



30 September 2015

The Honourable Philip Cummins AM  
Chair, Victorian Law Reform Commission  
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Dear Mr Cummins

### **The role of victims of crime in the criminal trial process**

Thank you for inviting Victoria Legal Aid (VLA) to contribute its views about the role of victims in the criminal trial process.

VLA plays an important institutional role within the criminal justice system, representing both offenders and victims at various stages of the criminal process.

VLA provides information, advice and representation to victims of crime seeking to access financial assistance from the Victims of Crime Assistance Tribunal (VOCAT). In the 2014-15 financial year we provided advice in 132 matters and ongoing assistance in 17 cases. VLA also assists victims to obtain compensation by pursuing claims under the *Sentencing Act 1991* (Vic).

In the family violence context, VLA's court-based legal services are accessed in similar proportions by both applicants and respondents in family violence intervention order matters in the Magistrates' and Children's Courts. Across VLA's services, persons who have experienced, are experiencing, or are at risk of experiencing family violence, are priority clients. We are committed to the provision and co-ordination of legal services that promote victim safety and interrupt offending cycles.

As the largest defence practice in the State, VLA is also committed to upholding the rights of an accused in criminal justice processes. This ranges from the provision of duty lawyer services to those charged with summary criminal offences, to trial representation in the County and Supreme Courts for serious indictable offences. VLA regards the proper representation of criminal accused in trial and appeal processes as an important safeguard for victims as well as for offenders. For example, in the family violence context, the lack of representation for criminal accused puts family violence victims at risk of the additional trauma of being cross-examined by, and directly having to cross-examine perpetrators. Proper representation may also reduce inappropriate or misconceived appeal applications, and assist in increasing the effectiveness of court orders.

Although VLA does not have statutory responsibility for assisting victims during the criminal trial process, VLA has a role and an interest in working collaboratively with other stakeholders to provide victims of crime with improved access to justice.

The following recommendations are informed by VLA's broad institutional role and experience in the criminal justice system.

### **Incorporating restorative justice principles in the sentencing process**

VLA supports the use of restorative justice processes in the sentencing process, including cases of sexual offending. Research suggests that carefully framed restorative justice approaches have the capacity to provide a more meaningful outcome for victims, and may be less re-victimising than traditional criminal justice processes.<sup>1</sup> They may also assist to increase the offender's understanding of the effect of the offending behaviour on the victim, thereby promoting offender accountability and potentially reducing the likelihood of future offending.<sup>2</sup>

While VLA supports the implementation of restorative justice models, particularly as a supplementary part of the sentencing process, VLA recognises that the acute power dynamics in many sexual offence cases require this to be approached with great care, with the full consent of participating victims, and with sufficient oversight by skilled professionals. Safeguards are required to ensure victim safety, and the appropriateness of restorative justice processes to the case at hand.

#### **Recommendation**

That the Commission make recommendations relating to the use of restorative justice procedures as a supplementary part of the sentencing process in appropriate cases.

### **Expanding victim eligibility for accessing VOCAT**

VLA supports reforming the eligibility requirements for claimants under the *Victims of Crime Assistance Act 1996* (Vic) (VOCA Act), so that victims of recurrent family violence and historical abuse have improved access to assistance. In our experience, some victims of family violence and historical abuse find it difficult to make claims under the VOCA Act where acts of violence are not immediately reported, and where the victim and perpetrator are known to each-other. This is because section 52 of the VOCA Act directs a Tribunal to refuse financial assistance where the offending was not reported within a reasonable time, or where the applicant did not provide reasonable assistance to authorities, unless there were special circumstances.

To improve the operation of the scheme, section 52 of the VOCA Act should be amended to explicitly require consideration of the nature of the relationship between the victim and the offender when assessing whether the victim took reasonable, timely steps in reporting the act and providing assistance to authorities.

Amending the VOCA Act in this way would provide greater certainty in cases of historical abuse and family violence, where the victim may be reluctant to immediately report acts of violence due to their relationship with the offender and/or concerns about their own wellbeing and that of others in the home.

#### **Recommendation**

That consideration be given to the adequacy of current arrangements for victims of family violence and historical abuse under the VOCA Act. In particular, section 52 of the VOCA Act should be amended to explicitly require consideration of the nature of the relationship between the victim and the offender when assessing whether the applicant has reported the act within a reasonable time, and provided reasonable assistance to authorities.

<sup>1</sup> See Centre for Innovative Justice, *Innovative Justice Responses to Sexual Offending – Pathways to Better Outcomes for Victims, Offenders and the Community* (May 2014), 26.

<sup>2</sup> *Ibid*, 27.



## Improved access to timely and accurate information for victims

In September 2014 VLA conducted a review into VLA's funding of criminal appeals against sentence, to determine whether changes should be made to VLA eligibility guidelines. The Criminal Appeals Review (Review) highlighted the need for criminal justice stakeholders to work together more effectively to ensure victims are appropriately informed and included in appeal processes, in recognition of their rights under the *Victims Charter Act 2006* (Vic) and the *Sentencing Act 1991* (Vic).

As part of the Review, VLA consulted with victims of crime and victim support agencies. A representative group of victims who had experienced trial and appeal processes (in respect of the serious crimes of murder, manslaughter and sexual assault) were referred by the Victim Support Agency, and supported during consultation by the Office of Public Prosecution Witness Assistance Service. Common themes arising from consultation included:

- The need for early notification of appeals and ongoing appeal updates. A number of the victims had found out about appeals through the media, at almost the same time as the appeals were lodged with the court, which was particularly traumatic. For these victims, a lack of information contributed significantly to their dissatisfaction with the criminal justice system.
- While victims felt that gains had been made over the last few years in giving victims a voice within the trial and plea process, many did not feel those gains had extended to appeals. Some victims reported feeling under-acknowledged in Court of Appeal proceedings, and excluded by the language, conduct and behaviour of judges and barristers.

Although VLA does not have specific responsibilities to support victims through the appeals process, it does have an institutional role in working with others in the justice system to bring about improvements. VLA strongly supports improved access to timely, accurate information for victims, and is committed to working with other agencies with direct responsibility for assisting victims, such as the Office of Public Prosecutions and the courts. In the appeals space, this could include measures as simple as developing a process for VLA and/or the court to directly notify the OPP when appeals are filed – a measure which VLA is currently pursuing. Further training for practitioners and judicial officials may also assist in ensuring that the language used in court is more inclusive and sensitive to victims. VLA is also supportive of greater coordination and integration of victim support services, and is committed to increasing its engagement with stakeholders and the broader community, to explain its role in trial and appeal processes.

### **Recommendation**

That victims have improved access to timely, accurate information, supported by agencies with statutory responsibility for victims.

Thank you for inviting VLA to provide further comment and I look forward to the review's recommendations.

Yours faithfully



**BEVAN WARNER**  
Managing Director