



**VICTIM
SUPPORT
SERVICE
INCORPORATED
1800 VICTIM**

Submission to the Attorney-General's Department

**Transforming Criminal Justice:
Efficient Progression of Major Indictable Matters**

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EXECUTIVE SUMMARY

This Submission outlines proposals designed to improve the rights of victims and support victim engagement with the criminal justice system during the early resolution of a case. We acknowledge the commitment outlined in 'Transforming Criminal Justice' to a more customer-centric system. Our recommendations are designed to specifically improve the engagement of victims through a more "victim focused system" that would place victims at the centre of the CJS and lower attrition rates by supporting and encouraging victims and witnesses to continue their participation in the criminal justice process.

Whilst we welcome a commitment to efficiency, the courts also have a sense of public or community accountability for the administration of justice. There is a need for the court process to satisfy "the customer". For victims, this means that 'procedural justice' prevails just as much as 'outcome justice'. That is, victims are fully engaged in the decision-making process as their case proceeds through the system.

It is our contention that, at present, the needs and expectations of victims are not well understood and met by the agencies of the CJS. We are concerned that efficiency considerations will be used as the overarching indicators of a more victim-focused CJS when, in fact, victims' rights enshrined in legislation remain largely overlooked. Procedures which can convince victims that they are being given an adequate hearing will go some way to assuring the community that the Courts are providing an effective and fair system of justice for all.

RECOMMENDATIONS

- 1 The Criminal Justice Sector Reform Council (CJRC) commission research of public, victim and witness attitudes towards sentencing discounts for early guilty pleas.
- 2 Establish a systemised approach through which victims could record and present their views on sentencing.
- 3 Establish a systemised process where victims are provided the opportunity to consult with a lawyer about the impact of plea bargaining or agreed facts on their right to compensation.
- 4 Establish a procedural mechanism to enable victims to request that an appeal be lodged by the ODPP on their behalf against the leniency of a sentence.
- 5 Establish a consistent and systemised process by which agencies of the CJS will support victims to complete a compelling and timely VIS.

VICTIM SUPPORT SERVICE

The vision of the Victim Support Service (VSS) is that all victims of crime (“victims”) in South Australia receive the support they need. We do this by providing a bespoke response to each victim, combining therapeutic expertise with knowledge of the criminal justice system to help victims both emotionally and practically. Our approach is augmented by a team of volunteers who guide victims through the court process.

The organisation has been working with and for victims in South Australia since 1979. We deliver programs that focus on victim engagement and evidence-based practice in areas such as trauma, crime prevention, homicide, domestic and family violence and child sexual abuse. To do so, we partner with government, non-government organisations, the wider community, and all agencies of the criminal justice system (CJS).

VSS provides a range of services including:

Practical Assistance

- Assistance with claims for victim compensation
- Supporting victims through the court process
- Assistance with Victim Impact Statements
- Advocating for victims’ rights

Information

- Statewide Victim Helpline (1800-VICTIM)
- Statewide network of victim service centres
- Victimology Resource Centre
- Community education and training programs

Therapeutic Intervention

- Free counselling for victims of crime
- Specialist support for co-victims of homicide
- Royal Commission in to Institutional Responses to Child Sexual Abuse - Support Services

Domestic and Family Violence

- Home security through the ‘Staying Home, Staying Safe’ (SHSS) program
- Statewide administration of Family Safety Framework meetings

VSS has an annual turnover of \$3 million to provide services throughout South Australia. Two-thirds of the funds are provided annually by the South Australian Attorney-General's Department from the Victims of Crime Fund. Each year VSS must submit a request for funding to the Attorney-General to maintain services.

VSS appreciates the opportunity to comment on *“Transforming Criminal Justice: Putting People First, Efficient Progression and Resolution of Major Indictable Offences”*.

RESPONSE TO THE CONSULTATION PAPER

1. Community attitudes to sentencing discounts in exchange for guilty pleas

The courts have a duty to uphold and balance the rights of the defendant with the expectations of the community. While the introduction of sentencing discounts for early guilty pleas may be welcomed by those managing the justice system, it is not clear how much support exists for such an approach in the South Australian community at large. Research in England and Wales has found that four out of five members of the public surveyed were against the universal application of the principle of guilty plea sentencing discounts (Dawes et al, 2011:16).

As part of the Early Resolution Project, the Criminal Justice Sector Reform Council (the Council) should commission research to examine the attitudes of the South Australian public, victims and witnesses on sentencing discounts for early guilty pleas before the proposals outlined in the consultation paper are adopted to determine public, victim and witness attitudes to sentencing discounts in South Australia.

Recommendation 1

The Criminal Justice Sector Reform Council (CJRC) commission research of public, victim and witness attitudes towards guilty plea sentencing discounts.

2. The Right to Compensation

The right for victims to be consulted on conditions of bail, the prosecution process, sentencing, and the right to compensation, under the declaration of principles governing treatment of victims, must be strengthened. VSS understands that the ODPP must currently inform victims if charges against an accused person are likely to be dropped or if certain facts will be excluded from sentencing. Before being asked by the ODPP to agree to any altering or dropping of charges, victims should have the opportunity to consult with a lawyer about the potential impact of plea bargaining, or the exclusion of agreed facts from sentencing, on their eligibility to access financial compensation. Without being consulted, victims are rarely aware of the implications of such decisions on their rights to compensation until it is too late. Victims should be informed of and engaged in plea bargaining and the establishment of agreed facts before sentencing.

Case study 1

An accused person has been charged with committing sexual abuse against several siblings. The ODPP has agreed to drop charges relating to one victim in return for guilty pleas in relation to the remaining victims. For the victim where the charges have been dropped, the right to claim compensation is lost.

Case study 2

A charge of causing grievous bodily harm is downgraded to aggravated assault, thereby excluding certain aspects of physical harm caused to the victim from sentencing. As the compensation process is linked to the agreed facts in the sentencing of an offender, the right to claim compensation for physical injuries that are excluded from the agreed facts is lost.

According to the Sentencing Advisory Council of Victoria (2007: 3), a specified reduction in sentence may lead to “unduly lenient sentencing” or disproportionate sentences being imposed in some cases. Victims directly affected by the crime will have their own view on the proportionality of sentencing. How will their views inform a rigid discount sentencing scheme in South Australia?

A system through which victims’ views would be recorded and presented to the court, including the right for their dissenting views to be heard, should be developed and

implemented. This could be achieved through a “Statement of Agreed Facts” presented by prosecution, defence and victim to the court. Additionally, a stay of sentence should be built in to the early resolution process to give victims sufficient time to express their views on discounted sentences.

A clear procedure is also required through which victims can ask the ODPP to lodge an appeal against the leniency of a sentence. Should the ODPP determine not to proceed with an appeal, the victim should have the right to request a judicial officer of the appeals court to examine their grounds for appeal and determine whether, in the public interest, an appeal should be heard.

Recommendation 2

Establish a systemised process where victims are provided the opportunity to consult with a lawyer about the impact of plea bargaining or agreed facts on their right to compensation.

Recommendation 3

Establish a systemised approach through which victims could record and present their views on sentencing.

Recommendation 4

Establish a procedural mechanism to enable victims to request that an appeal be lodged by the ODPP on their behalf against the leniency of a sentence.

3. The Right to Participation

VSS helps victims, witnesses, and their families in every criminal court in South Australia. Our Court Companion Service supported more than 300 people in the run up to a trial and during the court process in 2013-14, helping them to feel informed and supported so that they could give evidence confidently and promote justice.

Given our experience of supporting victims in court, we question the assumption that ‘technocratic justice’ is always in the best interests of victims because they would avoid the traumatic experience of having to participate or appear in court. Rather, for many victims, participating in the justice process, particularly by ‘having their day in court’, is integral to feeling included in the justice process and forms part of their recovery process.

The right to participate in sentencing through a Victim Impact Statement (VIS; Victims of Crime Act s10) is one of the most established mechanisms through which victims are directly engaged by the CJS. Despite this, except during the evaluation of victim impact statements in 1993-94, comprehensive data has not been kept by any agency of the CJS with respect to the number of requests to victims to make VIS, the number of VIS made, and the number of VIS made in courts.

The Commissioner for Victims’ Rights identified that a VIS was received in 60-90 percent of cases in the higher courts, as estimated by Judges, but in less than 3 percent of cases in the Magistrates Court, as estimated by Magistrates (O’Connell, 2009). In the absence of any current data, our understanding is that a VIS is still very rarely received in the Magistrates Court.

In preparing the case file, it is standard practice in some SAPOL Local Service Areas (LSA) to advise the victim to write their VIS straight after the completion of their statement or prior to the matter going to court for its first appearance. We submit that this practice is inappropriate and disadvantageous to the victim. In most major indictable cases the victim should only complete their VIS once a guilty verdict has been established and the defendant is awaiting sentencing. The key reasons behind this recommendation are:

- The victim is unlikely to know the full impact of the crime in the immediate aftermath of the event. This is likely to emerge over time.
- Under rules of disclosure, the prosecution case file has to be fully disclosed to the defence, including the VIS if it has been included as part of the file. This can provide the defence with potentially sensitive information, including how the crime has affected the victim.
- In preparing a VIS prior to the verdict, the victim can be given false hope of a guilty outcome, leading to unnecessary secondary victimisation.

VSS has expertise in assisting in the preparation of VIS. All victims should be referred to VSS to receive practical advice and assistance to prepare a compelling VIS. VSS should be funded to provide specialist support, and should administer the carriage of the VIS on behalf of the victim so that they are admitted in to the CJS at a point-in-time that is most beneficial to the victim.

Recommendation 5

Establish a consistent and systemised process by which agencies of the CJS will support victims to complete a compelling and timely VIS.

REFERENCES

Dawes, W., Harvey, P., McIntosh, B., Nunney, F., and Phillips, A. (2011) 'Attitudes to guilty plea sentence reductions', *Sentencing Council Research Series* 02/11.

O'Connell, M (2009), 'Victims in the Sentencing Process: South Australia's Judges and Magistrates Give Their Verdict', *International Perspectives in Victimology*, 4(1), March 2009, pp. 50-57.

Sentencing Advisory Council of Victoria (2007) 'Sentence Indication and Specified Sentence Discounts: Final Report'.

Victims of Crime Act 2001 (SA).