



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

**IMPROVING
VICTIMS '
EXPERIENCE OF
SUMMARY CRIMINAL
PROCEEDINGS**

Feedback for the Department of Justice and Community Safety

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem. For over 40 years CLCs have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities. As an influential advocate, our voice is distinct and courageous: we are not afraid to challenge government, big business, or other powerful actors to ensure equality and fairness for all.

Read our strategic plan online:

fclc.org.au/about

WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Our members lead collaboration and advocacy via several Working Groups, providing guidance and direction for the Federation's work, as well as opportunities for joint advocacy.

Together with our members and communities, we work to dismantle unjust systems that perpetuate racism, sexism, homophobia, ableism, economic injustice and other inequalities. Our priority is to be fully accountable to the communities we represent.



THE FEDERATION ACKNOWLEDGES THE TRADITIONAL ABORIGINAL OWNERS OF COUNTRY AND WE PAY OUR RESPECTS TO ELDERS PAST, PRESENT AND EMERGING. WE RECOGNISE THEIR CONTINUING CONNECTION TO LAND, WATER AND COMMUNITY. SOVEREIGNTY WAS NEVER CEDED.

Table of Contents

SECTION 1: Introduction and recommendations	4
Community legal services for victims	4
Key recommendation	6
Additional recommendations	7
SECTION 2: Key considerations for reform in summary criminal proceedings	8
SECTION 3: Victims' experience of summary criminal proceedings	9
Positive aspects of victims' experiences in summary criminal proceedings.....	9
Negative aspects of victims' experiences in summary criminal proceedings	10
SECTION 4: Improving access to information and support	13
Improving access to support services from the outset	13
Improving the courts and access to support services at court.....	14
Improving access to information about criminal proceedings for family violence matters	16
Improving the experience of young people	16
SECTION 5: Feedback on specific reform proposals	18
Improving information and involvement in prosecutorial decision-making.....	18
Improving opportunities to participate in court processes	20

SECTION 1: INTRODUCTION AND RECOMMENDATIONS

Thank you to the Department of Justice and Community Safety for the opportunity to provide feedback on how to improve victims' experiences of summary criminal proceedings.

We have prepared this feedback with input from the Victims of Crime Advisory Group for the Federation of Community Legal Centres. The following Community Legal Centres (CLCs) provided feedback on the experience of their clients and the recommendations for improvement referred to throughout this submission:

- Springvale Monash Legal Service
- Hume Riverina Community Legal Service
- Inner Melbourne Community Legal
- Whittlesea Community Legal Service
- Youthlaw
- Fitzroy Legal Service

Community legal services for victims

CLCs take a holistic, community-based and multi-disciplinary approach to providing legal assistance and support to some of the most vulnerable Victorians to ensure that a range of their needs are met, to reduce inequality, and to ensure that their legal problems do not escalate. This is often done through an integrated services model that involves legal and non-legal professionals working in partnership to meet people's needs in a holistic way, and lawyers working with non-lawyers to upskill them in being able to identify legal problems and understand legal systems, rights and entitlements to better address client needs.

CLCs regularly engage with vulnerable victims across Victoria. Of the 47 CLCs in Victoria, 29 provide services to victims. These CLCs are prescribed agencies under the *Victims of Crime Commissioner Regulations 2020* (Vic) for the purposes of the *Victims of Crime Commissioner Act 2015* (Vic) and therefore must comply with Victims' Charter obligations. A significant proportion of the work of CLCs in Victoria is with victim-survivors of family violence, with CLCs assisting with more than 16,000 Family Violence Intervention Orders in 2019.

CLCs can assist victims by providing the following types of assistance:

- General information and advice on navigating the criminal justice process
- Facilitating communications or consultations with justice agencies
- Providing advice or engaging in casework to assist with applications for financial assistance through the Victims of Crime Assistance Tribunal (VOCAT)
- Assistance with intervention order applications
- Assistance with related legal problems, including family violence, family law, child protection, migration law, tenancy disputes, workplace rights, or debt recovery
- Making warm referrals or linking in with support services

SECTION 1: Introduction

- Preparing Victim Impact Statements
- Restitution Orders and Compensation Orders under the *Sentencing Act 1991* (Vic)
- Asset confiscation
- Restraint or forfeiture of property
- Civil remedies including torts compensation
- Coronial Inquests

However, CLCs often do not have the funding or resources to provide this assistance to victims and must turn them away or only provided limited assistance. Victims have to navigate a patchwork of legal support or, more likely, they will receive no legal advice or assistance at all. Where support is not available to victims, the impacts of their victimisation can escalate and their escalating legal problems can undermine their capacity to recover.

The Centre for Innovative Justice's report 'Strengthening Victoria's Victim Support System: Victim Services Review' outlined the importance of providing victims with access to legal advice and assistance in relation to a range of multiple needs.¹ Evidence shows that there is a strong nexus between crime victimisation and legal need. For example, studies have estimated that multiple experiences of crime can increase the risk that a person will experience civil legal problems by 192 per cent, a greater rate than other commonly identified risk factors such as disability, sole parenthood, low income or dependence on social security.² Without CLCs engaging in 'issue-spotting' and early intervention practices, many legal problems for victims will escalate.

CLCs generally assist people who are experiencing disadvantage or have vulnerabilities who are otherwise unable to afford a private practitioner to obtain legal assistance. This means that where CLCs assist victims, these clients usually have multiple and complex needs, and are often victim-survivors of family violence, sexual assault and/or historical abuse.

While it is important for support services to be available to victims, social workers, caseworkers, psychologists and counsellors are often not well-equipped to provide legal assistance and advice. CLC lawyers are highly trained and skilled in providing information about criminal justice processes, and understand how to provide legal information to people who are vulnerable or experiencing disadvantage in a way that is simple and easy for them to understand. CLC lawyers also have expertise in community legal education and providing training to other services providers on how to identify legal problems so that they can be referred to CLCs for legal advice.

CLCs in Victoria operate Health Justice Partnerships and other integrated services to provide legal assistance, advice and wraparound support to people that are vulnerable or experiencing disadvantage, including victims. These involve partnerships with support services, health organisations and schools to ensure that people are linked in with lawyers where appropriate. Integrated services are an innovative approach to responding to the gap in legal expertise between health workers, educators, support workers and lawyers, the need to improve referral pathways to community lawyers, as well as the need to provide wraparound holistic support.

¹ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review*, November 2020, p.149.

² V Kemp et al, *The Problems of Everyday Life: Crime and the Civil and Social Justice Survey*, Centre for Crime and Justice Studies, 2007, p.5.

SECTION 1: Introduction

For example, Springvale Monash Legal Service operates a partnership with the South Eastern Centre Against Sexual Assault to provide assistance to victim-survivors of sexual assault. Hume Riverina Community Legal Service has an integrated service with their local family violence service partner, as well as partnerships with the local victims assistance program and community service partners (including health services, youth services and counsellors) in their regional area to provide supports to victim-survivors of family violence.

As part of these partnerships, CLC lawyers provide training to support workers so that they can better identify legal problems and determine what kind of legal information or advice a person might need. This will enable support workers to make warm referrals to a CLC lawyer who can provide the legal information and advice. These partnerships are a vital way of ensuring that victims receive access to support services and legal advice and information in a way that is accessible and improves their experience navigating the criminal justice system.

If CLCs received additional funding and resources to provide specialised assistance to victims they would be able to assist victims more extensively with the types of legal matters mentioned above, as well as provide more generalised legal information and assistance to support victims to navigate criminal justice processes, including in the summary jurisdiction. This would ensure that all victims that are vulnerable or have complex needs would have access to information and support that is provided by legal experts on the criminal justice process, and it would be provided in a way that is trauma-informed and adapted to their specific needs.

Key recommendation

We recommend that the focus of any reforms to improve victims' experience of summary criminal proceedings should be improving access to support services and community legal assistance for victims from the outset, when they first become victimised. This is because support services and CLCs provide an early intervention response to prevent further victimisation and vulnerability, and are best-placed to provide information about the criminal justice system and facilitate participation in justice processes in a way that is trauma-informed and able to be understood by the victim, particularly victims who are vulnerable or have complex needs.

Critical recommendations for improving access to support services and CLCs are:

- Recognition of the vital role of legal advice and assistance in ensuring that victims' needs are met (including their need to be recognised in the criminal justice process), and they are supported; and in preventing further victimisation and escalation of legal and non-legal problems.
- Additional funding for support services and CLCs to ensure that all victims are provided with information, assistance and advice to understand their rights and opportunities to participate in the criminal justice process, and receive proper support to participate fully in the criminal justice process.
- Adopting a state-wide integrated service model for providing legal assistance and advice to victims alongside holistic, wraparound supports through partnerships between CLCs, victim support services and other support services.

Additional recommendations

- We recommend that any reforms to improve the experience of victims in summary proceedings must balance the need to ensure efficiency in the administration of justice by imposing time limits on opportunities for victims to be consulted or to engage in the criminal justice process. This must occur alongside improvements to communication with victims about their rights and entitlements, access to support services, and better management of victims' expectations around where they can and cannot engage.
- We recommend additional investment in victim support services to ensure that they are adequately resourced to be the main point of contact for all victims. This would ensure that victims are supported in all communications with police, prosecutions or the court, supported to engage in the criminal justice process, and are provided with appropriate information or linked in with legal advice and assistance.
- We recommend improvements to the physical environment of the courts to ensure that they are trauma-informed, and investment in support services in courts that can tailor supports to the needs of each victim and overcome any barriers to access.
- We recommend the ongoing use of online court hearings, a dedicated court service to liaise with victims and their support services, and additional investment in support services to be able to provide safe, secure and supported venues for victims to attend court hearings.
- We recommend improvements to information sharing between justice system agencies, including Victoria Police, prosecutors and the courts, and lawyers that are assisting victims with family violence and related criminal matters (where the victim consents).
- We recommend imposing a new obligation on Victoria Police to explain charging practices and potential outcomes, alongside a mechanism for the explanation to be provided to a support person or lawyer (in addition to the victim) where the victim consents, for example through a written 'Statement of Reasons'.
- We recommend imposing a new obligation on Victoria Police to seek preliminary victim views about likely outcomes, alongside investment in support services and community legal assistance to assist with managing victims' expectations and provide relevant information. We also recommend that victims are provided with an opportunity to engage in further consultation on priority views (as determined by the victim) where a prosecution decision does not align with their views.
- We recommend imposing an obligation on Victoria Police to consult victims on priority views (as determined by the victim) unless specific circumstances exist that make consultation impracticable or consultation would otherwise lead to unjust outcomes.
- We recommend adopting an 'opt out' approach to victim impact statements to make them part of the routine practice of the lower courts, and to put the responsibility on justice system agencies to ensure that the victim impacts are taken into account.
- We recommend additional training for investigators, prosecutors and the courts about how to acknowledge victims and the value of their victim impact statement, and how to explicitly address their experience and respond to it in a trauma-informed way.
- We do not recommend any expansion of the extent to which victims are consulted by the court about sentencing, including enabling victims to provide a preliminary statement to the court about the impact of the offending.

SECTION 2: KEY CONSIDERATIONS FOR REFORM IN SUMMARY CRIMINAL PROCEEDINGS

We share the concerns highlighted in the Issues Paper regarding the volume, time and resource constraints faced in the summary jurisdiction of the Magistrates' Court and the Children's Court. Any reforms to improve the experience of victims in summary proceedings must balance the need to ensure efficiency in the administration of justice, noting that court delays is a significant barrier to achieving justice outcomes and can result in the accused spending unnecessary time on remand. Any reforms to improve the justice system overall, including prioritising rehabilitation and community-based approaches to offending where appropriate, will lead to more just outcomes overall and will inevitably benefit future victims due to lower recidivism rates.

It is also important to acknowledge that there is a clear link between victimisation and offending. A 2012 review of the literature on the 'victim-offender overlap' identified studies reporting that more than half of victims of crime become offenders and vice versa.³ Between 70 to 90 per cent of women in prison are victim-survivors of family violence, sexual abuse or child abuse.⁴ From that perspective, it is vitally important that reforms to improve victims' experience of summary proceedings do not lead to more punitive approaches towards offending and/or increase incarceration rates.

Any reforms to improve victims' experience of summary proceedings must also recognise that victims have an interest in the timely resolution of criminal matters for a number of reasons, including the need to reduce the trauma associated with prolonged engagement with the criminal justice system, and the impact of criminal justice outcomes on victims' applications for financial assistance. In the experience of CLCs, it is often easier to receive financial assistance through the Victims of Crime Assistance Tribunal (VOCAT) when criminal proceedings are finalised. Many CLC clients would prefer to wait for a court outcome before making a decision about a VOCAT matter. In this way, delays and adjournments in the lower courts can be painful for victims. We also acknowledge that the current court backlogs due to the COVID-19 pandemic have placed additional pressure on summary proceedings.

We recommend that these competing concerns are balanced by imposing time limits on opportunities for victims to be consulted or to engage in the criminal justice process, alongside improvements to communication with victims about their rights and entitlements, access to support services, and better management of victims' expectations around where they can and cannot engage.

³ W G Jennings et al, *On the overlap between victimisation and offending: A review of the literature*, Aggression and Violent Behaviour (2012) 17.

⁴ H Johnson, *Drugs and crime: A study of incarcerated female offenders, Research and public policy series*, 2004; Justice Health & Forensic Mental Health Network, *2015 Network Patient Health Survey report*, 2017; M Wilson et al, *Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia*, SAGE Open, January 2017.

SECTION 3: VICTIMS' EXPERIENCE OF SUMMARY CRIMINAL PROCEEDINGS

Positive aspects of victims' experiences in summary criminal proceedings

A key positive of summary proceedings is that they are dealt with quickly. As outlined above, the need to improve victim involvement in decision-making and victim participation in and information about court processes must be balanced with retaining the efficient administration of justice through the timely response to lower-level offending. Victims have an interest in the timely resolution of criminal matters for a number of reasons, including the need to reduce the trauma associated with prolonged engagement with the criminal justice system, and the impact of criminal justice outcomes on victims' applications for financial assistance. On the other hand, the focus on efficiency in summary proceedings can be part of the reason why victims are excluded from the criminal justice process.

A key positive that should be retained and strengthened is the opportunity for victims to prepare victim impact statements and share them with the court. More detail on specific improvements to victim impact statements is provided below. Victim impact statements can be a powerful way for a victim to feel heard in the criminal justice process. In the experience of CLCs, victims will often require support to draft a victim impact statement and CLCs will assist where possible, even though CLCs are not provided with funding to do this.

Many CLC clients have appreciated the words of a Magistrate in response to their victim impact statement as an acknowledgement of their experience, and this can be therapeutic and lead to a greater sense of validation and empowerment. However, there is a lack of uniformity in how Magistrates speak to victims and their comments can sometimes be disempowering. There are also issues with how victims are provided with information about victim impact statements by police or prosecutors, with victims often not being told about the opportunity to make one or being asked at the last minute.

The experience of young people that are victims can be positive. Victim impact statements of young people are taken seriously by the court. Young people are linked in with appropriate supports to assist with their recovery process in a timely manner. This can involve engaging in sports, recreation or music lessons, in addition to the more traditional therapeutic interventions. Young people that are CLC clients have been able to access funding for remedial massage, yoga, music lessons and art therapy. There are also positives in the ways that support services, police and schools will work together to support the young person through the process.

SECTION 3: Victims' experience of summary criminal proceedings

Negative aspects of victims' experiences in summary criminal proceedings

We agree with the Issues Paper that issues of key importance to victims are victim involvement in decision-making and victim participation in and information about court processes. Unfortunately, victims are very rarely provided with information about a summary criminal proceeding; and often when they are provided with information it is not in a way that is accessible or easy for them to understand. Victims are rarely involved in decision-making and do not have a very clear understanding of what their role is as a participant, how much they can expect to be engaged with, or how much input they can have.

In our experience, CLC clients want to be treated as an important person involved in the criminal justice process who is consulted, provided with information that they can understand, and given an opportunity to communicate directly with the court about the impacts of the crime. Unfortunately, there is currently limited space for victims to engage in summary criminal proceedings. In the experience of CLC clients and lawyers, criminal law matters (including proceedings for breaches of family violence intervention orders) are high-paced, ad hoc and arbitrary and there is no consistency in victims' experiences.

In the experience of CLCs, the level of engagement from police with victims will depend on the individual matter and there is no consistency. This makes it very difficult to advise clients and manage their expectations about how much they can expect to be engaged with through the criminal justice process. CLC clients report that the responses from police to victims can be hostile, which then leads to victims refusing to report safety concerns or breaches of family violence intervention orders to police. There is a clear need to improve police responses to victims, or to implement alternatives to police as a responder, because the current approach is disempowering and undermines confidence in the justice system.

We have provided the below case studies to outline the negative experiences of victims in summary criminal proceedings, including the lack of information provided to victims, lack of consultation with victims about prosecutorial decision-making, barriers to making a victim impact statement, and specific issues for victim-survivors of family violence.

CASE STUDY #1 - Lack of information provided to victims

Stuart was assaulted in an unprovoked attack during which he sustained serious injuries. This crime has impacted significantly on his daily enjoyment of life. Throughout the process of applying for financial assistance through the Victims of Crime Assistance Tribunal (VOCAT), Stuart consistently told his Community Legal Centre (CLC) lawyer that the most important thing to him was not compensation, but knowing how the offender was being dealt with through the criminal justice process.

Stuart was not informed by Victoria Police about the progress of the criminal proceedings. Upon enquiry by his CLC lawyer, the informant stated that the charge of 'recklessly cause injury' was withdrawn and the accused was found guilty of one count of assault. Stuart was not advised of the date of the court hearing, his right to attend or to provide a victim impact statement.

The informant told the CLC lawyer that the information he had received was unclear, but it appeared that the accused was placed on an adjourned undertaking and ordered to pay \$500 to the court fund.

Stuart felt let down by this result and the difficulties he faced finding out about the outcome.

SECTION 3: Victims' experience of summary criminal proceedings

CASE STUDY #2 - Lack of consultation with victims about prosecutorial decision-making

Casey was assaulted by a family member and sustained two broken bones. Casey received a letter from the Magistrates' Court asking her views about the accused being placed on a diversion. Casey wrote a well-articulated letter to the court saying clearly that she would only be agreeable to a diversion if the accused was obliged to seek a psychiatric assessment and treatment due to long standing mental health problems that had not been treated, and for him to attend anger management counselling.

Casey was outraged when she received a communication from the court advising that the accused was placed on a diversion without those two conditions. Instead, her family member was ordered to write a letter of apology to her. Casey stated that the system was a "joke" and that the accused would think he could get away with assaulting her with no serious outcome.

CASE STUDY #3 - Issues with Victoria Police not providing information or consulting

Lucy's ex-partner was charged with breaching a family violence intervention order put in place for her protection. Police officers told Lucy that they were supporting her ex-husband's application to be deemed a non-prohibited person, despite her objection to this. The police also suggested to Lucy that a diversion was an appropriate sentence. Lucy told the police that she did not agree to a diversion, but they told her that it was their decision and they would still pursue this.

Lucy contacted a CLC lawyer to find out if she could do anything about the police's decision. The CLC lawyer told Lucy she had the right to write a letter to the Magistrate about her views on the diversion and she could also attend Court. The police had not informed her of this right to be in Court or that she could write to the Magistrate. Lucy wrote a letter and attended Court. She gave the police a copy of her letter and emailed it to the Court. When Lucy appeared via WebEx on the next occasion, the prosecution remained firm that a diversion was appropriate. However, the Magistrate disagreed, refusing the diversion and the matter was listed for a contest mention.

CASE STUDY #4 - Barriers to providing a victim impact statement

Lucy then spent many weeks drafting her victim impact statement. At the same time, she was also involved in family law proceedings, and preparing her victim impact statement left her exhausted and triggered her anxiety and depression. However, she really wanted her voice to be heard and the Magistrate to know how she had been deeply impacted by the crime. She finally finished preparing her victim impact statement the day before court, however she did not feel up to attending to tell her story in person.

Lucy spoke to the police informant who asked her to email her victim impact statement to the local prosecutor's office. She did this immediately. After the court hearing, she followed up with police, only to be told that they had missed her victim impact statement email and it was not provided to the court. To Lucy, this was another blow – she told her CLC lawyer that she felt her experience and views were not important to police or the courts.

Lucy now has little faith in police and felt that they seemed more sympathetic to her ex-partner, who happened to be a prominent professional in the community and well-known to police.

SECTION 3: Victims' experience of summary criminal proceedings

CASE STUDY #5 - Lack of information for victim-survivors of family violence

Fiona had experienced ongoing family violence at the hands of her partner for many years and across a number of states, until she finally found the courage to leave. Following separation, he tracked her down and assaulted her. She contacted the police and they arrested him and applied for an intervention order on her behalf. He then breached the intervention order multiple times. He was charged with stalking, harassment, using telecommunications to stalk, two counts of assault and five breaches of the intervention order, and was held on remand. He was sentenced to time served of four days.

Fiona was not provided with any information by Victoria Police about the court process, what would happen, or her right to make a victim impact statement or attend court. She was told that she would be advised about the court outcome as soon as it was finalised, however when she contacted the police, she was advised that the offender had already been released from prison 20 minutes earlier. This was terrifying for Fiona who was fearful for her safety. The offender then continued to breach the intervention order, which she reported, but he was not arrested. Fiona felt like she was annoying the police so eventually she stopped reporting any breaches. She told her CLC lawyer that she felt like she did not have a voice and that she was the criminal and had no say in how her ex-partner was dealt with. Fiona said she doesn't trust the system and has no faith in police or the courts.

SECTION 4: IMPROVING ACCESS TO INFORMATION AND SUPPORT

Improving access to support services from the outset

We agree with the Issues Paper that an issue of key importance to victims is access to support services at court. However, there is still much work to be done to ensure that access to support services is available from the outset to all victims when a crime first occurs.

It is vitally important for victims to be able to access support services when they first experience a crime. In our view, the main point of contact for a victim of crime should not be the police, prosecutions or the court, but someone outside the criminal justice system. Victims need access to support workers, counsellors, psychologists or caseworkers who are trauma-informed, can help them to navigate the criminal justice system, and provide them with information in way that they can understand. Unfortunately, many victims do not receive the support that they need.

In our view, a police officer or prosecutor should never be the only person communicating with a victim of crime, particularly a victim with different needs or facing structural barriers. Unfortunately, often this is the case. Police do not receive training in providing trauma-informed responses to victims, and they often do not have the time and resources to spend with a victim of crime to ensure that their needs are being met or that they understand the information that they are being provided (if they are provided with any at all). The criminal justice system relies on complex terminology to describe its processes, and this can be very difficult for victims to understand, particularly those who are experiencing trauma, culturally and linguistically diverse, or have low literacy.

Any victim who has different needs or faces structural barriers needs to be provided with access to support services and community legal assistance to navigate the criminal justice process. A person with different needs or facing structural barriers is more likely to have complex needs that require a range of different supports and interventions, including the potential escalation of other legal problems.

CLCs have expertise in providing trauma-informed responses to people who are vulnerable or experiencing disadvantage, including victims. Many CLCs have integrated services with support services, including support workers, psychologists, counsellors, or caseworkers, to ensure that their clients' needs are being met. CLCs can work with their clients to ensure that they understand the information that they are being provided by police (if they are provided with any at all) and can facilitate any ongoing engagement or consultation with police or prosecutors, and support participation in the process.

We recommend additional investment in victim support services to ensure that they are adequately resourced to be the main point of contact for all victims. This would ensure that victims are supported in all communications with police, prosecutions or the court, supported to engage in the criminal justice process, and are provided with appropriate information or linked in with legal advice and assistance where requested.

SECTION 4: Improving access to information and support

Improving the courts and access to support services at court

The experience of CLCs confirms that victims often find court difficult and re-traumatising. As outlined in the Issues Paper, victims find it daunting and confusing to attend court. The physical environment of the Magistrates' and Children's Courts can be overwhelming for CLC clients and deters them from accessing at-court support. Clients may choose to silo themselves in a particular nook of the court to separate themselves from the main areas, particularly if suffering from anxiety or PTSD (hypervigilance). For this reason, it is important to design all justice spaces with the needs of victims in mind and to take a trauma-informed approach to architecture and interior design. This would include, for example, separate entrances for victims and perpetrators, safe and secure spaces for victims to wait, and lots of natural light and comfortable furniture.

Where support services are provided at court, it is important for there to be someone to help victims with understanding the court process, as well as the everyday things like where the bathroom is or how to get a cup of tea. There must also be easy access to this person, they need to be obvious and present, and how to access them must be clearly sign-posted from when a person first enters the court building. All support services at court need to be provided with adequate funding to deliver appropriate services that are tailored to the needs of each victim, and the resources to make appropriate referrals to other services and legal assistance where appropriate.

Victims who were previously offenders can find attending court particularly traumatising as a reminder of their past negative experiences. They can also feel as though the justice system is already biased against them. Former offenders that are victims need to receive additional support in the court environment, acknowledging that the perceived stigma can act as a barrier to them seeking out assistance.

We recommend improvements to the physical environment of the courts to ensure that they are trauma-informed, and investment in support services in courts that can tailor supports to the needs of each victim and overcome barriers to access.

Access to support at court in rural/regional areas

In rural and regional areas, there is a greater need for access to support services and legal assistance because the courts are particularly overwhelmed. In the experience of CLCs, registrars are often overwhelmed and prosecutors do not have any time to leave the bar table, let alone speak to victims. CLC duty lawyers who are assisting with family violence intervention order matters will often assist victims who are attending court for a criminal proceeding despite them not being their clients.

Access to support at court for young people

The access to support services at court for young people varies considerably from court to court. In the experience of CLCs, most courts are chaotic, overwhelming and, at times, an unsafe place for a young person or child to attend. There are certainly options (including Court Support, safe rooms and the Child Witness Service) that make the experience more positive for young people, but these do not apply to their families.

When engaged with support services (both victim support services and family violence services), young people and children do not always have their own individual case plan to identify their support needs throughout the court process. They can sometimes be 'invisible' and workers will rely on an adult victim to communicate with the young person to assess their needs. This often means that young people and

SECTION 4: Improving access to information and support

children will miss out on critical supports to help them recover from crime and to participate actively in the court matter if they so choose to.

Online court hearings in the context of COVID-19

During the changes to court services caused by the COVID-19 pandemic, many victims have been able to participate in court proceedings at home surrounded by family members or other supports, whereas previously they would often have been at court by themselves without support unless they choose to bring family members to court with them. We support the use of WebEx and video link technology to facilitate court hearings continue beyond the pandemic to enable victims to be able to engage in the process without any security concerns or support concerns.

However, there have been issues with some online court hearings not being very accessible to victims during COVID-19. There are additional barriers to victims being made aware of when a court hearing is occurring and victims are often required to actively pressure the court to ensure that they are provided with video link details. Victims would benefit from having a dedicated court service that can liaise with victims or their support worker or lawyer about when a matter is being heard so that they can choose whether or not to attend.

Many victims will not feel safe participating in court hearings from their home, including victim-survivors of family violence. For this reason, people should be given the option to attend a court hearing from another venue, such as a multi-disciplinary centre or a support service. The Child Witness Service is an excellent example of an approach that enables participation in court proceedings from a safe, secure and supported venue. The Orange Door also has a specific room for attending court proceedings.

We recommend the ongoing use of online court hearings, a dedicated court service to liaise with victims and their support services, and additional investment in support services to be able to provide safe, secure and supported venues for victims to attend court hearings.

CASE STUDY #6 - Positives of online court hearings

Melina was a victim of significant family violence. She was offered the opportunity to attend the criminal hearings via WebEx. This allowed Melina to be part of the proceedings, and listen to what was happening, while keeping her camera off. Melina took part in these proceedings while at the local family violence service. This gave her a sense of safety, with the appropriate support people around to explain to her what had happened in court. If Melina's only option had been to attend in person, she told her CLC lawyer that she would not have attended due to the risk and stress of facing the perpetrator.

SECTION 4: Improving access to information and support

Improving access to information about criminal proceedings for family violence matters

If a lawyer is assisting a client with a family violence intervention order or a family law matter, it is usually helpful to understand whether any criminal proceedings are underway or what the outcome has been of any previous proceedings. In the experience of CLCs, there are often clients that are victim-survivors of family violence who do not have any information about the criminal proceedings or the outcome. If a lawyer tries to contact police to get this information, it can be very time-consuming or the police may refuse to provide the information. This is particularly an issue for duty lawyers where there are significant time pressures and resource constraints.

It is important for lawyers to be able to access information about a criminal proceeding where their client is the victim so that they can properly advise their client about other matters, including family violence intervention orders. It is particularly important for victim-survivors of family violence and their lawyers to have information about when an offender is going to be released from prison so that they can engage in safety planning and ensure that an intervention order is in place.

In response to this issue, options could be explored in the Specialist Family Violence Court model to enable lawyers to assist with related criminal proceedings for affected family members where they have also experienced family violence. This issue could also be addressed by imposing a new obligation on police to explain charging practices and potential outcomes, including by requiring police to provide victims with a 'statement of reasons' that can be shared with their lawyer. This proposal is discussed in more detail below.

We recommend improvements to information sharing between justice system agencies, including Victoria Police, prosecutors and the courts, and lawyers that are assisting victims with family violence and related criminal matters (where the victim consents).

Improving the experience of young people

Children and young people are often excluded from the criminal justice process or overlooked, especially where there is an adult affected family member or parent with whom police, the Office of Public Prosecutions, or victim support services, routinely communicate. Child victims are often not treated as victims in their own right with individual support needs, and families may be 'clumped' together and contacted via one spokesperson due to time constraints.

Parents and carers can also act as the gatekeeper to the young person, or seek to shield them from participation. While this is sometimes appropriate to reduce re-traumatisation, it means that the young person's wishes and needs are not being communicated.

Young people from non-English speaking backgrounds can also become the de-facto spokesperson for their family where police do not use interpreters to communicate with parents who are also victims.

Young people with complex needs and barriers in accessing support often fall through the gaps. They are not always referred to appropriate support services at the earliest opportunity. For example, international students are often scared to be involved in the court process, do not understand how they can participate, have not been contacted by police, and interpreters are often not used by police or they are used in an ad hoc manner.

SECTION 4: Improving access to information and support

In addition to these issues, young people face the same issues as adult victims, including receiving limited or no communication or information from police and having a lack of understanding about how to engage in the criminal justice process.

To improve the experience of young people, we recommend:

- **Early referral by police to support services and legal assistance with the consent of the young person to assist with providing information about the criminal justice process and to assist with ongoing communication with police;**
- **Improvements to communication from the police and the court, including more age-appropriate communications, alongside increased access to support services and legal assistance, when a victim first experiences a crime, to assist with interpreting any communications;**
- **Recognising young people as victims in their own right, and ensuring that young people have their own individualised plans and supports;**
- **Establishing a new integrated service model for community lawyers and social workers to support young people who are victims, including wraparound support for assistance with court processes, victim impacts statements, applications for financial assistance, and other related legal issues and support needs; and**
- **Improved access to therapeutic supports for young people and children to assist them through the court process, including coverage for a broader range of modalities including art therapy, equine/animal assisted therapy and play therapy.**

SECTION 5: FEEDBACK ON SPECIFIC REFORM PROPOSALS

Improving information and involvement in prosecutorial decision-making

The Issues Paper lists a number of specific reforms or ‘opportunities for improvement’ that could be implemented to improve information for and involvement of victims in prosecutorial decision-making. We have outlined our feedback on each reform below.

A new obligation to explain charging practices and potential outcomes

We support a new obligation to explain charging practices and potential outcomes, however there should be a mechanism for the explanation to be provided to a support person or lawyer (in addition to the victim) where the victim consents, for example through a written ‘Statement of Reasons’.

It is important for there to be clear communication pathways for victims so that they understand where and who they can go to for information. Given our concerns about the limitations of police and their ability to engage with victims in a trauma-informed way and to provide information in a way that is accessible, support workers or lawyers should also be provided with information by police so that they are able to explain charging practices and potential outcomes to victims.

This relates to our recommendation that there should be a person outside the justice system who supports a victim throughout the criminal process, liaises with police and prosecutors to receive updates, outcomes, explanations of decision-making, helps the victim come to terms with decisions and understand the steps in the process and manages expectations. Support services and community legal centres have the expertise in working with victims, soft-skills and trauma-informed practice. They can also ensure that the victim of crime actually understands what is being explained to them, which may take time.

This could be implemented through police being required to write a ‘Statement of Reasons’ that outlines their decision-making process and reasoning, including any decision to discontinue charges, or the reasoning for an unsuccessful outcome or an adjournment. This Statement of Reasons could then be shared with a social worker or a community lawyer who can help to interpret it, answer any questions that the victim has, and follow up with police for any further information. This reform would also need to involve a review process to ensure that there is an avenue for oversight if insufficient information is provided in the Statement of Reasons. There would need to be clear guidelines and what information has to be provided.

We recommend imposing a new obligation on Victoria Police to explain charging practices and potential outcomes, alongside a mechanism for the explanation to be provided to a support person or lawyer (in addition to the victim) where the victim consents, for example through a written ‘Statement of Reasons’.

SECTION 5: Feedback on specific reform proposals

A new obligation to seek preliminary victim views about likely outcomes

We are broadly supportive of this proposal, and agree that victims would need assistance and advice in order to make an informed decision.

A few points:

- It is important for victims' expectations to be managed so that they are aware of what they can and cannot influence in the process. If victims are consulted at every opportunity, this would lead to significant delays, so it is important to have a social worker and lawyer available to manage expectations.
- In particular, managing victims' expectations of the outcome of a criminal proceeding is difficult in an increasingly complex justice system. It is difficult to tell a victim what they can expect from the outset – if the defence seeks an adjournment or changes their approach this can impact on what becomes practicable.
- There is a risk that victims' views will be unreasonable, particularly given no victim or their experience is the same. Each victim will experience the same crime differently and there are a range of different influences on how a person experiences or reacts to crime or responds to trauma, as well as varied understandings of the law and the justice system. This could be addressed by additional support from a social worker or lawyer to work with a victim to discuss their views prior to any consultation.
- Victims' views should be sought in whatever form they would prefer, including written form, interview via video link or with a social worker or lawyer present.
- Victims could be asked to prioritise what views are most important to them, and if a prosecution decision does not align with these priority views, this could then trigger an opportunity to engage in further consultation. This would help ensure that victims feel listened to.
- There should be time limits imposed around seeking victims' views to avoid delays in the justice system.
- Victims should be made aware that it is their responsibility to ensure that their contact details are up to date so that their views can be sought.
- There needs to be consideration about what language to use when talking to victims about consultation. For example, the term 'consultation' can imply that the feedback provided will be acted on, when in fact the prosecution will always retain their discretion.

We recommend imposing a new obligation on Victoria Police to seek preliminary victim views about likely outcomes, alongside investment in support services and community legal assistance to assist with managing victims' expectations and provide relevant information. We also recommend that victims are provided with an opportunity to engage in further consultation on priority views (as determined by the victim) where a prosecution decision does not align with their views.

An obligation to consult victims could be extended to summary proceedings where practicable

We do not support the use of the term 'where practicable' because it creates a very broad discretion. There are many obligations under the Victims' Charter that are already not being upheld and there are variable and detrimental police responses to victims across the state.

SECTION 5: Feedback on specific reform proposals

As an alternative, **we recommend imposing an obligation to consult victims on priority views (as determined by the victim) unless specific circumstances exist that make consultation impracticable or consultation would otherwise lead to unjust outcomes.** This would put the accountability on police to demonstrate why they have not consulted the victim. As above, there needs to be a social worker or lawyer involved to ensure that any victim being consulted is provided with assistance and advice in order to make an informed decision.

An obligation to consult with victims could be limited to classes of victims

We do not support limiting the obligation to classes of victims because the experiences and circumstances of victims are extremely variable. Each victim will have a different experience and it is problematic to make generalisations. As an example, the *Bail Act 1977* (Vic) provides that bail must be refused for certain categories of offending in certain circumstances, and this has created significant problems for the justice system in Victoria and has led to extremely unjust outcomes for vulnerable and disadvantaged people.

Improving opportunities to participate in court processes

The Issues Paper lists a number of specific reforms or ‘opportunities for improvement’ that could be implemented to improve opportunities for victims to participate in court processes. We have outlined our feedback on each reform below.

Reduce barriers that prevent victims from making a victim impact statement

We support any efforts to reduce barriers that prevent victims from making victim impact statements. In the experience of CLCs, clients often require assistance and advice to prepare their victim impact statement. Unfortunately, CLCs do not receive funding to assist with victim impact statements and will often only be able to provide very limited assistance. Victim support services can also assist with victim impact statements; however, CLCs report that the majority of their clients have not received any assistance with preparing a victim impact statement. More support is required, particularly for people with communication barriers.

We would like to see enhanced partnerships across justice sector agencies, victims’ services and specialist support services to support victims that are vulnerable or experiencing disadvantage to prepare victim impact statements. We would also like to see those partnerships joined up with the community legal sector, particularly CLCs that are already assisting victim-survivors of family violence and sexual assault with applications for financial assistance through VOCAT.

We would also like to see victim impact statements being routinely read out in lower courts where the victim consents, including where the matter is dealt with quickly by way of a guilty plea. Victim impact statements are a powerful part of the legal process for many CLC clients and enables them to feel heard. When Magistrates speak directly with victims, they are likely to feel a greater sense of validation and empowerment through the court process. This could be supported by having an ‘opt out’ rather than an ‘opt in’ approach to making a victim impact statement. There could be a presumption that a victim impact statement will be provided to the court, and support provided to victims to draft a victim impact statement as soon as the accused is charged (which can then be amended later in the process).

SECTION 5: Feedback on specific reform proposals

We recommend adopting an ‘opt out’ approach to victim impact statements to make them part of the routine practice of the lower courts, and to put the responsibility on justice system agencies to ensure that the victim impacts are taken into account.

Awareness-raising and training for investigators, prosecutors and the courts about victim impact statements

We support improvements to training for investigators, prosecutors and the courts. In the experience of CLCs, victim impact statements will often be provided to prosecutors that never reach the court, and there is variability in how Magistrates engage with victims. The language used by Magistrates can often be problematic, for example referring to victims or offenders as ‘drug addicts’ or ‘druggies’.

We recommend additional training for investigators, prosecutors and the courts about how to acknowledge victims and the value of their victim impact statement, and how to explicitly address their experience and respond to it in a trauma-informed way.

Enabling victims to provide information about the impact of the offending at an early stage

We do not support any expansion of the extent to which victims are consulted by the court about sentencing, including enabling victims to provide a preliminary statement to the court about the impact of the offending. The court already has the ability to consider the victim’s voice and experience on a sentencing indication and we consider that this is appropriate. Increasing the court’s engagement with victims at such an early stage in the proceeding risks increasing the punitive nature of the criminal justice system. In Victoria, the politicisation of sentencing is already a significant issue, and this change would risk increasing the pressure on courts to impose punitive and excessive sentences. This change could undermine the accused person’s right to a fair trial.

We do not recommend any expansion of the extent to which victims are consulted by the court about sentencing, including enabling victims to provide a preliminary statement to the court about the impact of the offending.