Briefing Note

Victim Impact Statements

by

Gareth Griffith

No 007/95

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ISSN 1321-2559
ISBN 0 7310 5900 X

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March 1995

Briefing Note is published by the NSW Parliamentary Library

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1. INTRODUCTION

The role of the victim in the criminal justice system has attracted increasing attention in recent years. The point is often made that "For too long victims were the forgotten element in the criminal equation"[1]; introducing the Crimes (Sentencing) Amendment Bill and other cognate legislation in 1987, the then Premier, Mr Unsworth, commented that "The victims of crime have often been called the Cinderellas of the criminal justice system. They are the forgotten participants".[2]

A range of arguments are encountered in the discussion concerning victims of crime. Often the debate has been expressed in terms of the need to redress the balance between victims and offenders. Reference is made to the alienation of the victim from the criminal justice system. It is said that the system simply could not operate without the cooperation of the victim in reporting crime, in furnishing evidence, in identifying the offender, and in acting as a witness in court. Yet, the victim has no effective formal part to play in the criminal process, at least in the sense that the victim has no procedural rights in that process. Edna Erez explains that in adversary legal systems, such as Australia, England or the USA, "Victims have no formally recognised role in the trial of their offender, and no mechanism to voice their concerns and feelings regarding the crime and its impact on them".[3] In a similar vein the NSW Task Force on Services for Victims of Crime commented in its 1987 report that victims had not been forgotten by the criminal justice system, but rather their needs have been neglected: "The criminal justice system is adversarial by nature: the State and the offender are the primary parties. The State is responsible for identifying, prosecuting and punishing the offender. The victim's involvement is limited to that of witness".[4]

It was not always so. Under Anglo-Saxon law little distinction was made between public and private wrongs and it was only with the growth of royal jurisdiction in the twelfth century that direct restoration to the victim was

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1 NSWPD 27 October 1994, p 4788.

2 NSWPD, 12 November 1987, p 15915.

3 E Erez, *Trends and Issues in Crime and Criminal Justice, No 33: Victim Impact Statements*, Australian Institute of Criminology, 1991, p 1. Erez adds, "Private prosecution has been virtually abandoned and the public prosecutor has monopoly over the criminal justice process".

4 NSW Task Force on Services for Victims of Crime, *Report and Recommendations*, February 1987, p 28.

sacrificed to the wider purposes of securing the "King's peace".[5] Over the centuries the original objective of the criminal law was thus transformed, from redress for wrong done to individuals, to punishment of the wrongdoer with a view to maintaining public order.

Victim impact statements are one means by which the contemporary concern about the rights of victims may be addressed and in a way, according to their proponents, which is consistent with established legal principles. Others claim their introduction would disrupt the balance of our adversarial criminal justice system.

The main purpose of this briefing note is to set out the arguments for and against victim impact statements and to review their implementation. It starts by presenting a few 'working definitions' of key terms and proceeds to offer an overview of the legal status of victim impact statements in NSW and other Australian jurisdictions.

2. DEFINITIONS

Victim impact statements: These were defined by the Community Law Reform Committee of the ACT to mean: "a statement setting out the full effects - physical, psychological, financial and social - suffered by a victim as a result of a crime. The statement is prepared for placement before the court engaged in sentencing an offender for the crime in question so that the court may fully understand the effects of the crime on the victim".[6] Following this, the *Acts Revision (Victims of Crime) Act 1994* (ACT) defined victim impact statements to mean "a statement, signed by a victim, containing particulars of any harm suffered by the victim as a result of an offence" (section 12).[7] The approach here is relatively broad, with the term "harm" being defined to include economic loss. This is in contrast to the position in NSW where, as noted below, the "injury" referred to in a victim impact statement does not extend to financial loss.

Essentially, victim statements constitute a mechanism for presenting information as to the effects of a crime on a victim to the court following the

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[5] L Zedner, "Reparation and Retribution: Are They Reconcilable?", [March 1994] 57 *The Modern Law Review* 228, p 231.

[6] The Community Law Reform Committee of the ACT, *Report No 6: Victims of Crime*, August 1993, p 37.

[7] The *Acts Revision (Victims of Crime) Act 1994* amended the *Crimes Act 1900* by, among other things, inserting section 429 AB into the Principal Act. To date, the section has not been proclaimed to commence.

conviction of an offender. This information might be presented in a number of forms, including the presentation of affidavits sworn by the victim or its inclusion as part of a pre-sentence report.[8] It seems that in some jurisdictions in the United States victims have been granted the right to deliver an oral statement at the time of sentencing.[9]

Victims of crime: Defining the term "victims of crime" is acknowledged to be a more difficult proposition.[10] Turning to the NSW Task Force on Services for Victims of Crime again, the point can be made that the concept "victim of crime" is not as straightforward or self-evident as it may seem initially. The Task Force gave two reasons for this: "First, the notion of crime varies from place to place and at different points in time. Second, it is not always self-evident who should be regarded as the direct victim or in fact whether the effect on those other than the direct victim should be considered".[11] A specific issue is whether the concept of victims of crime should include those "secondary" victims who may be financially or psychologically dependent on the direct victim of the criminal incident, however that may be defined. Should corporate and white collar crimes be incorporated into the victims debate in this context? Should the concept of victims of crime be limited to individuals or can it encompass, where appropriate, business and Government organisations? Also, there is the further argument that offenders can themselves be looked upon as victims.

Whilst recognising such complexities, the Task Force said it had decided to confine itself to victims of "traditional" crimes, such as theft, burglary, assault, rape and robbery, thereby adhering to the legal definition of crime as its frame of reference. Following this approach, it can be said that a "victim of crime" needs to show that harm, loss or damage occurred as a result of a violation of a criminal law. That approach is in fact based on that found in the United Nations Declaration of Basic Principles of Justice for Victims of Crime

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[8] Tasmanian Department of Justice, *Report of the Inter-Departmental Committee on Victims of Crime*, December 1989, p 33.

[9] E Erez, "Victim Participation in Sentencing: Rhetoric and Reality", (1990) 18 *Journal of Criminal Justice* 19-31, p 27.

[10] M O'Connell, "Who May Be Called A Victim Of Crime?", (1992) 1 *Journal of Australian Society of Victimology* 3, pp 15-23. O'Connell reviews the difficulties involved in defining "victim of crime".

[11] NSW Task Force on Services for Victims of Crime, op cit, p 19.

and Abuse of Power (1985),[12] which also provides the framework for the definition of "victim of crime" in the NSW *The Charter of Victims' Rights* (1989). The Charter states: "For the purposes of the Charter, a victim of crime is a person who suffers physical or emotional harm or loss or damage to property through a criminal offence. Where an offence results in death, this includes members of the deceased's immediate family".

3. VICTIM IMPACT STATEMENTS IN NSW

At present there is no statutory right in force in NSW for a victim of crime to make an impact statement to the court. The *Crimes (Sentencing) Amendment Act 1987* included a provision allowing the tendering of a written victim impact statements to the Supreme Court or the District Court before sentencing persons for offences involving personal violence. Section 447C was inserted into the *Crimes Act 1900* for this purpose. To date, however, that section has not been proclaimed.

The "right" to make an impact statement under section 447C (1) would be a qualified one in the sense that it would be left to the discretion of the court to "receive and consider" such a statement if it "considers it appropriate to do so". Under these circumstances an impact statement may be received "after a person has been convicted of the offence and before the court determines the punishment for the offence". Section 447C (2) defines a victim impact statement to mean "a statement containing particulars of any injury by any victim as a result of the offence". The victim's consent would be required before a victim impact statement could be tendered to the court under section 447C (4) (a) which provides that the court shall not receive or consider a statement if "the victim or any of the victims to whom the statement relates (or any person who has a prescribed relationship to the victim or any of the

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[12] The UN Declaration defines "victims of crime" as follows:

> "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
>
> A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

victims) objects to it being given to the court". Certain key words are then defined under section 447C (6), including:

> "injury", in relation to an offence, means bodily harm, and includes pregnancy, mental shock and nervous shock resulting from the offence;
>
> "offence" means an indictable offence that involves an act of actual or threatened violence (including sexual assault) and that is being dealt with on indictment;
>
> "victim", in relation to an offence, means a person:
>
> (a) against whom the offence was committed; or
>
> (b) who was a witness to the act of actual or threatened violence,
>
> and who has suffered injury as a result of the offence.

"Victim" is defined relatively widely, therefore, to include both the "direct" victim and any witness to the criminal act, provided some injury resulted from the commission of the offence. Provision is not made for a situation where, at the time of the conviction, the victim is dead or otherwise physically incapable of providing a statement. This was addressed in the Sentencing Legislation (Amendment) Bill 1994 which proposed the inclusion of a provision in section 447C of the *Crimes Act* to enable victim impact statements to be made by or on behalf of family representatives of deceased victims or victims who are under some incapacity. The bill further proposed amending section 447C to provide that the absence of a victim impact statement is not to give rise to an inference that an offence had little or no impact on a victim. Also, the bill proposed an amendment to section 447C requiring the Supreme Court, in its consideration of an application under section 13A of the *Sentencing Act 1989*, to substitute a minimum and additional term of imprisonment for an existing life sentence, to receive and consider any victim impact statement tendered to it, provided that the statement has been prepared after the imposition of the prisoner's life sentence. In addition, it was said in the Second Reading debate that regulations were to be introduced to provide that the statements would be in writing and prepared with the assistance of appropriate professional people - counsellors, psychologists and psychiatrists.[13] What this seems to imply is

[13] NSWPD 22 November 1994, p 5476. The comment was made by Hunt J in the NSW Court of Criminal Appeal in 1991 that "Victim impact statements are now to be produced by trained personnel for courts in all

that victims will have access to professional assistance if they so desire.

The Attorney General, Hon JP Hannaford MP, indicated in the Second Reading Speech for the bill that it was the Government's intention to have the amended section 447C proclaimed.[14] In the event the bill passed through the Legislative Council but did not progress beyond the First Reading stage in the Legislative Assembly.

For the sake of completeness, it can be noted that the bill dealt in addition with certain other cognate matters. In particular, the bill would have amended the *Sentencing Act 1989* to empower the victims of serious offenders to make submissions to the Offenders Review Board (which was to be re-named the Parole Board). Under the bill the Board would have been required to consider such submissions before deciding whether or not to release a serious offender on parole. The bill defined a victim to mean: the actual victim of an offence committed by the serious offender; or a family representative of the victim, but only if the victim was dead, under any incapacity or was in such circumstances as may have been prescribed by the regulations. Basically, then, the concern was with "primary" victims or their family representatives. The submissions were to have been made in writing or orally and were to have been made by the victim, or by a family representative of the victim if the victim was dead or under any incapacity. As the Attorney General said in the Second Reading Speech, "Victims will not be entitled to call or examine witnesses, thereby ensuring that, as far as possible, the hearings will be conducted in a non-adversarial manner".[15]

The Minister explained that these submissions would not be "repeated victim impact statements" but submissions "about the management of the prisoner, putting forward material relevant to whether the prisoner should be reclassified or released and dealt with by the Board in accordance with the principles of procedural fairness".[16]

As noted the bill did not proceed beyond the First Reading stage in the Legislative Assembly. Also, section 447C of the *Crimes Act* has remained

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child abuse cases" - *R v King* (unreported NSW Sup Ct, Hunt J, 20 August 1991). The comment was made in the light of the administrative guidelines governing the use of victim impact statements, discussed on page 9.

[14] NSWPD 27 October 1994, p 4790.

[15] Ibid, p 4789.

[16] NSWPD, 22 November 1994, p 5476.

unproclaimed. The result is that the admissibility of victim impact statements is dependent upon common law sentencing principles while the use of victim impact statements is governed by Guideline 15 of the Director of Public Prosecution's Policy and Guidelines and Article 17 of the Charter of Rights for Victims of Crime (1989). The Charter has no legislative effect. Rather, it operates as a set of administrative guidelines formulated for the purpose of establishing standards for the fair treatment of victims of crime in the criminal justice system. Many of its provisions set out the rights of victims during the criminal justice process, including Article 17 which provides: "The NSW Government recognises the right of victims of crime in matters relating to charges of sexual assault or other serious personal violence, to have the prosecutor make known to the court the full effect of the crime upon them". Guideline 15 of the Prosecution Policy and Guidelines of the NSW DPP states:

> In preparing cases involving charges of personal violence, including sexual assault, a statement should be obtained, with the consent of the victim (or if the victim is less than 12 years of age the consent of the parent or guardian) from an appropriate person evaluating the impact of the offence involved on any victim. When presenting evidence before the Court on the question of sentence, evidence of the effects of the offence on the victim should be tendered to the Court. If this evidence does not form part of the committal papers a copy of the statement should be provided to the defence as soon as possible.

4. VICTIMS' RIGHTS AND VICTIM IMPACT STATEMENTS IN AUSTRALIA

(i) The victims movement

In Australia as elsewhere a re-appraisal of the role and rights of crime victims in the criminal justice system has taken place over the past two decades or so. The interest shown in victim impact statements is but one aspect of this re-appraisal, focussing as it does on the role of the victim in the sentencing process. The wider debate about the rights and needs of victims of crime has of course been many-faceted, encompassing, among other things, claims for adequate support services for victims, the right to be kept informed about the charges laid against the offender and other matters, plus the right to satisfactory compensation and restitution. Here, as in other countries, the "victims movement", if it can be called that, has been equally diverse, incorporating feminists, law and order enthusiasts, as well as community based victims' assistance groups. In particular, since the early 1970s, by focussing attention on domestic violence, sexual assault and child sexual assault, the women's movement has played a vital part in gaining recognition of these

serious social problems, which in turn has helped to direct attention toward the role of the victim in the criminal justice system. As the NSW Task Force commented in 1987, "in Australia the politicisation of the victim owes much to the women's movement".[17] Alongside this, community based victims' assistance groups were formed in this period throughout Australia. The first of these was the South Australian Victims of Crime Service, which was established in 1979. Since then VOCAL (the Victims of Crime Assistance League) has operated in the Hunter Region of NSW and more recently in Sydney, as well as in Victoria and the ACT. In Queensland there is the Victims of Crime Association and in Western Australia the Victim Support Service.[18] Also, the media has increasingly focussed attention on the plight of victims, thereby intensifying and accelerating the process of politicisation noted by the NSW Task Force.

In fact a criminal injuries compensation scheme had been introduced as early as 1967 in NSW. However, the rationale behind that scheme was perhaps somewhat different to that which underpinned the kinds of claims that were made in later years. At least it is true to say that in the 1960s victims were very much the passive recipients of State benevolence, whereas by the 1980s governmental response to victims issues belonged to a climate of opinion sympathetic to the rights and needs of crime victims. As a result of effective lobbying and changing perceptions, victims have now established a high profile in criminal justice policy. All State Governments have now issued Declarations or Charters of Victims' Rights, whilst international recognition of the importance of these issues found expression in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

(ii) Governmental inquiries and legal reforms

Responding to the changing climate of opinion in the 1980s and beyond, Governments around Australia set up various inquiries dealing with a broad range of victims issues. Many of these touched directly on the subject of victim impact statement and some have resulted in the introduction of legal reform. These developments are presented here in a broadly chronological order.

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[17] NSW Task Force on Services for Victims of Crime, op cit, p 29.

[18] A full account of the formation of these community based groups is set out in the 1993 report of the Community Law Reform Committee of the ACT, op cit, pp 22-24.

South Australia: The South Australian Committee of Inquiry on Victims of Crime reported in January 1981 and recommended that "Prior to sentence, the Court should be advised as a matter of routine of the effects of the crime upon the victim".[19] This was to find statutory expression in section 7 of the *Criminal Law (Sentencing) Act 1988* which provides that information on the harm suffered by the victim must be put before the court by the prosecutor. The statement must be in writing and responsibility for obtaining the statements has been assigned to the police.[20]

New South Wales: The NSW Task Force on Services For Victims of Crime, which reported in February 1987, noted the developments in South Australia but went on to suggest a cautious approach to the introduction of victim impact statements. It said that, as the South Australian scheme had yet to be implemented, "there is no material evidence available evaluating the effect of victim impact statements on sentencing practices or on victim perception of the criminal justice system". The report concluded: "Until the schemes presently operating can be properly evaluated, the Task Force feels that no attempts should be made to implement such a scheme in New South Wales". Proposals for legislative reform in NSW were discussed earlier in this paper.

Victoria: In Victoria the introduction of victim impact statements was considered by two committees during the 1980s. In contrast to the NSW Task Force their response was more negative rather than cautious in nature. First, in November 1987 the Legal and Constitutional Committee released its report in Support Services for Victims of Crime. It noted that the concept of victim impact statements is supported strongly by many victim advocates, both in Australia and overseas and that "Legislation has been enacted to provide for their use at federal level in the United States, as well as in many of that country's state jurisdictions". Noted too were the developments in South Australia. At the same time the report commented it had received conflicting submissions on the subject. Obviously sympathetic to the rights of victims, the Committee said it supported the aim of increasing the recognition accorded to crime victims in the criminal justice system but concluded that the "introduction of victim impact statements into the existing sentencing process would create insuperable difficulties". In particular, it was concerned that the use of such statements would in effect create a "second trial" at the sentencing

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[19] *Report of the Committee of Inquiry on Victims Of Crime (SA)*, January 1981, p 160.

[20] E Erez, L Roeger and F Morgan, *Victim Impact Statements in South Australia: An Evaluation*, Office of Crime Statistics(SA), 1994, p 3.

stage in which the victim was cross-examined on the statement.[21] Secondly, the Victorian Sentencing Committee in 1988 concluded, having set out both sides of the case, that the arguments against victim impact statements were more compelling than that in their favour, stating:

> The existing approach of the criminal law in making an objective assessment of the impact of a crime on a victim strikes an appropriate balance between the general interests of the community, and the specific interests of the victim....victims' interests are in fact taken into account, and they are taken into account within the total social context and in an appropriate manner.[22]

According to Christopher Corns, the introduction of victim impact statements was part of the Victorian Liberal Party's law and order pre-election policy in 1988.[23] Subsequently, relevant statutory provision were introduced for such statements to be tendered to the court in the *Sentencing (Victim Impact Statement) Act 1994*. Section 95A (1) provides, "If a court finds a person guilty of an offence, a victim to the offence may make a victim impact statement to the court for the purpose of assisting the court in determining sentence". Under the Act, a victim impact statement may be made either in writing by statutory declaration, or in writing and orally by sworn evidence (section 95A (2)). Also, the definition of victims extends beyond individuals to include corporations. Another feature is that the injury, loss or damage caused to a victim need not have been "reasonably foreseeable by the offender" which, as Corns explains, "represents a significant jurisprudential shift away from traditional common law principles which focus on the moral culpability of the offender and intended or foreseeable consequences".[24] Further, the Act allows for additional material to be provided in support of the victim impact statement. However, as the Minister said in the Second Reading Speech for the Act, because this "material may have an effect on sentence it may be subject to

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[21] Legal and Constitutional Committee of the Victorian Parliament, *A Report to Parliament Upon Support Services For Victims of Crime*, November 1987, pp 98-99.

[22] Report of the Victorian Sentencing Committee, *Sentencing: Volume 2*, April 1988, p 545

[23] C Corns, "The Sentencing (Victim Impact Statement) Act 1994", (November 1994) *Law Institute Journal* 1054.

[24] Ibid, p1054.

cross-examination".[25] Section 95D was inserted in the *Sentencing Act 1991* for this purpose. Corns, a long-standing advocate of victims rights in Australia, is especially critical of this provision, stating "The rights of offenders are explicitly protected by this legislation not only in terms of the right to have the victim cross-examined but also by being able to call evidence to refute the victim's claims".[26] A written statement must be distributed to all parties "a reasonable time before sentencing is to take place" (section 95C). The *Children and Young Persons Act 1989* was amended at the same time to permit a victim to tender an impact statement where a child is found guilty of an offence. The sentencing guidelines under the *Sentencing Act 1991* were also amended to include consideration of "the personal circumstances of any victim of the offence" and "any injury, loss or damage resulting directly from the offence".

The ALRC: The Australian Law Reform Commission in its 1988 report on *Sentencing* also arrived at a negative conclusion in regard to victim impact statements. This was after having initially supported the introduction of such statements in its 1987 discussion paper on *Sentencing*.[27] Basically, the Commission opted in its final report for the continuation of the status quo where the prosecution may, if it wishes, submit a victim impact statement or a similar document: "The Commission does not recommend the introduction of legislation to make such statements mandatory generally or in specific circumstances".[28]

Tasmania: The Tasmanian Report of the Inter-Departmental Committee on Victims of Crime, which was released in December 1989, recommended the introduction of legislation imposing a duty on a prosecutor to inform the court of the injury, loss or damage resulting from the offence, and requiring the sentencing court to take this into account. The proposed legislation was to be based on the South Australian model. The Committee noted that the Tasmanian Parliament has already recognised the relevance in the sentencing process of the impact of the crime on the victim. Mentioned in this context was section

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[25] VPD (LA), 31 March 1994, p 778.

[26] C Corns, op cit, p 1055.

[27] ALRC, *Discussion Paper No 29 - Sentencing: Procedure*, August 1987, p 45. The ALRC tentatively proposed that "The statement should consist of a statutory declaration prepared by a victim liaison officer containing particulars of a victim's injuries (if any), damage to property, and financial loss. Any greater involvement of the victims in the sentencing process is inappropriate and may be counterproductive".

[28] ALRC, *Report No 44: Sentencing*, 1988, p 105.

386 (12) (a) of the *Criminal Code* which enables the prosecutor to draw to the attention of the court any aggravating circumstances in relation to the crime, including its impact on the victim. However, the prosecutor is under no statutory duty to address the court. The Committee concluded "that on balance the introduction of Victim Impact Statements would be a very useful tool in ensuring that the sentencing court is properly informed about the effects of the crime on the victim. This will ensure that all relevant matters are before the court in determining what the appropriate sentence should be, and secondly it will accord appropriate recognition to victims of crime within the criminal justice system".[29]

To date, legislation has not been introduced to give effect to this recommendation. At present the situation in Tasmania appears to be similar to that in NSW (and in Queensland and Western Australia). In all cases there is a provision in their Declaration or Charter of Victims' Rights obliging the prosecutor to present victim impact evidence to the court.[30]

National Committee on Violence: The National Committee on Violence in its 1990 report recommended that victim impact statements should be introduced in all jurisdictions. However, the concurrent need for the inclusion of appropriate safeguards against abuse by either the Crown or the defence was emphasised, as was the need for rigorous, objective monitoring.[31]

Australian Capital Territory: The Community Law Reform Committee of the ACT in its 1993 report also arrived at a positive conclusion, recommending a legislative framework for the preparation and use of victim impact statements. Specifically, it recommended that there be a statutory provision for the tender of a voluntary victim impact statement in all cases of indictable offences against the person or involving violation of a person's property, punishable by imprisonment for five years. The Committee believed that the decision to prepare a statement should be the victim's in all cases and that failure to adopt the option "should give rise to no comment or adverse inference". These recommendations have since been translated into statute, with the enactment of the *Acts Revision (Victims of Crime) Act 1994*. That Act further provides that a copy of the statement must be given to the defence and that "The defence may cross-examine the victim about the contents of a victim impact statement"

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[29] Tasmanian Department of Justice, *Report of the Inter-Departmental committee on Victims of Crime*, December 1989, p 35.

[30] Clause 14 of the Tasmanian Declaration.

[31] National Committee on Violence, *Violence: Directions for Australia*, 1990, p 181.

(section 12). On this point the Community Law Reform Committee commented that, as the impact statement would have to be supplied to Defence Counsel before the hearing, the Committee expected any difficulties Defence Counsel has with the material included in it to be resolved before the statement is presented in court. On this basis, the Committee concluded, "This is likely to make cross-examination of the victim unnecessary".[32] To date, the relevant section has not been proclaimed.

Also enacted in 1994 was the *Victims of Crime Act* (ACT) which, among other things, sets out "governing principles" for the treatment of victims of crime. Further, the office of Victims of Crime Coordinator is established under the Act.

Western Australia: The position here seems to be similar to that operating currently in NSW, Queensland and Tasmania. Thus, there is a Victims' Charter, clause 17 of which obliges the prosecutor to present victim impact evidence to the court, but no statutory provision for the tendering of victim impact statements. According to Ashworth, the Charter provides for courts to receive impact statements, but no systematic means of furnishing them has developed: "In some cases they are obtained and presented by the DPP's department, and in others the court requests one".[33] Empirical research has been undertaken on the use of victim impact statements in the Supreme Court of Western Australia which shows that between 1992 and 31 August 1993, out of a total of 260 criminal matters in which there was a finding of guilt, 75 impact statements were presented in respect of 56 different offenders.[34]

Queensland: Clause 14 of the Declaration of Victims' Rights requires the prosecutor to present victim impact evidence to the court.

5. THE CONTEMPORARY DEBATE

Clearly, the subject of victim impact statements has attracted considerable interest and debate over recent years. The foregoing survey of the relevant governmental inquiries reveals a division of opinion on the matter, which is only to be expected perhaps when it is recognised that the issues raised here

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[32] The Community Law Reform Committee of the Act, op cit, p xv.

[33] A Ashworth, "Victim Impact Statements and Sentencing", [1993] *Crim LR* 498-509, p 500.

[34] A Willinge, "The Rights of Offenders and the Needs of Victims; The Challenge of Victim Impact Statements", *Fifth International Criminal Law Congress*, Sydney, 25-30 September 1994, p 1.

feed into the perennial problem of reconciling the rights and interests of the victim, the offender and the State. Arguing the case for the victim, the US President's Task Force on Victims of Crime from 1982 stated: "victims, no less than defendants are entitled to their day in court. Victims, no less than defendants, are entitled to have their views considered. A judge cannot evaluate the seriousness of a defendant's conduct without knowing how the crime has burdened the victim. A judge cannot reach an informed determination of the danger posed by a defendant without hearing from the person he has victimized...".[35] In Australia that view would almost certainly gain the support of those organisations representing victims of crime and others.[36] But as the review of the principal inquiries shows there are different perspectives on the subject, in particular those focussing on the procedural difficulties involved in the introduction of victim impact statements.

Placing victim impact statements in the context of the broader debate about victims of crime for a moment, a useful distinction can be made between the rights of victims to services, on one side, and procedural rights in the criminal process, on the other. The distinction is made by Ashworth who includes everything from the provision of refuges for victims of domestic violence to the provision of financial compensation under the heading of the right of victims to services.[37] The arguments in regard to such rights are all relatively straightforward; the constraints on government action are basically financial in nature and not ones of theory or principle.

In relation to the procedural rights of victims, on the other hand, the issues are quite different and more controversial, centring as they do on the extent to which victims should have a right to be consulted, or even a right to participate, in the criminal process. The right to submit victim impact statements to the court before sentence is one such procedural right, though as indicated earlier it can be expressed in different ways. Other procedural rights

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[35] Quoted in E Erez, op cit, p 2.

[36] Even the support of victim groups may not be certain, however. In its submission to the ALRC's inquiry into sentencing procedure the Australian Victims of Crime Association is reported to have submitted the view that in some cases victims may not wish the offender to be fully aware of the harm caused to them: *Report No 44 - Sentencing*, op cit, p 104. The Community Law Reform Committee of the ACT noted the support of VOCAL for victim impact statements but the opposition of the Domestic Violence Crisis-Service, particularly in relation to the crimes of rape, incest and domestic violence (p 40).

[37] A Ashworth, "Victim Impact Statements and Sentencing", [1993] *Crim LR* 498, p 499.

include the right of the victim to be consulted: on parole release; on the decision whether or not to prosecute; on the bail-custody decision; and on the acceptance of a plea. The argument is put that these issues have the potential to alter the traditional rights and interests of both accused persons and their victims.

Fundamental to the debate about procedural rights is the question of the purpose or aim of the criminal justice system. One view is that the system should be concerned with the offender and that the victim should have no role in it beyond acting as a witness for the prosecution. This view flows from what until recently was the conventional opinion that criminal offences are offences against the State, that they should be prosecuted to the extent that the public interest requires it, and that the sentence should be passed in the public interest. Primacy is therefore given to the State's interest in controlling the response to crime, with the distinction being made between public and private wrongs.[38]

The contrary view is that the criminal justice system should focus more on the victim. That view is expressed in different ways. At one end of the spectrum it is championed by the proponents of what is known as "reparative" or "restitutive" justice, in the context of which crime is seen not only as a wrong against society but also, and primarily, as an offence against the victim. Seen from this perspective a crime is first and foremost a dispute between offender and victim requiring resolution. The argument that the victim deserves a role in the criminal court proceedings is another manifestation of the victim-oriented approach to the criminal law. Either way, a reconsideration of the conventional distinction between public and private wrongs is implied and with it a re-examination of the purpose or aim of the criminal justice system.

Some proponents of victim impact statements would maintain that such statements are perfectly consistent with the established principles and practices of the common law. Others disagree, such statements as part of the retrogressive trend in the contemporary law and order debate towards a view of the criminal law as a contest between the victim and the offender. There is the concern that victim impact statements may be the thin end of the wedge: "Once victims are given the right to be heard on sentence, there will be moves for victims to be heard on questions of parole and bail".[39]

Another aspect to the debate is that the reaction to the victim impact statement proposal may depend very much on the actual details involved. For example, a

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[38] Ibid, p 503.

[39] A Willinge, op cit, p 20.

proposal allowing victims to present their statements directly to the court and, as in some US States, granting them the right to say what they regard as an appropriate sentence, would be looked upon as a considerable departure from traditional principles.[40] Less confronting would be a proposal which used the prosecutor as a filter by leaving it to his or her discretion whether victim impact evidence should be presented to the court.[41] Garkawe further argues that it would be preferable if the relevant provision took the form of a clause in a Charter of Victims' Rights, rather than legislation. His argument is that in an area where there is a need for sensitivity, caution and flexibility, it is not appropriate to use legislation to attempt to force prosecutors to provide rights to victims.[42]

Procedural considerations are also of crucial importance to the debate. Victim impact statements were introduced in New Zealand under section 8 of the *Victims Offences Act 1987*. Since then the New Zealand courts have considered the procedural issues arising from the implementation of impact statements. Ashworth comments in this context: "The New Zealand courts have insisted that a VIS should not be used to introduce a major aggravating factor for the first time, that any assertion of significant medical effects of the crime should be supported by medical evidence, and that the defence should normally be allowed prior sight of the VIS. Indeed, it has been recognised that, since one of the primary functions of a VIS is to provide a factual basis for sentencing, it should be open to challenge in the same way as other statements of fact".[43] According to one source, the most serious criticism of impact statements in New Zealand appears to be that they tend to be served on the offender's

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[40] *Victim Impact Statements in South Australia: An Evaluation*, op cit, p 2. The report notes: "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".

[41] S Garkawe, "The Role of the Victim During Criminal Court Proceedings"(1992) 17 (2) *UNSW Law Journal* 595, p 611. In relation to the NSW Charter of Victims' Rights, Garkawe comments, "The critical issue of whether the prosecutor retains a discretion to omit such evidence is unclear, and thus needs to be clarified".

[42] Ibid, p 614.

[43] A Ashworth, op cit, p 507. A detailed account of the New Zealand scheme is presented in G Hall, "Victim Impact Statements: Sentencing on thin ice?" (1992) 15 *NZULR* 143-162.

representatives in insufficient time to prepare a response.[44]

6. ARGUMENTS FOR VICTIM IMPACT STATEMENTS

The main arguments found in the contemporary debate for and against victim impact statements are set out below. These arguments are presented here without commentary or analysis.

- ***Accountability:*** It is said that the use of victim impact statements would render the criminal justice system more accountable to crime victims and thus to some extent redress the perceived imbalance within the system created by its concentration of attention and resources on offenders.[45]

- ***Reducing victim alienation:*** The claim is made that greater involvement of victims in the court process through victim impact statements would reduce the dissatisfaction and alienation which many of them experience in their contact with the criminal justice system.[46] Kilpatrick and Otto state: "a criminal justice system that provides no opportunity for victims to participate in proceedings would foster greater feelings of helplessness and lack of control than one that offers victims such rights".[47] It is said that the most important grievance mentioned by victims was their lack of "standing" and voice in the proceedings.

- ***Psychological benefits:*** It is argued that the opportunity to express the effects of their victimisation and to have these acknowledged by the

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[44] J Miles, "The Role of the Victim in the Criminal Process: Fairness to the Victim and Fairness to the Accused", *Fifth International Criminal Law Congress*, Sydney 25-30 September 1994, p 22.

[45] Tasmanian Department of Justice, *Report of the Inter-Departmental Committee on Victims of Crime*, December 1989, p 33. The Committee's commentary on the arguments for victim impact statements is in fact based on the account found in the report of the Victorian Legal and Constitutional Committee at page 98.

[46] ibid, p 34.

[47] DG Kilpatrick and RK Otto, "Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning", (1987) 34 (1) *Wayne Law Review* 7-28, p 19.

court would be of great psychological benefit to many victims.[48] Victim involvement and the opportunity to voice concerns is necessary for satisfaction with justice, psychological healing and restoration.[49]

- ***The effectiveness of the system:*** Further to the above, it is argued that increased satisfaction among victims will result in improved cooperation with the criminal justice system, thereby increasing system efficiency.[50]

- ***Informing the court:*** Victim impact statements would provide a very useful aid to the court in its sentencing task. The effects of a crime on the victim, though a relevant factor in determining sentence, are often not available to the court particularly in cases where a guilty plea was entered. This is especially so in the context of guilty pleas in the Magistrates Courts. The presentation of a victim impact statement would, therefore, assist the court in making an informed sentencing decision. Corns elaborates thus: "One concern is that the judiciary will not be made aware of the full or true impact of the crime upon the victim and that from an ideological perspective, an injustice occurs in that the complete circumstances of the offender can be outlined without any corresponding account of the victims' experiences. In particular, where the accused pleads guilty, the prosecution may be inclined to summarise or even distort the gravity of the offence depending upon the nature of any pre-trial 'negotiations' between the prosecution and defence counsel".[51]

  Further to this, the recent South Australian research report on victim impact statements comments that these are considered critical in guilty plea cases compared to cases that go to trial: "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

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[48] Report of the Tasmanian Inter-departmental Committee on Victims of Crime, op cit, p 34.

[49] E Erez (1991), op cit, p 3.

[50] Ibid, p 3.

[51] C Corns, "Offenders and Victims", in *Current Australian Trends in Corrections*, edited by D Biles, Sydney 1988, p 206.

VIS provide valuable information for sentencing".[52] In a similar vein, Ashworth reports that a survey of American judges found that some four-fifths stated that an impact statement had some effect on the sentence, and that what they found most useful was objective information on financial loss, physical harm and psychological effects.[53] It can be noted in this regard that in NSW victim impact statements may be tendered under the sentence indication hearing scheme.

- ***Proportionality, accuracy and consistency in sentencing:*** The further argument is that the provision of information on the harm suffered by the victim may increase proportionality and accuracy in sentencing. Erez comments that the 1982 President's Task Force on Victims of Crime (US) mentioned this consideration in its assertion that a judge cannot reach an informed decision without hearing the person victimised.[54] The objection that victim impact statements militate against sentencing uniformity ignores the reality that the courts have always been required to take account of the actual effects of the crime: "this being the situation, a system which ensures that offence-impact details are compiled and presented according to well-defined procedures will enhance, rather than undermine, consistency of approach".[55]

- ***Cross-examination does not occur:*** The argument is made that concerns about victims being cross-examined about their statements are often over-stated. It is said that in practice it simply does not happen. The ACT's Community Law Reform Committee pointed to the South Australian experience in this respect.[56] Confirming this impression, the recent report evaluating the South Australian scheme stated: "Challenges concerning matters of emotional harm, and the cross-

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[52] *Victim Impact Statements in South Australia: An Evaluation*, op cit, p 71. This needs to be read in conjunction with the comment made earlier in the report that "In the Magistrates Court where the majority (95%) of cases are dealt with, VIS are rarely tendered" (page vii).

[53] A Ashworth, op cit, p 502.

[54] E Erez, "Victim Participation in Sentencing: Rhetoric and Reality", (1990) *Journal of Criminal Justice* 18, pp 19-31.

[55] CJ Sumner and AC Sutton, "Implementing Victims' Rights - An Australian Perspective", (1990) 1 (2) *Journal of the Australasian Society of Victimology* 3-10, p 5.

[56] The Community Law Reform Committee of the ACT, op cit, p 57.

examination of victims on mental injury details presented in VIS, were practically non-existent. Defence lawyers...were reluctant to cross-examine them. 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".[57]

- ***Unfounded fears:*** Research in the United States and elsewhere has not confirmed many of the fears expressed by those who object to increasing victims' participation in sentencing. Victims have not been found to be more punitive than the general public: "A study examining the content of victim impact statements has found that only one-third of victims in felony cases request that the offender be incarcerated".[58]

- ***Other arguments:*** If victims convey their feelings to the courts, it is claimed, then the sentencing process will become more democratic and reflective of the community's response to crime. Also, victim participation will provide recognition to the victims' wishes for party status and individual dignity, while at the same time reminding judges, juries and prosecutors that behind the "State" is a real person with an interest in how the case is resolved. The increasing willingness to regard crime as an act primarily against the victim rather than the "State" is reflected in a greater emphasis on restitution as a sentencing objective: victim impact statements could assist the courts in this regard when one considers that accurate information on victim harm is required for making restitution or compensation orders. Victim participation might also promote rehabilitation as the offender confronts the reality of the harm caused to the victim. Moreover, fairness dictates that when the court hears, as it may, from the offender, the offender's lawyer, family and friends, the person who has borne the brunt of the offender's crime should be allowed to speak.[59]

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[57] *Victim Impact Statements in South Australia: An Evaluation*, op cit, p 70.

[58] E Erez (1990), op cit, p 25.

[59] These arguments are canvassed in *Victim Impact Statements in South Australia: An Evaluation*, op cit, pp 3-4.

7. ARGUMENTS AGAINST VICTIM IMPACT STATEMENTS

- ***Criminal law and the public interest:*** It is claimed that to allow the victim to become involved in the sentencing process would undermine the fundamental principle of the criminal justice system that the processes of prosecution and punishment are the province of the State acting in the public interest. This argument rests on the proposition that the function of our criminal justice system is to ensure that the interest of the whole community as affected by crime are met.[60] One version of this argument was presented by Blackstone in his *Commentaries on the Laws of England*, published in 1778, where he asserted that "public wrongs, or crimes and misdemeanours, are a breach and violation of the public rights and duties due to the whole community, in its social aggregate capacity...since beside the wrong done the individual, they strike at the very being of society".[61] To achieve the proper ends of the criminal law the State interposes itself between the offender and the victim, and takes on the role of representing the legitimate interests of the victim. In this way "The policies of the criminal law have developed in such a way as to strike what is seen as an appropriate balance between the interests of the victim and the broader social and political interests of the community".[62]

- ***Subjectivity:*** The introduction of victim impact statements would, it is said, result in the substitution of the "subjective" approach of the victim for the "objective" one practised by the court.[63] An emotional element is thereby introduced into what is supposed to be a dispassionate process.[64] A particular concern is that if the victim gets a direct say in the sentencing process, then the desire for revenge will contaminate the proceedings.

- ***Effect on established sentencing principles:*** There is concern that the use of victim impact statements could result in the court according too much weight to the effect on the victim and thus neglecting other considerations such as the rehabilitation of the offender. Justice

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60 Report of the Victorian Sentencing Committee, op cit, p 543.

61 Quoted in G Davis, *Making Amends: Mediation and Reparation in Criminal Justice*, London 1992, p 3.

62 Report of the Victorian Sentencing Committee, op cit, p 543.

63 ibid, p 541.

64 EA Fattah ed, *Towards a Critical Victimology*, New York 1992, p 415.

Badgery-Parker of the NSW Supreme Court commented recently that, while it is appropriate that the judge should be made aware of the injuries suffered by the victim, it remains the case that "the part such matters play in the sentencing proceeding is necessarily very limited". His Honour went on to state that "the need which the criminal justice system exists to fulfil is the need to interpose between the victim and the criminal an objective instrumentality which...attempts to serve a range of community interests which include but go beyond notions merely of retribution".[65]

- ***Procedural difficulties:*** It is argued that if victim impact statements are to be placed before the court as evidence upon which it may rely in determining an appropriate sentence, then offenders must be offered an opportunity to challenge the material they contain. In some cases this would involve further cross-examination of the victim and of medical practitioners and psychologists. Not only would this involve additional trauma for the victim, it would also lengthen criminal trials and increase delays in an already over-burdened system. Against those who maintain that the victim at present feels alienated from the criminal justice system, it is pointed out that participation in that system may prove to be a double-edged sword, for reasons which include the emotional distress caused if the victim is cross-examined on the statement as part of the sentencing process (and conceivably even from attending court to be available for cross-examination). Anthony Willinge explains that "Concern about cross-examination has been raised by many writers. If the extent of the harm or the cause of the harm is disputed, then, as a potential finding of fact adverse to the accused, the prosecution will be required to adduce evidence (eg by calling the victim). If the victim was called, defence counsel would be entitled to cross-examine and the potential effect on the victim is not difficult to envisage".[66] Significantly, in its submission to the ACT's Community Law Reform Committee, VOCAL said impact statements should not be introduced if the likely result could include cross-examination of the victim by the defence Counsel.[67]

  Also, victim impact statements may give rise to similar objections as those which have been aimed at "dock" statements, only in this case the

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[65] *R v Cribb* (unreported NSW Sup Ct, 4 Badgery-Parker J, 4 November 1994).

[66] A Willinge, op cit, p 17.

[67] The Community Law Reform Committee of the ACT, op cit, p 57.

concern is that offenders might be subjected to unfounded or excessive allegations by victims.[68]

- ***Consistency:*** The need for consistency in sentencing is clear: "similar offenders who commit similar offences in similar circumstances should be punished in a similar way, and those offenders who commit more serious offences should be punished more severely than those who commit less serious offences".[69] From this flows the argument that punishment should not vary because of the effect that the offence has on the victim. Disparities in sentencing should nor arise therefore because some victims suffer greater emotional trauma as a result of the offence than others. To this Chris Richards adds, "an offender whose victim experienced delayed injury...could receive a less severe penalty than an offender whose victim experienced immediate signs of trauma".[70]

- ***Proportionality:*** Also clear is the importance of the principle of proportionality in sentencing. In a detailed discussion of the issues, Willinge has argued that the use of victim impact statements may detract from that principle in two ways. First, by emphasising the harm caused regardless of the offender's culpability. The point of victim impact statements is to bring the specific harm suffered by the victim to the court's attention, whereas a just regime of punishment seeks to apply the general standard of blameworthiness for an offence when determining sentence. Willinge is particularly aware of the danger of adopting the approach taken in determining criminal responsibility, on one side, and applying this to sentencing, on the other. The approach to determining criminal responsibility at issue here is that offenders should "take their victims as they find them", regardless of whether the effects of the crime were possible to anticipate or not. This leads back to the argument for consistency. Also, it leads into the question of reasonable forseeability. As noted, under the Victorian legislation the harm caused to a victim need not have been "reasonably foreseeable by the offender" which, it could be argued, represents a significant change to the principles of sentencing. It is a question of sentencing for unforseen results. Ashworth has said that it is one thing to set the general level of sentences so as to take some account of the risk of psychological effect:

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[68] The safeguards insisted on by the New Zealand courts in this regard were noted above.

[69] ibid, p 9.

[70] C Richards, "Victim Impact statements: Victims' Rights Wronged", [1992] 17 *Alternative Law Journal* 131.

"It is quite another to increase a particular sentence on the basis of actual consequences, unless there is evidence that the offender selected particularly vulnerable victims".[71]

Secondly, the use of victim impact statements may cause a skew in the relative seriousness of different types of offence. This would be as a result of such statements being used for some types of offences more than others. Willinge observes that research from Western Australia has shown that more than 80% of statements were presented in respect of sexual assault offences.[72]

- ***Victim satisfaction unchanged:*** Based on research undertaken in the United States, Davis and Smith conclude that victim impact statements are not an effective means of promoting victim satisfaction with the justice system: "There was no indication that impact statements led to greater feelings of involvement, greater satisfaction with the justice process, or greater satisfaction with dispositions".[73]

- ***Prejudicing the offender:*** Based on the Western Australian experience, Willinge has concluded that impact statements have the potential to gravely prejudice the offender, most strikingly due to the inclusion of improper content.[74]

- ***Other arguments:*** The argument is made that victim impact statements may raise unreasonable expectations for victims, thereby resulting in disappointment and disillusionment. Further that the criminal law already takes into account the harm done to the victim in the definitions of crime and mitigating or aggravating circumstances. There is, too, the concern that allowing victim impact statements will undermine the court's insulation from unacceptable public pressure.[75] According to

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[71] A Ashworth, op cit, p 506. The Victorian Sentencing Committee commented that certain statutory and common law definitions of crimes already take into account factors that could increase the impact of the criminal act on the victim (p 536).

[72] A Willinge, op cit, pp 2-8.

[73] RC Davis and BE Smith, "Victim Impact Statements and Victim Satisfaction: An Unfulfilled Promise?", (1994) 22 (1) *Journal of Criminal Justice* 1-12, p 10.

[74] A Willinge, op cit, p 22.

[75] These arguments are canvassed in E Erez (1991), op cit, p 3.

Davis and Smith, some have expressed suspicion that conservative support for victim rights is motivated less by a concern for the interests of victims than by a desire to abridge the rights of the accused.[76]

8. VICTIM IMPACT STATEMENTS IN SOUTH AUSTRALIA: AN EVALUATION

The 1994 research report evaluating the implementation of victim impact statements in South Australia is an important contribution to the debate. The 1987 NSW Task Force called for an evaluation of this kind before reforming the law in this State. Also, it seems the amendments proposed in the Sentencing Legislation (Amendment) Bill 1994 to section 447C of the *Crimes Act 1900* were influenced by the report.[77]

In terms of any comparison between South Australia and NSW, an initial point of contrast needs to be made. This refers to the fact that in South Australia responsibility for obtaining victim impact statements has been assigned to the police, whereas in the scheme proposed for NSW it seems that the victim is basically responsible for preparing the statement with the assistance of experts such as counsellors, psychologists and psychiatrists if required. Presumably, this alternative approach would have different implications for such factors as costs and the potential for delays, as well as for the quality of the statements and the experience involved for the victim in the process of their preparation.

The South Australian report set out to examine empirically the validity of the arguments in the debate concerning the use of victim impact statements, focussing on the effects on the criminal justice process, on sentencing outcomes, and on victim satisfaction with justice. In-depth interviews with a relatively small number of people from the legal profession (prosecutors, defence lawyers, magistrates and judges) involved in the administration of the scheme were conducted for this purpose. A survey of victims was also undertaken, based on 427 questionnaires. Only cases dealt with in the Supreme or District Court were considered. The report acknowledged that 95% of cases were dealt with in the Magistrates Court but commented at one point that impact statements "are rarely tendered" (page vii) and at another "that for a significant number of cases it was not possible to establish whether a VIS had been completed" (page 46). In any event, the report decided to focus on the more serious offences involving higher levels of injury and greater involvement with the criminal justice system.

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[76] RC Davis and BE Smith, op cit, p 3.

[77] NSWPD 18 November 1994, p 5399.

The overall conclusion was that the South Australian experience with victim impact statements 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 (page viii).

On the positive side, the report found, among other things, that in practice victim impact statements did not result in delays, additional expenses or mini-trials on their content. Exaggerations are not common place in such statements, with members of the legal profession indicating that they rarely include inflammatory, prejudicial or other objectionable statements. Most victims, on the other hand, stated they wanted to provide input, and many viewed it as an important duty. Concerning the effects on sentence outcomes and dispositions, the report found a consensus among legal professionals that impact statements did not result in sentence disparity; nor was the prediction that impact statements would make sentences more severe supported by the data. Further, the introduction of impact statements did not appear to increase restitution or compensation orders.

Turning to the negative side, a major finding emerging from the victim survey was that "about half of the victims stated they did not provide information for a VIS when in reality they did provide VIS material" (page 72). This suggests a lack of understanding of the purpose of such statements among a significant number of victims, even among those sufficiently motivated to respond to the questionnaire. As to whether victim impact statements increased the satisfaction of victims with the criminal justice system, the results were somewhat mixed. One finding was that providing material for such statements did not affect victim satisfaction with justice, whereas the report also found that "unfulfilled expectations concerning VIS effect on sentencing were associated with increased victim dissatisfaction with the sentence" (page 72). The report added, "Over two thirds of the victims who knew the sentence of their offender thought the sentence was too lenient". It has been noted that the report found that cross-examination of victims on the content of their statements is rare. However, the further point is made that "Less than one fifth of the 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" (page 70). Furthermore, the data revealed a very uneven implementation of impact statements: "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" (page 73). In this context the report indicated a basic lack of commitment among professional groups to the reform, plus a lack of adequate funding. But on a different tack, the report said:

> 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 legal professionals...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 (page 73).

The report's findings were something of a mixed bag, therefore. It was recognised that reaction to it would depend heavily on one's philosophical stance and moral conviction concerning the need for victim integration in the criminal justice process. The report concluded;

> 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' (page 74).

9. CONCLUSION

The question of victim impact statements raises interesting and important issues of a theoretical, procedural and practical nature for the criminal justice system. For some, they go too far: the right of the victim to be kept informed is a sufficient step in that direction and, if what is at issue is the respect shown to victims by the system, the best way forward would be to improve victim services. For others, they do not go far enough: commenting on the recent legislative reforms in Victoria, Corns states the whole victim impact statement process "will take place within the traditional adversarial context and ideology

which by definition has operated against the interests of victims".[78] On the other hand, their advocates maintain that they constitute a reasonable response to the legitimate claims of victims of crime for a formal role in criminal proceedings, based on the contention that the consideration of victim harm does not violate established principles of sentencing. Anthony Willinge concluded that victim impact statements will continue to be used, not least because of their perceived political value to Governments. He goes on to say that work must continue to ensure "that the vital balance between the needs of the victim and the rights of offenders are not being compromised, but also that statements do not promise so much to victims that they inevitably disappoint".[79]

[78] C Corns (November 1994), op cit, p 1055.

[79] A Willinge, op cit, p 22.

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