

# Victim Participation in Sentencing: a Challenge to the requirements of Due Process in the Courtroom?

National Victims of Crime Conference, Adelaide 2008

## The Legal Framework

- Death of a primary victim, family victim may submit a VIS.
- Must be in writing and once received may be read aloud to the court.
- Court must receive and acknowledge VIS
- Currently not taken into account in the determination of penalty (*Previtera*).

## The Right to a Fair Trial

- Extends to the whole course of the criminal process.
- Fairness to all involved and maintaining the integrity of the process.
- A just result according to law – proportionality, consistency, reasons and natural justice.

## Do VIS undermine the fairness of the sentencing process?

- Content prejudicial to offender, inflammatory, inaccurate and objectionable
- 'Feral, angry creatures': the court a site for 'lawless emotionalism'

## Content

- Impact of the primary victim's death on the members of the primary victim's immediate family.
- 8 interviews – 6 VIS tendered, 5 oral and 1 written
- Observation – 25 oral and 6 written VIS (2 of these prepared by third party)

## Impact

- “You are overwhelmed by the blackness of it [grief] ...you feel like you are going to drown in it, that you will never come out the other side.”
- “My fucking heart has been ripped out.”
- “My family want you to know Antonio as we knew him. Maybe then you will have some appreciation for the immense loss that we feel.”

## Material deleted

- “A bunch of murdering bastards”
- “To you and your employers ‘us the taxpayer’ because without this happening to me you would be unemployed, please don’t dismiss what the family of ... has to say...hopefully this may have some influence on you...it’s as if we don’t exist...you haven’t even had the decency to return my phone call, it’s as if I’m the guilty party.”

## Material Not Deleted

- Offenders
- The offence
- Sentencing
- The criminal Justice system
- More critical of court than prejudicial to offenders.

## Dynamics of Submission

- Objections
- Filtering system
- Agreement or submissions
- Cross examinations
- Reliance on the trial judge.

## Are Proceedings 'Polluted' with Emotionality?

- Inevitability of emotion in criminal matters
- Vast majority of VIS oral.
- Distress, sadness, anger, hostility, frustration.
- Disruption and control.
- Response of judges.
- Sentencing judgments.