



No.33

Victim Impact Statements

Edna Erez

A neglected aspect of our criminal justice system has been the impact of crime on victims. But during the last decade much progress has been made both overseas and within Australia.

In 1985 the General Assembly of the United Nations formally approved a Declaration concerning fair treatment and assistance for victims of crime and victims of abuse of power. However, the role of the victim in the criminal trial and sentencing process has provoked controversy in a number of quarters.

This Trends and Issues was prepared by a recent Visiting Scholar to the Institute. Dr Erez describes the Victim Impact Statement (VIS) - a significant initiative which embraces concerns about the rights of victims in a manner consistent with existing legal principles. The VIS is an organised and structured method of ensuring that the court is aware of important information concerning the effect of the crime on the victim. It has been adopted in South Australia and in many jurisdictions in the USA and Canada. The VIS is a simple way of integrating victims into the criminal justice process. It should be considered for adoption by all Australian jurisdictions.

Duncan Chappell
Director

Victims: the 'Eliminated' Persons

Until recently victims of crime have been considered the 'forgotten persons' of the criminal justice system. The historical evolution of the penal system, from private vengeance to state administered justice (Schafer 1968) has resulted in a criminal justice process in which the victims play only a secondary role. They report crimes to officials who decide whether to prosecute the case, how to proceed, and what type of punishment to recommend (where applicable). In adversary legal systems, such as Australia, England or the USA, the role of the victim in court proceedings is a passive one - that of an observer or, at best, a witness. As a witness, the victim has to remain outside the court until summoned to testify. During the brief time in court, the victim/witness is limited to answering questions from the prosecutor or the defence attorney. Victims have no formally recognised role in the trial of their offender, and no mechanism to voice their concerns and feelings regarding the crime and its impact on them. The prosecutor presumably represents the

**AUSTRALIAN INSTITUTE
OF CRIMINOLOGY**

trends

&

issues

in crime and criminal justice

September 1991

ISSN 0817-8542

ISBN 0 642 16615 3



Australian Institute
of Criminology
GPO Box 2944
Canberra ACT 2601
Australia

<http://www.aic.gov.au>

victims and their interests. Private prosecution has been virtually abandoned and the public prosecutor has monopoly over the criminal justice process. Victims have no power to compel prosecutions, nor 'standing' to contest decisions to dismiss or reduce charges, to plea bargain (reduce charges or sentence in return for a plea of guilt by the offender), or challenge the sentence imposed on their offender.

This concept of crime as an offence against the state, and its attendant administration of justice, have resulted in a host of economic and psychological problems for crime victims, and most importantly in perceptions of injustice. National movements concerned with ameliorating the victim's plight have emerged in numerous countries, including Australia. Initially the movements' efforts to achieve reforms focused on the economic and psychological difficulties resulting from the crime. Programs for compensation from the state and restitution from the offender were instituted to alleviate the financial difficulties associated with victimisation. Psychological counselling and other services to treat the distress resulting from the crime were also provided. As the process has continued, concern for victims' rights expanded into areas beyond its initial focus and has centred recently on victims' reintegration into the criminal justice process (Erez 1989a).

The demand for increased victim participation in the sentencing process was associated with studies which documented victims' alienation from the system. Studies of victims before the law have suggested that victims' grievances are as much with the procedures of the criminal justice system, particularly their lack of involvement in the decision making process, as with the supposed injustice of the outcome.

There were other complaints such as delays, unnecessary continuances, risk of intimidation by offenders, lack of information concerning the process and the status of the case, uncomfortable waiting rooms, and

insensitive criminal justice practitioners, most of which have been addressed through various programs (Erez 1989b). But the most important grievance mentioned by victims was their lack of 'standing' and voice in the proceedings. As one victim who testified before the Presidential Committee established to study the situation of victims in the USA expressed it 'Why didn't anyone consult me? I was the one who was kidnapped, not the state of Virginia' (President's Task Force on Victims of Crime 1982, p. 9). Research in several countries has shown that victims have a more general wish than punishment or compensation: '... their wish for respect and appreciation - their recognition as an important and necessary participant in the criminal justice system' (Shapland et al. 1985). The 1990 report of the Compensation Tribunal in Victoria also documents that for victims, being heard is as important as being compensated.

The presumption that the prosecutor represents the victim is contradicted by many victims' experiences. If the public interest comes into conflict with that of the victim, the former prevails. Public interest considerations often have nothing to do with the strength of the victim's case or the level of injury sustained. Issues such as the defendant's utility as a state witness in another case, correctional concerns related to the offender, or the priority given to certain types of cases, may determine whether a defendant will be prosecuted (Goldstein 1982). Once the offender is charged there are no guarantees that the judiciary will become aware of the full impact of the crime upon the victim. Prosecutors do not always disclose the details of the crime and its impact on the victim to the sentencing authority. In particular, where the accused pleads guilty, the prosecutor may be inclined to summarise or not reveal the extent of the harm sustained by the victim, dependent on the pre-trial negotiations between the prosecution and the defence (Corns 1988).

The Need for Change

The perception that the criminal law is unresponsive has led to demands being made to reintegrate victims into the criminal justice process, or minimally, to provide them with a mechanism for presenting the way in which the crime has affected them, and their concerns or wishes regarding the crime and the disposition of the offender. These needs have been aptly expressed by the US President's Task Force on Victims of Crime which asserted that:

(v)ictims, no less than defendants, are entitled to their day in court. Victims, no less than defendants, are entitled to have their views considered. A judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized . . . (1982, pp. 76-7).

The international community also recognised the need to integrate victims in criminal justice proceedings. The United Nations in the Seventh Congress on the Prevention of Crime and the Treatment of the Offender assembled in 1985 in Milan, adopted a Declaration concerning victims of crime and abuse of power. Part A of the Declaration, which addresses access to justice and fair treatment of crime victims, specifically mentions 'allowing the views and concerns of the victim to be presented and considered at appropriate stages of the process' as one component of fair treatment of victims. This Declaration was formally approved by the General Assembly of the United Nations in December 1985.

Overseas Legislative Responses

Several avenues of victim integration in the criminal justice process have been adopted by various countries. In the USA, in most of the states and at the federal level, and in parts of Canada, this right has been granted through the use of a Victim Impact Statement (VIS). A VIS is a statement made by the victim and addressed to the judge for consideration in sentencing. It usually includes a description of the harm in terms of financial, social, psychological and physical consequences of the crime. In some jurisdictions a VIS also includes a statement concerning the victim's feelings about the crime, the offender and a proposed sentence, referred to as a victim statement of opinion.

In the USA, two models express the current possibilities for victims' involvement in the sentencing process. The first model requires or allows the preparation of a written VIS that is introduced at the sentencing hearing, typically as an attachment to the pre-sentence report. The second model expands on the first by granting the victim the right to allocution—an oral statement by the victim at the time of sentencing. The party responsible for preparing the victim impact information varies, ranging from probation departments, to prosecutors' offices, to victim service agencies (in Canada, the police prepare and update the VIS). The VIS also differs in content and form, ranging from simple checklists in some states, to lengthy descriptive statements, both oral and written, in others (McLeod 1988). As plea bargains are the most common way to dispose of cases, many states have passed laws that allow or mandate victim participation and input in plea bargaining (Kelly 1990).

The Australian Situation

In Australia, federal, state and territorial law reform committees have considered the issue of victims' input into sentencing via the concept of

Victim Impact Statements. The Australian Law Reform Commission (1988) raised some objections to the VIS and the relevance of victim preferences concerning the disposition for sentencing decisions. The Commission asserted that information about the impact of the crime on the victim is brought to the court's attention by the prosecution or the defence, and proposed to retain the current practice. The Victorian Sentencing Committee (1988) has also decided against allowing victims' input via the VIS (*see Arguments against the VIS* over page). The New South Wales Task Force on Services for Victims of Crime (1987) recommended awaiting decision on that issue until evaluations of programs currently operating in other jurisdictions are completed.

In contrast to these negative or cautious state responses, the Australian National Committee on Violence has recently recommended that the VIS should be introduced in all jurisdictions, subject to inclusions of safeguards against abuse by either the Crown or the defence (National Committee on Violence 1990, p. 181).

South Australia is the only state that has integrated victims into the criminal justice process through (written) input into the proceedings. In 1985 the government of South Australia formulated and endorsed 17 principles on victims' rights, one of which (no. 14) states that the victim shall:

be entitled to have the full effects of the crime on him or her made known to the sentencing court either by the prosecutor or by information contained in a pre-sentence report; including any financial, social or physical harm, done to or suffered by the victim. Any other information that may aid the court in sentencing including the restitution or compensation needs of the victim should also be put before the court by the prosecutor ...

In 1988 South Australia passed the *Criminal Law (Sentencing) Act* according to which victim impact

material will be put before the court by prosecutors, although including it in a pre-sentence report prepared by probation departments remains an option. This law, which took effect in January 1989, allows only written statements concerning the impact of the crime on the victim, but not the right of allocution or victim statement of opinion concerning the offender or a proposed sentence. Collecting and summarising information on the crime's effect on the victim has become a part of the normal duties of the investigating police officer.

Arguments in Favour of the VIS

The demands to allow victims some form of participation in the criminal justice process, particularly input into sentencing decisions, have inspired heated debate. Supporters of the victim's right to participate have presented various moral, penological and practical arguments in its favour. The effectiveness of sentencing will increase if victims convey their feelings, and the process will become more democratic and reflective of the community's response to crime (Rubel 1986); victim participation will provide recognition to the victim's wishes for party status and individual dignity (Henderson 1985). It will result in increased victim cooperation with the criminal justice system, thereby enhancing system efficiency (McLeod 1986). The provision of information on the harm suffered by the victim will increase proportionality and accuracy in sentencing, and remind judges, juries and prosecutors that behind the 'state' is a real person with an interest in how the case is resolved (Kelly 1987). Fairness also dictates that when the court hears, as it may, from the offender, the offender's lawyer, family and friends, the person who has borne the brunt of the offender's crime should be allowed to speak (Sumner 1987).

From a psychological viewpoint, a criminal justice system that provides no opportunity for

victims to participate in proceedings would foster greater feelings of helplessness and lack of control than one that offers victims such rights (Kilpatrick & Otto 1987, p. 19).

Victim involvement and the opportunity to voice concerns is necessary for satisfaction with justice, psychological healing and restoration (Erez 1990).

Some argue that victims' input may advance the various goals of sentencing: retribution is enhanced when the extent of the harm caused to the victim is disclosed so that the punishment meted out can be measured against the level of harm caused. Victim participation enhances deterrence because it increases prosecutorial efficiency, which in turn increases the certainty of sanction. Incapacitation is advanced if the victim has a special knowledge about the defendant's potential for future criminal activity. Victim participation might also promote rehabilitation as the offender confronts the reality of the harm caused to the victim (Talbert 1988).

Arguments Against the VIS

The objections to victims' input in sentencing centre mostly on legal arguments concerning the appearance of justice and actual justice, and some practical concerns (Erez 1990). Some argue that allowing victims' input will undermine the court's insulation from unacceptable public pressures (Rubel 1986), or will result in substituting the victim's 'subjective' approach for the 'objective' one practised by the court (Victorian Sentencing Committee 1988).

Conceivably, similar cases could be disposed differently, dependent upon the availability of a VIS to the judge. Allowing victims to express their wishes concerning the offender will also inject a source of inconsistency and disparity in sentencing dependent on 'the resiliency, vindictiveness or other

personality attributes of the victim' (Grabosky 1987, p. 147).

Prosecutors object to victim input in sentencing because they fear that their control over the cases will be eroded and the predicability of outcomes reduced. Defence lawyers naturally view increased victim involvement as hindering the defence. Concerns over delays and additional expenses for an already overburdened system if victims are allowed to participate are also mentioned (Australian Law Reform Commission 1987). Some further argue that victim input would add very little useful or novel information which is not already available to the court.

Others suggest that the criminal law already takes into account the harm done to the victim in the definitions of crime and mitigating or aggravating circumstance. Moreover, as the law requires foreseeability of the effect of the crime on the victim, only effects on the 'normal' victim are to be considered (Victorian Sentencing Committee 1988).

Concerns have also been raised about the effect of the VIS on victims' health and welfare. Some have suggested that one of the dangers is to create expectations among crime victims that are not or could not be met (Fattah 1986). It has been argued that instituting formal procedures for victims' input may be counter-productive: the opportunity for input in sentencing may create or heighten the expectation that this input will be considered in sentencing decisions. Because judges are sometimes precluded from considering a victim's request, those who believe that their opinions have been ignored may become embittered and resentful (Henderson 1985).

Others are concerned that allowing victim input will aggravate victims' psychological well-being as they relive the crime experience. Because consideration of the VIS material by the court may increase the severity of punishment, the offender must be given the right of challenging the factual basis on which the escalation of penalty occurs (dispute causes, extent of harm and prognosis). This

may result in victims being subjected to unpleasant cross-examination (Victorian Sentencing Committee 1988). A related argument is that mandating the VIS may itself be traumatic for victims, and that victims may not wish the offender to be fully aware of the harm caused to them (Australian Law Reform Commission 1987).

Other objections to victim input are based on ideological grounds. Opponents of the participatory right express the concern that rights gained by the victims are rights lost to the defendant, that bringing the victim back into the process means a reversion to the retributive, repressive and vengeful punishment of an earlier age. These reforms would shift the primary goal of criminal justice administration from meeting the concerns of the state to meeting the concerns of the private individual, thus returning criminal prosecution to the days when it was little more than a branch of tort law (Abrahamson 1985). Some argue further that victims' anguish has been exploited or mistranslated into support for the conservative ideology, and the attempt to bring the victim back into the process is seen as yet another way to accomplish the goal of harsher punishment (Henderson 1985). Opponents of victim integration in the criminal justice process often portray the victim as a vindictive individual whose main objective in providing input will be to ensure severe punishment of the offender.

Related Research and its Implications

Are victims punitive?

Research has questioned many of the assumptions underlying the arguments against the use of the VIS, and has not confirmed the fears expressed by those who object to allowing victims' input into the sentencing decisions. The message from studies in several countries is that first-hand experience of crime as a victim does not, in

general, fuel a desire for heavy sentences (Walker & Hough 1987, p. 10). Furthermore, victims have not been found to be more punitive than the general public. Recent studies abroad (for example Zimmerman et al. 1988) as well as in Australia (Indermaur 1990) suggest that public attitudes tend to be more punitive than the actual sentencing practices of the courts.

Victims also do not view themselves as vengeful (Gardner 1990). Less than 10 per cent of victims report a crime in order to see an offender punished (US Dept of Justice 1988). Studies that examined the content of the VIS in various jurisdictions in the USA confirm that only a fraction of victims in felony cases request that the offender be incarcerated or punished severely (Erez & Tontodonato 1990; Walsh 1986). Quite often victims merely want restitution or compensation (Shapland et al. 1985; Gardner 1990), or help and counselling rather than punishment for their offender, even in cases where the offender was a stranger (Kosaki 1984).

The 'retributive' element in some victims' preferences about sentencing may reflect lack of knowledge about alternative dispositions. Often victims who recommend imprisonment do so because they are not aware of any other options, such as community service, treatment disposition or even restitution. Victims also tend to receive recommendations for disposition made by the prosecution or even the defence (Henderson & Gitchoff 1981). Fears that victim participation in sentencing would result in harsh pleas (in cases of plea bargaining) have also not been realised (Kelly 1990).

Does the VIS create or exacerbate problems for the criminal justice system?

Research in jurisdictions that allow victim participation indicates that including victims in the criminal justice process does not cause delays or additional expenses (for example Heinz & Kerstetter 1979), and very few court officials believe that

victims' input creates or exacerbates problems (Hillenbrand & Smith 1989). Although some prosecutors in one busy New York jurisdiction reported logistic difficulties in acquiring the VIS, they generally viewed this practice in a positive light. This opinion was also shared by judges. Further, all the judges reported no challenges from the defence, and all but one stated that the VIS did not slow down the adjudication process. The one dissenting judge stated 'So — is worth it' (Henley et al. forthcoming). When the information for the VIS is collected and updated by a person who can reasonably verify its credibility, and is given to the defence on a routine basis, challenges from the defence are likely to be minimal, if at all (Henley et al. forthcoming; Sumner & Sutton 1990).

Most of the judges and prosecutors in another study thought that victims' input in the form of the VIS improved the quality of justice by influencing restitution awards and sentence type and length (Hillenbrand & Smith 1989). This is in line with research in England that suggests that a key variable in making a compensation order was whether it was mentioned in court proceedings. This could have occurred in the course of the prosecution making its case, as a result of an application by the victim or simply as a reminder to the court of its power (Shapland et al. 1985). As prosecutors may not be aware of victims' preferences, or for various reasons fail to convey them to the court, allowing victims to express their wishes in a VIS may guarantee that the sentencing authority becomes aware of these requests.

Does the VIS have a substantial impact on sentence outcome?

Research on the impact of victims' input on sentence outcome suggests that it has only a limited effect. A study of victims' requests in Victim Impact Statements submitted in sexual assault cases found that the court was most likely to recognise the desires of the victim when they were consistent with the court's own view of an appropriate sentence. Further, the

court was also likely to ignore the victim's desire for a probation sentence over imprisonment (Walsh 1986). Another study which examined all types of felony offences (Erez & Tontodonato 1990) found that victim retributiveness or requests for incarceration do not influence the court's choice of sentence when all relevant factors are taken into consideration. The decision whether to grant probation or impose a prison sentence is explained primarily by legal consideration such as severity of the offence or prior convictions of the defendant. This study, however, found that the presence of the VIS in the court file does increase the likelihood of a prison sentence. Thus, the availability of the details of the crime and its impact on the victim, rather than the victim's specific retributive requests, influence the likelihood of a probation sentence. Once a prison sentence is imposed, the VIS does not significantly affect the length of prison sentence.

A recent survey of judges concerning the effects of the VIS confirms that judges designate 'objective' information (for example the physical and financial impact of the crime) to be more useful in sentencing decisions than 'subjective' types of information (for example social effects), particularly the victim statement of opinion (Hillenbrand & Smith 1989). Lastly, the victim's presence in the court rather than the use of the allocution right has some effect on the length of sentence. Typically, the victims who come to the sentencing tend to be involved in many phases of the trial process, thus providing a constant reminder to the judge that the victim is a person who has suffered substantially (Erez & Tontodonato 1990).

The finding of no effect of the allocution right is not surprising:

By the time the victim comes to the court, a well prepared probation report having been received by a well prepared judge leaves little reason for modification of an intended decision. A victim's emotional

appeal to the court cannot carry more weight in place of facts and criteria (Villmoare & Neto 1987, p. 37).

The sentencing stage is more ritualistic in nature and input at this juncture is not likely to be considered, as the decision has already been made. In this sense, the allocution right only constitutes a symbolic aspect of victim integration, whereas the opportunity for a written VIS is a more realistic and efficient approach to enable a victim's input to influence the sentencing decision (Erez & Tontodonato 1990).

The conclusion that emerges from these combined findings is that judges use their discretion and judgment in considering victims' input and requests. The VIS and the information it contains is only an additional, though relevant, item used by the judge in meting out a sentence. It by no means results in substituting the 'subjective' approach of the victim for the 'objective' one required by the law and practised by the court.

Does the VIS affect victims' distress and satisfaction with justice?

Research on the effect of victim participation via the VIS and satisfaction with justice indicates that filing the VIS is associated with increased satisfaction with the outcome. However, for a small proportion of victims, filing a VIS may heighten their expectations to influence the outcome, and when they feel that their input had no effect on the sentence, their satisfaction with the sentence is decreased (Erez & Tontodonato forthcoming). This problem may be prevented by describing a realistic range of sentences and explaining to victims the considerations judges apply in sentencing decisions. Recent research in Australia confirms that most victims are interested in understanding the considerations used by the courts in sentencing (Gardner 1990, p. 48). Better understanding of the criminal justice system often contributes to

victims' satisfaction with justice (Hagan 1982).

Studies of victims who participated as subsidiary prosecutors or who acted as private prosecutors (as several continental justice systems allow) reveal that their satisfaction with justice is higher than those who did not actively participate in the proceedings (Bienkowska & Erez 1991).

Although victims' distress levels are not directly influenced by aspects of procedural justice such as the VIS, input in this form is nonetheless important for victims' distress as it influences the type of sentence (Erez & Tontodonato 1990) and whether a request for restitution becomes known and awarded, which in turn influence perception of equity by the victim.

Few studies, thus far, have systematically examined the effect of participation in the criminal justice system on victims' distress. Further, these studies were mostly limited to rape victims and their results are inconclusive (Lurigio & Resick 1990, pp. 60-1). No research has specifically examined the effect of filling out a VIS on victims' distress. Indirect evidence however, suggests that victims may be interested in providing input for the purpose of 'justice', even at the supposed cost of reliving the crime. A study in Australia found that victims, particularly of serious crime, expressed interest in receiving information concerning the case at all stages of the process, even at the expense of being reminded of the crime and its impact (Gardner 1990). Most victims also expressed the feelings that, for the purpose of sentencing, the court should have information on the impact of the crime on their emotional state, family and lifestyle, and their concerns for safety, in addition to the medical and financial consequences (Gardner 1990, p. 48). The combined effect of these findings suggests that victims will be willing to provide what they consider vital information for sentencing, even at the expense of reliving the crime. Victims' complaints about being questioned pertain to

unnecessary, repeated and insensitive questioning; they do not relate to eliciting information which the victims view as important for a 'just' sentence.

Implementation of the VIS

Despite an enthusiastic endorsement of the victims' right for input, in practice this right is not fully implemented. Several studies in different jurisdictions in the USA have found that little is done to inform victims of their right to provide input, or to elicit this information. These studies estimate that no more than a quarter of the victims fill out a VIS, and only 6-9 per cent exercise the right of allocution (Villmoare & Neto 1987; Henley et al. forthcoming; Hillenbrand & Smith 1989; Erez & Tontodonato 1990). Studies in jurisdictions which use Victim Impact Statements indicate that often victims do not know what a VIS is, or claim that they did not fill out a VIS when in reality they had (Erez & Tontodonato forthcoming). The latter may occur because in the aftermath of the crime, victims are questioned by numerous persons or agencies and get confused about the purpose of particular interviews (rather than traumatised about retelling their story). This may be prevented by explaining to victims the purpose of the interview and its function in sentencing decisions.

The failure to elicit information for the VIS or notify victims of this right may be explained in several ways: feelings by court officials that the VIS seldom contains novel or more detailed information than they would have had otherwise; scepticism by prosecutors about the extent to which judges consider victims' input, or prosecutors' reluctance to have the full impact become known, so as to jeopardise a negotiated plea; practical problems in acquiring the VIS; or traditional ideological resistance to viewing victims' input as a legitimate factor in criminal justice decision-making. The latter will probably be a major barrier to overcome in the implementation of the victims' right to be heard. The low percentage of victims who exercise the right to speak (compared to the submission of

a written VIS) is probably due to victims' preferences to convey their feelings through an informal interview with a sympathetic probation (or other criminal justice) officer rather than through recitation in an open court (Villmoare & Neto 1987).

In South Australia the problem of a court not receiving information concerning the impact of the crime on the victim has still not been adequately overcome in cases where an offender is arrested and pleads guilty at the first court hearing. It has been suggested that prosecutors should apply for an adjournment to provide an opportunity to ascertain the impact. However, there is a concern that the courts may not be prepared to grant adjournments for the sole purpose of preparing the VIS. As the courts have set a precedent by adjourning cases for receiving a pre-sentence report for the offender's sake, it has been argued that justice requires a similar opportunity be afforded to victims (South Australia Police 1990).

It seems that implementation will continue to be problematic as long as providing the VIS is dependent on officials' beliefs in the importance or utility of Victim Impact Statements, their goodwill and diligence in eliciting them, and the existence of organisational incentives for furnishing this information to the courts. The laws requiring submission of the VIS (Section 7, South Australian *Criminal Law (Sentencing) Act 1988* is a typical example) often explicitly state that the validity of a sentence is not affected by non-compliance or insufficient compliance concerning the VIS. This reality has led some to comment that victims' 'rights' are only privileges that operate at the mercy of the police, prosecutor or the judge and that there is a need to reform the reforms (Kelly 1990).

Promising victims rights that are not delivered may involve a certain danger: providing rights without remedies would result in the worst of consequences, such as feelings of helplessness, lack of control and further victimisation .

... Ultimately, with the victims' best interests in mind, it is better to confer no rights than 'rights' without remedies (Kilpatrick & Otto 1987, p. 27).

Conclusion

The VIS as a mechanism for victims' input into sentencing decisions is an important reform in the direction of making the criminal justice system 'victim oriented' (Sumner 1987). It is a benign way of providing victims with the right for input and satisfying their need to be part of the process, without jeopardising the basic principles of the adversary system or compromising the rights of the accused.

The VIS contributes to procedural and substantive justice. It provides victims with an important component of procedural justice, 'the opportunity to present their case to the authorities before a decision is made' (Tyler 1988). Because the effect of the crime on the victim is a legally relevant consideration in sentencing practices (Sumner & Sutton 1990), providing the VIS to the sentencing authority also enhances substantive justice: it ascertains proportionality in sentencing. Eliciting VIS materials in a reliable and systematic manner will increase both accuracy and consistency of sentences. The benefits to be gained by introducing the VIS in all jurisdictions will undoubtedly outweigh the costs, if any, of providing victims with the right to be heard.

Reports from jurisdictions that have introduced the VIS suggest that victims' input does not raise practical or legal problems. Yet, there is a persistent belief to the contrary, particularly among the legal professionals. In the majority of the cases tried in our courts it is neither difficult to identify the victim, nor accept his or her reporting of the harm sustained. The implementation of the VIS does not transform sentencing to a three-way contest; the input is only one additional factor for the judge to consider in a sentencing disposition.

Because victim participation and input into sentencing decisions challenge traditions and established patterns within the criminal courts, legislative reforms often amount to lip service; they typically lack remedies for non-compliance. Victims' rights, such as the VIS, then become well-kept secrets that only few victims know about, or make use of, to their advantage (Kelly 1990). Victims' input continues to be dependent on the personal initiative or goodwill of the relevant court official. If Australia is to develop an effective mechanism for allowing crime victims a meaningful input into sentencing, there will need to be a profound change in the system or a stronger legal backing of this important right.

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Note: The author is Associate Professor of Criminal Justice Studies, Kent State University, Ohio.



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 The Director
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