

NSW SENTENCING COUNCIL: VICTIMS INVOLVEMENT IN SENTENCING - Consultation paper comments

Chapter	Area of discussion	Victims Services Response
<p>2. The Victims Experience</p>	<p>Question 2.1 Information about victim impact statements How can the information given to victims on VISs and sentencing be improved?</p>	<p>Making a Victim Impact Statement (VIS) can have a therapeutic effect and empower a victim of crime. It is important for victims who are eligible to make a victim impact statement (VIS) to have the opportunity to do so.</p> <p>Victims of crime are often traumatised by their experience of the crime and can find the criminal justice process challenging. The process of making a VIS should not add unnecessary stress or trauma to the victims’ experience. Information given to victims should facilitate an awareness and understanding of what a VIS is, it’s role in the sentencing process and how to prepare one.</p> <p>Key information about VISs should highlight issues that a victim needs to consider, such as how they are used and communicated in court, how a VIS relates to sentencing and where to find assistance to prepare a VIS. To manage victims’ expectations about the impact of the VIS, information about sentencing should be provided alongside information about the VIS.</p> <p>Currently there is no one organisation who is responsible for ensuring victims know of their right to make a VIS and for the provision of information. Though many organisations are aware of the right, particularly ODPP WAS and support the victim in this. Victims of crime come in contact with several agencies along their journey through the criminal justice process. This includes the NSW Police Force, Office of the Director of Public Prosecutions, Police Prosecutors and Victims Services including the Victims Access Line. Victims Services suggests an approach that requires all agencies that are in contact with the victim to inform them about their right to make a VIS and provide information, to increase the opportunity for awareness and participation in the process.</p> <p>Victim Services support standardised VIS information, to ensure consistency and avoid confusion. Information should be widely available in multiple mediums/formats to increase victims’ participation, including fact sheets at Local Courts, websites and online videos. Victim Services is scoping the development of an online video about VIS and working towards updating VIS information.</p> <p>Information about VISs should be plain English and as simple as possible, to facilitate victims understanding and ultimately participation in the VIS process. We acknowledge the feedback provided in preliminary submissions (p19) about the Victim Services VIS package and will be reviewing the document following feedback from this consultation paper.</p>

	<p>Question 2.2 Content of a victim impact statements How can the practice, procedure and or law for settling the admissible content of a VIS better meet the concerns of victims?</p>	<p>The empowering and therapeutic effect of a VIS may be diminished when there is a challenge to the admissibility of a VIS in court. The paper highlights that objections to admissibility and subsequent editing of a VIS usually occurs on the day of sentencing. This can result in victims feeling upset, unheard and that their experience has not been represented accurately. The impact of this could be a loss of trust and participation in the justice process and be experienced as re-traumatising for the victim.</p> <p>For a VIS to be effective for a victim, the victim needs to have confidence in the document they are presenting to court. Some victims of crime have expressed to Victims Services, that they have not been given adequate time to respond to changes when the admissible content of a VIS has been challenged. Victims Services suggests that extended timeframes for settling the admissible content of a VIS be considered. Rather than raising these issues on the day of sentencing, it would be ideal for objections to admissibility to occur before the day of sentencing. Additional time would provide an opportunity for victims to make changes (in line with the objections) that still represent their experience. Additionally, it would give the victim an opportunity to process and understand the objections that have been made and may be less re-traumatising than changes that occur to the VIS on the day of sentencing.</p>
	<p>Question 2.3 Presenting the victim impact statement in court What problems, if any, do victims experience when presenting their VIS in court?</p>	<p>For some victims of crime, reading the VIS in the courtroom is an empowering process. However, for others it can be a frightening and distressing experience, impacted by the type of crime they have experienced, and enhanced by the fear of facing the offender or fear of cross-examination.</p> <p>Sexual assault and vulnerable victims are able to read their VIS using closed-circuit television. The current Bill before Parliament amends the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) to include sexual assault victims' immediate family or a victim's representative to also be given these protections. Victims Service supports any further amendments that would broaden the types of victims who are able to give their VIS using closed-circuit television. This could encourage victims who may be fearful of giving evidence in the court to participate in the VIS process.</p> <p>It is important to ensure that victims understand that they may be cross-examined giving a VIS. To better support victims, information about the frequency of this should be collected and provided to victims. More information about cross examination could be included in the VIS package.</p>
	<p>Question 2.4 Victim impact statements in the Local Court 1) What factors are encouraging or discouraging the use of VISs in the Local Court</p>	<p>Through our monitoring of the Charter of Victims Rights, we have observed that most complaints/concerns about VISs come from issues experienced at the Local Court level. This is mainly around victims of crime becoming aware of VIS, but not receiving information about a VIS or not being able to prepare a VIS (because of the offence).</p>

<p>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?</p>	<p>We would support and will actively pursue measures that raise awareness of VIS at the Local Court level. This would include addressing the lack of information about VIS, who can prepare a VIS and providing support to prepare a VIS.</p> <p>We acknowledge that a potential increase of VIS may have an impact on the workload of the Local Court, and not every victim will want to make a VIS, however it is important that victims of crime who would like to make a VIS have the opportunity to do so.</p>
<p>Question 2.5 Victim assistance</p> <p>1) How can victims be better assisted in making a VIS?</p> <p>2) Should victims be provided with a specialist representative? If so, what should their role be?</p>	<p>Many victims of crime require assistance to navigate the process of preparing a VIS. In particular, victims of crime need assistance in understanding the purpose and limits of a VIS and how it fits within the broader court procedure and sentencing process. Preparing a VIS may bring up strong emotions for many victims of crime and subsequent emotional support may be required.</p> <p>In general, many victims are assisted in preparing their VIS by an ODPP WAS in District court matters and occasionally by counsellors or legal professionals. Victims Services provides the ‘The Victim Impact Statement information package’ on our website. If a victim of crime requires personal assistance, Victims Services can respond with support over the phone or in person. This includes practical support around providing information about what a VIS is and its limits, preparing the content of the VIS, help with decisions about how the VIS will be read out and providing emotional support. Victims Services can also refer victims of crime to an Approved Counsellor through the Approved Counselling Scheme who can assist with both practical and emotional support.</p> <p>Currently the Witness Assistance Service at the ODPP adequately supports victims at District Court, however there are gaps for victims at the Local Court level. We would support the development of victim liaison role within Victims Services to assist Victims in completing a VIS.</p> <p>A victim liaison should have specific skills to support victims of crime in preparing a VIS. This includes a strong understanding of the criminal justice system, court procedures and the legal requirements of a VIS. A victim liaison/specialist representative should have the ability to communicate this information but also to respond adequately to the emotional response that victims may have during this process. We would suggest that staff with professional qualifications in Community Welfare and Human Services, Psychology Studies, Social Work, Sociology and Anthropology and Law would be suited to this role. Victim Services also supports the view that any support provided to victims of crime around VIS needs to be trauma informed to avoid any re-traumatising of victims.</p>
<p>Question 2.6 Victims requiring additional</p>	<p>Victims Services acknowledges that the process of preparing a VIS may be difficult for people who have</p>

	<p>or distinct assistance</p> <ol style="list-style-type: none"> 1) Are the needs of victims that require additional or distinct assistance being met by current procedures? 2) How can assistance to victims with additional or distinct needs be improved? 	<p>additional or distinct needs such as a disability, being a child, not speaking English.</p> <p>Victims Services is currently developing a VIS template for children. To make the VIS more accessible to children, we have developed a template that includes pictures, simple language and use of emojis to assist children in expressing their response to being a victim of crime.</p> <p>Victim Services has identified a more accessible VIS template should be developed for victims of crime who have a cognitive or intellectual disability.</p>
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<p>3. Who can make a Victim Impact Statement</p>	<p>Question 3.1 Primary Victims</p> <ol style="list-style-type: none"> 1) Is the current definition of “primary victim” appropriate? 2) How could the definition be amended? 3) What are the advantages and disadvantages of expanding the definition? 	<p>Victim Services acknowledges that there are instances where people not included in the current definition of “primary victim” could have suffered harm as a result of an offence, even if the offence has not been against them directly. This harm is often experienced as psychological or emotional impact and distress.</p> <p>Under the Approved Counselling Scheme there is an acknowledgement of this harm for parents of children who are the primary victim of a crime. In these cases parents, are entitled to access counselling in acknowledgement of the impact that the offence has had on them. There is also some discretion within the Approved Counselling Scheme to approve counselling for parents/caregivers of people with a disability who are not children, especially in cases of sexual assault.</p> <p>The current definition of “primary victim” could be expanded to include people who have suffered harm as a result of the offence, though not directly against them. In particular family members including dependents of victims of an offence and spouses of people whose pregnancy has been terminated or resulted in a still birth as a result of the offences.</p> <p>The advantage of including these people would be to more accurately represent those who have experienced harm that currently do not have a voice in the process.</p>
	<p>Question 3.2 Family Victims</p> <ol style="list-style-type: none"> 1) Is the current definition of “family victim” appropriate? 2) How could the definition be amended? 	<p>The current definition for “family victim” does not reflect the different arrangements of family in the community. There should be a mechanism for someone who does not fall within the current definition of “family victim”, but who has close family type relationship with the primary victim to be allowed to make a VIS.</p>

<p>3) What are the advantages and disadvantages of expanding the definition?</p>	
<p>Question 3.3 Type of harm</p> <p>1) Is the current definition of “personal harm” appropriate for identifying victims who make a VIS?</p> <p>2) How could the definition be amended?</p> <p>3) What are the advantages and disadvantages of expanding the definition?</p>	<p>The current threshold for victims of crime to access Approved Counselling is related to whether a person has experienced a crime not the level of impact or harm they have experienced. There is an acknowledgement that there is an impact as a result of being a victim of crime.</p>
<p>Question 3.4 Eligible offences</p> <p>1) Is the current provision that identifies eligible offences for a VIS appropriate?</p> <p>2) How should eligible offences be defined?</p> <p>3) Should domestic violence be a separate category of eligible offences?</p> <p>4) What are the advantages and disadvantages of expanding the definition?</p>	<p>Eligible offences could be further expanded, in particular, offences that involve offences against the person and domestic violence offences could be included as eligible offences.</p> <p>Victim Services is supportive of the inclusion of domestic violence however the provision should refer to ‘domestic and family violence’ to reflect current state policy terminology. Victims Services supports the inclusion of a range of offences categorised as personal violence offences, including any breaches of orders. We would also support the extension of the scope of domestic and family violence to also encompass considerations such as economic and financial abuse.</p> <p>As identified in the consultation paper, the complexities of the current provisions make it unclear to some victims of crime about whether they are eligible to prepare a VIS. To increase accessibility and participation in the VIS process, it would be beneficial to have clearer definitions of eligible offences. Victims Services acknowledges that victims may still require assistance to understand this information, which could be provided by a victim liaison/specialist representative.</p> <p>Victims Services recommends further consultation with victims groups to determine eligible offences (according to offences punishable by a maximum term of imprisonment greater than a specified period).</p>
<p>Question 3.5 Matters listed on a Form 1</p> <p>1) In what circumstances should it be</p>	<p>Victim Services supports the current recommendation made by NSW Law Reform Commission that allows victims to make a victim impact statement where the defendant has been found not guilty on the</p>

	<p>possible for a Form 1 victim to make a VIS?</p> <p>2) What are the advantages and disadvantages of allowing a VIS to include content regarding Form 1 matters?</p>	<p>grounds of mental illness or guilty on limited evidence after a special hearing. Victims of forensic patients often experience frustration and distress about not being able to have a voice in the process. Being able to provide a VIS would provide an avenue for victims of forensic patients to express the impact the crime has had on them.</p> <p>The future impact of a VIS for a forensic patient should also be considered. A forensic patient may not be able to comprehend the impacts stated in a VIS at the time of its admittance, however there may be a later time, where the person may be able to read and understand the impact of their conduct on the victim.</p>
	<p>Question 3.6 Community Impact Statements</p> <p>1) Should NSW adopt community impact statements?</p> <p>2) What form should such community impact statements take?</p> <p>3) How should sentencing courts use them?</p> <p>4) What are the advantages and disadvantages of adopting community impact statements?</p>	<p>The VIS is intended to involve the victim and/or their family in the criminal justice process, and to give them an opportunity to voice to the Court the impact that the offence has had upon the family for consideration in sentencing. A community impact statement may not serve this purpose, and we note the concerns raised around the South Australian model.</p> <p>The scope of harm of a community will differ substantially to that of a family, and claims in a community impact statement would be considerably more difficult to prove. This may result in further delay of sentencing to the detriment of the victim's wellbeing.</p>

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<p>4. Content, admission and use of victim impact statements</p>	<p>Question 4.1: Content of a primary victim's victim impact statement</p> <p>What forms of harm, or other impacts or effects of an offence, should it be possible to include in a primary victim's VIS?</p>	<p>The primary focus of a VIS should be upon the personal harm suffered by the victim as a direct result of the offence, but should also be able to include secondary considerations, including social life, economic loss and damage to property as suggested in the <i>Victim Impact Statement Information Package</i>. This approach gives a more holistic view of the impact of crime, and aligns more accurately and consistently with existing sentencing law, which recognises the harm done to the victim of the crime in the sentencing procedure.</p> <p>Further discussions with victims and stakeholders to investigate the possibility of extending the</p>

		<p>legislative definition to establish a secondary tier which addresses the social impact would be beneficial.</p> <p>In our view, victims should not be unnecessarily limited in what they would like to submit in their VIS, maintaining that the VIS should be primarily focused upon the personal harm or impact of the crime upon the victim or their family. We are aware that societal perceptions of fairness in the criminal justice system often rely upon the ways in which the victim is able to participate and contribute to it. The current limitations imposed by the legislative provisions are a barrier to the full and honest participation of the victim in the criminal justice process.</p> <p>Victims Services recognises the impact of discretion; victims who have had sections of their VIS amended or excluded on the basis that it is inconsistent with the legislative provisions are often left with the belief that the criminal justice system is unfair and that their views are invalid.</p>
	<p>Question 4.2: Content of a family victim’s victim impact statement</p> <p>(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 victim?</p> <p>(2) What categories of relationship to the primary victim should the harm be in relation to?</p>	<p>The impact of a death is not merely limited to grief. Family statements should not be narrowly and artificially confined to the immediate impact, as the death of the individual may have a far-reaching and devastating impact upon the family with cascading issues. Following events such as homicide, issues such as family breakdown, mental illness and financial distress are common experiences for families of the deceased victim. Considering such circumstances, Victims Services supports a broad definition of ‘impact’ so as to allow families of the victim to communicate the full impact experienced.</p> <p>The procedural constraints of making a VIS may impact upon the practicality of a more liberal approach. As a VIS may only be 20 pages long, including a variety of accepted mediums, it may not be practicable to allow an exceedingly liberal approach to the definition of ‘impact’. Victims Services also acknowledges that families may also have differing viewpoints about the impact caused to them, and that the limitation of a single family VIS would make such an open interpretation difficult to apply in practice.</p> <p>Clarification as to what kinds of ‘impact’ may be discussed in a VIS will greatly aid families in the making of their VIS.</p>
	<p>Question 4.3: What a victim impact statement may not include</p> <p>(1) What particular types of statement, if any, should be expressly excluded from a VIS?</p> <p>(2) How should a court deal with the inclusion of any such prohibited</p>	<p>Victims Services supports the NSW legislative requirements for a VIS to exclude anything ‘offensive, threatening, intimidating or harassing’. We note that the Court maintains a broad application and latitude in its interpretation of ‘offensive, threatening, intimidating or harassing’. It is understood that during the course of grief and loss, strong feelings may be captured in the VIS. Victims Services notes that VISs of this nature are rare, and are typically dealt with prior to tendering.</p>

	statements?	
	<p>Question 4.4: Court’s use of a primary victim’s victim impact statement (1) Are the provisions relating to a court’s use of a primary victim VIS appropriate? (2) How should a court be able to use a primary victim VIS?</p>	<p>Under the current legislative provisions, a primary victim’s VIS may be received and considered by the Court. How or what is ‘considered’ is unclear. Victims Services infers that the nature of a VIS as discussed above supports the CCA’s observation that a VIS may be relied upon by the sentencing judge in the determination of an appropriate sentence.</p> <p>Should more weighting be placed upon a VIS, it may give rise to inconsistency with the legislative requirement that the absence of a VIS does not give rise to the inference that the offence had little or no impact upon the victim. Victims Services is concerned that by placing more weighting upon a VIS during sentencing, in the circumstances where one is not tendered by the primary victim, that the sentence will preclude considerations of the personal harm in that specific case despite the provision.</p> <p>Further clarification on the procedural aspects of using a VIS in Court would be beneficial. This would bring clarity to the circumstances and appropriateness of considering a VIS in determining a sentence.</p>
	<p>Question 4.5: Court’s use of a family victim’s victim impact statement (1) Are the provisions relating to a court’s use of a family victim VIS appropriate? (2) How should a court be able to use a family victim VIS?</p>	<p>Under the current legislative provisions, a family VIS must be received, acknowledged by the Court, and the Court may make any comment on the VIS. The 2014 provision stipulates that it is ‘appropriate’ to consider a family VIS in order to recognise the harm done by the crime upon the community. Victims Services supports this.</p> <p>Victims Services does note that the 2014 provision does not provide guidance upon how to apply ‘appropriateness’ in the determination of a punishment.</p>
	<p>Question 4.6: Absence of a victim impact statement What provision, if any, should be made for what a court may or may not conclude from the absence of a VIS?</p>	<p>Victims Services supports the current approach of the Act expressly providing that the absence of a VIS does not give rise to the inference that the offence had little or no impact on the victim.</p> <p>Victim Services observes that there are many circumstances where a VIS may not be tendered. Most of these reasons are trauma-related (e.g. the victim may want to simply move on with their life, the victim has reluctantly participated in the criminal justice process).</p>
	<p>Question 4.7: Proving mitigating circumstances (1) Should it be possible to use material in</p>	<p>Victims Services is concerned that an emphasis upon the VIS being used to prove mitigating circumstances, may lead to a more stringent focus upon the victims’ views and experience being used as</p>

	<p>a VIS to establish a mitigating factor at sentence? (2) If so, in what circumstances?</p>	<p>evidence, therefore losing focus of the therapeutic value and benefits of a VIS.</p>
	<p>Question 4.8: Corroborating evidence What provision, if any, should be made for adducing evidence to corroborate material contained in a VIS?</p>	<p>The VIS, by nature, will often go beyond the factual circumstances as the ‘harm’ or ‘impact’ may relate to matters beyond the agreed facts or cannot be readily proven (e.g. emotional impact, financial wellbeing). Indeed the Court of Criminal Appeal has observed the need to exercise caution, as the Court cannot as easily quantify or prove emotional and economic harm as it can physical harm. Victims Services simultaneously recognises that ‘baseless claims’ may result in cross-examination or objection to a VIS, and that this procedure may cause unnecessary duress to the victim or their family. For this reason, strictly enforcing the requirement of corroborating material in a VIS faces many challenges.</p> <p>Victims Services encourages discussion and consultation to formulate the way in which a VIS may be validated further without placing additional duress upon the victim or their family. Where harm may be evidenced (e.g. psychiatric harm).</p>
	<p>Question 4.9: Where a victim impact statement is not consistent with charges proved (1) What procedure should be followed in situations where a VIS is not consistent with the charges for which the offender has been convicted? (2) What provision, if any, should be made for such cases?</p>	<p>Victims Services notes the <i>De Simoni</i> principle should continue to apply in circumstances where the VIS is inconsistent with the proved charges. Where there is incongruence, the Court is not to take into account aggravating circumstances.</p> <p>Victims Services recognises that there are circumstances where the VIS has been inconsistent with the charges proved. It is the responsibility of the sentencing judge to recognise the inconsistencies, and to clarify the offence for which the offender is being sentenced. The Court has previously admitted such VISs without objection, as it recognised the therapeutic value of a VIS, and the subjectivity which may occur. It has also accepted that without objection from the offender, the judge is not bound to the facts for supporting material (i.e. a VIS) on the basis of procedural fairness.</p> <p>VISs which refer to offences not charged should be admitted.</p>
	<p>Question 4.10: Objecting to the content of a victim impact statement What provision, if any, should be made for objections to the content of a VIS?</p>	<p>There may be circumstances where a VIS may be objected to or challenged. Despite the many unique circumstances, generally objections to VIS are rare if the VIS is complicit with legislation. Victims Services notes that the making of a VIS is a highly emotional and reflective task for victims and their families. We believe that provisions should state that objections must have a legitimate basis, and cannot be frivolous.</p>

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<p>5. Procedural issues with the making and reception of a victim impact statement</p>	<p>Question 5.1: Time of making a victim impact statement (1) What arrangements, if any, should be made to allow a person to prepare a VIS before conviction of the offender? (2) What are the benefits and disadvantages of allowing a person to prepare a VIS before conviction?</p>	<p>The primary purpose of a VIS is for therapeutic reasons, and should not be used to determine a person’s guilt. A victim providing evidence as witness has this role.</p> <p>However, Victims Services acknowledges the therapeutic benefits that making a VIS has upon victims. Indeed, a victim may want to prepare a VIS as soon as practicably possible to ‘get it over and down with’ and to move on from the crime.</p> <p>Victims Services would support further discussion into the Victorian Law Reform Commission’s proposal where victims who seek legal assistance in preparing a VIS would be protected by legal professional privilege.</p>
	<p>Question 5.2: Notifying the offender 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?</p>	<p>Victims Services notes that a VIS may only be made available to the offender after it has been tendered to the Court. Victims Services generally supports the current ODPP and Crown Prosecutors practice of serving VISs to the offender’s lawyer prior to tendering it to allow time to respond. However, Victims Services has noted that although a VIS may be cross-examined in the court, it does not frequently occur in practice. Victims Services has also noted that VIS does not directly affect a sentence, and therefore does not object to the prosecution serving a VIS to an offender’s lawyer.</p> <p>Victims Services cautions against the establishment or alteration of any provision which would result in the over-editing and negotiation over the contents of a VIS. Such a practice, similar to plea bargaining, disempowers the victim from making statements which are true and relevant, rather than based upon negotiations.</p>
	<p>Question 5.3: Number of statements 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?</p>	<p>Victims Services encourages the submission of a single family VIS, but acknowledges the reality of family dynamics which make the submission of a single submission unrealistic. In circumstances where there is evidence of dysfunction or estrangement in the family, Victims Services would support provisions where the family may make an application to make a separate submission in circumstances where viewpoints are dramatically different. Victims Services understands that this will likely incur in multiple or competing viewpoints, but encourages services assisting victims to make their VIS to consolidate where possible.</p> <p>Victims Services understands that limitations in court processes and procedures exist to aid efficiency, and supports the exercise of discretion as to how many submissions may be practicable by the</p>

		<p>prosecutor.</p> <p>Victims Services also further notes that victims may express themselves differently and that the requirement for only one family VIS may preclude family victims from fully benefiting from the intended therapeutic benefits of making a VIS.</p>
	<p>Question 5.4: Attaching other material What provision should be made for attaching other material to a VIS?</p>	<p>Victims Services strongly supports provisions to facilitate different methods of expressing the impact of the crime upon a person’s life. Victims may express themselves differently to one another as the victims experience is unique to each individual.</p> <p>In trials, the public perception of ‘fairness’ often relates to the way in which the victim participates and contributes to the court process, and the VIS is often seen as a critical part of allowing the victim to voice their story and experiences. Victims Services acknowledges that there is no linear way for a victim to express themselves and that provisions should be made to encourage victims to express themselves in a variety of ways where possible.</p> <p>Victims may not always be capable of expressing the impact of a crime upon their life in words. Children and those with an intellectual disability would benefit immensely from provisions which would facilitate a variety of mediums. In response to this, we are workshopping a package for Victim Impact Statement for Children to allow children to better understand how to make a victim impact statement. This notably includes the use of stickers, emojis and drawings.</p> <p>Victims Services acknowledges evidence from the United States regarding the use of ‘eulogy-like videos’ similar to those used in funerals or memorial services. These videos have been regarded as ‘unfairly prejudicial to the offender’ due to the particularly emotional nature of the medium. Critics have cited that this is the Court’s deviation from pure reason and rationality in the treatment of both the offender and the victim seeks provides persuasion on this issue. Victims Services acknowledges the potential for bias during the court process, however precedence from Victoria supports Victims Services’ position in that the video medium is an effective medium for victims to express the impact the loss of the victim has had upon their lives.</p> <p>Victims Services also supports the extension of mediums to also include mediums such as music, sound and song.</p> <p>Victims Services notes that the VIS is limited to 20 A4 pages, and suggests that provisions or guidelines should be issued on the limits of length and acceptable content of video and audio material.</p>

	<p>Question 5.5: Medical and other expert evidence How should medical and other expert evidence relating to the impact of an offence on a victim be dealt with at sentencing?</p>	
	<p>Question 5.6: Other formal requirements (1) What should be the formal requirements for a VIS to be received and considered by a court? (2) What should be the consequences of failure to comply with the formal requirements?</p>	<p>Victims Services supports minimum requirements so as to enable the continued efficiency of the court, and recognises the positive impact of increasing the victims’ accessibility during the process. Victims Services suggests that additional details should be made optional where requirements cannot be provided by the victim.</p> <p>Victims Services recognises the influence of evolving technology upon court processes and encourages provisions to reflect modern methods. As such, Victims Services supports alternatives where the victim is unable to sign or has submitted a VIS electronically as it would also address issues of accessibility.</p>
	<p>Question 5.7: Tendering a victim impact statement (1) Who should be able to tender a VIS? (2) If prosecutors alone are permitted to tender a VIS, what guidance should be provided for the exercise of their discretion?</p>	<p>Victims Services supports the minimisation of contact of the victim with the offender. In our view, no substantial changes are to be made to whom is to tender a VIS. We support the current provisions whereby only the prosecution may tender a VIS to the Court. However, in our view, further information should be provided to victims and the prosecution as to what is considered compliant and non-compliant. This information should be made available for the prosecution and to professionals assisting the victim or the family in the making of their VIS.</p>
	<p>Question 5.8: Special arrangements for reading a victim impact statement (1) What special arrangements should be available to victims who read their VIS in court? (2) Should the availability of these arrangements be limited in any way?</p>	<p>Victims Services supports special arrangements for the reading of a victim impact statement at the discretion of the Court. It is acknowledged that for some victims and their families, the VIS may be a highly emotional and distressing event and that where appropriate, the Court should assist victims and their families when reading their statements so as to reduce further and trauma.</p> <p>Victims Services acknowledges that making special arrangements available to all victims is impractical, and that not all victims may require assistance. Victim Services therefore supports that special arrangements may be made available to victims upon application to the Court, and subject to discretion to the Court in determining whether special arrangements are appropriate.</p> <p>The options available should reflect the nature of the emotions at the discretion of Court with regard to the relevant circumstances. Victims Services would support further discussion on making the following</p>

		<p>special arrangements available:</p> <ul style="list-style-type: none"> • Reading out the VIS over CCTV • Prerecording the VIS and replaying it • The use of screens or one-way glass • Removing the offender from the victim’s direct presence • Making allowances for special conditions, including mental illness and physical disability • Lessening of the intimidation of the Court process
	<p>Question 5.9: Other considerations (1) Should any considerations prevent a victim from reading their VIS in court? (2) What alternative arrangements could be made?</p>	<p>Victims Services acknowledges the important role of therapeutic justice in the modern justice system. In some circumstances, Victims Services recognises that it may not be appropriate to read a VIS in Court. Victims Services maintains the Court must have regard for all factors in determining whether it is appropriate for the victim to read out their VIS. The Court may take into account several factors, such as the offender’s mental illness and age, when determining the appropriateness.</p> <p>The Court must endeavour to ensure that victim is given the opportunity to read their statement when they have requested to do so. Where the Court determines that there are factors which may prevent the victim from reading out their VIS, the Court should consider alternative arrangements to ensure that the offender receives the contents of the VIS regardless of their presence in the courtroom.</p>
	<p>Question 5.10: Oral statements (1) Should it be possible for a victim to deliver an oral VIS, without tendering one in writing? (2) What procedures would need to be put in place if oral VISs were to be permitted?</p>	<p>We note that the NSW jurisdiction does not currently allow a victim to deliver an oral VIS only, although many other jurisdictions do so. We note that if a oral VIS only is provided this may result in more cross examination.</p>

Chapter	Area of discussion	Victims Services Response
<p>6. Restorative justice practices in NSW</p>	<p>Question 6.1: When restorative justice practices should be used (1) When should restorative justice practices be available? (2) What are the advantages or disadvantages of having restorative justice practices available as part of the sentencing process? (3) What are the advantages or disadvantages of having restorative justice practices available after sentencing?</p>	<p>Victims Services strongly supports the choice and control over the way in which a victim or their family may move on from a crime. The victim’s option to complete an intervention relies upon their readiness and willingness to participate. Victims and their families should be informed about their choices at all points of the justice journey, and that assistance in taking up any of the options should be provided at the victim’s request.</p> <p>Victims Services notes that restorative justice provides many therapeutic advantages for both the victim and the offender, both pre- and post-sentencing.</p> <p>Consistent with the core restorative justice principle in recognising and responding to the harm done to victims, a victim-centric approach provides the opportunity for both the victim and the offender to collectively resolve issues which have arisen as a result of the offence.</p> <p>Pre-Sentencing</p> <p>The effectiveness of restorative justice practices is dependent upon the scope of the offence and the participants involved. For less serious crimes, pre-sentence restorative justice practices have been shown to be effective for first-time offenders, and those who are at low-risk of reoffending.</p> <p>However, there are many reasons why pre-sentence restorative justice is inappropriate for serious crime.</p> <p>In many cases, pre-sentencing practices are not designed to factor in the trauma of a crime. Often, the time between the offence and the conviction is insubstantial for victims to recover and move on from the effects of the offence, and that pre-sentence restorative justice practice could be more damaging to their wellbeing than effective in practice.</p> <p>Many victims perceive restorative justice interventions prior to sentencing as potentially having an impact upon the sentence. There is also a perception that offenders who undertake restorative justice practices prior to sentence do so in order to establish mitigating behaviours which may impact upon the severity of their sentence. As a result, some victims may form the view that any participation by the offender in restorative justice practices prior to sentencing may be disingenuous. Although victim and offender participation in pre-sentencing restorative justice practices has no impact upon sentencing, perceptions continue to prevail, stymying the willingness for victims to undertake pre-sentencing restorative justice practices.</p>

		<p>Furthermore, current pre-sentencing restorative justice practices are not specifically designed to address or consider victim trauma. Practices such as youth justice conferencing have been developed to prevent re-offending, shifting the focus of the practice from victim closure and therapy towards crime prevention.</p> <p>Victims Services heavily supports the need for further consultation and development of pre-sentence restorative justice practices to address victim trauma and offender behaviour. This must be prioritised to provide a more inclusive and productive channel for victim participation in the criminal justice system, and to prevent further harm from occurring to the victim.</p> <p>Post-Sentencing</p> <p>Restorative justice has shown to be highly effective at the post-sentencing phase. At current, protocols effectively ‘screen’ the offender against strict criteria which evaluates the offender’s acceptance of responsibility, empathy towards the victim and comprehension of the offending behaviour. Generally, post-sentencing programs are more personalised, and not bound by strict time limitations.</p> <p>It is critical that victims engage with restorative justice practices when they are ready and that victims are well supported. Both victim and offender should be required to undergo a rigorous assessment to assess their suitability for post-sentence restorative justice.</p> <p>Post-sentencing restorative justice practices allows victims and offenders to address issues which were not resolved by the criminal justice system and legislation, allowing victims the opportunity to ‘heal’.</p> <p>Victims Services notes that victims can be better supported in understanding options and opportunities associated with post-sentencing restorative justice practices.</p>
	<p>Question 6.2 Relevant offences</p> <p>(1) What offences should be eligible for restorative justice practices?</p> <p>(2) What offences should be excluded from restorative justice practices?</p>	<p>Restorative justice practices may be both ordered and pursued voluntarily. The eligibility of an offender for a restorative justice practice is dependent upon the nature of the offence. Determining eligibility for a program is not merely a case of inclusion or exclusion of an offender based upon their offence, but upon a variety of factors. These may include factor such as the behaviour of the offender, the potential for reoffending and the timing of an offender’s participation in an intervention.</p> <p>The safety of the victim is paramount. Victims Services supports the express exclusion from Court ordered pre-sentencing restorative justice practices for serious crimes. These relate particularly to crimes where interpersonal relationships are involved and include, but are not limited to:</p>

		<ul style="list-style-type: none"> • Violence-related offences, including grievous bodily harm and assault • Serious weapons offences • Sexual assault, rape • Child-related sex offences, including child sexual assault, pornography and prostitution • Stalking and intimidation • Domestic and family violence <p>Victims Services maintains that the interest and safety of the victim is to be prioritised and safeguarded during the sentencing process. To allow restorative justice practices would be irresponsible, and has the potential to cause further unnecessary harm to the victim and their family. Victims Services refers to the Charter of Victims Rights, ‘Protection from the accused’. Protecting this right extends to preventing the availability of programs such as restorative justice practices where it may incur in harm, intentional or otherwise, to the victim.</p> <p>Victims Services strongly asserts that restorative justice practices should only supplement the criminal justice system. Restorative justice practices should not be pursued where the offender does not show the appropriate behaviours for recovery of both the offender and the victim. From a clinical viewpoint, the above offences are categorically regarded as complex cases and require a high level psychological or psychiatric support. It is against the interest of the community not to immediately pursue a criminal justice resolution, particularly in the serious cases above.</p> <p>Victims Services supports the findings of the Royal Commission that no reforms should take place in relation to children who have committed child sexual abuse offences.</p> <p>Victims Services supports reforms to develop more victim-oriented restorative justice programs in NSW. There is strong evidence to support the therapeutic benefits of restorative justice practices for victims. Such programs must more deeply consider the trauma incurred by the offence, and make developments to reduce the harm and heighten the therapeutic benefits to the victim.</p>
	<p>Question 6.3 Attendance and participation (1) Who should be able to attend restorative justice proceedings? (2) Should certain participants be excluded?</p>	<p>Restorative justice practices are a unique supplement to the criminal justice system. Restorative justice programs depend upon the willingness of the participants. For some parties, including the victim, restorative justice may encompass much more than the practices outlined in the discussion paper. The involvement of participants must rely upon information about the available options, choice over such options and control in how to exercise those options.</p>

	<p>(3) What can be done to encourage victim involvement in restorative justice practices in appropriate cases?</p>	
	<p>Question 6.4 Procedural safeguards What procedural safeguards, if any, should be required in restorative justice practices in NSW?</p>	<p>In principle, any procedural safeguard in restorative justice reform should be designed to protect the victim from any further harm. How this is applied in practice is dependent upon the program scope. Standards in designing such procedural safeguards should identify positive behaviours of the offender, including the offender showing genuine remorse, whether they are willing and able to participate and taking responsibility of their actions.</p>