

The Role of Crime Victims in the Criminal Trial Process

Submission to the Victorian Law Reform Commission

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Thank you for the invitation to submit my views on the role of victims in the criminal justice process. Being unfamiliar with criminal procedures and victim rights practices in Victoria, I am unable to make specific recommendations for legal reform. My submission will therefore be limited to general observations about victim participation in adversarial criminal justice proceedings, including suggestions for ways to increase victim welfare/satisfaction with justice and reduce possible adverse impact of participation, without violating due process and offender/defendant's rights. Generally, any reform should strive to provide victims the sense that they are no longer outsiders in the criminal justice processing of their victimization, whether through legislative changes, enforcement of existing victim rights (human rights), or education/training.

The Victorian Law Reform Commission report on *The Role of Victims of Crime in the Criminal Trial Process* has accurately summarized the research on victim harm resulting from participation in justice proceedings and victim needs as their cases are processed by the criminal justice system. Victim distress, frustration, and dissatisfaction with justice in adversarial proceedings are often rooted in the fact that victims are defined, regarded, and treated as outsiders. While the legal definition of the victim role may be of significance to legal professionals, for victims the critical issue is to feel included—to be informed, consulted, and heard—thereby acquiring a sense of fairness and control over the way their victimization is processed and disposed. As the report notes, despite the heterogeneity of victims and variations in their victimization experience, they share this basic need to feel included in addressing the case that has deeply affected their lives.

The report includes options to resolve some of the distress and frustration that victims sustain as a result of their current role in the criminal trial: diversion of cases to restorative justice schemes

is an important option to address victim participation, but not all victims would agree to the stipulations made by these schemes, and many victims would prefer to remain within the protective structure of traditional adversarial proceedings. Financial support (restitution, compensation) and legal representation to make (reasonable) demands or challenge (unfair or misguided) decisions can also help victims, but resource limitations or priorities may restrict offering such benefits.

The framework of the discussion regarding legal reform is couched in terms of whether the role of victims should be protected, participating, or prosecuting witnesses. The literature review indicates that the first two roles already exist in some stages of the process, and it is unlikely that adversarial legal systems would allow victims to assume prosecutorial roles; the resistance of the legal profession to grant victims the right to submit victim impact statement is an example for the reluctance to integrate victims. Nor does the literature show that victims have an interest in shouldering the burden of prosecution.

To the possible roles that victims may play in proceedings, I would add another role that is likely to effect changes in victim experiences, without investing additional resources. Redefining victims as consumers, employing “customer service” approaches to victims during justice proceedings, and following good business principles in criminal justice may enhance victim satisfaction and reduce violations of victims’ rights. For instance, providing victims with detailed and clear explanations on how the law works, important dates to remember, evidentiary or practical constraints that prosecutors must navigate, sentencing guidelines and practices, and what to expect at different junctures of the process – all would help victims adjust their expectations, avoid frustrations, and feel they are included. Soliciting victim views, addressing their fears, and acknowledging their presence will likewise reduce feelings of being invisible and excluded.

Education/training and professional rewards can help to address the issue of legal professionals who sometimes apply poor “bedside manner” with victims or fail to observe their rights.

Therapeutic jurisprudence—a growing movement within law and legal practice—has provided insights into how to transform legal proceedings and professional behavior in ways that maximize victim welfare and minimize adverse consequences. For instance, victims can be offered opportunities to submit ‘criminal justice impact statements’ detailing professionals’

behavior in proceedings and how it affected them. Protocols that record “customer” satisfaction or complaints can be considered in administrative decision-making regarding professional advances, rewards, or promotions. Such practices can send a message that victims count, and that decisions affecting victims closely monitored, thus providing stopgap measures while reforms are being considered. Customer service approaches may also help in transforming the current legal culture to one that accepts victims as consumers of justice. Experience has taught us that legal reforms which are not accompanied by transformation of legal cultures are not likely to effect lasting changes in the behavior of the law.