

17 March 2022

To the Justice Committee

## Victim Support submission on the COVID-19 (Courts Safety) Legislation Bill

Victim Support is a non-government organisation that has been offering practical and emotional support to victims of crime and trauma for more than 35 years. Last year Victim Support helped more than 43,000 victims of crime and trauma in the immediate aftermath, through the justice process, and beyond. We routinely support victims at court, including criminal trials and coroner's court.

**Victim Support supports the general intent of this bill to enable safe access to justice during the Covid-19 pandemic, however we strongly believe the bill needs refinement to be consistent with obligations under the Victims Rights Act and Victims Code.** Our courts are an essential service, and it is vital that all parties can access them and do so without undue concern about Covid-19 transmission. We wouldn't want to see victims unwilling to attend court because of health and safety concerns, or any other party for that matter, as that could delay access to justice.

We have three main concerns with this bill:

- 1) that the proposed entry requirements to court could be barriers, rather than facilitators, of justice;
- 2) that victims' interests must be considered if judiciary are given the power to make decisions "in the interests of justice"; and
- 3) that remote options be made more accessible to victims.

### **Court entry requirements must not be a barrier to justice**

Attending court is a huge source of fear, stress, and uncertainty for most victims. They are fearful of seeing the defendant, the unfamiliar process itself, and that justice will not be served. They often have to travel, sometimes from overseas, to attend, and take time off work. Victims put a lot on the line to attend court, and sadly the court process can turn out to be more traumatic than the crime itself. Victims often describe it as revictimising, alienating, dehumanising, unfair, and offender-centric. Yet it is so important for victims to be in court, whether they are a witness or not, because it is a chance to participate, to sometimes have a voice, and to make sense of an event that has turned their life upside down.

We strongly believe everything needs to be done to enable victims to participate in court, and to enact their legal right to give a victim impact statement. We are not aware of any victims who have been fearful of Covid transmission at court; their priority tends to be on being able to attend (with their support people), preferably in person. That's why we're concerned that victims may be subjected to further stress and revictimisation if challenged by a court security guard who, under this bill, would have the power to request identification, deny entry, or even forcibly remove them from court. Indeed, some victims have been anxious that they will be denied entry to court due to being mask-exempt, unvaccinated, or having an international vaccine pass. We have experienced security staff who genuinely understand the plight of victims and have made this entry process less daunting, but likewise we have come across security staff who have been rigid in their enforcement of entry requirements and have not understood mask exemptions (some victims are unable to wear

a mask because it triggers prior trauma), and have clearly not understood victims' vulnerability and what attending court means to them.

As an example, we recently had a case where a victim had travelled from overseas to attend court, only for the court security staff to not recognise the validity of her international vaccine pass. This resulted in the victim being denied entry to the court, despite the judge giving prior approval for her attendance. This caused huge stress for the victim, who was eventually advised by court security she could be let in if she provided a negative RAT test. The Victim Support worker accompanied the victim to a pharmacy to get the RAT test and, after discussions with the pharmacist, worked out that her international vaccine pass could in fact be translated to a pass that was comparable to New Zealand's. This was done and the victim was finally allowed into court.

We submit that the powers this bill proposes for court security guards to request identification and to deny entry and remove non-complying individuals by reasonable force are *not* in the interests of justice. What if an anxious victim shows up without any identification and their anxiety is misconstrued as deliberate non-compliance? What if, due to a misunderstanding, an assault or sexual abuse victim is removed from court by "reasonable force". It seems the aforementioned proposals in Schedule 1 of this bill would undermine the Victims Code principles for victims to be treated with respect, dignity, privacy, and fair treatment. For this reason, **we do not support any additional barriers to entry to court for victims, including additional discretionary powers for security guards, as these could become barriers to justice and could even revictimise.**

**We suggest that the issue of meeting Covid requirements to enter courts should be focussed on improving the clarity of the measures already in place, and understanding what these mean from a victim's perspective, with an emphasis on inclusion rather than exclusion. The focus of security guards should not be on "catching out" those who don't meet requirements, but rather on contributing to a higher goal of enabling those with a genuine need to be in court.**

[Victims' interests must be considered in the definition of "the interests of justice"](#)

**We strongly support that provision be made in this bill for the needs and interests of victims to be considered if judiciary have discretionary power to make decisions "in the interests of justice".**

Unlike defendants, victims do not have formal party status in the criminal justice system, and, unless they are witnesses, do not have a legal obligation to be there. Yet victims have a personal obligation to attend court (most do not want to miss even a five-minute hearing), and they have needs and interests that are both clear and legitimate. Victims have strong procedural justice needs such as the need to be treated with respect, to have a voice, to receive information, and to be supported during the justice process, which are entrenched in our Victims Code. It is vital that victims and defendants are considered equally in the interests of justice. They should not be lumped under the umbrella of the public; victims are actively invested in being in court, they are not mere observers. However, we're seeing right now that victims are often the first to be turned away by security guards and judges when approaching limits in courtrooms due to Covid.

We are hearing of anxiety among victims from last minute decisions being made about who is approved to attend court in person and via Virtual Meeting Rooms (VMR). We also recently supported a victim in court who experienced extreme stress and uncertainty after one of the legal representatives and then four jurors either tested positive for Covid or were household contacts. Each day of the trial, the victim faced an agonising wait to learn at the last minute whether the trial would continue or be adjourned.

For this reason, judiciary must consider the impact of Covid-related court delays on victims, who often have already had to face a considerable wait for the trial and who may have travelled to

attend. The risks of Covid transmission need to be balanced with the stress and impact of delays, especially given that Omicron will likely have peaked before this legislation comes into force. **We submit that any legislation around decisions in the interests of justice must also explore how victims can be notified of approval for attendance with as much notice as possible.**

#### Remote options must be made more accessible to victims

**We support the proposal in this bill for the option of remote hearings to be legally recognised.** This certainly can improve access to justice for all, especially during this phase of the pandemic where people may be hesitant to travel or may be self-isolating. **However, for remote options to be in the interests of justice, they must be accessible to victims and the onus should be on the judiciary to ensure such access.** Not only are many victims being denied the opportunity to attend court in person due to Covid restrictions, they are also being told by some courts that there are limits on the numbers of VML and audio-visual links (AVL) they will allow. Some do not have suitable technology to access the hearing and not all courthouses are equipped with sufficient AVL rooms to allow access for all. This means some victims are missing out on accessing justice completely.

In some such cases, our Support Workers have invited victims into the police station to join the proceedings via their own laptops. But victims have said they feel disconnected with this method. One of our Support Workers shared this:

*At one hearing when they had been told they could not attend in person and had to watch on my laptop, there was a person sitting in the public gallery of the courtroom behind the defendant. I do not know who that person was, but the family perceived it to be a supporter of the defendant. They were very upset that the defendant was allowed a support person in person and they were only allowed to attend by VMR.*

#### Conclusion

Access to courts is absolutely essential for victims, especially during Covid when existing restrictions threaten to limit or prevent their access. We note that this legislation may not come into effect until mid-April and are concerned that some provisions could be too heavy-handed for the environment in which it will land. This could backfire on those for whom the bill is intended to support by creating additional stress and barriers. While we do support the general intention of this bill in enabling access to justice while reducing the risk of Covid transmission, this must be enacted with a focus—and education for those with discretionary powers—on the legitimate justice needs and interests of victims. The legislation needs to strike a balance between encouraging access to courts as an essential service and reducing health risks. We believe the bill requires refinement by ensuring it is consistent with the Victims Right Act and Victims Code to achieve that balance.

#### Contact information

Victim Support would welcome the opportunity to discuss this further.

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