



VICTORIA POLICE

Victoria Police's Response to the Consultation Paper, The Role of Victims of Crime in the Criminal Trial Process, July 2015, released by the Victorian Law Reform Commission

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Victoria Police Overview of a Victim-Centric Policing Model

A victim's journey through the criminal justice system starts with their first contact with the police, the police investigation that follows and continues throughout the criminal trial until the conclusion of their matter. Therefore Victoria Police and the criminal trial process are inherently linked in achieving the aim of comprehensively respecting victims' rights and reducing secondary victimisation.

The majority of criminal matters are dealt with entirely in the Magistrates' Court (by way of summary procedure), however it is noted that this jurisdiction falls outside the scope of this review¹.

Becoming a victim of crime can have serious physical, psychological, emotional and financial effects. These effects are also compounded by vulnerabilities that may be experienced by a victim, for example due to age, mental health issues, disability, language barriers or cultural background. The criminal justice system may increase the trauma that victims have already experienced and can become a cause of secondary victimisation. This not only hinders the victim's recovery, but can impact on their willingness to participate in the justice process and to report further crime.

Victoria Police is expected to be visible, provide reassurance and assistance, and be professional in the way we deliver our services at all times. The community's perception of Victoria Police and of the safety and security of their own neighbourhood is influenced by information, knowledge and experience of our services in some way. Therefore, every interaction between a member of Victoria Police and a member of the community, either directly or indirectly, as a victim, offender, participating in community activities or in the course of routine daily activities, matters.

Extensive research undertaken by the Victims Advisory Unit, and including a gap analysis, literature review, and consultations with our workforce, external partners and victims of crime, has identified a number of opportunities to further enhance service delivery to victims and those in need of assistance, and Victoria Police is working proactively to enhance our practices across the organisation.

Victim-Centric Service Delivery Strategy:

Victoria Police has recently undergone its own review process to identify how effective the organisation has been in meeting victim's needs and rights. It is almost a decade since the *Victims Charter Act 2006* (the Charter) was enacted and it was timely that the organisation measures how well it had achieved the aim of meeting its obligations under the Charter as an investigatory and prosecutorial agency.

The review formed part of the development of the Victim-Centric Service Delivery Strategy (the strategy) which was undertaken in 2014-2015.

As the gateway to the criminal justice system, Victoria Police recognises the importance of providing an effective and responsive service to individuals and communities impacted by crime. Victoria Police demonstrates its commitment to upholding the rights of victims in compliance with state and federal legislation and international instruments and standards. The strategy was developed pursuant to the action within the Victoria Police Blueprint 2012 -2015, to develop a victim-centric service delivery strategy expanding on the success of the Victims' Charter, which intended to contribute towards further enhancing service delivery to people affected by crime. The strategy

¹ According to the Sentencing Advisory Council's sentencing statistics on persons sentenced in the Magistrates' Court and the Higher Courts, in 2012-13, there were a total of 84,824 people sentenced in the Magistrates' Court of Victoria. In the same year, there was a total of 1,907 people sentenced in both the County and Supreme Courts of Victoria.

discusses the evolution of the victim within criminology and policing practice, specifically the emergence of victim-centred policing as a means to enhancing effective outcomes for people affected by crime and to meeting organisational objectives. The strategy also aims to prevent primary or secondary victimisation, and reduce the effects of victimisation upon the broader community.

The Victoria Police Victims Advisory Unit (VAU), undertook a comprehensive literature review, analysis of victim's survey; frontline member station study report, frontline forums, stakeholder engagement and an analysis of Victoria Police policy, processes and systems provided evidence to inform the strategy.

The research component included the drafting of a literature review and analytical piece focusing upon service delivery requirements in accordance with the Charter. The literature review explored academia concerning victimology (procedural fairness, victims' needs, restorative justice, measuring police performance etc.), perceptions of Victoria Police service delivery in the current state (Department of Justice and Regulation research) and the delivery mechanisms of victim-centric policing is delivered in other policing jurisdictions (environmental scan).

From this research, victim-centric policing was defined and some key inter-jurisdictional initiatives were identified. The analytical piece concerning our requirements in accordance with the Charter focused upon the 12 principles derived from this legislation² (legislative requirements) and the mechanisms which Victoria Police utilises to measure compliance in accordance with these principles. The research identified that Victoria Police has insufficient capability to accurately measure service delivery to victims, and that Victoria Police has many opportunities to meet identified legislative requirements. The 12 principles are summarised below:

1. **The treatment of persons adversely affected by crime** will be with courtesy, respect and dignity and be responsive to their particular needs relating to differences such as: race; sex or gender identity; cultural or linguistic diversity; sexual orientation; disability; religion; and age.
2. **Information is to be given to persons adversely affected by crime** in a clear, timely and consistent way, with information about relevant support services, possible entitlements and legal assistance and if appropriate, persons adversely affected by crime are to be referred to relevant support services and to entities that may provide access to entitlements and legal assistance.
3. **Information is to be given to a victim about the investigation** at reasonable intervals about the progress of an investigation unless disclosure may jeopardize that investigation, and in such cases the victim must be so informed unless the victim requests not to be provided with that information.
4. **Information regarding the prosecution is to be given to the victim** as soon as reasonably practicable. Information should include details of: the charges filed against the person accused; where no charge is filed - the reason why; where charges are filed - any decision that is made to substantially modify those charges, i.e. not proceeding with some or all of the charges, or accepting a plea of guilty to a lesser charge; finding out the date, time and place of the hearing, the outcome of the criminal proceeding, and any sentence imposed; and if an appeal is instituted, the facts of the appeal, the grounds of the appeal, and the result

² *Victims Charter Act, 2006, Part 2*

5. **For applications for bail, on request of the victim, ensure the victim is informed** of the outcome of any application for bail and if bail is granted, any special conditions imposed that are intended to protect the victim or their family members. In having regard to the safety and welfare of the public in accordance with the *Bail Act 1977* (Vic) the safety, welfare and attitude of the victim towards the granting of bail may be taken into account by the court.
6. **Information about court process to ensure that a victim is informed** of the court process and entitlements to attend proceedings, and if they are a witness to ensure they are informed about the trial process and the role of a witness.
7. **Contact between the victim and accused in court building is to be minimized**, as is unnecessary contact with the person accused, defense witnesses and family members and supporters of the accused. The victim is to be protected from intimidation.
8. **Victim Impact Statements (VIS) may be made by the victim to the court sentencing the person found guilty** of a criminal offence and unless the court orders otherwise, that statement may be considered by the court in determining the sentence of the offender. If the victim expresses a wish to make a VIS they should be referred to an appropriate victim's service agency for assistance in preparing the statement.
9. **Victims' privacy must be maintained** and their personal information including their address and telephone numbers are not to be disclosed to any person in accordance with section 14, of the Charter.
10. **Return and Storage of property** held by the State belonging to the victim is to be handled and stored lawfully, respectfully and in a secure manner and if possible the property is to be returned as soon as reasonably possible.
11. **Information concerning compensation and financial assistance for victims**, including their right to apply to the court for an order that the person convicted or found guilty of the criminal offence pay compensation to the victim, pursuant to Division 2 of Part 4 of the *Sentencing Act 1991* (Vic) and in relation to the right of an eligible person to apply to the State for compensation and financial assistance in accordance with the *Victims of Crime Assistance Act 1996* (Vic).
12. **Information about the offender where the victim of a criminal act of violence** within the meaning of the *Corrections Act 1986* (Vic) may apply to be included in the victims register. The secretary may give to a person included on the victims register certain information concerning the offender regarding length of sentence, the likely date of release and the making of an extended supervision order. The Adult Parole Board is considering ordering the release on parole of an imprisoned offender who has committed a criminal act of violence. A person included on the victims register may make a submission to the Board about the effect of the offenders' potential release on the victim and the Board can consider the submission received. A person on the victims register may make a submission to the Adult Parole Board for consideration in determining any instructions or direction it may give to an offender subject to an extended supervision order re sections 129 and 130 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* in relation to victim submissions.

Compliance with these principles requires, Victoria Police to identify and address the individual needs of victims. It is noted that s. 6 of the *Victims' Charter Act 2006* (Vic) states:

'investigatory agencies, prosecuting agencies and victims' services agencies are to take into account, and be responsive to, the particular needs of persons adversely affected by crime, particularly needs relating to differences such as race or indigenous background, sex or gender identity, cultural or linguistic diversity, sexual orientation, disability, religion, and age.'

This provision should include ensuring that information and communication to victims who may experience language barriers, cognitive disabilities or communication impairments are provided support, such as through the provision of independent persons, language and Auslan interpreters and communication aids. Victoria Police is engaging in initiatives to assist police service delivery in this regard, including by contributing to an Easy English resource about reporting crime that is being developed by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).

In developing the strategy, the VAU engaged in structured consultation with in excess of 26 key internal stakeholders. During this consultation process, VAU staff met with stakeholders and ascertained feedback concerning the current state of service delivery and opportunities to enhance services to victims and those in need of assistance. Additionally, the VAU hosted a frontline member forum to ascertain feedback concerning the current state and identify the desired state of service delivery. This forum was attended by all ranks, frontline police and specialist units. Police attending this forum identified that service delivery to victims was often not a priority as it was not measured, it was difficult to provide a high level of service due to the pressures and time-constraints associated with front line policing and current IT systems and processes were burdensome and not user-friendly. Furthermore there work was often hampered by the victim's reluctance to participate and with the lack of real time information from court systems.

Victim-centric is defined as the undertaking of lawful activities which prevent primary or secondary victimisation and which reduce the effects of victimisation upon the boarder community³.

A philosophy of victim-centred policing requires that victimisation be perceived in terms of primary and secondary victimisation. Primary victimisation refers to precursory acts to criminal victimisation and criminal victimisation itself⁴. A primary victim is thus defined as a person harmed by a criminal or human rights violation; whereas secondary victimisation refers to victimisation processes caused by self-harm, natural phenomena or as a result of social negligence⁵, ⁶. In accordance with this broad definition an example of a secondary victim is a person who may experience a severe mental illness that comes to the attention of the criminal justice system⁷.

Alternatively, there is a growing recognition of the definition of secondary victimisation as a victim that is twice victimised or suffers double victimisation, which implies that victims who are twice victims or suffer double victimisation following their original victimisation. In accordance with this definition, secondary victimisation can include victim blaming behaviour by criminal justice officials and/or a victim's family and friends, which can be unintentional. The concept further includes

³ Clark, M 2003, 'Victim-centred policing: The Shepherd's solution to policing in the 21st Century'. *The Police Journal*, Volume 76, <http://dx.doi.org/101350/pojo.764.314.25823>

⁴ *Ibid*

⁵ *ibid*

⁶ Clark, M 2005, 'The importance of a new philosophy to the postmodern policing environment'. *Policing: An International Journal of Police Strategies & Management*, Issue 4, Volume 28, DOI 10.1108/1363951051062872 cited in Alarid, L. & Montemayor, C 2012, 'Implementing restorative justice in police departments'. *Police Practice and Research: An International Journal*, Issue 5, Volume 13, <http://dx.doi.org/10.1080/15614263.2011.607654>

⁷ *Ibid*

disbelief, insensitive treatment, discouraging and preventing women from reporting to police, failure to provide private waiting rooms or report-taking facilities, failure to make adjustments to meet the physical and communication needs of people with disability, failure to provide victims with information on procedures and progress, long waiting periods and failure to object to inappropriate questioning⁸. This is not an exhaustive list but provides several examples of the kind of responses that can re-traumatise victims through the criminal justice process.

Within this context, the role of policing can be defined as the undertaking of law-enforcement activities and community based practices which seek to prevent primary and secondary victimisation⁹. This approach is consistent with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which specifically identifies the protection of victim's rights as an essential duty of the state; calling for crime prevention policies to be introduced to prevent criminal victimisation of individuals.

The actual secondary victimisation experience has a range of negative psychological consequences. Many victims of violent crimes are at risk of developing post-traumatic stress disorder and other psychological problems such as, depression, anxiety, substance abuse, low self-esteem, guilt and shame. Additionally, even when a person is the victim of a crime that does not constitute an explicit traumatic event such as a theft or household burglary, the negative psychological effects on the person's wellbeing can be significant; including doubts about the benevolence of the world and the trustworthiness of people, depression, anxiety and anger. It has been acknowledged that insensitivity of the criminal justice system to the victim's plight can contribute to or exacerbate their suffering¹⁰. This can further amplify pre-existing vulnerabilities experienced by the person such as mental health issues or disabilities, or compound the adverse impacts of barriers faced by individuals and communities, for example young people, Aboriginal communities or multicultural communities .

In summary, research and consultation identified the following key service delivery gaps and opportunities for improvement:

- **Information and support to victims of all crime types.** Victims want police to provide more information and greater support over the course of their journey through the criminal justice system. Victims are often required to 'chase' members for information¹¹ and the analysis of Victoria Police LEAP data reveals that large proportion members (over 50%) are failing to provide requisite information from the first point of contact. Further, victims are often not offered opportunities to be provided with further support over the course of their journey (referral to support via Victoria Police e-Referral system (VPeR)). This is particularly evident from the low numbers of applications for property Restraining Order applications received from police informants, with the view of servicing victim compensation/restitution.
- **Culture change.** The continued development of an organisational victim-centric culture is key to police providing victims with a greater level of service delivery. In order to develop such a culture, it is vital to train/educate members in victim-centric policing (preventative approach with early intervention), streamline or enhance process to generate 'buy in' and

⁸ Vetton, L, 2001, While Women Wait: Can specialist sexual offences courts and centres reduce secondary victimisation? *Needbank ISS Crime Index, Volume 5* (3), May-June.

⁹ Clark, M Opt Cit (2003)

¹⁰ Elliott, I., Thomas, S. and Oglloff, J. (2012). Procedural justice in contacts with the police: the perspective of victims of crime. *Police Practice and Research: An International Journal*, Vol. 13 (No. 5), pp. 437 – 449 Retrieved from <http://dx.doi.org/10.1080/15614263.2011.607659>

¹¹ Department of Justice and Regulation 2015, *A survey about how our justice system meets the needs of the community 2014*, Results, Melbourne.

recognise members engaging in good victim-centric policing practices. Culture change must be embedded with a top-down and bottom-up approach.

- **Compliance with legislative requirements.** Overall, compliance with legislative requirements is low, and we are unable to accurately measure and report upon the provision of service delivery to victims of crime. More effective governance and oversight needs to be applied in this area by Victoria Police.

Improving police service delivery to victims requires a significant commitment to organisational transformation, namely effective translation of victims’ rights into operational practice and represents a significant challenge. On 18 August 2015, Victoria Police publicly released its policy statement *Future Directions of Victim-Centric Policing* which is underpinned by a 3 year *Victim Centric-Service Delivery Strategic Approach* and yearly action plans.

Restoring the focus on victims, crime prevention and establishing the infrastructure and practices to support this will therefore be a priority over the next decade. It will also involve sustained stakeholder engagement to expand the understanding and expectations of police service beyond the traditional law and order debate. The strategy will focus on the following:

- treating victims with sensitivity, fairness, empathy, dignity and respect and providing support from the initial point of contact to closure of their matter
- providing victims with timely information that is tailored to their needs
- enhancing referral pathways to support services for victims and those in need of assistance with a focus on early intervention
- continuing to foster an organisational victim-centric culture that recognises victims and those in need of assistance as being of critical importance
- enabling our workforce to provide an enhanced level of service through education, training, the development of tools and processes and recognition of victim-centric policing practices
- working with stakeholders and government partners to deliver enhanced victim services and identify opportunities to empower victims.

Victoria Police will achieve these aims by:

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| Raising the organisational focus on victims and persons in need of assistance | To build a whole of organisation business model that ensures accountability to victims in accordance with legislative requirements |
| Providing timely and appropriate information to victims | To improve the timeliness, amount and quality of information provided to victims in accordance with the <i>Victims Charter Act 2006</i> . |
| Streamlining the process for referring victims and those in need of assistance to support | Raise awareness of the VPeR system and the benefits of making an appropriate referral to increase the quantity of referrals |
| Increasing opportunities to empower victims | Understand what victims need and work with our stakeholders to provide victims with greater options and outcomes |

VLRC Consultation Paper Questions

1. **Should the role of victims in the criminal trial process be that of protected witnesses, participating witnesses or prosecuting witnesses?**

The role of victims in the criminal trial process should be that of protected witnesses to ensure they are provided with as much protection and support in their role as a witness as possible. This must be balanced with the rights of the accused to a fair trial, as detailed in sections 24 and 25 of the *Charter of Human Rights and Responsibilities Act 2006*. However, it is accepted that the rights of the accused to a fair trial must be respected. An accused person is presumed innocent until proven guilty and has the right to cross-examine those who have made allegations against him or her. Victoria Police acknowledges the rights of an accused person but also notes that protective measures should allow sufficient and appropriate flexibility to address the individual needs of victims.

2. **Could victims have different roles at different stages of the trial?**

This approach could respect the differing needs and capacities of a victim while also balancing the right of the accused to a fair trial.

3. **If changes to attitudes and behaviour are needed to achieve the intent of legislative reform, how might those changes be achieved?**

As part of such reforms, enforcement mechanisms such as complaints or review procedures, can have a role in creating a culture of compliance within the legal profession. However, making a range of participatory victim rights enforceable by the victim throughout the criminal trial process (with consequences for the conduct of the trial if they are infringed upon) would be more effective.

Changes to attitudes and behaviour would also be facilitated by capability building to improve the understanding of police, court staff, legal representatives and judicial officers in identifying and addressing the needs of victims, including people from diverse backgrounds, people with disabilities, people with mental health issues, children and young people, Aboriginal people or people from multicultural communities.

The role of victims

4. **Should victims have a greater role in the decision to continue or discontinue a prosecution?**

Victims' rights should have a greater role in the decision to discontinue a prosecution.

In other countries victims' views are taken into consideration. In the United States, the Crime Victims' Rights Act (CVRA) of 2004 requires that victims are treated with fairness and their dignity respected. This had been taken to be satisfied only if a judge has heard the victim's views on the dismissal application.

In Victoria a prosecution may be discontinued by the Director at any time during proceedings, except during a trial. The *Victims' Charter Act 2006* (Vic) requires the prosecution to inform a victim as soon as reasonably practicable of a decision to discontinue. However, the DPP's

prosecutorial discretion policy goes further and requires that: The views of the informant and victims should be sought and recorded before a discontinuance is filed. Their views should be taken into account but are not determinative. The informant and victims should be provided with the decision to enter a discontinuance before it is publicly announced¹². The OPP Complaints Policy permits complaints from victims dissatisfied with a decision not to proceed with a prosecution. However, there is no publicly accessible DPP or OPP policy that sets out a process for internal review or the handling of a complaint seeking reconsideration of a decision to discontinue a prosecution.

5. If a victim wants to withdraw their complaint, should this determine whether the prosecution continues?

Unfortunately, victims are often reluctant to participate in criminal proceedings, which can lead to them seeking to withdraw their complaint. This reluctance is often as a result of a system that does not respect their rights. However every case is different and in determining whether the prosecution continues with balancing the needs of victim as well as the public interest should be considered.

6. Should a victim be able to require a prosecution to proceed where the DPP decides it should be discontinued?

As per the answer to Q4, the rights of the victim should be considered and the decision should be reviewable.

7. Should victims have a greater role in the decision to accept a plea of guilty after plea negotiations?

The Charter requires prosecutors to inform victims about a decision to:

- accept a plea of guilty to a lesser offence
- substantially alter charges
- not proceed with some or all charges.

However, these obligations are not enforceable and in any case only require the victim be informed of the decision after it has been made. There is no statutory requirement for the victim to be involved in the process leading to the plea agreement. While victims can complain about a lack of consultation in accordance with the OPP Complaints Policy, there are no implications for the subsequent sentencing proceedings.

Where a victim is aware that assets belonging to an accused person have been restrained by the DPP for the purpose of satisfying a possible compensation order in the event that the accused is convicted of the offence, the victim may consider it a relevant factor in considering whether to accept a plea of guilty to only one, some or lesser charges.

This is clearly not ideal and may result in a victim refusing to accept a plea offer to a lesser charge due to monetary/financial considerations. In addition, it may result in wealthier accused persons effectively paying their way out of a jail term.

¹² Director of Public Prosecutions Victoria, *Director's Policy: Prosecutorial Discretion* (24 November 2014)

Consultation

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?

There is currently very little or no consultation with victims in the making of decisions arising from plea negotiations, despite Director Public Prosecutions Victoria, *Director's Policy: Resolution* stating that when considering a plea of guilty, a prosecutor must have regard to the views of the victim and consult with the victim prior to the resolution of a prosecution. Additionally, it is concerning that decisions about the discontinuation of charges are made based on presumptions regarding the quality of evidence provided by a victim, in particular victims with cognitive or communication disabilities or young people.

Furthermore, there is no redress or review process relating to such decisions. For a process to be fair it needs to be inclusive and reviewable.

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?

As per the response to Q8, a fair process should be inclusive and reviewable.

10. Should victims be given the opportunity to access legal advice or representation during any consultation with the prosecution?

The legal system is complex and victims' rights should be considered and advocated. The criminal trial process needs to respect the legitimate rights of accused persons as well as equally respecting and fulfilling the rights of victims and of the community.

In addition to access to legal advice or representation, it is important to note that some victims may require additional and independent support and advocacy to navigate criminal justice processes. For example, under Victoria Police policy an independent third person is to attend an interview with an accused person with cognitive disabilities. Such supports could also be extended to victims at all stages, including through the criminal trial process.

Review of decisions

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?

In England and Wales victims can apply to the courts for judicial review of a decision by the Crown Prosecution Service (CPS) to prosecute or not to prosecute. Victims have been successful where they have been able to show that the law has not been properly applied, that evidence has not been properly considered, that CPS policy has not been applied, or that a previous court or coronial decision has not been carefully considered. Likewise in the consideration of a reform the process needs to be transparent and fair and a decision should be reviewable.

Alternative procedures

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?

If the restorative justice approach focuses on the offender acknowledging the harm caused, as narrated by the victim, and seeking to repair that harm, it might constitute an alternative means of giving victims some autonomy and fulfilling their justice needs.

However, a significant issue is ensuring that a victim's choice to pursue restorative justice is informed and made freely, and is not a second-best option. Additionally, any consideration of alternative processes should consider the impact on both victims and accused persons, particularly those that experience vulnerabilities that impose barriers to participating on an equal footing in restorative processes. Cultural considerations, are important here, particularly where preferred methods of negotiation and conflict resolution is through communication, for example Aboriginal Circle Sentencing practices and associated restorative justice practices.

Further, there may also be issues in relation to the evidentiary weight that could be placed upon an accused person acknowledging the harm caused to a victim under a restorative justice model in a situation where an accused's assets have been restrained for the purposes of compensating the victim (refer to response to Q43 for more detail). A victim's decision to pursue restorative justice could also affect any civil proceedings commenced by a victim. If a victim chose to pursue restorative justice avenues at the beginning of an investigation by police, then police would have no legislative authority to restrain assets of the accused for the purposes of compensation. In the event that after charges were filed, the prosecution was on foot and then the victim chose to pursue restorative justice avenues, then any restraining order in place would need to be set aside, as there would be no legal authority to restrain the assets. However, if it was legislated that the acknowledgement by the accused could be used applications for compensation (whether under section 85B of the *Sentencing Act 1991*(Vic) or under the Common Law), then the victim's rights to pursue compensation directly from the accused could be maintained under this model.

In addition, when a restraining order is sought by the DPP (in the County or Supreme Courts) or Victoria Police (in the Magistrates' Court), the court hearing the application can refuse to make the restraining order unless the DPP or Victoria Police refuse or fail to provide an undertaking

to the court concerning the payment of damages or costs that the respondent (or accused) may incur, due to the making and operation of the order. Unless changes were made to the *Confiscation Act 1997* to allow the restraint of assets to assist in restorative justice being achieved, then a victim that chooses to engage in restorative justice processes rather than the trial process, will lose the right to seek compensation directly from the offender (under the *Sentencing Act 1991* (Vic)). The State may also be liable for costs as a consequence of the undertaking given at the time of the restraining order was made.

Consultation

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?

Just as victims are required to be provided with information about general prosecution processes, in the interests of fairness and inclusivity, they should also be required to be consulted in circumstances such as those posed in the question.

Firstly, there is a difference between consulting victims of a summary jurisdiction application and consulting a victim in relation to an application to cross-examine a witness. Unquestionably, a victim should be consulted if defence have made a summary jurisdiction application. A victim's views in relation to the application can be submitted to the court, under section 29(2)(d) of the *Criminal Procedure Act 2009*. Consultation with victims in relation to summary jurisdiction applications are important as many victims may judge both the community and the court's view of the seriousness of the offence based on the court in which the matter is heard.

In relation to applications to cross-examine a witness, there is a fine line between the prosecution supporting victims and witnesses and then maintaining the integrity of the investigation. In a Form 32, defence practitioners are required to outline what prosecution witnesses they are seeking to cross-examine and to detail the issue in dispute and then to provide reasons as to why the calling of that witness is justified.¹³ To require the prosecution to seek the victim's view on each witness to be called at the committal may result in the entire prosecution being tainted. This is because a victim on becoming aware of what another witness has stated, may approach that other witness or change their own evidence. In a number of cases, victims are not even aware of who the other witnesses are in their matters, so in order for their views to be considered, they would need to be aware of what evidence that witness is to give and how that witness is relevant to the case. This will require a balance between victims' rights and the integrity of the investigation. Consultation should occur except where it may jeopardise the investigation.

14. Are measures required to ensure that the prosecution fulfils consultation obligations?

There are currently no measures to ensure that consultation with the victim occurs.

¹³ Section 119, *Criminal Procedure Act 2009*

The role of the victim in proceedings

15. Should victims have a role in relation to applications for summary jurisdiction or applications to cross-examine witnesses at a committal hearing?

The level of consultation with or participation of victims in such applications can vary for each person. What may be restorative for one victim could be secondary victimisation for another. One option for ensuring that consultation with victims by prosecutors is meaningful and that their participation is effective is to allow victims to obtain independent legal advice or be legally represented to ensure their rights are protected.

16. Should victims have a role during the committal hearing? If so, what should this role be?

Refer to response provided to Q15.

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?

Refer to response provided to Q15.

Protected-witness measures

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?

As stated previously, each victim's experience is different, however reducing the number of times a victim gives evidence is preferable in all instances. The criteria for measuring a victim's needs should not be restricted to factors such as the type of offence, the victim's age or the victim's cognitive ability (although these are important considerations). The individual needs of each victim should be considered and appropriately addressed to minimise any adverse impacts of evidentiary processes.

Cross-examination of child witnesses should be done as close to the statement as possible. Currently in Victoria, as in many jurisdictions around the world, children's witness evidence in sexual and serious physical assault cases is recorded via police interview as proximal to the event as possible. The evidence then forms the evidence in chief at Court. This is done to capture the best evidence possible, under the most favourable conditions in recognition of the vulnerability of children's developing memory. These preferable conditions include minimising the delay between the incident and the child recalling it, the child being interviewed by a

specially trained professional (in Victoria – this is a specially qualified Police member) using techniques proven by research to minimise memory errors and memory contamination, and in an environment that is psychologically safe. This furthers the pursuit of justice whilst simultaneously protecting the vulnerable witness from some of the negative consequences associated with giving evidence at court.

Increasingly, jurisdictions across the globe are recognising that the dual goals of the pursuit of justice and the protection of vulnerable witnesses are undermined by court practices relating to cross examination. Cross examination often occurs a significant time after the initial report, it is often conducted by professionals who are untrained in eliciting accurate memory recall and using the very questions and techniques that research demonstrates dramatically increases memory errors and contamination. It also occurs in an environment that is perceived as unsafe by witnesses.

Victoria Police recommends that the VLRC investigate international models that seek to enhance the quality of evidence elicited during cross examination of vulnerable witnesses, such as the use of specially trained professionals conducting and recording the cross examination at the same time as the Visual Audio Recorded Evidence (VARE) interview is conducted.

Since the early 1990's, Victoria has recorded the statement made by child complainants in sexual offences and serious physical assault matters. Pursuant to division 5 of the Criminal Procedure Act 2009 (Vic), these provisions also apply to persons with a cognitive impairment. This was introduced in recognition of the challenges facing these vulnerable groups in participating in the criminal justice system.

Since that time, a growing body of research has demonstrated that adult complainants of sexual offences face extra-ordinary challenges in their contact with the criminal justice process. For example, the delay in a sexual offence matter progressing to trial affects adult victims just as much as child victims, sometimes more. An adult victim of sexual assault is encouraged to seek counselling and psychological assistance in relation to the offence in an attempt for him or her to return to some sort of 'normal life,' yet at the same time they are expected to remember every single detail of the event two years down the track. It is simply contradictory and is the basis of many victims' complaints in respect to the criminal trial process.

There is a growing use of video recording technology in the taking of a complainant's statement and its subsequent use as evidence in chief around the world. It has been shown to increase victim satisfaction whilst simultaneously, allowing the collection of better quality evidence with the shortest delay and provides a more accurate record of the typed statement.

Victoria Police recommends that the VLRC investigate the feasibility of introducing legislative amendments to extend the use of the VARE process for adult complainants in indictable sexual offence matters.

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?

Refer to response provided for Q 18.

It is noted that s. 366 of the *Criminal Procedures Act 2009* (Vic) provides for a person with cognitive impairment that is a victim or witness of a sexual offence or an indictable offence which involves an assault on, or injury or a threat of injury to, a person, to have their statement taken by way of a VARE interview.

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?

This could reduce the number of times a victim is required to give evidence and the way in which evidence is gathered, thus the use of pre-recorded evidence, for example, video-recording the evidence of victims, could be a measure most likely to provide courts with the best evidence and meet the needs of vulnerable and intimidated witnesses. Accordingly any initiative which would assist in the reduction of times a victim is required to be subjected to a court process would be supported.

Role of victims—confidential communications

21. Are victims exercising their right to appear in relation to confidential communications applications? If not, why not and how might that be addressed?

In Victoria, victims' rights are not adequately respected or upheld. Confidential communications may be sought by an accused in preparation for, and for use in, all stages of a criminal trial. Records of communications between sexual assault victims and the professionals counselling or treating them can provide for some degree of victim participation without attendance. However there is no obligation to serve the notice on the victim or for the victim to be informed that the application is being made. Furthermore a victim cannot appeal the decision of a judge to allow an accused to access or use evidence from a confidential communication.

In some other states (including New South Wales and Tasmania) and in Canada and the United States, greater safeguards are provided to ensure that victims are aware of their rights in relation to protected confidences, having had reasonable opportunity to obtain legal advice. Having the opportunity to appeal should also be a priority.

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?

Refer to response to Q21.

Role of victims—pre-trial proceedings generally

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?

Pre-trial proceedings can have significant consequences for victims. For example, where a decision is made to hold separate trials, which means that the victim will have to give evidence more than once. The pre-trial phase can significantly impact on how victims experience the trial itself, yet there is no provision in the *Criminal Procedure Act 2009* (Vic) for the victim to have a role other than as a witness during any pre-trial application for separate trials.

Currently victims have no role in any of the pre-trial matters, apart from applications relating to confidential communications, and if relevant, as a witness. They have no role in initial directions hearings and no role in final directions hearings. The right of the accused to know what evidence will be used by the prosecution in the proceedings, as well as material that is relevant but not being used is a longstanding principle in adversarial criminal justice systems. There is no equivalent obligation to disclose evidence to the victim.

Whether it be standing to appear where interests are affected or increased obligations on prosecutors or judges, victims' rights should be foremost in the debate. The personal interests of victims would need to be extended. If victims are allowed to appear or to have standing in all or some pre-trial applications, it may be necessary to ensure victims have access to legal advice and representation to minimise the conflict of interest with the prosecutor.

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?

The criminal trial process needs to respect the legitimate rights of accused persons and also respect and fulfil the needs and rights of victims and of the community. These sets of rights should be equally respected.

25. How might any role for victims in pre-trial proceedings impact on or relate to the role of victims during the jury trial?

In Victoria, the aim is for victims to play a limited role in some pre-trial proceedings, and in the context of matters related to sexual offences, to protect victims from cross-examination about their sexual history.

The purposes of the directions hearings are to make any necessary orders for the fair and efficient conduct of the proceedings. These pre-trial procedures play an important role in shaping the future conduct of the trial by narrowing the issues and evidence in dispute and setting the limits on what evidence can be used.

The exclusion of the victim in pre-trial proceedings does not properly respect the rights of the victim. Treating victims fairly and providing them with information about court process to ensure that a victim is informed of the court process and their entitlements to attend proceedings is clearly articulated in the Charter. It is integral that this information be provided in ways that meet the communication needs of the victim, for example through the use of interpreters and accessible formats where the victim has an intellectual or cognitive disability.

Furthermore, information regarding the prosecution is to be given to the victim as soon as reasonably practicable. Failure to provide victims with information on procedures and progress, long waiting periods and failure to object to inappropriate questioning are some examples of causes of secondary victimisation. This is not an exhaustive list but provides several examples of the kind of responses that can re-traumatise victims through the criminal justice process.

A pilot study in New Zealand on the educational process for juries found that non-case specific education given to juries before the commencement of a trial often resulted in jurors developing fewer myths and misconceptions about child sexual abuse matters. Victoria Police believes that consideration should be given towards introducing similar trials in Australian jurisdictions to determine whether the knowledge of juries in relation to child abuse matters could be improved prior to the commencement of trials.

Similar processes could also be considered in relation to matters involving sexual offences against victims with cognitive or intellectual disabilities to build the capability of jurors in relation to any assumptions about the behaviours of people with these disabilities.

26. If victims are to have a participating-witness or prosecuting-witness role, should the state provide legal representation for victims?

Respecting the rights for victims will give rise to the need for victims to have access to legal advice and representation. One of the functions of a Victims of Crime Commissioner might be to play an intermediary role between the prosecutor and the victim, and to provide or fund independent legal advice for victims for pre-trial procedures in appropriate circumstances.

In addition, consideration could be given to the provision of non-legal support to vulnerable victims, such as people with mental health issues, people with disability, Aboriginal people or people from culturally and linguistically diverse communities. It is to be noted that the Child Witness Service provides this support to young people who have been victims of, or witnesses to, violent crimes. Consideration could be given to the expansion of similar support to victims and witnesses with specific needs and at risk of experiencing additional barriers in their interactions with the criminal trial processes.

Pre-trial restorative justice procedures

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?

Giving victims the choice to participate in restorative justice processes in the pre-trial phase, with adequate safeguards might provide an innovative measure to address victims' needs for empowerment.

Restorative justice in the pre-trial phase need not preclude a matter proceeding to a criminal trial. Such processes known as 'alternative dispute resolution' (ADR) aim to resolve the conflict between the parties without the need for a trial, thereby reducing the cost, time and stress often associated with legal proceedings.

In some other countries all victims are given the right, in principle, to request a restorative justice conference at any time during the criminal proceedings.

It is acknowledged that restorative justice procedures raises complex legal and social issues about the aims of the criminal justice system, the rights of offenders, the rights and needs of victims and how to address causes of offending. Also that the capacity of some victims, for example young people, people with mental health issues, people with disability, and people from culturally and linguistically diverse communities, to make truly independent and informed decisions may also be compromised, particularly when the offending involves family violence or sexual offending and the perpetrator is known to the victim, or where the victim may not be able to communicate the impacts of the offence. If restorative justice procedures were available as a pre-trial option, there are certain offences, victims and offenders for which such procedures may be assessed as unsuitable.

Furthermore, any consideration of alternative processes should consider the impact on both victims and accused persons, particularly those that experience vulnerabilities that impose barriers to participating on an equal footing in restorative processes. It is also as equally important to recognise that restorative practices for some communities and cultures are preferable to more traditional justice approaches and where possible opportunities to include such cultural considerations would enhance the justice outcomes for victims and offenders

However, there may also be issues in relation to the evidentiary weight that could be placed upon an accused person acknowledging the harm caused, under a restorative justice model, if an accused's assets have been restrained for the purposes of victim's compensation (refer to response to Q43 for further detail). This could also affect any civil proceedings commenced by a victim. If a victim chose to pursue restorative justice avenues at the beginning of an investigation by police, then police would have no legislative authority to restrain assets of the accused for the purposes of compensation. In the event that after charges were filed, the prosecution was on foot and then the victim chose to pursue restorative justice avenues, then any restraining order in place would be need to be set aside, as there would be no legal authority to restrain the assets. However, if it was legislated that the acknowledgement by the accused could be used applications for compensation (whether under section 85B of the *Sentencing Act 1991* (Vic) or under the Common Law), then the victim's rights to pursue compensation directly from the accused could be maintained under this model.

It may also be suggested to a victim that the only reason why they were not interested in the restorative justice process was because they would receive less compensation, either from the offender directly or from VOCAT.

When a restraining order is sought by the DPP (in the County or Supreme Courts) or Victoria Police (in the Magistrates' Court), the court hearing the application can refuse to make the restraining order unless the DPP or Victoria Police refuse or fail to provide an undertaking to the court concerning the payment of damages or costs that the respondent (or accused) may incur, due to the making and operation of the order. Unless changes were made to the *Confiscation Act 1997* (Vic) to allow the restraint of assets to assist in restorative justice being achieved, then a victim who chooses to engage in restorative justice processes rather than the trial process, will lose the right to seek compensation directly from the offender (under the *Sentencing Act 1991* (Vic)) and the State may also be liable for costs, given the undertaking given at the time of the restraining order was made.

Pre Charge Diversion trial for summary offences:

In 2014-15, we commenced a Pre-Charge Diversion Pilot aimed at establishing a broader policy basis for our police officers to exercise their discretion to officially warn, rather than charge, an accused offender. Applicable to adult offenders and certain offence types only, the pilot is complementary to existing diversion approaches within Victoria Police, including our Illicit Drug Strategy released in 2007. This process affords victims the opportunity to achieve a timely outcome with a focus on their needs and priorities (for example, restitution or charitable donation) and allows an offender to avoid a criminal record whilst reducing demand on the court system. The program has already seen a reduction in demands on judicial and police resources, and increases in customer satisfaction with promising results also recorded in timeliness, customer satisfaction, restitution and recidivism.

Protective measures

28. Are the protective procedures for the taking of evidence from vulnerable victims appropriate and effective?

All Australian jurisdictions have in place some measures to protect witnesses, including victims, who may find the experience of giving evidence during a trial particularly challenging or distressing. All Australian jurisdictions also have in place rules that prohibit questioning that might cause victims distress, embarrassment, humiliation or difficulty. However there is no general obligation on the judge to treat the victim differently to any other witness during the trial which is problematic.

In relation to sexual offence matters, it is noted that whilst many judicial officers have a strong knowledge base around relationship based crime and sexual offending, decisions in both lower and higher courts, as well as the appeals court, demonstrate a continued reliance on myth, misconception and outdated knowledge base when commenting on sexual offending adjudications. Whilst the 'problem' of delayed complaint has finally been addressed as an issue that had been over emphasised there are a number of other issues to consider such as: offending in proximity to others; returning to the offender's presence 'voluntarily'; seemingly 'initiating' offences; as well as the use of tactics to question 'credibility' of a vulnerable or

traumatised victim which will continue to diminish the courts ability to improve outcomes for victims.

Judges are obliged by the *Criminal Procedure Act 2009* (Vic) to order that various protective procedures be put in place for victims of sexual offences and other vulnerable witnesses. These procedures are limiting and should be expanded to recognise the rights of all victims. All witnesses are entitled to request that they give their evidence remotely (s42D & s42E of the *Evidence (Miscellaneous Provisions) Act 1958*) however it is only mandatory in sexual assault matters.

It is noted that for judicial officers to make such orders they, as well as court staff and legal representatives, must first be able to be cognisant of the individual needs of victims. This may require judicial officers and other professionals involved in the criminal justice system to actively inquire as to the needs of the individual and then enable court processes to be flexible to address those needs. This would be facilitated by building capability to improve the understanding of police, court staff, legal representatives and judicial officers in identifying and addressing the needs of victims, including people from diverse backgrounds, such as people with disabilities, people with mental health issues, children and young people, Aboriginal people or people from multicultural communities. For example, VEOHRC is currently engaging in a project with the Judicial College of Victoria to develop a Disability Access Bench Book which is intended to include information on different kinds of disabilities, relevant laws and guidance on making appropriate adjustments to court processes.

Further consideration could be given to more effective use of expert witnesses in child abuse matters to improve understanding about the nature of sexual offending, as jurors may lack knowledge about the complex nature of child abuse and the impact on victim behaviour and memory. Increasing their understanding about these matters will reduce the likelihood of any myths or misconceptions that may impact on their decision making, which can result in improved court outcomes and experiences for victims.

The judge also has the power to control the way the prosecutor and the accused's lawyer question a victim while giving evidence. The *Evidence Act 2008* (Vic) gives the trial judge the power and the duty to ensure that questioning of all witnesses, including victims, during the trial is respectful and proper¹⁴. The judge may stop lawyers from asking an improper question or questioning the victim in an improper way during cross-examination. For vulnerable victims, the judge must stop lawyers from asking improper questions in cross-examination, unless the court is satisfied that, in all the relevant circumstances of the case, it is necessary for the question to be put. Australian courts have emphasised the importance of taking into account the effect of cross-examination on a victim when deciding whether to prohibit a particular question or line of questioning. However, this is not effective in protecting victims' rights. The fact that the victim is present and subjected to such treatment before a decision is made can be detrimental. Also the victim does not have any person protecting their interests and decisions can be made without inclusion or for the opportunity to review such decision.

¹⁴ Evidence Act 2008 (Vic) s 26

29. Should the current protective measures for vulnerable witnesses be extended to other categories of victim, or to victims of other types of offence?

Refer to response to Q28.

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 re-traumatisation?

The existing evidentiary provisions being used, or enforced by judges, to prevent inappropriate questioning is not sufficient. There are other considerations that would prevent the risk of re-traumatising a victim such as:

- Special hearings for taking trial evidence as utilised in South Australia that permits the evidence of all victims to be pre-recorded, where the judge considers it necessary to protect the victim from distress, embarrassment or intimidation by the courtroom.
- The use of the recorded evidence of a victim in other proceedings where the judge cannot order the victim to give evidence at the retrial.
- The use of intermediaries, such as independent persons, to facilitate communication between the vulnerable victim and the prosecutor or the accused's lawyer, so that the questions that are asked are in a way that the victim can understand to enhance the evidence being provided. This may also require options to allow access to communication aids and devices to meet the needs of the victims.

31. Should Victoria introduce an intermediary scheme? If so, for which victims? What functions should an intermediary perform?

There is a wealth of evidence that the way that cross-examination has traditionally been conducted is particularly unfair to child victims and other vulnerable victims. The intermediary's role can take a number of forms, although the central function is to facilitate communication between the vulnerable victim and the prosecutor or the accused's lawyer, so that questions are asked in a way that the victim can understand, the victim is supported in understanding court and trial processes, and the court is assisted in its awareness of the needs of the victims.

Intermediaries are not victim-advocates or support people; their primary purpose is to ensure the court receives the best evidence from these victims. Notably, when making a decision to appoint an intermediary, the judge should take the views of the victim-witness into account.

Participatory and prosecutorial roles for victims

32. Should victims be able to participate during trial proceedings? If so, how and when might this participation be exercised? Who should provide representation?

Proposals for greater victim participation during the trial should be facilitated and this would generally involve the exercise of victim participation through a legal representative or advocate.

A limited role for lawyers representing victims could involve facilitating victims' participation outside the courtroom, through for example, providing legal advice, information and assistance, and consulting with the prosecutor. A broader proposal might allow victims to be represented by a lawyer or a 'victim advocate' both outside and inside the courtroom, but only on matters that demonstrably affect their interests or rights.

Limiting the intervention of victims during the trial to matters where the victim has a demonstrable personal right or interest may mean that victims avoid exercising quintessentially prosecutorial functions, such as cross-examining witnesses or introducing evidence.

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?

Refer to response to Q 32.

34. Are there aspects of inquisitorial trial procedures which could be adopted in Victoria?

Victims can generally be involved in one of three main ways: as a civil party, auxiliary prosecutor or as a legally represented victim-witness. In order to best represent victim rights and to not complicate the criminal trial process with introducing another level of advocacy or undermine the presumption of innocence, it would be recommended that there be independent lawyers for victims. In several European jurisdictions, including Sweden, Denmark, Iceland and Norway, victims are permitted to have lawyers to assist them throughout the criminal trial process¹⁵ for crimes involving sexual violence and other crimes against the person, such as assaults, murder, manslaughter and attempted murder.

The role of independent lawyers is to provide support and to protect the victim's interests. In Norway, victims' lawyers can be present in court throughout the trial. When the victim is being questioned, the victim's lawyer can pose additional questions to clarify the victim's evidence, and can object to questioning that is irrelevant or not appropriate. Victims' lawyers are permitted to make submissions regarding procedural matters that concern the victim, including asking for the accused to leave the room during the victim's evidence, and requesting that the court be closed to the public.

¹⁵ See generally Marion E Brienen and Ernestine H Hoegen, *Victims of Crime in 22 European Criminal Justice Systems* (Wolf Legal Publishers, 2001) 218–20 (Denmark), 441–2 (Iceland), 738–40 (Norway), 891–2 (Sweden).

The victim's role in sentencing and the purposes of sentencing

35. Should the victim have a greater role in sentencing? If so, what should that role be?

In Victoria, victims can only participate in the criminal trial process in the sentencing hearing through the provision of a Victim Impact Statement (VIS). The value of this limited participation is questionable. The Victorian Court of Appeal has held that the purpose of a VIS is to ensure that the courts are aware of the impact of the crime on the victim and to 'involve victims in the workings of the criminal justice system.'¹⁶ Victims report feeling confused about the role the VIS plays in sentencing and feel that their statement should have been given greater weight by the judge.

In section 1 of the *Sentencing Act 1991*, the purposes of the Act are specified. Only one of these purposes refers to victims. Section (1)(i) specifies one of the purposes is, 'to ensure that victims of crime receive adequate compensation and restitution' Sentencing guidelines are then listed in section 5 of the Act. In this section, the only purposes for which sentences may be imposed are punishment, deterrence, rehabilitation, denunciation and the protection of the community. Pursuant to sections 5(2)(daa), (da) and (db), the sentencing court **must** have regard to the impact of the offence on any victim of the offence, the personal circumstances of any victim of the offence and any injury, loss or damage resulting directly from the offence.

Despite the mandatory requirement for the sentencing court to take into account the effects of the offending on the victim, many judicial officers do not spend much time in their sentencing remarks addressing the impact or directing their remarks to the victim.

Victims should be involved in the criminal justice process inclusive of sentencing, which may lead to therapeutic, emotional or psychological benefits for victims and improve their satisfaction with the criminal justice system. It would afford victims dignity and respect by providing a form of official acknowledgment and recognising them as having a legitimate interest in the criminal trial process.

36. Should the purposes of sentencing explicitly include the needs and interests of victims?

Refer to response to Q35.

Victim Impact Statements

A consistent issue particularly in summary jurisdiction, although it is acknowledged not part of the VLRC review, is the disclosure of VIS prior to sentencing and the potential for the victim to be cross-examined on the VIS in the event that the matter proceeds to a hearing. Ideally, a VIS wouldn't be made until after a plea of guilty has been entered. However, in the fast-paced summary jurisdiction, except in very serious matters, the court will usually not entertain an adjournment for the purposes of obtaining a VIS. Therefore if a VIS is to be tendered, particularly following a plea of guilty in the mention court, the prosecutor is required to have the VIS in their possession prior to the plea being entered. As soon as police obtain the VIS, the

¹⁶ R v Dowlan [1998] VR123

document becomes discloseable. It would greatly assist if there was a legislative provision that prohibited the use of the VIS for any other purpose other than during sentencing of the offender.

37. Should further limits be placed on the publication and distribution of victim impact statements?

Victoria is the only jurisdiction that requires VIS to be disclosed to the prosecution and defence within a 'reasonable time' before the sentencing hearing. In New South Wales and Western Australia, the judge retains discretion. In Victoria the content of VIS can be tested, that is, the prosecution or the offender can request the judge to order that the victim give evidence and be cross-examined about the content of their statement. This also applies to any person who made a VIS on behalf of the victim, or any medical expert whose report is attached to the VIS. In some circumstances, the details of a VIS can be kept private. However in most instances there should be limited distribution and control regarding how the offender can request that the content be tested.

38. Should a broader group of victims be permitted to make victim impact statements?

Section 3 of the *Sentencing Act 1991* (Vic) defines a victim as '*a person who, or body that has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender.*' Currently, a VIS can be made by an immediate (primary) victim, family and friends of the immediate victim, and any member of the community who has witnessed the offence and has suffered injury, loss or damage as a direct result of the offence. Whilst a broad group of victims are already permitted to make a VIS, it is generally only a primary victims' VIS that is accepted by presiding Magistrates or Judges.

39. Should community impact statements be introduced?

As the *Sentencing Act 1991* (Vic) defines a victim inclusive of the local community then the answer should be yes. In South Australia, community impact statements may be provided¹⁷. A prosecutor or the Commissioner for Victims' Rights may submit a community impact statement to the court. Any person may make a submission to the Commissioner for Victims' Rights if they wish to provide information.

40. Should victims be permitted to make submissions in relation to sentencing?

Victims should be represented by their own lawyer during the sentencing hearing. An evaluation of VIS reforms in Victoria by the Department of Justice in 2014 noted that:

Considering some of the difficulties faced by prosecutors in advancing the interests of both the State and of the victim, and the associated tensions that have arisen with respect to victim impact statements and victims' expectations that prosecutors would 'advocate' for

¹⁷ Loukas Founten, '*Lana Towers Murder: Impact of Domestic Violence Extends to Community, Court Told*', ABC news (online), 7 November 2014<<http://www.abc.net.au/news/2014-11-07/victims-of-crime-commissioner-social-impact-statement/5874916>>

their rights, it might be timely to explore the role of victim advocates or victim representatives at the sentencing phase of the criminal trial.¹⁸

41. What should be the role of the prosecutor in preparing victim impact statements?

Refer to response to Q40.

Restorative justice sentencing procedures

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?

In appropriate circumstances, restorative justice has the potential to address many of the justice needs of victims that are not catered for by traditional sentencing procedures. Magistrates' Courts across Australia, present an alternative or complementary sentencing path to the traditional sentencing hearing. These can be effective in meeting the needs and interests of victims. Other jurisdictions have long recognised the limitations of adversarial systems in dealing with relationship based crime, leading to the adoption of restorative justice models. As most complainants to police will not have their case heard by a court, restorative models, with their victim-centric focus, should be considered in Victoria.

As noted above, the capacity of some victims, for example young people, people with mental health issues, people with disability, and people from culturally and linguistically diverse communities, to make truly independent and informed decisions may also be compromised. Furthermore, any consideration of restorative justice processes should consider the impact on both victims and accused persons, particularly those that experience vulnerabilities that impose barriers to participating on an equal footing in restorative processes. Accordingly, the suitability for participation in any alternative or supplementary restorative justice sentencing procedures should be assessed in relation to both the accused person and victim's safety and capacity to participate.

43. Do processes set out in Part 4 of the *Sentencing Act 1991 (Vic)* deliver on the aim of a swifter, less complex avenue for victim compensation? Are any changes needed to improve outcomes for victims?

The *Sentencing Act 1991 (Vic)* compensation provisions are intended to provide a quick, efficient and cheap means for the recovery of civil recompense by victims however this aim is not always achieved. Compensation orders are not intended to constitute punishment and are intended to restore the damage or loss experienced by a victim and therefore there is tension between the interests of the offender in not being left with a crushing financial burden and the interests of victims in accessing adequate compensation through the sentencing process.

¹⁸ Department of Justice, *Victim Impact Statement Reforms in Victoria: Interim Implementation Report* (Victorian Government, 2014) 5-6, 20, 44, 62-4.

While the processes set out in Part 4 of the *Sentencing Act 1991* (Vic) theoretically offer a swifter, less complex avenue for victim compensation, the practical difficulty faced by victims is the necessity to engage private solicitors to make the applications, given the DPP's current policy regarding the circumstances in which the DPP will make the application.

Additionally, as highlighted in paragraphs 10.15-10.27 of the consultation paper, the application of the Part 4 provisions have been modified by common law and consequently may discriminate against victims contrary to s 8(3) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). For example, where a compensation order would result in undue hardship for the offender or the dependants of the offender, the court may choose not to grant a compensation order commensurate with the loss to the victim. This may have the unintended consequence of creating undue hardship for the victim instead. To avoid this unfair discrimination, the victim's interests in receiving an appropriate order for compensation should take priority.

What is not discussed or mentioned in the Consultation Paper, is the power of the DPP to restrain an accused's person's assets, for the purpose of satisfying any restitution or compensation order made under section 85, 85B or 86 of the *Sentencing Act 1991* (Vic).

Under the *Victim's Charter Act 2006* (Vic), Victoria Police are required to inform victims of their right to seek compensation directly from an accused person. If a victim indicates that they will seek compensation directly from an accused if the accused is convicted, then depending on the offence, Victoria Police can investigate to determine if the accused person has any assets that may be restrained for the purpose of satisfying a restitution or compensation order made pursuant to sections 85, 85B or 86 of the *Sentencing Act 1991* (Vic). However, a restraining order can only be made if the court is satisfied that an application has been or is likely to be made by the victim and that the order of the court is likely to be over \$10,000. Therefore, the victim is required to make this decision very early into the police investigation.

Given Victoria Police's commitment to improving police service delivery to victims, training to over 1700 police members across the State has been provided specifically in relation to the power to investigate and then restrain an accused's person's assets. As a result of this training, the Criminal Proceeds Squad of Victoria Police has seen a small increase in the number of queries made from regional police members, specifically members stationed at Sexual Offence and Child Abuse Units, in relation to restraining an accused's assets either prior to or just after charging the accused.

In most cases, the asset restrained is real property. Only the DPP has the power to apply for restraining orders over real property. In most circumstances, the assets are restrained soon after an accused is charged. If an accused is convicted of the offence, then the victim can apply to the court within 12 months of the date of conviction, for an order requiring the offender pay compensation to the victim.

However, an appeal of a restitution or compensation order can only be made by the DPP and only in cases where the DPP is satisfied that an error has occurred and that it is in the public interest to appeal. Victims themselves do not have a statutory right to appeal.

In addition, the failure of an offender to fulfil a compensation order or a restitution order that requires payment of a sum of money, results in a judgment debt. Also the failure to fulfil a

compensation or restitution order will not impact on the offender's sentence. A judgment debt can then be enforced through the civil jurisdiction of the court that made the order.

When the victim is not satisfied with the outcome they can pursue compensation for loss and injury directly from an offender to sue for tortious damages in the civil jurisdiction of the court. Civil litigation can be a difficult process, requiring understanding of rules of evidence, legal principles, disclosure obligations and costs rules requiring potential legal representation.

The changes that need to occur are to ensure a fairer outcome for the victim such as a reparation order in New Zealand. As this is made as a sentencing order it is enforceable in the same way as a fine. Also the fact that a victim of crime can seek financial assistance through the *Accident Compensation Act 2001* (NZ). What is covered by the Accident Compensation Act is then excluded from reparation orders. This ensures that in one way or another the victim receives appropriate compensation in a timely way.

The DPP's policy of not applying for compensation or restitution orders unless the application is not opposed by the offender is also contrary to the intent of Part 4 of the *Sentencing Act 1991*. An example of this was a case before the court involving a plea by the accused to theft from the victim of the value of approximately \$650,000. Counsel for the accused did not agree to a compensation order for the \$650,000. Consequently the OPP solicitor did not apply to the court for a restitution order. This caused considerable stress to the victim.

Fortunately on the day the plea was heard the judge questioned Counsel for the OPP why there was no application before the Court in relation to restitution. Counsel for the OPP stated that there was no agreement between both parties in relation to the amount of restitution hence there was no application. Her Honour stated that she had just heard the accused plea to a number of thefts and the amount of money stolen by the accused. Her Honour then asked the defence instructing solicitor if she had been present in the Court and heard the accused's pleas to the counts of theft and the amount involved. Her Honour stated that there was therefore agreement in relation to the amount and the OPP was to have the documents relating to the restitution application delivered to her associate after lunch.

The judge subsequently ordered restitution for the full amount pleaded to in the presentment. Without the judge's active intervention, the victim would have been forced to undertake the costly process of obtaining a court order via the civil jurisdiction of the court.

It appears that the DPP's policy is based on the rationale that if the quantum of compensation or restitution is not agreed to by the accused then applying the provisions of Part 4 unacceptably extends the process, and so to expedite finalisation of the matter no application is made. Consequently defence lawyers take advantage of this policy and simply dispute the amount of compensation, thereby avoiding a compensation order against their client.

44. Should there be a statutory presumption in favour of compensation and restitution in all cases?

Section 10.95 of *The Role of Victims of Crime in the Criminal Trial Process, (the consultation paper)* states: 'Creating a statutory presumption in favour of orders for compensation and

restitution, as occurs in New Zealand, is an option for reform. This option encourages judges to turn their mind to making a restitution or compensation order in all cases and raising it with the parties. It also avoids victims relying on the DPP making them aware of the possibility of applying for a compensation or restitution order. Instead, it could be a matter raised as part of (but ancillary to) the sentencing proceedings.'

The matters pertinent to this question are covered well in paragraphs 10.94 – 10.97 of the VLRC consultation paper. For the justifications provided in that section and in the Australian Law Reform Commission report *Same time, Same Crime: Sentencing of Federal Offenders*¹⁹, Victoria Police supports a statutory presumption in favour of compensation and restitution in all cases similar to the New Zealand model but to also include the removal of any presumption of considering the offender's financial circumstances. This is consistent with the public interest in victim's interests taking priority for compensation orders.

Furthermore a statutory presumption in favour of compensation and restitution in all cases would serve as a significant deterrent to some forms of white collar crime. As this form of crime is solely profit driven, removing the option to claim impecuniousness after hiding or squandering the proceeds of crime would provide additional deterrence to embarking on this genre of crime. Such deterrence would reduce the number of victims in the first place.

In addition, if there was such a presumption in place, then the obtaining of restraining orders in respect to an accused's assets would be seen as simply another process to complete and another "pre-trial" order to obtain in relation to a criminal prosecution.

The fact that a restraining order has been made (or, alternatively that an application for VOCAT has been lodged) can be a matter the victim can be cross-examined on, at both the committal and trial stage of the proceeding. A negative imputation can be put to the victim that the only reason why they reported the crime, was for financial reasons. This can cause secondary victimisation and routinely occurs in the Magistrates' and County Courts. A statutory presumption in favour of compensation and restitution in all cases would dramatically affect the impact of this questioning and may even be disallowed by the court (it may be viewed as in the same category as alternative arrangements for giving evidence in sexual offence trials).

45. How should the financial circumstances of an offender be taken into account under Part 4 of the *Sentencing Act 1991 (Vic)*?

The primary consideration should be that the victim receives appropriate and timely compensation. The Sentencing Act needs to balance the punitive penalty of the offender together with compensation. The State should then be in a position to recover through the courts. If the offender has no capacity to meet such an order due to limited financial means then the compensation should be covered by the State.

For the reasons provided in response to Q44, the financial circumstances of an offender must be a lower priority than the financial circumstances of the victim.

46. Should a victim be given the power to commence appeal proceedings in relation to a restitution or compensation order?

¹⁹ Report 103, 2006

Currently, where a compensation or restitution order is made by the sentencing court, it is upon the application made by the victim directly, according to the current DPP policy. The order against the offender to pay an amount to the victim becomes a civil judgment debt, which the victim has the responsibility of enforcing. The monetary amount awarded by the court is discretionary. The court may take into account the financial circumstances of the offender and the nature of the burden that the payment will impose on the offender.²⁰ As such, a victim may be grossly offended by the amount awarded by the court and wish to appeal against such an order. At present, that appeal right does not exist.

A possible reform would be to give victims the right to appeal against compensation or restitution orders that they consider to be manifestly inadequate. Permitting victims to appeal such unsatisfactory orders is consistent with the fact that victims are parties to the original application. It also avoids victims having to sue the offender through separate court proceedings.

Another possible reform would be to incorporate restitution and compensation into the sentencing process as occurs in New Zealand, rather than being an additional non-sentencing civil procedure as is currently the case in Victoria. This would enable the state to appeal the sentence as a whole should such action be necessary.

However in view of the current DPP policy set out at paragraph 10.25 in the consultation paper, should restitution and compensation orders remain separate to the sentencing order, there is definitely a need to empower victims to commence appeal proceedings. Such a power would avoid much of the expense and time currently involved with the procedure mandated in the *Civil Procedure Act 2010* (Vic) to progress a civil claim.

47. How should restitution and compensation orders be enforced?

As per answer to Q 43 where the order is enforceable in the same way as a fine.

The New Zealand model is our preferred option on this issue. Victoria already has a state-funded financial assistance scheme, namely the *Victims of Crime Assistance Act 1996*, designed to provide financial assistance to victims of violent crime to help with recovery where adequate compensation cannot be obtained from the offender or another source. It would be a small step to extend this to shift the burden of enforcement to the state in relation to compensation orders for non-violent crimes. This would respect the right of the financially disadvantaged not to be further victimised by being unable to fund action in the civil courts to recover their loss.

The discussion at paragraphs 10.28- 10.30 of the consultation paper is supported.

In addition to the above, it is noted that the responsibility to seek a restitution or compensation order rests with the victim (in light of the DPP's current policy). While a victim can appear in person after the accused has been convicted, most victims engage private legal representation, who then request various documents from the OPP (such as the victim's statement, transcript of trial evidence and the VIS). The victim's solicitors then negotiate with the accused's solicitors.

If a restraining order is in place and a settlement is reached, then the victim's solicitor is required to contact the OPP Proceeds of Crime directorate. As indicated in the consultation paper, if an order for compensation or restitution is made, then it is a civil judgment debt that

²⁰ Section 85H & 86(2) *Sentencing Act 1991*

falls upon the victim to enforce. Given that the processes were designed to provide a swifter and less complex avenue for victims, in addition to the fact that the application follows the criminal trial and is usually heard by the same trial judge and is an order by the court, the burden of enforcement should be shifted to the state. To order a financial sum to a victim and then leave the victim alone to recover the debt simply seems contrary to the aims and objectives of the Charter.

48. Is there a need for restorative justice pathways as an alternative, or in addition to, *Sentencing Act 1991 (Vic)* orders and VOCAT?

Whether or not a victim will benefit from restorative justice processes depends upon many variables, including his or her relationship with the offender, the type of offence and any history of criminal activity.

Section 10.107 of *The Role of Victims of Crime in the Criminal Trial Process, Consultation Paper July 2015* states: 'Research suggests that some victims place greater value on what offenders can do as a form of compensation, rather than the amount they can pay. For these victims, a possible reform option would be to promote the use of restorative justice, such as mediation or conferencing, as part of applications for compensation or restitution orders under the *Sentencing Act 1991 (Vic)*.' This approach may offer alternatives with offenders with limited financial means.

Clearly, having the offender financially compensate the victim for any harm or damage caused as a result of the offending can be interpreted as a component of restorative justice.

Restorative justice type pathways currently work very effectively with the diversion program. A key aim of restorative justice is to directly involve people affected by harmful acts in healing the emotional harm. In appropriate cases in the summary jurisdiction, as part of the diversion plan that is agreed to and presented to a magistrate for ratification offenders can write to the victim expressing their remorse and apologising for the harm they have caused the victim.

In some cases, particularly where a victim's loss can be compensated from an insurance payout, this can be hugely beneficial to both victims and offenders. This is particularly so when there is an ongoing relationship between the two, as for example where the parties are neighbours. In the summary jurisdiction, alternative reparation such as undertaking gardening or cleaning for an elderly victim can be very effective in promoting emotional restoration of victims.

The effectiveness of this in the summary jurisdiction makes it worth considering for appropriate matters in the superior courts. Considering the seriousness of matters that are heard in the superior courts, as a matter of public interest any restorative justice pathway for sentencing should be in addition to rather than as an alternative to a sentencing order.

49. Are there offences not covered by the *Victims of Crime Assistance Act 1996 (Vic)* that should be?

As indicated in paragraphs 10.101 and 10.102 of the consultation paper, victims of non-violent and property related offences are ineligible to apply for financial assistance from VOCAT. However, recent research suggests that victims of property offences, including online fraud, can and do suffer from the same type of psychological, emotional and social impacts as victims of crimes against the person (albeit usually less severely).

In the event that an accused has no assets to restrain, victims of these crimes get no assistance from any party, whatsoever. In this way, victims of non-violent and property related offences are discriminated. There have been many cases involving small family businesses, who have suffered financial, psychological and emotional harm from thefts perpetrated by an employee of the business, who has no assets, who have not been able to receive any financial assistance at all.

However, any extension of the VOCAT to cover non-violent and property related offences would need to be developed so as to not be a disincentive to individuals taking out private property insurance.

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?

Victims should be provided the opportunity to seek leave to commence an interlocutory appeal, particularly in circumstances where the ruling impacts upon the personal interests or rights of the victim. The legislative provisions established in NSW relating to victims' privilege and protected confidence provides such an opportunity to victims and appears to be an appropriate use of this process.

If a victim was to have standing to seek leave to commence an interlocutory appeal in circumstances which do not directly impact the rights or personal interests of the victim, careful consideration must be given to ensure the right of the accused to a fair trial is not abrogated and whether it is in the public's interest to do so.

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?

Victims should be provided with the opportunity to have greater influence on the outcome of the court decision.

Ideally, the victim should be empowered to influence appeal processes as an independent party. In the current state victims are unable to play a role in any of the identified appeal processes (victims can commence proceedings in civil jurisdiction if unsatisfied with compensation or restitution order). If a victim does not have capacity to appeal a decision as an independent party, then they should be consulted by the DPP in appropriate circumstances. Victims who may experience additional vulnerabilities due to mental health issues, disability or cultural or language barriers should be appropriately supported by the prosecution to enable their full participation in any consultation. The prosecution should ensure that any adjustments are made or supports provided to facilitate this.

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?

Victims should have standing to participate in an interlocutory appeal by the prosecution or defence where the personal interests or rights of the victim are at hand.

If a victim were to have standing to participate in an interlocutory appeal commenced by the prosecution or defence where their personal interests or rights are not at hand, careful consideration must be given to ensure the right of the accused to a fair trial is not abrogated whether it is in the public's interest to do so.

53. Should a victim have standing to participate in a post-verdict appeal commenced by the defence or prosecution?

The victim should have standing to participate in a post-verdict appeal by the defence or prosecution.

As detailed above, ideally the victim should be empowered to participate as an independent party. If the victim were unable to participate as an independent party, then the victim should be in a position to influence the prosecution in such proceedings in appropriate circumstances. The legislative provisions established in South Australia provide such opportunities for victims to participate in appeal proceedings.

54. Should the victim impact statement scheme, as it applies in sentencing hearings, also apply when the Court of Appeal re-sentences an offender?

In principle, the introduction of such a measure would provide the victim with a further opportunity to participate and potentially impact the outcome of court proceedings.

As identified in this paper, careful regard must be given to ensure that victims do not have unrealistic expectations that their VIS will be utilised in these proceedings.

55. Could the obligations set out in the Director of Public Prosecutions Victoria's Director's Policy: Victims and Persons Adversely Affected by Crime, particularly obligations to consult, be strengthened by incorporating them into the *Victims' Charter Act 2006 (Vic)* or other Victorian legislation?

The obligations identified in the DPP's policy prescribe a higher level of support for victims and ensures that they are appropriately consulted throughout the court process. Inclusion of such practices in the Charter and other Victoria Legislation would add further weight and significance to their implementation, and expand the scope of such legislation to prescribe a

greater level of support to victims and ensure they can actively participate (where appropriate) in the court process.

56. Should the *Victims' Charter Act 2006 (Vic)* be amended to include other rights, or broaden existing rights for victims?

The Charter establishes principles concerning the provision of support to victims over the course of the court process. These principles are non-enforceable.

The Charter should be strengthened to ensure that victims are provided with sufficient opportunities to participate in the court process. An example of such would be to mandate the requirement of a court to consider a VIS in the sentencing of an offender. At present, the Court 'may' consider VIS in sentencing the offender.

In accordance with other jurisdictions, the Charter should also detail more specific requirements for investigatory and prosecutorial agencies concerning the provision of information and support to victims. The examples provided in NSW, Queensland and Western Australia's Charters appear to be an appropriate solution. Additionally, the Charter needs to be more prescriptive to ensure that policy makers are clear of relevant expectations and requirements, as to avoid service delivery gaps and shortfalls.

The Charter references that victims may apply for compensation in accordance with the *Sentencing Act 1991 (Vic)*. This Act identifies that the DPP can make application on behalf of the victim for compensation, however it is not a mandatory requirement to do so. If victims were to have a legal representative (a victim advocate as per chapter 12) in such proceedings, it would seem appropriate that they be required to assist in making such applications for compensation and that this be reflected in the Charter (and Sentencing Act).

57. Should victims have a legal right to enforce some or all of the rights contained in the *Victims' Charter Act 2006 (Vic)*? If so, how might this be achieved, and in what circumstances?

In principle, the inclusion of enforceable rights in the Charter may seem an appropriate measure to ensure that agencies are compliant with all legislative requirements. If enforceable rights were to be introduced, careful consideration must be given to the potential issues identified in this paper concerning delays in criminal proceedings and conflict with public interest.

A robust complaint process may be a more suitable approach if appropriate powers of investigation are provided to the nominated complaint handler and suitable outcomes can be reached for victims.

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 *Victims' Charter Act 2006 (Vic)*?

Legislation should prescribe process for the handling of complaints and possible outcomes or remedies to be applied.

It would seem appropriate that the investigation of such complaints be performed by an independent body or appointment, and the Victims' of Crime Commissioner would be best placed to do so. The Commissioner should have sufficient power to require the production of information in order transparently investigate and assess the complaint and to identify appropriate remedies or outcomes in cases where a breach of rights is proven.

59. What remedies should be available for breach of a victim's rights?

Consistent with other jurisdictions, a formal apology to the victim may be suitable in some circumstances.

If there is evidence at hand of severe negligence and breaches of rights, it may be appropriate for the independent body investigating the breach to apply through appropriate jurisdictional channels for financial compensation to be paid to the victim (as opposed to the onus being on the victim to apply).

60. Are there gaps in the provision of victim support services?

The Victims of Crime Helpline operates between the hours of 08:00am-11:00pm seven days per week, and is not resourced to provide victims with crisis support (face-to-face or via the helpline). It is acknowledged that the Victims of Crime Helpline expedites the referral of victims of serious crime to the Victims Assistance Program in order to assist with urgent practical support (For example, brokerage to secure a victim's premises). Further, it is acknowledged that this paper does not explore this avenue of support. It has recently become apparent that the Victims' Assistance Program is not fully aware of the legal provisions and pathways available to victims to initiate the restraint of offenders' property for the purpose of victims' compensation/restitution.

Another identified gap involves the provision of support from Witness Assistance Service to victims who are not considered within the scope of 'priority'. Are there delays in the provision of support to victims who fall outside of this scope or does the quality and level of support provided to such persons differ? It is acknowledged that the intent of this policy is to provide support to victims who may be most greatly impacted by crime and that this issue is consistent across the broader support network.

Victims are provided with a range of support services throughout the court process, however it is acknowledged that their interests may not be legally represented. As discussed, it is not the role of the prosecutor to perform such a role. This is discussed further in response to Q63.

It is to be noted that the Child Witness Service provides these supports to young people who have been victims of, or witnesses to, violent crimes. Consideration could be given to the expansion of similar supports to victims and witnesses with specific needs and at risk of experiencing additional barriers in their interactions with the criminal trial processes.

61. How should victim support services be prioritised?

Priority should be given to support services that best meets the victims' needs throughout the court process. Support should be prioritised to support those most in need of assistance, particularly for those victims who may experience the most barriers in their interactions with criminal justice processes. It is further noted that any prioritisation should take into account that an individual victim may experience multiple vulnerabilities that compound their need and victimisation.

Addressing current support service delivery gaps should be a key priority.

62. How might the delivery of victim support services in Victoria be improved?

The delivery of victim support services could be improved through a coordinated and streamlined approach.

Over the course of their journey through the Court process, victims may be required to seek support from multiple agencies, each of which provides a specialised response (e.g. WAS, VAP or non-government support groups). Where an agency is not suitably resourced to provide a particular type of support, they will refer the victim to another appropriate support service. In engaging multiple specialist support agencies, the victim may be required to re-tell their story and thus suffer further victimisation. Additionally, there is capacity for an inconsistent level of service to be provided by such agencies given they are not collectively governed under a single umbrella. Finally, it appears that there may be a duplication of particular types of support provided to victims (multiple agencies provide victims with support about the court process).

In many regards the provisions within the Confiscations Act 1997 (Vic), as they apply to the restraint of property for the purpose of victims' compensation, are unwieldy and add yet another layer to what is already a relatively complex framework for victims. Victoria Police members are not provided with any guidance concerning the amount of compensation likely to be awarded by the courts in each case and research has demonstrated that there is no discernible decision trend or history that can guide police deponents concerning the >\$10,000 hard-line required by the Act. This puts police informants trying to support victims in an invidious position. The restraint of property for the purpose of victims' compensation is processed civilly through the OPP Proceeds of Crime Directorate and whilst Victoria Police drive the matter to the point of litigation, once litigation is successful and a restraining order issued against an offender's property, Victoria Police and the OPP withdraw from the action and the recovery of any realised property is left for the victim to pursue as a civil debt, at the victim's own expense.

In 2013, The Victorian Auditor General undertook an examination of the Victorian Government Asset Confiscation Scheme.²¹

- Recommendation 15 of the Auditor General’s final report was that “Victoria Police should: reallocate responsibility across the organisation for assisting victims of crime in identifying and restraining assets”.
- The Victoria Police Chief Commissioner responded as follows: “Whilst it is intended to decentralise the activity within Victoria Police in the short term, the Criminal Proceeds Squad sees an opportunity for government to improve service to victims in the longer term by developing a facility external to Victoria Police to manage and perform this important service”.

Victoria Police Crime Command and its representatives on the Victorian Government Asset Confiscation Scheme Executive Management Group continue to support the CCP’s position, as communicated to the Victorian Auditor General. Legislative reform, increasing deponent access to *The Confiscation Act 1997* (Vic) to non-police applicants, as well as the design and implementation of a new service delivery model would be required to support this improved framework²².

Whilst visionary, a solution may be to streamline the provision of all relevant support to a single agency. Ideally, this agency would facilitate a multidisciplinary service and provide a single point of contact for victims. In the current state, it would appear that the VSA are best placed to do so.

63. Do victims need personalised legal advice and assistance? If so, how should such support be delivered?

Personalised legal advice and assistance could provide opportunities to empower victims and enable greater participation throughout the court process.

In principal, a victim ‘advocate’ or ‘liaison’ could be the appropriate vehicle for the provision of such support; however, it is acknowledged that there may be complexities concerning the role and interests of the victims’ advocate and that of the prosecution. Roles would need to be clearly defined.

Conclusion

Exposure to the criminal justice system may increase the level of trauma that victims have already experienced and can cause secondary victimisation. Becoming a victim of crime can have serious physical, psychological, emotional and financial effects. This not only hinders the victim’s recovery, but can impact on their willingness to participate in the justice process and to report further crime.

The research detailed in this paper indicates that there is great opportunity to undertake reform to:

- Developing a facility external to Victoria Police to manage and perform this important service for victims, using a “one stop shop” service delivery model.

²¹ Victorian Auditor- Generals Report ASSET CONFISCATION SCHEME September 2013

²² Victoria Police Force File FF-080466 1: Correspondence from CCP to Auditor General 07.08.213

- empower victims through greater involvement at all stages of the criminal trial process as an independent party with legal representation;
- provide victims with better justice outcomes through exploring alternative measures;
- ensure victims are appropriately compensated in a timely manner for pain ,suffering or costs associated with ‘injury’;
- address gaps and enhance the provision of support to victims throughout the court process;
- reduce secondary victimisation inflicted through exposure to the court process;
- protect the safety and privacy of victims; and
- ensure that the individual and diverse needs of victims are taken into consideration to ensure equitable participation and engagement of all people, irrespective of culture, age or ability.