

Police Association of NSW

Submission to NSW Sentencing Council

Victims' involvement in sentencing



The Police Association of New South Wales (PANSW) represents the professional and industrial interests of approximately 16,500 members, covering all ranks of NSW Police Officers in New South Wales.

This submission is written on behalf of our members.

An inclusive approach to victim impact statements

The interests and wellbeing of victims and their families are too often neglected in the criminal justice system. Having experienced terrible loss or harm as a result of crime, they are then re-traumatised by a process in which they feel they have too small a role, and receive insufficient acknowledgement.

Their participation in sentencing through victim impact statements (VIS) is one way they are given a voice in the process. This review should strengthen victims' voice in the sentencing process, and ensure they are given all necessary support to assist them throughout their involvement in the criminal justice system.

Given that the VIS is one of the few ways victims can play an active role in the proceedings, and feel recognised and respected, the Police Association of NSW believes the *Crimes (Sentencing Procedure) Act, Regulations*, and relevant court procedures, should:

- not be overly restrictive in who can make a VIS,
- not be overly restrictive in what can be included in their VIS, and
- should make available all mechanisms of support to facilitate the reception of the VIS in a manner in which the victim feels as comfortable and safe as possible.

People experience the impact of crime in a variety of ways, many of which cause them ongoing harm and change their lives drastically. Denying a person's wish to make a VIS, or limiting or editing what they can include in their VIS, is extremely traumatic to the victims.

The Police Association acknowledges the need to ensure procedural fairness is not denied due to the VIS. However, there are ways to ensure this without being overly restrictive of victims' involvement.

As highlighted by the Consultation Paper, other jurisdictions are far more permissive and accommodating regarding who can make a VIS, the content of the VIS, and the strategies put in place to facilitate the victim's participation and wellbeing. This permissive approach has not resulted in the court being inundated with huge numbers of people seeking to make a VIS, nor has it resulted in increased sentencing trends for offenders or problematic changes to court processes.

The Police Association submits the rules surrounding victim impact statements can be more permissive than is currently the case. The Police Association supports the request by the Attorney General, The Hon. Mark Speakman, that the review should examine ways to strengthen victims' voice, and provide them with more support.

The victim experience

Victims may experience distress and trauma throughout the entire criminal justice process, including the preparation and reception of their VIS.

Many of the preliminary submissions made to the Sentencing Council identified strategies to assist victims. The Police Association supports those, including the following:

- making the VIS information package easier to understand and less intimidating and sterile,
- providing the victim with suitable assistance in preparing their VIS and explaining the process, along with any other relevant court procedures,
- ensuring the ODPP Witness Assistance Service is sufficiently resourced to meet the needs of victims and witnesses, and

- providing victims with adequate access to counselling, financial support and recognition payments. In this regard we note the reported increase in applications for these services in recent years. We submit all funding necessary to provide such services should be available.

Who can make a victim impact statement

The Police Association supports a more inclusive approach to who is allowed to make a VIS. As demonstrated by a number of the preliminary submissions made to the Sentencing Council, there are currently many people who suffer serious harm and whose lives are changed, but who do not fall within current definitions.

Type of victim

'Primary victim'

The Police Association supports a model in which the ability to make a VIS is based on the person suffering harm, rather than their proximity to the offence.

The definition of harm should not be restrictive, and should include those who suffer emotional harm or other forms of significant change to their lives.

'Family victims'

"Family victims" may make a VIS in cases where the primary victim dies as the direct result of an offence.

The Police Association agrees that the current definition does not accommodate diverse family arrangements, or other strong relationship types.

Again, the Police Association supports an inclusive approach, where persons who suffer harm (broadly defined) are eligible to make a VIS.

Child abuse cases

Regardless of what model the Sentencing Council ultimately recommends, the Police Association submits it should ensure that the family members of a child victim in child abuse cases are able to make a VIS.

Type of harm

The Consultation Paper identifies that the definition of "personal harm" excludes significant harms which victims and their loved ones suffer as a result of crime, such as:

- emotional suffering that does not amount to psychological or psychiatric harm,
- impact on social life,
- economic loss, and
- damage to property.

The Police Association believes the current definition is too restrictive, and should be expanded to cover more types of harm which victims suffer.

Eligible offences

The Police Association considers the approach of Western Australia, the Northern Territory and Victoria to be suitable. That is, the definition of 'victim' and 'harm' should be used to determine eligibility, and there should not be limitations imposed based on the offence. This model should be considered by the Sentencing Council.

If that is not the model ultimately recommended by the Sentencing Council, the eligible offences should be expanded to at least include:

- all domestic violence offences,
- those Table 2 offences against the person referred to in the Consultation Paper;
 - assault,
 - assault occasioning actual bodily harm,
 - aggravated act of indecency,
 - indecent assault,
- fraud,
- theft, and
- arson.

Content, admission and use of victim impact statement

The Consultation Paper appropriately notes the dual purpose of a VIS; the expressive and instrumental functions. This dual purpose at times places a victim giving a VIS in an awkward position in the proceedings; the VIS is meant to be their opportunity to express their personal experience of the offender's conduct and how it affected them. This is an opportunity for them to be heard, to be acknowledged, and to experience a degree of catharsis. At the same time, they may be subject to significant limitations in what they are ultimately permitted to say, given the court may consider the VIS in setting the penalty.

The Police Association strongly believes restrictions on what the victim can say should be minimised as much as possible.

As highlighted by preliminary submissions to the Sentencing Council, as well as studies of victims' experience of giving a VIS, victims and their families can experience serious distress, anger and trauma when their VIS is subject to objections, edited, or the subject of cross examination. This significantly reduces the expressive value of the VIS process for the victim, and they may rightly feel incredibly let down by the criminal justice system.

The Police Association acknowledges a VIS is evidence the court may consider in determining a sentence, and therefore rules must be in place to ensure procedural fairness.

However, the Police Association submits this should be achieved not by editing what the victim says in their statement, but through what the court actually takes into account. The victim should, as far as possible, be allowed to give their VIS on their terms, according to their experience, to ensure the best opportunity to experience the expressive value and not be further alienated from the proceedings. The court can then decide what it takes into account when determining the sentence, and this should be the stage where limitations apply if necessary.

The Consultation Paper highlights (at paragraphs 1.44-1.47) that victim impact statements have not led to increased sentences, and not affected court processes. Therefore, the current level of restriction imposed on victims, and their exposure to objection and cross examination in relation to their VIS, is protecting against a risk that is not materialising.

Definition of harm – personal harm and impact of death

As discussed above, the Police Association submits the definition of personal harm is too restrictive and needs to be expanded. Given the expressive value of making a VIS, we believe victims should be able to express harm as they perceive it.

The Consultation Paper notes “NSW would appear to be the only jurisdiction that uses a different formulation of harm for the purposes of a VIS by a family victim”. The Sentencing Council should consider removing this different formulation, and defining harm on broader terms for both categories.

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

The preparation and presentation of their VIS can be a very traumatic experience for victims. It forces them to relive the crime, it draws up negative emotions, and it exposes them to the stressful experience of criminal procedures and proximity with the offender.

The VIS provides considerable benefit to both the court and the victim, and every effort should be made to assist the victim complete the process with as little stress and frustration as possible.

The Police Association submits all victims should where possible, have access to any arrangements which help the victim feel sufficiently safe and comfortable reading their VIS, including:

- allowing a support person to sit with them,
- ready access to basic facilities, such as a place to set their papers down, water and tissues,
- option to read their VIS via CCTV,
- option to read their VIS from behind a screen/one way glass,
- option to read their VIS in closed court,
- selecting where in the court room they read their VIS from,
- pre-recording,
- making extra allowances for breaks, and
- allow other people to read the VIS on behalf of the victim.

Responding to victims in proceedings

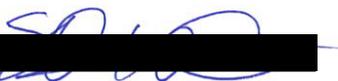
The Police Association agrees with many of the submissions which highlighted the need to ensure the court sufficiently and expressly acknowledges the impact on the victim, their courage and integrity shown in their participation in proceedings, and thanks them for doing so.

Guidance on these practices should be provided to the judiciary to ensure this occurs.

Conclusion

The Police Association of NSW thanks you for the opportunity to participate in this review. We hope this review results in a greater voice for victims in the sentencing process, and improved support services and strategies to make victims feel safe, comfortable, and valued by the criminal justice system.

Kind regards



Scott Weber

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