



Australian Government

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The Hon P D Cummins AM
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Dear Chair,

ALRC Submission: The Role of Victims of Crime in the Criminal Trial Process

I refer to your invitation for submissions on the Victorian Law Reform Commission's consultation paper *The Role of Victims of Crime in the Criminal Trial Process* (the VLRC consultation paper).

The ALRC makes the following submission, which draws on the experience of the ALRC in its 2009–2010 family violence inquiry. This inquiry, conducted with the NSWLRC, culminated in the final report *Family Violence — A National Legal Response* (ALRC Report 114), released in November 2010.

In the context of victims of family violence, the ALRC/NSWLRC made a number of recommendations that may be relevant to the questions asked in the VLRC consultation paper. Some of these are identified below for your reference.

The role of victims in the decision to prosecute

Chapter 5 of the VLRC consultation paper discusses the role of victims in the decision to prosecute and asks whether, if a victim wants to withdraw their complaint, this should determine whether the prosecution continues (Q5).

The ALRC/NSWLRC examined issues in relation to prosecutions for breaches of family violence protection orders, including concerns about the use of 'statements of no complaint', often obtained by police attesting to the fact that a victim does not wish to pursue criminal charges.

In particular, the ALRC/NSWLRC concluded that police should not encourage victims to attest that no family violence occurred when the evidence clearly points to the contrary because—in the absence of a sophisticated and informed understanding of why a victim of family violence may wish to negate that violence occurred or to withdraw previous statements made—this sets victims up for perjury charges.

The ALRC/NSWLRC made the following recommendations:

- Federal, state and territory police, and directors of public prosecution should train or ensure that police and prosecutors respectively receive training on how the dynamics of family violence might affect the decisions of victims to negate the existence of family violence or to withdraw previous allegations of violence (Recommendation 12–2).
- Police codes of practice or operating guidelines, and prosecutorial policies should ensure that any decisions to charge or prosecute victims of family violence with public justice offences—such as conspiracy or attempts to pervert the course of justice, where the conduct alleged to constitute such offences is essentially conduct engaged in by a victim to reduce or mitigate the culpability of an

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offender—should only be approved at the highest levels within state or territory police services, and by directors of public prosecution, respectively (Recommendation 12–3).

- Police should be trained about the appropriate content of ‘statements of no complaint’ in which victims attest to the fact that they do not wish to pursue criminal action. In particular, police should not encourage victims to attest that no family violence occurred when the evidence clearly points to the contrary (Recommendation 12–4).

Protective measures

Chapter 8 of the VLRC consultation paper discusses the role of victims in the trial, including protective procedures for sexual assault victims when giving evidence.

The consultation paper notes that, in Victoria, under s 353-355 of the *Criminal Procedure Act 2009* (Vic), in a trial for a sexual offence or an offence involving family violence, the judge may declare the victim a protected witness. Under s 356, an accused is prohibited from personally cross-examining a protected witness.

The ALRC/NSWLRC considered this issue in relation to protection order proceedings, which while not criminal proceedings are often concurrent with them. The ALRC/NSWLRC recognised concerns about allowing a person who has allegedly used family violence to personally cross-examine a victim of that violence. This provides an opportunity for a person to misuse legal proceedings and exert power and control over the victim of his or her family violence. Considering the nature and dynamics of family violence, this may significantly inhibit the ability of a victim, or another witness, to provide truthful and complete evidence in protection order proceedings.

The ALRC/NSWLRC recommended that state and territory family violence legislation should prohibit the respondent in protection order proceedings from personally cross-examining any person against whom the respondent is alleged to have used family violence (Recommendation 18–3).

The role of victims in sentencing

Chapter 9 of the VLRC consultation paper discusses the role of victims in sentencing. Chapter 13 of ALRC Report 114 examined a number of issues concerning recognising family violence in sentencing. The ALRC/NSWLRC recommended that:

- the national family violence bench book should include a section that addresses sentencing in family violence matters (Recommendation 13–1); and
- state and territory sentencing legislation should provide that the fact that an offence was committed in the context of a family relationship should not be considered a mitigating factor in sentencing (Recommendation 13–3).

In relation to victim impact statements, the VLRC also asks whether a broader group of victims be permitted to make victim impact statements (Q38).

In ALRC Report 114, the ALRC/NSWLRC recommended that police operational guidelines should require police, when preparing witness statements in relation to offences for breach of protection orders, to ask victims about the impact of the breach, and advise them that they may wish to make a victim impact statement (Recommendation 12–9).

Compensation and restitution

Chapter 10 of the VLRC consultation paper deals with victims’ compensation and restitution under the *Sentencing Act 1991* (Vic). In ALRC Report 114, the ALRC/NSWLRC made the following recommendation:


- State and territory victims’ compensation legislation:
 - (a) should define an ‘act of violence’ to include family violence and ensure that evidence of a pattern of family violence may be considered;
 - (b) should not provide that acts are ‘related’ merely because they are committed by the same offender, and should provide that victims have the opportunity to object if claims are to be treated as related; and
 - (c) should ensure that victims’ compensation claims are not excluded on the basis that the offender might benefit from the claim. (Other measures should be adopted to ensure that offenders do not have access to victims’ compensation award.) (Recommendation 29–5).

Support for victims

Chapter 13 of the VLRC consultation paper discusses support for victims during criminal proceedings. Chapter 32 of ALRC Report 114 considered the support that should be available for victims of family violence in specialised family violence courts—that is, any division, program, specialised list or a specialist family violence court room within existing state or territory magistrates or local courts set up to deal with family violence.

The ALRC/NSWLRC made the following recommendations:

- State and territory governments should ensure that specialised family violence courts have, as a minimum:
 - (a) specialised judicial officers and prosecutors;
 - (b) regular training on family violence issues for judicial officers, prosecutors, lawyers and registrars;
 - (c) victim support, including legal and non-legal services; and
 - (d) arrangements for victim safety. (Recommendation 32–3)
- State and territory governments should, where possible, promote the following measures in all courts dealing with family violence matters, including courts in regional and remote communities:
 - (a) identifying and listing on the same day, protection order matters and criminal proceedings related to family violence, as well as related family law and child protection matters;
 - (b) training judicial officers in relation to family violence;
 - (c) providing legal services for victims and defendants;
 - (d) providing victim support on family violence list days; and
 - (e) ensuring that facilities and practices secure victim safety at court. (Recommendation 32–4)

Thank you for this opportunity to comment on the consultation paper. If you require any further information please do not hesitate to contact me 

Yours sincerely,

