

The Public Defenders

Public Defenders Chambers

23/1 Oxford Street,
Darlinghurst NSW 2010
DX 11545 Sydney Downtown

Tel 02 9268 3111 Fax 02 9268 3168

www.publicdefenders.nsw.gov.au

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NSW Sentencing Council

Dear Chair,

Response to Consultation Paper: Victims' Involvement in Sentencing

I refer to the above and, on behalf of the Public Defenders, seek to respond to some of the issues raised, which I have grouped, below. The Public Defenders support Victim Impact Statements, for their therapeutic benefit to the victim and to the offender. They give a voice to victims in the formal court proceedings that they may not otherwise have and an opportunity to express the impact of the offence on their lives. It is helpful to the rehabilitation of the offender for him or her to be made aware of the consequences of his or her criminal actions, in human terms, directly expressed in their presence.

We have focussed on the issues which are particularly relevant to our experience, by replying to some specific questions which, where appropriate, are grouped.

2.1 How can the information given to victims on VISs and sentencing be improved?

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

4.3: What a victim impact statement may not include

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

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?

It would be helpful if steps were taken to ensure that material that is already available to assist victims with drafting their VIS is actually provided to them, and that their draft VISs are carefully checked by the prosecution, well before the sentencing hearing date, for any transgressions, before it is disclosed to the Defence.

In our experience, time is wasted by the Defence pointing out to the prosecution material in VISs that clearly is not permissible, and should have been rectified before disclosure. VIS disclosure often occurs the day before, or even the day of, the sentence hearing, which unnecessarily adds to the stress or preparation for the sentence proceedings.

For example, the guidelines provided to victims by the DPP to assist them in writing their VIS state:¹

¹ *Writing Your Victim Impact Statement Guide*. A download hyperlinked to: <http://www.odpp.nsw.gov.au/victims-witnesses/victim-impact-statements>

The VIS is not an opportunity to express your feelings towards the offender, and it is not a letter to the offender. It is also better not to write about the facts of the case, make assumptions regarding the offender's behaviour, or discuss court outcomes in your VIS.

In spite of this advice, often the VIS addresses the offender, and is sometimes critical of him or her in terms that are sometimes grossly inappropriate. As well, they sometimes urge a particular sentence or type of sentence which, as the CCA has noted and is referred to in the report (para 4.18), is not permissible. We support the inclusion of a legislative provision similar to that which exists in the ACT, to the effect that VISs not include material that is offensive, threatening, intimidating or harassing.

References to appropriate punishment are a continuing issue and is frequently encountered.



The same document states: *Please try to get the VIS to the prosecutor at least 1 week before the sentence date.* A week is too close to the sentence date. It should be provided to the prosecution well before that period, to enable sufficient time for it to be checked before disclosure to the Defence. Indeed, a week before the sentence date is a reasonable minimum period for the Prosecution to disclose any VISs to the defence.

We agree that the advice to victims about the content of VISs should be standardised, but note that the relevant prosecution officers need to be advised as to their important role in vetting VISs and in a timely fashion. This may require in-house training.

Chapter 3: Who Can Make a VIS

Chapter 3 discusses the merits of expanding the class of persons who may make a VIS so as to include persons significantly affected as a direct consequence of the offender's offences, but who would not presently be permitted to make a VIS, such as the parents of child who has been sexually assaulted, the parents of a person with an intellectual disability, or members of aboriginal or Torres Strait island communities who, do not qualify but who as a result of kinship connections, are as affected as others who do.

The Public Defenders support expanding these classes of persons who qualify to make a VIS.



Mark Ierace SC
Senior Public Defender