

Victims of Crime Commissioner

Submission to Family Violence Royal Commission



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1 Introduction

Victoria's first Victims of Crime Commissioner was appointed in October 2014. The role and objectives of the Commissioner are not prescribed in legislation however the Government's intention for the position is to:

- ◆ ensure the rights and needs of victims are recognised and respected across all government agencies
- ◆ ensure victim support services are well coordinated and effectively directed
- ◆ ensure victims are readily able to find or to be put in touch with the most appropriate support and advice
- ◆ perform an advocacy function for the interests of victims of crime in their dealing with government agencies; and
- ◆ provide advice on how the justice system can be further improved to meet the needs of victims.

The Office of the Victims of Crime Commissioner welcomes and supports the work of the Royal Commission into Family Violence particularly given the focus of the Royal Commission is on preventing family violence and examining the entire system.

It is important to acknowledge that family violence is predominantly committed by men against women and children. The Office of the Victims of Crime Commissioner is committed to addressing the issue of gender inequality by encouraging responses and legal processes that prioritise and elevate the needs and rights of victims of family violence and increase their access to important resources, information and support.

While the available evidence shows the relevant government and non-government organisations do regularly work well together there is, inevitably, room for improvement and, in some respects, an entirely new approach in dealing with victims of family violence.

This submission primarily focuses on methods and strategies to improve the provision of services by government agencies and the criminal justice system to victims of family violence.

Many of the submissions contained in this document are applicable to all victims of crime but each is critical to the victims of family violence related crime.

2 Victims of family violence and the trial process

In regard to victims of family violence in the trial process, it is important to note the role of victims in the criminal trial process is currently the subject of review by the Victorian Law Reform Commission (VLRC). It is anticipated that many of the issues to be explored by the VLRC will be applicable to victims of family violence. (See **appendix 1** for the full terms of reference of the VLRC Review).

In view of the VLRC's Review, this submission will not consider the legal complexities involved in providing for the simultaneous rights and needs of victims and the accused in the trial process. However, it does emphasise the importance of elevating the rights and participation of family violence victims in the trial process.

The Victorian legal system provides a person charged with a criminal offence, the right to be presumed innocent until proved guilty.¹ This important presumption and human right² shifts the burden of proof to the prosecution who must prove the accused is guilty of a criminal offence. This also seeks to achieve a fair balance between the State and the individual accused of a criminal offence and reflects the adversarial nature of the legal process.³

It is the adversarial process that forces many victims into an extremely unfamiliar climate, where they must recount their experience in detail and submit to a process of cross-examination that tests the victim's evidence. In this process there may be interspersed questions that do not relate to the commission of the alleged offence, but are couched in such a way that they "go to the credibility of the witness." This process frequently involves a victim being treated in a worse manner than any other witness and may expose a victim to secondary victimisation.

Whilst the rights of the accused are accepted as a cornerstone of the fair trial system and despite the many positive procedural reforms in Victoria relating to sexual offences and family violence proceedings, a victim of any crime in Victoria currently holds no higher status than that of a witness.⁴ In fact, victims in the modern adversarial criminal trial have been described as 'evidentiary cannon fodder, of witness or claimant, not of citizen with participatory rights and obligations.'⁵

Victims are usually unfamiliar with the legal system and lack the support and legal rights of an accused. For a range of reasons, some of which can be understood but none of which are ultimately acceptable in modern Australia, victims frequently must try to deal with the issues alone or with the support of family and friends.

These types of problems associated with the criminal justice process were identified by the Government when the *Victim's Charter Act 2006 (Vic)* was introduced in Victoria:

The criminal justice process itself can exacerbate the trauma that victims have already experienced and can, in fact, become a source of secondary victimisation. This not only hinders the victim's recovery, but can impact on their future willingness to report crime and participate in the prosecution process. If this happens, the efficacy of the criminal justice system as a whole is undermined. If victims stop reporting crime and do not come forward to give evidence in the prosecution process, this makes it much more difficult to call perpetrators to account.⁶

The above concerns have been realised through the many complaints made to the Office of the Victims of Crime Commissioner regarding the treatment of victims in the course of court proceedings. Many victims have identified unnecessarily combative processes and a lack of empathy from key participants (including Judges and lawyers) making them feel like mere bystanders in the trial process and or leaving them with a sense of disempowerment. In addition to this, there are occasional reports of rudeness and dismissiveness by Magistrates and Judges towards victims, often directly related to their Victim Impact Statements.

Similar issues were also raised by Justice Cummins who stated in his retirement speech:

I have no doubt that every judge respects, and has concern for, victims. But in my view the curial system does not sufficiently translate that respect and concern. I consider the courts have not sufficiently secured the rights of victims in doctrine, procedure and sentence.....

¹ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 25

² *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 25

³ Simon Bronitt, Bernadette McSherry, *Principles of Criminal Law*, (Lawbook co. 2nd edition 2005) 113-114

⁴ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Information Paper 1, May 2015, 4

⁵ Jonathan Braithwaite, 'Juvenile Offending: New Theory and Practice', in L Atkinson and S Gerull (eds), *National Conference on Juvenile Justice*. (Australian Institute of Criminology, 1993) 36. see also Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Information Paper 1, May 2015, 4

⁶ Victoria, *Parliamentary Debates*, Legislative Assembly, 14 June 2006, page 2045, (Rob Hulls- Attorney-General)

*Witnesses should be relevantly tested- cross-examination is the proper means of doing so in the adversarial system- but should not be treated as objects of warfare.*⁷

Whilst the *Victim's Charter Act 2006 (Vic)* does provide some safeguards for the needs of victims and promotes standards for the provision of services to victims of crime in Victoria, its reach is primarily administrative and does not extend to the trial process itself. Further to this, as previously mentioned, there have been a number of procedural reforms in the areas of sexual and family violence proceedings that also protect the rights of victims, however it appears as though these are incremental reforms and do not go far enough to preserve victims' rights.

The acknowledgement of victims' rights in the legal process is particularly important in the context of family violence as the *Family Violence Protection Act 2008 (Vic)* states: *family violence is predominantly committed by men against women, children and other vulnerable persons*, making this a gendered problem.⁸ In addition to this, Victoria Police crime statistics currently attribute the increase in crime against the person as being primarily driven by a rise in family violence related crime and this statement fails to account for the strongly suspected under reporting of family violence incidents.⁹

In the circumstances, the pervasive nature of family violence and changing social standards advocating the prevention of violence against women and children make it critically important to consider methods and strategies to elevate the status, rights and needs of victims of family violence in the Victorian trial process.

A legal system that simultaneously provides for the rights of the accused and the legitimate interests of victims of family violence and all victims more generally, will provide victims of crime with the confidence to report crime, including family violence related crime, and also increase their capacity to engage and participate in the criminal justice system.

2.1 Recommendations regarding victims of family violence and the trial process

- 1) The Family Violence Royal Commission consider methods and strategies to elevate the status, rights and needs of victims of family violence as participants in the Victorian trial process. This may include but is not limited to:
 - a. The possible inclusion of binding principled statement/s in relevant legislation, acknowledging the rights of victims in the Victorian trial process. As mentioned above, any legislative amendments should be balanced and not diminish the rights of the accused.
 - b. Consideration of the deliberations of the VLRC's Review into *The Role of Victims of Crime in the Criminal Trial Process* in the context of victims of family violence and their role in the criminal and civil trial processes.
 - c. Legislative amendments that rectify the many issues surrounding Victim Impact Statements, including:
 - issues addressed in the Chief Justice's Practice Note (11/2015) (see **appendix 2** for the Chief Justice's Practice Note)
 - a legislated compulsion on prosecutors or other independent qualified persons to assist victims by perusing Victim Impact Statements to ensure their content is appropriate and not liable to adverse comment from the bench; and
 - expanding on the VLRC's recommendations made in the *Review of Family Violence Laws* report¹⁰ to include training in family violence issues to all Magistrates and Judges and consider methods to embed this type of training into ongoing professional development and induction processes.

3 Victims of family violence and courts' administrative processes

If one observes the day to day operations of the Victorian criminal courts, it becomes abundantly obvious how effective the courts and the broader criminal justice system are at shepherding defendants effectively and efficiently through the court process. This is understandable, as it is the

⁷ Justice Cummins, Retirement Speech, Banco Court Melbourne, 24 February 2010.

⁸ *Family Violence Protection Act 2008 (Vic)*, Preamble

⁹ Victoria Police, *Crime Statistics 2013/14*, 4

¹⁰ Victorian Law Reform Committee, *Review of Family Violence Laws Report*, 2006, xxxii, see recommendation 38

accused that faces trial and is subject to prosecution. However, as mentioned in section 2, victims are also fundamental to the court process and should be provided for with similar regard and priority.

Recent reforms, both legislative and programmatic have seen the introduction of therapeutic services in courts targeted towards the accused. These reforms provide for referral pathways that are both prescribed in legislation and entrenched in court processes.

The premise of therapeutic jurisprudence is based on applying a case management approach ensuring an accused or convicted person has access to streamlined treatment services to provide them with support and address the causes of their offending. These same case management principles and streamlined access to holistic supports do not apply to victims involved in the court process, with the exception of recent reforms supporting sex offence and family violence victims appearing in specialist jurisdictions.

While there are a number of services available to victims at courts including:

- ◆ court network
- ◆ witness support and assistance services including the Office of Public Prosecutions Witness Assistance Service
- ◆ the Victims of Crime Assistance Tribunal (VOCAT); and
- ◆ Family Violence Specialist Courts.

These court based services are often applied in differing courts on an adhoc basis and there appears to be no formal referral pathways in place that are comparable or similar to the prescribed and entrenched referral pathways available to accused or convicted persons accessing therapeutic services. In lay terms, often a victim will need to be visibly affected or distressed before supports are offered at court, in contrast to defendants who are represented and case managed through the court process.

It is not enough for courts to discharge their obligations towards victims of crime by alluding to services that operate largely in isolation and all too frequently beyond the reach or level of awareness of victims. By way of example there may be circumstances where a victim of family violence is required to appear in five separate court proceedings arising from one family violence incident:

- ◆ intervention order proceedings
- ◆ Family Law proceedings
- ◆ criminal proceedings
- ◆ VOCAT application
- ◆ Victorian Civil Administrative Tribunal application pursuant to sec 233A of the *Residential Tenancies Act 1997* for a new tenancy agreement that removes the defendant from the initial agreement.

It has been suggested (and is the case in many international jurisdictions) that victims should be represented by a legal representative appointed by the Crown. It is acknowledge that whilst legal representation for all victims may be ideal, it is likely to be cost prohibitive.

However, it is unreasonable to expect victims to be aware of these aforementioned types of services and proceedings and act on their own initiative without assistance. In contrast, defendants attending court are routinely asked by their counsel, magistrates or registrars if they have any other matters pending which maybe consolidated into the one hearing. This same level of regard appears to be lacking in the context of victims, including victims of family violence in the courts administrative process.

This type of service delivery gap was identified in the Victorian Law Reform Commission's *Report into the Review of Family Violence Laws* and specifically its recommendation suggesting:

*The Magistrates' Court should establish a specialist list for family violence matters, including intervention order applications, criminal charges relating to family violence and victims of crime compensation.*¹¹

It is clear there have been attempts to implement this type of case management (or holistic service provision) for victims into the Family Violence Court Divisions and Family Violence Specialists Courts. However, these practices and services appear to be limited to the specialist courts and are not available in all Victorian Courts.

¹¹ Victorian Law Reform Committee, *Review of Family Violence Laws Report*, 2006, xxxii, see recommendation 37

Another important consideration in the context of all victims of crime is that Courts adequately minimise contact between a victim and accused in a court building. This principle is provided for in the *Victims' Charter Act 2006* (Vic).¹² It is understood the Victorian Government recently funded a safety audit to assess the physical structure and operation of the Magistrates' Court to ensure victims of family violence are safe and are not intimidated while attending court.¹³ This initiative is to be applauded, however, if requisite funding is not provided to the Court to address issues and concerns identified by the audit, then the safety of victims maybe compromised and the Court is at risk of failing to meet its obligations and standards required for victims as provided for in the *Victims' Charter Act 2006* (Vic).

3.1 Recommendations regarding victims of family violence and courts' administrative processes

- 1) The Family Violence Royal Commission considers methods and strategies that aid victims of family violence through the court process including:
 - a. The continued expansion of the Family Violence Court Divisions and the accompanying holistic service provision these services provide to victims and perpetrators of family violence.
 - b. The implementation of a network of victim support coordinators and or increased resourcing for existing witness support services into every court in Victoria. This type of service and increased resourcing would ensure embedded referral pathways for all victims attending court and the application of case management principles and holistic service delivery applied in the context of victims. Further, this would also ensure victims are proactively supported through the court process and beyond, and existing services are more accessible and their use is maximised, potentially leading to a cost benefit for courts.
 - c. The consideration of the findings of the Magistrates' Court of Victoria Safety Audit. This may include recommendations supporting the resourcing or funding of initiatives that address issues identified by the audit and provide for the safety of family violence victims and satisfy the provisions of the *Victims' Charter Act 2006* (Vic).

4 Emergency support for victims

Housing services for victims of family violence

In the brief period of operation of the Victims of Crime Commissioner's Office it has become apparent there is insufficient emergency accommodation available in Victoria to meet the needs of victims of family violence. This issue was noted in the Australian Institute of Health and Welfare's, *Specialist Homelessness Services 2013-14* report:

*There were almost 7,000 more clients seeking assistance for domestic and family violence in 2013–14 than 2012–13. This is largely due to an increase in the proportion of clients in Victoria seeking assistance.*¹⁴

If an offender/perpetrator cannot be immediately located, police usually do not have the time or resources to remain with a victim of family violence. Naturally, those victims are often in great fear for their safety and they may not be in a position to find alternative, even short-term, accommodation. Those difficulties increase if there are children involved. Once again, this issue was identified in the *Specialist Homelessness Services 2013-14* report:

*The highest proportion of clients requesting assistance for domestic and family violence were living as a single parent (with a child or children) household (46%) and at risk of homelessness when first presenting for support (60%).*¹⁵

While it is a simple fact that victims should not need to continue to hide from a perpetrator it is, regrettably, also a fact that perpetrators frequently return and cause further victimisation. Annually, in Victoria, there are thousands of situations where perpetrators leave the scene of a family violence incident and return after police have left (there were 15,016 contravention of intervention order charges in 2013-14, an increase of 284 per cent since 2008-09).¹⁶ Even if an offender's return does not involve

¹² *Victims' Charter Act 2006* (Vic) s 12

¹³ Victorian Government, Department of Treasury and Finance, Budget Paper no.3 2015-2016, 11

¹⁴ Australian Government, Australian Institute of Health and Welfare, *Specialist homelessness services 2013-14*, 39

¹⁵ Australian Government, Australian Institute of Health and Welfare, *Specialist homelessness services 2013-14*, 39

¹⁶ Magistrates' Court of Victoria, *Response to Family Violence 2015-17*, <http://www.magistratescourt.vic.gov.au/publication/mcv-response-family-violence-2015-2017-> (note: this strategic document reports (15,016 charges for breach of intervention order in 2013-14 an increase of 284 per cent since 2008-09)

further violence, their very presence can and often does cause further trauma and anxiety. If their return does involve violent confrontation then there is a potentially fatal situation.

In addition to the above, the Victims of Crime Commissioner has also responded to family violence victims who have encountered difficulties and delays with accessing long-term housing assistance. One notable case involved a family violence survivor who suffered significantly debilitating injuries arising from a serious assault perpetrated by her former partner. Five years after the assault, the survivor of the violence continued to experience significant difficulties in accessing support services including access to public housing.

The Victorian Government's considerable investment in the area of housing assistance, homelessness and emergency accommodation must be acknowledged, including specific initiatives relating to victims of family violence.¹⁷ However, whilst state governments have primary responsibility for housing services both federal and local government also provide funding to achieve housing and homelessness outcomes and despite the efforts of every level of government there appears to be considerable unmet demand for housing services for family violence victims.

It is not envisaged that every report of family violence will require the provision of emergency accommodation, however, the support system should be able to cope with the numbers of projected users based on average incidents over past years and be easily accessible to victims of family violence.

Multidisciplinary Centres

In addition to improving the availability of housing services for family violence victims, it is critical that victims of family violence are able to access crisis support services as soon as possible. There are a number of known factors that impact on victims' vulnerability to continued violence including:

- ◆ perceived or actual dependence on the perpetrator
- ◆ social isolation, including lack of access to networks of social support
- ◆ lack of awareness of family violence support services and protective mechanisms; and
- ◆ experiences or expectations of poor service responses.¹⁸

These types of issues influence the choices made by women and children when seeking safety and refuge from situations involving family violence. The provision of effective and integrated responses serves to mitigate these issues by providing victims of family violence with a greater sense of confidence in the service system.

There are a number of Multidisciplinary Centres currently being piloted in Victorian police stations that involve multiple agencies working collaboratively to provide an integrated and holistic response to victims of sexual assault from a single location.¹⁹ This service involves the co-location of various agencies including, Victoria Police, the Department of Health and Human Services- child protection services and sexual assault counsellors.

This type of model provides an example of a holistic and collaborative approach that responds to the needs of victims. A similar model that responds to the specific needs of victims of family violence may improve current support services and also increase victims' confidence in the service system.

Victim Support Agency

The Victim Support Agency ('VSA'), located within the Department of Justice & Regulation (DoJR), deals with an extremely wide range of issues with which victims of violent crime are confronted.

There is a Victims of Crime Help-line which operates between 8 am – 11 pm, seven days per week and is accessible via the free-call number, 1800 819 817. The services provided can be, and often are, maintained for years if necessary and are available to any victim of violent crime.

Inexplicably, the exceptions to this ongoing assistance are victims of family violence. Victims of family violence are directed to the Department of Health and Human Services (DHHS), which does not have the same, long term, regime of assistance and services in place. We are advised that assistance provided by DHHS lasts for a maximum of thirteen weeks and then concludes.

¹⁷ Victorian Budget 2015-16 see also: Victorian Government, Submission to Royal Commission into Family Violence, 29 May 2015, see Appendix B: Family Violence Funding

¹⁸ Victorian Government, Department of Human Services, Family Violence Risk assessment and Risk Management Framework and Practice Guide 1-3 (2nd ed), April 2012, 29

¹⁹ Victoria Police, Multidisciplinary Centres , http://www.police.vic.gov.au/content.asp?document_id=36237, accessed 29 June 2015

In the circumstances, as victims of family violence are victims of crimes, it is surely logical for them to be included in the support structure provided by the VSA and local Victims Assistance Providers, contracted by the DoJR for that purpose.

At present a significant percentage of victims are (both) assisted directly by the VSA and have aspects of their support needs referred to other government agencies. A single coordinating “front of house” would ensure all available services are offered to victims of family violence, just as they are offered to all victims of non-family related violence.

4.1 Recommendations to improve emergency support for victims

- 1) In order to address system failures in the area of housing services for victims of family violence it is recommended the Royal Commission consider strategies to improve:
 - a. the delivery of streamlined, accessible and safe services for victims of family violence who are unable to find immediate refuge. This may include the provision of adequate secure emergency accommodation in every municipality for victims of family violence; and
 - b. the provision of long-term housing services for victims of family violence suffering long-standing or permanent injuries incurred as a result of family violence incidences.

In considering appropriate strategies, the Royal Commission may wish to focus on the efficient and effective collaboration and use of local, state and commonwealth government resources and services.

- 2) In order to increase victims' confidence in the family violence service system it is recommended the Royal Commission consider strategies to improve collaborative and holistic service provision for victims of family violence. This may include:
 - a. the adaptation and implementation of Multidisciplinary Centres to include family violence specific responses; and
 - b. extending the scope of the VSA processes and service delivery to include victims of family violence, and the redirection of resources and funding to meet the needs of the VSAs' broadened scope responsibilities.

5 The provision of information to family violence victims

The provision of certain information to victims is a fundamental principle contained in the *Victim's Charter Act 2006* (Vic).²⁰ However, in many instances the provision of information to victims, including victims of family violence can be sporadic and, at times, inadequate.

It is also important to note that in the context of victims of family violence, information is often vital, as it may be used to inform the protective interests and actions of a victim and their family members. Equally, information provided immediately after a traumatic event may be lost or forgotten. It should also be noted that access and exchange of information to reduce risk and improve service provision for victims must be balanced against an individual's rights to personal privacy.²¹

Section 3 of this submission identified an issue regarding a need to improve and coordinate court services for victims of family violence. Central to this, is the efficient exchange of information between multiple court jurisdictions, which can not occur without a satisfactory interface between locations and complimentary organisations.

As mentioned above, court proceedings relating to a single incident of family violence may extend across a number of differing jurisdictions of the Victorian and Federal Court systems. Improved information sharing between multiple jurisdictions in relation to family violence related matters could streamline the court process for victims of family violence and potentially reduce their exposure to secondary victimisation.

Further to this, it is often important for government agencies and courts to exchange information. The effective exchange of information between Victoria Police and Magistrates' Courts is critical to ensure the service and enforcement of family violence safety notices and intervention orders. We are aware of circumstances where intervention orders, including court orders revoking intervention orders have not been received, served or properly recorded on the Victoria Police system.

This issue is also relevant when considering the proposed National Family Violence Order scheme that would mean an intervention order issued in one state would apply across the country. The effective exchange of information is of the utmost importance as failures in the system may deny a victim the

²⁰ *Victim's Charter Act 2006* (Vic) ss 7,8,9,10,11,17

²¹ *Privacy and Data Protection Act 2014* (Vic)

protection of a court order and potentially expose a respondent to the risk of false arrest. In the circumstances it is essential that there are systems in place that minimise errors or system failures in the exchange of information.

The *Victims Charter Act 2006* (Vic) places an onus on investigatory agencies, like Victoria Police, to provide victims with advice in relation to the progress of investigations and the dates, locations and progress of any court hearings.²² Victoria Police have systems in place that aim to ensure victims are advised of this type of information. However, an important consideration is the type and nature of the information to be provided to victims of family violence.

The *Victims Charter Act 2006* (Vic) specifically states an investigatory agency is to inform a victim about the progress of an investigation into a criminal offence unless the disclosure may jeopardise any investigation into a criminal offence.²³ An investigating agency is best placed to determine whether a disclosure will jeopardise an investigation however an investigating agency should be required to balance this consideration with the protective interests of the victim.

It is important to consider exactly what offence may be considered relevant to the victim. For example, in the context of a victim of family violence, a criminal offence committed by a perpetrator may be separate from the initial family violence related offence but relevant to the circumstances of the victim. Offending, and the nature of the offending, of a family violence perpetrator may be extremely relevant in that it may influence the protective interests and safety of the victim and their family members. It is for this reason that consideration should be given to the type of information that is relevant to the protective interests of a victim of family violence and the circumstances in which this information should be provided by an investigating agency.

In addition to the above, the importance of efficient provision of information to victims was emphasised by Victoria Legal Aid (VLA) in its recent *Criminal Appeals Review*. The Review found that many victims were notified of appeal results via media reports, which had a particularly traumatic impact on victims.²⁴ A key action recommended by the Review was:

*VLA will work with the Court of Appeal and the Office of Public Prosecutions to develop processes that support victims by providing timely, accurate information when an appeal is lodged.*²⁵

Whilst the above recommendation is applicable to all victims its broad reference also extends to victims of family violence who, as mentioned above, have a particular interest in appeal outcomes as they may inform and influence a victim's protective interests and actions.

Finally, we have also fielded complaints and enquiries in regard to the provision, or lack of, legal information and services available to victims of family violence. This includes occasions where victims of family violence were left without legal advice or representation due to perceived conflict issues within VLA.

In this regard, the Victims of Crime Commissioner supports the actions proposed by VLA within its *Family Law Legal Aid Service Review* and particularly those actions which:

- ◆ review current referral pathways to identify gaps and further develop relationships with key service providers to support early and appropriate referrals; and
- ◆ propose the investigation into the viability of establishing an enhanced duty lawyer service based on the Legal Aid NSW Early Intervention Unit. Importantly as noted within the VLA Report, the NSW Early Intervention Unit model applies information barriers, which reduce conflict issues and enable the Unit to help a greater number of clients.²⁶

5.1 Recommendations to improve the provision of information to victims of family violence

The Family Violence Royal Commission consider methods and strategies that improve the provision of information to victims of family violence including:

- 1) Improved information sharing between multiple court jurisdictions in relation to family violence related matters to streamline the court process for victims of family violence and potentially reduce their exposure to secondary victimisation.

²² *Victim's Charter Act 2006* (Vic) s 8

²³ *Victim's Charter Act 2006* (Vic) s 8

²⁴ Victoria Legal Aid, *Criminal Appeals Review*, (September 2014) , 5

²⁵ *Ibid*

²⁶ Victoria Legal Aid, *Family Law Legal Aid Services Review*, (June 2015) , 3 & 14

- 2) The review of information systems and processes between Victoria Police and Magistrates' Courts and interstate jurisdictions to reduce errors or system failures in the course of exchanging information related to family violence intervention orders and related criminal proceedings.
- 3) Consideration of the type of information that is relevant to the protective interests of a victim of family violence with specific regard to a family violence perpetrator's ongoing offending and the circumstances when this information should be provided by an investigating agency.
- 4) Consideration of VLA's proposals to:
 - a. develop processes that support victims by providing timely, accurate information when an appeal is lodged
 - b. review current referral pathways to identify gaps and further develop relationships with key service providers to support early and appropriate referrals in the context of Family Law related proceedings; and
 - c. investigate the viability of establishing an enhanced duty lawyer service based on the Legal Aid NSW Early Intervention Unit to reduce the number of conflict issues and enable the Unit to help a greater number of clients.

6 Making perpetrators accountable

We strongly support initiatives that hold perpetrators to account for their actions. This includes the expansion of the court-mandated men's behaviour change programs that form part of the Family Violence Court Division as referred to in section 3. However, it is equally important to consider methods that strengthen the legal response to family violence related crime to both; provide courts with powers that reflect the seriousness of this type of offending and serve as a deterrent for future offending.

The *Family Violence Protection Act 2008* defines family violence as including; assaulting or causing personal injury to a family member or threatening to do so.²⁷ The *Summary Offences Act 1966* (the Act) currently provides for a charge of common (or "unlawful") assault, that allows lower scale assaults to be heard summarily.

A finding of guilt carries a maximum penalty of 15 penalty units or imprisonment for three months.²⁸ However, section 24 of the Act provides the court with a discretionary power to treat common assaults as an "Aggravated assault", subject to a more severe penalty of 25 penalty units or imprisonment for six months.²⁹ This discretionary power may be used by courts in circumstances where an assault occurs in aggravation including:

- ◆ an assault or battery upon any male child under the age of 14 or
- ◆ an assault on a female of any age.³⁰

The automatic inclusion of assaults arising out of incidents of family violence in the aggravated assault provision of the Act would reinforce the courts' increased sentencing powers, emphasising the availability of broader sentencing options for Magistrates in circumstances of family violence and reflect the strong community expectation that this type of violence is unacceptable and intolerable.

This inclusion is possible by amendment to the Act. This proposal would be a quick and simple way to highlight the available penalties open to the Magistrates' Court, as it is one that (while rarely, if ever, used at present) remains 'alive' and available within existing legislation.

6.1 Recommendations to make perpetrators more accountable

- 1) In exploring options for strengthening penalties for family violence, the Royal Commission should consider recommending the inclusion of applicable assaults arising from incidents of family violence (and appropriate penalties) in the aggravated assault provisions contained in section 24 of the *Summary Offences Act 1966*.

7 The role of the Victims of Crime Commissioner

Finally, as mentioned previously, the impacts of family violence are profound and pervasive and the Victorian Government frequently refers to family violence as "*our number one law and order issue*".³¹ Further, the Victorian Government tasked the Royal Commission with the objective of inquiring into a

²⁷ *Family Violence Protection Act 2008* (Vic) s 2 (a)

²⁸ *Summary Offences Act 1966* (Vic) s 23

²⁹ *Summary Offences Act 1966* (Vic) s 24

³⁰ *Summary Offences Act 1966* (Vic) s 24 (1) (a)

³¹ Media Release, Premier of Victoria, The Hon Daniel Andrews MP, Monday 19 January 2015

system that it refers to as “broken”.³² In the circumstances, victims of family violence and the system that is meant to protect and support them is an absolute priority for this Office.

The scope of the terms of reference for the Royal Commission’s Inquiry and the commitment by the Government to implement all its recommendations suggest significant reform in relation to the Victorian family violence system is inevitable and imminent.

Although the Victims of Crime Commissioner is a recent appointment and the Office is in the early stages of development, the Office is well placed to perform a critical function in relation to the monitoring, review and evaluation of reforms arising from the Royal Commission’s Inquiry.

As mentioned in the introduction to this submission, the roles and functions of the Victims of Crime Commissioner include:

- ◆ ensuring the rights and needs of victims are recognised and respected across all government agencies
- ◆ ensuring victim support services are well coordinated and effectively directed
- ◆ ensuring victims are readily able to find or to be put in touch with the most appropriate support and advice
- ◆ performing an advocacy function for the interests of victims of crime in their dealing with government agencies; and
- ◆ providing advice on how the justice system can be further improved to meet the needs of victims.

The above roles and functions indicate that the Office of the Victims of Crime Commissioner is well positioned to assist in ensuring recommended reforms arising from the Royal Commission are lasting and sustainable into the future, provided the Office has resources commensurate with the scope of its responsibilities. This would provide a cost effective option to contribute to monitoring and reviewing the implementation and efficacy of the Royal Commission’s recommendations.

7.1 Recommendations for the role of the Victims of Crime Commissioner

- 1) The Family Violence Royal Commission should consider recommending the Government provide resources and funding to the Office of the Victims of Crime Commissioner to enable it to perform its functions, but, in addition, to take a meaningful role in the monitoring, review and evaluation of reforms arising from the Royal Commission.

³² Media Release, Premier of Victoria, The Hon Daniel Andrews MP, Monday 1 June 2015

Appendix 1 Terms of Reference: VLRC Inquiry into the Role of Victims in the Criminal Trial Process

The Role of Victims in the Criminal Trial Process

Terms of Reference

The Victorian Law Reform Commission is asked to review and report on the role of victims of crime in the criminal trial process.

In conducting the review, the Commission should consider:

- (a) the historical development of the criminal trial process in England and other common law jurisdictions;
- (b) a comparative analysis of the criminal trial process, particularly in civil law jurisdictions;
- (c) recent innovations in relation to the role of victims in the criminal trial process in Victoria and in other jurisdictions;
- (d) the role of victims in the decision to prosecute;
- (e) the role of victims in the criminal trial itself;
- (f) the role of victims in the sentencing process and other trial outcomes;
- (g) the making of compensation, restitution or other orders for the benefit of victims against offenders as part of, or in conjunction with, the criminal trial process; and
- (h) support for victims in relation to the criminal trial process.

The Commission is to report by 1 September 2016.

Appendix 2 Chief Justice's Practice Note (11/2015)



Practice Note No. 11 of 2015 Sentencing Hearings

1. The Chief Justice has authorised the issue of the following Practice Note.
2. This Practice Note will take effect in relation to matters listed for sentencing hearings on or after 1 March 2015, subject to any order of a judge.
3. Practice Note No 3 of 2011 is revoked on that date.

Plea of Guilty

Listing and filing

4. Where an accused pleads guilty to the charge or charges against them a date will be set by the Court for a sentencing hearing (hearing of the plea in mitigation) and notified to the parties.
5. Material may be filed by email to criminaldivision@supremecourt.vic.gov.au or to the email address of the associate to the judge hearing the plea (where that is known).

Openings

6. Unless otherwise ordered, the Crown is to file and serve no later than 10 days prior to the sentencing hearing the Crown opening on the plea.
7. In addition to the factual circumstances of the offending the opening should include:
 - whether it is submitted that the offender is to be sentenced as a serious offender³³ or a continuing criminal enterprise offender³⁴;
 - whether it is submitted that provisions imposing a minimum non-parole period are applicable (e.g. manslaughter in circumstances of gross violence³⁵ intentionally or recklessly causing serious injury in circumstances of gross violence³⁶, manslaughter by single punch or strike³⁷, offences against an

³³ See Part 2A of the *Sentencing Act 1991* encompassing provisions regarding serious sexual offenders, serious violent offenders, serious drug offenders and serious arson offenders.

³⁴ See Part 2B of the *Sentencing Act 1991*.

³⁵ *Sentencing Act 1991* s 9B

³⁶ *Crimes Act 1958* ss15A and 15B

³⁷ *Sentencing Act 1991* s 9C

- emergency worker on duty³⁸) and whether or not special reason³⁹ should be found to exist;
- whether any of the offences is a baseline offence⁴⁰; and
 - any orders which are sought by the Crown in addition to sentence (e.g. alcohol exclusion orders⁴¹).
8. Where any of the above matters is applicable, the Crown opening should include submissions regarding the matters said to support the application of the provisions and outline any evidence to be called in support of those matters.
9. If an offence is a baseline offence the Crown is to address the following matters in its opening:
- whether and for what reasons the offence is said to require a sentence at, above or below the baseline;
 - any relevant statistical material on which the Crown proposes to rely; and
 - any previous sentencing decisions on which the Crown proposes to rely whether by way of authority or comparison.

Victim Impact Statements

10. The Crown is to ensure that any victim impact statements together with any attached medical reports, are filed and served no later than 5 days prior to the sentencing hearing.
11. At the same time, the Crown shall provide to the Court and the Defence a letter indicating whether the statements are to be tendered in written form, read by the prosecutor, read by the victim or whether application will be made for them to be read by another person. The Crown should also indicate if application is to be made for alternative arrangements for the giving of evidence.
12. Where it is proposed that a Victim Impact Statement or parts of a Victim Impact Statement are to be read aloud the Crown is to be mindful of the obligation on the Court under s 8Q(2) of the *Sentencing Act 1991* to ensure that only admissible parts are read aloud.⁴²
13. As soon as reasonably practicable after receiving a victim impact statement, the Defence must inform the Crown of any objections to the admissibility of all or any part of it.

Defence material

14. The Defence is to file and serve no later than 5 days prior to the sentencing hearing:
- any expert reports sought to be tendered;
 - any other documentary exhibits sought to be tendered; and
 - a list of any witnesses to be called.

³⁸ *Sentencing Act 1991* s 10AA

³⁹ *Sentencing Act 1991* s 10A

⁴⁰ *Sentencing Act 1991* s 5A

⁴¹ See Division 4 of Part 4 of the *Sentencing Act 1991*

⁴² *R v York* [2014] VSCA 224

Defence submissions

15. If an offence is a baseline offence the Defence is to address the following matters in its submissions:
 - whether and for what reasons the offence is said to require a sentence at, above or below the baseline;
 - whether the statistical material provided by the Crown is accepted or whether the defence seek to rely on its own material; and
 - any previous sentencing decisions on which the Defence proposes to rely whether by way of authority or comparison.
16. Where the Crown contends that a minimum non-parole period is applicable the Defence is to address the following in its submissions:
 - whether it is conceded that the relevant provisions apply or the basis on which it is said the Crown has failed to establish the application of the provisions; and
 - whether, and if so on what basis, special reason should be found to exist.

Resolution of issues prior to hearing

17. Where there are any points of contention with the material provided, counsel are expected to confer prior to the day of the sentencing hearing.
18. The Defence is to notify the Crown of any matters in dispute that would require the calling of evidence.
19. The parties may request, or the Judge may require a preliminary hearing for the purpose of ruling on contested issues which may impact on the conduct of the plea.
20. The Crown, in accordance with s 11 of the *Victims Charter Act 2006*, is to inform all victims about the process relating to the determination of an issue of admissibility of their victim impact statement.

Guilty verdict following trial

21. Where an accused is found guilty of one or more charges at trial, the above procedure will apply with any necessary modification, subject to any order of the Trial Judge.

Vivienne Macgillivray
Executive Associate to the Chief Justice
27 February 2015 Document information