

Brodie Donegan

29<sup>th</sup> July 2017

New South Wales Sentencing Council  
GPO Box 31  
Sydney NSW 2001.

Dear Chairperson,

**RE: Preliminary Submissions for Victim Impact Statements (VISs)**

I am writing in response to the review into victim's involvement in the sentencing process.

I was a pedestrian hit by a car on Christmas Day, 2009. I was 32 weeks pregnant and my baby died as a result of the accident. The defendant was convicted of dangerous driving causing grievous bodily harm and driving under the influence of prescribed drugs. Upon sentencing, I was the only person allowed to make a victim's impact statement, under current legislation as I was considered the primary and only victim. My partner was not allowed to provide a VIS despite the huge impact that my injuries and losing his daughter had upon him and our family as a whole.

**Who can make a Victim Impact Statement**

In NSW, the provisions of Part 3 Division 2 of the Crimes (Sentencing Procedure) Act 1999 (NSW) states that only either a "primary victim" or a "family victim" can provide a VIS.

Under the definitions in section 26 Definitions of the Act a "primary victim" is defined as either the "(a) a person against who the offence was committed, or (b) a person who was a witness to the act of actual or threatened violence, the sexual offence, the death or the infliction of the physical bodily harm concerned" being a person who has suffered personal harm as a direct result of the offence. A "family victim" is able to provide a VIS in relation to an offence as a direct result of which a primary victim has died, means a person who was, at the time the offence was committed, a member of the primary victim's immediate family, and includes such a person whether or not the person has suffered personal harm as a result of the offence.

The narrow definition in the New South Wales legislation of who can provide a VIS to the Court at sentencing is at odds with other states of Australia's approach to the issue.

In Victoria the definition, under ss.3 (1), of the Sentencing Act 1991 (Vic) "victim" is "means a person who, or body that, has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the offender;" This definition of a victim extends to anyone who suffered injury, loss or damage as a direct result of the offence and recognises that the ramifications of offences are not solely born by the "primary victim" and that in cases such as this the family are also incredibly impacted.

The Australian Capital Territory has an even wider definition of who is defined as a victim of a criminal act and therefore who can make a VIS. Sub-section 6 (1) of the Victims of Crime Act (1994) ACT providing that a "victim means a person who suffers harm because of an offence and includes-

- (a) The person (the primary victim) who suffers harm- (i) in the course of or as a result of, the commission of an offence; or (ii) as a result of witnessing an offence; and
- (b) A family member, of the primary victim, who suffers harm because of the harm to the primary victim; and
- (c) A person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim;"

South Australia legislation closely aligns with the Australian Capital Territory with ss. 7A (1) defining those able to provide a VIS as:

“(1) A person who has suffered injury, loss of damage resulting from an indictable offence or a prescribed summary offence committed by another, may furnish the sentencing court with a written personal statement (a victim impact statement) about the impact of that injury, loss or damage on the person and his or her family.”

I make the submission that New South Wales should consider widening the definition of who can provide the court with a VIS to be more in line with Victoria and the Australian Capital Territory. By widening the definition of who can provide a VIS, other states and territories of Australia have been able to provide the people impacted by an offender’s behaviour a chance to have that acknowledged in court without changing the legislation surrounding the actual charges laid.

Further to my submission above relating to the widening of the definition of “victim” and who can provide a VIS, I would like the Sentencing council to consider:

- (1) Where “children” is defined, this should extend to children living, deceased or stillborn.
- (2) Where “stillborn” is defined, and not necessarily classed as the primary victim, both parents (if applicable) should be able to give a VIS, not just the mother/primary victim.

### **Procedural issues with making a VIS and assistance to victims**

VISs are the appropriate tool to inform the court about the impact of the crime, and as such, they assist the court in determining an appropriate sentence and most importantly, they increase victims’ level of satisfaction and therefore participation in the criminal justice system. They should be respected by all as such and not treated lightly nor dismissed.

As a victim, I found it incredibly difficult, traumatic and emotionally draining to write my statement. I had to relive the trauma. I had to relive the pain. I also struggled having certain rules around what I could and couldn’t write and it initially felt restrictive. In addition to the difficulty in writing my statement, I felt extremely intimidated to have to read my statement in court from the bench. I was, however, determined for the judge and the offender to hear the statement in my words. I also submitted photos so they could see the injuries I sustained and most importantly in my eyes, see my daughter. Despite my determination, I shook through the entire statement. I cried through at least half of it. I had the eyes of the courtroom on me. It was a hugely nerve wracking process. One that I am sure could also be made easier or at least steps could be taken to minimise the trauma.

I request that the Sentencing council consider the following:

- (1) A support person (of their choosing) could sit with the victim as they read their statement in front of the court (and take over if need be).
- (2) A victim should be given the opportunity to come in to the court at a separate time and practice reading or at least sitting on that side of the court. For most people it will be the first time they are in a court room, and it is hugely intimidating.
- (3) A victim liaison officer (a legally trained professional employed by the Department of Justice), assigned as a contact as soon as a person is identified as a victim. They could provide information on possible entitlements, assistance and directing to appropriate support agencies. In addition the officer could also explain the court processes, procedures and offer support during the writing of the victim’s impact statement. (Victim Assist Queensland runs the Local Victim Coordination Program to provide victims of violent crime/s—in Queensland—with support as they go through the criminal justice system and I would point to adopting a similar program throughout NSW)

### **Significance of the review of Victims involvement in the sentencing process**

This review is extremely important in my eyes. Even though writing and delivering a VIS is an emotional, difficult and traumatic process, it **IS** cathartic, it **IS** empowering and I did feel a **weight lifted** after reading my statement to the court. I am grateful I had the opportunity to speak. I felt it was the only input or influence I had in the process and I wanted the offender (the driver who hit me) and the judge to understand how much

the accident had changed mine and my family's life and how much we missed and grieved for our daughter. I believe giving or having an opportunity to give a victim impact statement is enormously important and the more steps and processes that are put in place to encourage, support and allow a victim to make such a statement will only benefit the victims and the courts.

Please feel free to contact me either by email ( [REDACTED] ) or by phone on [REDACTED] for any further information or input.

Thank you kindly for considering my submission.

Yours sincerely,

Brodie Donegan