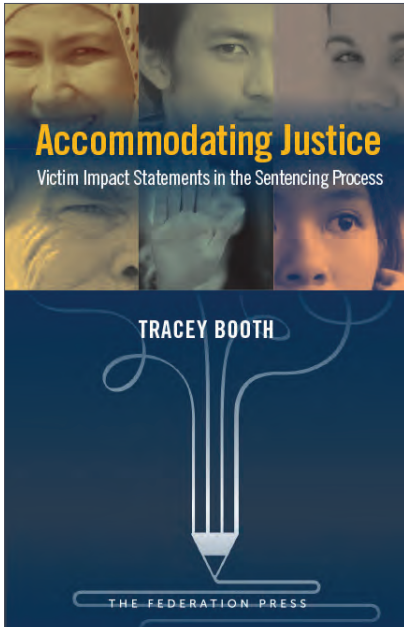


Accommodating Justice - Victim Impact Statements in the Sentencing Process

By Tracey Booth | The Federation Press | 2015



This book deals very comprehensively with an important topic in criminal law that still can cause confusion in its application: victim impact statements ('VIS').

Chapter 1 deals with the issues of who can submit a victim impact statement, what form it should take, what it should be about, and what is its purpose. The author makes clear that it is not simply a matter of considering the legislation to determine what VIS are, it is also a subjective, personal narrative. The author considers recent case law and legislation from around Australia.

Chapter 2 deals with the relevance of VIS to the determination of any penalty and in particular, the use of them as evidence in homicide matters where the consideration is the harm caused to 'family victims'. Once again the author considers case law around Australia.

Chapter 3 is headed 'The Expressive Function of Victim Impact Statements' and includes the importance of victims having 'a voice' in the criminal justice process, and how VIS in sentencing

proceedings might be considered to have restorative elements. Another interesting issue in this chapter is the therapeutic aspects of VIS, i.e., how the legal proceedings impact on a victim's welfare. Booth also describes how the expressive function of VIS are implemented in sentence hearings.

Chapter 4 deals with the theoretical incompatibility between VIS and the adversarial sentencing hearing, i.e., traditional views and processes are that victims are not 'technically' part of the sentencing proceedings, the focus should be on the offender and the excessive 'emotionality' of the victims does not assist in the sentencing process. The author details how VIS and emotionality can be managed in the court room.

Chapter 5 deals with how VIS are dealt with in a sentence hearing, i.e., the author details case law on the probative value and prejudicial nature of VIS, cross examining the makers of VIS, and what types of objections can be raised when such evidence is given. The author also details the interesting issue of how sentencing judges should be able to disregard overly emotional, unfairly prejudicial and non probative victim impact evidence for the purposes of sentencing. Once again the author details recent case law from around Australia in relation to this issue. The author also provides what the research shows in relation to the impact of VIS on penalties, including her own research. Interestingly, she says that in common law jurisdictions the research tends to show that VIS generally have little impact on sentencing outcomes although it seems that it is very difficult if not impossible to measure this. Her own research in NSW in relation to homicide offenders found it difficult to measure the impact of VIS on penalty where the

courts adopt an intuitive approach to sentencing.

The last chapter, Chapter 6, deals with VIS from the perspective of the victims. Not surprisingly, the research shows that generally, crime victims have positive views about the value of VIS however the author details plenty of examples where the victims were left feeling frustrated and let down by the whole process. The author notes however that VIS '... can be empowering and cathartic and provide an important opportunity to be heard in the process...' (at page 137). She details the importance of 'speaking' and 'having a voice' and whether this is really constrained by the sentencing process. The author refers to many international studies to inform us.

In the Conclusion, she sums up numerous issues, including the fact that although VIS are a well established feature of contemporary sentence hearings, their '... bifurcated nature renders them contentious' (at page 162). There is no doubt that the subjective and 'real' aims of victims who come before our courts is not really matched in how the sentencing process evolves. She concludes by saying that 'It is the sentencing judge's task to provide a well managed space for victims to express their feelings publicly and treat those victims with respect in a manner that does not conflict with giving the offender's due process entitlements and the imposition of an appropriate penalty... judges should be provided with training and support as necessary.'

I recommend this book to all lawyers especially those who practise in criminal law.

Reviewed by Caroline Dobraszcyk