OUR REFERENCE
M.Carey [redacted] (fax)

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DATE

DIRECTOR'S CHAMBERS

ODPP
New South Wales

15 November 2017

The Hon James Wood AO QC
Chairperson
NSW Sentencing Council
GPO Box 31
Sydney NSW 2001

By email: sentencingcouncil@justice.nsw.gov.au

Dear Mr Wood,

Victims' involvement in sentencing: Consultation Paper, September 2017

Thank you for the opportunity to comment on the Victims' involvement in sentencing Consultation Paper. I make the following comments in relation to the specific questions asked:

The Victim Experience

Question 2.1: *How can the information given to victims on victim impact statements (VISs) and sentencing be improved?*

As noted in the Consultation Paper (CP), this Office has received feedback from victims in relation to the publically available information, in particular Justice's Victim Impact Statement Information Package. This feedback indicates that the information is overly complicated and not reflective of the in-court experience of victims, particularly with reference to how a VIS will be used in court.

The supplementary information provided by this Office will also be improved to ensure that is it user-friendly both visually and content-wise. This process will be informed by the results of this consultation.

I note that the Victorian Government has well-designed VIS guides, including a version specifically directed towards young people, that go some way to also explaining the court process, which is one of the things that the NSW information could improve upon. Further, the Victorian Office of Public Prosecutions recently re-designed their on-line information and also now has very user-friendly information for victims and witnesses.

The guides and on-line pages created by the Victorians would be a useful starting point in the re-design of the information provided by NSW agencies and organisations and an impetus to also consider age-appropriate information.

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Any re-design should aim to provide user-friendly information (both visually and content wise) that not only explains what a VIS is, what it can contain, and who can write one, etc; but the information should clearly state the role of a VIS in the sentencing process in language victims understand. Victims want to know if their VIS will have a direct impact on the sentence the offender receives and the present language used, in my opinion, does not address this issue head on. This will be something that I consider as part of this Office's review of the information we provide.

There also needs to be better general information provided to victims about the sentencing process: about its purpose and aim and an acknowledgement that it may appear to focus on the offender and why this is so. Information needs to be provided about the guilty plea discount scheme and about the role of good character and character references, as these are things that can be easily misunderstood by victims. Victims also need to be reassured that the material tendered by the Crown/prosecution, which is often not read onto the record or referred to in Court as material provided by the Crown, has placed before the Court all the facts of the offence/s, of what happened to the victim, and all other relevant material. This information should come from both Justice and the ODPP – from Justice in a general sense and from the ODPP more specifically, as it does now.

Whether it is provided as part of a VIS information package or separately, there also needs to be general user-friendly information available to victims that details the steps in the court process and what they can expect at each step and what their role is (or is not) at each step. This should be general information related to all courts.

Question 2.2: *How can the practice, procedure and/or law for settling the admissible content of a VIS better meet the concerns of victims?*

The examples from this Office quoted in the CP, and other examples I am aware of relating to instances where objections are raised to the content of a VIS, do not generally concern inadmissible content per se or admissible content alone. ODPP solicitors and Witness Assistance Service Officers are well-versed in what constitutes admissible material and provide information (the design and delivery of which can no doubt be improved) in relation to what can and cannot be included in a VIS. Every effort is made to discuss any non-complying VISs with the victim prior to court and have the VIS rewritten or edited in consultation with them or by them. This is not always possible, particularly if the VIS is not provided prior to the day of sentence. And it is certainly not possible if, at sentence, Defence take a different view as to what constitutes admissible content.

Objections taken on the day of sentence are demoralising and re-traumatising and do leave victims feeling that their word is not good enough or that the VIS is no longer theirs and that the offender is once again "in charge" or "calling the shots".

A review of the guidelines re admissible content and a clear indication of what is or is not admissible would assist in better meeting the concerns of victims and hopefully avoid last-minute editing or rewriting.

Better explanations – in the general publically available information - of the effect of plea negotiations on a victim's VIS, which may have seen charges dropped or otherwise disposed of, would also assist in avoiding inadmissible content objections – as would the inclusion of Form 1 offences in the VIS regime.

Question 2.3: *What problems, if any, do victims experience when presenting their VIS in court?*

The problems victims experience when presenting their VIS include last-minute objections raised by Defence which, as noted above, can have severe detrimental effects; under-recognition or lack of comment by the Judge or Magistrate receiving the VIS; and concern that they are opening themselves up to the offender's family and friends and/or strangers in the courtroom (which fear, in the case of prescribed sexual offence complainants, will be greatly reduced with the recent closed-court and support person amendments). And, where last-minute adjournment applications are granted or matters are not reached, victims are denied the cathartic effect of reading their VIS, or even just having it over and done with, and will be required to again, on another occasion, actively and purposely re-live the day of the offence.

Question 2.4:

(1) *What factors are encouraging or discouraging the use of VISs in the Local Court?*

The three factors that, in my opinion, most discourage the use of VISs in the Local Court are, firstly, as noted in the CP, the fact that the list of offences for which a VIS can be prepared is narrower in that jurisdiction than it is for the District Court. Secondly, the time constraints that the Local Court operates under and the, at times, immediate progression from guilt to sentence (although, in reality, this should not be such an issue with offences that attract a VIS, as these more serious offences are the ones where there will often be a delay between guilt and sentence and therefore time for a victim to prepare a VIS). Thirdly, the lack of a dedicated, on-site support service that can provide information to victims about their right to write a VIS and that can also assist victims to write a VIS – especially where it has to be done "on the spot". The NSW Police Prosecutors are too busy to provide this service and nor should the NSW Police as a service be expected to.

(2) *How can the use of VISs in the Local Court be improved? Can this be implemented in a way that does not compromise the efficiency of the Local Court?*

As more matters move to the Local Court for resolution, I believe it is time to reconsider the application of the VIS regime in that jurisdiction. The policy of excluding some offences when dealt with in the Local Court now appears hard to justify. Practices and procedures designed to give a voice to victims, to include them in the sentencing process and to have the harm done to them acknoweldged, should not depend on what jurisdiction hears a matter.

Consideration could be given to the establishment of an on-site support service dedicated to advising victims about their rights to a VIS and assisting victims to write a VIS – including where a VIS is required on the spot. Services at larger courts could provide a telephone and document service to smaller courts and a telephone interpreter service should be available where required.

Such a service would assist in increasing the number of VIS presented in the Local Court and should not add to the Court's workload or delay the resolution of cases. (For example, short-form pre-sentence reports are regularly prepared by Community Corrections duty officers at court and do not impact on the court's efficiency.)

"On the spot" VISs could perhaps follow a set formula with set topic headings etc and be designed to be a short-form of VIS – with this explained to the victim. Victims would have to be in attendance for such a system to work and they may not always be, particularly if a matter has been part-heard and the victim gave evidence on the previous occasion. Therefore, even such a service would not assist all victims.

Referral to such an organisation by the NSW Police may assist, particularly where there is an adjournment between conviction and sentence. Such an organistion could be government-funded and staffed by paid workers or by trained volunteers from exisitng or newly creatred court-support organistations or both.

Question 2.5:

(1) How can victims be better assisted in making a VIS?

As indicated above, at Question 2.4(2), specialist VIS support workers in the Local Court, who are trained and follow trauma-informed practices and procedures would assist in making VISs more widely available in that jurisdication.

ODPP Witness Assistance Service (WAS) Officers provide trauma-informed support for victims, including in relation to writing a VIS, but do so upon request following the provision of written information and mostly in the higher jurisdictions. Likewise, ODPP solicitors will provide information and provide further assistance if requested and will liaise with the victim if the submitted VIS contains inadmissible material. Additionally, WAS Officers will provide assistance for, and in, court, including liaising with, for example, Mission Australia or the Victims and Witnesses of Crime Court Support, in order to have someone read the VIS out in court if the victim does not wish to. Such support though, is concentrated in central Sydney and now at Newcastle District Court. There is no support of this kind in other regional or country centres.

There is certainly room for a dedicated (trained and trauma-informed) outside service to assist victims prepare their VISs. My preference would be that this be a government-funded service that works with the ODPP to ensure that all victims are assisted to whatever degree they require.

(2) Should victims be provided with a specialist representative? If so, what should their role be?

I do not believe that the provision of a specialist representative for victims is compatable with the adversial system or that one is required if organistations and agencies improve the quality and content of the information available for victims, if there is more co-ordination of services, and if resources are put into services dedicated to assisting victims to prepare VISs.

Question 2.6:

(1) Are the needs of victims that require additional or distinct assistance being met by current procedures?

Whilst every effort is made to meet the needs of all victims, there is always room for improvement. Victims who live in regional and country areas often do not have the same access to government (or specialist volunteer) services as victims who live in the city, persons for whom English is not their first language can also encounter difficulties in accessing services, as can the disabled, people of different cultural groups, Aboriginal and Torres Strait Islander people and children in out-of-home care. The difficulties these groups have in accessing government services generally are also present when they seek to participate in the justice process, such as by the writing of a VIS.

(2) How can assistance to victims with additional or distinct needs be improved?

Improvement could take the form of, for example, providing written information about VISs in a variety of languages rather than relying on telephone interpreter services to translate this

basic information, by the establishment of a dedicated VIS assistance service, and by, as discussed below, taking a more modern and realistic view of who can submit a VIS.

Who can make a victim impact statement

Question 3.1:

(1) Is the current definition of "primary victim" appropriate?

In my opinion, and noting that the common law still has application in relation to VISs, the current definition of "primary victim" is largely appropriate, although I believe consideration should be given to including three further categories of "primary victim". These further categories would encompass the following situations:

- where a pregnancy has been terminated or a child stillborn as a result of the offence;
- a statement on behalf of the family (as opposed to one from or on behalf of the victim) where a child sexual offence was committed and the offender is a member of the child victim's immediate family (as per the definition in section 26 of the *Crimes (Sentencing Procedure) Act 1999)* and
- a statement on behalf of the family (as opposed to one from or on behalf of the victim) where the primary victim has been left severely disabled, whether physically or cognitively, by the offence.

(2) How could the definition be amended?

The definition could be amended by the insertion, in the definition of "primary victim", of a new sub-section (c) that specifies that a person who has suffered personal harm due to their relationship (whether spouse, defacto partner or by engagement) to a victim whose pregnancy was terminated as a result of the offence committed and/or due to their parental relationship to a child who was stillborn as a result of the offence committed is a primary victim.

With respect to the second category referred to above, the definition could be amended by the insertion, in the definition of "primary victim", of a new sub-section (d) that specifies that where a child sexual offence victim's immediate family has suffered, as a family unit, harm (for example, disruption, breakdown, estrangement, loss of job, loss of income, loss of home, psychological or psychiatric harm to family members, etc) as a result of an offence committed against the victim by a member of the victim's immediate family, a VIS can be submitted on behalf of the child victim's family. Such a VIS does not limit the rights of the primary victim to submit a VIS or have a VIS submitted in accordance with section 30(2).

With respect to the third category referred to above, the definition could be amended along the same lines as the second category so that a family unit that has suffered harm (akin to those mentioned above and with the addition of loss of job to become the victim's carer) as a result of the catastrophic and life-changing injuries received by the victim is able to submit a VIS on the family's behalf – and without placing a limit on the rights of the victim re a VIS.

(3) What are the advantages and disadvantages of expanding the definition?

I do not see any disadvantages in including the above three categories in the definition of "primary victim". The first category addresses a clear anomaly in the present law and acknowledges the reality, in terms of harm caused, of the loss of a foetus or stillborn child.

The second and third categories are situations where the offence committed against the victim has, either because of the relationship of the victim to the offender or the extent of the harm

caused to the victim, a devastating, direct, life-changing and on-going impact on the victim's family unit that is not usually present in other situations and which cannot be addressed in the VIS put forward by the victim or on their behalf. In these situations, the harm directly caused to the victim is only half the story; their families are direct victims also.

Opening up the right to make a VIS beyond these three categories, to "indirect" primary victims, runs the risk that victims' voices become diluted and that their voice becomes just one of many to be heard in the sentencing process.

As noted above, the common law retains a role in the VIS regime and it remains open for Judges and Magistrates to accept VISs from persons who fall outside the various definitions.

Question 3.2:

(1) Is the current definition of "family victim" appropriate?

As noted in my preliminary submission and the CP, there are many people in today's society whose "family" is not constituted by the traditional ties which constitute the definition of "family victim". Close friendships, for example, now constitute "family" for many people, and extended family and/or kinship relationships may be a person's only family.

In my opinion, the definition of "family victim" (because it is tied to the definition of a "primary victim's immediate family") should be amended to reflect reality and therefore the other type of relationships that can constitute family, to reflect the kinship ties of Aboriginal and Torres Strait Islander people, and to reflect different family structures that may be found within ethnically or culturally diverse communities.

(2) How could the definition be amended?

The definiton of "family victim" (or the definiton of the primary victim's immediate family) should be amended along the lines of the New Zealand definition of "immediate family" in section 4 of their *Victims' Rights Act 2002*, so that Aboriginal and Torres Strait Islander kinship ties are included in the definiton section.

And, where a victim has no "immediate family" as per the definition, a court should be allowed to admit a VIS by a member of a victim's extended family or culturally recogniesd family to whom they were close or by someone with whom the victim had a close family type relationship or whom they considered to be their family. The ability to admit such a VIS should be included in legislation in order to ensure a consistent approach to the admittence of such VISs and a discretion can remain with the Court if it is considered necessary.

(3) What are the advantages and disadvantages of expanding the definition?

I do not consider that there are any disadvantages to amending the definition of "family victim" as I have outlined above. To exclude a person who was, to all intents, a primary victim's family on the basis that they do not fit the traditional and Anglo-centric section 26 definition, is to deny a voice to those people and, therefore, to the deceased victim.

Question 3.3:

(1) Is the current definition of "personal harm" appropriate for identifying victims who may make a VIS?

As I support an extension of eligible offences, including where great economic loss has occurred, the definition of "personal harm" would need to be amended to include a reference to economic loss in some form. In this sense, the current definition is not appropriate.

And, as referred to above in my response to Question 3.1, if VISs from family victims in the two identified situations referred to are to be admitted, the "harm" occasioned or all the harm occasioned is not covered by the current definition of "personal harm". The insertion of a new definition, of "family harm", may be preferable to amending or extending the definition of "personal harm".

(2) How could the definition be amended?

Other than the situations referred to above, I do not consider the definition needs amendment.

(3) What are the advantages and disadvantages of changing the definition?

I do not consider that there are any disadvantages in changing the definition to allow a reference to economic loss (in certain circumstances, such as inter-familial fraud or offences committed against elderly people or of a certain level, for example, "a substantial loss") or to recognise harm to families (in two discrete circumstances). In both instances the harm caused is still the direct result of the offence and therefore within the contemplation of the offender and the amended definition would still retain an element of seriousness as it currently does.

Question 3.4:

(1) Is the current provision that identifies eligible offences for a VIS appropriate?

As noted in the CP, the current definition is complex and unclear and some offences are excluded depending on what jurisdiction they are in (Table 2 offences). Other offences are excluded all together, such as fraud, non-aggravated break and enters, thefts and arson, or because they are perhaps not seen as involving "violence", such as stalk and intimidate pursuant to section 13 of the *Crimes (Domestic and Personal Violence) Act 2007.*

Excluded also, albeit not necessarily due to offence ineligibility, are victims of an offender where no finding of guilt is made or conviction recorded but the judicial process nevertheless comes to a positive conclusion as to the offender's culpability. These matters are dealt with, in the Local Court, under section 32 of the *Mental Health (Forensic Provisions) Act 1990* and in the higher courts, as noted in the CP, they are those matters where an offender is found not guilty by reason of mental illness, a section 38 special verdict, and where following a Special Hearing, the Court finds that, on the limited evidence available, the accused committed the offence or an alternate offence (a finding equivalent to a section 38 special verdict).

For the above reasons, I consider that the list of eligible offences is inappropriate.

(2) How should eligible offences be defined?

Of the possible approaches outlined in the CP, Option 3 – Offences that can be heard on indictment and some summary offences - would strike an appropriate balance.

If the current regime is ultimately preferred and the list of eligible offences added to, I would particularly like to see frauds, especially where the victims are elderly, the personal loss is substantial (to them) and the damage significantly detrimental be included.

And, whilst I acknowledge it is not primarily an issue of eligible offences, I would like to see either the definition of eligible offences changed to include offences which are otherwise eligible but for no conviction being recorded by reason of mental illness etc. Alternately, a sub-section could be added to section 28(1) of the *Crimes (Sentencing Procedure) Act 1999* to allow a Court to receive and consider a VIS where no conviction has been recorded but the following findings made (or verdicts returned or sections relied upon etc).

(3) Should domestic violence offences be a separate category of eligible offences?

I would support domestic violence offences being a separate category of offences as they are already clearly defined in the legislation and to have to refer to a second list of offences ("the VIS list of eligible offences") that may not exactly match the list of domestic violence offences would create confusion and uncertainty. Such a step would, though, involve a substantial outlay of resources.

(4) What are the advantages and disadvantages of expanding the definition?

Whilst cognisant that making VISs too widely available may undermine the intent of the legislation and perhaps minimise their impact, I do not believe any of the ideas for expansion referred to above contain any disadvantages. On the contrary, they avoid jurisdictional issues, include victims who would otherwise be unfairly excluded and create a less confusing, less complex regime.

The extension to all domestic violence offences would, though, create workload and time issues for the Local Court and, absent a special VIS information and assistance service, likely result in many victims who had a right to submit a VIS not actually being able to do so.

Question 3.5:

(1) In what circumstances, if any, should it be possible for a Form 1 victim to make a VIS?

If the Form 1 offence is an eligible offence and the only reason a VIS cannot be received and considered by the court is due to the lack of a "conviction", I can see no reason why victims of such offences should be excluded from the VIS regime.

As such, I see no reason why all victims of eligible offences included on a Form 1 should not have the option of making a VIS. Form 1 offences can be serious and can be taken into account on sentence. The facts of Form 1 offences are included in agreed facts/material tendered on sentence and are before the court. Their inclusion on a Form is simply a way of dealing with a large number of offences and/or the result of plea negotiations.

(2) What are the advantages and disadvantages of allowing a VIS to include content regarding Form 1 matters?

Many Form 1 matters will involve the same victim as the offences to which a conviction attaches. It is unrealistic to ask, as we do, for victims to ignore the harm done by Form 1 offences when preparing their VIS. It is also unfair, where the victim of the Form 1 offence is not the same as the victim of the "conviction' offence that the Form 1 victim cannot prepare a VIS. The matter is before the court, it can play a role in the sentencing outcome and the harm suffered by the Form 1 victim is no less real and no less deserving of acknowledgement than that suffered by the victim of the "conviction" offence.

Further, I do not believe that offenders will be dissuaded from entering into pleas on the basis that a victim may also refer to the Form 1 offence/s in their VIS or may submit a VIS where they would otherwise not have been able to. These VISs can be submitted via the common law and are likely, on occasion, already being admitted without objection under the legislative regime.

Question 3.6:

(1) Should NSW adopt community impact statements?

I do not support the adoption of community impact statements. The impact on the community is something that a sentencing court can consider under present legislation; the information in the statement would indeed be hard to verify and the harm likely not specific enough. Such statements may lead to inconsistent sentencing. I also believe that community impact statements, although designed to address a different type of harm, could potentially undermine the impact and efficacy of a primary or family victims' VIS.

Content, admission and use of victim impact statements

Question 4.1: *What forms of harm, or other impacts or effects of an offence, should it be possible to include in a primary victim's VIS?*

As indicated above at Question 3.3(1), I support the inclusion of economic loss in the definition of personal harm, either generally or as related to a specific group, and I support a different definition of harm to allow VISs from families in interfamilial child sexual offence matters and in matters where catastrophic, life-changing injury has resulted from the commission of the offence.

Other than these amendments, I do not believe that further forms of harm should be included, although if other forms were to be considered, I would favour the inclusion of substantial emotional harm or distress that nevertheless does not amount to psychological harm.

Question 4.2:

(1) What forms of harm, or other impacts or effects of an offence should it be possible to include in a VIS by a family member?

Family victim VISs are not constrained by the definition of personal harm but rather by a recounting of the "impact" the death has had on members of the primary victim's immediate family. Their statements therefore may include a wide range of harms or impacts, including the forms of harm that I suggest, at Question 3.1, should be allowed in non-death family VISs (family breakdown, loss of income and home [for example, if the victim was the sole breadwinner] inability to work, etc).

Although courts have received and considered Family VISs that make reference to the impact of the justice process, this is via discretion only. I would like consideration given to defining impact to specifically include the impact of the trial or justice process – but otherwise leave "impact" undefined in order to avoid limiting its scope. The harm or impact of what will almost universally be a long and drawn-out process to get to trial and/or sentence is substantial: it can be debilitating, soul-destroying, frustrating, and traumatising. It will often prevents families from resuming some sort of normal life (albeit, life will never again be "normal") or from finding "closure" or acceptance. The justice process is part and parcel of the primary victim's death – it is an impact directly derived from the death and comment upon it should be allowed in Family VISs.

(2) What categories of relationship to the primary victim should the harm be in relation to?

See my response to Question 3.2, above.

Question 4.3:

(1) What particular types of statement, if any, should be expressly excluded from a VIS?

The material that is presently not allowed - references to appropriate sentences, to a victim's personal opinions of the offender and threatening, offensive, etc statements – is sensible but

rather than reject a Family VIS outright because some small segment touches upon what is considered to be a disallowable area, I would like to see the Court exercise wide discretion in this regard (as the Court did in *R v Turnbull (no 24)* [2016] NSWSC 830).

I would also like to see families, in cases where the reason or motive for the death is inexplicable or no reason or motive has been advanced, allowed to address this in their Family VIS, even if it means they cross into an apparently disallowable area, such as expressing a personal opinion in relation to the offender or directly addressing them. A family victim's lack of knowledge, or understanding as to why the primary victim died can have a direct and detrimental impact on them, particularly on their mental and emotional health. Likewise where the primary victim's body has not been recovered, that is devastating for family victims and, should they wish, they should be allowed to not only express it as an impact upon themselves but directly address the offender in relation to it. The court's discretion should extend to allowing, within reason, comments addressed to the offender or to their motivation in relation to these categories.

As such, it may be worth including in the legislation, or in the commentary that would attach to any amending legislation, that the Court has a wide discretion in relation to the content of Family VISs.

(2) How should a court deal with the inclusion of such prohibited statements?

As addressed above, with a wide discretion, and with understanding and compassion. Families cannot always dissect and differentiate, in order to accord with VIS requirements, the impact of the death of their loved one.

Question 4.4:

(1) Are the provisions relating to a court's use of a primary victim VIS appropriate?

The use to which a court may put a primary victim's VIS, that is, the court "may receive and consider it", offers almost no guidance as to how a court can use the VIS on sentence and certainly does not answer the question on every victim's mind: will my VIS make a difference to the sentence and how?

The provisions are, in this regard, inadequate.

Further guidance has been provided by the CCA but, as noted in the CP, the court has yet to reach a consensus as to the use to which a VIS can be put.

(2) How should a court be able to use a primary victim VIS?

A court should be able to use a primary victim's VIS as material available to assist in determining the appropriate sentence in the sense that the VIS may outline the extent of the victim's injuries and the harm suffered.

In some cases, where there is no objection to the admittance of the VIS or submission made in relation to limiting its use, it may be appropriate for the court to use the VIS to prove an aggravating factor pursuant to section 21A of the *Crimes (Sentencing Procedure) Act 1999*, specifically sub-section (2)(g) "the injury, emotional harm, loss or damage caused by the offence was substantial".

Although a court could make this finding without a positive submission from the Crown/prosecution, in most cases where the VIS is to be used to prove an aggravating factor,

I would expect that the Crown would make a submission to this effect, thereby putting the Defence on notice and allowing them to make any related submissions.

And a victim's VIS should always be considered as a means by which the victim's voice is heard in the sentencing proceedings.

Question 4.5:

(1) Are the provisions relating to a court's use of a family victim VIS appropriate?

The provisions relating to the use of a Family VIS are appropriate, although not particularly helpful in that they rely on concepts of 'appropriateness". The 2014 amendment, in my opinion, just codified, or gave specific content to, an existing practice whereby it was taken as fact that the community was harmed by an unlawful death. I do not think that the amendment can be read as an attempt to place different values on different lives. Section 29(4) of the *Crimes (Sentencing Procedure) Act 1999*, which deals with the absence of a Family VIS, goes some way to supporting an inference that the amendment is not to be read that way, although it only refers to a primary victim's immediate family and not the community at large.

Like sub-section (3), the 2014 amendment in sub-section (4) provides no guidance on when it is appropriate, in this case, for the court to consider the harm done to the family as an aspect of harm done to the community.

(2) How should a court be able to use a family victim VIS?

I consider that a court should be able to use a Family VIS as it traditionally does, as a voice for the victim, as recognition of the impact of the death, as a way to acknowledge the loss and resulting harm; and as giving content to that loss (which may amount to an aggravating factor under section 21A). It should also be able to use the statement to give specific content to the loss suffered by the community as a result of the death but this should not mean that greater sentences attach to matters where a VIS is used in this way.

Question 4.6: *What provision, if any, should be made for what a court may or may not conclude from the absence of a VIS?*

As the CP notes, there are already express provisions in the *Crimes (Sentencing Procedure) Act 1999* which make it clear that the absence of a VIS cannot give rise to an inference that the offence had little or no impact on a primary victim or, in the case of death, their immediate family. I also note that the Act makes it clear that a VIS is not mandatory.

As noted above, in my response to Question 4.5, even without a VIS a court is entitled to conclude that harm was occasioned to the victim, to a family victim and to the community. In some cases there will be other evidence in the sentencing material that will allow a court to give specific content and context to the harm, such as medical and psychiatric reports. I believe these provisions are satisfactory.

Question 4.7:

(1) Should it be possible to use material in a VIS to establish a mitigating factor on sentence?

No, or very rarely, and certainly not in the *AC v R [2016]* NSWCCA 107 situation (as referred to in the CP), where in a non-complying VIS a child, the victim of an arranged marriage at the age of 12, as the result of which she had already suffered an ectopic pregnancy, wrote that she had not been harmed as a result of the offending. As the court noted, it cannot be overlooked that the VIS was from a child who had already demonstrably suffered harm and, given that the

matter involved child sexual offences, it could be inferred that she had also already suffered significant psychological or psychiatric harm and that further harm could manifest as she matured.

(2) If so, in what circumstance?

In my opinion the circumstances in which a VIS could be a mitigating factor are extremely rare and would involve mitigation in terms of rehabilitation prospects where there is evidence from the victim that touches upon this issue. But other than in this very limited case, I do not consider that a VIS can be used as mitigation. To do so could lead to inappropriate sentences where a victim is merciful or has the power of forgiveness and could place undue pressure on victims, particularly where there is a familiar relationship between victim and offender and/or there is a history of domestic violence and all that such a history typically entails.

***Question 4.8:** What provision, if any, should be made for adducing evidence to corroborate material contained in a VIS?*

If a VIS is to be relied upon as an aggravating factor by the Crown/prosecution, I would expect that evidence has been led in the trial or tendered on sentence, either as part of the VIS or otherwise, that would support such a submission, although corroboration may not necessarily be required for every statement in a subject VIS, for example, those parts where the harm is of a type expected. Where such evidence has not been led but no objection is taken to the tender of the VIS or submission made as to the limits of its use, it is within the court's discretion to nonetheless consider the aggravating factor issue.

Outside its use as an aggravating factor, I do not believe that every harm referred to in a VIS requires express corroboration, unless the detailed harm is so far beyond what might be expected of the type of offence in question.

VISs are a statement by the primary victim of the harm they have suffered or a statement by a family victim of the impact of the victim's death. By definition they are personal and emotional, written from the victim's viewpoint, contain concepts that are often hard to express or quantify and which are certainly hard to corroborate in a legal sense.

It is completely unfair and demoralising to the victim to ask them to, for example, "prove" the shame they felt or that they still cry every day or no longer feel able to socialise with their friends or be intimate with their partner. Sometimes there will be reports which support some facets of the harm but generally requiring such proof or corroboration is, in my opinion, an undermining of the point of the VIS regime.

Please also see my response to Question 4.4(2) above.

Question 4.9:

(1) What procedure should be followed in situations where a VIS is not consistent with the charges for which an offender has been convicted?

In my experience, this situation most often arises where a VIS is not provided to the Crown/prosecution before the day of sentence. In such cases, discussions with the victim and agreed editing or rewriting may not be possible. As I noted in my answer to Question 2.2, better information as to the effect of plea negotiations or uncharged acts will assist in victims avoiding the inclusion of inadmissible content.

If a VIS with such inadmissible content is submitted by a victim, discussing the issue and, in consultation with the victim, editing or rewriting the VIS to conform is the preferred course

and what is expected of ODPP staff (as per Director's Guideline 19). Tendering of a VIS with this type of inadmissible content should be avoided. Yet sometimes, it is impossible for a victim, for example, to separate the harm they have suffered as a result of one offence from that suffered as a result of another uncharged or unproven offence. In these cases, the court can decline to receive and consider the VIS at all or, depending on the amount of inadmissible material and the degree of intertwining, the court could be asked to receive the statement but not consider the inadmissible content.

(2) What provision, if any, should be made for such cases?

See the above response.

Question 4.10: *What provision, if any, should be made for objections to the content of a VIS?*

As I stated in my preliminary submission, every effort should be made to avoid re-traumatising victims by the process of objection.

Where it is not intended that the court take the VIS into account in support of an aggravating factor, and the VIS complies with the requirements of the Act etc, and the reported harm or impact is within the range of that expected, I do not think that objections based, for example, on a lack of corroboration, should be allowed. They serve no purpose other than to demoralise and re-victimise the victim and rob them of the only voice they have.

If there are legitimate objections to be made to the content of a VIS – because it contains inadmissible material or the Crown intends to use it in support of an aggravating factor but it is not supported by other evidence – then there can be no issue with the taking of the objection. The timing, though, can be an issue. In court on the day the VIS is to be read is not appropriate. The preferable course is for the Defence to be served with a copy of the VIS before the day of sentence (and I note here that, if the VIS is available, this does frequently occur) and for any objections to be raised and dealt with by the parties prior to sentence.

(See also my response to Question 5.2, below, re service of VISs.)

Where agreement cannot reached and the objections remains to be raised as part of the sentencing proceedings, at least the victim or victim's family is on notice that there is an issue and of what it is, and that it is possible that they will be required to read an edited version of their VIS.

Procedural issues with the making and reception of a victim impact statement

Question 5.1:

(1) What arrangements, if any, should be made to allow a person to prepare a VIS before conviction of the offender?

I do not consider it necessary for VISs relating to offences dealt with by the District or Supreme Courts to be prepared prior to conviction, as in most instances there will be an adjournment period between verdict/conviction and sentence. The exception may be where the District Court sits on circuit and efforts are made to conclude matters in the one circuit sitting. In these instances, there may be no or very little delay between verdict and sentence.

A system that allowed for the preparation of VISs prior to conviction would allow victims of District Court circuit matters more time to prepare a comprehensive and considered VIS, albeit there would always be the proviso that a not guilty verdict would render the exercise futile

(which no doubt would have a detrimental impact on the victim beyond the heartache of the verdict) or a mixed or alternate verdict scenario may mean editing is required.

Preparation of VISs prior to conviction would also be of assistance in the Local Court, due to that jurisdiction's time constraints but, as indicted in my response to Question 2.4, there are other issues also preventing the greater use of VISs in the Local Court.

As practice, and as the CP notes, my Office does not seek VISs prior to conviction. To receive a VIS prior to conviction may trigger disclosure obligations with unintended or unwanted consequences for the victim and which undermine the purpose of the VIS scheme.

As such, any arrangements that allowed for the preparation of a VIS prior to conviction, such as the idea of the Victorian Law Reform Commission that where a VIS is prepared prior to conviction, it is only admissible after guilt has been determined, must also consider the issue of disclosure, not just admissibility.

(2) *What are the benefits and disadvantages of allowing a person to prepare a VIS before conviction?*

As outlined above, the advantages are that victims who may not otherwise have the time or opportunity to prepare a VIS between guilt/conviction and sentence, or no time to really consider the content of their VIS and obtain supporting material if desired, would now have that chance. This means that more victims could access the VIS scheme and therefore be given a voice in the sentencing process. It would also mean that there would be more time to liaise with the victim about inappropriate or inadmissible material and edit or rewrite the VIS before sentence and therefore, less objections to content and challenges to their reception.

The disadvantages are that many of these VISs would need to be edited or rewritten following the return of a mixed result or alternate verdict and, where offenders are found not guilty, a not-inconsiderable number would never be used in court. These scenarios, particularly the latter, would have a devastating effect on victims.

The disadvantages also include the possibility of VISs being used against victims in certain circumstances following their disclosure to Defence prior to a matter being completed.

Question 5.2: *What provision, if any, should be made to inform an offender about the contents of a proposed VIS, before the statement is tendered in court?*

As indicated above, in my response to Question 4.10, and as noted in the CP, if a VIS is available prior to sentence, this Office will serve it on Defence in order for any objections to be raised and dealt with prior to the day of sentence.

This is not required under legislation and such service cannot always occur, as in many instances my Office will not receive the victim's VIS prior to the day of sentence. This is particularly so where victims have limited access to technology, are based in regional centres or the country, or do not wish to commit to the tender of a VIS until they can assess or gauge their own well-being on the day of sentence.

Rather than legislate for service on the Defence prior to the day of sentence - as this would place an unreasonable burden on many victims and may rob them of their voice, the giving of which is the paramount point of the scheme - I would prefer to encourage the present practice of prior disclosure. This could be done by VISs being specifically included in the Sensitive Evidence provisions of the *Criminal Procedure Act 1986* (Chapter 6, Part 2A).

There are very good reasons to encourage prior disclosure - for the victim, who should not be faced with VIS objections on the day of sentence; for the offender, who should have time to consider VIS contents; and for the smooth and timely running of the court.

But VISs are very personal documents and all that can be done to prevent re-victimisation of the victim and the misuse of their VIS should be done. If a VIS is served on the Defence prior to the sentencing proceedings, strict protections should be in place to govern how the VIS is dealt with by the Defence and to whom access is given. Reference to such provisions is already made in section 28(5) of the *Crimes (Sentencing Procedure) Act 1999* but apply only when a VIS is made available by the court at sentence and relies on a concept of "appropriateness". Inclusion in the Sensitive Evidence provisions would formalise the process for prior disclosure.

Question 5.3: *What limits, if any, should there be on:*

(a) The number of victims who can make a VIS, or

(b) The number of VISs that any victim may tender?

I addressed this issue in my preliminary submission, noting that it was not always possible or appropriate for one Family VIS statement to be tendered. The subsequent amendment to the Regulations - to allow each family victim to write a VIS – has removed the previous limitation (which was not always adhered to by the court) and creates a fairer, more consistent and more realistic regime.

As noted in the CP, the amendment to clause 12(2)(a) of the Regulations may not be worded as accurately as it should have been, as it refers to only one victim impact statement being tendered in respect of "the primary victim". "Primary victim" is already defined to include the person against whom the offence was committed and witnesses. As such, it should really refer to "each primary victim". In my opinion this is essential, as I have advocated for the adoption of three more categories of primary victim – the spouse or parent where a pregnancy has been terminated or a child stillborn and families in two discrete situations (see my response to Question 3.1).

I do not think that amending clause 12(2)(a) in this way will open the VIS floodgates, as it is simply an acknowledgement of the intention of the legislature and the reality is very few witnesses, for example, will write a VIS.

With the recent change in regulation, adoption of my submission re the three new categories of primary victim, and amendment to clause 12(2)(a); I believe the correct balance can be struck in relation to the number of victims who may make a VIS.

As to the number of VISs that any victim may tender, the present system of one (which can be up to 20 pages long and can include medical reports, photographs, drawings and other annexures), is, in my opinion, appropriate. Any more and the system becomes unwieldy and the victims' voices in danger of being diluted.

Question 5.4: *What provision should be made for attaching other material to a VIS?*

I believe the present provisions are adequate and allow for an appropriate range of material to be annexed to a VIS. If it is thought necessary, section 30 of the *Crimes (Sentencing Procedure) Act 1999* could be amended to specifically refer to medical statements and the like but I do not believe there have been any issues in relation to the tender of VISs which attach medical reports, even though the only direct reference to them is in the Regulations.

Question 5.5: *How should medical and other expert evidence relating to the impact of an offence on a victim be dealt with at sentencing?*

As I have touched on above, for example, in my response to Question 4.5, such material will provide support for/corroboration of the reported harm a victim has suffered or the impact that the primary victim's death has had on a family member. As such, it will either assist a court by giving specific content and context to the harm or in forming an opinion as to whether the reported harm amounts to an aggravating factor.

Question 5.6:

(1) What should be the formal requirements for a VIS to be received and considered by a court?

As long as there continues to be an element of discretion exercised by the courts with respect to formal VIS requirements, I do not consider that any great amendment is required. Although, I would support the inclusion of a provision as per that available in Queensland in relation to VISs given to a prosecutor electronically being taken to be signed by the person who made the VIS. As mentioned in my response to Question 5.2, limited access to technology can often be the reason for the late provision of a VIS and often this is simply because a victim has no way to provide a signed copy electronically and instead provides it in person at the sentence proceedings.

Where a statement is prepared by a "qualified person", clause 9(3)(b) clearly implies that a person should state the basis on which they fit within the definition of "qualified person", but this, of course, could also be expressly required via amendment to the clause, thereby ensuring clarity and consistency.

(2) What should be the consequences of failure to comply with the formal requirements?

As these are formal requirements only, any consequence of a failure to comply should not rob a victim of their voice in the sentence proceedings. At present, formally non-complying statements are admitted by consent and/or considered by the court. To prescribe a specified consequence would rob the system of this discretion. As such, I would prefer that consequences are not prescribed but rather that efforts are continued to be made by this Office to ensure, as far as possible, that the formal requirements are met.

Question 5.7:

(1) Who should be able to tender a VIS?

ODPP solicitors and Witness Assistance Service Officers automatically receive or obtain victim contact details when a matter enters my Office; they have the ability to keep victims updated in relation to the progress of a matter, and they will have a pre-existing relationship with the victim by the time of sentence. They are also major sources of VIS information and guidance and they are able to liaise with victims to ensure that their VISs comply with the legislation. They are therefore in a unique position in terms of their understanding of the justice process, their access to it, their relationship to a victim and their expertise in relation to VISs. As such, it is appropriate that prosecutors – and I include the NSW Police Prosecutors in this – tender VISs and, as VISs are only written by or on behalf of victims and are part of the material put before the sentencing court, it is also appropriate that VISs may only be tendered by a prosecutor.

(2) *If prosecutors alone are permitted to tender a VIS, what guidance should be provided for the exercise of their discretion?*

I do not consider that further guidance is required for prosecutors in the exercise of their discretion. My Guidelines refer to the most important consideration, that of whether or not the VIS complies with the legislation. It would be rare where a prosecutor elected not to tender a VIS for any other reason than non-compliance.

If the VIS regime is extended – to all offences or to more offences dealt with by the Local Court, for example – it may be worth considering whether there is a need to make it clear that if the obtaining of a VIS would unreasonably delay the sentencing of the offender, than prosecutors may exercise their discretion against the obtaining/tendering of a VIS.

Question 5.8:

(1) *What special arrangements should be available to victims who read their VIS in court?*

The recent amendments which have synchronised the protections available to a victim of a prescribed sexual offence when giving evidence and those available when they read, or have read, their VISs, are a very welcome addition to the sentencing regime.

The protections are, though, limited to victims of prescribed sexual offences. Yet all VISs, irrespective of the type of offence, deal with the harm caused to the primary victim or the impact of their death on their family, and so all will be highly personal and all victims will, to varying extents, lay themselves bare. On this basis, there is no reason why these protections should not be available to assist all victims.

Beyond these protections, other arrangements can be made available to assist victims to read their VISs. These include allowing them to read – via AVL/a Skye-like service - their statements from remote locations (and watch the sentencing proceedings), to save, for example, victims in regional and country areas needing to travel to the city to participate.

Court familiarisation could be offered; victims should be able to face away from an offender if they wish; if reading their VIS in the courtroom, they should be able to stand or sit where they feel most comfortable (public gallery, witness box, or they could stand between the Bar Table and Bench); and matters should go part-heard rather than outright adjournments being granted so that the victim is at least able to read their VIS rather than having to go through the stress and trauma of the build-up again.

(2) *Should the availability of these arrangements be limited in any way?*

As I outlined above, all VISs are highly personal, all victims vulnerable and all deserve whatever assistance and protection the court can offer.

Question 5.9:

(1) *Should any considerations prevent a victim from reading their VIS in court?*

I do not think it appropriate under any circumstances for victims to be prevented from reading their VISs in court.

VISs not only give victims a voice in the sentencing proceedings, they often give primary victims back the voice - or the control or power - that is so often taken from them during the commission of the offence. To let concern for an offender's feelings override a victim's right to read their VIS is, in the mind of the victim, once again ceding control to that offender. As noted in the CP, one matter recently brought to my attention involved a young victim and her

mother being excluded from a Childrens Court sentence – which meant the victim could not read her VIS – because the young person offender would not enter the courtroom if the victim was present. This devastated the young victim, who was a child sexual assault complainant, and, in effect, gave control over the proceedings to the offender.

(2) What alternative arrangements could be made?

Offenders should be present in court when a VIS is read. If there are substantial valid concerns in relation to an offender's presence, then the option of them being present by audio/visual link for that segment of the proceedings should be available.

Question 5.10:

(1) Should it be possible for a victim to deliver an oral VIS, without tendering one in writing?

Generally I consider it preferable that a VIS be in written form, as this process allows victims to gather their thoughts, it allows a VIS to be served on the Defence prior to the sentence day (where possible), and it assists with ensuing it is a complying VIS. It also means that should a distressed victim be unable to finish reading their VIS, someone else can do so.

And, apart from some time pressures with circuit courts, there is usually plenty of time to allow victims to take this more considered approach in the higher courts.

But allowing a victim to deliver an oral VIS may assist should they become more widespread in the Local Court, as it may address some concerns re possible VIS-related sentence delays in that jurisdiction.

(2) What procedures would need to be put in place if oral VISs were to be permitted?

It would be, in my opinion, difficult to put procedures in place to govern the content of VISs delivered orally. They could only work if it was accepted that it was almost inevitable that an oral VIS would include an inadmissible or non-complying statement/s and, as such, a court would disregard such statements. This places quit a burden on a court, as presumably the Magistrate or Judge would need to identify the material they considered they were to disregard. Practical procedures, such as speaking time limits, would obviously be more straight-forward.

Question 5.11: *What provision should be made for someone to make a VIS on a victim's behalf?*

Consideration should be given to extending the provisions which allow another to act on behalf of a primary victim if they are incapable, by reason of "age, impairment or otherwise", of providing information for a VIS, to a family victim who is likewise incapable. If that extension is considered to be too "wide", then it should extend at least to those situations where the person who is incapable of providing information is the only family victim, or one of a very limited number of family victims, available to provide a VIS.

I would also favour legislative clarification or a wide interpretation being taken in relation to child victims, particularly child sexual assault victims, so that VISs can be prepared on their behalf whether they are "incapable" or not (and I note that this concept is not defined in the section). Many children, particularly teenagers, will be technically capable of preparing a VIS but for a variety of reasons unable to do so. Some feel that they cannot find the correct words, others do not want to contemplate or risk personal exposure at that stage of their lives, and others will simply find the timing of the sentence too disruptive, for example, when a sentence falls within the middle of HSC exams (every effort is made to avoid this but it can sometimes be unavoidable, for example, with circuit sittings).

Adoption of the ACT concept of allowing a person with parental responsibility or a close family member etc to make a VIS for a primary victim, or the Victorian concept of another person being able to make a VIS for a victim under 18, both irrespective of incapability, would assist these young victims.

Consideration should also be given to allowing another to act on behalf of a family victim where that victim dies before sentence but was alive at the time of the death of the primary victim and there is evidence that speaks to the impact the death had on the victim.

The statements of victims who have prepared a VIS but who then pass away prior to sentence, should also be received and considered by the court and may be read by a person linked to the deceased family victim if that accords with the deceased family victim's wishes/intent.

Question 5.12: *Under what circumstances should it be possible to cross-examine or re-examine a person who has made a VIS?*

I do not consider it appropriate to cross-examine (and therefore re-examine) a victim in relation to their VIS in any circumstance. To do so is to, in my opinion, undermine the whole point of the VIS regime and serves only to re-victimise and re-traumatise victims. As the CP notes, the CCA has observed that the scheme does not envisage cross-examination of victims on the content of their VISs.

Such questioning remains a possibility under the legislation, although one infrequently, if at all, taken up, as remarked on in the CP.

I note, though, that if the prosecution is seeking that the harm or impact conveyed in a VIS amounts to an aggravating factor under the *Crimes (Sentencing Procedure) Act 1999* then difficulties may arise if the harm or impact is not corroborated.

These circumstances are also likely to be infrequent, though, as the prosecution is aware of the requisite standards of proof and the need to obtain the necessary supporting material (another reason why only prosecutors should tender VISs). If there was a case where cross-examination was sought, measures should be in place to, for example, ensure it is only allowed in the interests of justice and with the leave of the court, not allowed if an offender is self-represented and all protections in relation to how evidence should be given should be available to victims.

Question 5.13: *To what extent and under what conditions should a VIS be available outside of the sentencing proceedings to which it relates?*

The CP notes the position of this Office in relation to the treatment of VISs as Sensitive Evidence and I have addressed this above, in my response to Question 5.2.

Question 5.14: *What other changes to practice and procedure could be made to improve a victim's experience of the sentencing process?*

Providing guidance to judicial officers in relation to ensuring appropriate and respectful victim interaction to or about a victim as suggested by the Victorian Law Reform Commission warrants consideration, as does the suggestion by the Victims and Witnesses of Crime Court Support that greater emphasis be placed on acknowledging the courage, dignity and determination of victims and witnesses and thanking them for their participation. Such acknowledgement would need to be appropriate and would need to ensure that, if made at the time of giving evidence for example, the accused is accorded procedural fairness and no inadvertent prejudice flows to them.

Restorative justice practices in NSW

Question 6.1:

(1) When should restorative justice practices be available?

Given the concerns in relation to pre-sentence restorative justice practices, consideration could perhaps be given to focussing on post-sentence restorative justice practices instead, although I would support continuation of pre-sentence practices where they involve juvenile offenders or Circle Sentencing.

(2) What are the advantages or disadvantages of having restorative justice practices available as part of the sentencing process?

The advantages and disadvantages are as identified in the CP.

(3) What are the advantages or disadvantages of having restorative justice practices available after sentencing?

Post-sentence, programs such as that administered by Corrective Services, appear to have less concerns than pre-sentence programs and victims, as noted in the CP, overwhelmingly report a "positive" response to post-sentence restorative justice. For victims, I see no disadvantages should they wish to take part in a post-sentence process, although I note that many victims who desire answers from offenders, such as an explanation as to their motive or information as to the location of a deceased's remains, even an acknowledgement of guilt where none has previously been offered, are unlikely to gain agreement from an offender to participation (and without an admission of responsibility, offenders cannot participate in the Corrective Services process).

Question 6.2:

(1) What offences should be eligible for restorative justice practices?

Pre-sentence, I support the continued limitations on eligible offences, although perhaps consideration could be given to allowing a discretionary conference where the offence is an ineligible one if the victim so desires. Post-sentence, I support the approach of Corrective Services, where the nature of the offence is not the determining factor.

(2) What offences should be excluded from restorative justice practices?

Post-sentence I do not consider that any offences should be excluded; the process should be victim driven.

Question 6.3:

(1) Who should be able to attend restorative justice proceedings?

The existing rules and regulations in relation to who can participant in restorative justice processes are appropriate, although I note that whilst victims may have support persons present for Forum Sentencing conferences, Circle Sentencing and Youth Justice conferences, they are not entitled to have a legal representative, only the offender is *(clause 77(1) Criminal Procedure Regulation 2017,* and *clause 43(1) and (2)* and *section 47(1) Young Offenders Act 1987)* and only in Circle Sentencing is there a prosecutor present. The investigating officer may attend but he or she attends as the officer-in-charge, not as the victim's designated legal representative or even in lieu of a prosecutor. All three types of proceedings should allow a victim to be represented by an independent legal representative who has knowledge of and

experience in the practice and procedure of the NSW criminal law. This will, of course, require resources.

(2) Should certain participants be excluded?

Participants who pose a risk to any other participants should be excluded. The risk should not have to be of a physical nature.

(3) What can be done to encourage victim involvement in restorative justice practices in appropriate cases?

Victims should be given the appropriate information, details of someone with whom they could discuss their options and, as part of this, made aware of the advantages and disadvantages of the processes. The decision to participate, though, must be theirs and must remain theirs. As such, I do not consider that they should be encouraged per se.

Question 6.4: *What procedural safeguards, if any, should be required in restorative justice practices in NSW?*

The Principles adopted by the UN, the matters put forward by the Victorian Law Reform Commission and the safeguards that exist within the existing frameworks are all worthy and all should be part of the NSW restorative justice system. As stated above, victims should also be able to be legally represented by a criminal law practitioner. In my opinion, the overriding consideration should be on ensuring the victim is not further harmed or traumatised by the process. As such, great focus should remain on, or be on, vetting or assessing offenders and their motivations for participating and/or their suitability for participation and on ensuring individual victims clearly understand the processes, the limitations, the risks and the rewards and that they, too, are suitable, or suitably robust, to participate.

Yours faithfully,

Lloyd Babb SC
Director of Public Prosecutions