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To the Victorian Law Reform Commission
By email: law.reform@lawreform.vic.gov.au

The Role of Victims of Crime in the Criminal Trial Process Consultation Paper Youthlaw Submission

1. About Youthlaw

Youthlaw is Victoria's state-wide community legal centre for young people. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs. We work with a diversity of children and young people up to the age of 25 years including victims of crime.

Youthlaw welcomes this opportunity to respond to *The Role of Victims of Crime in the Criminal Trial Process Consultation Paper (Consultation Paper)*.

In this submission, we do not address each of the key questions posed in the Consultation Paper. Rather, we make comments in relation to a number of specific topics and some related questions central to our experience providing free legal assistance to vulnerable young victims:

- The role of victims in decisions to prosecute & restorative justice,
- Compensation,
- Victims' rights, and
- Support for victims.

2. Summary of Youthlaw submissions and recommendations

The role of victims in decisions to prosecute

- A victim's decision to withdraw a complaint should not determine whether the prosecution continues;
- Young victims require more consultation and information about the investigative, prosecutorial and court process; and
- Victims should be able to pursue restorative justice and other alternative therapeutic avenues for redress.

Compensation

- Establish a specialist VOCAT list for young victims of crime; to strengthen the Tribunal's capacity to recognise and respond to their particular needs.

Victims' rights

- Police officers should receive training on take police complaints from young victims as particularly vulnerable and more likely to disengage from the process if they feel like their voices are not heard or that the police are blaming them for being a victim; and
- The Victims of Crime Commissioner's role should include facilitation of complaints investigation, compliance, research, public awareness and systemic advocacy.

Support for Victims

- Young victims should be able to access legal advice at any stage of the process, possibly via the introduction of a victim's advocate;
- Young victims should have access to support through the whole criminal trial process, via Victims Assistance Program (VAP), victim support workers and youth workers; and
- The Victim Support Agency should coordinate support services (including a legal advocate service), develop best-practice resources and ensure high quality training is delivered for those working with victims.

3. The role of victims in decisions to prosecute

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

No. In Youthlaw's view if police have sufficient evidence then the prosecution should continue, however this would necessitate greater support to be made available to the victim if a prosecution is going ahead in a situation where they want to withdraw the complaint.

We are particularly aware that significant pressure is already placed on young people by perpetrators to withdraw a complaint in situations of family violence, even when they are the victims of ongoing abuse by family members or partners.

We recognise that young people who have experienced family violence and who have been victims of long-term emotional and psychological abuse are often under significant pressure from the perpetrator to withdraw the complaint, including in situations where they are at risk of abuse.

As it currently stands, we often explain to young people that the police have the discretion to prosecute even if the victim wants to withdraw the complaint. Under this system, perpetrators are advised that the police can continue even if the victim withdraws the complaint. We consider that this reduces the level of pressure, victim-blaming and blackmail of victims as the decision of whether to prosecute is dependent on the police – not just the victim.

Question 8: Is there adequate consultation with victims before a decision is made to continue with charges, discontinue a prosecution or accept a plea of guilty after plea negotiations? If not, what additional consultation do victims require?

Youthlaw lawyers commonly receive feedback from young victims of crime that the police do not keep them sufficiently informed of the process or the status of their investigation. We consider that investigating officers dealing with victims under the age of 25 should, at a minimum:

- Inform young victims on a regular basis of the current status of the investigation – in recognition of the fact that young people often feel that their complaints are overlooked and their voices not heard by adults in authority;
- Notify young victims of key dates in the investigation and prosecution process (e.g. committal and sentencing dates) – particularly if there is a risk that they will be called as a witness or a prosecution will be discontinued; and
- For potentially triggering updates (e.g. decision not to prosecute or to discontinue prosecution), explain the investigative process in person and in the presence of an adult support person who can assist the young person to understand the process and to provide support throughout the meeting.

We often hear from young victims in situations where there has been no contact for a substantial period of time and the victim only hears back from the police when they are about to serve them with a witness summons. This can cause significant anxiety for young people, where they have not had the time to prepare themselves emotionally for having to give evidence in a courtroom.

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

Ideally, victims should have access to legal advice at any stage of the process. We have received feedback from young victims who have been notified that they do not need legal advice if they are the victim.

Making legal assistance available to young victims allows them to better understand the investigative, prosecutorial and court process.

Young victims often feel disempowered as they have no control over the investigation, whether the police decide to press charges and the court process. Ensuring that young victims understand the process makes them feel more in control and more confident that all of the necessary steps are being taken by the police.

We also consider that providing legal assistance to young victims can free up police time to focus on investigating and prosecuting the accused.

4. Restorative justice

Question 12: Should victims be able to pursue restorative justice or other alternative processes instead of, or at any point during, a traditional prosecution? Why, or why not?

Youthlaw generally supports the ongoing and expanded implementation of restorative justice systems which encourage meetings between victims and offenders to help resolve issues related to the offence. Restorative justice:

- Encourages young offenders to take responsibility for their offending behaviour;
- Enhances the rights of young victims; and
- Provides an offender with an opportunity to make amends to the victim and the community.

5. Compensation

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

In Youthlaw's experience, cases where the court makes a sentencing order that the offender has to pay compensation to the victim are rare as most offenders are impecunious. In cases where compensation has been ordered, it has commonly been ordered for property damage as part of an adjourned undertaking in situations where the young offender has no capacity to pay compensation and as a result is often re-sentenced.

Given that it is often so difficult for victims to obtain compensation from offenders, their only viable recourse is usually compensation through the State.

Apart from financial compensation, it is worth noting that an appearance at VOCAT, particularly in those cases where a Magistrate finds that the applicant is a victim of crime, is often the only acknowledgement victims receive that crimes of violence have been perpetrated against them.

This is especially the case where:

- Young people have been victims of crime while children and do not report the offence at the time, making it difficult for the police to obtain sufficient evidence to prosecute;
- Defendants are not convicted in court; or
- Police make a decision not to prosecute.

Acknowledging young people are highly represented in victim numbers, yet under-represented in VOCAT statistics, Youthlaw recommends a specialised VOCAT list for young people under 25 years of age. Such a list would allow the Tribunal to recognise and be responsive to the particular needs of young victims of crime, and improve their access and experience of victim support services and assistance.

6. Victims' rights in the criminal trial process

One of the major barriers to victims exercising their rights is the attitude and behaviour of some criminal justice officers from the stage of a victim reporting a crime to police, including:

- Negative and unhelpful responses from police when they have reported being victims of crimes;
- A lack of referrals by the police to appropriate support agencies; and
- How the Office of Public Prosecutions (**OPP**) deals with victims during the trial process.

Youthlaw is concerned with the experiences of some of our clients who include young people who are homeless, who experience mental health and/or disability issues and culturally and linguistically diverse young people.

Some young people, in particular young men, feel that police have an attitude that if a crime has been committed and you are a young person, then you some how deserved it.

Some clients report that police have treated them poorly and made insensitive comments about the crime, particularly the Criminal Investigation Unit officers who take over the handling of the investigation from the Sexual Abuse and Child Abuse Investigation Unit (SOCIT).

Question 58: Should there be a legislatively prescribed process for investigating and resolving complaints about breaches of victims' rights? If so, what might this process look like? Should the Victims of Crime Commissioner in Victoria have a role in complaints resolution relating to breaches of the Victims' Charter Act 2006 (Vic)?

While not advocating that the Victims' Charter needs to have a legal right to enforce a breach of a victim's right, we submit that the Charter should be amended to include a specific right to make a complaint and prescribe a specific complaints process.

Currently victims who want to complain about a Charter right not being respected have the option of contacting the Victims' Charter enquiries and complaints line provided by the Victims Support Agency. However, this is not well known or adequately promoted service for vulnerable young people.

We recommend that a function of the Victims of Crime Commissioner should be to conduct or coordinate complaint taking, investigation and resolution processes. These processes will need to be made very easy for young victims to access.

7. Support for Victims

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

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

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

Some young people who are victims seek out Youthlaw's legal advice and support during criminal trials. We agree that providing timely, accessible and accurate information to victims about criminal procedures and the status of their case is consistently identified as one means to remedy some victim dissatisfaction and increase levels of confidence in the criminal trial process.

While community legal centres such as Youthlaw have a role to play in providing legal information to young people about the process, as we are not involved in the trial process itself we can only provide very general, non case specific information. Further, we have limited resources and cannot provide adequate personalised legal advice, assistance or advocacy.

We are quite attracted to the proposal in the consultation paper (at p.172) to establish a scheme for providing victims with individual representation by victims' advocates who would take on a victim as their client from the start of that person's journey through the criminal justice system. A legally qualified advocate could act as the victim's lawyer, providing personalised and timely legal advice and assistance, and also provide referrals and assist with applications for compensation.

A critical need for young victims is to have access to intensive case-managed support from the start to the finalisation of the case by criminal justice system. Young victims would ideally have a worker attend the police interview, medical appointments, court and VOCAT with victim. While services such as the Victims Assistance Program (VAP) at the Victim Support Agency, are designed to provide such services, we are not sure how many young people are accessing these supports, and what the capacity of the service is to provide such intensive support.

Serious consideration needs to be given to the role the Victorian Victims of Crime Commissioner should have in relation to victim support services, and how they will compliment the role of the Victim Support Agency, and how to make both of these agencies youth relevant and accessible for our clients.

Given the Commissioner is independent of Government we submit it would be most appropriate for the Victorian Victims of Crime Commissioner to have a role in:

- Operating or overseeing a complaints resolution process for victims who feel that their rights have not been respected;
- Monitoring compliance with victims' rights instruments and victim-focused policies and guidelines;
- Conducting research, public awareness and systemic advocacy on behalf of victims; and
- Developing and informing policy and law reform relevant to victims of crime.

The Victim Support Agency would have a role in:

- Coordinating, and administering support services for victims, including any legal advocates service;
- Developing and informing best-practice resources, and
- Developing, coordinating and/or overseeing training and certification for those working with victims.

Thank you for the opportunity to respond to the consultation paper and we welcome further opportunities for involvement in this process.

If you have any queries, please do not hesitate to contact Tiffany Overall, Advocacy and Human Rights Officer on [REDACTED]

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