

Online submission to the Victorian Law Reform Commission

The role of victims of crime in the criminal trial process

Number	13
Name	Name Withheld
Date	30 September 2015

Question 1	Should the role of victims in the criminal trial process be that of protected witnesses, participating witnesses or prosecuting witnesses?
Response	No response
Question 2	Could victims have different roles at different stages of the trial?
Response	No response
Question 3	If changes to attitudes and behaviour are needed to achieve the intent of legislative reform, how might those changes be achieved?
Response	No response
The Role of Victims	
Question 4	Should victims have a greater role in the decision to continue or discontinue a prosecution?
Response	No response
Question 5	If a victim wants to withdraw their complaint, should this determine whether the prosecution continues?
Response	No response
Question 6	Should a victim be able to require a prosecution to proceed where the DPP decides it should be discontinued?
Response	No response
Question 7	Should victims have a greater role in the decision to accept a plea of guilty after plea negotiations?
Response	No response
Consultation	
Question 8	Is there adequate consultation with victims before a decision is made to continue with charges, discontinue a prosecution or accept a plea of guilty after plea negotiations? If not, what additional consultation do victims require?
Response	No response

Question 9	If the prosecution fails to consult with victims about a decision to discontinue a prosecution, or to accept a plea of guilty after plea negotiations, should this attract consequences? If so, what should those consequences be?
Response	No response
Question 10	Should victims be given the opportunity to access legal advice or representation during any consultation with the prosecution?
Response	No response
Review of decisions	
Question 11	11 Should there be a way to review decisions made by the DPP or Crown Prosecutor to discontinue a prosecution or accept a plea after plea negotiations? If so, what mechanism might be used?
Response	No response
Alternative procedures	
Question 12	Should victims be able to pursue restorative justice or other alternative processes instead of, or at any point during, a traditional prosecution? Why, or why not?
Response	No response
Consultation	
Question 13	Should the prosecution be required to consult with victims before taking a position on a summary jurisdiction application or an application to cross-examine a witness, including the victim?
Response	No response
Question 14	Are measures required to ensure that the prosecution fulfils consultation obligations?
Response	No response
The role of the victim in the proceedings	
Question 15	Should victims have a role in relation to applications for summary jurisdiction or applications to cross-examine witnesses at a committal hearing?
Response	No response
Question 16	Should victims have a role during the committal hearing? If so, what should this role be?
Response	No response
Question 17	Should victims' views be a relevant factor in the magistrate's determination of an application to cross-examine the victim, or other witnesses? If so, how might victims' views be communicated to the magistrate?
Response	No response
Protected-witness measures	

Question 18	Should the prohibition on child and cognitively impaired victims giving evidence at committal hearings in sexual offence matters be extended to all, or certain other, victims? If so, what criteria should this be based on?
Response	No response
Question 19	Should the evidence of victims at committal hearings be video-recorded so that it can be played at the trial instead of victims giving oral evidence?
Response	No response
Question 20	Should cross-examination of victims and other witnesses at committal hearings be replaced by earlier transfer of serious indictable offences to superior courts, with the examination of witnesses taking place in advance of the trial and before a trial judge?
Response	No response
Role of victims – confidential communications	
Question 21	Are victims exercising their right to appear in relation to confidential communications applications? If not, why not and how might that be addressed?
Response	No response
Question 22	Having regard to the practices in other jurisdictions, should victims have a greater role in pre-trial proceedings regarding confidential communications? Should the types of communications and the offences these proceedings relate to be expanded?
Response	No response
Role of victims – pre-trial proceedings generally	
Question 23	Should victims have a role in other pre-trial proceedings in which they have an interest? If so, what should be the test for determining whether victims have an interest?
Response	No response
Question 24	If victims are given a greater role in pre-trial proceedings, should disclosure obligations be imposed on victims? What other obligations might be imposed?
Response	No response
Question 25	How might any role for victims in pre-trial proceedings impact on or relate to the role of victims during the jury trial?
Response	No response
Question 26	If victims are to have a participating-witness or prosecuting-witness role, should the state provide legal representation for victims?
Response	No response
Pre-trial restorative justices procedures	

Question 27	Should restorative justice procedures be available in the pre-trial phase of proceedings? If so, should any limits be placed on the use of such procedures?
Response	No response
Protective measures	
Question 28	Are the protective procedures for the taking of evidence from vulnerable victims appropriate and effective?
Response	No response
Question 29	Should the current protective measures for vulnerable witnesses be extended to other categories of victim, or to victims of other types of offence?
Response	No response
Question 30	Are the existing evidentiary provisions being used, or enforced by judges, to prevent inappropriate questioning or to allow victims to give evidence in narrative form? Are there any further evidentiary reforms which might reduce victim retraumatisation?
Response	No response
Question 31	Should Victoria introduce an intermediary scheme? If so, for which victims? What functions should an intermediary perform?
Response	No response
Participatory and prosecutorial roles of the victims	
Question 32	Should victims be able to participate during trial proceedings? If so, how and when might this participation be exercised? Who should provide representation?
Response	No response
Question 33	Could victims be given a participatory or prosecuting role in Victoria similar to that provided for by the victim participation scheme of the International Criminal Court?
Response	No response
Question 34	Are there aspects of inquisitorial trial procedures which could be adopted in Victoria?
Response	No response
The victim's role in sentencing and the purposes of sentencing	
Question 35	Should the victim have a greater role in sentencing? If so, what should that role be?
Response	No response
Question 36	Should the purposes of sentencing explicitly include the needs and interests of victims?
Response	No response

Victim impact statements	
Question 37	Should further limits be placed on the publication and distribution of victim impact statements?
Response	No response
Question 38	Should a broader group of victims be permitted to make victim impact statements?
Response	No response
Question 39	Should community impact statements be introduced?
Response	No response
Question 40	Should victims be permitted to make submissions in relation to sentencing?
Response	No response
Question 41	What should be the role of the prosecutor in preparing victim impact statements?
Response	No response
Restorative justice sentencing procedures	
Question 42	Should restorative justice procedures be available as either an alternative or supplementary part of the sentencing process? If not, why not? If so, in what circumstances?
Response	No response
Question 43	43 Do processes set out in Part 4 of the <i>Sentencing Act 1991</i> (Vic) deliver on the aim of a swifter, less complex avenue for victim compensation? Are any changes needed to improve outcomes for victims?
Response	In my view, the processes in Part 4 of the Act do not deliver on the aim of a swifter, less complex avenue for victim compensation. Although the processes in place for a victim to obtain an order for compensation against an offender are adequate, there are significant problems in the mechanism for enforcing that order. Clearly an order that cannot be enforced is of no benefit to a victim. The problem stems from the fact that an order for compensation merely results in the victim becoming a judgment creditor (s85M). I am currently acting for a client who was a victim of sexual offences by her biological father. A compensation order was made in her favour in 2013. I was retained in early 2014 to enforce that order. My client (who I will not name as the matter is ongoing) has incurred considerable cost in taking steps to enforce the order. Although a victim of serious sexual offences, my client now has to undertake the same process of recovery as, for example, a party who successfully sues another party for unpaid invoices in the civil jurisdiction of the Magistrates' Court. Not only has this process been very expensive, but it

	<p>prolongs what is already a very traumatic situation. It is submitted that there needs to be changes made to the mechanism by which compensation orders are enforced so as to not require victims to enforce an order themselves. For instance, if the offender is sentenced to a community correction order, the Court could make compliance with a compensation order (whether by instalments or a lump sum payment) a condition of the CCO. It would seem to me that the offender would be less likely to ignore the compensation order as it could potentially result in custodial sentence. In that event, it would be a matter for the OPP and/or police, rather than leaving it to the victim to enforce a civil debt against the offender.</p>
Question 44	Should there be a statutory presumption in favour of compensation and restitution in all cases?
Response	No response
Question 45	How should the financial circumstances of an offender be taken into account under Part 4 of the <i>Sentencing Act 1991</i> (Vic)?
Response	No response
Question 46	Should a victim be given the power to commence appeal proceedings in relation to a restitution or compensation order?
Response	No response
Question 47	How should restitution and compensation orders be enforced?
Response	No response
Question 48	Is there a need for restorative justice pathways as an alternative, or in addition to, <i>Sentencing Act 1991</i> (Vic) orders and VOCAT?
Response	No response
Question 49	Are there offences not covered by the <i>Victims of Crime Assistance Act 1996</i> (Vic) that should be?
Response	No response
Question 50	Should a victim have standing to seek leave to commence an interlocutory appeal? If so, should this be limited to circumstances where the ruling impacts on the personal interests or rights of the victim?
Response	No response
Question 51	Should victims have a right to be consulted by the prosecution or to request that the DPP consider an appeal on any or all matters that the DPP is permitted to seek leave to appeal?
Response	No response
Question 52	Should a victim have standing to participate in an interlocutory appeal commenced by the prosecution or the defence? If so, how and in what circumstances?

Response	No response
Question 53	Should a victim have standing to participate in a post-verdict appeal commenced by the defence or prosecution?
Response	No response
Question 54	Should the victim impact statement scheme as it applies in sentencing hearings also apply when the Court of Appeal re-sentences an offender?
Response	No response
Question 55	Could the obligations set out in the Director of Public Prosecutions Victoria's <i>Director's Policy: Victims and Persons Adversely Affected by Crime</i> , particularly obligations to consult, be strengthened by incorporating them into the <i>Victims' Charter Act 2006</i> (Vic) or other Victorian legislation?
Response	No response
Question 56	Should the <i>Victims' Charter Act 2006</i> (Vic) be amended to include other rights, or broaden existing rights for victims?
Response	No response
Question 57	Should victims have a legal right to enforce some or all of the rights contained in the <i>Victims' Charter Act 2006</i> (Vic)? If so, how might this be achieved, and in what circumstances?
Response	No response
Question 58	Should there be a legislatively prescribed process for investigating and resolving complaints about breaches of victims' rights? If so, what might this process look like? Should the Victims of Crime Commissioner in Victoria have a role in complaints resolution relating to breaches of the <i>Victims' Charter Act 2006</i> (Vic)?
Response	No response
Question 59	What remedies should be available for breach of a victim's rights?
Response	No response
Question 60	Are there gaps in the provision of victim support services?
Response	No response
Question 61	How should victim support services be prioritised?
Response	No response
Question 62	How might the delivery of victim support services in Victoria be improved?
Response	No response

Question 63	Do victims need personalised legal advice and assistance? If so, how should such support be delivered?
Response	No response
Question 64	What role could the Victorian Victims of Crime Commissioner have in relation to victim support services?
Response	No response