

Victorian Law Reform Commission Reference
The Role of Victims of Crime in the Criminal Trial

Submission by the Director of Public Prosecutions

Introduction

1. The Director of Public Prosecutions welcomes the opportunity the Victorian Law Reform Commission's reference into the role of victims in the criminal trial process provides to examine the question of what role is played by victims in the current adversarial trial process with a focus on proposals for reform with respect to the participation of victims in that process.

About the Director of Public Prosecutions & the Victorian Public Prosecutions Service

2. The DPP is the head of Victoria's Public Prosecutions Service and is responsible for instituting, preparing and conducting serious criminal matters in the High Court, Supreme Court and County Court on behalf of the Crown. The DPP is independent of government in relation to decisions on the institution, preparation and conduct of criminal proceedings.
3. The Victorian Public Prosecutions Service (VPPS) is comprised of the Director of Public Prosecutions, the Chief Crown Prosecutor, Crown Prosecutors and staff of the Office of Public Prosecutions (OPP). The VPPS is charged with the responsibility to prosecute serious indictable crime on behalf of the State of Victoria. The OPP legal practice is made up of some 200 lawyers and the Witness Assistance Service (WAS).

About this submission

4. This submission draws on the practical experience of lawyers and social workers within the VPSS who regularly work in all criminal jurisdictions and have frequent interactions with victims of crime in that context.

THE ROLE OF VICTIMS IN THE DECISION TO PROSECUTE

The decision to commence or discontinue a prosecution

5. The decision whether to file a charge against an accused person is made by Victoria Police. Pursuant to s.22 *Public Prosecutions Act* 1994 The DPP has power to institute, prepare and conduct proceedings on behalf of the Crown in trials, pleas in the higher courts, committal proceedings in the Magistrate's Court and conducts appeal proceedings. The DPP also has the power to take over and conduct proceedings in respect of summary offences and indictable

offences and the power to discontinue criminal proceedings except during a trial.¹

6. The DPP's decision whether to proceed with a prosecution is governed by the Director's Policy on Prosecutorial discretion. A prosecution will only proceed if there is a reasonable prospect of a conviction and a prosecution is required in the public interest.² A consideration of the circumstances and attitude of the victim are regarded as an important but not a determinative factor in the decision whether to proceed or discontinue a prosecution.
7. Decisions made by the Director to discontinue a proceeding are made in a variety of circumstances. The Director considers the factors set out in the Director's Policy Prosecutorial Discretion when considering discontinuing a prosecution.
8. The DPP's decision to discontinue a proceeding is made after a careful assessment of the case by the solicitor assigned the matter, the trial prosecutor if one has been briefed to appear, a Crown Prosecutor and the Director personally. The victim's views on the decision to discontinue are sought prior to the decision being made and although an important consideration they are not determinative.
9. The majority of factors relevant to the decision to continue or discontinue a prosecution require a judgement to be made on the basis of expert legal knowledge and experience and a consideration of the public interest. These are matters that are not within the knowledge of most victims of crime.
10. Further it is the experience of OPP staff that most victims would not necessarily welcome increased participation in such prosecutorial decisions.
11. Victims who are dissatisfied with a decision to continue or discontinue a proceeding made by the Director may make a request to the Director to reconsider the decision. The Director's Policy The Giving of Reasons for Discretionary Decisions outlines the circumstances in which the Director will give reasons for his decisions.
12. It is the DPP's experience that very few victims are dissatisfied with the DPP's decisions after the reasons have been explained to them. The DPP's current procedures are sufficient to ensure the system is robust and meets the needs of victims.
13. Whilst it is accepted that empowerment of victims through increased participation in the prosecutorial processes is an important goal it is the Director's view that it would not be desirable to introduce a system of internal review of the DPP's decisions similar to that of the CPS Victim's Right to Review Scheme in the United Kingdom for a number of reasons.

¹ S.177 *Criminal Procedure Act 2009*

² *Director's Policy Prosecutorial Discretion (24 November 2014 paras 2-5 incl)*

14. The majority of victim's appeals in the CPS right to Victim's to Review Scheme were about decisions not to file charges in the first instance. In Victoria the DPP is not responsible for those decisions but rather they are made by Victoria Police. The DPP has no power either to review the decisions made by Victoria Police not to file charges or to require Victoria police to file charges. In those circumstances a Victim's Right to Review Scheme would be inappropriate.

Judicial Review of the decision to discontinue a prosecution

15. It is the Director's view that the current procedures provide a sufficient degree of transparency and victim participation whilst at the same time protecting the independence of the Director of Public Prosecutions. It is unnecessary to introduce a system of judicial review of the DPP's discretionary decisions as to do so would compromise the DPP's independence.
16. The role of the prosecutor is different to that of courts and the latter are not best placed to weigh the factors which include public interest that need to be considered in making a decision to prosecute or to discontinue a prosecution.
17. A system of judicial review would add an additional layer of costs from satellite proceedings and cause delays in the justice system. There is no demonstrated need for such a reform and it would be unfair to victims with less financial resources than others to pay for lawyers to conduct a judicial review. If such reviews were funded by Victoria Legal Aid it would be an additional impost on the taxpayer. Further a system of judicial review would raise the expectations of victims that will not be realised, as the result of a judicial review is merely to refer the matter back to the DPP to reconsider that decision not to substitute the court's decision for that of the DPP.

The role of victims in the plea negotiation process.

18. The Director's Policy Resolution³ states that solicitors must consider the views of the victim when considering whether a matter may be resolved by a plea of guilty to appropriate charges. Whilst the *Victim's Charter Act 2006* only obliges the OPP to advise victims of the outcome of plea negotiations the DPP's policy and practice is that the views of victims of crime are sought before a decision is made on an appropriate settlement of the case.
19. In a circumstance where a victim has made a complaint and charges have been filed but the victim changes their mind and wishes to withdraw that complaint that decision is currently made by the OPP not by the victim.
20. The factors that must be considered in any plea negotiation are many and varied including an expert legal assessment of the evidence, the credibility and reliability of witnesses, the public interest in proceeding to trial such as the

³ Director's Policy Resolution (9 January 2015)

cost to the community, the prevalence of the offence, the likely prospects of success and the victim's interests.

21. If increased weight were to be given to the victim's interests as a factor it may result in unmeritorious prosecutions being run which have little chance of success. It places an unjustifiable burden on vulnerable victims to give them the responsibility of deciding whether to proceed with or withdraw charges.
22. The existing procedures for consultation with victims with respect to decisions to continue or discontinue proceedings and during the process of plea negotiation are sufficient and effective. It is unnecessary to introduce reforms that would either increase the weight accorded to the victim's wishes or effectively give them a power to veto a prosecution proceeding.
23. Similarly to require the prosecution to continue a proceeding in circumstances where the DPP has decided that it should be discontinued would create an untenable situation and a perception that the victim and the Prosecution are one party.

Legal representation for victims

24. There is currently no bar to victims seeking advice from their own legal representative if they are dissatisfied with a decision made by the DPP and representations being made by them however, it is self-evident that those representatives are not and cannot be apprised of all the circumstances of a case and therefore any opinion they may give to the victim or the DPP on the appropriateness of decisions made is of limited value.
25. The release of information to a victim's solicitor that is for the purpose of giving a legal opinion on the DPP's decisions may in those circumstances cause a breach of the OPP's obligations under the *Privacy Act 2000*, the *Judicial Proceedings Reports Act 1958* or suppression orders if any. The involvement of a victim's legal representative may also delay proceedings.
26. It is essential that the independence of the Director of Public Prosecution be maintained to ensure the community's confidence in the VPPS's role in a fair and equitable system of justice.

Restorative Justice or other alternative procedures

27. Restorative Justice Procedures and other alternative procedures can be a valuable way in which victims can achieve redress however they should be a separate procedure from the committal and trial process and the Prosecution should not play a part in that process. To do otherwise would create the perception that the Prosecution represents victims. If such processes are engaged in before the trial process is completed there is potential for information that comes to light during the procedure may be required to be disclosed to the Defence in the trial.

The Role of Victims in Committal Proceedings

28. Whilst there is no obligation on the prosecution to consult victims with respect to applications to cross-examine witnesses at committal a particular victim's vulnerability or age is a matter that is considered by the OPP solicitor or advocate in making submissions to the Magistrate and objections are made in appropriate cases.
29. The decision as to which witnesses should be cross-examined at committal is an important one as the committal proceedings are a useful means for assessing the strength of the prosecution case, the credibility and reliability of witnesses and to narrow the issues between the parties. As this application requires a lawyer's assessment the victim's participation cannot add anything to that process and may result in evidence not being available for consideration prior to a decision being made on whether to file an indictment and what the appropriate counts will be.
30. The victim's views about the appropriate jurisdiction are a factor that is considered by the OPP solicitor or advocate in the making of applications for summary jurisdiction however, similar to other prosecutorial decisions it is a matter that is essentially for the DPP to determine taking into account relevant factors and the introduction of statutory obligations to enable victims to make submissions on this matter would interfere with the independence of the DPP.
31. The goal of reducing the potential for re-traumatisation of victims by having to give evidence multiple times is one that should be pursued. This is particularly problematic where there are multiple accused some of which are in the Children's Court jurisdiction and others in the adult jurisdiction. Reforms could be made to enable the evidence given by victims in the Children's Court particularly by vulnerable victims to be used in the proceedings in the adult jurisdiction with appropriate adjustments.
32. Committal proceedings should be retained in Victoria as if properly conducted they form a valuable means filtering cases that are suitable for trial. Viva voce evidence given at this stage can be the best means for the both the Prosecution and Defence to assess the credibility and reliability of witnesses and the likely success of the case at trial.
33. To put in place structural reforms to increase the current level of case management by judges could be perceived as blurring the lines between the judge's role as an independent impartial umpire and the parties.
34. There are advantages to victims in not having to give evidence multiple times that justify the prohibition on the giving of evidence by vulnerable witnesses at committal. Consideration should be given to increasing the categories of victims to whom the prohibition on giving evidence at committal applies. It

could be extended to all victims of alleged sexual offences and/or all victims of alleged offences involving family violence. If that is considered too broad then victims in those categories who are intimidated or are genuinely fearful for their safety could be a further category where such restriction is justified.

35. There may be some cases in which the transfer of the cross-examination of victims and other witnesses in serious indictable offences to take place before a judge may be an expeditious way of dealing with a case. However, there are some difficulties with that approach if it were to be applied in all cases. For example it would require changes to listing procedures to ensure that the same judge heard that evidence as the judge who is to hear the trial otherwise fragmentation of proceedings may occur. It would also require an increase in resources for the County and Supreme Courts. Further it may result in less matters being resolved as pleas of guilty at an early stage because the evidence of the victim or other principal witnesses will not be able to be assessed until the trial. It may also be more difficult for the prosecution to determine which charges should proceed and which should not prior to filing an indictment. If the accused person does not have an opportunity to enter a plea before trial because they cannot assess the witness' testimony then they may be deprived of an appropriate discount for pleading guilty.
36. One way of retaining the committal hearing but reducing the delay caused by the contested committal process may be to further restrict the criteria for granting leave to cross-examine a witness. This could be achieved by amending s.124(3)(a) *Criminal Procedure Act 2009* to require the Magistrate not to grant leave to cross-examine a witness unless a "substantial issue" is identified rather than just identifying "an issue" as the section is presently worded. This may result in less extraneous issues being dealt with at committal such as the execution of search warrants and doctor's being examined about their history and note taking. These are matters that could be dealt with in the higher court prior to trial.

The Role of Victims in Pre-Trial Proceedings

37. The Prosecution's duty of disclosure is an obligation to the court and disclosure of relevant material that may relate to the accused's defence is required as an exercise of the prosecution's duty of fairness. It is difficult to discern what purpose would be served by disclosing such information to the victim.
38. With the exception of matters going to the public interest in encouraging victims to have confidence in their ability to seek confidential counselling to assist in their recovery the interests of victims can be adequately conveyed to the court where appropriate by the prosecution.
39. *Should victims have standing to make submissions to the court with respect to:*
 - (a) *Separate trial applications;*

The issue of whether certain counts that have been joined on an indictment should be severed or whether separate trials should be ordered where there are multiple accused is essentially a legal issue. There seems to be little to be gained by allowing victims standing to put submissions on these matters.

(b) Evidence of sexual activities;

The test provided in s.349 *Criminal Procedure Act 2009* of “substantial relevance to a fact in issue” and public interest is a sufficient test to protect the interests of victims and courts are reluctant to allow such cross-examination as a matter of course. Amendments to that section could be made to ensure that the application has been brought to the attention of the victim via the informant and that the judge has considered whether the victim has been notified of the application in a reasonable time.

(c) Confidential Communications;

The protection of confidential communications made during counselling or medical consultations has been recognised as a very important goal. It would not be desirable to require the accused to serve a copy of the application to compel the production or to adduce a document containing a confidential communication directly on the victim as to do so would require that victim’s personal contact details be made available to the accused’s legal representative.

Section 32C (3)(b) *Evidence (Miscellaneous Provisions) Act 1958* enables the judge to waive the notice requirement. This section could be strengthened such that the judge must consider and be satisfied that the victim has received notice of the application and does not wish to make any representations to the judge before waiving notice requirements.

40. The role of victims in pre-trial applications should not be extended further than the provisions that currently exist. Whilst it is acknowledged that the victim’s right to privacy is important this should not have more importance than the need to ensure that all of the relevant evidence is available to the accused to prepare their defence and to the court. It is also difficult to define a victim’s ‘personal interests’ in a way that will not compromise the fairness of the trial.
41. To create a statutory obligation on the prosecutor and/or judge to inform victims about pre-trial matters in which they have an interest would put an unnecessary burden on the prosecution and/or the judge. As a matter of practice the views of victims are sought in matters where their interests are affected.
42. It would not be ethically appropriate for the prosecution to be responsible for providing victims with legal advice about a pre-trial application and it would be in conflict with the Director’s independence.

The Role of Victims in the Trial

Should victims be able to make application or address the court on the following matters?

- (a) whether the special hearing is to be held before or during the trial;*
- (b) where the Defence seeks permission to further cross examine the victim;*
- (c) where the Prosecution applies for the victim to give evidence in court instead of at a special hearing.*

43. These are matters that relate to how the case is run and should be determined by the judge on the basis of submissions by the Prosecution and Defence. A party's control of their own case is a central principle of the adversarial system. If victims were to have standing to make submissions on these matters this could result in a loss of party control and extraneous matters being taken into account.
44. Reforms aimed at reducing the number of times victims are required to give evidence such as V.A.R.Es, Special Hearings and Significant Witness Statements" are desirable as a means of reducing the re-traumatisation of victims however they do have their limitations. Viva Voce evidence is the best form of evidence that enables the parties, the judge and the jury to assess the credibility and reliability of a witness. It has more impact and immediacy and can be more or less convincing for a jury depending on the witness.
45. Alternative arrangements for vulnerable victims to assist them in giving their evidence and special hearings are frequently used and are effective for those classes of victims to whom they are available. Consideration should be given to whether alternative arrangements and/or special hearings should be extended to vulnerable victims in cases that do not involve a sexual offence or an offence involving family violence. For example child victims or child witnesses to homicides or serious assaults should be able to give their evidence by way of a special hearing or for older children by way of CCTV in a remote location. Of course any extension to the classes of victim to whom alternative arrangements are available will result in a need for further resources for remote witness facilities that are already in high demand.
46. The enforcement of evidentiary provisions relating to improper questioning or to allowing victims to give evidence in narrative form varies with the practice of the judges and is affected to some extent by which jurisdiction the case is being tried in.
47. Whilst narrative form as a means of giving evidence may suit some victims others require more assistance in order to give their evidence. The danger of abandoning the question and answer format is that inadmissible material will go before the jury. As it would be improper for the Prosecution to coach a witness before giving their evidence there is no effective means of preventing the admission of inadmissible material.
48. Consideration should be given to reforms such as the introduction of ground rules conferences in cases involving child witnesses or witnesses with a

cognitive disability or communication deficit. Such conferences between the parties and the judge could be used to make rulings prior to the trial as to how questions can be phrased, restrictions on leading questions during cross-examination or the use of questions involving double negatives or referring to prior inconsistent statements. They can also be used to address such issues as the frequency of rest breaks and other ways in which such witnesses can be made to feel safe and confident in giving their evidence.

49. The introduction of an intermediaries scheme for victims and other witnesses who suffer from cognitive or communication difficulties such as Autism or physical disability such as blindness, deafness, speech disorders or other conditions that make communication without assistance difficult is an important reform that will improve the access to justice for these groups. Intermediaries would perform a role that is more than just a translator and would act as an advisor to the court as to the best means of communication with victims and witnesses. It would be preferable if intermediaries were professionals such as speech therapists and psychologists trained to perform this specific role.
50. To introduce legal representation for victims and standing to make representations on matters of 'personal interest' however that term is defined would create an imbalance in the trial and the appearance that the Prosecution and the victim are working together. This would compromise the independence of the DPP. If victims were granted standing then additional resources would need to be provided for Victoria Legal aid to enable all victims equal access to representation. This may create difficulties if Victoria Legal Aid also acts for accused persons in the same matter.
51. The nature of cases which come before the International Criminal Court are quite different to that of the trials that are heard by Victorian courts. In cases where the accused are tried for genocide victim participation is an important way in which local knowledge not otherwise available to the prosecution. In such cases there is a role for victims as representatives of a class of victims rather than just as individuals. These factors do not apply to trials in Victoria.

The Role of Victims in Sentencing

52. The current role of victims in sentencing is appropriate and no increase to participation is required at the present time. The role of sentencing is one for the judge.
53. The purposes of sentencing should not be specifically extended to include the restoration of and reparations to the victim of the offending as to do so could be viewed as involving double punishment for the offender or as an offender paying their way out of punishment. The process of compensation is a quasi-civil matter and should remain a separate process from the sentence.

Victim Impact Statements

54. Whilst the victim impact statement forms part of the court record it is a document, which should be treated with greater sensitivity than other documents. It is the DPP's view that victim impact statements should not be kept by the accused personally to limit the opportunity for the information to be misused. Further victim impact statements should not be available to the media for publication unless the victim consents to release of the statement especially where the statement relates to a family violence or sexual offence.
55. There are some groups who are not currently within the definition of 'victim' who should be considered for inclusion. For example people who have witnessed violent offences such as aggravated burglary or homicide in neighbouring properties and don't feel safe in their homes. In some circumstances it may be appropriate that emergency workers and other first responders be able to make a victim impact statement if the event is committed in a public arena and is particularly traumatic such as the death of Darcy Freeman killed by her father on the Westgate bridge. The introduction of community victim impact statements should be considered for some cases for instance where a rural community are affected as a community not just as individuals. Examples of such cases include the Churchill bushfire case, the Towle case or where a community is affected by the death of the only doctor in a country town or a school community where the school has been destroyed as a result of Arson. A suitable representative of the community would be required to make the statement and read it aloud to the court if required.
56. It may be appropriate for victims to indicate their views in a general sense for example where the victim indicates they forgive the offender however, beyond such views it would not be appropriate that victims make representations as to the type or length of the sentence as this is the role of the judge. Of course the victim's attitude to the offender should not be determinative of the sentence as this would lead to unequal sentences for offenders depending on the generosity of the victims rather than on objective factors and may also lead to pressure being placed on victims by Defence to indicate a preference for forgiveness.
57. It is not appropriate that the prosecutor have a role in preparing or editing victim impact statements as to do so conflicts with the prosecutor's independence. Further if the prosecutor were to prepare victim impact statements on behalf of victims the statements would lose their authenticity as the voice of the victim on the only occasion that victims can voice their story in their own words in the trial process. It is the OPP's experience that this is an opportunity which is highly valued by victims and any interference with the process would not advance the goal of victim participation in the criminal trial process. It would be advantageous to better resource VAPS and the Victims Support Agency to enable them to assist more victims with information and preparation of their victim impact statements.

58. Restorative justice procedures should not be integrated in to the sentencing process but should take place separately after sentence. By integrating restorative justice procedures into the sentencing process there is a risk that offenders will participate in such procedures merely to obtain favourable material for their plea hearing and would thereby reduce the effectiveness of such procedures with the possibility of re-traumatising victims. Also there is a risk that victims could make statements during a conference about the circumstances of the offences that could be used by Defence as inconsistent statements or to challenge the victim's credibility and form the basis of a conviction appeal notwithstanding the offender's plea of guilty. This would make restorative justice procedures counter-productive for victims.

Compensation and Restitution

59. The processes set out in Part 4 *Sentencing Act* 1991 are not effective in providing a swifter, less complex avenue for victim compensation because the orders are practically unenforceable. The orders must be enforced as a judgement debt by the victim at their own expense in the court in which the order was made. This is an expensive process that generally requires the victim to engage the assistance of a solicitor. As offenders are generally impecunious and may be imprisoned for long periods of time it is often a futile exercise to enforce the order. As the order is not enforceable until the conclusion of any appeal by the offender this causes further delay in victims receiving compensation or restitution.
60. There should not be a presumption in favour of compensation and restitution in every case as this would lead to the making of many orders which are unlikely to be enforceable thereby causing unrealistic expectations and disappointment for victims. Any requirement on the Prosecution to apply for such orders in every case would require a considerable increase in resources for very little benefit to victims. As an essentially quasi-civil procedure the OPP does not have the expertise to conduct such applications and to do so would tend to create the impression that the Prosecution acts for victims.
61. To allow victims to join their application for compensation or restitution during the trial process risks the introduction of irrelevant and /or prejudicial information into the trial. It would also give the appearance that the accused was guilty before the jury have determined their guilt.
62. Victims should be able to commence appeal proceedings in relation to compensation or restitution orders instituted by them where the court has refused to make an order or the order is considered to be inadequate however it is the DPP's view as stated above that such orders are generally not an effective mechanism for compensating victims.
63. A more effective way of funding compensation would be to introduce an offender levy administered by the state.

The Role of Victims in Appeal Processes

64. To allow victims standing to seek leave to participate in an interlocutory appeal would unbalance the adversarial nature of the trial. The current provisions adequately protect the victim's interests. The concept of 'personal interests' would be difficult to define and allowing interlocutory appeals by victims may result in delays in the trial process.
65. The DPP's Policy Victims and Persons Adversely Affected by Crime provides that victims must be notified of an appeal and the grounds of such appeal however it does not require that the Director must consult victims in considering an appeal. As a matter of practice the victim's views are generally sought however, it would compromise the DPP's independence if victims had a right to be consulted or to request the DPP consider an appeal on all matters that the DPP is permitted to seek leave to appeal. This would also be the case if victims were to be granted standing to participate in DPP appeals or appeals against conviction or sentence made by offenders.
66. It is appropriate that where the sentencing discretion is re-opened during a sentence appeal that an updated victim impact statement is obtained especially where a victim has suffered an ongoing injury or where the effects of an injury take some time to be manifested. It would not cause disappointment to victims because such a statement does not need to be obtained in every case. To allow an updated victim impact statement would be fair as once the sentencing discretion is re-opened the offender has the opportunity to put updated material in mitigation.

Victim's Rights in the Criminal Trial Process

67. The creation of enforceable rights in the *Victim's Charter Act 2006* would not necessarily result in increased compliance with the rights contained in that Act and could be detrimental to the relationship between victims and the Prosecution. The OPP's experience is that there is a high degree of satisfaction experienced by victims in their interactions with the OPP and there is a satisfactory complaint process in place. The DPP's view is that there has been considerable cultural change in the way the legal profession interact with victims and that educational programs are the best way of continuing that process.

Support for Victims

68. The OPP's Witness Assistance Service is currently prioritised for victims of sexual offences, offences involving family violence and other violence offences. This is appropriate however; the service is unable without further funding to provide assistance to victims in matters being handled by the OPP in the Magistrate's Court or to members of the CALD community. There is also a need for victims of fraud offences to receive assistance as these crimes can also have a devastating effect on victims.

69. Given the complex laws and procedures that victims are confronted with when entering the criminal justice system, establishing a service that provides personalised legal advice and assistance is recommended.
70. Currently, regional VAPs refer victims to solicitors who specialise in applications for compensation to the Victims of Crime Assistance Tribunal. Consideration should be given to appointing a Legal Advocate to operate within each of the regional VAPS. The Legal Advocate would provide timely and accurate information about criminal procedures, which would help ensure that victims have realistic expectations about the criminal justice process.
71. However, as noted earlier, legal representatives acting on behalf of a victim cannot be appraised of all of the circumstances of a case, therefore there would be limitations to the role of the Legal Advocate.
72. A Victims of Crime Commissioner could play a valuable role in representing the interests of victims on matters of policy to government.

RECOMMENDATIONS

1. Reforms should be implemented to enable the evidence given by victims in the Children’s Court particularly by vulnerable victims to be used in the proceedings in the adult jurisdiction with appropriate adjustments.
2. Committal proceedings should be retained in Victoria.
3. Support for amending s.124(3)(a) *Criminal Procedure Act 2009* to require the Magistrate not to grant leave to cross-examine a witness unless a “substantial issue” is identified rather than just identifying “an issue”
4. Support for increasing the categories of victims to whom the prohibition applies for instance to all victims of alleged sexual offences and/or all victims of alleged offences involving family violence. If that is considered too broad then victims in those categories who are intimidated or are genuinely fearful for their safety could be a further category where such restriction is justified.
5. Support for amendments to s.349 *Criminal Procedure Act 2009* to ensure that applications to cross-examine a victim about their sexual activities has been brought to the attention of the victim via the informant and that the judge has considered whether the victim has been notified of the application in a reasonable time.
6. Section 32C (3) (b) Evidence (*Miscellaneous Provisions*) Act 1958 which enables the judge to waive the notice requirement for applications to produce or adduce confidential communications should be amended so that the judge must consider and be satisfied that the victim has received notice of the application and does not wish to make any representations to the judge before waiving notice requirements.
7. Consideration of extending protective procedures for vulnerable witnesses to offences other than sexual offences and offences involving family violence especially for child victims and witnesses.
8. Consideration should be given to the introduction of ground rules conferences in cases involving child witnesses or witnesses with a cognitive disability or communication deficit.
9. Support for the introduction of an intermediaries scheme for victims and other witnesses who suffer from cognitive or communication difficulties.
10. Accused persons should not be permitted to retain copies of victim impact statements. Victim impact statements should not be available to the media for publication unless the victim consents to release of the statement.
11. Consideration should be given to broadening the category of persons who can make a victim impact statement in certain limited circumstances

including neighbours to premises where a violent offence has taken place and/or emergency workers and other first responders be able to make a victim impact statement if the event is committed in a public arena and is particularly traumatic

12. Community victim impact statements should be introduced for some cases for instance where a rural or other community group are affected by the offending behaviour as a community not just as individuals.
13. Where on an appeal to the Court of Appeal the sentencing discretion is re-opened the victim should be permitted to file an updated victim impact statement.
14. Victims counselling services and the Victims Support Agency should be better resourced to assist victims in preparing victim impact statements.
15. Victims should be able to commence appeal proceedings in relation to compensation or restitution orders instituted by them where the court has refused to make an order or the order is considered to be inadequate.
16. Support for amendments to enable an updated victim impact statement to be obtained where the sentencing discretion is re-opened during a sentence appeal.
17. Establishing a service that provides personalised legal advice and assistance is recommended. Consideration should be given to appointing a Legal Advocate to operate within each of the regional VAPS.