

## **Introduction**

### **Executive summary**

This law reform submission will focus on the role of victims in the criminal trial process of crimes against a person. The Victorian Victims Support Organization (VVSO) defends the rights of victims and offers support to fulfill their needs. Survivors are often left unsatisfied with their involvement in the process, the outcome of the trial, and the long-lasting emotional and/or physical effects of the crime. In order to remedy these issues, the VVSO urges the Royal Commission to:

- a) Offer restorative justice programs for victims during the sentencing process
- b) Create educational programs of the criminal trial process for victims and their families

It is necessary to acknowledge that no two crimes are the same, meaning that each crime has a different effect on the victim and therefore there is no 'one-size-fits-all' remedy for the issues facing victims of crime. Although there is not an all-encompassing solution to the problems presented, the recommendations offered are the start to a long journey in empowering individuals to overcome the events of a criminal trial and rebuild their lives after being the victim of a crime.

### **Terms of Reference**

The terms of reference ask the Commission to consider the role of victims prior, during, and after the criminal trial process in crimes against a person with a perpetrator. In conducting the review the Commission should consider:

- a) The historical development of the criminal justice process in crimes against a person
- b) The role of victims in the sentencing process
- c) The role of victims in the criminal trial process
- d) The role of victims in the trial outcome
- e) Support for victims
- f) The development and history of restorative justice programs

## **About Us**

The Victorian Victim Support Organization (VVS0) is the leading support group for victims of crime in Victoria. We work with victims of all crimes and their families, with a focus on victims of crimes against a person. Our goal is to support victims prior, during, and after the criminal trial process, sentencing process, and other trial outcomes to ensure that their needs are met, allowing them to fully recover from the event. We prioritize the needs of the victims and their families to ensure:

- a) Victims needs and desires are represented in the criminal trial process
- b) Public policy is inclusive of all victims
- c) Support is accessible for primary and secondary victims

We value the victims of Victorian crime and believe that justice will only be served when the needs of the victim are properly reached. As the leading organization of victim support in Victoria, the Victorian Victim Support Organization encourages the Royal Commission of

Victoria to pay particular attention to victims of crimes against a person. We encourage to the Royal Commission to shape their Terms of Reference to:

- a) Offer restorative justice programs
- b) Create educational programs for victims and their families prior to the criminal trial process

## **Background**

### **Victims of Crime**

In 2019, there were over 82,500 recorded offences of a crime against a person in Victoria, over half of which were assaults or related offences (Recorded Offences, 2020). Although the Crime Statistics Agency of Victoria has kept a record of crimes reported, there is no way to determine the actual amount of crime that is unreported or the amount of victims who have not received justice. Violent crimes of intimate nature are less reported to the police than other types of crime, which is why this law reform submission will be focused on the impact on victims of crimes against a person (Cook, David and Grant, 1999, p. 4). As a victim of a crime, individuals face shock, loss of faith in society, guilt, fear, anger, depression, anxiety, PTSD, physical injury, direct and indirect financial loss, and social effects (Shapland and Hall, 2007, p. 178).

The Australian Institute of Family Services designed a study to identify the needs of victims in obtaining justice through analytical studies and interviews where they found that victims need information, validation, voice and control when seeking justice (Bluett-Boyd and Fileborn, 2014, p. 18). Victims detailed that they need information on the various stages of the criminal trial procedures, the important individuals involved in the system, their role in the trial,

and the possible outcomes (Bluett-Boyd and Fileborn, 2014, p. 18). For validation, victims detailed that they required acknowledgment that harm has occurred and to be seen as reliable by officials (Bluett-Boyd and Fileborn, 2014, p. 18). In order to express their voice, victims must be able to share their story in court or to the offender (Bluett-Boyd and Fileborn, 2014, 2014, p. 18). Lastly, victims require control of their case by being involved in the decision-making process and through regular updates on the proceedings (Bluett-Boyd and Fileborn, 2014, p. 18). The study detailed that for most crimes, survivors desire ‘information, support, recognition of harm, reparation for harm and effective protection’ in order to succeed in the criminal trial process and after (Bluett-Boyd and Fileborn, 2014, p. 19).

## **Problems**

Despite having a relatively clear understanding of the needs of victims, there are still issues in accessing those needs. One issue that victims have with the criminal trial process is the lack of information and involvement they are granted. Prosecutors are not obligated to keep victims informed on the progress of the trial, so it can lead to victims having a lack of information causing them to be left out of the trial process (The Role of Victims of Crime in the Criminal Trial Process Consultation Paper, 2015, p. 37).

Another issue that victims face when obtaining justice is in relation to their voice being heard. Victoria offers the option for victims to have their voices heard through Victim Impact Statements (VIS) which provides victims with a therapeutic and communicative experience in an active role (The Role of Victims of Crime in the Criminal Trial Process Information Paper 2,

2015, p. 18). However, VIS have been characterized to be ‘too little and too late’, showing that this is not substantive enough to grant closure to the victim (Wemmers, 2009, p. 399).

## **Recommendations**

### **Voice - Restorative Justice Programs**

In order for victims to obtain justice, a necessary aspect of their healing process is expressing their voice which helps them feel a sense of closure. VIS are useful in transferring the victim from a passive role to an active role in the criminal trial process, but consultations with victims have shown that they wanted the offender to hear about the impact of the crime rather than influence the sentence (A Victim's Voice, 2009, p. 9). Therefore, VIS are not exhaustive enough to give victims a voice, which is why the expansion of restorative justice programs are needed to empower victims to embark on their journey for justice.

Restorative justice programs, sometimes known as victim-offender mediations, are focused on the victim by offering them a chance to confront the perpetrator with the guidance of a trained mediator to repair the harms of the crime (Zernova, 2007, p. 1-8). These programs would provide the victim a chance to express their feelings, give them a sense of closure by asking questions only the perpetrator could answer, and allow the criminal to understand the harm they caused (Zernova, 2007, p. 8). Currently, Victoria only offers restorative justice for juvenile offenders, but other states have seen success through these programs (Restorative Justice in Australia, 2017). For example, In New South Wales an Aboriginal man who was found guilty of assaulting a female took part in a restorative justice program with the police, Aboriginal elders, and the victim (Restorative Justice in Australia, 2017). Through the program, the victim

was able to express how hurt she was while the offender was able to explain that he had some brain damage and mental health issues (Restorative Justice in Australia, 2017). The process allowed the victim to feel empowered enough to speak about her feelings towards the encounter along with the other incidents she had been involved in but had never discussed prior, and the offender was referred to a psychiatrist to reassess the medications he was taking (Restorative Justice in Australia, 2017). As a result of the restorative justice program, the victim was heard, empowered, and received counselling while the offender received the proper medication for his mental illness (Restorative Justice in Australia, 2017). Based on this example, the benefits of restorative justice programs are clear for both parties, and should be expanded in Victoria for all victims to express their voice and get closure. With the expansion of restorative justice programs, victims will be able to display their needs and concerns, which will allow them to have an active role during the sentencing process.

### **Information - Educational Programs**

The next recommendation is centered around the need of victims for information on the criminal trial process. As mentioned prior, prosecutors are not required to inform victims on the progress of the trial, which can cause victims to feel excluded and isolated from the process (The Role of Victims of Crime in the Criminal Trial Process Consultation Paper, 2015, p. 37). A possible solution would be to require prosecutors to keep victims informed on the trial, but this would be difficult to enforce and monitor. In order to properly arm the victim with the ability to become involved in their trial, educational programs on the criminal trial process should be offered by a social worker who is able to connect with distressed individuals. By educating the

victims and their families on the criminal trial process, they are equipped with the knowledge on how to become involved rather than just receiving updates on their case. In studies conducted in Britain, contact with informational services and support for victims was associated with a greater satisfaction with the way the case was handled (Bradford, 2011, p. 356). Currently in Victoria, either the prosecutor or the police are responsible for informing the victim on the complexities of the trial process, despite not being educators or trained in victim assistance (A Victim's Voice, 2009, p. 10). Victims are going through a traumatic event which causes extreme distress, making it difficult for them to absorb new information (A Victim's Voice, 2009, p. 10). Since the victim is in a sensitive state, it is necessary for a social worker who is trained in working with distraught survivors to educate them on the actions they should take during the trial, rather than have a police officer or prosecutor teach them about the process. If victims have the ability to seek out information rather than depending on the prosecutor, this would allow them to become more empowered and involved, enhancing their ability to recover from the event. This recommendation is especially important in cases where the victims have suffered extreme trauma and cannot properly defend themselves. By having a social worker educate the victim's family on the trial processes, they have a greater ability to offer their support and guidance in the trial without relying on the prosecutor and while upholding the values of the victim. This recommendation would directly influence the ability of the victim and their family to become involved with the criminal trial process by providing them with information needed in an absorbable manner from a social worker trained in victim assistance.

## **Conclusion**

In conclusion, victims of crime require information, validation, voice and control when seeking justice (Bluett-Boyd and Fileborn, 2014, p. 18). Two major issues facing victims in Victoria are issues with information and voice. Since prosecutors do not have to inform victims on the conduct of the trial, victims feel isolated and take a passive role in the sentencing process (The Role of Victims of Crime in the Criminal Trial Process. Consultation Paper, 2015, p. 37). Also, Victim Impact Statements are used to allow survivors to have their voice heard, but many victims feel as though this is not an extensive resource and that they are not recognized (Wemmers, 2009, p. 399). The Royal Commission of Victoria should address and support victims by implementing programs to aid them in recovering from these incidents. In order to remedy these issues, the Victorian Victim Support Organization urges the Royal Commission to:

- a) Offer restorative justice programs for victims during the sentencing process
- b) Create educational programs of the criminal trial process for victims and their families

These recommendations are necessary in supporting victims of crimes against a person in Victoria and should be considered by the Royal Commission to support the rights of individuals who have been victimized.

For more information, contact us at [VVS0.com](http://VVS0.com) or email us at [info@VVS0.com](mailto:info@VVS0.com).



## Reference List

2009. *A Victim's Voice*. [online] Available at:

<[https://www.victimsofcrime.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2020/04/a2/c4ae7a3c9/a\\_victims\\_voice-victim\\_impact\\_statements\\_in\\_victoria.pdf](https://www.victimsofcrime.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2020/04/a2/c4ae7a3c9/a_victims_voice-victim_impact_statements_in_victoria.pdf)> [Accessed 14 June 2020].

Australian Institute of Criminology. 2017. *Restorative Justice In Australia*. [online] Available at:

<<https://aic.gov.au/publications/rpp/rpp127/restorative-justice-australia>> [Accessed 14 June 2020].

Bluett-Boyd, N. and Fileborn, B., 2014. *Victim/Survivor-Focused Justice Responses And Reforms To Criminal Court Practice*. [online] Available at:

<[https://minerva-access.unimelb.edu.au/bitstream/handle/11343/227183/Victim%20survivor-focused\\_Bluett-Boyd\\_Fileborn\\_rr27.pdf?sequence=2](https://minerva-access.unimelb.edu.au/bitstream/handle/11343/227183/Victim%20survivor-focused_Bluett-Boyd_Fileborn_rr27.pdf?sequence=2)> [Accessed 14 June 2020].

Bradford, B., 2011. *Voice, Neutrality And Respect: Use Of Victim Support Services, Procedural Fairness And Confidence In The Criminal Justice System - Ben Bradford, 2011*. [online] SAGE Journals. Available at:

<<https://journals.sagepub.com/doi/pdf/10.1177/1748895811408832>> [Accessed 14 June 2020].

Cook, B., David, F. and Grant, A., 1999. *Victims' Needs, Victims' Rights : Policies And Programs For Victims Of Crime In Australia*. [online] Australian Institute of

Criminology. Available at: <<https://aic.gov.au/publications/rpp/rpp19>> [Accessed 14 June 2020].

Crime Statistics Agency Victoria. 2020. *Recorded Offences*. [online] Available at:

<<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-crime-data/recorded-offences>> [Accessed 14 June 2020].

Shapland, J. and Hall, M., 2007. *What Do We Know About The Effects Of Crime On Victims?*.

[online] SAGE Journals. Available at:

<<https://journals.sagepub.com/doi/10.1177/026975800701400202#articleCitationDownloadContainer>> [Accessed 14 June 2020].

Victorian Law Reform Commission. 2015. *The Role Of Victims Of Crime In The Criminal Trial Process Consultation Paper*.

Victorian Law Reform Commission. 2015. *The Role Of Victims Of Crime In The Criminal Trial Process Information Paper 2*. [online] Available at:

<[https://www.lawreform.vic.gov.au/sites/default/files/Role\\_of\\_Victims\\_of\\_Crime\\_Info\\_Paper\\_2\\_web.pdf](https://www.lawreform.vic.gov.au/sites/default/files/Role_of_Victims_of_Crime_Info_Paper_2_web.pdf)> [Accessed 14 June 2020].

Wemmers, J., 2009. *Where Do They Belong? Giving Victims A Place In The Criminal Justice Process*. [online] Springer Link. Available at:

<<https://link.springer.com/article/10.1007/s10609-009-9107-z#citeas>> [Accessed 14 June 2020].

Zernova, M., 2007. *Restorative Justice : Ideals And Realities*. [online] ProQuest Ebook Central. Available at:

<<https://ebookcentral.proquest.com/lib/unimelb/reader.action?docID=439007>> [Accessed 14 June 2020].