

TRANSFORMING CRIMINAL JUSTICE

BETTER SENTENCING OPTIONS:
CREATING THE BEST OUTCOME
FOR OUR COMMUNITY

Submission

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About 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 helps victims, witnesses and their families in every criminal court in South Australia. Our Court Companion Service provided help to more than 240 people in the run up to a trial and during the court process in 2014-15, helping them to feel informed and supported so that they could give evidence confidently, promote justice, and engage with the criminal justice system.

VSS provides a range of services including:

<p>Practical Assistance</p> <ul style="list-style-type: none"> • Assistance with claims for victim compensation • Supporting victims through the court process • Assistance with Victim Impact Statements • Advocating for victims’ rights 	<p>Information</p> <ul style="list-style-type: none"> • Statewide Victim Helpline (1800-VICTIM) • Statewide network of victim service centres • Victimology Resource Centre • Community education and training programs
<p>Therapeutic Interventions</p> <ul style="list-style-type: none"> • Free counselling for victims of crime • Specialist support for co-victims of homicide • Royal Commission into Institutional Responses to Child Sexual Abuse - Support Services 	<p>Domestic and Family Violence</p> <ul style="list-style-type: none"> • Home security through the ‘Staying Home, Staying Safe’ (SHSS) program • Statewide administration of Family Safety Framework meetings • Women’s DV Court Assistance Service

VSS has an annual turnover of \$3.2 million to provide services throughout South Australia. Two-thirds of the funds are provided annually by the AGD (SA) from the Victims of Crime Fund. Each year VSS must submit a request for funding to the Attorney-General to maintain services.

Recommendations

Recommendation 1: That all offenders serving intensive correction orders have multi-agency case plans in place that include mandatory education and/or employment plans, a range of rehabilitation programs including drug and alcohol testing (and treatment where necessary).

Recommendation 2: That all offenders serving intensive correction orders are subject to constant electronic monitoring that uses GPS to identify their location at all times.

Recommendation 3: That the requirement to serve 50 per cent of the non-parole period in custody prior to being eligible to apply for home detention be retained.

Recommendation 4: That information is made public by DCS as to how risks will be assessed and managed for offenders who are on intensive correction orders.

Recommendation 5: That DCS review and improve its processes around keeping specific victims of crime informed about the location and movements of the person or persons who offended against them.

Recommendation 6: That DCS advises victims of crime as to how specific risks will be assessed and managed as presented by the person(s) who offended against them if they are on an intensive correction order.

Recommendation 7: That the Attorney-General amend the *Victims of Crime Act 2001 (SA)* to ensure that all agencies of the criminal justice system have an obligation to all victims of crime to provide information about the whereabouts and conditions under which an offender has been sentenced, and where they can receive support services.

Recommendation 8: That at the time a Victim Impact Statement is prepared, the suitability of restorative justice as a recovery process is discussed with the victim to determine their interest in participation.

Recommendation 9: That DCS leads a collaborative approach to develop a comprehensive victim-led restorative justice framework.

Recommendation 10: That s 12(1) of the *Young Offenders Act 1993 (SA)* be expanded to explicitly enable a family conference to require the young offender to undertake specialised counselling to address unresolved trauma.

Recommendation 11

That Justice Sector Reform gives regard to the principles of parallel justice for the rehabilitation of victims of crime as well as offenders when proposing and implementing strategies to promote more effective and efficient justice practices.

Recommendation 12

That all courts request Victim Impact Statements in all cases where there is an offender being sentenced for a crime and there is a known victim of crime.

Recommendation 13

That the CAA introduces a Key Performance Indicator to measure the number of requests for Victim Impact Statements, and the number of Victim Impact Statements received.

Recommendation 14

That all victims of crime are invited to complete a Victim Impact Statement and are referred to the VSS by SAPOL and the ODPP for further information and support about how to undertake a Victim Impact Statement.

1. Introduction

While VSS appreciates the opportunity to comment on the Discussion Paper, we are disappointed that victims did not feature in the document until almost one-third of the way through (p.10). We are concerned that this blind spot in the Government's approach to justice reform will reinforce the continuing existing between investments in the rehabilitation of offenders and repairing harm to victims. For VSS, any plans to expand alternative punishments for offenders should be balanced with a parallel investment in systems and services that support the rehabilitation of victims.

The Criminal Justice Sector Reform Council *'aims to promote and support a contemporary, effective and efficient criminal justice system which maintains justice and integrity inspiring the confidence of the public'* (p. 7). To inspire confidence in victims that a broader, more flexible range of ways for the Courts and the Department of Correctional Services (DCS) to manage offenders will improve community safety, it is imperative that victims of crime are prioritised as key stakeholders. We note that the Hon John Rau, Deputy Premier and Attorney-General stated at the Key Partner Workshop on 28 August 2015 that *'the big danger in government is that we do things back-to-front'*. VSS hopes that this is not the case here and that, moving forward, victims are given more opportunity to inform policy development.

In considering better sentencing options, the CJSRC has leapt to consider how to implement intensive community orders before consulting specifically with victims of crime. We commend the Government for planning a survey of victims of crime but the Government must learn to work with victims of crime more consistently when seeking to achieve a more effective and efficient justice system.

Victims of crime in South Australia are marginalised by the adversarial nature of the criminal justice system. This has serious consequences for victim recovery and their satisfaction with sentencing outcomes. In the last major survey of victims in South Australia — more than 20 years ago — 78 per cent said the criminal justice system did not give them enough attention or help (AGD 1994). The lack of victim engagement in the criminal justice system goes some way to explaining victims' dissatisfaction with their treatment and with the attitudes and practices of agencies that operate within the criminal justice system.

"Victims have the right to feel that justice has been done"

(Attorney-General's Department, 2014)

We agree with the Attorney-General that South Australia needs empirically demonstrated programs that incorporate effective evaluations, can be scaled-up across different population groups and have the potential to be sustainable, both in terms of results and funding.

We seek that in the future, the evidence-base of proposed justice initiatives are more readily shared with key partners and the community more broadly.

Sentencing reform provides the South Australian Government with the opportunity to address victim isolation from the criminal justice system as well as the impact of increased costs associated with a growing prisoner population.

Victims of crime and the wider South Australian community deserve a criminal justice system that upholds victims' rights, enhances community safety, and holds offenders accountable for their actions. In order to create the best outcomes for the South Australian community, the needs and the views of victims must be heard at all stages of the justice process.

2. Response to Discussion Paper

Benefits of Intensive Correction Orders

What benefits could be achieved by South Australia introducing a form of intensive correction order to provide more flexibility for the courts in sentencing?

Would South Australia benefit by expanding the use of home detention as a sentencing option?

What benefits could be realised if the Department for Correctional Services were given more flexibility in ordering the early release of offenders into home detention?

What benefits could be achieved by providing offenders with the opportunity to maintain employment, community and family ties?

VSS notes that the aim of the proposed reforms is not specifically to reduce pressure on DCS. However, VSS can see significant financial benefits for DCS in reducing the incarcerated prisoner population. VSS would hope that these cost savings would be diverted into evidence-based rehabilitation programs for offenders and victims of crime, although this is not a position clearly made in the Discussion Paper.

VSS supports the intent of the intensive correction orders to provide offenders with opportunities for rehabilitation and reintegration into the community while serving their sentence in the community. However, the introduction of intensive correction orders raises several policy and operational issues that would first need to be addressed prior to their widespread use. These issues include:

- the availability of evidence-based programs provided by specialised rehabilitation and reintegration service providers, including multidisciplinary and cross-agency (government and non-government) staff to deliver statewide services to offenders;
- the availability of housing facilities for offenders who do not have suitable housing; and
- the capacity of DCS to provide for the supervision, electronic monitoring and surveillance of all offenders subject to an intensive correction orders on a statewide basis;
- the capacity and suitability of local communities to accommodate and reintegrate offenders.

VSS would require all offenders on intensive correction orders to be electronically monitored 24/7, with random DCS visits and regular, random drug-testing. Without these measures intensive correction orders would present an unacceptable level of risk for victims of crime and the community more broadly.

Recommendation 1

That all offenders serving intensive correction orders have multiagency case plans in place that include mandatory education or employment plans, a range of rehabilitation programs including drug and alcohol testing (and treatment where necessary).

Recommendation 2

That all offenders serving intensive correction orders are subject to constant electronic monitoring that uses GPS to identify their location at all times.

Changes to Parole Periods and Home Detention

Should the requirement to serve 50 per cent of the non-parole period in custody prior to being eligible to apply for home detention be removed?

Should the maximum period that can be spent on home detention be increased?

VSS does not support the removal of the requirement of an offender to serve 50 per cent of the non-parole period prior to being eligible for home detention. For many victims of crime, the removal of this requirement, even if the maximum period of home detention is increased beyond 12 months, will be perceived as too lenient a sentence in comparison to the harm done.

Such a reform, without evidence to indicate how it might reduce recidivism and improve long term outcomes for the community is also likely to decrease victim satisfaction with the criminal justice system.

Recommendation 3

That the requirement to serve 50 per cent of the non-parole period in custody prior to being eligible to apply for home detention be retained.

Suitability for offenders

Should specific offender types be excluded from eligibility for an intensive correction order?

VSS notes the following:

The Discussion Paper is deliberately focussed on one type of offender: an offender who is facing a sentence of imprisonment but for whom a punishment that is an alternative to custody may be a more appropriate and a more effective response.

The Government firmly acknowledges that there are a large number of offenders in prison who should be there, and must be there, to preserve community safety. However, for some offenders, it may be that if the courts had more flexibility in sentencing, prison may not have been the answer. (p.8)

However, the Discussion Paper does not propose to identify who this 'one type of offender is'. VSS would support an evidence-based risk assessment being undertaken prior to any offender being

considered for an intensive correction order. Information about how such a risk assessment process works should be made available to victims of crime.

VSS believes that most offenders who have been convicted for offences against the person, particularly violent offences, should be excluded from eligibility for an intensive correction order. Given the extensive evidence to show that DV offenders will often seek to harm or kill ex-partners following a separation, VSS has reservations about such offenders being managed in the community, allowed to work, having access to their children in the community etc.

Recommendation 4

That information is made public by DCS as to how risks will be assessed and managed for offenders who are on intensive correction orders.

Offenders in the community

If South Australia establishes community facilities so that offenders are able to live in the community, how can this be done without compromising community safety?

When offenders are able to live in the community, their victims need to be kept informed.

Victims of crime tell us that they need:

- information about the status of their case;
- information on the location of the offender;
- support to address personal safety and home security concerns;
- information about the offender's conditions (e.g. where they must reside, whether they are allowed to attend work, the hours they must be home etc); and
- information on what happens if the offender violates the conditions of their order.

More needs to be done to improve links between community-based support services for victims of crime (including but not limited to VSS) and the DCS Victims Register, so that more victims can receive ongoing information about their case and can re-engage with support services if necessary.

Sentences and conditions that the offender must abide to should be explained to the victim as clearly and as simply as courts do to offenders. Section 8 of the *Victims of Crime Act 2001* (SA) should be amended such that victims of crime **are** informed (not 'should be') by the SA Government (e.g. DCS, DCSI, SAPOL and/or CAA) about their rights as a victim of crime, the services available to them, how to complete a Victim Impact Statement and the details of the sentence imposed.

The onus should not be on the victim to request that information. Rather it should be a duty of the criminal justice system and the government agencies within it to ensure that all victims of crime are provided with and understand that information.

The victim's lack of understanding of the sanctions imposed by the court can exacerbate their fear of

"If the criminal justice system in a democratic society is to correspond with the actual feelings and demands of the community it serves, then sentencing of offenders must be such as to ensure that the community does not lose confidence in its courts and that support for them does not diminish."

(Aldo S. Raineri, 1995)

the offender. This can have serious consequences for the victim's recovery and feelings of safety in the community.

Recommendation 5

That DCS review and improve its processes around keeping specific victims of crime informed about the location and movements of the person or persons who offended against them.

Recommendation 6

That DCS advises victims of crime as to how specific risks will be assessed and managed as presented by the person(s) who offended against them if they are on an intensive correction order.

Recommendation 7

That the Attorney-General amend the *Victims of Crime Act 2001 (SA)* to ensure that the government has an obligation to all victims of crime to provide information about the whereabouts and conditions under which an offender has been sentenced, and where they can receive support services.

Restorative Justice

Would the expanded use of restorative justice provide better outcomes for victims of crime?

Would the expanded use of restorative justice provide better outcomes for offenders?

In 2006, the Australian Law Reform Commission (ALRC) conducted a review of sentencing in Australian jurisdictions. The ALRC recommended that the purposes of sentencing outlined in each Australian jurisdiction be amended to include 'the restoration of relations between the community, the offender and the victim' (ALRC, 2006).

Evidence suggests that restorative justice delivers higher levels of victim satisfaction, and that programs work at least as effectively as formal justice responses (Daly, 2004). This has already been observed in South Australia (Goldsmith, Halsey & Bamford, 2005) and in the United Kingdom (Victim Support UK, 2015).

We support the expanded use of restorative justice to provide better outcomes for victims, the community and offenders. Not all victims want reparation but sometimes it would help them to receive an apology from the offender, some financial compensation or some other form of redress.

Restorative justice practices offer other ways for reparation to be made to victims of crime and significant opportunities for victims to contribute to the sentencing process. Broadly speaking, restorative justice approaches aim to:

...address the harm caused by the crime, balancing the concerns and rights of the victim and the community with the need to reintegrate the offender into society. It is a process whereby all the parties with a stake in a particular offence have the opportunity to communicate to

There is some evidence to suggest that investing more in restorative justice programs will contribute to reducing crime and rehabilitating offenders, as well as to improving the well-being of victims. However, adult restorative justice conferencing has not become a mainstream pre- or post-sentence strategy in South Australia and this is clearly an area that should be further developed.

(Hora, 2010)

resolve collectively how to deal with the aftermath of the offence and its implications for the future. (Marshall, 1999: 5)

The current review of sentencing options in South Australia is an opportunity to consider the suitability of restorative justice as a legitimate justice process and to extend such practices to other parts of the court system, including adult courts. The review should also consider how the offer of restorative justice should be made to victims where provision is available. For example, consideration should be given as to how Victim Impact Statements might be used as an opportunity to explain restorative justice to the victim and to record their interest in participation.

Recommendation 8

That at the time a Victim Impact Statement is prepared, the suitability of restorative justice process is discussed with the victim to determine their interest in participation

Victim-offender meetings

VSS and DCS have worked together on several occasions to organise and facilitate ad-hoc victim-offender meetings. VSS has participated in the assessment, facilitation and post-mediation follow-up for victims, whilst DCS has provided a similar service for offenders.

At a meeting in September 2014, both agencies identified the lack of a victim-led restorative justice framework as a major barrier to the effective extension of restorative justice practices in South Australia.

Improved information-sharing between DCS and community-based support services for victims of crime would support the strengthening of victim-led restorative justice practices which, in some cases, would reduce secondary victimisation.

Recommendation 9

That DCS leads a collaborative approach to develop a comprehensive victim-led restorative justice framework.

The success of victim participation in family conferencing in the Youth Court in South Australia is to be applauded. VSS supports the continuation of family conferencing for young offenders.

However, we believe the powers of a family conference outlined in s 12 of the *Young Offenders Act 1993 (SA)* should be expanded so that the conference may explicitly require the youth to enter into a series of counselling sessions delivered by a trauma specialist. Given that many young offenders have had contact with the child protection system and have experienced family dysfunction and disengagement with education, this option would go some way to helping young people address unresolved trauma and prevent reoffending.

The lifetime burden of unresolved childhood trauma is estimated to cost Australia up to \$24 billion a year (ACSA, 2013).

Recommendation 10

That s 12(1) of the *Young Offenders Act 1993 (SA)* be expanded to explicitly enable a family conference to require the young offender to undertake specialised counselling to address unresolved trauma.

3. General Feedback

Key Partner Workshop, 28 August 2015

On 28 August 2015, VSS attended the Key Partner Workshop where participants were asked, 'What needs to be considered or done to supervise or rehabilitate offenders outside prison to ensure we reduce reoffending and enhance community safe?' We suggest that the justice sector reform gives greater consideration to 'parallel justice', which aims to rehabilitate both offenders and victims.

According to Susan Herman from the National Center for Victims of Crime (USA):

When offenders are brought to the bar of justice, they are held accountable by the state for harms suffered by individuals. There is a societal response to the offender that says, "You violated the law and we will hold you accountable and punish you if it is appropriate, isolate you if needed, and offer you services to help reintegrate you into the community."

The individuals who have been harmed – the victims of crime – have no comparable experience of a societal response to them. There is no statement that says, "What happened to you was wrong." There is no statement of communal responsibility that says: "We will help you rebuild your life."

The same event produces both an offender and a victim. Yet, as a society, we have only created a path to justice for offenders. We must ask whether the pursuit of justice can be for both parties. For example, can we create a forum for victims to be heard, and to ask for help, either within or outside of our current justice system? Is it possible to create a distinct path to justice for victims?

... we need to decouple the pursuit of justice for victims from the administration of justice for offenders. I believe we can create two distinct visions of justice, one for victims and one for offenders. Justice for victims requires that, for all victims, we identify and address the harm caused by the crime. (Herman 1999)

Recommendation 11

That the Justice Sector Reform gives regard to the principles of parallel justice for the rehabilitation of victims of crime as well as offenders when proposing and implementing strategies to promote more effective and efficient justice practices.

Victims and sentencing: Victim Impact Statements

While the Discussion Paper refers to Victim Impact Statements (p.3), it does not identify them as a key element for consideration when determining the suitability of an offender to service an intensive correction order.

South Australia was the first Australian jurisdiction to allow victims to provide input into the sentencing process through the submission of a Victim Impact Statement (Webster, 2011). Today, Victim Impact Statements are one of the few established mechanisms through which victims are directly engaged by the criminal justice system.

Many victims tell us that a major deterrent to providing a Victim Impact Statement is the right of the

defendant or their lawyer to cross examine the victim on the content of the Statement, potentially leading to further trauma and experiences of secondary victimisation (Bowden, Henning and Plater, 2010).

In 2010, the *Criminal Law (Sentencing) Act 1988 (SA)* was amended by the *Statutes Amendment (Victims of Crime) Act 2009 (SA)* to allow a victim to include a recommendation regarding the sentence in a Victim Impact Statement. However, as there is no requirement for the sentencing court to consider the content of a Victim Impact Statement, it is difficult to see how this is a fair and just outcome for victims of crime.

The role and purpose of Victim Impact Statements should be strengthened in South Australia to promote a criminal justice system that reasonably considers the impact crime has on the community and on the particular victims of that crime.

VSS recommends that courts seek Victim Impact Statements in all cases where there is an offender being sentenced for a crime and there is a known victim. VSS has expertise in assisting victims of crime in the preparation of a Victim Impact Statement and recommends that all victims be referred to VSS to receive practical advice and assistance to prepare a compelling Victim Impact Statement, as well as access to court support when reading their Statement to the Judge or Magistrate.

Recommendation 12

That all courts request Victim Impact Statements in all cases where there is an offender being sentenced for a crime and there is a known victim of crime.

Recommendation 13

That the CAA introduces a Key Performance Indicator to measure the number of requests for Victim Impact Statements and the number of Victim Impact Statements received.

Recommendation 14

That all victims of crime are invited to complete a Victim Impact Statement and are referred to the VSS by SAPOL and the ODPP in every case for further information and support about how to undertake a Victim Impact Statement.

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