

## **Case study: The Role of Victims of Crime in the Criminal Trial Process**

### **What was this project about?**

The project addressed the question: What role should a victim of crime have in the criminal trial process?

The term 'victim' includes people who have directly suffered harm from a crime, the parents of child victims and family members of homicide victims.

The criminal trial process includes everything from the point where the Director of Public Prosecutions takes over a prosecution for an indictable (serious) offence, including: committal proceedings; trials and sentencing, and appeals. Almost every criminal case, including for indictable offences, begins in the Magistrates' Court, but criminal trials take place only in the Supreme and County Courts.

Adversarial criminal trials are a contest between two parties: the state (the prosecution) and the accused. But where does the victim fit in?

### **Why did the law need to change?**

The law needed to change because society's understanding of the role of the victim has changed.

In the past, a victim of crime had no role in the trial unless they appeared as a witness for the prosecution. They used not to have any special rights to information, support, to tell their story or to be treated with respect in court.

Gradually, over the past three decades, law reforms enabled victims to be more involved in the criminal trial process. Today, victims are entitled to make a victim impact statement about how the crime has affected them, there are new procedures to reduce the trauma of giving evidence, and victims have the right to apply for compensation. The Victorian Victims Charter requires police and prosecutors to keep victims informed about the trial and treat them with respect.

However, in spite of these changes, victims often have a hard time in practice. Experiencing a crime – such as an assault, rape, or the murder of a loved one – causes harm and trauma which can be made even worse by negative experiences during the trial process. This is why the Attorney-General asked the Commission to review the law and make recommendations for change that would improve the experiences of victims.

### **What was the Commission's task?**

The Attorney-General asked the Commission to review the role of victims in the criminal trial process, including:

- How criminal trials developed in England and other common law systems, and how adversarial trials (where there is a prosecution and a defence) compare with inquisitorial trials (where there are judges alone)
- Recent innovations such as victim impact statements
- The role of victims at different stages of the criminal trial process

- How orders for compensation and restitution are made
- Support provided to victims in relation to the criminal trial process.

For the complete terms of reference see [www.lawreform.vic.gov.au](http://www.lawreform.vic.gov.au).

## **Key dates**

27 October 2014	The Attorney-General gave the Commission the reference on Victims of Crime.
May-June 2015	The Commission published four information papers about aspects of the law relating to victims of crime..
July 2015	The Commission published a consultation paper including questions and made a call for submissions.
30 September 2015	Submissions closed.
1 September 2016	The report was delivered to the Attorney-General.
22 November 2016	The report was tabled in Parliament.
2018	Several bills passed the Victorian Parliament enacting changes to the law based on the Commission's recommendations. (See 'What happened next' below.)

All publications are available on the Commission's website at [www.lawreform.vic.gov.au](http://www.lawreform.vic.gov.au).

## **What were the issues?**

### *Respect*

Victims of crime should consistently be treated with respect. Victims feel respected when they are provided with information and support, can participate in decision making, are protected from unnecessary trauma, and can claim compensation or restitution. Authorities should also respond to the diverse needs of victims.

### *Information and support*

Victims' experiences depend largely how well they are prepared and supported. They need to be informed about what support services are available; about the progress and outcome of cases; about court processes and their role as a witness (if applicable); about decisions to modify charges or drop charges; and about victim impact statements.

### *Participation*

Participation means giving victims a voice in what happens. Victims want their views to be taken into account when important decisions are made, such as the decision to modify or drop charges. The right to make a victim impact statement is another important means of participation.

### *Protection*

Giving evidence in court can be intimidating for victims, especially when they are cross-examined by the defence. It can be particularly traumatic for victims of sexual offences. The right for accused

persons to test the evidence against them is an important aspect of a criminal trial, but victims must also be treated with respect.

### *Financial reparation*

Victims have an interest in how harm may be repaired through the criminal justice system, for example through compensation. It can be very hard for victims to obtain compensation.

### **What did the community say?**

The Commission held 75 consultations across Victoria, meeting with victims of crime and their families, lawyers, judges, police, victim support and therapeutic professionals, and experts in victims' rights.

In consultations, victims and their families raised these concerns:

- Being treated with lack of respect by judges and lawyers
- Safety issues – such as encountering the accused and their supporters at court
- Cross-examination and offensive questions – victims who appeared as witnesses were sometimes humiliated and bullied during cross-examination
- Lack of information about the process, and issues such as how to access compensation.

The Commission received 43 written submissions. Most of these can be viewed on the Commission's website.

### **What was recommended?**

The Commission's report recommended cultural change within the criminal justice system to ensure victims are properly acknowledged and respected.

The rights of victims should be expanded and explicitly stated in the *Victims' Charter Act* and the *Charter of Human Rights and Responsibilities Act*.

The victim should have a right to be:

- (a) acknowledged as a participant with an interest in the proceedings
- (b) treated with respect at all times
- (c) protected from unnecessary trauma, intimidation and distress when giving evidence.

The Commission made 51 recommendations in total. They included:

- Victims should be provided with information and support by the prosecution.
- There should be more protection for victims who give evidence (such as not having to encounter the accused in court; and other options for how they give evidence when necessary to reduce emotional trauma).
- Judges should disallow improper questions asked of victim-witnesses, to prevent bullying and humiliation.
- Seeking compensation should be easier

- A new legal service should advise and support victims of violent crime who need independent legal advice
- A witness intermediary scheme should assist child victims and victims who have a disability that impairs their ability to give evidence
- Victims should have more rights with regard to victim impact statements
- Restorative justice should be introduced in some circumstances. (Restorative justice means processes that focus on repairing harm, involve the perpetrators taking responsibility for their actions, and increase the involvement of victims).
- There should be more training for lawyers, judges and others on victims' rights.

## **What happened next?**

Significant changes to the rights of victims of crime were made in September 2018 with the passage of the *Victims and Other Legislation Amendment Act 2018*.

The Act recognises that a victim of crime has an 'inherent interest' in the response by the criminal justice system to that crime. This acknowledges the victim's role as a participant in proceedings for criminal offences. This was Recommendation 1 of the VLRC report.

The Act requires all agencies to respect the rights and entitlements of victims as participants in proceedings, and to take into account the particular needs of victims in rural and regional locations.

The new Act requires the Director of Public Prosecutions to take all reasonable steps to:

- advise a victim of the details of criminal proceedings and the progress of a prosecution
- seek a victim's views regarding modifying charges, discontinuing a prosecution, or an appeal
- provide reasons for decisions to a victim. The VLRC was told during consultations that these changes were "crucial" and would be "empowering".

The *Sentencing Act 1991* has been amended in relation to the contents of victim impact statements. The Act provides that:

- a victim impact statement allows the victim to tell the court about the impact of the offence on them; and
- a victim impact statement is not inadmissible (cannot be ruled out by the judge) merely because it contains subjective or emotive material.

These reforms go a long way towards improving the rights of victims as participants in criminal trials.

## **More information**

Visit [www.lawreform.vic.gov.au](http://www.lawreform.vic.gov.au) and look under All Projects for more about Victims of Crime in the Criminal Trial Process.