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THE VICTIM IMPACT STATEMENT PROCESS
IN NSW AS EXPERIENCED BY VICTIMS OF
CRIME AND VICTIM SERVICE
PROFESSIONALS

FIONA TAIT

A THESIS SUBMITTED IN FULFILMENT OF THE
REQUIREMENTS FOR THE DEGREE OF

MASTERS OF CRIMINOLOGY BY RESEARCH – JC081

SCHOOL OF LAW
UNIVERSITY OF SYDNEY

2015
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Abstract

This study, featuring one of the largest, broad-based samples of primary and family victims of crime (VOC) interviewed in-depth regarding the victim impact statement (VIS) process, aimed to address current gaps in VIS knowledge to include whether some sectors of the VOC community are better, or more poorly served by VIS process and why. Drawn from data collected from 66 VOC and 35 victim service professionals in NSW between 2010 and 2011, it further sought to uncover the exact therapeutic benefits of VIS and present a comprehensive picture of the NSW VIS process as experienced by VOC.

Providing insight into difficulties and challenges that VOC negotiate when considering making a VIS, it presents a firsthand understanding of the nature, challenges and risks of the VIS writing experience and novel data on the impact of legal processes such as VIS editing, and types of assistance VOC use and require.

Findings show the core therapeutic value of VIS is robust, standing alone, even where levels of anger or psychological trauma remain unaffected, and despite VOC dissatisfaction with other elements of their criminal justice experience or sentence handed down. However, findings also show that the nature of the crime, relationship with the offender, gender, literacy, culture, minority status and self-worth can individually or collectively impact VOC access and engagement with VIS process. The decision to make, write and present a VIS in court is complex; highly sensitive to exterior mechanisms, legal processes and relational forces; and emotionally, and for some, psychologically challenging. Provision of VIS information and support is variable, with high levels of editing and inconsistencies in editing rationale reported, suggesting some confusion regarding the intended purpose of VIS within sentencing proceedings.

In response, the study provides recommendations regarding VIS process, specifically designed resource tools and further research.
Acknowledgements

This study would not have been completed, or indeed possible, without the help and support of a great many people.

First, I would like to thank all of the victims of crime who participated in the research for their kindness and generosity. I remain profoundly touched by their experiences, humbled by their suffering and in awe of their beneficence and resilience despite the harms they have suffered. My hope is that their bravery in coming forward and the candour of their responses will result in a deeper understanding of the VIS experience. In addition, I would like to thank the many victim service professionals who kindly gave their time to be interviewed and to assist the study, who work tirelessly to assist victims of crime to the best of their ability and who are often overworked and under-resourced. This work would have been far more difficult without the considerable support of Lee Purches at the Witness Assistance Service and of Marianne Curtis, Mandy Young and Louise Lenard at the Victims Services Unit of the NSW Department of Justice who assisted with the facilitation of VIS paperwork and made arrangements to enable their staff to participate. I would also like to say a special thank you to Martha Jabour (HVSG), Lindsay Bonouvrie (MACSS) and Robyn Cotterell-Jones (VOCAL), who gave me a great deal of their time, and Pauline Nunn (MACCS), who first suggested the VIS as a research topic and who has continued to support the project.

I knew research could be a long and lonely pursuit, but I had not quite envisaged what a challenge it would be. My time in the wilderness was guided and supported by my supervisors, Professor Julie Stubbs and Associate Professor Rita Shackel, whose advice, wisdom and encouragement were invaluable. I would particularly like to thank Julie Stubbs for her intensive guidance in the early stages of the project, and I remain indebted to both for their responsiveness and focused reviews of the progress of the work. Thanks also to Amanda Wilson for helping with the SPSS design framework and to
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Finally, I would like to thank Tigger Wise, whose enthusiasm, insight and friendship helped to re-energise the final stages of the work.
Declaration of Originality

I hereby certify that this thesis is entirely my own work and that any material written by others has been acknowledged in the text.

The thesis has not been presented for a degree or for any other purposes at the University of Sydney or at any other university of institution.

The empirical work undertaken for this thesis, which comprised semi-structured telephone interviews with victims of crime and face-to-face interviews with victim service professionals, was approved by the University of Sydney Human Research Ethics Committee (HREC).
Human Ethics Approval Number: HREC 12149 – October 2009

Data sources comprised:
A review of current literature
Demographic information from 66 victims of crime
Telephone interviews with 55 victims of crime
One in-depth face-to-face interview with a victim of crime
Face-to-face interviews with 35 victim service professionals.

Technical assistance was provided by:
Amanda Wilson, who assisted in the preparation of the SPSS templates
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Professor Julie Stubbs, University of NSW
Associate Professor Dr Rita Shackel, University of Sydney.
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<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>AIC</td>
<td>Australian Institute of Criminology</td>
</tr>
<tr>
<td>ASCA</td>
<td>Adults Surviving Child Abuse</td>
</tr>
<tr>
<td>AVO</td>
<td>Apprehended Violence Order</td>
</tr>
<tr>
<td>CJS</td>
<td>Criminal justice system</td>
</tr>
<tr>
<td>DPP</td>
<td>Director of Public Prosecutions</td>
</tr>
<tr>
<td>HCSA</td>
<td>Historical child sexual abuse</td>
</tr>
<tr>
<td>HREC</td>
<td>Human Research Ethics Committee</td>
</tr>
<tr>
<td>HVSG</td>
<td>Homicide Victims’ Support Group</td>
</tr>
<tr>
<td>IDRS</td>
<td>Intellectual Disability Rights Service</td>
</tr>
<tr>
<td>IHCSA</td>
<td>Institutional historical child sexual assault</td>
</tr>
<tr>
<td>MACSS</td>
<td>Mission Australia Court Support Service</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>NT</td>
<td>Northern Territory</td>
</tr>
<tr>
<td>ODPP</td>
<td>Office of the Director of Public Prosecutions</td>
</tr>
<tr>
<td>PA</td>
<td>Physical assault</td>
</tr>
<tr>
<td>PTSD</td>
<td>Post-traumatic stress disorder</td>
</tr>
<tr>
<td>SA</td>
<td>Sexual assault</td>
</tr>
<tr>
<td>SPSS</td>
<td>Statistical Package for the Social Sciences</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
<tr>
<td>USYD</td>
<td>University of Sydney</td>
</tr>
<tr>
<td>VISIP</td>
<td>Victim Impact Statement Information Package</td>
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<tr>
<td>VOC</td>
<td>Victims of crime</td>
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<td>VOCAL</td>
<td>Victims of Crime Assistance League</td>
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<td>VPS</td>
<td>Victim personal statement</td>
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<td>WAS</td>
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<td>WDVCAS</td>
<td>Women’s Domestic Violence Court Advocacy Service</td>
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<td>WDVLASS</td>
<td>Women’s Domestic Violence Legal Aid Support Service</td>
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Chapter 1: Introduction

The inclusion of the voices of victims within the adversarial system now practised in most English-speaking common-law nations has caused rancour in many criminal justice systems (Erez 2004; Garkawe 2006; Strang 2002; Walklate 2012). The argument against it, put simply, is that the adversarial system was developed to take the power of retribution out of the hands of vengeful victims, instead placing those accused of crimes under the jurisdiction of the State. The system was to mete out justice in accordance with what was deemed fair and just on behalf of the State to protect and advance its aims. While sparing victims the burden of prosecution, this process effectively relegated them to the status of witness, representing the State on behalf of society regarding a crime committed against one of its members, namely (and ironically) themselves (Wenzel & Thielman 2006).

Despite considerable resistance, over the past 30 years there has been a concerted global push by victim support and advocacy groups (see Van Ness 2005), aligning with politicians and the media, to press the case for the individual victim, who had become so marginalised within the criminal justice process as to have become largely ‘invisible’ (Erez, Ibarra & Downs 2011:36). The realisation that dissatisfaction with the criminal justice system (CJS) among vocal victims leads to systemic societal mistrust towards lawmakers, with subsequent negative consequences for the government, did not go unnoticed by those in politics and public policy. Mistrust towards the law aids criminal behaviour, in that it begins to go unreported (Strang 2002), resulting in some levels of criminal activity becoming, if grudgingly, accepted by society and ignored by authorities (Hendershott 2004; Moynihan 1993).

The systemic dismissive treatment towards victims, decried by vocal victims’ rights movements operating within an increasingly conservative global Western political environment, became a burgeoning focus of government policymakers keen to engage grassroots support by promoting the legitimacy of the CJS. Procedural justice, an area of research developing concurrently, showed how
criminal justice processes that are experienced as inequitable, unjust, exclusive, morally questionable, non-transparent and disrespectful weaken communal trust in legal authorities (see Thibaut & Walker 1975, 1978). Anxious to lessen the cacophony of voices crying for improved rights for victims in general, the introduction of participatory rights for victims in the criminal justice process were intended to raise levels of victim satisfaction to ensure victims/witnesses would continue to engage. Importantly, in 1985 the United Nations put forward basic principles for governments to support victims of crime (VOC) whose rights had ‘not been adequately recognised’ (United Nations 1985), giving a strong directive to First World nations to reassess their treatment of victims within their judicial processes.

With this in mind, many common-law jurisdictions started enacting provisions for a victim impact statement (VIS), or victim personal statement (UK), offering victims a voice in sentencing proceedings. While the parameters for this voice were legislated differently depending on jurisdiction, the central tenet was the same—namely, that VOC be allowed to reveal to the court the impact the crime against them had on them personally.

From 1996, New South Wales (NSW), following similar legislation in other jurisdictions, passed a number of acts focusing on the rights of the victim (Johns 2002). The Victims Rights Act 1996 (NSW) concerned itself with the provision of rights and services for VOC, introducing the VIS within The Charter of Rights for Victims of Crime s 6(14). The Crimes (Sentencing Procedure) Act 1999 (NSW) s 3A(g) recognised ‘the harm done to the victim of the crime and the community’ as one of the purposes for which a court may impose sentence on an offender.

Changes to legislation\(^1\) then extended the scope of the VIS to include a widening of the definition of personal harm to include psychological or psychiatric harm, also allowing for vulnerable victims to present their VIS to court via closed circuit television and for pictorial images such as photographs, drawings and other relevant images to be included within the VIS. During its

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second reading in the NSW Parliament, Greens member Ms Lee Rhiannon (NSW Parliament 29.10.08) stated that although the Greens supported the amendments, they were:

concerned about the creeping use of victim impact statements in New South Wales. The Labor Government has … had a clear agenda to increase the role of victim impact statements in the New South Wales court system. This increase is occurring despite any evidence that victim impact statements have any impact on sentencing, crime rates or indeed the wellbeing of victims.2

Although not enacted prior to data collection for this study, most recently in 2014, the Crimes (Sentencing Procedure) Amendment (Family Member Victim Impact Statement) Act 2014 (NSW) passed into NSW law, with s 28(4) amended to state:

A victim impact statement given by a family victim may, on the application of the prosecutor and if the court considers it appropriate to do so, be considered and taken into account by a court in connection with the determination of the punishment for the offence on the basis that the harmful impact of the primary victim’s death on the members of the primary victim’s immediate family is an aspect of harm done to the community.

The passing of this amendment, first tabled but not pursued by NSW Liberal Attorney-General Greg Smith in 2011, resulted from public pressure to allow the impact on families to be considered in sentencing death matters following the tragic, random, fatal attack on Sydney teenager Thomas Kelly.3 However, as the Judicial Commission of NSW (2014:12–838) cautions, it will be a question for the courts to consider the level of recognition of the harm caused to the victim and the community, cognisant of the fact that consideration ‘is limited by the common law rule that a court can only have regard to the consequences of an

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offence that were intended or could reasonably have been foreseen’ (see Appendix 8 for a detailed description of the VIS provision in NSW.)

It was initially argued that the purpose of the VIS was threefold: (1) to provide VOC with a participatory voice in the legal proceedings in order for them to express to the court the impact of the crime against them, (2) to allow a focus on the victim rather than on the defendant and (3) to provide a therapeutic aid to victim recovery (Erez 1999). However, this victim-centric position is not reflected in the wording of current NSW legislation, which simply offers VOC the opportunity to provide the court with information regarding the crime’s impact. This is made clear in instructions given to VOC in the NSW Victim Impact Statement Information Package (VISIP 2013/1998):

A victim impact statement is a written statement about the impact that a crime has had on the victim … A victim impact statement can provide the victim with an opportunity to participate in the criminal justice process by informing the court about the effects of the crime on them. (VISIP 2013:3)

VOC are told in the VISIP that the content of their VIS can reflect their ‘thoughts, feelings and experiences’ to include ‘any ongoing effects’ in their lives (VISIP 2013:6). However, within the legislation, as victim-centric goals are not mentioned, it appears that the purpose of the VIS remains instrumental—namely, to enhance particular aims of sentencing, retribution and rehabilitation and to serve public policy concerns aimed at alleviating victim—and greater public—dissatisfaction with the CJS (Booth 2005). That is to say, victim recovery is not a legitimate concern of the VIS, nor the focus of the police or the Office of the Director of Public Prosecutions (ODPP) when prosecuting matters.

Brennan (2001:11) more cynically suggests the concept of the victim’s voice is merely a diversionary tactic to make the public ‘ignore or forget’ the State’s inability to provide security for its people, by giving them a more active role in the prosecution process. Pollard (2000) also sees the VIS as political

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management of public frustration and as merely adding to the burden of responsibilities already shouldered by the victim. Walklate (2012:109) suggests that although policy directives that ‘court compassion’ may appear to serve the interests of the victim, in real terms rebalancing the CJS with the victim in mind has produced little practical improvement. She attests that the adversarial system is institutionally bound to consider the case made against the offender by the State, not by the victim; thus, attempts to graft on victim-centric measures reveal a conceptual failure on the part of victim-oriented policymakers to recognise the incompatibility of purpose.

Since the inception of VIS schemes, a stream of literature has discussed the constitutional and philosophical complexities of giving the victim a voice, which, though seeming sensible as a concept and morally fair, becomes far more complex in practice (Shapland & Hall 2010). The victim’s voice is subjective, describing personal experience. How is a court to evaluate and process such information (see Kirchengast 2009; Sanders et al 2001; Sankoff & Wansbrough 2006)? To restrain it or ignore it might be seen to be cruel, even immoral, but to accept it and give it credence in determining sentence is potentially dangerous to proportionality.

Working on the assumption that it is highly unlikely VIS legislation will be repealed, some legal scholars, attempting to forward debates about the probative function of the VIS, have sought to address the practicalities of courts incorporating VIS in a more uniform, less idiosyncratic fashion. Kirchengast (2009:18) in his ‘restorative model of proportionality’ suggests the VIS should be sworn in, and, as sworn testimony, should then be treated as any other evidence, also argued by Garkawe (2007). In NSW, the VIS remains unsworn.

Various scholars have addressed the ambiguity of VIS purpose (Hoyle 2011; Lens, Pemberton & Bogaerts 2013; Rock 2010). Procedural justice (Tyler 2006a) describes the victim’s voice as a mechanism of process control, where the victim is afforded some input in the sentencing process. What it does not provide victims, however, is decision control, in that the final decision regarding the offender remains with the State and the responsibility for sentencing
judgement with its officials (Thibaut & Walker 1975). Despite clear intentions to address a particular and identified need—namely, the lack of focus on the victim in the CJS (Sankoff & Wansbrough 2006), the nature of the intended gains of the VIS remain less defined. The opportunity for VOC to be part of the sentencing process for ill-defined and nebulous outcomes remains a concern (Bandes 2009; Hoyle 2011; Wemmers 2011).

The VIS is not evidence. It is not a statement of facts about the crime as it occurred. Rather, it is a personal reflection on the consequential damage caused by the crime. It is a retrospective, subjective document, written after events have been processed through the victim’s filters, fashioned by all prior life experiences and understandings. The VIS documents a transformation from existence pre-crime to post-crime. For each VOC, this experience is unique, for although some may share similarities of experiences and impacts suffered, the degree of effect will be individual based on multivariate factors.

The two accepted purposes of the VIS have been described as informative in that it provides useful information to the sentencing court for assessment when determining judgement (Roberts & Edgar 2006; Shackel 2011; VSA 2009) and as expressive in that the VIS allows VOC to share the personal consequences of the impact of the crime with both the State and the offender (Roberts & Erez 2004). The ongoing concern dogging the VIS is its duality of purpose in the minds of VOC and those in the CJS; the VIS attempts to serve opposing masters, one operating within the paradigm of procedural and therapeutic justice to enhance victim wellbeing, the other retributive justice to enhance sentencing aims (Erez 2004).

Its expressive function, described by Erez (2004), comprises two elements:

- to inform the court of the objective seriousness of the crime in order for it to pass judgement with regard to, in limited circumstances (see Garkawe 2007), the personal consequences of the crime on the victim—functional element
• to allow victims the opportunity to participate and for their suffering to be acknowledged and validated within sentencing proceedings—therapeutic element.

The potential probative value of the VIS to inform sentencing decisions is perhaps its poisoned chalice. It is understandable that VOC, whose lives have been changed forever, would wish the VIS to be taken into account at sentencing. However, if the purpose of the VIS is to inform the court of the consequences of the crime in order to affect sentencing, the subjective content of the VIS becomes open to challenge and drags the VIS and the victim’s experience into a realm of truth against which the prosecution and defence can take arms, negating any therapeutic benefit it might provide.

Although the therapeutic aim of the VIS is not tangible, it is implied, built on notions of redressing the balance, shifting the focus from the offender, giving something to the victim (Walklate 2007a). If this cannot be fully achieved through convicting and sentencing the offender, then to symbolically satisfy these public needs, the victim must be offered something more, something to fortify them, a recognition that they matter.

Over the past 150 years, the adversarial process has developed into a binary conflict between the State (acting on behalf of the community) and the defendant. As such, both prosecution and defence can legitimately present any information that might assist their case (see Kirchengast 2011). For the prosecution, the victim is only necessary if required to establish its case (Hoyle 2011). The defence’s task is to disprove, minimise or cast doubt on the crime charged, often by challenging the victim’s account. Thus, the overarching focus of the prosecution and defence remain on the offender, with the victim merely a potential tool of both (Sankoff & Wansbrough 2006). This attitude towards the victim’s status continues into sentencing proceedings, where participatory rights afforded the victim still preclude their input in decision-making and affirm their

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5 Garkawe (2007:114) suggests that prior to the mid-nineteenth century, the criminal justice system, although still adversarial in nature, ‘consisted primarily of private prosecutions by victims of defendants’.
status as outside the main business of the sentencing court (Booth 2013a; Englebrecht 2012).

The desire of victims to participate in the CJS has been well documented (Erez, Kichling & Wemmers 2011; Wemmers & Cyr 2006), and the frustrations with the seeming inequity and negative psychological and emotional consequences of victim exclusion from court matters regarding crimes they have personally suffered are a potent driver for the victims’ rights movement to demand further victim inclusion. Concurrent expansion of research in solution-focused emotional and psychological therapeutic theory (Erez, Kichling & Wemmers 2011), influencing law, social understanding and political policy, has affected law processes, which have consequently adapted to accommodate theories of therapeutic jurisprudence (see Wexler & Winick 1996) and to include provisions designed to provide restorative and therapeutic opportunities for both victims and offenders (Walklate 2007a). However, it is one thing to provide a therapeutic opportunity, another to ensure its therapeutic consequences.

The literature remains divided regarding whether therapeutic benefits can be attributed to the VIS. Erez, Roeger and Morgan (1994) were the first to point to the personal therapeutic benefits for the victim. This expressive therapeutic benefit continues to be a theme in much VIS literature (Cassell 2009; Erez 2004; Giannini 2008). However, other scholars suggest that engagement in the VIS process can be antitherapeutic, putting VOC at risk of being revictimised if their voices are curtailed or the extent of their harms minimised or discounted (Bandes 2009; de Mesmaecker 2012; Herman 2003; Hinton 1995). Despite this ongoing argument, the actual therapeutic benefits of the VIS are rarely described beyond vague terms of making victims feel better (Leverick, Chalmers & Duff 2007) or of being cathartic (Bandes 2009; Kirchengast 2008). It has been suggested that using psychological testing to measure the therapeutic benefits of the VIS against states of anxiety or levels of anger (Pemberton & Raynaers 2011; Wemmers 2011) could serve to counter arguments that the VIS has little restorative or healing value for the victim (Hoyle 2011; Lens 2014). Whether the experience of making a VIS ameliorates the victim’s level of psychological distress post-sentencing proceedings was of
interest in this study. As already noted, whether legal processes can be deemed valid on the basis that they provide the potential for a therapeutic outcome remains contentious. More-recent literature is critical of the development of therapeutic processes within legal settings where they appear to carry little weight in the decisions being made (Kirchengast 2014, Wexler 2008, Erez, Kichling & Wemmers 2011). As the present study was interested in the therapeutic consequences of the VIS, it is necessary to define the term therapeutic as understood by the study. Therapeutic jurisprudence (Wexler & Winnick 1996) focuses on the impact of legal processes and sociolegal interactions on the emotional life and psychological wellbeing of all those engaged with the law, and recognises the law as a social force that can produce therapeutic or antitherapeutic consequences. In this study, the therapeutic consequence of the VIS is measured by VOC perceptions of the effect on their emotional life and psychological wellbeing (and for VSP on that of their clients) of the opportunity to make a VIS.

Also of interest, from the perspective of procedural justice, was the level of access, information, support, equity and respect the VIS process affords victims. Previous studies seeking to evaluate VIS efficacy have often been skewed towards evidence supplied by court workers, police, prosecution, defence and judiciary (Baptiste 2004; Department of Justice Canada 2005; Erez & Rogers 1999a). Perhaps in an effort to shield VOC from further harm, their firsthand experiences have either been ignored or examined in terms of logistical process rather than therapeutic outcome (Erez, Kichling & Wemmers 2011). Previous VIS studies have often looked at particular victim groups, such as family victims (Englebrecht 2014; Booth 2013a; Rock 2010), female victims of sexual assault (Miller 2007 & 2013; Konradi & Burger 2000), victims of sexual assault and domestic violence (Schuster & Propen 2006) or child sexual assault victims (Shackel 2011). Large-scale studies of VIS across the wider VOC population have tended to favour survey data-collection techniques with far fewer numbers of VOC participating in in-depth interviews (Leverick, Chalmers & Duff 2007; VSA 2009). Although Lens et al’s (2014) study, which was interested in which factors contribute to VIS take-up and which included victims’ perspectives of the purpose of the VIS, used a broad-based sample of 170
VOC, data was gathered using structured survey questionnaires. Further analysis and consideration of existing VIS literature is presented in Chapters 4 and 5; however, to date there have been few qualitative research studies featuring in-depth interviews performed with large, broad-based samples of VOC with the sole interest being their personal experience of the VIS process. Despite regular claims that the VIS is therapeutic and helps the victim ‘recover from the crime’ (NCVOC 2008:1), little research has assessed victims’ perceptions of these claims. And while some practitioners point to potential emotional damage caused to victims mismanaged by the CJS due to inconsistencies in VIS handling (de Mesmaecker 2013; Herman 2005; Nunn 2007), this too has been little explored from the victim’s perspective. A more detailed analysis and consideration of VIS literature is presented in Chapters 4 and 5.

With this study, I aimed to address such gaps in current VIS research and knowledge. In particular, I wished to know whether some VOC community are better, or more poorly, served by the VIS process (Brennan 2001). Although it is important to know how well the provision of the VIS is working, it is also important to understand who uses it, who does not and why, if the needs of all VOC are to be equally supported. As the VIS is a document charting not only physical wounds but also the deeper psychological damage and ongoing hurts experienced by VOC, any evaluation of the efficacy of the VIS must reflect the complexity of all the issues brought into play.

In sum, this study sought to understand the subtleties of the VIS experience for VOC, based on an understanding that experience of the VIS may differ due to interpersonal relationships, internal understandings, procedural experience and socio-economic and cultural backgrounds (Inglis 2005; Ivey, D’Andrea & Ivey 2011). Through this study, I aimed to understand the nature of any benefits or harms of the VIS for the victim, not its effect on the court or the offender. I maintained a victim-centric focus, exploring the victim’s holistic understanding of
the VIS experience, rather than exploring how victim participation affects the criminal justice process, sentencing and their integrity.\(^6\)

The five main research questions were as follows:

1. What motivates victims to make a VIS or inhibits them from doing so?
2. What is the experience of writing and presenting a VIS from the victim’s perspective?
3. Do legal processes affect the victim’s experience of the VIS?
4. Do the personal characteristics of the victim and the nature of their personal relationships affect the VIS process and experience?
5. Does the VIS provide any therapeutic benefits for the victim and, if so, what is the nature of those benefits?

This chapter has provided a general background to the study. Chapter 2 presents the research questions, study aims and methodology. Chapter 3 presents the quantitative findings. Chapters 4 and 5 present the qualitative findings, and Chapter 6 concludes the thesis with a discussion of the results, concerns and recommendations for future research and future practice.

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\(^6\) Erez (2004) suggests that the emphasis on the VIS as an instrumental tool for providing information to judges in sentencing has derailed the original purpose of VIS as a vehicle for victim voice and redirected research to focus on whether the VIS meets the needs of the court or whether its inclusion affects sentencing judgements. She argues that this shift in the academic debate ignores the expressive purpose of the VIS as a tool for victims to express to the court the harms done to them and thus ‘the therapeutic value of such expression has been forgotten’.
Chapter 2: Methodology

2.1 Study design

This study was designed to explore the VIS process from the perspective of the victim, to gain a deeper understanding of how VOC experience the provision of the VIS: the meaning they ascribe to it, the difficulties it poses for them and the reported therapeutic benefits, with a view to further inform current VIS discourse.

A paradigm of social constructivism and interpretivism was chosen as the theoretical framework for this study. This theoretical paradigm views human behaviour and responses through a multidimensional lens, with an awareness that the participant’s responses, and indeed their truth, is influenced by multiple value systems and social, physical, environmental and genetic factors unique to their experience (Bronfenbrenner 2005). Thus, reality for participants is understood as having been created in part because of their need to give meaning to their subjective experiences, which is influenced by their previous life experiences and the social, cultural, political and economic environments in which they live.

In this approach, the researcher uses empathic understanding to seek to experience the world of the participant from the participant’s perspective (Rogers 1980). However, it is unlikely that the researcher will completely understand the experience of the participant. The construct of both the researcher and the participant are unique, and therefore the interaction between the two will also be both constructed (Laing 1967) and interpretive as the researcher attempts to understand the experience described by the participant and the participant attempts to understand the researcher’s understanding of that experience. The researcher acknowledges that participants come to the research process from a particular personal position affected by their subjective experience of their own multidimensional background and value system, and the researcher must maintain an awareness of their own personal triggers and agenda. As Laing (1967:16) writes:
I cannot avoid trying to understand your experience, because although I do not understand your experience, which is invisible to me (and non-tasteable, non-touchable, non-smellable and inaudible), yet I experience you as experiencing.

The interaction between participant and researcher is value-bound and the nature of research inquiry influenced by the value systems, expectations and prejudices that researcher and participant bring to it (Baird 2005; Lincoln & Guba 1985).

A constructivist approach focuses on the ethical values to be upheld in the development of the structure and design of the research, working inductively to develop meaning from the data collected. The researcher working within this paradigm needs to be reflexive (Brookfield 1998), transparent, self-critical and socially accountable (NHMRC 2007).

A main aim of the study was to gain insight into the experience of making a VIS as perceived by VOC, including their intrapersonal, interpersonal and procedural experiences of the VIS. It was not possible to obtain a full picture of this by analysing the content of pre-existing material, such as court reports, VISs and media reports, because these sources do not include the victims’ perceptions of their experiences. Further, victims’ blogs and victim support websites that post victims’ VISs do not necessarily indicate whether the VIS posted is the version accepted by the court. For these reasons, it was necessary to personally canvass VOC to achieve the aims of the study.

For the study design, I intentionally combined both quantitative and qualitative methods. I used quantitative analysis to determine key areas of interest to be explored further in the qualitative data (Cresswell 2003; Walter 2010). The numerical recurrence of factors revealed by the quantitative statistics provided unexpected focuses for in-depth descriptive study (see Cupchick 2001:8).
Qualitative methods were appropriate for producing the rich data needed to cover the breadth of the research questions. The qualitative approach recognises that an interpretive position requires the development of a contextual understanding and seeks to understand the processes by which events and actions take place (Babbie 2004). Qualitative data were collected through interviews with VOC and with key victim service and support stakeholders, referred to as ‘victim service professionals’ (VSP) for the purposes of this study.

Combining the findings from VOC and VSP data sets provided greater opportunity to analyse responses against research questions and to develop a deeper understanding of the relationships between variables, while providing a numerical context of the commonality of individual and collective experiences. While it was understood that perceived truths presented by participants were subjective, data analysis focused on similarity of experience described and areas of commonality—in terms of process and emotional reaction—to reach objective conclusions and to provide areas of focus for future research.

Building on the 2007 study evaluating the Pilot Victim Statement Scheme instigated by the Scottish Government (Leverick, Chalmers & Duff 2007), which offered a comprehensive research methodology, including the actual experiences of VOC eligible to make a VIS, response rates, victims’ views, VIS content and victim satisfaction, the design of this study involved semi-structured interviews with VOC and VSP. As detailed below, the initial design included interviews only with VOC; however, it became clear that the perspectives of VSP would be valuable to verify themes emerging from the VOC interviews and to counter possible bias in the VOC sample. I sought ethical approval to conduct the interviews of this second sample, which were performed face-to-face and digitally recorded on audio only.\(^7\)

The data were collected through semi-structured interviews using pre-constructed questionnaires. Based on information collected through ongoing

review of the literature, a conceptual framework was devised to provide theoretical and analytical grounding for the study and to frame the study within the context of current thinking on the VIS. This concerned:

1. VIS makers’ and non–VIS makers’ perceptions of their experience of the VIS, including process, support, personal efficacy, expectation and outcome
2. VSP perceptions of the VIS experience of their clients, including process, support, demographics, expectation and outcome
3. demographic information, such as personal details, type of crime, harm, details of plea, VIS or non–VIS maker.

One argument against the VIS has been that it favours, and is mainly used by, those VOC who are among the articulate and least vulnerable members of society (Cassell 2009). To explore this argument, VOC who might be categorised as likely to be more vulnerable in court (see Green 2007) were of particular interest for this study. Therefore, it was important for the research design to be as simple, easy and non-confronting for victims as possible.

The Scottish study’s use of telephone interviews to cover a large geographical area had some benefits. As the participants were not required to read the study questions, nor write their responses, the possibility of literacy issues or English as a second language as barriers to participation may have been reduced. Telephone interviews may have been more accessible for participants not wishing to engage with such a study outside their homes and allowed VOC with a physical or intellectual disability or with psychological trauma to participate in the safety and comfort of their chosen environment. Telephone interviews did not require participants to travel to an interview site or to engage face-to-face with a stranger, offering those who were less committed to participation, fearing for their safety or wishing to retain a measure of physical anonymity an opportunity to engage with the study on their terms.

In addition, the Scottish study used interview questionnaires relevant to some of the interests of this study. The questionnaires had been rigorously prepared by a team of University of Aberdeen academics commissioned by the Scottish
Government. Adapting existing questionnaires to suit the purposes of this study was beneficial in terms of resources, as the Scottish team had done much of the groundwork in terms of research development, allowing me to collect data effectively in ways that they had already tested and validated.

2.2 Research instruments

This study did not target particular VOC, although the chosen channels of dissemination suggested that victims of more-serious crimes would be alerted to the study. The possibility that prospective participants might have mental health issues, mild cognitive impairment, physical disability, little understanding of the English language or be from various socio-economic and cultural backgrounds that might render them more vulnerable was a reality to consider. The research was highly sensitive to the individual needs of participants. The study was an unfunded master’s research project and, as such, did not have the resources to provide counsellors with whom participants could debrief. As it was highly likely some participants might need support following their participation in the interview (an issue raised during the ethics approval process), a provision to refer study participants in need of emotional or practical support was informally arranged with various victim support agencies, including the Witness Assistance Service (ODPP), Victims Services (NSW Department of Justice), Mission Australia, the Homicide Victims Support Group (HVSG) and Victims of Crime Assistance League (VOCAL). These services confirmed they were willing to counsel study participants post-interview on an ad hoc basis.

The VOC questionnaire used in this study was adapted from the semi-structured interview templates used in the Scottish study with the permission of Professor Peter Duff of the University of Aberdeen. The interview template, Annex 4: Telephone Interview Questionnaire, in Leverick, Chalmers & Duff (2007) provided a tested questionnaire that sought to understand the experience of the VIS for VOC from a functional and personal perspective, which was a good fit for the aims of this study. These questionnaires were
adapted for relevance to criminal justice processes and supports available in NSW.\textsuperscript{8}

As the participants in this study had suffered serious crimes against them or were family members of deceased victims, the wording of some questions was changed. For example, where the Scottish study asked (Q32) ‘And would you say that the experience of making the Victim Statement made you feel better about what happened?’ the question was adapted to ‘Was making the VIS a positive experience for you?’ If the participant answered ‘Yes’, it was followed with ‘In what ways was it positive?’ As this study was alert to concerns regarding the fact that the VIS in NSW could be cross-examined and edited prior to presentation at sentencing proceedings and that no standard time was given to prepare a VIS, questions were added to examine these issues from the point of view of the victim.

2.3 Permissions and HREC approval

2.3.1 Gatekeeper approvals

Previous VIS studies reveal that a VIS is more likely to be made in serious matters; therefore, it was necessary to enlist the assistance of the NSW Witness Assistance Service (WAS),\textsuperscript{9} which required permission from the NSW Director of Public Prosecutions (DPP). The DPP gave permission for study\textsuperscript{8}

\textsuperscript{8}The adapted questionnaire added questions asking participants about their understanding of the purpose of the VIS, their expectations of making a VIS and their reflections on the personal consequences of making a VIS. As the intention of the questionnaire was to promote inclusiveness and equity in the research process, the tone of the questionnaire was changed, allowing participants to comment on how legal processes and procedures had made them feel and asking them for their advice regarding a best practice model. As the study was interested in the nature of the therapeutic benefit of the VIS, the closed nature of Question 32 in the Scottish questionnaire, ‘Would you say that the experience of making the VIS made you feel better about what happened?’ was changed to a series of questions under a heading ‘G: Personal reflections of making the VIS’, asking participants to expand on their experience of writing and presenting the VIS. Informed by a review of VIS literature, questions were added to enquire about duration of time from the crime event to making the VIS, whether participants understood how their VIS would be handled by the court, and their knowledge of VIS editing and whether and by whom their VIS had been edited. Questions important to the Scottish study, such as regarding the evidential statement and participant treatment by the CJS and satisfaction with legal process and outcomes were outside the scope of this study and were excluded within the questionnaire template.

\textsuperscript{9}The NSW Witness Assistance Service (WAS) assists victims of crime during the trial and sentencing proceedings of their matter. WAS is required to inform a victim about their right to make a VIS at sentencing proceedings if the defendant in their matter is convicted or pleads guilty to the charges and to provide assistance to the victim to prepare a VIS if required. WAS is funded by the Office of the Director of Prosecutions and its remit is to support victims and witnesses to crimes during their court matter. Dealing in more serious matters mainly heard in the District and Supreme Courts, WAS supports victims in death matters, sexual assault matters, serious physical assault matters, serious domestic violence matters, historical abuse matters and matters of serious harms or abuse of children.
information and study consent forms to be disseminated in the VISIP distributed by WAS, Victims Services and victim support agencies on the proviso that the NSW Police Force and Victims Services, a unit within the Department of Justice, also gave their permission as co-authors of the VISIP.

2.3.2 HREC approval process

The study was given Human Research Ethics Committee approval to proceed (16.10.09). However, after initial approval, unforeseen issues arose and consequently three modifications were requested. Each was approved by the HREC.

2.3.2.1 Modification to include family victims in death matters

WAS requested the inclusion of family victims, arguing that family victims might react negatively if excluded and that their VIS experiences were valid to the study data, particularly as family VOC were actively lobbying government to change the legislation to allow their VIS to be taken into account in sentencing. As the participant information sheet was to be pre-packed in the VISIP, WAS argued that it would be too burdensome for their officers to remove the participant information sheet from VISIPs sent to family victims and that they feared mistakes would be made, causing potential distress to family victims.

2.3.2.2 Modification to permit recruitment of subjects via websites

Victim service agencies confirmed that many VOC download VIS information from the website Lawlink NSW, with those most likely to do so being primary VOC, especially for Local Court matters. As primary victims were of particular interest to this study, a modification was sought to allow the participant information sheet to be uploaded to various victim service websites, including Lawlink NSW, and to be provided digitally to WAS officers in NSW, allowing them to attach it to VIS information emailed to VOC.

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10 For response to the then Liberal Attorney General Greg Smith’s proposal to allow the VIS of family victims be taken into account at sentencing in NSW courts see:
After discussions regarding the study with non-government victim service agencies, study information and links to the participant information sheet information were uploaded to more websites offering assistance and support to VOC.

2.3.2.3 Modification to include a second interview sample of key VSP

To explore the possible nature of bias in the VOC sample due to the self-selection method of participant recruitment, it was necessary to check participant data against the broader experiences of professionals providing victim support through victim service agencies.

A second sample comprising VSP to include Crown prosecutors, police prosecutors, lawyers in specialised services, WAS officers, victim service agency staff and court support workers was added and with whom face-to-face digitally recorded interviews were performed using a semi-structured questionnaire.

The development of the semi-structured questionnaire for VSP reflected some of the areas of interest in Section 7: ‘Interviews with Criminal Justice Personnel’ of the Scottish study (Leverick, Chalmers & Duff 2007), which focused on VIS frequency, process, function and perception of outcomes, but in this study was expanded to explore specific themes presented by the VOC interviews.

2.4 The research samples

Two research sample groups were recruited for the study.

2.4.1 Sample 1: Victims of crime eligible to make a VIS

Participants in this sample comprised primary or family VOC eligible to make a VIS in sentencing proceedings in NSW following a conviction in their matter. A prerequisite for participant inclusion was that the sentencing of all their matters must have concluded, including any appeal processes. Due to ethical and practical implications of interviewing child VOC, it was decided that all study participants must be over 18 years of age.
Sample size was difficult to determine prior to recruitment commencement as it was dependent on response rates, but the target was an initial response of between 100 to 200 VOC, commensurate with the 2007 Scottish study of 182. It was intended that participants would initially be interviewed over the telephone, with a smaller sample of 10 to 20 participants attending a follow-up face-to-face interview, again to be commensurate with the Scottish study where 20 in-depth face-to-face interviews were conducted.

2.4.1.1 Method of recruitment

VOC were informed of the study through the participant information sheet and participant consent form enclosed in the VISIP mailed or handed to them by various victim support agencies, including WAS, or by downloading the information from various victim support service websites (see Appendix 4a). Those wishing to participate were asked to complete a consent form and return it via mail in the enclosed stamped self-addressed envelope or by email to me at my university faculty address. In the information package, I provided a dedicated mobile contact number where I could be contacted to answer questions. The participant consent form requested participants to provide a contact phone number and a convenient time to be contacted to discuss and arrange a telephone interview.

In January 2010, 300 participant information sheets were given to Victims Services (NSW Department of Justice) to place in the VISIPs distributed to various victim service agencies, including WAS. A further 300 copies were delivered to the NSW Sydney WAS office to pack into existing VISIPs in their offices. Independent of the study, WAS decided to pack the participant information sheet in a separate sealed envelope marked ‘Independent Research Project’ before including it in the VISIP, to make it clear the study was independent of WAS and the ODPP. In this manner, 150 copies were placed inside existing VISIPs distributed from the Sydney office. The remainder were placed within the special sealed envelopes and distributed by WAS Sydney to regional WAS offices, including Newcastle, Wollongong and Campbelltown. A second run of participant information sheets was disseminated in June,
comprising a further 200 to WAS Sydney and 100 to Victims Services (NSW Department of Justice).

Packs of 25 copies of participant information sheets were also sent to the following victim support services: Homicide Victims’ Support Group (HVSG), Parramatta; Mission Australia Court Support Service (MACSS) Sydney; the Intellectual Disability Rights Service (IDRS), Sydney; NSW Rape Crisis, Sydney; Victims of Crime Assistance League (VOCAL), Newcastle; Enough is Enough, Campbelltown; and NSW Sexual Assault Services, Sydney. In addition, I presented the research aims and study design to a branch meeting of NSW Sexual Assault Services counsellors in February 2010, encouraging them to discuss participation in the study with their clients.

As the dissemination period began, I telephoned services likely to support VOC, following up with an email attaching relevant documentation, informing them of the study in order to enlist their support. Following discussions with the senior programs officer of the Domestic and Family Violence Team of the NSW Police Force, domestic violence liaison officers were informed about the study through their networks. From March 2010, links to the study information were included on the websites of Victims Services, Lawlink, the AIDS Council of NSW, Bravehearts, the IDRS, NSW Rape Crisis, Adults Surviving Child Abuse (ASCA), Forgotten Australians, NSW Domestic Violence Coalition and VOCAL, and information about the study was printed in the Women’s Domestic Violence Court Advocacy Service (WDVCAS) digest, distributed to its officers.

2.4.1.2 Outcome of recruitment

Sixty-six VOC contacted the study.\textsuperscript{11} Twenty-six were family victims, of whom two were ineligible for interviewing, because their matters concluded prior to the introduction of the VIS. Forty were primary VOC, with 11 ineligible for

\textsuperscript{11} The broad-based dissemination of study information might suggest there would be a higher response rate than the 66 VOC who contacted the study. Without accurate statistical data on numbers of VOC eligible to make a VIS and numbers of VIS actually made in NSW, it is impossible to assess whether this participant response rate is proportionately low. It was not possible to assess how many VOC eligible to make a VIS actually received or viewed the study’s call to participate or to make any assumption regarding the level of seriousness of matters of VOC receiving or viewing the study information, beyond an understanding that VOC receiving participant information from WAS or the HVSG were victims in serious criminal proceedings.
interviewing for various reasons outlined in Chapter 3. A small number of primary victims were not able to make a VIS within their proceedings; however, their observations regarding why they would wish to make a VIS were useful to the study and they were interviewed. These were mainly victims of institutional historical child sexual assault. Basic demographic data were taken from all victims who contacted the study and, where appropriate, were recorded within the quantitative data. In total, 56 semi-structured interviews with VOC were performed: 55 were conducted over the telephone and one conducted face-to-face. Of these, 24 were family victims and 29 were eligible primary victims. Due to the recruitment approach, which included alerts to the study through websites, it was not possible to calculate a response rate.

The telephone interviews revealed the depth of the trauma that most of the participants had experienced. It was apparent that many were still dealing with the consequential emotional and physical tolls of the crime. With this in mind, it was felt that the benefits from gaining further data from face-to-face interviews were outweighed by the potential risks placed on the participants by participating, especially as data from the telephone interviews had proved comprehensive and rich.

Other reasons for not conducting face-to-face interviews included concerns about where the interviews would be conducted and in what type of setting, difficulties with managing any power balance dynamic or unintentional judgements between VOC and the researcher during a face-to-face encounter (see Blaxter, Hughes & Tight 2006) and concerns about costs associated with providing a dedicated interview setting and transporting interviewees to and from such a location. Considering the principle of the VOC interview was to empower the participant, it was important for interviewees to retain the rights and autonomy to participate in the interview when they wanted, to choose the content they were willing to present and to terminate the interview at any time.

12 Three primary victims interviewed were victims of IHCSA who approached the study from the Forgotten Australian victim support service and who had hoped to make a VIS but whose matters had not proceeded to conviction.
they desired. These elements were better supported by the telephone interview method.

2.4.2 Sample 2: Victim service professionals

Victim support services and government and non-government agencies dealing with VOC, identified during initial information gathering and the VOC recruitment stage, were invited to participate in the study. Purposive selection is a method of non-probability sampling, where the researcher selects individuals based on the researcher’s judgement that the respondent will represent the views of the defined sample group (Babbie 2004). This approach is targeted and limited, saving costs and time.

VSP were drawn from key agencies offering support to VOC, specifically with the consideration, preparation and presentation of their VIS to court in NSW. These agencies included the Crown Prosecution Service of the ODPP, the Police Prosecution Service of the NSW Police Force, the NSW WAS, specialist legal service agencies, court support services and government and non-government victim support agencies.

2.4.2.1 Method of recruitment

Participants in the VSP sample were emailed an invitation to be interviewed, with attachments containing the participant information sheet, the participant consent form and a draft of the questions to be asked during interview. Follow-up telephone calls were made to arrange an interview date. Many of those contacted had already supported the study by disseminating study information to their clients and were considered likely to agree to an interview.

2.4.2.2 Outcome of recruitment

In total, 35 VSP participated in interviews. Of these, 13 were individually interviewed and 22 participated in eight group interviews comprising between two and seven group members.
2.5 VOC sample

2.5.1 Data collection

After participants returned a completed participant consent form with contact telephone number, I contacted them on a blocked landline from my residential home.

In the initial discussion, I confirmed that sentencing of their matter and any appeal process had concluded and noted whether they had chosen to make a VIS. The orientation of the study was discussed, and it was made clear that their participation was voluntary and could be withdrawn at any time. I explained that their interviews would be coded to protect their anonymity and that the study’s focus was to understand their experience of the VIS process, not to explore details of their experience of the crime/s committed against them. If the participant was still happy to proceed, a convenient date and time for the interview was set, with participants asked to allow a timeframe of at least 30 minutes. Four participants whose matters had not yet concluded were asked if they were willing to be contacted after sentencing of their matter, and a date was recorded to contact them again.

The subsequent telephone interview was conducted within a particular framework. While it was not structured as a therapeutic exchange in the sense of counselling where topics are led by the client/participant, elements of the therapeutic conversation were adopted. Interviews were conducted under the Rogerian (Rogers 1959) premise of unconditional positive regard, meaning that the information participants provided was taken at face value. Their point of view and the veracity of their explanation and description were accepted without challenge. In addition, the stance I adopted was one of congruence, using authentic engagement and empathic understanding when responding. Using open-ended questions at times, the exchange was non-directional in parts, indicating to participants that they retained autonomy to choose how they would explain their experience and themselves within the interview structure.
The questionnaire was structured to assist the participant to ease into and out of the interview. Early and concluding questions were mainly closed and monadic, requiring simple answers. Monadic, or direct questioning, focuses a respondent on a particular issue to be discussed in order to evoke a more targeted and authentic response. As the study was interested in the nature of the therapeutic challenges and possible benefits of the VIS, it was necessary to ask straightforward questions in the emotional domains as well as in the physical and procedural. When further detail was required, following the monadic question, Socratic questioning was used to explore issues further (Corey 2001; Egan 2002). The questions that were most sensitive and likely to trigger emotions were deliberately placed mid-interview.

In line with HREC directives, the interviews were scribed. This requirement to scribe was clearly explained to the participants, because I wished them to understand that pauses during the interview were to allow time to scribe their answers, not a lack of attention to what they were saying. Most interviews took approximately 45 minutes to an hour to complete, although some took nearly two hours. During the interview if appropriate, or at its conclusion, participants were asked whether they felt emotionally well supported at the present time. If they indicated they needed more support, various support agencies were presented to them as options, and contact numbers provided.

At the interview’s conclusion, participants were asked whether they might like to be informed of the study’s progress and receive information regarding findings. Most participants wished to receive the study’s results and provided their email or postal details.

The hand-scribed interviews were dated, recoded and transcribed into Microsoft Word documents.

2.5.2 Method of coding

Within the coding of victim information, details including gender, nature of the crime and whether the participant was a primary or family victim were included.
The nature of the familial relationship of family victims to the deceased was also recorded. As the study was interested in possible connections between victim gender, victim culture, crime category and relationship to the offender and deceased in relation to the VIS experience, such details needed to remain unmasked during both quantitative and qualitative analysis. While it could be argued that removal of all identifying features from the data would allow it to stand alone to be reviewed and analysed without context, to do so would ignore the theoretical standpoint of the research, which acknowledges that all human experience and interaction are contextual and that human behaviour is reactive to context and therefore can only be contextually understood.

2.5.2.1 Quantitative analysis

Each participant (N = 66) was allocated a numeric code for analysis within the quantitative data set, and VOC responses during the interview were recorded against 130 items/variables. For those contacting the study who proved ineligible for interview or who could not be contacted, any details that had been provided on contact relevant to the study were recorded within the demographic data to provide as comprehensive a picture of VIS makers and non–VIS makers as possible. All who contacted the study indicated their commitment to participate by posting back their signed consent forms. Therefore, it seemed important to record as much of the information about their engagement with the study as possible. A small number of participants whose matters did not eventuate in a conviction or who had not been asked to provide a VIS despite a conviction in their matter were interviewed about their experience and understanding of the VIS, and their data were recorded where it applied to the research questions.

Within the quantitative tables presented (see Chapter 3), valid percentages reflect the percentage of participants who answered the question posed. However, a record was kept in instances where the question was not applicable or the question and answer were missing, and these data were retained in the larger data set.

13 ‘Family victims’ within the study refers to participants whose family member, to include spouse or defacto partner, had died as a result of a criminal act.
2.5.2.2 Qualitative analysis

Of the 66 participants who contacted the study, 56 were interviewed.14 These interviews were coded by a pseudonym, maintaining the anonymity of the victim. As described, within coding, details of crime category, gender, whether they were a VIS maker or non–VIS maker, and the nature of VIS presentation were retained.

2.5.3 Timeframe

The dissemination period for the study information was nine months, from February 2010 until October 2010. Seventy-five per cent of VOC interviews were performed during this time. Those approaching the study whose matters were ongoing were followed up and interviewed once sentencing proceedings in their matter and any appeal period had concluded.

2.6 VSP sample

2.6.1 Data collection

VSP interviews were face-to-face, recorded using GarageBand software on a laptop. Some interviews were conducted with focus groups, some with individuals. Whether interviews were conducted singly or with a group was largely determined by the service and the availability of their personnel. Larger services, such as WAS and Victims Services (NSW Department of Justice), organised meetings to allow a number of participants to be present. I pinpointed managers and CEOs of some victim support agencies rather than request group interviews, aware that these individuals would have a comprehensive experience of the VIS support offered to their clients and that many of their workers were volunteers. However, at times during individual interviews, participants suggested that I also interview another member of staff with particular knowledge relevant to the study. For example, after interviewing the CEO of Enough is Enough, he suggested I also interview his cultural coordinator to get a broader picture of the VIS experiences of their Aboriginal

14 As mentioned, (FN:12), three interviews were performed with VOC who had wished to make a VIS but whose matters did not conclude with a conviction. Some of their experiences and opinions about the purpose, process and recommendations regarding the VIS were valid; however, as they had not made a VIS, their data were differently coded and not included within the non-VIS maker group.
clients. I approached the DPP, requesting interviews with Crown prosecutors and police prosecutors, and interviews with two Crown prosecutors and one police prosecutor were arranged. The choice of interviewee was not mine; however, I was informed that those chosen had experience with VISs in court. All interviews were conducted at the VSP’s place of work and usually took between one and two hours to complete.

VSP were asked to reflect on their experiences of their client base, responding to questions about the VIS that were prompted by an initial analysis of the VOC responses. During the semi-structured questionnaire, participants occasionally provided more than one answer to a question. For example, participants may have suggested a number of different reasons why a victim might not make a VIS. In these instances, each reason was recorded and given equal weighting.

The participant consent form (see Appendix 5a) allowed VSP to decide whether they wished their responses to be credited to them personally, to their job title or to them as a member of their organisation. In addition, the participant consent form required VSP to consent to the digital recording of their interview.

The audio recordings were transcribed verbatim into Microsoft Word documents. Participants interviewed in group settings were not individually identified or coded but were differentiated by region and/or office, for example, ‘WAS officer, Campbelltown’.

2.6.2 Method of coding

2.6.2.1 Quantitative analysis

Participant interviews (n = 35) were given an individual coding for quantitative analysis, where responses were recorded against 151 items/variables. Where questions were not posed, and therefore no answer provided, a numerical figure of 99 was used to indicate missing data. Where questions did not apply to the clientele of the service provider, ‘not applicable’ was recorded. Once completed, transcripts of the interview were forwarded to participants by email as agreed prior to interview. It was understood that participants could withdraw
their interview, or discuss with me any parts of it that concerned them, before it was included in the data for analysis.

2.6.2.2 Qualitative analysis

VSP were coded under occupation and organisation. Where participants expressed a desire to be named within the research, their name and organisation were used as their code. For group interviews, coding was grouped, for example, WAS Sydney or Warringa Baiya.

2.6.3 Timeframe

VSP interviews were performed between February 2011 and July 2011.

2.7 Method of analysis

2.7.1 Quantitative analysis

VOC and VSP interviews were transcribed into Microsoft Word documents. Quantitative data extrapolated from interviews were recorded in data files using SPSS. Although interviews with VOC and VSP were based on semi-structured questionnaires, it was useful initially to reduce most questions to numeric data in order to present a broad picture of the samples and VIS experience. Punch (2005) suggests quantitative research is often driven by the initial concerns of the researcher. With this study, I was concerned to explore the characteristics of VIS makers and non-VIS makers and also interested to examine any patterns in the VIS process as experienced by VOC. Transposing the questionnaires into an SPSS framework allowed question responses to be tabulated, which enabled frequencies to be explored. The SPSS framework also facilitated cross-tabulation of variables, which allowed exploration of the relationships between them—for example, crime category and gender or gender and VIS makers. Apparent connections between variables were noted for qualitative analysis.
2.7.2 Qualitative analysis

The core task of qualitative research is to make meaning through the analysis of deep, rich data concerning what is specific or unique to the meanings and perspectives that individuals and groups attach to their experiences (Travers 2006). Coding of the transcribed individual interviews was performed in stages. Drawing on literature reviewed prior to data collection, a priori codes were developed, such as type of crime, gender, literacy and relationship with offender. As the data were analysed against these codes, inductive codes were added. Codes were suggested through the constant review and dissection of the transcripts, where particular turns of phrase, words, emotions and relationships began to feature, such as relationships between gender and VIS content, between impact of crime and likelihood to make a VIS and between relationship with the offender and presentation of the VIS.

By using processes of grounded theory, if retrospectively, where elements are constantly compared for similarities or differences (see Glaser & Holton 2004), gradually a complex understanding of the VIS process and its meaning for VOC was developed. Analysis was also thematic, where data from transcripts—after further coding using inductive categories such as motivation, expectation, safety, support, timing, relationships, empowerment, catharsis and altruism—were analysed to explore how these categories fit together or are affected. At this stage, notions of explanation or interpretation of the data could begin to be made (see Green et al 2007).

It is to be remembered that because the samples were small, self and purposefully selected, the data could not confirm prevalence of experiences beyond those participating. Rather, as in Graham et al (2004:5), the data collected served to identify ranges of experiences and opinions that exist, to examine patterns among those experiences and opinions and to explore the reasons for differences.
2.8 Ethical considerations

2.8.1 VOC sample

The primary concern of the study’s design was to be respectful of the suffering and the emotional state of VOC contacted, using the overarching ethical principle of non-maleficence or *primum non nocere*, meaning ‘first, do no harm’. Potential harms for the VOC sample were secondary victimisation through the interview process and reliving traumatic experiences without the provision of support.

To combat these concerns, the study was designed to allow participants a level of control, acknowledgement, input and status as valued experts in an important experience. Procedural justice (Lind & Tyler 1988; Tyler 2006b) and therapeutic jurisprudence studies (see Erez, Kichling & Wemmers 2011) suggest that legal processes themselves have restorative potential for the victim if human interactions around those processes are victim-centric. In their systematic review of 33 victim studies, ten Boom and Kuijpers (2012) found that of the six most-expressed needs of VOC when viewed according to theories of basic human needs and positive functioning (Maslow 1943; Staub 2004), three were based on relational interpersonal and intrapersonal interaction and response:

- love, security, positive relations with others
- esteem, positive identity/self-realisation
- effectiveness and control/independence/autonomy.

The needs described are derived from practical needs expressed by VOC: acknowledgement; restoration of relationships, sometimes with the offender, but sometimes with the community (Herman 2003); being treated as an interested party; being given an opportunity to provide input at criminal justice proceedings; being consulted; and being given assent and power to make decisions (Rohl 1997). According to the theories of procedural and restorative justice, such needs are met by treating the victim with courtesy, consideration and respect, allowing them to express themselves and affording them some process control and decisive power in matters that concern them (see ten Boom & Kuijpers 2012:165, Table 4).
It was expected that some participants might be dealing with psychological, emotional and physical consequences resultant from the crime/s against them. Another consideration was the possibility that, of those, some may have been struggling with psychological and health problems prior to the crime. All correspondence was carefully drafted to ensure that recipients did not feel they had been particularly targeted for selection, and the questionnaire was designed in such a way that questions were asked in a straightforward manner, focusing on the VIS experience alone.

For participants who felt their needs were not supported through the court process or not met by the VIS process, or who were still dealing with issues from the crimes against them, the opportunity to participate in the study might have been viewed as a way to continue proceedings. Such participants may have hoped their engagement would continue to bring their voice, and the personal impact of the crime against them, under the spotlight. To counter this, the cover letter clearly stated that the study—through analysis of VIS experiences for VOC—aimed to highlight areas of efficacy in the VIS process and to seek recommendations for improvements to the process.

During interactions with VOC, I was clear about the limits of the research, explaining where necessary that the study had no influence over past or future proceedings and that I was neither legally qualified nor ethically permitted to provide legal advice or advocate on their behalf. To support participants in the completion of the telephone questionnaires, a rapport needed to develop between the participant and myself. However, boundaries of the researcher/participant relationship remained clear. Although the interview technique used the active listening skills of counselling, the interview was not designed as a counselling session. The use of closed functional questions to top and tail interviews reminded participants of the formal purpose of the interview. Where participants requested roles outside the boundaries of our relationship, I referred them to specialised services to meet their needs, in consultation with the supervision team.15

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15 On two occasions, VOC requested legal advice about issues relating to their matter. I referred them to Victims Services and WAS, who could provide appropriate referrals.
It was possible that some participants might perceive the research process as exploiting their suffering for an academic exercise, viewing the process as minimising or dismissive of the seriousness of their trauma, also a concern of Booth (2013a). To address this, I was mindful to thank each one for their participation, to remind them of the significance and potential outcomes of the research, to include them within the dissemination of findings and to update them should any recommendations eventuate in drives towards procedural change. These measures were designed to facilitate their empowerment as integral to any outcomes from the research, as described previously.

Although it was hoped victims of domestic violence would participate, the study was also sensitive to their difficulties.16 In such cases, receipt of the participant information sheet in the VISIP had the potential to aggravate the relationship between participants and perpetrators still residing together if viewed by either or both as an invasion of privacy. To counter this, the participant information sheet highlighted the focus of the study as being the experience of the VIS alone and made clear the voluntary nature of participation and ability to withdraw at any time.

The telephone interviews provided anonymity, where participants could tell their stories without being recognised, and facilitated a non-judgemental environment. Booth (2013a:134) suggests that ‘it was much easier to establish rapport in the face-to-face interviews than over the telephone, where, in the absence of visual cues, it was difficult to gauge the participant’s response to our discussion and establish the requisite rapport with each other’. While I understand Booth’s point, a level of safety, privacy and control was offered to the participant by a telephone interview that would not have been present in face-to-face interviews for reasons earlier explained.

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16 Domestic violence is a crime that features particular complexities due to both the social stigma associated with its disclosure and to the nature of the relationship between the offender, victim, and their familial and social group. Victims of domestic and family violence, and indeed those suffering crimes of historical child physical and sexual abuse, are often silenced by the constraints of their situation and controlled by their offender. Such victims face particular challenges and risks when engaging with criminal justice processes, and the study was interested in the particular challenges of the VIS experienced by these victims.
However, interviewing participants on the telephone in the knowledge that the only support available to them was provision of support service contact details was a grave concern. Prior to interview, participants were not asked whether they were suffering any mental health or substance abuse issues. It seemed ethically inappropriate to do so, anticipating that it would be intrusive to try to ascertain whether such issues were pre-existing conditions or resultant from being VOC; also, practically, it was questionable whether this made a difference to their appropriateness to participate. During the interviews, I was aware a small number of victims appeared particularly emotionally unstable, and two may have been affected by alcohol or drugs, which may have coloured their responses. However, as explained earlier, regardless of their psychological state or any impairment, participants chose to present their responses as they wished them to be understood at that time (Rogers 1980), because they controlled the scheduling of their interview and participated freely in the interview.

Interviewing VOC about their experiences of the VIS was not a benign experience. The participant was required to review not only their VIS experience but also the context of that experience in order to frame it. Whether primary or family victim, participants were returned to moments of intense fear, anxiety, grief and loss. Their lives had been altered by their experience as VOC, and the decision to discuss it for the purposes of research was both brave and potentially risky. Listening to such stories is emotionally affecting for the listener, and acknowledgement of victim suffering engenders personal feelings of responsibility, as supported by Booth (2013a), who describes exactly the difficulties, feelings of guilt and weight of responsibility I felt in instigating, conducting and attending to the VOC interviews. Most VOC participants stated that they had engaged with the study hoping to improve the VIS experience for others. I am mindful of their purpose and must acknowledge feelings of responsibility towards the VOC participants in my sample within the research process.
2.8.2 VSP sample

Many VSP interviewed were public servants working in government organisations supporting VOC or in non-government victim support agencies reliant on government funding. It was understood that candid exposure of details of systems that might not be working well had the potential to cause friction and even to put participants’ employment at risk. In addition, VSP risked the chance of making unintentional breaches of confidentiality or of revealing information injurious to their organisation. Although the aim of the interview was to gather information to evaluate data from Sample 1, it was not to do so at any cost. For this reason, VSP were able to choose how their comments would be attributed, and a transcript of their interview was emailed to them, with an understanding that if changes were requested, they would be discussed and addressed to the satisfaction of both parties (only one such request was made).

2.9 Confidentiality and privacy

Participants’ details were recorded on their participant consent form; however, their transcribed interviews were separately coded and renamed and filed separately to prevent them being identified by their interview. During transcription, highly specific details were masked, making it impossible to identify participants. Interview coded data remaining in the files were identifiable by aliases and number codes only.

Recorded interviews with VSP were coded in accordance with their wishes regarding attribution.

In correspondence and in the questionnaire process, it was made clear to VOC that all information was taken in confidence and would not be viewed by anyone except those involved in the research. It was always made clear to VOC participants that their identities would not be reported and their involvement would remain anonymous.
2.10 Strengths of the study design and methodology

Few VIS studies have asked VOC directly about their experiences of the VIS, using individual in-depth interviews as this study has done. As VISs in death matters are particularly controversial, some studies have limited their interest to the experiences of secondary or family victims, and the experiences of primary VOC are less recorded. The perspectives of victims of non-sexual crime and of male primary victims are recorded even less. In general, it is difficult and time consuming to get primary victims to participate independently in such studies. Many VIS studies therefore rely on victim services to assist in the provision of subjects and settings, which may affect the nature of involvement of, and information shared by, the participant, as such participants have been, in many cases, consumers of the services and of the information provided by the service that promoted their participation.

In this study, the primary victims were almost all self-motivated volunteers who chose to participate independently on receipt of, or having come across, the study information. Although victim support services were asked to pass on the study information to their clients, participants were not actually selected by the services to participate. Further, the VOC study sample, though not large in number (N = 66), is substantial in comparison with other VIS studies, especially in terms of the number of in-depth VOC interviews (n = 56) performed and its representation of a broad spectrum of crime categories, albeit of mainly serious offences.

A strength of the chosen interviewing technique was that it allowed participants to volunteer information that was unexpected and undirected. The interview style supported the status of the participants as experts of their experience, allowing them the scope to describe not only their experience but also the manner in which that experience was enhanced or diminished. There appeared to be a genuine interest on the part of many participants to present to the study as full a picture as possible, and after reflection on their interview, some re-contacted me by email to present further information about their VIS experience they thought would improve the process for others. In the interview, participants
were able to be self-reflexive in their consideration of their personal engagement with, and responses to, the VIS process and mechanisms, giving a much more rounded understanding of the unique and multifaceted influences on VOC that affect their experience of the VIS.

Similarly, VSP when interviewed were often extraordinarily candid about their experience of the VIS, providing information to open questions that was unexpected and novel. Again, the style of the interview was based on unconditional positive regard, with VSP positioned as experts assisting the study through not only their experience but also their empathic understanding of the VIS from the position of their clients. Unlike other studies asking VSP to provide their opinion of the potential benefits of the VIS for victims and the court, this study allowed VSP to consider data gathered from the personal reflections of VOC participants about their VIS experience and appeared to present VSP an opportunity to consider facets of the VIS they had previously not been aware of or had not contemplated. In addition, the interview provided some VSP an opportunity to voice concerns they held for their client base regarding VISs.

Finally, although this study received assistance with the dissemination of the participant information sheet from various government and non-government victim support agencies, unlike many previous VIS studies, this study was unfunded and remained independent from any particular exterior agency or influence.17

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17 Examples of recent VIS studies supported by government funding include:
2.11 Limitations of the study

First, this study was not designed to evaluate the totality of the VIS process and experience in NSW. Rather, it aimed to reveal areas of efficacy or concern in the NSW VIS scheme from the victim’s perspective. Resources of time and finance were an issue in terms of the study’s scope. Although observation of the VIS being presented in court in the matters of VOC study participants would have greatly added to the data, this was not practically possible as participants did not usually contact the study prior to sentencing, and it was not ethically sanctioned due to the possibility of any discussion of the VIS with participants pre-sentencing influencing their presentation of their VIS to the sentencing court. Similarly, while it would have been enlightening to evaluate expectations of the VIS by approaching potential participants post-conviction but pre-presentation of their VIS and sentencing to gain a comparison of perceived expectation and perceived outcome, it was legally impossible to do so due to the possibility of the study influencing or contaminating VIS content. This limited participant interviews to purely retrospective and reconstructed accounts of their VIS experience.

Second, notwithstanding the strengths of qualitative interviews, some critics suggest that limiting a study to data solely comprising oral testimonies creates a specific, subjective and narrow vision. Silverman (2010) argues against this method, seeing it as ‘journalistic’, stating that simply asking respondents questions, especially if they are questions asking respondents to discuss their feelings or experiences, is little better than tabloid inquiry. He argues that data from interviews must be understood as a manufactured and manipulated data set, because the data would not exist without the researcher’s instigation. Thus, the choice to use oral responses to questionnaires alone potentially places a shadow of unreliability on the results, making them easy to challenge.

Third, this study is based on interviews about matters sentenced in NSW and focuses on NSW VIS practice. The VIS process differs between states in Australia and between jurisdictions in other countries; thus, results must be
understood within the framework of NSW VIS legislation and practice and may not be generalisable to other jurisdictions.\textsuperscript{18}

Fourth, the choice to use data collected through interviewing raises the possibility of bias and subjectivity. Although I made every effort to conduct interviews in a standardised way, it was impossible to ensure interaction between the participants and myself was not coloured by status, power relations, quality of rapport, vocal delivery, content, emotionality and the personal value systems and prejudices of myself and of the particular interviewee.

Fifth, ethics approval required that VOC interviews were not audio-recorded but hand-scribed. Although every effort was made to make verbatim transcriptions, this could not always be guaranteed, and thus VOC transcriptions can only be viewed, at best, as accurate field notes.

Hand-scribing had three additional limitations:

- There was not time to scribe each question, making it difficult to evaluate the possibility of the wording of the question directing or influencing the participant’s response.
- There was little time to note emotional tone, length of pauses and intricacies of vocal delivery, with the result that nuances may have been lost.\textsuperscript{19}
- It could be argued that my attention was compromised by the need to scribe, and therefore my ability to fully utilise active listening skills was diminished by the need to hear to record, rather than to hear to understand.

Sixth, it was important for many participants to explain to me the nature of the crimes against them, including their injury and trauma, to provide background

\textsuperscript{18} For a full description of the differences regarding VIS legislation in Australian states and other countries where VOC are permitted to make a VIS, see VSA (2009) and Roberts and Manikis (2011).

\textsuperscript{19} After each interview, if there had not been time to note particular emotionality or tone, I took time to make reflexive notes on the nature of the interview and how the participant presented themselves and their information, especially if it appeared in any way unusual or pronounced.
and rationale for their feelings. The ways in which VOC reconstruct narratives of traumatic events has been described in therapeutic terms as a way of making sense and giving meaning to what has happened in order to restore the self (Baumeister & Newman 1994; McLean, Pasupathi & Pals 2007). Unconscious self-protective mechanisms adopted by those who are required to listen to the traumatic information of others, such as emotional hardening or desensitisation, are well documented in literature regarding risks to practitioners in psychological clinical practice (Figley 2002). Mindful of this, I was also aware that the depth of physical and psychological harms suffered by those coming forward could not be assumed to be understood by me, nor the severity of their full impact comprehended.

Seventh, this study had no interest in the experience of the offender or of the court beyond their interaction with the victim. Sole focus on the experience of the victim necessitated a victim-centric bias. This is recognised as a potential limitation of the study.

Eighth, although every effort was made to get the participant information sheet to VOC, the study relied on organisations contacted. Organisations receiving hard copies of the participant information sheet to forward to VOC did not report back on the numbers actually received by their clients. Whether all hard copies reached VOC is unknown. The separation of the participant information sheet by WAS, for example, by placing it within a dedicated envelope labelled ‘independent research project’ within the VISIP mailing, made it highly possible that the information may have been ignored by recipients disinterested to open a separate envelope requiring them to do something un-related to their immediate focus and need.

Ninth, the VOC sample was self-selecting. Participants were required to read the participant information sheet and consent form, which were dense in information. A certain level of literacy, or literacy support, was needed to respond to the study. Participation required the signed consent form or online form to be returned by mail or email, requiring motivation, effort and ability to write and, for those preferring to consent online, access to a computer and
email. Thus, the design of the study paperwork, mode of dissemination and participation possibly made engagement more difficult for those VOC challenged by literacy, cognition, access or language issues, whom the study was hoping to reach. Further, as there was a potential onus for participants to discuss private and emotionally challenging experiences with a stranger, it could be argued that only individuals highly motivated by the study’s focus would have taken the time to engage, and only those VOC who felt strongly towards the provision of the VIS, either positively or negatively, would have wished to participate, polarising the data between two extremes. To counter this, data presented was analysed thematically, looking for similarities and differences across both VOC and VSP data sets in an attempt to present a more generalised understanding of the VIS experience.

Importantly, VOC receiving the study information as part of the VISIP were at the post-conviction but pre-sentencing stage in their criminal justice journey. It would not be surprising if the need to focus on that process outweighed any other considerations, especially once they understood they could not contribute to the study until after sentencing proceedings had concluded, which for many was at some unknown time in the future.

Tenth, the VOC sample was small and therefore may be unrepresentative of VOC in general. Another concern was that only those victims of domestic violence who had severed their relationship with the perpetrator would be prepared to participate. Those still involved with the perpetrator through, for example, shared accommodation and/or children, or those whom the perpetrator still controlled, would be less likely to participate and thus possibly unrepresented.

The VSP sample was purposively selected as the sample was small. No magistrates or judges were interviewed. Victim support organisations, including WAS, police prosecutors and the DPP, selected representatives to be interviewed and may have selected those with a positive bias towards the NSW VIS scheme, wishing to present their organisation as being VIS-positive and victim-centric. The fact that interviews with VSP were carried out within their
workplaces may have consciously or subconsciously reminded participants of their duty to their employer and may have affected levels of disclosure.

Validity of research data is important. Results need to be replicable, meaning that if a research methodology is repeated using similar samples in similar contexts and settings, similar results should be expected. The difficulties regarding the standardisation of interviews with vulnerable subjects have been explained. In terms of data analysis, as I was working alone, inter-rater reliability (Miles & Huberman 1994) where coded interviews might be reviewed by others in order to check that coding would be similar, was beyond the scope of the research design. Although it was decided not to mask certain characteristics of participants, such as gender, crime category and relationship to the deceased in the case of family victims (see Section 2.7), not to do so could be argued as a bias within the analysis in that data were analysed through a contextual lens.

This chapter has outlined the rationale, design and methodology of the study, providing background to the quantitative findings presented in Chapter 3, and qualitative findings presented in Chapters 4 and 5.
Chapter 3: Quantitative Results

This chapter presents quantitative results from interviews conducted with VOC, comprising VIS and non–VIS makers, and with VSP. Examples of VOC and VSP participant information, consent forms and interview questionnaires can be found in Appendices 4A, 4B, 4C, 5A and 5B. Responses were analysed using the SPSS. Interview questions sought information about composition of the samples, administrative features of the VIS scheme, VIS response rates within the sample, understandings regarding VIS purpose, the experience of making a VIS, issues relating to the presentation of VISs in court, and satisfaction with court and VIS process.\(^{20}\)

VOC data were collected first, and informed questions presented to VSP. The two data sets are presented separately, with the results jointly discussed in the summary at the chapter’s conclusion.\(^{21}\)

3.1 VOC participants

3.1.1 Description of the sample

This section presents the findings regarding gender, cultural background, age and knowledge of the offender in relation to crime category and whether a VIS was presented or not presented.

\(^{20}\) It was not always possible to pose all questions within each interview because some questions were not relevant to VOC or VSP circumstances. In such instances, a numerical figure of 99 was used to indicate missing data, and a non-applicable result was recorded. Valid percentages presented therefore reflect the percentage of participants who answered the question posed.

\(^{21}\) As the quantitative data analysis is substantial, additional findings are tabulated in Appendix 1. These include:

- the age and crime category of VIS makers and non-VIS makers
- the country of birth and ethnic origin of VIS makers and non-VIS makers
- VIS maker and non-VIS maker knowledge of their offender
- the severity of the medical, financial and psychological consequences of the crime, as described by VOC participants
- use of counselling services
- dissemination of VIS information
- numbers of VOC reporting that police and prosecutors suggested a VIS would affect sentence
- the usefulness of support when writing the VIS
- length of time VOC were given to prepare the VIS.
### 3.1.1.1 Gender

The sample comprised 66 participants of whom 26 were family victims and 40 were primary victims (see Table 3.1). Most VOC contacting the study were women (71%). Thirteen participants had not been able to make a VIS for various reasons or had made a VIS for a victim compensation claim rather than in sentencing proceedings and were therefore listed as ‘ineligible’.

<table>
<thead>
<tr>
<th>Table 3.1: Family and primary victims by gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participants</td>
</tr>
<tr>
<td>---------------------</td>
</tr>
<tr>
<td>Family victims</td>
</tr>
<tr>
<td>Primary victims</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Of the 26 family victims, two (7.6%) were ineligible, and of the 40 primary victims, 11 (27.5%) were ineligible (see Table 3.2). Overall, of participants eligible to make a VIS, women represent 72% of the sample, with more female participants in both the family victim (62.5%) and primary victim (79%) groups.

<table>
<thead>
<tr>
<th>Table 3.2: Family and primary victims eligible to make a VIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participants</td>
</tr>
<tr>
<td>--------------------------------</td>
</tr>
<tr>
<td>Family victims</td>
</tr>
<tr>
<td>Primary victims</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Although over 71% of VOC participants were female (see Table 3.3), when participants were separated into crime categories, the gender picture altered. Among family victims, there was a fairly equal gender split for participants who had lost a child or grandchild. However, while no men whose wives had been killed contacted the study, a number of women whose husbands had been killed participated, with slightly more females participating whose sibling had been killed than males suffering the same circumstances.
Participant victims of domestic violence (DV) and sexual assault (SA) were almost exclusively female. There was a fairly equal gender split in participants suffering crimes of historical child sexual assault (HCSA) and physical assault (PA). In crime victimisation statistics, males are over-represented as victims of PA, with 6.4% of Australian males reporting being victims, compared with 4.3% of females. The equal gender split of PA participants within the sample in this study may be explained by the fact that two female participants in this category reported additional charges of SA being removed during charge negotiations in their matters, leaving only charges of PA.

PA and HCSA were the most common offences presented by male primary VOC participants, and DV and SA the most common offences presented by female primary VOC participants. Within offence categories, there were more female participants for all offences except PA.

<table>
<thead>
<tr>
<th>Crime category</th>
<th>Males</th>
<th>Females</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family victims</td>
<td>10</td>
<td>16</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>38.5%</td>
<td>61.5%</td>
<td>100%</td>
</tr>
<tr>
<td>Sexual assault</td>
<td>1</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>12.5%</td>
<td>87.5%</td>
<td>100%</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>0</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>HCSA</td>
<td>3</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>42.9%</td>
<td>57.1%</td>
<td>100%</td>
</tr>
<tr>
<td>Physical assault</td>
<td>3</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>50%</td>
<td>100%</td>
</tr>
<tr>
<td>Primary victims other/</td>
<td>2</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>crime not confirmed to study</td>
<td>20%</td>
<td>80%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
<td>47</td>
<td>66</td>
</tr>
<tr>
<td></td>
<td>29%</td>
<td>71%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.1.1.2 VIS and non–VIS makers

Of the 53 participants eligible to make a VIS, 85% were VIS makers and 15% were non–VIS makers (see Table 3.4). Of 29 primary victims, eight were non–

---

VIS makers. By contrast, all family victim participants (9 males and 15 females) made a VIS, other than two who were ineligible.  

Table 3.4: Family victims and primary victims, VIS and non-VIS makers

<table>
<thead>
<tr>
<th>Participants</th>
<th>VIS maker</th>
<th>Non–VIS maker</th>
<th>Number of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family victims</td>
<td>24</td>
<td>0</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>Primary victims</td>
<td>21</td>
<td>8</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>72.4%</td>
<td>27.6%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>45</td>
<td>8</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>85%</td>
<td>15%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 3.5: Primary male VIS makers and non–VIS makers, by crime category

<table>
<thead>
<tr>
<th>Primary male participants, crime category</th>
<th>VIS maker</th>
<th>Non–VIS maker</th>
<th>Total N = 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual assault</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>HCSA</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physical assault</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total respondents</td>
<td>5</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>83.3%</td>
<td>16.6%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Of non–VIS makers, just over a third (n = 3) were Local Court matters where participants stated they would have chosen to present a VIS if requested or allowed by their prosecutor. All family victim participants eligible to make a VIS had done so and are therefore not included in Tables 3.5 and 3.6, which present primary victim VIS makers and non–VIS makers. Over 83% of male participants and just under 70% of female participants chose to make a VIS. This may suggest that given the opportunity, female victims are less likely to make a VIS, with 30% of female participants and 16% of male participants choosing not to make one. However, the figures may indicate that VIS take-up rates are related to the crime category (see Tables 3.5 and 3.6). For instance,

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23 The matters of these participants occurred prior to VIS legislation being introduced.
all victims of HCSA participating had chosen to make a VIS, with most non–VIS makers being victims of SA or DV.

### Table 3.6: Primary female VIS makers and non–VIS makers, by crime category

<table>
<thead>
<tr>
<th>Primary female participants, crime category</th>
<th>VIS maker</th>
<th>Non–VIS maker</th>
<th>Total offence category N = 23</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual assault</td>
<td>5</td>
<td>2</td>
<td>7 30.4%</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>5</td>
<td>3</td>
<td>8 34.8%</td>
</tr>
<tr>
<td>HCSA</td>
<td>4</td>
<td>0</td>
<td>4 17.4%</td>
</tr>
<tr>
<td>Physical assault</td>
<td>2</td>
<td>1</td>
<td>3 13%</td>
</tr>
<tr>
<td>Arson and malicious endangerment</td>
<td>0</td>
<td>1</td>
<td>1 4.3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>16</td>
<td>7</td>
<td>23 100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>VIS maker</th>
<th>Non–VIS maker</th>
<th>Total offence category N = 23</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>69.6%</td>
<td>30.4%</td>
<td>100%</td>
</tr>
</tbody>
</table>

#### 3.1.1.3 Age demographic

Participant VIS makers and non–VIS makers were analysed according to age categories (see Appendix 1, Table A1.1).

No VOC aged 18–22 years participated, despite consistent findings in victimisation surveys that young people 15–24 years are the most victimised group (see ABS 2007; Burton, Evans & Sanders 2006, 2007). Based on the quantitative results, it is difficult to conclude much in terms of likelihood of making a VIS based on age. Younger female participants more frequently reported being victims of SA and are therefore over-represented in the 20–30 age category. Over half the participants were aged 30–55, with 23% aged over 55. The lack of young adults in the sample may indicate that youth is a barrier to making a VIS, although results may also be an artefact of the sample.
3.1.1.4 Country of birth, ethnic background, language spoken at home and crime category

Demographic data of country of birth and ethnic background were recorded from 53 VIS-eligible participants. Of VIS makers, most spoke English at home, and over 83% were born in Australia. In terms of ethnic or racial origin (see Appendix 1, Table A1.2), 87% were of Australian/Anglo/Irish/European descent, and 7% were Aboriginal; the remainder included a small number of participants of Maori and Chinese descent.

Australian Social Trends (ABS 2014) taken from the 2011 Census reports that 42.4% of those residing in the City of Sydney and 24% in NSW identify as having been born overseas, with those identifying as Aboriginal or Torres Strait Islander making up 3% of the NSW population. In terms of victimisation, recent ABS statistics show that 43% of physical assaults are reported by victims identifying as being born overseas.

While the non–VIS maker group is small in number, over 60% of non–VIS makers had either a pronounced accent or features that would distinguish them as being from a culturally and linguistically diverse background, or identify them as having been born outside Australia. Four identified as immigrants and one as Aboriginal.

3.1.1.5 Knowledge of offender

Of 49 participants responding, the offender was known to 63%. Offenders were least known to victims of SA (60%) and PA (75%), with 50% of family victims and 100% of DV and HCSA victims knowing the offender (see Appendix 1, Table A1.3).

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24 These figures may be underestimated. Migration Trends 2012–2013 published by the Department of Immigration reports visitors (44,800) and students (10,720) as the largest cohort to outstay their visa and remain in Australia, with highest numbers being from China (7,690), Malaysia (6,420), US (5,220) and UK (3,780): <www.immi.gov.au/media/publications/statistics/immigration-update/asylum-trends-aus-2012-13.pdf>.


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Of non–VIS maker participants, seven were women and one was a male victim of PA, with five (72%) of the female participants reporting they knew their offender. The other two female participants had encountered their assailant in their work and had had some interaction with them, albeit brief, prior to the crime being committed. Therefore, the crimes against them were not completely random. The attack on the male participant was completely random. NSW victimisation statistics (ABS 2013) report that 74% of female victims of SA and 86% of female victims of PA know their offender.

3.1.2 Effects of the crime on VOC

VOC participants were asked to consider the seriousness of the effects of the crime against them. Effects were recorded against crime categories, rather than against VIS and non–VIS maker categories, and presented collectively. When non–VIS maker data were studied exclusively, the results were markedly similar to the results of primary victim VIS makers (see Appendix 1, Tables A1.4, A1.5 & A1.6 for VIS and non–VIS comparisons).

3.1.2.1 Medical consequences of the crime

Participants were asked if they used the services of a hospital or doctor due to physical injuries resultant from the crime against them and were asked to rate their injuries as either ‘serious’ if requiring immediate medical attention or as ‘not serious’ (see Table 3.7). Not surprisingly, in crimes of DV or PA, participants reported serious injuries; most of the matters of those participating were of the more serious nature, heard in the higher courts. Some participants had been hospitalised due to their injuries; others, especially in the case of HCSA and family victims, used the services of a doctor for prescription medication for symptomatic relief from anxiety, panic attacks, depression and sleeplessness.
Table 3.7: VOC: How would you rate the medical consequences of the crime? (by crime category)

<table>
<thead>
<tr>
<th>Severity of medical consequences</th>
<th>Family victims N = 26</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total responses N = 53</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>4</td>
<td>3</td>
<td>7</td>
<td>2</td>
<td>6</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>15.4%</td>
<td>42.9%</td>
<td>100%</td>
<td>28.6%</td>
<td>100%</td>
<td>41.5%</td>
</tr>
<tr>
<td>Not serious</td>
<td>16</td>
<td>4</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>61.5%</td>
<td>57.1%</td>
<td>0%</td>
<td>71.4%</td>
<td>0%</td>
<td>47.2%</td>
</tr>
<tr>
<td>None</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>23.1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>11.3%</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Among primary victims, both the majority of VIS makers and non–VIS makers reported the medical consequences of the crime against them as serious (see Appendix 1, Table A1.4).

3.1.2.2 Financial consequences of the crime

Participants were asked to consider whether the crime against them had caused them any financial loss (see Table 3.8). Overall, approximately half reported serious financial loss. As a group, primary victims reported greatest financial loss, with over 85% stating the crime against them had affected their ability to work. Victims of HCSA reported least financial loss, though many reported being compromised in their ability to perform well at school and tertiary study and to manage employment. Both VIS and non–VIS makers reported similar impacts on their finances (see Appendix 1, Table A1.5).

Table 3.8: VOC: Did you experience financial loss due to the crime? (by crime category)

<table>
<thead>
<tr>
<th>Financial loss</th>
<th>Family victims N = 24</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total responses N = 50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>7</td>
<td>6</td>
<td>6</td>
<td>3</td>
<td>5</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>29%</td>
<td>100%</td>
<td>86%</td>
<td>43%</td>
<td>83%</td>
<td>54%</td>
</tr>
<tr>
<td>No</td>
<td>17</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>71%</td>
<td>0%</td>
<td>14%</td>
<td>47%</td>
<td>17%</td>
<td>46%</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
3.1.2.3 Psychological consequences of the crime

Participants were asked to consider the seriousness of psychological consequences resulting from the crimes against them (see Table 3.9). Although some family victims (23%) stated their psychological issues were ‘not serious’, no participants stated that the crime against them had no psychological effect. Of those who responded, all primary victims reported psychological consequences suffered as a result of the crime against them as ‘serious’, whether or not they had made a VIS (see Appendix 1, Table A1.6).

Table 3.9: VOC: How would you rate the severity of psychological consequences of the crime? (by crime category)

<table>
<thead>
<tr>
<th>Severity of psychological consequences</th>
<th>Family victims N = 26</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total responses N = 53</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>20</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>76.9%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>88.7%</td>
</tr>
<tr>
<td>Not serious</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>23.1%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>11.3%</td>
</tr>
<tr>
<td>None</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td>7</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.1.2.4 Psychological issues and crime category

Psychological problems described by participants are represented for family victims (see Table 3.10), primary victims and crime category (see Table 3.11), and primary VIS and non–VIS makers (see Table 3.12). The reason for dividing the psychological problems described by participants in this way was to ascertain whether particular victim groups are more challenged by particular psychological issues as a result of their victimisation. Where participants mentioned a cluster of issues, each was singly noted. Depression and anxiety were reported as the dominant psychological consequences of the impact of the crimes, and concurrent issues of anxiety and depression were higher for primary victims than for family victims, where depression was more regularly described.
### Table 3.10: Family victim VIS makers: What were the psychological consequences you experienced as a result of the crime?

<table>
<thead>
<tr>
<th>Psychological consequences</th>
<th>Family victim VIS makers N = 26</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depression</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>65.4%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>26.9%</td>
</tr>
<tr>
<td>PTSD</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3.8%</td>
</tr>
<tr>
<td>Suicidal</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3.8%</td>
</tr>
</tbody>
</table>

Note: N = the number who stated that they suffered from psychological consequences.

### Table 3.11: All primary victims: What were the psychological consequences you experienced as a result of the crime? (by crime category)

<table>
<thead>
<tr>
<th>Psychological consequences</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 6</th>
<th>Physical assault N = 6</th>
<th>All primary responses to question N = 26</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depression</td>
<td>7</td>
<td>6</td>
<td>5</td>
<td>3</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>85.7%</td>
<td>83.3%</td>
<td>50%</td>
<td>80.7%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>6</td>
<td>7</td>
<td>6</td>
<td>5</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>85.7%</td>
<td>100%</td>
<td>100%</td>
<td>83.3%</td>
<td>92.3%’</td>
</tr>
<tr>
<td>PTSD</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>28.6%</td>
<td>0%</td>
<td>16.7%</td>
<td>11.5%</td>
</tr>
<tr>
<td>Suicidal</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>12.5%</td>
<td>28.6%</td>
<td>14.3%</td>
<td>0%</td>
<td>15.4%</td>
</tr>
</tbody>
</table>

Note: The figures are the number of VOC who stated they suffered from the particular condition. The column totals are greater than N due to multiple responses.

### Table 3.12: Primary VIS makers and non–VIS makers: What were the psychological consequences you experienced as a result of the crime?

<table>
<thead>
<tr>
<th>Psychological consequences</th>
<th>Primary VIS makers N = 19</th>
<th>Primary non–VIS makers N = 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depression</td>
<td>14</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>74%</td>
<td>87.5%</td>
</tr>
<tr>
<td>Anxiety</td>
<td>18</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>95%</td>
<td>75%</td>
</tr>
<tr>
<td>PTSD</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>11%</td>
<td>12.5%</td>
</tr>
<tr>
<td>Suicidal</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>16%</td>
<td>12.5%</td>
</tr>
</tbody>
</table>

Note: The figures are the number of VOC who stated they suffered from the particular condition. The column totals are greater than N due to multiple responses.
It should be noted that approximately 20% of the population in Australia have a mental health condition (ABS 2007). Therefore, the possibility that some participants may have experienced mental health issues prior to the crimes against them must be acknowledged. Furthermore, participants volunteered their own diagnosis of their psychological states, and these were simply noted. It could be argued that what participants may have termed ‘depression’ might be regarded clinically as normal grieving or sadness, and ‘anxiety’ as a normal response to extreme fear and trauma.

Participants’ self-diagnosis was not tested using psychological scales. However, if describing themselves as suffering from depression, participants often offered descriptions of their symptoms, such as being unable to concentrate or think as clearly as before the crime, having issues with memory and focus, experiencing disturbed sleep, weeping constantly or lacking interest in general life.

3.1.2.5 Use of a counselling service

Counselling services were used by primary victims more than by family victims, with the highest usage reported by victims of SA, DV and HCSA (see Appendix 1, Table A1.7). This is perhaps because specialist police services assisting victims of sexual and family violence crimes are conversant with supports available and, as a matter of routine, discuss referral to specialist services offering counselling and support. The highest use of counselling services was reported by DV participants, who also reported the highest level of complex diagnoses. Fewer victims of PA reported suffering from depression, and victims of PA reported less use of counselling services.

Among primary victims, non–VIS makers (37.3%) were half as likely as VIS makers to report the use of counselling services (see Appendix 1, Table A1.8), despite reporting suffering from high levels of psychological distress (see Appendix 1, Table A1.6). As there was no longitudinal follow-up of the sample,

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26 Pemberton & Raynears (2011) suggest that VIS studies regarding the therapeutic benefit of VIS are unscientific as they rely on evidence that is anecdotal and argue that without psychological testing of the levels of anger and anxiety of VOC performed pre-VIS, immediately post-VIS and in follow-up measured against validated psychological tools, the therapeutic efficacy of VIS cannot be proven.
it is difficult to ascertain whether levels of psychological distress reported by participants having counselling would reduce at its completion. Comparison of results of VIS makers and non–VIS makers suggest that despite over half of the VIS makers using counselling services, their levels of anxiety and depression within the primary VOC sample remained commensurate with those who did not use counselling services.

3.1.3 Awareness and understanding of the VIS

This section looks at who provides VIS information to VOC, issues that affect comprehension of VIS material, what VOC understand as the purpose of the VIS, and VOC understanding of the effect of VIS on sentencing.

3.1.3.1 Dissemination of VIS information

Most participants interviewed (91%) were aware of their ability to make a VIS. This finding is not surprising considering the recruitment strategy used in this study. Participant victims of PA had least awareness of the provision of VIS, especially if their matters had been heard in the Local Court. Participants were asked to recall from whom they received VIS information (see Appendix 1, Table A1.9). Most received information from WAS or the police; however, in the case of family victims, half received information from HVSG.

Participants most frequently reported receiving the information in the following ways: from the VISIP sent or emailed to VOC; during personal discussions with police, police prosecutors, DPP solicitors or victim support agencies; or by downloading it from the Lawlink website. Overall, primary victims were less likely than family victims to have received the VISIP. Only 57% of Victims of SA reported having received the VISIP, most having received VIS information directly from their sexual assault counsellor.

3.1.3.2 Factors affecting the ability of VOC to comprehend VIS information

The VISIP was reported as ‘very easy’ or ‘quite easy’ to understand by 66% of participants. Issues affecting comprehension of VIS information are represented in Table 3.13. The main factor hindering understanding was trauma, with...
participants stating that their emotional state affected clarity of thinking and their ability to deal with dense paperwork. Nearly 50% of family victims and around a third of primary victims of PA and SA stated that trauma affected their comprehension of VIS information. Overall, 20% of primary victims reported trauma negatively affected comprehension of VIS information. Literacy was reported as an issue affecting comprehension by over 10% of participants overall. Although the percentage of participants experiencing issues with literacy and language are small, it must be remembered that all participants in the study spoke English well, even if it was not their first language, and did not report needing assistance to negotiate the study documentation, which included completing the participant consent form. In the past few years, WAS has produced a simplified two-page document outlining the VIS process and purpose, which is sometimes provided as a supplement to the VISIP.

<table>
<thead>
<tr>
<th>Factors affecting understanding of VIS information</th>
<th>Family victims N = 24</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trauma</td>
<td>11 (46%)</td>
<td>2 (28.6%)</td>
<td>0 (0%)</td>
<td>1 (14.3%)</td>
<td>2 (33.3%)</td>
<td>16 (32%)</td>
</tr>
<tr>
<td>Literacy</td>
<td>3 (13%)</td>
<td>0 (0%)</td>
<td>2 (33.3%)</td>
<td>1 (14.3%)</td>
<td>0 (0%)</td>
<td>6 (12%)</td>
</tr>
<tr>
<td>NESB</td>
<td>1 (4%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>1 (2%)</td>
</tr>
<tr>
<td>No factors affecting comprehension</td>
<td>9 (37%)</td>
<td>5 (71.4%)</td>
<td>4 (66.7%)</td>
<td>5 (71.4%)</td>
<td>4 (66.7%)</td>
<td>27 (54%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>24 (100%)</td>
<td>7 (100%)</td>
<td>6 (100%)</td>
<td>7 (100%)</td>
<td>6 (100%)</td>
<td>50 (100%)</td>
</tr>
</tbody>
</table>

Table 3.13: VOC: What factors affected your ability to understand information about VIS? (by crime category)
3.1.3.3 VOC understanding of the purpose of VIS

Participants were asked to describe the functional and personal purpose of the VIS and their expectations for their VIS (see Table 3.14). VOC responses differed by offence category.

Informing the court of the impact of the crime and having a voice in proceedings were most commonly mentioned as purposes of, and expectations for, the VIS; however, this is not surprising, considering these functions are outlined in the VISIP. However, a third of victims of sexual assault did not mention informing the court as a purpose or an expectation, and half did not describe having a voice as a purpose or expectation. These victims tend to use sexual assault counselling services provided in court proceedings in SA matters, and their expectations may therefore have been managed to expect little in that regard (see Clark 2010).

Family victims and victims of HCSA and SA more frequently reported that a purpose and an expectation of the VIS was to inform the offender of the impact of the crime suffered by the victim or victim’s family. However, fewer victims of DV and only one victim of PA described this as a purpose of, or an expectation/wish for, their VIS.

The two victims of DV who reported that a purpose of VIS was to inform the offender of the impact of the crime had severed contact with their offender and stated they no longer feared him.

Although less than a third of primary victim participants considered the purpose of the VIS was to inform the offender’s family of the impact of the crime on the victim, over 50% of family victims saw this as a purpose, especially in instances where the offender had been in a relationship with the deceased.

Where criminal behaviour was physically or sexually abusive and had occurred in secret, family victims and primary victim participants stated that the exposure
of their suffering to those close to the perpetrator was a purpose of the VIS and an expectation/wish for their VIS.

Of 23 family victims eligible to make a VIS who responded, 74% stated the purpose of the VIS was to inform the court of the personhood of the deceased, and the same percentage expected to be able to do so with their VIS. Almost 57% felt the purpose of the VIS was to inform the offender’s family of the personhood of the deceased and expected to be able to do so. This was particularly important to family victims where the deceased was not known, or not well known, to the offender.

**Table 3.14: VOC: What is the purpose of and what did you expect from the opportunity to make a VIS? (by crime category)**

<table>
<thead>
<tr>
<th>VIS purpose / expectation</th>
<th>Family victims N = 23</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>To inform the court of the impact</td>
<td>21 (91.3%)</td>
<td>4 (66.7%)</td>
<td>6 (85.7%)</td>
<td>6 (85.7%)</td>
<td>6 (100%)</td>
<td>43 (87.6%)</td>
</tr>
<tr>
<td>To have a voice in proceedings</td>
<td>21 (91.3%)</td>
<td>3 (50%)</td>
<td>7 (100%)</td>
<td>6 (85.7%)</td>
<td>5 (83.3%)</td>
<td>42 (85.7%)</td>
</tr>
<tr>
<td>To inform the offender of the impact</td>
<td>19 (82.6%)</td>
<td>5 (71.4%)</td>
<td>2 (28.6%)</td>
<td>6 (85.7%)</td>
<td>1 (16.7%)</td>
<td>33 (66%)</td>
</tr>
<tr>
<td>To inform the offender’s family of the impact</td>
<td>13 (56.5%)</td>
<td>1 (16.7%)</td>
<td>2 (28.6%)</td>
<td>2 (28.6%)</td>
<td>0 (0%)</td>
<td>18 (36.7%)</td>
</tr>
<tr>
<td>To inform the court of the personhood of the deceased</td>
<td>17 (73.9%)</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>17 (73.9%)</td>
</tr>
<tr>
<td>To inform the offender’s family of the personhood of the deceased</td>
<td>13 (56.5%)</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td>13 (56.5%)</td>
</tr>
</tbody>
</table>

**3.1.3.4 VOC understanding of the effect of a VIS on sentencing**

Participants’ understanding of whether the purpose of a VIS was to affect sentence, and their expectation and hope that it would affect sentence, are shown in Table 3.15.
When these data were recorded, the VIS of family victims was not taken into account at sentencing under the legislation at that time, although the VIS of primary victims could be taken into account at sentencing in certain circumstances (see Chapter 1). Despite this information being clearly stated in the VISIP, over 30% of family victims stated that affecting sentence was a purpose of the VIS and 60% of family victims saw it as an expectation or wish for their VIS.

Among primary victims, views differed by offence category. All participants in the PA and HCSA categories stated not only that the purpose of their VIS was to affect sentence but also that it was their expectation and hope. As previously mentioned, only one victim in the PA category knew their offender. In general, more participants in most crime categories hoped their VIS would influence sentence than expected it would or felt was its legislated purpose. Conversely, participants from the SA category were least likely to expect their VIS to influence sentence and did not report any hope that it would do so.

### Table 3.15: VOC: Is the purpose of VIS to affect sentence, and did you expect or hope your VIS might affect sentence? (by crime category)

<table>
<thead>
<tr>
<th>VIS</th>
<th>Family victims</th>
<th>Sexual assault</th>
<th>Domestic violence</th>
<th>HCSA</th>
<th>Physical assault</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N = 23</td>
<td>N = 6</td>
<td>N = 7</td>
<td>N = 7</td>
<td>N = 6</td>
<td>N = 49</td>
</tr>
<tr>
<td>Purpose</td>
<td>7</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>6</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>30.4%</td>
<td>16.7%</td>
<td>57.1%</td>
<td>14.3%</td>
<td>100%</td>
<td>38.8%</td>
</tr>
<tr>
<td>Expectation</td>
<td>14</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>6</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>60.9%</td>
<td>16.7%</td>
<td>57.1%</td>
<td>57.1%</td>
<td>100%</td>
<td>40.8%</td>
</tr>
<tr>
<td>Hope</td>
<td>17</td>
<td>0</td>
<td>5</td>
<td>4</td>
<td>6</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>73.9%</td>
<td>0%</td>
<td>71.4%</td>
<td>57.1%</td>
<td>100%</td>
<td>65.3%</td>
</tr>
</tbody>
</table>

Although most participants stated that it had been made clear that making a VIS was voluntary, 10% (n = 5) reported that police, the police prosecutor or Crown prosecutor in their matter had suggested the VIS could affect sentence (see Appendix 1, Table A1.10). Three of the five participants were primary victims—two VIS makers and one non–VIS maker. Although the VIS of family victims in NSW was not taken into consideration in sentencing at time of interview, two
family victims stated their prosecutor had told them their submission of a VIS might affect the sentence.

3.1.4 Writing a VIS

Participants were questioned about their initial response to the opportunity to make a VIS, whether they were the sole author, what assistance they required to write their VIS, adequacy of preparation time, emotional challenges to writing it and whether the VIS writing experience was positive.

3.1.4.1 Initial response to opportunity to make a VIS

Participants were asked whether they had made the decision to make a VIS immediately on hearing of the provision (see Table 3.16). Nearly 80% of participants stated they had immediately wanted to make a VIS on hearing of the possibility to do so. While over 80% of family victims and victims of PA were motivated to make a VIS immediately, only 67% of victims of SA interviewed were motivated to do so. It appears that victims of SA, DV and HCSA, require more time to consider making a VIS than do family victims and victims of PA.

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 23</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>20</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>87%</td>
<td>66.7%</td>
<td>71.4%</td>
<td>71.4%</td>
<td>83.3%</td>
<td>79.6%</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>13%</td>
<td>33.3%</td>
<td>28.6%</td>
<td>28.6%</td>
<td>16.7%</td>
<td>20.4%</td>
</tr>
<tr>
<td>Total = N</td>
<td>23</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.1.4.2 Non–VIS makers: reasons given for not making a VIS

Only eight participants contacting the study who were eligible to make a VIS had not made one. Of these, seven were female, comprising three victims of DV, two of SA, one of PA and one of arson and malicious endangerment. The male participant was a victim of PA.
Three non–VIS makers reported not being asked for a VIS or being told their VIS was not needed by the prosecution. These participants, despite reservations, wanted to make a VIS and would have done so if given the opportunity. For this reason, only five can be considered as victims who actively chose not to make a VIS. Non–VIS makers’ reasons for not wishing to make a VIS have been analysed qualitatively owing to the small sample and are presented in Chapter 4.

3.1.4.3 Authorship of the VIS

Almost 64% of participants reported writing their initial VIS draft without any additional input (see Table 3.17).

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>13 (59%)</td>
<td>3 (60%)</td>
<td>3 (60%)</td>
<td>5 (71.4%)</td>
<td>4 (80%)</td>
<td>28 (63.6%)</td>
</tr>
<tr>
<td>No</td>
<td>9 (41%)</td>
<td>2 (40%)</td>
<td>2 (40%)</td>
<td>2 (28.6%)</td>
<td>1 (20%)</td>
<td>16 (36.3%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 (100%)</td>
<td>5 (100%)</td>
<td>5 (100%)</td>
<td>7 (100%)</td>
<td>5 (100%)</td>
<td>44 (100%)</td>
</tr>
</tbody>
</table>

However, when further questioned, some VOC revealed that although they had written their draft VIS themselves, assistance was sometimes sought to proofread, to check content or for other reasons. Other VOC reported needing assistance throughout the VIS writing process. The data were analysed to provide a picture of the services used to assist with writing the VIS and to determine whether service use was crime specific or victim specific (see Table 3.18).

Victim support agencies were more commonly reported as being used by family victims. This is likely explained by the fact that over half the family victim participants had been supported by the HVSG. Victims of HCSA and those of
PA more commonly reported drafting the VIS without help and using informal assistance. Victims of DV more commonly relied on formal assistance and did not report using the support of family or friends in the writing process.

Table 3.18: VOC: Who provided assistance as you completed the writing of the VIS? (by crime category)

<table>
<thead>
<tr>
<th>Provider of assistance</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAS</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Victim support agent</td>
<td>10</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>Counsellor</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Sexual assault counsellor</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Family/friends</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>11</td>
</tr>
</tbody>
</table>

Note: Each number represents a VOC reporting they used the service in the production of their VIS. The columns and rows do not total 100%, as respondents may have referred to more than one source providing them with assistance when writing the VIS, and each was noted equally.

3.1.4.4 Type of assistance VOC required in writing the VIS

The most reported assistance was that of reviewing the VIS for possibly inadmissible or contentious content, formatting, tone and general proofreading of spelling and grammar (see Table 3.19). Assistance was most usually provided by a WAS officer, a victim support agent or a friend or family member. Half the family victim participants needed assistance to know how to start writing their VIS in the face of the enormity of their loss. Content and remembering what to include were issues for 40% of victims of SA, DV and HCSA, but were less often issues for victims of PA and for family victims. Formatting refers to how the VIS should be laid out and presented. Translation was not reported as required by any participants; however, this is unsurprising as all were fluent speakers of English.
### Table 3.19: Type of assistance required by VOC when writing or completing the writing of the VIS, by crime category

<table>
<thead>
<tr>
<th>Type of assistance required</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Totals N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>Checking it</td>
<td>21</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>95.45%</td>
<td>100%</td>
<td>100%</td>
<td>71.4%</td>
<td>80%</td>
<td>90.9%</td>
</tr>
<tr>
<td>How to start</td>
<td>11</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>20%</td>
<td>40%</td>
<td>28.6%</td>
<td>20%</td>
<td>36.3%</td>
</tr>
<tr>
<td>Formatting</td>
<td>9</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>41%</td>
<td>20%</td>
<td>40%</td>
<td>28.6%</td>
<td>20%</td>
<td>34.1%</td>
</tr>
<tr>
<td>Content</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>18.2%</td>
<td>40%</td>
<td>40%</td>
<td>42.9%</td>
<td>20%</td>
<td>27.3%</td>
</tr>
<tr>
<td>Things to remember</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>18.2%</td>
<td>40%</td>
<td>40%</td>
<td>42.9%</td>
<td>20%</td>
<td>27.3%</td>
</tr>
<tr>
<td>Writing it for me</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>20%</td>
<td>0%</td>
<td>14.3%</td>
<td>20%</td>
<td>6.8%</td>
</tr>
</tbody>
</table>

Note: Each number is a percentage of N within the column. The columns and rows do not total 100% as respondents may have referred to a number of items they needed assistance with when preparing their VIS, and each was noted and recorded equally.

### 3.1.4.5 Is support useful for VOC when writing the VIS?

Over 60% of VOC participants stated that support in writing the VIS was helpful (see Appendix 1, Table A1.11). Victims of SA and HCSA reported the highest need for support when writing the VIS. Victims of PA and family victims were split, half stating that support would be useful and half that the VIS was a private experience, needing to be composed alone. Some VOC appeared to make a distinction between drafting the VIS and the usefulness of support to review the draft. For a number of participants, revisiting the crime and assessing its impacts in order to prepare a VIS was too traumatic an experience to be undertaken alone and required professional support to attempt it.

### 3.1.4.6 Adequacy of preparation time to write the VIS

Most participants were given more than a month to prepare their VIS. Although most found this enough time, a third of family victims and victims of SA reported
finding it difficult to complete their VIS on time (see Appendix 1, Tables A1.12 & A1.13).\(^{27}\) SA matters are often prioritised over other matters at court in order to deal with them as expeditiously as possible, and 50% of family victims needing assistance with their VIS reported they did not know where to start when writing it.\(^{28}\) Half the participants in the PA category attended the Local Court and reported being given at least one week to make their VIS.

### 3.1.4.7 The emotional experience of writing the VIS

Participants were asked directly whether writing the VIS had been a challenging or upsetting process. Not all described the process as emotionally upsetting (see Table 3.20). The category of VOC with the lowest percentage reporting being 'upset' by the process were victims of DV.

#### Table 3.20: VOC: Was writing the VIS upsetting in any way? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>19</td>
<td>5</td>
<td>2</td>
<td>6</td>
<td>4</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>86%</td>
<td>100%</td>
<td>40%</td>
<td>86%</td>
<td>80%</td>
<td>82%</td>
</tr>
<tr>
<td>No</td>
<td>3</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>14%</td>
<td>0%</td>
<td>60%</td>
<td>14%</td>
<td>20%</td>
<td>18%</td>
</tr>
<tr>
<td>Total N</td>
<td>22</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>5</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

### 3.1.4.8 Challenging factors for VOC when writing the VIS

Participants described finding a number of factors as upsetting or challenging when writing their VIS (see Table 3.21). Participants often referred to a cluster of factors, each recorded separately against the descriptors.

Most participants (75%) described general emotional distress when writing their VIS, caused by the need to evaluate the impact of the crime on their lives.

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\(^{27}\) Most study participants attended the District or Supreme Court because their matters were of a serious nature and were therefore more protracted. Hence, these figures are not representative of the experience of VOC attending the Local Court, where turnaround is quicker, with some matters concluded within a day.\(^{28}\) See Practice Note 6, [10-200] Sexual Assault Case List, *Sexual Assault Trials Handbook*, Judicial Commission of NSW: <www.judcom.nsw.gov.au/publications/benchbks/sexual_assault/dc_criminal_pn06.html>.
(66%), acknowledge the impact (61%) and relive the trauma of the event (55%). Victims of SA and HCSA reported high rates of distress across various descriptors, with all primary victims of SA and PA reporting the highest level of distress caused by evaluating the impact of the crime upon their personal life.

Table 3.21: VOC: What was upsetting or challenging about writing the VIS? (by crime category)

<table>
<thead>
<tr>
<th>Challenge/upset</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reliving the trauma</td>
<td>12 55%</td>
<td>4 80%</td>
<td>1 20%</td>
<td>5 71%</td>
<td>2 40%</td>
<td>24 55%</td>
</tr>
<tr>
<td>Emotional distress</td>
<td>20 91%</td>
<td>4 80%</td>
<td>2 40%</td>
<td>5 71%</td>
<td>2 40%</td>
<td>33 75%</td>
</tr>
<tr>
<td>Not being able to describe the impact</td>
<td>7 32%</td>
<td>3 60%</td>
<td>1 20%</td>
<td>3 43%</td>
<td>2 40%</td>
<td>16 36%</td>
</tr>
<tr>
<td>Evaluating impact on personal life</td>
<td>14 64%</td>
<td>5 100%</td>
<td>0 0%</td>
<td>5 71%</td>
<td>5 100%</td>
<td>29 66%</td>
</tr>
<tr>
<td>Not knowing where to start</td>
<td>6 27%</td>
<td>3 60%</td>
<td>0 0%</td>
<td>4 57%</td>
<td>0 0%</td>
<td>13 29%</td>
</tr>
<tr>
<td>Having to acknowledge impact</td>
<td>12 55%</td>
<td>4 80%</td>
<td>2 40%</td>
<td>6 86%</td>
<td>3 60%</td>
<td>27 61%</td>
</tr>
</tbody>
</table>

Note: Each number is a percentage of N within the column. The columns and rows do not add up to 100%, as respondents may have referred to a number of factors that were upsetting or challenging about writing the VIS, and each was noted equally.

3.1.4.9 Was writing the VIS a positive experience?

Despite these difficulties, 74% of 46 participants stated that writing the VIS was a positive experience (see Table 3.22). Importantly, 80% of participant victims of SA and 100% of HCSA participants, who as categories had reported the highest levels of distress against all descriptors, stated that writing the VIS was a positive experience. These results suggest that although writing a VIS is a challenging experience for victims, it is also for many a positive one.
Table 3.22: VOC: Was writing the VIS a positive experience? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>16</td>
<td>4</td>
<td>4</td>
<td>7</td>
<td>3</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>73%</td>
<td>80%</td>
<td>57%</td>
<td>100%</td>
<td>60%</td>
<td>74%</td>
</tr>
<tr>
<td>No</td>
<td>6</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>2</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>27%</td>
<td>20%</td>
<td>43%</td>
<td>0%</td>
<td>40%</td>
<td>26%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22</td>
<td>5</td>
<td>7</td>
<td>7</td>
<td>5</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.1.5 The VIS in court

This section looks at victims’ understanding of how the VIS would be presented in court, their knowledge that the offender may see it, how the VIS would be handled once completed and their reactions to those processes. It presents findings regarding charge negotiations and the administrative processes of VIS editing.

3.1.5.1 Awareness of how the VIS would be presented in court

Regarding VIS protocol within the courtroom, 50% of VOC participants, reported they did not know how their VIS would be presented in court. This included not being aware of where it would be placed in sentencing proceedings, where they would stand if reading it, who they would address, whether their VIS would need to be sworn and how it would be acknowledged (see Table 3.23).

Table 3.23: VOC: Did you know how your VIS would be used in court? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 23</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>13</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>56.5%</td>
<td>33.3%</td>
<td>71.4%</td>
<td>28.6%</td>
<td>50%</td>
<td>51%</td>
</tr>
<tr>
<td>No</td>
<td>10</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>43.5%</td>
<td>66.7%</td>
<td>28.6%</td>
<td>71.4%</td>
<td>50%</td>
<td>49%</td>
</tr>
<tr>
<td>Total = N</td>
<td>23</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
3.1.5.2 Awareness of whether the offender would have access to the VIS

Most participants were aware the offender could have access to their VIS (see Appendix 1, Table A1.14). Family victims in general wanted the offender to read the VIS and to be aware of its contents; however, some participant victims of PA, DV and HCSA were more reticent (see Table 3.24). These findings suggest some victims prefer the offender not to know the extent of the harms suffered as a consequence of the offender’s actions.

Table 3.24: VOC: Did you want the offender to see your VIS? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>21</td>
<td>5</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>34</td>
</tr>
<tr>
<td></td>
<td>96%</td>
<td>83%</td>
<td>33%</td>
<td>57%</td>
<td>40%</td>
<td>74%</td>
</tr>
<tr>
<td>No</td>
<td>1</td>
<td>1</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>4%</td>
<td>17%</td>
<td>67%</td>
<td>43%</td>
<td>60%</td>
<td>26%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>5</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.1.5.3 Process of court matter: guilty plea or trial

In 27 of 55 VOC participant matters (49.1%) a guilty plea had been entered, with 26 matters where offenders were convicted following a trial. Participant matters of HCSA reported the highest proportion of guilty pleas (70%), with matters of SA and PA having the lowest proportion of guilty pleas (see Table 3.25).

---

29 Two participants contacted the study whose matters did not conclude in a conviction as the defendants were acquitted.
Table 3.25: VOC: What was your court process to conviction? (by crime category)

<table>
<thead>
<tr>
<th>Court process to conviction</th>
<th>Family victims N = 26</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 55</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trial</td>
<td>12</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>46.2%</td>
<td>57.1%</td>
<td>44.4%</td>
<td>28.6%</td>
<td>66.7%</td>
<td>47.3%</td>
</tr>
<tr>
<td>Guilty plea</td>
<td>14</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>2</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td>53.8%</td>
<td>28.6%</td>
<td>44.4%</td>
<td>71.4%</td>
<td>33.3%</td>
<td>49.1%</td>
</tr>
<tr>
<td>No conviction</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>14.3%</td>
<td>11.2%</td>
<td>0%</td>
<td>0%</td>
<td>3.6%</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td>7</td>
<td>9</td>
<td>7</td>
<td>6</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.1.5.4 Charge negotiations

Charge negotiations affect the content of a VIS and may explain the high level of editing reported by the participants (see Table 3.27). Over 50% of participants reported that changes were made to the charges in their matter, with charge negotiations being most prevalent for victims of PA and DV, some of whose matters were processed through the Local Court (see Table 3.26).

Table 3.26: VOC: Were the charges in your matter negotiated? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 48</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10</td>
<td>2</td>
<td>6</td>
<td>4</td>
<td>6</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>46%</td>
<td>33%</td>
<td>86%</td>
<td>57%</td>
<td>100%</td>
<td>58%</td>
</tr>
<tr>
<td>No</td>
<td>12</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>54%</td>
<td>67%</td>
<td>14%</td>
<td>43%</td>
<td>0%</td>
<td>42%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>6</td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
3.1.5.5 Editing the VIS

The percentage of VOC participants reporting that charges in their matter were negotiated (58%) (see Table 3.27) appears consistent with the percentage reporting their VIS was edited (see Table 3.26). However, these findings are not necessarily associated, as the nature of the material that required editing is not described. Booth (2013a) notes in her observation of 18 sentencing hearings where VISs were presented that some VISs accepted for oral presentation or tendering still contained material that was potentially defamatory or prejudicial to the offender or that referred to matters not part of the agreed statement of facts.

Table 3.27: VOC: Was your VIS edited? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>11</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>20%</td>
<td>60%</td>
<td>43%</td>
<td>60%</td>
<td>48%</td>
</tr>
<tr>
<td>No</td>
<td>11</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>80%</td>
<td>40%</td>
<td>57%</td>
<td>40%</td>
<td>52%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>5</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.1.5.6 Who edits the VIS?

VOC reported that their initial VIS draft was edited by victim service and criminal justice professionals. Numerical data were calculated by totalling the number of VIS makers reporting that an agent edited their VIS (see Table 3.28). The prosecution (prosecuting solicitor, police prosecutor or Crown prosecutor) and WAS were the most frequently reported as having edited the VIS. Over 10% of VOC also mentioned their VIS had been edited by the defence.

---

30 A VIS can go through many drafts before presentation. VOC, sometimes with the advice of friends or family, make edits or changes to their VIS before presenting their draft VIS to anyone involved in victim support or to criminal justice officials assisting them during the process of their matter.
Table 3.28: VOC: Who edited your VIS? (by crime category)

<table>
<thead>
<tr>
<th>VIS editor</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAS</td>
<td>4 (18%)</td>
<td>1 (20%)</td>
<td>2 (40%)</td>
<td>1 (14%)</td>
<td>1 (20%)</td>
<td>9 (20%)</td>
</tr>
<tr>
<td>Victim support agencies</td>
<td>3 (14%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>1 (20%)</td>
<td>4 (9%)</td>
</tr>
<tr>
<td>Prosecution</td>
<td>7 (32%)</td>
<td>1 (20%)</td>
<td>2 (40%)</td>
<td>3 (43%)</td>
<td>1 (20%)</td>
<td>14 (32%)</td>
</tr>
<tr>
<td>Defence</td>
<td>3 (14%)</td>
<td>0 (0%)</td>
<td>2 (40%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>5 (11%)</td>
</tr>
<tr>
<td>Judge</td>
<td>1 (5%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>1 (2%)</td>
</tr>
</tbody>
</table>

Note: Each number is a percentage of N within the column. The columns and rows do not total 100% because respondents may have referred to a number of sources who provided assistance when writing the VIS, and each was noted equally. The figures do not include victims who wrote their initial draft with a counsellor or victim support worker.

Most VOC participants stated they objected to their VIS being edited and felt strongly that VIS editing should not occur (see Appendix 1, Table A1.15). While many VOC were aware of the parameters of admissible content in the VIS, they believed it inappropriate that the expression of their suffering could be tempered or limited by the offender or the court.

3.1.5.7 Cross-examination of the VIS

VOC participants reported varying degrees of awareness of the possibility of being cross-examined on their VIS, with victims of SA reporting least awareness, despite the possibility of cross-examination being clearly stated in the VISIP (see Table 3.29). No participants reported being cross-examined on their VIS, consistent with previous studies (see Booth 2013a).
Table 3.29: VOC: Were you aware you could be cross-examined on your VIS? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 48</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>14 (64%)</td>
<td>2 (33%)</td>
<td>6 (86%)</td>
<td>5 (71%)</td>
<td>3 (50%)</td>
<td>30 (63%)</td>
</tr>
<tr>
<td>No</td>
<td>8 (36%)</td>
<td>4 (67%)</td>
<td>1 (14%)</td>
<td>2 (29%)</td>
<td>3 (50%)</td>
<td>18 (37%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 (100%)</td>
<td>6 (100%)</td>
<td>7 (100%)</td>
<td>7 (100%)</td>
<td>6 (100%)</td>
<td>48 (100%)</td>
</tr>
</tbody>
</table>

Forty-two participants were asked whether they feared being cross-examined on their VIS. All family members reported such fears, with many stating they regarded the possibility of being cross-examined as an opportunity to extend their voice (see Table 3.30).

Cross-examination was feared by 12 of the 20 primary victims who answered this question (60%). All participant victims of DV stated a fear of being cross-examined, with 60% of the PA participants who answered the question also reporting this fear. Results suggest fear of cross-examination is a genuine concern for some VOC when considering making a VIS.

Table 3.30: VOC: Would you be concerned if you were cross-examined on your VIS? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 4</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 5</th>
<th>Physical assault N = 5</th>
<th>Total N = 42</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>0 (0%)</td>
<td>1 (25%)</td>
<td>6 (100%)</td>
<td>2 (40%)</td>
<td>3 (60%)</td>
<td>12 (29%)</td>
</tr>
<tr>
<td>No</td>
<td>22 (100%)</td>
<td>3 (75%)</td>
<td>0 (0%)</td>
<td>3 (60%)</td>
<td>2 (40%)</td>
<td>30 (71%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 (100%)</td>
<td>4 (100%)</td>
<td>6 (100%)</td>
<td>5 (100%)</td>
<td>5 (100%)</td>
<td>42 (100%)</td>
</tr>
</tbody>
</table>
3.1.5.8 VIS read out or handed up in court

More VOC participants read their VIS than handed them up. All primary victims who reported that their VIS was read to the court had read them themselves. Most family victims read their VIS; only one male and one female family victim reported that their VIS was read by another member of their family. No participants reported using the services of a court support worker to read their VIS. All participants whose matters were dealt with in the Local Court handed up their VIS. Most were handed up in the crime categories of DV and PA.

The results suggest that gender, type of crime and type of court may influence the decision to read the VIS or to hand it up (see Tables 3.31 and 3.32). A larger percentage of male family victims (78%) read their VIS compared with female family victims (64%). Regarding primary victims, 50% of females and 40% of males read their VIS. Numbers may be skewed by the fact that almost none of the participating males who were eligible to make a VIS were victims of SA or DV and that more females than males participated in the study. However, it must be remembered that 7 of 8 non–VIS makers contacting the study were women.

Table 3.31: Male VOC VIS makers: Did you read your VIS or hand it up? (by crime category)

<table>
<thead>
<tr>
<th>Crime Category</th>
<th>Family victims N = 9</th>
<th>Sexual assault N = 0</th>
<th>Domestic violence N = 0</th>
<th>HCSA N = 3</th>
<th>Physical assault N = 2</th>
<th>Total N = 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Read VIS</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>78%</td>
<td>0%</td>
<td>0%</td>
<td>66.7%</td>
<td>0%</td>
<td>64%</td>
</tr>
<tr>
<td>Handed up VIS</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>22%</td>
<td>0%</td>
<td>0%</td>
<td>33.3%</td>
<td>100%</td>
<td>36%</td>
</tr>
<tr>
<td>Total = N</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>0%</td>
<td>0%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

31 Once a court has accepted a VIS, the victim or victim representative is entitled to read out part or all of the statement to the court. The reading of the VIS to the court is optional and voluntary (VISIP 2013/1998). There is no definition or guidelines provided for ‘victim’s representative’ in the VISIP or on the NSW Victims Services website (http://www.victimsservices.justice.nsw.gov.au/). It appears the victim’s representative can be anyone nominated by the victim.
Table 3.32: Female VOC VIS makers: Did you read your VIS or hand it up? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 14</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 4</th>
<th>Physical assault N = 2</th>
<th>Total N = 30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Read VIS</td>
<td>9 (64%)</td>
<td>3 (60%)</td>
<td>2 (40%)</td>
<td>3 (75%)</td>
<td>0 (0%)</td>
<td>17 (57%)</td>
</tr>
<tr>
<td>Handed up VIS</td>
<td>5 (36%)</td>
<td>2 (40%)</td>
<td>3 (60%)</td>
<td>1 (25%)</td>
<td>2 (100%)</td>
<td>13 (43%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>14 (100%)</td>
<td>5 (100%)</td>
<td>5 (100%)</td>
<td>4 (100%)</td>
<td>2 (100%)</td>
<td>30 (100%)</td>
</tr>
</tbody>
</table>

3.1.5.9 Judicial response to VIS

VOC participants were asked to describe the response of the judge or magistrate to their VIS within sentencing procedures (see Table 3.33). A comment was coded as positive if the judge acknowledged the suffering of the victim, thanked them for presenting their VIS or made some mention of it. If VOC stated that the judge did not mention the VIS but maintained a supportive demeanour during its presentation, such as listening attentively or using empathic body language such as nodding in understanding, that was also noted as positive acknowledgement.

Where participants perceived indifference on the judge’s part, stating that the judge appeared dismissive, inattentive or preoccupied during VIS presentation or did not acknowledge the VIS verbally or with supportive body language or non-verbal cues, this was coded as ‘not supportive’.

Participants who were more likely to report positive acknowledgement of their VIS by judges were family victims (64%) and victims of HCSA (60%). Conversely, participant victims of DV and PA were less likely to report that they received positive acknowledgement of their VIS. Although two-thirds of family victims reported positive acknowledgement, 32% felt that the judge had not been supportive of their VIS. It is to be noted that 30% of family victim participants, 60% of DV participants and 100% of PA participants handed up
their VIS, which suggests that judicial response is more likely to be made following an oral VIS, as supported by Booth (2013a) and Miller (2013).

Table 3.33 VOC: What was the judge’s response to your VIS? (by crime category)

<table>
<thead>
<tr>
<th>Judicial response</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 4</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 5</th>
<th>Physical assault N = 3</th>
<th>Total N = 39</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge positively acknowledged or commented on the VIS</td>
<td>14 64%</td>
<td>1 25%</td>
<td>0 0%</td>
<td>3 60%</td>
<td>0 0%</td>
<td>18 46%</td>
</tr>
<tr>
<td>Judge did not supportively acknowledge, or behaved dismissively towards, the VIS</td>
<td>7 32%</td>
<td>0 0%</td>
<td>2 40%</td>
<td>2 40%</td>
<td>3 100%</td>
<td>14 36%</td>
</tr>
</tbody>
</table>

Note: Table 3.33 tabulates the data for responses to the following two questions. For this reason, the total column does not total 100%.
Did the judge positively acknowledge or comment on your VIS?
Did the judge show no supportive acknowledgement of your VIS or act dismissively towards it?

3.1.5.10 Offender response to VIS

Of the participants who answered this question, 92% reported that the offender did not acknowledge their VIS (see Table 3.34). Acknowledgement was described as showing a facial response indicating emotion, being visibly moved, appearing contrite or in some other way being visibly affected on hearing the VIS.

Table 3.34 VOC: Did the offender respond or acknowledge your VIS? (by crime category)

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 4</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 5</th>
<th>Physical assault N = 3</th>
<th>Total N = 39</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>2 9%</td>
<td>0 0%</td>
<td>0 0%</td>
<td>1 20%</td>
<td>0 0%</td>
<td>3 8%</td>
</tr>
<tr>
<td>No</td>
<td>20 91%</td>
<td>4 100%</td>
<td>5 100%</td>
<td>4 80%</td>
<td>3 100%</td>
<td>36 92%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 100%</td>
<td>4 100%</td>
<td>5 100%</td>
<td>5 100%</td>
<td>3 100%</td>
<td>39 100%</td>
</tr>
</tbody>
</table>
3.1.6 Support and satisfaction

This section describes which agencies provided support to VOC during the VIS/sentencing process; VOC levels of satisfaction with their presentation of their VIS in court; whether, with hindsight, they would add anything to their VIS; and whether they would make a VIS again. Findings also show VOC satisfaction with the sentencing process in their matter and satisfaction with the sentence itself.

3.1.6.1 Support given to VOC during the VIS/sentencing process

Participants were asked who provided support to them during the VIS process. Where more than one support was named, all were equally recorded. VOC tended to mention those providing significant support, which often included support provided after the crime was committed and post-sentencing. Participants did not always differentiate between WAS and other victim support agencies.

For 60% of participants, support was provided by the police, for 54% by family and friends and for 50% by victim support agencies (see Table 3.35). A third of participant victims of PA and one-fifth of family victims received no support. Participant victims of DV received less support from the police than did any other category and little support from family and friends. Participant victims of HCSA appeared to use support from the police, family and friends rather than from other agencies. Family victims and SA victims reported higher levels of support from victim support services, likely due to referral services such as the HVSG, NSW Sexual Assault Services and NSW Rape Crisis. Support from the police was more commonly reported by participant victims of HCSA (57%) and family victims (76%), who also more frequently reported positive acknowledgement of their VIS by the judge or magistrate (see Table 3.33).
Table 3.35: VOC: Who were you supported by during the VIS/sentencing process? (by crime category)

<table>
<thead>
<tr>
<th>Type of support</th>
<th>Family victims N = 25</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 52</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>19 76% 43% 29% 4 57% 3 50%</td>
<td>3 43% 2 29% 4 29% 3 33%</td>
<td>2 29% 3 29% 2 29% 2 33%</td>
<td>31 60%</td>
<td>19 37%</td>
<td></td>
</tr>
<tr>
<td>WAS</td>
<td>10 40% 29% 3</td>
<td>2 43% 2 29% 3 33%</td>
<td>2 29% 2 29% 3 33%</td>
<td>19 37%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DPP solicitor</td>
<td>9 36% 14% 29% 29% 3 29%</td>
<td>1 14% 2 29% 3 33%</td>
<td>3 33% 4 33% 2 33%</td>
<td>13 25%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Victim support services</td>
<td>15 60% 71% 43% 29%</td>
<td>5 71% 3 29% 2 29%</td>
<td>1 17% 1 17% 0 20%</td>
<td>26 50%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family friend</td>
<td>16 64% 57% 14% 71%</td>
<td>1 43% 1 29% 5 29%</td>
<td>2 33% 0 33% 2 33%</td>
<td>28 54%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No support</td>
<td>5 20% 0% 0% 0% 14%</td>
<td>0 0% 0% 14% 2 33%</td>
<td>2 33% 1 17% 0 20%</td>
<td>8 15%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: Each number is a percentage of N within the column. The columns and rows do not total 100% as respondents may have referred to a number of sources who provided assistance when writing the VIS, and each was noted equally.

3.1.6.2 Satisfaction with presentation of VIS, the VIS process and sentencing outcome for VOC

VOC participants were asked about their satisfaction with the presentation of their VIS, the VIS process and the sentence handed down in their matter (see Tables 3.36, 3.37 and 3.38). Of those questioned, just over 70% were happy with the way their VIS was presented in court; however, only 40% were satisfied with the sentencing process and 39% with the sentence. When the responses are examined according to crime category, the picture is more nuanced. While 60% of victims of DV were satisfied with the presentation of their VIS in court, 83% were not happy with the sentencing proceedings nor the sentence handed down, and 75% of victims of SA were dissatisfied with the sentence. As mentioned previously, participant victims in these crime categories were more likely to have their charges negotiated.

More family victims and victims of HCSA reported satisfaction with the presentation of their VIS, and they reported most positive judicial responses to their VIS. While only one victim of SA reported a positive judicial reaction to her VIS, none reported a negative reaction. In addition, more victims of SA reported
being motivated to make a VIS for themselves than did victims in other crime categories. The disparity in the number reporting satisfaction with the presentation of their VIS and satisfaction with the sentencing process and sentence suggests that VOC are able to isolate their feelings of satisfaction with the VIS from their feelings about the sentencing hearing and their reaction to the sentence. The participant’s positive experience of writing the VIS (see Table 3.22) appeared not to be coloured by the sentencing experience.

**Table 3.36: VOC: Were you happy with the presentation of your VIS to the court? (by crime category)**

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 44</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>17 (77%)</td>
<td>4 (80%)</td>
<td>3 (60%)</td>
<td>5 (71%)</td>
<td>2 (40%)</td>
<td>31 (70%)</td>
</tr>
<tr>
<td>No</td>
<td>5 (23%)</td>
<td>1 (20%)</td>
<td>2 (40%)</td>
<td>2 (29%)</td>
<td>3 (60%)</td>
<td>13 (30%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 (100%)</td>
<td>5 (100%)</td>
<td>5 (100%)</td>
<td>7 (100%)</td>
<td>5 (100%)</td>
<td>44 (100%)</td>
</tr>
</tbody>
</table>

**Table 3.37: VOC: Were you happy with the sentencing process? (by crime category)**

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 23</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 47</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>9 (39%)</td>
<td>3 (60%)</td>
<td>1 (17%)</td>
<td>4 (57%)</td>
<td>2 (33%)</td>
<td>19 (40%)</td>
</tr>
<tr>
<td>No</td>
<td>14 (61%)</td>
<td>2 (40%)</td>
<td>5 (83%)</td>
<td>3 (43%)</td>
<td>4 (67%)</td>
<td>28 (60%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>23 (100%)</td>
<td>5 (100%)</td>
<td>6 (100%)</td>
<td>7 (100%)</td>
<td>6 (100%)</td>
<td>47 (100%)</td>
</tr>
</tbody>
</table>

**Table 3.38: VOC: Were you happy with the sentence? (by crime category)**

<table>
<thead>
<tr>
<th></th>
<th>Family victims N = 23</th>
<th>Sexual assault N = 4</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>11 (48%)</td>
<td>1 (25%)</td>
<td>1 (17%)</td>
<td>3 (43%)</td>
<td>2 (33%)</td>
<td>18 (39%)</td>
</tr>
<tr>
<td>No</td>
<td>12 (52%)</td>
<td>3 (75%)</td>
<td>5 (83%)</td>
<td>4 (57%)</td>
<td>4 (67%)</td>
<td>28 (61%)</td>
</tr>
<tr>
<td>TOTAL = N</td>
<td>23 (100%)</td>
<td>4 (100%)</td>
<td>6 (100%)</td>
<td>7 (100%)</td>
<td>6 (100%)</td>
<td>46 (100%)</td>
</tr>
</tbody>
</table>
3.1.6.3 Happiness with the contents of the VIS over time and decision to make a VIS again with hindsight

Almost half the participants questioned stated that they would make changes to their VIS if they were to make it again (see Appendix 1, Table A1.16). Recent research has noted that time changes the victim’s perception of their victimisation, as the effects of the crime become more apparent, suggesting that the greater the length of time from crime incident to sentencing the more likely a VIS will be made (Lens, Pemberton & Bogaerts 2013).

All participants, apart from one victim of DV, stated that if given the opportunity again, they would wish to make a VIS (see Appendix 1, Table A1.17). These results confirm that VOC attribute some worth to the process and presentation of the VIS.

3.2 VSP sample

3.2.1 Description of the sample

The VSP sample comprised Crown and police prosecutors, officers of the ODPP Witness Assistance Service (WAS), and providers offering VOC legal, court and personal support. A detailed composition of the VSP sample is presented in Table A1.18 in Appendix 1. Of 35 participants, 32 were female and three were male. The 2010 Profile of Women’s Employment in NSW reported that industries that employ large percentages of women include health care and social assistance (79% of all employees are women) and education and training (68.9%) (Baird et al 2010).

Thus, it is not surprising that most VSP participants were female, as women are predominantly employed in positions providing administrative, educative, legal and psycho/social support, mainly funded within the public service sector, the highest employer of women in NSW (Baird et al 2010:18). Similarly, the 2014 Australian Institute of Criminology (AIC) study of supports for male VOC in NSW found that women were over-represented in areas of victim support. Of their sample group of 25 victim support service workers interviewed to inform the study, ‘the majority’ were women, and ‘all of the support services consulted (for
the study) were staffed predominantly by women’ (Bricknell, Boxall & Andrevski 2014:3, 36).

Demographics of age, country of origin and educational background were not recorded for this sample. However, most VSP interviewed were over 30 years of age and had required tertiary level qualifications to meet the requirements of their position.

3.2.2 VIS response rates

VSP nominating crime categories where VIS were more likely to be made in their experience (see Appendix 1, Table A1.19) stated most VIS are made in death matters and in matters of HCSA, SA and serious PA where an injury was sustained by the victim. Such matters are mainly heard in the District and Supreme Court. VSP reported few VIS were made in the Local Court. Participants working at WDVCAS, Wirringa Baiya Legal Service and IDRS reported that their clients’ matters rarely got to court and/or conviction. Interestingly, DV as a crime category was not referred to by any VSP as a crime category where VIS are likely or unlikely to be made, whereas robbery was mentioned by 13 participants as a category where VIS are not made.

VSP interviewed were not able to provide concrete numerical data regarding the number of their clients who make a VIS within a fixed period. Overall, 36% of VSP stated ‘most’ or ‘many’ of their clients make a VIS, with 36% stating that ‘a few’ or ‘no’ clients make a VIS, and 27% stating that they ‘didn’t know’ how many victims eligible would make a VIS (see Appendix 1, Table A1.20). When broken down into particular services, it seems that a VIS is more often made in serious matters, defined as being matters where the victim has sustained a fatal or physical injury requiring urgent medical assistance or the intervention of emergency services, or has been sexually assaulted. It is, however, interesting to note the varied understandings within the different services of how many VIS are made.
3.2.3 Understandings of the VIS

3.2.3.1 VSP understandings of the purpose of the VIS

All VSP stated that a purpose of the VIS is to allow the victim to have a voice in the proceedings. In addition, 94% stated that the purpose of the VIS is to also inform the court and judge or magistrate about the impact of the crime on the victim and the objective seriousness of the crime committed. While 39% stated that a purpose of the VIS is to make the victim feel better, 61% did not consider this a purpose of the VIS (see Table 3.39). All participants asked (N = 33) stated that the purpose of the VIS is not to affect sentence, despite the fact that the VIS of primary victims may be taken into consideration at sentencing in certain circumstances.

Table 3.39: VSP: What are the purposes of the VIS?

<table>
<thead>
<tr>
<th></th>
<th>To have a voice in proceedings</th>
<th>To inform the judge/court of the impact of the crime</th>
<th>To make the victim feel better</th>
<th>To affect sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>33</td>
<td>31</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>94%</td>
<td>39%</td>
<td>0%</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>2</td>
<td>20</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>6%</td>
<td>61%</td>
<td>100%</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>N = 33</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

3.2.3.2 VSP experience of the purpose of the VIS from their client’s perspective

Reasons outlined by VSP regarding why VOC wish to make a VIS were similar to the purposes and expectations VOC reported—namely, for the victim to have a say in proceedings, to highlight the full impact of the crime against them to the court, to affect sentence, to be able to address the defendant in a safe environment and, where applicable in death matters, to bring the personhood of the deceased into the court room. Four VSP interviewed did not have experience of their clients considering a VIS.

VSP reported the multiple reasons VOC may give for making a VIS (see Table 3.40). While over half of VSP stated that the purpose of the VIS is not to provide
a therapeutic outcome, nearly a third interviewed stated that they encourage their clients to make a VIS because it can be a therapeutically beneficial experience for them. Despite the fact that VSP stated that the purpose of the VIS is not to affect sentence (see Table 3.39), nearly 90% stated that this is a motivation for some of their clients (see Table 3.40). Only one participant, a Crown prosecutor, said they inform clients that the VIS might affect sentence.

Table 3.40: VSP: What reasons do your clients give for wishing to make a VIS?

<table>
<thead>
<tr>
<th>Reason</th>
<th>Yes N=29</th>
<th>Yes %</th>
<th>Yes N=29</th>
<th>Yes %</th>
<th>Yes N=29</th>
<th>Yes %</th>
<th>Yes N=29</th>
<th>Yes %</th>
<th>Yes N=29</th>
<th>Yes %</th>
</tr>
</thead>
<tbody>
<tr>
<td>To have their say</td>
<td>29</td>
<td>100%</td>
<td>29</td>
<td>100%</td>
<td>29</td>
<td>100%</td>
<td>29</td>
<td>100%</td>
<td>9</td>
<td>31%</td>
</tr>
<tr>
<td>To highlight the full impact of the crime to the court</td>
<td>26</td>
<td>89.7%</td>
<td>25</td>
<td>100%</td>
<td>21</td>
<td>100%</td>
<td>1</td>
<td>3.5%</td>
<td>1</td>
<td>3.5%</td>
</tr>
<tr>
<td>N=29</td>
<td></td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
</tr>
<tr>
<td>To affect sentence</td>
<td>26</td>
<td>89.7%</td>
<td>25</td>
<td>100%</td>
<td>21</td>
<td>100%</td>
<td>1</td>
<td>3.5%</td>
<td>1</td>
<td>3.5%</td>
</tr>
<tr>
<td>To address the offender in a ‘safe’ environment</td>
<td>100%</td>
<td></td>
<td>0%</td>
<td></td>
<td>0%</td>
<td></td>
<td>0%</td>
<td></td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>To bring the deceased into the courtroom</td>
<td>21</td>
<td>100%</td>
<td>21</td>
<td>100%</td>
<td>29</td>
<td>100%</td>
<td>29</td>
<td>100%</td>
<td>29</td>
<td>100%</td>
</tr>
<tr>
<td>We suggested that the VIS might provide them therapeutic benefits</td>
<td>9</td>
<td>31%</td>
<td>20</td>
<td>69%</td>
<td>28</td>
<td>96.5%</td>
<td>28</td>
<td>96.5%</td>
<td>28</td>
<td>96.5%</td>
</tr>
<tr>
<td>N=29</td>
<td></td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
</tr>
<tr>
<td>We suggested it might affect sentence</td>
<td>1</td>
<td>3.5%</td>
<td>28</td>
<td>96.5%</td>
<td>28</td>
<td>96.5%</td>
<td>28</td>
<td>96.5%</td>
<td>28</td>
<td>96.5%</td>
</tr>
<tr>
<td>N=29</td>
<td></td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
<td>N=29</td>
<td></td>
</tr>
</tbody>
</table>

Other reasons that VSP gave for VOC making a VIS are presented in Table A1.21 in Appendix 1. Five of 15 reported VOC using the VIS to redress the balance of power between the victim and the offender in court, and four participants from victim support agencies reported that some of their clients were instructed to provide a VIS by the prosecutor, concurring with VOC data (see Table A1.10) where 10% of VOC reported that they felt obligated or influenced to make a VIS following advice from the police or prosecutor that submission of a VIS might affect sentence. Other reasons VSP gave for VOC wishing to make a VIS included:

- the ability to inform the offender or the offender’s family of the impact of the crime
- the ability to present emotional rather than factual detail to the court
- VIS content might aid the rehabilitation of the offender
- pressure of public obligation and feelings of guilt if they did not.
3.2.3.3 VSP experience of VIS and its effect on sentence

Most VSP interviewed implied a strong reluctance to encourage victims to make a VIS as a means to affecting sentence. However, although VSP stated that the purpose of a VIS was not to affect sentence, when asked whether VISs affect sentences, of 30 participants who responded, 7% reported that they did and 30% reported that they sometimes did affect sentence. Responses refer here to sentencing in general, with no discrimination between sentencing of death matters and primary victim matters (see Table 3.41).

Table 3.41: VSP: Does a VIS affect sentence?

<table>
<thead>
<tr>
<th></th>
<th>N = 30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>7%</td>
</tr>
<tr>
<td>No</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>40%</td>
</tr>
<tr>
<td>Sometimes</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>30%</td>
</tr>
<tr>
<td>Don’t know</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>23%</td>
</tr>
<tr>
<td>Total = N</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

3.2.3.4 Factors that affect VOC making a VIS

Specific factors that might affect the ability of, or decision by, VOC to make a VIS were drawn from early analysis of VOC data regarding barriers and considerations when deciding to make a VIS. A number of VSP, when interviewed, affirmed these factors as affecting their client’s decision to make a VIS (see Table 3.42). VSP stated that some clients might be affected by more than one factor, while others may only be affected by one or none.
Table 3.42: VSP: factors that can affect the decision of VOC to make a VIS

<table>
<thead>
<tr>
<th>Number of VSP affirming this reason as a factor</th>
<th>Do not want the offender to know the full impact of the crime on the victim N = 33</th>
<th>Do not want to present as a victim N = 33</th>
<th>VIS has no impact on sentence, so there is no point making one N = 33</th>
<th>Shame of personal revelation and victimhood N = 33</th>
<th>Literacy Issues N = 33</th>
<th>Fear of retribution from offender or offender’s family N = 33</th>
<th>Fear of public speaking N = 33</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL N = 33</td>
<td>29</td>
<td>29</td>
<td>28</td>
<td>27</td>
<td>26</td>
<td>26</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>91%</td>
<td>90%</td>
<td>85%</td>
<td>82%</td>
<td>79%</td>
<td>79%</td>
<td>61%</td>
</tr>
<tr>
<td>Have no experience of this being a factor</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>9%</td>
<td>9%</td>
<td>15%</td>
<td>18%</td>
<td>21%</td>
<td>21%</td>
<td>39%</td>
</tr>
<tr>
<td>TOTAL N = 33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Note: 33 VSP responded with multiple factors that could affect their client’s decision to make a VIS; therefore, the factor column totals more than 100.

Most VSP (97%) stated one of the main reasons VOC give for deciding not to make a VIS is that they do not want to further engage in the criminal justice process. It could be argued that this reason was not given by VOC because those who felt this way would have been unlikely to engage with the study. However, the reasons why VOC chose to disengage with the CJS are likely included, at least in part, as factors considered by VOC in the decision to make or not make a VIS (see Chapter 4).

The majority of VSP are aware through their experience that some victims do not want the offender to understand the full impact the crime has had on them, do not want to present as a victim in court, feel too ashamed of their hurts to reveal them, and/or fear retribution from the offender (see Table 3.42). On a more practical level, literacy issues and fear of public speaking were also factors given by VSP as reasons VOC choose not to make a VIS.
3.2.4 Writing the VIS

3.2.4.1 VSP Experience of type of assistance requested by VOC with preparation of VIS

Over 84% of VSP interviewed reported that their clients ‘often’ (65.6%) or ‘sometimes’ (18.8%) need assistance to understand the purpose of the VIS (see Table 3.43). Findings suggest that while VOC may be able to read and work through VIS paperwork, the intention of the VIS is not as easily comprehended, its purpose remaining ambiguous for some. In addition, 65.5% stated that VOC sometimes need assistance due to literacy issues and with understanding why the VIS can be edited, with 53% stating that VOC sometimes need assistance with translation and 47% that VOC sometimes need assistance with drafting the VIS.

Table 3.43: VSP: What is the nature and regularity of assistance requested by your clients in preparing a VIS?

<table>
<thead>
<tr>
<th>Assistance</th>
<th>Often</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
<th>N = 32</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understanding the purpose of the VIS</td>
<td>21</td>
<td>6</td>
<td>4</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>65%</td>
<td>20%</td>
<td>12%</td>
<td>3%</td>
<td>100%</td>
</tr>
<tr>
<td>How to draft the VIS</td>
<td>12</td>
<td>15</td>
<td>3</td>
<td>2</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>37%</td>
<td>47%</td>
<td>10%</td>
<td>6%</td>
<td>100%</td>
</tr>
<tr>
<td>What the VIS can contain</td>
<td>18</td>
<td>10</td>
<td>3</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>56%</td>
<td>31%</td>
<td>10%</td>
<td>3%</td>
<td>100%</td>
</tr>
<tr>
<td>Translation services</td>
<td>4</td>
<td>17</td>
<td>8</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>12%</td>
<td>53%</td>
<td>25%</td>
<td>10%</td>
<td>100%</td>
</tr>
<tr>
<td>Assistance due to issues of literacy</td>
<td>5</td>
<td>21</td>
<td>3</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td></td>
<td>15%</td>
<td>65%</td>
<td>10%</td>
<td>10%</td>
<td>100%</td>
</tr>
<tr>
<td>Understanding why contents might be</td>
<td>7</td>
<td>21</td>
<td>3</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td>edited</td>
<td>22%</td>
<td>65%</td>
<td>10%</td>
<td>3%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Just over 50% of VSP said VIS templates are not routinely provided to their clients, the template being perceived as too prescriptive and as negating the intention of the provision of the VIS—to provide the victim with an opportunity to
convey in their own words to the court the personal, individual impact of the crime. Despite this, nearly 40% reported that they ‘often’ or ‘sometimes’ provide templates (see Table A1.22).

3.2.5 The VIS in court

3.2.5.1 Editing of the VIS

Of 27 VSP, most (81%) stated that based on their experience, VISs are often edited; only 8% stated that VISs are rarely left untouched (see Table 3.44). Overall, VSP reported VIS editing occurring at more frequent rates than those reported by the VOC sample.

| Table 3.44: VSP: Are VIS edited in your experience? |
|-----------------|-----------------|-----------------|-----------------|
| Frequency       | Often           | Sometimes       | Rarely          |
| N = 27          | 22              | 3               | 2               |
|                 | 81%             | 11%             | 8%              |
| Total = N       | 27              | 100%            |                 |

3.2.5.2 Who edits the VIS?

Consistent with VOC data, VSP reported that the prosecution is most likely to edit the VIS (see Table 3.45). Almost 50% of VSP participants reported experience of judicial editing of VIS. Such editing occurs late in the process, often on the day of VIS presentation or reading. This last-minute editing of VIS by the judiciary can be especially traumatic for the victims (Booth 2013a; Rock 2010).

| Table 3.45: VSP: Who edits the VIS in your experience? |
|-----------------|-----------------|-----------------|-----------------|
| Prosecutor: DPP solicitor or Crown N = 26 | WAS N = 26 | Defence N = 26 | Judge N = 26 |
| Number of VSP  | 25              | 13              | 18              | 12              |
| 96%             | 50%             | 69%             | 46%             |
3.2.5.3 Fear of cross-examination

VSP interviewed stated that some of their clients choose not to make a VIS for fear of cross-examination, although of 29 respondents only one was aware of a victim being cross-examined on their VIS.

3.2.5.4 VSP experience of numbers of VIS read in court

Most VSP (34%) stated that ‘a few’ VOC read their VIS in court (see Table 3.46). Here, VSP were referring to clients who choose to personally read their VIS in court rather than electing another person to read it for them. Although almost as many VSP (24%) stated that they did not know how many of their clients read their VIS, the ‘don’t know’ responses tended to come from VSP who had had less involvement with clients during sentencing proceedings. Only three services reported that ‘many’ or ‘most’ VOC read their VIS, and these were generally services dealing with more-serious offences.
Table 3.46: VSP: What proportion of your clients choose to read their VIS aloud in court?

<table>
<thead>
<tr>
<th>VSP</th>
<th>Most</th>
<th>Many</th>
<th>A few</th>
<th>None</th>
<th>Don’t know</th>
<th>N = 33</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAS officers</td>
<td>0</td>
<td>8</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Victims Services officers (NSW Department of Justice)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Wirringa Baiya Aboriginal Women’s Legal Centre</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>DPP Crown Prosecutors, Sydney</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Police Prosecutor, Sydney</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>WDVCAS Solicitor/Coordinator, Sydney</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>MACSS VWCCS</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>HVSG</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Enough is Enough CEO</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Enough is Enough Cultural Coordinator</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>VOCAL</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>ASCA</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>IDRS manager</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>1</td>
<td>9</td>
<td>11</td>
<td>4</td>
<td>8</td>
<td>33</td>
</tr>
</tbody>
</table>

3.2.5.5 Importance of judicial and defendant response to VIS

Over 75% of VSP responding stated the judge’s reaction was ‘very important’ to their clients; only 7% stated the judge’s reaction was ‘not very important’. When asked how important the offender’s reaction to the VIS was for their clients, 45% stated it was ‘very important’, with 21% stating it was ‘not very important’ (see Table 3.47). This suggests that VSP perceive the judge’s reaction to the VIS to be highly valued by their clients. Interestingly, some VSP were unsure whether the reaction of the judge (17%) and the offender (21%) were important to their clients.
Table 3.47: VSP: To what extent is the reaction of the judge or offender important to your clients?

<table>
<thead>
<tr>
<th>Extent</th>
<th>Judge N = 29</th>
<th>Offender N = 29</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very important</td>
<td>22</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>76%</td>
<td>45%</td>
</tr>
<tr>
<td>Not very important</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>7%</td>
<td>21%</td>
</tr>
<tr>
<td>Not sure</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>17%</td>
<td>21%</td>
</tr>
<tr>
<td>Not applicable*</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>13%</td>
</tr>
<tr>
<td>Total</td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

* Not all VSP participants were able to respond to this question because some were not involved in the sentencing proceedings of their clients.

3.2.6 Satisfaction levels

3.2.6.1 Factors providing satisfaction for VOC at sentencing

While over 80% of VSP stated that the ability to participate in sentencing proceedings, to describe the impact of the crime, and to have a voice gives satisfaction to their clients, over 80% also stated that the sentence itself gives VOC satisfaction (see Table 3.48). However, while all VSP stated that participatory factors of VIS provides satisfaction, three VSP (11.6%) stated that the sentence is not a factor providing satisfaction for their clients.

Table 3.48: VSP: What gives your clients most satisfaction at sentencing?

<table>
<thead>
<tr>
<th></th>
<th>Participating N = 27</th>
<th>Ability to describe the impact of the crime N = 27</th>
<th>Having a voice N = 26</th>
<th>Sentence N = 26</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>22</td>
<td>22</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>81%</td>
<td>81%</td>
<td>81%</td>
<td>81%</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>12%</td>
</tr>
<tr>
<td>Not aware</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>19%</td>
<td>19%</td>
<td>19%</td>
<td>7%</td>
</tr>
<tr>
<td>Total</td>
<td>27</td>
<td>27</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>
3.2.6.2 The importance of VIS as a provision for VOC

Towards the end of the interview, VSP were asked to consider both the positives and negatives of the VIS experience for their clients. Almost 80% of VSP working with clients eligible to make a VIS stated that the VIS was an important provision, although 22% felt VIS importance to the victim was crime specific (see Appendix 1, Table A1.23).

3.3 Summary

The quantitative data provide a useful, broad picture of the VIS experience and reveal some unusual findings, now outlined.

The study was interested in the influence of gender, culture and literacy on VIS take-up rates. The results show proportionately fewer female participants (69.6%) than male participants (83.3%) chose to make a VIS when given the opportunity, which appears a surprising finding considering previous studies suggest women are more likely to present a VIS (Erez, Kichling & Wemmers 2011; Meredith & Paquette 2001). However, male participant numbers were small, representing only 30% of the total sample, and over 50% of male participants were family victims as opposed to 34% of female participants. The VSP results suggest that VISs are most likely to be made in death matters, where most male VIS makers in this study are represented. Increasingly, victim literature is noting that male victims may find it more challenging to their sociocultural status than women do to enlist victim support (Bricknell, Boxall & Andrevski 2014; Sutton & Farrall 2005), preferring to underplay their vulnerability (Goodey 1997; Stanko & Hobdell 1993), which may explain why fewer men might choose to participate in victim studies.

Considering the recent AIC study into support for male victims (Bricknell, Boxall & Andrevski 2014) suggests men even struggle to come forward to report crimes against them, figures of male victims engaging with the CJS are not likely to reflect a true picture of male victimisation. In terms of the VIS, Meredith and Paquette (2001:15) suggest that men may be less likely than women to want to expose their feelings about their victim experience. Leverick, Chalmers
and Duff (2007:130) reported that their in-depth interviews with 10 male and 10 female primary VOC found seven of 10 females presented a VIS as opposed to three of 10 males, and two of seven male victims of assault made a VIS compared with three of four female victims of assault. As no males are represented in the adult victim categories of SA or DV in this study, it is possible that the picture revealed by the results would be different if the sample size were larger. However, the pattern of male engagement with this study is perhaps consistent with the demographic of male victims engaging with the VIS process.

Women appear more willing to engage in studies regarding victimisation; however, women are also the interest of many criminology studies exploring family violence and violence against women (see Hoyle & Zedner 2007). Walklate (2004:13) describes crime as being a ‘male-dominated activity’.\(^{32}\) Conversely, it could be argued that the interests of criminologists have provided a more dominant picture of female VOC than male, with an understanding that being a victim is a female-dominated activity.\(^{33}\) This gendered picture, until recently, largely ignored male victims. If included at all, it was assumed that, similar to male offenders, the masculinity and status of male victims would be supported within a patriarchal criminal justice process, in that their physical and intellectual powers would not be challenged. Female victims, in comparison, continue to be viewed as those whose status is undermined within the CJS, in that their strength and intellect are questioned (Davies 2007).

Viewing the criminal justice process through a gendered paradigm of females as victims and males as perpetrators (see Greer 2009; Walklate, 2004; Hoyle 2007) in a broad sense, creates different gender challenges for VOC regarding the VIS. In making a VIS and revealing the full impact of the consequential

\(^{32}\) In terms of gender and crime, the fact that crimes of personal violence are mainly committed by males is consistently statistically proven. In 2011, males were nearly four times more likely to commit offences intended to cause injury and more than 28 times more likely to commit sexual assault than were women, with the male victimisation rate for sexual assault about one-sixth that of females. See Australian Bureau of Statistics, ‘Gender Indicators, Australia, Jan 2012 (cat. no. 4125.0)\(^{33}\) Walklate (2007:18) describes the victimological other as being the male perpetrator of crime and the criminological other as being the female victim of crime.
personal harms suffered—not only to the court but also to the public and the offender—the risks differ for males and females. More generally, male victims risk their personal pride and status, which are intrinsic. Female victims, arguably historically and culturally conditioned to subjugate such intrinsic and—what Maslow (1943) would see as—higher-order cares of self-esteem, face extrinsic risks to their personal safety and, sometimes, the safety of their children. The results suggest that some primary female victims feel less protected within the CJS and choose to not make a VIS, believing that by making such a choice they will protect themselves from the offender emotionally and physically, from being further exposed publicly and/or privately, or from their suffering not being believed or validated by the court. Conversely, the normative assumption of the female victim stereotype makes it more acceptable for women to disclose their vulnerabilities and hurts, supported, possibly, by an expectation within support services for them to wish to do so (see Erez Kichling & Wememrs 2011). This may explain why studies suggest women are more likely to make a VIS. Meredith and Paquette (2001) in their VIS study suggested that women may see more benefit in preparing a VIS than men do. While previous studies suggest that more women than men make a VIS, with Booth (2013a) concluding that making a VIS is a ‘gendered activity’, there is scant research explaining why.

It is interesting to note that of eight non–VIS makers, all of whom were primary victims, seven were female, six being victims of DV, SA or PA by an ex-partner or someone known to them. It is unclear from the quantitative data whether female victims in these particular crime categories are less likely to make a VIS because of safety needs, their need to protect their relationship with the offender or their expectation that their disclosures will be received negatively (see Herman 2005). In terms of service provision, this information is relevant. However, gender-specific data in VIS studies appears lacking, for example:

- The Scottish study (Leverick, Chalmers & Duff 2007) did not make reference to gender in relation to the decision to make a VIS.
- The 2009 Victorian study prepared by the Victims Support Agency (VSA, 2009) did not report gender or the numbers representing each category and did not differentiate between VIS makers and non–VIS makers.
• The 2004 Home Office study (Graham et al 2004) did not analyse by gender, crime category or VIS take-up.

In a systematic review of 33 empirical studies into the needs of VOC, ten Boom and Kuijpers (2012:164) reported that ‘the most striking finding’ of their research was that ‘gender did not appear to be a standard variable’ in research assessing the needs of victims.

Analysis of the results of this study cannot ignore the fact that both samples are small and the VOC sample self-selected. For this reason, some results may be an artefact of the sample. As the VSP sample data reveal, victim support workers in government and non-government agencies tend to be female, as supported by Bricknell, Boxall & Andrevski (2014). Whether this female front line acts as a deterrent to male primary victims considering VIS, knowing they would need to volunteer information about the nature of the consequences of their crime experience is worth considering. Certainly the quantitative data suggest that of primary victims, fewer males than females make a VIS.

In terms of ethnicity and culture, within the VOC sample those of white Anglo/Australian descent are over-represented while those of non-Anglo/Australian descent are under-represented as VOC in relation to statistics reported in current NSW victimisation studies (ABS 2013). ABS victimisation data (ABS 2013) show that one-third of victims of PA or threatened violence in Australia were born overseas, with NSW recorded crime statistics (ABS 2011) indicating that migrants were three times more likely to be victims of such attacks. It is possible that these are not the true figures; issues of under-reporting (Bartels 2011) and the fact that data might not have been routinely collected about a victim’s country of origin may reduce the stated victimisation levels (Baur 2006). Fifty-five participants in this study provided their residential postcodes, which indicate that about 80% of participants lived within a three-hour drive of Sydney and 10% lived in Sydney. It is interesting to note the small number of VOC participants from China, Indonesia and India, despite the dense population of people from those countries who live in and around Sydney (ABS
In addition, no participants came forward from Middle Eastern or African backgrounds. In NSW, Aboriginal people are three and a half times more likely to suffer a crime of SA than those identifying as Anglo/Australian (ABS 2013); and 7% of PA victims in NSW are Aboriginal. However, no participants in the study identifying as Aboriginal reported crimes of PA or adult SA, suggesting that Aboriginal VOC may be under-represented within the sample in these categories.

The focus of this study was the VIS rather than victimisation, and results suggest that there may be a difference between the demographics of the VIS maker and the general victim of crime. An early criticism of the VIS was that it favoured individuals who speak the language of the dominant culture and possess a confidence derived from knowledge of the dominant culture’s procedures and norms (Cassell 2009; Erez & Rogers 1999b; Herman 2003).

As this study was interested in ethnicity, culture and language as possible barriers to making a VIS, perhaps more revealing is a comparison of the country of birth and ethnic background of VIS makers and non–VIS makers. Literature suggests that VOC from minority or stigmatised groups face particular obstacles when engaging with criminal justice processes (Burton, Evans & Sanders 2007; Herman 2003). Although the group of non–VIS makers is small in number, over 60% of non–VIS makers were not born in Australia or were members of ethnic minorities.

No problem of literacy was revealed within the VOC sample; however, nearly 80% of VSP interviewed stated that, in their experience, issues of literacy and comprehension of English were barriers for VOC making a VIS, supporting findings of previous studies (Herman 2005; Meredith & Paquette 2001).

34 Reasons for this are difficult to pinpoint. The method of dissemination of study information may have missed this demographic; language may have been a barrier as may have cultural directives.
Richards (1992:133) suggested that ‘class, gender and ethnic differences’ would result in the ‘selective utilisation’ of the VIS process, due mainly to financial resources, literacy difficulties and cultural differences, which would ‘exacerbate the frustration and powerlessness’ experienced by some victims. The quantitative results in this study show that when the VOC sample is examined according to crime category, age, gender, country of origin and consequential harms, it appears that particular barriers may affect particular victims of particular crimes at particular times (see Bronfenbrenner’s [1979] ecological systems theory). In other words, barriers already noted by previous scholars may not be necessarily be universal to all victims but may apply more to certain cohorts or persons than to others (ten Boom & Kuijpers 2012). Such information is useful in determining appropriate service provision and in providing victim support services with a deeper and more nuanced understanding of the potential needs of the client base. Themes of gender, culture and literacy are examined in Chapters 4 and 5.

Within the VOC sample, all primary victims, whether or not they had made a VIS, reported suffering psychological problems, and 88% of non–VIS makers reported their physical injuries resultant from the crimes against them as serious. This suggests that not all victims suffering serious physical and psychological effects will decide to make a VIS. This finding differs from previous VIS studies that suggest a strong correlation between the seriousness of the effects of a crime on a victim and their likelihood to make a VIS (Erez, Roeger & Morgan 1994; Leverick, Chalmers & Duff 2007; VSA 2009). Importantly, 88% of those choosing not to make a VIS were female primary victims.

Victims of PA and DV reported higher rates of physical injury than did victims of other crimes represented, which is unsurprising. The high levels of reported financial loss for adult victims of SA suggest that the emotional effects of the crime were highly debilitating, even if those participants had not reported physical injuries. The most prevalent psychological issue described for family victims was that of depression (65%). Primary victims most commonly reported concurrent depression and anxiety. Lower rates of depression were reported by
victims of DV (67%) and PA (50%) than by victims of SA (75%) and HCSA (83%), but all recorded similarly high rates of anxiety. Non–VIS makers reported higher levels of depression than anxiety, although both were reported at high levels. Participants were not asked whether their psychological issues had been reduced as a consequence of making the VIS, but as all were interviewed post-VIS it appears that states of depression and anxiety post-sentencing do not cease. These findings replicate those of Herman (2005) and suggest that any therapeutic benefits the VIS may provide appear not to be those that substantially ameliorate a victim’s levels of anxiety or depression. Pemberton and Raynaers (2011) suggest the therapeutic benefits of VIS should be tested with regard to a VIS reducing a victim’s level of anger and anxiety; however, results from the quantitative data in this study suggest that such testing might not be as fruitful as testing the levels of self-efficacy pre- and post-VIS (see Catteneo, Dunn & Chapman 2013).

Information supporting VOC prepared by NSW Victims Services and other victim support agencies in NSW makes mention of possible psychological issues and consequences resultant from being a VOC. While not intended, these descriptors may direct some VOC in their understanding and description of the impacts they experience. The Scottish study (Leverick, Chalmers & Duff 2007), which conducted a content analysis of 160 VIS presented to court, found that 39% described an inability to sleep, 41% a general fearfulness or inability to cope and 28% a depressive state. The Scottish study noted that these markers were key descriptors of possible consequences a VOC might experience as presented in the VIS paperwork supplied to victims, concluding this may have had a prompting effect when VOC composed their VIS. This has been noted as a potential bias in other VIS studies (Lens, Pemberton & Bogaerts 2013).

The UK Home Office study (Graham et al 2004) reported that sustained fear, anxiety and depression experienced by VOC were not always described fully in their victim personal statement, also noting that it was not only the level of violence that affected victims psychologically but also crimes where the victim
had come into contact with the offender.\textsuperscript{35} Within this study, the offender was known to nearly 63% of the sample, and all but one primary victim had been in the presence of their offender when the crime was committed.

In this study, non–VIS makers were 50% less likely than VIS makers to have sought the assistance of counselling services, despite reporting high levels of psychological distress. Whether the processes of counselling assists VOC towards an engagement with the VIS process, in that counselling assists VOC to begin evaluating their experience of victimisation, is interesting to consider, although short-term counselling did not appear to reduce reported levels of depression and anxiety.

The study results confirm that VISs are mostly made in serious matters and suggest that youth may be a barrier to making a VIS, with more VIS makers in the older age groups (supported by Leverick, Chalmers & Duff 2007). Victimology literature suggests that youth is a barrier to engagement with the CJS for reasons such as fear of offender, ambiguous perceptions of victimhood and feeling intimidated by the criminal justice process (Greer 2007).

VIS take-up rates within the sample were high at 85%, which may be due to its self-selected nature. As the study focused on the VIS experience, VIS makers may have been more interested in participating than non–VIS makers. However, the VSP data also points to a high take-up rate for serious matters, with Crown prosecutors and WAS officers reporting that many of their clients choose to make a VIS. High levels of VIS presentation have been noted in other Australian studies, higher than those noted in UK and Scotland. The Victorian study (VSA 2009) estimated that 80–95% of victims eligible to make a VIS in the County Court and Supreme Court would do so, and in a survey of judges and magistrates in South Australia, O’Connell (2009) noted the incidence of VIS presentation in Supreme Court matters at 80% and District Court matters at between 60% and 90%. In the NSW scheme, as in other Australian jurisdictions, a victim is not eligible to make a VIS until the offender has been

\textsuperscript{35} The victim personal statement (VPS) is the name given to the victim impact statement made by victims of crime within the UK. For more details of the legislation regarding its scope see VSA (2008).
convicted, with most VSP participants reporting that they discourage their clients from even considering the VIS until the point of conviction. Over 90% of VOC participants stated they were aware of their opportunity to make a VIS, with over 65% stating they found the VIS information easy or quite easy to understand. Kilpatrick, Beatty & Howley (1998) found that over 90% of victims in their US study who were well informed about the VIS were keen to participate in the process.

Few participants reported making a VIS in the Local Court, and those who did handed them up. These findings are consistent with the Victorian study (VSA 2009), which estimated only a 7% VIS use in the Magistrates Court, and with O’Connell (2009), who reported VIS use of 3% in South Australian Local Courts.

Results of this study indicate that the timing within the criminal justice process of the presentation of the VIS, as well as provision of information and access, are important factors in the take-up rate (see Lens, Pemberton & Bogaerts 2013). However, importantly, the results of this study also suggest that although delaying the presentation of the VIS until post-conviction creates a greater VIS take-up rate, it may also raise the victim’s expectation that the VIS will have an enhanced functional effect. In VIS studies in Scotland (Leverick, Chalmers & Duff 2007) and the UK (Graham et al 2004), where the VIS is

36 It is to be noted that, in Victoria, VOC have a legislative right to request that the prosecutor reads their VIS (Sentencing Act 1991 [Vic.] s 95F [1]) or the VIS can be read with the victim’s permission by the judge or magistrate at their discretion (s 95F [2]), but VOC can read their VIS themselves only if they have requested to do so and have been given approval by the Court. ‘Currently victims [wishing to read out their VIS] … are required to negotiate this right and, as a result, there is inconsistency in practice with some victims being able to read out their VIS and others being refused’ (VSA 2009:78).

37 O’Connell concluded low VIS take-up rates in the Local Court were due to poor communication of a victim’s right to make a VIS, to VIS being used at the discretion of the court, and to the offender not often being present. Australian figures are significantly higher than those reported in the Scottish study of 14.9% (Leverick, Chalmers & Duff 2007), the UK Home Office studies of 30% (Hoyle et al 1998), and 17% (Graham et al 2004). More recently, Roberts and Manikis’s study (2011) of VPS take-up in the UK between 2007 and 2010 found, on average, 55% of victims reported making a VPS from an average of 42% who recalled being offered the opportunity to make one, that is, just over 20%. With the Scottish Pilot VIS scheme, in all matters, including ‘solemn’ (serious) matters, the VIS was requested from the victim at the point of indictment of the offender when formal charges were laid, but only if the victim had indicated a desire to provide a VIS in a form completed during the police investigation.

38 In the UK, victims are given the opportunity to present a VIS (known as the ‘ Victim Personal Statement’ or VPS) at or near the point of reporting the crime to the police. Although the VPS can be updated prior to sentencing, the statement is made to the police, who prepare it. The VPS is tendered as a written submission, and oral presentation is prohibited, with the likelihood that some VPSs are prepared for matters that never eventuate into conviction and are consequently not used.
presented much earlier in proceedings, VOC respondents appeared much less inclined to indicate an interest in using their VIS to affect sentencing.

This study was not concerned with whether the presentation of a VIS actually affected sentences handed down; rather, it was interested to know whether VOC perceived this as a purpose of the VIS or expected or hoped that it would do so. While only 39% of VOC stated that the purpose of the VIS was to affect sentence, 59% expected and 65% hoped that it would. Despite the fact that at time of interview, NSW courts did not consider the VIS of family victims at sentencing, 30% of family VOC stated that affecting sentence was a purpose of the VIS, with 61% expecting and 73% hoping that it would do so. The quantitative results suggest that many VOC, even when categorically informed to the contrary, hold high hopes that their VIS will affect sentence. The potential damage caused to victims by such expectations not being realised has been noted as a systemic difficulty with the VIS (Hinton 1995). Interestingly, victims of SA reported the lowest expectation (17%) that their VIS would affect sentence and held no hope that it would.

Studies evaluating the effect of the VIS on sentences conclude overall that sentencing severity or leniency is not affected by the VIS (Erez 2004; O’Connell 2009; Roberts & Manikis 2011). Nevertheless, judges and magistrates interviewed in a number of studies have inferred that it is complex to isolate or assess the potency of any one item presented before them, including the VIS, when determining sentence (Department of Justice Canada 2005; Leverick, Chalmers & Duff 2007; O’Connell 2009). Affirmation by judiciary and magistracy of the functional usefulness of the VIS to provide information relevant to sentencing varies across studies, from 48% to 73%, despite judges and magistrates, when directly questioned, maintaining a fairly unequivocal line that VIS information does not affect sentence but that consideration of VIS content may provide a more informed sentence (Leverick, Chalmers & Duff 2007; Roberts & Edgar 2006; VSA 2009). Similarly, in this study, all VSP interviewed stated that the purpose of the VIS was not to affect sentence; however, when considering whether the VIS affected sentences, 7% reported that it did and
30% reported that it sometimes did affect sentence.\textsuperscript{39} As Roberts and Manikis (2011:33) point out, although research suggests that overall sentences are not harsher when a VIS is presented, there is little research examining whether VIS presentation has affected the consistency of sentencing judgements.

Despite over 50\% of VSP interviewed stating their clients often need help with the content of their VIS, and 47\% stating their clients sometimes need help with drafting the VIS, there is no directive regarding the type of advice victim support agencies can or should provide regarding VIS content. A formal VIS ‘template’ as a standardised universal draft layout does not exist. Despite the sensitive nature of admitting to providing content prompts or topic outlines, nearly 40\% of VSP reported that they often or sometimes provide templates or written guidelines.\textsuperscript{40} If the VIS is intended to reflect the personal voice of the victim and the victim’s description of the crime’s impact, the varied responses of VSP regarding the levels of assistance provided with the VIS are potentially problematic. The VISIP (2013) explains why the VIS ‘must be written in your own words’, but data suggest that in some cases VOC do not read the VISIP or are unable to process the information provided, preferring to rely on one-on-one information and explanation. The appropriateness of providing further, and at times eclectic, direction to VOC regarding what to include in the VIS is worthy of discussion. That said, it appears that some VOC demand from victim support services advice regarding VIS content beyond that briefly outlined in the VISIP.

In terms of writing the VIS, the quantitative findings reveal that the VOC who report being most challenged by doing so were also those most likely to report it being a positive experience. This suggests that the process of writing the VIS provides therapeutic benefits. Participant victims of DV were less likely to report being emotionally challenged when writing their VIS but also less likely to report

\textsuperscript{39} For this question 30 VSP participants responded. Responses refer to sentencing in general. VSP did not discriminate between the sentencing of death matters and primary victim matters.

\textsuperscript{40} Such documents appeared to be directives unique to the service or service consultant and varied from suggested headings for content topics (e.g. physical injuries, financial loss and emotional consequences) to the provision of specific prompts, such as ‘How has the crime against you impacted on your relationships?’, and ‘How do you feel when you are in social situations?’ Some non-government victim support organisations also provided the VIS of others as examples for VOC to read.
the process as positive. Victim experiences of writing the VIS are examined more closely in Chapter 5.

A surprising finding was the high level of VIS editing reported by VOC (48%) and VSP (81% reported VIS were ‘often’ edited). This may point to inconsistencies in interpretation by VOC, victim support services and counsel of what content a VIS can and cannot contain. Editing may also be due to late changes to charges, which require the removal of parts of the VIS referring to charges outside the agreed statement of facts. The data also show that fear of cross-examination deters some VOC from making a VIS, supporting other studies (Booth 2013a; Leverick, Chalmers & Duff 2007; Meredith & Paquette 2001; VSA 2009), which appears something of a paradox, as findings show cross-examination of the VIS does not occur. Participants’ experiences of editing and cross-examination processes are presented in Chapter 5.

Results suggest that judicial reaction is more meaningful for VOC than is offender reaction, as noted in other studies (Booth 2013a; Herman 2005; VSA 2009). Most participants stated that the offender made no visible reaction to the content of their VIS. This appears initially surprising when considering that the offender was known to all participant victims of DV and HCSA, to 50% of family victims and to 40% of SA victims participating. However, this statistic is consistent with offender reaction to the VIS reported in other studies (Booth 2013a; Rock 2010).

The results show a disparity between VOC levels of satisfaction with the presentation of their VIS and their satisfaction with the sentencing process and sentence, suggesting VOC are able to isolate feelings of satisfaction with their VIS experience from the totality of the sentencing process and reaction to the sentence.41 Those who made a VIS viewed the experience positively in the main, with almost all reporting they would make a VIS again if given the opportunity.

41 ‘Satisfaction’ is something of a catch-all term and is possibly ambiguous. Here it refers to being ‘happy with’ or ‘unhappy with’.
While these quantitative results provide valuable insights, they cannot stand alone. A deeper understanding of what exactly is understood by each participant in response to each question is required. In the following chapters, the VIS experience is further explored, with particular interest not only in the challenges it presents for VOC but also, more importantly, in the nature of its therapeutic benefits and the processes and interactions that best support them.
Chapter 4: The Decision to Make a VIS

The next two chapters present the findings from the analysis of the qualitative data. This chapter examines why VOC participants wanted to make a VIS (see Section 4.1) and the barriers affecting that decision (see Section 4.2). It looks at the various needs that VOC wish to satisfy or the aims they hope to achieve by making a VIS, and the factors that complicate them. It also includes VSP views regarding factors their clients consider in their decision to make a VIS.

Dominant VIS motivators and issues of concern for VOC considering making a VIS were evident from analysing the quantitative data. These factors were used to create thematic codes as areas of interest, and qualitative data were reviewed against these codes to produce a deeper understanding of why each factor was important to VOC or why it caused difficulties. The findings support previous studies that report VOC are motivated to make a VIS in order to have a voice in proceedings; to have the nature of their harm acknowledged, validated and vindicated by the court; and to have the opportunity to experience therapeutic effects, such as catharsis and empowerment (Giannini 2008). However, data presented in this chapter goes further, revealing the complexity and important interplay between varieties of factors that VOC consider when deciding whether to make or not make a VIS.

An overarching theme emerged in the VOC data—namely, a common belief system drives the desire to participate in the VIS process. Most VOC participants were connected by a ‘just world’ worldview, where, as Murray, Toth and Clinkinbeard (2005:88) describe, ‘the self is worthy and the world is benevolent, just and meaningful’. Within this paradigm, control and mastery are valued, and there is an assumed fit between efforts and outcomes. The ‘just world’ worldview also encompasses the notion of ‘just deserts’, which assumes that the good will be rewarded appropriately for their goodness and the bad will be punished in proportion to the severity of their badness/crime. The term worldview is defined as the way in which individuals make sense of their world regarding how they wish it to exist and operate (Lerner 1980). The responses of
VOC participants reveal that they used the participatory opportunity of the VIS to particular ends within the adversarial CJS where their opportunities for control and mastery are limited or absent (Winick 2011). However, as Locke and Bailey (2014) describe, the notions of justice held by individuals are varied and distinct.42

Lerner (1980) suggests people rely on a deeply ingrained ‘justice motive’, using particular strategies to maintain their sense in a just world when challenged by injustice. Despite the underpinning of a general ‘just world’ view, differing notions of justice co-exist within the culturally specific collective conscience (Burns & Engdahl 1998), operating fluidly, with one position becoming predominant as appropriate to individual or group circumstance. Qualitative results suggest that VOC hold various views of justice specific to different events. Understanding the situational worldview of VOC and the particular notion of justice they adopt when approaching sentencing proceedings is important, because it influences action, coping strategies and VIS participation.

4.1 VIS motivators

4.1.1 To inform the court of the impact

The victim’s voice serves the interest of victim justice by allowing VOC to tell their story of what happened and its impact as a form of truth telling. Importantly, the victim presents information with the expectation of it being believed, an aspect of the justice interests of validation (Daly 2012). Being believed has been described as a basic emotional need of VOC (ten Boom & Kuijpers 2012), central to their perceptions of their perceived status in, and experience of, the criminal justice process (Campbell 2006; Herman 2003). The subjective nature of the VIS, however, has been criticised in terms of truthfulness (Bandes 2009; Green et al 2007). VOC construct information in their VIS to create a meaningful narrative, with the intention of persuading the

42 Among the different concepts of justice to have emerged through the ages of ongoing philosophical debate are justice as revenge (retributive justice), justice as mercy, justice as harmony, justice as equity (impartiality and fairness), justice as equality (equals must be treated equally), justice as an equal distribution of benefits and burdens (distributive justice and redistributive justice), justice as what is deserved (to each according to merit or worth), justice as love and justice as reconciliation and reparation (restorative justice) (Locke and Bailey 2014:281).
listener to accept their point of view. In other words, only particular information supporting their narrative is included. This is not unusual or unexpected (see Reissman 2008). Within the court setting, all discourse is purposive and persuasive, with particular elements of the truth more useful to the argument highlighted. Consistent with other VIS research (Rock 2010; Wemmers 2011), few VOC participants included in their VIS any information about negative aspects of themselves or of their loved ones prior to the crime. Previous criminality on behalf of the victim, if mentioned at all, was done dismissively, as alluded to by Irene, whose son was in prison when he was murdered:

Feelings of [my son] growing up. What he did from a young age, cricket, guitar, keyboard … and I said that [he] was no angel, but now he is.  
Irene (CD:18), son killed by another inmate while serving a custodial sentence, VIS handed up

Alternatively, it was introduced purposely, which Patrick did to indicate negative behaviours as a personal consequence of the crime:

and I guess I was quite open about issues of substance abuse and gambling and I know I thought it was important to be honest, to let people know how I had been affected.  
Patrick (CD:54), victim of HCSA, VIS read

The types of impact participants wanted to convey to the court included physical, social and emotional crime consequences, both at the time and over time; many stated that the opportunity to present their emotional harms made proceedings ‘more human’ (supported in Leverick, Chalmers & Duff 2007). Family victims tended to include practical and emotional impacts on the family regarding their loss, whereas primary victims wished to include physical injury, rehabilitation, financial consequences, and social and emotional impacts such as damage to personal relationships and changed behaviours. Such information differs from that required in a statement made to police when reporting the crime and contains more expansive and subjective information than allowed.
during counsel’s examination of a witness (Graham et al 2004; Morgan & Sanders 1999):

What happened was there were times when I was emotional, and they said that this was not the time for that emotional content. That time was in the VIS. 

*Oscar (CD:53), victim of HCSA, VIS read*

He went from a soldier to someone who couldn’t do up his buttons. The parallels between what he had done and what he couldn’t do now. He had to wear a helmet out in public and be humiliated by people calling out ‘You spaz’ and so forth. The helmet was a necessity, but it was so undignified, and so to be able to explain how it affected him …

*CEO, VOCAL, describing the VIS of a client with an acquired brain injury due to assault*

Thus, the VIS allows the presentation of a different sort of information, presented differently from that required from the victim witness during the prosecution process (Bandes 2009; Cassell 2009; Morgan & Sanders 1999) because sentencing proceedings offer opportunities for a more profound understanding of both victim and offender (Shackel 2011).

### 4.1.2 To redress the balance in sentencing proceedings

Generally, VOC participants did not feel the CJS presented the interests of offender and victim equally, which indeed it does not (Christie 1986; Sankoff & Wansbrough 2006). This basic misunderstanding of the rules of the adversarial system’s ‘zero sum game’ (Shapland et al 2007; Braswell, Miller & Pollock 2012) caused many VOC participants to decry the process as being all about the offender. As a result, VOC saw the VIS as one of the few ways they could present information about the human cost of the crime rather than about how the crime was committed (see Leverick, Chalmers & Duff 2007; VSA 2009) and, in so doing, reorientate the process to include an understanding of the consequences of their victimisation:

It made me glad that I put in a VIS, otherwise it’s just poor old them.
Michael (CD:34), victim of PA, VIS handed up

You have to get a balance in proceedings. It was the main driver for me, and I expect the same for my daughter. … Why can the jury hear about the perpetrator and not the victim? This savouring and helping the perpetrators with daft references!

Mary (CD:22), mother of murdered adult daughter, VIS read

The VIS was used to present the innocence of the victim, unfairly treated, and to counter submissions presented prior to sentence that promoted the offender’s good character (see Booth 2001; Szmania & Gracyalny 2006). Many participants viewed the VIS as an instrument to make the sentencing process more equitable, at least in appearance (Cassell 2009).

4.1.3 To reveal the personhood of the deceased victim

Due to the contentious nature of the VIS in death matters, much of the literature and recent studies concentrate on the VIS of family victims (Bandes 2009; Booth 2013a; Rock 2010), described as narratives of memorialisation that remember, praise and mourn the deceased (Kunel & Dennis cited in Booth 2013a). Studies of the content of family VISs suggest that they tend to be emotive and eulogistic and may present a highly subjective and idealised picture of the victim (Green et al 2007; Hoyle 2011; Rock 2010).

Unexpected death is feared by all—for those whom we cherish, including the self—and creates a very powerful response within the collective conscience (Durkeim 1997/1893). We may feel unlikely to experience personal physical or sexual attacks and therefore can restrict ourselves to displaying empathy for the person, rather than as the person, but the reality of our mortality and the mortality of those we love causes our reactions to tales of death to be visceral, experienced differently from other tales of harm (Becker 1973). This subtle difference manifests in the content of the VIS and must be acknowledged. In a primary VIS, ‘I’ represents ‘us’. In a family VIS, ‘I’ represents ‘all’. As the data suggest, one of the powerful motivators unique to family victims wishing to
make a VIS is an appreciation of and a need to challenge the existential crisis of a life unexplored, unfulfilled or unknown (Yalom 1989).

The VIS allows the deceased to be brought into sentencing proceedings. Without it, family VOC participants stated the deceased’s personhood would remain a mystery to the court. Intrinsic to the content of their VIS, family members wished to present the deceased as blameless, of good character, important within their community, deeply loved and greatly missed (Harvey et al. 2001):

Of course I wanted everyone to know that [he] was an innocent victim … In the case of the parents, especially if you have an innocent child, you want the world to know that they were innocent and that the child was law abiding. He got along well with everyone.

*Doug (CD:05), father of murdered adult son, VIS read*

Booth (2013a:198) suggests a VIS is a ‘gendered action’, with women more likely to present a VIS (see also Erez, Kichling & Wemmers 2011; Lens, Pemberton & Bogaerts 2013); however, participant responses suggest the picture may be more complex. Gender and familial relationship appear important variables regarding not only the likelihood to make a VIS but also the content and purpose, influenced by normative expectations and socialisation. Gilbert (1996) describes incongruent grieving with parental couples, where one adult displays a cognitive and solitary grief (usually males), and the other a grief that is more social and emotional (usually females) (see Murray, Toth & Clinkinbeard 2005). Stroebe and Schut’s (2001) dual-process model suggests that a functional grief system requires both loss orientation and restoration orientation. Family victim data suggest normative patterns of traditional family roles appear to allow mothers to embrace loss orientation towards restoration more fully through the VIS process than fathers. Male family participants, taking on the role of protector of the surviving family, often appeared to constrain their emotions within the VIS. These findings are consistent with Creighton et al (2013), whose qualitative study of the views of young men losing friends in tragic circumstances found that they would align themselves with post-loss
masculine identities, such as adventurer, father figure and lamplighter, as they struggled to reconcile feelings of vulnerability with manly ideals of strength and stoicism. The normative gender expectation for men is to present a VIS as part of their protector role:

In the family situation, often it’s the men who will make the statement rather than women, say the father, the man of the family, [italics added] and in District Court matters, sexual assault it’s more women than men.43
*Crown prosecutor, Sydney (2)*

Participant mothers describing the experience of making a VIS for deceased children talked about wishing to express the depth of the emotion of their loss as a result of the crime. They were less likely to see the VIS in terms of memorialising, appearing more focused on past and present:

Yes it’s [writing a VIS] the hardest part of the process, but it is important. Until that time you don’t get it, that your girl is not coming back, and she was so young. This is the moment that it becomes real.
*Anna (CD:01), mother of murdered daughter, VIS read*

It does make you think in terms of the loss of the person, of the family and of their life. You may not have thought about it so deeply, and voicing these things are such a personal matter. It does make you think about it. ... You can get it all out, to feel the loss and acknowledge the feelings. It’s such an emotional time.
*Mary (CD:22), mother of murdered adult son, VIS read.*

Male and female siblings described using the VIS to present information about the deceased’s personhood, the loss of their relationship with the deceased and, where children were left, the impact on the children of losing their parent and ongoing difficulties faced by those caring for them. Introducing harms to the deceased’s children purposively informed the court of all secondary victims emotionally and practically affected, whose position may not have been

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43 This was the only instance where a VSP participant suggested male family victims were more likely to make a VIS. This VSP participant was male.
presented during the prosecution process. Here, the VIS described past and present, with any reference to the future described in terms of future effects on the children:

I wanted to bring [deceased’s daughter] into mine, so I had to be very careful how I did that, as I couldn't provide new evidence … what I put in was purely emotional, not legal evidence. So if there was a reference to something, for example, to say that my niece experienced nightmares, that such things had directly been mentioned in our previous statements, I had to do it from my viewpoint regarding my niece's [experience/behaviour] as it was my statement.

Bev (CD:03), sister murdered by spouse, VIS read

I wanted to make sure that they [court] knew that she was a loved person and a missed person and that her kids don’t have a mother.

Olivia (CD:24), sister murdered by partner, VIS read

Fathers of deceased adult children were far more likely to describe the content of their VIS in eulogistic terms, describing their pride in being able to present their child’s life, achievements and good character to the court. These VIS more often focused on past and future in terms of the deceased’s legacy, with the loss described less in personal terms than as loss to the community and wider society:

We wrote down a history of [my son]. He was a young fella and he didn’t do anything we were worried about. He was a law abiding kid. It [the VIS] was a biography and my feelings and incidents [of his life]. I did get a great deal of satisfaction, reading the biography.

Doug (CD:05), father of murdered adult son, VIS read

I hoped it was heard and listened to and formed an opinion of our son’s character and life. And tell the world what a wonderful person he was, and to make a comparison in the achievements between my son and the perpetrator. I wanted to tell the world what they had missed [by his loss]. I was a proud father to have been able to say what he had done for his family and his community.
Francis (CD:07), father of murdered adult son, VIS read

[He] was resilient and had an incredible strength of character, with so much potential and ambition yet to be realised. His presence will be dearly missed by those who loved him, but his legacy will live with us throughout our lifetime.

Excerpt from George’s (CD:08) VIS for his son, killed by a negligent driver, VIS read

Male family participants were mainly fathers of deceased sons killed by a stranger. In matters where daughters had been killed, no fathers participated.44 The difficulties for fathers of daughters to make a VIS were observed:

I have two sons, and my daughter’s fiancé. They put VIS in. They had trouble starting them, and my mother did too. … My husband would have had no hope of doing it [preparing a VIS]. [Italics added]

Jenny (CD:19), mother of daughter killed by drunk driver, VIS read

Whether paternal VIS is motivated by and its content reflective of a normative acknowledgement, acceptance and Western ritualised etiquette regarding the deaths of sons (as opposed to daughters) created over time by the historical reality of sons being killed by strangers in adversarial feudal conflicts and wars is perhaps a subject for further research. For fathers socialised to understand their masculine role as protector of the family, particularly of its female members, presenting a VIS for a daughter he could not protect, especially from someone he knew, may be doubly challenging:

She was killed in May and I picked up the ashes in September. Doing it, [VIS]

I was glad it was me and not my Dad.

Olivia (CD:24), sister murdered by partner, VIS read

44 Two male secondary victims presented a VIS regarding deceased females other than daughters or sisters, one for a mother: I talked about the impact on the family and the children and about Mum and who she was (Jack, CD:66); and one for a granddaughter, whose VIS was written to the DPP in the form of a letter requesting clemency for the offenders. The impact of his granddaughter’s death was described as devastating but was not the focus of the VIS: They [prosecution] said there wasn’t enough grief in it. I should have said I grieve. I can’t sleep (Ian, CD:10, granddaughter killed in a boating accident, offenders charged as negligent contributing to death).
Recent research reports that most women killed in Australia die at the hands of a current/ex partner or spouse, perhaps explaining why fewer male partners/spouses present VIS in homicide matters.\textsuperscript{45} No males whose female partners or spouses had been murdered participated in this study. The AIC statistics of Australian crime (AIC 2012) report more male victims of homicide than females, with adults more likely to be killed than children. In addition, more women aged 25–44 years were victims of homicide than those aged 15–25 years. In terms of the VIS, these figures may suggest that the lack of fathers presenting a VIS for daughters may indicate that women over 25 years have others to speak for them, such as partners, mothers, siblings and/or children. Alternatively, it may point to cultural pressures as protector and to stereotypical expectations within the father–daughter relationship creating special challenges for fathers considering making a paternal VIS.

This appears to be supported by statistical data presented in Booth’s research (2013a:199). Her observation of 18 homicide matters where 30 oral VISs were presented reveal a gender disparity in frequency of fathers and male partners presenting a VIS, as opposed to mothers and female partners/wives. Of the 41 VIS presented in homicide matters, Booth observed where gender of VIS maker was specified (to include those inadmissible, co-authored and handed up), 15 were male and 26 were female.\textsuperscript{46} Analysing her figures further (see Appendix 6, Table A6.1), in those matters observed, no male partners or husbands submitted a VIS, and all VIS submitted by fathers (4) were orally presented by another (two were on behalf of daughters and two for children with gender unrecorded). Further, of 14 in-depth interviews with family victims in the same study, only two were men, both fathers of deceased adult sons (see Booth 2013a:131).

In this study, of the 15 female family VIS makers, nine (60%) presented a VIS on behalf of deceased females, three for deceased daughters, four for

\textsuperscript{45} In NSW, numbers of women killed by current or ex partners/spouses have increased from one in four homicides in 2009 (Grech & Burgess 2011) to two in three homicides in 2012 (NSW Domestic Violence Death Review Team 2013).

\textsuperscript{46} Male VIS comprised four from fathers and 10 from brothers (four separate matters), and one from a de facto partner. Female VIS comprised 10 from mothers, seven from partners/spouses, five from sisters (five separate matters), three from daughters (two separate matters) and one from a granddaughter.
deceased sisters and two for deceased mothers. Six (40%) female participants presented a VIS on behalf of males—four for sons and two for spouses. Of nine male family VIS makers, six (67%) presented a VIS on behalf of deceased males, with five of the six presenting a VIS for sons.\footnote{The remaining three male participants presented a VIS on behalf of a deceased sister (1), deceased mother (1), and deceased granddaughter, although this VIS was used to request clemency for the male offenders.} Three male participants presented a VIS on behalf of females, but no males presented a VIS for daughters, wives or female partners.

The manager of the HVSG explained that some VIS are written collectively within a family and presented as a single VIS with multiple readers or read by a designated family member, making the correlation between gender, relationship and VIS presentation difficult to assess. She surmised that the lack of male spouses and fathers of daughters presenting a VIS was more likely to be a result of the NSW homicide victim demographic than a relational gender bias. While it is difficult to draw concrete conclusions from such a small data set, especially acknowledging lower participant rates for male VOC in victim studies, the striking fact remains that within this sample, male family VOC did not make a VIS regarding their daughter, wife or female partner. Considering Booth’s findings are similar, more research in this area would be useful, as the data suggest that choice, construction and presentation of the family VIS may be affected by its author’s understanding of what is deemed to be a socioculturally and emotionally acceptable response within their gendered familial role (Doka & Martin 2001; Murray, Toth & Clinkinbeard 2005). VIS statistics regarding author demographic, crime, relationship to offender, relationship to deceased (if applicable) and VIS presentation would assist research in this area, especially if viewed in conjunction with a content analysis of VIS presented.

4.1.4 To reveal the personhood of the primary victim, to include shows of strength and resilience

Primary victim participants described wanting to present their own personhood to the court and to the offender. This appeared particularly important to participants in cases where the offender was a stranger. Gender, culture,
relationship to the offender and nature of crime were variables affecting participants’ likelihood to make a VIS and its content and presentation. Some male VOC wished to stand before their offender to reassert their masculine status, to make the court and offender aware that being a victim was atypical for them, symbolically indicating that, had they met the offender in a fair fight, they would not have been overcome. VIS was used as a show of strength:

I hoped it [VIS] would get through to the young man, that he had done something wrong … It’s a cultural thing. I am Irish. It’s important to front up and face up. Especially for young people. He was 19 … I relinquished compensation just to face this boy. I wanted some satisfaction, some indication of remorse. I wanted to meet the assailant. Put him on the line. Ask for an apology. To front up. Make him know he needs to know better.

Charles (CD:04), victim of PA, VIS written but not presented by prosecutor

Some female primary victims of SA, and those victims of DV who felt safely free from ties to their offender, used their VIS to indicate their strength of character rather than physicality, describing their VIS as a means to display their resilience to the offender and the community as demonstrated by their ability to overcome the trauma and harm they had endured:

I told him I wasn’t a victim anymore and that there is no shame.

Jane (CD:48), victim of SA, VIS read

i’m [sic] just letting him know you can’t treat me like he did … however, I am a strong and independent female and feel i’m [sic] quiet [sic] able to defend myself …

Extract from Gina’s VIS. Gina (CD:45), victim of SA, VIS read

To stand up and show strength that wasn’t there before. That you can stand up and not be scared of them anymore.

Yasmin (CD:37), victim of DV, VIS read

Many primary and family victims appeared to want to reveal their personhood prior to the crime, linking to notions of blameworthiness and innocence, in
accordance with the ‘just world’ worldview described earlier. They did not want to present as victims, but as victimised (Dolan 2000):

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 PA, VIS read*

And stating that I have in fact changed as I am, as a person because of someone else’s actions. You do change and it’s hard to admit you let someone do that to you, because you’re admitting to people that it has had an effect on you as a person.

*Emma (CD:43), victim of SA, VIS read*

I don’t like feeling sorry for myself, and I want to be positive in my outlook, but it causes you to be introspective, and be the victim, and I don’t want to live like that, live like a victim.

*Mary (CD:22), mother of murdered adult son, VIS read*

In their systematic review of empirical literature regarding victim needs, ten Boom and Kuijpers (2012) concluded that a value for VOC in being able to provide input into criminal proceedings is that their autonomy is supported. In terms of fulfilling expressive needs, their findings suggest the empowerment experienced through the provision of victim input, as a form of self-presentation, is an end in itself. In the damaged state the victim is unsafe and unable to reconnect positively with the community and (in some cases) the offender (ten Boom and Kuijpers 2012:161). Victims seek acknowledgement, driven by needs to repair the damaged self, self-esteem and positive selfhood (Staub 2004). The VIS offers some victims an opportunity to present their positive and revised identity.
4.1.5 To inform the offender of the impact

A recurrent theme in the VOC participant interviews was the motivation to inform the offender of the personal impacts of the crime. Participants who felt the offender was unaware or oblivious to the suffering caused, or those previously silenced as victims of DV or HCSA—able to now speak from a position of safety—particularly directed their VIS to the offender and their supporters:

To tell him what he had done to me. I wanted to let him know how he had made me feel, and how it had ruined my life.

*Jane (CD:48) victim of SA, VIS read*

I wanted to get across to him how much it did affect me, and have my say.

*Belinda (CD:40) victim of DV, VIS handed up*

The potential for attacking the offender through the VIS is limited largely by constraints placed on VOC when preparing it (see Booth 2012). Although some participants described the VIS as a safe and sanctioned way to rail against the offender, all remained cognisant that there was little the VIS could provide in retributive terms comparable to the harm inflicted upon them. Power in the offence was still retained by the offender, with the VIS seen as a mechanism through which VOC could claw back some control by determining their management of the personal aftermath of the crime. Two quotes below reveal again how male and female motivators align with acceptable stereotypical norms (Sutton & Farrall 2005; Walklate 2007a). Adam describes using his VIS as an alternative to physical action where, despite emotional harms, his strength is not in question, whereas Fran describes wanting her VIS to debilitate the offender as she has been debilitated, the word ‘shatter’ describing both the physical and emotional annihilation she has experienced:

I remember asking the police officer, bring him close, I want just one punch. So my VIS was my punch. That’s how I felt. That was my opportunity to smack him in the mouth.

*Adam (CD:2), sister murdered by partner, VIS read*
I didn't have to think about it at all. It was something I wanted to do. May as well shatter the perpetrator’s world as well.

_Fran (CD:15), husband murdered in shooting, VIS handed up_

Stereotypical gender norms also appear to shape the way primary VOC approach and present the consequential impact of the crime within their VIS, consistent with more generalised gender victimological research (see Walklate 2007b). While some VOC participants described feelings of anger towards the offender, this was not given as a reason for wanting to make a VIS. Although VOC were not directly asked about feelings of anger within the interview, they freely discussed other emotions, and it is surprising that when anger was mentioned, they did not relate it to reasons for wanting to make a VIS.\(^{48}\) If victimhood is seen in terms of loss, it could be argued that VOC considering the VIS need to accept the event if they are to contemplate the nature of their loss and associated grief. In accordance with loss theory, acknowledgement of the crime and its consequences assists victims past early grief stages of isolation, denial and anger, into stages of bargaining where a regaining of control is sought, depression where regret and sadness predominate and acceptance, in order to survive into the future (see Kübler-Ross 1969). In other words, those considering a VIS have psychologically moved beyond the base desire to simply attack the offender from the ‘relative security of the VIS’ (Ashworth 1993: 507). While some VIS research has suggested angry victims are more likely to make a VIS (Erez, Kichling & Wemmers 2011; Lens et al 2015), this reason was not given by participants as a VIS motivator. Anger appears too simplistic a reading of VIS motivation, lacking a full appreciation of the personal risks versus the hoped-for gains that VOC must consider prior to engaging with the VIS process (de Mesmaecker 2012; Miller 2014). Rather than ‘getting even’ with the offender, driven by anger and desire for revenge, motivation appears to be more nuanced towards seeking opportunities to redress inequity and restore status. This appears particularly important to primary VOC. Results from the

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\(^{48}\) One female participant victim (Jane, CD:48) of sexual assault saw part of the cathartic bonus of the VIS being a release of pent up feelings of anger, but she stated her main motivation for making VIS was to raise awareness of the consequences of sexual assault to assist others and to regain her personal autonomy. Another female participant (Anna, CD:01), whose daughter had been murdered, described her need to hold on to her feelings of anger in order to survive because moving from anger to acceptance was too painful a step to contemplate. For her, the VIS was a very difficult document to write as it required personal acknowledgement of the loss of her daughter.
qualitative data suggest the therapeutic benefits of the VIS for some VOC partly result from engagement with the VIS process, as it requires them to move forward along a loss/grief-work therapeutic timeline (Worden 2008).49

From a restorative justice perspective, a function of the VIS is its potential to provide information to the offender that may assist them to take responsibility for their actions, affecting change in their behaviour (Dubber 2002; Erez 2004; Tobolowsky 1999). Certainly, some VSP in services that support restorative justice felt that this was an important facet of the VIS:

So I see the value of a Victims Impact Statement as twofold. No 1. The victim gets an opportunity to express their feelings on how it’s impacted on them … But it also gets an offender, and this has come up for me because we do a lot of work in prison, that it wasn’t until they actually, the offender, it wasn’t until they actually heard how a victim felt did they really understand what they had done. So I think it’s a two-edged sword here. There’s a lot of value both ways.

CEO, Enough is Enough

Some participants stated that their VIS was motivated in part by a hope that it might positively affect the future behaviour of the offender:

If there is any chance for rehabilitation for criminals, they have to understand the impact of the crime. It’s the only tool we victims have.

Jenny (CD:19), mother of daughter killed by drunk driver, VIS read

These participants tended to be those who had no knowledge of their offender. Offender reaction to the VIS is discussed in Chapter 5, but if affecting offender behaviour through the VIS is a legitimate aim, it appears important to collect data from offenders in this regard (also recommended by Roberts & Manikis 2011), for although it is not unusual for VOC to forgive their offender, and even to reach out to assist them (see Field 2012; Wade, Tucker & Cornish 2013), whether it is ethically appropriate to burden them with an expectation that they

49 The nature of progressive movement away from victimhood is further explored in discussions regarding the victim, survivor, thriver model (see Kezelman & Stavropoulos 2012; and Morris Centre 2006).
should be proactively responsible for their offender’s rehabilitation should be considered.

4.1.6 To create community awareness

VOC participants described a need or wish to ‘tell the world’ about the impact of the crime. For family victims this meant exposing impacts of the loss of their loved one so that their death was neither forgotten nor in vain. Primary victims wished to send a message to the community that such crimes were not acceptable. Both hoped to raise community awareness of the personal repercussions of criminality in order to affect societal change.\textsuperscript{50}

To be honest I wanted the world press to hear and to put it out there. We had been silent for so long, and it was all about him [offender]. Once the process was over she [deceased daughter] would just fade into the sunset. I wanted the world to know.

Anna (CD:1), mother of murdered adult daughter, VIS read

I hoped that people would take domestic violence more seriously.

Wendy (CD:37), victim of domestic violence, VIS handed up

I thought this was an opportunity for me to make a public statement about the notion of paedophilia in general. Mine was a heavily publicised case and I wanted those words to be heard by a broader audience.

Oscar (CD:53), victim of HCSA, VIS read

The court setting was seen as an important platform from which to do this, viewed as a public and authoritative forum where the voices of VOC were sanctioned, legitimised and given credence:

I wanted the court to hear it because that is the world. [Italics added]

Francis (CD:07), father of murdered adult son, VIS read

\textsuperscript{50} Studies report community condemnation of the offence is of particular importance to victims of DV and SA (see Feldthu\ssen, Hankivsky & Greaves 2000 and ten Boom and Kuijpers 2012).
Almost 70% of participants viewed making a VIS as a duty they needed to perform as a member of society. This was described as an intrinsic desire to do the right thing (Leventhal 1980; Taylor 2006) arising from a moral conditioned understanding of each individual’s responsibility to uphold the democratic, normative values of society. Couched in terms of redressing the balance, of fairness and righteousness, of being a representative of those without a voice or of a role model on behalf of society, making a VIS to fulfil a civic duty was most often reported by family victims and by victims of PA and HCSA. Conversely, participants suffering crimes of SA, and to a lesser extent DV, were least likely to report making a VIS motivated by civic duty. Gender is a variable that needs to be considered here, as 100% of SA and DV participants eligible to make a VIS were female. Whether victims of SA or DV, anticipating little public/communal support, or even societal disapproval, feel disinclined towards notions of civic duty and less interested in assisting communal aims for justice is worth contemplating (see Tyler 2011). For although it could be argued that those motivated by duty are simply angry, this does not explain the gender–crime difference. The civic-duty motivation appeared to be driven by moral outrage rather than by personal anger. Hutcherson and Gross’s (2011) study of anger, disgust and contempt is relevant here. They found anger to be associated with a perception held by the angry person of having equal status with the person who angered them. A person disgusted by, or having contempt for, another person saw themselves as having a higher moral status and were much less likely to accept an apology from the person who had wronged them than were those who stated they were simply angry. This perhaps explains why female victims of sexual crimes, often personally characterised within the trial process as being morally at fault, are less likely to be motivated by a generalised notion of civic duty to make a VIS, understanding that they have already been gender judged by normative society as vulnerable or lacking.

The results suggest victims of SA and DV differentiate between personal duty to others in a similar situation and duty to society as a whole. This is supported by Miller (2014:797), who suggests that female victims of SA demonstrate ‘relational caring’ in their use of the VIS, by prioritising the need for protection of others over themselves, such as children, future or hypothetical victims or their
offender’s partner. However, the way in which victims did this, both in this study and Miller’s, was to provide specific information to the court of the nature of relational violence and its repercussions within families across generations, which although described by the victims as selectively altruistic, could be defined as providing a public service and civic duty by making the unseen seen. Miller (2014:802) notes that the female SA victims in her study were characterised by a ‘strong moral sense of responsibility for the safety and emotional well being of others and a desire to protect them from physical, psychological, or other harms’. However, as there are no studies of male SA VISs, it cannot be suggested that male victims are not similarly motivated. Indeed, findings of this study suggest desire to assist other VOC is not gender-specific but is more likely framed by gendered cultural expectations. Therefore, men and women may share and be motivated by similar understandings of responsibility, duty and care but simply describe them differently to comply with gender stereotypes (further research in this area would be interesting):

I suffer from anxiety and depression. Never used to go out. Little things remind me. Sight, sound, smell. Driving past where it was. Little things trigger big emotions. Now I feel fine. I just want to help other girls.

*Jane (CD:48), victim of SA, VIS read*

I knew when I took it to court, I did it for the women who had not stood up to him, and you wish he had got longer, because it’s not just me, it’s other women, and the mental and physical abuse of the children.

*Yasmin (CD:38), victim of DV, VIS read*

We wanted to express how it had affected our lives and we wanted to do something for others.

*Edward (CD: 06), son murdered, VIS read*

Wishing to raise societal awareness of the reality of victimisation and issues victims face is tied to victims’ notions of civic duty (Braithwaite 2008; Tyler 2006b) and altruism, both themes that permeated VOC responses. In terms of theories of trauma and recovery (Batson 2008; Herman 2005, 1992; Raphael 1983), reaching out via the mechanism of the VIS to re-engage with the wider
community fulfils an important need on the part of VOC to reconnect positively to society as a useful, valued and worthy citizen. As this appears to be another therapeutic benefit of making a VIS, it seems important to understand extrinsic and intrinsic factors that may prevent VOC from considerations of civic duty or that may undermine their societal connectedness and resilience, in order to counter impediments stalling their abilities to reconnect fully within their communities.

4.1.7 To fulfil one’s duty to the deceased and the prosecution

Further to notions of civic duty, family victim participants wished to fulfil their duty to the deceased by presenting the deceased’s personhood to the court to honour them, as previously discussed. Some primary and family VOC also felt it was their personal and moral duty to assist the prosecution case by presenting a VIS.\textsuperscript{51} For some, this duty was described positively, as providing a focus and a job to do during a highly traumatic period during which chaos appeared to reign (see Winick 2005). For others, feeling obligated to prepare a VIS at such a time was onerous and burdensome (see Du Mont & Miller 2007; Sanders & Jones 2007; Booth 2013a):

\begin{quote}
I had to think about it for a while. The pollies were keen because they thought it would help with the sentence.\textsuperscript{52}

\textit{Kelly (CD:49), victim of HCSA, VIS read}
\end{quote}

\begin{quote}
The DPP [solicitor] said it’s good if you do one. It could get the criminal extra time in jail. She said even if you can tell your nephew, even if it says ‘I’m so upset’ and ‘I miss her’. Two lines to say that. I thought, apparently it goes good to maybe get extra time, but the family couldn’t do it.

\textit{Carrie (CD:12), sister murdered, VIS handed up}
\end{quote}

Some of them feel like they have no choice about whether they do it. The police will say ‘Where’s your victim impact statement? We have to have it

\textsuperscript{51} Both Graham et al’s (2004) UK study and the Victims’ Support Agency, Victoria (VSA 2009) report that some victims felt making a VIS was compulsory, with Graham et al further finding that some victims made their VIS thinking it would assist the police.

\textsuperscript{52} ‘Pollies’ here is a reference to the police investigating the matter.
back by Tuesday 30th of this month, and it’s only the 20th or 21st and we’ve only got 10 days to get it in’ and then you [victim support] have the conversation about (a) You don’t have to do it, (b) It doesn’t affect the sentencing and (c) It goes into the public domain, so. But then they [victim] don’t want to hear that. Because if the prosecutor has said you need to do it, who are we to tell them?

_{MACSS, Sydney}_

Well most of the ones I have had have been female clients, who do it because the prosecutor has asked them to do it.

_{Victims Services worker}_

I always discuss it with victims and give them my views on whether it’s a good idea or not and ultimately tell them only they know what is right for them. Because, because it’s voluntary. It does sometimes frustrate me that people won’t do it. But I can’t make them.

_{Crown prosecutor, Sydney (1)}_

Victim attitudes to duty to the police and legal institutions are important. Understanding the heterogeneity of VOC (Lens, Pemberton & Bogaerts 2013), it still can be said that as a group they present as highly vulnerable, sensitive and potentially suggestible (Herman 1992, 2005). Compliant victims in particular may be anxious to do everything they can to assist the authorities and may suffer additional trauma or guilt if they are unable to prepare or present a VIS they perceive as acceptable and fulfilling that obligation (de Mesmaecker 2012).

4.1.8 To affect sentence

The quantitative and qualitative data reveal that sentence is a focus for both primary and family VOC and a motivation to make a VIS, replicating findings in previous studies (Leverick, Chalmers & Duff 2007; VSA 2009). Lens, Pemberton and Groenhuijsen (2010) found around 50% of respondents delivering an oral VIS did so with the expectation of affecting sentence, as did two of four families in death matters (50%) presenting a VIS in Rock’s (2010) study.
In this study, 74% of family victims and 62% of primary victims stated that they had hoped their VIS would affect sentence (see Table 3.15). Daly (2014) describes sentencing as supporting VOC justice interests of vindication, where the court—as a representative of the wider community—censures the offence and publicly declares solidarity with the victim, with an affirmation that the perpetrator’s actions against the victim were wrong. Responses such as the two below were sentiments repeated by other participants:

My understanding is that the VIS was to get the people a severe sentence.
Ian (CD:10), grandfather of granddaughter drowned while on a boat due to others’ negligence, VIS handed up

One reads of people who get light sentences for serious matters. I was hoping my VIS would prevent that happening.
Michael (CD:34), victim of PA, VIS handed up

In a guilty plea, and even at trial, the descriptions of harm may not encompass the full and specific nature of hurts suffered, both at the time of the crime and subsequently. This lack of specific information is important, as the judiciary may base their understanding of harms on their more generalised understandings, which may differ from the actual harm experienced by a particular victim. Thus, VISs have educative effects for judiciary who may be unaware or lacking experienced knowledge of the relational dynamics within certain types of crime or of details regarding the aetiology and longevity of types of systematic interpersonal abuse (see Erez 1999; Schuster & Propen 2010). For this reason, it has been argued that provision of specific and previously unconsidered information to the sentencing court through the VIS facilitates more accurate and proportionate penalties (Roberts 2009; Roberts & Edgar 2006; Shackel 2011; VSA 2009). However, opposing understandings from two Crown prosecutors regarding the influence of VIS in the determination of sentence are revealing:

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.

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 um, but um, 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. Um it’s, it’s, 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. That some members of society are more valuable than other members of society, and we just can’t have, accept that. And the difficulty is that, because of that fundamental principle. 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)_

One of the legal profession’s central criticisms of the VIS is that consideration of a VIS at sentencing could lead to inconsistencies of judgements in similar matters where VISs are or are not presented. In interviews with the Victims’ Support Agency, Victoria (VSA 2009), 67% of judges and magistrates stated that they considered the VIS often or occasionally significant in determining sentence; however, their findings also indicated that the higher the jurisdiction, the less significant the VIS became in determining sentence.53 The VSA (2009:33) study also stated that ‘none of the [judicial] respondents surveyed thought that the purpose of VIS was, or should be, to specifically impact on sentence’. Their findings suggest that although previous research suggests victims of more-serious crimes are more likely to make a VIS (see Roberts and Manikis 2011), courts dealing with such crimes are less likely to consider them in the determination of sentence. Studies comparing the sentencing outcomes of matters where VIS are presented and not presented generally conclude that the VIS does not affect sentencing decisions (Erez 2004), and in studies where the judiciary are interviewed, most state that their decisions are informed, but not changed by, the VIS. If this is the case, it appears strange that VISs are so heavily scrutinised, as revealed by the high levels of VIS editing and redrafting (see Chapters 3 and 5). Judiciary report that it is difficult to isolate and evaluate the influence on sentencing of particular elements, including the VIS, within the body of information presented to them (Leverick, Chalmers & Duff 2007; VSA 2009). It could be argued that it would not be in the interests of the judiciary to reveal potential risks to sentencing consistency. Roberts and Manikis (2011:33) report that ‘although the evidence demonstrates that sentencing patterns do not get harsher [when VIS are presented], we lack research to know whether the use of VPS [victim personal statements] has affected consistency of sentencing outcomes’.

53 However, it should be noted that of 220 judges and magistrates contacted for the VSA study, only 42 completed the survey (19%). Of 220 interviewed, 28 (13%) stated that VISs were often or occasionally—with no distinction between those categories—useful in determining sentence (see VSA 2009:96).
Prior to changes to NSW VIS legislation in June 2014, the NSW Supreme Court consistently argued against taking the VIS of family victims into consideration, stating that to do so would ‘offend the fundamental concepts of equality and justice’ due to the potential for the VIS to influence the court’s decision to value more greatly one homicide victim’s life over another (Roth 2011:9), especially as the voluntary nature of the VIS means it may be presented in some matters and not others. While this logic appears generally understood, the argument of inconsistency between sentencing in matters where VISs are presented and where they are not is strangely not raised regarding primary victim matters where the VIS is also voluntary:

I always explain that to people. In that for whatever reason people don’t write a victim impact statement, for whatever reason that might be, that it’s too traumatic, that they can’t, that they just don’t want to, that they’re afraid of reprisal, whatever reason that they don’t write one, that it [VIS] can’t be seen to be given weight because it’s not fair on people who for whatever reason don’t write one. [Italics added]

WAS, Newcastle

The official line presented by some VSP interviewed was that if the VIS does provide an educative and informative function for the sentencer, such knowledge forms only a part of information considered at sentencing. Consideration was reported as equating to the general, being of judicial use more to a cerebral cumulative acknowledgement of the aetiology of particular crimes than of primary interest in sentence determination of a particular matter.

However, findings suggest a tacit understanding among some in the police and in those prosecuting matters that the VIS has an instrumental purpose in terms of affecting sentence, with an increase in sentence being an aim. Despite research already cited that the VIS has little influence on sentence, it is interesting that the behaviour of some VSP supporting victims, or involved in the prosecution of matters, appeared to suggest otherwise:

I’ve seen judges cry when victim impact statements have been read. And I have no doubt that, as human beings, they are affected. And they might say
in their judgements, it hasn’t changed my sentence. But it has an impact. I see it every day. That of course is not the ‘official response’ to that because it’s not supposed to ... because nobody ever talks about this. Everybody pretends that they make no difference at all and the Court of Criminal Appeal says over and over again ‘they make no difference. They make no difference to the sentence’ ... I think it [VIS] does.

Crown prosecutor, Sydney (1)

In general, the understanding of the criminal justice process presented by VOC participants was based on the severity of their suffering being acknowledged by the severity of the sentence handed down, driven by their normative understanding of the validation of their suffering being acknowledged by level of offender punishment in line with the proportionality principle of sentencing in common law.\(^{54}\) However, the proportionality principle also takes account of the objective circumstances of the crime event, something less likely to be understood or embraced by VOC. The data suggest that some practitioners who advise VOC view the VIS as a tool of the prosecution to affect sentence, as described by the Crown prosecutor, Sydney (1), above. Here, notions of justice for those VOC holding a ‘just world’ worldview become highly problematic. In reality, primary victim participants had no quantified certainty and family victim participants had no legislated certainty regarding the influence of their VIS on sentencing decisions, relying completely on the court to assess the level of injury and harm they had suffered as they, the victim, perceived it. Most study participants were victims of serious crimes, suffering profound, lasting, but also highly individual impacts, with individual consequences. As previous studies report that VISs have less, if any, significance in the sentencing judgements of higher jurisdictions (see Garkawe 2007; O’Connell 2009; VSA 2009), it appears that victims of the most-serious crimes, hoping their VIS might affect sentence (in this study, 74% of family victims and 64% of primary victims), or advised it would, appear at most risk of their expectations being dashed (see Henderson

1985; Hinton 1995). Data suggest some prosecuting and judging matters view the VIS as tokenistic:

It's always struck me as insincere [the VIS], that victims are, well the reality is there is no impact on the outcome, so it is rather patronising if you analyse it. Perhaps the victims that make the statement are not equipped to see it, and do not understand the extent of which they are being patronised by the process …

*Crown prosecutor, Sydney (2)*

Participants expecting least from sentencing were mainly those most highly counselled within a therapeutic setting:

It really comes from the support that people get prior to giving [their VIS] … It's keeping them supported in such a way that even if the worst does happen you can still move them along. Justice begins when revenge ends. There is nothing you can do to the offender that will change what they've done. So we have to work with victims on more than getting even with the offender.

*CEO, Enough is Enough*

While sentence was described as important, many VOC stated that using the VIS to attempt to affect the severity of a sentence would not ultimately change the nature of their suffering. For some, the additional perceived responsibility of the VIS having the potential to affect sentence was too great a burden to bear (see de Mesmaecker 2012; Erez 2000). Rather, these VOC described being motivated to make a VIS for personal and expressive reasons, suggesting that the expressive function of VIS provides a different and intrinsic value for VOC, distinct from its value of providing information to the sentencing court:

You need to let go of that [sentence]. As a victim I have expectations, and to be disappointed would be extra trauma. Friends say ‘I wish they had got a more severe punishment’, but it’s not about them. It's about me healing. If I had to be concerned about their sentence it would be too much. It would send me over the edge.

*Olga (CD:65), victim of robbery and aggravated PA, VIS read*
I didn’t do it for that reason [making a VIS to affect sentence]. I did it for myself.

_Emma (CD:43), victim of SA, VIS read_

If humans seek meaning in all things in order to control their environment (Frankl 1959/1946), it can be assumed that when given the opportunity to have a voice in sentencing proceedings, victims would wonder to what end:

I thought it was to put our point across. For us to say how it had affected us, so they could think about that in the sentencing. To me it didn’t seem like it meant anything to anybody. It was a waste of paper. We were grieving over my daughter and we wanted the magistrate to understand how we felt and what it would do to the family, and what he [offender] should get, in the sentence. It didn’t seem to sink in, and the court didn’t do anything about it.

_Diana (CD:13), mother of daughter killed in a motor accident by drunk driver, VIS read_

Where the end is not obvious, and outcome uncertain, it would not be surprising for VIS makers to assume part of purpose of the VIS, albeit unspoken, is to increase sentence (Hoyle 2011) unless specifically and comprehensively counselled to the contrary, especially if given indicators from prosecution or police that ‘apparently it [VIS] goes good to maybe get extra time’.55 Mismanagement of VOC expectations by those supporting them who promote the potential of the VIS to affect sentence opens VOC up to significant risks of further disappointment and secondary traumatisation if those expectations are not realised (Bandes 2000; Herman 2005).

### 4.1.9 To achieve catharsis

Results confirm that the VIS can be cathartic, allowing VOC to get things off their chest (Graham et al 2004:19), supporting previous findings (Hoyle 2011; Leverick, Chalmers & Duff 2007; Winick 2005). This sharing of information is not the same as telling friends, family or mental health professionals. The VIS allows for a ritualised and legitimately sanctioned form of sharing, which VOC

55 See Section 4.1.7 Carrie (CD:12), sister murdered.
experience as powerful, as reported in Booth’s study (2013a). Many participants, not necessarily happy with some criminal justice procedures or the sentencing outcome of their matter, still saw the VIS as having a positive personal effect.

Cathartic effects gained through the processes of writing and presenting the VIS are discussed in Chapter 5, sections 5.1, 5.4 and 5.6. In terms of a motivator, however, many participants described needing to make a VIS to release the pressure of containing information about their harms that had not been presented to the court or heard by those who committed the crime. The need for participants to tell their story of hurt and injustice in order to let it dissipate was palpable in phrases such as needing to ‘let it go’, ‘let it out’ and ‘get it out’. There is a sense that this information, once released, becomes public property and, therefore, of public and communal interest and is perhaps another way VOC use their VIS to reconnect to the greater community as a worthwhile member, rather than as one diminished and silenced by their victimhood (Herman 1992; Kezelman & Stavropoulos 2012):

I did it because I felt I had to do it. I had the need to do it. It was personal for me and the court.
Fran (CD:15), husband murdered, VIS handed up

It needed to be done. Without that he would wander off and not know how he had affected not just me, my whole family, and once it was done, it was like ‘Phew! That was done.’
Natalie (CD:55), victim of HCSA, VIS read

Those concerned that the VIS has the potential to affect an offender’s right to an impartial sentencing judgement question whether the court is the appropriate place for victims to seek emotional catharsis (see Hoyle 2011). However, the findings from this study suggest that the opportunity to publicly and formally present within the legitimacy of a court setting the hurts VOC suffer as a result of the crime, or to ultimately choose not to, is for many important:
It's a good thing that people get a chance to say something in a court of law. You can say what you like to friends or the press, but to speak to a judge and other people [in the court] and it is approved that we can say it.

George (CD: 08), father of murdered son, VIS read

George’s sentiments mirror those of other participants who stated that catharsis was not about expression per se, but expression within a safe and sanctioned environment in front of an interested audience who acknowledges their right to speak as an interested party. Thus, their personal expression of suffering is formally allowed, given credence, supported and understood as legitimate and legitimated.

4.2 VIS barriers

4.2.1 Lack of desire to continue with the criminal justice process post-conviction

VSP stated that many VOC decide not to make a VIS because they do not want to engage with the criminal justice process beyond conviction of the offender (supported by Roberts & Manikis 2011). Whether VOC see conviction as a validation in itself, negating further need to participate, or whether, disappointed with proceedings to that point, they disengage to avoid further trauma or revictimisation is not clear—both were given by VSP as reasons. Without statistics regarding the proportion of VOC eligible to make a VIS who choose to do so, it is difficult to draw conclusions. Some studies report a 15% to 30% take-up rate for VIS when less-serious matters are included (Leverick, Chalmers & Duff 2007; Graham et al 2004), although most studies that include serious matters suggest a much higher take-up rate of over 70% to 90% (O’Connell 2009; VSA 2009), and this study reports 85% of those participating. Some VSP also reported that for VOC unable to portray what they see as a pattern of offending that is important in setting a context, or for those where charges have been negotiated from more-serious to lesser charges, production of the VIS can be too frustrating and traumatic a task to undertake (see de Mesmaecker 2012), especially if they understand it to have no instrumental function or to offer no personal gain:
I think there is a big discrepancy between what they want to write and what they are allowed to write, and what they think for them is important to be included. Something that might have affected them most might be something that they are not allowed to say. So it sort of defeats the purpose. And they may come to the conclusion that it is pointless.

*Victims Services worker*

Also that they wanted to include in it matters that were not permitted to be included … you know, he’s done all these other terrible things but I can only comment on that. How can I break up all these things? I can’t isolate the impact on those things that are indicted and are just related to those few offences, when in my mind there were so many. How can I do it? I can remember a few cases like that, and then, therefore, they don’t want to be restricted, so they would rather not make them at all.

*Crown prosecutor, Sydney (2)*

Over half the VOC overall and over 80% of SA, DV and PA participants reported suffering financial loss as a result of the crime (see also Freeman & Smith 2014). VOC are not automatically compensated for costs associated with attending sentencing proceedings to present a VIS, and loss of earnings is not taken into account. Some participants stated that they could not afford to take the time away from work to attend sentencing, and thus were financially prohibited from presenting a VIS.

### 4.2.2 Awareness of the VIS in the Local Court

VIS studies suggest that VISs are more likely to be made in serious matters, with three variables positively associated with the decision to make a VIS—namely, post-traumatic stress symptoms, type of crime and the extension of time between victimisation and sentencing (Lens, Pemberton & Bogaerts 2013). In the Local Court, usually lesser crimes are dealt with, and matters discharged more swiftly than in the higher courts, with many not meeting the criteria to make a VIS.

Findings from this study not only confirm far fewer VISs being made in the Local Court (see SALRC 2010; O’Connell 2009; VSA 2009) but also suggest VOC in
the NSW Local Court are less likely to have their wishes to present a VIS taken up. This appears to be because the VIS is generally viewed by police and police prosecutors as a ‘feel good’ measure, adding no instrumental value to a matter where the offender has already been convicted, especially when court time is precious and pressing:

[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*

Lack of time within the Local Court was cited as a reason VISs are less likely to be made; however, although no statistics on NSW Local Court VIS have been kept, VSA (2009) reported that in Victoria, matters fitting the criteria for a VIS accounted for only 5% of Local Court business and would therefore be unlikely to cause significant court delays. The lack of recognition of the usefulness of the VIS to the determination of sentence in the NSW Local Court may explain why opportunities to make a VIS are less discussed with VOC, with their wishes to present a VIS sometimes ignored, dismissed or not acted upon. Certainly the study results suggest any therapeutic value a VIS may provide VOC does not appear to be a particular consideration of those prosecuting or judging matters in the NSW Local Court. This finding is novel and unexpected in light of previous research based on interviews with the judiciary (Erez, Kichling & Wemmers 2011; Roberts and Manikis 2011; VSA 2009).

Findings suggest there is a general lack of awareness regarding the opportunity to make a VIS in NSW Local Court matters, on the part of not only VOC but also police and police prosecutors, supporting findings of the South Australian

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56 Interestingly, while three quarters of the magistrates surveyed by VSA stated VISs were always or almost always useful when determining sentence, only 22 of 120 magistrates (18%) contacted actually responded to the survey; in other words, 16 magistrates responding (13%) commented on VIS usefulness. A factor given for the low response rate was that not all magistrates contacted were sitting during the data-collection period.
investigation into the VIS (SALRC 2010). The NSW Sentencing Bench Book states that eligibility to present a VIS ‘extends to indictable offences dealt with summarily in the Local Court that result in actual physical bodily harm, or that involve an act of actual or threatened violence, or that are prescribed sexual offences referred to in Table 1 of Sch 1 Criminal Procedure Act (previously “or an act of sexual assault”): s27(3)(c) and (d).’ Such matters, though less prevalent, are heard in the Local Court depending on circumstance. VIS awareness, access, procedures and timing are all issues that affect VIS uptake in the NSW Local Court:

I think the biggest barrier is that people don’t know that they can do them. And then, that prosecutors, both police and DPP prosecutors, don’t necessarily encourage people to do them. But I think the biggest barrier is the awareness that that is an option … In the Local Court, sentencing can happen at the same time as an outcome. So whether the opportunity is there for the victim to actually have that input?

Director, Victims Services NSW

So the few that we do, I mean just because I was doing the interview today, it suddenly occurred to me that I’m running a reckless wounding that started on Tuesday and Wednesday and it’s been put back five months because we didn’t finish, but it’s a matter that does fall into this criteria, and it completely didn’t occur to me. The detectives dealing with it, I haven’t heard talking about it [VIS], or whether they’ve talked to the bloke about it, or whether he has said ‘no, don’t worry’ or whatever, erm, but because it’s not something we do all the time, it’s something that completely escaped my mind, which even though I was going to talk to you, it still escaped my mind so … Erm, you’ve got the police who have just got so many different things they’ve got to do, that, unless things become habitual, they don’t tend to, they don’t tend to remember.

Police prosecutor, Sydney

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

57 In O’Connell (2009), magistrates surveyed reported that VIS are not often provided or are not obtained by the police or prosecution in Local Court matters.
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 PA, non–VIS maker

Is there an inverted understanding of the probative and therapeutic value of the VIS in the Local Court compared with the higher courts? Is the gift of participation and voice to the more seriously or fatally injured through the VIS better appreciated within the higher courts, or is its inclusion viewed as token but politically necessary (Brennan 2001)? Without further research, these questions remain difficult to answer.

4.2.3 Reaction of family members, victim support agencies and prosecutors to the VIS

The decision to make a VIS can be influenced by those with whom VOC share relationships and by those providing support or professional advice. VOC data suggest family and friends can be unsupportive of a VIS, either viewing the process as too traumatic or concerned about familial or community disapproval. Similarly, VOC and VSP data report that some in victim support, seeing little functional value of the VIS, advise their VOC clients that distress endured in VIS preparation may outweigh the value of its outcome (see also Du Mont & Miller 2007; Du Mont, Miller & White 2008):

To get a completely sort of mixed message from someone who is supporting them in a different environment, it can be really difficult for the victim. It can make people question whether they are doing the right thing, which is the last thing they need to be confronted with. And ‘I’m suddenly in the middle of all this trouble and my counsellor’s saying this and you’re saying this and my mum’s saying this, and you know’, it’s like an awkward situation.

WAS worker, Newcastle (1)

Sexual assault counsellors, look some aren’t [in favour of VIS] and some are. But some services actually refuse to help people write one. Some people
actually say ‘don’t write one’, and some in other areas help and will go and read one for you at the court, so there is inconsistency everywhere.

_WAS worker, Newcastle (2)_

As already mentioned, data suggest that some police prosecutors, DPP solicitors and Crown prosecutors view the VIS negatively, either based on the notion of its lack of functional value or viewing the emotional content of the VIS as inappropriate within the court (see also Miller 2013:1455). If VOC, seeking support in their wish to make a VIS, find that their desire is unsupported, undermined or ignored, they are far less likely to continue to make one.

4.2.4 Not wanting the offender to know the consequences of the impact of the crime

An unexpected finding was the frequency with which some primary and family victim participants mentioned that they did not want the offender to know how the crime affected them. Some felt the offender would gain pleasure and empowerment from their suffering, and others felt that the offender had no right to know personal information about their lives or to be privy to their suffering:

> It was just that they would read it in court in front of the defendant and I didn’t want him to know. I didn’t want him to know what impact it had had on me. I just felt that I didn’t want him to know. It took me a while to decide. Not sure about the emotion. I was pretty sad when I knew he was going to hear it.

_Hua (CD:46), victim of SA, non–VIS maker_

In terms of emotional self-protection, some participants, systematically abused over a period in situations such as DV and HCSA, talked about the fact that having given away so much of their personal autonomy to the perpetrator, they were conscious of not wanting to give up any more through a VIS. Some victims of SA and PA also reported not wanting to be further victimised or to provide the offender with more satisfaction.

At sentencing following a guilty plea, the VIS was the first time that VOC could reveal the impact of the crime to the court. Participants appeared to view the
VIS within the paradigm of a power struggle between victim and offender. A refusal to present the impact of the crime to the court was seen by some VOC as allowing them to retain some autonomy over their suffering. Choosing not to make a VIS allowed them control in their management of their trauma and recovery, refusing to allow it to be sullied by being disregarded, belittled or salaciously enjoyed by the offender:

In a way too, I didn’t want the offender to know how he had affected me. And he would know how he frightened me, and that was what he wanted … The statement said ‘you made me feel scared and helpless’, which was their aim, so you are telling them that they’ve done a good job.

Belinda (CD:40), victim of DV, VIS handed up

I felt they’d get pleasure from it, like reading about their success. I don’t believe every criminal would be the same, but they would in common parlance have a wank over the thing. It was the sort of people they were.

Michael (CD:34), victim of PA, VIS handed up

While many decide to make a VIS despite these reservations, the qualitative data reveal that although VOC wish the court to know the extent of the impact of the crime, offender access to that information was deeply troubling for some victims and challenging to their intrinsic safety (see Meredith & Paquette 2001; Wall & Quadara 2014).

4.2.5 Fear of retribution from the offender, their family or shared community

Of non–VIS makers (all primary victims), 80% stated a fear of retribution from the offender as a reason not to make a VIS. Qualitative data reveal this was mainly an issue for victims of DV or PA committed by an offender known to the victim. It could be suggested that VOC who fear retribution by the offender or the offender’s family or community would not bring charges, or these concerns would be apparent and discussed prior to proceedings. However, police will prosecute DV matters and other matters they feel will be successful, even when the victim wishes to drop charges. DV is the leading cause of death and injury in
women under 45, with more than one woman murdered by her current or former partner every week in Australia. Two-thirds of females murdered in NSW are killed by their intimate partners (Domestic Violence Death Review Team 2012). Some DV participants stated that although the VIS offers an opportunity to reveal to the court their legitimate concerns for future offender violence, this was outweighed by fear of the offender’s retaliation for using their voice in this way. In a guilty plea, a VIS may be the only chance for these victims to voice their ongoing safety concerns, but ignorant of the sentence the offender will receive prior to VIS presentation, making a VIS can be high risk:

I feel safe because he’s locked up in jail. I’m moving to New Zealand. I feel safe because he’s locked up, but I’m scared he’s going to come after me. The [sentence] was five years. I have an AVO out on him. I am scared, because last time he hit me in my house, so I’m scared he will come after me. So I’m moving away from Australia before he gets out. I want to find out when he gets out, so we can go before, because he will come after me. And that’s why I said I was safe, because he’s in custody now, and while he’s in jail I know I’m safe.

Wendy (CD:37), victim of DV, VIS handed up

And especially in DV matters and SA matters where they say, ‘I don’t want to make him more angry than he already is. Because when he gets out, he might make it worse’, sort of thing.

WAS worker, Newcastle

Similarly, some victims of PA were concerned that contents of their VIS might antagonise not only the offender but also members of the offender’s family or community to retaliate:

I didn’t want to make one [VIS] ’coz I thought what I might say might come back to me. I was sceptical … The guy’s tried to kill me. If it [VIS] comes back

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to bite me on the arse … He knew where I lived. His family might come and get me. People can get info from anywhere. His father turned up here and knocked on my door. He was saying he had a licence, and he got a look at me then and got a look at me in court.

*Vicky (CD:31) victim of PA - VIS handed up*

I was afraid of writing it because I’m a Kiwi and he’s a Kiwi too. Families know each other, and it might have had an impact on my family back home. So yeah, I had to think about it.

*Ken (CD:32), victim of PA, VIS handed up*

The majority of VOC participants expressing concerns about not wanting the offender to hear their suffering, or those fearing future retribution, preferred to hand up their VIS rather than read it—if they decided to provide one to the court at all.

**4.2.6 Ambivalence: complications of victim/offender relationships, and matters where death or injury is due to offender negligence**

Some participants were ambivalent about making a VIS, unsure of its consequences. VSP stated that victims in ongoing relationships or sharing children with their offender can be reluctant to make a VIS, fearing that it might increase the offender’s sentence (see Miller 2014). Some HCSA participants also described confused attachment to the offender, wishing less for them to be punished than to understand that their offending was wrong. Herman (1992) suggests that those who develop attachments with dangerous or injurious caregivers develop adaptive coping strategies, such as denial, dissociation, confused attachment and self-blame, which over time may become maladaptive (see Wall & Quadara 2014). Kezelman and Stavropoulos (2012) describe the core problems of complex trauma—most often seen within the CJS in matters of HCSA; ongoing physical, sexual abuse or neglect; and DV—as manifesting in effect dysregulation, structural dissociation, somatic dysregulation, impaired self-development and disorganised attachment. Some VOC participants appeared to want to use their VIS as part of a one-way dialogue to elicit some
understanding, remorse or contrition on the part of the offender, despite knowing their attempt was likely to be futile:

Trying to get it, because most wouldn’t understand the relationship, because most wouldn’t understand … I guess like knowing it was my form of contact to him … If I could have made him understand, it would have made things better. Not that it changed anything. I think, personally, I’m used to dealing with stuff like that without talking to people. That’s just the way I deal with stuff like that. I don’t talk to people.

*Lucy (CD:50), victim of HCSA, VIS handed up*

Some VOC reported conflicted feelings towards their offender; notions of self-blame or the desire to forgive, understand or assist complicated their motivation to make a VIS. Such concerns opened them up to emotional risk, because rather than using a VIS for potential empowerment over and creating distance from their offender, it became a form of communication that still invested the offender with power in the autonomy of response:

I didn’t know him. He was 17. He was a kid. I am 36. Another emotion, I had pity for him. He needs help more than me. I felt bad for him. I wanted him to be punished, but I didn’t. Wanting him to get help, not vengeance.

*Ivona (CD:47), victim of SA, VIS handed up*

I don’t think he cared. He was so shallow. He saw through me. I would love to talk to him and know why. He was a nice guy.

*Gina (CD:45), victim of SA, VIS read*

VOC and VSP data reveal that death matters where a victim was killed due to offender negligence (e.g. cases of driver inattention) were particularly difficult for some families when considering making a VIS:

There were lots of fors and againsts. At the end of the day, I felt I had to say something … Like if you are the victim of an accident and you had survived [you could make the VIS yourself], but my brother was not able to do that. And I wanted to give X a voice and mention how that had affected us. [But]
the guy’s been through a lot, and feeling remorse. I didn’t want to rub salt into
the wound, but I needed to have something be said … Here, it was a tragic
accident, but he wasn’t paying attention. That’s what we were looking at all
the way through.

*Henry (CD:09)*, *brother killed in vehicle collision due to negligence of driver of
other vehicle, VIS read*

It appears there is a correlation between the level of conflict felt by VOC in such
circumstances and the level of contrition and remorse as displayed by the
offender within the court setting or as described to VOC prior to sentencing.
Where participants understood the crime was not intentional, their sense of
injustice regarding the incident was complicated by their sense of compassion
towards the offender. Here, two notions of justice conflict—that of justice as
retribution and justice as mercy—potentially affecting the motivation for and
content of a VIS.

### 4.2.7 Trauma

Trauma was a prevalent theme cited by participants, negatively affecting their
cognitive and coping skills in terms of their ability to understand VIS information
and to engage effectively in VIS processes:

> I couldn’t put pen to paper because we were going through so much. They
said, ‘Didn’t you do an impact statement? Oh! I thought you would have done
one.’ I wasn’t up to doing it … So you’re not thinking clearly. It’s very
overwhelming. I’ve never been in this position. Every day something
happening. Channel 9 in the street. Things in the paper.

*Zena (CD:36)*, *victim of arson and malicious damage with intent to endanger
life, non–VIS maker*

Of non–VIS makers, 60% cited trauma as a reason why they chose not to make
a VIS. Trauma begins as a normal response to overwhelming stress. Kezelman
and Stavropoulos (2012) suggest that trauma only ‘becomes pathological if
traumatic experience remains unresolved after the precipitating event/s have
passed’ (Kezelman & Stavropoulos 2012:30, italics added). For many VOC,
criminal justice processes and proceedings create an extension and complication of the resolution process, undermining recovery (Herman 2005).

In their study of 390 African-American adolescents and Iraqi refugee adolescents, Kira et al (2012) examined the specific relationships between different types of trauma, PTSD cluster symptoms (re-experiencing, arousal, avoidance and emotional numbness/dissociation) and IQ factors (perceptual reasoning, verbal comprehension, processing speed and working memory). They concluded that the experience of cumulative trauma in certain circumstances can have a negative effect on all of the four IQ components. VOC participants described how extremely difficult, if not impossible, it was to process information and act coherently during additional stresses of trial and sentencing processes (supported by McDonald 2010):

More needs to happen than being handed an envelope. I remember the police giving me a pack [VISIP] 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 PA, 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_

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.

4.2.8 Shame, literacy and language and perceived intellectual inadequacy

Some VOC participants stated they were ashamed of what had happened to them and did not want to expand on the nature of their victimisation publicly
through the VIS. Some felt that they would be unfairly judged. Seen through a ‘just world’ perspective, as Pemberton (2012) suggests, this appears paradoxically to be the case. From the ‘just world’ viewpoint, bad things do not happen to good people; ergo, there must be something at fault with someone who is a victim. The acknowledgement that people can be victimised at random allows the possibility of one’s own personal victimisation, which Lerner (1980) suggests is too unsafe a concept for individuals to live with. To combat this, non-victims disassociate themselves from victims through a cognitive process of re-evaluation of the circumstances that caused the victimisation event, of the personal characteristics of the victim and of the consequences of the crime. This occurs as a result of the need to self-protect by denying the logic that victimisation could happen to anyone/onself, especially in instances where personal consequences are considered most serious. Thus victims become ‘them’, and non-victims remain ‘us’ (see Lerner & Goldberg 1999). Pemberton (2012:49) suggests that within this paradigm the victim’s conduct will be under closest scrutiny in cases ‘where his or her suffering is largest’.

Fohring (2012:6) suggests that VOC who are able to cope with their victimisation by rationalising their experience using various cognitive processes will be less ‘inclined to adopt the victim label’, whereas those who are no longer able to perceive themselves as invulnerable, possessing a positive self-image or living in a just and benevolent world (most likely those suffering serious personal crimes) ‘progress down the road of victimhood’ (2012:4). However, Fohring’s study reported that this does not necessarily mean such victims would be any more likely to engage with criminal justice processes or seek the assistance of victim support services.59 Her findings are supported in this study, where non–VIS makers, despite describing serious crime impacts, chose not to engage with the VIS process and reported less engagement with support/counselling services.

Some VOC stated it was humiliating to have to reveal that a lack of personal insight or strength had allowed them to be taken in, hurt or controlled by

59 Fohring’s study (2012), unlike the present study, also included victims of less-serious crimes.
another. Some VOC instinctively understood and internalised the ‘just world’ paradox necessitating victim blame, acknowledging that the more they exposed themselves to the court the more they risked their suffering being judged.

I never actually went to the court. I gave it [VIS] to the WAS who gave it to the DPP, because I felt I was going to get up and say something in the courthouse. Because everyone laughs at me, I’d prove to them that I was serious and I wasn’t a joke. I get too emotional about things, so it would come out worse. It was myself, my brother and sister it happened to. It would have made it more uncomfortable. He’d threatened to kill me, so it would have made it worse. Keeping it a secret, maybe it would have been better.

*Peter (CD: 51), victim of HCSA, VIS handed up*

Shame was described by both genders, but the orientation of personal distress differed. Male participants described difficulties in having to expose themselves as vulnerable, in terms of reconciling their masculine identity with their experience of being a victim. Male family participants, whose victimisation was secondary, appeared able to rely on the ideal victim stereotype of innocence and distance from the offender (see Christie 1986) and thus anticipated a positive VIS experience. Primary male participants, however, often presented as very isolated, conflicted and shamed by their emotional hurts, and this was a barrier to making and presenting a VIS. Their shame was not only intrinsically but also extrinsically challenging to their masculine status and stereotypically experienced as unexpected:

I never reached out for support to anyone. I’m surprised that some guys do. It’s brave. You tend to isolate yourself after sexual assault. You have to protect yourself. It’s a big secret and you carry that as a man I think.

*Oscar (CD:53), victim of HCSA, VIS read*

The intrapersonal status of a victim refers to their internal understanding of their sense of self, in terms of their abilities, autonomy and efficacy developed over time through internalisation of experience in relation to expectation. Elements creating perceived self-worth are only prohibitive if understood and internalised as deficient. Thus, intrapersonal status is situational, relational, reactive and
fluid. The facets of the ‘ideal victim’, first described by Christie (1986), could be described as resultant from the ‘just world’ worldview. Only victims seen to be completely innocent and beyond reproach by observers can be accepted as being without blame and, therefore, without shame, as earlier described. Therefore, all those groups historically tainted as being of minority status, subordinate or disenfranchised are at risk when personally victimised, such as females, the aged, the young, those of different and minority ethnic, sexual identity or religious groups, and those challenged by intellectual, physical or mental health impairments. The shame some VOC from these groups described appeared to be generated from an intrinsic perception that they were, or would be, viewed as being of lesser status, leading them to fear that their emotional or physical hurts would not be believed or validated:

Didn’t want to get on the stand to be belittled ‘coz of what I was doing … In the paper: Woman was a prostitute. Put in the paper long before court. Before I was out of a coma. Sex worker/prostitute, and the hospital. They didn’t give a fuck about me as a victim.

Vicky (CD:31), victim of PA, VIS handed up

Others [at HVSG] saying how lovely the police are. Mine couldn’t give two shits about me. If this had happened in a different environment, not prison, this would have been different. Why should I be treated differently? If I didn’t believe it, I wouldn’t say it.

Irene (CD:18), mother of a son killed by inmate during a custodial sentence, VIS handed up

Victims falling outside the paradigm of the ideal victim may challenge the dominant legal and political narrative, because they sully the notion of the ideal offender (Christie 1986). Other studies have noted judicial evaluation of victim harm in SA cases based on the status and perceived complicity of the victim (Rogers & Erez 1999; Schuster and Propen 2006, 2010). If VOC view themselves as not wholly deserving of community sympathy, it follows that offenders may not understand themselves as wholly deserving of communal contempt. This grey morass of assumption and perception is highly uncomfortable to negotiate and manage for an adversarial system based on
absolutes. Unless all VOC are treated as equally deserving by the CJS and those supporting them, some victims will feel illegitimate. The degree to which this is felt by VOC is exaggerated or ameliorated by their internalised understanding of their personal worth within their community (Ziegenhagen 1978 cited in Brennan 2001) and how comfortably the community accepts the nature and context of the crime.

Although less noted in previous VIS studies, the VOC and VSP data suggest fear of public speaking and feelings of intellectual inadequacy are barriers to making a VIS. For many VOC, their court experience was their first, and their knowledge of the theatre and processes of the court largely understood through film and television. The decision to present a VIS in a highly charged, high-stakes foreign environment was profoundly challenging for some participants, who did not want to let themselves, their deceased loved one or their supporters down. Some stated the court was a place of higher learning that used legal language, rituals and protocols they found difficult to comprehend. In this environment, they were concerned they would appear ill educated, lacking and foolish (Green 2007; de Mesmaecker 2012) and be negatively judged:

I’m not a public speaker. But speaking in that kind of environment with highly qualified, educated people. It was that environment that made me nervous. I was terrified to begin with.
I’m a nothing …

Doug (CD:05), father of son murdered, VIS read

Previous studies have pointed to the likelihood that poor literacy and not having English as a first language prohibits some VOC from making a VIS (Department of Justice Canada 2005; Herman 2005; VSA 2009). Although this reason was not given by the small non–VIS sample, 60% proved to have been born outside Australia, with accents or distinguishing features that would identify them as from culturally and linguistically diverse backgrounds or non-Australian born. Herman (2005) suggests that those who are not part of the dominant culture experience more barriers when engaging with criminal justice processes. Previous VIS studies have not focused on different cultural perspectives to
crime, nor highlighted specifics of cultural identity within their samples. Of the 28 respondents in the UK Home Office study (Graham et al 2004), 23 identified as ‘White UK’. Booth (2013a) noted the monocultural bias of respondents in her study, who were all of white Anglo-Saxon descent. The Scottish study (2007) and VSA (2009) did not provide information regarding the country of origin, culturally and linguistically diverse background or ethnic status of their samples.

Fohring (2014) suggests that different attitudes towards crime affect reporting, some of which are cultural. It has been argued that the VIS favours those from individualistic cultures and, within that cohort, favours those who follow the normative values of that culture (Cassell 2009). The numbers of VOC participants from cultures where SA may be seen as a dishonour to the family or community as well as to the victim, and where relational violence is not discussed, were too low to explore whether culture affects VIS take-up or the nature of personal revelation in VIS content. However, VSP reported VOC of collective cultures are less likely to make a VIS, being culturally bound not to shame their community, the notion of shaming the community extending to victims of particular crimes within religious, minority or stigmatised groups (see Kezelman & Stavropoulos 2012):

And there is the shame factor, especially with some cultures and different religious backgrounds, and we find it here. Like, they’ll ring up and say, you know, ‘I need to see a counsellor, but can I come and see you in your office between these hours because I don’t want my mother to know or I don’t want my husband to know or I don’t want other family members to know I’m getting counselling’. So there is, like, a shame factor for a lot of people to say, ‘I need help’. So when it comes to a victim impact statement, there’s no way, especially if it’s a family member who’s committed the crime, that they will get up and say anything about that person publicly, because the community would be so unaccepting of it, especially if you are a woman in some communities, like those where you are to be seen and not heard. So giving a victim impact statement is never going to be.

Manager, HVSG
I don’t think I’ve had an Aboriginal person do a victim impact statement for me. I’m not quite sure of the reasons for that. Asian people in particular do not like doing it. I’ve asked on multiple occasions, and it must be a cultural thing. It must be something that I don’t understand.

*Crown, Sydney (1)*

VSP stated that, in their experience, VOC challenged by literacy and language were less likely to want to make a VIS. This appeared a greater issue for VOC whose matters were heard in the Local Court, where little support was offered:

A lot of people I know, their literacy is pretty low in the first place. And then a lot of court stuff is told in a lot of jargon. Things they wouldn’t understand. So if you say to someone what’s a victim impact statement, they probably have no idea what you’re talking about … I am an Aboriginal person myself. And with my Aboriginal clients, their literacy levels are unbelievably poor often. And to walk into a court with your poor literacy skills, when you don’t really know what they’re talking about is very daunting. So you tend to let the solicitor do his job and you just sit there.

*Cultural coordinator, Enough is Enough*

I think the lack of education is the thing that makes people very reluctant [to make a VIS]. Probably, even the idea of writing a letter would have been a difficult thing for some of them to have to do.

*Manager, VWCCS*

The stress and shame faced by VOC unable to access or understand information regarding the VIS, the anxiety of fearing they will appear inadequate or foolish in the courtroom, and collective cultural norms regarding public disclosure are important factors to acknowledge. Awareness of the challenges these barriers may pose may better assist some VOC towards making a VIS.

**4.2.9 Fear of cross-examination**

VOC are alerted to the possibility of cross-examination in the NSW VISIP (2013:5) in ‘Points to consider before making a VIS’:
The victim or the author of the statement is subject to possible cross-examination about the contents of the victim impact statement. This may happen if the offender does not agree with parts of the statement.

The concept of cross-examination of the VIS appears to be an anomaly, existing as a consequence of the confusion regarding its probative and evidentiary value. As findings suggest, cross-examination of VIS in NSW is almost unheard of. Indeed, John Stratton SC (Stratton 2013) in his advisory website to lawyers in the field suggests:

On the current state of the authorities, it is probably good practice when a victim impact statement is tendered not to object to the tender but to point out that the victim impact is unsworn and not subject to cross-examination.

In *R v Wilson* [2005] NSWCCA 219, Simpson J said at [27]–[28] that while the factual basis of the Crown’s case, particularly where it seeks to establish aggravating circumstances, is always open to challenge by an offender, her Honour stated that the relevant legislation ‘does not appear to envisage that cross-examination of the content of the statement [VIS] would be permitted’ (Judicial Commission of NSW 2014:12–836).\(^60\)

Despite this, it is clear from the data that some participants feared the possibility of their VIS being challenged and the veracity of the information presented questioned, as noted in previous studies (Herman 2005; Leverick, Chalmers & Duff 2007; Schuster & Propen 2006). The idea of the personal and subjective nature of VIS content being scrutinised appeared demeaning to many VOC:

I still find that amazing that they can question you on your VIS. I find that amazing … to be questioned on your raw emotion. This is your soul you are baring. I found that difficult.

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

To say that the VIS can be cross-examined, you are making it clear to the victim that they have no influence … you are allowed to talk about how you

\(^60\) *Sentencing Bench Book Victim Impact Statements (12–830).*
have been impacted in your VIS, but first we are going to edit it, and then we are going to challenge it … to portray a façade of empathy and taking your needs and feelings into account, but behind the scenes, we are going to cut it down and fashion it to our uses.

*Sandra (CD:29,) victim of PA, VIS handed up*

Family victims appeared less concerned about being cross-examined, some suggesting they would welcome the opportunity to expand on the consequences of their loss. Primary victims welcoming the notion of their VIS being cross-examined believed they would be validated by the process. Those fearing cross-examination were those less empowered within the court environment and less personally resilient during sentencing proceedings. For them, the possibility of a challenge to their VIS was potentially re-traumatising, as they viewed cross-examination of their VIS as a mechanism by which the court or offender could put them on trial, requiring them to prove the level of their victimisation and blamelessness (see Burton, Evans & Sanders 2006; Herman 2005). While data from this study confirms VISs are very rarely cross-examined (see Booth 2011), the potential deters some victims from making one.

### 4.3 Summary

The qualitative data show that VOC consider varied and contextual motivators/inhibitors when deciding whether to make a VIS (as supported in Roberts and Manikis 2011). These can be positively or negatively influenced by factors in four domains: (1) nature of crime and relationship to offender, (2) perception of VIS purpose, (3) perception of self and (4) level of access and support. The qualitative data discussed in this chapter clearly show that the decision to make or not make a VIS is complex, with particular VOC in particular circumstances being more challenged by the decision to make a VIS than others.
Chapter 5: The Experience of Making a VIS

This chapter presents analysis of the qualitative data regarding the VIS writing experience, the information and supports that VOC seek and receive when contemplating writing a VIS and the presentation of the VIS in court, including procedural processes that affect the quality of that experience. It was apparent from the data that after making the decision to make a VIS (see Chapter 3), VOC go through a staged process as part of their VIS experience:

1. writing the VIS
2. checking the VIS
3. editing the VIS
4. presenting the VIS in court
5. response to VIS
6. consequences of VIS.

The sections in this chapter follow the sequence of this process, with an analysis of views presented by both data sets regarding each stage.

5.1 Writing the VIS

The experience of writing a VIS from the point of view of VOC has been little explored in depth.\(^61\) This study asked primary and family VOC to expand on the nature of their personal VIS writing experience, with a view to understanding how VISs are constructed in order to determine whether the mere writing of a VIS provided any therapeutic benefits and, if so, their nature.

Writing a VIS is a complex process. VOC must fashion a narrative. They must consider how much information they wish to reveal, to whom and to what end, and take themselves back to the crime event to evaluate its consequences and consider how this information will be received and how they will be perceived.

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\(^{61}\) The Scottish study (Leverick, Chalmers & Duff 2007) surveyed respondents about whether making the VIS was ‘upsetting’ and reported that while 39% found it distressing, 61% reported feeling better having done so. However, writing the VIS was not separated from the totality of the VIS process. Booth (2013a) analysed the narrative content of 38 family VISs presented in 18 homicide sentencing matters, in conjunction with data she collected during 14 in-depth interviews with family VIS makers regarding the preparation of their VIS, but the focus of her study was the impact of victim participation (to include VIS presentation and content) on the emotionality and process of the sentencing court in death matters.
Finally, they must be mindful of the constraints of the VIS and work within set guidelines of admissibility and relevance. The VIS once tendered becomes part of the public record, freely accessed and used by media, which is another consideration.\textsuperscript{62} Referred to as ‘testaments of harm’ (Graham et al 2004:i), VIS are not benign.

Salmon and Reissman (2008:199) point to the co-constructed nature of narratives, suggesting that the audience, whether present or not, ‘exerts a crucial influence on what can and cannot be said, how things should be expressed, what can be taken for granted, and what needs explaining’.\textsuperscript{63} Reissman (2008:8) highlights the complicated relationship between narrative, time and memory, suggesting ‘we revise and edit the remembered past to square with our identities in the present’. In considering the writing of the VIS, VOC are required to make assumptions regarding the context in which their narrative will be presented—and choose a personal stance as author—within the timeline of pre-victimisation, victimisation and post-victimisation.

Narratives are political in that they have a social role (Reissman 2008). Rock (2012:7) suggests that within the victim’s movement, there is no more-potent force than that of victims of serious personal crimes of physical and sexual assaults/abuses or relatives of homicide victims. He describes family victims in particular as having a ‘compelling intensity’ that makes ‘an impression’ within the political and cultural sphere. Findings suggest that VOC participants intended their VIS to have influence, understanding the VIS as an opportunity to exercise their right to reveal the impacts of the crime against them to their chosen audience to achieve a desired outcome.

In general, writing the VIS was reported as difficult and, for some, traumatic and emotionally distressing. However, in analysis, variables such as the nature of

\textsuperscript{62} The VIS can be freely used by the media unless a ‘no publication order’ has been sought from the judge, through the Crown. This order prevents contents of the VIS being published by the media and is granted at the judge’s discretion, based on the sensitivity of the criminal matter.

\textsuperscript{63} In the case of primary VOC, ‘audience’ can include themselves; their supporters; their community and wider community; the offender; the offender’s supporters police; criminal justice professionals; victim support services; the media; those politically, culturally or religiously interested; and may also include persons to whom the VOC would wish their feelings known, including those no longer living. ‘Audience’ for family VOC would most importantly include the deceased.
the crime, relationship to the offender, understanding of VIS purpose, experience and attitude towards the criminal justice process, gender, literacy, culture and perceptions of self-worth are important. These factors can affect not only the content of the VIS but also the nature of the distress suffered when preparing it.

5.1.1 Family victims

For family victims, the sentencing hearing is the end of a journey with no saving grace. Some described the VIS as the final task they could perform for their loved one. In writing it, they had to confront the nature of their loss and its consequences:

I do feel this is a process. Probably with the VIS and judgement you get to the point where this is all real. You really feel flat. VIS makes it even more real. A lot of the time I am still in denial, and in saying that, when you look at it, this [the sentencing] is the funeral so the VIS, it’s almost a eulogy.  
Olivia (CD:24), sister murdered by partner, VIS read

The difficulty was that when you make the VIS, that makes it all real and very final. It’s extremely difficult. The minute you put pen to paper, you have to realise that she is never coming back.  
Anna (CD: 01), mother of a daughter murdered, VIS read

The content of female family VISs tended to be concerned with the reality and totality of the loss. Perhaps for this reason, participants more often described issues with not knowing where to start, with procrastination and completion within the timeframe and with concerns that their VIS would not properly convey their trauma or do justice to the enormity of their loss:

It [VIS] was upsetting and it wouldn’t leave me. I’d wake up and think of things I should have said. It was in my subconscious all the time.  
Jenny (CD: 19), mother of a daughter killed in motor collision by an intoxicated driver of another car, VIS read
At the time, when you’re so traumatised, it’s hard to do. I was still sick with the shock, so I couldn’t do it how I wanted, and when, when I did want to do it, they brushed it aside and said ‘we’d go with what we’d got’.

*Linda (CD: 21)*, mother of a daughter murdered by boyfriend. *Linda suffered a heart attack and required triple bypass surgery after her daughter’s death. Her VIS was read by her son, brother to the deceased.*

Male family participants tended to describe writing the VIS in more pragmatic terms and, as previously mentioned, most wrote their VIS for sons. They tended to focus on the purpose of their VIS, which was eulogistic, written to introduce the positive personhood of the deceased and to draw a comparison with the offender in terms of relative societal worth:

You’re trying to help your son and trying to do your best. No, I didn’t feel better for writing it, but it had to be done, [like] cleaning your teeth, to counter what the lawyers were saying. I just made it short and sweet, and didn’t think of anything like, just to help my son.

*Jeff (CD:11), father of a murdered son, VIS handed up*

I think I wrote it with pride. No not upsetting. It gave me a wonderful feeling. It was difficult. I’m not sure if it was therapeutic. It was reminiscing over a young person’s life. Just remembering our life together and I was so proud of what he had achieved. Obviously it was written with great care.

*Francis (CD: 07) Father of a murdered son, VIS read*

With men, they do tend to keep the emotion out of it to a certain degree, and they will write the facts and the figures. They will write the story. They will write about the experiences that they had with this person, like the camping trip or the fishing trip. So they bring them to life in a different way. Where with the females, it is about the missing. It is about the yearning. It is about the knock on the door. It is about the grief, the pain, all of that. The men want to talk about the process. The women talk about the reactions.

*Manager, HVSG*

The sudden and unexpected loss of a loved one often results in ‘complicated grief’ where ‘normal’ grief processes maladapt (Horowitz, Bonanno & Holen
In deaths caused by crime or misadventure, there is no opportunity to prepare for the loss. Family victim participants often reported their distress at not knowing why the offender took the life of their loved one. Worden (2008:127) notes that a special feature of the grief experience of sudden death is an increased need to understand. Many theorists describe stages of grief or mourning, to assist those grieving to understand the emotional and often somatic reactions they experience (see Bowlby 1980; Kübler-Ross 1969; Parkes 1993, 2001). Stages are interchangeable and not necessarily universally experienced in either order or totality. Worden (2008), expanding on the grief process, developed four tasks of mourning: (1) to accept the reality of the loss, (2) to work through the pain of grief, (3) to adjust to an environment where the deceased is missing and (4) to emotionally relocate the deceased and move on with life.

In reviewing the ways in which family participants described writing the VIS and its content, it appears the last two tasks of mourning are difficult, if not impossible, for parents of murdered children, whether lost in childhood or adulthood. Superficially, it appears females move through Tasks 1 and 2, and males through Tasks 1 and 3, although this is a very simplistic reading of the results. However, undoubtedly, VIS assists family victims towards the difficult first task of acceptance, countering potential maladaptation of the adaptive behaviours of denial and isolation, for it is only possible to assess the consequences of loss by its acceptance.

While the writing process was challenging, some described it as useful, cathartic and positive. The VIS appeared to give family victims a reason to consider the life lost and the reality of the impacts. There was a practical value to forcing oneself into what, in therapeutic terms, would be described as ‘grief work’ (Worden 2008), and safety in its containment, by its purpose:

In some respects it has a cathartic value. Just the process of writing it. You can get it all out, to feel the loss and acknowledge the feelings.

Mary (CD: 22), mother of a murdered son, VIS read
The writing was difficult. Very harrowing. I locked myself away for three to four days. It was horrific, but therapeutic … I found finally being able to open up and speak about what I was feeling—it was two and a half years ago at that stage—it was extremely cathartic. It took me back to the beginning, to lay it all out and let me grieve … those three to four days was being in her presence and feeling her and the loss of her and how the loss of her had impacted on me, to now. The role I had to play [in the future of my niece]. To be immersed in that in a safe place and at a safe time, for a reason. There was a purpose [to consider the impact] which made it safer. When you are dealing with so much grief, to let it out of the box—it was for a purpose and there was a deadline and purpose that made it much safer.

Bev (CD:03), sister of a woman murdered by partner, VIS read

I certainly felt better for the process. It helped somewhat in putting things into perspective. Things that you wouldn’t be able to tell people. I don’t know what it does for me. I pull that VIS out often and read it.

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

As supported by Booth (2013a), family participants described taking great care in writing their VIS. This was a considered document, written over a period ranging from days to weeks—for some, even months. Some participants described keeping a diary of feelings and events from the death to sentencing. It appears many anticipated the likelihood of presenting a VIS, even at the start of homicide or manslaughter investigations. Many saw the VIS as an important part of the role they would play in sentencing proceedings and looked forward to that opportunity. The VIS was not written recklessly, and participants reported investing much worth and pride in its content:

I took a long time to write it. You read it over and over. No mistakes. Nothing. It took me a week to write it. But if I’m putting pen to paper, it’s got to come from the heart. It was a time to say what (X) meant to me and to the family as a whole.

George (CD:08), father of a murdered son, VIS read
When those prosecuting, defending and judging death matters and those supporting family VOC fully understand the agonising emotional process family members go through to complete the first draft of their VIS, negative reactions they may display when editing is required can be better anticipated and managed.

Some family participants described writing the VIS as an ordeal, angered by even having to consider it. Some suffered confusion, not knowing what they were supposed to say. Others viewed the VIS as a final task they needed to complete in criminal justice proceedings, which had, to that point, delayed complete grieving. Although the deceased was no longer alive, they continued to exist as part of a living discussion within their criminal justice matter. Not mentioned in the literature, data from this study suggest that the prospect of the termination of relationships developed over time by family VOC with police, criminal justice personnel, prosecutors, victim support workers and media, once sentencing was complete, was another loss to be anticipated for some family VOC.

5.1.2 Primary victims

Primary VOC approached the writing of the VIS differently. In basic terms, their VIS represented the impacts on them personally. They needed to consider how much of themselves they wished to reveal to the court and the offender. Those who knew their offender needed to consider how they would position themselves regarding their interpersonal and intrapersonal safety. Primary VIS makers reported writing their VIS more quickly than did family victims, often within a matter of hours, and rarely more than a few days. While this is likely due to less time taken between conviction and sentence in primary matters, primary participants often described the speed of writing the VIS as an outpouring, providing a cathartic, relieving effect:

I probably wrote it in two hours and it just flowed. Once I started, it just flowed.
It was easy to write. But it was hard, because I started to think of all these things I hadn’t thought about or [had] forgotten about.

Ken (CD: 32), victim of PA, VIS handed up
It was a relief. There are things that I missed out on, like my son’s Easter hat parade, because I had a black eye. I sat outside the school and wept. It [VIS] was sad to read, but a relief too.

_Wendy (CD: 37), victim of DV, VIS handed up_

Writing the VIS is not easy for many primary VOC and puts some at great psychological risk. Herman (1992) states that recovery from the trauma of victimisation cannot commence without the secure knowledge that one is safe. For those suffering abuse as children, or those who have endured protracted, systematic abuse, acknowledgement of harms buried, internalised or previously dismissed can be highly challenging and traumatic (Kezelman et al 2015; Kezelman & Stavropoulos 2012; Wall & Quadara 2014). Such participants described constructing their VIS as revelatory; they were suddenly able to understand how their lives had been fashioned from the crime event:

The VIS made me realise how much it had affected me, and suddenly I could see the connection and I saw how it had formed my life. My feelings were legitimate and my actions, and that I had done what I had done because of it. It was cathartic, therapeutic. Upsetting at times, but out in the open. All the clichés. It does help. It clarifies things and legitimises feelings. I don’t feel as heavy. It’s very light. A weight lifted.

_Maggie (CD:52), victim of HCSA, VIS read_

I suffer from depression, anxiety. I’ve tried to commit suicide. It happened to me when I was a kid, about four or five. Affected pretty much all of my life. At the time, I didn’t notice it … I’d shut it out, and I knew what I hid. It [VIS] made me realise that I had been kidding myself that nothing has been wrong, and I realised it had had an effect, in that I had done this and that because of it.

_Peter (CD:51), victim of HCSA, VIS handed up_

Despite the traumatic nature of experiences that participants needed to recall to write their VIS, many appeared to do this without support, writing their VIS at home, in isolation. This concerned some VSP, who felt recalling the crime and considering its impacts put some victims at risk of secondary traumatisation. For this reason, some services took the view that the potential therapeutic benefits
of VIS are outweighed by the likelihood of the writing process triggering psychological distress, exacerbated if the victim is unsupported and the content presented in the VIS is treated without appropriate understanding and empathy:

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. Um, we wouldn’t want people to be doing that by themselves.

*Counsellor, Adult Survivors of Childhood Abuse*

It was torture for me [writing the VIS]. God, I think, I felt incredibly panicked, like a panic attack to have to do it. Very difficult. Much more difficult than I thought. I really hadn’t considered it, and I was really surprised how difficult it [writing the VIS] was. I think it was the pressure of wanting to get it right. I knew it was going to be in the media, which [pause]. He would be there with his family.

*Patrick (CD:54), victim of HCSA, VIS read*

Implicit in the responses of primary and family VOC was the core therapeutic value of the VIS. In telling the story of the impact, or in considering doing so, participants were forced to locate the crime event in the past, reframing it in a perspective of their choosing. Telling stories of difficulties in our lives creates order and contains emotions, giving events and our reactions to them a context (Harney 2001). Through the story, distance from the event is created, allowing a different perspective from which the storyteller can search for meaning. When shared, this constructed, completed narrative enables connection with those who listen with understanding and empathy (Reissman 2008). In Herman’s (1992) trauma and recovery model, the three fundamental stages to recovery from trauma are (1) establishing safety, (2) reconstructing the traumatic story

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64 Erez, Ibarra and Downs(2011), a qualitative study comprising in-depth interviews with 27 criminal justice professionals points to the therapeutic effect of reframing the trauma story. Evaluating the therapeutic effects of victim voice and empowerment, they write, ‘Participation may result in self-insight regarding one’s victimisation, which can be in its own way empowering, allowing victims to look at their past victimisation in a different light, and to re-interpret the experience and make changes in their lives’ (20).
and (3) restoration of connections between victim and community. The VIS allows VOC to reconstruct their trauma story and, in doing so, choose how they wish their victimhood to be understood intrapersonally and interpersonally, in both the present and the future:

Upsetting yet cathartic. I guess I got to share with people that cared about me the torment I suffered, and suffer, and to do so allows them to better share my support.

*Oscar (CD:53), victim of HCSA, VIS read*

This process allows some VOC to intellectually and emotionally distance themselves from victimhood and the offending behaviour. By choosing to confront and acknowledge the event and its consequences through writing a VIS, VOC report being able to take control of how they move forward, by reframing their past:

I had, in a sense, it was erasing the damage done, and the shame lifted from me and I had found my own voice. It was liberating.

*Patrick (CD:54), victim of HCSA, VIS read*

The VIS was a different sort of thing, a positive thing, because it was a chance for me to have my say about what happened. It was hard to do because you have to think about all the things that have happened as a result, but it was empowering. I guess, sitting back, and looking at it and knowing you are doing something about it, and knowing that it isn’t going to control your life. Even though it’s called a victim impact statement, it felt good not to be ‘the victim’, and actually have a say.

*Kelly (CD:49), victim of HCSA, VIS read*

Primary VOC put themselves through considerable emotional distress when considering and writing their VIS, and, for some, the VIS is potentially a psychologically dangerous endeavour. It does not appear congruent that VOC would go through such anguish and take such care in authentically representing their harms merely in the hope that the VIS would affect sentence or touch a, seemingly (in many cases), indifferent or unknown offender. VOC appear to
appreciate that writing the VIS offers important personal therapeutic returns. The VIS facilitates catharsis, reconstruction of events and identity, and supports a positive and empowered re-engagement with society.

5.1.3 Perceptions of appropriateness of VIS content and emotionality

5.1.3.1 Primary victims

Some VOC choose to draft their VIS in a way that seems unusual for the severity of the crime, which was a novel finding. Rose, Nadler and Clark’s (2006) US study, of the reaction of participants reviewing written descriptions of two severe and less-severe crimes against varied presentations of subsequent victim responses, found there is a proportionality perspective to the level of emotional expression expected of a victim. In other words, victims are expected to portray a level of emotional and psychological response in keeping with the severity of their crime experience as understood by others. Where victims portray insufficiently strong emotions, or appear to be mild mannered in their presentations to the court, they are viewed as being comfortable with their role as victim and are stigmatised. Victims who display too much emotion in proportion to the severity of the crime are viewed as over-reacting and thus unreliable (see Tsoudis & Smith-Lovin 1998).

Rose, Nadler and Clark (2006) suggest there are norms and rules that govern what appropriate emotion should look like, created by multiple influences, such as personal internalisation of dominant culture; cultural identity; social, economic, religious and political environments; and life experience. However, they admit empirical understanding of such norms is limited. My qualitative data suggest that some VOC, despite the VIS being an opportunity to describe the full impact of the harms against them, will pointedly choose not to make one, will deliberately minimise the content of their VIS or, for various reasons, will present a VIS that is not a ‘good fit’ between what Rose, Nadler and Clark (2006) describe as the normative expression of emotion for the severity of the crime. Rose, Nadler and Clark (2006:210) suggest the display of unexpected levels of emotion are problematic for VOC within the criminal justice setting and are likely to result in disproportionate sentencing outcomes of their matters:
‘Emotions are a fact of life in legal settings—either because they are an inherent part of a decision-making task (e.g. the right amount of compensation for “suffering”) or, as in the case of VIS, because the law has expanded evidentiary rules to make emotional reactions relevant to decisions’.

So why would VOC ‘get it wrong’? What influences would affect them to the extent that they present an atypical emotional response through their VIS? The data do not suggest VOC lack understanding about how to present an emotional response; rather, some VOC are presenting the most powerful response they can, in light of understanding and learned experience of other more dominant influences that form their perception of how their voice will be received. These VOC balance their need to be heard and acknowledged with competing needs of extrinsic and intrinsic safety. Dissociative disorders are not uncommon in victims of sustained abuse, where, as Putnam (1992:31) describes, ‘The personality [presented] is almost never the [victim’s] original personality—the identity that developed between birth and the experience of trauma. That self usually lives dormant and emerges only after extensive psychotherapy’. It is not unusual for victims of sustained abuse to present in their VIS a short, unemotional, matter-of-fact and minimised account of their suffering:

And I’ve seen some very rigid women who give clinical, very unemotional victim impact statements as well, so. Yeah, I don’t know. That’s [nature of VIS content] an interesting thing to look at.

*Crown prosecutor, Sydney (1)*

Although VOC are permitted to submit a VIS of up to 20 pages in length, it is not unusual for VOC conditioned to accept their abuse as normal or as deserved to submit a VIS of one or two paragraphs, featuring little detail of the emotional or physical toll of the crimes against them. Data show these VISs are often handed up or read by court support workers without the attendance of the victim at sentencing. If the VIS of primary victims educate the judiciary and
inform sentencing, such VISs are important to recognise and understand.\textsuperscript{65} The quantitative results reveal that offenders pled guilty in 70\% of HCSA matters and 45\% of DV matters, with charges being negotiated in 57\% of HCSA matters and 86\% of DV matters. Therefore, such matters were less tried and charges more often contested than other matters, with the offender known to the participant in 100\% of these cases.\textsuperscript{66} Offenders of these crimes characteristically use fear, shame and conditioning to ensure their victims remain silent, and they often deny the abuse by discrediting the accounts of their victims (Middleton 2012). Those suffering sustained trauma define their harms within a hierarchy of harm and use denial, minimisation and dissociation from reality as a way to cope and exist (Platt, Barton & Freyd 2009):

When you’ve been abused over 16 years, you’re used to the punches, sticks and burns. Rapes. When it’s over, you don’t know it’s over. They have ... my body’s aching, so you hit yourself to feel. A world just in turmoil. You don’t know when you are going to come back ... Thinking about the hurts ahead. You can’t be back in society emotionally, physically. You are a nobody. You don’t exist. You get hurt. You don’t even think you are human.

\textit{Penny (CD:34), victim of DV, VIS handed up}

Victims of these crimes often described their need to protect themselves in order to survive:

It would have been nice to know he [offender] didn’t get to read it, and knowing that the defence counsel wouldn’t go through it and pick holes in it. You offer a lot of private information. I kept it brief because I didn’t want him to have the information, but also so they couldn’t mess with it … I’m giving all this information that he can use to terrorise me more.

\textit{Amanda (CD:39), victim of DV, VIS handed up}

I don’t really deal with things by talking to people. WAS did say I could call them if I had any questions [about VIS]. I did see a counsellor when I was

\textsuperscript{65} It was out of the scope of this study to provide a content analysis of the VISs. However, a content analysis of the VISs of victims of systemic physical or sexual abuse and the nature of their relationship to the offender at time of sentencing might prove enlightening.

\textsuperscript{66} It is noted that quantitative results show charges in PA matters as the most negotiated at 100\%.
younger. Mum made me go. I didn’t like it. I found it easier not to talk about things.

*Lucy (CD:50) victim of HCSA, VIS handed up, did not attend court*

Understanding the personal safety needs of VOC suffering complex trauma who choose to minimise or deny harms they have suffered is important to ensure they are validated and supported within the VIS process, should they decide to proceed.67

### 5.1.3.2 Family victims

Family VOC data reveal that they want to powerfully convey the tragedy of their loss and its ongoing repercussions. To do so, it is most likely they will embrace victimhood as an appropriate stance (Fohring 2012). Primary VOC report the need to demonstrate their abilities to survive, move on or make positive meaning of the crime within their VIS. Presentation of such abilities in a family VIS would be emotionally counterintuitive, counterproductive and, for VOC of many cultures, culturally deviant. Family VISs are generally testaments of grief, loss and relational destruction (Joh 2000). In other words, within the dominant Anglo/European Australian culture, there is a normative expectation for family VISs to present content consistent with being devastated, grief-stricken and angry68 (Ekman 2003; Parkes 2001). This behaviour fulfils cultural expectations and strengthens the reconnection of family VOC to society through mutual understanding:

>You can’t get over something like this, or ever get back to normal. It’s about finding a new kind of normal. It’s about falling over and [pause]. Before (X’s) death and after (X’s) death. Nothing is the same.

*Bev (CD: 03), sister murdered by partner, VIS read*

However, people from different cultures react differently to death. For some, quite violent displays of grief are appropriate, whereas for others grief is

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67 For an explanation of the aetiology of complex trauma, see Kezelman & Stavropoulos (2012).
68 Booth (2013) presents the content of family VISs presented at sentencing proceedings. She observed and analysed the nature of the narrative in death matters, providing valuable insight into the emotional content of family VISs (221–266).
personal and contained (see Parkes, Laungani & Young 1997; Rosenblatt, Walsh & Jackson 1976). The cultural norms of individual victims are important and should be discussed, as first-generation migrants making a VIS may hold different justice notions or see it as culturally inappropriate to divulge or display personal, emotional feelings.

5.1.4 The media

Increasingly, news outlets and popular media are including the content of VISs in their copy. The expressive nature of the VIS makes them particularly appealing, especially in matters easily portrayed as innocent victim versus evil villain (see Greer 2007). Data reveal that VOC are not blind to this, and some fashion their VIS knowing that the media will use it:

A journalist from the Daily Telegraph asked me, ‘Have you prepared a VIS? It’s your chance to say how you feel.’ I said I’m definitely going to do one of those … By this time I was good friends with the Daily Telegraph reporters and I had written some stories for them. So X [Daily Telegraph journalist] helped in terms of looking at the expressionism. How it would come across.

Jane (CD:48), victim of SA, VIS read

Some VOC wanted their VIS content made public, positioning themselves as spokespersons, making meaning of their suffering by raising community awareness of the consequences of such crimes in order to support VOC less able to take a stand:

Mine was a heavily publicised case and I wanted those words to be heard by a broader audience … No, writing it was not hard for me. Very personal. I’m a pretty gifted writer.

Oscar (CD:53), victim of HCSA, VIS read

So I wanted to look at him, and him know how it had affected my life. I knew the media would use my VIS.

Patrick (CD: 54), victim of HCSA, VIS read
Other participants expressed sadness that their VIS was not used as they had hoped. VSP report that many VOC are happy to give their VIS to the media, anticipating publication. However, the media has no obligation to publish VISs, nor publish them in their entirety:

I was told that it was [available to the media]. Nobody would publish it.

_Doug (CD:05), father of murdered son, VIS read_

I naively downloaded the [VIS] information and understood it would give me a voice: ‘X read her VIS over the TV’. I felt inspired. I did want a voice, so I never thought about not doing it, and even when I understood the limits, I felt I would write as much as I can, and fight to have a voice [pause], which didn’t work.

_Sandra (CD:29), victim of PA, original charge of attempted murder pled down, VIS handed up_

However, many participants found media attention distressing and were challenged by the fact that their VIS might be published. While it is concerning that some journalists might seek to collude with victims of high-profile matters to construct their VIS, data suggest many victims would rather keep the explicit details of their suffering out of the public arena. Concern regarding media access to VISs has been noted in other studies (Erez, Ibarra & Downs 2011; Herman 2005; Leverick, Chalmers & Duff 2007; Schuster and Propen 2006):

Some are concerned that the media will get hold of it. And that their very private thoughts will be exposed. And often they are. Especially when they [VIS] are read. Generally a ‘Non-publication Order’ is sought. And they [VIS] often contain very emotional passages that are attractive to journalists. And I always tell people this is a possibility. So there’s sometimes privacy reasons for not wanting to do it [VIS].

_Crown prosecutor, Sydney (1)_

As the 24-hour news cycle and digital global news become ingrained, it is likely that the VIS will be an increasingly prevalent feature of news stories of convicted crimes. The knowledge that the media have the power to use, edit
and broadcast the VIS as it sees fit has the potential to affect the emotion and content of the VIS, as the anticipated audience becomes far wider than those at court. As seen above, some victims may hope to influence public and political opinion through their VIS, while others will see potential publication of their VIS as so intrusive as to minimise its content or not make one at all. It would be useful to canvass VOC eligible to make a VIS regarding the extent to which media concerns are personal to the victim or crime specific, especially considering media use of VIS appears a deterrent (Erez, Ibarra & Downs 2011; Herman 2005).

5.2 Supports available to victims when drafting the VIS

In NSW, a WAS officer is allocated to assist VOC whose matters are heard in the District Court or Supreme Court. The WAS sends or emails a VISIP to the VOC once a conviction has been made, unless the VOC is already being supported by a particular service relevant to their needs. In addition, various court support services assist VOC either through referral prior to the court date or by offering their services to VOC once at court. Most VOC meeting the criteria to make a VIS in the Local Court would not be supported by WAS and rely on services they seek out themselves or are referred to by the police.

Time is a factor in the preparation of the VIS. Lens, Pemberton and Bogaerts (2013) suggest that the longer the period between the crime event and VIS presentation, the more likely a VIS will be made. Lack of preparation time was a barrier to making a VIS mentioned by non–VIS makers, including those whose matters were expedited owing to an unexpected plea of guilty:

One of the reasons as well, she [WAS officer] said I had a month before making it. The booklet said I had to send it in before the sentencing, and then

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69 WAS provides a service to adults and children who have matters prosecuted by the ODPP. Priority is given to victims of sexual assault and domestic and family violence, family members of the deceased in driving or homicide cases, children and young people under the age of 18 years, people with a disability, people who are older or frail aged, people with history of mental health concerns, people from culturally and linguistically diverse backgrounds, people who are experiencing particular trauma difficulties about coming to court, people who identify as Aboriginal or Torres Strait Islander. See: [www.odpp.nsw.gov.au/witness-assistance-service/about-the-was](http://www.odpp.nsw.gov.au/witness-assistance-service/about-the-was).

70 Some VOC receive immediate referrals to specialist support services when the crime is reported to police, who provide VIS information when appropriate.
she called me a couple of days before the sentencing to see if I wanted some assistance and I just felt there wasn’t enough time.

_Hua (CD:46), victim of SA, non–VIS maker_

The manager [of the Family Violence Team] said we could sit down and write one [VIS]. But we didn’t do it before, because we thought he would be sentenced on another day.

_Catherine (CD:41), victim of DV, non–VIS maker_

I think I had to consider it. When I was first told, it was rushed because he was trying to negotiate the plea. So I had 28 hours to write it, which was overwhelming.

_Amanda (CD:39), victim of DV, VIS handed up_

VOC participants often wrote or attempted their first VIS draft in isolation, usually working from information in the VISIP. Those who found the initial drafting difficult enlisted the help of a friend, victim support worker or WAS officer. Female SA participants were more likely to have been assisted by a sexual assault counsellor. Some VOC attending psychiatric or counselling sessions chose to tender a professional VIS in addition to, or in place of, their VIS. VSP reported a high number of victims needing information regarding VIS purpose, content and format prior to writing the VIS. As reported in Chapter 3, some services provided templates or examples of previous VIS to work from. It was not unusual for WAS or victim support agencies to meet with VOC to help them prepare or complete the initial draft. This included:

- meeting VOC to discuss and write up the VIS, for those unsure how to construct the VIS or what to include
- transcribing a handwritten VIS to a typed format for VOC without computer access
- facilitating a translator to discuss or prepare the VIS for VOC for whom English was not their first language.

It appears that services are much more involved in constructing the VIS of some VOC than of others. VOC challenged by literacy or language issues, or those
unsure not only of the purpose and parameters of VIS but also of the content they should include, are most likely to seek help. While the VISIP provides guidelines regarding VIS format and content, different services may have different attitudes to the VIS (see Chapter 4) and may serve slightly different policy and political agendas.\textsuperscript{71} In addition, data suggest that levels of available VIS support are greatest in areas where most VISs are made. In regional areas, support is more difficult to access and, in some cases, response towards making a VIS more negative, due to concerns of possible secondary traumatisation of the victim or a familial or communal backlash. Some VSP were aware that assisting VOC with the construction of their VIS had the potential to affect the emotion and emphasis of its content:

Again, because we generally get someone to be assisting [in writing the VIS] we might leach some of the emotion out of the VIS in some ways, as in by getting assistance sometimes, it’s not going to always be exactly, because by getting assistance I guess it is saying, ‘Well these are the things we actually can talk about, and these here are other things that we’re not actually going to be allowed to put into our victim impact statement’.

\textit{Women’s Domestic Violence Legal Aid, Sydney manager}

Sometimes I think things can be lost in translation. For, you know, we are getting a lot more African communities here, and sometimes you can’t get the interpreter who speaks their [language], yeah. And also they say that their VIS is fine, but yeah, I think some things get lost in translation. They sometimes don’t come out how, like sometimes they seem exaggerated or underplayed. Or just because it’s, the meanings different for them in their language, as opposed to when it comes out in English words. I’ve found that, or assume it could be happening, I guess.

\textit{WAS, Newcastle (3)}

While VSP data findings suggest every effort is made to ensure VOC are provided with the information and support they seek, there do appear to be

\textsuperscript{71} See Rock (2012) for an analysis of the sociopolitical criminal justice agenda with regard to advances made in victims’ rights in the UK.
issues regarding consistency and influence of advice provided. Further research in this area would be useful.

5.3 Editing the VIS

Editing the VIS can occur at a number of stages, from informal discussions of the VIS draft with victim service agencies or family and friends through to suggestions regarding content admissibility or tone by WAS or the prosecuting solicitor, or to edits required by the prosecution, defence or judge to satisfy the legislation. Booth (2013a) explains this as a deliberate process, providing an opportunity for VOC to be educated and supported to accept the reasons for the VIS being edited, suggesting this filtering of the VIS serves to minimise chances of VOC non-compliance. This ‘cooling out process’ manages the expectations of VOC regarding their VIS, by subjecting VOC and the VIS to a process of emotional and content containment, as both are honed for presentation in the sentencing court (Booth 2012, 2013a).

Despite this, the high levels of VIS editing reported in VOC and VSP data point to inconsistencies in interpretation of the content that a VIS can or can’t contain. There appears to be tension between whether VIS content should be accepted as subjective and unsworn or be treated as subject to rules of evidence (Erez 2000; Erez, Roeger & Morgan 1994; Roberts 2003). This tension is especially evident in matters where charges are negotiated, when VOC are required to fashion or amend their VIS to fit with the agreed statement of facts on which the offender agrees to plead guilty. In the case of DV participants, their VIS was reported as being edited at each stage of the VIS process by WAS, the prosecution and defence:

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

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72 In Booth’s (2013) study of the VIS of family victims in death matters, all 14 interview participants had submitted a draft of their VIS to the Crown prior to the sentencing hearing to ensure that material conformed to the guidelines set out within the law. Booth concluded in her observation of 18 sentencing proceedings of death matters in the District and Supreme Court that VIS presented in 15 of those matters ‘appeared to have gone through this process’ (229).

73 Over half of VOC participants reported charges being negotiated in their matters, with 86% of victims of DV and 100% of victims of PA reporting the highest level.
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. Where in fact the VISs don’t have an impact on sentence technically, so they shouldn’t be, so they shouldn’t be subjected to evidence rules. So that understanding I don’t think is very clear.

Director, Victims Services NSW

Editing of the VIS can be highly traumatising for VOC, especially if they do not understand or accept the reasons given for such editing (Booth 2013a; Rock 2010). Not only is it possible that the victim will be so angered as to disrupt sentencing proceedings but they may also make their feelings of being treated poorly plainly known to the media (see Booth 2013a and Rock 2010), potentially undermining sentencing decisions (Hoyle 2012), a concern in both justice and political domains (Greer 2007; King 2008).

5.3.1 Editing the VIS: Stage 1

Once the initial draft is complete, especially in more-serious matters, the VIS is formally submitted—first to the WAS officer, or to the prosecuting solicitor directly or via the police investigator—to be checked, and, second, to the police prosecutor or Crown prosecutor, where it is similarly checked.74 At this stage, the VIS can be edited for content deemed inadmissible, irrelevant or prejudicial. Recent VIS studies note that courts often accept VISs that contain information beyond what is deemed permissible in the legislation. While mainly focusing on the VIS of family victims (Bandes 2009; Booth 2013a; Hoyle 2011; Rock 2010), primary VISs have also been noted to exceed legislated limits (Schuster & Propen 2006, 2010; VSA 2009). Despite this, high levels of editing reported in this study suggest that editing is not necessarily solely due to VOC misunderstanding the legislated parameters of the VIS. Rather, data show VIS editing to be eclectic and haphazard, based on what those who are advising VOC understand to be admissible and considered appropriate by the judge/magistrate and defence. With little guidance from the NSW legislation regarding boundaries around admissibility, VSP are often required to use their

74 Any editing or checking of the VIS made prior to this point by family and friends was not described by VOC as contentious.
own judgement, based on personal understanding of VIS purpose, sentencing experience and value to the victim. Those viewing the VIS in functional terms are more likely to edit the VIS, whereas those viewing the personal therapeutic value to the victim are more likely to allow inclusion of contentious material, leaving editing to the defence and judiciary (Stage 2):

I haven’t had one knocked back. But again, we’re very careful about how we word it, satisfying the needs of the victim. There’s issues that they have, that go close to what I would say would be verging on unacceptable, and sometimes you’ll put that through, but I haven’t had one knocked back. I guess being around it for a while now, so you pretty much know what you can and can’t get away with.

_Crown prosecutor (1)_

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)_

I don’t think they [prosecution] understand what the victim impact statement is about themselves, to be honest. I don’t think they know what can and can’t go in it. So if they’re reading it and thinking ‘that’s a bit …’, and it’s often there are things, they’re not things that are comfortable things, or not things that they would expect to hear or they’re not things that fit with ‘Well this is what the impact on a victim of a sexual assault is’, or [pause] so there are things that they’re ‘Well, gee, I’m just not too sure about that’, and because they’re not too sure about it, they get rid of it before it even goes to the, before the judge, magistrate or before defence even.

_WAS, Newcastle (3)_

Certainly, VSP data suggest that best efforts are made to support VOC to present a VIS that will be accepted to prevent the distress of further editing by the defence and judiciary. Quantitative results suggest that the VIS is most
likely to be edited at Stage 1 by the prosecutor (Crown or prosecuting solicitor) and WAS (see Chapter 3, Tables 3.28 & 3.45). However, lack of consistency in Stage 1 editing can be deeply distressing for some victims. This is worsened if reasons are unclear or appear arbitrary, or where VOC refuse to change their VIS, which is subsequently accepted without revision:

And they [victim support agency] edited my VIS. It was just cold. They edited it like it was going into a newspaper. And I cried. They took out all the ‘me’s’ and called it ‘the family’. It was from me. My heart! And they sent back an edited one back to me, and put in ‘murder’. Murder? That terrible gruesome crime? If I wanted to say that word, I would have put it in. The DPP lady was ringing to see how I was going. [She said] ‘I don’t see any problems with it [the VIS]’. I sent her the one [I had written]. They submitted it how I wrote it.

*Carrie (CD:12), sister murdered by her partner, VIS handed up*

The subjective and unique nature of the VIS can be challenging for those assessing admissibility of content. While VSP reported an understanding of the therapeutic value of victim expression, the reality that some VISs contain information deemed irrelevant to the court was difficult to manage. VOC described wanting to tell the court about the impact of the crime as they perceived it, and they questioned how something that they themselves understood as subjective could be challenged objectively by others:

The prosecutor vetted it and scrubbed bits out. I was angry about that, about that censorship. She explained why, but I was still angry. It’s not part of the evidence but part of the story I wanted to tell.

*Doug (CD:05), father of murdered son, VIS read*

Most difficulties in terms of content edited at Stage 1 regarded references to previous offending (reported or unreported) irrelevant to the matters charged. In terms of the narrative story, the desire to include such material makes sense, as it allows VOC to give meaning to reasons for the crime event. Editing contextual content—necessary to conform to the legislation—takes away meaning and informs VOC that their expert knowledge of their experience is of no importance to the sentencing court.
It appears the cooling out process of Stage 1 editing may not reduce the emotional response of VOC (see Rock 2010) in the event of editing by the defence and judge (Stage 2). Data from this study suggest that primary and family victims object generally to the editing of VIS, especially once it has been accepted by the prosecution, unless reasons for further edits have been anticipated and discussed (supported by Booth 2013a). Main reasons VOC objected to VIS editing were:

- concerns regarding the discretionary nature of VIS editing
- the inconsistency in VSP guidance on the boundaries of admissibility of certain content
- perceptions of editing as unjust in terms of justice notions of equity.

5.3.2 Editing the VIS: Stage 2

Editing of the VIS by defence was generally viewed as giving the offender the right to decide which part of the victim’s suffering was admissible. The idea that offenders were permitted to undermine and challenge personal assessments of a crime’s impact was deeply offensive and distressing to some VOC. Judicial editing tended to occur on the day of VIS presentation, leaving VOC little time to process or accept changes needing to be made, especially if unexplained:

The judges [edit the VIS]. On the day. Yeah. On the day. So, therefore, there’s no preparation. There are paragraphs that they cross out. Or the family member may be reading them, reading their victim impact statement, and the judge will say, ‘Now stop there. Now go to paragraph whatever’ and that happened quite recently. ‘Now go to, skip the next two paragraphs.’ And they’re like, ‘Skip the next two paragraphs? But it’s not going to make any sense.’ ‘Skip the next two paragraphs and go!’

HVSG, manager

For the VIS, written with such care, to be edited on the day of sentencing was traumatic for some VOC (supported by Department of Justice Canada 2005). Unlike Booth (2013a), data from this study suggest last-minute editing of the VIS may not always be anticipated, and while angry or negative reactions within the court to last-minute editing seem rare, this may be more likely due to VOC
acknowledging court etiquette and adhering to its protocols (‘the cooling out’) than to an acceptance of the rationale of its decisions (see Booth 2012; also Tyler 2006a). VOC participants reporting their voice (VIS) as unfairly curtailed were more dissatisfied with the criminal justice process:

They slaughtered my VIS. Reading the information clued me in that it wasn’t going to be easy. Rather than doing anything for me, it was making a fool of me. The fact that it was graded and supervised by the man who did this to me, and his defence team. It’s embarrassing, re-traumatising … I don’t like the fact that he gets to take a look at my VIS. In my case, he’s going to discuss it with his barrister and he is going to let you know what is acceptable to them.

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

While quantitative findings reflect low levels of editing by defence and judiciary, the VSP qualitative data suggests this did occur with some frequency. Recognising the real potential for secondary traumatisation of VOC following VIS editing at Stage 2, statistics regarding frequency of defence and judicial editing of VIS, including reasons and types of matters, would be most useful.

There appears to be continuing confusion and contention regarding the functional and expressive value of the VIS, leading to inconsistencies in how they are dealt with. Although VISs are accepted as unsworn, VSP reported that some magistrates in one District Court insisted VIS be sworn in, arguing that as VIS could be challenged in cross-examination they had evidentiary status. While this study did not observe the VIS at sentencing hearings, data suggest there is most inconsistency of VIS editing within the Local Court and rural District Court where VIS are less used. Rock (2010) and Booth (2012) discuss the potential for victims to go ‘off script’, attempting to present the unedited version of their VIS to the court. Some VOC in this study reported that had their VIS been edited, they would have ignored the edits and read the full VIS, preferring to be ejected from proceedings. Some VSP also reported knowledge

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75 In her observation of 18 sentencing proceedings of death matters, Booth (2013a) noted only two matters where objections were made to a family VIS, noting that the reactions from the family members suggested that the objections were anticipated and therefore not reacted to negatively.
of VOC attempting to include edited material during oral VIS presentation. It appears from the data that the more the VOC are informed about, and comfortable with, reasons why changes to the VIS are necessary, the more compliant their adherence and higher their satisfaction with the VIS and sentencing processes.

5.3.3 Charge negotiations

Charge negotiations affect the VIS, as impacts of the crime need to relate to the statement of agreed facts on which the offender is convicted. To secure a plea of guilty, charges will often be negotiated, with more-serious charges pled down to lesser charges. Charge negotiations are viewed positively by court protagonists on both sides, saving court time and costs and protecting victims from the ordeal of being witnesses, while securing a conviction: a ‘win-win’ in criminal justice terms (Forsyth 2009). However, some VOC reported changes to charges as distressing and felt further challenged when they realised this meant their VIS would be constricted. While most did not relish the idea of a trial, the realisation that by accepting a guilty plea to lesser charges the full experience of their victimisation would not be validated was frustrating at the least and psychologically damaging at worst:

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 PA, charges pled down from attempted murder, VIS handed up*

It made me angry that he was able to make me change my [VIS]. So that was hard … I was flying blind. I didn’t know what a good offer was. He went from 17 charges to four charges, and those were reduced. I had very minimal guidance. They said ‘It’s up to you’, and I didn’t know, and had no idea.

*Emma (CD:43), victim of SA, VIS read*
It appears in the case of primary victims, the VIS is not a consideration for the prosecution when negotiating charges. Prosecution were alert to the possibility that without an agreement to a plea of guilty on lesser charges, VOC risked charges against the offender not being fully proven or dismissed if their matter went to trial.\footnote{In death matters, negotiation of charges needs to be canvassed with the family victims, who are required to sign an acceptance agreeing to changes to charges before the trial or judgement can continue.}

It’s always a bit of a weighing up process because I actually, I’m always, I’m probably there on the side of encouraging the women to accept a guilty plea to a lesser charge rather than go through the unpleasantness of proceedings. It can be terrible. I see hearings even now after all these years and my stomach will turn, and I’ll think this is terrible … and perhaps that’s something we should think about in terms of putting it to the women that we see, saying that if you do agree to this lesser charge and we strike all of this out, then anything you’ve got to say in the victim impact statement can’t refer to any of [pause]. But here we are really only thinking about ‘is this what we’re going to do today? He’s going to put in a plea to common assault and not aggravated bodily harm’.

*Women’s Domestic Violence Legal Aid, Sydney manager*

When it comes to even negotiating a plea, which may mean taking the plea of guilty to lesser charges, again the extent to which that may impact on the VIS doesn’t feature in my mind very much at all … Within that process, I’ll be taking the plea to lesser charges, the victim or family member will be consulted, but I can’t ever remember addressing the issue of ‘well by the way, that means that with the VIS, that’s going to inhibit you’.

*Crown prosecutor, Sydney (2)*

Understanding the lengths and anguish VOC go through to write the VIS, more consideration should be given to the fact that VIS content can only relate to the agreed statement of facts if charges are negotiated. This issue causes most anguish for primary VOC, whose matters can proceed quickly, especially if an offender suddenly changes his or her plea from not guilty to guilty. Procedural justice suggests that VOC who are consulted, included in the decision-making process and treated with consideration and respect are much more satisfied.
with, and therefore supportive of, the criminal justice process (Tyler 2011). To ensure the best therapeutic outcome, VOC should be offered time to process information regarding charge negotiations, and how these might affect their ability to present the full impact of the consequences of the crime as they see it should be discussed and their expectations managed.

5.4 Presentation of the VIS

5.4.1 Significance for VOC of the VIS in sentencing proceedings

Presenting the VIS within the sentencing hearing, where harms suffered can be publicly recognised and acknowledged (Daly 2014) was powerful for many participants (also see Booth 2013a). The inclusion of the VIS gave some participants hope that the court and the offender would focus on what they had to say. Many were empowered by the fact that the offender was mandated to be present to hear the VIS if it was read—effectively forced to listen, even if they chose to ignore it:

Because I wanted him to know how I felt and how this shit affected me. I didn’t have to be there, but he HAD to listen to it because the judge reads it to him. Not that it would have made much difference to him [offender], but it made me feel better.

*Wendy (CD:37), victim of DV, VIS handed up*

I guess the main one was for him to hear what he had done and how it had affected me, knowing he would have to be there and had to listen to it.

*Kelly (CD:49), victim of HCSA, VIS read*

Effectively where else do they get an opportunity to get someone to sit down and listen, and tell the person who has damaged their life, say what they think and hopefully make them listen? If not in the criminal proceedings discussing the events that damaged their lives, where are they going to get the opportunity?

*Crown prosecutor, Sydney (2)*
An important intrapersonal function of the VIS was that it allowed VOC an opportunity to do something positive for themselves in revealing their personhood and resilience to the court and the offender. For VOC who made an oral VIS, this was an important consequence:

Since I read the VIS I have had changes in my dreams. Previously in my dreams X was trying to control me. Since the VIS there is me, being powerful and in charge in his presence. Reclaiming my own power and control. From being able to stand up and tell him how I felt.  

*Yasmin (CD:38), victim of DV, VIS read*

The ability to not only write but also present their VIS was described as empowering, most commonly by those primary VOC who had been victims of forms of SA. Frazier and Haney’s study of female rape victims (cited in Herman 2003:626) suggests that ‘the rape victim’s experience in the legal system may have less of an impact on her recovery than other factors over which she has more control’. An oral VIS allows VOC to express their harms to the offender within a safe environment and to reconnect with the community as a survivor. VOC described the therapeutic benefits of empowerment as ‘redressing the balance’, or taking back power from the offender:

It was empowering [to read the VIS], because I was a child. It's nice to be equal. I’m an equal and what you did was [pause] I had to see him and see his face. He looks the same, but he was old and not scary any more.  

*Maggie (CD:52), victim of HCSA, VIS read*

It was empowering to the max to be able to do that and to look at him [pause] I did break, and for him to see me not broken and to look down on him and not allowing him to take control of my life through my VIS … The eye contact with him was amazing. To say that [in the VIS]. I've never felt so powerful in my life.  

*Gina (CD:45), victim of SA, VIS read*

For me it was my chance to be empowered. This is my turn to take control back. To tell him what he had done to me. I wanted to let him know how he
had made me feel, and how it had ruined my life. I told him I wasn’t a victim
anymore and that there is no shame. Yes, it was empowering.

*Jane (CD:48), victim of SA, VIS read*

Challenging the offender and taking back autonomy appeared to be an
important therapeutic consequence of the VIS, but its potency can be
diminished if the VIS is not perceived as positively received or acknowledged:

Why was I treated so differently? Is it because X was killed in prison? I was
criminal? It is to do with the circumstances of the crime. If this had happened
in a different environment, not prison, this would be different … Maybe it [VIS]
wasn’t worded right, but I’m not going to apologise for saying I was treated
differently.

*Irene (CD:18), son killed by another inmate while in custody, VIS read*

VOC who feel that their status is in question, or that they are judged regarding
the circumstances of the crime, report being less supported during the VIS
process. Allowing for the small number of primary victim participants, data show
that the decision to read a VIS may be influenced by fear of facing the offender;
fear of offender retribution; concerns about breaking down in court; fear of
public speaking; issues of privacy, and issues of culture, literacy and self-worth
already discussed; and, finally, whether the matter is heard in the Local Court.

VOC data support recent research showing that oral presentation of the VIS
provides VOC the most satisfaction, with most oral VIS presented by family
victims (Booth 2013a; Roberts & Manikis 2011). Hoyle (2011), concerned that
the emotionality of family VIS in death matters have the potential to affect
sentencing judgements, suggests VIS should be presented at the conclusion of
sentencing proceedings or on another date, after sentence has been handed
down. This appears to miss the point. While some VOC stated they directed
their VIS to the offender, most wished their VIS to be heard by the judge and be
acknowledged by the court, understanding their inclusion within sentencing

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77 VIS can be presented orally by its author, by a nominated person or representative, or handed up to the
Magistrate/Judge through the Police or Crown Prosecutor.
proceedings as symbolic of the fact that their voice was sanctioned and validated by those in authority (supported by Booth 2013a):

If it was done after [the sentencing hearing] I think you would lose the emotion ... The process is really over once that sentence is handed down, and the formality of it. And I think it’ll [VIS] lose its lustre and lose its importance. I think while it’s in sentencing, at sentencing submissions, you’ve got everyone’s attention

HVSG, manager

While a VIS may not influence sentencing, its inclusion within sentencing proceedings, however perfunctory, indicates to the VOC, and to the wider community, that their suffering is not outside the interest or concern of the sentencing court. To position the VIS outside sentencing proceedings takes away its symbolic legitimacy (see Booth 2013a:311). Such exclusion prevents victim interests of validation and vindication (Daly 2012) and diminishes the therapeutic benefits of catharsis, transformation and reconnection by taking away the communally sanctioned forum where they can be acknowledged.

5.4.2 Timing in sentencing proceedings and position in court from which the VIS is read

Data show there is some confusion regarding when in sentencing proceedings oral VIS should be heard. Booth (2013a:194) noted that oral VISs were generally heard at the start of sentencing proceedings, almost ‘to get them out’ of the way before the real work of the court could begin. She further observed that it was usual for the sentencing hearing to continue immediately after the reading of the VIS, sometimes before the victim had returned to their seat, with no time set aside for distressed VIS readers to recover their composure. VOC and VSP data confirm Booth’s findings, with VIS usually being the first matter of business once the sentencing proceeding begins.

Data also reveal an apparent variation and confusion regarding where in the court the VIS should be read (supported by Booth 2013a). In the higher courts, VOC were often asked to present their VIS from the witness stand or jury box, looking into the court, able to clearly see the judge, offender, counsel and public
gallery. At other times, especially in the District Court and Local Court, VOC would be asked to stand next to (on the left of) the prosecutor, with their back to the public gallery, with their view of the offender (usually to their right) often obscured. Both VOC and VSP report how unsettling this can be:

The part that I have a problem with mostly is the awkward way that the person who is to make the statement is suddenly called upon to come forward and it always seems stressful and uncomfortable for them, and it’s ‘where shall I stand?’ and ‘should I be reading it?’, or ‘what should I be doing?’ It’s quite uncomfortable how it evolves. There seems to be confusion sometimes. ‘We have a statement’. ‘Who’s giving it?’ ‘They are’. ‘Oh! Would you like to come forward?’ ‘Well I don’t know! I’ve never given one and I’m never going to give one again, so I don’t know!’ It seems a bit awkward. Bit uncomfortable and so a bit stressful, because it seems the people there are not in control of the game and don’t know how to receive it.

*Crown prosecutor, Sydney (2)*

Even when you are going to read one out, there’s no common way where we’re placed. I mean sometimes I’m asked to stand at the bar table with the microphone, other times I’m in the witness box. Sometimes there’s all this discussion about whether I need to be sworn in or not, and I clearly don’t because it’s not evidence, but there’s all these different varieties of me just getting up there to read it out! And then other people say ‘let’s just get this over and done with’ particularly if there’s no victim there, and so you just read it and leave. It’s kind of like, what the hell was that all about? It just feels like they just want to get it over and done with. They know they have to, so they tick the box.

*MACSS, volunteer*

Supports provided for VOC presenting an oral VIS varied. While some were provided with seating and drinking water, others were not. Some, concerned that they might break down, had arranged through the prosecutor to have a support person or family member with them who could take over. However, VOC explained it was difficult to know prior to presentation how they would
cope. Some who had felt confident to present described becoming overwhelmed:

I broke down 10 minutes into it, and the Crown had to complete it. He read it so differently and slowly, I wished it was shorter. Delivering it was one thing, but hearing it read out was another. I should have been given the opportunity to complete it … I do regret that. I do wish I had been given time, 30 seconds even, and then carried on. I think it’s important that it’s your words, spoken by you.

*Oscar (CD:53), victim of HCSA, VIS read*

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*

Booth (2013a) notes that when there was a clash between VIS rituals and traditional legal rituals, legal rituals were followed. Considering VISs were first introduced in NSW courts in 1999, it seems surprising that protocols of how they should be orally presented within the various court settings have not been established. Confusion regarding VIS presentation only adds to the stress for VOC (Englebrecht 2012), and the lack of standard procedural protocols for dealing with orally presented VIS in the court, or lack of mandatory formal acknowledgement of VIS tendered or read aloud, suggests to some that the presentation of the VIS is merely tokenistic—a measure designed to appease victims and the wider public, but of no value or interest to the business of sentencing proceedings.

### 5.5 Offender reaction to the VIS

Consistent with other studies (Booth 2013a; Roberts & Manikis 2013; Rock 2010), offender reaction to the VIS—while sought by some VOC—was rare, with 92% of VOC reporting the offender showed no reaction to the VIS. VOC and VSP data suggest some VOC can be comforted by displays of remorse
during the reading of the VIS, and VSP data suggest that at times the VIS can move the offender’s family to tears, consistent with Booth’s (2013a) observations. On rare occasions, VOC and VSP reported offenders being asked by the judge to respond to a VIS, with ‘sorry’ the usual response, which most VOC viewed as disingenuous (see Miller 2013; Stubbs 2007):

And after he heard the VIS he [the judge] asked ([the offender]) if he had anything to say, and he said ‘Sorry’. That’s all he said.

_Linda (CD:21), mother of daughter murdered by partner, VIS read by brother of deceased_

It could be argued that a remorseful reaction to a VIS would be prudent on the part of the offender. VSP data suggest that the defence are aware that challenging a VIS prior to sentencing could be viewed as lacking compassion for the victim and counterproductive, as displays of offender contrition at this stage are more likely to be viewed favourably by the judge. Victim service Enough is Enough, who visit offenders in prison, suggest VISs offer valuable information to the offender and their families in terms of understanding the consequences of the offending. VSP data confirmed that, while rare, offender response does occur:

[The] young man who was the perpetrator of the crime was asked if he had anything to say after the victim impact statement was read out. And he just cried. And he said ‘I had no idea that I had done that. And made him feel that way, and his family feel that way. I just didn’t know’. And he was absolutely genuine. He was in tears.

_VWCCS, manager_

However, the level to which such one-way responses, especially if undirected, are restorative for VOC is difficult to assess. If the VIS is the first time the full impact of the crime has been fully understood by the offender, their lack of response may reflect the fact that the information is too overwhelming to comprehend immediately and to respond to authentically. If this was proven, the offender’s lack of VIS recognition might be easier for VOC to bear. However, it
must be noted that no VOC reported being contacted by the offender in response to hearing the VIS. Booth (2013a:262) noted that most offender acts of contrition, such as an apology, were not related to hearing the VIS but usually prompted through questioning by the defence or presented in final submissions. Further research is needed regarding the impact of VIS content on offender remorse.

Primary VOC displaying ambivalent feelings towards their offender suggested an emotional reaction to the VIS can be challenging to observe:

No, I didn’t think it [VIS] would affect him [offender] at all, but [pause] it did have an impact. He was crying. It didn’t feel good.

_Natalie (CD:55), victim of HCSA, VIS read_

VSP suggested that some VOC use their VIS strategically, not wishing the offender to show remorse, concerned that it might lessen the sentence:

If they [offenders] are being seen to be showing remorse or contrition because of the victim impact statement, the victims don't want that, because that's going to go in their favour. So they are very mindful of that when they're reading their victim impact statement.

_HVSG, manager_

Offenders, and more often their supporters, can respond negatively to a VIS, making it obvious to the victim that they disregard its contents by shouting out, talking loudly or laughing, or pointedly and noisily leaving the court during the VIS reading. While such behaviour appears rare, VOC described these reactions as expected, annoying or offensive and were angered or upset by them. Therapeutic effects already gained through writing a VIS are undermined when offenders and their families do not respond to the VIS as VOC expect. VOC who know their offender are most desirous of a visible offender response to the VIS.
5.6 Judicial reaction to the VIS

Judicial reaction to the VIS was highly regarded by VOC, who perceived it as an indication that the judge was on their side, believing and acknowledging their suffering and sympathetic to their position. VOC viewed judicial support differently from the support of other officials, understanding judges to be knowledgeable, powerful and representing the interests of the community. Many VOC sought the judge’s approval and studied his/her reactions during the VIS presentation.

The judge looked directly at myself and my wife [when we read the VIS] and his head gave a little shake, to say he couldn’t believe it.

*Edward (CD:06), father of murdered son, VIS read*

When a judge referred to the VIS in his/her summation, this was seen as an affirmation for VOC and was significant to them:

I liked the judge. On the day of sentencing, when he mentioned my statement, he choked up. It was important that the judge recognised my statement. I went into shock afterwards. Just afterwards. After he read it. He referred to something I said. He did listen. On the day of judgement, he [pause]. I felt proud I had done it. He did notice.

*Olivia (CD:24), sister murdered by partner, VIS read*

When the judge in sentencing brought up things in my VIS, it was a validation of my feelings. I thought, ‘You heard’. If the judge hadn’t [pause]. It felt very empowering when he [judge] was talking about the impact on me. I’m not just a cry baby. He’s actually saying ‘Poor you’, and the court is agreeing and validating my trauma.

*Natalie (CD:55), victim of HCSA, VIS read*

I looked up frequently and turned to the judge to address him. [His reaction] was very important. It showed me that they were very interested. Nobody fidgeted. They were all focused on me. In that respect, I was pleased with how it all went off. [My daughter said] Dad that was terrific. The fact he [judge] mentioned it in his summing up and said how … it meant a lot to me.
VOC reported placing themselves under considerable pressure to get their VIS ‘right’. Many took great satisfaction from the judge not only acknowledging their VIS but also referring to the quality of its content. Some VOC remembered the judge making positive comments about their VIS in submissions that, when reviewed, were not in the court transcript. This suggests that positive judicial oral acknowledgement of the VIS, coupled with positive judicial regard and respectful behaviour towards VOC, creates an environment of such support that VOC internalise their experience as more positive than it in fact was (see Kahneman & Riis 2005 for a discussion of positive and negative memories of experience over time):

[I was] pleased, oh yes. When the judge read them and said, ‘I’m impressed’.
Jeff (CD:11), father of murdered son, VIS read

In the summary from the judge, he mentioned the VISs and especially mine. He said it was moving and said I had done a good job of reading it. For the judge to say what a good job I did made me feel good.
Diana (CD:13), mother of murdered son, VIS read

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)

In therapeutic terms, judiciary acknowledgement of the VIS serves an important function. The judge is viewed as not only a representative of the community but also an arbiter of righteousness. Conviction of the offender confirms that the
State acknowledges the crime against the VOC has been proved; however, positive judicial response to a VIS indicates to VOC that the constructed narrative they shared is believed, their suffering is legitimate and their worthiness acknowledged, affirming they are supported by the community and their reconnection to it is formally sanctioned. In Herman’s (1992) trauma recovery model, reconnection to the community is the third and final stage.

From the data, it is difficult to assess how regularly judges refer to the VIS in summation. Whereas some VSP reported this was common, especially in death matters, others felt it was rare. However, there was general consensus from VSP that victims’ needs were an increasing focus of the criminal justice process, and therefore judicial acknowledgement of and reference to VISs was increasing. VOC data show judicial reference to the VIS in summation was most prevalent in death matters and matters involving forms of SA where an oral VIS had been made. Similar to Booth’s (2013a) findings, in matters where VISs were handed up, it was much less likely for them to be acknowledged or referred to, especially if VOC were not in attendance, leaving some wondering whether the judge or magistrate had read their VIS or taken it into account:

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*

In therapeutic terms, VOC who hand up their VIS but attend sentencing proceedings are less likely to receive the empowerment of judicial sanction on behalf of the community:

Judges are very pressed for time, and when you give them a document to read, they’ll skim it. And even a victim impact statement. And, we’re all the same. If you are given a document, you read it and you go, ‘OK’. Somebody speaking the words, full of emotion, tears in their eyes, looking at the person who has done this thing to them is an incredibly powerful, you know, part of what happens in that court room on sentence.

*Crown prosecutor, Sydney (1)*
Understanding factors that may prohibit VOC from presenting an oral VIS, and cognisant of the importance to VOC of judiciary acknowledgement, mandatory judicial recognition of VISs tendered but not read out to the court might be worth considering.

In some cases where judges did not seem interested or appeared antagonistic towards the presentation of a VIS, the response of VOC was one of anger, and the therapeutic potential of the VIS was undermined:

I feel very bitter about the judge. When we came out, we were more angry with her than [with] the defendant. We felt very let down. She actually didn’t want us to read any [VIS]). I felt one was about all we could get in, so I chose the one I felt best covered how we all felt. I don’t know why she didn’t want them in the court. Maybe it was because of time, or maybe she didn’t want the emotion in court, but I had no faith she read them. It was a very negative experience. We are still recovering. It took us right back to where we were 18 months ago [time of daughter’s death]. I’m quite disgusted by the process and to have a representative of government which is what the judge is, to be so pro the defendant, someone with 30 years before the courts, and not to focus on an innocent victim. I don’t think they [the court] care. They have no thought for the individual. They’re really favouring the accused all the time.

Jenny (CD:19), mother of a daughter killed by drunk driver, VIS read

In early VIS literature, critics of the VIS suggested that victims given a voice would most likely use it vindictively to exact revenge (Arrigo & Williams 2003; Ashworth 1993). Previous studies (Booth 2013a; Schuster & Propen 2010) found that VISs that demonstrate a level of understanding towards the offender and victim stoicism and personal strength to rally against tragedy are well received by judges, and this stance may be strategically used by victims (see Miller 2007, 2013). It could be argued that such VISs relieve the judge of the emotional challenge of responding sympathetically to traumatic information, enabling the more removed and comfortable response of distanced compassion.78 As Booth (2013a:254) reports, when VISs were read ‘there was

78 Severity of sentence can be appealed on the grounds that a disproportionate sentence has been handed down, based on an overly sympathetic or visibly supportive judicial response to a VIS.
an element of discomfort at times that stemmed from public displays of grief and the disclosure of highly personal, private matters by family victims to an audience of strangers, … [and] the vehement expressions of anger by the victims were at times disturbing’. However, informed by learned philosophical debates regarding notions of justice, the culturally normative intellectual understanding of judges would endear them towards victims able to demonstrate their ability to survive tragedy through fortitude and rationalisation, by moving beyond lower order justice needs of retribution and revenge towards higher-order justice ideals of mercy, harmony, equity, equality and love. Victims able to display such sentiments in their VIS would therefore be recognised as deserving of judicial praise rather than sympathy because they represent the civilised ‘us’ (those ruled by logic) rather than ‘them’ (those ruled by emotion) (see Lerner & Goldberg 1999; Maslow 1954).

Overall, data show that judicial response to VIS is important to VOC. Further, judicial reference to VIS content in summation is an effective tool to aid victim satisfaction and, in some cases, is able to ameliorate negative experiences of other elements of the sentencing process.

5.7 Gender

Findings from this study and others (Erez, Kichling & Wemmers 2011; Miller 2013) show that female VOC are more likely to present a VIS and, therefore, have more opportunity to gain the therapeutic benefits outlined. In 446 homicide sentencing proceedings in the NSW Supreme Court between 2003 and 2012, VISs were presented in 306 (Booth 2013a). Table 5.1 shows the disparity between the numbers of mothers and fathers presenting a VIS. While the gender of the deceased was not identified, it would be beneficial to know how many paternal VIS were presented for sons and daughters, given the findings presented in Chapter 4. Of the 130 parents presenting a VIS as individuals, fathers represent fewer than 30%, with only 13% reading them.
Table 5.1 Parents presenting a VIS in homicide sentencing proceedings in NSW Supreme Court 2003–2012, by gender

<table>
<thead>
<tr>
<th>Parent</th>
<th>VIS handed up</th>
<th>VIS read</th>
<th>VIS read by rep</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mothers</td>
<td>44</td>
<td>38</td>
<td>11</td>
<td>93</td>
</tr>
<tr>
<td>Fathers</td>
<td>16</td>
<td>16</td>
<td>5</td>
<td>37</td>
</tr>
<tr>
<td>Dual presentation</td>
<td>14</td>
<td>1</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>74</td>
<td>55</td>
<td>21</td>
<td>150</td>
</tr>
</tbody>
</table>

Source: Data taken from Booth (2013a)

5.8 Satisfaction

All but one of the VOC participants reported being happy to have made a VIS, despite some reporting their VIS had been unfairly edited or ignored or had not affected sentence as they had hoped and some reporting dissatisfaction with VIS procedures, sentencing process or outcome of sentencing proceedings. Previous research also shows VOC reporting feeling better for having made a VIS and that they would choose to do so again given the opportunity (Chalmers, Duff & Leverick 2007; Department of Justice Canada 2005 Miller 2007). This is intriguing in light of all the obstacles, barriers, process inconsistencies and emotional challenges VOC endure during the VIS process, as revealed by this study. Participants appear to separate the personal usefulness of their VIS experience from the VIS process and its effect on sentencing outcomes, which confirms that the VIS provides VOC with internal, intrinsic benefits that exist in spite of negative experiences of criminal justice mechanisms and disappointed expectations of justice. For example, Michael, an elderly man physically attacked at home by two younger male offenders was not happy with the trial process and felt the treatment and sentence his offenders received was too lenient:

I was surprised they had not been charged with attempted murder. The police said it was too difficult to prove. But when you come with a meat cleaver? … I
felt his [prosecutor’s] job presenting the case was very average and very poor. (X) court. And he didn’t intervene when I was attacked by defence barristers. I felt under attack. They had two barristers each. I didn’t feel supported by the prosecutor.

*Michael (CD: 34), victim of PA, VIS handed up*

Despite this, Michael reported he was well supported by the police and WAS during the trial and sentencing process and he was satisfied with having made a VIS:

I think I did a very good statement [VIS]. I’m quite proud of it.

*Michael (CD: 34), victim of PA, VIS handed up*

With very few exceptions, for the VOC who participated, VIS satisfaction appears universal—across all categories, individual circumstances, challenges and experiences. The nature of the lasting benefits described by VIS makers appear so powerful that despite the personal challenges and frustrations with VIS handling, all VOC participants acknowledged the importance to them of making the VIS and that they would make a VIS again.

### 5.9 Summary

This chapter has presented the emotional and process challenges faced by VOC when writing and presenting their VIS. Results show how multivariate factors affect the VIS experience, but they also show that despite difficulties, challenges and negative outcomes within the criminal justice process, participants were able to isolate the personal value to them of the opportunity to make a VIS.
Chapter 6: Testaments of Transformation

The VIS process is evolutionary, not one of restoration but of transformation, with the VIS necessitating a victim to accept the crime event and acknowledge and consider the depth of its impacts and, in doing so, consider their changed status. VISs are far more than ‘testaments of harm’ (Graham et al 2004:i), for as findings show, beyond the impact of the crime event, there is much for victims to contemplate, negotiate and evaluate in the decision to make, write and present a VIS. It is within those processes that lie opportunities for meaning-making and self-reformation.

This study has featured one of the largest broad-based samples of primary and family VOC to be interviewed in depth about their VIS experience to date and is one of the few independent VIS studies, unfunded by government agencies or victim support services, to report VOC and VSP understandings of the VIS. Participants’ candid responses have produced a rich picture of the experience of the VIS for VOC in NSW. Crimes against those interviewed were very serious, and when reviewing the findings it is important to remember the profound suffering caused to them—still endured by many—and their bravery in sharing their experiences.

This chapter presents the therapeutic benefits of the VIS, further findings of interest and concern, recommendations and potential for future research, and concludes with an appraisal of the study’s contribution to existing research.

6.1 Therapeutic benefits of the VIS

Findings confirm that the VIS is a useful therapeutic mechanism. 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 (see Cattaneo Dunn & Chapman 2013; Daly 2014).
The novel finding in this regard is that 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. VIS satisfaction and its therapeutic benefits seem to occur in isolation from less-favourable legal experiences or ongoing psychological distress resultant from the crime event. This counters one of the policy intentions of the VIS—namely, that satisfaction derived from the participatory opportunity of making a VIS raises the victim’s satisfaction with criminal justice processes (Walklate 2012; Winick 2011). The data provide a more specific understanding that feeling better after making a VIS does not necessarily refer to an amelioration of levels of anger or mental anguish resultant from the crime. Lens et al 2015, in seeking to assess the therapeutic value of the VIS in relation to victim recovery and reduction in levels of psychological distress, were not able to attribute such direct benefits to the VIS and instead suggested the therapeutic benefits of the VIS may be less direct.

The VIS cannot compensate for losses experienced due to the crime nor for further (if only perceived) injustices of cross-examination or negotiation of charges or sentences discordant with the victim’s appraisal of their suffering. However, findings show that this does not negate the personal and positive effect of the VIS. Hoyle (2011:257) is perhaps right to argue that evidence indicating the VIS significantly reduces the victim’s distress and increases their satisfaction with the criminal process is ‘tenuous to say the least’. Findings suggest it would be foolhardy to assume that the VIS has the power to lessen the psychological distress and personal impacts resulting from serious personal or fatal crimes.

What positive therapeutic effects does the VIS provide? Although the findings support the therapeutic—though at times short-lived—benefit of catharsis noted in other studies (Erez, Kichling & Wemmers 2011; Graham et al 2004; Leverick, Chalmers & Duff 2007; VSA 2009), this is not the most important and lasting effect of a VIS. Analysis of the firsthand experiences of VOC confirms the novel
finding that the core therapeutic value of the VIS lies in the opportunity it provides for VOC to reframe their experience (Bowman 1999). By giving VOC the autonomy to choose how their experience is to be understood by a wider audience, the VIS is a vehicle through which the power—at least regarding the consequences of the victim’s management of their experience—is returned to them. The VIS requires VOC to purposely challenge themselves to consider their crime experience and evaluate its impact. They fashion their understanding of not only what has happened to them but also what that means to them in the present through the perspective of their past and how they will make sense of it into their future. This process of making their own meaning of the injustices of their suffering is both therapeutic and transformative, allowing them to psychologically travel from victimisation to self-determination, from isolation to reconnection and from disempowerment to empowerment facilitated through the mechanism of the VIS. This intrinsic therapeutic benefit stands alone, disassociated from any disappointment with sentencing proceedings and sentence term. The results show this outcome as robust and lasting.

As demonstrated by results presented in Chapter 4, in viewing victimhood in terms of loss, when VOC are preparing their VIS, they are required to acknowledge the full repercussions of the crime/s against them in order to contemplate the nature of their losses and associated grief. During this process of acknowledgement and assessment, VOC pass through early grief stages of isolation, denial and anger, into stages of bargaining—where a regaining of control is sought—and acceptance in order to survive into the future (Kübler-Ross 1969; Murray 2001). In other words, the VIS provides the mechanism through which the psychological process of ‘grief work’ is both enabled and required (see Neimeyer 2001).

The personal value is of the VIS for VOC is further confirmed by the finding that while some participants described dissatisfaction with their sentencing and criminal justice experience, all would choose to make a VIS again.

Analysis of the data shows the VIS to be self-edifying. As Reissman (2008) points out, narratives are political, with the VIS understood by VOC as a
democratic measure adding equity to the sentencing process, whether that process ultimately appears to support or ignore their wishes. The opportunity for VOC to participate, or to choose not to participate, in the VIS process enhances their sense of civic inclusion, again in therapeutic terms validating their worth (Erez, Kichling & Wemmers 2011). Many participants described the lasting therapeutic benefit of empowerment in terms of having an opportunity to do something that fortified their sense of self (Cattaneo, Dunn & Chapman 2013). As VOC, they had been overpowered, but through the VIS they were able to stand in front of their offender, or present themselves to the court differently, redressing to some extent the power imbalance (Catteneo & Goodman 2010).

It was interesting to note how keen some primary and family victims were to read me their VIS when interviewed, or to forward it to me. Many described the VIS as a document that gave comfort, they were proud of and treasured and at times re-read. VSP described some family victims reading their VIS to their loved one at the graveside, with the VIS not only providing the opportunity to symbolically reveal to the deceased how the impact of their loss was revealed to the court but also providing some with a format in which to channel, describe and present their grief to their loved one. Some posted their VIS on the internet on personal blogs, or gave their VIS to victim support agencies to use as they saw fit. As previously described, the VIS appears to facilitate reconnection to others, including the wider community. These findings are supported by Graham et al (2004:30) who noted that VIS makers described their VIS in terms of its ‘public value’ and were motivated by a sense of civic duty and altruistic aims.

6.2 Findings of interest and areas of concern

VOC and VSP responses suggest there is a high take-up rate for VIS in the NSW District Court and Supreme Court and a growing awareness of the opportunity to make a VIS in the Local Court. The timing of the VIS being post-conviction appears to aid take-up, the conviction providing some validation that the victim’s victimisation is not in question.
However, while the therapeutic gains of VIS are evident in the findings, the VIS remains problematic. As VOC are heterogeneous, it is difficult for a generalist provision such as the VIS to serve all victims equally. Janoff-Bulman (1992), taking Lerner’s ‘just world’ theory, suggests that for VOC, their understanding of a just world is challenged to the point where fundamental assumptions of justice are shattered, and the degree to which it is shattered is related to how just they thought the world was prior to their criminal victimisation (see Pemberton 2012; and Lens et al 2015). In arenas or within relationships where differing operating concepts of justice appropriate to circumstance collide and where value systems are challenged, there is a great potential for functionally maladaptive experiences to occur. Without processes sympathetic to the heterogeneity of individual justice values, there is most chance of missed understandings (Landany, Friedlander & Nelson 2005) and VOC retraumatisation.

With this study, I sought to discover not only who made a VIS and what they experienced, but why, including a detailed picture of the motivations and barriers to making a VIS. Supporting Miller’s (2014:798) findings that ‘a VIS author is most often female, vulnerable, a victim of violent crime or personal injury, victimised at home, harmed by a known or male offender’, more importantly, this study provides evidence for why this is the case. It challenges the notion of ‘angry women’ (see Erez, Kichling & Wemmers 2011), adding another perspective of VIS motivation beyond women expressing ‘relational caring’ (Miller 2014:802). Data from Miller’s study of female SA victims in Canada suggest that these victims use their VIS in a way that prioritises the needs of relational others to include the protection of children and future or hypothetical victims, or to promote the interests of the intimate partner offender. While this was also a finding in this study, further analysis of the data suggest that some male VISs also expressed relational caring but differently from those of females. Importantly, data revealed that in certain circumstances both male and female VOC choose to minimise the content of their VIS in a complex expression of intrapersonal caring and self-protection.

Findings suggest that one of the reasons more women than men make a VIS is because the intrinsic risk to women’s status of engaging with VIS processes is
less than for male victims. Further, it appears that cultural expectations for women to be more comfortable describing their hurts means females are less challenged by the notion of the VIS and more likely to identify as being victimised than as being a victim and therefore more readily seek victim supports. It could be argued that those investigating crimes, those employed in victim support and in the CJS and the VOC themselves perceive female victimhood as culturally normative and male victimhood as aberrant (see Zur 2012). This is not to say that women are victims but that their victimisation appears a more accepted notion and, therefore, there are social, cultural and systemic practices that more readily acknowledge their harms and support their needs. This normative understanding of female victimisation exists because females are disproportionately represented as the victims of personal crimes, whereas males, within those categories, are disproportionately represented as the perpetrators.

Data from this study regarding the reasons for some women being more likely than others are to want to make a VIS, and the risks for particular VOC when engaging with the VIS process, changes our previously generalised understandings of the VIS experience to something far more specific. For example, data show that gender and the nature of the relational role towards a deceased victim or offender can affect motivation, content and presentation of the VIS. The personal characteristics of the victim and the nature of the crime affect not only the level of support sought or provided but also VIS processes and interactions. Findings further support previous studies that found some VOC use the VIS strategically, with a view to achieving particular public and personal ends (re. female VIS see Miller 2014; Schuster & Propen 2010).

6.2.1 Barriers affecting engagement with the VIS process

Issues that exclude or restrict VOC from expressing their harms to the court and the offender have been little explored within VIS studies (see de Mesmaecker 2012), although they have been raised as a concern within VIS academic discourse. Findings from this study suggest that the nature of the crime, relationship with the offender and issues of gender, literacy, culture, minority
status and personal self-worth can individually or collectively affect VOC access to, or successful engagement with, the VIS process (supported by Booth 2000). Findings show the decision to make, write and present a VIS is complex, highly sensitive to exterior mechanisms and relational forces, and emotionally—and for some, psychologically—challenging.

Findings show a disparity between the demographic of the VOC population and the VIS-making population, and suggest that the VIS is most utilised by those of the dominant culture and tends to favour VOC who are more articulate and least vulnerable or stigmatised (see Cassell 2009). In this study, most non–VIS makers were either not born in Australia or were from culturally and linguistically diverse backgrounds distinguishable, supporting previous studies by Konradi and Burger (2000) and Villmoare and Neto (1987) who found that those who read VIS aloud tend to be white and secure within their membership of the dominant culture. Findings of this study support early concerns that the VIS favours those least vulnerable and further suggests that VISs presented in cases of crimes understood socially as being beyond reproach, such as murder and child sexual assault, receive most judicial acknowledgement in sentencing proceedings.

6.2.2 Editing the VIS and VIS influence on consistency of sentencing

Findings regarding the high incidence of VIS editing and conflicting perceptions of VIS influence on sentence suggest a focus on the functional/informative nature of VIS among some in the police, victim support, prosecution and defence. This appears to be coupled with an assumption that the unspoken aim of the VIS is to affect sentence, which VOC naturally assimilate. Despite being at odds with consistent research that suggests there is no evidence to show that VISs affect sentences (see Roberts & Manikis 2013), the consequence of this assumption is that VISs are often dealt with as if they will affect sentence. Thus, the VIS, promoted by some as a way to get the offender ‘more time’, is overly scrutinised and edited by others in victim support and in the ODPP to avoid objections to the VIS or to prevent a point on which the defence can launch an appeal or is edited by defence because of concerns about the
assumed influence of the VIS on sentence. This notion appears to be exacerbated by vagueness about what ‘taking a VIS into account at sentencing’ effectively means and what constitutes normal or reasonably foreseeable harm. It could be argued that a lack of insight or lack of care for the feelings of their victims is the very reason some offenders commit particular crimes. Such offenders show no capacity to understand or have no interest in the effect of their actions on the victim. In other words, what would be perceived as normal or foreseeable harm by the victim may be completely alien to the offender (e.g. see Stubbs 2007:173 on gendered perspectives of DV).

The subjective nature of the VIS does not mean that VOC choose to fashion their memories inaccurately. Memory is much more than a photofit of an experience. It is fashioned within a life narrative to determine meaning and provide reasons for events. As Kahneman and Riis (2005:286) argue, humans mainly live in the ‘remembering self’, which is relatively stable and permanent, rather than in the ‘experiencing self’, which is fleeting, further arguing that the human brain and sensory system is evolutionarily hardwired to prioritise the recording or memorising of unpleasant events to avoid repeating such experiences. In their clinical study of the memory-experience gap, defined as the ‘discrepancy between the average of experienced emotions and the overall evaluation of the experience’, Miron-Shatz, Stone and Kahneman (2009:885) found that ‘separate processes are used for committing positive and negative events to memory’, noting that ‘especially when unpleasant emotions are involved, prudence is favoured over accuracy’.

Knowing this, it is not surprising that some in the CJS are concerned about the informative nature of the VIS being of influence. In the future, this is likely to be exacerbated by increased media coverage of the realities of victim impact and a wider understanding and acceptance of mental health problems and their origins. Notwithstanding ongoing academic research into the impacts of SA, familial violence, DV and child abuse, the extensive media coverage and literature generated by such investigations as the Board of Enquiry into the Protection of Aboriginal Children from Sexual Abuse (NT Government 2007), the Australian Royal Commission into Institutional Responses to Child Sexual
Abuse (actioned 2013, ongoing), and the Victorian Royal Commission into Family Violence (actioned 2015, ongoing) could be argued to be heightening individual, communal, criminal justice and political awareness of what would constitute reasonably foreseen or normal impacts suffered by victims of such crimes.

Further, that which individuals, communities, VOC and VSP understand as normal and foreseeable consequences of a crime are likely highly variable. For example, those who work exclusively with victims of SA have a specific and very different understanding of its consequential harms from those with no exposure to such victims. Arguably, various recent campaigns in Australia and internationally have not only increased general knowledge of crimes of DV, SA, familial, cultural and institutional child sexual and physical abuse but also raised awareness of their long-term individual psychological and intergenerational impacts.

The VIS is a subjective document. It is truthfully made, but it cannot necessarily be described as a representation of ‘factually correct information’ (Garkawe 2007:107). Rather, it is a constructed personal evaluation of facts, truly believed by the VIS author. As such, it can inform the court of the truth of the crime’s impact as the victim understands it and experiences it, but caution must be taken in considering these understandings objectively, however tragic and devastating the circumstances. This study supports previous findings that VOC are disempowered and suffer secondary traumatisation when they feel they are not believed (Daly 2014; de Mesmaecker 2012; ten Boom & Kuijpers 2012). In terms of the VIS, VOC perceive challenges to its content as a challenge to the believability of their account of the crime’s impact as they wish it to be understood. Findings show this can be highly distressing for VOC and therapeutically destructive. It could be argued that for each VIS to reach its full therapeutic potential it should be orally acknowledged and validated by the court in judicial summation. However, VOC also need to be made aware and reminded of the subjective nature of the truth of the impacts they present, which by the adversarial rules of justice must be viewed in conjunction with other truths to be considered, be they subjective truths within offender submissions or
other truths measurable or observable. If VOC, trying to make meaning of the purpose of their input at sentencing, are not comprehensively counselled regarding the very limited influence of their VIS on sentencing, their expectations of its practical impact on sentencing decisions are likely to be disappointed.

6.2.3 Issues of clarity in VIS legislation and changes to allow family VIS to be considered in sentencing

Findings show that many VOC endure a level of deliberation, anguish and psychological risk in order to prepare and present their VIS, explaining why judicial response is so important and why eclectic, arbitrary or unexplained editing of the VIS can be distressing and traumatic. Findings suggest that lack of clear direction within the legislation regarding consideration of the VIS, idiosyncratic judicial VIS handling and the non-mandatory voluntary nature of VIS remain systemic issues of VIS process. Whether VISs affect the consistency of sentencing was not a focus of this study (see Roberts & Manikis 2013); however, findings show that VIS information and support provided to VOC is inconsistent, and the high level of editing reported and qualitative responses about the nature of editing suggests a general confusion regarding the intended aims and expected effects of the victim’s voice within sentencing proceedings. As other studies suggest, the VIS embodies an uneasy dissonance between the legal goals of the sentencing hearing and the needs of VOC (Booth 2013a; Hoyle 2011; Kirchengast 2006). Although the VIS has become part of regular business within the Supreme Court and District Court, findings show no particular procedural protocols or guidelines regarding their court presentation (as supported by Booth 2013; VSA 2009).

Although data from this study suggest VISs are rarely cross-examined, in line with previous studies (see Booth 2001; Miller 2013), the potential threat is enough to make some VOC decide against making one. Data for this study were collected prior to the amendments to the NSW Crimes (Sentencing Procedure) Act in 2014, which now allows family VISs to be taken into account at sentencing. In submissions regarding such changes (see Roth 2011), many
expressed concerns that giving weight to VISs in death matters would make VIS cross-examination more frequent and more important (see Manikis & Roberts 2013), with the potential to retraumatise family victims (Law Society of NSW 2011; Legal Aid NSW 2011).

Despite fear of VIS cross-examination preventing some primary VOC from making a VIS (noted in Booth 2013a; Meredith & Paquette 2001; VSA 2009), there is little to allay such fears beyond evidence suggesting it is unlikely. Concerns regarding secondary traumatisation caused by VIS cross-examination are being more forcefully raised on behalf of family victims. Perhaps family victims, being secondary victims, are viewed differently from primary victims, not subject to protective measures that society uses in the creation of victim dissociation and victim blame described earlier (see Pemberton 2012). It appears society and the law are more likely to seek to protect secondary victims from trauma, as members of the in-group, while negating the need for such protection of primary victims because they are viewed as other and part of the out-group (see Lerner 1980). Study data (gathered prior to 2014 changes to legislation regarding family VIS) show family VOC, who understood their VIS could not be taken into account, did not fear their VIS being challenged. Perhaps current arguments posed on behalf of family VOC by lawmakers have more to do with the spectre of the political outcry if cross-examination of family VISs becomes more necessary and more prevalent due to their potential impact on sentencing.

Kirchengast (2008) argues that excluding the VISs of NSW family victims from consideration is non-therapeutic, as it does not allow their VIS the functionary role of informing the court. I would argue that consideration of family VISs places family VOC on the same footing as primary VOC, where the potential probative usefulness of the VIS demands that it is more rigorously scrutinised and edited prior to being accepted by the court. Although Booth (2013b) suggests family VISs are unlikely to be more routinely cross-examined if prosecutorial pre-presentation edits have occurred, based on findings of this study, I am not so optimistic. While VOC might accept cross-examination of fact within the trial process as necessary, data suggest cross-examination of the
perceived reality of their hurts may not be so logically understood. For this reason, over-zealous editing of family (as with primary) VISs has the potential to be psychologically damaging and antitherapeutic.

6.2.4 Concern regarding lack of support for vulnerable, traumatised or culturally isolated victims when making a VIS

The study data suggest VOC are able to access support to make a VIS from a variety of sources, including from family, friends, police, WAS, the ODPP and specific victim support agencies. However, findings show that the sample mainly comprised English speakers who demonstrated reasonable literacy levels. VSP results suggest that having low literacy skills, a lack of English, or being from a culturally and linguistically diverse background can discourage VOC from making a VIS or seeking help to make one. Support is varied, with lower levels available to VOC wishing to make a VIS in rural areas. Inconsistencies are apparent in the advice and guidance provided to VOC regarding the VIS, which is troubling. While many VOC participants reported being not only satisfied but also sometimes humbled by the support they had received during their criminal justice process, data suggest levels of general support and specific VIS support can be affected by not only the nature of the crime but also the characteristics of the victim.

The need for support for those VOC who have difficulty encapsulating the impacts they have suffered and suffer for the purpose of writing the VIS and the potential risk to those unsupported, intimidated and highly traumatised who engage with the VIS process, while flagged as an issue of concern within the literature of victimisation and criminal justice processes (see Clark 2010; Herman 2005) has not been reported to any extent as a particular concern in VIS studies. Similarly, issues of shame for VOC who are required to reveal unpleasant, personal details regarding the consequences of the crime, or facets of their character or behaviour that they feel will be judged, or who are forced to operate outside their cultural norms of disclosure, has been little examined within VIS studies (de Mesmaecker 2012).
6.3 Recommendations and potential for future research

The VIS is an accepted part of the sentencing process in many jurisdictions within English-speaking countries, including the UK, the United States, Canada, Australia and New Zealand. While there is some variation in legislation (see Garkawe 2007; Manikis & Roberts 2011; VSA 2009), as Erez, Kichling and Wemmers (2011) suggest, it is unlikely a provision so vigorously fought for would be retracted. Indeed victims’ movements continue to press for the extended influence of victim impact evidence and for consideration of victim harm at sentencing proceedings and parole hearings and in victim compensation claims.

For the VIS process to reap the most benefits for VOC, a delicate interplay of elements is required that moves beyond those of therapeutic and procedural justice into the realms of ‘emotionally intelligent justice’ (Sherman 2003), defined by King (2008:1098) as a communicative approach of techniques incorporating ‘understanding, feelings and empathy’ and the ‘application of a broad definition of legal problems and outcomes’. Although VIS legislation is required to be generalist, the way in which the VIS is prepared and performed and the meanings VOC attach to it are individual, affected by relationships and processes encountered, namely interpersonal justice (see Laxminarayan & Pemberton 2014). Therefore, any therapeutic consequences involve not only psychological but also procedural interactions, with both reliant on the quality of those charged to interpersonally present and perform them.

At time of writing, no statistical data have been systematically gathered in NSW regarding the number of VISs made in the Local, District and Supreme Courts. Even if numbers were recorded, in terms of victim experience the statistics would be useless without context. It would be helpful if such statistics included eligibility, number presented, whether sentencing proceedings followed a trial or guilty plea, type of matter, gender of VIS author, gender of offender, whether the offender was known to the victim, whether the VIS was orally presented or handed up, whether the VIS had been edited and by whom within the court, and whether the VIS was referred to in summation. In tandem, it would be useful to
research the nature of VIS editing, using a content analysis of VIS from first draft to final presentation, to better understand whether VISs are edited in accordance with the legislation or based on personal assumptions of what might be inadmissible or inappropriate.

The therapeutic benefits of the VIS appear mainly intrinsic to the VOC. The VIS does not change how victims feel about what has happened to them; rather, it changes the way they feel about themselves in terms of their ability to manage the consequences of the crime and the outcomes of their criminal justice experience in the future. For this reason, measuring pre- and post-VIS levels of anger or anxiety (see Pemberton & Raynaers 2011), which are extrinsic reactive behaviours to the trauma of the crime and criminal justice experience, may not be helpful (see Lens et al 2015). Psychological measurement of empowerment, self-efficacy or self-determination pre- and post-VIS might be more fruitful (see Catteneo, Dunn & Chapman 2013).

Understanding the powerful effects for VOC of a judicial reference to their VIS within summation (see Bell et al 2011), it is hoped that judges will be given further guidance regarding how this could be routinely done without affecting the rights of the offender. Similarly, while it is obvious that many working tirelessly to assist VOC within the CJS and in victim support are alert to their individual VIS needs, there are inconsistencies in support, information, access and advice illuminated by this research, which could further assist to form a model of VIS best practice.

Research has not been undertaken to assess the effect on the offender of hearing or reading the VIS. Considering that those working with offenders in prison suggest the VIS may have a latent impact on offenders, a qualitative study of offender reactions to VISs could prove enlightening.

A full outline of recommendations arising from the findings of the study regarding the VIS appears in Appendix 2. In addition, Appendix 3 provides resources I have designed based on the findings, intended for use by those supporting VOC through the VIS process. The first is a prompt sheet alerting
VSP to challenges that may make it more difficult for a particular VOC to make a VIS. This is intended to assist VSP to individualise their service provision in order to facilitate for VOC the most positive therapeutic experience from the VIS opportunity. The second is the practice model ‘SLOW’, which is intended to help VSP discuss the VIS with VOC in more detail, in order to ensure that their needs are best supported and that their expectations are thoroughly explored and managed if necessary.

6.4 Contribution to existing research

This thesis contributed to existing research by presenting a comprehensive picture of the VIS experience and process as experienced by VOC and as understood by VSP. This study is the first to present an independent in-depth analysis of the nature of therapeutic benefits of the VIS, describing not only what the benefits are but also why they occur. This study provides important insights into the difficulties and challenges that VOC negotiate when considering making a VIS, useful for victim support services and those in criminal justice to better understand the needs of VOC and to offer targeted support. Further, it presents a firsthand understanding of the nature, challenges and risks of the VIS writing experience and provides important data regarding the VIS process, including the types of assistance VOC use and require.

Providing a specific and nuanced picture of the VIS process and experience for a broad cross-section of victims of various serious crimes in NSW, the findings show that VIS motivation and use is complex and affected by specifics of the crime and the micro and macro characteristics and needs of the victim (supported by de Mesmaecker 2012; Lens et al 2015; ten Boom & Kuijpers 2012), further influenced by the processes and relationships VOC are required to negotiate en route to the final presentation of their VIS. It is hoped that the findings revealing the emotional challenges many VOC go through to prepare their VIS will inform those charged to vet them, hear them and acknowledge them. Understanding the importance to VOC of judicial acknowledgement, it is anticipated that this research may lead to a discourse within the judiciary regarding appropriate responses to VISs, while upholding the rights of the
offender. Findings show that the legislation regarding the VIS remains unclear, causing those supporting VOC to second guess what the judiciary might deem as appropriate content. As the VIS of family victims can now be considered in sentencing, a review of the guidelines for dealing with the VIS would be timely, to avoid family VOC being further traumatised by overzealous editing or by the mismanagement of their expectations regarding the influence of their VIS on sentencing. Overall, the findings suggest that VOC and VSP are confused about the duality between the functional use of VIS to the court and its therapeutic value to VOC, seemingly based on personal assumptions of what the consideration of a VIS actually means. It is hoped that these findings will lead to further targeted research, will contribute to current VIS discourse and will assist those who support VOC and those handling and responding to VISs within sentencing proceedings to better understand the systemic and process challenges that VISs present, the varied reasons behind VIS presentation and their therapeutic importance.
References


Booth T (2013a) ‘Accommodating Justice: An Exploratory Study of Structures and Processes that Shape Victim Participation and Presentation of Victim Impact Statements in the Sentencing of Homicide Offenders in the NSW Supreme Court’, thesis to fulfil requirements for PhD, School of Law, University of New South Wales.


Frankl V (1959/1946) Man’s Search for Meaning, Beacon Press.


Appendices

Appendix 1: Additional quantitative data tables and explanation

VOC Sample

Age

Table A1.1 shows the ages of participants according to age categories. Ages of the participants were those at date of interview, which do not necessarily equate to their age at time of sentencing proceedings. This disparity arose exclusively for participants in death matters who received information regarding the study via the HVSG. Within that cohort, some had matters that had concluded some years before being interviewed for the study.

<table>
<thead>
<tr>
<th>VIS and non-VIS makers Age</th>
<th>Family victims VIS makers</th>
<th>Sexual assault VIS makers</th>
<th>Sexual assault non-VIS makers</th>
<th>Domestic violence VIS makers</th>
<th>Domestic violence non-VIS makers</th>
<th>HCSA VIS makers</th>
<th>Physical assault VIS makers</th>
<th>Physical assault non-VIS makers</th>
<th>Other*</th>
<th>Total #</th>
</tr>
</thead>
<tbody>
<tr>
<td>20–30</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>31–40</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>41–55</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>21</td>
</tr>
<tr>
<td>56–70</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>71–85</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>5</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>53</td>
</tr>
</tbody>
</table>

*Arson and intent to endanger life
#Age demographic data is missing from 13 participants within these tables.

No participants between the ages of 18 and 22 years participated in this study, despite consistent findings in victimisation surveys that young people 15–24 years are the most victimised group (see ABS 2007; Burton, Evans & Sanders 2006, 2007). Based on the quantitative results, it is difficult to conclude much in terms of likelihood of making a VIS based on age. Younger female participants more frequently reported being victims of SA and are therefore over-represented as participants in the 20–30 age category. Over half the participants were aged between 30 and 55, with a further 23% being over 55. The lack of young adults in the sample may indicate that youth is a barrier to making a VIS.
**Country of birth and ethnic origin**

Demographic data of country of birth and ethnic background were recorded from 53 VIS-eligible participants (see Table A1.2). Of VIS makers, most participants spoke English at home, and over 83% were born in Australia. In terms of ethnic or racial origin, 87% were of Australian/Anglo/Irish/European descent, and 7% were Aboriginal; the remainder included a small number of participants of Maori and Chinese descent.

Australian Social Trends (ABS 2014) taken from the 2011 Census reports that 42.4% of those residing in the City of Sydney and 24% in NSW identify as having been born overseas. The figures may be underestimated. Migration Trends 2012–2013 published by the Department of Immigration reports visitors (44,800) and students (10,720) as the largest cohort to outstay their visa and remain in Australia, with highest numbers being from China (7690), Malaysia (6,420), US (5,220) and UK (3,780):

Table A1.2: VIS makers: country of birth including ethnic/racial background, by crime category

<table>
<thead>
<tr>
<th>VIS makers country of birth including ethnic/racial background</th>
<th>Family victims</th>
<th>Sexual assault</th>
<th>Domestic violence</th>
<th>HCSA</th>
<th>Physical assault</th>
<th>VIS makers Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian/ Anglo/European</td>
<td>21</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>2</td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>88.5%</td>
<td>80%</td>
<td>80%</td>
<td>71.4%</td>
<td>50%</td>
<td>80%</td>
</tr>
<tr>
<td>Australian/ Aboriginal/</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>3.8%</td>
<td>0%</td>
<td>0%</td>
<td>28.6%</td>
<td>0%</td>
<td>7%</td>
</tr>
<tr>
<td>New Zealand/Maori</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
<td>20%</td>
<td>0%</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>New Zealand</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>25%</td>
<td>2%</td>
</tr>
<tr>
<td>UK /Ireland/ European</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>3.8%</td>
<td>20%</td>
<td>0%</td>
<td>0%</td>
<td>25%</td>
<td>7%</td>
</tr>
<tr>
<td>China/Thailand/ India</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3.8%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>4</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

While the non–VIS maker group is small in number, over 60% of non–VIS makers had either a pronounced accent or racial features that would distinguish them as being not born in Australian or from a culturally and linguistically diverse background. Four identified as immigrants and one as Aboriginal.

**Knowledge of offender**

Of 49 participants responding, the offender was known to 63%. Offenders were least known to victims of SA (60%) and PA (75%), with 50% of family victims and 100% of DV and HCSA victims knowing the offender (see Table A1.3).
Table A1.3: VIS makers: Was your offender known to you? (by crime category)

<table>
<thead>
<tr>
<th>Offender known</th>
<th>Family victims N = 24</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 9</th>
<th>HCSAN = 7</th>
<th>Physical Assault N = 4</th>
<th>Total N = 49</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12 50%</td>
<td>2 40%</td>
<td>9 100%</td>
<td>7 100%</td>
<td>1 25%</td>
<td>31 63%</td>
</tr>
<tr>
<td>No</td>
<td>12 50%</td>
<td>3 60%</td>
<td>0 0%</td>
<td>0 0%</td>
<td>3 75%</td>
<td>18 37%</td>
</tr>
<tr>
<td>Total = N</td>
<td>24 100%</td>
<td>5 100%</td>
<td>9 100%</td>
<td>7 100%</td>
<td>4 100%</td>
<td>49 100%</td>
</tr>
</tbody>
</table>

Of non–VIS makers, seven were women and one was a male victim of PA. Of seven female non–VIS makers, five (72%) knew their offender. The other two female participants had encountered their assailant in their work and had had some interaction with them prior to the crime being committed, albeit briefly. Therefore, the crimes against them were not completely random. The attack on the male participant was completely random. NSW victimisation statistics (ABS 2013) show that 74% of female victims of SA and 86% of female victims of PA know their offender.

**Severity of medical consequences for primary VOC: VIS makers and non–VIS makers**

Among primary victims, both the majority of VIS makers and non–VIS makers reported the medical consequences of the crime against them as serious (see Table A1.4).

Table A1.4: Primary VIS makers and non–VIS makers: severity of medical consequences of the crime

<table>
<thead>
<tr>
<th>Severity of medical consequences</th>
<th>VIS makers N = 19</th>
<th>Non–VIS makers N = 8</th>
<th>Total responses N = 27</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>18 93%</td>
<td>7 93%</td>
<td>25 93%</td>
</tr>
<tr>
<td>Not serious</td>
<td>1 17%</td>
<td>1 17%</td>
<td>2 17%</td>
</tr>
<tr>
<td>Total</td>
<td>19 100%</td>
<td>8 100%</td>
<td>27 100%</td>
</tr>
</tbody>
</table>
Severity of financial consequence for primary VOC: VIS makers and non–VIS makers

Analysing the impact of financial loss on primary victims not suffering a historical matter, the majority of both VIS and non–VIS makers reported that the crime had a serious impact on their finances (see Table A1.5).

Table A1.5: Primary VIS makers and Non–VIS makers: severity of financial consequences of the crime

<table>
<thead>
<tr>
<th>Severity of financial loss</th>
<th>VIS makers N = 19</th>
<th>Non–VIS makers N = 8</th>
<th>Total responses N = 27</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>13</td>
<td>7</td>
<td>20</td>
</tr>
<tr>
<td>Not Serious</td>
<td>6</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
<td>8</td>
<td>27</td>
</tr>
</tbody>
</table>

Severity of psychological consequence for primary VOC: VIS makers and non–VIS makers

Of those who responded, all primary victims reported the psychological consequences suffered as a result of the crime against them as ‘serious’, whether they had made a VIS or not (see Table A1.6).

Table A1.6: Primary VIS makers and Non–VIS makers: severity of psychological consequences of the crime

<table>
<thead>
<tr>
<th>Severity of psychological consequences</th>
<th>VIS makers N = 19</th>
<th>Non–VIS makers N = 8</th>
<th>Total responses N = 27</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>19</td>
<td>8</td>
<td>27</td>
</tr>
<tr>
<td>Not Serious</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>19</td>
<td>8</td>
<td>27</td>
</tr>
</tbody>
</table>
**Use of a counselling service**

Tables A1.7 and A1.8 represent the use of counselling services reported by participants who discussed psychological problems. Counselling services were used more by primary victims, and most in crimes of SA, DV and HCSA. This is perhaps because specialist police services assisting victims of sexual and family crimes are conversant with supports available and discuss referral to specialist counsellors as a matter of routine. The highest use of counselling services was reported by DV participants, who also reported the highest level of complex diagnoses. Fewer victims of PA reported suffering from depression, and they reported less use of counselling services.

**Table A1.7: VOC: self-report of use of counselling services by crime category**

<table>
<thead>
<tr>
<th>Counselling services used</th>
<th>Family victims N = 24</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 7</th>
<th>HCSA N = 6</th>
<th>Physical assault N = 6</th>
<th>Total responses N = 50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12</td>
<td>4</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>57%</td>
<td>85.7%</td>
<td>66.7%</td>
<td>33.3%</td>
<td>56%</td>
</tr>
</tbody>
</table>

**Table A1.8: Primary VOC: self-report of use of counselling services by crime category**

<table>
<thead>
<tr>
<th>Use of a counselling service</th>
<th>VIS makers N = 18</th>
<th>Non–VIS makers N = 8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>72%</td>
<td>37.5%</td>
</tr>
</tbody>
</table>

Among primary victims, non–VIS makers (37.3%) were half as likely as VIS makers to report the use of counselling services (see Table A1.8) despite reporting suffering from high levels of psychological distress (see Table A1.6). As there was no longitudinal follow-up of the sample, it is difficult to know whether levels of psychological distress reported by participants currently being counselled would be reduced at the completion of their counselling, but comparison of results for VIS makers and non–VIS makers suggest that despite over 50% of VIS makers using counselling services, their levels of anxiety and depression within the primary VOC sample remained commensurate.
**Dissemination of VIS information**

Most participants (91%) interviewed were aware of their ability to make a VIS during their proceedings. This finding is not surprising given the recruitment strategy used in this study. Participant victims of PA had least awareness of the provision of VIS, especially if their matters had been heard in the Local Court.

Participants were asked to recall from whom they received VIS information (see Table A1.9). Most received information from WAS or the police; however, in the case of family victims, half stated they received information from the HVSG.

**Table A1.9: Agencies that supplied VIS information to VOC participants by crime category**

<table>
<thead>
<tr>
<th>Agency</th>
<th>Family victims</th>
<th>Sexual assault</th>
<th>Domestic violence</th>
<th>HCSA</th>
<th>Physical assault</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAS</td>
<td>10</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>41.6%</td>
<td>42.9%</td>
<td>42.9%</td>
<td>57.1%</td>
<td>50%</td>
</tr>
<tr>
<td>Police</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>4.2%</td>
<td>28.6%</td>
<td>28.6%</td>
<td>42.9%</td>
<td>50%</td>
</tr>
<tr>
<td>VISIP downloaded from NSW Lawlink website</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>4.2%</td>
<td>0%</td>
<td>14.3%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Solicitor/Prosecutor</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
<td>14.3%</td>
<td>14.3%</td>
<td>16.7%</td>
</tr>
<tr>
<td>Victim support agency or service</td>
<td>12</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>50%</td>
<td>14.3%</td>
<td>14.3%</td>
<td>0%</td>
<td>16.7%</td>
</tr>
</tbody>
</table>

Note: Each number is a percentage of 'N' within the column. The columns and rows do not add up to 100% because respondents may have referred to a number of sources providing VIS information and each was noted equally.

Information most commonly received was in the form of the VISIP either sent to the VOC, downloaded from the Lawlink website, or presented personally during discussions with police, police prosecutors, DPP solicitors or victim support agencies. Primary victims were less likely to have the VISIP, with only 57% of Victims of SA reporting that they had received it. This was often a result of being provided information on the VIS directly by their SA counsellor.
**Numbers of VOC reporting that police or prosecutor said VIS can affect sentence, by crime category**

While most participants stated that it had been made clear that making a VIS was voluntary, 10% of participants (5) reported that police, the police prosecutor or the Crown prosecutor in their matter had suggested that the VIS can affect sentence (see Table A1.10). Three of the five participants were primary victims, comprising two VIS makers and one non–VIS maker. While at the time of interview, VISs of family victims in NSW were not taken into consideration in sentencing, two family victims stated that their prosecutor had told them that submission of a VIS might affect the sentence.

<table>
<thead>
<tr>
<th>Table A1.10: Numbers of VOC reporting that police or prosecutor said VIS can affect sentence by crime category</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Police or prosecution stating VIS can affect sentence</strong></td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>Police or prosecution stating VIS can affect sentence</td>
</tr>
<tr>
<td>8.7%</td>
</tr>
</tbody>
</table>

**Is support useful for VOC when writing the VIS?**

Over 60% of VOC stated that support in writing the VIS is helpful (see Table A1.11). Victims of SA and HCSA reported the highest need for support when writing the VIS. Victims of PA and family victims were split, half feeling that support would be useful and half that the VIS was a private experience needing to be composed alone. Some VOC appeared to make a distinction between support with the first drafting of the VIS and support to review the initial draft. For a number of participants, the contemplation of revisiting the crime and assessing its impacts in order to prepare a VIS was too traumatic an experience to be undertaken alone, and some required professional support to attempt it.
Table A1.11: VOC: Is support useful when writing the VIS? (by crime category)

<table>
<thead>
<tr>
<th>Support useful</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 47</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12</td>
<td>6</td>
<td>4</td>
<td>5</td>
<td>3</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>55%</td>
<td>100%</td>
<td>67%</td>
<td>71%</td>
<td>50%</td>
<td>64%</td>
</tr>
<tr>
<td>No</td>
<td>10</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>45%</td>
<td>0%</td>
<td>33%</td>
<td>29%</td>
<td>30%</td>
<td>26%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>6</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Time VOC reported they were given to prepare their VIS

Most participants were given more than a month to prepare their VIS (see Table A1.12). Most stated that this was enough time, although a third of family victims and victims of SA reported finding it difficult to get their VIS completed on time (see Table A1.13). It is worth noting that SA matters are often prioritised over other matters at court in order to deal with them as expeditiously as possible, and that 50% of family victims needing assistance with their VIS reported they did not know where to start when writing it.81 Half the participants in the PA category attended the Local Court and reported being allowed one week or more to make their VIS.

80 Study participants mainly attended the District Court or Supreme Court because their matters were of a serious nature, and, as a consequence, featured a more protracted timeframe. Therefore, these figures are not representative of the experience of VOC attending the Local Court, where turnaround is far quicker, with some matters concluded within a day.
Table A1.12: VOC: How long were you given to make your VIS? (by crime category)

<table>
<thead>
<tr>
<th>Time given to make VIS</th>
<th>Family victims N = 24</th>
<th>Sexual assault N = 7</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 6</th>
<th>Total N = 50</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than one week but less than one month</td>
<td>5 (21%)</td>
<td>2 (29%)</td>
<td>2 (33%)</td>
<td>1 (14%)</td>
<td>3 (50%)</td>
<td>13 (26%)</td>
</tr>
<tr>
<td>One month or longer</td>
<td>19 (79%)</td>
<td>5 (71%)</td>
<td>4 (67%)</td>
<td>6 (86%)</td>
<td>3 (50%)</td>
<td>37 (74%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>24 (100%)</td>
<td>7 (100%)</td>
<td>6 (100%)</td>
<td>7 (100%)</td>
<td>6 (100%)</td>
<td>50 (100%)</td>
</tr>
</tbody>
</table>

Table A1.13: VOC: Were you given enough time to prepare your VIS? (by crime category)

<table>
<thead>
<tr>
<th>Enough time given</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>15 (68%)</td>
<td>4 (67%)</td>
<td>4 (80%)</td>
<td>7 (100%)</td>
<td>5 (100%)</td>
<td>35 (78%)</td>
</tr>
<tr>
<td>No</td>
<td>7 (32%)</td>
<td>2 (33%)</td>
<td>1 (20%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>10 (22%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 (100%)</td>
<td>6 (100%)</td>
<td>5 (100%)</td>
<td>7 (100%)</td>
<td>5 (100%)</td>
<td>45 (100%)</td>
</tr>
</tbody>
</table>

**Awareness of whether the offender would have access to the VIS**

Most participants were aware that the offender was able to see their VIS (see Table A1.14). Family victims in general wanted the offender to read the VIS and be aware of its contents; however, some participant victims of PA, DV and HCSA were more reticent.
Table A1.14: VOC: Did you know the offender would see your VIS? (by crime category)

<table>
<thead>
<tr>
<th>Knew offender would see the VIS</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 6</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 46</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>19 (86%)</td>
<td>4 (67%)</td>
<td>6 (100%)</td>
<td>6 (86%)</td>
<td>5 (100%)</td>
<td>40 (87%)</td>
</tr>
<tr>
<td>No</td>
<td>3 (14%)</td>
<td>2 (33%)</td>
<td>0 (0%)</td>
<td>1 (14%)</td>
<td>0 (0%)</td>
<td>6 (13%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 (100%)</td>
<td>6 (100%)</td>
<td>6 (100%)</td>
<td>7 (100%)</td>
<td>5 (100%)</td>
<td>46 (100%)</td>
</tr>
</tbody>
</table>

**VOC responses to the editing of the VIS**

Most VOC did not feel the VIS should be edited and felt strongly that it should not (see Table A1.15). While many VOC were aware of the parameters of the content admissible in the VIS, they objected to the concept that the expression of their suffering could be tempered with or limited by the offender or the court.

Table A1.15: VOC: Do you think the VIS should be edited? (by crime category)

<table>
<thead>
<tr>
<th>VIS should be edited</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 4</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 6</th>
<th>Physical assault N = 5</th>
<th>Total N = 43</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>1 (4%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>1 (17%)</td>
<td>0 (17%)</td>
<td>2 (5%)</td>
</tr>
<tr>
<td>No</td>
<td>21 (96%)</td>
<td>4 (100%)</td>
<td>6 (100%)</td>
<td>5 (83%)</td>
<td>5 (100%)</td>
<td>41 (95%)</td>
</tr>
<tr>
<td>Total = N</td>
<td>22 (100%)</td>
<td>4 (100%)</td>
<td>6 (100%)</td>
<td>6 (100%)</td>
<td>5 (100%)</td>
<td>43 (100%)</td>
</tr>
</tbody>
</table>

**Happiness with the contents of the VIS over time**

Table A1.16 shows that almost half the participants questioned stated that they would make changes to their VIS if they were to make it again. Recent research has noted that time affects victim’s perception of their victimisation, as impacts and effects of the crime become more apparent, suggesting that the greater the length of time from crime incident to sentencing, the more likely a VIS will be made (Lens, Pemberton & Bogaerts 2013).
Table A1.16: VOC: Would your VIS be the same if you were to do it again? (by crime category)

<table>
<thead>
<tr>
<th>VIS would be the same</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 4</th>
<th>Domestic violence N = 5</th>
<th>HCSA N = 6</th>
<th>Physical Assault N = 4</th>
<th>Total N = 41</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>45%</td>
<td>50%</td>
<td>60%</td>
<td>50%</td>
<td>50%</td>
<td>49%</td>
</tr>
<tr>
<td>No</td>
<td>12</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>55%</td>
<td>50%</td>
<td>40%</td>
<td>50%</td>
<td>50%</td>
<td>51%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>4</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Decision on whether to make a VIS again with hindsight**

Apart from one victim of DV, all participants in all crime categories stated that they would choose to make a VIS if given the opportunity again (see Table A1.17). These results suggest that VOC attribute some worth to the process and presentation of the VIS.

Table A1.17: VOC: Given the opportunity again would you choose to make a VIS? (by crime category)

<table>
<thead>
<tr>
<th>Would make a VIS again</th>
<th>Family victims N = 22</th>
<th>Sexual assault N = 5</th>
<th>Domestic violence N = 6</th>
<th>HCSA N = 7</th>
<th>Physical assault N = 5</th>
<th>Total N = 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>22</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>5</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>83%</td>
<td>100%</td>
<td>100%</td>
<td>98%</td>
</tr>
<tr>
<td>No</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
<td>17%</td>
<td>0%</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Total = N</td>
<td>22</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>5</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**VSP Sample**

The VSP sample comprised Crown and police prosecutors, WAS officers and providers offering VOC legal, court and personal support. A detailed composition of the VSP sample is presented in Table A1.18. Of 35 VSP participants, 32 were female and three were male.
Table A1.18: VSP sample by service and gender

<table>
<thead>
<tr>
<th>Service</th>
<th>Female</th>
<th>Male</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAS officers</td>
<td>12</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Victims Services officers (NSW Department of Justice)</td>
<td>5</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Wirringa Baiya Aboriginal Legal Services</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>DPP Crown Prosecutors, Sydney</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>WDVCAS</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>MACCS</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Enough is Enough, CEO &amp; cultural coordinator</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Victims and Witnesses of Crime Court Support Service</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Adults Surviving Child Abuse (ASCA) counsellor</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>IDRS</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>VOCAL CEO</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>HVSG manager</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Women’s Domestic Violence Legal Aid Support Service</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Police Prosecutor, Sydney</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>32</td>
<td>3</td>
<td>35</td>
</tr>
</tbody>
</table>

Note: N represents the total number of VSP participants referring to a crime category.

**VSP experience of VIS response rates**

VSP were asked to nominate, in their experience, the crime categories for which VISs were more likely to be made (see Table A1.19). In general, all services felt that a VIS is more likely to be made in death matters and in those
matters of HCSA, SA and serious PA where an injury was sustained by the victim. These types of matters are mainly heard in the District Court and Supreme Court. VSP reported that few VIS were made in the Local Court. Participants working at WDVCAS, Wirringa Baiya Legal Services and IDRS reported that their clients’ matters rarely got to court and/or conviction. DV was not referred to by any respondents as a crime category where VIS are likely or unlikely to be made, whereas robbery was mentioned by 13 participants as being a category where VIS are not made.

Table A1.19: VSP: Which are the crime categories where the submission of a VIS is more likely?

<table>
<thead>
<tr>
<th>Submission of VIS more likely</th>
<th>Death matters N = 26</th>
<th>Sexual assault N = 22</th>
<th>HCSA N = 21</th>
<th>Physical assault with bodily harm N = 19</th>
<th>Robbery N = 13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>25</td>
<td>16</td>
<td>14</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>96%</td>
<td>73%</td>
<td>67%</td>
<td>47%</td>
<td>0%</td>
</tr>
<tr>
<td>No</td>
<td>1</td>
<td>6</td>
<td>7</td>
<td>10</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>4%</td>
<td>27%</td>
<td>33%</td>
<td>53%</td>
<td>100%</td>
</tr>
<tr>
<td>Total = N</td>
<td>26</td>
<td>22</td>
<td>21</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

VSP interviewed were not able to provide concrete numerical data regarding the number of their clients who would make a VIS within a fixed period. Overall, 36% of VSP stated ‘most’ or ‘many’ of their clients make a VIS, with 36% stating that ‘a few’ or ‘no’ clients make a VIS, and a further 27% stating that they ‘didn’t know’ how many victims eligible would make a VIS (see Table A1.20). When analysed by service type, it seems that a VIS is more generally made in serious matters, defined as being matters where the victim has sustained a fatal or physical injury requiring urgent medical assistance or the intervention of emergency services or has been sexually assaulted. It is, however, interesting to note the varied understandings among the different services of the number of VISs made.
<table>
<thead>
<tr>
<th>VSP</th>
<th>Most</th>
<th>Many</th>
<th>A few</th>
<th>None</th>
<th>Don't know</th>
<th>N = 35</th>
</tr>
</thead>
<tbody>
<tr>
<td>WAS officers</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Victims Services (NSW Department of Justice) officers</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Wirringa Baiya Aboriginal Legal Services</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>DPP Crown Prosecutors, Sydney</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Police Prosecutor, Sydney</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>WDVLASS solicitor/manager Sydney</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>WDVCA S</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>MACCS VWCCS</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>HVSG</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Enough is Enough, CEO</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Enough is Enough, cultural coordinator</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>VOCAL</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Adults Surviving Child Abuse (ASCA)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>IDRS manager</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>5</td>
<td>7</td>
<td>7</td>
<td>4</td>
<td>12</td>
<td>35</td>
</tr>
<tr>
<td><strong>14%</strong></td>
<td><strong>20%</strong></td>
<td><strong>20%</strong></td>
<td><strong>11%</strong></td>
<td><strong>35%</strong></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
</tbody>
</table>
**VSP experience of the purpose of VIS from their clients’ perspective**

In discussion, VSP stated other reasons they felt victims make a VIS (see Table A1.21). Five of 15 suggested victims wish to use their VIS to redress the balance of power between the victim and the offender in court, and four participants from victim support agencies stated some of their clients report being told by the prosecutor to provide a VIS, which concurs with VOC data (see Table A1.10), where 10% of VOC reported that they had felt obligated or influenced to make a VIS due to indications from the police or prosecutor that the submission of a VIS would be useful.

Other reasons stated by VSP included a need to inform the offender or their family of the impact of the crime, seeing the VIS as a form of rehabilitation for the offender, being able to present emotional rather than factual detail to the court, and because victims feel guilty if they do not prepare one.

<table>
<thead>
<tr>
<th>Reasons clients provide for wanting to make a VIS</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>To redress the balance of power from offender to victim</td>
<td>5</td>
</tr>
<tr>
<td>The prosecutor told them to provide one</td>
<td>4</td>
</tr>
<tr>
<td>They feel guilty if they do not provide one</td>
<td>1</td>
</tr>
<tr>
<td>To provide emotional rather than factual detail regarding the impact of the crime</td>
<td>1</td>
</tr>
<tr>
<td>They want the offender to hear about the consequences of their actions on the victim</td>
<td>1</td>
</tr>
<tr>
<td>To get acknowledgement that they are not to blame</td>
<td>1</td>
</tr>
</tbody>
</table>

**Templates**

VSP were asked how often they provide their clients with VIS templates (see Table A1.22). Just over half the VSP said that VIS templates were not routinely provided for their clients’ use as this was seen to be too prescriptive, negating the intention of the provision of the VIS—namely, to provide the victim with an opportunity to convey to the court in their own words the personal, individual
impact of the crime. Despite this, nearly 40% reported that they ‘often’ or ‘sometimes’ provide templates.

**Table A1.22: VSP: How regularly were VIS templates provided?**

<table>
<thead>
<tr>
<th>Number of VSP</th>
<th>Often</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
<th>N = 33</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>12</td>
<td>3</td>
<td>17</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>3%</td>
<td>36%</td>
<td>9%</td>
<td>52%</td>
<td>100%</td>
</tr>
</tbody>
</table>

**The importance of the VIS as a provision for VOC**

Towards the end of the interview, VSP participants were asked to consider both the positives and negatives of the VIS experience of their clients. At this point in the interview, nearly 80% of participants working with clients eligible to make a VIS stated that the VIS was an important provision, although 22% felt VIS importance to the victim was crime specific (see Table A1.23).

**Table A1.23: VSP: Do you see the VIS as being important to your clients?**

<table>
<thead>
<tr>
<th>VIS important to clients</th>
<th>N = 23</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>78%</td>
</tr>
<tr>
<td>Dependent on crime</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>22%</td>
</tr>
<tr>
<td>Total = N</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>
Appendix 2: Recommendations

For research

1. Collection of VIS statistics in all NSW courts to include:
   a. demographic details of VOC
   b. nature of matter
   c. whether sentencing post-trial or guilty plea
   d. VOC relationship to offender, if any
   e. VIS presented orally, tendered or not presented
   f. judicial/magistrate response to VIS
   g. media access to VIS
   h. sentence details.

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

3. 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.

To improve VIS process

1. Central information line for VOC to call regarding VIS questions.
2. A VIS video available online outlining VIS purpose, content and presentation and addressing concerns raised by the study.
3. VIS information sheet available at Local Courts.
4. Standard protocols for the presentation of oral VIS in Supreme, District and Local Court.
5. Standard protocol for judges and magistrates to orally acknowledge an oral or tendered VIS in summation prior to sentencing.
6. Facility to present oral or tendered primary or family VIS in matters where offender is found not guilty due to mental illness/diminished
responsibility. Currently VIS are not permitted to be presented in these matters, where although it has been proved the offender committed the crime, a not guilty verdict has been made due to the offenders responsibility for the crime being diminished due to mental illness.

7. Education regarding presentation of VIS at the Local Court for police/police prosecutors/defence/magistrates.

8. Education regarding the complexities and emotional challenges VOC endure to make a VIS for those prosecuting, defending and judging matters.

9. Ability to apply for financial aid for VOC wishing to attend sentencing to make a VIS who are financially prohibited from doing so.

10. Standardised protocols regarding information given by victim support agencies to VOC regarding VIS.
Appendix 3: Resources

Resource 1

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

For use by victim support agents

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

**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
How to use the tick sheet

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

The 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.
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.

<table>
<thead>
<tr>
<th>S</th>
<th>Safe</th>
</tr>
</thead>
<tbody>
<tr>
<td>L</td>
<td>Listen</td>
</tr>
<tr>
<td>O</td>
<td>Options</td>
</tr>
<tr>
<td>W</td>
<td>Wellbeing</td>
</tr>
<tr>
<td><strong>SLOW: VIS support model</strong></td>
<td></td>
</tr>
<tr>
<td>-----------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Safe</strong> Check safety issues.</td>
<td></td>
</tr>
<tr>
<td>• Does the victim feel safe? If they report that they feel unsafe, are their fears realistic?</td>
<td></td>
</tr>
<tr>
<td>• Do they feel making a VIS potentially increases the risk to their physical safety? If so, is this fear realistic?</td>
<td></td>
</tr>
<tr>
<td>• Do they feel making a VIS potentially increases the risk to their mental health? If so, is this fear realistic?</td>
<td></td>
</tr>
<tr>
<td><strong>Listen</strong> Listen to understand, as well as to inform. Use active listening skills.</td>
<td></td>
</tr>
<tr>
<td>• Why does the victim want to make a VIS?</td>
<td></td>
</tr>
<tr>
<td>• What do they hope to achieve by making a VIS?</td>
<td></td>
</tr>
<tr>
<td>• Who do they want it to be heard by?</td>
<td></td>
</tr>
<tr>
<td>• Do they expect their VIS to impact sentence? Are their hopes realistic?</td>
<td></td>
</tr>
<tr>
<td><strong>Options</strong> Empower through information and choice.</td>
<td></td>
</tr>
<tr>
<td>• What is the purpose of the VIS and what benefits could it provide for the victim?</td>
<td></td>
</tr>
<tr>
<td>• Go through the VISIP with them.</td>
<td></td>
</tr>
<tr>
<td>• Do they face challenges in writing the VIS? How can these be overcome?</td>
<td></td>
</tr>
<tr>
<td>• 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.</td>
<td></td>
</tr>
<tr>
<td>• What are the options for presenting a VIS, and what are the different implications?</td>
<td></td>
</tr>
<tr>
<td>• Is making a VIS the best way for them to achieve their hopes? Discuss options.</td>
<td></td>
</tr>
<tr>
<td>• What are the implications if they choose not to make a VIS?</td>
<td></td>
</tr>
<tr>
<td><strong>Wellbeing</strong> Check victim’s mental health status, support and vision post-sentencing:</td>
<td></td>
</tr>
<tr>
<td>• How is the victim coping currently?</td>
<td></td>
</tr>
<tr>
<td>• How traumatised are they?</td>
<td></td>
</tr>
<tr>
<td>• What are their supports?</td>
<td></td>
</tr>
<tr>
<td>• Do they need more support?</td>
<td></td>
</tr>
<tr>
<td>• How do they view their criminal justice process to this point?</td>
<td></td>
</tr>
<tr>
<td>• How do they see the future after the criminal justice process and sentence?</td>
<td></td>
</tr>
</tbody>
</table>
Appendix 4A: VOC participant information sheet and participant consent form

The University of Sydney
Faculty of Law

Julie Stubbs
Professor of Criminology
Institute of Criminology
Telephone: + 61 2 9351 0251
Facsimile: + 61 2 9351 0200
Email: stubbs@usyd.edu.au

Mail to: Fiona Tait - Research Student
Department of Criminology – Law Faculty
Law Building: F10/Level 3
University of Sydney
NSW 2006

RESEARCH STUDY:
An evaluation of the victim impact statement process in NSW with regard to the therapeutic consequences for victims of crime

I am conducting a study of the victim impact statement (VIS) process for victims of crime in NSW. The aim of the study is to gain information from victims of crime which will assist others who are considering making a VIS.

I am seeking your assistance, as I would like to talk to victims of crime, whether they have decided to make a VIS or not, in order to better understand how well making a VIS works. This study is the first to ask victims of crime in NSW for their views about this system.

I am conducting the study for a Masters of Criminology thesis through the University of Sydney Law School. Please be advised that all victims of crime participating in this study must be over 18 years.

The study has two parts: the first is a short telephone interview to be completed at a time convenient to you and the second is a face-to-face interview to discuss your experience in more depth. This interview is optional and should take approximately 30 minutes.

It is important to understand that whether you choose to be involved in this study or not will in no way impact on your proceedings and will have no effect on your entitlements and access to legal and support services. The study is run by the University and is totally independent of the court and prosecution services.

Included in this letter is an information sheet, which also highlights information about privacy and confidentiality. Please be aware that none of your personal details or details of your case have been provided to us, and again please note you are under no obligation to participate and can withdraw at any time.

Thank you for considering this request. If you would like to participate, please copy the participant consent form, complete it and either email it to ftai3698@usyd.edu.au or post it to: Fiona Tait, Research Student, Department of Criminology, Law Building F10/Level 3, University of Sydney, NSW 2006. If you would prefer a hard copy to be sent to you to sign with a stamped addressed envelope, please request this by email or telephone: 0450 857 495.

Yours sincerely,

Fiona Tait
Tel: 0450 857 495
email: ftai3698@usyd.edu.au
PARTICIPANT INFORMATION SHEET

RESEARCH STUDY:
An evaluation of the victim impact statement process in NSW with regard to the therapeutic consequences for victims of crime

Introduction
This letter is to introduce and seek your assistance with a research study being undertaken by Fiona Tait which will form the basis for a Masters of Criminology degree at the University of Sydney under the supervision of Professor Julie Stubbs, University of Sydney Law School.

Aim of the study
The aim of this research is to gain information from victims of crime who have made, or have decided not to make a victim impact statement and to evaluate this process from the victims’ point of view. The purpose of the research is to pinpoint possible areas of need where victims of crime wishing to make a victim impact statement may be better supported.

We are hopeful that you will be interested to participate in this research.

What does the research involve?
Fiona would like to contact you by telephone to complete a short over-the-phone questionnaire. A form is enclosed to return to us should you agree to participate in the questionnaire.

How much time will it take?
The telephone questionnaires should take no more than 30 minutes to complete. We are happy to arrange a time to talk to you at your convenience, either during the day or in the evening.

If English is not my first language, can I still participate?
Victims of crime in NSW who come from different cultures and speak languages other than English are encouraged to participate in the study. Every effort will be made to conduct the interviews in your own language if that is your preference.

Can I withdraw from the study?
Being in this study is completely voluntary—you are not under any obligation to consent and if you do consent you can withdraw at any time. Involvement or non-involvement in the study has no bearing on your case, and has no effect on your claims, entitlements, services or legal proceedings.
What if I require further support resulting from my participation?
If you require further support as a result of your participation, Fiona will be able to refer you to support agencies that may assist you.

How will information given to the study be kept private?
No person participating in the research will be identified. Contact details will be known only to the researcher, and this data will be coded in order that data stored is not able to be identified by persons outside the research project. Within the study no names will be used, nor will details of crimes be described. Completed questionnaires will be kept in a locked filing cabinet for a period of 7 years, after which the data will be destroyed. No individual participants will be identifiable in any publications from this research.

Please be aware that none of your personal details or details of your case have been provided to us.

Outcome and Significance
While some studies have looked at the inclusion of victim impact statements within the criminal justice system, there have been few studies reflecting the actual experiences of victims of crime.

This research may improve the process of making and presenting a victim impact statement for victims of crime, as they engage with the court system. It may also highlight to those working within the criminal justice system, the specific needs of victims of crime, facilitating more effective practices to support victims of crime by victim support services and agencies.

Results
Summary results of the study, once completed, will be available to all participants in the study, should they wish to see them, with the full study available on request.

Participation
If you would like to participate in this study, please copy the consent form, complete it and email it to: ftai3698@usyd.edu.au or post it to: Fiona Tait, Research Student, Department of Criminology, Law Building F10/Level 3, University of Sydney, NSW 2006. If you would prefer a hard copy to be sent to you to sign with a stamped addressed envelope, please request this by email or telephone: 0450 857 495.

If you would like contact the researcher about any aspect of the study, please contact: Fiona Tait: mobile: 0450 857 495 or email: ftai3698@usyd.edu.au

Who can I contact if I have a complaint or concern about the study?
Any person with concerns or complaints about the conduct of a research study can contact the Deputy Manager, Human Ethics Administration, University of Sydney on (02) 8627 8176 (Telephone); (02) 8627 8177 (Facsimile) or human.ethics@usyd.edu.au (Email).

Please quote Ethics Approval Number: 9–2009/12149 in any correspondence.

Thank you.
This information sheet is for you to keep.
PARTICIPANT CONSENT FORM

If you would like to participate in this research please copy this form, complete it and email it to ftai3698@usp.edu.au or post it to: Fiona Tait, Research Student, Department of Criminology, Law Building F10/Level 3, University of Sydney, NSW 2006. If you would prefer a hard copy to be sent to you to sign with a stamped addressed envelope, please request this by email or telephone: 0450 857 495.

RESEARCH STUDY
An evaluation of the victim impact statement process in NSW with regard to the therapeutic consequences for victims of crime

I agree to participate in the above research project. I understand that my participation is voluntary and that I may withdraw from the study at any time.

I understand that participating in the research will not affect any claims, services or entitlements due to me in any way, and that this research is separate from the court process. I understand I must be over 18 years to participate in the study.

I have read and understood the aims, significance, and confidentiality terms of this research project, and also understand the time required for me to participate in the telephone questionnaires.

I agree to be contacted by research student - Fiona Tait by telephone, and will supply a contact number and time I would prefer to be called.

NAME: ...........................................................................................................................

PREFERRED CONTACT NUMBER ................................................................................

PREFERRED TIME OF DAY TO BE CONTACTED ......................................................

SIGNED ............................................................................................................................

DATE ..............................................................................................................................
Appendix 4B: VOC telephone questionnaire: VIS makers

The University of Sydney
Faculty of Law

RESEARCH STUDY:
An Evaluation of the Victim Impact Statement process in NSW with regard to the therapeutic consequences for victims of crime

TELEPHONE INTERVIEW QUESTIONNAIRE – VIS MAKERS

This questionnaire has been adapted from the Annex 4 Questionnaire designed for the evaluative pilot study of Victim Statements commissioned by the Scottish Government 2007, with the approval of the study coordinators.

A). Introduction

Good morning/afternoon. My name is Fiona Tait from USYD. Thank you for allowing me to interview you at this time. As we discussed on the phone, I am carrying out a research study concerning the experiences of people who have been victims of crime and the process and expectations involved in making a Victims Impact Statement. The research is intended to explore victims’ experience of the victim impact statement in terms of its therapeutic effect, with a view to improving the supports and assistance to better meet the needs of victims of crime. Is it convenient to talk to you now? (Or would you like to arrange an alternative time?) The interview usually takes no more than 30 minutes.

The questions I am about to ask you are intended to be unobtrusive and respectful. Please understand that you do not have to answer a question if you do not wish to. The questions are standardised with many requiring a simple answer. I will offer you alternative answers for some questions, and while you are free to elaborate, please do not feel you have to, if you do not wish to. Some questions require answers that ask for your understandings or thoughts.

As explained in our letter of introduction, the results of this conversation are confidential, and will only be available for the purposes of this research. Your details are coded and in a way to make it impossible for anyone outside the research team to know your identity.

B). The offence and its impact

1). As a result of this crime, have you suffered from any physical or medical problems, such as injuries or illness

<table>
<thead>
<tr>
<th>Yes 1</th>
<th>Answer Q2</th>
</tr>
</thead>
<tbody>
<tr>
<td>No 2</td>
<td>Go to Q3</td>
</tr>
</tbody>
</table>

2). Would you describe these physical or medical problems as serious or not serious?

| Serious 1 | Not Serious 2 |

Page 1 of 8
3). As a result of this crime, have you suffered from any emotional or psychological problems, for example anxiety or depression?

Yes 1  Answer Q4
No 2  Go to Q5

4). Would you describe these problems as serious or not serious?

Serious 1

Not Serious 2

5). Did the crime cause you any financial loss at the time, or after the offence?

Yes 1  Answer Q6
No 2  Go to Q7

6). Would you describe this loss as serious of not serious?

Yes 1
No 2

C). Awareness of victim impact statement

7). Can you remember how you first heard about the possibility of making a Victim Impact Statement?

Letter from WAS 1
The police 2
VCB Victims package 3
Lawyer/solicitor 4
Through Victim Support 5
Through media coverage 6
Other (write in) 7
Not sure 8

D). Supporting documents

8). Do you recall receiving written material, for example, a letter or package, explaining what a victim impact statement is, and how to complete it?

Yes 1  Answer Q9
No 2  Go to Q14
Not sure 3
9). How easy was the information to understand?
   - Very easy  1  Go to 12
   - Quite easy  2  Go to 12
   - Not very easy  3  Answer 10
   - Very complex  4  Answer 10

10). Can you explain why it was not easy? (write in)

11). What might have made it easier? (write in)

12). Would you say that you read...
   - All or almost all of the information  1
   - Most of the information  2
   - Some of the information  3
   - Did not read it  4

13). Did reading the information package help you make up your mind whether or not to make a victim impact statement?
   - Yes  1
   - No  2
   - Not sure  3

E). Discussion of purpose and expectations with regard to making a victim impact statement

14). Can you give me your understanding of the reasons why Victims Impact Statements are made. What Purposes they might serve? (write)

15). Were you prepared to make a Victim Impact Statement?
   - Yes  1    Go to Q17
   - No  2

16). Why did you decide to make a victim impact statement? (write)

17). Did you know how your victim impact statement would be used in court? (write)
18). What did you hope would happen as a result of making a victim impact statement? (write)

19). For you personally, what were the most important consequences of making a victim impact statement? (write)

F). Production of the victim impact statement (VIS)

20). Did you prepare your VIS yourself

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>No</td>
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Go to Section F

Go to Q21

21). Who helped you prepare your VIS

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<tr>
<td>Family or friend</td>
<td>1</td>
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<tr>
<td>WAS officer</td>
<td>2</td>
</tr>
<tr>
<td>Lawyer</td>
<td>3</td>
</tr>
<tr>
<td>Victim Support worker</td>
<td>4</td>
</tr>
<tr>
<td>Social worker or therapist</td>
<td>5</td>
</tr>
<tr>
<td>Social worker or therapist</td>
<td>6</td>
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22). What kind of help did they give you? (write)

23). How much influence would you say they had on what you said in your statement?

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<tr>
<td>a lot of influence</td>
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<tr>
<td>some influence</td>
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<td>no influence</td>
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G). Personal reflections of making the VIS

24). Thinking about the experience of making the VIS would you say that this was upsetting in any way?

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<td>Yes</td>
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<td>No</td>
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</table>

Answer Q25

Go to Q26

25). Could you tell me about that upset, and the things about making the VIS that distressed you? (write)
26). Was making the VIS a positive experience for you?  
Yes 1  Answer Q27  
No 2  Go to Q28

27). In what ways was it positive? (write)

28). Could you tell me why making the VIS was not such a positive experience for you? (write)

29). Do you have any suggestions of how it could have been a more positive experience for you? (write)

30). Did you have any expectations about how your VIS would be handled by the court? (write)

31). Were those expectations met?  
Yes 1  Go to Q 34  
No 2  Answer Q 32

32). Why was that? (write)

33). How did that make you feel? (write)

34). Were you aware that the accused would see your VIS?  
Yes 1  
No 2

35). How did that make you feel? (write)

36). Was your VIS accepted by the court?  
Yes 1  Answer Q39  
No 2  Go to Q42

37). How did that make you feel? (write)

38). Was your VIS required to be edited after you had written it?  
Yes 1  Answer Q39  
No 1  Go to Q42

39). Who edited your VIS

Judge/magistrate 1  
Prosecution lawyer 2  
Defence lawyer 3  
WAS 4
40). Were you involved in the editing process, or was your VIS amended without your involvement?

41). How did that make you feel? (write)

42). Were you aware you might be cross-examined on your VIS?

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<th>Option</th>
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<tr>
<td>Yes</td>
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<td>No</td>
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43). Were you cross-examined on your VIS

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<th>Count</th>
<th>Action</th>
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<tbody>
<tr>
<td>Yes</td>
<td>1</td>
<td>Answer Q44</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
<td>Go to Q45</td>
</tr>
</tbody>
</table>

44). How did that make you feel? (write)

45). How long was the gap from the time of the crime committed against you until sentencing? (write)

46). At what stage were you aware you would be able to present your VIS to court? (write)

47). How long were you given to prepare your VIS before sentencing? (write)

48). Was the time to prepare your VIS adequate?

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<tr>
<th>Option</th>
<th>Count</th>
<th>Action</th>
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<tr>
<td>Yes</td>
<td>1</td>
<td>Go to Q50</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
<td>Answer Q49</td>
</tr>
</tbody>
</table>

49). How much time would you have preferred? (write)

50). Is there anything you can suggest that would have helped support you during the court/sentencing process? (write)

51). How are you coping now? (write)

52). Do you think that making a VIS has had an impact on how you are feeling since the conclusion of your matter? (write)
TELEPHONE INTERVIEW QUESTIONNAIRE – VIS MAKERS – cont.

53). If you were to make your VIS again now, do you think that what you would say about how the crime affected you would be

- more or less the same 1 Go to Section G
- or different in some way 2 Answer Q54

54). In what way might it be different? (write)

55). Why would that be, do you think? (write)

H). BASIC DEMOGRAPHIC INFORMATION FOR DATA ANALYSIS

56). May I also ask your date of birth? (write)

57). Is English the language spoken at home

- Yes 1 go to Q23
- No 2 go to Q22

58). Were you born in Australia?

- Yes 1 go to Q 60
- No 2 go to Q59

59). May I ask where you were born? (write)

60). May I ask your family of origin? (write)

61). Could you tell me your post code?

62). Finally may I ask you the nature of your matter?

- a) robbery
- b) assault
- c) assault and robbery
- d) sexual assault
- e) domestic violence
- f) other (write)

Thank you very much for talking with me today, in what I understand are difficult circumstances. I will be doing some face-to-face interviews to further discuss the experience, expectations and impact of making a VIS. Would you be interested in being interviewed in person?

- Yes 1 Go to ii)
- No 2 Go to i)
i) 
I do understand, and thank you for your assistance today. The information you have 
given to me will be very useful in terms of recommendations for better supports for 
victims of crime. If appropriate ask) … Are you aware of victim support services 
available to you? if not would you like me to give you some contact details? (give 
contacts and telephone numbers if requested).

Would you like to be contacted with the results of the study? 

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<tbody>
<tr>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
</tr>
</tbody>
</table>

Thank you once again. I wish you well for the future.

ii) 
Thank you. Are you happy to arrange a time for the interview now or would you prefer 
me to call again when you have considered your continued involvement in the study. 
(continue as appropriate. Have dates and locations ready). If appropriate … ) Are you 
aware of victim support services available to you? If not would you like me to give you 
some contact details? (give contacts and telephone numbers if requested).

Thank you once again. We very much appreciate your assistance and look forward to 
meeting you/speaking with you on … (tba)
Appendix 4C: VOC telephone questionnaire: non-VIS makers

The University of Sydney

RESEARCH STUDY:
An evaluation of the victim impact statement process in NSW with regard to the therapeutic consequences for victims of crime

TELEPHONE INTERVIEW QUESTIONNAIRE – Non–VIS MAKERS

This questionnaire has been adapted from the Annex 4 Questionnaire designed for the evaluative pilot study of Victim Statements commissioned by the Scottish Government 2007, with the approval of the study’s coordinators.

A). Introduction

Good morning/afternoon. My name is Fiona Tait from USYD. Thank you for allowing me to interview you at this time. As we discussed on the phone, I am carrying out a research study concerning the experiences of people who have been victims of crime and the process and expectations involved in making a victim impact statement. The research is intended to explore victims’ experience of the victim impact statement in terms of its therapeutic effect, with a view to improving the supports and assistance to better meet the needs of victims of crime. Is it convenient to talk to you now? (or would you like to arrange an alternative time?) The interview usually takes no more than 30 minutes.

The questions I am about to ask you are intended to be unobtrusive and respectful. Please understand that you do not have to answer a question if you do not wish to. The questions are standardised with many requiring a simple answer. I will offer you alternative answers for some questions, and while you are free to elaborate, please do not feel you have to, if you do not wish to. Some questions require answers that ask for your understandings or thoughts.

As explained in our letter of introduction, the results of this conversation are confidential, and will only be available for the purposes of this research. Your details are coded and in a way to make it impossible for anyone outside the research team to know your identity.

B). The Offence and its impact

1). As a result of this crime, have you suffered from any physical or medical problems, such as injuries or illness
   Yes 1    Answer Q2
   No 2    Go to Q3

2). Would you describe these physical or medical problems as serious or not serious?
   Serious 1
   Not Serious 2
3). As a result of this crime, have you suffered from any emotional or psychological problems, for example anxiety or depression?

   Yes 1  Answer Q4
   No 2  Go to Q5

4). Would you describe these problems as serious or not serious?

   Serious 1
   Not Serious 2

5). Did the crime cause you any financial loss at the time, or after the offence?

   Yes 1  Answer Q6
   No 2  Go to Q7

6). Would you describe this loss as serious or not serious?

   Yes 1
   No 2

C). Awareness of victim impact statement

7). Can you remember how you first heard about the possibility of making a Victim Impact Statement?

   Letter from WAS 1
   The police 2
   VCB Victims package 3
   Lawyer/solicitor 4
   Through Victim Support 5
   Through media coverage 6
   Other (write in) 7
   Not sure 8

D). Supporting Documents

8). Do you recall receiving written material, for example, a letter or package, explaining what a victim impact statement is, and how to complete it?

   Yes 1  Answer Q9
   No 2  Go to Q14
   Not sure 3

9). How easy was the information to understand?

   Very easy 1  Go to 12
   Quite easy 2  Go to 12
   Not very easy 3  Answer 10
   Very complex 4  Answer 10
10). Can you explain why? (write in)

11). What might have made it easier? (write in)

12). Would you say that you read …

All or almost all of the information  1
Most of the information          2
Some of the information          3
Did not read it                  4

13). Did reading the information package help you make up your mind whether or not to make a victim impact statement?

Yes  1
No   2
Not sure  3

E). Discussion of purpose and expectations with regard to making a victim impact statement.

14). Can you give me your understanding of the reasons why Victims Impact Statements are made. What Purposes they might serve? (write)

15). What are the factors that made you decide not to make a victim impact statement? (write)

16). What were your expectations of how a victim impact statement would be used in court? (write)

F). Personal reflections of the VIS

17). Thinking about the decision whether to make a VIS would you say that this was upsetting in any way? Yes Go to Q18
No Go to Q 20

18). Could you tell me about that upset, and the things about the VIS that distressed you? (write)
19). Do you have any suggestions of how the process of could be made more effective? (write)

20). Did you have any expectations about how a VIS would be handled by the court? Yes 1 Answer Q21
No 2 Go to Q23

21). How did that make you feel? (write)

22). Where did your expectations come from? (write)

23). Were you aware that the accused would see your VIS? Yes 1 Answer Q24
No 2 Go to Q27

24). How did that make you feel? (write)

25). Were you concerned your VIS might not be accepted by the court? Yes 1 Answer Q26
No 2 Go to Q27

26). How did that make you feel? (write)

27). Were you concerned your VIS might be edited after you had written it? Yes 1 Answer Q28
No 1 Go to Q30

28). Who did you think might edit it

Judge/magistrate 1
Prosecution lawyer 2
Defence lawyer 3
WAS 4

29). How did that make you feel? (write)

30). Were you aware you might be cross-examined on your VIS? Yes 1 Answer Q31
No 2 Go to Q32
31). How did that make you feel? (write)

32). How long was the gap from the time of the crime committed against you until sentencing? (write)

33). At what stage were you aware you would be able to present a VIS to court? (write)

34). Was the preparation time need to make a VIS a factor in deciding not to make one?
   Yes 1 Go to Q35
   No 2 Answer Q36

35). How much time would you have preferred? (write)

36). Is there anything you can suggest that would have helped support you during the court/sentencing process? (write)

37). How are you coping now? (write)

F). BASIC DEMOGRAPHIC INFORMATION FOR DATA ANALYSIS

38). May I also ask you your date of birth? (write)

39). Is English the language spoken at home?
   Yes 1
   No 2

40). May I ask your family of origin?

41). In what area of NSW do you reside?

42). Finally may I ask you the nature of your matter?
   a) assault
   b) assault and theft
   c) sexual assault
   d) domestic violence
   e) other (write)
TELEPHONE INTERVIEW QUESTIONNAIRE – Non–VIS MAKERS cont.

Thank you very much for talking with us today, in what we understand are difficult circumstances. We will be doing some face-to-face interviews to further discuss the experience, expectations and impact of the VIS process. Would you be interested in being interviewed in person?

Yes 1  Go to ii)
No 2  Go to i)

i)
We do understand, and thank you for your assistance today. The information you have given to us will be very useful in terms of recommendations for better supports for victims of crime. (If appropriate ask) … Are you aware of victim support services available to you? If not would you like me to give you some contact details? (give contacts and telephone numbers if requested).

Would you like to be contacted with the results of the study?

Yes 1
No 2

Thank you once again. We wish you well for the future.

ii)
Thank you. Are you happy to arrange a time for the interview now or would you prefer us to call again when you have considered your continued involvement in the study. (continue as appropriate. Have dates and locations ready). (If appropriate … ) Are you aware of victim support services available to you? If not would you like me to give you some contact details? (give contacts and telephone numbers if requested).

Thank you once again. We very much appreciate your assistance and look forward to meeting you/speaking with you on … (tba)
Appendix 5A: VSP participant information sheet and participant consent form

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Faculty of Law
New Law Building F10
Eastern Avenue
The University of Sydney
NSW 2006 Australia

T + 61 2 9351 0368
F + 61 2 9351 0200
rita.shackel@sydney.edu.au

STUDY:
An evaluation of the victim impact statement process in NSW with regard to the therapeutic consequences for victims of crime

Dear …

I am currently undertaking research that seeks to evaluate the victim impact statement (VIS) process for victims of crime in NSW. The aim of the study is to gain information from victims of crime which will assist others who are considering making a VIS, and to explore the therapeutic consequences of the VIS process as experienced by victims of crime.

Victims of crime who responded to the study have now been interviewed.

This letter is to invite you to participate in an interview regarding the VIS process as a professional assisting victims of crime required to attend court. You have been selected for interview because of your expertise in this area. The interviews with victim service professionals are intended to give a broader context to the respondent interview data.

The interviews will be face-to-face, lasting approximately 30–40 minutes, and can be conducted within a group setting within your agency/service, or individually within your work setting or outside work, based on your preference.

The study is being conducted in conjunction with the University of Sydney and is totally independent of the court and prosecution services.

Included with this letter is an information sheet about the interview, which also highlights information about privacy and confidentiality. Also included is an outline of the type of questions I would like to ask you. Please note you are under no obligation to participate and that if you agree to be interviewed you can withdraw at any time.

Thank you for considering this request.
Yours sincerely,

Fiona Tait
Masters by Research Student: NSW VIS Study
Department of Criminology: fitai3698@uni.sydney.edu.au
PARTICIPANT INFORMATION SHEET
FACE-TO-FACE INTERVIEWS: Professional Service Providers

RESEARCH STUDY:
An evaluation of the victim impact statement process in NSW with regard to the therapeutic consequences for victims of crime

Introduction
This letter is to re-introduce and seek your assistance to be interviewed for a research study being undertaken by Fiona Tait which will form the basis for a Masters of Criminology degree at the University of Sydney under the supervision of Dr Rita Shackel, University of Sydney and Professor Julie Stubbs, University of New South Wales.

Aim of the study
The aim of this research is to gain information from victims of crime who have made, or have decided not to make a victim impact statement and to evaluate this process from the victims' point of view. The purpose of the research is to pinpoint possible areas of need where victims of crime wishing to make a victim impact statement may be better supported. The perspectives of professionals and service providers who work with victims of crime are also important for this study.

What does the face-to-face interview involve?
You have been selected to be interviewed as part of this study because of your expertise. If you consent to do so, Fiona would like to discuss your experiences with and understanding of the process of making, or not making a victim impact statement. from the perspective of clients utilising your service. Fiona will arrange a date, time and location which is convenient to you for the interview. If more than one professional from your service/agency has agreed to be interviewed, you will be given the option of a group interview in the interests of convenience. However, if you feel you would prefer to be interviewed individually as that is a more convenient option for you, please let Fiona know when she arranges the appointment. A consent form is enclosed for you to complete should you agree to participate in the interview.

Are the interviews recorded?
If you consent to audio recording, Fiona will record the interview on computer audio file. However, if you prefer, Fiona will take written notes of your responses. Any notes or recordings will be coded so that your interview will not be able to be identified by anyone other than the researcher to comply with the terms of confidentiality and privacy outlined below.

Will my identity or that of my organisation be revealed?
As an expert in this area, you may wish your name, title and organisation to be attributed to you in any reports that result from the research. You may also choose not to be identified. The consent form allows you to indicate if you agree to be identified, and in what way.

Can I have a copy of my interview?
A copy of your interview on CD can be sent to you if you wish.
How much time will it take?
The interview is designed to take around 40 minutes; however, the interview may be longer or shorter based on your experiences.

What sort of questions will I be asked?
Within this package is an outline of the type of questions you will be discussing.

Do I have to answer a question if I do not want to?
You are not obliged to answer any question(s) you do not want to, and you are free to stop the interview at any stage, should you wish to.

Where will the interview take place
If agreeable with you, Fiona will come to your offices to perform the interviews, or at another location should that be your preference.

Can I still withdraw from the study?
Participation in this study is completely voluntary—you are not under any obligation to consent and if you do consent you can withdraw at any time.

How will information given in the interview be kept private?
Data with regards to the face-to-face interviews will be kept in a locked filing cabinet for a period of 5 years, after which the data will be destroyed. No individual victims of crime participating in the study will be identifiable in any publications from this research. All information discussed during the face-to-face interviews with victim service professionals will be confidential and data will be transcribed in such a way that it will be impossible to link information presented during the interview to an identifiable case or to any client in your service. It is understood that the anonymity of your clients will be maintained and the confidentiality of their matters respected and upheld within the data collection, storage and research publication. As discussed above, you may choose to remain anonymous in reports arising from the research if you wish.

Outcome and Significance
While some studies have looked at the inclusion of victim impact statements within the criminal justice system, there have been few studies reflecting the actual experiences of victims of crime.

This research may improve the process of making and presenting a victim impact statement for victims of crime, as they engage with the court system. It may also highlight to those working within the criminal justice system, the specific needs of victims of crime, facilitating more effective practices to support victims of crime by victim support services and agencies.

Results
Summary results of the study, once completed, will be available to all participants in the study, should they wish to see them, with the full study available on request.

If you would like contact the researcher about any aspect of the study, please contact: Fiona Tait on telephone number: 0402 988 601

Who can I contact if I have a complaint or concern about the study?

Any person with concerns or complaints about the conduct of a research study can contact The Manager, Human Ethics Administration, University of Sydney on +61 2 8627 8176 (Telephone); +61 2 8627 8177 (Facsimile) or ro.humanethics@sydney.edu.au (Email).

Please quote Ethics Approval Number: 9–2009/12149 in any correspondence.
Thank you.
This information sheet is for you to keep.
PARTICIPANT CONSENT SHEET
FACE-TO-FACE INTERVIEWS: Professional Service Providers

RESEARCH STUDY:
An Evaluation of the victim impact statement process in NSW with regard to the therapeutic consequences for victims of crime

I agree to be interviewed in person to discuss the victim impact statement process through my understanding of the experiences of my client base for the above research project. I understand that my participation is voluntary and that I may withdraw my consent to be interviewed at any time. If I feel uncomfortable during the interview, the interview will be terminated immediately.

I have read and understood the aims, significance, and confidentiality terms of this research project, and also understand the time required for me to participate in the interview.

I understand I can elect to have the interview recorded by audio, or in writing, and that the interview will be coded to comply with the terms of confidentiality and privacy outlined in the participant information sheet (attached), I understand that my details, identity and that of my agency will not be identified in any reports arising from the research without my consent.

I understand that all information discussed during the interview will be confidential and that data will be transcribed in such a way that it would be impossible to link information presented during my interview to an identifiable case or to identify any client of the service. It is understood that the anonymity of my clients will be kept and the confidentiality of their matters respected within the data collection, storage and publication.

I understand that the interview will be organised at a date, time and location convenient to me.

NAME:………………………………………………………………………………………………………………

SIGNED………………………………………………………………………………………………………………

I consent / do not consent (delete as appropriate) to my interview being recorded by audio
Or:
I consent / do not consent (delete as appropriate) to my interview being recorded in writing

I consent / do not consent (delete as appropriate) to having any of my responses in my interview attributed to me in any reports arising from the research.
And/Or:
I consent / do not consent (delete as appropriate) to having any of my responses in my interview attributed to the organisation /victim support service I represent in any reports arising from the research.

SIGNED………………………………………………………………………………………………………………DATE…………………………
Appendix 5B: VSP face-to-face interview questionnaire

The University of Sydney
Faculty of Law

Question Guide for Professional Service Providers for Semi-Structured Interview

Note: These questions form a guide and prompt to the researcher. Participants may answer a number of questions in one response, and the researcher will adapt the interview questions posed as necessary.

1. Could you tell me what you understand the purpose of VIS to be in terms of Policy Rationale?
2. Could you tell me your understanding of why Victims of Crime (VOC) choose to present a VIS?
3. Could you tell me your understanding of why VOC choose not to present a VIS?
4. In your experience, what percentage of your clients eligible to make a VIS would actually make one?
5. In your experience how many clients read out their VIS?
6. In your experience how many clients require assistance to prepare their VIS?
7. What type of assistance do they usually require?
8. Do you provide templates of VIS/past VIS for your clients to look at?
9. In your experience, are there types of matters where victims are more likely to want to make a VIS?
10. In your experience, are there types of matters where victims are less likely to want to make a VIS?
11. In your experience are there any factors that can make it more difficult for victims when considering making a VIS (societal, educational, cultural, previous experience of court, etc.)?
12. Do you feel VIS have any effect on the type of penalty given and its severity?
13. In your experience are VIS always accepted by the court
14. In your experience, what reasons do the courts give for rejecting a VIS?
15. In your experience are VIS often edited?
16. In your experience, who is responsible for editing the VIS?
17. In general how do your clients feel if their VIS is edited?
18. Are you aware of clients being cross-examined on their VIS?
19. Do you feel the opportunity to make a VIS is important to your clients?
20. What do you feel are the consequences of VIS for your clients?
21. In general how important to your clients is the reaction of the judge/magistrate to their VIS?
22. In general how important to your clients is the reaction of the court to their VIS?
23. In general how important to your clients is the reaction of the defendant to their VIS?
24. In your experience what gives your clients most satisfaction during the Sentencing process?
25. In your experience what are the most usual complaints made by VOC with regard to the Sentencing process?
26. In your experience how well do you feel your clients understand the purpose of the VIS?
27. In your experience how useful is the information given to VOC regarding VIS?
28. In your experience, who do you find your clients rely on most for information regarding their court matters?
29. In your experience, how well served are your clients by the opportunity to make a VIS?
30. In your experience how significant do you find the VIS to be as part of the total court process/experience for your clients?
31. Have you noticed any gender differences in your clients in terms of their experiences with VIS?
32. Have you noticed any cultural differences in your clients in terms of their experiences with VIS?
33. In your experience does a client’s level of literacy have any significance regarding their experiences with VIS?
34. How well does the VIS process work, in your experience?
35. In your experience, do you have any recommendations towards any improvements that could be made to the VIS process for your clients?
36. In your experience do judges always treat VIS in the same way?
37. In your experience do Prosecuting solicitors always treat VIS in the same way?

In summing up include…

Thank you for your participation in the interview today.
Your insights have been most useful to the study.
Would you be interested in being kept informed of the study findings?
Appendix 6: VIS presentation in death matters: gender and relationship to the deceased

Breakdown of statistical data on VIS presented in 18 NSW death matters in Booth 2013a

Findings of this study with regard to the gender and relationship to the deceased being a variable in the likelihood to present a VIS appears to be supported by statistical data presented in Booth’s (2013) research as follows. Her observation of 18 homicide matters where 30 oral VIS were presented (see Booth 2013a:199) reveal a gender disparity in frequency of fathers and male partners/husbands presenting VIS compared with mothers and female partners/wives. Of the 41 VIS presented in the homicide matters that she observed where gender of VIS maker was specified (to include those inadmissible, co-authored and handed up), 15 were male VIS and 26 female VIS.\(^{82}\) Breaking her figures down further (see Table A6.1), it is evident that in the homicide matters she observed, no male partners or husbands submitted a VIS, and all VIS submitted by fathers (four) were orally presented by another (two VIS were on behalf of daughters and two for children whose gender is unrecorded).

<table>
<thead>
<tr>
<th>Relationship to deceased</th>
<th>Personal oral presentation</th>
<th>Presented orally by other: Family member/victim support/Crown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mother</td>
<td>5</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Female partner</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Sister</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Daughter</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Granddaughter</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Father</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Brother</td>
<td>6</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20</strong></td>
<td><strong>10</strong></td>
<td><strong>30</strong></td>
</tr>
</tbody>
</table>

However, results only show who VIS were made by, the relationship of the VIS maker to the deceased and how the VIS was presented. The gender of the

\(^{82}\) Male VIS comprised four VIS from fathers and 10 VIS from brothers (four separate matters), and one VIS from a de facto partner. Female VIS comprised 10 VIS from mothers, seven VIS from partners/spouses, five VIS from sisters (five separate matters), three VIS from daughters (two separate matters) and one VIS from a granddaughter.
deceased was not reported for 12 of the 18 matters (see Booth 2013a, Table 6.1: 199).

Further, findings from this study and others (Erez, Kichling & Wemmers 2011; Miller 2013) show female VO are more likely to present VIS and therefore have more opportunity to gain the therapeutic benefits outlined. These findings again appear to be supported by Booth (2013a). She reviewed 446 homicide sentencing proceedings in the NSW Supreme Court between 2003 and 2012 noted VIS were presented in 306. Table A6.2 reveals the disparity between numbers of mothers presenting VIS and fathers. While the gender of the deceased was not presented, it would be interesting to know how many paternal VIS were presented for sons and daughters based on findings presented in Chapter 4. Of the 130 mothers and fathers presenting VIS as individuals, fathers represent less than 30%, with only 13% reading them.

<table>
<thead>
<tr>
<th>Parental VIS</th>
<th>VIS handed up</th>
<th>VIS read</th>
<th>VIS read by rep</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mothers</td>
<td>44</td>
<td>38</td>
<td>11</td>
<td>93</td>
</tr>
<tr>
<td>Fathers</td>
<td>16</td>
<td>16</td>
<td>5</td>
<td>37</td>
</tr>
<tr>
<td>Dual presentation</td>
<td>14</td>
<td>1</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>74</td>
<td>55</td>
<td>21</td>
<td>150</td>
</tr>
</tbody>
</table>

Source: Booth (2013a)
Appendix 7: Additional qualitative findings

Additional findings regarding VOC consideration of the content of the VIS over time, and the need for some VOC to include their criminal justice experiences within their VIS as part of their criminal justice process

Adding to the VIS

Many VOC interviewed reported that they would make changes to their VIS if they were to present them again. As time elapsed from the crime event, they noticed further consequences they would have wished the court to understand. For some, whose matters were dealt with quickly, the long-term ramifications of the crime had not been fully evident at the time of writing their VIS:

It would be different, because you can’t imagine what the impacts will be 15 months down the track. Life changes and the impact grows. [That’s] an impact that we didn’t have then, which we had later. The dramas of a teenager who had lost her father. Those things that you don’t think of at the time [of making the VIS].

Fran (CD: 15), spouse murdered, VIS handed up

I would add how long it has affected me. And decisions. How my life would have been if that hadn’t happened. It’s relatively fresh.

Jane (CD:48), victim of SA, VIS read

There is little that can be done in this regard, and VOC were aware that the VIS was part of a process determined by time. The sense of regret for some at not being able to fully convey to the ongoing consequences of the crime was viewed fateful as part of the burden victims have to bear, with time especially closer to the event not necessarily healing, but simply compounding the hurts.

The criminal justice process and VIS content

As supported by previous research (Booth 2013a; Herman 2005), both family and primary VOC at times described needing to make reference within their VIS to the frustrations with aspects of the criminal justice processes, including the lack of information during investigations, the constraint of their role within
proceedings, constraints regarding information they can present to court, and the seeming indifference of the authorities or court to their plight. This suggests that crime impact can be compounded and worsened by the investigative and legal process. For some VOC, the sense of injustice regarding their treatment by the authorities superseded the crime’s impact. This is interesting, as it suggests that VOC may not see the crime event as the experience but rather the crime and its criminal justice resolution as the experience. In other words, victims remain in a state of victimisation until the crime event is resolved to their satisfaction. Repeated experiments by Kahneman and colleagues show that retrospective evaluations of an experience are in part based on positive or negative experiences near the end of the event known as the *peak-end rule* (see Miron-Shatz, Stone & Kahneman 2009).\(^8^3\) If the totality of the crime and resolution process is seen as a continuum of the crime experience for a victim, the peak-end rule may explain why further systemic perceived injustices after the crime event are felt so keenly. VOC would naturally expect to include impacts of the criminal justice process within their VIS if perceived as significant to them, seeing them as part of the crime experience. Evaluations of events are affected by personal theories (McFarland, Ross & Giltrow et al 1992). If VOC are treated by those supporting or assisting them in an unexpectedly positive or negative manner, their evaluations of their experience will be affected in proportion to the discrepancy between what they experienced and what they believed they should experience. For this reason, it would be useful for police, victim support agencies and criminal justice personnel to regularly canvas victims regarding their hopes for their police and justice experience prior to the criminal justice process, in order to manage expectations.

\(^8^3\) The experiments conducted by Kahneman and colleagues leading to the conclusion of the peak-end rule were based on the evaluations of patients experiencing the pain of medical procedures. However, they suggest that memory of an experience is similarly laid whether pain, or indeed pleasure, is emotional or physical or both.
Appendix 8: The NSW victim impact statement described

A victim impact statement (VIS) is an unsworn written statement prepared for the court by the primary victim of crime or by a family member of a victim of homicide or manslaughter. The statement allows a victim to outline physical bodily harm and, most recently, psychological or psychiatric harm, that they may have experienced as a result of the crime against them. In terms of family victims, their statements relate to the impact of the death of the primary victim on them as a member of the immediate family. A VIS can be received by the Supreme, District, Children’s Court and Industrial Relations Commission, and in the more serious cases by the Local Court. VISs are to be submitted after conviction but prior to the sentencing of an offender, and VISs may also be submitted at the hearings of offenders applying for parole.

A VIS can be prepared by the victim or their representative and may include statements from professional support practitioners, such as physicians, psychiatrists, psychologists and counsellors. Only one VIS is permissible per victim. A VIS should be no more than 20 A4 pages in length and must not include any information that could be deemed offensive or threatening to the offender.

In NSW, the VIS of primary victims may be accepted by the court, if the court feels it appropriate; however, the VIS of family victims must be accepted and acknowledged. In terms of sentencing, the VIS of primary and family victims may be considered with regard to sentencing if deemed appropriate by the judge or magistrate to do so.

VISs are tendered in writing and can be read out in court by the victim or a support person designated by the victim.

A VIS may be made available to the offender, although the offender is not permitted to hold a copy and the victim may be cross-examined on details raised in the VIS by the defence. Should the VIS contain information regarding matters not concerning the actual offence, the VIS will be amended. Once a VIS
has been accepted by the court it becomes part of the court file. As there is no legal requirement for VISs to be treated confidentially, the contents of a VIS may become public and can be reported by the media in general, unless in matters of a particularly sensitive nature a suppression order is granted by the court.

In NSW, an information package and a form to prepare a VIS have been developed by the NSW Department of Justice, the Office of the Director of Public Prosecutions and the NSW Police Force as part of the ‘NSW Government’s commitment to Victims of Crime with the Victims Rights Act 1996’ (VISIP 2014).# As victims of crime appear as part of a prosecution case, victims of crime may often be supported by the Witness Assistance Service, which operates as a division of the ODPP. Further assistance to prepare a VIS can be given by the police, or designated court support/victim support organisations such as Mission Australia Court Support, HVSG, Enough is Enough, and VOCAL.*

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