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RESEARCH REPORT

# VICTIM IMPACT STATEMENTS IN SOUTH AUSTRALIA: AN EVALUATION

OFFICE OF CRIME STATISTICS



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# VICTIM IMPACT STATEMENTS IN SOUTH AUSTRALIA: AN EVALUATION

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Frank Morgan
Director
Office of Crime Statistics

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## Summary

This report presents the findings of an evaluation of Victim Impact Statements (VIS)* in South Australia. The evaluation covered three main areas: the effect of VIS on the criminal justice process; the effect of VIS on victim satisfaction with the criminal justice system; and the effect of VIS on sentencing outcomes.

A series of interviews with members of the legal profession contributed to an assessment of the effects of VIS on the criminal justice process. Forty two interviews were conducted with members of the main professional groups in the criminal justice system (prosecutors, defence lawyers, magistrates and judges). These interviews revealed a very uneven and problematic implementation of VIS. In the Magistrates Court where the majority (95%) of cases are dealt with, VIS are rarely tendered. In the Supreme and District Courts where more serious offences are heard, prosecutors and judges stated that the information provided in VIS was highly variable in quality and often was not adequately followed up or updated.

Despite the poor implementation of VIS, many judges and prosecutors believed that information about victim harm has improved since the introduction of VIS. Two thirds of judges and most of the prosecutors stated that they would recommend the introduction of VIS in other Australian jurisdictions. All groups believed that the introduction of VIS has not led to court delays, additional expenses or mini trials on VIS content. Many of those interviewed actually suggested that VIS saved court time. Judges and prosecutors felt that only rarely did VIS contain exaggerations or inappropriate remarks. Defence lawyers stated that they were often suspicious of material relating to the emotional harm suffered by victims, however they rarely challenged VIS because of the damaging effect a cross examination of the victim might have on sentencing.

One third of the judges interviewed stated that VIS were important for sentencing; a third thought that the VIS itself was not very important; and the remaining judges were of the view that VIS were only important in some cases, in particular offences against the person and cases in which the defendant pleaded guilty. Most of the professionals believed that VIS have not increased the severity of sentencing. In fact, some judges were of the opinion that in the few cases where VIS affect penalties, VIS are just as likely to lead to more lenient sentences as to harsher sentences. Most judges did not believe that VIS have led to sentencing disparity.

Victim satisfaction with the criminal justice system was examined through a mailed questionnaire to victims of serious crimes dealt with in the District and Supreme Courts. A high response rate of 63% was achieved with 427 victims completing and returning questionnaires. Just over one third of victims stated that they had provided information for a VIS. The majority (68%) stated that their main reason for providing the information was to ensure that justice was done. After providing the information a significant proportion (45%) felt 'better' or 'relieved' but for almost one

* Note that in this report the abbreviation 'VIS' is used both in the singular and the plural.

half (49%) the VIS did not make any difference to how they felt. A significant number of victims, about half the sample, believed that they had not provided information for a VIS even though a VIS was found in their court file.

On a scale from 1 (very dissatisfied) to 5 (very satisfied) the mean overall satisfaction with the criminal justice system was found to be 2.8. There was no difference in the satisfaction rating with the criminal justice system between victims who stated that they had provided information for a VIS and those who stated that they had not. Satisfaction with the criminal justice system was found to be significantly correlated with satisfaction with the sentence imposed on the offender. Most victims (71%) who stated that they had provided VIS information expected the VIS to have an impact on the sentence. However less than half of these (40%) believed that the VIS had actually affected the sentence. Victims who expected the VIS to influence the sentence, but felt that it had not, were significantly more dissatisfied with the criminal justice system than those victims who did not expect an effect.

Over three quarters (78%) of victims believed that the criminal justice system does not give enough attention and help to victims of crime. Suggestions by victims for improving the criminal justice system included better support and counselling services, more information about the way the criminal justice system works and the outcome of their case, more and longer prison sentences but also more community service, licence revocation and restitution and compensation.

The study examined the effect of VIS on sentencing outcomes by analysing sentencing trends in the Supreme and District Courts before and after the introduction of VIS. In addition a multivariate analysis was conducted on assault cases finalised before and after the introduction of VIS. The analysis of aggregate sentencing trends in the higher courts found no evidence that VIS had changed the proportion of offenders receiving a sentence of imprisonment, nor did it find VIS had changed the length of sentences of imprisonment that offenders received. Similarly the multivariate analysis did not identify VIS as a significant variable for discriminating between those cases resulting in sentences of imprisonment and those receiving community based sanctions.

It is the opinion of the researchers that the South Australian experience with VIS will provide support for the positions of both those in favour and those against VIS. Opponents of VIS will point to the very minimal changes and improvements which have occurred as a result of the introduction of VIS. On the other hand, those in favour will argue that the evaluation dispels fears about their supposed detrimental effects and they will continue to maintain their belief in the presumed benefits of VIS if properly implemented.

# Chapter 1 Introduction

Crime victims, previously the 'forgotten persons' of the criminal justice system, have received increased attention in the last two decades. In a relatively short time period, governments have enacted sweeping legislative changes which provide victims with rights of compensation from the state, restitution from the offender, support and counselling services, and information and updates about their criminal cases. Some countries have gone further to enact 'victim participation' statutes (Erez, 1989). These statutes guarantee crime victims a voice to provide input into sentencing decisions, and, as a result, victims can affect the way their offender is dealt with by prosecutors, judges, juries and parole officials (Hall, 1991).

Whereas victim rights concerning compensation, restitution and receiving information have been welcomed, their right to provide input into sentencing decisions has been controversial and continues to be the subject of heated debate. This report presents the results of a comprehensive evaluation of South Australia's attempt to integrate victims into the criminal justice process. The study evaluated the implementation of South Australia's 1988 legislative reform which, for the first time, provides Australian crime victims the right to have input into sentencing decisions via a victim impact statement (VIS).

## Background

The historical evolution of the penal system, from private vengeance to state administered justice, has resulted in a criminal justice process in which victims play a secondary role. They report crimes to officials who decide whether to prosecute the case and how to proceed. In adversary legal systems, such as the USA, England or Australia, the role of the victim in court proceedings is a passive one. The victim is an observer, or at best, a witness. As a witness, the victim has to remain outside the courtroom until summoned to testify. During the brief time victims are in court, they are limited to answering questions from the prosecutor or the defence lawyer. Victims have no formally recognised role in the trial of their offender, nor any mechanism to voice their concerns and feelings regarding the crime and its impact on them. The prosecutor presumably represents the victim and their interests. Victims have no power to compel prosecution, nor have 'standing' to contest decisions to dismiss or reduce charges, or to challenge the sentence imposed on the offender.

This concept of crime as an offence against the state, and its attendant administration of justice, has resulted in a host of economic and psychological problems for victims, and most importantly, in perceptions of injustice. Research in several countries has shown that in criminal justice proceedings, victims have a fundamental need: 'Their wish [is] for respect and appreciation - their recognition as an important and necessary participant in the criminal justice system.' (Shapland et al., 1985). Studies have suggested that victims' grievances are as much with criminal justice procedures, particularly their lack of involvement in the decision making process, as with the supposed injustice of the outcome.

National committees were established in several countries to examine the victim's place in the criminal justice process (e.g. in the USA, President's Task Force, Victims of Crime,

1982; in Canada, Federal-Provincial Task Force on Justice for Victims of Crime, 1983; in New Zealand, The Victim's Task Force established in 1987). These committees have documented the importance of participation in maintaining a perception of fairness about the process.

The international community has also recognised the need to integrate victims into 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 which recognises victims' input as one component of the fair treatment of victims. Part A of the Declaration, which addresses access to justice and the fair treatment of crime victims, specifically mentions the requirement of 'allowing the views and concerns of the victim to be presented and considered at appropriate stages of the process.' This declaration was formally approved by the General Assembly of the United Nations in December 1985.

In response to these demands for increased victim participation, several avenues of victim integration in the criminal justice process have been adopted by various countries. In most of the states and at the federal level in the USA, parts of Canada, and in New Zealand this right has been granted through the use of a Victim Impact Statement. The VIS is a statement made by the victim and addressed to the judge for consideration in sentencing. It usually includes a description of harm in terms of financial, social, psychological and physical consequences of the crime. In some jurisdictions in the USA VIS also include a section concerning the victims' attitude about the crime, the offender, and a proposed sentence, referred to as 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 - a form of speech - at the time of sentencing. The agency responsible for preparing the victim impact information varies, ranging from probation departments, to prosecutors' offices, to victim service agencies. In New Zealand and parts of Canada the police prepare and update VIS. VIS also differ in content and form, ranging from simple checklist in some states in the USA, to lengthy descriptive statements, both oral and written, in others (McLeod, 1988). As plea bargains are the most common way to dispose of cases in the USA, many states have passed laws that allow or mandate victim participation and input in plea bargaining (Kelly, 1990).

In Australia, federal, state and territorial law reform committees have considered the issue of victims' input into sentencing through the use of VIS. The Australian Law Reform Commission (1987) stated that the prosecution or the defence bring to the courts attention information about the impact of the crime on the victim, and raised objections as to the relevance of victim preference concerning offender [illegible]sition. The Victorian Sentencing Committee (1988) also recommended against allowing vi[illegible] input through a VIS because of adverse consequences on the criminal justice pro[illegible] and on crime victims. The New South Wales Task Force on Services for Victim[illegible]f Crime (1987) recommended tabling any decision on that issue until the evalua[illegible]n of programs currently implemented in other jurisdictions are completed. Western Australia is considering the issue of integrating victims into the criminal justice process via VIS, but is also awaiting evaluations of current VIS practices. Victoria has recently proposed a bill which allows victims impact statement prepared by victims to be considered by the judge in sentencing.

As at the date of this report South Australia is the only State in Australia that has integrated crime victims into the criminal justice process via victims' input into the proceedings. Following the 1985 declaration by the United Nations concerning victim integration into the criminal justice process, the government of South Australia formulated and endorsed seventeen principles of 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 Section 7 (detailed in Appendix A) of the *Criminal Law (Sentencing) Act 1988*, which states that information on victim harm must be put before the court by prosecutors. The VIS is a statement made to inform the judge of any physical or mental harm, or any loss or damage to property suffered by a victim as a result of the crime. This legislation, 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. Responsibility for collecting and summarising information on the crime's effect on the victim in terms of physical, psychological or social harm, financial loss or damage was assigned to the South Australia police. It now forms part of the normal duties of the investigating police officer. South Australia has preferred the police over probation officers because of resource and practical problems, and because probation officers deal principally with offenders (Sumner & Sutton, 1990).

## Arguments in favour of victim input

Supporters of a victim's right to have input into sentencing decisions have proffered various moral, penological and practical arguments. They argue that victim participation will provide recognition of the victim's wishes for party status and individual dignity. It will also remind judges, juries and prosecutors that behind the 'State' is a real person with an interest in how the case is resolved (Kelly, 1987). It is also thought that victim integration may result in increased victim cooperation with the criminal justice system, thereby enhancing system efficiency (McLeod, 1986). The effectiveness of sentencing may increase if victims convey their feelings, and the process will become more democratic and reflective of the community's response to crime (Rubel, 1986). The provision of information on the harm suffered by the victim may increase proportionality and accuracy in sentencing (Erez, 1990). Supporters also argue that when the court hears, as it may, from the offender, the offender's lawyers, family and friends, fairness dictates that the person who has borne the brunt of the offender's crime should also be allowed to speak (Sumner, 1987).

Victim involvement and the opportunity to voice concerns may also be necessary for victim satisfaction with justice, psychological healing and restoration (Erez, 1990). Allowing victims to provide input into sentencing would be likely to reduce feelings of helplessness and lack of control (Kilpatrick and Otto, 1987). It would also symbolise the importance of the victim in the process: 'the chance to be heard, to be given the dignity of

the court's attention and to be seen as a significant the value of whose life and well-being is acknowledged by the law' (Ballin, 1991).

On a practical level, some argue that victims' input may also advance the various goals of sentencing. For example retribution may be 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. Similarly victim participation may increase the deterrent effect of punishment because it increases prosecutorial efficiency, which in turn increases the certainty of sanctions. Incarceration (and hence incapacitation) is likely if the victim has a special knowledge about the defendant's potential for future criminal activity. Victim participation may also promote rehabilitation as the offender confronts the reality of the harm he or she caused the victim (Talbert, 1988). It is also argued that there has been an increased willingness on the part of legislators to regard crime as an act primarily against the victim rather the 'State' which is reflected in a greater emphasis on restitution as a sentencing objective (Corns, 1988). This provides further justification for VIS since accurate information on victim harm is required for making restitution or compensation orders.

## Arguments against victim input

Objections to victims' input in sentencing focus mostly on legal arguments concerning justice and the appearance of justice and on practical concerns (Erez, 1990). Some argue that allowing victim input will undermine the court's insulation from unacceptable public pressure (Rubel, 1986), or will result in substituting the victim's subjective approach for the objective one practiced by the court (Victorian Sentencing Committee, 1988). Sentence disparity may occur as similar cases could be disposed of differently, dependent upon the availability or thoroughness of the VIS (Hall, 1991). Because victims are thought to be as often vindictive as forgiving, allowing them to express their wishes concerning the offender will inject a source of inconsistency and disparity in sentencing dependent on 'the resiliency, vindictiveness or other personality attributes of the victim' (Grabosky, 1987: 147).

Some objections pertain to the presumed adverse effects of victim integration on the criminal justice process. Concerns over delays and additional expenses for an already overburdened system, if victims are allowed to participate, are mentioned (e.g., Australian Law Reform Commission, 1987). Some prosecutors object to victims' input in sentencing because they fear that prosecutorial control over the cases will be eroded and that the predicability of outcomes reduced. Defence lawyers naturally view increased victim involvement as a hindrance to the defence. Some argue that victim input would add very little useful or novel information which is not already available to the court, and will result in longer trials.

It is also argued that the criminal law already takes into account the actual harm done to the victim in the definitions of crime and mitigating or aggravating circumstances. Some also suggest that unless courts are free to pass sentences according to the unforeseen results of the crime (rather than those intended or likely), the effect of a VIS on sentence will be minimal (Ashworth, 1993). As a practical matter, victim participation through VIS is bound to have limited relevance in jurisdictions that employ a determinate sentencing scheme which guides and restricts the sentencing judge's discretion (Hellerstein, 1989).

Concerns have also been raised about the effect of VIS on victims' health and welfare. Some are concerned that allowing victim input will aggravate victims' psychological well-being as they relive the crime experience. Because consideration of VIS material by the court may increase the severity of punishment, the offender must be given the right to challenge the factual basis on which the escalation of the penalty occurs, specifically to 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 requiring a VIS may in itself be traumatic for victims, and that victims may not want the offender to be fully aware of the harm caused them (Australian Law Reform Commission, 1987). Others have suggested that the victim movement may have created expectations among crime victims, that in reality, are not or could not be met (Fattah, 1986). In this respect, instituting formal procedures for victims' input may be counter-productive. The opportunity for input in sentencing may create or enhance the expectations that this input will be reflected in sentencing decisions. Because judges are sometimes precluded from considering a victim's request or input, those who believe that their opinions have been ignored may become embittered and resentful (Henderson, 1985).

Opponents of participatory rights also express the concern that rights gained by victims are rights lost to the defendant, and that bringing the victim back into the process means a reversion to the retributive, repressive and vengeful punishment of an earlier age (Sebba, 1988). Some expressed the concern that VIS may result in offenders being subjected to unfounded or excessive allegations by victims made from the relative security of the VIS (Ashworth, 1993). The essence of the harm of victim rights is in shifting the focus of the justice system from the accused to the victim; consequently the efforts funnelled into reform have turned into a reprisal against the offender (Hellerstein, 1989). Some argue that the victims' anguish has been exploited or mistranslated into support for a conservative ideology, and that the attempt to bring the victim back into the process may be a way to accomplish the goal of harsher punishment (Henderson, 1985). Because of these expected legal and practical problems with VIS some have concluded that 'the right to submit a VIS may be high in profile but low in improving genuine respect for victims' (Ashworth, 1993: 509).

## The study

The present study documents the implementation of VIS in South Australia and examines empirically the validity of many of the arguments in the debate concerning the use of VIS. The three main focuses of the study were the effects of VIS on the criminal justice process, on sentencing outcomes, and on victim satisfaction with justice. The report first presents the opinions and experiences of the legal profession concerning the implementation of VIS and its impact on the South Australian legal process (Chapter 2). It then displays the results of a survey of victims whose offender was processed under the new sentencing law that mandates VIS (Chapter 3). Chapter 4 compares sentencing outcomes including the use of restitution and compensation, before and after the introduction of VIS. It also provides a detailed analysis of sentencing patterns in one specific offence (assault). The report concludes with the implications of the findings for VIS practice and provides directions for future efforts to integrate victims in the criminal justice process.

# Chapter 2 The Opinions and Experiences of the Legal Profession

## Background

The knowledge accumulated about victim integration through VIS has been mostly from the victim's viewpoint, and presented by victims and their advocates. Very little is known about the opinions and experiences of a significant factor in the implementation of VIS - the legal professionals (for one exception, see Henley et al., forthcoming).

This chapter examines the attitudes toward, and experiences with, VIS by the legal profession in South Australia: Police and Crown prosecutors, defence lawyers, magistrates and judges. Because these legal practitioners are charged with the implementation of this right - they have to present, consider or accept VIS information - their attitudes are important, their experiences revealing. Their approaches, practices, and experiences may also provide insight and assist in interpreting the patterns and statistical figures presented in subsequent chapters of this report.

## Methodology

The judges, magistrates and Crown prosecutors were informed about the study by a letter from the Attorney-General to the Chief Justice, Judge or Magistrate, or the Director of Public Prosecution (DPP). The letter informed them about the study and stated that its purpose is to elicit their attitudes toward and experiences with VIS. The letter emphasised the importance of their input for the study. The legal practitioners were then contacted by the research team to schedule an interview. The police prosecutors were informed about the study by the South Australia Police coordinator of VIS, who also scheduled the interviews. All respondents (except three defence lawyers) were interviewed by the first principal investigator in a structured interview that lasted between one hour to an hour and fifty minutes, with only two interviews of about half an hour. The interview schedule included questions about the content of VIS the practitioners dealt with, and the perceived effects of VIS on sentencing and the criminal justice process. It also elicited the legal professionals' opinions about the role of victims in the criminal justice process. Lastly, respondents were asked questions about their professional background, experience and penological perspectives.

Although the samples used are not large, the in-depth interviews, which included numerous open-ended questions, capture a wide range of experiences and opinions of the legal practitioners. The interviews also reveal considerable variation among the respondents in their attitudes and professional definitions of their work, the priorities they assigned to the various aims of the criminal justice system and their views on the role of victims in the process. These differences emerge within and between the groups interviewed. This chapter, therefore, offers a comprehensive picture of the reality of VIS from a variety of personal convictions and from the angles of all the professional groups involved in sentencing. Because the role these professionals play in the process (prosecution, defence, sentencing) is of major significance to the implementation of VIS, their responses are presented by their professional group affiliation.

## Police prosecutors

Description of the respondents

Police prosecutors were approached by the Victim Impact Statement Coordinator of the South Australia Police and were invited to participate in the study. All those who were approached agreed to participate. The respondents included four prosecutors and two adjudicators (those who prepare the files for prosecutions but do not appear in court). Two were females and four were males. One worked only in the children court. Their work experiences ranged from 2 to 14 years with a mean of 7 years. Respondents also varied in the work they performed before becoming prosecutors: most of them had been in patrol; and few in other areas of the police department. The necessary qualities to work in prosecution listed by the respondents included legal knowledge, good communication skills or cunning ('to deal with the defence'), and being quick and compassionate.

The majority of the police prosecutors found working with criminal law issues interesting or challenging. They also liked the thrill of winning a case, particularly when investigative efforts were involved, or when appropriate penalties are imposed on offenders. Several respondents mentioned that what they liked least in prosecution is family dispute situations and rape cases. Another aspect of the work they did not like revolved around 'watered down penalties', 'immorality of the criminal defence system' and 'the effect of crime on victims.'

Opinions and Experiences with VIS

At the time of the study the South Australia police were experimenting with a new way of collecting information for VIS; many of the respondents therefore made comments, or provided responses, that pertained to both forms, the 'old way' (VIS prepared by the police) and the 'new' VIS, self-completed form prepared by the victim.

The respondents stated VIS are helpful to them if they provide information about the injury, loss or damage - the expenses for which compensation will be sought by the victim. Monetary figures, several respondents stated, are important because 'they are tangible,' or 'can be verified with receipts.' They were divided as to whether information about mental or psychological injury is useful for them.

Most of the police prosecutors thought that the quality of VIS they see is highly inconsistent. One prosecutor explained the lack of thoroughness of VIS: 'police officers on the road are lazy and will not take an extra two minutes to complete the job, and then, we prosecutors, have to clean up after them.' Some respondents stated that VIS thoroughness varies by the timing of their completion: 'Those which are completed straight away lack sufficient details; those prepared after some time, tend to be more complete. Emotional and financial extent of injury need to be gauged later in the process. The injury is not known yet immediately after the crime.'

When asked how well structured VIS forms are, most respondents thought the old forms were less complex and not as bulky as the new forms, but they lacked necessary details

such as address of the victim. The new form provides many more details, and each type of injury has a special page.

All the police prosecutors agreed that information about victim harm has improved considerably since VIS were introduced. One respondent added that victim impact information improved even more since a special VIS coordinator was appointed. Another respondent commented that the amount of information conveyed to the prosecutor has improved, not necessarily the amount that magistrates take into account. 'It almost needs an entire culture change to have magistrates consider it.'

Quality of VIS

The police prosecutors expressed concerns about the content of VIS. One concern is related to the thoroughness of the information; for instance, the police are cautious in documenting information which reveals too much about the victim and this results in incomplete information. Another problem was that the police do not make follow-ups of the initial interview. Some respondents stated that quite often it is not clear from a VIS how much property was recovered or money paid by the insurance. Several respondents mentioned lack of comprehensiveness and sometimes, though not often, inflated claims.

When asked about prejudicial or inflammatory statements in VIS most of the police prosecutors stated they have not seen any such statements in VIS and that 'the police do not go into the intangible, they deal only with factual issues: money lost, time off from work etc.' or 'the police are dispassionate when they write it; I cannot recall anything that suggests the police were not objective. They may have been perhaps lazy or not interested enough'. Other respondents stated that 'some inflammatory or emotional statements are possible in domestic situations, issues of custody of children have particularly some impact on people exploding in VIS. They use the criminal process and the VIS to get family issues settled.' But one added 'if some victims state the offender should go to jail, or hang the villain, or castrate him, it does not get into the VIS.' Most prosecutors also stated that only seldom do VIS contain exaggerations. If they do, often it is about monetary issues. The comments included: 'I have seen a couple of VIS where the victim jazzed it up a little, but they sometimes do it in the court as well', 'certain ethnic groups who collect jewellery inflate property stolen mostly for insurance purposes; but in any dispute they are willing to forget the claim', 'I do not see people go out of their way to defraud the government on psychological compensation', 'people exaggerate because they fear they will be short in out of pocket expenses, so they exaggerate. In property damage cases, some people overclaim'. Other comments were : 'exaggerating does not occur often; if anything, VIS are vague' or 'there are few ones in which the strength of feeling and frustration comes out, but these are genuine expressions.'

Perceived Effect of VIS on Sentencing and the Criminal Justice Process

The respondents were asked to comment on the effect of VIS on sentencing. Those who were willing to express an opinion stated they did not think sentencing patterns have changed as a result of VIS. Comments included the following: 'magistrates are now more aware of using compensation orders as part of penalties, but I don't think that at this stage they are trying to address any needs of victims in penalties', 'absolutely no change in sentencing', 'What has caused the change in sentencing is the legislation which put emphasis on rehabilitation and sentences other than custodial. I find that victim harm is

the last consideration taken by judges. One of the main reasons is that unless there is a major injury or great wrong done, there is no discussion of the victim.'

When asked how important is the harm suffered by victims compared to other factors taken into account in sentencing, the police prosecutors stated that victim harm 'is not the predominant factor influencing sentences,' or 'has only minimal importance' or 'is the last factor judges consider.' Their comments included explanations for the small weight on harm: 'magistrates take it into account on a technical level, they view it in clinical terms and I don't think that magistrates have truly human appreciation of the harm that victims suffer. If they are told in court that someone suffered a broken bone it is only words for them. They lack some comprehension of what kind of harm is actually done.' 'The degree of physical harm is important, but the court takes no notice of property damage.' 'Victim harm is not the predominant factor unless it is very serious', 'Victim harm has no importance except with bad assaults and assault police. Everything appears to be for the defendant, sadly, the circumstances of the defendant have gone into much more deeply than the loss of the victim, because there is either a solicitor representing the defendant or a pre-sentence report that goes into great details about how the sentence will affect the offender, and by comparison the information we have is limited; seems to me an unequal balance.' One police prosecutor expressed the opinion that victim harm should have as much importance as prior convictions. The respondent who worked at the Children's Court stated that in this court 'the actual sentence has not changed, just the component the judge says it (the harm) influences. In the Children's Court sentences are for rehabilitation and not punitive; the court brings it home to the offender what he has done and it is useful for this reason.'

Most respondents did not think that in the cases they have prosecuted VIS played a significant role. One prosecutor stated, however, that in uncontested cases VIS are the only source of accurate information. When asked if they can remember cases in which VIS clearly influenced the sentence, most respondents could think of at least one case in which VIS had an effect on sentencing. But, as will be presented later with the crown prosecutors and judges, their examples noted effects in both directions, causing increases and decreases in sentence severity. For instance: 'a young woman (18) was assaulted with broken glass by a 42 year old stranger in a restaurant. Although the man did not have prior record he received a prison sentence with relatively long non-parole period, because she suffered and sustained emotional and physical scars.' Another police prosecutor mentioned a case in which 'the victim recovered well. He was coping with the situation and had no hatred to his attacker and it caused the court to give a lower sentence.' One respondent explained why VIS generally do not influence the sentence in the Magistrates Court, 'I will tender it if I have it in the file but it has never been asked for.' Another police prosecutor noted 'I cannot remember any case in which VIS influenced a sentence, but I could think of many examples where a pre-sentence report had an effect on it.'

Most of the respondents stated that VIS provide new information not available from other sources, but they disagreed on how often they do. Some stated that specific injuries are described well, or the name of the treating physician is provided, but other information, such as time taken off work or follow up of a medical treatment, is often not given. Other respondents stated that even though VIS often do not provide any new information, it still has its value: 'VIS serve as a collecting paper; it puts at your fingertips information important in court, such as receipts for hospital expenses; so although it often does not provide new information, it is easier to have it in one form rather than spread through many other sources, including the victim.' One police

prosecutor offered an explanation why new information is rarely found in VIS: 'the police look at the VIS as another chore and they don't fill them out as they should, although there are exceptions.' Another respondent stated that in cases in which full impact could not be assessed at the time of police intervention, (and this typifies the majority of cases), VIS are often not useful if they are not updated.

Police prosecutors were divided on the question whether or how often VIS are useful in assisting the court to order compensation. Some stated VIS are frequently used for that purpose, others said very rarely. Comments included 'there are substantial number of cases in which we cannot substantiate the amount claimed', 'because judicial officers do not always understand how the criminal injury compensation legislation and the *Criminal Law (Sentencing) Act 1988* fit together, they often think it will prejudice against the victim if the offender is sued', 'we often receive quantification of damage from the victim or the police officer, not VIS', 'a lot of information is not in the VIS or is not accurate.'

Most of the police prosecutors did not think that the absence of VIS in a file, or variations in the quality of VIS, cause disparity in sentencing. Some stated that the court often does not take notice of the VIS, unless it is a very aggravated offence. One police prosecutor added that 'the court has no time and we have to push the cases through; we don't plea bargain charges as they do in the USA.' Only one respondent thought that the lack of VIS in some cases may cause disparity. The prosecutor who worked in the Children's Court stated that 'the sentencing in the Children's Court is tailored to the needs of the offender and therefore VIS have a minor effect, if at all.'

The police prosecutors were in agreement that in practically all of the cases they have prosecuted, VIS were never tendered or otherwise included in the court file. Some prosecutors stated they glance through the VIS but they never tender them. The prosecutor in the Children's Court stated that he tenders them in almost all contested cases, and in the non-contested cases they are read to the court.

The police prosecutors were divided about what is assumed if a VIS is not in file. Some stated that the assumption is that the police were to be blamed: 'they were slack, lazy', 'could not be bothered with it', 'did not have time,' or 'some breakdown in departmental communication system caused the VIS not to reach the file.' Others thought the assumption is that it was a victim's issue: 'the victim suffered no particular injury' or 'was not interested in compensation.'

The police prosecutors did not think that, generally, magistrates considered VIS in their sentences, although they admitted exceptions. The reasons they provided included the following: 'because VIS are not tendered', 'many magistrates are from the old school and not flexible enough to change', 'they (magistrates) traditionally consider the defendant's position over the victim.' In the Children's Court, it was stated, 'the judges' hands are tied by the Protection of Young Offender Act.'

Most of the respondents stated that very rarely is a VIS, or any information about victim harm, challenged by the defence. If it does occur, it normally pertains to monetary issues related to the amount of compensation sought. In case of a challenge, most of the respondents stated they either call the victim or produce receipts or other necessary evidence. All those who experienced challenges from the defence about victim harm noted that those challenges are resolved either by accepting the defence version or after an adjournment to secure additional evidence.

The police prosecutors were virtually in agreement that VIS have little effect on the proceedings: they do not result in longer hearings, in delays or additional expenses. If VIS are incomplete, delays may result, and police time may be an associated expense; but with the routine recording of victim harm, this is not usually a problem. Practically all the police prosecutors said they will be willing to request an adjournment to receive the necessary information, but very few said they ever had to do it, and all stated the court responded favourably to their request. One prosecutor, however, stated that sometimes there is resistance to allow adjournment when the information was supposed to be available but was not presented. The magistrate then will agree, upon the request of the defence, to sentence without this information. This prosecutor added that such an outcome is frustrating; she viewed it as injustice resulting from police inefficiency.

All police prosecutors stated they always presented VIS orally rather than tender the form. Most of them also stated they prefer to present victim harm information orally rather than tender the written VIS. One prosecutor stated he prefers to hand in the written form of the new self-completed VIS.

Who Should Complete the VIS?

The police prosecutors were divided on the issue who is the best person or agency to prepare VIS. Some thought it should be the police officer in combination with the victim. Others thought 'the victims should do it if they so wish, and as long as they do not use it for the wrong purpose (retribution).' Some explained that 'it will be good for victims to air their emotions.' Arguments against having the police prepare them included 'the police do not have the time to do it,' or 'they are not trained for that purpose.'

Victims' Role in the Criminal Justice Process

Most of the police prosecutors thought that victims should be allowed to participate in the sentencing stage, particularly if they want to, although few mentioned that there may be a problem with over-emotional victims. One prosecutor stated that because defendants have someone representing them, victims should be represented as well. Another objected to their participation, as it may unnecessarily lengthen the hearings.

All of the police prosecutors thought that victims should have input into sentencing by providing information concerning the impact of the crime on them. They were divided, however, on whether victims should be allowed to state their views of the most appropriate sentence. Half of the respondents were of the opinion that victims be allowed to present their views. The major reason given was that 'this will be a psychologically forced release mechanism for them' with a qualification mentioned that victims are not aware of the tariff and range of sanctions.

Most of the police prosecutors estimated that a very small percentage of victims are satisfied with the sentence of their offender. Estimates ranged between none to 25%. One respondent stated that if victims were given explanations of the considerations used by judges in sentencing they will be more satisfied with the sentence.

The police prosecutors generally expressed satisfaction with the range of sanctions available to judges, but practically all of them stated that they are not satisfied with the

way sanctions are applied. In particular, they indicated, according to the *Criminal Law (Sentencing) Act 1988* imprisonment is used only as a last resort; they also commented that suspended sentences, bonds and community service orders (CSO), which keep people out of jail, are not 'real' penalties. One prosecutor noted that 'penalties are particularly soft when multiple offences are condensed into one.' The prosecutor who worked in the Children's Court expressed dissatisfaction with the range of sanctions in that court, which he found lacking in their punitive and public protection effects.[1]

Recommendations Concerning VIS

All the police prosecutors thought VIS are worth the resources devoted to them. Some commented that not enough resources are devoted to VIS, or that by comparison to offenders, victims get minimal assistance or resources. According to the police prosecutors, VIS serve an important role in the process, 'the VIS calls the attention of the criminal justice agents and judiciary to victims', 'meets the psychological need to release emotions and the confirmation that victims are finally heard,' in addition to 'providing the information to prosecutors about the impact of the crime.' Some respondents noted, however, that at the moment VIS do not accomplish much, or are not a major factor in sentencing, and 'are done primarily to follow the letter of the law.'

Most of the police prosecutors stated that VIS need to be improved. Suggestions included educating criminal justice personnel and victims about their importance, and devoting more resources and personnel to it so that they can be prepared properly. Some had more specific recommendations: 'encourage the victim to present doctors' and other professionals' statements', 'include victim address for purposes of compensation', 'conduct follow ups to confirm what was not available at the time of the crime or its reporting to the police,' and 'each type of injury should be on a separate page.' Some respondents were critical of the way in which the police ultimately were made responsible for preparing VIS and its ramifications for them: 'government jumped on it (the VIS) before the previous election and the police department got stuck with it. Police haven't got the time to do it properly. The ones on the road don't have the time. They just get sick of our requests to complete information for VIS.'

## Crown Prosecutors

Description of the Respondents

This group consisted of 5 males and 3 females, who varied considerably in their length of experience as prosecutors (between one year to fifteen, with a mean of 6 years) and by the type of work they did prior to becoming Crown Prosecutors. Three had no or very little experience (up to one year) in any other legal work: others had extensive experience in private practice, mostly in various types of civil law but also in social welfare and business. They also varied by their attitudes to work and by what they defined as necessary qualifications for prosecuting cases. Some emphasised personal, social, or communicative skills (e.g. be persuasive, get the most out of a witness, ask intelligent questions); others emphasised attributes such as understanding of human nature, sensitivity to people, ability to retain a balance between fighting hard and being objective. The prosecutors also varied by what they liked most and least in their work. Some liked dealing with issues of human behaviour or 'making the process as caring as

possible for the victims.' Others emphasised, or exclusively mentioned, the type of work involved, its detective nature, or success in getting the jury to convict a defendant. The prosecutors also differed in their penological priorities, specifically, whose concerns should be addressed first in sentencing: victim, offender or community. But they were in agreement that the prosecutors' concerns are irrelevant in punishment, and in any case, were the last ones to be addressed after the victim, community or offenders concerns. The Crown Prosecutors often mentioned as the least liked aspects about their work the difficulty to obtain convictions when an offence was actually committed, and the occasional 'miscarriage of justice.' Another aspect of the work mentioned as least liked was the effect of trials on victims of sex offences.

Opinions and Experiences with VIS

There was an agreement among the prosecutors who have prosecuted cases before 1989, the time in which the law concerning VIS came into effect, that the information on victim harm presented in the court has improved since the VIS amendment to the *Criminal Law (Sentencing) Act 1988* became operational. Some qualified their answers by stating that the amount of information available is dependent on how well VIS are prepared. The Crown Prosecutors further agreed that the part of VIS which provide the most important information is the section on the victim's injury (physical and psychological). They also agreed that the use and importance of the VIS sections varies by offence: in fraud or property offences - the financial loss section, whereas in crimes of violence and sex offences - the injury, which includes physical as well as psychological harm. Those who had prosecuted child sexual abuse in particular emphasised the importance of details on the psychological injury. The section on financial loss was viewed as important due to the prosecutor's obligation to furnish the court with particulars about monetary loss (unless the victim has indicated otherwise) for insurance purposes, or for requesting property to be returned (restitution).

Most of the prosecutors agreed that the VIS form used at the time (see Appendix B) is reasonably or fairly well structured, and that it covers most issues of relevance to sentencing. Several prosecutors emphasised that the usefulness of the form does not depend so much on its structure but rather on how well it is prepared. One prosecutor thought that the current structure, which was designed as an all-purpose VIS form, is deficient due to the relative space given to the different types of injury - much more space is given to financial loss compared to physical and particularly psychological injury. In this respect, one prosecutor commented that in its emphasis upon financial matters, the form in use devalues the injury and turns VIS to a recitation of facts already available from other sources. Another prosecutor stated that one of the advantages of the form that it allows for annexation of professional reports for the details on injury. Several prosecutors emphasised that VIS which include reports by professionals are the most useful. As one prosecutor put it: 'you need to get an expert that the judge will listen to.'

There was a virtual agreement among all the Crown Prosecutors that the quality of VIS information they receive is inconsistent and extremely variable. Some VIS are comprehensive and useful, other are 'totally useless,' or 'appalling', 'dependent on the experience and conscientiousness of the police officer who prepares it.' To prove their point, almost all the prosecutors, during the interview, pulled out from one of the files they were working on an example for a 'useless' form: a blank VIS form which had only the signature of the police officer who prepared it. Several prosecutors expressed anger and disappointment at the way in which the forms are completed by the police. Some

stated that the lack of police thoroughness in preparing VIS not only causes the prosecution more work but also may result in various problems for sentencing: where the content of information is not verified, there is a potential for challenge from the defence. Furthermore, the lack of information or insufficient details undermines and devalues the injury to the victim (e.g. 'in a rape trial the VIS only said that the victim was upset'). Several prosecutors also mentioned the importance of updating VIS for sentencing.

Prosecutors were asked to comment on three types of problems that may affect VIS: the quality of information presented, inflammatory or prejudicial statements, and exaggeration. Most of the prosecutors expressed concerns relative to some aspects of the quality of information they receive from VIS. Some prosecutors stated that the forms and the procedure by which they are administered allow inaccurate information to go in. For instance 'sometimes the police expressed views about the character of the victim, or attempt to make in the VIS a psychological assessment of the victim, which they are not qualified to do,' or 'there is a problem with police interpreting what a victim has said.' Another problem mentioned was the fact that 'sometimes they (VIS) state the obvious, whereas in other cases the police form says nothing, where there is a story to be told.' One prosecutor mentioned that VIS may include hearsay information when victims fill out the forms.

Based on their experience with VIS most of the prosecutors did not view the possibility of inflammatory or prejudicial information in VIS as a problem. Some stated that 'if there is an emotional statement which accurately reflects the picture, it should be included, as it is not prejudicial.' Another stated that 'there is a fine line between emotional and inflammatory statements.' This prosecutor suggested that these kinds of input would more likely appear in self-completed VIS, but mentioned that she has never encountered one, and in any case 'the courts take it into account when they consider it; they understand human nature.' One prosecutor suggested that VIS information could be prejudicial against the victim, not necessarily the offender. However, they all agreed that inflammatory or prejudicial statements were, in their experiences, very uncommon.

Most of the prosecutors also did not view exaggeration by victims as a problem which undermines the quality of VIS. One person stated that the police often fetter out the information before it enters VIS. Several prosecutors stated that if exaggerations occur, they tend to relate to monetary issues, rather than psychological effects, because often the victim had reported a higher loss or damage to the insurance company, and feels compelled to be consistent about the amount of damage or loss he or she reported. The prosecutors, however, felt that this kind of exaggeration was relatively easy to verify and correct. One prosecutor stated that if prosecutors suspect information to be exaggerated, they refuse to tender it to the court. Several prosecutors could think of no more than a handful of cases they encountered, in which information was exaggerated (e.g. medical conditions which were present before the offence were being claimed as resulting from the offence, or expenses were claimed which were very indirectly or remotely related to the offence). One prosecutor remarked that in reports of injury, unlike cases of financial loss, prosecutors have no way of telling whether any exaggeration occurred, particularly relative to psychological injury. Another prosecutor stated that the self completed forms, now being trailed by the South Australia police as a replacement to the ones prepared by the police, would allow more room for exaggeration, as these statements are completed by the victims on their own, without any attempt on the part of the police to verify their content.

The Role of VIS and Its Perceived Effects on Sentencing

Most of the prosecutors could not conclusively comment on whether, in their experience, the introduction of VIS resulted in changes in sentencing patterns, and opinions were divided about the effect of VIS on sentence outcomes. Some suspected that the introduction of VIS did affect sentencing 'by virtue of the court being better aware and appraised about the effect of the crime on the victim.' One prosecutor commented that 'in some ethnic groups, it is difficult to receive particulars of the harm because they are 'tight' about their members. The judge who is to sentence the offender in such a case receives no information on harm and may assume little or no injury. Thus the sentence of the offender may not be as severe as it could have been if information had been available.'

Other prosecutors claimed that sentencing patterns have not changed noticeably. These prosecutors suggested that a lot of what is included in VIS is what is assumed by judges anyway, or that 'much of what is in VIS is common sense and judges already know it; for instance, that sexual abuse of children has long term effects on children.' Some added, however, that VIS allow judges to point clearly to the harm inflicted on the victim. Several prosecutors mentioned that judges make comments on victim impact in their sentences. One prosecutor noted that it is difficult to separate the effect of VIS *per se* from the impact effected by the general increase in public awareness and attention to victims of crime during the last decade, particularly the focus on rape and sex offences. VIS themselves, he suggested, were the result of this increased attention to victims.

Most of the prosecutors agreed that victim harm is a factor considered by judges in sentencing, but disagreed on the weight judges assign to it. Some stated that harm is given a significant weight, other thought its weight is negligible; still others thought it is difficult to assess the weight assigned to harm when judges have to consider so many factors in determining a sentence. One prosecutor commented that victim harm is built into sentencing: the law prescribes higher sentences for serious offences (e.g. rape) than for less serious offences (e.g. assault) and 'if a rape victim is wrecked, it is nothing more than expected.' Another prosecutor stated that the effect of VIS varies by the type of crime: 'offences against the person involve more harm than property crime, as a rule, but any harm proven will be considered.' One prosecutor stated that 'harm is hardly noticed in the standard rape cases; only in horrible rape cases (e.g. involving a baby, young child or an old grandmother, or male rape) harm is considered by judges.' One prosecutor mentioned that 'prosecutors have to wrestle with the legal argument that just because the victim is extra sensitive, the defendant should not be extra punished, when, in fact, the victim suffered more than normally.' One prosecutor, who thought harm is not sufficiently considered by judges, explained 'everyone focuses on the terrible life the defendant has had, and usually they have had a terrible life.'

Prosecutors opinions were also divided on how important VIS are in the cases they have prosecuted. Some thought VIS were unimportant, others felt that their importance varied by case (property vs. person), and still others believed VIS were important in all the cases they prosecuted. They all noted, however, that it was their duty to provide one to the judge. Some added that they consult VIS for their sentence submissions, or refer to it in their submissions, particularly if the VIS includes professional reports. Several prosecutors noted that VIS are more important in guilty plea cases compared to cases that go to trial. They explained that cases in which the defendant has pleaded guilty, the judge has no opportunity to see the victim and make his or her own assessment of the harm the victim has suffered, an opportunity available to the judge if a trial takes place.

The prosecutors were asked if they could remember any instances in which a VIS clearly influenced a sentence. Most of the prosecutors said that they remember judges referring to VIS in their sentencing remarks, but opinions were divided as to whether this meant that VIS actually influenced the sentence. One prosecutor stated that she remembered cases in which judges waited to receive a VIS, or purported to be influenced by it, but, she added, those were cases that traditionally would receive attention (e.g. granny bashing or baby rape). Another prosecutor stated that when judges impose a heavier than normal sentence they often point to the effect of the crime on the victim. Two prosecutors could provide examples in which VIS clearly influenced the sentence. However, its impact in each case was in the opposite direction. One case was a property offence where the VIS disclosed such a serious damage that the judge said he had to give a prison sentence, rather than the normally imposed fine or bond, but he suspended the prison sentence. Another example was a case in which a 15 year old girl was sexually abused by a friend of the family, but the counselling report revealed that the girl was grieving for the lose of the abuser's friendship, rather than the 'abuse' itself. Because the VIS disclosed a reduction in the seriousness of the injury, the sentence imposed was therefore lower than would have been otherwise imposed. One prosecutor mentioned he was prosecuting a domestic violence case where the husband held a gun to his wife and terrorised her for two hours, and the prosecutor thought that this case will result in a more severe sentence than the norm for domestic violence because of this terror.

The Perceived Utility of VIS for Various Dispositions

Prosecutors were asked whether they ever find information in VIS which was not available from other sources. The prosecutors answered this question in the positive, but disagreed about how frequent this is the case: some stated it occurs frequently, others argued only infrequently (e.g. 1 in 10). One prosecutor remarked that in offences against the person or sexual offences VIS provide valuable, otherwise unknown, information about the impact on the victim. Another prosecutor stated that VIS does no more than spell out what is implied in the rest of the file, particularly in sex offences; 'it collects what one can deduce from the rest of the file, dependent on how carefully one reads the file.' Some prosecutors reiterated the fact that in cases which go to trial they have an opportunity to learn about the impact of the crime on the victim from the victim testimony, but in guilty plea cases, VIS are their only source of information about the harm and its impact on the victim.

Prosecutors were asked whether in their experience VIS have been useful in assisting the court to order compensation or restitution. The majority of the prosecutors stated that VIS were useful for that purpose, but added that most offenders do not have the means to compensate the victim. Some suggested that VIS may be more helpful for restitution than compensation (as the latter is usually determined by a special procedure and paid by the State). Some emphasised that determining restitution is important in property offences, and VIS provides the best quantification of the loss. The court, they said, can make an order only when it is made aware of the loss, and it has to give reasons why it is not ordering restitution (e.g. the accused has no means). Most of the prosecutors who had relevant experience stated that restitution orders are made regularly by judges since VIS have been instituted. Some stated that judges often make it a term of a bond or a suspended sentence.

The Perceived Effect of VIS on the Criminal Justice Process

Prosecutors were asked whether, in their experience, when victims' decline to provide VIS material this contributes to disparity in sentencing. Most of the prosecutors stated that a lack of VIS information is not a cause of disparity. For one thing, most victims, particularly of violent crime, are more than willing to provide the information. But, the prosecutors noted, even in cases in which victims decline to provide information for a VIS (mostly sexual offences), ' the judges are fairly common sensical about the effect of the crime on the victim'. One prosecutor volunteered to list the 'typical' impact on victims in child sexual abuse cases: 'nightmares, wets in bed, difficulties in school, seems to be afraid of the company of men.' Another prosecutor stated that in child sexual abuse the nature of the charge is such that the police get to know the victim and they can and will fill out the VIS, even if the girl refuses to cooperate. Some prosecutors thought that the presence of VIS is not relevant for the disparity issue because judges do not pay much attention to VIS; and in any case, one prosecutor added, 'in the less serious cases the absence of VIS does not matter as much as it does in the more serious cases, where the judge can assess the harm based on the charge and other evidence.' Some prosecutors stated that theoretically, the absence of VIS may lead to disparity, and to more lenient sentences in cases in which VIS is not tendered. In their experience, however, this has not happened.

The prosecutors were also in agreement that variation in the quality of VIS is not a cause of disparity in sentencing. Their reasons for their answer echoed previous impressions: some claimed that in the serious cases VIS is always tendered, other claimed that judges do not pay much attention to VIS, or its effect is minor compared to other factors considered by the judges in sentencing.

The prosecutors were asked to comment about the effect of VIS on the criminal justice process. They all stated that VIS are tendered to the judge in the overwhelming majority of the cases (almost all quoted the figure of over 95% of the cases). They noted that by law they are obliged to tender it whenever there is an identifiable victim. But they had different ideas about what is assumed when VIS are not tendered: some said that the assumption would be that the police were slack or negligent in filling one out; other stated that it is assumed that the victim does not seek compensation. They emphasised, however, that in the absence of VIS, judges do not necessarily assume that no harm occurred if the charge indicates otherwise. Some prosecutors added that in cases where VIS are not tendered, the judges specifically ask for it.

Prosecutors were asked whether they thought judges consider VIS seriously, or whether VIS are important in sentencing decisions. Their opinions were divided on this question: about half of the prosecutors thought VIS were important and useful to the judges, while others had doubts about its importance or its weight in judges' decisions. Some said its importance varied by judges.

The next set of questions addressed challenges of VIS from the defence. Most prosecutors said that challenges by the defence were rare events, or at best, very infrequent. Some said that challenges occur more often in property theft or damage offences; it is easier to challenge monetary loss compared to emotional injury. The prosecutors noted that challenges from the defence in personal crimes (sex and violence) are 'not a smart move' on the defence part, as the victim is then called to testify and this may hurt the defence.

In response to the question of what do they do in cases of challenge to VIS from the defence, the prosecutors listed three options available: first, to get the police to prepare an amended VIS without the objectionable material; second, to agree that the judge is to ignore the objectionable material, and third, to ask for professional reports or call the victim to testify. Most of the prosecutors stated that the solution most commonly practiced is an agreement between defence and prosecution, because most objections concern the value of property, which is relatively easy to settle. They all reiterated that calling a victim to testify may be devastating to the defence in personal or sex offences. One prosecutor remembered a case of a victim of robbery, who was very articulate and typed his own statement. His VIS was challenged by the defence and the victim was asked to testify. In his testimony, the victim was as articulate as in his written VIS, and this had enormous impact on the sentence.

Prosecutors were asked about the effect of VIS on the proceedings. Most of them did not think the inclusion of VIS in the proceedings causes longer trials or delays. On very few occasions, some stated, an adjournment may be necessary to prepare or update a VIS, or provide a professional report. One prosecutor explained that this may be the case because the criminal justice process is drawn out even in plea cases, and prosecutors do not look at VIS until the accused is convicted. The prosecutors also did not think that VIS cause additional expenses, except for the additional police resources to collect and record the information in VIS. All the prosecutors stated that for their part in the legal process, VIS do not require additional resources (e.g. to accommodate mini-trials concerning the VIS content). One prosecutor explained that 'the prosecutors do not become litigants or lawyers for the victim, as the courts are not in a position to deal with a civil trial as an adjunct to the criminal trial.' This prosecutor, however, expressed concern about the need to rely on what the defence conveys regarding the defendant's means to pay restitution.

All Crown Prosecutors stated that they would be willing to request an adjournment of a case to receive professional reports for VIS. All but one also said that they have requested adjournment of a case to receive a report, particularly when the victim required long counselling. All of them noted that the court is always agreeable to such requests.

Some prosecutors stated they prefer to make oral presentations about victim harm, while others were more comfortable in tendering a written VIS. Most of them thought that judges prefer a written VIS and commented that if judges need further clarification they will ask questions.

Who Should Complete the VIS?

Prosecutors were asked to identify the best person or agency to complete VIS. Their opinions were divided on this issue. About half thought police officers should continue to prepare VIS. One prosecutor suggested that a special victim liaison officer should be responsible for this task. One respondent explained that since the police are most familiar with the case, they are most suitable to prepare VIS, even, or particularly, in child abuse cases. Another respondent stated that police officers are more suitable to fill out a VIS in property offences but not in violent or sex offences. Several prosecutors thought that because the police tend either to project their own interpretations of the victim loss or harm, or are not trained to collect this information, other persons or agencies should complete VIS: social workers, probation officers, or professionals

(psychologists, psychiatrists, etc.). Only two prosecutors thought the victim should be the one to complete it. Several prosecutors expressed the opinions that victims tend not to be objective and may therefore express objectionable statements in VIS. Also, because victims are often poorly educated and cannot express themselves, they should not complete VIS on their own.

Victims' Role in the Criminal Justice Process

In this part of the interview prosecutors were asked about their opinions concerning the victim's role and proper degree of input into the criminal justice process. All the prosecutors except for one, thought that victims should not participate or provide any input beyond VIS. They also expressed strong objection to victims presenting their views on the appropriate sentence and offered various explanations for their objection: 'victims have only one aspect in mind - retribution or prison sentence', 'victims do not understand the considerations used by judges in sentencing, and therefore allowing them to express their views is not productive,' or 'it may be frustrating to them (victims) or harassing to the accused.' One prosecutor noted, however, that in child abuse cases the victim often does not want the abuser (commonly the father) to go to prison, but only that the abuser recognises the harm he has done to the victim.

Most of the prosecutors conceded they had no idea about the proportion of victims who are satisfied with the sentences. Some stated they usually hear from, or read about, those who are unsatisfied with the sentence, but could not estimate how representative they are of all victims. Several prosecutors thought that the majority, or at least half of the victims, are satisfied with the sentence. Only two prosecutors thought that unsatisfied victims are the majority.

Opinions About Criminal Justice Sanctions

When asked whether they are satisfied with the range of criminal sanctions available to the court, prosecutors' opinions were divided: some thought that the current range is broad enough and satisfactory, and judges have good range of options; others felt there is room for expansion and improvement. Suggestions included increasing maximum penalties for certain offences, creating mid-range offences or treatment responses, or perhaps instituting corporal punishment for juvenile crimes or sex offences.

Prosecutors were also asked to comment about the effectiveness of the various sanctions. Many of the prosecutors commented that they often see repeat offenders. For child and familial abuse, it was commented, appropriate dispositions are particularly lacking. Some prosecutors stated that penalties short of prison (e.g. bond or CSO) are not taken seriously by offenders. The prosecutors were aware, however, of the high costs of imprisonment, which render prison sentences a punishment of last resort.

Recommendations Concerning Victims in the Criminal Justice System

Prosecutors were asked to make a general assessment of VIS practices and offer recommendations concerning victims in the criminal justice system. Most prosecutors thought VIS warranted the resources devoted to them. If prepared properly, most respondents commented, VIS are worth the trouble and the expense. VIS, they

suggested, allow judges for the first time to become aware of the extent of harm suffered by the victim. Most of the prosecutors (those who were willing to make suggestions to other states) recommended the introduction of VIS in other jurisdictions in Australia in at least some form, written or oral. One prosecutor, who had experience in a jurisdiction that did not have VIS, stated that at least for the victims' sake VIS should be prepared. Although harm is assumed in most cases, he stated, in the cases where dramatic effects occur, these effects never become known if a VIS is not prepared.

When asked to make suggestions for improving the treatment of victims in the criminal justice system or VIS, several prosecutors suggested that more resources be devoted to preparing VIS, they noted that currently the police have the burden without the accompanying necessary resources to complete the job. One prosecutor suggested special victim liaison officers who are sympathetic and have time for victims. One respondent remarked that VIS should become a vehicle to involve victims in the process, and suggested that probably half of the victims are not aware of the fact that they filled out a VIS. Two prosecutors recommended that the relative space of VIS be changed with larger sections on mental harm, and smaller on property loss. One prosecutor thought that VIS should only be completed after the perpetrator has been convicted: 'why make a rape victim more upset if a defendant is not convicted?'

The prosecutors also had various ideas to improve the treatment of victims by the criminal justice system: provide better compensation and counselling possibilities, more information about the process, or funds to address the various growing expectations of victims concerning their rights in each and every stage of the process. One prosecutor added that 'we have reached the high water mark of subjecting the victim rights to those of the offender.'

## Defence lawyers

### Description of the Respondents

The defence lawyers group consisted of four men and two women. Their work experiences as defence lawyers ranged from 4 to 15 years, with a mean of 11 years. Prior to becoming defence lawyers two worked as prosecutors, one worked as a technician, another as a librarian, and two were law students. The aspects some liked most about their work were the variety of cases and people from all walks of life they encounter, and dealing with human nature. Others stated they liked the trial process, presentation to the jury, or the court atmosphere. One person stated that he liked clients or witnesses who appreciate their work; that 'barristers do not work only for the money.' The work aspects they liked the least included dealing with sexual offences involving children, or cross-examining victims of sexual crimes, particularly children or teenagers. One person mentioned waiting for a verdict, or always dealing with criminals. Others mentioned over-zealousness of prosecutors or police.

In describing the most important qualities of defence lawyers, several respondents mentioned perseverance, stubbornness, or being tenacious. Others listed compassion, honesty, knowledge of law, objectivity, common sense, empathy and ability to relate to clients as necessary attributes of defence lawyers.

Opinions and Experiences with VIS

Most of the defence lawyers thought that VIS provide some useful information. They claimed, however, that VIS are more useful in determining property loss, and they had reservations about the reliability or truthfulness of VIS in describing mental injury. All the defence lawyers admitted that in reading a VIS they focus on those issues that affect the penalty, such as the ongoing or long term psychological effects of the crime; whether the victim has recovered, or his or her condition improved. In monetary offences, they are looking for whether money was recovered. One defence lawyer commented that he only flips through VIS to look for inappropriate material which needs to be challenged.

The defence lawyers thought that judges and prosecutors also look for ongoing psychological difficulties victims suffer as a result of the crime. Some of the lawyers stated, however, that prosecutors tend to take VIS at face value, whereas judges are less inclined to do so: 'they (judges) even question reports by professionals.' Judges, they noted, also tend to look whether the harm has a direct nexus to the crime. One lawyer stated that judges pay more attention to physical and financial harm, which are easier to identify and verify, than mental injury.

Opinions varied as to whether the VIS form practiced in South Australia is well structured. Some respondents thought these forms are poorly structured and permit too much room for opinions which have no basis. Also, their pro-forma type does not allow for sufficient information in some cases. Others thought the forms are reasonably well structured.

All the defence lawyers agreed that the quality of VIS they see is highly inconsistent. One lawyer added that from the defence viewpoint, the less information the better. A few lawyers explained that inconsistency occurs because some officers could not be bothered with VIS, while others produce excellent reports. Generally, there was an agreement that in property or monetary offences there is more consistency than in offences against the person.

Several defence lawyers viewed as the main problem of VIS their lack of objectivity, and as such VIS do not assist in sentencing but rather hinder it. One respondent mentioned that professional reports prepared by social workers (as opposed to psychiatrists, for instance) are consistently non-objective. Another stated that the only consistency in VIS is their poor quality, which does little to benefit the sentencing process.

The defence lawyers were divided on the question of whether information on the victim has improved since VIS was introduced. Some thought it did, others thought it did not or thought that improvement was noticed only infrequently. Several respondents felt that currently there is an overemphasis on the victim's harm. They suggested that because VIS often can not be tested for its accuracy, VIS are a problem rather than panacea for sentencing.

Quality of VIS Information

The defence lawyers were asked to provide assessment of the quality of VIS they have seen. All the respondents stated that VIS often includes opinions, or value judgements with no foundation or support (such as can be found in medical reports). All the respondents also thought that VIS often included prejudicial and inflammatory or

emotional statements, 'victims over-eating the pudding' in order to influence the sentence. One defence lawyer stated that parents of abused children in particular tend to express inflammatory statements about the accused / abuser.

All the defence lawyers also stated that VIS often included exaggerations, in particular on psychological effects, and not so much on financial loss or physical injury. One lawyer gave an example of a VIS report, which he claimed he did not challenge 'for practical reasons', but which he felt was highly exaggerated: a middle aged man was charged with oral sex rape of a young male whom he knew. The accused was convicted for indecent assault. The VIS stated that the young man's life was almost ruined. The defence lawyer stated: 'I could not accept that his life was ruined. He coped quite well. He probably was embarrassed.'[2] Another lawyer stated that exaggerations occur because victims use the criminal case 'to get compensation at the other end' through the *Criminal Injury Compensation Act*. One respondent noted that exaggerations usually manifest themselves even before they get to VIS. But, he added, exaggerations and inflammatory statements are 'picked up by the judges and end up damaging not the defendant but the agency that did the report.' Several defence lawyers suggested that the ways to resolve issues or questions concerning psychological injury is to order a medical report.

Perceived Effects of VIS on Sentencing and the Criminal Justice Process

The defence lawyers were questioned about the effect of VIS on sentencing and other court decisions. The majority of the respondents expressed the opinion that sentencing patterns have not changed since VIS was introduced. Two lawyers explained that 'judges do not give a great deal of weight to the information in VIS' and that 'judges carry out sentencing as it should be, on an objective basis, taking into account aspects of rehabilitation and deterrence, rather than the actual effect on that one victim.' One respondent stated that some change has occurred in the area of compensation. Only one defence lawyer thought that sentencing patterns have changed as a result of VIS, although, he added, 'penalties have only marginally increased since VIS were introduced.' Another lawyer stated that since VIS was introduced the courts have paid much more attention to victims but this, he thought, 'was a natural progression, not much to do with VIS. VIS only facilitated a process which was already happening.'

Most of the defence lawyers thought that victim harm is a very important factor in determining the sentence. 'It is one of the first things the court wants to know about the crime: is the victim out of pocket, suffering any long term injury. This has always been the starting point for sentencing, long before VIS.' Some defence lawyers felt that victim harm is considered and given equal importance as other issues in sentencing, including deterrence, and rehabilitation. Sentencing, one respondent emphasised, 'is not about retribution.' Most of the defence lawyers, however, thought that generally VIS are of little importance. In their experience, only in very few cases did VIS clearly affect a sentence. One example given was a case involving a fraudulent conversion in which 'the pile of VIS forms was so high on the bar, and the prosecutor used this pile to make his point.' Another case was 'a pack rape in which the girl required an ongoing treatment and the detailed reports by the psychologist resulted in such a harsh sentence, that it had to be appealed.' Another example was of death resulting from drunken driving in which the accused received an actual jail sentence rather than a suspended one, as was expected. One respondent could think of only one case involving a sexual offence on a child, in which the judge extensively cited the VIS and has given a harsher sentence than normally.

The defence lawyers did not think that as a rule VIS provide information which is not available from other sources. New information disclosed by VIS occurs very infrequently. The respondents stated that VIS are more often (though not frequently) useful for restitution orders.

The defence lawyers did not think that victims' decline to provide a VIS, or variations in the quality of VIS, have resulted in sentence disparity, although some thought it a theoretical possibility. They explained that 'judges see through VIS, do not rely much on it or, in its absence, speculate about the harm.'

The respondents were divided as to whether judges consider VIS seriously or find it useful. They agreed that at least some judges do, whereas others just take a quick glance at VIS; 'It may depend on the qualification and background of the professional who prepared it' one lawyer added.

All the defence lawyers noted that VIS are always made available to them, but often not early enough. They usually receive VIS just before the judge gets to see them, and too late to allow serious inspection. Several respondents viewed this timing as a serious problem.

The defence lawyers stated that they rarely challenge a VIS. They all noted that challenging a VIS, particularly in regard to psychological effects, is not a wise move. In property or compensation issues, they added, it may be possible and less risky for the defence to question the content of VIS. According to the respondents, most of the challenges to VIS were resolved through negotiations and agreement between the defence and the prosecution, without hearing additional evidence.

The defence lawyers did not think that VIS cause delays or require longer time to hear a case. Only occasionally, where the prosecutor is queried about the VIS content, some delay may occur. All the respondents stated they would be willing to request adjourning a case to seek professional reports to rebut a VIS. However, they all stated, so far they had never done this.

### Who Should Complete the VIS?

The opinions expressed by the defence lawyers were divided on the question who should prepare VIS, but without an exception, all the respondents expressed strong objection to having victims prepare VIS, particularly the part on the mental effects. One respondent thought that in monetary loss or damage victims may assist in preparing VIS. Several defence lawyers thought the mental effects should be prepared by mental health professionals (psychiatrists or psychologists). Others thought that probation officers should be responsible for preparing VIS. All the respondents emphasised that VIS need to be completed by someone 'objective' or 'independent'. Only one lawyer thought the police should prepare VIS, provided they are trained for it.

### The Role of Victims in the Criminal Justice Process

All the defence lawyers thought that the victim has no place in the criminal justice proceedings and should not provide any input beyond VIS. They strongly objected to

victims expressing views about the appropriate punishment. The reasons commonly offered for the objection was that 'victims cannot possibly be objective', 'they do not know the law and its considerations for punishment,' or that 'the system will get bogged down if victims will be given a right to participate.'

The defence lawyers were asked to estimate the number of victims who are satisfied with the sentence. Estimates ranged between a third and two thirds of the victims, with one lawyer suggesting that 'no victim is happy with the sentence.'

The defence lawyers were asked how satisfied they were with the range of sanctions available to the court. Most of them thought the range was satisfactory. The comments offered were: 'prisons are not useful as they provide little rehabilitation'; 'although some people need to be removed from society, too many people are sent to prison'; 'fines compound people's problems.' Several respondents expressed support for CSO and home detention, and mentioned current inadequate possibilities for dealing with psychologically disabled offenders.

### Opinions About the VIS and Recommendations for Improvement

The defence lawyers were divided on the need for VIS and its usefulness. Some thought VIS are worth the resources and expenses involved, others did not. Some thought VIS are necessary only in some cases, particularly serious personal crime. The objections to VIS were based on the view that they bring vindictiveness into the process, or that they are redundant, as the information is available from other sources. The few who expressed support for VIS stated that VIS save time by focusing on the issue, and provide detailed information, 'judges not merely guessing'. VIS, some suggested, facilitate smooth sentencing procedures, consistency, and provide victims with a role in the process. When asked about recommending VIS in other Australian jurisdictions only few respondents recommended some form of VIS, and only for certain kinds of offences.

Recommendations to improve VIS ranged from getting rid of them to using 'objective persons' to prepare them, and more professional reports. Several respondents commented that the police are not qualified to prepare VIS. Suggestions concerning the handling of victims included better information about the case, explanation of the process and establishing in victims realistic expectations concerning offender disposition.

## Magistrates

### Description of the Respondents

The group of magistrates included seven men whose work experience as magistrates ranged from 7 years to 25 years, with a mean of 12 years experience. Prior to becoming a magistrate, four of the respondents worked in private practice, mostly in civil matters. Only three had some experience in criminal matters before accepting appointments to the bench.

Six magistrates dealt either exclusively or predominantly (90% and over) in criminal matters. One magistrate had about half of his time in the criminal jurisdiction. The majority of the magistrates stated they preferred to deal with criminal matters. Their

reasons were varied: some stated that 'the criminals are more likely to accept the punishment than the civil litigants, who are after the money,' or 'the people we encounter as criminals and witnesses in criminal cases are more straightforward. I dislike squabbles over money and business dealings... People in civil disputes are more devious.' One magistrate stated that in his court 'civil cases are child protection issues which are more onerous than the criminal cases.' The magistrates found the criminal cases less demanding intellectually, but more taxing emotionally, and quite difficult in matters of credibility judgments. The aspects they least liked about criminal cases were 'the tragic effects crimes have on the lives of people', 'witnessing the nasty underside of society', 'that family disputes end in the criminal court', 'the futility of punishment with repeat offenders', 'frustration about inadequacy of the system that produce such people, and the inadequate resources to do anything with them,' and 'frustration with the little preparation that goes into the cases by both sides.' The aspects they liked most about their work was 'the drama associated with criminal cases', 'when offenders are not likely to offend again' or 'when all parties are satisfied with the disposition.' Some magistrates stated they find the fact finding portion more difficult than the sentencing and others said they find them equally difficult. One magistrate noted that when he started to serve on the bench he found sentencing the most difficult aspect of the work and 'I continue to be more concerned about sentencing than the fact finding, as sentencing has immediate and long lasting effects on people.' One magistrate remarked that not having a jury in the Magistrates court makes fact finding more difficult.

The magistrates listed as important qualities of a judge hearing criminal cases the following: objectivity, impartiality, tolerance, patience, fairness, 'ability not to underestimate difficulties of others', 'to listen, not be prejudiced, not to shoot from the hip', 'ability to convince others they had a fair go,' and 'be prepared for, or not be surprised by anything.'

The reasons magistrates were attracted to the bench included the following: the lifestyle, wanting to be free from the burden of running a practice, work with less pressures, and personal ambitions or responding to a challenge.

### Opinions and Experiences with the VIS

All the magistrates stated at the outset that they do not see many VIS in their jurisdiction. One magistrate said he has seen so far only one VIS and another has seen only three since 1989. The judge in the Children's Court noted that he has never seen VIS as they are not tendered in his jurisdiction. Several respondents were not aware that the *Criminal Law (Sentencing) Act 1988* requires that the prosecutor provides a VIS material to the court. Several magistrates suggested that the reason they are not receiving VIS is that their jurisdiction deals with less serious offences.

### Quality of VIS

The magistrates stated that the quality of the few VIS they have seen varied greatly, from brief and inadequate to complete and useful. One magistrate remarked that VIS are most often about damage or financial loss and 'it looks like a company balance sheet, and they are rarely updated at the time of sentencing.' Several magistrates stated they look for the long term effects on the victim rather than the immediate ones, and these are rarely included: 'some are prepared too early, at the time of the offence or a week after it

when long term effects are not known. They should be prepared close to sentencing.' One magistrate qualified this assertion by stating that 'if a person pleads after one week he has to be sentenced immediately, and then an early VIS is necessary.' Another magistrate also emphasised the fact that victims are rarely in the court, and in plea cases the police investigators are also not in court. Thus, defendants are sentenced on the basis of the apprehension report and the magistrates do not have any way to verify their accuracy. Often the information magistrates receive about victim harm 'is dependent on the quality of the investigator's work, or negotiation between defence and prosecution.' Another magistrate commented that at the present 'defendants get a generous understatement of the circumstances of the offence. With proper VIS information sentences will be probably more severe.'

Yet, most of the magistrates stated that generally information on victim harm has improved since VIS were introduced in 1989. Several magistrates thought that 'the general attention to victims has increased the awareness of the victim harm by those who are investigating and prosecuting cases,' or 'subject to the information at hand, prosecutors are keen to provide information about the effects on the victim.' One magistrate remarked that 'when there is a controversial case about the sentence prosecutors will ask for an adjournment to get further information' but, he added, this is the exception rather than the rule. Several magistrates commented that attention to harm will be greater in their courts if they dealt with more serious crimes.

The concerns expressed by the magistrates about the quality of VIS related to the information they encounter, and lack of follow-ups. The possibility of inflammatory or prejudicial statements in VIS was not viewed as a problem by most of them. One magistrate stated that VIS he has seen are usually factual. Another respondent remarked that sometimes the police may come up with statements that could be inflammatory, because they perceive the harm to be based on the offence information, without opportunity to contact the victim. One magistrate commented that 'in areas of mixed races or regions with racial conflict, sometimes you have to water down what you hear or read. In the country areas where I go to, where there is a simmering racial tension... mutual prejudices bubble up and extravagant claims are made by both sides, and claims that a particular victim deserved all he got.' This magistrate added that VIS should be sworn statements: 'this will make victims more cautious and thoughtful about what they say.' Another magistrate said that if the victim is particularly annoyed by the crime, the inflammatory statement should be there and the judge can discount them if he thinks it is necessary.

The magistrates were also not very concerned about the presence of exaggerations in VIS. One magistrate said that in the rare cases in which exaggerations occur, they are mostly about the amount of loss suffered by the victim. Another magistrate mentioned a related problem: 'which amount of loss to consider, replacement costs or market value of the property at issue.' Exaggerations concerning mental injury, one magistrate remarked, 'are more problematic as it is difficult to know whether people exaggerate.' He related a case of police assault, in which the perpetrator defecated on the police officer and told the officer he had AIDS. The victim was extremely upset, stressed and had to take leave. This magistrate remarked that he suspected the victim overstated his concerns, as all the medical evidence indicated he will not get AIDS; and he added, 'we need to do our best in assessing human behaviour.' Another magistrate noted that in matters of injury there is actually an understatement of the victim harm: 'the police do not have resources to check out every matter of dispute between prosecution and defence,

for instance, the presence of provocation, and this often works for the benefit of the defendant.'

The Impact of VIS on Sentencing

The majority of the magistrates did not think that the introduction of VIS resulted in changes in their sentencing patterns, mostly because they get very few VIS. Some thought that the new sentencing law sets considerations for sentencing which they have been applying anyway, long before the law was passed. Some added that the increased attention and focus on victims, rather than VIS *per se*, may have influenced sentencing patterns, or increased the weight now given to the harm in determining the sentence. One magistrate provided an example: 'if it was not for the VIS I would have thought he (the victim) could just take a shower and get the whole thing behind him.' This magistrate added that VIS make magistrates more educated about individual cases. Another magistrate said that 'if you have two assaults between unrelated people, the presence of VIS in one case often does something, tips the scale between suspended and direct imprisonment. In property damage, or breaking and entering matters, it may influence a decision to order community service work or compensation to be paid.'

All the magistrates stated that the harm suffered by the victim is an important factor in sentencing, particularly in crimes of violence. Some magistrates stated that even in property crimes this may be an issue: 'the significance of victim harm varies by case. In an indecent assault of a 6 year old there is more harm than in car theft, unless the theft victim is someone with no legs and the thief knows it.' The Children's Court judge stated that harm is very important in his jurisdiction, 'rarely is a child incarcerated unless there was a physical harm or risk of it.' Most of the magistrates stressed, however, that VIS are not often the vehicle by which information on victim harm is conveyed to them. VIS therefore have little importance in their sentencing decisions. Nonetheless, most of the magistrates could think of cases in which the victim harm conveyed through VIS caused them to change their mind about the sentence: 'a case of assault causing actual bodily harm where the VIS disclosed that the victim was suffering continuing fear of being alone and nightmares and general loss of confidence' or 'a female victim embarrassed by the scars that remained on her face', 'a person who continuously suffered headaches and discomfort due to an assault by a broken bottle', 'a case in which people were charged with terrorising and assaulting people in their house. I was given detailed and comprehensive information on the effect on the victims and the difficulty to continue to live in the neighbourhood of the offender. The effect was graphically described and was backed up with reports.' Some magistrates stated they remember cases in which the serious injury involved caused them to impose a severe sentence, but could not remember if the information was in the VIS or other documents.

Because the magistrates hardly ever see VIS, they could not comment on whether VIS provided them information which is not available from other sources. Some stated that for them 'VIS are a convenient means of collecting the information that is needed for sentencing.' In the few cases that they saw actual VIS, some said these forms did not duplicate information from other sources. One magistrate remarked that some prosecutors handed out VIS, others simply provided them orally, and he 'could not think of information in the VIS that was not at least alluded to by the prosecution.' Some magistrates noted that the victim impact is sometimes found in the pre-sentence report. One magistrate gave an example of a serious domestic violence case where the pre-

sentence report stated that the parties were living together again, despite the violent episode.

The magistrates stated that in the cases they received VIS they used it for ordering compensation or restitution, when appropriate; mostly in property damage or dishonesty offences. One magistrate noted he would use VIS information for ordering such dispositions only if it was not disputed by the defence. But, he added, 'most of the time disputes are resolved by negotiation, it is rare to have evidence in support of a claim.' The Children's Court judge stated that in his court, the issue of compensation is a moot issue because the children have no money and he cannot order compensation against the parents.

The magistrates could not comment on the question whether the absence of VIS in some cases could result in disparity, as they rarely see VIS. Most of them, however, speculated that theoretically disparity is possible if in some cases VIS are absent. Most of them stated, however, that they could not think of any instance in which at least some input was not provided by the victim. Similarly, because in their jurisdiction VIS are hardly ever tendered, or the information is consistently minimal, they did not think that variations in the quality of VIS caused sentence disparity. Two magistrates, who suspected the theoretical possibility of disparity, stated that 'sketchy VIS are not likely to influence you one way or another. They (VIS) need to be specific and with reasonable detail to influence the sentence.' But, one of them added 'this problem (of variations in quality of documents) is not peculiar to VIS but to all materials provided in cases.' This magistrate, who presided at several courts around the state, remarked 'sometime we should have a pre-sentence report, but if you are 300 kilometres away there is no way you can get it.'

The Impact of VIS on Proceedings

In the Magistrates Court VIS have very little effect, if any, on the proceedings. Because magistrates see VIS 'in less that 1% of the cases', they naturally felt that VIS neither cause delays, nor result in longer trials or additional expenses. For the magistrates, the absence of VIS did not lead to any assumption about the harm beyond that 'someone did not have the time to do it,' or 'the available information is presented orally by the prosecutor.' None of the magistrates thought that the absence of VIS reflects on the presence or degree of harm. The magistrates stated that their sources for victim harm is often the prosecutor in plea cases, and in trial cases - the victim, who usually is available as a witness to answer questions or tell the story. Several magistrates estimated that 90% of the cases are guilty plea, and in them the available materials relevant to sentencing need to be digested very fast by the magistrates. One magistrate remarked that this 'may be itself a cause for disparity.' The tyranny of the numbers in the Magistrates Court results in magistrates devoting no more than few minutes to sentencing.

The magistrates stated that the content of VIS or other victim impact materials are hardly ever challenged by the defence. Disputes may occur concerning the quantum of loss, but they are usually resolved by negotiation between counsels. One magistrate remarked that he suspected that 'discussion and negotiation of victim impact preceded oral submissions of VIS before they appear in front of us, and that's why we don't see the documents or get challenges. It's all deals.' But another magistrate stated that 'if a VIS

is tendered and horrendous injury comes out of it there is no possibility of concealing it for plea bargaining purposes.'

All the magistrates claimed they are willing to adjourn cases to receive professional reports about victim impact. One magistrate remarked 'we often do it for psychiatric views on defendant, so we will do it for victims.' Several magistrates stated that often there is lack of follow ups or updating of the victim impact information and this makes it difficult for them to order compensation concerning property or injury, as well as to sentence. One magistrate stated 'unless victims are pushy, or the police notify the victim about testimony and then he cannot breathe despite three operations, the information is not updated.'

The magistrates were divided on whether they would prefer to see a VIS or hear about it orally. Some stated that 'it takes less time if it is presented orally by the prosecutor, as prosecutors will select the information they think is relevant.' Another magistrate stated that because they are a summary jurisdiction, oral presentation is preferable. The other half of the magistrates stated they would prefer the written statement, the original. One magistrate noted that he would prefer a sworn statement from the victim.

Who Should Prepare VIS?

The magistrates were divided on who is the best person or agency to complete VIS. Some thought that the Victims of Crime Service (VOCS) should do it; others suggested the police. One magistrate suggested the prosecutor, another respondent recommended paralegal workers. The magistrate who suggested that ideally it will be social workers of VOCS, added that it will be quite expensive 'to have social workers chase up all domestic violence cases, particularly when so many are withdrawn because counselling has been undertaken.' Only one magistrate thought that 'victims should complete VIS, with the qualification that it be written when they have calmed down, and done impassionately.' Several magistrates thought that victims should not prepare VIS by themselves (although they may help or provide information to the agent who completes it). Victims, some magistrates suggested, 'will exaggerate if there is a coin for them in it' or 'they will all want life imprisonment.' One magistrate stated that 'a lot of victims will find it hard to do it and thus will be discouraged, like filling out tax forms.' Another magistrate remarked that 'although some victims may be able to complete VIS, it would not be objectively presented and this manner of presentation will undermine confidence in the reader.'

Most of the magistrates thought that victims should not participate in sentencing beyond VIS. Some expressed concern about potential problems if victims appear in person, such as delays, disruption of proceedings, emotional input. One magistrate added '..it is the function of the court to decide sentences. Probation officers were chastised by judges for making recommendations. It is not for probation officers or psychologists, nor for victims to recommend what the sentence should be. Victims should only provide information for sentencing.' Only two magistrates thought victims should be allowed to present their views on the appropriate sentence. One of them added that 'the judiciary does not necessarily have to agree with it'. The other respondent commented that 'the conflict belongs to the victim and the perpetrator, and the State stole it from them; and in the Children's Court, the Welfare Department stole it from the State.'

The majority of the magistrates had no idea about the proportion of victims who are satisfied with the sentence and could not provide an estimate. One magistrate noted that victims are rarely present in the proceeding and magistrates do not get any feedback. Another magistrate said he remembers cases where 'victims were spectacularly dissatisfied.' Another magistrate remarked that if victims were present they will be satisfied. One magistrate, however, commented 'I would like to think victims are satisfied... We get more feedback from offenders, often that they expected a more severe punishment.'

All the magistrates, except for one, thought VIS warrant the resources devoted to them. One magistrate remarked that for the minor offences he deals with, VIS are not necessary. The magistrates also stated that they would recommend the use of VIS in other Australian jurisdictions, with one magistrate qualifying his response that VIS be used only in more serious offences.

In response to a question about what VIS achieve, the magistrates emphasised both the value of VIS for victims and for the criminal justice process: 'through them some reasonable effort is made to ascertain victim's feelings and to put before the court the extent of harm', 'we are not only better informed but also that the victims know that we take them into account, as justice needs to be seen to be done. Anything to ensure that the public is happy with the way justice is done is welcome.' Another magistrate remarked that through VIS 'the view of the victim is taken into account and made known to the offender. It may assist the offender in perceiving his wrongdoing and rehabilitation.'

### Recommendations For Improving The VIS

The magistrates made several recommendations about improving VIS: 'victim's statement should be sworn and there should be provisions to annex reports, artifacts and photographs. It now happens only on an ad hoc basis, but it should be formalised', 'amount and quality of the information should be improved; that it be less in the nature of a balance sheet statement at the time of the initial offence', 'have it prepared before sentencing and have them in due time to the defence', 'get more of them ... important to update the information not only as part of the formalities.' One respondent noted he would prefer to see victims in court if they so wish.

## Judges

### Description of Respondents

The group included eight District Court judges and seven Supreme Court judges. Except for one female District Court judge, all the respondents were males. The work experience of the District Court judges ranged from 5 to 20 years, with a mean of 11 years and a range of 2.5 to 30 years for Supreme Court justices, with an average of 13 years. The proportion of judges' work in the criminal jurisdiction ranged between third to half, with only one judge working almost exclusively in the criminal jurisdiction.

The judges varied in their experience prior to joining the bench. Most of them were in private practice as barristers or solicitors, in different areas of civil law. Very few

practiced criminal law prior to becoming judge. One has worked as Crown Law Officer's and one was a member of parliament.

Overall, the judges were divided between those who preferred criminal law and those who preferred sitting on civil cases. The qualities most often mentioned as necessary for sitting in criminal cases were: patience, compassion, objectivity, understanding of law and common sense. Other attributes listed were concern, open-mind and ability to listen.

The judges stated they find criminal cases more demanding, stressful, emotionally and physically taxing, and sometimes frustrating. Those who had background or experience in family law, prosecution, or had general interest in human nature and behaviour, stated they find criminal law more interesting or worthwhile. Some judges found the work with jury or presiding in criminal court as placing more pressures and demands compared with civil cases. Others claimed they find the need to balance the interests between the offender and society challenging.

The judges differed considerably in their penological philosophies and priorities. Some thought the sentencing process should reflect the concerns of the community over the concerns of all other participants in the criminal justice process (victim and offender primarily), whereas others thought the sentencing should give priority to victim concerns. Few respondents thought that all parties should be given equal consideration in sentencing. Several judges expressed the view that sentencing is a balancing exercise of the various concerns and considerations, with one judge emphasising that 'sentencing is an art, not a science.'

The Content of VIS

The majority of the respondents stated that the most useful information they get from VIS was the effects of the crime on the victim, particularly details about personal injury documented by professionals (psychologists, psychiatrists). Some judges stated it was the long term effects, ongoing injury or recovery that are the most important information they look for in VIS. Three judges noted that for them VIS do not provide any useful information or details that cannot be found elsewhere. This is particularly true in contested cases, where judges have the opportunity to see the victims. One judge commented that VIS are useless when prepared immediately after the crime and not updated prior to sentencing. Another judge proclaimed 'I never bother to read them. To me it (VIS) is a political thing to appease the feminist lobby in rape cases.'

The judges were also divided on whether VIS forms are well-structured. About half thought they are 'OK' and the other half thought they are poorly structured. Some stated that the current forms are 'superstructured,' and one added that the open-ended forms he has seen are superior. Some mentioned specific criticism of VIS: critical details are missing, for instance, the date VIS are filled out, because 'it is important to know when the assessment was made'. Others suggested that too much space is devoted to financial loss and not enough to injury, 'VIS are related to people who suffered injury, particularly in sex offences.'

Two third of the judges thought information on victim harm has improved since VIS were introduced in January 1989. About a quarter of them thought information about harm has not improved. One judge stated that impact information has actually become

worse. Another judge commented that even though VIS may be poor 'at least there is a form in the file, which has heightened awareness about victims.'

Quality of VIS Information

Two third of the judges stated that the quality of VIS they see is highly inconsistent. Some added they are consistently poor. The rest stated VIS quality on the average is acceptable. Only one judge thought its quality was good.

All the judges expressed various concerns about the kind of information presented in VIS. Concerns mentioned included the following: 'the information is sometimes merely hearsay'; 'VIS may sometimes be misleading or not be accurate.' Several judges mentioned that the quality of VIS 'depends on the thoroughness, enthusiasm or interest of the person preparing them. It is just another form for them (the police) and that's how they treat it', 'the VIS is often out of date, where it should be contemporaneous', 'they often do not include enough information, or they are not sufficiently detailed.' One judge suggested, however, that enormous details will lead to objections, because detailed VIS would hinder prompt sentencing. Another judge remarked that he always receive high quality VIS because prosecutors know his views on VIS, and would not present to him incomplete information.

The majority (two thirds) of the judges said they did not encounter inflammatory statements in VIS. The rest said they came across such statements only occasionally. Some judges responded to the question by suggesting that VIS may be better described as subjective, and they would not refer to them as inflammatory. Some judges noted that inflammatory statements tend to appear in child sexual abuse but 'judges can read between the lines.' Others said that inflammatory statements may happen if victims complete VIS themselves. But, one judge added, 'such statements are an indication of the emotional state of the victim.' Other judges remarked that they did not find inflammatory material in VIS, even the self-completed ones. Some further noted that the statements they encountered were mild compared to what they would have expected considering the victimisation involved. One judge mentioned that inflammatory statements can be found in letters from victims to the judge. In these letters victims often include statements they wanted to direct to the judge but the police refused to include them in VIS. This respondent added that it is his duty to disclose such statements to the defence counsel.

The judges were divided on whether they encountered exaggerations in VIS, but those who claimed that exaggerations occur noted they do so infrequently or rarely. One judge remarked that exaggerations may occur 'only in the sense that there is never an objective appraisal of the information, so you never know how objective and accurate the information is.' The 'lack of objectivity' in the preparation of VIS was listed as a problem by several judges. Another judge stated that if there is an exaggeration, the judge is not in the position to know it. He added 'I ask the defence lawyer if he has seen it, and the defence counsel will usually answer he was given the VIS a minute ago. The VIS is admitted unless the defence contests it, but they often don't want to have the victim testify.' Some judges mentioned that if exaggerations occur they are usually in cases of property loss where victims exaggerate the amount of loss sustained in order to match their insurance claims. Some judges noted that exaggerated claims are usually detectable, or that they request supporting documents before making a restitution order. One judge commented that most VIS are rather terse; the only VIS that are detailed are

those from child abuse cases, which have medical reports that give quotes from the victim. Several judges stated that the emotional parts of VIS are not exaggerated. Only one judge claimed that the emotional part may be problematic: 'I had an experience with a rape case, where the emotional injury was challenged and it could have been exaggerated for all I know.'

Perceived Effect of VIS on Sentencing

Two third of the judges (or 8 out of 13; two respondents were not on the bench prior to 1989) did not think that sentencing patterns have changed since the introduction of VIS in 1989. The rest estimated that sentence patterns have changed somewhat, not considerably. Some have remarked that they paid attention to victim harm prior to 1989 but now they have more details about it. One judge stated he makes remarks about victims' harm in his sentences. He added that 'insofar as my remarks include comments on the ongoing harm, then it has affected the actual sentence as well, by increasing it where there is harm or reducing it, where there is no harm, or at least take it as a mitigating factor.' Another judge commented that 'since VIS I sensed some greater sensitivity to the interests of victims; a reminder of the effect of crime upon the victim does little harm to sentencing.' Other reasons for which judges thought that some effect on sentencing patterns may be noticeable included the following: 'because the *Criminal Law (Sentencing) Act 1988* requires that the harm on the *particular* victim be considered', 'because there is now greater awareness of the effect on the victim and the judge is able to point directly to the VIS report on harm and thus bring home the effect on the victim to the offender,' or 'simply to the extent that in some cases the judge has better information may have some effect on sentencing.'

The judges were asked to evaluate the importance of victim harm in their sentencing decisions compared to other factors they take into consideration. Practically all the judges stated the victim's harm is important, although some qualified their answer by stating it depends on the offence type. All agreed that harm is much more important in personal injury, particularly sexual offences, than in financial loss cases. One judge noted that harm which was foreseeable, or should have been such when the offence was contemplated, is much more important for sentencing purposes than accidental harm. Another judge pointed out that in child abuse or assault the injury may be very subtle and may vary enormously from case to case. Several judges were of the opinion that the degree of criminality is more important than victim harm. One judge commented that sentencing is a balancing exercise, and it is difficult to quantify the importance of the various relevant factors.

The judges were asked how important VIS are in their sentencing decisions. Opinions were divided. About one third thought it was important, and the same proportion of judges thought the VIS itself is not very important. The rest stated it was important only in some cases (mostly crimes against the person). Those who felt that VIS are important noted that what is mostly helpful are the reports from professionals; some added that often the manner in which VIS are filled out is the very reason why VIS are not useful for them in sentencing. Another judge remarked 'I don't think the Crown Prosecutors realise it is a legal must. There is often a lack of professional responsibility by some prosecutors to provide VIS.' Another judge noted that in plea of guilt cases VIS are very important whereas in trial cases VIS are not as important, because the judge has an opportunity to form an impression of the victim during his/her testimony. Another judge stated that VIS are useful for him because he can point out in the sentencing remarks to

the defendants the harm they have caused. One judge mentioned that VIS have become important to him since his personal acquaintance with a probation officer, who has worked with and studied victim issues. One judge remarked that 'the VIS is only a political gimmick, and I don't need any reemphasising the harm.'

Judges were asked whether they remembered instances in which VIS caused them to change their mind about a sentence.[3] Several judges could think of examples in which VIS made a difference in the sentence; the differences, however, were in both directions, - lesser and more severe punishment. For instance, in a serious sex offence on a family member, the VIS showed a desire for reconciliation among the family members and this led to a lenient sentence. Examples for VIS that caused judges to give a more severe sentence included: a case of culpable driving in which the VIS showed a variety and extensiveness of trauma to several surviving relatives; in another case the VIS disclosed that the victim was permanently disabled. One judge stated that an extensive trauma is experienced by victims when the offender is known to them. When a VIS revealed that the offender was an acquaintance of the victim, it led to a more severe sentence. Several judges stated they had few situations in which VIS caused them to impose a more lenient or severe sentence, but they could not remember the details.

The judges agreed that VIS provide information that is not available from other sources, but disagreed as to how often they do. Some stated VIS frequently disclose such information, whereas others said they only infrequently or rarely they do so. Several judges stated that in abuse or assault cases they often find new information, particularly about the extent of the trauma and its long term impact on the victim. For some judges 'new information' meant professional reports, which one judge remarked 'we often don't get them unless we ask for them; the prosecutor often does not produce the medical reports; perhaps the victims do not want to have much to do with the court process.' Several judges noted that information that one does not get from any other source concerns the ongoing disability, but often VIS are not updated prior to sentencing and therefore is of limited value. One judge added that the quality of information has deteriorated since VIS were introduced, and currently VIS are useful only in about half of the cases, whereas few years ago he would have said they are useful in the overwhelming majority of cases. He concluded that 'the police have gotten slack about it.' Similar sentiments were expressed by another judge: 'My impression is that only a small percentage of VIS are adequately completed. My impression is that many police view it just as a bureaucratic necessity and they only pay lip service.' Another judge commented 'VIS provide new information subject to the ability of the reporter. Reporters are always the detectives encharged on the case, and they ought not to have this job.'

The judges were divided on whether VIS are useful for ordering compensation or restitution. Most of them stated, however, that compensation is very often a moot issue as the defendants have no means of paying it: 'unemployed persons on drugs cannot pay for bank robbery'. One judge remarked that an agreement between counsels is necessary before compensation will be ordered, and often VIS are not a useful vehicle for that purpose. Unless conceded by the defence, these orders are not given. Other judges stated that VIS are a starting point for the discussion on compensation or restitution; still others said they use VIS whenever compensation or restitution is an issue, and they often tally what is in the VIS. Some qualified their response by saying that compensation, and thus VIS, are more useful in matters of property loss, which often are supported by insurance letters, compared to matters of emotional injury.

Judges were asked to comment on the possibility of disparity in sentencing because some victims decline to give VIS. The overwhelming majority of them (86%) stated they did not think such disparity occurs. Several judges stated that they had never encountered a victim who declined to provide information for a VIS. Others stated that in a significant number of cases VIS do not provide any new information over and above that which is available from other sources so disparity is not likely to occur. One judge stated that the absence of VIS does not mean to him that no harm occurred. Only two judges showed willingness to entertain the possibility that disparity may occur when VIS is absent, because in such cases either there may be an assumption that no harm occurred, or the absence of the details about harm may result in more lenient punishment than would otherwise be imposed.

The majority of the judges (73%) did not think that variation in the quality of VIS resulted in disparity in sentencing. Some stated that in certain types of offences (e.g. rape) even a very terse statement about the impact of the crime is not likely to convey less impact than a detailed one. One judge commented that in the serious offences VIS usually contain details of the crime impact. Several judges stated that they overcome problems in quality variation by asking for completion of parts of VIS where gaps are obvious, particularly in serious offences. Some judges commented that it is difficult to respond to this question, as they do not know what ought to be in VIS, nor do they know if an appeal about the sentence was made.

All the judges except for two stated that a VIS is tendered in over 90% of the cases with victims. The other two estimates were 75% and 50-60%.[4] The judge who gave the lowest estimate suggested that 'when the VIS became a legal requirement most all cases had a VIS prepared; now things are different (there is less attention to this legal requirement).' Another judge stated that in pleas VIS are tendered less than in trials, as it may be part of the plea negotiations. Several judges at this point again emphasised the fact that the quality of VIS information is often very poor.

The majority of the judges (80%) stated that they do not make any assumption about harm when VIS are absent. Some stated they will request a VIS, remind prosecutors that VIS are mandatory, or accept oral statements in lieu of written ones. Few judges added that in serious offences (such as rape) they will normally assume a profound impact, even if VIS is not tendered: 'this is common sense or practical experience.' The rest of the judges stated that the lack of VIS may imply no adverse impact on the victim, or that the victim did not want to submit a VIS and preferred to have the criminal justice process behind him or her. Another judge said that when there is no VIS he would assume that someone changed their mind about a plea of guilt at a later stage.

Most of the judges stated that in cases where VIS are not tendered they will consider other material. In a trial, the trial testimony and material will provide sufficient information; in pleas, they will consider the arguments, victim statement, counsel submissions, depositions, medical reports, etc. Others stated that in the absence of a VIS they will use 'common sense', 'personal life experience', 'the inherent seriousness of the offence,' or 'the expected normal consequences.' Most of the judges stated they consider VIS at sentencing together with the other materials. They commented, however, that in most of the offences they try they do not devote much time to VIS, or no more time than is given to the antecedents (e.g. prior record). In child abuse cases, the VIS may need more careful review. But, the judges added, it is very rare that they will adjourn a case to examine the VIS. Several judges mentioned that for the majority of VIS they encounter, it takes only a moment or so to read and digest them.

Two thirds of the judges stated that the content of the VIS is very rarely challenged by the defence. The rest stated that it occurs only occasionally. Only one judge stated that in about half of the cases he tried the VIS was challenged by the defence. The reason given for rare challenges were: the poor quality of the VIS (little information to challenge), or because the defence has no way of knowing what was the effect of the crime on the victim, and therefore do not question the impact presented. One judge commented that sometimes challenges to VIS are made tactically, 'good defence counsels do not challenge it directly. What they do is in submissions they will make statements inconsistent with the VIS. Crown prosecutors will not make an issue of the differences between them. Once it is an issue, then the burden is on the prosecutor to produce evidence. If VIS had the status of a deposition, the defence will have to produce evidence first.' This judge then added 'it is not worth to have couple of hours of evidence about the value stolen or damaged.' In the rare event of a defence challenge to the VIS, most judges said counsels will arrive at some agreement. One judge remembered one incident of challenge in which 'I did not know what to do. Somehow I persuaded the defence counsel not to cross examine the victim; somehow I got over the problem, I either ignored the VIS or the objection, but I am not sure how.' Another judge remarked that 'in cases of challenge from the defence, the principle is that you have to rule in its favour. This is an area most ill defined by the law.'

Practically all the judges stated it does not take longer to hear cases because of the introduction of VIS, and if it does, it is only for one to five minutes. Several judges remarked that if VIS are properly prepared, it actually takes less time to hear the case, 'if instead of spending time arguing about what the effect could be there is a comprehensive and updated VIS, it shortens it.' Several judges said that 'even if it takes longer to hear a case because of VIS, it is for a good reason. '

Similarly, two third of the judges stated that overall VIS do not cause delays nor additional expenses (besides the police personnel to complete it). The rest thought it does cause delays only occasionally. Some stated it is very rare that they will adjourn because a VIS is absent or inaccurate, although all judges, except for one, said they will be willing to adjourn a case to receive professional reports for VIS. The one judge who said he would not be willing to adjourn a case because of VIS reasoned that 'if the Crown Prosecutors are properly prepared they should have it (the VIS); if the Crown knows we will adjourn cases they will often not prepare it. If you given them an inch they will take a mile.' All the judges stated they see the written VIS and prefer to read them rather than hear them presented orally, particularly if they include professional reports. Some stated it saves time and money to have VIS tendered rather than orally presented.

Opinions About the Role of Victims and VIS

All the judges except for one, stated that victims should not participate at the sentencing stage. They did not think that victims should have any input into sentencing beyond VIS, nor present their views on the most appropriate sentence. Some of them reasoned their objections to victim input into sentencing by reference to victim's considerations; for instance, 'victims will be subjected to additional unnecessary stress,' or 'confrontation of the offender will make them more emotional.' Others offered legal arguments: 'the purpose of the criminal justice system is public condemnation', 'victims are not familiar with the law of sentencing and its considerations,' or 'the prosecutor is the one to convey the victim input and it is the judge's role to decide a sentence.' Several judges remarked

that confrontation of the offender by the victim may be appropriate for young offenders, juveniles in the Children's Court, but not in the adult court.

## Who Should Prepare The VIS

The judges' opinions about who should prepare VIS varied considerably. Some thought that professionals such as doctors, psychologists or psychiatrists should be encharged with preparing VIS. Others thought that correctional service personnel, such as probation or parole officers, should complete VIS. One judge stated that 'as a matter of practicality, the prosecutor or someone from the DPP office should prepare VIS.' Some judges, however, qualified their responses by noting that professionals are needed only in certain serious crimes. Most of the judges often emphasised that the person who prepares VIS should be someone 'objective' or 'impartial.' Only two judges thought the victims could or should do it. One judge added 'that's what it is, a victim statement, unless the victim is a child.' Several judges commented that some victims may not be able to complete it on their own, due to young age, illiteracy or lack of communication skills. Two judges mentioned that in any case they would like to see the victim's signature on VIS. Several judges remarked that the police should not prepare VIS. These judges stated that 'the police are not the best qualified or properly suited to prepare VIS, although for some run of the mill offences they could prepare the VIS adequately, if they are willing to take the trouble.' Most cases, one judge added, do not need experts to prepare them, and when experts are used, it causes delays.

## Opinions Concerning the VIS

All the judges, except for two, stated VIS are worth the trouble and expense involved. Several judges commented, however, that the 'resources devoted to them are at the moment minimal.' The majority of the judges remarked that the concept of VIS has the potential of providing useful information for sentencing, or 'to serve as a double check for the judge of what loss the victim has suffered.' But they emphasised, 'it should have in it what significant things happened between depositions and sentencing, which in most cases is not there.' Another judge remarked that VIS in South Australia is 'perfunctory.' One judge summarised the insignificance of the legal change embodied in VIS and its little effect on justice administration by noting that 'VIS is not a frequent topic of discussion among judges in conferences or meetings.' Another judge commented on the misdirected efforts concerning VIS: 'My impression is that we provided a formal consolation prize to people who are entitled to grief, but I am not sure what we gave them is what they need.... Counselling or comfort and support in the future is more important than additional contribution to the criminal justice process; and I do not accept the VIS is in place of support and counselling. Also, support to people other than the direct victim is needed. The VIS is secondary in importance to support - economically, socially and psychologically. These are more challenging than the VIS.' Still another stated that 'VIS ought to be what it is advertised, i.e. statement by the victim; what we have now is not what it should be. The important thing is that the victims know they had a fair go and this is only when they know the judge heard their story. If I was a victim I would want to make sure the judge heard the whole story. VIS are never signed by the victim and if it was signed by the victim they will be satisfied. I often ask the prosecutor, facetiously, 'has the victim seen this VIS?' and of course they did not see it.' Another judge thought that 'VIS are really important in the small number of cases where the assessment needs to be a specialist rather than lay, or when there is an unexpected or unusual result that I

need to know about.' The general feeling of several judges was that 'the VIS has considerable potential, but at the moment it is not fully realised due to the administrative manner in which they are prepared, by people who are overburdened and have minimal time to devote to the task.'

Yet, several judges thought VIS were still useful for the following reasons: 'as a way to mitigate victim's feelings of alienation', 'for providing balance in the sentencing process', '. victims feel they are overlooked, because most of the attention is on the offender', 'providing opportunity for taking into account the particulars of the case', 'promote a sense of evenhanded justice', 'a greater awareness and appreciation by the sentencing judge of the victim's position', 'a reminder that there was a victim', 'greater awareness of the victim's rights.'

Two third of the judges stated they would recommend the introduction of VIS in other Australian jurisdictions. The remainder either felt that in its current practice VIS are not what they are supposed to be, or stated they do not claim to be in a position to recommend to other jurisdictions. Several judges, however, were surprised to hear that no other Australian jurisdiction has instituted any form of VIS.

Opinions About Sentences

The judges were asked to estimate the proportion of victims who are satisfied with the sentencing. With one exception, (an estimate of 20%), all judges stated they had no idea about the proportion of victims who are satisfied with the sentence. The most common reason given was that they do not get any feedback from victims about the sentence. Several judges stated that they suspect that a large number of victims are dissatisfied. One judge remarked that he gets communication from unsatisfied victims, but never from satisfied ones. Several judges commented that only rarely victims' opinions or objections are based on proper knowledge of the facts. Some judges added that the media often publicise the sentences as not severe enough, and these often apply to very serious crimes. One judge conceded that he agrees that sentences are lenient, but added that if the sentences imposed are more severe than the tariff it will attract an appeal.

The judges were divided on whether the range of sentencing options available for them when they sentence offenders are satisfactory. About half felt they were satisfied with the range, but expressed a preference for one type of penalty or another. Several judges mentioned reservations on the availability or utilities of semi-custodial options or the utility of the present sanctions for some types of offenders (e.g. culpable drivers, white collar), and in particular sex offenders, or those with psychiatric disorders. Several judges argue that 'partial suspension of sentence may be useful for the offenders and may appease many who like to see offenders go to jail.' Other judges commented that they do not want corporal or capital punishment, while others still said they wished they could impose corporal punishment in some cases. One judge expressed a concern about the possibility that victim integration may bring back capital punishment.

Judges were asked to comment on their experience concerning the effectiveness of criminal justice sanctions. Several judges stated they do not get any feedback (beyond breach of bonds) on the effectiveness of sentencing or remarked that it will be bold to make such assumptions, but nine judges were willing to express an opinion. They all stated that jails are not effective, and are mostly for retribution. One judge noted that in the Supreme Court most offences call for custodial sanctions. Another judge remarked

that 'if justice is to be seen to be done then offenders need to be seen to be punished, even if those incarcerated continue to offend after their prison sentence.' Several judges expressed confidence in the effectiveness of some non-custodial sanctions, (e.g. CSO - in instilling work skills, suspended sentence or probation - in guaranteeing good behaviour during the suspension), and compensation and restitution. Fines are rarely imposed, one judge stated, because offenders do not have the capacity to pay. The lack of resources for corrections was mentioned by several judges as a problem, particularly in the workload of probation officers.

Recommendations for Improvement of the VIS

The judges were asked to make recommendations for improving VIS and victims' plight. Recommendations centred on three types of problems: the quality of VIS, its source of information, and its legal status. The majority of the recommendations (9 judges) addressed the quality issue. They included the following comments: 'VIS needs to be more intensively prepared by qualified persons', 'increase resources and training for preparing VIS', 'include reports from experts, whenever applicable', 'provide proper dating of VIS and chronology of progress of improvement, or deterioration of disability, from the time of the crime up to sentencing.' Several judges repeated the importance of having a current, or contemporaneous VIS for sentencing. VIS which are out of date, several judges emphasised, 'are of no use to us, as by the time of sentencing all sorts of things could have changed.' The other kind of recommendation (5 judges) addressed the issue of authorship and agency responsible for preparing VIS. Three judges suggested that the author be a professional, three judges stated that VIS should have more input from victims or be verified by them. One judge stated that the prosecutor should be ultimately responsible for providing a complete and updated VIS. The third type of recommendations (three judges) addressed the legal status of VIS. The sentiment was that there is a need to define the proper use and status of VIS in the sentencing process and 'what to do when there is a dispute about its content; whether the community wants a trial within a trial'. Another judge stated that 'VIS should be signed by the victim and this would elevate it to the status of deposition.'

## Discussion of results from interviews

Despite some differences of opinion between and within the groups of legal professionals interviewed - prosecutors, defence lawyers and judges - the following picture concerning VIS in South Australia emerges from the data: There is a consensus that information about victim harm has increased since VIS have been introduced, although this increase was not always attributed directly to VIS. Respondents from all groups viewed the recent political visibility of victims as partly responsible for increased information available on victim harm. In the Magistrate Courts, however, where most of the criminal matters are dealt with, VIS are not tendered and the amount of information on victim harm has not been noted to increase with the passage of the new law.

The professionals agreed that VIS are more important in serious crimes than in minor offences, and they are critical in guilty plea cases compared to cases that go in trial. In plea cases judges do not have the opportunity to observe victims testifying; therefore, they depend on VIS to provide the information on victim harm. VIS are also helpful to judges in pointing out to defendants in their sentencing remarks, the damage or injury

the victim suffered. VIS, however, often are not critical to orders of compensation or restitution, because the majority of offenders do not have the means to pay for the damage or injury they caused. Although a third of the judges thought VIS were not important for sentencing purposes, this may be attributed in part to the problems they identified in the quality, comprehensiveness, or updating of the VIS information. While the majority of the professionals thought the form itself was adequately structured, some were concerned that the relative space delegated to different types of injury may imply judgments about their importance.

The fears expressed by opponents of victim integration concerning various negative effects of VIS on the criminal justice process or outcome did not materialise. According to the judges' and prosecutors' assessments, VIS rarely include inflammatory, prejudicial or other objectionable statements. Similarly, exaggerations are not common place. If exaggerations do occur, according to the prosecutors and judges, they involve financial matters, and not emotional and mental suffering. Only the defence lawyers expressed concern about the accuracy of victim input regarding psychological and mental harm.

There was a consensus that the introduction of VIS did not result in sentence disparity either due to the absence of VIS from some files or because of variations in VIS quality. Sentencing disparity due to VIS variations or absence may also occur because in such cases judges made different assumptions about victim harm and handled the problem differently. Some assumed no harm occurred, while others assumed a breakdown in the system and made attempts on their own to acquire the needed information. Still others took a formalistic approach and 'penalised' prosecutors who did not perform their duty to tender an updated VIS and sentenced without it. Yet, such instances were exceptional and no group thought that either of these responses resulted in sentence disparity.

Further, the problem of variation in quality of input is not unique to VIS. As one judge noted, variations in quality apply to each and every factor that influences sentencing, including the quality of the prosecution, defence, witnesses and their testimonies, etc. To single out VIS for elimination because presumably they are a cause of disparity in sentencing is to ignore the nature of the criminal justice process, and ultimately subject victim rights to higher standards than those that apply to other kinds of input. Also, as several respondents suggested, if VIS are prepared with care, and updated for sentencing, they will enhance the sentencing process and increase the uniformity of outcomes.

All the legal professional groups agreed that the predictions about VIS' harshening effect on sentencing did not materialise. While several respondents from the various groups stated that this is theoretically possible, no group believed that in reality it had occurred. One reason is that VIS may result in a more lenient sentence as often as a harsher one. This happens when VIS discloses recovery, an attempt at reconciliation, or an injury that is less than the one which would have been normally expected. Another reason proposed was that often the information on the extent of damage or injury in VIS can be deduced from other materials in the file (as judges have always done before VIS were introduced). VIS, it was suggested, serve mostly as a collecting instrument, and as such may save courts' time in looking for the relevant information.

The introduction of VIS generally did not result in delays, additional expenses or mini trials on the VIS content. The experience of legal professionals has been that VIS actually saved court time. In the few instances in which additional time was needed (e.g., to deal with challenges to VIS from the defence), most respondents thought the

extra time spent was well worth it. The data also show that challenges from the defence were rare and mostly involved monetary issues (e.g. value of property stolen or damaged). An agreement between counsels often resolved these challenges without the need to bring in new evidence. Challenges concerning matters of emotional harm, and the cross examination of victims on mental injury details presented in VIS, were practically non-existent. Defence lawyers, despite their deep suspicion of victims' input on emotional matters, were reluctant to cross examine them. They were afraid of the devastating effects that the victims' testimony and appearance might have on the jury, the judge, and ultimately the sentence. It is quite revealing that despite their distrust of victims' motives and input, defence lawyers were not willing to take the risk of verifying their doubts about matters related to mental injury. Thus, concern over victims being subjected to difficult cross examination about their input in VIS did not materialise.

The data reveal a very uneven and problematic implementation of VIS. All groups noted that the quality of information presented to them was highly variable in its thoroughness, often inadequate in detail, and almost always without follow-ups or updates for sentencing purposes. Such a practice highly undermines the major purpose of VIS - to inform decision makers about the nature and extent of harm. A detailed and contemporaneous VIS also obviates judges' need to second guess the kind of injury sustained, or make assumptions about its presence, extent or long term effects (see also Douglas and Laster, 1994).

Despite a common observation that the current implementation of VIS is highly problematic, the sentiment of the judges and prosecutors was that even under the present scheme, VIS provide the symbolic recognition and voice that victims deserve, and that through VIS, the system further approaches an evenhanded and balanced justice. Most of the defence lawyers were reluctant to recognise any advantage in VIS, or attribute to it even a symbolic value. The interviews of the judges and prosecutors also revealed agreement that victims should have input into sentencing, but disagreement about its kind, form, scope and who should prepare it.

Other differences surfaced among the professionals. One notable issue on which opinions differed was determining responsibility for such minimal implementation of VIS. Judges, Crown and police prosecutors viewed the police, who are charged with VIS preparation, as the culprits. The police, it was suggested, treated VIS as only a formality, were slack, or simply did not appreciate VIS' importance. Some judges also viewed prosecutors as negligent in their duty to provide VIS. A few prosecutors argued that judges do not consider VIS in their decisions, so additional demands should not be placed on already overburdened police. Defence lawyers knew that vague or terse VIS are in the defense's interest, so they did not concern themselves with this issue. The police perceived themselves as the 'victims' of the movement to improve the crime victims lot, as the dumping ground of government in its attempt to win political gains with minimal investment. The police agreed that they are neither trained to prepare VIS, nor do they have the time and resources to do it.

The ideal person or agency to prepare VIS was also disputed. Generally, the legal professionals objected to victims completing VIS on their own, and emphasised the importance of an independent agency for their preparation (whether it is probation, victims services or the police). Others thought a professional (medical, psychological, etc.), whose expertise would normally not be questioned, should be assigned to the task. A reliance on experts for the majority of crimes, or even the more serious ones, however is potentially problematic. As several judges noted, this practice will result in

unjustifiably slower and more expensive justice. Further, many judges believe that they are already educated about the effects of crimes on victims. During the interview, some of them recited the 'normal' effects of child sexual abuse or rape on victims. Several judges suggested that only in very unusual cases, those with victims exhibiting uncommon or unique reactions, is there a need for an expert to testify.

The reluctance of legal professionals (Crown Prosecutors, defence lawyers and judges) to accept direct victim input may partially be attributed to their socialisation in the law and consequently the weight they place on formal criminal procedure rules. This sentiment was evident by the groups' frequent reiteration of the concept of crime as a wrong against the state, and the corresponding role of the prosecutor as representing the victims and their interests, not only those of the state. Some of the judges, however, were willing to accept victim input in the form of deposition, or if victims sign their impact statements. Police prosecutors, who do not have formal legal training often thought that victims could and should prepare VIS on their own, if they so wish.

When taken as separate groups, the scope of victims' acceptance was largest among police prosecutors, followed by Crown prosecutors, judges and lastly defence lawyers. As previously mentioned, one notable disagreement focused on the veracity of victim input or 'exaggerations' by victims. Judges and prosecutors did not view it as a problem, and if it did occur, they felt it related to monetary issues. Defence lawyers perceived victim input on emotional injury as highly exaggerated. In general, the proximity to the victims and their suffering increases the acceptance of the victim and reduces suspicion concerning their motives or the accuracy of their statements. Police prosecutors, who have the greatest amount of contact with victims, both in cases which are prosecuted as well as those which for various reasons do not go forward, support victims' expanded role and increased input into the criminal justice process. For them, victim harm or suffering is not 'only words.' Defence lawyers, who have the least direct contact with victims, and often their minimal exchanges with victims are in an adversarial context, question victims' input and motives. They consistently expressed distrust of victims and recommended reducing victim input and restricting their role in the criminal justice process. Judges (and to some extent Crown Prosecutors) can be placed somewhere in between these polar groups in their views of victims and their input.

Judicial suspicion of victims' motives and the veracity of their input may also be a result of judges' experiences in civil jurisdictions, where litigants may distort facts or even lie in order to win a monetary award. Very few of the judiciary have practiced criminal law prior to accepting an appointment to the bench. Several judges and magistrates also explicitly mentioned that they prefer criminal defendants over civil litigants, because the former are 'less devious.'

The interview data revealed a major issue that need to be addressed for a meaningful integration of victims to occur. As previously noted, respondents were concerned about the ill-defined legal status of VIS. It was suggested that making VIS a formal statement signed by the victim will better define its legal status and reduce doubts about its veracity. Such practice has the potential of accomplishing several aims. It will guarantee that victim harm is fully disclosed to the sentencing authority, educate legal professionals about the wide range of possible effects of crime on victims, and will assist in implementing the *Criminal Law (Sentencing) Act 1988* provision which requires that the crime effects on a particular victim are considered. This practice will also alleviate the resource problems experienced by the police in preparing VIS, without sacrificing defendants rights or reducing confidence in the system. VIS prepared and signed by

victims (provided they are literate and articulate enough to do it, or by victims with the assistance of a designated agent such as the VIS coordinator) may then become an acceptable or standard practice for victim input into the process. As one judge has remarked, 'VIS will become what it states it is, a victim statement.'

## Endnotes

1. It is instructive to note that the lowest category of response to the victim survey is that of male victims of sex offences - is an indication of the difficulty for these victims to talk about the victimisation or recall the experience.

2. It should be noted that extensive changes in juvenile justice were implemented in January 1994, after the interviews were conducted.

3. Several judges commented that the question is misstated because they do not have a preconceived idea about the punishment; they 'get the whole picture' before they decide the sentence. We rephrased the question to mean a change in what would be an expected or typical sentence under the circumstances.

4. These two respondents took as their base all cases that have come to the court, including victimless crimes, where a VIS is not produced because there is no specific victim.

# Chapter 3 Survey of Victims

## Background

This chapter examines victims' own evaluation of their participation in the criminal justice process. In particular it examines the way that VIS affected their satisfaction with sentencing and the criminal justice system.

The rationale behind legislation concerning victim involvement is twofold. From the victims' perspective, the consideration of their input and concerns is expected to help them regain a sense of control over their lives (Bard and Sangrey, 1986), fulfil a desire for retributive justice (Zehr and Umbreit, 1982), and result in some psychological satisfaction and benefits from the opportunity to voice their opinions (Hoffman, 1983; Kilpatrick and Otto, 1987). It is also suggested that victim participation will assist in restoration of victims (Erez, 1990) and will reduce the feelings of alienation that develop when victims believe they have no control over, and no 'standing' in, the criminal justice process (Welling, 1988; Young, 1987). Research has shown that satisfaction with justice is increased when victims have the opportunity to express their concerns and when they feel that their wishes are not ignored (Forst and Hernon, 1985; Heinz and Kerstetter, 1979). Research on procedural justice confirms that the 'control or representation' component - 'the opportunity to present the case or problem to authorities' (Tyler, 1988: 11) - is crucial for satisfaction with justice among all parties involved: offenders (Casper, 1978; Casper, Tyler, and Fisher, 1988), citizens (Tyler, 1988), and victims (Kelly, 1984a, 1984b). The importance of procedural justice for satisfaction makes it likely that filing a VIS, in which victims provide their input and express their concerns to the judge, will lead to increased satisfaction with justice.

From the perspective of the criminal justice system, it is expected that increased satisfaction among victims will result in improved cooperation and thus in a more effective system (Goldstein, 1982; Hoffman, 1983). Non-cooperation by victims has long been identified as an obstacle to efficient processing of offenders (e.g. Davis, 1983). Studies of non-reporting of crime suggest that a major deterrent to reporting is a victim's expectation regarding negative treatment by the criminal justice system (e.g. Shapland et al., 1985). By allowing victims to participate, criminal justice practitioners hope to increase 'consumer satisfaction' and to encourage involvement and cooperation, thereby enhancing the efficiency of the system (McLeod, 1986).

Yet, some observers have suggested that the victims' movement may have created expectations among crime victims that in reality are not or could not be met (Fattah, 1986). Opponents of victim participation in the criminal justice process have argued that providing victims with participatory rights may be counterproductive: the opportunity to file a VIS may create or heighten the expectation that a victim's input will be considered in deciding the sentence. Because judges sometimes are precluded from considering a victim's request, those victims who realise that their opinions are unimportant or are ignored in sentencing decisions may become embittered (Henderson, 1985). The experience with compensation programs supports this argument: when victims are led to believe that they will receive a benefit, their satisfaction with justice is decreased if these expectations are not fulfilled (Elias, 1984).

## Victim involvement and victim satisfaction with justice: previous research

Although victim participation in sentencing has been the subject of legal debates and analyses (Goldstein, 1982; Hall, 1975; Henderson, 1985; Sebba, 1982; Welling, 1987, 1988), very few empirical studies have examined this topic (e.g. McLeod, 1987; Villmoare and Neto, 1987). Further, with few exceptions, the effect of victim participation in the legal process on satisfaction with justice has been largely ignored. This neglect is surprising in light of increased attention to the victim's role in the criminal justice process (e.g., Goldstein, 1982; Sebba, 1982), and the legislative developments concerning the integration of victims in sentencing via the victim impact statement (McLeod, 1986; Erez, forthcoming).

Interviews of crime victims have revealed varying levels of satisfaction with the agents of the criminal justice system. Greater proportions of felony victims report higher satisfaction with police than with the prosecutor, the victim assistance staff, and the judge (Forst and Hernon, 1985). Rape victims also have rated the police more highly than prosecutors (Kelly 1984a; 1984b). One study found that victims' attitudes toward the offender seem to worsen after sentencing and that involvement with the court decreased victims' perception that the sentence was too lenient (Hagan, 1982). The victim-offender relationship, the seriousness of the victimisation, and the return of property appeared to have no impact on victims' evaluation of the sentence (Hagan, 1982).

Davis et al. (1984) found that restitution and victim assessment of the severity of the punishment affected satisfaction with the case. Forst and Hernon (1985) suggest that knowledge of case outcome, victims' perception of influencing the outcome, and conviction and incarceration of the defendant predicted satisfaction with the case outcome and with the criminal justice system in general. Rape victims' satisfaction with police and with prosecutors was found to be related to the verdict in the case, and to the victim's belief that he or she was treated with understanding (the most important factor) and was kept informed of case developments (Kelly, 1984a).

The role played by VIS in explaining victims' satisfaction has not been assessed until recently. Recent studies on the effect of filling out a VIS on victim satisfaction with justice indicate that VIS do not increase victim satisfaction with justice (Erez and Tontodonato, 1992; Davis and Smith, 1994). Further, Erez and Tontodonato (1992) suggest that victim dissatisfaction with justice increased when expectations concerning the effect of VIS on sentencing were unrealised. Research also found that about half of the victims thought they did not provide VIS information when in reality a VIS was found in the file (Erez and Tontodonato, 1992; Davis and Smith, 1994). The relationship between satisfaction with justice and victims' demographic characteristics is not clear, although in the USA race (being black) generally has been shown to be correlated with a negative evaluation of criminal justice and alienation from legal institutions (Casper, 1978; Hagan and Albonetti, 1982; Erez, 1984).

The present chapter examines the relationship between victims' involvement and the impact of providing information for a VIS on satisfaction with justice. It also considers any unintended consequences of the legislation mandating VIS, such as the heightening of victims' expectations concerning their influence on the case outcome. Satisfaction with justice is conceptualised as encompassing two dimensions: satisfaction with the sentence and satisfaction with the criminal justice system as a whole.

## Sample selection

Under the operational arrangements during the course of this study a VIS was completed when an offender was apprehended and brought before a court. A total of approximately 38,000 criminal cases are finalised in the Supreme Court, District Court and Magistrates Court each year (Office of Crime Statistics, 1992).

The majority of court cases concern summary offences or minor indictable offences. Loosely defined these are offences for which the maximum statutory penalty does not exceed five years imprisonment or property offences where the total loss does not exceed $25,000. Summary and minor indictable offences are dealt with in the Magistrates Court while more serious offences called major indictable offences are dealt with in the Supreme or District Court.

The researchers in this study chose to select for analysis only those cases dealt with in the Supreme and District Courts. A perusal of court files from the Magistrates Court revealed that for a significant number of cases it was not possible to establish whether a VIS had been completed. In a large number of matters in the Magistrates Court VIS are presented orally and a written copy is not placed in the court file. In addition, the researchers believed that changes to victim satisfaction as a result of the use of VIS would be more likely to occur for more serious offences involving higher levels of injury and greater involvement with the criminal justice system.

Databases located within the Office of Crime Statistics were used to generate a list of court file numbers of all cases finalised between 1 January 1990 and 31 July 1992 where an offender was convicted in the Supreme or District Court. Victims' names and addresses, offender and offence details were then recorded from these court files. The presence of a VIS in the court or Crown Prosecutor's file was also noted. Victims whose address could not be located in the court file were excluded.

The study excluded victims under 18 years of age at the time of the survey and the relatives of victims who were known to be deceased (either as a result of the offence or who had died at some later date). Also excluded were cases which involved offences where there was not a readily identifiable victim. For example corporate victims of an offence of 'larceny as a servant' committed against them would not usually have an easily identifiable individual who could be contacted in regard to the questionnaire. On the other hand the study included bank staff victimised during an robbery.

## Survey design

The design of the mail survey was guided by the techniques developed by Dillman (1978) and entitled 'The Total Design Method'. The techniques outlined by Dillman influenced the style and content of the covering letters and reminder card, the size of the questionnaire and the timing of the mailing of material to members of the sample. A copy of the survey material is available from the Office of Crime Statistics on request.

The initial package was mailed on Tuesday 17 November 1992. This consisted of a covering letter, a questionnaire, a reply paid envelope and an adhesive label for

respondents to write their name and address on should they wish to receive a copy of the results. A reminder card was mailed approximately one week later to all members of the sample who had not returned a questionnaire to us. A follow up package comprising a revised covering letter, an additional questionnaire, adhesive label and a reply paid envelope was mailed on Tuesday 8 December 1992 to persons who had not yet responded to the original package or reminder card.

### Questionnaire content and structure

The questionnaire consisted of five broad sections. These sections covered demographic data relating to the victim, details of the offence and its effect on the victim, measures of involvement with the criminal justice system, evaluation of the VIS and its administration and, finally, satisfaction with the sentence, the criminal justice system and its various components.

The demographic details of victims included the age at time of the offence, gender, employment status and educational qualifications. This section also contained a question on whether the respondent had ever been a victim of crime previously and if so how many times before, how long ago and if this resulted in them being involved in the court process.

Details of the offence and its effect on the victim were ascertained from a series of questions concerning the nature of the offence, the relationship between the victim and the offender, how serious the victim believed the offence was and the impact of the offence on the victim in terms of physical injuries, emotional or social problems or financial loss. In addition a series of questions were asked to measure the level of distress experienced by victims following the crime. The questions covered areas such appetite change, sleeping difficulties, loss of energy, loss of interest in usual activities, feeling guilty, difficulty concentrating, being unable to sit still or feeling slowed down and finally thoughts of death or suicide. Answers to these questions were summed to produce a 'distress' score. Victims who experienced none of these difficulties would score zero on the scale. On the other hand victims who experienced all of the difficulties would record the maximum score of eight.

The third section of the questionnaire dealt with victim involvement in the court process. Victims were asked whether they attended court, testified, or knew the outcome of the court case. Those who knew the outcome of the court case were asked to rate their satisfaction with the sentence and to state their opinion on the sentence the offender should have received. Also, victims were asked to state whether the issue of compensation or restitution was discussed in court and whether they had received or thought they would receive restitution or compensation from either the government or the offender.

Details relating to the VIS included whether victims had provided information for a VIS and if so what was their main motivation for providing this information. Other questions concerned how the person felt after providing the information, whether they wanted the VIS used in sentencing, whether the VIS was adequately presented in court by the prosecutor and whether it was challenged in court by the defence. Respondents were also asked whether they expected the VIS to have an effect on the sentence and whether they believed the VIS actually had an effect on the sentence.

The final section of the questionnaire sought details from victims on their level of satisfaction with the criminal justice system. Victims were asked to rate their overall level of satisfaction with the manner in which the criminal justice system handled their case and following this question they were asked to rate their satisfaction with the various individual groups that make up the criminal justice system. Other general questions concerning whether they would report a similar crime to police if victimised again, whether they received an 'Information Booklet for Victims of Crime' from the police and whether they felt they had been kept adequately informed during the court case were also asked. Respondents were given an opportunity to express in their own words what they believe could be improved in the criminal justice system to assist victims of crime and what they thought VIS should contain and what purpose they should serve.

### Response rate

Table 3.1 shows the number of questionnaires sent to victims and the type of response received.

**Table 3-1 Number of questionnaires mailed and type of response**

| Response Type | Number |
|---|---|
| Questionnaires returned and completed | 427 |
| Returned to sender address unknown | 173 |
| No response | 180 |
| Refused / Inappropriate | 67 |
| Total number of questionnaires sent | 847 |

The response rate (63%) has been calculated as the proportion of questionnaires completed and returned which had been sent to valid addresses.

The majority (55%) of returned questionnaires were received within two weeks of mailing the initial package of survey material. The reminder card mailed at the beginning of the second week contributed to this early rate of return. The remainder of questionnaires were received between two and eleven weeks after the initial mail-out.

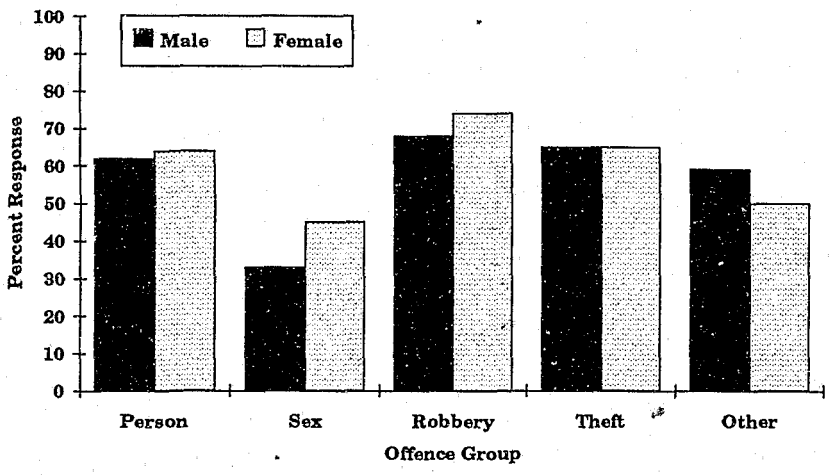
Most questionnaires were completed by respondents without any assistance but the covering letter mentioned the questionnaire could be completed over the telephone and several people took advantage of this offer. In addition an interpreter was provided for one member of the sample. Another victim requested a face to face interview because of language difficulties and this request was met.

The characteristics of the members of the sample who responded to the questionnaire were compared with those who did not on three factors: gender; offence type; and whether a VIS was found in the court file. The comparisons between respondents and non-respondents did not reveal any systematic differences between the groups except for some under-representation of victims of sex offences.

Overall 64% of males and 62% of females responded to the questionnaire. Of those with a VIS in their court file 66% responded compared with 54% of those without such a VIS. The response rate by offence type was as follows: offences against the person 63%, sex offence 43%, robbery 71%, theft 65% and other offences 56%.

Figure 3.1 shows the response rate by gender and offence type. The lowest response rate occurred in male victims of sex offences where the response rate was only 33%. Cross tabulations of the response type by gender, offence category and whether a VIS was found in the court file are provided in Appendix C.

**Figure 3-1 Response rate by gender and offence category**




## Characteristics of the victims

A total of 427 questionnaires were received from 145 females and 282 males. The average age of the sample was 38 years (SD=13.3). The majority (78%) were employed at the time of the offence, 7% were retired, 6% were students, 5% carried out home duties and 4% were unemployed. Over half (59%) of the respondents had either completed their secondary education or had completed a certificate, trade or tertiary qualification. Approximately one third (36%) had achieved a part secondary education excluding Year 12 and 5% had either completed a primary school education or did not state their educational background.

Table 3.2 shows the age and gender of victims in the sample by the type of offence committed against them.

About a third of respondents (34%) indicated that they had been a victim of crime previously although a much smaller number (7%) had ever been involved in the court process as a victim before.

**Table 3-2 Age and gender of victims by offence type**

| | Person | | Sexual | | Robbery | | Theft | | Other | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | M | F | M | F | M | F | M | F | M | F | |
| < 20 | 8 | 6 | 2 | 9 | 7 | 6 | 4 | 1 | 0 | 0 | 43 |
| 21 - 25 | 7 | 4 | 0 | 2 | 4 | 6 | 12 | 4 | 1 | 0 | 40 |
| 26 - 30 | 11 | 3 | 0 | 1 | 3 | 3 | 16 | 6 | 0 | 1 | 44 |
| 31 - 40 | 17 | 7 | 0 | 1 | 3 | 8 | 53 | 16 | 5 | 4 | 114 |
| 41 - 50 | 14 | 4 | 0 | 3 | 10 | 8 | 48 | 18 | 4 | 1 | 110 |
| 51 - 60 | 5 | 20 | 0 | 0 | 2 | 4 | 26 | 6 | 2 | 0 | 47 |
| 61 + | 1 | 4 | 0 | 1 | 1 | 1 | 10 | 1 | 1 | 0 | 20 |
| Unknown | 2 | 0 | 0 | 0 | 0 | 1 | 3 | 3 | 0 | 0 | 9 |

## The offence and its effects

Most victims believed that the offence committed against them was serious (37%) or very serious (34%). About 22% thought it was somewhat serious and only a small number thought it was minor (2%) or fairly minor (4%). On a scale from 1 (fairly minor) to 5 (very serious) the mean seriousness rating was 4.0 (SD=1.0).

Most offences were committed by strangers (73%) but this varied by offence type. A significant number of sex offences for example were committed by persons known to the victim (74%).

Table 3.3 shows the percentage of the victims who stated that they suffered from either physical injury, emotional pain, financial loss and social or family pressures by offence type.

**Table 3-3 Type of impact by offence category (percentages)**

| Type of impact | Person | Sexual | Robbery | Theft | Other | Total |
|---|---|---|---|---|---|---|
| Physical | 63 | 47 | 14 | 4 | 0 | 20 |
| Emotional | 78 | 100 | 83 | 59 | 58 | 69 |
| Financial | 53 | 26 | 38 | 82 | 84 | 66 |
| Social | 57 | 79 | 32 | 40 | 53 | 45 |

As expected a higher percentage of victims experiencing physical injuries were found in offences against the person and sexual offences than in robbery, theft and the 'other' category. The majority of victims of all types of crime and all of the victims of sex offences stated that they experienced emotional pain as a result of the offence. Theft and 'other' offences were associated with the greatest percentage of victims suffering financial loss, but a significant percentage of victims in the remaining offence categories also stated they experienced financial loss. Increased family or social pressures were experienced by just under half (45%) of the overall sample but by the majority (79%) of victims of sex crimes.

The overwhelming majority (71%) of the sample reported suffering from at least one of the eight difficulties presented to measure the intensity of distress following the crime. A full list of these difficulties is presented in the methodology section of this

chapter. The mean distress score for the groups is 2.6 (SD=2.5) from a potential minimum and maximum score of 0 to 8 respectively.

**Involvement with the criminal justice system**

Less than half (44%) of the sample attended some court hearings in relation to the case. The reason most frequently given for not attending any court hearings was that they were not notified of the court case. Overall 36% of the victims in the sample were not notified of the court case. However, 67% of all victims felt that they had not been kept adequately informed during the court case.

Of those who attended court most (70%) attended only one or some of the sessions while 30% attended most or all of the hearings. The majority (82%) of those attending were required to testify. Of those who attended court 68% did not change their opinion about the offender as a result of being present during the proceedings and 22% thought much less of the offender than they did before the hearings began. Only 3% of victims thought better of the offender as a result of attending the court case.

One half (51%) of the sample knew the outcome of their court case. The usual source of this information was the police. Of those who did not know the outcome of their court case, the majority (73%) were aware that this information was available. Only 7% of victims overall were not aware they could find out the outcome of the court case.

Bivariate and multivariate statistical procedures were used to investigate factors associated with victim knowledge of the outcome of their court case. Details of these analyses are presented in Appendix D. In summary, the statistical analyses show that victims who knew the offender before the offence, who received restitution, attended one or more of the court hearings and were a victim of an offence against the person' rather than a property offence were more likely to have stated that they knew the outcome of their court case.

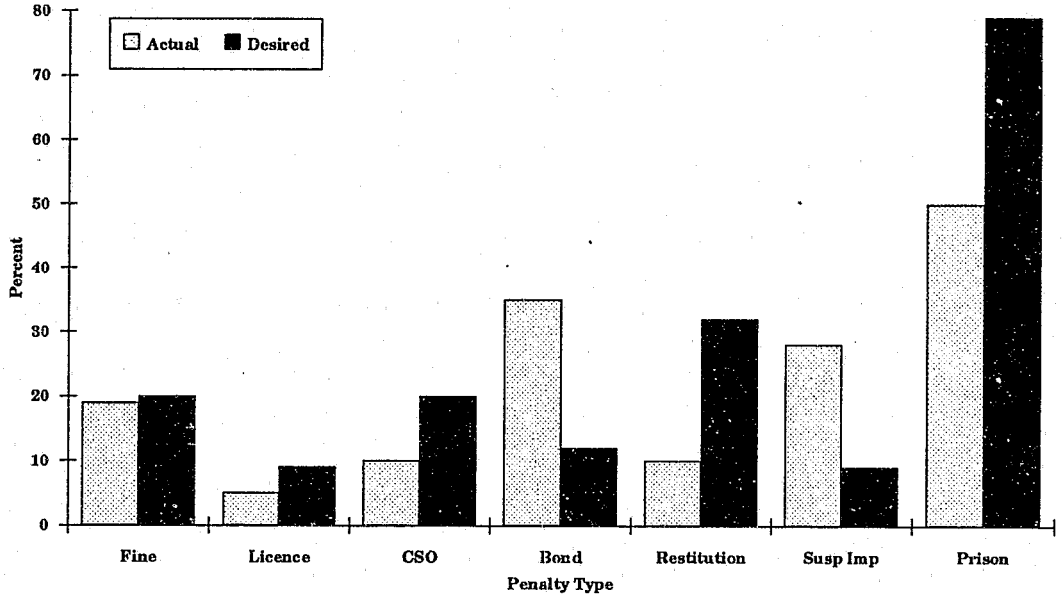
The majority (65%) of the victims who attended one or more court hearings stated that the issue of compensation or restitution was not discussed in court. Only 10% stated that it was discussed and 25% did not know or could not remember. Of the total sample of victims 10% indicated that they had, or were about to receive at least partial restitution from the offender. Only 5% indicated that they had or would receive full restitution from the offender. Similarly 7% indicated that they had, or thought they would, receive partial compensation from the Criminal Injuries Compensation Scheme and 6% thought they would receive full compensation.

The majority (70%) of victims who knew the outcome of their court case believed that the sentence imposed on the offender was too lenient. Less than one third (29%) thought that it was fair and only 1% thought that it was too harsh.

Victims who knew the outcome of their court case were asked to state the penalty which was actually imposed on the offender and then to nominate the penalty that in their opinion should have been ordered by the court. Victims requested sentences of imprisonment and community service orders more frequently than had actually

been imposed by the courts. Victims also requested that restitution and compensation orders be made more frequently than the court had issued. Victims favoured a reduction in the use of suspended sentences and bonds. This data is presented in Figure 3.2.

**Figure 3-2 Actual penalties imposed and desired penalties selected by victims**




Note that more than one penalty may be imposed on offenders and that victims were free to choose more than one penalty as part of their desired sentence for the offender. The average length of imprisonment imposed on offenders actually sentenced to prison was 50 months (SD=45.5). The average length of imprisonment thought appropriate for these offenders by victims, however, was 137 months (SD=237.2).

## VIS details

Only 152 victims or 36% of the sample stated that they had provided information for a VIS. Of victims who stated that they had provided the information the majority (68%) indicated that their main reason for doing so was to ensure that justice was done. Other reasons given for providing the information for a VIS were to communicate the impact of the offence to the offender (9%) or because they felt it was their civic duty (8%). Only 5% sought to influence the sentence given to the offender. A significant proportion (45%) of victims who provided VIS material felt relieved or satisfied after providing the information. For almost half (49%) providing VIS information did not make any difference while 7% felt worse. The majority (68%) of the victims who indicated they provided material for the VIS said it was never updated. About 20% said it was updated once, and 11% stated twice or more.

Bivariate and multivariate statistical procedures were also used to investigate factors associated with victims providing information for a VIS. Details of these analyses are presented in Appendix D. The statistical analyses showed that victims were more likely to have stated that they provided information for a VIS when they were victims of an offence against the person as opposed to a property offence. In addition victims who received restitution/compensation from either the offender or from the Government were more likely to have stated that they provided information for a VIS.

The overwhelming majority (96%) of victims stated that they wanted their VIS to be used in sentencing. About two thirds (66%) of victims did not know whether the VIS material was adequately presented in the court. Of victims expressing an opinion, however, 83% believed it had been adequately presented while 17% thought the presentation of the VIS details by the prosecutor was inadequate. The majority of victims (94%) felt that if they were ever a victim again they would want a VIS presented in court. Only 32 victims (or 7% of the total sample) indicated that the information provided in the VIS was challenged by the defence and 56% of these victims felt angry about the VIS being challenged.

Of victims providing VIS material most (71%) expected the VIS to have an impact on the sentence and 29% did not expect an impact. Less than half (40%) however perceived that the VIS had affected the sentence. For 34% of victims their expectation for an effect on sentence, in their view, was unfulfilled. Table 3.4 cross tabulates the number of victims who expected the VIS to have an effect on the sentence with those who believed that the VIS actually had an effect on the sentence.

**Table 3-4 Expected and perceived effect of VIS on sentence**

| Actual | Expected Yes | Expected No | Total |
|---|---|---|---|
| Yes | 34 (37%) | 3 (3%) | 37 (40%) |
| No | 32 (34%) | 24 (26%) | 56 (60%) |
| Total | 66 (71%) | 27 (29%) | 93 (100%) |

The majority of the sample (59%) indicated that they did not provide information for a VIS. A manual check of court and prosector files however revealed that a VIS had been completed in 82% of cases. Almost half of the sample (47%) had provided information for a VIS but did not realise the information was being used for a VIS. Data relating to whether victims acknowledged providing information for a VIS and whether a VIS was located in the files is shown in Table 3.5.

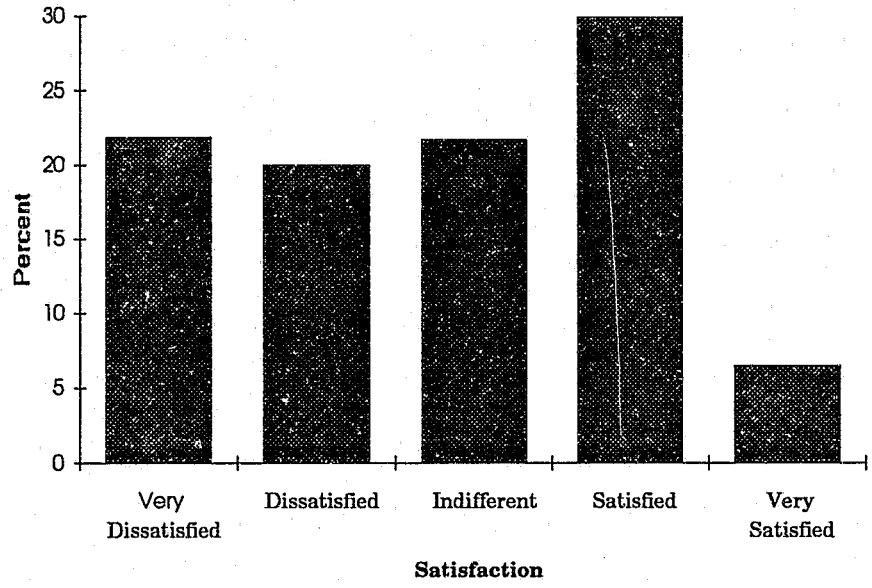
**Table 3-5 Victim awareness of the VIS and whether in the court file**

| | | Victim Aware of VIS: Unknown | No | Yes | Total |
|---|---|---|---|---|---|
| VIS in File | No | 1% (2) | 11% (49) | 6% (24) | 18% (75) |
| | Yes | 5% (23) | 47% (201) | 30% (128) | 82% (352) |
| | Total | 6% (25) | 59% (250) | 36% (152) | 100% (427) |

## Satisfaction with the criminal justice system

On a scale from 1 (very dissatisfied) to 5 (very satisfied) the mean overall satisfaction with the criminal justice system was found to be 2.8 (SD=1.3). Figure 3.3 shows that while 30% of victims were satisfied and 7% were very satisfied with the manner in which the criminal justice system handled their case a significant proportion were dissatisfied (20%) or very dissatisfied (22%)

**Figure 3-3 Victim level of satisfaction with the criminal justice system**




About half of the victims (52%) found the criminal justice system to be no better or worse than they had expected it to be. One fifth (20%) thought it was somewhat worse and 19% thought it was much worse than they thought it would be. Only 10% indicated the system was better than they had thought it would be with 4% thinking it was much better.

Slightly over half (52%) of the sample stated that they had not been given the 'Information Booklet for Victims of Crime' by the police. Those who had received the booklet however found it clear (92%) and useful (73%).

Over three quarters (78%) of the sample believed that the criminal justice system does not give enough attention and help to victims of crime. Most (96%) however claimed they would report the matter to the police and testify in court (93%) if they became a victim of the same type of offence again.

Table 3.6 shows the satisfaction level of victims with the manner in which various groups in the criminal justice system handled their case.

**Table 3-6 Victim satisfaction with criminal justice agencies**

| | Very Dissat. | Dissat. | Indiff | Satisfied | Very Satisfied | Mean (SD) | Total |
|---|---|---|---|---|---|---|---|
| Police Investigator | 5% (19) | 6% (23) | 5% (19) | 39% (153) | 45% (117) | 4.1 (1.1) | 391 |
| Police Prosecutor | 4% (9) | 7% (15) | 17 (37) | 43% (95) | 29% (65) | 3.9 (1.0) | 221 |
| Crown Prosecutor | 7% (12) | 9% (15) | 28% (45) | 34% (55) | 21% (33) | 3.5 (1.1) | 160 |
| Judge | 14% (28) | 12% (24) | 27% (53) | 31% (59) | 15% (29) | 3.2 (1.3) | 193 |
| Court Staff | 5% (9) | 3% (5) | 32% (56) | 39% (68) | 20% (35) | 3.7 (1.0) | 173 |
| Defence Lawyer | 24% (39) | 13% (21) | 40% (65) | 16% (27) | 7% (12) | 2.7 (1.2) | 164 |
| VOC Service | 21% (24) | 8% (9) | 39% (44) | 18% (21) | 14% (16) | 3.0 (1.3) | 114 |

## VIS and satisfaction with the criminal justice system

Several analyses were performed to examine whether the introduction of VIS has led to an improvement in victim satisfaction with the criminal justice system.

As shown in the previous section on a scale from 1 (very dissatisfied) to 5 (very satisfied) the overall mean satisfaction with the criminal justice system was found to be 2.8 (SD=1.3). The mean satisfaction rating of victims who stated that they had completed a VIS was 2.9 (SD=1.3) compared with 2.7 (SD=1.2) for victims who stated that they had not completed a VIS. The difference between the mean ratings was not statistically significant (T=-1.15, p=0.25).

A further comparison was made between the mean satisfaction rating of victims with a VIS in their court file and the mean satisfaction rating of victims where a VIS was not able to be located in the court file. The mean rating for victims where a VIS was able to be located in the court file was 2.8 (SD=1.3) compared with a mean rating of 2.7 (SD=1.2) for victims who did not have a VIS in their court file. The difference between these two mean ratings was not statistically significant (T=-0.39, p=0.70).

The results presented above suggest that the introduction of VIS has not increased victim satisfaction with the manner in which the criminal justice system handled their case. Further analyses were carried out to examine the effect of the VIS on victim satisfaction when other factors are taken into account. In particular, previous research has found that victim satisfaction with the criminal justice system is significantly related to the level of satisfaction with the sentence which is ultimately imposed on the offender. As a consequence, two multiple regression equations were estimated to determine the factors related to satisfaction with the criminal justice system when the victim does not know the outcome of their court

case and when they do. A full description of the methodology and results from these analyses is presented in Appendix D.

The first model examined the factors related to victim satisfaction when the victim does not know the outcome of their court case. When victims do not know the outcome of their court case it appears that they are more satisfied with the manner in which the criminal justice system handled their case when they are victims of an offence against the person as opposed to a property offence, and secondly when they have a lower rather than a higher level of distress as a result of the crime. Consistent with the univariate analysis shown above the multivariate analysis did not find that victims stating that they had completed a VIS to be related to satisfaction with the criminal justice system.

In the second model the factors related to victim satisfaction were examined for victims who knew the outcome of their court case. When victims knew the outcome of their court case, satisfaction with the criminal justice system was highly correlated with the level of satisfaction with the sentence. No other factors, including whether or not the victim believed that they had completed a VIS, were found to be statistically significant when satisfaction with the sentence was taken into account.

Analyses presented to point have focused on the factors related to victim satisfaction with the criminal justice system. A final multiple regression analysis was performed to identify the factors associated with victim satisfaction with the sentence imposed on the offender. The results suggest that satisfaction with the sentence is improved when the offender is known to the victim and when the offence type is an offence against the person. Older victims also appear more satisfied than young victims. Satisfaction with the sentence decreases when victims report a higher level of distress resulting from the offence and state that they view the offence seriously. In addition victims who expected the VIS to have an effect on the sentence but believe that this effect did not materialise are more dissatisfied with the sentence than victims who did not expect an effect.

### Victim suggestions for improving the criminal justice system and the VIS

Victims were given an opportunity in the survey to write what they believed could be improved in the criminal justice system to help victims of crime and to state what they thought the VIS should contain and what purpose it should serve.

The ideas and suggestions volunteered by victims to improve the criminal justice system can be divided into two main categories: suggestions for improvement of the victim's situation and suggestions for the improvement of the justice system. A substantial proportion of victims (28%) stated that more information should be provided. The type of information sought concerned the outcome of the court case, information about their rights and information about the way the criminal justice system works. Other suggestions pertaining to victims which were repeated in the open ended questions were to make the process faster, more efficient and less intimidating, provide better support or more counsellors through Victims of Crime Service or alternative bodies, better protection for victims, help with insurance claims and finally increased provision of interpreters.

The other main category of response for improving the criminal justice system related to justice and punishment. In this category the most frequent desire (13%) was for harsher penalties and sentences to be served in full. Other repeated suggestions included compensation orders, to treat defendants who are minors as adults in the court system and to disclose to the judge or jury any prior convictions of the defendant. Only two victims suggested that victims be allowed to speak in court.

Some victims offered suggestions about what the VIS should contain. The most frequent response was for information about the impact (including physical, emotional and financial effects) of crime on the victim. This view was expressed by 16% of the sample. A wide range of purposes of the VIS were suggested and these included to assist in obtaining compensation, to gain justice in respect to the sentence, to confront the offender with the impact of their crime and to enable victims the opportunity to give an opinion on the sentence. Other miscellaneous comments on the VIS were that the VIS should be updated, discussed more fully with the victim, assist in any counselling and that it should be used and not ignored by the judge.

## Discussion of results from the victim survey

The results indicate that victims were interested in providing input concerning the crime impact. The wish, or need, to provide input into sentencing is higher among victims of personal crime compared to victims of property offences. Victims of crime against the person have generally higher stakes in the process and its outcome. These victims were more likely to know they have provided VIS material, and were more likely to know the outcome of the case.

Victims viewed their input primarily as a mechanism to ensure that justice is done. Some wanted to communicate the harm to the offender, and only a small number sought to influence the sentence. Yet, victims who thought that their input was ignored were disappointed and as a result their satisfaction with justice was lower than those who did not have unfulfilled expectations.

To prevent the possibility that raised expectations will result in a decrease in satisfaction with justice (also documented in previous research, see Erez and Tontodonato, 1992), victims should be presented with a realistic range of penalties and given explanations about the considerations used by judges in sentencing. Information and explanation concerning the criminal justice process was often mentioned by the victims as a way to improve justice.

Almost half of the victims who provided input for their VIS did not know they had done so. If the purpose of providing VIS material is to provide the psychological gratification of being heard, this procedure should be conducted in a more ceremonial manner so that victims remember it clearly as the occasion in which they provided their input. If 'justice must be *seen* to be done', for these victims the right to provide input has yet to materialise (see also Erez and Tontodonato, 1992).

According to the majority of victims' responses their VIS was never updated. Because crime impact and victim's harm can drastically change over time (improve or deteriorate), and as the justice machinery is relatively slow, an outdated VIS is not very helpful to the court. Lack of VIS follow-up and updating undermines the benefits that the right for input was expected to provide to the victim as well as to 'justice'.

The results also shed light on victims' wishes with respect to penalties. Although victims wanted more and longer prison sentences than were actually imposed, they also desired many more orders of restitution, compensation, community service and license revocations than the courts provided. This finding may question the prevailing assumption echoed by the legal professionals that victims' only interest is in vindictiveness and prison sentences.

Victims' overall satisfaction with justice was relatively low (2.8 on a 5 point scale). This score was lower than their satisfaction level with individual components of the system - police investigators (4.1), police and Crown prosecutors (3.9 and 3.6 respectively), judges (3.2), court staff (3.7), and Victims of Crime Services (VOCS) (3.0). Only the level of satisfaction with the defence lawyers was lower than satisfaction level with the criminal justice system as a whole (2.7 compared to 2.8). These findings suggest that victims do not perceive the system as the sum total of its components and evaluate it accordingly.

The results also confirm that victims' satisfaction with justice is determined mostly by their satisfaction with the sentence. As the majority of the victims thought the sentence was too lenient, their satisfaction with justice consequently was low, despite their reported high satisfaction with most of the components of the system. The relatively low level of satisfaction with VOCS may be attributed to the fact that many victims, particularly of property offences, do not have much contact with VOCS, and often their requests from this organisation, e.g. to receive compensation and restitution, cannot be fulfilled. Higher initial victim expectations from VOCS also may explain this finding.

In general providing VIS material was not associated with negative effects on victims. Only 6% were upset or disturbed by this experience. The overwhelming majority of the victims wanted to provide VIS material and wanted it to be used in sentencing. They also stated that in future victimisation's they would want a VIS prepared and presented in court. Yet, input provided for a VIS was not found to be associated with increase in satisfaction with the sentence, nor with satisfaction with justice. The later was mostly explained by satisfaction with the sentence, for those who knew the outcome of the case. For those who did not know the sentence, satisfaction with justice was best predicted by the type of victimisation (being a victim of a crime against the person) and lower level of distress.

The finding that providing VIS information was not associated with increased victim satisfaction is consistent with the results from studies in other jurisdictions (e.g. Erez and Tontodonato, 1992; Davis and Smith, 1994) and suggests that VIS contributes very little to victims' overall evaluation of the criminal justice system. An alternative explanation is that our inability to detect increased victim satisfaction was due to the manner in which VIS are implemented in South Australia - an 'implementation failure' (Davis and Smith, 1994). For example, the fact that almost half the victims in our survey were unaware that they had provided information for a VIS does not inspire confidence in the South Australian implementation of VIS. Other research (Davis & Smith, 1994) however has found that even when victims are given a detailed explanation about VIS and its purpose for sentencing nearly half, when later questioned, cannot recall providing VIS

information. It appears that regardless of how VIS are prepared, or by which agency, many victims will be unable to separate the VIS from other requests for information.

The finding that VIS do not promote victim satisfaction with justice have led some to suggest that victims may not be interested in participation (e.g. Davis & Smith, 1994). In the present study, however, the majority of the victims, particularly those of personal crime, expressed a wish to provide input for consideration in sentencing. Further research will be necessary to clarify the reason(s) why fulfilling this wish does not appear to increase victim satisfaction.

# Chapter 4 VIS Impact on Sentencing

## Background

As outlined in Chapter 1 of this report section 7 of the *Criminal Law (Sentencing) Act 1988* requires that material detailing any physical or mental harm, any loss or damage to property suffered by a victim as a result of a crime must be provided by the prosecutor for the purpose of assisting the court to determine the sentence for an offence. The aim of the present chapter is to assess whether this requirement, which took effect in January 1989, has resulted in any changes to sentencing. As the introduction section indicated, one of the arguments against the introduction of VIS has been that they will result in harsher sentences. One of the arguments in their favour is that they will lead to increased restitution and compensation orders. This chapter will address these issues.

Assessing the impact of the VIS requirement on sentencing present some methodological difficulties. Comparing sentences issued before the introduction of VIS with sentences following VIS might be misleading because of other changes influencing sentences occurring during the time period. For example other sentencing policy developments may be taking place around the same time that VIS are introduced or the average seriousness of offences may change. An alternative approach of selecting only cases following the introduction of VIS and comparing the sentences of cases with and without a VIS is also problematic because of the possibility that cases possessing a VIS are systematically different on factors related to the sentence from cases not possessing a VIS. For example more serious cases may be more likely to attract a VIS than less serious cases.

International research on the impact of VIS and sentencing has provided conflicting results. One study found that the existence of a VIS in the court file increased the likelihood of the defendant receiving a prison sentence rather than probation but the VIS did not influence the length of imprisonment (Erez and Tontodonato, 1990). On the other hand another study which used an experimental design did not find any effect for the VIS on either the type of sanction imposed (e.g., prison or probation) or on the length of imprisonment (Davis and Smith, 1994).

In order to overcome possible systematic bias in the comparisons the approach adopted in the present study is to examine overall sentencing trends in South Australia before and after the introduction of VIS. The length of sentences of imprisonment and also the proportion of cases receiving a sentence of imprisonment are examined. The chapter reviews other sentencing policy changes occurring around the time of the introduction of the VIS to assist in interpreting any changes in sentencing patterns which might be evident. In addition a multivariate analysis of one offence type (assault cases) is performed in order to identify whether VIS made a significant contribution to sentences after controlling for other factors thought to be important in sentencing for these offences.

## Aggregate sentencing trends in South Australia

This section presents data on sentences of imprisonment issued by the Supreme and District Courts during the thirteen year period 1981 to 1993. The Supreme and District Courts in South Australia deal with the more serious offences and the majority of prisoners in custody have been sentenced by these courts. The data was complied from statistical databases maintained by the South Australian Office of Crime Statistics.

Data pertaining only to the higher courts were collected because the results from the interviews with Magistrates and Police Prosecutors and an examination of court files indicated that VIS are only very rarely tendered in the Magistrates Court. Given the small percentage of VIS in the lower courts it is highly unlikely for VIS to have influenced aggregate sentencing patterns in this jurisdiction.

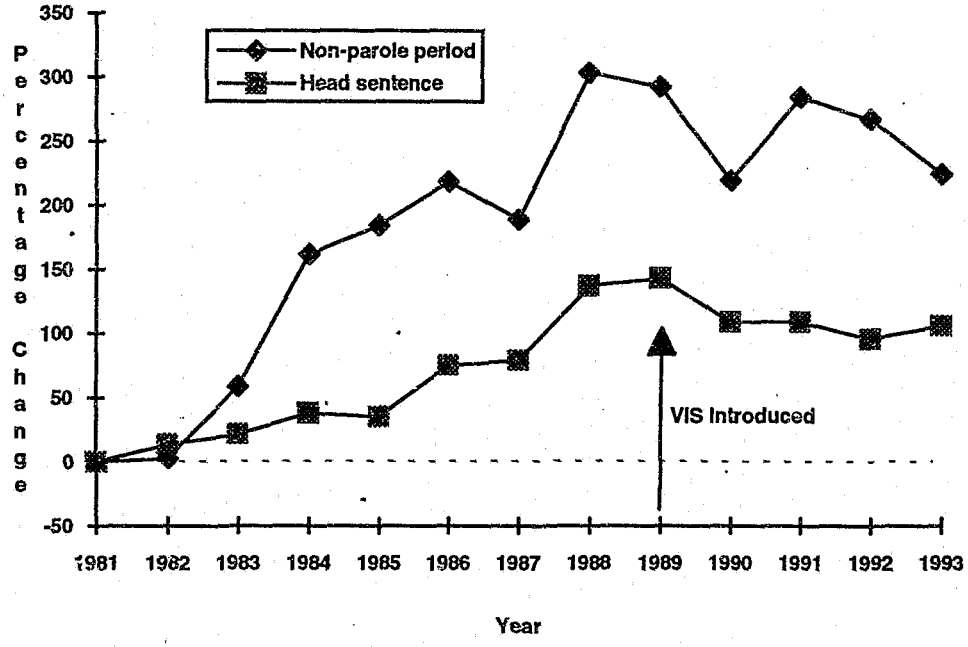
One possible impact of VIS on sentencing is that VIS influenced the distribution of dispositions, for example imprisonment might be issued more frequently. The percentage of cases receiving a sentence of imprisonment in the higher courts during the period 1987 - 1993 was: 1987 (39%); 1988 (36%); 1989 (38%); 1990 (34%); 1991 (36%); 1992 (37%); and 1993 (41%). Based on this data the introduction of VIS in early 1989 does not appear to have significantly influenced the percentage of cases receiving a sentence of imprisonment.

The second issue addressed was the length of prison sentences. Figure 4.1 shows the average percentage change in head sentence and non-parole period imposed for all convicted cases in the higher courts for the period 1981 to 1993. A significant upward trend and considerable volatility is exhibited in both data series. During this period there were a number of changes to the manner in which remissions and parole operated and the timing of these changes correspond very closely to the movements in sentencing patterns shown in Figure 4.1.

The average head sentence in 1981 and 1993 was 23.1 months and 47.6 months respectively. The average non-parole period in 1981 and 1993 was 9.9 months and 32.1 months respectively.

In December 1983 South Australia moved towards a more determinate sentencing system. Under the system in operation prior to this time prisoners were released at the discretion of the Parole Board at some point after the expiration of their non-parole period. With the changes in 1983 prisoners were released automatically at the expiration of the non-parole period minus up to one third for remissions. For effective prison terms to remain comparable with previous prison terms, it was necessary for non-parole periods to be significantly increased - and this is exactly what occurred over the period 1984 to 1987.

**Figure 4-1** **Average head sentences and non-parole periods 1981 - 1993 (taking 1981 as a base year)**




During 1988 and 1989 sentences increased to a new level corresponding to a Court of Criminal Appeal judgement (R v Dube and Knowles (1987) 46 SASR 118) which held that a legislative amendment concerning remissions required an increase in non-parole periods. This judgement was overturned by High Court in *Hoare v The Queen and Easton v The Queen* ((1989) 63 ALJR 505) and resulted in a decrease in sentence lengths during 1990. The South Australian Parliament reinstated the earlier Court of Criminal Appeal interpretation of the legislative amendment and non-parole periods during 1991-92 returned to roughly 1988-89 levels.

As shown in Figure 4.1 the introduction of VIS in early 1989 does not appear to have had any significant impact on the average length of sentences of imprisonment issued in the higher courts. Sentences fell during 1990 to expected levels because of the High Court judgement as discussed above and when the effect of this judgement was negated sentences returned to 1988-89 levels. Similar analyses for the offences of assault, rape and robbery were carried out (not shown) and no clear pattern showing any impact of VIS on sentences for these offences could be discerned.

Another area where VIS may have influenced sentencing patterns is in the number of restitution and compensation orders. Theoretically information contained in VIS can assist sentencing courts to order restitution or compensation. The VIS indicates whether compensation is sought by the victim, provides details of injury or property loss suffered by the victim, shows whether restitution has been offered by the offender and finally it provides, when it is known, details of the offender's ability to pay compensation. Figure 4.2 shows the trend in number of compensation or restitution orders made in the Supreme and District Courts for the calendar years 1980 to 1993.

**Figure 4-2 Number of restitution and compensation orders 1980-1993**

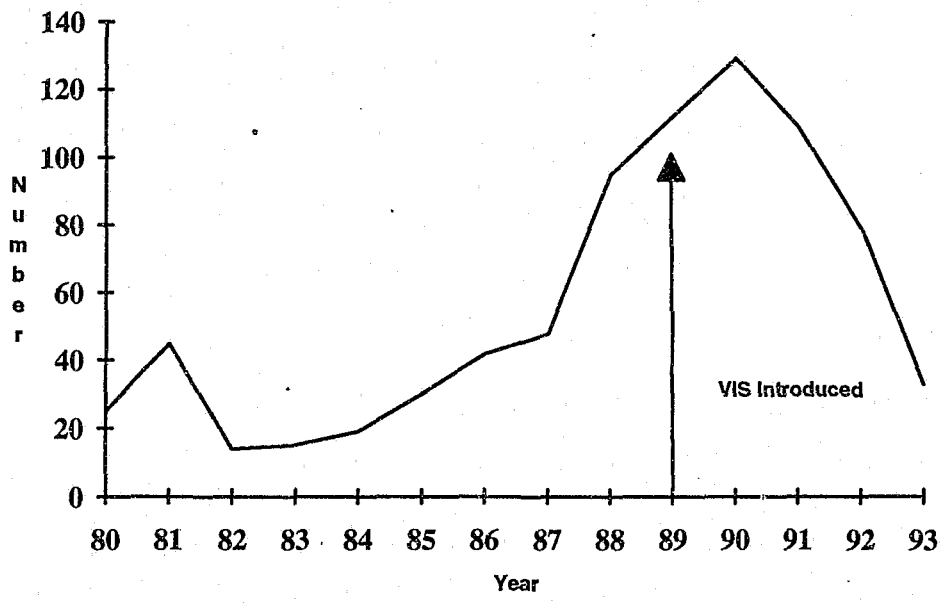



Figure 4.2 shows that the number of restitution or compensation orders issued by courts was increasing prior to the introduction of VIS in 1989. The increase in the number of orders peaked in 1990 but has fallen significantly in 1991, 1992 and 1993. A possible contributing factor to the fall in the number of compensation or restitution orders in 1992 and 1993 is legislation which came into effect July 1992 which resulted in less serious matters being moved from the higher courts to the Magistrates Court. It is possible these less serious matters (particularly for example break and enter offences) may have attracted a relatively high number of restitution or compensation orders.

To more closely examine the changing patterns in the number of restitution and compensation orders issued in the higher courts Table 4.1 shows the number of these orders by offence type. As a percentage of the total number of cases the number of restitution and compensation orders issued peaked in 1989 and has fallen since that year. At its maximum these orders were issued in 8.3% of cases. It can also be seen that these orders were increasing prior to the introduction of VIS and the decline began before less serious cases were moved to the Magistrates Court in 1992. This tends to suggest that the introduction of VIS has not affected the number of compensation or restitution orders issued.

**Table 4-1 Number of restitution or compensation orders issued in the Supreme and District Court by offence type.**

| Offence Type | Year 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Against the person | - | 1 | 2 | - | 2 | 3 | 1 | 1 | 5 | 6 | 10 | 10 | 9 | 3 |
| Robbery | - | 3 | 1 | 1 | - | 1 | 2 | 1 | 2 | 4 | 2 | 11 | 4 | 2 |
| Sexual offences | - | - | - | - | - | 1 | - | - | 2 | 5 | 3 | 3 | 1 | 1 |
| Drug offences | - | - | - | - | - | - | - | - | 7 | 2 | 2 | 1 | 1 | - |
| Fraud | 4 | 11 | 4 | 4 | 7 | 12 | 18 | 18 | 24 | 28 | 22 | 13 | 11 | 7 |
| Break and enter | 9 | 22 | 3 | 5 | 3 | 2 | 9 | 10 | 14 | 22 | 33 | 31 | 15 | 4 |
| Other offences | 12 | 8 | 4 | 5 | 7 | 11 | 17 | 18 | 41 | 45 | 57 | 40 | 38 | 16 |
| Total Orders | 25 | 45 | 14 | 15 | 19 | 30 | 47 | 48 | 95 | 112 | 129 | 109 | 79 | 33 |
| Total Cases | 790 | 1490 | 1339 | 1153 | 1284 | 1330 | 1244 | 1254 | 1250 | 1343 | 1668 | 1898 | 2039 | 1548 |
| % Orders of cases | 3.2 | 3.0 | 1.0 | 1.3 | 1.5 | 2.3 | 3.8 | 3.8 | 7.6 | 8.3 | 7.7 | 5.7 | 3.8 | 2.1 |

Unfortunately data relating to the number of restitution or compensation orders made in the Magistrates Courts is not available. So the possibility that the fall in the number of orders made in the higher courts is being 'picked up' in the Magistrates Court cannot be ruled out with complete certainty. It can be noted however that evidence has been provided earlier in this report which shows that VIS are rarely tendered in the Magistrates Court. Given the minimal implementation of VIS in these courts significant change in these courts would not be expected.

## Analysis of sentence outcomes in assault cases

A multivariate statistical study of Assault Occasioning Actual Bodily Harm (AOABH) cases was undertaken to examine in closer detail possible effects on sentencing patterns resulting from the introduction of VIS. The main question this section seeks to answer is whether the introduction of VIS has caused penalties to change while controlling for factors known to be associated with sentences for AOABH cases.

The offence AOABH is defined in section 40 of the *Criminal Law Consolidation Act, 1935* and carries a maximum penalty of a term of imprisonment of five years, or where the victim was less than twelve years of age at the time of the offence, a maximum penalty not exceeding eight years imprisonment. The offence AOABH was selected for detailed examination because it is an offence for which information relating to victim injury or loss would intuitively seem relevant to sentencing authorities.

### Sample selection and data collected

In South Australia there are between 30 and 50 AOABH cases which result in a conviction in the Supreme or District Courts each year. Because there are very few female assault defendants and in order to rule out factors that influence sentence outcome which are gender related the sample was restricted to males. The potential

sample of cases in the present research consisted of all matters (N=155) finalised between 1988 and 1992. Court files were located for 98 (or 63%) of these cases. The remaining court files were not located for a variety of reasons including that the file had been archived and this made it very difficult for it to be retrieved, the file was in use by another section of the courts administration or that the file had been misfiled in central records. There was no reason to suspect that the court files which were located differed systematically from files which could not be located.

Data items collected from the court files can be categorised into four main areas: offender details, offence information, VIS material and penalty outcome.

Offender details collected included data on age, employment status, character (CHAR), rehabilitative prospects (REHAB), circumstances requiring sympathy (CIRC), remorse (REM), previous prison record, whether the injuries to the victim were intended (INTEND), whether the offender was in breach of a previous order of the court (BREACH), and finally whether the offender had pleaded guilty to the offence.

Offence details collected included whether the offence was provoked (PROV) or premeditated (PREM), the seriousness of injuries to the victim, whether the victim was vulnerable (VULN), whether a weapon was used (WEAP) and whether the offender was known or related to the victim.

Answers to items which would tend to mitigate or aggravate the sentence were summed to produce two new variables: a 'Mitigation score', comprised of the variables CHAR, REHAB, CIRC, REM, PROV and a 'Aggravation score' comprised of the variables VULN, INTEND, PREM, WEAP, BREACH. Each variable was given an equal weighting of one so that the 'Mitigation' and 'Aggravation' scores could vary between 0 and 5. For example a score of three on the 'Mitigation' factor and a score of two on the 'Aggravation' factor would indicate positive responses on three of the factors CHAR, REHAB, CIRC, REM, PROV and positive responses on two of the factors VULN, INTEND, PREM, WEAP, BREACH.

Information relating to the VIS included whether the VIS was able to be located in the court file and whether the judge mentioned the VIS in their sentencing remarks. Penalty outcome information collected included penalty type (prison or community based sanction) and duration of penalty.

Descriptive statistics

The sample comprised 98 cases of AOABH. The cases were finalised between 1988 and 1992 with 21 cases before and 77 cases after the introduction of VIS. The average age of offenders in the sample was 29 years of age (SD=9.6), the majority (66%) were unemployed, 34 (35%) had previously been imprisoned and 22 offenders (22%) were in breach of a previous order of the court as a result of committing the offence. Most (71%) pleaded guilty to the offence. Around half (49%) of the offenders were perceived to have otherwise good characters, and 60% were seen as good prospects for rehabilitation. Slightly less than half (40%) of offenders showed remorse for their actions and just over one third (36%) of offenders were able to show circumstances requiring sympathy.

On rating scale from 1 (minor) to 3 (very serious) the mean level of injury to victims was 1.8 (SD=0.6). The injuries to the victim were considered to have been intended by the offender in 35 cases (36%) and the offence was premeditated in 28 cases (29%). In 36 cases (37%) a weapon was used and in 18 cases (18%) the victim was seen to have provoked the offence. The victim was vulnerable (for example by being very young or elderly or very disparate in physical ability compared with the offender) in 14 cases (14%). In just over one quarter of cases (27%) the offender and victim were related to one another or in some form of relationship.

A VIS was located in court files for 53 (69%) cases finalised after the introduction of VIS. None were located in court files for matters finalised before the introduction of VIS. The VIS was mentioned in the judges sentencing remarks in 9 cases or 17% of cases where a VIS was located in the court file.

Just over half (54%) of the defendants in the sample were placed on a community based sanction as a result of their conviction while 46% were sentenced to imprisonment.

Table 4.2 presents the bivariate relationships between various factors and sentence outcome (community based sanction or imprisonment). There were significant differences between cases in which the sentence is a community based sanction rather than imprisonment in terms of the employment status of the offender, whether the offender had previously been imprisoned, the number of adult convictions, the age of the offender, the 'Aggravation score' and the 'Mitigation score'.

A multivariate analysis was conducted to determine whether the bivariate relationships between the factors and case outcome hold when relevant variables are controlled. Because the dependent variable is dichotomous (community based sanction versus imprisonment), logistic regression was used to estimate the influence of offender details, offence information and the VIS on sentence selection.

The results from this analysis are shown in Table 4.3 and are consistent with the bivariate analysis. The factors increasing the likelihood of a sentence of imprisonment are that the offender has previously been imprisoned, a high rating on the 'Aggravation score' (eg the victim was vulnerable, the injuries were intended, the offence was premeditated, a weapon was used or the offender was breach of a court order) a low rating on the 'Mitigation score' (eg the offender possessed a good character, good rehabilitation prospects, circumstances requiring sympathy, showed remorse or was provoked) and finally younger offenders were more likely to be imprisoned than older offenders. Whether a VIS was located in the court file or whether the VIS was mentioned by the judge in the sentencing remarks did not appear to influence the choice of disposition.

## Table 4-2 Correlates of sentence outcome (community sanction vs imprisonment)

| Variable | CBS (%) | Prison (%) | $\chi^2$ | p |
|---|---|---|---|---|
| **A. Discrete Variables** | | | | |
| VIS in file | | | | |
| No | 56 | 44 | 0.07 | 0.79 |
| Yes | 53 | 47 | | |
| VIS mentioned | | | | |
| No | 56 | 44 | 1.72 | 0.19 |
| Yes | 33 | 67 | | |
| Time period | | | | |
| Before VIS | 52 | 48 | 0.08 | 0.79 |
| After VIS | 55 | 45 | | |
| Relationship to victim | | | | |
| Stranger | 54 | 46 | 0.001 | 0.98 |
| Known | 54 | 46 | | |
| Offender employ. | | | | |
| Unemployed / Other | 46 | 54 | 4.9 | 0.03 |
| Employed | 70 | 30 | | |
| Prior imprison. | | | | |
| No | 70 | 30 | 19.6 | <0.001 |
| Yes | 24 | 76 | | |
| Plea | | | | |
| Guilty | 51 | 49 | 0.69 | 0.41 |
| Not Guilty | 61 | 39 | | |
| **B. Continuous Variables** | Mean and Standard Deviation | | t | p |
| Age of offender (years) | | | | |
| Mean age CBS | 31.6 | (SD=11.0) | 3.01 | 0.001 |
| Mean age Prison | 25.5 | (SD=6.3) | | |
| Level of injury (1-3) | | | | |
| Mean level CBS | 1.70 | (SD=0.63) | -1.46 | 0.15 |
| Mean level Prison | 1.89 | (SD=0.64) | | |
| Aggravation score (0-5) | | | | |
| Mean score CBS | 0.89 | (SD=0.85) | -5.17 | 0.001 |
| Mean score Prison | 1.96 | (SD=1.14) | | |
| Mitigation score (0-5) | | | | |
| Mean score CBS | 2.70 | (SD=1.4) | 5.32 | 0.001 |
| Mean score Prison | 1.29 | (SD=1.2) | | |
| No. of adult convictions | | | | |
| Mean score CBS | 7.83 | (SD=15.1) | -3.17 | 0.002 |
| Mean score prison | 19.7 | (SD=20.9) | | |

**Table 4-3** **Logistic regression coefficients and related statistics of sentence outcome (Community based sanction vs Imprisonment)**

| | Full Model | | | | Stepwise Model | | | |
|---|---|---|---|---|---|---|---|---|
| Variable | b | SE | χ2 | | b | SE | χ2 | |
| VIS in file (0=No 1=Yes) | 1.15 | 0.96 | 1.54 | | | | | |
| VIS mentioned (0=No 1=Yes) | 0.25 | 1.21 | 0.11 | | | | | |
| Relationship to victim(0=Stra 1=Kn) | 1.09 | 0.85 | 1.65 | | | | | |
| Employment status(0=Unem 1=Emp) | -0.53 | 0.86 | 0.38 | | | | | |
| Prior imprisonment (0=No 1=Yes) | 2.67 | 0.91 | 8.40 | ** | 3.07 | 0.79 | 15.09 | *** |
| Plea (0=Guilty 1=Not Guilty) | -0.81 | 0.95 | 0.73 | | | | | |
| Age of offender (Years) | -0.19 | 0.07 | 7.27 | ** | -0.15 | 0.05 | 7.65 | ** |
| Level of injury | -0.06 | 0.62 | 0.11 | | | | | |
| Aggravation score | 1.75 | 0.47 | 13.96 | *** | 1.57 | 0.39 | 16.37 | *** |
| Mitigation score | -0.40 | 0.29 | 1.90 | | -0.47 | 0.24 | 3.74 | * |
| No. of Adult convictions | 0.03 | 0.02 | 1.91 | | | | | |
| Intercept | 3.7 | 2.88 | 1.64 | | | | | |

* p<0.05** p<0.01 *** p<0.001

With respect to sentence lengths the average non-parole period received by offenders with a VIS located in the court file was 14 months (SD=9.0) compared with 17 months (SD=14.9) for offenders without a VIS located in the court file. This difference was not statistically significant (t=0.97, p=0.34). Because of the difficulties of attempting to control for the other sentencing policy changes (detailed in the section on overall sentencing trends) which occurred around the time of the introduction of VIS and taking into account the relatively small numbers in the sample further multivariate analysis on the effect of VIS on sentence lengths was not undertaken.

### Discussion of results from analysis of sentencing patterns

The analysis of aggregate sentencing patterns in the higher courts, where VIS are routinely tendered, did not identify any changes that can be attributed to the VIS with respect to the proportion of cases receiving a sentence of imprisonment or to average prison sentences (head sentence or non-parole period). In addition the introduction of the VIS did not result in an increase in the number of compensation or restitution orders issued.

The multivariate analysis of the factors related to sentences for Assault Occasioning Actual Bodily Harm identified as predictors of prison sentences: a previous record of imprisonment, the presence of aggravating factors, an absence of mitigating circumstances and the defendant's age. However, the presence of a VIS in the court file, the judges remarks about the VIS or whether the case was finalised before or after the introduction of VIS were not found to be related to sentencing disposition. The results from the analysis of aggregate sentencing trends and the multivariate analysis of Assault Occasioning Actual Bodily Harm cases are consistent with the view expressed by members of the legal profession that the introduction of VIS has not significantly influenced sentencing patterns.

Different explanations can be posited for our inability to detect any effect for VIS on sentence patterns. The most obvious one is that VIS material is relatively unimportant alongside other information concerning culpability and the prior record of the offender. It is also possible, however, that VIS material is considered important but that this information was already being collected prior to the introduction of VIS or judges have deduced it from other material in the file. As a consequence, the format in which material is presented has changed even though it is substantially the same in terms of content and quality.

An alternative interpretation, which was offered by several members of the legal profession when interviewed, is that VIS may impact sentences in both directions making punishment in some cases more severe but in other cases more lenient. For example when two similar crimes result in very different outcomes for the victims. The first victim suffers abnormally serious after effects while the other is rehabilitated successfully and suffers relatively very little. In the first case, the offender will receive a more severe sentence but this will be counterbalanced by a lenient sentence for the second offender. On average penalty levels remain unchanged.

Further research would be required to assess the validity of the argument that VIS are causing changes to sentences in individual cases but that this is occurred in a balanced fashion and consequently the effect cannot be detected by looking at aggregated data. It should be noted, however, that while members of the legal profession were able to recall instances where they believed a VIS resulted in a more lenient or severe sentence, these cases were the exception rather than the rule.

In summary the present research suggests that contrary to the concerns of some commentators, the introduction of VIS in South Australian has not resulted in any significant change in sentencing patterns.

# Chapter 5 Discussion and Conclusion

This evaluation has investigated the effects of adopting Victim Impact Statements (VIS) in South Australia. Professionals involved on a daily basis with VIS provided their opinions and experiences on the operation of VIS. The effect of the introduction of VIS on victims was ascertained through a questionnaire survey and, finally, analyses of sentencing statistics furnished information on the effects of VIS on sentencing. This chapter presents a discussion of the results of these three components of the evaluation.

## Effects on the criminal justice process

The findings suggest that concerns about negative effects of VIS on the criminal justice process were unwarranted. The practice of VIS did not result in delays, additional expenses or mini trials on VIS content. The experience of legal professionals has been that often VIS actually saved court time. As several of them noted, when the information on harm is readily available to them on a special form, there is no need to spend time looking for it. In the few instances in which additional time was needed (e.g., to deal with challenges to VIS from the defence), most respondents thought the extra time spent was well worth it. Also, most of the legal professionals thought that updated and well prepared VIS were not redundant, nor did they duplicate other information in the file. Quite often VIS were the only source of relevant information for sentencing such as whether there is an ongoing disability, any long term effects, or a complete recovery.

According to the judges' and prosecutors' assessments, VIS very rarely include inflammatory, prejudicial or other objectionable statements. Similarly, exaggerations are not common place. If exaggerations do occur, according to the prosecutors and judges, they involve financial matters, and not emotional and mental suffering. Only the defence lawyers expressed concern about the accuracy of victim input concerning psychological and mental harm. The data also show that challenges from the defence were rare and mostly involved monetary issues (e.g., value of property stolen or damaged). An agreement between counsels often resolved these challenges without the need to bring in new evidence. Challenges concerning matters of emotional harm, and the cross examination of victims on mental injury details presented in VIS, were practically non-existent. Defence lawyers, despite their deeply-rooted suspicion of victims' input on emotional matters, were reluctant to cross examine them. They were afraid of the potentially adverse effect that the victim's testimony and appearance might have on the jury, the judge, and ultimately the sentence. It is quite revealing that despite their distrust of victims' motives and input, defence lawyers were not willing to run the risk of verifying their doubts about matters related to mental injury. Thus, concern over victims being subjected to difficult cross examination about their input in VIS was not justified. Similarly, the legal professionals' experience has been that victims are willing and interested in providing input for VIS. Only in a very small number of cases, mostly child sexual abuse, were the victims (often their guardians) reluctant to provide input.

The following findings also emerged from the victim survey. Most victims stated they wanted to provide input, and many viewed it as an important duty. Less than one fifth of victims who testified stated that their testimony was challenged. About half of those whose input was challenged, however, stated that they were angry or upset about the challenge.

The legal professionals agreed that more information about victim harm is available to the court now that VIS have been introduced, although this increase was not always attributed directly to VIS. Respondents from all groups viewed the recent political visibility of victims as partly responsible for increased information available on victim harm.

The professionals agreed that VIS are more important in serious crimes than minor offences, and that they are critical in guilty plea cases compared to cases that go to trial (Douglas and Laster, 1994). In plea cases judges do not have the opportunity to observe victims testifying, therefore, they depend on VIS to provide information on victim harm. The victim survey showed that victims do not testify in about 75% of the cases disposed of by the Supreme and District Courts (this percentage is higher in the Magistrates Court). Therefore, in the majority of the cases VIS provide valuable information for sentencing.

### Effects on sentence outcomes and dispositions

The fear that VIS would have negative or punitive effects on sentencing also did not materialise. There was a consensus among the legal professionals that the introduction of VIS did not result in sentence disparity either due to the absence of VIS from some files or because of variations in VIS quality. In the Supreme and District Courts VIS were tendered in over 90% of cases but in the Magistrates Court where the less serious matters are dealt with VIS were tendered in less than 1% of cases. In the small number of cases in the higher courts where VIS were absent, judges made different assumptions about victim harm and handled the problem differently. Some assumed no harm occurred, while others assumed a breakdown in the system and made attempts on their own to acquire the needed information. Still others took a formalistic approach and 'penalised' prosecutors who did not tender an updated VIS and sentenced without it. Yet, such situations (and reactions) were exceptional and no group thought that either of these problems resulted in sentence disparity. Generally judges agreed that in serious offences, with high levels of injury or harm, VIS are available and judges make efforts to receive updated versions.

The prediction that VIS would make sentences more severe was not supported by the data. The view of the legal professionals was that sentencing patterns did not change following the introduction of VIS. This view was confirmed by an analysis of aggregate sentencing patterns before and after the introduction of VIS. The analysis did not reveal any changes in sentence severity, as measured by the frequency of imprisonment or by the average length of a prison sentence (both head sentence and non-parole period). A detailed multivariate analysis of assault cases was performed and also showed no effect for VIS on sentence outcome.

One reason for the lack of increase in sentence severity was that in the few cases in which VIS influences the sentence, it may result in a more lenient effect as often as in a harsher one. This happens when VIS disclose recovery, an attempt at reconciliation, or an injury that is less than would be normally expected. Another reason was that often the information on the extent of damage or injury in VIS can be deduced from the other materials in the file, as judges have routinely done before VIS were introduced. VIS, it was suggested, serve mostly as a collecting instrument.

The introduction of VIS also did not appear to increase restitution or compensation orders. Trend analysis of these orders show that they were increasing before the

introduction of VIS in 1989, peaked in 1990, and have declined since this date. In addition it should be recognised that restitution and compensation orders are made relatively few cases, for example in 1993 in the higher courts in 2% of cases. Most defendants do not have the means to pay compensation to the victim for the harm they have caused, or are unable to make restitution (return property to the victim) therefore judges are not likely to make an order for restitution or compensation regardless of the information in a VIS.

### Victims and the VIS

Victims provided VIS information in the overwhelming majority of the cases. The impression of the legal professionals was also that victims rarely withhold impact information. However, a major finding emerging from the victim survey is that about half of the victims stated they did not provide information for a VIS when in reality they did provide VIS material.

The victims who stated they provided VIS information were mostly victims of offences against the person. Most of the victims who provided input for VIS did so 'to ensure that justice was done.' Only a small minority (5%) provided the input with the purpose of influencing the sentence. Yet, almost three quarters of victims who stated they provided VIS material expected the VIS to have an impact on the sentence. Less than half of them felt that their input had an effect on the sentence. For about a third of the victims who stated they provided VIS material, expectations concerning the effect of VIS on sentencing went unfulfilled.

Analysis of the factors related to victim satisfaction with justice did not identify the provision of VIS material as one of these factors. For victims who knew the sentence of their offender (about half of the sample), satisfaction with the sentence was the major determinant of their satisfaction with justice. For victims who did not know the sentence, satisfaction with justice was predicted by the type of victimisation (personal crime) and their level of distress. Whereas providing VIS material did not affect victim satisfaction with justice, unfulfilled expectations concerning VIS effect on sentencing were associated with increased victim dissatisfaction with the sentence. Providing victims with a realistic range of penalties and with explanations about the considerations judges use when they impose sentences may reduce victim dissatisfaction.

Almost half of the victims who stated that they provided VIS material felt relieved or satisfied after providing the information, and for the other half, providing VIS material did not make any difference. Only a small number of victims (6%) were upset or disturbed by this experience. The overwhelming majority of victims who provided information stated they wanted or agreed to the VIS being used in sentencing. Practically all these respondents felt that if they were a victim again they would want a VIS presented in court.

Over two thirds of the victims who knew the sentence of their offender thought the sentence was too lenient. Victims wanted a greater use of, and longer, prison sentences. They also wanted more license revocations, community service orders, restitution and compensation orders than the courts imposed. Over three quarters of the victims believed that the system does not give adequate attention and help to victims. They wanted more information and efficient processing of the case. Yet, almost all victims

stated they would report victimisation and cooperate with law enforcement efforts if they were victimised again.

## Implementation of the VIS

The data reveal a very uneven implementation of VIS. All legal professional groups noted that the quality of information presented to them was highly variable in its thoroughness, often inadequate in detail, and almost always without follow-ups or updates for sentencing purposes. The latter finding was confirmed by the victim survey which showed that two-thirds of the victims who indicated they provided VIS material stated that the VIS was never updated. From the victim perspective, the fact that almost half of the victims did not know that they provided VIS material is also indicative of a problematic implementation of VIS. If one of the purposes of VIS is to provide victims with a voice in the process, or an opportunity to convey the impact of the crime on them, victims should be aware of exercising this right when they do so. In justice needs to be seen to be done, for these victims the VIS right has yet to materialise.

The ideal person or agency to prepare VIS was disputed. Generally, the legal professionals objected to victims completing their own VIS, and emphasised the importance of an independent agency charged with VIS preparation. Some thought a professional (medical, psychological, etc.), whose expertise would normally not be questioned, should be assigned the task. A reliance on experts for the majority of crimes, or even the more serious ones, however, is potentially problematic. As several judges noted, it will result in unjustifiably slower and more expensive justice. Further, judges believe that they are already educated about the effects of crimes on victims. Several judges therefore suggested that only in very unusual cases, those with victims exhibiting uncommon or unique reactions, is there a need for an expert to testify.

Differences of opinion also surfaced among the legal professionals concerning determining responsibility for the minimal implementation of VIS. Judges, Crown prosecutors and some police prosecutors blamed police investigating officers who are charged with VIS preparation. The police, it was suggested, treated VIS as only a formality and simply did not appreciate the importance of VIS. Some judges also viewed prosecutors as negligent in their duty to provide VIS. A few prosecutors thought that judges do not consider VIS in their decisions, so additional demands should not be placed on already overburdened police. Defence lawyers know that vague or terse VIS are in the defence interest, so they did not concern themselves with this issue.

Despite a common observation that the current implementation of VIS is highly problematic, the sentiment of the legal professionals was that VIS provide the symbolic recognition and voice that victims deserve, and that through VIS the system further approaches a balanced justice. The victim survey confirmed that victims want to present to the judge the crime's impact on them, and that they view their input as relevant and necessary for 'justice.' The legal professionals also agreed that victims should have input into sentencing, but disagreed about its kind, form, scope and who should prepare it. Most objected to victims expressing a view regarding the appropriate court sentence for the offender and were generally reluctant to allow victims to complete VIS on their own.

## Conclusion

The findings from this evaluation provide evidence to dispel several arguments raised against VIS, but at the same time has revealed problems in its present implementation. The study provides valuable empirical information about the effects of the VIS on victims, on sentencing and on the legal profession. This broad focus mitigates against undue reliance on exceptional cases, atypical situations or theoretical possibilities in the assessment of public policy. In the final analysis, however, whether one interprets the results of the South Australian evaluation study as supporting VIS depends heavily on one's philosophical stance and moral conviction concerning the need for victim integration in the criminal justice process.

The results confirm findings from other studies concerning the conditions necessary for effective law reform. For successful legal change, the support of all organisational parts involved in the reform is necessary. Support is generally forthcoming where participants are convinced about the need for change and where accompanying resources to effect the reform reinforce the perception of its significance. In the present case, neither condition was present. The legal profession had (and still has) reservations about victims' integration in the criminal justice process, and doubts concerning the VIS utility as a vehicle for presenting victim harm to the court. The police, to whom the task of collecting VIS material was assigned, perceived a lack of resources for VIS and interpreted this as a statement about VIS importance. Further, the reform, as spelled out in the law, did not change drastically the way in which the system recognises victims' harm. Although the law mandated the presentation of VIS, it did not confer any recognised legal status on it (such as a deposition), nor did it specify any sanctions for non-compliance.

The evaluation confirms the uncertainty associated with reforms that, to an unspecified extent, challenge traditions and established patterns within the criminal courts. We are sympathetic to the claim that 'Victims rights cannot be grafted onto the existing system without generally remaining simply cosmetic, nor can they be made potent without creating profound changes through the entire system' (Villmoare and Neto, 1987 as quoted in Kelly, 1990 p184). The South Australian implementation of VIS has not led to any radical change in sentencing process or outcomes and indeed the consideration of victim harm was not seen to violate established principles of sentencing (Sumner, 1987). As a consequence, the reform presents a dilemma to both opponents and supporters of VIS. Opponents, while taking relief from the absence of any aggregate effects on sentencing, may claim that any benefits of VIS can be achieved by other means which would guarantee the integrity of established sentencing principles. Supporters on the other hand may doubt that the South Australian system goes far enough in entrenching the victim's place in the sentencing process, even though the VIS seems to have symbolised greater recognition of this place.

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## Appendix A: Section 7 of the Criminal Law (Sentencing) Act 1988

Prosecutor to furnish particulars of victim's injury, etc.

7. (1) Subject to subsection (2), the prosecutor must, for the purpose of assisting a court to determine sentence for an offence, furnish the court with particulars (that are reasonably ascertainable and not already before the court in evidence or a pre-sentence report) of -

(a) injury, loss or damage resulting from the offence; and

(b) injury, loss or damage resulting from-

(i) any other offence that is to be taken into account specifically in the determination of sentence; or

(ii) a course of conduct consisting of a series of criminal acts of the same or a similar character of which the offence for which sentence is to be imposed forms part.

(2) The prosector may refrain from furnishing the court with particulars of injury, loss or damage suffered by a person if the person has expressed a wish to that effect to the prosecutor.

(3) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

# VICTIM IMPACT STATEMENT

(1) Offender's Name.....

(2) Charge(s) ..... (3) .A/P Number .....

.....

(4) **VICTIM** (Separate form for each victim)

(5) ADDITIONAL VICTIMS YES/NO (6) No.....of.....

(7) Name.....

(8) Age (D.O.B.) ..... (9) Occupation.....

---

(10) Victim requests Prosecutor to refrain from furnishing particulars of injury loss or damage as part of sentencing process YES/NO

(11) COMPENSATION SOUGHT YES/NO See (12) INJURY (18) OTHER EXPENSES (23) PROPERTY

└┘ └┘ └┘

(12) **Injury Section**

Full details of injuries (including physical, psychological and shock etc.); brief details of treatment; time spent in hospital; specialist treatment; has treatment ended; residual effects. Annex summary of injuries where appropriate. Annex all doctors reports if available.

---

(13) Where doctor has supplied report: Name, address and contact telephone number of Doctor(s):

.....

(14) Will Victim consent to access to medical and other reports YES/NO

---

(15) Time away from work..... (16) Loss of earning $_____

(17) After Tax $_____

---

(18) **Other Expenses**

Damage to clothes; spectacles; tools of trade etc. Employment of persons because of injury etc. Annex receipts/valuations.

---

(19) Workers Compensation received/awarded YES/NO (20) If yes amount $_____

(21) Other Compensation received/awarded YES/NO (22) If yes amount $_____

---

(23) **Property Section**

(a) Full details of property stolen and not recovered, including the replacement value. Receipts/ valuations to be annexed. Include whether insurance has been paid out, excess details etc.

(b) Full details of property damaged or stolen and recovered in damaged condition, including estimate of value and cost of replacement. Receipts/valuations to be annexed.

---

(24) Details of any third party interested in the property (e.g. Insurance Company, Television Hire Company, Finance Company etc.

(25) Name and address of interested party .....

.....

---

(26) Restitution offered/not offered.

(27) Details of accused's ability to pay compensation (e.g. employment status, assets etc.) if known:

.....

.....

.....
Name

Rank..... I/D.....

Posting.....

## Appendix C: Characteristics of victims in survey by response type

### Response type by offence and gender (number)

| Response | Person | | Sex | | Robbery | | Theft | | Other | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | F | M | F | M | F | M | F | M | F | M | |
| Answered | 28 | 61 | 18 | 2 | 29 | 28 | 55 | 179 | 7 | 20 | 427 |
| Refused | 6 | 11 | 2 | 1 | 4 | 2 | 7 | 30 | 1 | 3 | 67 |
| Invalid Address | 22 | 22 | 28 | 3 | 11 | 9 | 24 | 46 | 6 | 2 | 173 |
| No Reply | 10 | 26 | 20 | 3 | 6 | 11 | 22 | 65 | 6 | 11 | 180 |
| TOTAL | 66 | 120 | 68 | 9 | 50 | 50 | 108 | 320 | 20 | 36 | 847 |

### Response type by offence and gender (percentage)

| Response | Person | | Sex | | Robbery | | Theft | | Other | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | F | M | F | M | F | M | F | M | F | M | |
| Answered | 42 | 51 | 27 | 22 | 58 | 56 | 51 | 56 | 35 | 56 | 50 |
| Refused | 9 | 9 | 3 | 11 | 8 | 4 | 7 | 9 | 5 | 8 | 8 |
| Invalid Address | 33 | 18 | 41 | 33 | 22 | 18 | 22 | 14 | 30 | 6 | 20 |
| No Reply | 15 | 22 | 29 | 33 | 12 | 22 | 20 | 20 | 30 | 31 | 21 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

### Response type by offence and vis (number)

| Response | Person | | Sex | | Robbery | | Theft | | Other | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | F | M | F | M | F | M | F | M | F | M | |
| Answered | 12 | 77 | 2 | 18 | 9 | 48 | 48 | 186 | 4 | 23 | 427 |
| Refused | 4 | 13 | 1 | 2 | 3 | 3 | 13 | 24 | 2 | 2 | 67 |
| Invalid Address | 11 | 33 | 10 | 21 | 5 | 15 | 28 | 42 | 4 | 4 | 173 |
| No Reply | 10 | 26 | 4 | 19 | 5 | 12 | 19 | 68 | 5 | 12 | 180 |
| TOTAL | 43 | 149 | 17 | 60 | 21 | 79 | 108 | 320 | 15 | 41 | 847 |

### Response type by offence and vis (percentage)

| Response | Person | | Sex | | Robbery | | Theft | | Other | | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | F | M | F | M | F | M | F | M | F | M | |
| Answered | 32 | 52 | 12 | 30 | 43 | 61 | 44 | 58 | 27 | 56 | 50.4 |
| Refused | 11 | 9 | 6 | 3 | 14 | 4 | 12 | 8 | 13 | 5 | 7.9 |
| Invalid Address | 30 | 22 | 59 | 35 | 24 | 19 | 26 | 13 | 27 | 10 | 20.4 |
| No Reply | 27 | 17 | 24 | 32 | 24 | 15 | 18 | 21 | 33 | 29 | 21.3 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |

## Appendix D: Multivariate statistical analyses

A number of statistical analyses were undertaken in order to establish factors related to:

- Victims knowing the outcome of their court case (Model 1);
- Victims stating that they completed a VIS (Model 2);
- Satisfaction with the criminal justice system when victims do not know the outcome of their court case (Model 3);
- Satisfaction with the criminal justice system when victims do know the outcome of their court case (Model 4);
- Victim satisfaction with sentence imposed on the offender (Model 5).

Three types of statistical procedures were used to investigate these questions. These were Pearson Correlations, Logistical Regression and Multiple Regression. Pearson Correlations were performed in each of the analyses in order to identify a sub-set of potentially relevant factors for inclusion in the regression models. Logistic Regression models were used when the dependent variable (in our case firstly whether a VIS was completed and secondly whether victims knew the outcome of their court case) was dichotomous. Multiple Regression Analysis was performed when the dependent variable (in our case firstly level of satisfaction with the criminal justice system and secondly level of satisfaction with the sentence) was recorded at an ordinal level of measurement.

The interpretation of the coefficients from the regression models depends on whether it is a Logistic Regression or a Multiple Regression model when using the particular statistical software package (SAS) which was used in the present study. In a Logistic Regression model, using SAS, a positive coefficient for a particular factor reflects a negative relationship with the dependent variable and conversely a negative coefficient reflects a positive relationship to the dependent variable. For example in the Table B:1 the coefficient for relationship to the offender is -1.20 and this is coded with 0 equal to stranger and 1 equal to known. The dependent variable is whether the victim knew the outcome of the court case and this is coded 0 equals no and 1 equals yes. The significant negative coefficient informs us that when the offender is known to the victim the victim is more likely to know the outcome of their court case than when the offender is not known (ie a stranger) to the victim. In a multiple regression model, using SAS, the direction of the coefficients have the opposite interpretation.

The levels of a number of variables were re-coded for the multivariate analyses and the categories of each factor in the regression equations are shown in the table of results for each model.

The information for each model estimated show the results from a 'full model' where all variables potentially relevant to the dependent variable were entered to the equation and a 'stepwise model' where only variables meeting statistical significance are entered to the models.

**Model 1 Factors associated with victims knowing the outcome of their court case.**

In Chapter 3, section: 'Involvement with the criminal justice system', descriptive statistics were provided which indicated that approximately half the members of the sample did not know the outcome of their court case. The aim of this first analysis was to establish the factors associated with victims knowing the outcome of their court case using a logistic regression model.

The results from the 'full model' and the 'stepwise model' are shown in Table B:1. Statistically significant coefficients were found for the variable relationship to offender, attending court and offence type for both the 'full model' and the 'stepwise model'. In addition the factor relating to whether the victim received restitution although not significant in the 'full model' was significant in the 'stepwise model'.

The direction of the coefficients were all negative indicating (for each of the factors) that if the offender was known to the victim, or the victim attended court, or the victim was a victim of an 'Offence against the person' or the victim received compensation/restitution they were more likely to know the outcome of their court case.

**Table B:1 Logistic regression: coefficients and related statistics for whether victims stated they knew the outcome of the court case.**

| Variable | Full Model | | | Stepwise Model | | |
|---|---|---|---|---|---|---|
| | b | SE | $\chi 2$ | b | SE | $\chi 2$ |
| Relation to Offender (0=St 1=Kn) | -1.20 | 0.30 | 16.0 *** | -1.25 | 0.28 | 20.2 *** |
| Attended Court (0=No 1=Yes) | -0.59 | 0.24 | 5.9 ** | -0.53 | 0.23 | 5.1 ** |
| Offence Type (0=Prop 1=Person) | -0.88 | 0.28 | 10.1 *** | -0.95 | 0.24 | 16.1 *** |
| Restitution (0=No 1=Yes) | -0.47 | 0.29 | 2.62 | -0.56 | 0.28 | 4.0 * |
| Gender (0=Female 1=Male) | -0.30 | 0.27 | 1.30 | | | |
| VIS (0=No 1=Yes) | -0.32 | 0.25 | 1.69 | | | |
| Prior Victimisation (0=No 1=Yes) | -0.34 | 0.26 | 1.68 | | | |
| Level of Distress | -0.07 | 0.06 | 1.65 | | | |
| Poor Fam. Support (0=Yes 1=No) | -0.24 | 0.27 | 0.78 | | | |
| Age of Victim (Years) | -0.003 | 0.01 | 0.12 | | | |
| VOC Booklet (0=No 1=Yes) | 0.12 | 0.24 | 0.26 | | | |
| Emp Status (0=Employed 1=Oth) | 0.34 | 0.31 | 1.16 | | | |
| Educational Qualifications. | 0.18 | 0.16 | 1.22 | | | |
| Seriousness of Offence | -0.12 | 0.13 | 0.80 | | | |
| Intercept | 1.53 | 0.08 | | 0.92 | 0.19 | |
| -2LogL | | 431.1 | | | 509.3 | |

* p<0.05 ** p<0.01 *** p<0.001

**Model 2 Factors associated with victims stating that they provided information for a VIS.**

In Chapter 3, section: 'VIS details' descriptive statistics were provided which indicated that only 36% of victims stated that they had provided information for a VIS. The aim of this second analysis was to establish the factors associated with victims stating that they had provided information for a VIS.

The results from this analysis are presented in Table B:2. The results show victims were more likely to have stated that they provided information for a VIS if they were victims of an 'offence against the person' or when they indicated that they had received compensation/restitution.

**Table B:2 Logistic regression: coefficients and related statistics for whether victims stated they provided information for a VIS.**

| Variable | Full Model | | | Stepwise Model | | |
|---|---|---|---|---|---|---|
| | b | SE | $\chi 2$ | b | SE | $\chi 2$ |
| Relation to Offender (0=St 1=Kn) | -0.31 | 0.25 | 1.62 | | | |
| Attended Court (0=No 1=Yes) | 0.20 | 0.23 | 0.78 | | | |
| Offence Type (0=Prop 1=Person) | -0.60 | 0.26 | 5.24 * | -0.61 | 0.22 | 7.66 ** |
| Restitution (0=No 1=Yes) | -0.49 | 0.25 | 3.58 | -0.54 | 0.25 | 4.70 * |
| Gender (0=Female 1=Male) | 0.05 | 0.25 | 0.04 | | | |
| Prior Victimisation (0=No 1=Yes) | -0.31 | 0.25 | 1.62 | | | |
| Level of Distress | -0.04 | 0.05 | 0.58 | | | |
| Poor Fam. Support (0=Yes 1=No) | -0.04 | 0.26 | 0.03 | | | |
| Age of Victim (Years) | -0.001 | 0.009 | 0.02 | | | |
| VOC Booklet (0=No 1=Yes) | -0.31 | 0.23 | 1.84 | | | |
| Emp Status (0=Employed 1=Oth) | 0.03 | 0.29 | 0.01 | | | |
| Educational Qualifications. | -0.14 | 0.15 | 0.93 | | | |
| Seriousness of Offence | -0.12 | 0.13 | 0.89 | | | |
| Intercept | 2.13 | 0.78 | | 0.90 | 0.16 | |
| -2LogL | | 468.5 | | | 478.9 | |

* p<0.05 ** p<0.01 *** p<0.001

## Model 3 Factors associated with satisfaction with the criminal justice system when victims do not know the outcome of their court case.

As indicated earlier (see Model 1) approximately half of the sample did not know the outcome of the court case. The aim of the third model was to establish factors which were associated with victim's satisfaction with the criminal justice system when they do not know the outcome of the court case. The results from this regression are shown in Table B:3. The results show victims were more likely to be satisfied with the criminal justice system if they were a victim of an 'offence against the person'. They were less likely to be satisfied with the criminal justice system if their level of distress was higher.

**Table B:3 Multiple regression: coefficients and related statistics for satisfaction with the criminal justice system, when victims do not know the outcome of the court case**

| Variable | Full Model | | | Stepwise Model | | |
|---|---|---|---|---|---|---|
| | b | SE | T | b | SE | F |
| Relation to Offender (0=St 1=Kn) | -0.35 | 0.28 | -1.26 | | | |
| VIS (0=No 1=Yes) | 0.20 | 0.19 | 1.02 | | | |
| Offence Type (0=Prop 1=Person) | 0.51 | 0.22 | 2.32 * | 0.42 | 0.20 | 13.59 *** |
| Restitution (0=No 1=Yes) | 0.02 | 0.24 | 0.08 | | | |
| Gender (0=Female 1=Male) | 0.01 | 0.21 | 0.07 | | | |
| Prior Victimisation (0=No 1=Yes) | -0.03 | 0.19 | -0.15 | | | |
| Level of Distress | -0.14 | 0.05 | -2.91 ** | -0.17 | 0.04 | 4.47 * |
| Age of Victim (Years) | -0.009 | 0.008 | 1.15 | | | |
| VOC Booklet (0=No 1=Yes) | 0.18 | 0.19 | 0.98 | | | |
| Emp Status (0=Emp 1=Other) | -0.008 | 0.24 | -0.03 | | | |
| Educational Qualifications | -0.004 | 0.12 | -0.04 | | | |
| Seriousness of Offence | -0.06 | 0.10 | -0.62 | | | |
| Intercept | 2.73 | 0.56 | | | | |
| $R^2$ | 0.14 | | | 0.10 | | |

* p<0.05 ** p<0.01 *** p<0.001

**Model 4 Factors associated with satisfaction with the criminal justice system when victims know the outcome of their court case.**

Model 4 shows the factors related to satisfaction with the criminal justice system by victims who knew the outcome of the court case. The results from this regression are printed in Table B:4. The results show that victims who are more satisfied with the sentence imposed on the offender are more likely to be more satisfied with the criminal justice system. Other variables were not significant in the presence of the variable pertaining to satisfaction with the sentence.

**Table B:4 Multiple regression: coefficients and related statistics for satisfaction with the criminal justice system, when victims know the outcome of the court case**

| Variable | Full Model | | | | Stepwise Model | | | |
|---|---|---|---|---|---|---|---|---|
| | b | SE | T | | b | SE | F | |
| Satisfaction with Sentence | 0.52 | 0.07 | 7.28 | *** | 0.60 | 0.06 | 97.46 | *** |
| Relation to Offender (0=St 1=Kn) | -0.23 | 0.18 | -1.26 | | | | | |
| VIS (0=No 1=Yes) | 0.25 | 0.19 | 1.31 | | | | | |
| Offence Type (0=Prop 1=Person) | 0.32 | 0.19 | 1.65. | | | | | |
| Restitution (0=No 1=Yes) | 0.03 | 0.18 | -0.14 | | | | | |
| Gender (0=Female 1=Male) | -0.23 | 0.18 | -1.30 | | | | | |
| Prior Victimisation (0=No 1=Yes) | -0.15 | 0.18 | -0.84 | | | | | |
| Level of Distress | -0.003 | 0.04 | 0.07 | | | | | |
| Age of Victim (Years) | -0.004 | 0.007 | 0.59 | | | | | |
| VOC Booklet (0=No 1=Yes) | -0.13 | 0.17 | -0.75 | | | | | |
| Emp Status (0=Emp 1=Other) | -0.07 | 0.20 | -0.36 | | | | | |
| Educational Qualifications | 0.13 | 0.12 | 1.08 | | | | | |
| Seriousness of Offence | -0.13 | 0.10 | -1.32 | | | | | |
| Opinion of Offender | 0.10 | 0.20 | 0.53 | | | | | |
| Unfilled Expectat. (0=No 1=Yes) | -0.50 | 0.30 | -1.67 | | | | | |
| Intercept | 2.28 | 0.75 | | | 1.31 | 0.16 | | |
| $R^2$ | 0.39 | | | | 0.36 | | | |

* p<0.05** p<0.01 *** p<0.001

**Model 5 Factors associated with victim satisfaction with the sentence imposed on the offender.**

In Chapter 3, section: 'Involvement with the criminal justice system' descriptive statistics were provided which indicated that 70% of victims believed that the sentence imposed on the offender was too lenient. The aim of the final model was to establish factors which are associated with victim's satisfaction with the sentence imposed on the offender. The results from this regression are presented in Table B:5. The results show victims were more satisfied with the sentence if the offender was known to them. They were also more likely to be satisfied if they were a victim of an 'offence against the person'. Older victims and victims with higher distress scores were less likely to be satisfied. Victims who expected the VIS to have an effect on the sentence and who felt it didn't were also less likely to be satisfied.

**Table B:5 Multiple regression: coefficients and related statistics for satisfaction with the sentence imposed on the offender.**

| Variable | Full Model | | | Stepwise Model | | |
|---|---|---|---|---|---|---|
| | b | SE | T | b | SE | F |
| Relation to Offender (0=St 1=Kn) | 0.40 | 0.19 | 2.11 | 0.38 | 0.18 | 4.76* |
| VIS(0=No 1=Yes) | 0.34 | 0.20 | 1.75 | | | |
| Offence Type (0=Prop 1=Person) | 0.65 | 0.19 | 3.36*** | 0.66 | 0.18 | 13.24*** |
| Restitution (0=No 1=Yes) | -0.17 | 0.19 | -0.90 | | | |
| Gender (0=Female 1=Male) | -0.07 | 0.18 | -1.39 | | | |
| Prior Victimisation (0=No 1=Yes) | -0.12 | 0.19 | -0.6 | | | |
| Level of Distress | -0.13 | 0.04 | -3.26** | -0.14 | 0.04 | 15.14*** |
| Age of Victim (Years) | -0.02 | 0.007 | 2.66** | -0.02 | 0.006 | 7.56** |
| VOC Booklet (0=No 1=Yes) | -0.08 | 0.17 | -0.43 | | | |
| Emp Status (0=Emp 1=Other) | -0.10 | 0.21 | -0.48 | | | |
| Educational Qualifications | 0.09 | 0.12 | 0.71 | | | |
| Seriousness of Offence | -0.28 | 0.10 | -2.86** | -0.28 | 0.09 | 8.93** |
| Opinion of Offender | 0.003 | 0.20 | 0.02 | | | |
| Unfilled Expectat. (0=No 1=Yes) | -1.20 | 0.30 | -3.96*** | -1.0 | 0.28 | 13.26*** |
| Intercept | 2.70 | 0.76 | | 2.85 | 0.46 | |

* p<0.05** p<0.01 *** p<0.001