the Tribunal relied on information provided by the applicant or the applicant's lawyer to assist it to identify what applications for assistance had been made by Koori victims of crime. The introduction of the identifier question (and the List) allowed the Tribunal to bring together all applications made by Koori applicants and administer them centrally. As at 31 December 2009, there were 522 applications in the List (278 applications had been finalised and 244 were pending finalisation). When the Tribunal commenced the Koori VOCAT List on 1 July 2006, there were only 60 applications identified as being made by an applicant who elected to identify as an indigenous Australian.

Please note that there are difficulties in trying to maintain up-to-date and accurate statistics about the number of Koori people who have had contact with the criminal justice system, particularly the courts. This is a general statement and does not apply just to the Tribunal. While a lot of court forms enable a Koori person to identify as an Indigenous or Torres Strait Islander, many choose not to. This creates an ongoing issue about the reliability of data, and it also makes it impossible to draw any conclusions about whether an increase in the number of applications for assistance to the Tribunal reflects an increase in violence amongst the Koori community, a decrease in violence or just an increase in reporting.

## **2.5 Koori VOCAT List**

The List commenced operation as a 2-year pilot project from 1 July 2006.<sup>8</sup> The Tribunal commenced operation of the List on its own initiative and in the absence of funding to support its operations and objectives. Since then the Tribunal has received support and funding to extend the List beyond the pilot period and it now operates as a permanent part of the Tribunal's operations.<sup>9</sup> Central to the success of the Koori VOCAT List has been both the commitment of the small number of Tribunal Members who sit in the Koori VOCAT List and the work undertaken by the Koori VOCAT List Registrar.

The intention of the Tribunal in developing the List was to try and develop procedures to ensure that the purposes and objectives of the VOCA Act can be achieved in relation to Koori applicants. In doing so, the Tribunal relied on the procedural flexibility and the informality afforded to it under the VOCA Act to respond with maximum flexibility to the particular circumstances of a Koori applicant.

The List is supported by the appointment of a full-time Koori VOCAT List Registrar (Registrar), who administers all applications in the List from the Tribunal's Principal Registry at Melbourne. All applications for assistance where the applicant has identified as an Indigenous or Torres Strait Islander person, with the exception of applications within the jurisdiction of the Family Violence Court Division at Ballarat and Heidelberg, and applications within the jurisdiction of the Neighbourhood Justice Centre at Collingwood, are included in the List.<sup>10</sup>

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<sup>7</sup> Statistics extracted from the Courtlink Database, accurate as at 31 December 2009.

<sup>8</sup> See Chief Magistrate's Practice Direction No.2 of 2007 – *Koori VOCAT List*.

<sup>9</sup> See the Chief Magistrate's Practice Direction No.2 of 2009 – *Koori VOCAT List*, which confirmed that, due to the success of the pilot, the Koori VOCAT List will continue as an ongoing part of the Tribunal's operations.

<sup>10</sup> The Family Violence Court Division and the Neighbourhood Justice Centre are divisions of the Magistrates' Court of Victoria with jurisdiction to hear and determine applications for assistance under VOCA Act. See

Any application for assistance made by an Indigenous or Torres Strait Islander person that is lodged at a venue other than Melbourne must be transferred, prior to registration, to Melbourne for inclusion in the List.

## **2.6 Points of difference**

The List is a management initiative introduced by the Tribunal. It does not apply any different legal considerations to the determination of applications for assistance by Koori victims of crime or non-Koori victims of crime. All applications for financial assistance from victims of crime are considered and determined within the framework of the VOCA Act, which sets out specific matters the Tribunal must have regard to and specifies limits on the amount of assistance that may be awarded.

What the List does do, however, is enable the Tribunal to be more responsive to the circumstances of Koori victims of crime who, for whatever reasons, have found it difficult to engage with the justice system.

### **Related victim applications**

Since the inclusion of the Indigenous identifier question and the development of the List, the Tribunal has observed some notable differences between List applications and non-Koori VOCAT List applications (General List applications). For example, there is a higher proportion of applications arising from homicide offences amongst List applications than General List applications (21 per cent compared to 11.3 per cent respectively).<sup>11</sup> This translates to a higher number of applications by related victims (those claiming assistance based on their relationship to a deceased victim) in List applications (18 per cent of all applications, 96 applicants).

The high proportion of related victim applications reflects the Koori community's disproportionate experience of loss of life through violence. It is also consistent with the Productivity Commission's *Overcoming Indigenous Disadvantage Report*, which reported that nationally, the Indigenous homicide death rate (6 per 100,000 population) was 7 times the non-Indigenous death rate (1 per 100,000 population) between 2003-2007.<sup>12</sup>

Because related victim applications involve a number of different applicants they generally take longer to finalise than primary or secondary victim applications. The reason for this is that the Tribunal is obliged to try and find all possible related victims and notify them that they may be entitled to apply for assistance from the Tribunal. The Tribunal must then wait until all applications are ready to proceed at the same time before determining them. The Tribunal may also await the outcome of complex legal proceedings before determining related victim applications, and this can contribute to the delay.

### **Koori victims of crime – family and community violence**

Family and community violence amongst Indigenous people is reported on in the *Overcoming Indigenous Disadvantage Reports*.<sup>13</sup> In 2009, Indigenous people were hospitalised as result of spouse or partner violence at 34 times the rate of non-Indigenous people. Indigenous females and males were 35 and 21 times as likely to be hospitalised due to family violence related assaults as non-

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section 4I(2) of the *Magistrates' Court Act 1989* (jurisdiction of the Family Violence Court Division) and section 4O of the *Magistrates' Court Act 1989* (jurisdiction of the Neighbourhood Justice Centre).

<sup>11</sup> Please note that statistics contained in this report are accurate as at 31 December 2009.

<sup>12</sup> *Overcoming Indigenous Disadvantage Key Indicators 2009* (Commonwealth of Australia, 2009).

<sup>13</sup> *Ibid.*

Indigenous females and males.<sup>14</sup> Indigenous females sought Supported Accommodation Assistance Program assistance in 2006-07 to escape family violence at the rate of 45 per 1000 population compared with 3 per 1000 population for non-Indigenous females.

These figures are reflected in the Tribunal's statistics in respect to List applications. In 44 per cent of List applications (179 applications) where the relationship between the applicant and the alleged offender is recorded, the alleged offender is a family member. Of those applications, the alleged offender was a domestic partner or former domestic partner in 37 per cent of the applications (67 applications). The alleged offender was the parent or child of the alleged offender in 28 per cent of the applications (52 applications). The Tribunal has observed that a significant amount of these applications involve sexual assault matters.

The issue of sexual assault in Indigenous communities has emerged in recent years as a key area of community concern. While prevalence rates are higher in Indigenous populations, reporting of sexual assault by Indigenous victims tends to be lower. A 2004 Victorian report prepared by Elizabeth Hoffman House and the Centre Against Sexual Assault identified specific barriers to access of services by Indigenous victims as a lack of Indigenous specific services; limited community awareness of services; institutional racism; fear of reprisal from the perpetrator or community; normalisation of assault; fear of police and the legal system; and limited skills of Indigenous community workers in responding to sexual assault.<sup>15</sup>

The introduction of the List appears to be having a positive impact in increasing the number of Koori victims of sexual assault seeking assistance from the Tribunal. As at 31 December 2009, the offence category distribution where an award of financial assistance was made indicated that 17 per cent of List applications (where an award was made) involved a sexual offence. This is comparative to the General List, where 20 per cent of applications (where an award was made) involved a sexual offence. As can be expected, almost all of the victims of these offences were female (89 per cent for List applications and 84 per cent in the General List).

Although it is difficult to say that there is a higher incidence of sexual assault and family violence offending amongst the Koori community, what these statistics show is that Koori women victims of rape and sexual assault are turning to the Tribunal for assistance and acknowledgement of the impact of such offending. It is a very positive response and reflects proactive work done in the community.

## **Reporting act of violence to police**

Through its experiences over the past three and a half years, the Tribunal has observed that a significant number of the List applications that involved a sexual offence concerned historical sexual offending. The Tribunal requires that all acts of violence be reported to the police within two years after the act of violence occurred (unless the Tribunal finds that there were special circumstances for the failure to report the act of violence or cooperate with the police in the investigation of the act of violence). If the applicant did not report the offence to the police, or if the police did not prosecute, the Tribunal has to investigate the alleged act of violence in order to make a finding that the offence took place. This almost always requires a hearing and may involve the Tribunal notifying the alleged offender of the allegation.

Feedback the Tribunal has received when discussing this issue with the Koori community is that some victims, particularly victims of family violence, would prefer to deal with issues 'in-house' rather than report them to the police. Sometimes victims will wait until the alleged offender has moved away, or died, before making an application for assistance to the Tribunal or complaint/report to the police. Sometimes these concerns will relate to the community's historical experience of the

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<sup>14</sup> Ibid.

<sup>15</sup> Thorpe, L, Solomon, R & Dimopoulos, M 2004, *From shame to pride: access to sexual assault services for Indigenous people*, Elizabeth Hoffman House and CASA House, Melbourne.

criminal justice system and the impact that a potential sentence of imprisonment may have on a family member.

However, the Tribunal's statistics in relation to List applications indicate that applications for assistance (particularly in relation to sexual offending and family violence) are being made, showing that people are feeling more comfortable in coming forward and reporting the offending. This outcome aligns with the Victorian Government's response to dealing with sexual assault through the *Victorian Sexual Assault Reform Strategy*. The key objectives to this strategy are to create a system that encourages people to report sexual assault, minimises the trauma and distress for complainants through the criminal justice process; and leads to a reduction in the incidence of sexual assault in the community.

### **Prior behaviour, criminal history and/or provocation on part of applicant**

The Tribunal must have regard to the applicant's character, behaviour or attitude when determining whether to make an award of assistance, and the amount of assistance it will award. The Tribunal must consider whether the alleged offender may also benefit financially from any award, or if the applicant contributed to or provoked the act of violence in any way.<sup>16</sup> The applicant's prior criminal history, particularly if there is a history of related criminal offending – for example, the applicant is claiming assistance as a result of an assault and they have a history of committing assaults – can also be relevant to the Tribunal's decision.<sup>17</sup>

If the evidence suggests that the victim in some way provoked or contributed to the violence, the Tribunal may delay a hearing until a criminal court has made a finding, or the Tribunal is able to complete an investigation. The Tribunal may need further information or evidence which places the applicant's prior criminal behaviour into context (their social, cultural and economic history), and while prior criminal activity may not necessarily affect the amount of financial assistance the Tribunal awards, it does add complexity to the proceedings. All of these issues can have an impact on a Koori victim's inclination to speak to the police or make an application for assistance to the Tribunal.

### **Longer case processing times**

The above factors all have an impact on how long it takes the Tribunal to determine an application for assistance made by a Koori victim of crime. The Tribunal has noted that case processing times (the elapsed time between lodgement and finalisation of an application) are significantly longer for Koori victims of crime than other applicants (as at 31 December 2009, 36 percent of applications by Koori applicants were finalised within 12 months, compared to 67 per cent for non-Koori applicants).

As noted above, this could be attributable in part to the higher number of related victim applications in the List, but it could also be in part due to the fact that in 30 per cent of List applications the elapsed time between the alleged act of violence and the application is greater than 2 years (154 applications). The VOCA act provides that applications made more than two years after the alleged act of violence must be refused unless the Tribunal is satisfied that 'special circumstances' contributed to that delay.<sup>18</sup> Establishing whether 'special circumstances' exist increases the complexity of a matter.

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<sup>16</sup> See section 54 of the *Victims of Crime Assistance Act 1996*.

<sup>17</sup> Ibid. In determining whether or not to make an award of assistance or the amount of assistance to award, the Tribunal must have regard to the character, behaviour (including past criminal activity and the number and nature of any findings of guilt or convictions) or attitude of the applicant at any time, whether before, during or after the commission of the act of violence.

<sup>18</sup> See section 29 of the *Victims of Crime Assistance Act 1996*. Special circumstances can include the age of the applicant at the time of the occurrence of the act of violence, whether the applicant is intellectually disabled or mentally ill, whether the person who committed, or is alleged by the applicant to have committed, the act of

Since the inception of the List, the Tribunal has observed a number of different factors prevalent (but not unique) to List applications that can contribute to increased case processing times. For example, the Tribunal has observed a high number of incidents (alleged acts of violence) that have been reported to the police but which are not then the subject of prosecution by the police. In this situation the Tribunal is required to conduct its own investigations (usually through evidence given at a hearing) and determine the issue of whether an act of violence against the applicant occurred.

The Tribunal has also observed that some Koori applicants are victims of multiple traumatic events, they may be dealing with pre-existing mental trauma and stress, they may also have to deal with subsequent traumatic events and challenges which impact on their ability to engage with the Tribunal and respond to the timetable set by the Tribunal in respect to preparing their claim. In addition, Koori applicants need to respond to written and often legalistic communication from the Tribunal – meaning that literacy issues and/or increased mobility (frequent changes of address) can also contribute to a delay in finalising List applications.

## **Legal representation**

Another difference the Tribunal has observed amongst List applications is the high proportion of legal representation. While it is not necessary for an applicant to be legally represented in order to make an application for assistance to the Tribunal, 90 per cent of applicants in the List are represented by a legal practitioner (471 applications). Legal representation statistics for General List applications are not available for inclusion in the report (although they are recorded in the Courtlink database), but it has been the Tribunal's observation that legal representation amongst List applications is significantly higher.

While this is testament to work done by agencies like the Aboriginal Family Violence Legal Prevention Service and the Victorian Aboriginal Legal Service and some private firms, there is concern that the Tribunal is not reaching those Koori victims of crime who are not in contact with a lawyer, or referral to a lawyer, through their involvement in family violence or criminal proceedings. It would seem likely that a Koori victim of crime who makes an application to the Tribunal for financial assistance is referred to the Tribunal secondary to another legal intervention. What the Tribunal is trying to do through the List is make the Tribunal more accessible to Koori victims of crime, whether or not they have access to legal representation.

## **Culturally sensitive hearing process**

It is the experience of Tribunal Members sitting in the List that Koori applicants who attend the Tribunal often have an expectation that they will have the opportunity to relate, in a narrative style, the incident of violence, the history which gave rise to it and the impact it has had on them. The narrative is of primary importance to the process. Flexibility, time and specialist training enable the Tribunal Member to acknowledge this process as critical to the applicant, whilst also progressing other issues of relevance to the determination of their application (legislative requirements under the VOCA Act).

The List is still evolving, and the approach adopted by different Tribunal Members sitting in the List is also still evolving. However, the Tribunal Members are adopting practices employed by magistrates sitting in the Koori Court, such as sitting at an oval table or bar table with all other participants and not at the bench; making the setting more informal; talking directly to the victim to ensure that they fully understand what is happening; and receiving culturally specific or background

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violence was in a position of power, influence or trust in relation to the applicant, the physical or psychological effect of the act of violence on the applicant.

information from Elders, Respected Persons or other community representatives (where appropriate) to assist the Tribunal Member in understanding the applicant's situation.

The Tribunal Member will make a point of telling the applicant that no one is there to oppose their application. They try to make it a conversation, where they explain what evidence the Tribunal requires in order to be able to make a determination and what the Tribunal's award of assistance means. At the end of the hearing the Tribunal Member will thank the applicant for their contribution (and the contribution of other people who have attended) and acknowledge the injury they have suffered as a victim of crime. The Tribunal Member will try and make their decision during the hearing so that the applicant can leave knowing what their award is and what they are entitled to.

### **3. Current operation of the List**

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#### **3.1 Introduction**

Since the introduction of the List, the Tribunal has adopted approaches and procedures in response to the specific requirements of Koori victims of crime and their expectations of the Tribunal. The development of these procedures has been relatively organic and informal, due in part to the absence of a funded Koori VOCAT List Registrar (Registrar) until November 2008, and also to the fact that the Tribunal has tried to maintain flexibility in managing and determining List applications.

Experience has shown that the success of the List has relied on a case-by-case approach to management and a willingness by the Tribunal to adapt its procedures to the individual circumstances of the applicant.

Over the three and a half years that the List has been operating, the Tribunal and the Registrar have developed practices that are unique to the List. The initiatives introduced by the Tribunal in relation to List applications are possible because of the relatively small number of applications by Koori victims of crime (3 per cent of all applications lodged since 1 July 2006) and the fact that applications are managed by a single registrar in a centralised location.

The practices employed by the Tribunal Members and Registrar in administering the List have provided a valuable learning experience for the Tribunal as a whole and have had an impact on the Tribunal's general administration.

#### **3.2 Koori VOCAT List approach**

##### **Communication**

The Registrar utilises telephone contact to communicate with applicants and applicants' legal representatives more frequently in List applications. In General List applications, the Tribunal relies heavily on correspondence to communicate with applicants. In List applications, telephone contact is made early on in the application process and helps to establish a relationship between the Tribunal and the applicant. It particularly helps to overcome difficulties experienced by many Koori people with literacy and addresses the reality that the community is highly transient.

The Registrar has also identified that some Koori applicants do not respond to letters addressed to them in window faced Magistrates' Court envelopes. As the Tribunal operates within the Magistrates' Court of Victoria buildings, Tribunal correspondence is sent out in Magistrates' Court envelopes. To address this, the Registrar has implemented a process whereby correspondence from the Tribunal to Koori applicants is sent out in hand-addressed envelopes (e.g. not window faced envelopes).

Where appropriate, the Registrar writes letters in plain English to make them as easy to understand as possible.

##### **Relationship between Tribunal and legal practitioners**

The developing relationship between the Registrar and legal practitioners who represent Koori victims of crime has been identified as one of the key elements contributing to the success of the List.



Since the introduction of the List, the Registrar endeavours to make regular email contact with practitioners who have an application(s) in the List.

By establishing email contact, the Registrar is able to identify any legal issues that need to be addressed and whether there is any outstanding material to be filed with the Tribunal. This procedure helps to communicate the expectations of the Tribunal, anticipate and resolve issues which have the potential to delay applications, and to ensure the immediate concerns of applicants are addressed.

## **Listings and hearings**

The List enables the Tribunal to respond with maximum flexibility to the particular circumstances of a Koori applicant. In managing List hearings, the Tribunal will ask the applicant to indicate their preference for the venue of the hearing. It will also ask whether any alternative arrangements are sought for the hearing, including alternative arrangements for attendances by video link or for giving of evidence by remote witness facility.

The Tribunal may also prompt the applicant to consider whether an elder or respected person is available to attend the hearing to provide context relevant to the applicant's background that may assist the Tribunal. An understanding of the applicant's history, family relationships and standing in the community can throw light upon issues to be determined.

Although List applications are managed and administered centrally from Melbourne, they are not necessarily heard in Melbourne. Hearings usually take place at a venue of the Tribunal (all venues of the Magistrates' Court of Victoria are venues of the Tribunal) preferred by the applicant. For some applicants a local venue is best; it enables family and community supports to attend and give evidence and can alleviate problems associated with travel and childcare. Other Koori applicants may prefer the privacy or security of a hearing away from their local community.

Generally the Tribunal Member sits with the applicant, the legal representative and support person(s) at the bar table and conducts the hearing as much as possible as a conversation. The informal style is directed toward eliciting the 'best evidence'.

Since commencing in the role, the Registrar has introduced regular Koori VOCAT List meetings. These meetings are held once a month and provide an opportunity for the Registrar and List Tribunal Members to discuss any general trends or specific issues identified in the previous month, as well as any issues pertaining to List applications listed for hearing. The Tribunal is also considering ways to maximise the use of directions hearings for List applications. Legal practitioners have observed that directions hearings can assist in preparing the application for final hearing, particularly if there are issues in respect to the alleged act of violence or the applicant's prior criminal history.

## **Case management approach**

The Registrar has introduced a case management approach to managing List applications. Because the applications are managed centrally by one person, the Registrar is able to develop a relationship with the applicant/applicant's legal representative and gain an understanding of the issues involved in the application.

The case management approach is certainly evident in the monthly listing meetings, where the Registrar and Tribunal Members discuss a particular case study from that month's applications and consider possible and actual responses to the issues raised. The Registrar has established a close and collaborative relationship with Tribunal Members determining applications within the List and will meet to discuss issues with them on a regular basis.

### **3.3 Impact of List – outcomes and processing times**

The introduction of the List has made an impact on the processing times of applications for assistance by Koori victims of crime.<sup>19</sup> While case processing times are longer for Koori victims of crime than other applicants (only 36 per cent of applications by Koori applicants were finalised within 12 months from the date of lodgement, compared to 67 per cent for non-Koori applicants), the processing time for those applications lodged **after** the commencement of the List is significantly lower than those lodged prior to the commencement of the List (on average, 14 months, compared to 31 months).

Of the 276 applications within the List that had been finalised at 31 December 2009, an award of financial assistance was made in 73 per cent of applications (202 applications), which is slightly higher than the outcome for General List applications finalised (71 per cent). The rate at which applications was refused was consistent (2 per cent).

The introduction of the List has also had a positive impact on Koori applicants' level of engagement with the Tribunal and their willingness to continue with their application. As at 31 December 2009, an application for assistance was withdrawn by the applicant or struck out by the Tribunal for failure to comply with directions in 24 per cent of all List applications. This compares to 21 per cent of General List applications that had either been struck out or withdrawn. Other positive impacts include the improved access to victim support and financial assistance for Koori victims of crime (which can lead to positive community outcomes), as well as Tribunal Members and Tribunal staff gaining greater cultural awareness and sensitivity of Koori issues.

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<sup>19</sup> *Case processing time* is measured as the time between an application being lodged and finalised. Where a finalised application has been reinstated after previously being struck out and a further order is made finalising the claim, the case processing time on that application will be measured from the date that the application for financial assistance was originally lodged to the date of the second order made that finalised the claim.

## 4. Koori VOCAT List Engagement Forum

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### 4.1 Introduction

The Koori VOCAT List Engagement Forum (Forum) was held to seek feedback from persons and organisations directly involved in the List. It was organised to help the Tribunal review initiatives introduced by the Tribunal during the pilot period of the List and to make recommendations as to its future operation.

The Forum was held at the Koorie Heritage Trust on 30 March 2009, and ran from 9.30am to 3.00pm. It was attended by legal practitioners, Indigenous service providers and Department of Justice employees who have had some involvement with the List and/or Koori victim support services (a full list of attendees is included at Appendix Two of this report). It was facilitated by Andrew Jackomos, Director, Indigenous Issues Unit, Department of Justice, and Antoinette Braybrook, Chief Executive Officer, Aboriginal Family Violence Prevention and Legal Service.

The Engagement Forum was very positively received and showed a strong degree of collaboration between the Tribunal, Indigenous service providers, legal practitioners and other Victorian Government agencies. It was an opportunity for people involved with the List to network, develop relationships and establish stronger lines of communication. Discussion also went beyond the specific workshop questions and highlighted general procedural issues within the Tribunal where there were opportunities for improvement.

Andrew Jackomos concluded the Engagement Forum by observing that the List has made a real difference to Koori victims of crime accessing their rights to apply for financial assistance. The List has shown that the Tribunal can be more proactive and responsive to the community and has provided the Tribunal with an opportunity to be flexible in its hearings and procedures.

### 4.2 Workshop questions

The Engagement Forum was divided into three workshop sessions, under the themes of Access, Process and Meaning.

- The *Access Workshop* considered the legislative barriers that might impact on a Koori victim of crime's decision to make an application for assistance; the written correspondence and supporting material required by the Tribunal; mobility and contact of Koori victims of crime; and privacy issues.
- The *Process Workshop* considered the practical and administrative aspects of the List, including the process for hearing List applications and the value (or otherwise) that can be drawn from attending a hearing, and the role of the Koori VOCAT List Registrar.
- The *Meaning Workshop* considered the meaning of the Tribunal process for Koori victims of crime, including whether the introduction of the List has improved the Tribunal's responsiveness to Koori victims of crime.

The specific workshop questions considered were sent out to the participants prior to the Engagement Forum and are set in full on the following pages.

## Workshop One - Access

### **Barriers to access**

The intention of the Tribunal in establishing the Koori VOCAT List was to ensure that the purposes and objectives of the *Victims of Crime Assistance Act* (VOCA Act) can be achieved in relation to Koori applicants. However, the Tribunal must also operate within the bounds of natural justice and the provisions of the VOCA Act, which place certain obligations and requirements on the Tribunal in respect to eligibility for financial assistance.

For example, the Tribunal must refuse an application if it is not reported to the police within a reasonable time and/or the applicant does not cooperate with the police investigation (unless the Tribunal is satisfied that special circumstances exist). In determining the amount of financial assistance to award, the Tribunal must have regard to the character and antecedents of an applicant, including any prior criminal offending. In some cases, the Tribunal may deem it necessary to notify an alleged offender of an application and given them an opportunity to participate in the proceedings.

To what extent do you think these matters are a disincentive to a Koori applicant making an application for financial assistance? Do you have any suggestions as to how the Tribunal can address that disincentive?

Do you think there are any other barriers, whether procedural or legislative, that may affect a Koori applicant's decision to make an application for financial assistance? If yes, what do you think the Tribunal could do to address those barriers?

### **Supporting material**

Applications for financial assistance to the Tribunal are predominantly paper based. Applications are made in writing and the Tribunal requests that evidence be provided in the form of medical and psychological reports, police reports, affidavit material and so on. Communication between the Tribunal and the applicant and/or the applicant's lawyer is largely via written correspondence.

It has been our observation that if the paperwork is not adequately prepared or if the applicant cannot understand the letters sent by the Tribunal, the progress of the application for assistance can be delayed, causing considerable frustration for an applicant. These delays often result in the application for assistance taking longer to be determined and finalised.

In your opinion, what could the Tribunal do to assist a Koori applicant in providing the supporting material required in support of their application for assistance?

Do you think the Tribunal could make any changes to the way it communicates with Koori applicants and/or their lawyers?

### **Mobility and contact**

One of the themes the Tribunal has identified in relation to Koori VOCAT List applications is the mobility of the applicants. Koori applicants often have more than one contact address and they also tend to move more than non-Koori applicants. Difficulties can also arise if an applicant changes their address without notifying their lawyer or if they have to change lawyer due to a change in location. These difficulties can make it difficult for the Tribunal to maintain accurate contact details and to

ensure applicants receive timely correspondence in respect to the progress of their application. They can also contribute to delay in determining and finalising an application for assistance.

Do you have any suggestions as to how the Tribunal could address this issue?

Do you have any comments to make generally in respect of the length of time it takes the Tribunal to process and determine an application for assistance?

### **Privacy**

In our experience, some Koori applicants are often concerned that if they make an application for assistance their personal history or the allegation of violence made by them against others will become known in their community. These concerns are related to the requirements in the VOCA Act for the act of violence to be reported to the police and the Tribunal's obligation, in some circumstances, to notify the alleged offender of the application.

There may also be a perception that Koori employees within the Department of Justice (although there is currently no Indigenous Koori VOCAT List registrar) are too closely connected to the applicant's community and/or the alleged offender, and that this may deter Koori victims of crime from engaging with the Tribunal.

In your opinion, is there anything the Tribunal can do to provide reassurance to Koori victims of crime about privacy and increase their confidence in the privacy and impartiality of its processes?

Do you think this issue affects a Koori applicant's decision to make an application for financial assistance?

## **Workshop Two – Process**

### **Hearings**

All venues of the Magistrates' Court of Victoria are venues of the Tribunal and all magistrates of the Magistrates' Court are Tribunal Members of the Tribunal. The Tribunal performs an administrative function when determining applications for assistance, but sits within the organisational structure of the Magistrates' Court and utilises Magistrates' Court facilities.

When making their application for assistance, an applicant is required to indicate on the application form whether they would like to attend a hearing or whether they would like their application determined in their absence. If the Tribunal is satisfied that it is appropriate, an applicant may be given the option of not attending a hearing and their application will be determined on the basis of documents filed.

Although Koori VOCAT List files are managed centrally from the Tribunal's Melbourne registry, an applicant may choose whether to have the hearing held locally (close to their place of residence) or not. An applicant may choose to give evidence via video link or through remote witness facilities. Tribunal hearings take place in a court room and are presided over by a Tribunal Member (who is also a magistrate of the Magistrates' Court of Victoria).

Having regard to the symbolism of the judicial process, do you think there are any advantages/disadvantages to having a Koori VOCAT List application heard and determined in a court room by a Tribunal Member?

Do you think there are any other issues in respect to the hearing of an application for assistance that might affect a Koori applicant's decision to participate in the proceedings? If yes, what do you think the Tribunal could do to address those issues?

### **Administrative arrangements**

From the commencement of the Koori VOCAT List pilot period the Tribunal identified that there would need to be one registrar responsible for coordinating the management of the files. This function was absorbed within existing registry resources at the Tribunal's Melbourne registry until October 2008, when the Tribunal was able to employ a Koori VOCAT List Registrar.

The Koori VOCAT List Registrar manages and administers all Koori VOCAT List applications from the Melbourne registry and develops and maintains relationships with Koori applicants and Indigenous service providers/practitioners. The Koori VOCAT List registrar also has a strong working relationship with the small number of Tribunal Members that hear and determine Koori VOCAT List applications.

Do you think the role of the Koori VOCAT List registrar is a significant one? Why?

In your experience, has the introduction of the Koori VOCAT List registrar position assisted Koori applicants and/or their lawyers in making an application for assistance? Do you think there are any advantages/disadvantages to the applicant in having their application managed and administered from Melbourne?

## **Workshop Three – Meaning**

### **Meaning and engagement**

The Tribunal provides victims of crime with financial assistance to assist them in their recovery from an act of violence. Financial assistance serves both a practical and symbolic function; it assists victims to pay expenses incurred by them as a direct result of the crime and it is a symbolic expression by the State of the community's recognition, sympathy and condolence for the significant adverse effects suffered by victims of crime.

One of the Tribunal's key purposes in establishing the Koori VOCAT List pilot was to attempt to address the Koori community's difficulties in exercising their rights to assistance under the VOCA Act. The Koori VOCAT List is intended to operate in a way which is accessible to Koori victims of crime and responsive to their particular circumstances.

To what extent, if any, do you think the Koori VOCAT List has improved the Tribunal's responsiveness to Koori victims of crime? What do you think the Tribunal could do to improve its responsiveness?

Having regard to the objectives and purpose of the Tribunal, do you think the Koori VOCAT List has improved Koori applicants' experiences of the Tribunal? Do you think there is a therapeutic value to the applicant through this process?

### 4.3 Participants' responses

Please note that the following comments are, as far as possible, an accurate summary of participants' feedback and comments at the Forum. Footnotes are used to provide context and explanations of participants' comments in relation to the VOCA Act and the Tribunal's procedures. Specific comments from participants are highlighted in the gray text boxes.

#### Workshop One – Access

##### **Barriers to access**

As a general comment, participants noted that the VOCA Act is very complex and that most Koori applicants require legal representation. Legal practitioners noted that the 'special' circumstances' provisions in the VOCA Act are generally more applicable to Koori victims of crime and it would help if the Tribunal could develop guidelines about what the Tribunal will have regard to in considering what are 'special circumstances'.<sup>20</sup> Ensuring a consistent approach as to how the Tribunal deals with special circumstances was seen as being particularly important.

Participants felt that the Tribunal should hold more directions hearings to identify and address issues with applications prior to hearings. Applicants/applicants' lawyers could also set out urgent needs as early as possible, with a request that these be dealt with on an interim basis. Magistrate Wakeling observed that the Tribunal is there to be informed about the history of an applicant, and that it requires evidence which places any prior offending in the context of the applicant's personal history. It was noted that because applicants do not generally understand the legislation or what the Tribunal will consider, they do not feel confident in preparing their application.

##### **Reporting act of violence to police and information from police**

Legal practitioners present talked about the issues involved in police reporting and prior criminal offending. One practitioner observed that there are a significant number of adult victims making applications in relation to childhood sexual assaults. If these offences were not reported to the police, the Tribunal will have to conduct its own investigations. This will almost always involve a hearing and notification to the alleged offender. In these cases, the legal practitioner needs to prepare evidence and get instructions from their client, which is often a difficult and time consuming process.<sup>21</sup>

Other practitioners talked about the length of time it takes to get police material through Freedom of Information requests. One practitioner noted that if there was no charge or the alleged offender was acquitted, the Tribunal would not release the police material without the consent of the investigating officer/author.<sup>22</sup> He noted that sometimes it can take up to nine months to get a response from the police. One practitioner noted that it might speed up the application process if the Tribunal could

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<sup>20</sup> Section 52 of the *Victims of Crime Assistance Act 1996* provides that the Tribunal **must** refuse an application for an award of assistance if it is satisfied that: an act of violence was not reported to police within a reasonable time (unless there are *special circumstances*); the applicant failed to provide reasonable assistance to any person or body investigating, pursuing arrest or prosecuting the act of violence (unless there are *special circumstances*); the application is made in collusion with the person who committed or is alleged to have committed the act of violence; or an earlier application for assistance has been made by the victim arising from the same act of violence.

<sup>21</sup> Ibid. The Tribunal relies primarily upon information from Victoria Police in determining whether the alleged act of violence that is the subject of an application for assistance occurred, and whether the applicant is a victim of that act of violence. If this information is not available, or there is limited police information, the Tribunal will need to conduct a hearing to satisfy itself that the alleged act of violence occurred.

<sup>22</sup> See the Chief Magistrate's Practice Direction No.9 of 2008 – *Access to files*.

release police records directly to the applicant's lawyer, particularly if there are 'priors' or special circumstances that need to be addressed early on in the application process.

It was generally agreed by the participants that it can be difficult to get instructions/information from Koori victims of crime in respect to their prior criminal history. Some practitioners reported that they do not feel comfortable asking applicants questions about their prior criminal history. One recommendation was for the Tribunal to advise practitioners once it has the police material so that practitioners can access and view this material earlier. Another suggested that an applicant's prior criminal history could be put to the Tribunal in advance in a directions hearing.

Participants also observed that sometimes the police do not fully explain (or even understand) the Tribunal process to victims. There were examples of applicants not being advised (by the police) that they could not proceed with their application unless they reported the alleged act of violence to the police. It was recommended that there be greater training and involvement with the police regarding this issue. One practitioner noted there tends to be more hearings with List applications because often there is no prosecution case.

Participants and Tribunal representatives discussed in what circumstances the Tribunal could release police material to an applicant's legal representative, but agreed this issue requires further investigation. The appropriateness of the Tribunal seeking information about the applicant was also considered, particularly in relation to the communication of information about victims/offences through different organisations, e.g. Victoria Police or the Victims Support Agency. Privacy issues were raised, although it was not clear exactly how the Tribunal could address privacy concerns.

### **Delay**

Delay in making an application for assistance appeared to be attributed to trauma and a reluctance to report the act of violence. One practitioner noted that the delays between the offence and seeking advice are very significant, for example, it could be more than 10 years or the applicant could wait until the alleged offender has died (particularly if the alleged offender is a family member). Applications by children under the care of the Department of Human Services also pose problems, particularly in terms of determining who will oversee and sign the application. A recommendation was that time limits for making an application for assistance should change in relation to children.<sup>23</sup>

*"The delay between the offence and seeking advice can be really significant. Sometimes an applicant will wait 10 to 15 years, sometimes they will wait until the perpetrator is deceased. This can be a real barrier in accessing assistance from the Tribunal."* Legal practitioner

One of the Victims Assistance and Counselling Program (VACP) workers present noted that there is a lot of trauma and other things going on with Koori victims of crime. VACP workers and Indigenous Liaison Officers need to work with Koori victims early on to point out what they can access. They need to assist a Koori applicant throughout the whole process and ensure there is more follow up. Koori victims of crime are often reluctant to attend a Tribunal hearing, and they need to

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<sup>23</sup> See section 29(1) of the *Victims of Crime Assistance Act 1996*. An application must be made within two years of the occurrence of the act of violence or, in the case of a related victim or person, who has incurred funeral expenses, within two years of the death of the primary victim. If an application is not made within this period, the applicant must make an application for *extension of time*. The Tribunal may consider whether there are particular circumstances that indicate that the application should not be struck out.



be supported through this. Applicants should also be advised early on whether the Tribunal is considering notifying the alleged offender of their application for assistance.<sup>24</sup>

Some legal practitioners noted that delays in preparing an application for assistance can be caused when applicants change lawyers. New practitioners often find that when they take over a file the applicant is not inclined to contact them, or the correspondence from the Tribunal has not been timely. Sometimes the Tribunal does not acknowledge receipt of fax. Another practitioner noted that this problem also arises when applicants change counsellors; she observed that the Tribunal process for changing a counsellor is quite onerous and that the Tribunal could make this process more simple and portable.<sup>25</sup>

Another comment was that issues often go back to the police and how they deal with prosecution cases. One practitioner noted that if an application was taking more than 18 months to finalise it is usually a police issue. However, she noted that it can be difficult to explain this to Koori applicants and it can exacerbate sensitivities between Koori victims of crime and the police, i.e. they are being re-victimised by the police. One recommendation was that the Tribunal deal with more things on an interim basis to speed up the process, and/or appoint another Tribunal Member to sit in the List.<sup>26</sup>

### **Supporting material**

In general, participants felt that the Tribunal's correspondence was too complex for Koori applicants to understand. Lawyers can understand the correspondence and filing requirements, but if this information is sent directly to applicants, they can get turned off by the process. Participants recommended the Tribunal simplify its correspondence in order to assist responsiveness. Relationship building was seen as the key element in facilitating better communication with Koori applicants. Participants noted that they benefit the most from contacting the Registrar directly and having a personal relationship with them.

Another recommendation was that the Tribunal produce appropriate and easy to read guidelines that explain the Tribunal process, what information the Tribunal requires from applicants and what applicants could expect at a hearing. Participants felt that there is not enough public information about the Tribunal, and that many Koori victims of crime do not know about the assistance available and who is eligible to apply for assistance. Participants advised that the Tribunal needs to communicate its requirements about what police material and evidence is required to support an application for assistance, particularly what is required to satisfy the Tribunal that the applicant is a victim of an act of violence.<sup>27</sup>

One practitioner observed that there are a number of different agencies and service providers that Koori people have access to and lawyers are often required to follow up with a number of different agencies to obtain all supporting material. It was observed that this can be very time consuming and

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<sup>24</sup> See section 34(2) of the *Victims of Crime Assistance Act 1996*. The alleged offender may be entitled to appear and be heard at a Tribunal hearing; however the Tribunal cannot give notice of the hearing to the alleged offender unless the applicant has had opportunity to be heard on whether such notice should be given.

<sup>25</sup> See the Chief Magistrate's Practice Direction No.1 of 2008 – *Awards for counselling expenses*. If an applicant wishes to change counsellors, the new counsellor has to agree to provide treatment in accordance with the treatment plan submitted by the initial counsellor and approved by the Tribunal. If the new counsellor does not agree with the initial treatment plan, they will need to prepare a new report and this will need to be approved by the Tribunal before the applicant is authorised to incur counselling expenses with them.

<sup>26</sup> The time taken to finalise an application for financial assistance will vary between applications. The Tribunal will usually await the outcome of the police investigation into an alleged act of violence before finalising an application, or may decide to await the outcome of criminal charges.

<sup>27</sup> The types of documentation necessary to support an application for assistance may include accounts or receipts for all expenses incurred by the applicant; evidence of extent of any insurance, Medicare rebates or other forms of compensation obtained; medical reports from doctors relating to applicant's injury; report from a counsellor outlining the extent of any psychological injuries; calculations relating to loss of earnings.

frustrating. It was also observed that Koori applicants often do not keep all of their paperwork / receipts from service providers. The time involved in chasing up this paperwork causes delays in processing and finalising an application. It was thought that the Tribunal could hold directions hearings sooner to explain what is required and set out a timeline for providing supporting material.

*“Because of the number of agencies Koori people have access to there can be up to 10 different agencies they can visit to access different services. It is incumbent on the practitioner to follow each agency up as there may be material with those agencies that assist the claim. It ends up being a mountain of paperwork.”* Legal practitioner

Participants also noted that the Tribunal has a very clinical definition of counselling and that this is evident in the prescribed counselling reports. There was some discussion about other forms of therapy and whether these forms could satisfy the Tribunal’s requirements in respect to counselling reports.<sup>28</sup> It was observed that some Koori applicants benefit from bringing a cultural context to their therapy. One practitioner noted that some clinicians are reluctant to release a report without receiving payment first, and that this is an issue where the Tribunal could provide more information and reassurance about its processes.

### **Mobility and contact**

Participants discussed the option of the Tribunal having greater telephone/mobile contact with applicants, particularly making contact or sending follow up reminders by SMS. Although it was noted that there could be privacy issues; Koori applicants often change numbers, give their phone to family members, have other family members who have access to their phone. One participant noted that if the Tribunal had a dedicated 1800 number for the Koori VOCAT List, applicants might be more inclined to ring for advice. It was observed that 1800 numbers still incur mobile call charges and that this can be a disincentive for some Koori applicants.

Practitioners present recommended that the Tribunal always get consent from the applicant to talk to their lawyer, counsellor, VACP worker, police officer about their application. They suggested that the Registrar advise the applicant that they will speak to those people for administrative purposes only, and not to discuss the applicant’s background/situation with them. Participants also thought the Registrar should try and establish contact with the applicant’s family and community so that they have another contact point if they can’t reach the applicant. The Tribunal could also list more than one contact on the application form (a back up contact).

*“I usually leave a non-identifying voice mail message on the applicant’s phone.”* VACP worker  
*“I ask clients whether they have any other contact people that I can contact if I need to get in touch with them.”* Legal practitioner

There was discussion about utilising other Indigenous agencies and service providers for contact purposes, such as the Aboriginal Family Violence Prevention and Legal Service (AFVPLS) or an aboriginal co-operative. Koori Court Officers within the Magistrates’ Court of Victoria and Koori employees within the Department of Justice could also provide a link and assist with contacting an applicant, although it was acknowledged that this may involve privacy issues. Participants agreed that the best way to maintain contact with Koori applicants is to establish a relationship with them.

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<sup>28</sup> See the Chief Magistrate’s Practice Direction No.1 of 2008 – *Awards for counselling expenses*.

This will increase their confidence in the system and encourage greater engagement with the Tribunal. It was observed that having the Registrar position has made a positive difference.

*“It is hard to set a blanket approach in respect to how you contact applicants; need to acknowledge that some applicants do not want to be contacted; need to accept that there will be a time when we should not contact the applicant.”* Legal practitioner

### **Privacy**

Participants agreed that the prospect of the Tribunal notifying the alleged offender of the applicant’s application for assistance causes a lot of concern for Koori applicants.<sup>29</sup> One participant noted the interrelatedness of many Koori communities and said that notification to the alleged offender can be perceived as notification to the entire community. She recommended that the Tribunal advise an applicant as soon as possible whether it is considering notifying the alleged offender so that their anxiety can be reduced. Notification concerns could be alleviated somewhat by the Tribunal conducting a closed hearing (particularly if the hearing is going to be stressful for the applicant) and restricting publication.

An issue was raised in respect to culturally appropriate counsellors/psychologists. One practitioner noted that in some cases Koori applicants prefer to access non-Koori/mainstream service providers. There seemed to be a fear (amongst some Koori applicants) that the community would find out about their issue if they saw a Koori service provider. Participants noted in general that there needs to be more training and cultural awareness amongst the mental health profession. A representative of the AFVPLS advised that AFVPLS is currently providing cultural awareness training with a mental health focus.

In response to what the Tribunal can do to provide reassurance to Koori applicants about privacy, the participants observed that the Tribunal could have better communication about its practices and processes and what it does to address privacy concerns. It needs to stress and communicate to applicants that Tribunal staff uphold confidentiality and will keep an applicant’s file and supporting documentation secure. It was thought that this could be done through the appointment of a Koori Liaison Officer.

*“Notification to the alleged offender can be notification to the whole community; this is of great concern to applicants. If notification to the alleged offender is not going to occur, it would be good if the Tribunal could advise the applicant as soon as possible so that their anxiety is reduced.”* VACP worker

## **Workshop Two – Process**

### **Hearings**

This topic generated a lot of discussion amongst participants. It was acknowledged that Koori victims of crime generally have a lot of mistrust about the judicial system, distrust that may extend

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<sup>29</sup> See section 34 of the *Victims of Crime Assistance Act 1996* and the Chief Magistrate’s Practice Direction No.4 of 2008 – *Notification of alleged offenders and third parties*. Factors usually taken into account by the Tribunal in determining whether to notify the offender include: whether there has been a complaint to police in relation to the act of violence; whether the alleged offender has made denials in relation to the allegations; whether the alleged offender has been charged or convicted; or whether there are previous or concurrent proceedings elsewhere relating to the same alleged offences.

from their experiences with the police, prisons or as prior offenders. It was also noted that this distrust extends to legal practitioners as well as to the police and the Tribunal. Participants agreed that applicant's prior experiences of the justice system could affect their perception of the hearing process.

In respect to having a List application heard and determined in a courtroom by a Tribunal Member, participants acknowledged the formality of the process and noted that for some Koori applicants this is very important.<sup>30</sup> One practitioner gave an example of Koori women clients who have seen the Tribunal's hearing process as being a big part of the justice system acknowledging them and what they have suffered. Participants talked about the healing aspects of the hearing and the recognition that some Koori victims of crime obtained by attending court.

*"There is a certain value in a Koori applicant going for a hearing in a court where the State is saying we support you and we stand behind you."* Department of Justice representative

On the other hand, participants agreed that what might be therapeutic for one applicant may be damaging for another applicant. For example, an applicant might feel that because they are attending a courtroom they will be getting in trouble. One of the VACP workers noted that there is a lot of anxiety and nervousness amongst Koori applicants about what is going to happen at the hearing. She stressed that applicants need to be supported throughout the hearing process and that the Tribunal needs to understand their particular needs and requirements.

*"What is the support we give to the victim prior to the hearing? I am concerned that there is no counsellor at the Tribunal (court). How do we prepare our Koori applicants to attend a Tribunal hearing and what support do we give them after it?"* Department of Justice representative

Tribunal representatives explained that Tribunal Members presiding over List hearings have adopted their own processes and protocols.<sup>31</sup> It is now quite common for the Tribunal Member to sit at the bar table with the applicant and/or their legal representative and conduct the hearing as a 'conversation' between the parties. However, some practitioners pointed out that this approach is not followed in all cases and there are examples of Tribunal Members sitting at the bench. It was agreed that Tribunal Members must be culturally aware but that they also need to explain what they are doing to applicants, whether this is sitting at the bar table or the bench.

One recommendation that flowed out of this discussion was that the Tribunal prepare more information and/or a video for applicants, explaining the hearing process. Comparisons were drawn with the Children's Court and the support provided to victims and witnesses in that jurisdiction. Another suggestion was to provide more support to the victim prior to the hearing. There was some

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<sup>30</sup> The *Application for Assistance* form enables applicants to elect whether they would prefer the application determined at a hearing or determined in their absence. However, in some circumstances it will be necessary for the Tribunal to hold a hearing (even if the applicant elected that their application be determined in their absence). As at 30 June 2009, 57 per cent of finalised List applications were determined at a hearing, with the balance of 41 per cent determined without a hearing.

<sup>31</sup> See section 37 of the *Victims of Crime Assistance Act 1996*. The procedure at a Tribunal hearing is informal, with the Tribunal not bound by the rules of evidence or practice. The Tribunal will usually use a courtroom at a venue of the Magistrates' Court to conduct a hearing. Applicants can attend the hearing on their own or with a legal practitioner. The Tribunal is amenable to the use of techniques, such as closed circuit television, screening, video conferences and the attendance of other people for emotional support during the hearing.

concern that the Tribunal was not ensuring that Koori applicants were accessing appropriate support services (e.g. counselling) following their award.

Discussion also focussed on the appropriateness of holding Tribunal hearings in a Koori Court courtroom. It was agreed that Koori Court courtrooms have been designed to be supportive and more culturally appropriate, and that in some cases an applicant might feel more comfortable in a Koori Court courtroom.<sup>32</sup> However, it was noted that there is no Koori Court courtroom at the Melbourne Magistrates' Court. A suggestion was put forward that the Tribunal consult with the Koori community about utilising the space in its Hearing Room One at the Melbourne Magistrates' Court to make it more Koori friendly.

One of the disadvantages in using a Koori Court courtroom (or in fact any court room) is its association with criminal proceedings. Participants agreed that there needs to be a distinction between the criminal process and the Tribunal's process. It was noted that this might be one of the reasons why applicants do not turn up to hearings. The need to understand the hearing process was a common theme, and there was definite agreement that more information and support needs to be provided to an applicant. It was not so clear, however, whether this is the Tribunal's role.

Discussion about the Koori Court led on to a discussion about the role (if any) for Koori Court Officers in List applications. One participant asked whether there is capacity for the Tribunal to have a Koori liaison officer. In responding to this, Magistrate Wakeling expressed the view that the Tribunal does need to nurture its relationships with the Koori community and that there could be a role for a Koori liaison officer. It was agreed, however, that caution needs to be exercised to avoid conflicts of interest between Koori liaison officers, the offender and the victim.

The participants agreed that the applicant needs to have a choice about how their application should be determined.<sup>33</sup> In some cases an applicant will gain therapeutic value out of attending a Tribunal hearing in a courtroom, in other cases an applicant can be re-victimised by the process. In discussing this, Magistrate Wakeling gave an example whereby the applicant's hearing was held in the same courtroom where she gave evidence as a victim, a situation which was completely inappropriate in the circumstances. On this point, it was agreed that other Magistrates' Court staff, particularly those responsible for listing arrangements, need to be sensitive to issues involved in List applications.

*"I supported an applicant who attended a hearing via the remote witness facility, and while they felt happy with their award they did not feel that the environment was right."* VACP worker

There was a lot of discussion about moving the Tribunal outside the courtroom and sitting in culturally appropriate and/or neutral venues. Comparisons were drawn to the native title hearings, which move to the community. The flip side to this is issues with security, recording and maintaining the sense of formality. Having regular List circuits and the availability of 'court-in-a-box' was also discussed. Although Tribunal representatives noted that because the number of applications in the List is small, administratively it can be very difficult to sit outside of court. One Tribunal Member noted that if you give too many choices the Tribunal will not be able to establish consistency in approach.

<sup>32</sup> The Koori Court is a division of the Magistrates' Court of Victoria that sentences Indigenous defendants. All offences that can be heard in the Magistrates' Court, except family violence and sexual offences, can be heard in the Koori Court. There is a Koori Court operating at the Magistrates' Court of Victoria at Bairnsdale, Broadmeadows, Children's Court Melbourne, Mildura, Moe/La Trobe, Shepparton, Swan Hill, Warrnambool.

<sup>33</sup> Applicants can elect whether they would prefer the application determined at a hearing or determined in their absence. However, in some circumstances it will be necessary for the Tribunal to hold a hearing.

The Tribunal was advised that the best advertisement for its services and the List is to approach its hearings with as much informality as possible. One practitioner noted that this is better than a road show as people will talk to each other and come back in greater numbers. It will also show a commitment on the part of the Tribunal to be responsive to Koori victims of crime. Participants agreed that Tribunal Members need to be culturally aware and appropriate and need to understand the community context where they are sitting.

*“The best advertisement for the Tribunal is to go out with as much informality as possible, this is better than a road show or a video, people will talk to each other and come back in greater numbers.”* Legal Practitioner

### **Administrative arrangements**

The overwhelming response was that there has been a definite improvement in the way List applications are managed since the Registrar commenced. It was also agreed that the position is integral to the success of the List. Practitioners noted that the response time for acknowledging receipt of applications and responding to correspondence has definitely improved. They also said they felt more confident that their correspondence was getting onto the file and before a Tribunal Member.

All participants responded positively to the increased contact by the Registrar, with one legal practitioner relaying an experience where the Registrar rang to advise of issues with the applicant’s history that could impact on their application for assistance. The practitioner did not think this level of involvement would have occurred prior to the position being created. Another common response was that the Registrar has been able to facilitate a line of communication between the Tribunal and the practitioner/applicant that did not exist previously.

*“I have had the Koori VOCAT List Registrar ring me to notify me of adverse prior convictions in relation to my client; I do not think that this would have been done prior to the Koori VOCAT List Registrar position being created.”* Legal practitioner

The relationship between the Registrar and practitioners was attributed to the fact that there is now only one registrar dealing with applications. Participants agreed that having the files administered centrally has improved consistency in approach as well as providing the Registrar with an understanding of the history and context to a file. Understanding the wider issues on a file was seen as key to enabling the Tribunal to learn about its applicants and their community. Although, it was noted that more could be done to educate Koori service providers about the assistance available from the Tribunal.

There was some discussion amongst participants as to whether the relationship building function should be the sole responsibility of the Registrar, or whether this should be shared with another position, perhaps a Koori liaison officer. It was acknowledged that the development of another position was beyond the scope of the Tribunal’s focus and resources for the List at this stage, and participants also acknowledged the difficulty in recruiting Koori registrars for these types of roles. However, it was agreed that there is room for the Registrar to informally strengthen their relationship with Koori Court Officers and Koori Liaison Officers.

*“A Koori Liaison Officer who was assisting with a Koori VOCAT List application went and saw the applicant in custody and made sure that they were not brought into the hearing room as a prisoner and that they were not held with other prisoners; a lot of background work went on beforehand.”*  
Tribunal Member

In talking about the disadvantages in having the List applications managed and administered from Melbourne, some country legal practitioners noted that it can be difficult to inspect material on the file if they (the lawyers) are not physically present in Melbourne, although that issue can be addressed by the Tribunal transferring files to different locations. There was a view amongst some participants that when the Tribunal first centralised the List in Melbourne there was an increased delay in responses, but that has improved now with the appointment of the Registrar.

Concern was also raised about the Registrar’s ability to understand what is happening in regional courts, particularly if they do not have knowledge of the local space or listing issues. One option put forward was that the Registrar liaise regularly with country registrars and be prepared to take advice from people who do have the knowledge. In some cases it may be necessary to conduct a hearing locally, in which case the Registrar should share responsibilities with a country registrar in order to understand resources/appropriate service providers in that region.

Overall, it was agreed that the advantages of centralisation outweigh the disadvantages. Specialisation of the Registrar has improved communication with stakeholders, improved the response time to practitioners and service providers, and provided the Tribunal with the cultural context and history to an application. It was agreed that List applications contain complex and often related issues and that they do require more involvement and commitment than other VOCAT applications. Some participants observed that there needs to be more than just one Koori VOCAT List Registrar.

*“Because of the Koori VOCAT List Registrar I am able to follow up on files and issues, I have a contact point to make sure material has been received and I am reassured to know that someone is looking out for my letter.”* Legal Practitioner

## Workshop Three - Meaning

### Meaning

Participants discussed the fact that the amount of financial assistance available from the Tribunal is relatively small.<sup>34</sup> Because of this, the process needs to be meaningful and ‘worth it’ for a victim of crime. Participants acknowledged that most victims want to hear someone say, on behalf of the State of Victoria, that we are sorry that this has happened to you. It was agreed that this verbal

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<sup>34</sup> An applicant’s potential entitlements to financial assistance depend on their designated category of victim. Primary victims of an act of violence may be entitled to financial assistance of up to \$60,000 to pay for expenses incurred by them in their recovery from the act of violence. Primary victims may also be eligible for a lump sum amount of special financial assistance of up to \$10,000. Secondary victims of an act of violence may be entitled to financial assistance of up to \$50,000 to pay for expenses incurred by them in their recovery from the act of violence. Related victims of an act of violence may be entitled to financial assistance of up to \$50,000 to pay for expenses incurred by them in their recovery from the act of violence (this amount may include a lump sum payment for distress). There is a maximum amount of \$100,000 that can be awarded in relation to all the related victims of any one deceased primary victim, regardless of the number of related victims who might have potential claims. This \$100,000 cap is exclusive of any amounts awarded for funeral expenses.

acknowledgement is particularly important for Koori applicants. As one participant noted, ‘people want to feel part of the process, it is not the money, they want someone to say that they are sorry.’

*“A lot of victims want to hear someone say, on behalf of the State of Victoria, that we are sorry that this happened. It seems to be very important to Koori applicants, this verbal acknowledgement.”*

Legal practitioner

On a more general point, participants agreed that it is important to have the List. Because of the List, the Tribunal (and its Koori stakeholders) has statistics and a better picture of what is happening to Koori people in Victoria. It was noted that it is important to have a List that is focussing on the needs of the community. One practitioner observed that the Tribunal, through the List, has changed its approach as it has gone along. She noted that at the start of the pilot period, services were provided to Mildura by video link - that has since moved to face to face. The willingness of the Tribunal to adapt was seen as very positive.

*“I think it is important to have the Koori VOCAT List; we have statistics and a better picture of what is happening to Koori people in Victoria. It is important to have a List that is focussing on the community and we need to keep working on this.”* Department of Justice representative

### **Responsiveness**

In respect to responsiveness, participants noted that this is a case-by-case thing. Some applicants get more out of the process than others. A common theme was that the Tribunal process has given Koori victims of crime an opportunity and a voice to address the damage to their lives. It was observed that Tribunal Members have integrated their cultural awareness training well and apply these principles when dealing with List applications. One practitioner noted that all feedback from his clients in the List has been positive, ‘everyone seemed satisfied’.

Still on responsiveness, one participant thought the Tribunal could look at broadening the definition of family in the VOCA Act and have a more Koori specific definition of family.<sup>35</sup> There was general agreement that work could be done to make a courtroom at the Melbourne Magistrates’ Court more Koori friendly. It was also observed that responsiveness would be helped by having more Koori staff involved with the Tribunal. There was some discussion about the role of elders in the Tribunal process, and it was noted that some Koori victims of crime like hearing what the elders said in relation to the sentencing of their offender in the Koori Court. The possibility of those elders speaking in relation to the victims’ Tribunal application was raised.

### **Letter of acknowledgement**

One practical recommendation that arose out of this discussion was that the Tribunal draft a letter to accompany the award notification.<sup>36</sup> This was seen as being particularly important if the application

<sup>35</sup> See section 3 of the *Victims of Crime Assistance Act 1996*. A close family member means a person who had a genuine personal relationship with the victim at the time of the victim’s death and who has one of the following relationships with the victim: spouse, parent, guardian, step-parent, child, step-child, some other child of whom the victim is guardian, brother, sister, step-brother or step-sister. A spouse means a person to whom the person is married. Section 3 of the VOCA Act contains definitions of *domestic partner*, *guardian*, *parent* and *spouse*. It does not contain a definition of ‘intimate personal relationship’.

<sup>36</sup> See section 38(2) of the *Victims of Crime Assistance Act 1996*. An applicant will be notified in writing of the Tribunal’s decision. The Tribunal’s notification must include details of: the amount of assistance awarded (if



was determined without a hearing. Participants suggested that the letter be signed by a Tribunal Member and acknowledge what the applicant has suffered. Participants agreed that the letter should reflect the wording in the VOCA Act around the community's recognition, sympathy and condolence for the significant adverse effects suffered by victims of crime. This is particularly important if the applicant elected a 'section 33 determination' (determination without a hearing).

Participants also thought the Tribunal should put more focus on following up with an applicant after they receive their award. One participant observed that some Koori applicants have difficulty understanding the order and accessing their assistance. One suggestion was that this could be explained to applicants, either in a letter or a brochure, with some practical tips as to where they can get support. Another option was to have an 'exit poll', whereby the Tribunal actually asks applicants whether the process has been therapeutic. Some practitioners complained that there is a lag between the award being made and the cheque being received and that there needs to be more communication with the applicant post award.

In conclusion, it was observed that the Tribunal needs to deliver something valuable to victims of crime. The process is difficult, it takes a long time and Koori applicants need to be supported throughout that process. There was a feeling, because it does take such a long time, that the Tribunal process holds people back – that they can't get on with their recovery while their application is still being processed. To get a therapeutic value, the Tribunal needs to look at ways it (or another agency) can support applicants, both before, during and after the application process. Again this seemed to come down to communication, engagement and taking the time to let a relationship of trust develop between the Tribunal and its applicants.

## 5. Recommendations for future operation

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### 5.1 Recommendations

The following recommendations are drawn from participants' responses and comments at the Engagement Forum and the Tribunal's own experiences over the pilot period of the List. Some of these recommendations the Tribunal will be able to implement with a small amount of effort, others will require more planning and will be dependent upon funding.

Over the next 12 months the Tribunal, through its Koori VOCAT List Steering Committee, will develop a work plan and will focus on developing and implementing the following recommendations.

#### Koori VOCAT List Pilot

At the time the Engagement Forum was held, the Koori VOCAT List was still operating as a pilot and was due to end on 30 June 2009. As a result of feedback received at the Engagement Forum and the success of the List to date, the Koori VOCAT List has been established as an ongoing part of the Tribunal's operations. This took effect by virtue of the Chief Magistrate's Practice Direction No.2 of 2009 – *Koori VOCAT List*.

| Recommendation One – Extension of Koori VOCAT List Pilot  |
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| <ul style="list-style-type: none"><li>▪ extend the Koori VOCAT List beyond the pilot phase and establish it as an ongoing part of the Tribunal's operations</li><li>▪ <b>please note</b> that this recommendation was implemented in June 2009 – see the Chief Magistrate's Practice Direction No.2 of 2009 – <i>Koori VOCAT List</i></li></ul> |



#### Koori VOCAT List Registrar

At the time the Engagement Forum was held, the Registrar position was a fixed-term position and was due to end on 30 June 2009. Participants at the Engagement Forum observed that the Registrar position is integral to the success of the List and is making a real difference to the Tribunal's communication and responsiveness to applicants/applicant's lawyers. It was recommended that the Koori VOCAT List Registrar position be a permanent position. Since the Engagement Forum, the Tribunal successfully obtained funding to employ the Registrar on an ongoing full-time position. The position is currently held by Mr Fergus Dunipace (the incumbent in the role).

| Recommendation Two – Koori VOCAT List Registrar   |
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| <ul style="list-style-type: none"><li>▪ establish the Koori VOCAT List Registrar position as a permanent ongoing position</li><li>▪ <b>please note</b> that this recommendation was implemented in June 2009 and the position has been filled since June 2009</li></ul> |

## Koori Liaison Officer

Relationship building was seen as the key element in facilitating better communication with Koori applicants. Participants at the Engagement Forum noted that they benefit the most from contacting the Registrar and having a personal relationship with them. One suggestion was that the Tribunal employ a Koori Liaison Officer who could take responsibility for relationship building between the Tribunal and Indigenous service agencies.

The role and duties of a Koori Liaison Officer is subject to further investigation and consultation by the Koori VOCAT List Steering Committee. It is noted that this role would be dependent on developing a position description and obtaining funding.

### Recommendation Three – Koori Liaison Officer

- that the Tribunal investigate the possibility of having a designated Koori Liaison Officer role for the Koori VOCAT List, with responsibility for providing cultural and service information to the Tribunal Member, linking Koori applicants to Indigenous service agencies, and liaising with those Indigenous service agencies
- **please note** that this position is dependent on the Tribunal developing a position description for the role and obtaining appropriate funding

## Tribunal correspondence and information

In general, participants at the Engagement Forum felt that the Tribunal's correspondence was too complex for Koori applicants to understand. Lawyers can understand the correspondence and filing requirements, but if this information is sent directly to applicants, they can get turned off by the process. Participants recommended the Tribunal simplify its correspondence in order to assist responsiveness. Another recommendation was that the Tribunal produce appropriate and easy to read guidelines or information brochures that explain the Tribunal process in simple, easy to understand language.

It is noted that the Registrar already tailors a lot of the written communication sent out to Koori applicants, and sends out correspondence in hand addressed envelopes. Over the next 12 months the Tribunal will look at all of its correspondence and review it in anticipation of the changes being brought in by the Integrated Courts Management System, which is the new online court document and management system being introduced across all Victorian courts.

The Tribunal will also look at the information available on the Victims of Crime Assistance Tribunal website, and redevelop this content so that it is more accessible and relevant to Koori applicants.

### Recommendation Four – Tribunal correspondence and information

- that the Tribunal simplify its written correspondence sent to Koori applicants so that they can better understand what information the Tribunal requires from them, and so that they can understand how to access their award of assistance
- that the Tribunal produce appropriate and easy to read guidelines or information brochures that explain the Tribunal process in simple, easy to understand language

## Culturally appropriate hearing venues

There was a lot of discussion at the Engagement Forum about where the Tribunal should conduct hearings and the appropriateness of having Tribunal hearings in a Koori Court courtroom. A suggestion was put forward that the Tribunal consult with the Koori community about utilising the space in its Hearing Room One at the Melbourne Magistrates' Court to make it more Koori friendly, for example, purchasing flags and Indigenous artwork. Please note that since this time, the Tribunal has purchased the Aboriginal, Torres Strait Island and the Australian flags and these are displayed in the Tribunal's Hearing Room One in Melbourne.

The Koori VOCAT List Steering Committee will also liaise with the Koori Court Unit in respect to the availability of Koori Court courtrooms for Tribunal hearings.

The suggestion that Tribunal hearings be conducted at alternative locations, for example sitting outside a courtroom or utilising 'court-in-a-box', will require more investigation into issues of security and privacy and will also require much further consultation with the Koori community.

### Recommendation Five – Culturally appropriate hearing venues

- that the Tribunal's Hearing Room at the Melbourne Magistrates' Court is set up in a culturally specific way, including conducting Tribunal proceedings around an oval table or bar table where all participants are seated, displaying the Aboriginal, Torres Strait Island and the Australian flags in the Hearing Room, and displaying local Koori artwork on the walls of the Hearing room
- that the Tribunal investigate the possibility (and appropriateness) of conducting Koori VOCAT List hearings in regional locations in a Koori Court courtroom
- **please note** that the Tribunal has purchased the Aboriginal, Torres Strait Island and the Australian flags and these are displayed in the Tribunal's Hearing Room One in Melbourne

## Culturally appropriate and sensitive hearings

The Tribunal will continue to ensure that all Tribunal Members sitting in the List (as well as the Koori VOCAT List Registrar) have undertaken cultural awareness training and are sensitive to the overlapping social issues that may be involved in List applications. As part of this, the Tribunal will consider developing and adopting a cultural competency framework for the Tribunal (undertaken in conjunction with other courts).

It is also recommended that Tribunal Members request advice of any cultural matter that might require the assignment of the application to a Tribunal Member of a particular member (men's and women's business).

In respect to the ongoing caseload and work involved with the List, it is noted that the number of applications to the Tribunal by Koori victims of crime is increasing. The increase in applications is going to have an impact on the ability of the Registrar and the Tribunal Members sitting in the List to respond in a timely manner.

Over the next 12 months the Tribunal will investigate resource requirements for the ongoing development of the List, including resources for additional Tribunal Members, resources for Tribunal Members required to travel to regional venues for List hearings, and funding for community liaison and promotion work.

### **Recommendation Six – Culturally appropriate and sensitive hearings**

- ensure that all Tribunal Members (magistrates) who sit in the Koori VOCAT List have undertaken cultural awareness training
- encourage Tribunal Members sitting in the Koori VOCAT List to request advice of any cultural matter that might require the assignment of the application to a Tribunal Member of a particular gender (men's and women's business)
- encourage Tribunal Members sitting in the Koori VOCAT List to conduct their hearings (as far as possible) in an informal and culturally sensitive manner, for example conducting the hearing around an oval table or bar table where all participants are seated
- allow Koori applicants the time and the space to explain to the Tribunal Member the incident of violence, the history that gave rise to it and the impact that the incident had on them

### **Directions hearings**

Lawyers at the Engagement Forum noted the complexity of the VOCA Act and observed that it would assist if the Tribunal could clarify and address interlocutory issues and/or any deficiencies in an applicant's application for assistance in directions hearings. It was noted that many Koori victims of crime have prior criminal records, and while this may not be necessarily relevant to their application for assistance, delays could be avoided if this issue could be put to a Tribunal Member early on in the process. Early directions hearings could also assist in clarifying exactly what police material and evidence is required to satisfy the Tribunal that the applicant is a victim of an act of violence, particularly if there are issues with respect to when that act of violence was reported to the police (if at all).

Koori VOCAT List applications take, on average, 14 months from date of lodgement to finalisation. While the case processing time has improved dramatically since the introduction of the List (applications lodged prior to the commencement of the List took on average 31 months to finalise), the Tribunal is aware of applicant's and lawyer's concerns about delay and the Tribunal's ability to respond promptly. Under its current resources, the Tribunal only has a limited number of Tribunal Members sitting in the Koori VOCAT List and only one Koori VOCAT List Registrar.

One way the Tribunal has identified to address delay and improve its response time is to have directions hearings (and/or case conferences with unrepresented applicants) to identify any procedural or jurisdictional issues early on in the proceedings. Directions hearings/case conferences will enable the Tribunal to develop a relationship with the applicant/applicant's lawyer and perhaps set a time line as to when material is required to be filed (as well as what is required to be filed). The Tribunal will also investigate the possibility of appointing more Tribunal Members to sit in the List.

### **Recommendation Seven – Directions hearings**

- that the Tribunal try and address the length of time involved in finalising a List application by utilising directions hearings early in the application process, for example a directions hearing with the applicant/applicant's lawyer could identify any issues or deficiencies in the applicant's application, identify what supporting documentation is required, and set a time line for filing all supporting documentation

## Post hearing/award support

After the Tribunal determines an application for assistance (and provided that the application is successful), it will send the applicant/applicant's lawyer an *Award Notice* which sets out their award of assistance. For example, an applicant might receive an award of special financial assistance and an amount to be used for a specific number of counselling sessions over a specified period of time (known as *authorised future expenses*). There was general agreement amongst participants at the Engagement Forum that the *Award Notice* can be difficult for applicants to understand.

In response, it is recommended that the Tribunal look at sending a letter to the applicant, along with their *Award Notice*, acknowledging that the Tribunal – on behalf of the State of Victoria – is sorry for what they have suffered as a victim of crime. The Tribunal could also look at ways to ensure that the applicant understands what assistance they have been awarded and how they can access that assistance.

### Recommendation Eight – Post hearing/award support

- that the Tribunal focus on the support and assistance it gives to a Koori applicant after their application for assistance has been finalised and an award made, including assisting them to understand what the award means and how they can access the assistance awarded
- that the Tribunal send a personalised letter to the applicant along with their award of assistance acknowledging that the Tribunal – on behalf of the State of Victoria – is sorry for what they have suffered (particularly where the application is determined without a hearing)

## Relationship with other agencies/support services

One of the issues highlighted at the Engagement Forum is the need for greater awareness of the List in the Koori community. Participants also expressed some concern about the range of support and treatment available to Koori victims of crime, particularly counselling. Koori victims of crime are often dealing with a myriad of social, educational and economic issues, in addition to the physical and psychological effects suffered by them as a result of the crime. There need to be appropriate services in place to ensure that Koori victims of crime are receiving the treatment they require.

In response, it is recommended that the Tribunal develop a coordinated and comprehensive promotion strategy aimed at raising greater awareness of the List in the Koori community and amongst Koori community service providers and victims support groups. It is anticipated that this communications work would be a key part of the Koori Liaison Officer role. It is also recommended that the Tribunal ensure that its processes and protocols for dealing with allegations of sexual assault are consistent with the reforms set out in the *Victorian Sexual Assault Reform Strategy*.

### Recommendation Nine – Relationship with other agencies/support services

- that the Tribunal develop its relationships with Indigenous service providers and victim support services so that it is aware of the range of culturally appropriate service providers available to Koori victims of crime (and they are aware of the assistance that the Tribunal can provide)
- that the Tribunal develop relationships and protocols with Koori and mainstream sexual assault services to ensure that its processes for dealing with allegations of sexual offences are consistent with protocols adopted by other agencies (see the *Victorian Sexual Assault Reform Strategy*)

## Appendix One – Koori VOCAT List Statistics

### 1. Introduction

This paper provides a statistical snapshot of applications for assistance within the Koori VOCAT List (the List) at 31 December 2009.<sup>37</sup>

### 2. Summary

Since commencement of the List on 1 July 2006, the number of applications for financial assistance by Koori victims of crime has increased, case processing times for these applications has decreased, and the outcome of applications are consistent with those for non-Koori applicants.

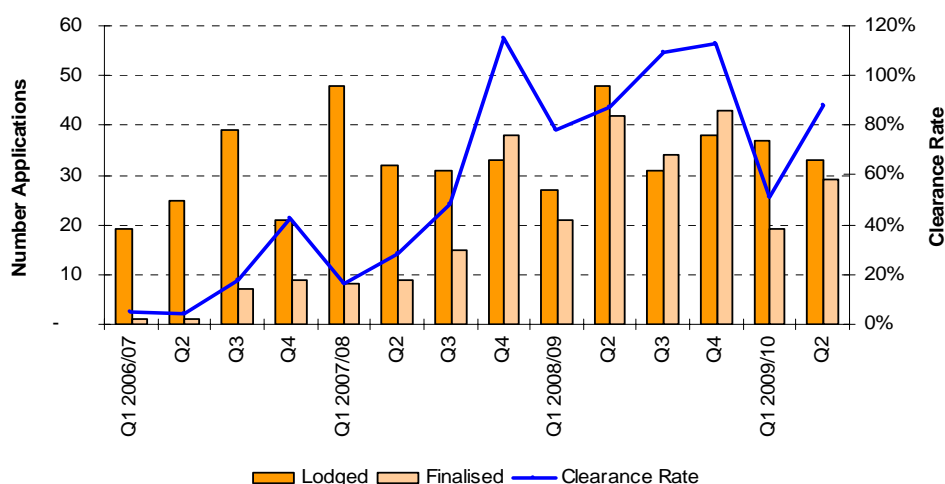
Case processing times (elapsed time between lodgement and finalisation of an application) were longer for Koori victims of crime than other applicants (36 per cent of applications by Koori applicants finalised within 12 months, compared to 67 per cent for non-Koori applicants), however, the processing time for those applications lodged after commencement of the List was lower than those lodged prior to the commencement of the List (on average, 14 months, compared to 31 months).

Of the applications finalised since commencement of the List, an award of financial assistance was made to 73 per cent of applicants, which is slightly higher than the outcome for non-Koori applications finalised over the same period (71 per cent). The proportion of applications that were refused was consistent between applicant groups (2 per cent). The balance of applications within each applicant group were either withdrawn by the applicant or struck out by the Tribunal.

### 3. Applications lodged and finalised

At 31 December 2009, there were 522 applications in the List, of which 276 had been finalised (clearance rate of 53 per cent).

*Number of applications for assistance lodged, finalised and clearance rate, by quarter, 2006/07 – 2009/10*



<sup>37</sup> This information presented in this paper is based on data that had been manually recorded as at 31 December 2009. Results for the period may change as further results are added to the dataset, or existing records are updated.

The following table presents the number of applications lodged and finalised where the applicant was identified as Aboriginal and/or Torres Strait Islander, and within Koori VOCAT List at 31 December 2009.<sup>38</sup>

| Year              | Applications Lodged within Koori List | Applications Finalised within Koori List | Clearance Rate of Koori List |
|-------------------|---------------------------------------|--|------------------------------|
| 1999/00           | 2                                     | -  | -                            |
| 2000/01           | 1                                     | -  | -                            |
| 2001/02           | -                                     | -  | -                            |
| 2002/03           | 1                                     | -  | -                            |
| 2003/04           | 3                                     | -  | -                            |
| 2004/05           | 7                                     | -  | -                            |
| 2005/06           | 46                                    | -  | -                            |
| 2006/07           | 104                                   | 18                                       | 17%                          |
| 2007/08           | 144                                   | 70                                       | 49%                          |
| 2008/09           | 144                                   | 140                                      | 97%                          |
| 2009/10 (Jul-Dec) | 70                                    | 47                                       | 67%                          |
| <b>Total</b>      | <b>522</b>                            | <b>275</b>                               | <b>53%</b>                   |

In 2.7 per cent of all applications for assistance lodged with the Tribunal since 1 July 2006, the applicant identified as being Aboriginal and/or Torres Strait Islander (and therefore within the List).

Of the applications within the List, 88 per cent (453 applications) were lodged after the commencement of the List on 1 July 2006.

#### **4. Elapsed time between act of violence and lodgement of application for assistance<sup>39</sup>**

Of the total number of applications within the List at 31 December 2009, the elapsed time between the alleged act of violence and the lodgement of the application for assistance was greater than 2 years in relation to 30 per cent of applications (154 applications), and greater than 5 years in relation to 13 per cent of applications (68 applications). Where the elapsed time was greater than 5 years, the majority of applicants (71 per cent / 48 applicants) identified the alleged act of violence as a sexual offence.

Of the applications within the List, the average number of days between the alleged act of violence and lodgement of the application for assistance was 1,251 days (approximately 3 years and 5 months).

- Excluding those applications where the elapsed time between incident and application was greater than 5 years, the average number of days between the alleged act of violence and lodgement of the application was 397 days (approximately 13 months).
- Excluding those applications where the elapsed time between incident and application was greater than 2 years, the average number of days between the alleged act of violence and lodgement of the application was 229 days (approximately 7.5 months).

<sup>38</sup> Note that an Aboriginal and Torres Strait Islander identifier was not introduced onto the *Application for Assistance* form until early 2006, and the Koori VOCAT List did not commence until 1 July 2006. There may have been more applications for assistance made by Koori applicants prior to 1 July 2006, however, the Tribunal is unable to identify those applications.

<sup>39</sup> Where the alleged act of violence was identified by the applicant as occurring in a particular year (rather than on a specific day within that year), the date used to calculate elapsed time is 1 January of the year of the alleged act of violence. Where the alleged act of violence was identified by the applicant as occurring in a particular month of a year (rather than on a specific day within that month), the date used to calculate elapsed time is the first day of the month of the alleged act of violence.



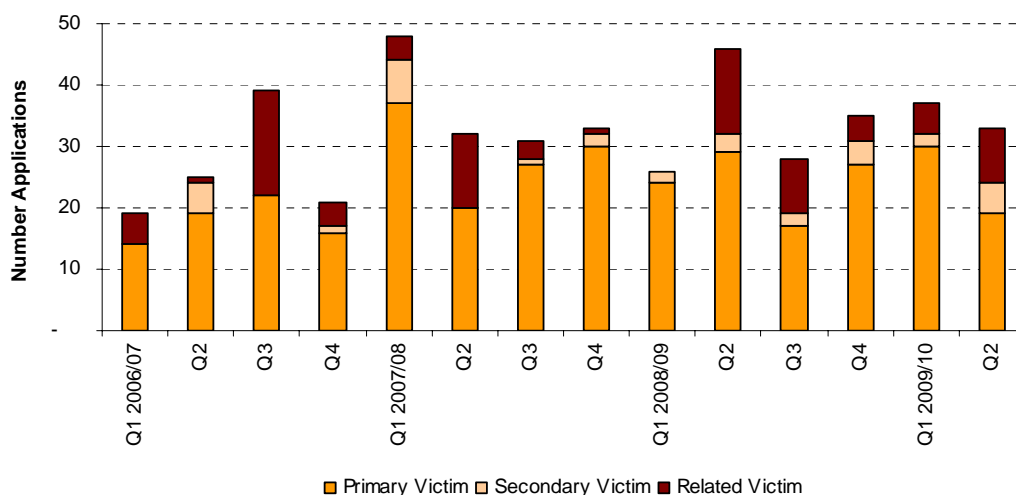
The following table presents the elapsed time between the date of the alleged act of violence and lodgement of the application for assistance for applications within the List at 31 December 2009:

| Elapsed Time   | Number     | Percent     | Cumulative |
|----------------|------------|-------------|------------|
| 0 < 3 months   | 121        | 23%         | 23%        |
| 3 < 6 months   | 76         | 15%         | 38%        |
| 6 < 9 months   | 42         | 8%          | 46%        |
| 9 < 12 months  | 38         | 7%          | 53%        |
| 12 < 18 months | 55         | 11%         | 64%        |
| 18 < 24 months | 32         | 6%          | 70%        |
| 2 years +      | 158        | 30%         | 100%       |
| <b>Total</b>   | <b>522</b> | <b>100%</b> |            |

## 5. Applicant demographics

Of the applications within the List, 74 per cent of applicants identified themselves as primary victims (387 applicants), 7 per cent as secondary victims (39 applicants) and 18 per cent as related victims (96 applicants).

*Number of applications for assistance lodged by victim type (as identified on application), by quarter, 2006/07 – 2009/10*



Applications for assistance by persons claiming as related victims of a deceased primary victim related to 27 deceased persons (average of 4 related victim claims lodged per deceased). At 31 December 2009, the maximum number of related victim claims received in relation to one deceased was 9.

In 78 per cent of applications (406 applications), information regarding whether or not there was a family relationship between the applicant and the alleged offender was recorded.

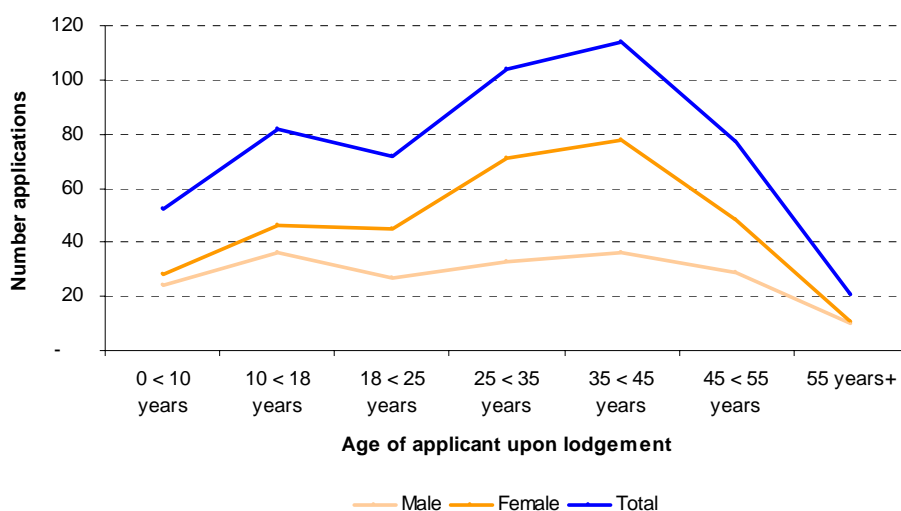
Of the 406 applications where the relationship between the applicant and alleged offender was recorded, the alleged offender was a family member of the applicant in relation to 44 per cent of applications (179 applications). Of these 179 applications, the relationship in 37 per cent (67) of applications was domestic partner / former domestic partner, followed by parent/child (29 per cent / 52 applications), and siblings (8 per cent / 14 applications).

Of the applications within the List, 63 per cent of applicants identified themselves as female (327 applicants), and 37 per cent identified themselves as male (195 applicants).

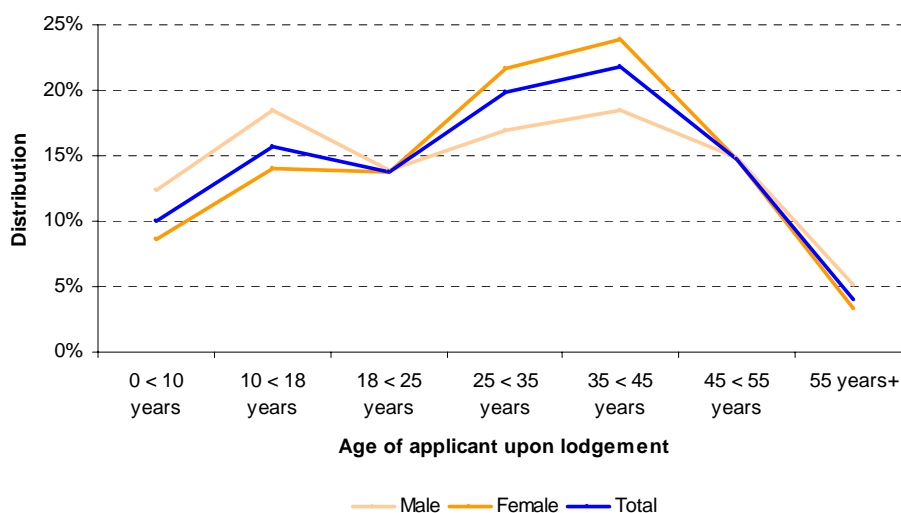
The age distribution of applicants at the time of lodgement was:

|               | Male Applicants |             | Female Applicants |             | Total Applicants |             |
|---------------|-----------------|-------------|-------------------|-------------|------------------|-------------|
| Age           | Number          | Percent     | Number            | Percent     | Number           | Percent     |
| 0 < 10 years  | 24              | 12%         | 28                | 9%          | 52               | 10%         |
| 10 < 18 years | 36              | 18%         | 46                | 14%         | 82               | 16%         |
| 18 < 25 years | 27              | 14%         | 45                | 14%         | 72               | 14%         |
| 25 < 35 years | 33              | 17%         | 71                | 22%         | 104              | 20%         |
| 35 < 45 years | 36              | 18%         | 78                | 24%         | 114              | 22%         |
| 45 < 55 years | 29              | 15%         | 48                | 15%         | 77               | 14%         |
| 55 years+     | 10              | 5%          | 11                | 3%          | 21               | 4%          |
| <b>Total</b>  | <b>195</b>      | <b>100%</b> | <b>327</b>        | <b>100%</b> | <b>522</b>       | <b>100%</b> |

*Number of applications within the Koori VOCAT List at 31 December 2009, by age and gender of applicants at lodgement*



*Age distribution of applicants within the Koori VOCAT List at 31 December 2009, by gender*



Of the applications within the List at 31 December 2009, the acts of violence most commonly identified by applicants were assault offences (51 per cent / 264 applications), homicide offences<sup>40</sup> (21 per cent / 110 applications), sex (non-rape) offences (18 per cent / 92 applications), and rape (7 per cent / 34 applications).

At the time that the application for assistance was lodged, 90 per cent of applicants resided within Victoria. The following table presents the number of applications lodged at 31 December 2009, by the State / Territory in which the applicant resided at the time of lodgement, by claim type:

<sup>40</sup> Includes acts of violence identified as culpable driving and attempted murder.

| State / Territory | Total Applications | Distribution (Total) | Application made as: |                |                  |
|-------------------|--------------------|----------------------|----------------------|----------------|------------------|
|                   |                    |                      | Primary Victim       | Related Victim | Secondary Victim |
| New South Wales   | 37                 | 7%                   | 14                   | 21             | 2                |
| Queensland        | 6                  | 1%                   | -                    | 6              | -                |
| South Australia   | 5                  | 1%                   | 5                    | -              | -                |
| Victoria          | 469                | 90%                  | 365                  | 67             | 37               |
| Western Australia | 5                  | 1%                   | 3                    | 2              | -                |
| <i>Total</i>      | <i>522</i>         | <i>100%</i>          | <i>387</i>           | <i>96</i>      | <i>39</i>        |

Of the 469 applicants residing within Victoria at the time the application for financial assistance was lodged, the closest Tribunal venue to the applicants' place of residence was:

| Closest Tribunal Venue | Total Applications | Distribution (Total) | Application made as: |                |                  |
|------------------------|--------------------|----------------------|----------------------|----------------|------------------|
|                        |                    |                      | Primary Victim       | Related Victim | Secondary Victim |
| Ararat                 | 2                  | 0.4%                 | 1                    | -              | 1                |
| Bacchus Marsh          | 1                  | 0.2%                 | 1                    | -              | -                |
| Bairnsdale             | 48                 | 10.2%                | 30                   | 15             | 3                |
| Ballarat               | 14                 | 3.0%                 | 13                   | 1              | -                |
| Bendigo                | 28                 | 6.0%                 | 23                   | -              | 5                |
| Broadmeadows           | 38                 | 8.1%                 | 34                   | 2              | 2                |
| Castlemaine            | 2                  | 0.4%                 | 2                    | -              | -                |
| Cobram                 | 1                  | 0.2%                 | 1                    | -              | -                |
| Dandenong              | 25                 | 5.3%                 | 19                   | 4              | 2                |
| Dromana                | 11                 | 2.3%                 | 7                    | 1              | 3                |
| Echuca                 | 13                 | 2.8%                 | 11                   | -              | 2                |
| Frankston              | 17                 | 3.6%                 | 15                   | 2              | -                |
| Geelong                | 15                 | 3.2%                 | 7                    | 8              | -                |
| Hamilton               | 6                  | 1.3%                 | 6                    | -              | -                |
| Heidelberg             | 57                 | 12.2%                | 44                   | 8              | 5                |
| Kyneton                | 1                  | 0.2%                 | 1                    | -              | -                |
| Latrobe Valley         | 10                 | 2.1%                 | 6                    | 1              | 3                |
| Melbourne              | 16                 | 3.4%                 | 15                   | -              | 1                |
| Mildura                | 28                 | 6.0%                 | 27                   | 1              | -                |
| Moe                    | 12                 | 2.6%                 | 6                    | 5              | 1                |
| Myrtleford             | 1                  | 0.2%                 | 1                    | -              | -                |
| NJC - Collingwood      | 1                  | 0.2%                 | 1                    | -              | -                |

| Closest Tribunal Venue | Total Applications | Distribution (Total) | Application made as: |                |                  |
|------------------------|--------------------|----------------------|----------------------|----------------|------------------|
|                        |                    |                      | Primary Victim       | Related Victim | Secondary Victim |
| Orbost                 | 1                  | 0.2%                 | -                    | 1              | -                |
| Portland               | 1                  | 0.2%                 | 1                    | -              | -                |
| Ringwood               | 7                  | 1.5%                 | 7                    | -              | -                |
| Sale                   | 7                  | 1.5%                 | 7                    | -              | -                |
| Shepparton             | 6                  | 1.3%                 | 3                    | 2              | 1                |
| Stawell                | 24                 | 5.1%                 | 22                   | -              | 2                |
| Sunshine               | 1                  | 0.2%                 | 1                    | -              | -                |
| Swan Hill              | 21                 | 4.5%                 | 15                   | 5              | 1                |
| Wangaratta             | 13                 | 2.8%                 | 10                   | 1              | 2                |
| Warrnambool            | 1                  | 0.2%                 | -                    | 1              | -                |
| Werribee               | 24                 | 5.1%                 | 16                   | 7              | 1                |
| Wodonga                | 4                  | 0.9%                 | 4                    | -              | -                |
| Unknown                | 7                  | 1.5%                 | 4                    | 1              | 2                |
| <b>Total</b>           | <b>469</b>         | <b>100%</b>          | <b>365</b>           | <b>67</b>      | <b>37</b>        |

## 6. Offender demographics

Of the applications in the List at 30 June 2009, the gender of the alleged offender was known in relation to 93 per cent of applications (487 applications). In 80 per cent of applications the alleged offender was identified as an individual male person (420 applications), and in 9 per cent of applications, the alleged offender was identified as an individual female person (45 applications). Multiple alleged offenders were identified in 5 per cent of applications (22 applications), and in 14 of these applications the alleged offenders were of mixed gender, with the balance being male offenders. In total, males were the alleged offenders in at least 85 per cent (442) of applications for assistance, while females were the alleged offenders in at least 11 per cent (59) of applications.

The age distribution for alleged offenders has not been reported as the date of birth of the alleged offender was unknown in two thirds of all applications within the List.

## 7. Legal representation

Of the 522 applications within the List at 31 December 2009, a legal practitioner was recorded as acting for the applicant in 90 per cent of applications (471 applications).

Of the 51 applicants who were not legally represented, 55 per cent (28 applicants) identified as primary victims of an act of violence, and 39 per cent (20 applicants) identified as related victims of an alleged act of violence.

Of the 471 applications where a legal representative was recorded as acting for the applicant, 66 per cent (310) of applicants were represented by one of 12 firms/legal services – an average of 26

applications per firm/legal service.<sup>41</sup> The remainder of applicants who were legally represented (161 applicants) were represented by one of 71 different firms/legal services – an average of two applications per firm/legal service.

Of the 471 applications where a legal representative was recorded as acting for the applicant, 34 per cent of applicants were represented by the *Aboriginal Family Violence Prevention and Legal Service* (106 applicants) or the *Victorian Aboriginal Legal Service* (52 applicants).

## **8. Interim awards of financial assistance**

Of the applications within the List at 31 December 2009, interim financial assistance had been awarded to 26 per cent of applicants on at least one occasion (135 applicants).

## **9. Directions Hearings**

Of the 275 applications finalised within the Koori VOCAT List at 31 December 2009, a directions hearing had been held in 25 per cent of applications (72 applications) on at least one occasion.

## **10. Notification of hearing to alleged offender**

Of the 522 applications for assistance in the List at 31 December 2009, the Tribunal had notified the alleged offender of the application for assistance in 3 per cent of applications (17 applications). Of these applications, 11 had been finalised, and 6 were yet to be finalised.

Of the 11 finalised applications where the alleged offender was notified of the hearing, four alleged offenders advised the Tribunal that they intended to participate in the hearing.

- Where the alleged offenders indicated an intention to participate in the hearing (4 applications), applicants withdrew their claims for financial assistance.
- Where the alleged offenders did not participate in the hearing after notification by the Tribunal, an award of assistance was made in relation to 4 applications, and 3 were withdrawn.

## **11. Outcome of applications**

Of the 276 applications within the List that had been finalised at 31 December 2009, an award of financial assistance was made in 73 per cent of applications (202 applications), which is slightly higher than the outcome for non-Koori VOCAT List applications finalised over the same period (71 per cent). The rate at which applications were refused was consistent (2 per cent).

The outcomes recorded for finalised applications within the List are as follows:

- an award was made in 73 per cent of the finalised applications (202 applications).
- an award was refused in 2 per cent of the finalised applications (6 applications).
- the application was struck out in 14 per cent of the finalised applications (40 applications).
- the application was withdrawn in relation to 9 per cent of applications (26 applications).

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<sup>41</sup> These firms were recorded as acting in ten or more applications for assistance within the List.

The following table compares the outcome of applications finalised within the List, and all other applications finalised across Victoria for the period 1 July 2006 to 31 December 2009:

| Outcome                            | Koori VOCAT List |             | Non Koori VOCAT List |             |
|------------------------------------|------------------|-------------|----------------------|-------------|
|                                    | Number           | Percent     | Number               | Percent     |
| Award made                         | 202              | 73%         | 12,094               | 71%         |
| Application refused                | 6                | 2%          | 385                  | 2%          |
| Application struck-out / withdrawn | 66               | 24%         | 4,421                | 21%         |
| Other disposal                     | 2                | 1%          | 240                  | 1%          |
| <b>Total</b>                       | <b>276</b>       | <b>100%</b> | <b>17,140</b>        | <b>100%</b> |

Applicants within the Koori VOCAT List were more often awarded assistance as related victims of an act of violence than non-Koori applicants (16 per cent, compared to 10 per cent).

The following table presents the number of applicants who were awarded assistance by victim type within the Koori VOCAT List, in comparison to other applicants awarded assistance by the Tribunal, for the period 1 July 2006 to 31 December 2009:

| Award Type   | Koori VOCAT List |             | Non Koori VOCAT List |             |
|--|------------------|-------------|----------------------|-------------|
|  | Number           | Percent     | Number               | Percent     |
| Primary Victim   | 159              | 79%         | 9,963                | 82%         |
| Secondary Victim   | 11               | 5%          | 931                  | 8%          |
| Related Victim   | 32               | 16%         | 1,165                | 10%         |
| Criminal Injuries Compensation Act (previous legislative scheme) / other | -                | -           | 25                   | -           |
| <b>Total</b>   | <b>202</b>       | <b>100%</b> | <b>12,084</b>        | <b>100%</b> |

## 12. Act of violence – where award of financial assistance made

Of the 276 applications finalised within the Koori VOCAT List, just over half of the applicants (59 per cent / 120 applicants) were awarded financial assistance for an assault offence, which is consistent with non-Koori VOCAT List applications (54 per cent).

- Female applicants within the Koori VOCAT List were more often awarded financial assistance for an assault offence than female non-Koori List applicants (55 per cent, compared to 40 per cent).
- Applicants within the Koori VOCAT List were more often awarded assistance as related victims of a deceased primary victim than were non-Koori VOCAT List applicants (16 per cent, compared to 10 per cent).

The following table presents the offence category distribution where an award of financial assistance was made to 31 December 2009, by the gender of the applicant, and whether the application was finalised in the Koori VOCAT List or not:

| Category                | Koori VOCAT List |        |       | Non-Koori VOCAT List |        |       |
|-------------------------|------------------|--------|-------|----------------------|--------|-------|
|                         | Male             | Female | Total | Male                 | Female | Total |
| Homicide                | 24.7%            | 16.3%  | 19.3% | 11.0%                | 12.1%  | 11.6% |
| Rape                    | 1.4%             | 9.3%   | 6.4%  | 1.0%                 | 8.4%   | 4.6%  |
| Sex (non-Rape)          | 4.1%             | 14.7%  | 10.9% | 6.5%                 | 24.2%  | 15.2% |
| Robbery                 | 1.4%             | 1.6%   | 1.5%  | 6.4%                 | 5.3%   | 5.8%  |
| Assault                 | 67.1%            | 55.0%  | 59.4% | 68.3%                | 40.1%  | 54.4% |
| Abduction/Kidnap        | -                | -      | -     | 0.2%                 | 0.5%   | 0.3%  |
| Criminal damage by fire | -                | -      | -     | 0.3%                 | 0.3%   | 0.3%  |
| Burglary                | -                | 0.8%   | 0.5%  | 4.3%                 | 5.0%   | 4.6%  |

| Category     | Koori VOCAT List |               |               | Non-Koori VOCAT List |               |               |
|--------------|------------------|---------------|---------------|----------------------|---------------|---------------|
|              | Male             | Female        | Total         | Male                 | Female        | Total         |
| Harassment   | 1.4%             | 2.3%          | 2.0%          | 0.4%                 | 2.2%          | 1.3%          |
| Other        | -                | -             | -             | 1.6%                 | 2.0%          | 1.8%          |
| <b>Total</b> | <b>100.0%</b>    | <b>100.0%</b> | <b>100.0%</b> | <b>100.0%</b>        | <b>100.0%</b> | <b>100.0%</b> |

The following table presents the gender distribution of awarded applicants to 31 December 2009, by the act of violence and whether the application was finalised within the Koori VOCAT List or not:

| Category                | Koori VOCAT List |              |               | Non-Koori VOCAT List |              |               |
|-------------------------|------------------|--------------|---------------|----------------------|--------------|---------------|
|                         | Male             | Female       | Total         | Male                 | Female       | Total         |
| Homicide                | 46.2%            | 53.8%        | 100.0%        | 48.1%                | 51.9%        | 100.0%        |
| Rape                    | 7.7%             | 92.3%        | 100.0%        | 10.5%                | 89.5%        | 100.0%        |
| Sex (non-Rape)          | 13.6%            | 86.4%        | 100.0%        | 21.5%                | 78.5%        | 100.0%        |
| Robbery                 | 33.3%            | 66.7%        | 100.0%        | 55.2%                | 44.8%        | 100.0%        |
| Assault                 | 40.8%            | 59.2%        | 100.0%        | 63.5%                | 36.5%        | 100.0%        |
| Abduction/Kidnap        | -                | -            | -             | 28.2%                | 71.8%        | 100.0%        |
| Criminal damage by fire | -                | -            | 100.0%        | 48.6%                | 51.4%        | 100.0%        |
| Burglary                | -                | 100.0%       | 100.0%        | 47.1%                | 52.9%        | 100.0%        |
| Harassment              | 25.0%            | 75.0%        | 100.0%        | 17.2%                | 82.8%        | 100.0%        |
| Other                   | -                | -            | 100.0%        | 46.1%                | 53.9%        | 100.0%        |
| <b>Total</b>            | <b>36.1%</b>     | <b>63.9%</b> | <b>100.0%</b> | <b>50.6%</b>         | <b>49.4%</b> | <b>100.0%</b> |

### 13. Elapsed time between lodgement of application and finalisation

Of the 276 applications within the List that had been finalised at 31 December 2009, 64 per cent of applications required 12 months or more to be finalised, compared to 33 per cent for non-Koori VOCAT List applications.

Of the 276 applications that had been finalised, 19 per cent (52 applications) were lodged prior to the commencement of the List on 1 July 2006.

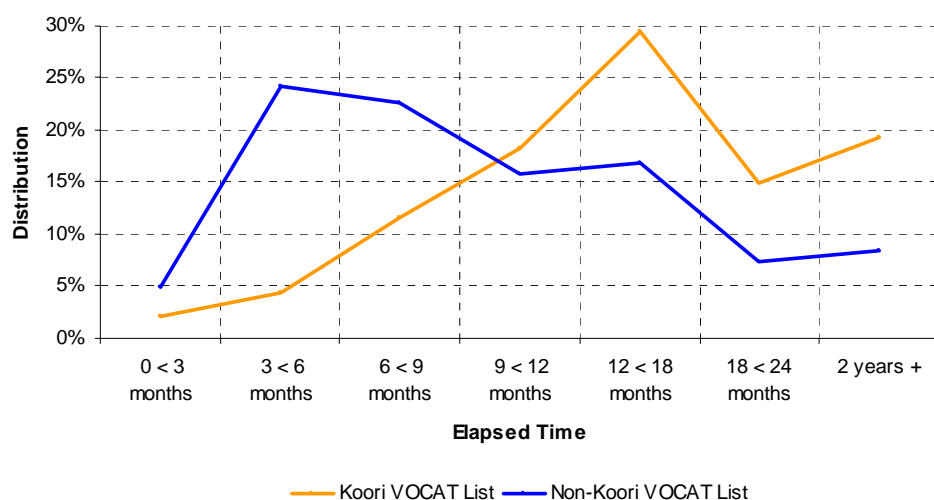
Of the applications within the List that had been finalised at 31 December 2009, the average number of days between lodgement of the application and finalisation was 525 days (approximately 17 months).

- Where the application was lodged prior to commencement of the List (on 1 July 2006), the average number of days between lodgement and finalisation was 952 days (approximately 31 months).
- Where the application was lodged after commencement of the List (on 1 July 2006), the average number of days between lodgement and finalisation was 425 days (approximately 14 months).

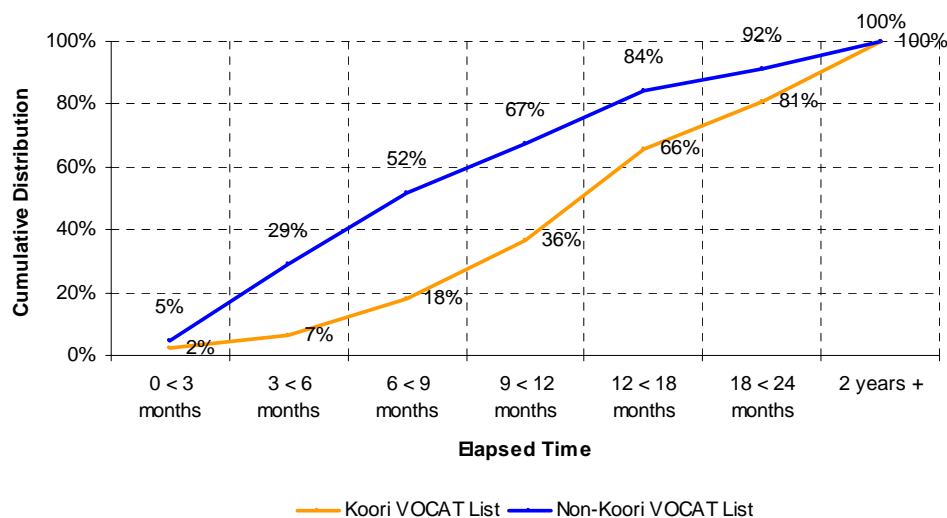
The following table compares processing times (from lodgement to finalisation) for applications finalised within the List and non-Koori VOCAT List applications for the period 1 July 2006 to 31 December 2009:

| Elapsed Time   | Koori VOCAT List |            | Non-Koori VOCAT List |            |
|----------------|------------------|------------|----------------------|------------|
|                | Percent          | Cumulative | Percent              | Cumulative |
| 0 < 3 months   | 2%               | 2%         | 5%                   | 5%         |
| 3 < 6 months   | 4%               | 7%         | 24%                  | 29%        |
| 6 < 9 months   | 12%              | 18%        | 23%                  | 52%        |
| 9 < 12 months  | 18%              | 36%        | 16%                  | 67%        |
| 12 < 18 months | 29%              | 66%        | 17%                  | 84%        |
| 18 < 24 months | 15%              | 81%        | 7%                   | 92%        |
| 2 years +      | 19%              | 100%       | 8%                   | 100%       |
| <b>Total</b>   | <b>100%</b>      |            | <b>100%</b>          |            |

*Distribution of processing time (from lodgement to finalisation) for applications finalised within / outside the Koori VOCAT List, 2006/07 – 2009/10*



*Cumulative distribution of processing time (from lodgement to finalisation) for applications finalised within / outside the Koori VOCAT List, 2006/07 – 2009/10*



#### **14. Determination of application with/without a hearing**

Of the 276 applications finalised within the Koori VOCAT List at 31 December 2009, 55 per cent (153) of these applications were determined following a hearing, with the balance determined without conducting a hearing (45 per cent / 123 applications).<sup>42</sup>

Of the applications for assistance where an award was made (202 applications), two thirds were made following a hearing (66 per cent / 134 applications).

Of the six applications for assistance that were refused, all were refused following a hearing.

The following table presents the outcome of finalised applications for assistance, by whether the application was determined with or without a hearing:

<sup>42</sup> Directions hearings may have been held prior to determination of these applications for assistance.



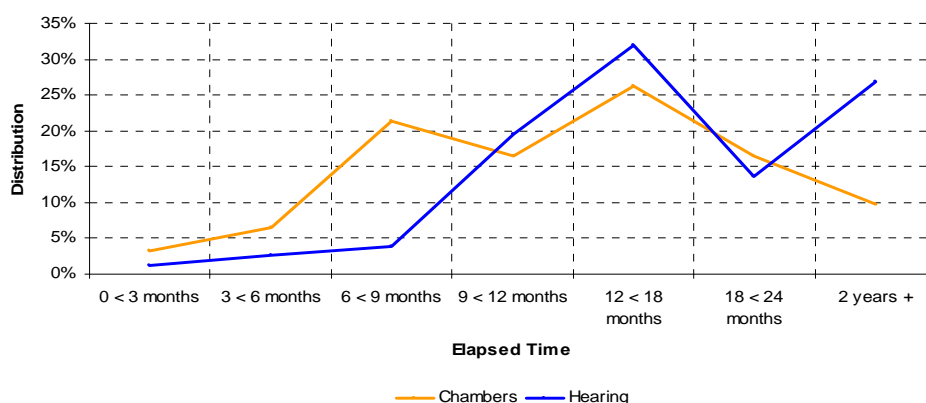
| Outcome                            | Finalised without a Hearing |             | Finalised following a Hearing |             |
|------------------------------------|-----------------------------|-------------|-------------------------------|-------------|
|                                    | Number                      | Percent     | Number                        | Percent     |
| Award made                         | 68                          | 56%         | 134                           | 88%         |
| Application refused                | -                           | -           | 6                             | 4%          |
| Application struck-out / withdrawn | 54                          | 43%         | 12                            | 8%          |
| Other disposal                     | 1                           | 1%          | 1                             | 1%          |
| <b>Total</b>                       | <b>123</b>                  | <b>100%</b> | <b>153</b>                    | <b>100%</b> |

Of the applications determined in chambers, 48 per cent were finalised within 12 months of the application for assistance being lodged, compared to 27 per cent where the application was determined following a hearing.

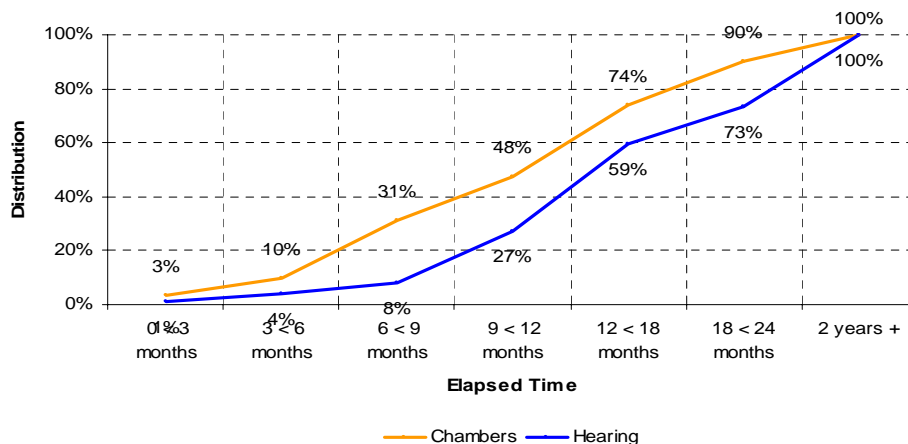
The following table presents the elapsed time between lodgement of the application and finalisation, where determined in chambers or following a hearing:

| Elapsed Time   | Determined in Chambers |            | Determined following a Hearing |            |
|----------------|------------------------|------------|--------------------------------|------------|
|                | Percent                | Cumulative | Percent                        | Cumulative |
| 0 < 3 months   | 3%                     | 3%         | 1%                             | 1%         |
| 3 < 6 months   | 7%                     | 10%        | 3%                             | 4%         |
| 6 < 9 months   | 21%                    | 31%        | 4%                             | 8%         |
| 9 < 12 months  | 16%                    | 48%        | 20%                            | 27%        |
| 12 < 18 months | 26%                    | 74%        | 32%                            | 59%        |
| 18 < 24 months | 16%                    | 90%        | 14%                            | 73%        |
| 2 years +      | 10%                    | 100%       | 27%                            | 100%       |
| <b>Total</b>   | <b>100%</b>            |            | <b>100%</b>                    |            |

*Distribution of processing time for applications finalised within the Koori VOCAT List, by method of determination (determined in chambers / determined following hearing), 2006/07 – 2009/10*



*Cumulative distribution of processing time for applications finalised within the Koori VOCAT List, by method of determination (determined in chambers / determined following hearing), 2006/07 – 2009/10*



## **15. Applications pending**

Of the total number of applications within the List at 31 December 2009, 246 (47 per cent) were pending. On average, these applications had been pending for approximately 15 months. Of the pending applications, 49 per cent had been pending for more than 12 months, compared to 29 per cent of applications made by non-Koori applicants.

Of the 246 pending applications, 68 per cent of applicants identified themselves as primary victims (167 applicants), 25 per cent identified as related victims (61 applications), and 7 per cent identified as secondary victims of an act of violence (18 applicants).

A hearing date had been set in relation to 4 per cent of pending applications (10 applications).

Interim financial assistance had been awarded on at least one occasion in relation to 20 per cent of pending applications (48 applications).

Of the 246 pending applications, 11 per cent were lodged in 2006/07 (26 applications), 16 per cent were lodged in 2007/08 (40 applications), 43 per cent were lodged in 2008/09 (106 applications), and 27 per cent were lodged in 2009/10 (66 applications). The balance (8 applications / 3 per cent) were lodged prior to the commencement of the Koori VOCAT List (on 1 July 2006).

## Appendix Two – Forum Attendees

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### 1. *Forum attendees*

The following people attended the Koori VOCAT List Engagement Forum on 30 March 2009:

Merv Atkinson, Executive Officer, Grampians RAJAC  
Zumi Chiew, Acting Registry Manager, Victims of Crime Assistance Tribunal  
Graeme Chirgwin, Acting Senior Registrar, Melbourne, Magistrates' Court of Victoria  
Lucia Danek, Solicitor, Aboriginal Family Violence Prevention and Legal Service  
Ian Gray, Chief Magistrate, Magistrates' Court of Victoria  
Erica Owens, Manager, Courts and Tribunals Unit, Department of Justice  
Karen Martin, Victims Assistance and Counselling Program, Sunraysia Community Health, Mildura  
Andrew Jackomos, Director, Indigenous Issues Unit, Department of Justice  
Samantha Adrichem, Principal Registrar, Victims of Crime Assistance Tribunal  
Mason Atkinson, Manager, Koori Court Unit, Magistrates' Court of Victoria  
Thelma Austin, Team Leader, Koori Court Unit, Magistrates' Court of Victoria  
Rebecca Boreham, Solicitor, Aboriginal Family Violence Prevention and Legal Service  
Antoinette Braybrook, CEO, Aboriginal Family Violence Prevention and Legal Service  
Felicity Broughton, Deputy Chief Magistrate, Magistrates' Court of Victoria  
Shelley Burchfield, Solicitor, West Melbourne Legal Centre  
Patricia Clarke, Koori Court Officer, Warrnambool, Magistrates' Court of Victoria  
Frances Coughlan, Indigenous Victims Project Officer, Victims Support Agency  
Erin Davis, Project Manager, Courts and Tribunals Unit, Department of Justice  
Patsy Doolan, Koori Court Officer, Mildura, Magistrates' Court of Victoria  
Fergus Dunipace, Koori VOCAT List Registrar, Victims of Crime Assistance Tribunal  
Nellie Flagg, Aboriginal Liaison Officer, Victims Support Agency  
Chris Howes, Solicitor, Victorian Aboriginal Legal Service  
Rudolph Kirby, Deputy Director, Indigenous Issues Unit, Department of Justice  
Simon McDonald, Acting Manager, Specialist Courts and Court Support, Magistrates' Court of Victoria  
Lyn Osborne, Solicitor, Bowen Barristers and Lawyers  
Jelena Popovic, Deputy Chief Magistrate, Magistrates' Court of Victoria  
Jill Post, Project Officer, Family Violence Programs and Initiatives, Magistrates' Court of Victoria  
Julia Schiembri, Legal Assistant, Schiembri and Co Lawyers  
Thracy Vinga, Barrister, Melbourne  
Sarah Wade, Solicitor, Wade Lawyers  
Susan Wakeling, Magistrate, Magistrates' Court of Victoria  
Mereana White, Standards and Compliance Officer, Victims of Crime Assistance Tribunal

