

NSW Sentencing Council: Victim's involvement in sentencing

Office for Police and NSW Police Force response

The NSW Sentencing Council is conducting a review of victims' involvement in the sentencing process. Preliminary submissions addressing the issues suggested to be covered in the terms of reference have been invited from interested stakeholders.

The NSW Police Force have suggested for the following matters to be considered as a part of the review:

Victim Impact Statements

1. An evaluation of the impact of the changes to Victim Impact Statements since 1 July 2014 and if this has improved sentencing outcomes for victims;
2. An evaluation of sentencing outcomes where no Victim Impact Statements is submitted compared to matters in which victim impact statement are taken into account;

Victims' involvement in sentencing, including who can be considered as a victim and make a victim impact statement, are contained in Part 3 Division 2 of the *Crimes (sentencing Procedure) Act 1999 (NSW)* and Part 2 Division 2 of the *Crimes (Sentencing Procedure) Regulation 2010 (NSW)*. Prior to 2014, a court was not required to consider a victim impact statement given by a family victim in connection with the determination of the punishment for the offence unless it considered that it was appropriate to do so.

Effective from 1 July 2014, the *Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014* inserted a new Section: s 28(4): *A victim impact statement given by a family victim may, on the application of the prosecutor and if the court considers it appropriate to do so, be considered and taken into account by a court in connection with the determination of the punishment for the offence on the basis that the harmful impact of the primary victim's death on the members of the primary victim's immediate family is an aspect of harm done to the community.*

The prosecution is required to consult with family victims in relation to the preparation and presentation of Victim Impact Statements (VIS). VIS are subject to compliance with the rules of the sentencing hearing. Often victims find that their highly personal account is subject to legal constraints diminishing their 'voice' to ensure compliance with the law. Other victims feel compelled to make a VIS or be seen that the impact of the crime was not harmful to them.

Legal representation

3. Exploring the possibility of introducing legal representation of victims at sentencing hearings moving victims towards equality with the prosecution and defence;
4. Consider the wider impact that legal representation for victims could have in minimising victim distress in the sentencing process and to make them more comfortable and accepting of sentencing outcomes.

The involvement of victims in criminal prosecutions has increased over the last 23 years, as the United Nations Declaration of Basic principles of Justice for Victims of Crime has been recognised. Even with these changes and the changes to victim impact statements, many victims do not feel that they are part of the justice system. Anecdotal evidence from victims suggests that they feel that they are simply witnesses for the prosecution and not a party to the prosecution of the defendant. Victims' satisfaction is guided by the fairness of the process and that there is an acknowledgement of the injury or harm done to them.

International jurisdictions which pride themselves as taking a "victims first" approach include Japan, where lawyers for victims act as co-prosecutors and can cross examine witnesses and the accused. In the United States of America, counsel is appointed to ensure the rights of victims are represented in sentencing and this approach has also been adopted by Austria. In December 2012, the United Nations published a guideline recommending limited legal aid funding be extended to victims to 'allow them to exercise participation' in justice.

The South Australian Victims Rights Commissioner, Mr Michael O'Connell is also a vocal advocate of legal representation for victims during sentencing hearings.