Rights of Victims

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The traditional focus upon apprehending offenders, the adversarial system of the courts and general lack of concern about the effect of victimisation have meant that in the past the treatment of victims and their rights and needs has not been adequately acknowledged.

However in recent times there has been increasing attention paid to the needs of victims of crime, the services that are available, and the responsiveness of the criminal justice system to the needs and rights of victims of crime.

A number of reviews overseas and in Australia, including reviews in South Australia, New South Wales, Northern Territory and Victoria have been undertaken.

These reviews were instigated due to a recognition that the rights and needs of victims of crime were not being satisfactorily met, services were inadequate and victims were forgotten or were not being treated fairly throughout criminal justice processes.

There appeared also to a feeling that the needs and rights of offenders were receiving a higher priority than the needs of victims. Measures needed to be developed to redress this imbalance.

In community debate this question of victim's rights and services is sometimes tied in a competing way, especially in the media, to the issue of offenders’ rights and how offenders should be treated.

It is crucially important that the victim feels that justice has been done and that the victim's suffering and trauma are given due recognition in the criminal justice process. It is clear for example, that a significant number of victims of violence do not report crimes or choose not to proceed with cases because they believe they will not be treated with due consideration in the process. In many cases they will be forced to relive their suffering and in the end, they will experience the final outcome as unfair and self defeating.

At the same time, it is important that this concern should not impede or interfere with the basic right of an accused offender to a fair trial.

While it is certainly sometimes difficult to separate the competing interests of victims and offenders, it is appropriate in debate and discussion to address issues concerning offenders separately.
VCCAV Victim Inquiry 1994

In late 1993 the Victims' Task Force of the Victorian Community Council Against Violence received a reference to undertake an inquiry into services for victims of crime from the Attorney General, the Hon. Jan Wade M.P. and the Minister for Police, Emergency Services and Corrections, the Hon Pat McNamara M.P.

The detailed Report of this Reference published in December 1994 is available from the VCCAV.

I will draw extensively on the results of that Inquiry and the final report of the VCCAV in this discussion of Victims’ Rights.

Issues raised in the VCCAV consultations during the inquiry.

The focus of this discussion is on difficulties and areas where improvements and changes within the criminal justice system may need to be implemented. It is acknowledged that not all victims will have experienced difficulties. Some victims had positive experiences in dealing with police, courts, crimes compensation and were very satisfied with the support services they received.

This information used in this address today comes from 74 written submissions from victims of crime; consultations with 139 individuals and groups; responses from 310 people in the mailed survey of victims of crime; responses from 268 victims in the phone-in; questionnaire responses from 116 community groups and 12 from Government areas.

This information shows that there are a range of outstanding issues relating to meeting the issues around the rights of victims of crime.

Where the basic needs of victims are not being met it cannot be said that their rights have been acknowledged. In many senses the words ‘needs’ and ‘rights’ become interchangeable. My address will focus on the expressed needs of victims within the criminal justice system and how if these were met, the rights they are entitled to would be met.

Many victims of crime are able to be fully satisfied with the current services provided or will find that their own networks of family and friends, are sufficient to enable them to overcome the trauma and damage they have experienced.

However for a variety of reasons not all victims report crimes or seek assistance and others are unable to access the services that are available.

There are gaps in services to victims which result in considerable numbers of victims of crime suffering further problems and feeling hurt and neglected by the system.
When victims seek the assistance of police and go to court as a result of offences committed against them, the processes are often frightening, confusing and disappointing.

The enormous response to the 'Victims Phone In' conducted by the VCCAV illustrates just how many people have had unhappy experiences and wish to comment on the current system and find some assistance towards their own healing processes.

That these needs are not being met indicates that Victims’ Rights are still not being fully acknowledged.

Both the Criminal Justice System and the support services funded by Government still need to meet the challenges of the rights of victims.

For the purposes of today’s discussion I will focus upon the Responsiveness Of The Criminal Justice System. Support services for victims is an area which should follow on from acknowledgment of and attention to these rights and needs.

In modern times the victim of crime has become regarded as an ordinary citizen with a responsibility to assist the police with the provision of evidence, and when that evidence is needed as part of the prosecution case in court -usually only when the offender is pleading his innocence - the victim will be required to act as a witness. .

No special status has been granted to the victim in respect of the special interest she/he has in the case, and where evidence is not required it has not even been considered necessary to provide information to the victim about the arrest of the offender or the intention to prosecute. . In the course of historical development, therefore the victim has been pushed to the sidelines and become irrelevant to the procedures in the eyes of the professional who operate the system. . (Reeves:1994:3)

This situation has already begun to change in Victoria, through recent legislative reform which has included amendments to the Sentencing Act, the abolition of unsworn evidence, and the introduction of the Victim Impact Statement. The recommendations of the Law Reform Committee of the Parliament of Victoria suggest further ways in which the victim can gain some involvement in the criminal justice system through restitution and compensation.

However the overwhelming evidence presented to the Task Force suggests that it is insufficient to simply introduce legislative change or formal restitution or compensation schemes for victims of crime. We need to pay attention to defects within the criminal justice system which stop victims from reporting crimes to police or other authorities, and that work against victims carrying their cases through to ultimate resolution in the courts. A reassessment of court administration and
procedures is necessary to ensure that victims do not experience the pain they often report upon attempting to access the system.

Many victims never see their case result in an arrest and conviction. But for those victims whose suspected assailant is arrested, their emotional problems are often compounded by what doesn't happen to them.

- little information about the arrest,
- no consideration in bail proceedings,
- no notification about pre trial hearings,
- no consultation about any plea bargaining,
- little information about trial proceedings, and,
- until recently with victim impact statements, little information or consideration at the time of sentencing.

Such matters can exacerbate the victim's feeling of helplessness. The further fact that the case is brought in the name of the 'state' or the 'people' emphasises the feeling that they have no right to be involved, no right even to be informed and no standing.

**CONTACT WITH POLICE**

The first contact the victim will have with the criminal justice system will be with the police. The manner and skills of the police officer at this stage may well determine how the victim will cope in the aftermath of the crime.

In recognition of this, in all Australian jurisdictions, police have paid more attention to victims' requirements in recent years.

The Australian Police Minister's Council, 1987, stated:

> "police are the initial contact in the criminal justice system for victims of crime. They need to deliver a professional, sympathetic, and prompt service to ensure victims satisfaction and to encourage future reporting. Additionally Police have a role in immediate crisis assistance and referral of victims to appropriate service agencies for ongoing attention to their needs.'

and

>'Police have a role in minimising victim trauma in the ensuing investigatory and prosecutorial proceedings by upholding the United Nations principles on the rights of victims of crime.'

This attitude still needs to be put into practice more comprehensively in most jurisdictions.
Information

This was unanimously identified by victims as the first requirement. Information both about the criminal justice system and about support services available to assist the victim at the time when the offence is reported.

This should include a description of the process of investigation, what will happen in court, information about crimes compensation and a list of appropriate services she may need to access.

If the victim has an intellectual disability, or is otherwise disabled, she may need this information to be provided to a third party who can explain the processes on her behalf. Similarly a person of non English speaking background will need the information to be made available in her own language or with the assistance of an interpreter.

Information should be comprehensive and detailed and enable the victim to choose the most appropriate service for her needs at different times during the process.

This information is most appropriately supplied by the police officer who takes the original crime report. While the victim may not understand the need for such information at this early stage, often being traumatised by the event itself, material provided at this time can be accessed later on when and if the need arises.

Problems arise when there is no comprehensive information directory or booklet available. This is still the situation in many of our state jurisdictions.

An Information Booklet prepared by the Attorney General's Department in South Australia is an excellent example of the type of material universally needed.

Training

Police training in most jurisdictions now addresses the issue of victims of crime with a unit on victim sensitivity during recruit and sub officer training. However the need for 'in service' training continues to be an issue. Training at District level should encompass victim sensitivity, compensation and restitution, police procedures, accountability and management.

Police should also be provided with information about all local services for victims of crime. Familiarity with the work of these local agencies should be encouraged within this training and officers made aware of the services available and relevant to the needs of victims.

Police training should also address gender issues and the issues and problems attendant upon police contact with victims of crime with an intellectual disability, from
the Aboriginal community or from a non English speaking background. These topics should be presented by specialist instructors and enhanced by incorporating a wide range of speakers from relevant community agencies.

**Victim liaison**

Some police jurisdictions have such officers in each police district. This is a clear recognition of the needs and rights of victims. However it may also be more appropriate to aim to have all operational police trained and familiar with the needs of victims as identified above, rather than to concentrate on specialist roles in this way.

**Police records**

Information about victims is not routinely recorded or readily available on police records in some states. Such information about the nature of victimisation in the state is therefore difficult to access.

South Australia for example does have a computer based Brief Enquiry Management System which provides police state wide, with ready access to information about the progress of criminal proceedings. The System allows police to search for particulars on victims, as opposed to traditional police systems which are geared towards offender data. As a result South Australian police are better placed to meet victim' informational needs.

Such major readjustments to some information systems is expensive, and requires care with issues of privacy. However it is possible, and important, that more accurate details of victims of crime are gathered and maintained within police data.

This information will allow for the provision of significant information to victims themselves through the criminal justice system and also assist in the development of a more accurate understanding of specific victim requirements.

As well, current police statistics focus upon offences and it is difficult for policy makers to gain reliable statistics and data about victims themselves. Additional information collected from a victim perspective in this way, would enable police to access and publish useful statistics about victims which would facilitate the development of the most needed policies and services.

**INFORMATION ABOUT INVESTIGATION AND COURT PROCEEDINGS**

As the investigation proceeds the victim of crime needs to be provided with information about the progress of the case.

 Victims of crime experience difficulties in finding out what is happening in respect to their case. Attending police are frequently helpful to victims at this time, the demands
on their time and the length of time involved in court hearings and outcomes mean that victims are sometimes unaware even of when their case comes to trial.

The mobility of police officers and the practice of individual officers retaining information on a personal basis also means that it becomes difficult to access information if a particular officer moves or is on leave.

As noted by the Victorian Sentencing Committee (1988:525) victims

'are not paid the fundamental courtesy by police and prosecutors of being informed of significant events and occurrences in the prosecution of those cases in which they have a personal interest in the outcome.'

If plea bargaining occurs or cases are not proceeded with victims often do not understand or accept the reasons for this. Sometimes they are not told. This leads to feelings of impotence and frustration.

Frequently too, victims may wish to have the nature of the sentence received by the offender explained to them. They will also wish to know when the offender will be released if a custodial sentence has been given.

Ordinary people are not familiar with the court, legal terminology or the court processes. Although most start out eager to help the prosecutors their eagerness is often abused to the point where they become poor witnesses or simply do not show up.

Issues:
- postponement of cases without notification to the victim,
- lack of information about what is expected of a victim/witness,
- harassment in examination or cross examination, in pre trial hearings and preliminary hearings as well as trials, and
- the simple expenses of child care, transport and other matters related to the proceedings

All these issues act to deter and intimidate victims and deny them any rights.

The Victorian Sentencing Committee (1988:531) identified the need for a specific officer from either the police or the Director of Public Prosecutions, to have responsibility for informing the victim of significant events in the case they are involved in.

These include:
- information about bail applications and their outcomes
- progress of the investigation of the crime
• charges laid against the accused and of any modifications of the charges in question;
• when criminal proceedings are listed for hearing, the outcome of any criminal proceedings and the implication of the outcome and any sentence imposed.
• the discontinuation of any proceedings, the acceptance of a plea of guilty to a lesser charge, of the acceptance of a guilty pleas in return for recommended leniency in sentencing and the prosecution's reasons for adopting such a course.

In countries overseas there has been a growth in prosecutor based victim aid programs. For example in the United States, following the inquiry conducted by the President's Task Force on Victims of Crime 1986, there has been a significant growth in assistance provided by prosecutors in major jurisdictions.

Victim Assistance Officers are based in some State prosecution offices. In addition the Office for Victims of Crime is working with the National District Attorneys Association and the National College of District Attorneys to train prosecutors and improve victim services in their offices.

Such assistance is aimed at promoting the consideration of victims throughout the criminal justice process and is being considered world wide as a matter of urgent need.

Similarly in the United Kingdom an extensive package of measures to protect the rights of victims has been negotiated and agreed systems are being introduced to ensure that victims are kept informed at every stage of the criminal justice process, the arrest of an alleged offender, the decision to prosecute, bail, sentence and appeal.

Such schemes are being adopted within Australia and it is pleasing to note that a Witness Assistance Scheme has recently been introduced within the Victorian Office of Public Prosecutions, modelled on the successful N.S.W. scheme.

**DURING THE COURT CASE**

In addition to these problems which victim/witnesses experience before coming to court, numerous problems are reported by victim/witnesses when they come to court.

For example:

• unnecessary, embarrassing and distressing encounters between the victim and the defendant or relatives and friends accompanying them, when separate rooms are not provided;
• lack of knowledge of whom to contact when they first arrive at the court, leading to immediate insecurity and confusion;
• long waiting periods without any suitable arrangements being made for refreshments.
• lack of child care arrangements;
• few facilities for disabled victim/witnesses;
• Unlike the defendant a victim/witness does not have his/her own lawyer. Consequently he/she may feel particularly harassed when one advocate questions him/her to elicit evidence and another to dispute it;
• A defending advocate may mitigate on behalf of his client in an effort to persuade the court to impose a moderate sentence. This can sometimes involve putting forward a version of the facts which conflicts with the victim's version. The present system does not allow the victim to be represented so he/she is unable to challenge the defendant's version. Several victims reported to the Task Force that this was particularly painful for them.

In Victoria, organisations such as Court Network and the Salvation Army service most of the law courts including the Supreme, Family, Coroner's and the majority of Magistrates Courts, as well as some courts in regional centres. The services offer 'non partisan, non judgemental concerned support'. 'The services often rely to a large extent upon the work of volunteers who are all professionally trained and monitored

However if victim rights are to be acknowledged, there is a need to improve access for all victims to this type of service described above. Such services are spread very thinly with a majority of victims never accessing such support.

**Special needs of people of Non English Speaking Background.**

Australia has an increasing population of people born overseas, many of whom come from cultures where the criminal justice system is quite different to ours. There may be little understanding of the role of the victim, or even other players in the legal system. There may be considerable fear and anxiety.

Extra care must be taken to ensure that assistance is available in a readily accessible form. Publications relating to all important aspects of the legal system should be made available in all community languages and in a clearly readable format. Other forms of passing on information should also be utilised, including audio and video cassettes and radio.

Community workers and social workers within specific communities and cultural groups need to be informed about the needs and rights of victims and the range of services available for their assistance.

Translators and interpreters need to be made available to victims from the time of the first reporting of the offence. Police, medical personnel and others providing assistance need to be sensitive to particular cultural, social or religious factors which may affect a person's response to a crime.
The availability of female interpreters in particular circumstances is particularly critical. It is also important that there be continuity of interpreters with the same person handling a case until its conclusion.

**Special needs of Aboriginal people who become victims of crime**

The report of the National Committee on Violence described the vulnerability of Aboriginal Australians to victimisation.

For many and varied reasons, many Aboriginal people are reluctant to report their victimisation to the police.

The understandable mistrust of traditional institutions such as courts, by Aboriginal people has been noted by the National Committee on Violence (Grabosky: 1989:18) Further, the formalities of the criminal justice process may be more alien and bewildering to Aboriginal victims of crime than they are to victims in general.

It is important that there be more consultation with Aboriginal groups on the especial difficulties for victims of crime. This consultation should lead to the development of more suitable service delivery.

**Child victims of crime**

Child victims, especially of sexual assault experience special difficulties within the criminal justice system. A child victim will generally be expected to relate the details of the offence in court some considerable time later and to stand up to some cross examination.

Evidence suggests that children as witnesses/victims are often given inadequate care and protection during legal proceedings.

Going to court for a young child (as for many adults) is part of an awesome, intimidating ritual. The formal surroundings, the wigs and gowns, the presence of the offender, the loneliness of the witness box, the number of persons present, the language used and the hostility of the cross examination are all factors which many adults find hard to cope with.

A wealth of material is available on the problems of child victims. The need to balance the conflicting interests of those involved in a case where a child has complained of abuse and the complaint has ended up in court is crucial. The needs and rights of the child victim/witness must be considered as significant as are those of the accused person.

The special vulnerability of children has recently been given more recognition in the legal system with some assistance measures being developed. All Australian
jurisdictions appear to be considering and trialing various methods to reduce the ordeal for child victim/witnesses.

These include procedural and legislative reforms to reduce the trauma of child victim/witnesses within the criminal justice system, such as allowing judges the discretion to conduct the trial in such a way as to take account of the welfare of the child, and the use of television and video and screens to protect the child.

While these measures may assist in preventing some of the trauma experienced by children in these circumstances, the question of rights of this special group must continue to be a paramount concern.

**CRIMES COMPENSATION**

While most victims of crime reported that the amount of money they received in compensation was not the most significant issue "how could money compensate for what I have been through?" the system of compensation for victimisation is an important part of the process of validation and victim rehabilitation. Some victims mentioned dissatisfaction with the monetary amount received in compensation. Others report difficulties with the system.

The issues of most concern appear to be:

**Lack of awareness of right to compensation**

- many victims only find out about compensation by accident or by luck
- others do not apply for it because they do not know about it.

This further affirms and highlights the need for the information booklet recommended above.

**Experience in the court**

- appearing at the Tribunal may be harrowing, difficult and perhaps even frightening
- magistrates may appear 'unsympathetic'
- victims feel they have to 'prove' their suffering to such an extent that they were made to feel the guilty party.

Far from being a cathartic experience it appears for some victims to be a continuation of the trauma of victimisation.
Inconsistency

A major problem is inconsistency. Most magistrates appear to be responsive to the needs of victims but it is suggested that some conduct hearings in a manner which can intimidate the victim.

As well, inconsistency of awards was often raised. For example, the distraught mother of a murder victim was puzzled that her sister, the victim's aunt, received more in compensation than she, the boy's mother did from a different magistrate. Such inconsistencies can lead to misunderstandings which further traumatisate the victim.

It was mentioned to the Task Force that legal practitioners are unable to provide reasonable guidelines to their clients about what compensation to expect from the Tribunal.

'Few cases are reported and appellate decisions in administrative appeals tribunals tend to be difficult of access. (Freckelton:1994))

Freckelton, in a Paper delivered at the 8th International Symposium on Victimology, Adelaide, 22 August 1994, pointed out that while legal practitioners and judicial officers are becoming more and more specialised in recognition of the trend towards greater specialisation in our legal system, 'victims are not given the benefit of such specialisation.'

'Decision makers who have never encountered .......standard works on trauma and victim impact are put in the position of having to deal with this sensitive area. No textbook exists in Australia or New Zealand on criminal injuries compensation. The result is that the tariff, for example for the award for those suffering moderate or severe post traumatic stress disorder is almost impossible to discern.'

This limited understanding by the legal profession of the nature of trauma and the behaviour of victims can result in inadequate advocacy on behalf of victims and confused decision making by those responsible for dispensing criminal injuries compensation awards.

Different approaches by magistrates to the notion of contribution and to the appropriate level of compensation may result in some victims being disadvantaged. Freckleton stresses that the complexity and specialisation of this area needs to be recognised by the bodies and the decision makers whose task it is to assess the existence and quantum of injuries flowing from criminal acts and for those who represent victims. He emphasises the need for communication between medical practitioners, mental health practitioners and lawyers.
SUMMARY

Without examining legislative or sentencing matters in relation to support for victims of crime, there are a number of areas emphasised above, where the rights and needs of victims of crime within the criminal justice system can be significantly improved.

Such areas relate to provision of information, assistance for victims in negotiating new and complex systems, attention to special needs and general courtesy to vulnerable people undergoing a difficult and traumatic experience.

These reforms will indicate to victims that they are considered an integral part of the system, that they do have rights, and that the community does care about what has happened to them personally.

While some victims, indicate a concern about the sentencing of offenders, the rights they are most concerned to have respected are:

- their own personal rights to information at all levels;
- participation in decisions to drop charges or accept pleas to lesser charges;
- courteous treatment from those involved in the case;
- a degree of protection from harassment in cross examination; as well as
- the right of access to a full range of services.

While linking the issues of victims rights and healing to outcomes of court cases and length of sentences for offenders is an understandable reaction of some victims and lobby groups it is not necessarily a healthy or useful long term victim assistance strategy.

As well, it may be counter productive in that it gives the general public a false impression of who victims are and what they hope to achieve by way of justice.

The rights of victims to be treated with dignity, courtesy and respect following their ordeal are the basic rights which will best enable these and all victims to work through their experience with the assistance of the legal and social supports of the system.


This Declaration begins with the basic premise:

A victim of crime shall be entitled to:

Be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to the victim's personal situation, rights and dignity.
The declaration then lists a number of specific areas in which the criminal justice system is required to provide victims with information and to respect their rights and needs both before and during any legal proceedings which may result from the victimisation

For such rights to be meaningful, it is important that they are well known and that those who work within the criminal justice system victims are conscious of the special place of the victim within the system and endeavour to assist and support wherever possible.

It is also crucial to any system of rights that there be a corresponding right to complain, or to describe the short comings of the system when it goes wrong. Currently this does not appear to be an option for most victims.

The overwhelming response to the Phone In suggested that it in fact, was a 'de facto' complaints system which vast numbers of victims wished to utilise.

A model strategy for victim assistance will include both a firm Declaration of the Rights of Victims and a process whereby victims can complain if these rights are violated. All organisations which are part of a victim support strategy should have built in guarantees that victims can express their opinions about services that are delivered and about the way in which services are offered.

COMMUNITY RESPONSIBILITY

We are all victims of crime in some ways. We pay the price for crime in our society in the form of higher taxes, higher prices, lost productivity and wasted lives. Just as community safety has increasingly become recognised as a responsibility to be shared by the whole community, and not regarded as the specific responsibility of the criminal justice agencies, the police and the courts, so too the care and rehabilitation of victims of crime needs to be seen in the same light.

It has been suggested that a subtle reason for the mistreatment of victims of crime may be that they are sometimes blamed for their misfortunes. People who have not experienced crime may unwittingly expect victims to get up, brush themselves off and get on with their lives.

'This responsibility for recovery somehow becomes transformed into responsibility for the crime itself- the victim is faulted for having become victimised. By blaming victims, others seem to believe that they, themselves are less vulnerable to crime. They tell themselves that they would not have driven with their car doors unlocked, walked down the street in the dark, or opened their door to a stranger. Therefore they would not have been victims.' (Presidents Task Force:1986:9)
This attitude causes whole communities to live in fear and narrow their opportunities and quality of life. Women and children and the elderly are particularly affected by the adoption of such attitudes.

An unbalanced emphasis on the dangers and consequences of victimisation and the too dramatic media centred highlighting of the plight and misfortune of those who are victimised may inadvertently raise anxiety about crime and heighten the fear of victimisation.

Assistance for crime victims must embrace a holistic community safety movement to stop crime before it occurs. While assisting victims helps to repair the damage done by crime, crime prevention works to protect all people from becoming victims. Where people work together to promote community safety and security and open lines of communication with police, government agencies, schools, churches, sporting groups and other bodies, the whole community will be able to live more safely.

David Hunt, Commissioner of Police, South Australia, and Chairperson of the Australasian Society of Victimology, stated recently,

'...the responsibility for preventing criminal victimisation has to be shared. Strategic alliances will also enhance the prospect of not only devising creative measures to reduce criminal victimisation, but actually achieve a reduction in actual crime, erasing fear of crime and minimising re-victimisation' (Adelaide:1994)

Such a sense of responsibility, of communities working together with professional groups and government agencies, to prevent crime, promote safety and care for those affected by crime will be the most satisfactory way to acknowledge and respond to the needs and rights of victims.