



Centre for Innovative Justice

Response to Issues Paper: Improving victims' experience of summary criminal proceedings

Introduction

This review arises as a result of section 21A of the *Victims Charter Act 2006* (Vic) (the Act), which requires the Attorney General to cause a review to be conducted into what legislative and non-legislative changes are necessary and appropriate to improve the experience of victims¹ participating in summary proceedings for criminal offences. The Act recognises that victims of crime have an inherent interest in the response by the criminal justice system to that crime, giving rise to the rights and entitlements set out in the Act, and acknowledges their role as a participant in proceedings for criminal offences.²

While the recognition of the rights and interests of victims of crime, and their role in criminal proceedings offered by the Act is an important step, the experiences of victims participating in summary proceedings often falls short, and many of the most important justice needs victims have in the aftermath of criminal offending remain unmet, or only partially met by criminal proceedings.

We have prepared this submission to highlight the potential for restorative responses to improve the experience of victims who have experienced crime prosecuted summarily by meeting some of these unmet needs.

Victims and summary criminal proceedings

The Centre for Innovative Justice (CIJ) recognises that the summary criminal jurisdiction is characterised by several constraints associated with the volume of criminal cases that are tried summarily. These constraints are often framed as challenges for the incorporation of measures aimed at improving the experience of victims. In fact, in circumstances where victims have identified significant shortcomings in existing responses available to them, such constraints point to the importance of considering alternative approaches to meeting the needs of victims of crime, and in particular the value of responses that have the potential to meet the needs of victims of crime outside the strictures of existing processes.

¹ This submission uses the term 'victim' to refer to a person who has, or is alleged to have, suffered harm as the result of a criminal offence, including a family member of a person who has died as a result of a criminal offence. We adopt the use of the term 'victim' here to reflect the terminology used in the issues paper while acknowledging that some people who have experienced harm, and their advocates, prefer the terms 'victim survivor' or 'survivor'.

² *Victims' Charter Act 2006* (Vic), section 4.



In the CIJ's previous work with victims of crime, victims told us that the criminal justice system's response to the crime that was committed against them was extremely significant to them. Victims said that they wanted to take opportunities to be actively involved in the criminal proceedings that dealt with the crime they had experienced. Past CIJ work has been directed at improving current criminal justice system practices, to better support victims to exercise their role as participants within this system, and we acknowledge that the Issues Paper draws on this research.

The consultation questions in the Issues Paper do not expressly seek views on the topic of restorative justice, but our experience is that access to restorative justice is an issue of key importance to victims. Our research indicates victims have a diverse range of 'justice needs', only some of which are addressed through existing criminal justice processes. Our view is informed not only by our research, but by our informal engagement with victims in the context of our work delivering restorative justice processes through Open Circle, CIJ's restorative justice service.

A review of this nature should incorporate consideration of restorative justice given its relevance to victims' justice needs and interests, as well as the high levels of interest and support for this option expressed by victims themselves, and the opportunity it may present for improving the experience of victims in summary criminal proceedings.

As will be explained in more detail in this submission, victims of crime have a range of justice needs that are not readily identified or met through existing legal processes. These justice needs are for voice, validation, information, accountability, prevention, relationship repair and resolution. Summary criminal proceedings fulfil a range of functions and may meet some victims' needs, but such proceedings do not have meeting victims' needs as their central focus. The role of victims is not central to the process – they are participants, but not parties to proceedings for criminal offences. While offering some protections to complainants and vulnerable witnesses, criminal procedure and evidentiary rules primarily uphold the rights of the accused to a fair summary hearing process. This means that if the full range of justice needs that victims experience in the aftermath of crime are to be appropriately addressed, then in addition to any necessary reform to address the shortcomings of the summary process for victims, serious consideration must be given to offering other mechanisms capable providing these responses to victims.

This may be particularly relevant in the context of summary proceedings, for, as noted in the Issues Paper, the fast pace at which these processes are conducted (compared to matters in the higher courts) presents particular challenges to victims' capacity to meaningfully take part as participants. Due to this limitation, the summary criminal processes may have less capacity to meet all of victims' justice needs than criminal proceedings that take place in the higher courts. Perhaps, then, restorative justice has great potential to deliver benefits to victims of summary crime.

In this submission, we will outline how restorative processes can meet individual victims' justice needs in ways that the existing criminal justice system cannot. Rather than merely replacing or offering an alternative to the existing criminal justice system, restorative justice processes can operate alongside it, in ways that complement it. We explain in this submission several models or options for restorative responses. These include restorative processes that could be integrated within the summary criminal process, or could exist outside it. We also offer preliminary assessments of their benefits and limitations for victims and other participants. Given not all restorative responses are victim-oriented, we also suggest some of the key features of any restorative response that seeks to focus on the needs of victims of crime.

Defining restorative justice

Restorative justice has been defined as, 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the

offence and its implications for the future.’³ Restorative justice focuses on the personal harm caused by a crime or other wrong rather than on the violation of a law committed against the state, or on the technical elements of a legal duty owed to another party. It is concerned with acknowledging and addressing the harm caused to individuals and their broader communities. The focus is on healing, meeting needs, accountability, community restoration, and righting damaged relationships (where appropriate).

Among the core principles underpinning restorative justice processes are those relating to the importance of involving all people affected by a crime or other form of harm in addressing its effects and its implications for the future, and of not causing any further harm to the participants in circumstances where they are already feeling the impact of the original harm. Restorative justice processes can have benefits and outcomes that are not generally available through adversarial legal processes, which tend to entrench oppositional and defensive positions and states of conflict. Restorative justice processes, by contrast, encourage participants to speak with and listen to each other, thereby promoting mutual understanding. Restorative justice processes offer benefits to all who participate in them.

Restorative justice processes

The most common restorative justice process is restorative justice conferencing, where those affected by a crime, other harm or situation of conflict collectively discuss how to respond to the aftermath of what has happened and its implications for the future. Participation in a restorative justice conference is voluntary for all participants. The convener of the conference is a skilled professional whose focus is guiding the process according to restorative principles, with the aim that the process is respectful and fair for everyone involved. A restorative justice conference generally proceeds in three phases, with all parties discussing: what happened; how people were affected; and what needs to happen to address the harm. Restorative justice processes can also be used in ways other than conferencing or face-to-face meetings between parties, including through indirect communication and the exchange of correspondence. Throughout this submission we advocate for the wider availability of ‘restorative justice processes.’ In doing so we are referring to restorative justice conferencing and also a broader range of processes that are restorative in nature, including those involving indirect communication. We take the view that a key benefit of restorative justice processes is their capacity to be flexible and responsive to the needs of individual participants.

Victims’ justice needs

It is often said that, after experiencing a crime, victims seek ‘justice.’ But what does ‘justice’ mean for victims? Recognising that victims of crime are not a homogenous group and their distinct characteristics and experiences shape how the crime affects them and their interests and needs following the crime, there are common themes in what victims want to happen in order for them to feel that justice has been done. The CIJ refers to these themes collectively as ‘victims’ justice needs.’⁴

³ Tony Marshall, ‘The evolution of restorative justice in Britain’ (1996) 4 *European Journal on Criminal Policy and Research* 31, 37.

⁴ Some scholars refer to these themes collectively as ‘victims’ justice interests,’ e.g. Kathleen Daly, ‘Reconceptualising Sexual Victimization and Justice’ in Inge Vanfraechem, Antony Pemberton & Felix Mukwiza (eds) *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Taylor & Francis, 2014) 387. However, other researchers (e.g. Jane Bolitho, ‘Putting justice needs first: A case study of best practice in restorative justice’ (2015) 3(2) *Restorative Justice* 256, 267) have found the term ‘justice needs’ to be a closer fit with victims’ own narratives, which is also the experience of the CIJ, and therefore we use the term ‘justice needs.’

Based on the research and the CIJ's experience of working directly with victims of crime, the CIJ uses the following categories of victims' justice needs:

Justice Need	Description
Voice	The need or desire to tell the story of what happened and its impact
Validation	To have others believe and affirm their experience
Information	The need to understand more the circumstances of the crime or harm, about what happened and why
Accountability	May encompass punishment, public acknowledgement, apology/expression of remorse, other forms of recompense/reparation
Relationships	To restore damaged relationships with others involved in or affected by the crime or harm, family members and the community
Prevention	To see that what happened to them does not happen to anyone else To address the circumstances that contributed to the crime or harm
Resolution	To feel that what needs to happen in order for the crime to be addressed has occurred

The criminal justice system cannot meet all the justice needs of all victims

If we map each of the above justice needs against what the criminal justice system is capable of delivering for victims, it becomes clear that the criminal justice system as it is currently constituted is unlikely to be able to meet all of them. To consider the need for voice: some victims who have a strong need for voice may feel that this need is met if the summary hearing allows them to give evidence, or if they make a victim impact statement. However, not all victims have these opportunities. In some cases, police may decline to bring charges, or a prosecution may be discontinued in the early stages. This is often the experience of victims of sexual offences, given the high attrition rate in the prosecution of these matters. In the summary jurisdiction, the vast majority of charges are determined following a plea of guilty by the accused, and the victim does not give evidence.

Even in cases where victims do have opportunities to exercise voice during criminal proceedings they may not necessarily find these experiences satisfying; the legal structures governing these processes may not be conducive to victims feeling able to tell their stories in the ways they want to tell them. For example, as the Issues Paper acknowledges, there are constraints on what can be included in victim impact statements.

Further, there is no mechanism within the traditional criminal justice system to facilitate direct communication between victims and offenders. Therefore, victims who have a specific need to voice their experience to the offender are unlikely to have this need met via the traditional criminal justice system. The criminal justice system does have the potential to deliver victims a sense of validation and offender accountability in cases where offenders plead guilty or are found guilty. In those circumstances a guilty outcome may be experienced by a victim as evidence that the criminal justice system has believed them, that it has denounced the behaviour as wrong, and has attributed the wrong to the offender and imposed a punishment on them. However, not all criminal proceedings result in a guilty verdict. Even in cases that do, we know that some victims have negative experiences of the criminal justice system and may feel that the system fails to acknowledge their victimisation and fails to adequately hold the offender accountable.⁵

Other victims may have specific validation and/or offender accountability needs that cannot be met via formal criminal justice system mechanisms. For example, some victims of sexual offences may seek validation in the form of their own family members acknowledging the harm they have

⁵ Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process: Final report (Victorian Law Reform Commission, report 34, 2016),

experienced. This is not a process the criminal justice system can deliver. For some victims it is crucially important to know whether an offender is genuinely remorseful, beyond any formal acknowledgment of responsibility that might be indicated on the offender's behalf via their lawyer. These victims may seek an opportunity to speak directly with the offender in order to gauge whether the offender truly understands the consequences of the offending. As noted above, this is not an interaction that the traditional criminal justice system facilitates.

Victims who have a prevention need may express a strong desire to ensure that the victimisation they have experienced does not happen to anyone else in the future. Victims with a prevention need may, for example, recognise that factors such as an offender's mental health or substance abuse issues contributed to the offending. Some of these victims will seek opportunities to encourage an offender to seek treatment, with the aim of helping the offender make changes that will mean they are at a lesser risk of repeating the offending behaviour in the future. Some victims want to contribute to broader social change to address issues that contributed to the offending on a structural level.

In summary, existing criminal justice processes may be able to meet some justice needs, to some extent, for some victims, some of the time. This is not to say that the criminal justice system is failing to fulfil its purpose. Criminal justice system processes are not primarily designed to address victims' needs. The core function of a criminal prosecution is to determine questions such as whether a crime has been committed, whether an accused person is guilty, and if so what sentence is appropriate to impose in the circumstances. Critically, its mechanisms uphold the rights of the accused in recognition of the imbalance of power and resources that necessarily arises when the state prosecutes an individual.

Research findings: benefits of restorative justice for victims

Unlike a criminal prosecution where the victim is not a party to proceedings and therefore their needs are not the main focus, restorative justice processes have the potential to offer victims an opportunity to participate in a process specifically designed to address the harm they have experienced. There are several benefits for victims identified in the literature. Although restorative justice programs differ considerably and it can be difficult to draw general conclusions from dataset comparisons,⁶ there is now a solid research base that indicates that restorative justice processes offer benefits for victims who participate in them. The studies comprising this research base have frequently measured victims' level of satisfaction with a restorative justice process compared to victims' level of satisfaction with court processes. For example, a well-known study by Heather Strang examined the impact on victims of crime of a restorative justice program in Canberra (the 'Reintegrative shaming experiments' or 'RISE').⁷ Conducted over five years, the study randomly assigned cases to either a restorative justice conferencing program or to usual court processes. Victims who took part in the restorative justice program were significantly more satisfied with their experience compared to those who went to court. While a small percentage of victims reported dissatisfaction with the restorative justice process, Strang found that this was usually related to poor practice rather than the nature of the process itself.

In a further study, Strang and her colleagues compared the RISE results with those from randomised controlled tests conducted in relation to three restorative justice processes programs in the UK.⁸ As was the case with the RISE program, victims who took part in the three UK-based programs also reported significantly higher levels of satisfaction compared to those who had only gone to court. Across the four restorative justice programs, victims' sense of satisfaction with their

⁶ Jane Bolitho, 'Putting justice needs first: A case study of best practice in restorative justice' (2015) 3(2) *Restorative Justice* 256, 267

⁷ Heather Strang *Repair or revenge : Victims and restorative justice* (Oxford University Press, 2002).

⁸ Heather Strang, Lawrence Sherman, Caroline Angel, Daniel Woods, Sarah Bennett, Dorothy Newbury-Birch, and Nova Inkpen, 'Victim Evaluations of Face-to-Face Restorative Justice Conferences: A Quasi-Experimental Analysis' (2006) 62 *Journal of Social Issues* 281.

participation in restorative justice was associated with feeling that they had had an opportunity to participate meaningfully in the process and that they had felt fairly and respectfully treated. Strang and her colleagues also found that victims from a diverse range of backgrounds, who had experienced offences that ranged from relatively minor crimes to very serious crimes and included those committed by juveniles and by adults, consistently reported feeling better off after taking part in restorative justice processes.

Jaimie Beven and his colleagues conducted a randomised controlled test in which they compared the experience of victims who took part in a restorative justice program with those of a control group of victims who went through the court process. They found that the victims who took part in the restorative justice program reported significantly greater levels of perceptions of safety compared to the control group.⁹ In fact, most of the victims who had taken part in the restorative justice program reported perceptions of safety that were higher than their pre-offence levels. Consistent with other studies, the victims who took part in the restorative justice program reported higher levels of satisfaction with the quality of their participation in the process compared to the victims who went through court. A recent study has also suggested that participation in restorative processes can reduce the traumatic effects of crime for victims.¹⁰

The relationship between restorative justice and the criminal justice system

Restorative justice processes can meet a range of victims' justice needs that the traditional criminal justice system is not capable of meeting. However, this is not to say that restorative justice processes should replace the traditional criminal justice system. It is vitally important that the justice system, including the summary criminal process, continue to perform its functions of determining questions of guilt based on evidence, determining sentences according to law and ensuring that criminal prosecutions are fair and the rights of accused upheld. The criminal justice system concurrently serves the interests of the accused, the victim and the community as a whole, and because of this broad role it would not be appropriate for the needs and wishes of individual victims to become the central focus of criminal proceedings.

Recognising the distinction between what a properly functioning criminal justice system can deliver for victims, and what it cannot, provides some guidance on the appropriate relationship between restorative justice processes and traditional criminal justice processes. It suggests that restorative justice processes can and should operate alongside the criminal justice system in a complementary way, by providing a forum in which the human impact of crime can be the central focus and victims' needs can be expressly responded to. The availability of restorative justice as a complementary process can also help protect the integrity of the criminal justice system, reducing the pressure for it to incorporate approaches incompatible with other functions, and improving victim satisfaction.

In Victoria, unlike some international and national jurisdictions where restorative justice is widely available, there is very limited access to restorative justice as a response to crime. Access to restorative justice for victims in Victoria is limited to the Youth Group Conferencing option (available only when the accused is within the jurisdiction of the Children's Court); the Department of Justice and Community Safety's restorative justice service (when the victim has experienced family violence); and the restorative justice service provided by CIJ's Open Circle in response to a broad range of criminal offences. There is substantial demand for Open Circle's restorative responses from victims of crime, but this program is not formally embedded within the criminal

⁹ Jaimie Beven, Guy Hall, Irene Froyland, Brian Steels & Dorothy Goulding, 'Restoration or Renovation? Evaluating restorative justice outcomes' (2005) 12 *Psychiatry, Psychology and Law* 194.

¹⁰ Caroline Angel, Lawrence Sherman, Heather Strang, Barak Ariel, Sarah Bennett, Nova Inkpen, Anne Keane and Therese Richmond, 'Short-term effects of restorative justice conferences on post-traumatic stress symptoms among robbery and burglary victims: A randomised controlled trial' (2014) 10 *Journal of Experiential Criminology* 291.

justice system as an option for victims of crime. Increasing access to restorative justice would improve the experience of victims participating in summary proceedings for criminal offences in Victoria.

How might a restorative response work in the context of summary criminal proceedings?

There are several opportunities to incorporate restorative responses into or alongside summary criminal proceedings. Legislative reform would not be necessary for these responses to be made available to victims, but some non-legislative measures would likely increase their accessibility. These options or models for restorative justice in the summary jurisdiction are explained below, together with some of their potential benefits and limitations for victims and other participants.

Post-plea, pre-sentence restorative justice process (restorative justice as deferral of sentencing)

Under this model, restorative justice could be offered in circumstances where:

- an offender has been found guilty or entered a guilty plea;
- restorative justice would potentially meet a victim's justice needs that may not be met through the criminal justice process;
- the victim agrees to participate in a restorative justice process and is comfortable that the offender's participation may be taken into account for sentencing purposes; and
- the accused consents to the approach.

Under this model the magistrate would be asked to adjourn proceedings utilising her or his power to defer sentencing under section 83A of the *Sentencing Act 1991 (Vic)* for a period that would enable the restorative justice process to take place. Following the restorative justice process, the matter would return to court for sentencing. The magistrate could take the offender's participation in a restorative justice process to account in determining the appropriate sentence.

There would be several benefits to this approach. These include the following:

- this is a post-plea process so it would not raise concerns for accused about the risk of self-incrimination / admissions being used to prove charges;
- this process would provide victims with access to both processes – a criminal justice and an restorative response – which is likely to enhance their experience of the criminal justice system;
- the possibility that an accused person's participation might be viewed positively for sentencing purposes may encourage participation of accused, thereby increasing the availability of restorative justice to a broader range of victims.

A limitation of this option would be the potential for delay in resolving the criminal proceedings while the sentence was deferred.

Post-charge, pre-plea (restorative justice process as diversion)

Under this model, restorative justice could be offered in the form of a diversion in accordance with section 59 of the Criminal Procedure Act 2009 (Vic), for suitable offences in circumstances where:

- the accused acknowledges to the Magistrates' Court responsibility for the offence;
- it appears appropriate to the Magistrates' Court, which may inform itself in any way it considers appropriate, that the accused should participate in a diversion program; and
- both the prosecution and the accused consent to the Magistrates' Court adjourning the proceeding to enable the accused to participate in and complete the diversion program, including participating in a restorative justice process.

There would be several benefits to this approach. These include the following:

- addressing concerns on the part of accused about the potential for self-incrimination in the context of a restorative process;
- the possibility of a diversion may encourage participation of accused persons, leading to greater uptake, thereby increasing the availability of restorative justice to a broader range of victims.

There are some limitations that may arise in this context. A diversionary response would likely only be available for suitable 'low-level' offences where the prosecution and magistrate consider it appropriate. Further consideration of current approaches to diversion processes, including policies and procedures adopted by police prosecutors to determining the suitability of different offences for diversion may need to be reviewed to ensure consistency of approach, or to make the option available for other than 'low-level' offences.

Post-charge, pre-plea (restorative justice as an alternative to prosecution)

Under this model, restorative justice could be offered as an alternative to prosecution in circumstances where:

- it is the preferred approach for the victim;
- the prosecution supports this approach; and
- the accused consents to the approach.

This approach would require prosecutors to seek an adjournment of proceedings while the matter is assessed by a restorative justice service provider for suitability and for the magistrate to grant an adjournment to enable this to occur. Charges could then be withdrawn by prosecutors following a satisfactory restorative justice process.

There would be several benefits to this approach. These include the following:

- the potential to provide an alternative resolution of matters with low prospects of conviction;
- reducing the risk of harm to the victim associated with the unsuccessful prosecution;
- the potential to provide victims whose cases have low prospects of a conviction or for whom a criminal prosecution is unlikely to deliver a suitable outcome with an alternative process that meets some of their needs.

This approach would require significant policy guidance and education for police prosecutors and other decision-makers to ensure decisions in relation to the suitability of matters for restorative justice / withdrawal of proceedings are victim-centred, and that careful and consistent processes are adopted. While this approach would be designed to respond to the needs of victims who did not wish to proceed with a criminal process, careful consideration would still need to be given to the potential for this type of response to be used inappropriately as a convenient way of dealing with difficult to prosecute offences. It would not be desirable for the availability of a restorative response as an alternative to criminal prosecution to have the effect of limiting access to criminal prosecution for those victims of crime for whom the latter is the preferred response. In the absence of specific legislative protection, accused persons may also have concerns about the potential for any admissions made during a restorative justice process to be used in future criminal or civil proceedings.

Features of a victim-focused restorative justice program

The above options represent two models of restorative justice that could be integrated into, and complement the summary criminal justice process and another model that would act as an alternative pathway for a victim of crime. Each of these options provide benefits and limitations for victims, accused, and the broader system's efficiency. This illustrates that as well as improving victims' experiences of justice, restorative justice practices can take many different forms and can have many impacts at a system-level.

However, it is important to acknowledge that not all forms of restorative justice are solely focused on the needs of victims of crime. Indeed, some restorative processes do not involve victims at all. The CIJ takes the view that restorative processes have the potential to offer significant benefits to victims of summary crime. However, such processes need to be specifically designed and operated to be victim-focused in order to realise such benefits.

Principles

We suggest that the following principles should inform a restorative justice program focused on the justice needs of victims who have who experienced summary crime, including offences prosecuted summarily:

- **Recognises the victim as the expert on their own life and their own healing/recovery.** The restorative process must support victims to exercise choice and agency. Victims' decisions, including whether to engage with a restorative justice process, when it feels right for them to do so, and who else they want to include, must all guide the process. If a victim does not want to engage in a restorative justice process, the process should not go ahead.
- **Flexible, so that the process can be tailored to the individual justice needs of each victim.** Victims are not parties to criminal proceedings, their needs are not central within these processes, and some victims can feel overlooked and as though they do not matter in the context of justice system processes. A victim-focused restorative justice process must be one in which victims' individual needs are recognised. Victims have a range of different justice needs. Which needs are most pressing, and the way they present in a victim's life will be different for each person. The process must be flexible enough to respond to each participant's unique needs. It must not be a 'one-size-fits-all' approach.
- **Part of a suite of options available to victims.** Restorative justice should be complementary to the criminal justice system. Restorative justice processes can meet some justice needs that the criminal justice system cannot. However, restorative justice processes cannot meet all needs for all victims. Victims must be able to decide on a course of action best suited to them. For some victims this will involve engaging with the criminal justice system and participating in a restorative justice process. It must always be the victim's decision as to whether to take part in a restorative justice process and deciding to do so must not prevent victims from accessing other forms of justice.
- **Trauma-informed:** the ongoing effects of the harm the victim has experienced are recognised. An understanding of the impacts of trauma is applied to the design of approaches which accommodate the vulnerabilities of trauma survivors and enable processes which minimise the risk of re-traumatisation. The work is collaborative and acts on the core principles of safety, trustworthiness, choice and empowerment.

In addition to the above principles, the following considerations should inform a restorative justice program focused on the needs of victims.

Timeframes

Extensive preparation with participants is essential to delivering a trauma-informed service, that is responsive to the needs of each victim. Preparation processes should be flexible and adapted to the needs of the people involved and their circumstances. Preparation should be comprehensive and unrushed, giving conveners opportunity to explore with the victim (in particular) and the offender what they want to say, how they might respond and things that they do not wish to discuss (for example, revisiting the details of the offence). Preparation is likely the longest part of any restorative justice process, and services should be designed (and resourced) to accommodate matters that they remain involved with for substantial periods of time. To ensure that a restorative justice program is capable of delivering best possible benefits to victims who take part, timeframes

must be dictated by each victim's needs, and not determined by justice system priorities. This point is particularly relevant in the context of the fast-moving pace of summary criminal proceedings.

Clarity around the purpose of the program

A restorative justice program intended to benefit victims of summary crime must remain focused on this objective. This objective must also guide evaluations of the program. While there is evidence that indicates that participating in restorative justice processes can reduce recidivism,¹¹ this should not be the primary lens through which a victim-focused restorative justice program is judged. Rather, such a program should be judged on the benefits it delivers for victims. Of course, some victims have a strong need to see accused persons engage in therapeutic and rehabilitative activities, and may want to participate in restorative justice in order for the process to have this effect for accused. However, the key purpose of the restorative justice program we are proposing is to meet the needs of victims. It should not be seen as primarily as a mechanism by which to address the therapeutic needs of offenders or broader goals more relevant to sentencing purposes.

The process must not be punitive

While focused on the justice needs of victims, the process should offer offenders genuine opportunities to reflect on and understand their behaviour. The process should not aim to punish or shame offenders. The process must not compromise the legal rights or interests of accused.

Eligibility criteria

A restorative justice program focused on the justice needs of victims of summary crime should have broad, flexible eligibility criteria. Eligibility assessments should focus on the harm a victim has experienced rather than on types of crime and their anticipated effects. For example, the summary offence of careless driving may be presumed to be a 'victim-less crime' when in fact, some offences of this nature involve deaths and serious injuries. In those circumstances, people affected should not be excluded from a restorative justice program. We note that even though offences dealt with summarily are, viewed through a legal lens, considered objectively less serious than those dealt with in the higher courts, victims of crimes prosecuted in the lower courts can be severely impacted.

Crimes at the more serious end of the spectrum should not be excluded from a restorative justice program focused on the justice needs of victims of summary crime. Evidence suggests that in fact restorative justice processes are most effective in the context of serious harm.¹²

Crimes that involve particularly complex dynamics and risks, such as family violence and sexual violence, should not be excluded from a restorative justice program focused on the justice needs of victims of summary crime. However, additional measures must be put in place to ensure that restorative justice processes can go ahead safely in these contexts. The CIJ has outlined a model for restorative justice responses to sexual harm, which provides details of the additional features that should apply to those cases.¹³ It is relevant to note in this context that several indictable sexual offences are triable summarily, and that the Victorian Law Reform Commission will soon report to the Attorney-General on Improving the Response of the Justice System to Sexual Offences and is expected to make recommendations on restorative responses to sexual harm.

¹¹ For example, Jeff Latimer, Craig Dowden and Danielle Muise, 'The effectiveness of restorative justice practices: A metaanalysis' (2005) 85 *The Prison Journal* 127; Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (The Smith Institute, 2007).

¹² Lawrence Sherman, Heather Strang and Daniel Woods, *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE)* (Australian National University Press, 2000); Mary Koss, 'The RESTORE program of restorative justice for sex crimes: vision, process and outcomes' (2013), *Journal of Interpersonal Violence*, 29(9), 1623-1660.

¹³ See the CIJ's submission to the Victorian Law Reform Commission's Inquiry, *Improving the Response of the Justice System to Sexual Offences*: <https://www.lawreform.vic.gov.au/improving-the-response-of-the-justice-system-to-sexual-offences-submissions/>

Conclusion

Victims of crime have an inherent interest in the response by the criminal justice system to that crime. However, for some victims, the response offered by summary criminal proceedings falls short of their expectations, and may fail to meet some of their needs.

In this submission, we have outlined how restorative processes can meet individual victims' justice needs in ways that the existing summary criminal process cannot. We have suggested that restorative justice processes can operate alongside the summary criminal process, and improve the experience of victims of crime.

We have identified several options for restorative processes that could be integrated within the summary criminal process, or could exist outside it, and the benefits that these responses could offer to victims of crime.

We therefore recommend that this review give serious consideration to recognising the potential for restorative justice processes to provide an opportunity for improving the experience of victims within and alongside the summary criminal process. In this context, we note that implementation of restorative responses in or alongside the summary criminal process could occur as a consequence of either legislative or non-legislative changes.