

CIJ submission # 2 to the review into victims' experiences of summary criminal proceedings

September 2021

1. Introduction

This is the second of two submissions made by the Centre for Innovative Justice ('the CIJ') to the review into victims'¹ experiences of summary criminal proceedings – an inquiry required under section 21A of the *Victims Charter Act 2006* (Vic) (the Act).

The first submission focussed on the potential for restorative justice responses to meet the justice needs of victims of crime more effectively by providing a forum for restorative engagement with those responsible for causing the harm they have experienced. It draws on insights gained in our direct work with victims in the context of delivering restorative justice processes through the CIJ's service, Open Circle.

In this second submission, the CIJ draws on another significant stream of our work, to address more specifically the three issues highlighted as being of relevance to the review. This other stream of work includes system-wide and service reviews recently undertaken by the CIJ which outline comprehensive recommendations which, if implemented, have the potential to improve outcomes for a large number of victims of summary offences.

2. The CIJ's expertise

The CIJ's objective is to develop, drive and expand the capacity of the justice system to adapt to the needs of its diverse users. We are committed to finding innovative and workable solutions to complex problems that manifest in the justice system and do this by conducting rigorous research with a focus on impact and achievable reform and prioritises direct engagement with service users and frontline service agencies.

This second submission is informed by a significant two-stage review and redesign of victim services in Victoria, commissioned by Victim Support Services and Reform (VSSR) within the Department of Justice and Community Safety (DJCS). It is also informed more broadly by our understanding of the link between victimisation and trajectories into further harm, including contact with the criminal justice system, and in particular, by our work on the need to [find non-custodial responses for criminalised women](#), the vast majority of whom have past and ongoing experiences of crime victimisation.

All CIJ research and advocacy relevant to victim support and criminal justice reform is enriched by the contributions of our colleague Dorothy Armstrong, a Lived Experience Expert employed by the CIJ since 2019.

CIJ research on the needs of victims

Finalised and published in 2020, the aim of the CIJ's [review of Victoria's state-wide victim services system](#) was to support the development of a future service model that is aligned to, and keeps pace with, contemporary knowledge and leading practice in victim support. As part of that wider review, the CIJ conducted a distinct [review and redesign of the Child Witness Service](#) (CWS) to inform ongoing improvements in that particular and very important area (unpublished). Both projects involved extensive consultations with key criminal justice stakeholders as well as interviews with victims of crime, including a small number of child witnesses and their families.

While insights emerging from the victim services review focus primarily on the web of services available for victims outside the court process, they have direct relevance to the issues raised for consideration in DJCS's current inquiry. Providing effective support provided to victims of crime participating in courts of summary jurisdiction, where the vast majority of criminal matters are determined, is not only likely to result in more positive experiences of legal processes but, by doing so, is also likely to contribute to a well-functioning criminal justice system. Without the participation of victims of crime, the overall capacity of the system to identify, investigate and prosecute incidents of crime is reduced.²

As addressed in the CIJ's earlier submission on restorative justice, not all victims of crime want their offender simply to be punished, with many also seeking recognition, validation and support.³ Evidence also strongly indicates that procedural justice – that is, a sense that the process is fair and legitimate – can be just as, if not more, important to victim satisfaction than substantive criminal justice outcomes. This suggests that investing in services which work to support victims of crime through summary criminal justice processes; manage their expectations; and ensure that they are informed throughout their journey, can increase victim satisfaction and support participation in the criminal justice system.

Findings from our research also indicate that experiences of victimisation are complex, varied and are not necessarily predicted by crime type. Victims do not necessarily experience crime as an isolated or confined experience; are likely to be impacted by the crime in a non-linear way and in the context of pre-existing vulnerabilities; and are not always able to identify and articulate what they need from the system. An overview of our findings on the needs and experiences of victims and key considerations for policy makers when designing responses for victims of crime can be found in the CIJ resource, *Improving support for victims of crime: Key practice insights*, attached as **Appendix A** to this submission.

The CIJ's review of the CWS not only highlights the need to ensure adequate resourcing for specialist support to assist children to navigate legal processes, but the need to extend that model to other vulnerable cohorts and, in particular, young adults appearing in summary criminal matters either as witnesses or defendants. Our Inquiry into the involvement of victims in decisions made by prosecutors from the Office of Public Prosecutions (OPP) XXXX

3. Issue one: Victim involvement in decisions made by prosecutors

Findings from research conducted by the CIJ into the ways in which victims are consulted in relation to decisions made by prosecutors in indictable matters – such as whether to modify, continue or discontinue charges, or to accept a guilty plea to a lesser charge – are also relevant in relation to the conduct of summary criminal proceedings.

As acknowledged in the Department's Issues Paper, victims participating in legal proceedings are concerned primarily that their views are considered in making prosecutorial decisions relevant to the case, regardless of whether those wishes are acted on. In CIJ research commissioned by the OPP, we found that 'victims are more likely to feel fairly treated by the criminal justice system when police and prosecutors: take an interest in them; give them an opportunity to express their wishes; and take their wishes into consideration.'⁴

More broadly, a strong finding from the CIJ's review of Victoria's victim support services, is that being kept informed about the criminal justice processes is relevant to the extent to which people feel that they are part of the process. Providing support that includes tailored information and advice, involves regular contact to check on people's well-being and changing needs over time, and functions as a central point of contact, maximises opportunities for victims to not only engage meaningfully in legal proceedings.

Similarly,, consultations conducted as part of the review of the CWS within the wider victim services review demonstrated that child witnesses/victims and their families value having the opportunity to communicate with criminal justice professionals. These can take the form of:

- legal conferences, where the child and family meet with the prosecution team involved in the case; and
- debriefing meetings once the trial concludes.

The CIJ heard that conferences conducted post-court involve a meeting between a young person and their family with the CWS, the Victoria Police informant, the OPP and other agencies deemed relevant to discuss the outcome of the legal process. This included providing information on plea deals; the reason for any discontinuance; the sentence handed down; or the absence of a conviction.

Stakeholders consulted within this specific review regarded these conferences as a crucial way of providing a young witness and their family with a wider context and perspective, as well as countering what was often a disempowering experience of the criminal justice system for victims and witnesses. To this end, stakeholders noted that these conferences required a united approach from agencies, particularly given that police informants or SOCIT teams may not be aware of why or how an outcome has occurred.

Consultations also highlighted that these conferences were particularly important in matters involving juvenile offenders. This was because diversionary processes may often be used, leaving families of victims without a sense of 'justice' being done in the way they had anticipated.

As valuable as these conferences were, the CIJ heard that it was crucial that they occur in a timely manner. One young person interviewed as part of this review indicated that the debriefing session was offered to them more than six months after sentencing. This delayed process left the young person feeling unsettled and unresolved – a feeling which the young person described as like being 'a book without a back cover'.

You finish at court... that's it... You are cut off from everything. It ended and it was like - nothing. Three years of my life... and now you've left me with nowhere to go...

As was made clear in the CIJ's research into consultations with victims as part of the prosecutorial process, the way in which that consultation occurs is also important. For victims involved in indictable matters, the presence of the VWAS ensures that OPP prosecutors are 'socialised' by working in partnership with social workers engaged by that service to operate in a trauma-informed way. Victims in matters proceeding summarily, however, who deal solely with police prosecutors, are less likely to experience that communication in the same considered way.

Here it is important to note that the associated time and resources from all the agencies involved in ensuring victims can meaningfully participate in court proceedings needs to be considered, particularly in the high-volume and less well-resourced summary jurisdiction. . Notwithstanding this, representatives of criminal justice agencies consulted for the CIJ's research into victim services, stressed the value of this consultation process both for the victims involved and their families, but also for the effective administration of justice

4. Issue two: Victim participation in court proceedings

The ability for victims of crime to have input into proceedings, including in relation to sentencing via Victim Impact Statements (VIS) and contributing to indicators of sentencing, has become an integral part of criminal justice processes. However, as the Department recognises in the Issues Paper supporting this review, findings from the CIJ's review of victim's services highlights the barriers faced by many victims in taking up this opportunity.

Victims of crime who participated in the CIJ review frequently noted that they did not know what was available to them in terms of support, or that they required assistance and advocacy to access their entitlements.⁵ For example, victims of crime often relied on services and agencies with which they were engaged to notify them of the availability of mechanisms such as VIS and the Victim's Register, and to assist them to undertake those processes to give effect to their rights under the Victims' Charter. Processes currently in place requiring investigating police and police prosecutors to notify victims of these options, and to refer them to the services that can assist them to engage with them, are clearly falling short – either because victims are not receiving the information or are not receiving it at a time or in a manner that increases the chances they will retain the information.

In addition, victim complainants in the summary jurisdiction may have insufficient time to prepare a VIS in a considered and supported way, or at all. Unlike processes in the higher courts, the fast-paced environment of the summary system means that defendants can be sentenced on the same day that a guilty plea is entered. Our consultations with victims of crime for the victim services review clearly illustrated the importance for victims of telling the court how the offending had impacted their life, and the impact of not having an opportunity to do on their sense of fairness and justice, and hence on their recovery.⁶

The CIJ notes the approaches discussed in the DJCS Issues Paper to overcome the particular barriers victims involved in summary proceedings face in submitting a VIS, including enabling victims to make a preliminary statement at an earlier point in the process, including while the victim is giving a statement to the police. In addition to the numerous concerns raised in the paper about police taking impact statements from victims during the investigative phase, we emphasise findings from the review of the victim services system, that victims engaging with agencies require trauma-informed responses from skilled practitioners. This is particularly the case in the immediate aftermath of an experience of victimisation.

For this reason, and in recognition of the fact that preparing a VIS may cause distress or resurface trauma, we support measures that increase the capacity of specialist victim support services and the wider service system to assist victims to complete a VIS at more points on a victim's pathway through the system. More specifically, as part of the enhanced response for victims of crime, the CIJ proposed that a future Victim Support & Recovery Program would assist victims with the development of a VIS, either as a one-off task, or as part of a package of case-managed support. Such support would be trauma-informed and accompanied by a risk and needs assessment, with ongoing support offered to clients where required.

The CIJ also supports approaches that upskill police, court staff and judicial officers to convey information to victims about the availability, purpose and scope of the VIS, and to develop interactive resources, including videos, to support victims to prepare a VIS independently where this is their preference.

5. Issue three: Support services for people in the lower courts

There are currently minimal opportunities for victims of crime to access support to participate in proceedings in the summary jurisdiction. While there are some services that provide ancillary support for victims navigating court processes – such as those provided under the Victim Assistance Program (VAP)⁷, by Centres Against Sexual Assault (CASA), and emotional and practical support via Court Network – specialist witness support services are generally restricted to indictable matters only.

Specialist court support

Services such as the CWS and the Victim and Witness Assistance Service (VWAS) offered by the OPP) provide a package of support that can include:

- information about the rights and entitlements of victims in relation to court processes;
- information about the progress of a victim's matter;
- support during aspects of the court process, including assistance to attend court;
- assistance to understand the legal process, including giving evidence and making a Victim Impact Statement;
- facilitating the pre-recording of a child's evidence or the provision of evidence remotely;
- referral to other specialist support services; and
- access to a therapy dog.

In particular, the CWS, which the CIJ found to be widely regarded as a high-quality and valued specialist service, incorporates some of the best components of witness support services interstate and internationally.

Of the two witness support services operating in Victoria, VWAS is accessible by adults in indictable matters only. The Child Witness Service, although available in both indictable and summary matters, is limited to proceedings relating to crimes against the person and is only for children who were aged under the age of 18 when the charges were laid.⁸ In addition, the CIJ has found that resourcing constraints limits the capacity of both the CWS and the VWAS to operate as state-wide services, with limited VWAS presence in regional locations resulting in support for young adult witnesses outsourced to the VAPs.

A third service, the Intermediaries Pilot Program (IPP) does not provide witness support per se but, rather, provides assistance for vulnerable witnesses,⁹ including children and witnesses with a disability or challenges in communicating, to contribute in a meaningful way to the trial process.¹⁰ The service is only available to complainant witnesses in sexual offence matters and witnesses in homicide matters.

The following table maps different categories of court support available by age and matter type. It illustrates clear discrepancies in the support available for certain groups of witnesses, many of whom are likely to be the complainant victim. These include people who are:

- non-complainant witnesses requiring assistance with communication via an intermediary in sexual assault matters;
- witnesses requiring assistance with communication via an intermediary in matters other than those involving sexual offences or a homicide;
- witnesses aged 18 or over at the time of the offence who are providing evidence in summary matters; and
- witnesses in contested Family Violence Intervention Orders (FVIO) matters.

These service gaps increase the potential for proceedings in summary courts to result in re-traumatisation for victims who are unsupported to participate, as well as for there to be adverse impacts on the quality of evidence provided.

Table 1: Court support available for young witnesses by age and matter type

Witness age	Matter type	All witnesses	Witnesses with cognitive impairment*	Victim of crime against the person only	Victim of sexual offences only
Under 18 at time charges are laid	All matters involving crime against the person	<ul style="list-style-type: none"> ■ CWS ● Court Network ● OPP Court Dog 	◆ IPP	■ VAP	▲ CASA
Over 18 at time charges are laid	Summary criminal matters	<ul style="list-style-type: none"> ● Court Network 	◆ IPP	■ VAP	▲ CASA
	Indictable criminal matters	<ul style="list-style-type: none"> ■ VWAS ● Court Network ● OPP Court Dog 	◆ IPP	■ VAP	▲ CASA
All ages	FVIO matters	<ul style="list-style-type: none"> ● Court Network ▨ Applicant Practitioner ▲ Specialist FV Worker 		■ VAP	▲ CASA

Key

- Emotional support at court
- ▲ Pre/ongoing support (not court support)
- ◆ Support to give evidence only
- Court support and pre/ongoing support
- ▨ Court-based info and referrals only

* Only complainant witnesses in sexual offence matters and/or witnesses in homicide matters.

Source: Analysis by Centre for Innovative Justice

Support for young adults

As is evident from Table 1, young adults who are aged 18 and over and are appearing in summary matters in the Magistrates' Court, are a particularly under-served cohort, being ineligible for assistance under both the CWS and the VWAS. These young adult witnesses - some of whom may be only weeks or months older than clients of the CWS - only have access to limited, non-specialist support from Court Network. While offences heard in the summary stream are generally of a less serious nature than those dealt with by the higher courts, the expansion of the MCV's jurisdiction in the preceding 10 years has resulted in the court dealing with matters of greater complexity and severity, as well as a significantly increased workload.¹¹

In its recent report on Summary Crime,¹² Victoria Legal Aid (VLA) noted that:

In the wake of the Victorian Royal Commission into Family Violence, VLA and private practitioners described how the mix of summary crime work had become increasingly complex, particularly where family violence intersects with drug and alcohol issues or co-occurs with other compounding factors...

Changes to the *Magistrates' Court Act 1989 (Vic)* in 2006 and 2009 increased the number of indictable matters that can be triable summarily. These include sexual offences (sexual assault, sexual assault of a child under 16, indecent act, grooming, assault with an intent to commit a sexual offence) and other offences against the person (assault, causing serious injury recklessly, intentionally cause injury, threat to inflict serious injury; aggravated burglary), as well as offences committed in the context of family violence. Hence witnesses in these matters are likely to have vulnerabilities resulting from their specific type of victimisation, in addition to their youth.

To address this service gap, the CIJ recommended the trialling of a Young Adult Pilot whereby services are extended to young people aged up to the age of 21 years who are appearing as witnesses in the summary stream in matters involving either crimes against the person or family violence. One senior stakeholder

consulted by the CIJ suggested that extending eligibility for a service such as the CWS to young adults would capture a considerable number of very vulnerable young witnesses.

Support for child witnesses

The CIJ's review also uncovered concerns that young people were not always being referred to the service by police. This was in part found to be due to low awareness of the availability of the CWS amongst police outside the specialist context of SOCITs, as well as in matters conducted in the summary jurisdiction. Matters not referred by police would ordinarily be identified upon referral to the OPP, but this safety net is missing for matters processed in the summary stream.

The review also found evidence that some cohorts are under-represented in CWS clientele, despite having disproportionately high rates of victimisation. This included children and young people from Aboriginal and Torres Strait Islander communities, as well as those within the out-of-home care and youth justice systems. This accords with CIJ findings from its wider Victim Services Review, as well as with relevant literature, which suggest that cohorts which are over-represented as victims of crime can be *under*-represented in terms of receiving victim support.

Legal advice and support

Another significant service gap for victims of crime participating in legal proceedings is in relation to legal advice and support. Victoria currently has no services available to provide dedicated and specialised legal advice which can address issues arising because of crime victimisation, with victims left to navigate a patchwork of legal support or, more likely, to receive no legal advice or assistance at all. The need for a specialist victim's legal service in the summary jurisdiction is particularly acute given adult victim complainants have no access to specialist witness support that could link them to relevant services for legal advice.

Victims of crime consulted as part of the CIJ's victim services review signalled an acute need for specialist legal support to help them navigate court processes. Almost every person interviewed either expressly stated that this was something that they had required or described circumstances and issues which clearly indicated to the researchers that they had unmet legal needs. Several characterised the court process as a bewildering, alien experience.

I'm not a court person, I'm an average everyday person. If you're going to use court jargon with me, I'm going to be like, "Talk English". I was sitting there in court half the time on Google trying to find out what things mean.

Even where they had a source of legal advice and information, such as an OPP solicitor or police prosecutor, victims of crime understood that the role of the lawyer did not extend to representing them. This resulted in them feeling uncertain about the quality of any advice received – instead, they wanted to receive it from someone whose sole role in the process was to protect and advocate for their rights and interests. Lack of information in relation to the criminal justice process had a negative impact on victims' perceptions of fairness, legitimacy and the extent to which they felt recognised or heard in the process.

I really do not know and I did not understand why information has to be kept from me... I feel that the system is completely wrong, and I feel that it's more there for the perpetrator.

The other most common legal need identified was assistance with the VOCAT process. Several victims of crime were dissatisfied with the quality of private VOCAT legal practitioners. Further, because VOCAT funds

practitioners to assist with VOCAT applications only, they did not advise on broader entitlements, including other avenues for seeking restitution or compensation.

The absence of dedicated and holistic legal support also meant that broader legal ‘issue-spotting’ did not occur, despite victims of crime expressing a range of legal needs arising from their experience of crime. This included legal advice and support in relation to child protection matters; family violence; migration; workplace rights; debt recovery and rights under the Victims’ Charter. This was in fact one of the strongest themes to emerge from the CIJ’s research with victims of crime.

A key recommendation arising from the victim’s service review was for the creation of a new, dedicated legal service for victims of crime. The Victim’s Legal Advice Service proposed by the CIJ, leverages existing publicly funded legal services through a co-location model, to provide victims of crime with tailored legal information and advice, referrals and discrete task assistance. The specialised nature of the proposed service will help ensure that victims of crime receive legal support from lawyers with an understanding of the needs and experiences of victims of crime, and the application of trauma-informed approaches to legal practice. As Deputy Chief Magistrate Felicity Broughton has previously stated:

You need to have people with expertise, who can make an assessment of the complexity of the situation from the victims’ perspective, with a trauma-informed understanding, who actually understand not only the complexity of the sort of trauma related environment in which they are working, but also the really complex technical and legal questions that arise.¹³

The CIJ applauds the recent announcement by the Victorian Government of funding to create a new Victim’s Legal Service to be delivered by Victoria Legal Aid and community legal centres, as recommended in the CIJ report, and to ensure continuation of the IPP.¹⁴ We note however, that the proposed legal service is limited to assisting people to navigate the new financial assistance scheme providing compensation and restitution for victims of crime. The need for a service providing advice for victims on the range of legal issues arising from their victimisation, in addition to the criminal justice processes they will be engaged in, is particularly important in the lower courts given the absence of specialist victim support.

Nothing in VSR final report re scaling up the proposed legal service. Riley to provide this information and info re scoping study re provision of legal advice in indictable offences.

6. Conclusion

While there have been significant improvements in the provision of assistance for victims of crime to participate in court processes in indictable matters, there is clear need for greater research and investment into the supports available to victim complainants in the Magistrates’ Court. The lack of specialist witness support for adult victims participating in summary matters, including those with pre-existing vulnerabilities, means that most people who experience crime, are left to navigate stressful court proceedings largely unassisted. This not only has the potential to compound trauma and impact negatively on the ability to recover from experiences of victimisation, but also compromises people’s ability to exercise their rights as outlined in the Victim’s Charter.

Centre for Innovative Justice

17 September 2021

Appendix A

Insert 'Improving support for victims of crime: Key practice insights'

¹The term ‘victim’ is used throughout this report. It is acknowledged that some people who have experienced victimisation and their advocates prefer the term ‘survivor’ and/or ‘victim/survivor’, as a more empowering expression. However, we have chosen to use the term ‘victim’ to reflect the terminology used in communications about the review. The term ‘victim’ is also used in instances where the term ‘complainant’ might equally apply.

² See, e.g., Pamela Davies, Peter Francis and Chris Greer, ‘Victims, crime and society’ (SAGE Publications Ltd, 2017); Wesley G Skogan, ‘Citizen Satisfaction with Police Encounters’ (2005) *Police Quarterly*.

³ Centre for Innovative Justice, (2019) *Communicating with Victims about Resolution Decisions: A Study of victims’ Experiences and Communication Needs*.

⁴ *Ibid*, p 9.

⁵ Centre for Innovative Justice, (2020) *Strengthening Victoria’s Victim Support System: Victim Services Review Final Report*, 39.

⁶ *Ibid*.

⁷ The Victim Assistance Program, in addition to providing assistance for victims to address wider needs resulting from their experience of victimisation, can also provide information and assistance with tasks associated with the criminal justice process. However, it was evident from interviews with victims of crime undertaken as part of the Victim’s Services Review, that the scope and quality of assistance provided to victims varied significantly across the system.

⁸ Given limited capacity of the service, guidelines are in place that determine which matters receive re priority access. Child sexual offences represent the clear majority of matters handled by the service.

⁹ The service also sometimes provides assistance to defendants.

¹⁰ Kimberly Collins, Natalie Harker and Georgios Antonopoulos, ‘The Impact of the Registered Intermediary on Adults’ Perceptions of Child Witnesses: Evidence from a Mock Cross Examination’ (2017) 23(2) *European Journal of Criminal Policy Research* 211-225.

¹¹ Victoria Legal Aid (2017), In summary: Evaluation of the appropriateness and sustainability of Victoria Legal Aid’s Summary Crime Program. At <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-evaluation-of-the-appropriateness-and-sustainability-of-victoria-legal-aids-summary-crime-program-report.pdf>

¹² *Ibid*, p 250.

¹³ Sentencing Advisory Council, *Restitution and Compensation Orders: Report* (2018).

¹⁴ Victorian Government, (20 May 2021) Better outcomes for victims and young people (Media Release) <<https://www.premier.vic.gov.au/better-outcomes-victims-and-young-people>>