

8th November 2017

To: New South Wales Sentencing Council
GPO Box 31
Sydney 2001
Via email: sentencingcouncil@justice.nsw.gov.au

Submission to the NSW Sentencing Council review of 'The Role of the Victim in Sentencing'

From: Fiona Tait - Author Criminology Masters Research Thesis (2015)
Testaments of Transformation: The Victim Impact Statement (VIS) process in NSW as experienced by Victims of Crime (VOC) and Victim Service Professionals (VSP).

Thank you for allowing me the opportunity to present a submission regarding Consultation Paper :
Victim's involvement in sentencing' (September 2017).

Background:

My study sought to determine the nature of the Victim Impact Statement (VIS) process as experienced by victims of crime (VOC) in NSW and whether the VIS was utilised by all eligible victims, or whether VIS take up was associated with particular variables including victim characteristics, nature of the crime, criminal justice processes, and cultural and societal norms. The study was also interested to understand how VOC perceive the purpose of VIS, their reasons for making or not making a VIS, and the nature of the therapeutic benefits VIS provide.

Analysing data from a broad cross-section of victims of various serious crimes in NSW interviewed showed that motivations to make a VIS and expectations for its consequential effect are complex, affected by specifics of the crime, relationship between the offender and victim, micro and macro characteristics, experiences and needs of the victim. VIS are further influenced by the processes and relationships VOC encounter en route to and during the final presentation of their VIS at sentencing proceedings. Initial submissions to the Consultation Paper concur with my findings that:

VOC eligible to make a VIS are confused about:

- the purpose of the VIS
- what content is admissible and inadmissible
- why a VIS is edited
- media access to, and media use of the VIS
- where and how the VIS will be positioned and presented within sentencing proceedings
- what consideration of the VIS at sentencing means
- cross-examination of VIS

Whilst informing the Court of the crime's impact, and hoping to affect sentence are reasons some VOC make a VIS, other reasons are often equally or more important to them, and again these are reflected in some of the preliminary submissions: These include:

- presenting the personhood of the deceased in death matters, or personhood of the primary victim to the court and offender and/or their family
- informing the offender and/or their family of the crime's impact
- raising public and political awareness regarding the human cost of particular crimes
- redressing the balance and equity in criminal justice proceedings
- providing an opportunity for personal catharsis
- demonstrating personal strength and resilience – 'victimised not victim'
- performing one's civic duty and democratic right as a member of society
- assisting the authorities engaged in the prosecution process.

However, various factors inhibit VOC from making a VIS. Some have no desire to continue their engagement with the criminal justice process beyond conviction. Some are too traumatised to be able to consider a VIS, while others gain empowerment and a sense of personal autonomy from the opportunity to choose not to make a VIS. Many do not wish the offender to know the nature of their suffering, fear of retribution from the offender or their family/community, or fear that exposure of their harms will further empower or satisfy the offender. Contemplation of the VIS is further complicated for VOC who are in a current relationship and/or share children with the offender, or those who retain protective, compassionate, conflicted or ambivalent feelings towards them.

VOC report concerns regarding how they will be perceived, based on their experience or perception of normative value judgments of personal status and self-worth, to include culture and ethnicity, gender, literacy, language, age, religion, sexual preference, mental and physical ability, relationship with the offender and previous experience of criminal justice processes. Fear of cross-examination, feelings of shame and concerns regarding personal exposure through publication of the contents of the VIS by media can also inhibit VOC from making a VIS or affect VIS content.

In terms of process, VOC can be dissuaded from making a VIS if they find it difficult to access or comprehend VIS information, if they feel their desire to make a VIS is unsupported by those close to them, victim support services, or those engaged in the prosecution of the matter, if the content of their VIS is curtailed - in particular during charge negotiations, or if the time to produce the VIS is limited. In terms of service provision, many VOC participants expressed gratitude for the support and kindness they received from the police, victim support and criminal justice personnel. However, it appears that availability of services, the nature of the crime and victim characteristics are factors affecting the level of assistance and support VOC receive.

Finally as described in preliminary submissions, there is general confusion in VOC's understanding regarding the exact purpose of VIS. Most VOC view it functionally, in terms of VIS having some consequence or causal effect, be it affecting sentence, affecting the emotional understanding and future behaviour of the offender, or affecting wider public and political awareness. This confusion in marrying the informative function of VIS in sentencing proceedings to an outcome was also held by some in victim support agencies, and those working within the criminal justice system (VSP) I interviewed. Some VSP viewed the VIS as tokenistic, believing it to have no tangible value, based on their understanding that VIS had no actual consequence in terms of the sentencing decision of the court. Others viewed the VIS as having an effect on sentencing decisions, viewing it as a practical tool, of use to the prosecution. Overall, VIS was viewed by VSP's as measure to enhance VOC satisfaction with the sentencing process as a result of the inclusion of the victim's voice. Some saw this opportunity to participate as meaningful for their clients, however any therapeutic benefits of VIS was seen more as a by-product of the process, rather than a function.

These issues have been highlighted in both preliminary submissions and the Consultation Paper and recommendations are now discussed (recommendations are in bold type). As my research was specifically concerned with the VIS process in NSW, I have limited my responses to those sections where my understanding is most relevant.

Regarding Section 2: The Victim's experience.

How can the information given to VOC on VIS and sentencing be improved ?

Information regarding VIS and sentencing procedures is complicated and as mentioned many VOC are challenged by trauma, literacy, language and other concerns. Some VOC need support through one-on-one face-to-face or telephone discussion where information gaps can be discussed, and concerns be worked through. In addition, as many VOC state it is difficult to comprehend or retain information due to the effects of trauma, and emotional and practical issues that result from the crime and criminal proceedings, information that is constantly accessible and easily presented is required, to allow VOC time to absorb the detail.

For these reasons, **I recommend that VOC have access to VIS and sentencing information provided in multiple ways, in multiple settings.**

a). The NSW VIS information pack provides basic information regarding VIS. **I recommend the pack includes links not only to VOC support services, but links to further information online and across all digital media platforms - whether created as written, graphic or filmed items - that give specific detail regarding:**

- How sentencing proceedings operate at Local, District and Supreme Courts
- The principles regarding how a sentence is determined
- What is the purpose of VIS
- Ways you can present a VIS to the sentencing court , what to expect and how a court uses a VIS
- The experience of preparing and writing a VIS
- The types of information you can and can't include in a VIS and why
- How are VIS edited and why

It is also recommended that any videos/visual information existing or created regarding VIS and sentencing proceedings are easily found by google search, using key words that immediately direct VOC to the information they need. Currently there is little visual information available specific to the needs of VOC in NSW.

b). **I recommend a NSW Central information line for VOC to call regarding VIS questions, with staff educated not only in VIS process but in the emotional and systemic challenges facing VOC considering VIS.** This service should be confidential, person-centred and trauma-informed, with staff able to refer VOC to support services to meet their particular needs when deciding whether to make or preparing a VIS. My research, supporting previous findings, found that those less likely to make a VIS included those with low levels of literacy, low english speaking or english comprehension skills, those needing an interpreter, those challenged by their physical or intellectual abilities, those with perceived lesser social status, those with perceived lower cultural status, or those with previous experience of the criminal justice process as an offender.

c). Trauma informed practice and standardised protocols for those supporting VOC regarding VIS.

Awareness of how trauma affects VOC is important in terms of service provision and support provided in the initial stages of the VIS process. Without it, services may misunderstand a dismissal of the opportunity to make a VIS as an informed choice rather than as an indication of an inability to cope with further process demands. **I support the recommendation made by Legal Aid in their preliminary submission, that those supporting VOC through their criminal justice process, to include VIS, should have training in Trauma Informed Care and Practice (TICP).**

"More needs to happen than being handed an envelope. I remember the police giving me a [VIS] pack too, but I was so traumatised. You need people to go through it and point out what is important. It's like giving a drowning person an envelope and saying, 'When you have time, read this. See you!' Just so they cover themselves by tossing you an envelope."

Sandra (CD:29), victim of Physical Assault, VIS handed up

"You see, at that time, even to make a cup of tea, it was difficult. So imagine trying to write a statement ." [VIS]

Anna (CD:01), mother of murdered daughter, VIS read

Considering and preparing a VIS can be highly traumatising, and it is of concern that many VOC are unsupported in this process.

"Preparing victim impact statements can be highly triggering and traumatic, and we would not recommend that they do it alone ... because often, even though you would say that kind of recognition is amazing—it's kind of like a penny dropping often for people, when they realise the impact and are able to trace it back to these events—the amount of grief and rage that can come from that is quite huge. So it can be a period that's very hard and also very risky. We wouldn't want people to be doing that by themselves."

Counsellor, Adult Survivors of Childhood Abuse

Outside the Witness Assistance Service of the ODPP, VOC access support through a variety of victim support and court support services, including the Police. These services provide advice to VOC on VIS and sentencing procedure, however this advice is not always consistent and can be influenced by the sentencing experiences of the organisation.

I recommend a review of information victim support organisations provide to VOC and standardisation of information across such services regarding VIS and sentencing procedure, to minimise misinterpretation, misinformation and inconsistencies in advice.

d). Local Court Matters.

Local Courts are busy places. Often the first time a VOC will meet their Police Prosecutor is the day on which a matter proceeds. VIS are rarely made.

"I was not aware I was able to make a VIS. I read the information on the Victims Services website, that's where I read about it ... I didn't have any support from the DPP. It was at the Local Court in Campbelltown ... I had tried to contact the police to discuss VIS but I had huge problems trying to get hold of the police to get information."

Tracey (CD:30), victim of Physical Assault, non-VIS maker

1). As Local Court matters are usually dealt with very quickly, there is often no time for a VOC to prepare a VIS, even if they wish to present one. The denial of this opportunity when available, due to lack of time, or unwillingness of Local Court officials and Police to support those wishing to make a VIS can be deeply troubling for VOC.

I recommend that VOC be counselled to be able to advise the Court prior to proceedings taking place if they wish to make a VIS should the offender plead guilty or guilt be established. In this instance, sentencing could be delayed to allow the VOC an agreed amount of time to write their VIS.

"[The VIS] probably wouldn't bog the court time down, but there would still be an inherent resistance to anything that was going to take longer if it wasn't actually going to have a practical effect. They're [magistrates] very, very, they're very, very motivated about keeping things moving. Court time for them, court time is the most precious thing on earth and anything that takes up court time needs to be justified."

Police prosecutor, Sydney

2). **I support education regarding presentation of VIS at the Local Court for police/police prosecutors/defence/magistrates, to include the therapeutic importance of VIS to VOC and to VOC's satisfaction with criminal justice proceedings.**

3). **I recommend that a VIS information sheet should be available in the information stands at all Local Courts.**

Regarding Section 3: Who can make a VIS ?

I support the submission by the NSW DPP regarding reforms to widen the criteria for those eligible to make a VIS.

I understand and appreciate the counter argument put forward in Robert Wade's preliminary submission. However, in matters where offenders are found not guilty by reason of mental illness, supporting submissions by the NSW DPP and Mental Health Review Tribunal, **I believe a mechanism is needed to allow VOC to make a VIS to the Sentencing Court if they wish to, to allow those VOC the same therapeutic and procedural justice benefits of the opportunity of VIS as other VOC, whilst also safeguarding the needs of offenders dealt with under the Mental Health (Forensic Provisions) Act 1990.**

Victims of Domestic Violence and VIS

Those I interviewed did not voice concerns regarding their eligibility to make a VIS, rather they were concerned regarding their future safety should they decide to make one. Fear of future harm to the victim or their immediate family from the offender or the offenders family was cited as a reason not to make a VIS. Non-VIS makers of DV interviewed who feared the offender would harm them again, whatever the sentencing outcome, would often state that they wished to make a VIS simply to put on Court record the harms they suffered, and would have done so if they were able to present it without the offender being aware of it.

Regarding Section 4: Content, Admission and use of VIS

Type of Harm

The NSW VIS pack makes suggestions to VOC to consider emotional, social and financial impacts when drafting their VIS. In line, victim support services interviewed generally advised both primary and family victims writing a VIS to consider these harms. VOC interviewed stated that these areas of their lives had been affected as a result of the crime event, and often existed as a cluster consequence. As this is inconsistent with the current provisions, it is unsurprising that there is frustration regarding what content can and cannot be included.

Latitude regarding VIS content and offensive material.

The Consultation Paper refers to the latitude of some Courts allowing the inclusion of content and offensive material other Courts may deem inadmissible. This subjectivity is highly problematic not only for VOC but those agencies supporting them.

“And I think that there’s a lack of consistency of approach to VISs, and I think that’s fairly well known, and I think that the reason that they are knocked back or edited is either very personal reasons by the prosecution who’s dealing with the matter, the defence or the judiciary, which the victim has no control over.”
Director, Victims Services NSW (2012)

“Again there’s such diversity. Some Crowns and solicitors will say that they would not edit someone’s victim impact statement and that they will just serve it on the defence, and others will go to enormous lengths to edit it, and to ask you to go through those edits with the victim, so that there is no question of there being any problem. It just depends on the Crown, it depends on the solicitor, it depends on the judge.”
WAS, Wollongong (1)

This inconsistency appears to derive from the lack of clarity regarding the instrumental rather than expressive function of VIS. Whilst VIS may be taken into account at sentencing, there is little guidance as to the level of weight given to a VIS. Whether VIS affect sentence or not, the current provisions are interpreted by some Prosecutors and Defence to treat VIS as if they might, and scrutinise them accordingly, with others giving VIS more latitude, seeing them as carrying no weight.

“See I tell people that I believe it [VIS] does [affect sentence], which is probably a bit naughty of me. But I say to them, basically what I am saying to you. That it is totally voluntary. It is your opportunity to tell the court the impact that it has. Judges are human beings and they are affected by real people, and being told real things. And they may not understand the impact that this has had on you. So, erm. But I believe they do have an impact.”
Crown prosecutor, Sydney (1)

“I take it to mean that they don’t take it [VIS] into consideration. That’s what I think, in practical terms, but that it’s acknowledged. I don’t think it affects the sentence. I don’t think that. I know what it says [the legislation], but I don’t think it [the VIS] has any effect on, on, increasing sentence. I think the whole victim impact statement legislation is couched in euphemisms. I think it’s a pretty fundamental principle in

sentencing and that is that you really can't adjust a sentence to take into account the circumstances of the victim, which flows from a concept that some people aren't worth more than other people, and that's pretty fundamental. ...And I think the problem with the VIS really having an impact on the sentence is that as soon as you say, well, the better the impact statement, the more heartfelt the sentiments in the impact statement, the more serious the offence because of it ... And that, just out of principle I don't think we can have a system like that, and so there is a conflict between VIS and what some victims would like the VIS to achieve and the fundamental principles of the justice system and I don't know how you accommodate the two"
Crown prosecutor, Sydney (2)

There is no doubt that VOC wish their suffering and loss to be considered when sentence is determined, and many hold (one could argue) a fairly logical expectation that sentence would reflect severity of harm. Without information, VOC can assume the Prosecution is acting for the VOC as an individual, rather than acting for the State, still seeing the court process as a binary conflict between themselves and the offender. When properly and compassionately briefed however, most VOC are prepared to accept that in criminal justice proceedings there are many other factors at play. For these VOC especially, the VIS is a very important mechanism to have their hurts acknowledged by the Court and heard by the offender.

"The sacrifice was really worth it for my voice to be seen. To be seen as a person. To break down barriers ... It was just [to say] who I am. A mother, a grandmother and married for 47 years, because they [the perpetrators] kept calling me names that I had never been called before. I really wanted them to know my humanity. I am a human being and an important human being ... It was just important for me for them to see the human being that they had dragged out of bed, who thought they might die."
Olga (CD:65), victim of robbery and aggravated Physical Assault, VIS read

The more informed VOC are regarding how sentences are constructed and where the VIS sits within the body of information being considered, the more accepting they are about sentencing outcomes. However, whilst previous studies state that VIS does not appear to affect the severity of sentences per se, there are questions regarding consistency of sentencing where VIS are present.

"They [judges] don't understand those [particular] consequences sometimes. So I think it [the VIS] informs them, it makes them more sympathetic and it highlights the objective seriousness. It may not change it, but it just brings it back into focus, I think. So yes, I think the answer is that you could end up with two different sentences for exactly the same crime if you had a victim who didn't do a victim impact statement and one that did. And it was an articulate, eloquent expression of what had happened to them. Even though in both instances the judge would say that 'the harm was significant, the crime was terrible', and in the case where the victim did the victim impact statement, 'I've read the victim impact statement and taken it into account but it hasn't affected the length of sentence', I think it does."
Crown prosecutor, Sydney (1)

I recommend a review of the guidelines regarding how a VIS can be 'taken into account' at sentencing.

Editing of and Challenges to VIS

There is therapeutic value in the VIS. It offers VOC the opportunity to reconstruct the traumatic story from their perspective, to assess their harms, and to make meaning of their suffering in order to restore their connections to those close to them and to the wider community through the experience of their story being heard and validated within a public, sanctioned forum. VOC gain therapeutic effects not only from the participatory but also the self-reflective, validatory and empowering opportunities the VIS provides, despite levels of anger or psychological trauma remaining unaffected and despite dissatisfaction with other elements of their criminal justice experience or the sentence handed down.

VOC often describe writing a VIS as traumatic and emotionally challenging. For some it can take a matter of months. These documents are very carefully constructed, and designed to tell a particular story of the victim's experience and truth. It is very difficult for VOC who have suffered systematic abuse over a long period by an offender to ignore the historical context and previous harms. Similarly in matters where initial charges laid have been negotiated from serious to more minor charges, it is equally difficult for VOC to accept the reality of the full extent of their suffering being inadmissible within their VIS.

“Nothing could be in the VIS that wasn’t in the agreed statements of fact for the plea bargain, but I did not see that agreed statement. When I did [pause] it was like reading about someone else’s crime. It bore little relation to what happened to me, and then the accused and barrister could go through [the VIS] and toss out what they didn’t like.”

Sandra (CD:29), victim of Physical Assault, charges pled down from attempted murder, VIS handed up

I support the VLRC recommendations in regard to providing better information to manage the expectations of VOC in criminal justice proceedings, and best practice protocols for court professionals to ensure every effort is made to support VOC when changes to charges are made. The better informed and supported VOC are during the preparation of their VIS, the better the outcome if challenges to it are made.

Further however, **I recommend that those prosecuting, defending and judging matters receive more education regarding the complexities and emotional challenges VOC endure to make a VIS, in order to gain a greater understanding of the VOC’s experience of the VIS process.** Appreciation of this experience may make it more likely that the need to edit VIS is more deeply considered (in my study, 50% of VIS-makers participating had had their VIS edited at least once before it was accepted by the Court). I hope it becomes standard practice to inform VOC as to why parts of their VIS are being challenged, and give them adequate time to process that information and amend their VIS if they wish to.

Regarding Section 5: Procedural issues with the making and reception of a VIS.

Presenting the VIS within the sentencing hearing, where harms suffered can be publicly recognised and acknowledged is powerful, with data of VOC interviewed showing oral presentation of VIS provides VOC with most satisfaction. However, reading a VIS to the Sentencing Court is a daunting experience for most VOC. Fears of public speaking, breaking down in public, or facing negative reactions from the Court and/or the offender are reasons VOC choose not to read their VIS.

Factors that exacerbate VOC stress when presenting a VIS include :

- lack of standard protocols within the Local, District and Supreme Court for the presentation of VIS
- lack of knowledge of the Court layout
- indecision regarding where the VOC should stand to read the VIS
- where in the proceedings the VIS should be placed
- negative reactions from the gallery, or lack of court attention when a VIS is read
- lack of Judicial reaction to a VIS

“So they’re standing there not realising that they’re going to have to stand in the body of the Court. And they’re shaking, and they want a tissue and they’re wiping their noses with their hands, and it’s like... It is chaotic. But that’s because the victim doesn’t know how they’re going to be. It’s daunting for a lot of people.”
HVSG, manager

I recommend standard protocols for the presentation of oral VIS in Supreme, District and Local Court and support the recommendations in Brodie Donegan’s and the VWCCS submissions that VOC be allowed to familiarise themselves with the courtroom prior to reading their VIS, when necessary have the option to use CCTV or present their VIS by pre-recorded video, have the option to close the court, and have a support person standing with them. Allowances for breaks when VOC become emotional when reading VIS, and having regard for the victim during their VIS presentation are also recommended.

Cross examination of a VIS destroys it’s therapeutic consequences, as it suggests to the VOC that their voice and their understanding of their experience is not to be believed. The VIS is not sworn, therefore it should not be cross-examined, especially as Defence has the option to challenge it’s contents prior to presentation. **I support the recommendation made in Bravehearts submission that VIS should not be cross-examined.**

Responding to VOC in proceedings

One of the recommendations made in 2015 as part of my study was that a standard protocol for judges and magistrates to acknowledge an oral or tendered VIS in summation prior to sentencing be handed down should be devised, with guidelines regarding how to acknowledge a VIS appropriately, to avoid further appeal. The reaction of the Judge or Magistrate to a VIS is very important, as VOC see judicial acknowledgement as a validation of the harms suffered both as an individual and a valued member of society.

“The court is seen as the big institution that is supplying justice. And the judge is the representative of that. Then if the judge acknowledges it [VIS], then it’s this really big institution that is acknowledging the harm, even on behalf of the community as well. I think it’s a big deal. Particularly for people who don’t have a lot of contact, which is most of our victims anyway, with court and those sorts of systems. You see court as a really big deal, and a judge as a really important person. For that big, important person, who has so many other things to think about, to comment on, in judgement, about you, and how you feel, is incredibly important.”
WAS, Campbelltown (3)

I support the recommendations in the VWCCS submission regarding Judicial acknowledgment of the role of witnesses and VOC within criminal justice proceedings.

“Because I did not read it out, it was not acknowledged, so I didn’t know if he [the judge] had read it. There was nothing mentioned about it at all. I would have liked some acknowledgement that he had read it.”
Amanda (CD:39), victim of domestic violence, VIS handed up

I again recommend more education for the Judiciary regarding the very special personal and emotional challenges VOC endure to present a VIS, which might assist in informing judicial practice to ensure attention and acknowledgement is paid to the victim, and the VIS if presented, as a standard practice within all sentencing proceedings.

Thank you for your consideration of this submission.

All quotes are taken from my research*. I also attach recommendations made at it’s completion, to include recommendations for future research, and two resources designed for victim support services that might be of interest. If you require any further information regarding this submission, please contact me, as outlined below.

Fiona Tait

Email: [REDACTED]

*link to NSW VIS Study: www.fionatait.com or
<https://ses.library.usyd.edu.au/handle/2123/14033>

RECOMMENDATIONS: To improve VIS process

- A central information line for VOC to call regarding VIS questions, with staff educated in emotional and systemic challenges facing VOC considering VIS.
- A VIS video/s available online outlining VIS purpose, content and presentation and addressing specific concerns raised by the study.
- VIS information sheet available at Local Courts.
- Standard protocols for the presentation of oral VIS in Supreme, District and Local Court.
- Standard protocol for judges and magistrates to orally acknowledge an oral or tendered VIS in summation prior to sentencing.
- Facility to present oral or tendered primary or family VIS in matters where offender is found not guilty due to mental illness/diminished responsibility.
- Education regarding presentation of VIS at the Local Court for police/police prosecutors/defence/magistrates.
- Education regarding the complexities and emotional challenges VOC endure to make a VIS for those prosecuting, defending and judging matters.
- Information and access provided to VOC wishing to apply for financial aid in order to attend sentencing to make a VIS, if their personal finances prohibit them from doing so.
- Standardised protocols regarding information given by victim support agencies to VOC regarding VIS.

RECOMMENDATIONS: For research

- Collection of VIS statistics in all NSW courts in matters meeting criteria for the presentation of a VIS - to include:
 - demographic details of VOC
 - nature of matter
 - if death matter, VOC relationship to deceased
 - whether sentencing post-trial or guilty plea
 - VOC relationship to offender, if any
 - VIS presented orally, tendered or not presented
 - judicial/magistrate response to VIS
 - media access to VIS
 - sentence details.

Rationale: At present no statistical detail regarding VIS is kept. Individual agencies such as WAS and NGO victim support agencies keep some data regarding their clients making VIS, but there is no systematic data collection. For this reason, it is not possible to state how many VIS are made in particular courts, nor who they are made by and in which matters. As the study findings suggest particular VOC making VIS in particular circumstances, statistical data is needed, to ensure all VOC wishing to make a VIS have the access and support to do so.

- Content analysis of VIS from initial draft through edit process, if any, to final VIS presented at court.

Rationale: Findings suggest the editing of VIS is inconsistent. A content analysis of VIS as they are edited with rationale for edit/s analysed against the legal guidelines may assist clarification of VIS guidelines regarding VIS content.

- Qualitative study based on in-depth interviews with offenders in prison regarding the impact of the victim impact statement on their understandings of the consequences of the crime for the victim, the level of responsibility they acknowledge for those consequences whether foreseen or unforeseen, and whether they have made any behavioural change since hearing/reading the VIS. The study would also incorporate the offender's understanding of the purpose of VIS.

Rationale: Findings show that offenders rarely acknowledge VIS during their presentation. Anecdotal evidence suggests that the VIS provides offenders with insight and an opportunity to consider their actions. This research would inform debates regarding the restorative justice value of the VIS.

The above recommendations have been devised based on findings from the NSW VIS STUDY (2015). The full study is available via links:

www.fionatait.com &

<https://ses.library.usyd.edu.au/handle/2123/14033>

VIS Resources for Victim Support Services*

Resource 1

VIS Tick Sheet: Aspects to consider for clients making a VIS

How to use the tick sheet

The tick sheet is designed to assist workers supporting VOC during the preparation, presentation and follow-up processes of the VIS.

The two- page tick sheet is intended to highlight factors affecting VOC that may have the potential to:

- complicate their decision to make a VIS
- affect their ability to prepare a VIS
- affect the personal consequences of their VIS presentation.

Designed as a prompting tool, the tick sheet is not intended to be comprehensive. Workers are encouraged to amend it to suit their own use, particularly in specialised services dealing with victims of specific crimes.

Trauma was shown by the study to impact the ability of VOC to comprehend information and to engage with the VIS processes. Trauma is not a specific feature on the tick sheet, but victims appearing or reporting being highly traumatised will need additional support in the early stages of the VIS process because their ability to comprehend and retain information and make informed decisions can be significantly impaired.

*Resources have been created based on the findings of the NSW VIS Study (2015).

The full study is available via links:

www.fionatait.com &

<https://ses.library.usyd.edu.au/handle/2123/14033>

Factors that assist a positive therapeutic VIS consequence for VOC	Factors that may complicate a positive therapeutic VIS consequence for VOC
Personal factors	Personal factors
No concerns regarding personal/familial safety	Concerned for personal safety or that of family
Positive sense of self	Poor sense of self
Personal autonomy	Lack of personal autonomy
Personal belief in self-efficacy	Lack of personal belief in self-efficacy
Good mental health	Negative mental health
Able to consider and discuss future	Cannot contemplate or discuss future
Positive belief in personal literacy	Negative belief in personal literacy
Perception of being at no fault	Misguided perception of somehow being at fault
Gender	Gender
Member of dominant culture*	Member of a minority culture
Age 30 years and over	Age under 30 years
Member of individualist culture	Member of a collective culture
English speaker	Non-English speaker
No previous involvement with police or CJS	Previous involvement with police or CJS
Interpersonal factors	Interpersonal factors
Never or no longer involved in a relationship with the offender	Has been or is still involved in a relationship with the offender
No children with the offender	Shared children with the offender
Supportive family/friend network	Unsupportive family/friend network
Supportive police	Unsupportive police
Supportive victim service agencies	Unsupportive victim service agencies
Supportive prosecuting services	Unsupportive prosecuting services
No ambiguous feelings towards the offender	Ambiguous feelings towards the offender

Factors that assist a positive therapeutic VIS consequence for VOC	Factors that may complicate a positive therapeutic VIS consequence for VOC
Positive reaction from judge/magistrate to VIS	Negative reaction from judge/magistrate to VIS
Acknowledgement of VIS by offender	Negative or lack of acknowledgement of VIS by offender
Process factors	Process factors
Nature and seriousness of crime	Nature and seriousness of crime
Higher court matter	Local Court matter
Positive experience of trial/plea process	Negative experience of trial/plea process
Received information regarding VIS	Did not receive information regarding VIS
Was able to comprehend VISIP	Was not able to comprehend VISIP
Understands purpose and legal limitations of VIS	Does not understand purpose and legal limitations of VIS
The likelihood of cross-examination has been discussed	The likelihood of cross-examination has not been discussed
Has been informed of time frame to prepare VIS	Not informed of time frame to prepare VIS
Has adequate time to prepare VIS	Inadequate time to prepare VIS
Is consulted and understands why VIS is edited	Not consulted and/or does not understand why VIS is edited
Understands sentencing process	Lacks understanding regarding sentencing process
Has been consulted and discussed presentation of VIS at sentencing hearing	Has not been consulted or has not discussed presentation of VIS at sentencing hearing
Judicial reference made to VIS	No Judicial reference made to VIS
Does not expect VIS to affect sentence	Expects VIS to affect sentence
Follow-up—VOC not present at sentencing	No follow-up—VOC not present at sentencing

* To include religion/sexual orientation/disability

Resource 2

The 'SLOW' VIS practice model

The acronym SLOW has been devised as a model of practice for victim service professionals supporting VOC contemplating making a VIS. It is intended to assist workers not only to explore the process of making a VIS in some depth with VOC (to include potential challenges in preparing and presenting a VIS) but also to allow VOC an opportunity to air their hopes for their VIS so that those supporting them can manage their expectations, and the realities of what the VIS affords victims can be discussed and considered.

S	Safe
L	Listen
O	Options
W	Wellbeing

*Resources have been created based on the findings of the NSW VIS Study (2015).

The full study is available via links:

www.fionatait.com &

<https://ses.library.usyd.edu.au/handle/2123/14033>

SLOW: VIS support model

Safe

Check safety issues.

- Does the victim feel safe? If they report that they feel unsafe, are their fears realistic?
- Do they feel making a VIS potentially increases the risk to their physical safety? If so, is this fear realistic?
- Do they feel making a VIS potentially increases the risk to their mental health? If so, is this fear realistic?

Listen

Listen to understand, as well as to inform. Use active listening skills.

- Why does the victim want to make a VIS?
- What do they hope to achieve by making a VIS?
- Who do they want it to be heard by?
- Do they expect their VIS to impact sentence? Are their hopes realistic?

Options

Empower through information and choice.

- What is the purpose of the VIS and what benefits could it provide for the victim?
- Go through the VISIP with them.
- Do they face challenges in writing the VIS? How can these be overcome?
- What may happen during the VIS process; include the VIS being edited, challenges to the VIS in cross-examination, the VIS not being acknowledged by the offender or judiciary.
- What are the options for presenting a VIS, and what are the different implications?
- Is making a VIS the best way for them to achieve their hopes? Discuss options.
- What are the implications if they choose not to make a VIS?

Wellbeing

Check victim's mental health status, support and vision post-sentencing:

- How is the victim coping currently?
 - How traumatised are they?
 - What are their supports?
 - Do they need more support?
 - How do they view their criminal justice process to this point?
 - How do they see the future after the criminal justice process and sentence?
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