



Our **Mission** is to prevent child sexual assault in our society.
Our **Victim impact statement** is to make Australia the safest place in the world to raise a child.

31st July 2017

New South Wales Sentencing Council
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Sydney NSW 2001
E-mail: sentencingcouncil@justice.nsw.gov.au

To Whom It May Concern:

Bravehearts is pleased to provide this submission in relation to the review of victims' involvement in sentencing.

As an agency that works with, and advocates for, survivors of child sexual assault and lobbies for evidence-based legislative and policy responses to offending we are providing feedback with specific thought around victims of child sexual offences.

We note that the current terms of reference focus specifically on:

1. The principles courts apply when receiving and addressing victim impact statements.
2. Who can make a victim impact statement.
3. Procedural issues with the making and reception in court of a victim impact statement, including the content of a victim impact statement, the evidential admissibility applied to a victim impact statement, and objections to the content of victim impact statements
4. The level of support and assistance available to victims.

One of the most disempowering aspect of the criminal justice system for victims of child sex assault is losing their voice and their identity as the person harmed by the offence. In a system where victims very often get lost as the State takes on the "identity" of the victim, it is vital that victims be given an opportunity to be involved and a strong voice to tell their story.

The ability to provide a victim impact statement is a step towards bridging the gap between our traditional adversarial system of justice and a more restorative approach. While traditional systems are about dealing with offenders for committing offences against the state, restorative justice is about repairing the harm done.

If we consider the usage of victim impact statement under this framework we can understand that this type of focus in our system tends to more effectively give victims a greater voice in the criminal justice system and allow offenders an opportunity to understand the true impact of their actions.

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The Right to Provide Victim Impact Statement

We note that information provided by the ODPP on victim impact statements states: “Please be aware that the final decision about whether to submit the VIS, or parts of the VIS, to the court is made by the prosecutor”.

For many victims of child sexual assault, the feeling that they are outside and/or superfluous to the process can have a devastating impact on their healing process and their ability to deal with the crime perpetrated against them, providing them with that voice provides them with a level of power and control over their experience. To have that right denied to a victim would be devastating.

The literature on restorative justice practises extols the positive impact of the victim’s voice. Victims of crime need to feel as if they are more than a name on a piece of paper or a “witness” to the crime perpetrated against them.

While victims need to have the option to have their voice heard and to tell of the impact of the offence on them, there are a number of victims of child sexual assault who may not want to be part of the process, this is particularly relevant when the offender is someone trusted and loved by a victim. The complexity of the “relationships” between victims of child sexual assault and their offenders means that for some, there is no desire to be part of the process. For many, the only outcome they are concerned with is that the offending stops. For others, the traumatic nature of these types of matters means that they would rather not be part of the process or have to articulate the harm they suffer.

It must be clear that the decision to not submit a victim impact statement can not be considered a sign that the offence had little or no impact on the victim, only that the victim for whatever reason does not want to prepare a statement. The impact of the crime on victims who choose not to submit a victim impact statement should be noted as part of the sentencing process.

Supporting Victims in Providing Victim Impact Statements

The process of providing a victim impact statement can be daunting and difficult for victims. The role of victim support in assisting victims is absolutely vital. We note that currently victims are provided with information on what to include, but we would further suggest that ODPP Victim Support Officers (or suitably appointed victim support agencies) are trained to assist victims in their victim impact statement preparation. This should include both practical support and emotional support, as the process of providing such statements can be re-traumatising for many victims.

The opportunity for a victim to submit a VIS has to be an opportunity for them to tell their story and how the crime impacted on them. We support the current suggestion provided to victims, being a focus on:

Impacts of the crime you may wish to tell the court about could include:

- Physical injuries, impact on health, medical treatment
- Emotional impact and wellbeing

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- Psychological or mental health impact
- Changes in your behaviour, attitudes, or how you think about things
- Changes in your normal coping skills
- Changes in your social life or impact on relationships with others
- Impact on your financial or housing situation; education or employment.

These are just a few suggestions to think about. You may write about how the crime impacted on you at the time of the offence and / or any ongoing effects on your life. Some people may write a bit about their history, and then compare their life before and after the crime. The thoughts, feelings and experiences must be your own as the victim of crime, rather than those of others.

Consideration might be given to developing a pro forma asking 'core questions' to assist the process. However, questions should not be closed or leading and should not inhibit the victim from providing further information about the effects of the crime.

Questioning Victims

We note that information on victim impact statement states that “The defence is also entitled to cross-examine you or the author of the VIS about the contents in the VIS. This may happen because the offender does not agree with parts of the statement.” This is a huge concern of ours.

Given that the victim impact statement is about the victim’s experience and their perceptions of how the crime affected them, it would seem redundant and potentially unnecessarily traumatising for victims to be cross-examined on their statements. In sentencing the Courts are well aware of what is and what is not relevant. The victim impact statement is not considered as evidence of fact in considering guilt or innocence and should not include any new information or allegations, but rather it is the victim’s subjective statement on the impact of the offence on their life. If it is taken as this, there should be no need to put victims through the likely distressing process of questioning by the defence.

If victims are adequately supported in writing and providing the victim impact statement, there should be no requirement for questioning of the victim.

Finally, we recognise that all too often victims are left outside of the criminal justice process – a system that is focussed on the offender and the offence rather than the “impact of the offence on the victim. The purposes of VIS can be seen as twofold (Department of Justice Canada).

The first set, known as 'direct purposes', is that the statements will:

- provide an instrument for victims to give information regarding the impacts of the offence on them;
- introduce this information to the court; and
- provide direct input into the criminal justice process by victims.

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The second set, known as 'indirect purposes', is that the statements will:

- offer victims a means of input about the effects of the offence;
- increase victims' willingness to co-operate with the criminal justice system;
- increase victims' feelings of involvement in the criminal justice process; and
- increase victims' satisfaction with the sentence handed down and with the criminal justice system generally.

We thank you for the opportunity to provide this submission.

Please contact us on [REDACTED] if any further information is required.

Kind Regards,


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