Victim Impact Statements

A brief examination of their implementation in Victoria

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Victim Impact Statements (VIS) first became available in Victoria on 31 May 1994 when the *Sentencing (Victim Impact Statement) Act* 1994 took effect. VIS provide one means by which victims of crime can participate in the criminal justice system. This form of victim participation usually takes place at the sentencing stage. The introduction of VIS is said to be justified by Declaration 6(b) of the United Nations Charter of Victim Rights. This section provides for

> allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system (cited in Richards 1992:132).

The introduction of VISs in Victoria, as elsewhere, has been controversial and the rights of victims to participate in sentencing is subject to ongoing debate (Erez 1994:17). Moreover, opinion on the efficacy of VISs varies greatly. Some commentators see the VIS as the most important legislative reform in the area of victim's rights because the VIS reintegrates victims into the criminal justice system at the sentencing stage (Erez 1990:26). Other commentators are highly critical of this procedural reform (Richards 1992). An alternative response is that the existence of a VIS is not an issue because VISs have no real effect on sentencing practices or outcomes (Douglas and Laster 1994:35). The latter response reflects the stand taken by the Opposition during the Victorian Parliamentary Debates about the introduction of the Bill (Parliamentary Debates 1994:1043).

This paper describes elements of the Victorian model of the VIS and makes some comparisons with the nature and usage of VISs in other jurisdictions, particularly South Australia, New Zealand and the United States. It also examines theoretical sentencing problems raised by the VIS, such as assessing the character of the victim as an aggravating or mitigatory factor in the sentencing of an offender, and problems of the Victorian VIS in practice.

Description and comparison

The purported purpose of the VIS is threefold (Hall 1992:143). First, to provide further information to the court about the nature of the offence (Ashworth 1993; Attorney General's Department (Victoria) 1994:2). Secondly, to empower the victim and aid the healing process. Thirdly, to help the offender by showing her or him the consequences of the offence. Those in favour of the reform believe the VIS is necessary for the victim's satisfaction

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with justice, psychological healing and restoration. Some commentators argue that the healing of the victim should be a substantive sentencing aim (Community Law Reform Committee of the Australian Capital Territory 1993:65).

In the Victorian legislation a victim is defined as

> a person who, or body that, has suffered injury, loss or damage as a direct result of the offence, whether or not that injury loss or damage was reasonably foreseeable by the offender *(Sentencing Act* 1991 s95A4(1)(b)).

Unlike the New Zealand legislation (*Victims of Offences Act* 1987 (NZ)) the *Sentencing Act* 1991 (Vic) allows a person to make a VIS on behalf of a victim 'that is not an individual' (s95A(3)(c)). Similarly, the South Australian VIS legislation (*Criminal Law (Sentencing) Act* 1988 (SA)) identifies the victim as 'a person(s), business or Government body who suffers direct loss' (Sumner and Sutton 1988:38). To date, courts have had difficulty attributing quasi-human criminal liability to a corporate entity (Chesterman 1994). Quantifying the victim status of a corporation also carries theoretical, legal problems worthy of examination, but beyond the scope of this paper.

A striking omission from the Victorian legislation is the lack of any reference to immediate family members of the deceased in the class of victims able to make a VIS where an offence results in death. By contrast, the New Zealand legislation does recognise family members (*Victims of Offences Act* 1987 (NZ) s.2). In *The Queen v Penn,* the Supreme Court of Victoria followed the exact wording of the legislation in determining that evidence of the impact of the crime on secondary victims should not be taken into account when sentencing (see also McCarthy 1994:1056). However, this decision was reversed in *The Queen v Miller* where the full Supreme Court upheld the decision to allow judges 'to take account of previously inadmissible evidence about sorrow and misery caused to the families of crime victims' (see also Gregory 1995).

In Victoria the VIS is confined to use at the sentencing stage. By contrast, the 'majority of states in the USA also provide for victim input into parole hearings' and many states allow for victim participation at the plea bargaining stage (Erez 1994:18). The participation of the victim at the plea bargaining stage sometimes occurs in practice in Victoria, although it is not a legislative provision (Gibson 1995). An example is a rape case where the victim was not only kept informed, but was also consulted concerning the decision of the Director of Public Prosecutions to reduce the charges from rape to sexual assault, in order to achieve a conviction. This course of action is necessary because of the understandable disenfranchisement that victims feel when the more serious charge against an alleged perpetrator is dropped by the DPP, and is achievable without the provision of a VIS.[1]

The Attorney-General's department in Victoria has prepared a proforma VIS that includes information to assist victims to complete a VIS and describes the VIS as a statutory declaration about the effects of types of crime on a victim (Attorney General's Department 1994). The VIS may contain information about physical injury, emotional trauma, financial loss and property damage. However, the legislation 'allows for the whole or part of the VIS to be ruled inadmissible' (Corns 1994:1054–5). This means that the victim may provide information in good faith only to find this information is rejected by the court, with the risk of further alienation of the victim from the criminal justice system.

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1 To this end the Victorian Office of the Director of Public Prosecutions instigated a Witness Assistance Program in July 1995.

In South Australia, the police informant or prosecutor is required to complete the VIS (Sumner and Sutton 1988:35) which is in marked contrast to the Victorian VIS where most details must be completed by the victim without professional assistance (Attorney General's Department 1994). Making the victim complete the statement creates the prospect of inconsistent outcomes and victims with differing educational backgrounds will provide different standards of VIS. The South Australian practice is preferable because it allows a level of consistency and a better prospect of ensuring that all victim impact details are considered by the court.

The Victorian model gives the victim a choice between providing a written VIS or writing a statutory declaration plus allocution in court (s.95A(2)). Some critics find fault with this model (Hall 1992:153). To avoid a miscarriage of justice, Rowan (1988:194) argues that the VIS should be in writing, supported by medical evidence and capable of being verified by sworn evidence. Several commentators suggest that because VIS evidence may be highly prejudicial and emotional, there are grounds for exclusion under due process considerations (Levy 1993:1027; Finn–DeLuca 1994:403). Alternatively, Hall (1992:144) and Rowan (1988:195) argue that more guidelines should be applied to the use of VISs. In the West Australian case of *R v Pinder* the Court recognised the value of VISs but cautioned that they should be

> presented with discretion, responsibility, with due regard being had to the accuracy of the material and the capacity to demonstrate a causal relationship between the effects described and the commission of the offence (cited by Morgan 1993:441).

An example of the possible adverse effects of allocution is the US case *Payne v Tennessee*. Prior to this case VISs were excluded from capital cases on the constitutional basis that the use of oral victim statements in capital cases was barred by the 8th Amendment (*Booth v Maryland*). In *Payne* the Court heard the extremely emotional testimony of a family member of the deceased. The controversial statement was given by the grandmother on behalf of a child whose mother and sibling were murdered by the convicted person.

The accuracy of VISs is particularly important, and the nature of the checks and balances available to protect a defendant from an unjust sentence are crucial. As noted above, because the VIS is subject to the rules of evidence, expert opinion may be required by the Court to determine the accuracy of the VIS (Corns 1994:1055). The Victorian legislation does not address this point. It seems an unacceptable burden to expect the victim to pay for medical reports to support their VIS. Additionally, during the Victorian Parliamentary Debates, the government argued that allowing the cross examination of the victim is a sufficient safeguard to ensuring the accuracy of a VIS (Parliamentary Debates 21 April 1994:1022). However, it was also conceded that 'it would be a brave counsel indeed who would cross-examine a victim' (Parliamentary Debates 21 April 1994:1021).

The same sentiment applies to defendants. In *R v Trotter* (cited in Donovan 1996:A2) where a sex offender cross examined the victim and his family, Judge Thomas Wodak described the cross examination as 'callous, sadistic and heartless.' From this language it could be concluded that if the defendant uses the legislative right of cross examination indelicately, they may risk the imposition of a harsher sentence.

Theoretical sentencing problems

Victim's character

Opponents of VISs have raised concerns about the potential for VIS to impact adversely on sentencing, and to clash with traditional sentencing principles. Finn-DeLuca (1994:418) criticises the decision in *Payne v Tennessee* because it involved a reassessment of the

blameworthiness calculation. That is, it focused on personal responsibility 'based on the premise that accountability turns on outcome more than intent'. The Victorian legislation allows for the consideration of details of the actual effect of the crime, even if the injury was not reasonably foreseeable by the accused (s.4(b)).

Moreover, the potential for the introduction of criteria such as 'race, social standing, religion and sexual orientation' (Finn-DeLuca 1994:418) with regard to the victim's character implies a subjective determination of the gravity of the crime. This raises the problem of 'loved' and 'unloved' victims (McCarthy 1994:1056). In *The Queen v Penn* the Court used the example that an offender who causes the death of a person who is widely loved should not be punished more than one who causes the death of an unloved victim.[2] Similarly, Ashworth asks whether it is

> right that one offender should receive a more severe sentence because his [sic] victim suffered abnormally serious after-effects or that another offender should receive a much lower sentence because his [sic] victim was counselled successfully and apparently recovered quickly (1993:506).

Sentencing aggravating and mitigating factors

In *Payne* the prosecution argued that if the defendant is allowed to present unlimited mitigating evidence, so too should the victim be able to present details of the effect of the crime as aggravating factors. However, as Finn-DeLuca (1994:418) notes, the victim's character may also be used as a mitigating factor. This leads to a situation such as that in the much criticised case *The Queen v Hakopian* where the 'likely psychological effect on the victim of forced oral intercourse and indecent assault, is much less a factor in this case [where the victim is a prostitute] and lessens the gravity of the offences' (see also Carter and Wilson 1992:6).

By contrast, Morgan (1993:438) takes the opposite view, and argues that 'carefully structured Victim Impact Statements may also have a role in challenging the views of cases like *Hakopian'*. Rather than reducing the gravity of a crime because the victim is a prostitute, Morgan suggests that a VIS may enable the court to hear the true effect of the crime on the person thereby avoiding erroneous assumptions (see also Erez and Roeger 1995:374, and for a critical analysis of Erez and Roeger, see Hinton 1995).

Another problem is that the VIS can introduce aggravating factors for the first time at the sentencing stage (Hall 1992:149). An example is provided by a case in which the victim revealed that the incest had continued over a number of years and that violence and threats accompanied the incest despite the fact that the defendant had been charged with one incident only (see *R v F*). As noted above, the whole or parts of the VIS can be ruled inadmissible to avoid this situation, however, the consequence may be greater alienation for the victim who after giving the statement finds that its contents are rejected by the court.

Sumner and Sutton (1988:16–17) refute such attacks on VISs and argue that the legal tradition is not compromised. They contend that VISs do not introduce new elements because 'sentencing authorities have always been required to take account of the actual effects of the crime'. To support this assertion Sumner and Sutton cite cases where the 'vulnerability of the victim is treated as an aggravating factor calling for a heavier sentence', for example, *Blaue* where the court stated:

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2 In this case there were two victims. One family submitted victim impact information; the other did not.

> [It] has long been the policy of the law that those who use violence on other people must take their victims as they find them. This in our judgment means the whole man [sic], not just the physical man [sic] (Sumner and Sutton 1988:18 citing *Blaue*:450).

The problem with using this case as authority in this context is that it relates to issues of causation at the trial stage, as opposed to sentencing considerations. The Victorian legislation adds further confusion when it states that reasonable foreseeability of the impact of the crime on the victim by the accused is not a factor when determining the appropriate sentence. This could imply that the principle of reasonable foreseeability is also a causation issue to determine the culpability of the accused. However, it reads as if the accused can receive a harsher sentence should the victim be more severely harmed, even where the accused had no knowledge of the increased potential for serious injury.

The VIS in practice

The VIS and the criminal justice system

In a 1991 evaluation study of VISs in South Australia, Erez (1991:190) found that the VIS allows victim input without affecting either the adversarial system or the rights of the accused. Erez (1994:28) argues that the participation of victims does not transform the sentencing into a three-way contest. However, in *R v F* the court identified the need to balance the interests and rights of the victim, society and the defendant. This approach does not account for the fact that the adversarial system is largely a 'mythical process' in the day to day running of the criminal justice system (Elias 1995:5). The reality is that the great majority of cases are heard in the lower courts and the defendant pleads guilty. Moreover, as Douglas and Laster (1994:4) argue, 'technocratic justice', or the efficiency of the criminal justice system, has become a more important consideration than debating the abstract rights of the victim/ offender dichotomy.

In South Australia the question arose as to whether the court should be adjourned where a defendant pleads guilty before the victim has time to prepare a VIS (Erez 1991:189). To avoid this situation in Victoria, Douglas and Laster (1994:36) suggest that 'embedding victim impact information within existing procedures may both symbolically and in practice have a more pronounced effect'. The advantage of this proposal is that victim information is provided in every case, not on a voluntary basis as is the situation with the Victorian VIS. Douglas and Laster's (1994:47) proposition involves changing the form prepared by the police to include more comprehensive victim details. Their study found that the details were collected in many cases, but 'got lost' between the initial recording and the court. The South Australian experience supports Douglas and Laster's propositions. South Australia was the first Australian state to formally introduce VISs in 1987. On a practical level this change involved merely changing the name of a police form from PD 73 to Victim Impact Statement (Sumner and Sutton 1988:35).

The VIS and administration

There are three main general administrative problems with VISs. First, the VIS legislation lacks an administrative framework (Hall 1992:144). Their implementation relies on the mercy of officials such as the police, prosecutors and judges (Erez 1990:26). Recent US research suggests that the VIS is accepted in principle by such officials, but not in practice (Henley, et al 1994:91).

Secondly, the procedure is described as secondary victimisation by some commentators because the victim suffers new burdens such as economic costs for medical reports and physical inconveniences (Elias 1986:165). Moreover, the effects of the crime relate only to the offence for which the defendant is found guilty (Attorney General's Department

1994:1). As noted above, information given by the victim and ruled inadmissible by the court may lead the victim to believe in the futility of providing a VIS, and hence further disempower the victim. Therefore, some commentators conclude 'it is better to confer no rights, than rights without remedies' (Kilpatrick and Otto, cited in Erez 1994:27).

Thirdly, VISs are under utilised. US studies indicate that no more than 25 per cent complete a VIS (cf Ashworth 1993) and six to nine per cent exercise their right of allocution (Erez 1994:26). By contrast, South Australia has the comparatively unusual situation where Erez (1995:374) estimates that 90 per cent of higher court cases involve the submission of a VIS. In Victoria VISs are used sparingly. The possible reason is that, unlike South Australia, the victim must complete the VIS voluntarily. Due to the relatively small number of VISs completed in the first six months since the introduction of the VIS, the Victorian Justice Department formed a Victim Impact Statement Monitoring Committee to determine how often victims exercised their rights under the VIS legislation (John Isaacs, personal communication, 4 August 1995). The results of a survey conducted by this committee are outlined in Table 1 below.

Table 1 Victim Impact Statements in Victorian Courts, January to June 1995*

Court	Type of Offence	Number of VISs
Supreme	N/A	Nil
County	sexual offences	48
	theft/burglary**	9
	assault	17
	armed robbery	23
	culpable driving	3
Total		100
Magistrates	sexual offences	2
	theft/burglary**	4
	assault	7
Total		13
Children's	assault	2
Total		2

*All information in this Table, including categories of offences, was provided by Adrian McGurr of the Victorian County Court.
**Includes aggravated burglary

As evidenced in Table 1, no VISs were submitted in the Supreme Court, and few were submitted in the Magistrate's or Children's courts. The majority of VISs were submitted to the District Court and almost one half of these were for sexual assault matters.

Table 2 shows the number of cases in which VISs were submitted as a proportion of the estimated number of convictions in Victorian courts in 1994/95.

Table 2 Estimated number of convictions in Victorian courts for 1994/95 and the number of VIS submitted

Court	No. of convictions*	No. of VIS submitted	% of cases where VIS submitted
Supreme and County Courts	621	100	16.10
Magistrates' and Children's Court	43068	15	0.034

*Approximate only. Annual data for 94/95 were used to estimate six monthly figures.

The VIS and sexual assault

As shown above in Table 1, sexual assault cases made up a significant percentage of the relatively small number of VISs submitted to Victorian Courts. This trend would concern some commentators. For example, McCarthy (1993) argues that VISs are inappropriate for sexual assault victims because sexual assault 'is perpetrated in a context of gender and racial inequality', often on a continuous basis. Therefore, VISs prepared on the basis of discrete incidents cannot reflect these realities (see also Walsh 1992:306). There are a range of other factors which contribute to the inadequacy of VISs in relation to sexual assault cases. Firstly, the general under reporting of the crime of sexual assault due to the reluctance of victims wishing to avoid the trauma of a criminal trial. Secondly, the small number of convictions for sexual assault indicates that in the majority of circumstances the trial would not proceed to the sentencing stage and therefore the victim would not have the opportunity to submit a VIS. Moreover, the practical effect of a plea bargain may be that the impact of the incident appears markedly at odds with the offence for which the offender was found guilty.[3] Further, as McCarthy (1993:6) points out, VISs would not alter the lot of the vast majority of victims of sexual assault whose assailants are never convicted.

McCarthy (1993:18) concludes that some of these problems can be avoided if victims of sexual assault present details of the impact of a crime at the Crimes Compensation Tribunal (CCT). This avenue has the advantages of providing the victim with official legal recognition and providing a concrete acknowledgment of harm suffered in the form of money. In addition, it is not necessary that the offender be found guilty. The harm to the victim does not need to match the offence for which the defendant was convicted. A further advantage is that CCT hearings are not open to the public.[4]

The VIS and law and order

One strong criticism of the VIS is that 'that which is passed off as victim assistance is, in reality, predicated on the needs of the prosecution rather than the needs of the victim (McShane and Williams 1992:264). The basis of this criticism is that the prosecution has

3 For example, in a rape case where the charge is reduced from rape to indecent assault in order to obtain a conviction.

4 Recent changes to the Practice Directions of the CCT may represent a disadvantage to victims. Under the authority of s.7(7) *Criminal Injury Compensation Act*, the Tribunal can use its discretion to call 'any person, who in the opinion of the Tribunal has, or may have an interest in the determination of the application' where the alleged offender had not faced criminal charges, as a matter of fairness. Thus, alleged offenders now have the opportunity to participate in the CCT hearing, in person and by access to police statements. See Crimes Compensation Tribunal (1995) *Practice and Procedure* Chapter 4, Appendix 1, 2.

an interest in fostering victims rights because victims are often also witnesses and a good, or satisfied witness can make the prosecution's job easier.

A further concern is the public perception portrayed in the media that the sentences given by the Courts are too lenient (for example, see Pinkney 1996:3). Some commentators suggest that the

> victim's anguish has been exploited or mistranslated into support for the conservative ideology, and the attempt to bring the victim back into the process is seen as yet another way to accomplish the goal of harsher punishment (Erez 1994:20 citing Henderson 1995).

In Victoria harsher punishment is on the agenda. Other allegedly victim orientated law reforms initiated by the Government include cumulative, rather than concurrent, sentences and indefinite sentences for serious sexual offenders. During the debate about the Bill to introduce VISs, the Attorney-General conceded that the VIS would 'cause magistrates to reconsider a decision not to impose a custodial sentence' (Parliamentary Debates 21 April 1994:1044). The Attorney-General appears to be conceding that an unavoidable consequence of VISs is that they contribute to harsher sentences.

In addition, newspaper reports often reflect and contribute to the call for harsher sentences by victims. This type of reporting links harsher sentences to victim satisfaction, a link which is not supported by the research literature. An example is the response to the so-called 'hospital rapist'. Friends of the family 'urged all Victorians to seize the chance to push for tougher sentencing laws' because it was perceived that the sentence given was too lenient (Pinkney 1996:3). Similarly, '[T]he father of a little girl sexually abused by her teacher said yesterday he believed the parents of all the victims would be devastated by his 21 month minimum jail sentence' (Giles 1996:9).

In two recent Victorian cases, where VISs were submitted, harsh or custodial sentences were reduced or suspended on appeal. In *The Queen v Beattie*, a custodial sentence was suspended, and in *Huan* the Appeal Court suggested that the trial Judge had placed too much emphasis on the consideration of the sentencing aim of deterrence, instead of concentrating on the mitigating characteristics that suggested the convicted person might respond to rehabilitation. However, it is impossible to determine exactly how much weight was given to the contents of a particular VIS given the 'instructive synthesis approach' to sentencing followed in Victoria (Hinton 1995:89).

The VIS and the ideal victim

Another problem is that the view of victims is very narrow. It is based on the 'simplistic middle class framework where all victims are innocent characters in a morality play' (McShane and Williams 1992:262). This view promotes the dichotomous image of the offender as evil, and the victim as morally pure. In reality, often the line between victim and offender is blurred. Smith and Huff (1992:213) conclude that unless policy changes are implemented 'retribution-oriented, white dominated victim's groups will wield disproportionate influence in shaping policies that will apply disproportionately to racial minorities, who are overrepresented among offenders'.

The Victorian VIS makes no reference to providing interpreting services to non-English speaking victims (Victorian Community Council Against Violence 1994:90–92). Similarly, illiterate and multiple victims are ignored. As one commentator notes, the legislation advantages literate and articulate people (McCarthy 1993:14). The VIS suits the 'innocent victim' injured once by an unknown offender in the course of a street crime. Moreover, class, gender and ethnic differences will determine who is prepared to submit a VIS. As Richards (1992:133) notes, it is unlikely, for example, that a Vietnamese woman who has recently arrived in Australia would complete a VIS. Such a victim may also find

it difficult to get appropriate police assistance given the racism embedded in police culture (Chan 1992). As Sandra Walklate (1994:7) has argued, 'acquiring the label and/or status of victim, especially that of a 'deserving victim' is crucial in some circumstances if the victim is to achieve appropriate agency response and support'.

VISs and the future

Academic studies about the value of VISs are inconclusive. Recent research evaluating the South Australian experience with VISs came to the extremely unsatisfactory conclusion that VISs contributed neither to more harsh nor more lenient sentencing (Erez and Roeger 1995:373–374). Another study found that sentence leniency contributes to the distress of victims, while compensation improves the position of the victim (Tontodonata and Erez 1994:49). In another survey (Davis and Smith 1994:10) researchers found that VISs did not promote victim satisfaction. Supporters conclude that what is required is legal backing and meaningful implementation of VISs (Tontodonata and Erez 1994:51). There is also a need to ascertain victim's wants, not assume that victims want the right of a VIS as a 'symbolic aspect of victim integration' (Erez 1991:188).

Recent Supreme Court decisions also vary as to the implementation of VISs. Prior to the introduction of VIS legislation in Victoria, the Court of Criminal Appeal encouraged the provision of an 'Impact of Crime Statement' in *Tahche*.[5] In another Victorian case heard after the introduction of the VIS legislation (*The Queen v Huan Huei Hsin*), the defendant appealed against the severity of the sentence. One basis for appeal was the VIS submitted by the victim. In this case the victim had been threatened. However, the offender had no prior convictions. The Appeal Court found that not enough weight was given to the rehabilitation of the offender. Similarly, in the *Queen v Beattie* the sentence was reduced from a custodial sentence to a suspended custodial sentence. The court found that the impact of the offence was 'relatively transitory'. In these cases it appears that the VISs contributed to excessive sentences being given by the trial judge which were reduced on appeal.

However, in the more serious case of *Miller,* the Appeal Court did not reduce the sentence of 22 years imprisonment. What is interesting about this case is that no VIS was submitted by the victim's family yet the deposition from the mother of the deceased 'touched upon their loss', and the court proceeded as if there was a VIS in light of the legislation. The court also took into account the 'effect on the Bendigo community of this crime'. This is an example of the court applying the sentiments of s.95A3(c) of the Act, which allows for the submission of a VIS by an organisation or government department, as opposed to an individual. The court's consideration of the effect of the crime on 'all possible victims', that is, the citizens of Bendigo, was achieved without the need for the submission of a formal VIS.

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5 The Crown appealed against the leniency of the sentence and the Court imposed a cumulative, rather than concurrent sentence of sixteen years. The prisoner has subsequently been released on bail as there was some problem with the accuracy of the victim's evidence (Das and Royle 1995). While not specifically stated, it is possible that the false VIS had some impact on the sentencing.

Conclusion

Whether VISs are the most effective means of providing victim information to the courts depends on what is envisaged as the primary purpose of the VIS. Is the purpose to assist the healing process of the victim or to alter sentencing patterns to reflect the concern of the victim (Hinton 1995:85)? I reject the idea that VISs are the most appropriate method of realising the United Nations Charter of Victims Rights that allows 'the views and concerns of victims to be presented' to the courts (Richards 1992:132). One reason is because this Charter does not state that altering sentencing patterns is the aim of victim participation in the criminal justice system. Moreover, it states explicitly that victim impact information must be presented 'without prejudice to the accused'.

Formal VISs, completed on a voluntary basis are neither necessary nor desirable because information about the victim can, and should, be incorporated into the current procedures of the courts. In the lower courts, existing police forms can be adapted to include details of the effects of the crime on the victim. With regard to the higher courts, the cases described in this paper suggest that the effects of crime on victims can be included and considered by the judge when sentencing without the submission of a formal VIS. This means that all victims can be considered, not just literate and articulate victims. It also might be possible to give more emphasis to the continuing context of gender inequality in which sexual assault occurs, when not relying on a VIS that relates only to the offence for which the defendant was convicted.

Moreover, the use of VISs may risk further alienating victims of crime, especially where a victim may provide information in good faith only to find this information is rejected by the court. Making the victim complete the statement also creates the potential for discrepancies in sentencing decisions between cases where a VIS is submitted to the court and those where no formal VIS is submitted. To ensure consistency, victim details relating to the offence for which the defendant is convicted should be provided to the court by the police or prosecution at the sentencing stage of the trial to ensure that victim information forms part of the synthesis of information on which sentencing decisions are made, rather than victim information affecting some sentencing decisions. A more appropriate venue for the victim to receive formal recognition, and thus assist the healing process, is in the Crimes Compensation Tribunal.

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