Participation of Victims of Crime in New South Wales Court Processes

A Study Commissioned by Victims Services, NSW

Final Report – Full Report
Including All Appendices

by

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### Abbreviations and Definitions

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<th>Abbreviation</th>
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<tbody>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>AIC</td>
<td>Australian Institute of Criminology</td>
</tr>
<tr>
<td>ATSI</td>
<td>Aboriginal and/or Torres Strait Islander</td>
</tr>
<tr>
<td>AVO</td>
<td>Apprehended Violence Order</td>
</tr>
<tr>
<td>Charter of Victims Rights or the Charter</td>
<td>Charter of Rights for Victims of Crime NSW per s 6 Victims Rights and Support Act 2013 (NSW)</td>
</tr>
<tr>
<td>CI</td>
<td>Chief Investigator</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>Judicial Officer</td>
<td>Judge or Magistrate</td>
</tr>
<tr>
<td>Justice Official</td>
<td>NSW Judge, Magistrate, Police Officer, Police Prosecutor, Public or Crown Prosecutor and Solicitors</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Government Organisation</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>ODPP</td>
<td>Office of the Director of Public Prosecutions</td>
</tr>
<tr>
<td>RA</td>
<td>Research Assistant</td>
</tr>
<tr>
<td>SA</td>
<td>South Australia</td>
</tr>
<tr>
<td>Stakeholder</td>
<td>A person or group with a vested interest in an outcome relevant to a criminal process in NSW</td>
</tr>
<tr>
<td>VAO/WAO</td>
<td>Victim or Witness Assistance Officer</td>
</tr>
<tr>
<td>WAS</td>
<td>Witness Assistance Service</td>
</tr>
<tr>
<td>WAS Officer</td>
<td>Witness Assistance Service Officer</td>
</tr>
<tr>
<td>Victim</td>
<td>See s 5 Victims Rights and Support Act 2013 (NSW)</td>
</tr>
<tr>
<td>VIS</td>
<td>Victim Impact Statement</td>
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Summary

This is the Final Full Report of the study, *Participation of Victims of Crime in NSW Court Processes*. It presents the main analysis of data, findings and recommendations and may be read in conjunction with the Final Report – Executive Summary. An information sheet is also available.

This study determines the extent of victim participation in NSW criminal courts via a four stage methodology by 1. scoping the current laws, regulations and rules that determine victim participation in NSW criminal courts, 2. surveying victims of crime as to their modes, expectations and levels of satisfaction with court participation, 3. interviews with justice officials as to their experience and expectations with victim participation in court, and 4. synthesis of a typology of modes of participation following the analysis of stages 1-3.

142 victims participated in the survey of victim expectations and 19 justice officials were interviewed in this study. Victims’ self-identified across a range of injuries and harms that spanned family members of homicide victims, offences to the person, sexual and indecent assault, robbery, and fraud. Victims also identified other offences, specifically, domestic violence. Justice officials included judicial officers from all NSW criminal courts, members of the NSW State Parole Authority, Mental Health Review Tribunal, NSW Police, Police prosecutors, ODPP prosecutors and a solicitor working with victims of domestic violence.

The data was assessed in the context of a thematic analysis that determined consistent points or issues of concern amongst survey participants. These themes were also used to group interview data and assess the ways in which justice officials categorised and permitted victim participation in court. Both victims and justice officials tended to conceptualise victim participation in terms of an adversarial exchange between state and offender, such that victims were usually always removed from court processes unless otherwise asked to attend to assist the state in its prosecution of crime. This led to a range of problems for victims regarding the representation of their interests, feelings of removal and at times ill treatment, from court processes that otherwise concern them. While some victims praised justice officials, specifically investigating police and police prosecutors in local court proceedings, other victims felt removed and excluded from the system, especially for longer or ongoing matters dealt with on indictment before judge and jury. Tests for significance and correlation between demographics and court processes indicated that certain victim groups had significantly different expectations of NSW court processes. Aboriginal and Torres Strait Islander (‘ATSI’) victims were less satisfied with overall court processes and sentencing than non-ATSI victims. Victims in rural and remote locations were less likely to want further participation, however, financial and property loss victims wanted greater participation. There were also statistical differences as to the perceived helpfulness of witness assistance officers by gender.

The aims of this study sought to determine levels of victim participation generally including impediments to participation and as such the following recommends were made: that Victims Services NSW offers legal education to the criminal justice professions to further enhance the understanding and significance of victims’ rights, to consider the potential role of victim advocates as professional members of the
criminal justice system charged with supporting the victim throughout their justice journey, and to consider the characterisation of the Charter of Victims Rights as relevant to all justice officials. Recommendations for further research were also made in light of the outcomes of this study, in particular, to focus on the needs of identified victim groups to determine their acute needs with regard to court participation, and to determine the extent to which further assistance and organisation of services through an advocacy scheme affects the current role of service providers, including lawyers, the courts and judiciary, in terms of the overall coherence of the NSW criminal justice system.
Chapter One – Aims and Background

1.1 Introduction

This is the final report on the participation of victims of crime in New South Wales (‘NSW’) criminal court processes commissioned by Victims Services, NSW Department of Justice, in August 2012 for completion in 2014.

This section sets out the relevant literature and background to the project; the scope of the study; its aims and purpose; as well as methodological requirements and limitations.

This research has been undertaken by Dr Tyrone Kirchengast, the Chief Investigator (‘CI’) and Senior Lecturer in Law, with the assistance of Ms Laura Boseley, Legal Research Assistant (‘RA’). The survey was drafted by Dr Suzanne Poynton, Assistant Investigator (‘AI’) and Adjunct Senior Lecturer in Law. The interviews were transcribed by Ms Scarlet Wilcock, PhD candidate in Law.

The research team wishes to recognise the participation of all victims and justice officials in the research. We thank the participants for their time and effort, without which this research would not have been possible. In particular, we thank the victims of crime for taking time to provide us with valuable insights into their experiences with the aim of improving the justice experience for all victims. We value their willingness and trust, and furnish this report with the view to enhancing court participation for victims now and into the future.

1.2 Aims of Research

The last two decades has evidenced the rise of a number of initiatives encouraging the greater participation of victims of crime in court processes in NSW. Although spread across all courts and some tribunals, these procedures vary significantly depending on existing criminal and trial procedure. The extent to which the victim of crime is able to participate is thus uneven and inconsistent, yet there is a paucity of research on how best to meet the needs of victims and to facilitate their participation in court processes.

This project systematically evaluates how the needs of victims of crime can best be served by the NSW criminal justice system. The main research questions addressed include:

- What is the nature and extent of victims’ participation in NSW court processes?
- What are victims’ expectations and actual experiences with court processes? How do they wish to participate in these processes?
- What are the barriers to effective victim participation in court processes and how can they be overcome?
Through a comprehensive review of the types of victim participation that exist in NSW courts and tribunals, a survey of victims and semi-structured interviews with key stakeholders, including members of the judiciary, police and Crown prosecutors, police officers, and solicitors, this project will identify ways in which victim participation in court processes can be facilitated to meet the needs of victims and strengthen their respect for the justice system.

Relevant court processes would include all aspects of the pre-trial, trial and sentencing process, across the various courts in NSW. Certain tribunals that act to facilitate victim participation, including the Mental Health Review Tribunal and the NSW State Parole Authority will also be considered.

### 1.3 Scope of Research

The relevant courts that comprise this study include those identified as exercising a criminal jurisdiction in NSW. These courts (and tribunals) include:

- Local Court of NSW
- District Court of NSW
- Drug Court of NSW
- Supreme Court of NSW
- Court of Criminal Appeal NSW
- Children’s Court NSW
- Mental Health Review Tribunal
- NSW State Parole Authority

These courts, especially the Local Court of NSW, NSW State Parole Authority and the Mental Health Review Tribunal may also exercise a jurisdiction over modes of victim participation more readily identified as a mode or form of alternative, supervisory, restorative or therapeutic justice, characterised as an intervention in or extension upon nominal court proceedings. This may include Circle or Forum Sentencing programs, Magistrates Early Referral into Treatment (‘MERIT’), or other modes of medical or therapeutic intervention. While all respondents were free to discuss modes of restorative justice and other interventions, this research was aimed at evaluating court processes characterised as nominal adversarial processes that constitute each court as a functional and discrete institution, or court of record.

Nominal processes are those that comprise court processes that fall within the exclusive jurisdiction of a court as a court of record. This excluded processes that may invite victim participation that would ordinarily lie beyond the jurisdiction and control of a court, magistrate or judge. Such alternative processes may be made available by the broader institutional environment of the criminal justice system and may be dependent on executive authorities (such as Corrections), tribunals, Non-Government Organisations (‘NGO’s’) or alternative service providers.

The purpose of excluding these other processes was to isolate and make available for analysis those processes that fall within the control of the criminal courts, although it is recognised that many processes are now a hybrid of court procedure and those processes available from alternative non-court providers.
One clear departure from this general focus on court processes is the assessment of victim participation in the Mental Health Review Tribunal and the NSW State Parole Authority. Both are constituted as tribunals exercising a jurisdiction that is not normally demarcated as that constitutive of a criminal court. The Industrial Relations Commission of NSW (in Court Session) was not assessed. Other tribunals that invite victim participation, including the Victim’s Compensation Tribunal (note claims are now assessed by the Civil and Administrative Tribunal per the 2013 reforms to compensation), were not assessed.

Chapter 2 sets out the laws and regulations that comprise the substantive and procedural basis of this report. These processes underpin the survey and interview questions and are instrumental to the analysis of data against the aims of the study.

1.4 Ethics Approval

Ethics approval for this project was sought and granted by the UNSW Human Research Ethics Committee prior to the collection of any primary data. Approval was granted from 18 December 2012 to 17 December 2017. The approval number is HREC Ref: # HC12572.

The application for ethics indicated that the assessment of victim participation must be based on stakeholders’ and victims’ informed consent and voluntary participation.

Ethics approval was granted on the basis that study participants will be protected by guarantees of confidentiality, anonymity, privacy and freedom to withdraw without prejudice.

Any identifying particulars (eg. a victim’s telephone number for completion of the post-court questionnaire) were deleted once the questionnaire had been completed.

Where a child was identified as a relevant victim (ie. potentially in the Children’s Court) the respondent’s parent or guardian was surveyed.

1.5 Confidentiality

This final report should be considered private and confidential unless declassified by Victims Services, NSW.

The authors of this report will not disseminate the research results nor the content of the analysis in this report unless permission is granted by Victims Services, NSW.

1.6 Significance and Innovation

This project will be the first major systematic study of the opportunities for and barriers to victim participation in criminal processes in NSW. The research will make use of a mixed-method approach to examine the issue of victim participation from the points of view of a range of criminal justice stakeholders, including the victims
themselves, so that their needs, expectations, and experiences are taken into account in any proposed reform.

An important component of the study includes the development of a typology of victim participation across all courts and relevant tribunals in NSW. This typology will draw on similar exercises in other jurisdictions, namely England and Wales and the International Criminal Court (see Edwards 2004; Wemmers 2010). Edwards’ (2004) typology breaks participation into four relevant areas, including control, consultation, provision of information, and expression. Wemmers (2010) provides a fifth area, victim notification. Such typologies have been useful in documenting the different ways in which victims are able to engage relevant officials and participate in court processes. The development of typologies of participation is recognised as a key means by which assumptions as to modes of participation may be analysed and overcome. This is consistent with the methodological benefits of the development of typologies in social research (see Elman, 2005; Bailey, 1994), as a tool to discover missed combinations and suppressed assumptions as to the mode and form that participation may take. Typologies also identify important variants of participation that might otherwise go unnoticed.

In the context of victims of crime, debate regarding participation has generally focused on balancing the needs of victims and those of the accused. Victim participation is then characterised in terms of detracting from the participation of the accused. Edwards’ (2004) typology recognises that victims tend to participate in far more diverse ways than the conventional literature suggests. By developing a typology of victim participation, this project is designed to be an innovative departure from debates that conceptualise participation principally in terms of the rights of the accused. Importantly, as this typology will be specific to NSW court processes, it will allow for clearer insights into stakeholder expectations as to different degrees of victim participation in a local context. A well-developed typology will thus be of enormous benefit to the continued development of victim focused policy and law reform in NSW.

An investigation into the diverse modes of victim participation in NSW courts and tribunals provides a useful diagnostic tool for improving victim engagement with court processes since the availability of a mode of participation (eg. a VIS) does not necessarily guarantee effective or satisfactory participation in court processes. Much depends on the implementation of the process by the stakeholders (ie. lawyers, judicial officers, etc.) involved. Where a victim chooses to participate, their contribution may not have any impact on proceedings as a result of the limited nature of the procedure allowing for participation or stakeholders’ attitudes regarding the relevance of the victim as a participant in the criminal process. Such impediments to participation and importantly, victim satisfaction in the criminal process, has been investigated to determine ways of overcoming impediments to victim engagement in criminal processes in NSW.

The project is also innovative in its research design. Not only does it draw on multiple sources of data to enhance the validity of its findings, it also provides rare insights into victims’ experiences in the NSW justice system by comparing victim expectations to court processes together with the expectations of justice officials gained by interview.
The project will assist in setting a future research agenda and policy context that can focus on particular types of participation that are more likely to be agreeable to victims, the courts and the legal profession. It is hoped that this will reduce the need for costly trials or pilot studies which may encourage modes of participation that do not accord with expectations or limitations as to the meaningful role a victim may play in NSW court processes.

1.7 Research Approach

The conceptualisation of victim participation in NSW takes into account:

- that consistent or fixed procedures may be applied or adapted inconsistently between courts/tribunals;
- that some stakeholders will be more or less aware of their rights and obligations under the Charter of Victims Rights in NSW;
- that not all victims want to access court processes in the same way;
- that not all police act to support the victim consistently;
- that not all lawyers, judicial officers or prosecutors appreciate and allow for victim participation in the same way (as a more active or more passive participant);
- that opportunities for victim participation will vary significantly between court/tribunals, and between phases of the criminal process;
- that some victims will actively seek assistance (from, for example, NGO’s, court staff and victims services) and some will not;
- that not all processes for participation allow for substantive impacts in the hearing of the matter under determination;
- and that different stakeholders will invariably seek to include the victim based on their relevance to or connection with the evidence on the matter under consideration.

The project used a mix of qualitative and quantitative research methods including:

- A review of legislation and official documents to map the various means by which victims participate in all courts and (relevant) tribunals in NSW;
- An evaluation of victims’ expectations and experiences with court processes through a pre-court and post-court survey of 142 victims in NSW courts and tribunals;
- 19 semi-structured interviews with NSW public officials (including police, prosecutors, judicial officers, court officers and defence counsel) germane to each court and (relevant) tribunals as to their attitudes to victim participation and their views of what barriers exist to effective victim participation and how these barriers can be overcome; and
- The development of modes of participation using data gained from points 1-3 above.
1.8 Methodology

A four stage methodology mapped and assessed modes of victim participation from the perspectives of a range of criminal justice stakeholders, including victims themselves.

1.8.1 Mapping the Criminal Process in NSW

The first stage of the project involves mapping the varied and complex ways in which victim participation is currently invited across all courts and relevant tribunals in NSW. The more complex courts (in terms of current multiple forms of participation) will include the lower level courts, specifically the Local Court and Children’s Court, where the victim may be included through an array of formal and less formal means (from private prosecutor, to witness, to delivering a VIS, to a participant in a conference, forum or circle sentence, or intervention program). The higher courts including the District and Supreme Court will also be included, as will the Mental Health Review Tribunal and NSW State Parole Authority.

Although it is true that major components of relevant criminal procedure may be gleaned from legislation, much victim participation occurs via the individual policy and practices of each court. This project will extend upon the tendency to characterise a court through legislation to consider subordinate sources of law, including regulations, court rules, practice directions, guidelines and policy. In addition to the formal policy framework that gives character to processes enabled by statute, informal practices of participation will also be mapped, although these will also be elicited in steps 1.8.2 and 1.8.3 below.

The sources of law that regulate victim participation are set out in Chapter Two.

1.8.2 A Survey of Victim Expectations

Surveys of victims of crime who have participated in court processes in NSW were undertaken between November 2013 and April 2014. Victims were recruited with the assistance of relevant government agencies such as Victims Services, ODPP, Legal Aid NSW and NSW Police, and were asked to complete a questionnaire both before and after their court matter has been finalised. Victims were contacted on the Victim registers kept by Corrections, Juvenile Justice and the Mental Health Review Tribunal. Both metropolitan and regional courts were advised of the survey and flyers were distributed to all metropolitan and regional courts via the court registrar. The pre-court questionnaire was self-administered online (link available via Victims Services Website with questionnaire administered via UNSW Surveys). Where required and available, to maximise participant response rate, the post-court questionnaire was completed via telephone. The RA telephoned respondents at a time convenient to the respondent, once their court matter was finalised. Victims were also posted a questionnaire where they were unable to otherwise complete it. Data was then entered electronically and the hard copy destroyed. All questionnaires were depersonalised and identifying particulars deleted.
The pre-court questionnaire includes the following questions: relevant demographics, the nature of the court process the victim will take part in, the victim’s prior knowledge of court procedures and their expectations about their role and the process. The post-court questionnaire includes questions on the victim’s level of satisfaction with the overall court experience and whether their expectations regarding victim participation in court processes have been met. Open-ended questions were also included in order to identify strengths and weaknesses within the current system and to explore alternatives to the criminal court process which may potentially have more beneficial outcomes for victims. The questionnaire was designed to complement the semi-structured interviews conducted with judicial officers and other public officials in stage 1.8.3 of the research. Where possible, the knowledge and expectations of judicial officers and court staff regarding victim participation in the court process was compared with victim’s knowledge and expectations of these procedures in the analysis of the results in Chapter 5.

The AI was responsible for the survey methodology and questionnaire design. The RA was responsible for the recruitment of respondents, the administration of the questionnaires and data entry, where required.

The survey data and the full questionnaire are set out in Chapter 3 and Appendix 1 respectively.

1.8.3 Semi-structured Interviews with NSW Justice Officials

19 semi-structured interviews with NSW justice officials (including police officers, police prosecutors, Crown prosecutors, judicial officers and defence counsel) germane to each court and (relevant) tribunals were conducted by the CI and the RA. Interviews were conducted across NSW, in both metropolitan and regional locations. The interviews focused on the officials (1) understanding or knowledge of the processes by which victims may participate in their court; (2) attitudes, values and beliefs as to what role the victim ought to play in proceedings, and (3) views of what barriers currently exist and what future reforms are possible for more effective victim participation. The interviews were sound recorded and transcribed and anonymised.

Select extracts from the anonymised transcribed interview data and interview questions appear in Chapter 4 and Appendix 2 respectively. Unedited interview data is contained in Appendix 4.

1.8.4 Analysis of Modes of Participation in NSW and Completion of the Final Report

The data gained in stages 1.8.1, 1.8.2 and 1.8.3 was synthesised in accordance with the literature on typologies of victim participation to create a typology of participation in NSW courts and tribunals. This typology proved to be expansive, with the actual number of relevant distinctions between forms of participation depending on the trends that present in the data. Past research (see Edwards, 2004; Wemmers, 2011) indicates that at least 5 types of participation were present. A general typology was developed focussing on the NSW experience. More detailed typologies may then be
developed in accordance with each court and tribunal in NSW. The typology was developed as a shorter reference list that classed or graded forms of participation together with explanations and data central to the conceptualisation of each mode of participation. This typology is presented in section 5.6. This should allow the typology to be applied as an easy reference or diagnostic tool, or as a more detailed research tool connecting the data gained from stages 1.8.2 and 1.8.3 with the procedural sources from stage 1.8.1.

1.9 Relevant Literature and Background

Most of the research into the experiences of victims of crime in court processes has been conducted overseas, or in other states in Australia. Little work has been done systematically analysing the barriers to victim participation in court processes in NSW and no study has dealt with the participation of victims across all relevant NSW courts and tribunals, utilising a stakeholder perspective.

The literature on court participation in NSW has generally been limited to discrete processes (for example, victim impact statements (‘VIS’) and sentencing, see Garkawe, 2007; Booth, 2007; Kirchengast, 2008, 2011a; Baptie, 2004); how certain stakeholders may better support victims (eg. police support for victims in NSW, see Kirchengast, 2011b), or how well designed policy may improve the experiences of victims as an adjunct to court process (see Mawby, 2007). Several studies have evaluated victim’s participation in court processes outside NSW, examining the attitudes of judicial officers and victims in the consideration of VIS in the sentencing process in SA (see Rogers and Erez, 1999) and magistrates and judges’ views on victims in sentencing in SA (O’Connell, 2009). Some work has been done on the role of victims in Australian criminal procedure, including the role of the victim in prosecution decision-making in Australia (Flatman and Bagaric, 2001) and alternatives to court processes in Australia (Garkawe, 1999). Other studies have tended to focus on particular offences, such as sexual assault in the ACT (ACT Victims of Crime Coordinator, 2009).

The international literature has considered the extent to which victims may participate in aspects of the criminal process but much of this is in light of domestic or international law which may be of limited direct relevance to the NSW court processes. Examples include victim assistance and witness support in England and Wales (Shapland, 1986); victims in the magistrates’ court and Crown court (Shapland and Bell, 1998); the integration of victims into the social policy context (Wemmers, 2005); pilot programs allowing for private counsel in England and Wales (see Sweeting, Owen, Turley, Rock, Garcia-Sanche, Wilson and Kahn, 2008) or the United States (see Beloof, 2005); and the role of victims in international courts, such as the ICC (Wemmers, 2010). There is an abundance of literature on the relevance of VIS to sentencing processes in England and Wales, Canada and the United States, with some reflections on the role of the judiciary and counsel in the VIS tendering process (see Ashworth, 1993; Edwards, 2009; Roberts, 2003; Henley, Davis and Smith, 2004). Some work has been also done on the role of victims in pre-trial decision-making processes (see Edwards, 2004; Doak, 2005). Victim surveys and other quantitative methods have also been used, mainly in England and Wales and the United States (Shapland and Hall, 2007, cf. AIC, Meyer, 2014).
As the above literature suggests, research on victims of crime has tended to focus on discrete aspects of criminal procedure, jurisdictional concerns, or the experiences of victims of particular offences (Shapland and Bell, 1998; Shapland, 1986; Wemmers, 2005, Beloof, 2005). Little attention has been paid to a jurisdiction-wide consideration of the experiences of Australian victims of crime in the context of the attitudes and opinions of stakeholders (Kirchengast, 2006, 2013). However, the literature does raise issues and concerns that will be relevant to the assessment of the modes of victim participation in NSW courts and tribunals. These issues and concerns include the importance of a well-designed criminal process in meeting the needs of crime victims (Edwards, 2009, Doak, 2005). This proposal identifies and builds upon the gaps in the Australian and international literature by moving beyond an evaluation of discrete or individual processes for a jurisdiction-wide analysis of modes of participation.

This research is developed out of an understanding of the existing research framework that focuses on the importance of the criminal process, from police investigation and pre-trial enquiries through to trial and sentencing. An assessment of the multiple stages of the criminal process is therefore required in order to best assess the needs of crime victims. As the context of the criminal process is important to the experience of any victim, the attitudes of stakeholders that engage the victim are also relevant to our understanding of the experiences of victims in the criminal process. As such, this extends upon previous research by taking a whole of jurisdiction approach to the assessment of the dynamic ways in which victims participate in the criminal process in NSW, by seeking stakeholder values and attitudes on the different ways victims actually participate in NSW criminal courts. This project will thus assess how the criminal process may better support victims in the context of the complex requirements of the range of stakeholders in the criminal justice system.

1.9.1 Definition of ‘Victim’

Central to this study is the adoption of the expanded notion of victim identified in s 5 Victims Rights and Support Act 2013. This definition constitutes the victims as someone who suffers harm, including physical and psychiatric harm, as well as persons suffering property damage.

The s 5 definition considers victim in a broad sense. Section 5 provides:

Meaning of ‘victim of crime’

(1) For the purposes of this Part, a ‘victim of crime’ is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence.

(2) A person suffers ‘harm’ if, as a result of such an act:

(a) the person suffers actual physical bodily harm or psychological or psychiatric harm,

(b) the person’s property is deliberately taken, destroyed or damaged.
(3) If the person dies as a result of the act concerned, a member of the person’s immediate family is also a victim of crime for the purposes of this Part.

(4) If a person dies as a result of the act concerned and there is more than one member of the person’s immediate family, members of the immediate family may nominate a representative for the purposes of the Charter of Victims Rights.

This is an adaptation of the nominal definition of victim recognised by a criminal court. A nominal definition of victim at law would include those identified as the recipient of a harm or injury that can be actualised in the behavioural component, or actus reus, of a criminal offence. It is thus the offence, and its requisite behavioural or conduct elements, which gives rise to a participant’s victim status at law. Ordinarily, this would only accord with the notion of primary victim under s 20 Victims Rights and Support Act 2013 but would not include the expanded notion of victim under s 5 in so far as it includes reference to family members.

While the definition of victim as recipient of direct harm or injury is instructive in the sense of helping us understand the distinctions made by criminal law and process, it fails to identify the broad and discrete ways in which a number of different victims participate in criminal proceedings in NSW. It would thus be remiss of this study to adopt a limited notion of victim and the broader categories of victim – as indicated by s 5 – have been adopted. The definitions of violence under ss 4,11 Crimes (Domestic and Personal Violence) Act 2007 (NSW) have also been adopted for the purpose of recognising victim status.

However, the nature of the survey calls for those persons who have participated in court proceedings and there may be limited court participation from secondary and family victims except as an observer or support person to those proceedings. The clear exception is family members in homicide cases who may be called as witnesses or give an impact statement during sentencing.

This difference in definition is an important conceptual issue relevant to the reading of interview data by judicial officers, who may adopt the nominal rather than expansive definition of victim status.
Chapter Two – Relevant Law

2.1 Introduction

This section sets out the relevant law and policy regulating victim participation in NSW criminal courts.¹

The sources of law that comprise this section recognise that the processes that invite victim participation in court proceedings varies depending on the specific court, the type of proceedings before that court, and the availability of a source of law that allows for victim participation. These sources of law include, in order of authoritative standing:

- Legislation from NSW Parliament;
- Regulations from NSW Parliament;
- Court Rules as devised by each individual court or tribunal;
- Practice Directions or Guidelines devised by individual courts, tribunals or the Office of the Director of Public Prosecutions;
- Explanatory Notes and Policies that set out or explain any of the above; and
- Custom (as established by common law or otherwise).

This section aims to demonstrate the complexity of victim participation in NSW criminal courts by setting out how the powers that allow for victim participation are inherently diverse and fragmented. They are not consolidated within one source nor are they provided over a set of coherently organised sources. Rather, victim participation is a mix of anticipated processes under a general adversarial model of court participation in the context of legislative intervention in that custom by statute, regulation, and to a lesser extent, court practice and practice direction. Victims, including family and friends of victims, and those seeking to assist victim participation in a professional capacity, including Victims Services NSW, Corrections, Parole, and other departments and NGO’s, must navigate this complexity in best advising victims of the ability to participate in court processes.

This section will group sources of law by theme or mode of participation. Note that the following list of sources is non-exhaustive. Victim rights are provided across broad ranging sources of law, which collectively provide victims some right of personal or de facto participation, either through a personal representative (where available), through rights of consultation, or through rights to information. The types of participation, whether direct or indirect (see sections 5.7.1.2 and 5.7.1.3), are thus variable depending on the law utilised or relied upon and the intended mode of participation. Discretion to utilise a process, whether by victim or justice official, is also key to the final mode of participation experienced by each victim.

2.1.1 Charter of Victims Rights

Victim Rights and Support Act 2013 s 6

¹ Law and policy current as at May 2014.
2.1.2 Relevant Definitions of ‘Victim’
Victim Rights and Support Act 2013 s 5
Young Offenders Act 1997 s 5
Mental Health (Forensic Provisions) Act 1990 s 41

2.1.3 Arrest
Law Enforcement (Powers and Responsibilities) Act 2002 s 100

2.1.4 Bail
Bail Act 1978 ss 9A; 32(1)(b1),(c),2A(b)
Bail Act 2013 ss 17(2)(c),(d),(4)(b); 48(1)(c); 51(3)(c,d) (Act commences May 2014)
Bail Regulation 2008 cls 9,10

2.1.5 Police Requirement to Consult
Crimes (Sentencing Procedure) Act 1999 s 35A
Crimes (Sentencing Procedure) Reg 2010 cl 7A

2.1.6 Public Prosecution
Director of Public Prosecutions Act 1986 ss 10,13,14,20A
Discontinuing Prosecutions - Prosecution Guidelines Pt 7
Taking Over Proceedings - Prosecution Guidelines Pt 10
Privacy - Prosecution Guidelines Pt 11
Victims of Crime, Vulnerable Witnesses, Conferences - Prosecution Guidelines Pt 19
Charge Negotiation, Agreed Facts and Form 1’s - Prosecution Guidelines Pt 20
Retrials - Prosecution Guidelines Pt 31

2.1.7 Private Prosecution
Criminal Procedure Act 1986 ss 49; 174
2.1.8 Committals

Criminal Procedure Act 1986 s 91, 93

2.1.9 Conferences, Pre-Trial Disclosure and Pre-Trial Hearings

Criminal Procedure Act 1986 ss 139,140

Victims of Crime, Vulnerable Witnesses, Conferences - Prosecution Guidelines Pt 19

2.1.10 Charge Bargaining and Plea Deals

Crimes (Sentencing Procedure) Act 1999 s 35A

Charge Negotiation, Agreed Facts and Form 1’s - Prosecution Guidelines Pt 20

2.1.11 Children and Young Offenders

Young Offenders Act 1997 ss31, 35-61

Young Offenders Reg 2010 cl 13

2.1.12 Evidence

Evidence Act 1995 ss 26-29,41

Criminal Procedure Act 1986 ss 290-306L

2.1.13 Apprehended Violence Orders (ADVO and APVO)

Interim Order - Crimes (Domestic and Personal Violence) Act 2007 ss 22-24

Provisional Orders - Crimes (Domestic and Personal Violence) Act 2007 ss 25-34

Final Orders - Crimes (Domestic and Personal Violence) Act 2007 ss 47-71

External Orders - Crimes (Domestic and Personal Violence) Act 2007 ss 94-98

Criminal Procedure Reg 2010 cl 104
2.1.13 Domestic Violence

Crimes (Domestic and Personal Violence) Act 2007 ss 11-14
Director of Public Prosecutions Act 1986 s 20A
Coroners Act 2009 ss 101A-101P
Law Enforcement (Powers and Responsibilities) Act 2002 s 81-87
Bail Act 1978 s 9A
Bail Act 2013 s 51(3)(c,d) (Act commences May 2014)
Bail Regulation 2008 cl 9
Local Court Practice Direction 2/2012 Domestic and Personal Violence Proceedings – Timetable for Statements

2.1.14 Sex Offences Victims

Criminal Procedure Act 1986 ss 290-306L
Bail Regulation 2008 cl 10
Supreme Court Common Law Division SC CL 8 – Media Access to Sexual Assault Proceedings Heard in Camera
District Court Practice Direction 5 - Media Access to Sexual Assault Proceedings Heard in Camera
District Court Practice Direction 6 - Management of Prescribed Sexual Offence Proceedings

2.1.15 Victims of Forensic Patients

Mental Health (Forensic Provisions) Act 1990 s 75(1)(i)

2.1.16 Provision of Evidence as Witness (Prosecution or Defence)

Evidence Act 1995 ss 26-29
Hearings Process - Criminal Procedure Act 1986 s 38
Interviews with Vulnerable Persons - Criminal Procedure Act 1986 s 76
Sensitive Evidence - Criminal Procedure Act 1986 s 281B
Sexual Offence Proceedings - Criminal Procedure Act 1986 ss 290-306L

Evidence by Vulnerable Persons - Criminal Procedure Act 1986 ss 306M-306ZP

Circle Sentencing - Criminal Procedure Reg 2010 cls 28-54

Forum Sentencing - Criminal Procedure Reg 2010 cls 55-87

Suppression of Evidence or Non-Publication Orders – Court Suppression and Non-Publication Orders Act 2010 s 7; 8(1)(c); 9(2)(a,b,e)

2.1.17 Provision of Victim Impact Evidence (in Court/Tribunal/Conference)

Crimes (Sentencing Procedure) Act 1999 ss 26-30A

Crimes (Sentencing Procedure) Reg 2010 cls 8-11

Young Offenders Act s 24A

Mental Health Act 2007 s 160(c)

2.1.18 Victim Impact Evidence (Supreme Court Application for Limiting Term)

Crimes (Sentencing Procedure) Act 1999 s 28(2); Sch 1

2.1.19 Determination of Head Sentence and Non-Parole Period

Crimes (Sentencing Procedure) Act 1999 ss 3A(g); 11; 21A(2),(3)(c),(3)(i)(ii)

2.1.20 Provision of Victim Impact Evidence/Submission from Victim (in NSW State Parole Authority Hearings)

Crimes (Administration of Sentences) Act 1999 ss 135(2)(g),135A(f),145,147,256

Crimes (Administration of Sentences) Reg 2008 el 237,331,332

2.1.21 Advocacy and Representation

Mental Health Act 2007 s 160(c)

2.1.22 Victim Registers

Crimes (Administration of Sentences) Act 1999 s 256
2.2 Analysis and Comment

The setting of the sources of law that provide some means of victim participation in court (or in proceedings connected to court processes, including rights to consultation and information) demonstrates the fragmented and discrete ways in which victim participation is made available in NSW criminal courts.

It is important to note that this section does not recommend that this approach be reformed or modified, ie. by attempting to consolidate such processes into one legislative instrument or across several linked instruments.

Rather, this section seeks to map the terrain of modes of victim participation in order to demonstrate the numerous and significant ways in which victims are able to participate. These sources of law also demonstrate significant variation in the way such participation may be invited or made available. These sources are used to map justice officials’ recall of knowledge of victim focused processes in section 5.6.2.

The breakdown of modes of participation evidenced through the sources of law may realise victim participation as the:

- Right to information;
- Right to consultation; and
- Right to present evidence and/or make submission on substantive matters in court.

However, a more detailed assessment of the way these sources invite or enable participation range through the following:

- To be treated with respect and courtesy as a minimum procedural requirement;
- To be kept informed of factual developments;
- To be advised as to legal rights and powers;
- To be consulted in pre-trial or out of court processes with the view that the victim will be able to make submissions that will be factored into the decision-making process to the extent that the submission is relevant and allowed by law (eg. prosecution guidelines);
- To be invited to participate in court or trial proceedings although the participation may not impact on the decision being made; and
- To be invited to participate in court or trial proceedings with a view that the evidence presented may impact on the decision being make, where relevant and allowed by law.

Some examples of these rights to the different modes of participation may include (but are not limited to):

- Provision of information generally;
• To be kept informed of new or future developments with regard to a reported incident or matter before the courts;
• To be informed of relevant charges or deal made with regard to charges or disposal by indictment following a plea-deal;
• To be consulted with regard to final charges arrived at or plea-deals made;
• To be informed of the opportunity to present evidence in court where relevant and if called, to be supported throughout the process;
• To present a VIS and have it considered as potentially relevant to sentence for a non-fatal offence;
• To present a VIS for a homicide offence; and
• To be directed to Victims Services (or possibly an NGO or service organisation) for additional support or information with regard to court process or additional claims, including compensation.
Chapter Three – Survey Data

3.1 Introduction – Court Participation: All Victims

The experiences and expectations of victim participation in NSW criminal courts was garnered by a survey and questionnaire of NSW victims of crime. The questionnaire sought to survey all victims that self-identified as experiencing a form of victimisation that resulted in a court process in NSW. The questionnaire screened out victims that did not report the matter to the police, where the police did not proceed with a charge, or where a victim’s matter was currently pending before the courts. The target population included victims of any offence whose court matter were completed, i.e. post-sentencing. A copy of the questionnaire is contained in Appendix 1.

Victims were required to self-identify as a victim of crime. The quality of our victim cohort was assured by the fact the survey was only relevant to those persons whose injuries or trauma gave rise to a criminal charge that would only proceed on the basis of a criminal charge laid by a police officer. The injuries and trauma that gave rise to the participant’s status as victim would usually involve death of the primary victims, interpersonal violence or property damage. The expanded definition of victim pursuant to the Victims Rights and Support Act 2013 s 5 has been adopted.

The survey was structured across eight sections, including:

- Section 1 – Demographics;
- Section 2 – Types of Victimisation;
- Section 3 – Police Investigation;
- Section 4 – Going to Court;
- Section 5 – After Court (for completed cases);
- Section 6 – Knowledge and Expectation of the Court process (for pending cases);
- Section 7 – Reasons for Not Talking with the Police (where no crime reported); and
- Section 8 – General Open Ended Comments.

All participants completed section 1 and 2. Where there was no injury, trauma or identified victim experience (in the context of being a primary, secondary and family victim) the participant was screened out. This eliminated all persons who may attempt the survey out of interest but who did not experience any identifiable from of physical, mental or property victimisation that would nominally result in a potential criminal offence.

Section 3 sought information on the way in which the victim or someone else reported the matter to police. If the matter was not reported the participant skipped to section 7. If the police did not investigate the matter (for whatever reason) the participant skipped to section 8.

Section 4 sought information on the court in which the matter was being dealt with. If the matter did not proceed to court or if the participant did not know which court the matter was proceeding before, they skipped to section 8. All respondents who knew
which court was hearing their case but whose case was at the pre-trial or trial (ie. not completed or post-sentencing) stage then skipped to section 6. Only those participants whose matters were completed (ie. post-trial and sentencing) proceeded to the end of section 4 and onto section 5.

This thorough screening process ensured that of the 142 participants only those participants who had experienced the entire justice journey, from initial reporting to pre-trial, trial and sentencing and post sentencing or conviction were providing their experiences of the whole of the court system and its processes. Of the 142 participants who engaged the survey, 78 identified as completing their justice journey and went on to complete sections 4 and 5 of the questionnaire. Pending cases completed section 6. Those who did not report their offence completed section 7. All respondents completed the open ended questions in section 8.

Open ended responses have been selected as representative of issues across a range of responses. Unedited open ended data is presented in Appendix 3.

Section 3.1 includes all data collected and does not filter for offence type, gender, court type or Aboriginality. Sections 3.2 covers comparisons by these groups.

Overall completion rates were as follows:

142 victims completed the survey. These 142 respondents were then further screened to answer questions relevant to their particular experiences of the criminal process.

119 victims reported matters where police were informed and/or charges were laid.

103 victims reported matters which proceeded to court.

78 victims reported matters where their court case was complete/finalised at the time of completing the questionnaire.

25 victims reported that their court case was incomplete/pending at the time of completing the questionnaire.

11 victims did not report their matter to police.
### 3.1.1 Section 1 – Demographics

<table>
<thead>
<tr>
<th>Q. 1 Are you</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>17.61%</td>
<td>25</td>
</tr>
<tr>
<td>Female</td>
<td>82.39%</td>
<td>117</td>
</tr>
<tr>
<td>Transmale</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Transfemale</td>
<td>0.00%</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 2 How old are you?</th>
<th>Average age</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>43.18</td>
<td>15-79</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 3 Which country were you born in?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>87.32%</td>
<td>124</td>
</tr>
<tr>
<td>Other</td>
<td>12.68%</td>
<td>18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 4 Are you an Australian citizen?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>95.77%</td>
<td>136</td>
</tr>
<tr>
<td>No</td>
<td>4.23%</td>
<td>6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 5 Do you identify as Aboriginal or Torres Strait Islander?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes – Aboriginal</td>
<td>5.63%</td>
<td>8</td>
</tr>
<tr>
<td>Yes - Torres Strait Islander</td>
<td>0.70%</td>
<td>1</td>
</tr>
<tr>
<td>Yes - Aboriginal and Torres Strait Islander</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>No</td>
<td>93.66%</td>
<td>133</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 6 What is your marital status?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single</td>
<td>43.66%</td>
<td>62</td>
</tr>
<tr>
<td>Defacto</td>
<td>14.79%</td>
<td>21</td>
</tr>
<tr>
<td>Married</td>
<td>28.17%</td>
<td>40</td>
</tr>
<tr>
<td>Other</td>
<td>13.38%</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 7 Do you have any children?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>75.35%</td>
<td>107</td>
</tr>
<tr>
<td>No</td>
<td>24.65%</td>
<td>35</td>
</tr>
</tbody>
</table>
### 3.1.2 Section 2 - Types of Victimisation

#### Q. 1 What was your involvement in this crime? (check all that apply)

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>I was physically injured</td>
<td>53.52%</td>
<td>76</td>
</tr>
<tr>
<td>I suffered psychological or emotional harm</td>
<td>73.24%</td>
<td>104</td>
</tr>
<tr>
<td>I suffered financial loss or property damage</td>
<td>42.25%</td>
<td>60</td>
</tr>
<tr>
<td>I was a witness</td>
<td>17.61%</td>
<td>25</td>
</tr>
<tr>
<td>One of my family members died</td>
<td>24.65%</td>
<td>35</td>
</tr>
<tr>
<td>None of the above</td>
<td>0.70%</td>
<td>1</td>
</tr>
</tbody>
</table>

#### Q. 2 What was the nature of the crime committed?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder/Manslaughter</td>
<td>22.54%</td>
<td>32</td>
</tr>
<tr>
<td>Assault</td>
<td>26.76%</td>
<td>38</td>
</tr>
<tr>
<td>Sexual assault or act of indecency</td>
<td>27.46%</td>
<td>39</td>
</tr>
<tr>
<td>Robbery</td>
<td>3.52%</td>
<td>5</td>
</tr>
<tr>
<td>Fraud</td>
<td>0.70%</td>
<td>1</td>
</tr>
<tr>
<td>Other theft (including motor vehicle theft)</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Property damage</td>
<td>1.41%</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>17.61%</td>
<td>25</td>
</tr>
</tbody>
</table>

#### Q. 3 When did the crime occur?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;6 months ago</td>
<td>7.75%</td>
<td>11</td>
</tr>
<tr>
<td>6 to &lt;12 months ago</td>
<td>9.86%</td>
<td>14</td>
</tr>
<tr>
<td>12 months to &lt;2 years</td>
<td>9.15%</td>
<td>13</td>
</tr>
<tr>
<td>2 years or more</td>
<td>61.97%</td>
<td>88</td>
</tr>
<tr>
<td>Ongoing</td>
<td>11.27%</td>
<td>16</td>
</tr>
</tbody>
</table>

#### Q. 4 Where did you live when the crime occurred?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sydney/Newcastle/Wollongong</td>
<td>56.34%</td>
<td>80</td>
</tr>
<tr>
<td>Regional area</td>
<td>23.94%</td>
<td>34</td>
</tr>
<tr>
<td>Rural or remote area</td>
<td>19.72%</td>
<td>28</td>
</tr>
</tbody>
</table>

#### Q. 5 What was your relationship with the offender(s) involved in this crime?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partner or ex-partner</td>
<td>28.87%</td>
<td>41</td>
</tr>
<tr>
<td>Other family member</td>
<td>18.31%</td>
<td>26</td>
</tr>
<tr>
<td>Friend or acquaintance</td>
<td>16.90%</td>
<td>24</td>
</tr>
<tr>
<td>Workplace colleague</td>
<td>4.23%</td>
<td>6</td>
</tr>
<tr>
<td>Stranger</td>
<td>23.24%</td>
<td>33</td>
</tr>
<tr>
<td>The offender was unknown</td>
<td>8.45%</td>
<td>12</td>
</tr>
</tbody>
</table>

#### Q. 6 Have you received compensation for an injury (or injuries) as a result of this crime?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>21.13%</td>
<td>30</td>
</tr>
<tr>
<td>No, but a compensation claim is currently being considered</td>
<td>26.76%</td>
<td>38</td>
</tr>
<tr>
<td>No, but I intend to seek compensation in the future</td>
<td>11.97%</td>
<td>17</td>
</tr>
<tr>
<td>No</td>
<td>40.14%</td>
<td>57</td>
</tr>
</tbody>
</table>

#### Q. 7 Are you a member of or associated with a victim rights groups/organisation?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>77.46%</td>
<td>110</td>
</tr>
<tr>
<td>Yes</td>
<td>22.54%</td>
<td>32</td>
</tr>
</tbody>
</table>
### 3.1.3 Section 3 - Police Investigation

The following tables include 119 respondents where police investigated the matter or where charges were laid. Not all respondents answered every question. Percentages are based on the number who responded to each question.

<table>
<thead>
<tr>
<th>Q. 1 Did you or someone else report this crime to the police?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, I did</td>
<td>62.68%</td>
<td>89</td>
</tr>
<tr>
<td>Yes, someone else did</td>
<td>29.58%</td>
<td>42</td>
</tr>
<tr>
<td>No</td>
<td>7.75%</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 2 Did the police investigate the matter?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>90.84%</td>
<td>119</td>
</tr>
<tr>
<td>No</td>
<td>4.58%</td>
<td>6</td>
</tr>
<tr>
<td>Don't know</td>
<td>4.58%</td>
<td>6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 3 To what extent were you kept informed regarding the police investigation of this crime?</th>
</tr>
</thead>
<tbody>
<tr>
<td>------------------</td>
</tr>
<tr>
<td>Response percent</td>
</tr>
<tr>
<td>Response total</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 4 Was anyone charged as a result of the police investigation?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>82.35%</td>
<td>98</td>
</tr>
<tr>
<td>No</td>
<td>14.29%</td>
<td>17</td>
</tr>
<tr>
<td>Don't know</td>
<td>3.36%</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 5 Did the police consult with you when determining what the offender(s) should be charged with?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>37.76%</td>
<td>37</td>
</tr>
<tr>
<td>No</td>
<td>62.24%</td>
<td>61</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 6 Overall, how satisfied were you with the police involvement in this matter?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Very Satisfied</td>
<td>30.25%</td>
<td>36</td>
</tr>
<tr>
<td>2. Satisfied</td>
<td>16.81%</td>
<td>20</td>
</tr>
<tr>
<td>3. Neutral</td>
<td>15.13%</td>
<td>18</td>
</tr>
<tr>
<td>4. Dissatisfied</td>
<td>14.29%</td>
<td>17</td>
</tr>
<tr>
<td>5. Very Dissatisfied</td>
<td>23.53%</td>
<td>28</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 7 What are some of the ways in which police helped you?</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police were of little to no assistance</td>
<td>23</td>
</tr>
<tr>
<td>Police were helpful to primary victim</td>
<td>46</td>
</tr>
<tr>
<td>Police were helpful to secondary or family victim</td>
<td>2</td>
</tr>
<tr>
<td>Police took out AVO on behalf of victim</td>
<td>4</td>
</tr>
<tr>
<td>Police charged offender</td>
<td>12</td>
</tr>
<tr>
<td>Police kept primary victim informed</td>
<td>32</td>
</tr>
<tr>
<td>Police gave advice as to what actions were possible</td>
<td>2</td>
</tr>
<tr>
<td>Police gave emotional support</td>
<td>34</td>
</tr>
<tr>
<td>Police referred victim to support group</td>
<td>8</td>
</tr>
<tr>
<td>Police provided incident number</td>
<td>1</td>
</tr>
<tr>
<td>Police took a statement</td>
<td>4</td>
</tr>
<tr>
<td>Police assisted in court</td>
<td>11</td>
</tr>
<tr>
<td>Police accused victim of lying</td>
<td>1</td>
</tr>
<tr>
<td>Police downgraded charge without notifying victim</td>
<td>1</td>
</tr>
<tr>
<td>Police spoke to victim re plea/charge bargain</td>
<td>1</td>
</tr>
</tbody>
</table>

Q. 8 Are there any areas where the police could have done more to assist you?

<table>
<thead>
<tr>
<th>Response</th>
<th>Percent</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes (please specify)</td>
<td>61.34%</td>
<td>73</td>
</tr>
<tr>
<td>No</td>
<td>38.66%</td>
<td>46</td>
</tr>
</tbody>
</table>

Q8 Specify:

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide more information and updates</td>
<td>22</td>
</tr>
<tr>
<td>Advise on outcomes of decisions made</td>
<td>7</td>
</tr>
<tr>
<td>Advise on outcomes of court cases</td>
<td>9</td>
</tr>
<tr>
<td>Garner more/better evidence for use in court</td>
<td>4</td>
</tr>
<tr>
<td>Provide a media release</td>
<td>1</td>
</tr>
<tr>
<td>Could charge offender</td>
<td>3</td>
</tr>
<tr>
<td>Respond faster</td>
<td>12</td>
</tr>
<tr>
<td>Keep in touch/update</td>
<td>4</td>
</tr>
<tr>
<td>Help with compensation claim</td>
<td>1</td>
</tr>
<tr>
<td>Help deal with media</td>
<td>3</td>
</tr>
<tr>
<td>Being better prepared for court</td>
<td>5</td>
</tr>
<tr>
<td>Provide identity of offender</td>
<td>1</td>
</tr>
<tr>
<td>Improve across all areas</td>
<td>5</td>
</tr>
<tr>
<td>Respect/Support/Sympathy</td>
<td>14</td>
</tr>
<tr>
<td>Safety of Victim</td>
<td>4</td>
</tr>
</tbody>
</table>
3.1.4 Section 4 - Going to Court

The following tables include 78 respondents whose matters proceeded to court. Not all respondents answered every question. Percentages are based on the number who responded to each question.

<table>
<thead>
<tr>
<th>Q.1 Did the matter proceed to court?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, Local Court</td>
<td>33.61%</td>
<td>40</td>
</tr>
<tr>
<td>Yes, District Court</td>
<td>32.77%</td>
<td>39</td>
</tr>
<tr>
<td>Yes, Supreme Court</td>
<td>19.33%</td>
<td>23</td>
</tr>
<tr>
<td>Yes, Children's Court</td>
<td>0.84%</td>
<td>1</td>
</tr>
<tr>
<td>No</td>
<td>11.76%</td>
<td>14</td>
</tr>
<tr>
<td>Don't know</td>
<td>1.68%</td>
<td>2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q2. At what stage in the court process is this matter currently?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>The court case is at the pre-trial or committal stage</td>
<td>3.88%</td>
<td>4</td>
</tr>
<tr>
<td>The court case is before a Magistrate (Local Court)</td>
<td>3.88%</td>
<td>4</td>
</tr>
<tr>
<td>The court case is at trial before a Judge and/or Jury (District and Supreme Court)</td>
<td>1.94%</td>
<td>2</td>
</tr>
<tr>
<td>Don't know</td>
<td>2.91%</td>
<td>3</td>
</tr>
<tr>
<td>The court case is completed</td>
<td>75.73%</td>
<td>78</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>11.65%</td>
<td>12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q3. To what extent were you kept informed regarding the progress of your court case?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Response percent</td>
</tr>
<tr>
<td>1. Always kept informed</td>
</tr>
<tr>
<td>29.49%</td>
</tr>
<tr>
<td>Response total</td>
</tr>
<tr>
<td>1. Always kept informed</td>
</tr>
<tr>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 4 Who mostly kept you informed regarding the progress of your court case?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>37.18%</td>
<td>29</td>
</tr>
<tr>
<td>Lawyer(s) from the Office of the Director of Public Prosecutions (ODPP)</td>
<td>29.49%</td>
<td>23</td>
</tr>
<tr>
<td>Witness Assistance Program Officers</td>
<td>2.56%</td>
<td>2</td>
</tr>
<tr>
<td>Court Officers (e.g. sheriffs, registrars)</td>
<td>1.28%</td>
<td>1</td>
</tr>
<tr>
<td>Victims Services (part of NSW Attorney General and Justice)</td>
<td>6.41%</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>23.08%</td>
<td>18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 5 What other information would you have received?</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>No information</td>
<td>9</td>
</tr>
<tr>
<td>Little information</td>
<td>2</td>
</tr>
<tr>
<td>Counselling and/or support</td>
<td>1</td>
</tr>
<tr>
<td>Details on offender</td>
<td>1</td>
</tr>
<tr>
<td>Relied on personal research</td>
<td>2</td>
</tr>
<tr>
<td>Advice from ODPP</td>
<td>3</td>
</tr>
<tr>
<td>More information more needed</td>
<td>4</td>
</tr>
<tr>
<td>Updates on court appearances</td>
<td>2</td>
</tr>
<tr>
<td>Projected outcomes</td>
<td>2</td>
</tr>
<tr>
<td>Some literature/pamphlets to read</td>
<td>2</td>
</tr>
<tr>
<td>Meetings with the ODPP</td>
<td>1</td>
</tr>
<tr>
<td>Information on ODPP bargaining process</td>
<td>1</td>
</tr>
</tbody>
</table>
Victim’s rights re plea deals 1
MHRT processes 1

<table>
<thead>
<tr>
<th>Q. 6 Did you have any contact with a lawyer from the Office of the Director of Public Prosecutions (ODPP) regarding this court case? (note: The ODPP is separate from the police. Police investigate and commence criminal proceedings but in serious criminal matters the police will refer the matter to the ODPP who then prosecutes the matter, in court, on behalf of the community).</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>60.25%</td>
<td>47</td>
</tr>
<tr>
<td>No</td>
<td>32.05%</td>
<td>25</td>
</tr>
<tr>
<td>The ODPP was not involved in the court case</td>
<td>7.69%</td>
<td>6</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 7 Which of the following matters did you discuss with the ODPP (select all that apply)</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>The nature of the evidence in your case</td>
<td>65.96%</td>
<td>31</td>
</tr>
<tr>
<td>Providing evidence in court</td>
<td>40.43%</td>
<td>19</td>
</tr>
<tr>
<td>What charges should be laid/Alternative charges</td>
<td>51.06%</td>
<td>24</td>
</tr>
<tr>
<td>Plea deals with the accused</td>
<td>23.40%</td>
<td>11</td>
</tr>
<tr>
<td>Information regarding court processes (i.e. what to expect in court)</td>
<td>68.09%</td>
<td>32</td>
</tr>
<tr>
<td>Ongoing information about the progress of your matter (by mail or in person)</td>
<td>61.70%</td>
<td>29</td>
</tr>
<tr>
<td>Who you can contact if you need help</td>
<td>51.06%</td>
<td>24</td>
</tr>
<tr>
<td>Other</td>
<td>17.02%</td>
<td>8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 8 Were you involved in the court case in any of the following ways (select all that apply)</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Prosecution</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Provided a Victim Impact Statement</td>
<td>38.46%</td>
<td>30</td>
</tr>
<tr>
<td>Attended court as an observer (sat in public gallery)</td>
<td>47.44%</td>
<td>37</td>
</tr>
<tr>
<td>Attended court to give evidence but was not called</td>
<td>17.95%</td>
<td>14</td>
</tr>
<tr>
<td>Gave evidence in court</td>
<td>25.64%</td>
<td>20</td>
</tr>
<tr>
<td>Gave evidence via CCTV</td>
<td>3.85%</td>
<td>3</td>
</tr>
<tr>
<td>Gave evidence but did not attend court</td>
<td>7.69%</td>
<td>6</td>
</tr>
<tr>
<td>Participated in forum sentencing</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Participated in youth justice conferencing</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Participated in circle sentencing</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>12.82%</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 9 Did you expect to have greater involvement in the court case compared to what you experienced?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes (please specify)</td>
<td>43.59%</td>
<td>34</td>
</tr>
<tr>
<td>No</td>
<td>56.41%</td>
<td>44</td>
</tr>
</tbody>
</table>

| Q. 10 Did you receive support from any of the following people or organisations while the court case was being heard? Of the agencies/people who did support you, how helpful were they? | Response percent |
|---|---|---|---|---|---|
| Witness Assistance Officers (from the ODPP) | 30.16% | 12.70% | 12.70% | 4.76% | 0.00% | 39.68% |
| ODPP Lawyers | 27.27% | 18.18% | 7.58% | 4.55% | 4.55% | 37.88% |
| The Police | 34.72% | 22.22% | 12.50% | 9.72% | 6.94% | 13.89% |
| Legal Aid | 2.08% | 2.08% | 18.75% | 2.08% | 4.17% | 70.83% |
| Victims Services NSW | 21.31% | 16.39% | 19.67% | 6.56% | 0.00% | 36.07% |
Q. 11 What are some of the ways in which you were supported during the court case?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Counselling</td>
<td>14</td>
</tr>
<tr>
<td>Safe room for DV victims</td>
<td>1</td>
</tr>
<tr>
<td>Support staff in court</td>
<td>12</td>
</tr>
<tr>
<td>Police</td>
<td>4</td>
</tr>
<tr>
<td>ODPP lawyers</td>
<td>3</td>
</tr>
<tr>
<td>Victim Assistance Officer</td>
<td>3</td>
</tr>
<tr>
<td>Information on court process</td>
<td>6</td>
</tr>
<tr>
<td>No support</td>
<td>8</td>
</tr>
<tr>
<td>Legal advice</td>
<td>3</td>
</tr>
<tr>
<td>Support from rights group</td>
<td>3</td>
</tr>
<tr>
<td>Family support</td>
<td>4</td>
</tr>
<tr>
<td>Support person/give assistance</td>
<td>1</td>
</tr>
<tr>
<td>DV support</td>
<td>3</td>
</tr>
</tbody>
</table>

Q. 12 Are there any areas where you would have liked to receive greater assistance during the court case? (If yes, please provide details)

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competent people to deal with</td>
<td>8</td>
</tr>
<tr>
<td>Counselling</td>
<td>3</td>
</tr>
<tr>
<td>Contact with the police</td>
<td>3</td>
</tr>
<tr>
<td>Kept updated</td>
<td>2</td>
</tr>
<tr>
<td>Not sure</td>
<td>2</td>
</tr>
<tr>
<td>Information on plea bargaining</td>
<td>1</td>
</tr>
<tr>
<td>ODPP could have pursued case</td>
<td>1</td>
</tr>
<tr>
<td>Better notice of key dates</td>
<td>2</td>
</tr>
<tr>
<td>Financial assistance</td>
<td>1</td>
</tr>
<tr>
<td>Access to court transcripts</td>
<td>1</td>
</tr>
<tr>
<td>Input into ODPP decisions</td>
<td>2</td>
</tr>
<tr>
<td>Explanation of effects of crime</td>
<td>4</td>
</tr>
<tr>
<td>Child care</td>
<td>1</td>
</tr>
<tr>
<td>More information generally</td>
<td>13</td>
</tr>
<tr>
<td>Advised of outcomes eg. sentencing</td>
<td>3</td>
</tr>
<tr>
<td>Abide by Charter of Victims’ Rights</td>
<td>1</td>
</tr>
<tr>
<td>More victim’s assistance</td>
<td>1</td>
</tr>
<tr>
<td>No</td>
<td>20</td>
</tr>
</tbody>
</table>
3.1.5 Section 5 - After Court (for completed cases)

The following tables include 78 respondents where police investigated the matter or where charges were laid. Not all respondents answered every question. Percentages are based on the number who responded to each question.

Q. 1 Overall, how satisfied were you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc)?

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>19.23%</td>
<td>16.67%</td>
<td>17.95%</td>
<td>11.54%</td>
<td>34.62%</td>
</tr>
</tbody>
</table>

Q. 2 Overall, how satisfied were you with the sentence handed down in court?

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7.69%</td>
<td>12.82%</td>
<td>14.10%</td>
<td>16.67%</td>
<td>44.87%</td>
<td>1.28%</td>
<td>2.56%</td>
</tr>
</tbody>
</table>

Q. 3 Is your name on a victim register so that you can be kept informed about the custodial status of the offender charged in relation to the crime?

<table>
<thead>
<tr>
<th>Yes, Parole Board register</th>
<th>19.23%</th>
<th>15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, Mental Health Review register</td>
<td>25.64%</td>
<td>20</td>
</tr>
<tr>
<td>Yes, Juvenile Justice register</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>No, the offender was not gaol ed</td>
<td>19.23%</td>
<td>15</td>
</tr>
<tr>
<td>No</td>
<td>17.95%</td>
<td>14</td>
</tr>
<tr>
<td>Don't know</td>
<td>17.95%</td>
<td>14</td>
</tr>
</tbody>
</table>

Q. 4 Have you been kept adequately informed of the custodial status of the offender by the agencies that maintain the register?

<table>
<thead>
<tr>
<th>Yes (please provide details)</th>
<th>91.43%</th>
<th>32</th>
</tr>
</thead>
<tbody>
<tr>
<td>No (please provide details)</td>
<td>8.57%</td>
<td>3</td>
</tr>
<tr>
<td>Comments</td>
<td></td>
<td>18</td>
</tr>
</tbody>
</table>
3.1.6 Section 6 - Knowledge and Expectation of the Court Process (for pending cases)

The following tables include 25 respondents whose court matters were pending at the time of the questionnaire. Not all respondents answered every question. Percentages are based on the number who responded to each question.

Q. 1 If the offender pleads guilty or is convicted, would you like to give a victim impact statement during sentencing?

<table>
<thead>
<tr>
<th>Response</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>80.00%</td>
<td>20</td>
</tr>
<tr>
<td>No</td>
<td>8.00%</td>
<td>2</td>
</tr>
<tr>
<td>Don't know what a victim impact statement is</td>
<td>12.00%</td>
<td>3</td>
</tr>
</tbody>
</table>

Q.2 What do you think you can say in an impact statement? (describe the general types of statements you think you can make – you do not need to refer to your own personal experiences)

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of trauma suffered</td>
<td>5</td>
</tr>
<tr>
<td>Physical damage/injury</td>
<td>6</td>
</tr>
<tr>
<td>Psychological damage/injury</td>
<td>2</td>
</tr>
<tr>
<td>How offender hurt the victim</td>
<td>3</td>
</tr>
<tr>
<td>Effects of victim generally</td>
<td>4</td>
</tr>
<tr>
<td>Not sure</td>
<td>2</td>
</tr>
<tr>
<td>Effects on victim's safety</td>
<td>2</td>
</tr>
<tr>
<td>Effects on victim's business</td>
<td>1</td>
</tr>
<tr>
<td>How crime has effected whole life of victim</td>
<td>3</td>
</tr>
<tr>
<td>Not safe in own home</td>
<td>1</td>
</tr>
<tr>
<td>Property</td>
<td>1</td>
</tr>
</tbody>
</table>

Q. 3 What do you expect to gain from writing an impact statement?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nothing</td>
<td>2</td>
</tr>
<tr>
<td>Not sure</td>
<td>1</td>
</tr>
<tr>
<td>Acknowledgement of feelings</td>
<td>3</td>
</tr>
<tr>
<td>Help judge with sentencing</td>
<td>1</td>
</tr>
<tr>
<td>Show offender how I feel</td>
<td>2</td>
</tr>
<tr>
<td>Let go of anxieties</td>
<td>1</td>
</tr>
<tr>
<td>Address offender</td>
<td>2</td>
</tr>
<tr>
<td>Resolution</td>
<td>1</td>
</tr>
<tr>
<td>Provide voice in offender focused court</td>
<td>1</td>
</tr>
<tr>
<td>Have my say</td>
<td>4</td>
</tr>
</tbody>
</table>

Q. 4 Would you like to read the statement in court? Please specify why or why not

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, to make the offender squirm</td>
<td>1</td>
</tr>
<tr>
<td>Yes, to show offender effect upon victim</td>
<td>3</td>
</tr>
<tr>
<td>Yes, to have say</td>
<td>3</td>
</tr>
<tr>
<td>Yes, to inform court of injury</td>
<td>4</td>
</tr>
<tr>
<td>Yes, to feel empowered</td>
<td>1</td>
</tr>
<tr>
<td>Yes, to inform court of family issues</td>
<td>1</td>
</tr>
<tr>
<td>No, v will be too emotional</td>
<td>3</td>
</tr>
<tr>
<td>No, can’t face offender</td>
<td>8</td>
</tr>
<tr>
<td>No, would be terrifying</td>
<td>2</td>
</tr>
<tr>
<td>Not sure</td>
<td>1</td>
</tr>
</tbody>
</table>

Q. 5 Have you heard of any of the following court processes in which victims can participate in criminal proceedings?

<table>
<thead>
<tr>
<th>Response percent</th>
<th>1. Yes</th>
<th>2. No</th>
<th>3. Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forum sentencing</td>
<td>16.00%</td>
<td>72.00%</td>
<td>12.00%</td>
</tr>
<tr>
<td></td>
<td>1. Yes</td>
<td>2. No</td>
<td>3. Unsure</td>
</tr>
<tr>
<td>----------------</td>
<td>--------</td>
<td>-------</td>
<td>-----------</td>
</tr>
<tr>
<td>Circle sentencing</td>
<td>12.00%</td>
<td>72.00%</td>
<td>16.00%</td>
</tr>
<tr>
<td>Youth Justice Sentencing</td>
<td>16.00%</td>
<td>68.00%</td>
<td>16.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Response total</th>
<th>1. Yes</th>
<th>2. No</th>
<th>3. Unsure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forum sentencing</td>
<td>5</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>Circle sentencing</td>
<td>3</td>
<td>18</td>
<td>4</td>
</tr>
<tr>
<td>Youth Justice Sentencing</td>
<td>4</td>
<td>17</td>
<td>4</td>
</tr>
</tbody>
</table>

**Q.6 Would you like to participate in any of these court processes if they are applicable to your court matter?**

<table>
<thead>
<tr>
<th>Response percent</th>
<th>1. Yes</th>
<th>2. No</th>
<th>3. I'm unsure of what that is</th>
<th>4. Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forum Sentencing</td>
<td>20.00%</td>
<td>24.00%</td>
<td>44.00%</td>
<td>12.00%</td>
</tr>
<tr>
<td>Circle Sentencing</td>
<td>16.00%</td>
<td>20.00%</td>
<td>52.00%</td>
<td>12.00%</td>
</tr>
<tr>
<td>Youth Justice Conferencing</td>
<td>12.50%</td>
<td>25.00%</td>
<td>45.83%</td>
<td>16.67%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Response total</th>
<th>1. Yes</th>
<th>2. No</th>
<th>3. I'm unsure of what that is</th>
<th>4. Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forum Sentencing</td>
<td>5</td>
<td>6</td>
<td>11</td>
<td>3</td>
</tr>
<tr>
<td>Circle Sentencing</td>
<td>4</td>
<td>5</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>Youth Justice Conferencing</td>
<td>3</td>
<td>6</td>
<td>11</td>
<td>4</td>
</tr>
</tbody>
</table>

**Q. 7 Are there any other ways in which you hope to participate in the current court case (include details on what role you expect to play)?**

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>6</td>
</tr>
<tr>
<td>Just want offender locked up</td>
<td>1</td>
</tr>
<tr>
<td>Don’t know</td>
<td>2</td>
</tr>
<tr>
<td>Have the ODPP explain themselves</td>
<td>2</td>
</tr>
<tr>
<td>Advice on plea/charge bargaining</td>
<td>2</td>
</tr>
<tr>
<td>More information on every step</td>
<td>3</td>
</tr>
<tr>
<td>To be kept informed</td>
<td>4</td>
</tr>
<tr>
<td>Not much more I can do</td>
<td>1</td>
</tr>
<tr>
<td>See a better court system</td>
<td>2</td>
</tr>
<tr>
<td>Be phoned after every court date</td>
<td>1</td>
</tr>
<tr>
<td>To be listened to</td>
<td>3</td>
</tr>
<tr>
<td>Details of possible consequence</td>
<td>1</td>
</tr>
<tr>
<td>No barriers</td>
<td>7</td>
</tr>
</tbody>
</table>

**Q. 8 Are there any barriers which may prevent or inhibit your participation in the current court case? If yes, please specify.**

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCTV room and cameras intimidating</td>
<td>1</td>
</tr>
<tr>
<td>Not listened to</td>
<td>3</td>
</tr>
<tr>
<td>System is corrupt/incompetent</td>
<td>1</td>
</tr>
<tr>
<td>Worried about cross-examination process</td>
<td>1</td>
</tr>
<tr>
<td>Scared of the defence</td>
<td>1</td>
</tr>
<tr>
<td>Being witness stops me from seeing whole case</td>
<td>1</td>
</tr>
<tr>
<td>Frightened of offender and government departments</td>
<td>3</td>
</tr>
<tr>
<td>Victims classed as witnesses</td>
<td>1</td>
</tr>
<tr>
<td>Health consequences</td>
<td>1</td>
</tr>
<tr>
<td>Fear of process</td>
<td>2</td>
</tr>
<tr>
<td>Seeing offender again</td>
<td>2</td>
</tr>
<tr>
<td>Disruption to life of victim</td>
<td>1</td>
</tr>
<tr>
<td>No barriers</td>
<td>7</td>
</tr>
</tbody>
</table>
Q. 9 So far, how satisfied are you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc.)?

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>12.00%</td>
<td>16.00%</td>
<td>24.00%</td>
<td>4.00%</td>
<td>44.00%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>11</td>
</tr>
</tbody>
</table>
The following tables include 11 respondents who did not report the crime to the police. Percentages are based on the number who responded to each question.

<table>
<thead>
<tr>
<th>Q. 1 What is the main reason you did not report the crime to police?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of a trivial nature or unimportant</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Police could not do anything</td>
<td>9.09%</td>
<td>1</td>
</tr>
<tr>
<td>Police would not do anything</td>
<td>9.09%</td>
<td>1</td>
</tr>
<tr>
<td>Private matter</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Afraid of reprisal/revenge</td>
<td>36.36%</td>
<td>4</td>
</tr>
<tr>
<td>Did not want offender punished</td>
<td>9.09%</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>36.36%</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 2 How likely is it that you will report the crime to police in the future?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Very Unlikely</td>
<td>36.36%</td>
<td>4</td>
</tr>
<tr>
<td>2. Unlikely</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>3. Neutral</td>
<td>27.27%</td>
<td>3</td>
</tr>
<tr>
<td>4. Likely</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>5. Very likely</td>
<td>36.36%</td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 3 Did you talk with any of the people listed below about this crime (select all that apply)</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>GP or other medical professional</td>
<td>63.64%</td>
<td>7</td>
</tr>
<tr>
<td>Counsellor or psychologist</td>
<td>54.55%</td>
<td>6</td>
</tr>
<tr>
<td>Private lawyer</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Family or friends</td>
<td>54.55%</td>
<td>6</td>
</tr>
<tr>
<td>Work colleagues</td>
<td>18.18%</td>
<td>2</td>
</tr>
<tr>
<td>Religious pastors</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Legal Aid</td>
<td>9.09%</td>
<td>1</td>
</tr>
<tr>
<td>ODPP</td>
<td>9.09%</td>
<td>1</td>
</tr>
<tr>
<td>Please specify</td>
<td>9.09%</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q. 4 Have you contacted or do you intend to contact any victim support services (i.e. government and non-government organisations) to assist you in relation to this crime?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes (please specify agency)</td>
<td>63.64%</td>
<td>7</td>
</tr>
<tr>
<td>No (please specify why)</td>
<td>36.36%</td>
<td>4</td>
</tr>
<tr>
<td>Please specify</td>
<td></td>
<td>10</td>
</tr>
</tbody>
</table>

Q. 4 Specify Agency?
Q. 4 Specify Why?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Don’t know</td>
<td>2</td>
</tr>
<tr>
<td>DV support</td>
<td>1</td>
</tr>
<tr>
<td>Employee assistance</td>
<td>1</td>
</tr>
<tr>
<td>Not sure</td>
<td>1</td>
</tr>
<tr>
<td>HVSG</td>
<td>2</td>
</tr>
<tr>
<td>Counselling</td>
<td>1</td>
</tr>
<tr>
<td>Don’t want to</td>
<td>2</td>
</tr>
</tbody>
</table>
Q. 5 What are some of the reasons why you chose to contact a victim support service? If you chose not to contact a victim support service, why not?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>No point</td>
<td>2</td>
</tr>
<tr>
<td>Didn’t know where to go for help</td>
<td>1</td>
</tr>
<tr>
<td>Police referred me</td>
<td>1</td>
</tr>
<tr>
<td>PTSD</td>
<td>1</td>
</tr>
<tr>
<td>To get help</td>
<td>2</td>
</tr>
<tr>
<td>HVSG contacted me</td>
<td>1</td>
</tr>
<tr>
<td>To find family</td>
<td>1</td>
</tr>
<tr>
<td>Don’t know VS existed</td>
<td>1</td>
</tr>
<tr>
<td>Couldn’t afford counselling</td>
<td>1</td>
</tr>
</tbody>
</table>
3.1.8 Section 8 - General Open Ended Comments

All 142 respondents completed this section. Respondents may have nominated more than one answer.

Q. 1 Can you think of any changes that could be made to the NSW criminal justice system in order to improve victim participation in court processes?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement of Carter of Victims’ Rights</td>
<td>4</td>
</tr>
<tr>
<td>Better understanding of courts</td>
<td>7</td>
</tr>
<tr>
<td>No</td>
<td>28</td>
</tr>
<tr>
<td>Not sure</td>
<td>1</td>
</tr>
<tr>
<td>Don’t know</td>
<td>8</td>
</tr>
<tr>
<td>Compensation process took a long time</td>
<td>1</td>
</tr>
<tr>
<td>Process to relax witnesses</td>
<td>1</td>
</tr>
<tr>
<td>Harsher penalties</td>
<td>3</td>
</tr>
<tr>
<td>Accountability</td>
<td>6</td>
</tr>
<tr>
<td>Honesty</td>
<td>3</td>
</tr>
<tr>
<td>Evidence Act needs revising</td>
<td>1</td>
</tr>
<tr>
<td>Offender had more rights than victim</td>
<td>4</td>
</tr>
<tr>
<td>Less time wasted</td>
<td>3</td>
</tr>
<tr>
<td>Truth in sentencing to be retrospective</td>
<td>1</td>
</tr>
<tr>
<td>Trust, assurance and safety</td>
<td>6</td>
</tr>
<tr>
<td>Educate police on victimisation and re-victimisation</td>
<td>2</td>
</tr>
<tr>
<td>AVO but no charges</td>
<td>2</td>
</tr>
<tr>
<td>Prosecutors help throughout</td>
<td>4</td>
</tr>
<tr>
<td>Tougher laws on bail</td>
<td>1</td>
</tr>
<tr>
<td>Both parties have counselling</td>
<td>1</td>
</tr>
<tr>
<td>Mental health training</td>
<td>2</td>
</tr>
<tr>
<td>Separate waiting area for victim and offender</td>
<td>1</td>
</tr>
<tr>
<td>Victim to have voice in court</td>
<td>8</td>
</tr>
<tr>
<td>Transparency between police and prosecutors</td>
<td>4</td>
</tr>
<tr>
<td>Information for victims</td>
<td>12</td>
</tr>
<tr>
<td>Have a police/victim liaison in court</td>
<td>3</td>
</tr>
<tr>
<td>To be treated with compassion</td>
<td>4</td>
</tr>
<tr>
<td>Support workers for victim</td>
<td>2</td>
</tr>
<tr>
<td>Let the victim tell the judge what happened in own words</td>
<td>2</td>
</tr>
<tr>
<td>Victims’ families access to information and kept updated</td>
<td>2</td>
</tr>
<tr>
<td>Mandatory sentencing</td>
<td>2</td>
</tr>
<tr>
<td>Financial assistance</td>
<td>1</td>
</tr>
<tr>
<td>No secret plea deals</td>
<td>3</td>
</tr>
<tr>
<td>Video link for victims</td>
<td>2</td>
</tr>
<tr>
<td>Access to transcripts</td>
<td>1</td>
</tr>
<tr>
<td>Change wording of mental health plea</td>
<td>1</td>
</tr>
<tr>
<td>Don’t change victims words</td>
<td>1</td>
</tr>
<tr>
<td>Inquisitorial system</td>
<td>1</td>
</tr>
<tr>
<td>Consultation with victim</td>
<td>3</td>
</tr>
<tr>
<td>Limit defence questions</td>
<td>2</td>
</tr>
<tr>
<td>VIS confidential from offender</td>
<td>2</td>
</tr>
<tr>
<td>Time from work</td>
<td>2</td>
</tr>
<tr>
<td>Financial loss</td>
<td>1</td>
</tr>
<tr>
<td>Officer to explain system to victim</td>
<td>2</td>
</tr>
<tr>
<td>Legal representation for victim</td>
<td>2</td>
</tr>
<tr>
<td>Publically funded representative for victim</td>
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</tr>
<tr>
<td>Police could return calls</td>
<td>3</td>
</tr>
<tr>
<td>Longer sentences</td>
<td>8</td>
</tr>
<tr>
<td>Informed from start to finish</td>
<td>3</td>
</tr>
<tr>
<td>More voice, offender has to many rights</td>
<td>3</td>
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</tbody>
</table>

Q. 2 Are there any other comments you would like to make in relation to victim participation in the criminal justice system in NSW?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
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<td>Don’t trust police./ODPP/courts</td>
<td>2</td>
</tr>
<tr>
<td>More communication</td>
<td>3</td>
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<tr>
<td>Victims are made to feel like criminals</td>
<td>4</td>
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<tr>
<td>Issue</td>
<td>Count</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------</td>
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<td>Expedite process</td>
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<tr>
<td>Equality</td>
<td>2</td>
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<tr>
<td>Feelings of retribution increase due to poor system</td>
<td>2</td>
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<tr>
<td>Judicial process favours accused</td>
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</tr>
<tr>
<td>Child victims could be more involved</td>
<td>1</td>
</tr>
<tr>
<td>Let victims make own decisions</td>
<td>2</td>
</tr>
<tr>
<td>Help with reporting/protection</td>
<td>2</td>
</tr>
<tr>
<td>DV liaison officer was good</td>
<td>2</td>
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<tr>
<td>Treat DV seriously</td>
<td>3</td>
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<tr>
<td>Unlimited counselling for victims</td>
<td>2</td>
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<tr>
<td>Poor treatment of victims</td>
<td>4</td>
</tr>
<tr>
<td>No right to silence for offender</td>
<td>1</td>
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<tr>
<td>MHRT review of custody is worrying</td>
<td>1</td>
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<tr>
<td>Victim’s family to be treated better</td>
<td>3</td>
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<tr>
<td>Inform victim re change of offender’s custody status</td>
<td>2</td>
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<tr>
<td>Police/ODPP supportive</td>
<td>4</td>
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<tr>
<td>Victims is owed more of a say</td>
<td>6</td>
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<tr>
<td>Victim is owed publically funded legal representative</td>
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<td>Court should care about victims</td>
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<tr>
<td>Stricter sentences</td>
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<tr>
<td>Discrimination against Aborigines a problem</td>
<td>1</td>
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<tr>
<td>Victim not mentally strong enough to participate</td>
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3.2 Introduction – Comparison by Victim Group

While the survey focused on victims that self-identified as experiencing an offence that gave rise to a completed court process and did not primarily seek to identify particular groups or clusters of victims, useful comparisons may be made by subgroup or process that better highlights the court process related experiences and expectations of those groups.

Comparisons by offence type, gender, level of court, and self-identification as an Aboriginal and/or Torres Strait Islander further demonstrate how victims may experience particular justice outcomes by group. Selected points of comparison include the extent to which victims were kept informed by the police during the investigation of their complaint, satisfaction with police involvement in their court matter/complaint, to what extent victims felt they were kept informed of the progress of their court matter, who kept victims informed, actual involvement of victims in court processes, support for victims during court processes, overall satisfaction with the justice system and sentence, and for those victims yet to finalise their court matter, overall satisfaction with the progress of their matter to date.

3.2.1 Data Compared by Victim Group

This section compares victim groups against questions focused on satisfaction with court processes.

Different groups were identified in the survey. Victim groups are identified by offence type, gender, court type, geographic location and identification as an Aboriginal and/or Torres Strait Islander.

Number of responses per section will vary depending on whether the respondent skipped out of the section. Only those respondents whose court matters were completed were asked questions in sections 4 and 5 of the questionnaire.

Total responses per question per victim group are indicated in the left column.

3.2.1.1 Comparison by Victim Group - Section 3 Question 3 – Kept Informed by Police

<table>
<thead>
<tr>
<th>To what extent were you kept informed regarding the police investigation of this crime?</th>
<th>1. Always kept informed</th>
<th>2.</th>
<th>3. Neutral</th>
<th>4.</th>
<th>5. Not kept informed at all</th>
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<td>13.45%</td>
<td>20.17%</td>
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<tr>
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<td>44.83%</td>
<td>10.34%</td>
<td>17.24%</td>
<td>13.79%</td>
<td>13.79%</td>
</tr>
<tr>
<td>Assault n = 32</td>
<td>28.13%</td>
<td>15.63%</td>
<td>15.63%</td>
<td>9.38%</td>
<td>31.25%</td>
</tr>
<tr>
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<td>12.12%</td>
<td>9.09%</td>
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<tr>
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<td>40.00%</td>
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<td>Murder/Manslaughter</td>
<td>Assault</td>
<td>Sexual Assault/Act of Indecency</td>
<td>Robbery</td>
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<td>-----</td>
<td>---------------------</td>
<td>---------</td>
<td>--------------------------------</td>
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<td>0.00%</td>
<td>0.00%</td>
<td>100.00%</td>
<td>0.00%</td>
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<tr>
<td>Property damage n = 1</td>
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<td>100.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
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<tr>
<td>Females n = 98</td>
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<td>19.39%</td>
<td>14.29%</td>
<td>14.29%</td>
<td>18.37%</td>
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<tr>
<td>Males n = 21</td>
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<td>14.29%</td>
<td>14.29%</td>
<td>9.52%</td>
<td>28.57%</td>
</tr>
<tr>
<td>Children's Court n = 1</td>
<td>100.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Local Court n = 40</td>
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<td>20.00%</td>
<td>12.50%</td>
<td>15.00%</td>
<td>40.00%</td>
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<tr>
<td>District Court n = 39</td>
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<td>17.95%</td>
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<td>7.69%</td>
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<td>Supreme Court n = 23</td>
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<td>8.70%</td>
<td>8.70%</td>
<td>4.35%</td>
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<tr>
<td>Sydney/Newcastle/Wollongong n = 66</td>
<td>31.82%</td>
<td>18.18%</td>
<td>16.67%</td>
<td>13.64%</td>
<td>19.70%</td>
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<tr>
<td>Regional n = 31</td>
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<td>6.45%</td>
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<td>18.18%</td>
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<td>18.02%</td>
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**To what extent were you kept informed regarding the police investigation of this crime?**

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</thead>
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<td>All Respondents n = 119</td>
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<td>17</td>
<td>16</td>
<td>24</td>
</tr>
<tr>
<td>Murder/Manslaughter n = 29</td>
<td>13</td>
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<td>4</td>
<td>4</td>
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<tr>
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<td>5</td>
<td>3</td>
<td>10</td>
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<td>9</td>
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<td>4</td>
<td>3</td>
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<tr>
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<td>0</td>
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<td>0</td>
</tr>
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<td>0</td>
<td>0</td>
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<td>14</td>
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<td>0</td>
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<td>16</td>
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<tr>
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<td>6</td>
<td>7</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Supreme Court n = 23</td>
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</table>
### 3.2.1.2 Comparison by Victim Group - Section 3 Question 6 – Overall Police Involvement

Overall, how satisfied were you with the police involvement in this matter?

<table>
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</thead>
<tbody>
<tr>
<td>All Respondents n = 119</td>
<td>30.25%</td>
<td>16.81%</td>
<td>15.13%</td>
<td>14.29%</td>
<td>23.53%</td>
</tr>
<tr>
<td>Murder/Manslaughter n = 29</td>
<td>44.83%</td>
<td>10.34%</td>
<td>17.24%</td>
<td>13.79%</td>
<td>13.79%</td>
</tr>
<tr>
<td>Assault n = 32</td>
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<td>18.75%</td>
<td>28.13%</td>
<td>15.63%</td>
<td>25.00%</td>
</tr>
<tr>
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<td>48.48%</td>
<td>15.15%</td>
<td>9.09%</td>
<td>12.12%</td>
<td>15.15%</td>
</tr>
<tr>
<td>Robbery n = 5</td>
<td>20.00%</td>
<td>40.00%</td>
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<td>20.00%</td>
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<td>Fraud n = 1</td>
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<td>0.00%</td>
<td>100.00%</td>
</tr>
<tr>
<td>Property damage n = 1</td>
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<td>100.00%</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
<tr>
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<td>9.52%</td>
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<td>33.33%</td>
</tr>
<tr>
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<td>0.00%</td>
<td>0.00%</td>
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<tr>
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<td>32.50%</td>
<td>17.50%</td>
<td>32.50%</td>
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<tr>
<td>District Court n = 39</td>
<td>46.15%</td>
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<td>7.69%</td>
<td>7.69%</td>
<td>17.95%</td>
</tr>
<tr>
<td>Supreme Court n = 23</td>
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<td>0.00%</td>
<td>8.70%</td>
<td>17.39%</td>
</tr>
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<td>30.30%</td>
<td>21.21%</td>
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<td>21.21%</td>
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<td>Regional n = 31</td>
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<td>16.13%</td>
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<td>22.73%</td>
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<td>22.73%</td>
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<td>12.50%</td>
<td>37.50%</td>
<td>12.50%</td>
<td>25.00%</td>
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<td>17.12%</td>
<td>13.51%</td>
<td>14.41%</td>
<td>23.42%</td>
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</table>

Overall, how satisfied were you with the police involvement in this matter?

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<td>18</td>
<td>17</td>
<td>28</td>
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<td>3</td>
<td>1</td>
<td>5</td>
<td>6</td>
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<tr>
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<td>4</td>
<td>6</td>
<td>9</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Sexual Assault/Act of Indecency n = 33</td>
<td>16</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>5</td>
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<tr>
<td>Robbery n = 5</td>
<td>1</td>
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<td>1</td>
<td>0</td>
<td>1</td>
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<tr>
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<td>1</td>
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<tr>
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<td>0</td>
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<td>18</td>
<td>16</td>
<td>13</td>
<td>21</td>
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### 3.2.1.3 Comparison by Victim Group - Section 4 Question 3 – Kept Informed During Matter

To what extent were you kept informed regarding the progress of your court case?

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<td>20.51%</td>
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<td>16.67%</td>
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<td>4.17%</td>
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<td>8.70%</td>
<td>30.43%</td>
<td>17.39%</td>
<td>21.74%</td>
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<td>36.84%</td>
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<td>10.53%</td>
</tr>
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<td>0.00%</td>
<td>0.00%</td>
<td>100.00%</td>
</tr>
<tr>
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<td>100.00%</td>
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<td>11.48%</td>
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<td>17.65%</td>
<td>29.41%</td>
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<td>0.00%</td>
<td>0.00%</td>
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<td>24.00%</td>
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<td>District Court n = 32</td>
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<td>12.50%</td>
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<td>Supreme Court n = 21</td>
<td>47.62%</td>
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<td>27.27%</td>
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<td>11.36%</td>
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<td>Regional n = 20</td>
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<td>20.00%</td>
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<tr>
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<td>7.14%</td>
<td>35.71%</td>
<td>0.00%</td>
<td>7.14%</td>
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<td>16.67%</td>
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<td>2.</td>
<td>3. Neutral</td>
<td>4.</td>
<td>5. Not kept informed at all</td>
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<td>7</td>
<td>4</td>
<td>5</td>
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<td>5</td>
<td>7</td>
<td>4</td>
<td>1</td>
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<td>2</td>
<td>1</td>
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<td>4</td>
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### 3.2.1.4 Comparison by Victim Group – Section 4 Question 4 – Who Kept You Informed Regarding Progress of Matter

Who mostly kept you informed regarding the progress of your court case?

|                      | All Respondents n = 78 | Murder/Manslaughter n = 24 | Assault n = 23 | Sexual Assault/Act of Indecency n = 19 | Robbery n = 2 | Fraud n = 1 | Property damage n = 1 | Females n = 61 | Males n = 17 | Children's Court n = 0 | Local Court n = 25 | District Court n = 32 | Supreme Court n = 21 | Sydney/Newcastle/Wollongong n = 44 | Regional n = 20 | Aboriginal and/or Torres Strait Islander n = 6 | Non-Aboriginal and/or Torres Strait Islander n = 72 |
|----------------------|------------------------|---------------------------|----------------|----------------------------------------|--------------|-------------|------------------------|----------------|-------------|---------------------|---------------------|----------------------|---------------------|------------------------|----------------|----------------------|
| **Police**           | 37.18%                 | 37.50%                    | 34.78%         | 42.11%                                 | 50.00%       | 0.00%       | 100.00%                 | 36.07%         | 41.18%      | 0.00%                | 48.00%              | 25.00%               | 42.86%              | 31.82%                 | 48.00%         | 16.67%                |
| **Lawyer(s) from the Office of the Director of Public Prosecutions (ODPP)** | 29.49%                 | 33.33%                    | 26.09%         | 31.59%                                 | 50.00%       | 0.00%       | 0.00%                   | 31.15%         | 23.53%      | 0.00%                | 46.88%              | 38.10%               | 29.55%              | 31.82%                 | 0.00%          | 5.00%                 |
| **Witness Assistance Program Officers**                              | 2.56%                   | 4.17%                     | 4.35%          | 0.00%                                  | 0.00%        | 0.00%       | 0.00%                   | 0.00%          | 0.00%       | 0.00%                | 0.00%               | 0.00%                | 0.00%               | 0.00%                   | 0.00%          | 0.00%                 |
| **Court Officers (e.g. sheriffs, registrars)**                        | 1.28%                   | 0.00%                     | 4.35%          | 0.00%                                  | 0.00%        | 0.00%       | 0.00%                   | 0.00%          | 0.00%       | 0.00%                | 0.00%               | 0.00%                | 0.00%               | 0.00%                   | 0.00%          | 0.00%                 |
| **Victims Services (part of NSW Attorney General and Justice)**       | 6.41%                   | 12.50%                    | 4.35%          | 0.00%                                  | 0.00%        | 0.00%       | 0.00%                   | 6.56%          | 5.88%       | 0.00%                | 0.00%               | 0.00%                | 0.00%               | 0.00%                   | 0.00%          | 9.25%                 |
| **Other**                                                           | 23.09%                  | 12.50%                    | 26.09%         | 26.32%                                 | 0.00%        | 0.00%       | 0.00%                   | 21.31%         | 23.41%      | 0.00%                | 25.00%              | 25.00%               | 25.00%              | 35.00%                 | 16.67%         | 33.33%                |


Who mostly kept you informed regarding the progress of your court case?

| Source of information                  | All Respondents n = 78 | Murder/Manslaughter n = 24 | Assault n = 23 | Sexual Assault/Act of Indecency n = 19 | Robbery n = 2 | Fraud n = 1 | Property damage n = 1 | Females n = 61 | Males n = 17 | Children's Court n = 0 | Local Court n = 25 | District Court n = 32 | Supreme Court n = 21 | Sydney/Newcastle/Wollongong n = 44 | Regional n = 20 | Aboriginal and/or Torres Strait Islander n = 6 | Non-Aboriginal and/or Torres Strait Islander n = 72 |
|----------------------------------------|-------------------------|----------------------------|----------------|----------------------------------------|--------------|-------------|------------------------|----------------|----------------|----------------------------|-----------------|----------------|------------------------|------------------------|----------------|------------------------|------------------------|----------------|------------------------|
| Police                                 | 29                      | 9                         | 8              | 8                                      | 1            | 0           | 1                      | 0              | 0              | 0                          | 14              | 8                        | 9                      | 12                        | 15                      | 10                        | 10                      | 7                          | 10                        |
| Lawyer(s) from the Office of the Director of Public Prosecutions (ODPP) | 23                      | 8                         | 6              | 6                                      | 0            | 0           | 0                      | 0              | 0              | 0                          | 8               | 9                        | 13                     | 7                         | 7                        | 8                         | 8                        | 5                          | 5                         | 5                        | 22                      | 22                      |
| Witness Assistance Program Officers    | 2                        | 1                         | 0              | 0                                      | 0            | 0           | 0                      | 0              | 0              | 0                          | 0               | 0                        | 0                      | 0                         | 0                        | 0                         | 0                        | 0                          | 0                        | 0                         | 0                        | 0                       | 0                       | 1                       | 1                       | 1                       | 1                       |
| Court Officers (e.g. sheriffs, registrars) | 1                        | 0                         | 0              | 0                                      | 0            | 0           | 0                      | 0              | 0              | 0                          | 0               | 0                        | 0                      | 0                         | 0                        | 0                         | 0                        | 0                          | 0                        | 0                         | 0                        | 0                       | 0                       | 0                       | 0                       | 0                       |
| Victims Services (part of NSW Attorney General and Justice) | 5                        | 3                         | 0              | 0                                      | 0            | 0           | 0                      | 0              | 0              | 0                          | 0               | 0                        | 0                      | 0                         | 0                        | 0                         | 0                        | 0                          | 0                        | 0                         | 0                        | 0                       | 0                       | 0                       | 0                       |
| Other                                  | 18                       | 3                         | 6              | 5                                      | 0            | 1           | 1                      | 0              | 0              | 0                          | 0               | 0                        | 0                      | 0                         | 0                        | 0                         | 0                        | 0                          | 0                        | 0                         | 0                        | 0                       | 0                       | 0                       | 0                       |

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### 3.2.1.5 Comparison by Victim Group - Section 4 Question 8 – Involvement of Victim During Matter

<p>| Were you involved in the court case in any following ways (select all that apply) | All Respondents n = 78 | Murder/Manslaughter n = 24 | Murder/Manslaughter n = 24 | Murder/Manslaughter n = 24 | Assault n = 23 | Assault n = 23 | Assault n = 23 | Sexual Assault/Act of Indecency n = 19 | Sexual Assault/Act of Indecency n = 19 | Sexual Assault/Act of Indecency n = 19 | Robbery n = 2 | Robbery n = 2 | Robbery n = 2 | Fraud n = 1 | Fraud n = 1 | Fraud n = 1 | Property damage n = 1 | Property damage n = 1 | Property damage n = 1 | Males n = 17 | Males n = 17 | Males n = 17 | Children’s Court n = 0 | Children’s Court n = 0 | Children’s Court n = 0 | Local Court n = 25 | Local Court n = 25 | Local Court n = 25 | District Court n = 32 | District Court n = 32 | District Court n = 32 | Supreme Court n = 21 | Supreme Court n = 21 | Supreme Court n = 21 | Sydney/Newcastle/Wollongong n = 44 | Sydney/Newcastle/Wollongong n = 44 | Sydney/Newcastle/Wollongong n = 44 | Regional n = 20 | Regional n = 20 | Regional n = 20 | Regional n = 20 | Regional n = 20 | Regional n = 20 | Aboriginal and/or Torres Strait Islander n = 6 | Aboriginal and/or Torres Strait Islander n = 6 | Aboriginal and/or Torres Strait Islander n = 6 | Non-Aboriginal and/or Torres Strait Islander n = 72 | Non-Aboriginal and/or Torres Strait Islander n = 72 | Non-Aboriginal and/or Torres Strait Islander n = 72 |
| Private Prosecution | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |
| Provided a Victim Impact Statement | 38.46% | 29.17% | 39.13% | 21.74% | 63.6% | 63.6% | 63.6% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |
| Attended court as an observer (sat in public gallery) | 47.44% | 87.50% | 39.13% | 21.74% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |
| Attended court to give evidence but was not called | 17.95% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |
| Gave evidence in court | 25.64% | 33.33% | 30.43% | 30.43% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |
| Gave evidence via CCTV | 3.85% | 0.00% | 4.35% | 4.35% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |
| Gave evidence but did not attend court | 7.69% | 0.00% | 3.17% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% | 0.00% |</p>
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<th>Were you involved in the court case in any following ways (select all that apply)</th>
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<td>Were you involved in the court case in any following ways (select all that apply)</td>
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<td>Private Prosecution</td>
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<td>Provided a Victim Impact Statement</td>
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<td>Attended court as an observer (sat in public gallery)</td>
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<td>Attended court to give evidence but was not called</td>
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3.2.1.6 Comparison by Victim Group - Section 4 Question 10 – Support of Victim During Matter

Did you receive support from any of the following people or organisations while the court case was being heard? Of the agencies/people who did support you, how helpful were they?

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<td>12.70%</td>
<td>4.76%</td>
<td>0.00%</td>
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<td>0.00%</td>
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<td>0.00%</td>
<td>0.00%</td>
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<td>Local Court N</td>
<td>District Court N</td>
<td>Supreme Court N</td>
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Victims Services NSW

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<th>Local Court N</th>
<th>District Court N</th>
<th>Supreme Court N</th>
<th>Sydney/Newcastle/Wollongong N</th>
<th>Regional N</th>
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Court Officers (including sheriffs and registrars)

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**Non-Government /organisations**

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**Did you receive support from any of the following people or organisations while the court case was being heard? Of the agencies/people who did support you, how helpful were they?**

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**Victims Services NSW**

| All Respondents n = 78 | 13 | 10 | 12 | 4 | 0 | 22 |
| Murder/Manslaughter n = 29 | 4 | 5 | 2 | 2 | 0 | 6 |
| Assault n = 23 | 4 | 1 | 5 | 0 | 0 | 6 |
| Sexual Assault/Act of Indecency n = 19 | 4 | 2 | 3 | 1 | 0 | 5 |
| Robbery n = 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Fraud n = 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Property damage n = 1 | 0 | 0 | 1 | 0 | 0 | 0 |
| Females n = 61 | 11 | 8 | 9 | 2 | 0 | 15 |
| Males n = 17 | 2 | 2 | 3 | 2 | 0 | 7 |
| Children’s Court n = 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Court n = 25 | 2 | 3 | 6 | 1 | 0 | 8 |
| District Court n = 32 | 7 | 3 | 4 | 1 | 0 | 8 |
| Supreme Court n = 21 | 4 | 4 | 2 | 2 | 0 | 6 |
| Sydney/Newcastle/Wollongong n = 44 | 6 | 6 | 9 | 3 | 0 | 10 |
| Regional n = 20 | 3 | 3 | 2 | 1 | 0 | 8 |
| Rural n = 14 | 4 | 1 | 1 | 0 | 0 | 4 |
| Aboriginal/Torres Strait Islander n = 6 | 1 | 0 | 1 | 2 | 0 | 2 |
| Non-Aboriginal/Torres Strait Islander n = 72 | 12 | 10 | 11 | 2 | 0 | 20 |

**Court Officers (including sheriffs and registrars)**

| All Respondents n = 78 | 11 | 5 | 10 | 0 | 1 | 26 |
| Murder/Manslaughter n = 24 | 5 | 0 | 3 | 0 | 0 | 10 |
| Assault n = 23 | 3 | 1 | 5 | 0 | 0 | 6 |
| Sexual Assault/Act of Indecency n = 19 | 3 | 1 | 1 | 0 | 0 | 7 |
| Robbery n = 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Fraud n = 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Property damage n = 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Females n = 61 | 8 | 4 | 8 | 0 | 1 | 17 |
| Males n = 17 | 3 | 1 | 2 | 0 | 0 | 9 |
| Children’s Court n = 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Court n = 25 | 2 | 3 | 5 | 0 | 0 | 9 |
| District Court n = 32 | 5 | 2 | 2 | 0 | 1 | 8 |
| Supreme Court n = 21 | 4 | 0 | 3 | 0 | 0 | 9 |
| Sydney/Newcastle/Wollongong n = 44 | 7 | 3 | 6 | 0 | 0 | 13 |
| Regional n = 20 | 3 | 2 | 0 | 0 | 1 | 9 |
| Rural n = 14 | 1 | 0 | 4 | 0 | 0 | 4 |
| Aboriginal/Torres Strait Islander n = 6 | 0 | 1 | 2 | 0 | 0 | 3 |
| Non-Aboriginal/Torres Strait Islander n = 72 | 11 | 4 | 8 | 0 | 1 | 23 |
| Non-Government /organisations | All Respondents n = 78 | 23 | 4 | 6 | 0 | 0 | 25 |
| Murder/Manslaughter n = 24 | 15 | 0 | 2 | 0 | 0 | 4 |
| Assault n = 23 | 3 | 1 | 3 | 0 | 0 | 9 |
| Sexual Assault/Act of Indecency n = 19 | 3 | 2 | 0 | 0 | 0 | 8 |
| Robbery n = 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Fraud n = 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Property damage n = 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Females n = 61 | 14 | 4 | 4 | 0 | 0 | 20 |
| Males n = 17 | 9 | 0 | 2 | 0 | 0 | 5 |
| Children’s Court n = 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Local Court n = 25 | 4 | 2 | 2 | 0 | 0 | 11 |
| District Court n = 32 | 8 | 2 | 2 | 0 | 0 | 10 |
| Supreme Court n = 21 | 11 | 0 | 2 | 0 | 0 | 4 |
| Sydney/Newcastle/Wollongong n = 44 | 16 | 2 | 3 | 0 | 0 | 12 |
| Regional n = 20 | 5 | 1 | 1 | 0 | 0 | 9 |
| Rural n = 14 | 2 | 1 | 2 | 0 | 0 | 4 |
| Aboriginal/Torres Strait Islander n = 6 | 3 | 0 | 0 | 0 | 0 | 2 |
| Non-Aboriginal/Torres Strait Islander n = 72 | 20 | 4 | 6 | 0 | 0 | 23 |

### 3.2.1.7 Comparison by Victim Group - Section 5 Question 1 – Overall Satisfaction with Criminal Justice System

<table>
<thead>
<tr>
<th>Overall, how satisfied were you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc)?</th>
<th>1. Very Satisfied</th>
<th>2. Satisfied</th>
<th>3. Neutral</th>
<th>4. Dissatisfied</th>
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Overall, how satisfied were you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc)?

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### 3.2.1.8 Comparison by Victim Group - Section 5 Question 2 – Satisfaction with Sentence

Overall, how satisfied were you with the sentence handed down in court?

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Overall, how satisfied were you with the sentence handed down in court?

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3.2.1.9 Comparison by Victim Group - Section 6 Question 9 – Pending Matters – How Satisfied with Criminal Justice System So Far

So far, how satisfied are you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc.)?

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So far, how satisfied are you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc.)?

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<td>4</td>
<td>6</td>
<td>1</td>
<td>11</td>
</tr>
<tr>
<td>Murder/Manslaughter n = 5</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Assault n = 4</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Sexual Assault/Act of Indecency n = 8</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Robbery n = 0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fraud n = 0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Property damage = 0</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Females n = 24</td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Males n = 1</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Category</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>Children’s Court n = 1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Local Court n = 15</td>
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<td>2</td>
<td>3</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>District Court n = 7</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Supreme Court n = 2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sydney/Newcastle/Wollongong n = 13</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Regional n = 20</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Rural n = 5</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Aboriginal/Torres Strait Islander n = 1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Non-Aboriginal/Torres Strait Islander n = 24</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>11</td>
</tr>
</tbody>
</table>
3.2.1.10 Comparison by Victim Group – Demographics and Satisfaction with Court Processes – Testing for Significance and Correlations

This section compares demographics and court processes including satisfaction with select processes where asked.

Modes of participation were identified by demographic group, offence type and injury. These groups included:

- Gender
- Age
- Aboriginal and Torres Strait Islander (ATSI)
- Type of Injury
- Nature of crime/offence
- Geographic location
- Relationship to offender
- Active compensation claim
- Member of a victim’s group

Data presented in this section is discussed at 5.7.1.6. Note that only those groups with statistical significance are discussed.

3.2.1.10.1 Statistical Tests Used

The analysis was conducted using a range of statistical tests according to the metric or non-metric nature of the data for each variable. These tests included t-tests, one-way Anovas, chi-square tests and correlations. Injury-type variables were individually dummy coded for analysis such as correlations as well as t-tests. The sample size and likely assumption violations precluded the application of multivariate techniques.

3.2.1.10.2 Whole Sample Tests (Completed and Incomplete/Pending Cases, Report Police)

3.2.1.10.2.1 Crime Type and Demographics (n=142)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Test type</th>
<th>Result</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>Crosstab (Chi-square)</td>
<td>Marginally signif (p=.05)</td>
<td>Sexual assault/indecency more likely associated with females</td>
</tr>
<tr>
<td>Age</td>
<td>One-way ANOVA</td>
<td>p&lt;.05</td>
<td>Significant difference between ave age of Murder/manslaughter (49yrs) v sexual ass/indec (39 yrs)</td>
</tr>
<tr>
<td>ATSI</td>
<td>Crosstab (Chi-square)</td>
<td>ns (not significant)</td>
<td></td>
</tr>
<tr>
<td>Type of Injury</td>
<td>Crosstab</td>
<td>p&lt;.05</td>
<td>Murder/mans and assault more</td>
</tr>
</tbody>
</table>
Chi-square likely associated with physical injury

Murder/mans less likely associated with psychological injury.

Sexual assault/indec and DV more likely associated with psychological injury.

DV more likely associated with fin/property loss. Murder/mans less likely associated with fin/property loss.

DV more likely associated with witness.

Assault less likely associated with witness.

Murder/mans more likely associated with family death

Murder/mans and less likely associated with all types of injury.

---

<table>
<thead>
<tr>
<th>Location</th>
<th>Crosstab (Chi-square)</th>
<th>ns</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Relationship to offender</th>
<th>Crosstab (Chi-square)</th>
<th>$p &lt; .05$</th>
</tr>
</thead>
</table>

Murder/mans less likely to be associated with Partner and more likely to be associated with other family.

Assault more likely to be associated with partner, less likely to be associated with other family and friend/acquaintance

Sexual assault/indec less likely associated with partner and more likely to be associated with friend/acquaintance

DV more likely to be associated with partner.

Murder/mans more likely associated with Yes; and less likely associated with No but claim considered.

Assault less likely associated with Yes

Sexual assault/indec more likely associated with No but claim considered and less likely associated with No.

Murder/mans more likely to be a member of a victim’s group

Assault and Sexual assault/indec more likely not to be a member of a victim’s group

---

*a Type of Injury coded*
3.2.1.10.2.2 Kept Informed of Police Investigation and Demographics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Test type</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>t-test</td>
<td>Ns (not significant)</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td>Ns</td>
</tr>
<tr>
<td>ATSI</td>
<td>t-test</td>
<td>Ns</td>
</tr>
<tr>
<td>Type of Injury</td>
<td>Pearson's correlation</td>
<td>Ns</td>
</tr>
<tr>
<td>Nature of crime</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Location</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Relationship to offender</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Compensation</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Member victim’s group</td>
<td>t-test</td>
<td>Ns</td>
</tr>
</tbody>
</table>

*a Type of Injury coded

3.2.1.10.2.3 Satisfaction with Police Involvement and Demographics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Test type</th>
<th>Results</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>t-test</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>Pearson's correlation</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>ATSI</td>
<td>t-test</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Type of Injury</td>
<td>Pearson's correlation</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Nature of crime</td>
<td>One-way ANOVA</td>
<td>p&lt;.05</td>
<td>Sexual assault more satis than dom. violence victims</td>
</tr>
<tr>
<td>Location</td>
<td>One-way ANOVA</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Relationship to offender</td>
<td>One-way ANOVA</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Compensation</td>
<td>One-way ANOVA</td>
<td>p&lt;.05</td>
<td>Comp, yes &gt; no; No (but consid) &gt; No.</td>
</tr>
<tr>
<td>Member victim’s group</td>
<td>t-test</td>
<td>Ns</td>
<td></td>
</tr>
</tbody>
</table>
3.2.1.10.2.4 Satisfaction with Overall Criminal Justice System and Demographics

<table>
<thead>
<tr>
<th>Variable</th>
<th>Test type</th>
<th>Result</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>t-test</td>
<td>Ns</td>
<td>(not significant)</td>
</tr>
<tr>
<td>Age</td>
<td><strong>Pearsons</strong></td>
<td><strong>Ns</strong></td>
<td></td>
</tr>
<tr>
<td>ATSI</td>
<td>t-test</td>
<td><strong>p&lt;.05</strong></td>
<td>ATSI=satisfied than non-ATSI</td>
</tr>
<tr>
<td>Nature of crime</td>
<td>One-way ANOVA</td>
<td><strong>Ns</strong></td>
<td>See table below</td>
</tr>
<tr>
<td>Relationship to offender</td>
<td>One-way ANOVA</td>
<td><strong>p&lt;.05</strong></td>
<td>Regional=satisfied than rural/remote</td>
</tr>
<tr>
<td>Compensation</td>
<td>One-way ANOVA</td>
<td><strong>Ns</strong></td>
<td></td>
</tr>
<tr>
<td>Member victim’s group</td>
<td>t-test</td>
<td><strong>Ns</strong></td>
<td></td>
</tr>
</tbody>
</table>

* Type of Injury coded

**Correlations: ToI x Age**

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of Injury – Physical</td>
<td>-.247**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of injury - Psychological/emotional</td>
<td>-.169*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of injury - Family member died</td>
<td>.255**</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

** Correlation is significant at the .01 level (2-tailed)
* Correlation is significant at the .05 level (2-tailed)

Weak negative correlations: Physical injury weakly related to younger victim. Weak positive correlation: Family death weakly related to older victim.
3.2.1.10.3 Completed Sample Tests (Completed Court Cases)

3.2.1.10.3.1 Kept Informed of Police Investigation and Demographics (n=78)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Test type</th>
<th>Result</th>
</tr>
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<tbody>
<tr>
<td>Gender</td>
<td><em>t</em>-test</td>
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</tr>
<tr>
<td>Age</td>
<td><em>Pearsons correlation</em></td>
<td>Ns</td>
</tr>
<tr>
<td>ATSI</td>
<td><em>t</em>-test</td>
<td>Ns</td>
</tr>
<tr>
<td>Type of Injury</td>
<td><em>Pearsons correlation</em></td>
<td>Ns</td>
</tr>
<tr>
<td>Nature of crime</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Location</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Relationship to offender</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Compensation</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Member victim’s group</td>
<td><em>t</em>-test</td>
<td>Ns</td>
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</tbody>
</table>

*a* Type of Injury coded

3.2.1.10.3.2 Satisfaction with Police Investigation and Demographics (n=78)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Test type</th>
<th>Result</th>
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</thead>
<tbody>
<tr>
<td>Gender</td>
<td><em>t</em>-test</td>
<td>ns (not significant)</td>
</tr>
<tr>
<td>Age</td>
<td><em>Pearsons correlation</em></td>
<td>Ns</td>
</tr>
<tr>
<td>ATSI</td>
<td><em>t</em>-test</td>
<td>Ns</td>
</tr>
<tr>
<td>Type of Injury</td>
<td><em>Pearsons correlation</em></td>
<td>Ns</td>
</tr>
<tr>
<td>Nature of crime</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Location</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Relationship to offender</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Compensation</td>
<td>One-way ANOVA</td>
<td>Ns</td>
</tr>
<tr>
<td>Member victim’s group</td>
<td><em>t</em>-test</td>
<td>Ns</td>
</tr>
</tbody>
</table>

*a* Type of Injury coded

3.2.1.10.3.3 Satisfaction with Overall Criminal Justice System and Demographics (n=78)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Test type</th>
<th>Result</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td><em>t</em>-test</td>
<td>ns (not significant)</td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td><em>Pearsons correlation</em></td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>ATSI</td>
<td><em>t</em>-test</td>
<td><em>p</em>.05</td>
<td>Non-ATSI&gt;Satisfied than ATSI</td>
</tr>
<tr>
<td>Type of Injury</td>
<td><em>Pearsons correlation</em></td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Nature of crime</td>
<td>One-way ANOVA</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>One-way ANOVA</td>
<td><em>p</em>.05</td>
<td>Rural/remote &gt;satisfied than regional</td>
</tr>
<tr>
<td>Relationship to offender</td>
<td>One-way ANOVA</td>
<td>Ns</td>
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</tr>
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</table>
### 3.2.10.3.4 Satisfaction with Sentence and Demographics (n=78)

<table>
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<th>Variable</th>
<th>Test type</th>
<th>Result</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender</td>
<td>t-test</td>
<td>Ns</td>
<td>(not significant)</td>
</tr>
<tr>
<td>Age</td>
<td><em>Pearsons</em> correlation</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>ATSI</td>
<td>t-test</td>
<td><em>p&lt;.05</em></td>
<td>Non-ATSI&gt;Satisfied than ATSI</td>
</tr>
<tr>
<td>Type of Injury</td>
<td><em>Pearsons</em> correlation&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Nature of crime</td>
<td>One-way ANOVA</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>One-way ANOVA</td>
<td>ns</td>
<td></td>
</tr>
<tr>
<td>Relationship to offender</td>
<td>One-way ANOVA</td>
<td>Ns</td>
<td></td>
</tr>
<tr>
<td>Compensation</td>
<td>One-way ANOVA</td>
<td>Ns</td>
<td></td>
</tr>
</tbody>
</table>

<sup>a</sup> Type of Injury coded

![Graph showing mean satisfaction with sentence and demographics](image_url)
3.2.1.10.3.5 What was Involved in the Process by Kept Informed (satisfied by police, system, sentence) (t-test)

Those who submitted a VIS more likely satisfied with police and more likely satisfaction with system compared to those who did not (p>.05)

Those who did not have some ‘Other’ process involved more likely satisfied with sentence compared to those where some ‘Other’ process was involved. (p>.05)

3.2.1.10.3.6 Greater Involvement in Court Case by Demographics

Age: Younger. On average those wanting greater involvement were 41 compared to those who did not (47). t-test; p>.05.

Satisfaction with police: Those wanting more involvement were on average less satisfied. t-test; p>.05.

Informed: Those wanting more involvement on average perceived less informed. t-test; p>.05.

Satisfaction with System: Those wanting more involvement were on average less satisfied. t-test; p>.05.

Location: Rural/remote less likely to be associated with wanting more involvement.

Relationship to offender: If partner, more likely than expected to be associated with wanting more involvement. Crosstab Chi square; p>.05.

Compensation: Those receiving no compensation more likely than expected to be associated with wanting more involvement.
3.2.1.10.3.7 Type of Injury:

Financial/property loss more likely to be associated with wanting more involvement. Crosstab Chi square; p>.05.

Family death less likely to be associated with wanting more involvement. Crosstab Chi square; p>.05.

3.2.1.10.3.8 Kept Informed by Who Kept Victim Informed:

One-way ANOVA (p<.05).

Those kept informed by police was greater for ‘Other’, including domestic violence victims.

Kept informed by DPP was greater for ‘Other’, including domestic violence victims.
3.2.10.3.9 Support Variables (n=78)

Those with police support less likely than expected to have received compensation.

Those with NGO support more likely than expected to have received compensation.

Member victims support group: If yes, more likely to have received NGO support

Type of injury: Where a family member died, more likely to have NGO support.
3.2.10.3.10 Helpfulness of Support (Excl the ‘No’ item) by Demographics – Witness Assistance Officer

Gender: Males perceive greater average helpfulness than females from VAO/WAO/WAS Officer.

Involvement with court case: Those who want greater involvement with the court case perceive greater average helpfulness from VAO/WAO/WAS Officer than those who do not want greater involvement

3.2.10.4 Correlations:

There is a weak, negative correlation between Informed against Helpfulness – VAO/WAO/WAS Officer ($r$=-.31).

There is a weak, negative correlation between satisfied with police against helpfulness of VAO/WAO/WAS Officer ($r$=-.4).

Correlations between $y$ variables:

Satisfaction police investigation by kept informed: There is a high positive correlation between satisfaction with police investigation and being kept informed ($r$=.82), meaning that as perceptions of the extent to which victims believe they were kept informed increase, so does satisfaction with the police investigation.

Satisfaction with the police investigation by satisfaction with the system: Moderate positive correlation ($r$=.57).

Satisfaction with the system by kept informed: Moderate positive correlation ($r$=.51).
Chapter Four – Interviews with Justice Officials

4.1 Introduction

Interviews were conducted with 19 justice officials. Unedited transcripts of interviews with each justice official appear in Appendix 4. Of the 19 justice officials interviewed there were:

- 13 judicial officers (2 from the Children’s Court, 1 Magistrate, 6 District Court Judges, 4 Supreme Court Judges)
- 1 member of the State Parole Authority
- 2 Police Prosecutors
- 1 ODPP Prosecutor
- 1 Detective with NSW Police
- 1 solicitor with DVCAS

Thematic analysis of the interviews reveals common points in accordance with the types of questions asked. These themes are analysed in the next chapter but the relevant information is extracted in this chapter and grouped by theme.

4.2 Thematic Groups

Themes and groupings were developed from the questions themselves and the answers provided by each interviewee. The following themes indicate the ways in which victim participation was made sense of by each interviewee and suggest connections and trends between individual justice officials. This data is further analysed in the next chapter.

Quotes are represented by office:

- S = Solicitor
- PD = Police Detective
- PP = Police Prosecutor
- M = Magistrate
- CC = Children’s Court Magistrate
- DCJ = District Court Judge
- SCJ = Supreme Court Judge
- ODPP = ODPP Prosecutor
- SPA = State Parole Authority

Note that additional extracts from interviews as grouped by theme are located in Appendix 5.

4.2.1 Experience of Justice Officials

All interviewees practiced/sat across a range of criminal and other matters and most possessed a comprehensive pre-trial, trial, and sentencing experience. Interviewees
were selected to encompass a range of perspectives from investigative police through to police prosecutors and judicial officers across all levels, including appellate courts. The NSW State Parole Authority was also represented in the sample.

The following comments were representative of the types of criminal matter the interviewees were familiar with:

[I] pretty much have to cover everything so we do a range of robberies, armed robberies, sexual assaults. We get a murder, break and enters, domestics- You name it, if it’s going to happen, it’s one thing that we could end up responding to. (Police Detective)

Police Prosecutors possessed experience across a range of public order and assault matters, including domestic violence:

All the different criminal charges from domestic violence through to until property crime, fraud, traffic matters, except for the strictly indictable ones. The ODPP do those... (Police Prosecutor)

The higher level criminal courts were also represented, through to the Court of Criminal Appeal:

I do criminal trials, I sit in the Court of Criminal Appeal and I [also] do bail... (Supreme Court Judge)

4.2.2 Procedures Identified by Justice Officials

Justice officials tended to identify victim relevant court processes in accordance with their known practice areas. When asked to think about all courts other than their own most justice officials raised court processes consistent with identified adversarial processes common to each court, specifically victims presenting as witnesses and tendering a victim impact statement upon sentencing.

The main processes identified were appearing as a witness and presenting a VIS:

[T]he only participation of the victims is generally by way of giving evidence, and we also do have of course victims impact statements.

And:

[T]he victims gave evidence first of all and when I sentence somebody on rare occasions, not usually, about I’d say thirty per cent of the cases, of the time I had a victims impact statement. (District Court Judge)

Alternative modes of testifying, such as via closed circuit television, were also noted:

[W]hen it’s a sexual assault case, those kind of cases, they’re allowed to give evidence in a...room away from the court via CCTV and they’re supported by an officer really... (District Court Judge)
The relevance of the victim in the sentencing processes was also referred to:

"The impact on the victim is always a significant consideration when one is looking at...the objective seriousness of an offence or considering the aggravating factors, which are referred to in section 21A of the Sentencing Act." (Supreme Court Judge)

Other processes were noted that included victim registers, bail, parole hearings although the majority of interviewees noted that victims mainly participate as a witness or through a VIS. Testifying as a witness or through a VIS provide a means of participation that clearly stood out as a mode of victim participation – as opposed to other out of court or indirect modes, such as seeking information or consulting with the police, ODPP or being asked to participate in an alternative mode of justice, such as restorative intervention.

4.2.3 Expected Modes of Victim Participation

Justice officials identified acceptable or expected modes of victim participation consistent with the adversarial process. The limits of victim participation include the point at which their participation impacts upon the fair trial rights of the accused.

Nominal processes including participating as a witness were commonly noted:

"At trial the only involvement with victims is when they appear as witnesses. There’s rarely any other involvement. There may be on occasions in both sentence matters and hearing matters a victim impact statement. But in my experience, and this is only my experience, they’re somewhat rare." (Magistrate)

And:

"Victims participate in my trial court by giving evidence in respect of the facts which surround the incident which brings the matter before the court." (District Court Judge)

And:

"I suppose their participation in the trial process can be as a witness. They can also participate in the sentencing process by the provision to the court of a victim impact statement. When we say victim we’re talking about the victim of a criminal offence, but it’s those two, either as a witness or in the event of a conviction, as a victim of crime." (Supreme Court Judge)

VIS were also commonly noted:

"Only at the sentencing stage when a relative of the victim gives a victim impact statement." (Supreme Court Judge)
However, alternative processes, including AVO’s relevant to the protection of victims in domestic violence matters, was also raised:

[W]e might get a referral this morning and we will have contacted her within hours and spoken with her, and talk to her about participating, in the AVO process or the AVO and criminal charge process. For the other half of our clients we’d see them on the first occasion at court and they would come to our room at one of the four courts and we would speak to them then about participating in this AVO process. (Solicitor)

Domestic violence was an area that was particularly relevant for victims, and often called for their direct or indirect participation:

[I]f you’re talking specifically domestic violence victims, again they’re a witness. They’re called to give evidence. They’re subpoenaed. Police attend on the night. They take, hopefully take, a statement by way of evidence for court. That witness is called to court to give that evidence. (Police Prosecutor)

### 4.2.4 Satisfaction with Current Processes

Justice officials gave mixed opinions as to the satisfaction of victims with court processes. Many identified routine modes of participation as satisfying victim needs. These ranged from AVO applications through to attending as a witness or tendering a VIS.

Some felt the current criminal justice system had a limited capacity to satisfy victims:

I’m not sure that the criminal justice system will ever satisfy some victims. So - it’s not about them really. It is to get details of the crime so that the court can sentence, but I don’t know that it’s a venue for them to have their, the other things, the consequences of the crime dealt with... (Magistrate)

The difficult task of measuring the satisfaction of the victim when current processes do not cater for the satisfaction of the victim was noted:

Yes, I’d say they were satisfactory. That’s, that’s kind of a difficult question because satisfactory as to what as to their feelings, the feelings of, well, the interests of the community, due process. Yeah, I think they’re probably satisfactory. They may not be happy about outcomes I suppose but that’s only one measure. (District Court Judge)

Existing procedures, such as tendering of a VIS, were also cited as increasing victim satisfaction with court processes:

Some victims are very happy, for example, to put in a victim impact statement to describe exactly what effect the crime has had on them and on their families and those close to them. Other victims on the other
hand, don’t want to have any part of that process. They don’t want to show to the offender, for instance, what impact that person has had and therefore they think maybe to give the offender some sort of satisfaction having caused such problems and they run a mile from victim impact statements. (ODPP Prosecutor)

4.2.5 New/Modified Procedures to Better Accommodate Victims

Most justice officials struggled to think of new processes to better accommodate victim interests. Most raised known processes that already accommodate victims. Some raised pre-trial rights not historically available to victims, such as right to consultation where it previously did not exist.

Innovations with domestic violence victims was noted as a new process to accommodate victims:

[O]ne of things that will happen next year is that women whose safety is at high risk or who are deemed to be at high risk, they will, their matters will be sent to what’s going to be called a safety action meeting. And, those meetings will be with police and other government agencies or non-government agencies depending on who’s involved with the woman and there will be decisions made around her safety. (Solicitor)

Other issues included sexual assault law reform, albeit this interview reflects on the English situation:

I know over in England in relation to sexual assaults, their system is a lot better than what our system is in dealing with victims at the first instance. Each patrol car will carry around special kits, and at that stage they are able to get urine and swabs from the victim right there and then without having to go sit at the hospital for hours waiting for the counsellor to come in, then waiting for a doctor to be- carry out intrusive examinations. So that gives them evidence at the first point. (Police Detective)

Some interviewees noted that there is no need for change:

I don’t see any particular need for change, but we’re always amenable to any suggestions that will improve the capacity for victims to be represented… (District Court Judge)

New processes were noted as potentially benefiting the victim:

I think there should be some kind of counselling for the victim before and after giving evidence and the victim should be supported in some way in court, I think. (Magistrate)

Increased support was noted in the form of increased support for victims in court:
Well I think the processes of assisting victims and vulnerable witnesses should be expanded so I think the Witness Assistance Service in the ODPP’s office should be expanded to provide greater coverage and support for victims and for vulnerable witnesses. (ODPP Prosecutor)

4.2.6 Knowledge of the Charter of Victims Rights

Most judicial officers did not know of the Charter of Victims Rights or had a limited knowledge of it. While not bound to the charter, some judicial officers identified key provisions regarding rights to courteous treatment, information, etc.

Practitioners and Police, including Police Prosecutors had a good knowledge of the charter:

_I mean we are mindful of the charter of victims’ rights...and particularly around the area of you know, the victim being kept informed about what has been happening._ (Solicitor)

..._the Charter of Victims’ Rights that we have essentially tells us how we are to go about dealing with our victims. So we know that we need to keep them informed, we need to let them know what’s happening..._ (Police Detective)

_A lot. Obviously they, the Charter of Victim Rights, and I think there’s just been one in relation to domestic violence released by the government recently in relation to our involvement._ (Police Prosecutor)

Although not bound by the charter, most judicial officers did not recall the charter or its content in a significant way:

_Is this the UN charter or..?_ (Magistrate)

_I didn’t even know about it. I don’t know when it came in._ (District Court Judge)

_I’ve no idea what the Charter of Victims’ Rights is..._ (District Court Judge)

_Is it a federal charter or an international charter?_ (District Court Judge)

_It hasn’t been brought to my attention by the Crown or anyone._ (District Court Judge)

_Isn’t it doesn’t impact my conduct as a judge, but it impacts on the way in which other institutions such as the police and the prosecution deal with victims._ (Supreme Court Judge)

Although other perspectives also prevailed:
... I understand the background of that charter and I understand the need for victims to have a function within the criminal justice system that’s dealt with as sympathetically as possible and with them having the various rights to consultation and things like that as they have... I don’t know that I actively keep that in mind when I have victims before me as witnesses but I, as a general practice I attempt to ensure that they are dealt with in a manner that is consistent with dealing with their trauma and making their passage through what is effectively an alien system as comfortable as possible. (District Court Judge)

4.2.7 Breadth of Victim Participation – Pre-trial through to Sentence, Appeal and Parole

Most justice officials identified processes consistent with their direct courtroom experiences. Some reflected generally on process available elsewhere, including those available to sexual assault victims, but none considered the dynamic breadth of processes available to NSW victims. See Chapter 2.

Most judges identified participation in accordance with trial participation, as witness for the prosecution:

I mean that presupposes- again this is the difference between trials, sentence matters. Participation in the justice system may involve being an active participant which victims inevitably are, if we’re talking about trials. (District Court Judge)

I’m sure all, well if we don’t have it, all courts should have the capacity to have the victim give them evidence not in front of the perpetrator. That should be at the judge’s discretion or the magistrate’s discretion or the tribunal officer’s discretion to do that. And post-trial, well as I’ve said, victim’s impact statements can be used by magistrates, when they consider sentence I’m sure. Victims also have the right to bring an application for compensation under the victims compensation act. (District Court Judge)

However, some held the view that victims did not need to participate:

So far as before trial is concerned, I don’t see a role for the victim at all. I think that they should be properly advised as to what their role is and I see that as the role of the Director of Public Prosecutions or the police. (District Court Judge)

4.2.8 Alternative Pathways for Victims

Various points were raised as to the relevance of alternative pathways for victims. Some thought that restorative justice provided an acceptable means by which victim interests and rights of participation could be addressed.
Views of interviews as to modes of restorative justice were generally favourable. Youth justice conferencing was noted in particular as a well-supported development:

*If there’s as part of the sentencing process a referral to a youth justice conference, there’s potentially direct involved of the witness – sorry, of the victim – in that process, but that doesn’t take place in the court’s presence. It takes place with Juvenile Justice organising youth justice conference.* (Children’s Court)

*[C]ertainly the whole idea of youth conduct orders and youth justice conferencing is, is entirely based on restorative justice principles so that we’re...They’re required to if you like, have a – confrontation is the wrong word but they’re required to meet with their victims and part of the whole process is for them to, for the perpetrators to be able to see it firsthand the impact that they’ve had on their victims and also to make, to make to make amends if you like to show their genuine contrition.* (District Court Judge)

Restorative processes that apply to the post-conviction phase, such as mediation, were also noted as beneficial:

*For those who are interested in... where the victims are prepared to participate and where the inmate is prepared to participate, restorative justice is exceptionally good - I’ve always thought it is. And I know of a number of instances where I’ve been told of the process and the enormous therapeutic value it was to the victim. And to the inmate.* (State Parole Authority)

**4.2.9 Therapeutic Processes**

Most justice officials identified the significance of therapeutic outcomes for victims and keenly supported a movement toward therapeutic jurisprudence, but could not always identify how this might impact on their court where it was constituted as expressly adversarial.

The notion of providing therapeutic processes for victims was generally received with criticism

*I don’t know that I’d want them to have a greater role. It would mean a complete change of the way we run criminal proceedings in the country, in fact in the English speaking world where we have this adversarial system if you adopted that.* (Magistrate)

Otherwise existing processes, such as VIS, were cited as potentially proving a therapeutic process for victims:

*I can’t see what those processes might be. I mean a victim impact statement allows them to inform the court of the impact of the crime upon*
them. I can’t think of what other processes within the courtroom might be appropriate. (District Court Judge)

I think that some victim’s impact statements, victims’ submissions that have been put to our authority, and have been heard by the inmate, are particularly eloquent, particularly powerful. And I think that that’s good for everyone involved. (State Parole Authority)

4.2.10 Victim Advocates

There was some support for the idea of a victim advocate to guide the victim of crime through the justice journey from initial investigation through to sentence and possibly appeal.

Victim advocates may be identified generally as a support person that need not be legally qualified. They may possess skills in social work, case management, counselling or witness support. Victim advocates differ from WAS Officers as they are assigned to a victim from initial complaint to police through to trial, sentencing and potentially, post-conviction, such as parole hearings.

The police saw the role of victim advocate as an important liaison in court:

You rely heavily on your support staff which is domestic violence liaison officers, police, ah, and also you’re...community domestic violence people. So a lot of times I’m speaking through them, or they’re speaking to the victims on my behalf while I’m sitting in the chair at the big table and they’re helping me helping them so to speak.

Although judicial officers viewed the idea with some scepticism, most recognised the need to further support the victim. Note the difference between a victim advocate and victim lawyer (see next section):

I mean they’re always entitled to get their own legal advice, but I don’t think- I don’t see any need for- Well let me put it this way: there may be cases where it’s appropriate for a victim to be given independent legal advice separate from the prosecution, and I think that should be looked at on a case by case basis, but by and large I see no need for, if you like, separate independent advice being given to, legal advice I assume you’re talking about. What they do need is counselling services and support services... (District Court Judge)

On the other hand, having someone available to the victim to explain the process and the significance of the various steps and who can perhaps help the victim prepare a full, cogent and detailed impact statement could be a very good idea. (Supreme Court Judge)

Room for the greater representation of the victim was also noted as support for greater non-legal advocacy:
It would be an expensive exercise to provide that, I mean there would be no harm in it, but I’m not sure that the expense would be, would warrant the greater representation, again because many of them appear with their victims group, currently, and they, that’s adequate, and so I wouldn’t oppose it, but, I’m not sure, what, how much more a lawyer would be able to advocate on behalf of the victim. (State Parole Authority)

4.2.11 Victim Lawyers

Almost all justice officials possessed significant reservations regarding the suggestion of appointing private counsel to represent victim interests in criminal proceedings. The introduction of a third party to proceedings was largely deemed to be incompatible with known adversarial processes, especially where that third party has equal standing before the court as currently enjoyed by prosecution and defence.

A victim is not a party to the proceedings unlike some European systems and other systems around the world. If we were to go further than we have already I suspect that we would need a fundamental change in the philosophy behind the structure of our system. We would need to start recognising the role of victims as some sort of a party to proceedings if we were to go further than we have already. I can’t see that happening. (ODPP Prosecutor)

The adversarial process was generally cited as precluding any consideration of a discrete lawyer for the victim:

You’ve got the fundamental dichotomy between the victim who isn’t a party and, and the state who brings the prosecution not on their behalf but in relation to the crime that’s been committed against them, and I think sometimes there’s a breakdown in, if you like, the communication between the prosecution and the, and the victim who is a witness...

(District Court Judge)

Some judicial officers recognised the role of private counsel for victims in limited circumstances, such as where matters of privilege arise or where material private to the victim is being subpoenaed:

It rather depends in what context, but because our general rule is that witnesses are not parties and that’s a very important distinction. I know that victims think of themselves as parties, but they are not and to have them involved in a trial as a party would entirely undermine - not entirely - would significantly undermine a proper criminal process so you could not have it, unless of course there’s some important issue that affects them, for example, privilege of one kind or another. (Supreme Court Judge)

Unless they rise to the status of a party to proceedings, I don’t think there is any basis for them to be separately represented. Of course, if
they want to obtain legal advice about what is happening and what they can do, well, they’re perfectly entitled to do that at their own expense. But I don’t think there’s any obligation on society to provide separate legal representation. (ODPP Prosecutor)

4.2.12 Normative Assumptions on Adversarial Justice

Throughout the interviews justice officials commented on the nominally minor role expected of a victim in adversarial proceedings.

Most commonly, interviewees identified victim participation in accordance with a strict interpretation of the limited role provided for victims in adversarial court processes. This included presentation as a witness, talking to the police following an incident, participating as a witness for the prosecution, and submitting a victim impact statement during sentencing.

Few other opportunities for participation, either directly or indirectly through other justice officials or stakeholders in relation to specific court processes (see Chapter 2), were recalled.

4.2.12.1 Informing the Police

A range of perspectives were offered regarding the victims involvement with the police during the investigative phase. This was generally identified as an important opportunity for victim participation, although the nature and extent of this participation was largely seen at the behest of the investigating officer:

Yes. Someone to look after their interests. You’ve got the police, the prosecutors – we’re all focused on the investigation, so we’re focused on putting that person behind bars or making them pay for what they have done to the victim. So we are working for the victim, but the victim’s interests are not solely what we’re focusing on. (Police Detective)

Well, they’re not really part of a court process. They’re not. The process is undertaken by the AGs courts obviously and the police. They become entwined in that process just because of the circumstances as they’re a victim. But, they’ve got no control over what happens. So no, they got, they can’t get involved in the process. (Police Prosecutor)

The major opportunity for their involvement in the process is really before the matter gets to court with police and prosecutors and so on, because there you can have, how should I put it, you can have relatively untrammelled conversation and untrammelled communication one way and the other depending on the circumstances. A judge is very constrained, necessarily constrained, in what can happen in the courtroom. (Supreme Court Judge)
4.2.12.2 Witness for the Prosecution

Most justice officials were of the opinion that the most meaningful form of participation was as a witness for the prosecution. Some went as far as to say that there are no victims just witnesses, emphasising that under a model of adversarial engagement, victims present evidence to be considered at trial:

*Look, as a matter of principles [sic], I think it has to be borne in mind that the state brings the prosecution and it’s an offence committed against the law of the state, and it brings a prosecution against an offender and that the victim is a witness and not…a party to proceedings so that I don’t think that the role of the victim should be overemphasised. (District Court Judge)*

*I think the victim should be protected and assisted and everyone, but we’ve got to keep in mind that it’s the police, the prosecutor, the state that’s taking the action against the offender, and that when the offence is committed it’s an offence against the victim or several victims but it’s an offence against the law of the state, so it’s the state protecting the security of the state that’s important. (District Court Judge)*

*Yes, the trial as I’ve said because they shouldn’t participate as victims, they should participate as witnesses. (District Court Judge)*

4.2.12.3 Victim Impact Statements

The views of most justice officials as to the tendering of a VIS were supportive. Some accepted that VIS is now well established and that this is a process which some victims will want to access during sentencing. Some interviewees indicated that VIS provides an important opportunity for participation, however, some were reticent in their view that VIS may not be entirely appropriate in the fair trial context:

*Yes, it’s inappropriate in the sentencing process of the District Court of New South Wales…and the Supreme Court, and the Local Court, any criminal proceedings, it is inappropriate. For all the reasons that you’ve heard, that is, that it’s the articulate who go on or the better than most who are less articulate, and it becomes, well if their views are to be taken into account well then, the person who hasn’t got relatives, why should they be, why should there be any weight placed upon what the relatives of the victim or the victim and the extended family have as against the single person. (District Court Judge)*

4.2.12.4 Participation Generally

A range of other perspectives were offered that suggested that justice officials, judicial officers in particular, have a difficult time coalescing the role of the victim with the accused’s right to a fair trial. Although most were willing to accommodate the victim and treat them with courtesy and respect, how this materialised in terms of
actual court participation depended on the extent to which the victim was able to participate without compromising the integrity of the criminal trial process:

I wonder whether as judicial officers we have enough understanding of victims. I think it does come with more experience, but - and perhaps I’m of a more particular background - and I think my empathy for victims is growing. I have a defence lawyer background. And, I certainly think it grows and I’m certainly able to, and as I said before, I really would like in a lot of matters more information about how victims are travelling later on, particularly when they’ve been a victim of a serious assault or if they’ve been seriously injured in some way. (Magistrate)

Well I want to emphasise that they shouldn’t be participating, that is, their input as is to what happens or doesn’t happen with the victim- with the prosecution of cases. Indeed, it’s gone too far now in my mind that their views are considered in respect of whether matters proceed or not. (District Court Judge)

It’s a question of definition like...for instance the, I’ve recently had victim participation in a confidential, confidences type situation where there was a separate representative for the complainant in a sexual assault case where it was necessary for the defence to subpoena material – sorry – it was necessary for them to attend in order to resist the subpoena of material about confidential communications. That I think is certainly appropriate. But if you’re talking about the participation in terms of the litigation of a criminal trial, I’m a fairly conservative person in terms of how many parties there should be. (District Court Judge)

But I think there is a danger in overemphasising the direct and personal rights and interests of the victim because although I hope I’ve indicated that their interests are a central consideration, I think the traditional idea that the injury to the victim is vindicated by the whole community acting in the criminal justice system and the whole community having an interest in bringing the offender to justice and to the extent to which it’s a relevant factor, insisting upon retribution and denunciation, then the victims’ rights shouldn’t enlarge, as it were, in the process to such an extent that the interests of the whole community is pushed out from the centre as well. (Supreme Court Judge)
Chapter Five – Analysis, Discussion and Modes of Participation

5.1 Introduction

This chapter sets out the analysis and discussion of the survey data and interview data gathered. This chapter also presents this data in a synthesis of modes of participation that connect with the review of sources of law in Chapter 2.

5.2 Survey

The survey was distributed as a self-completion questionnaire available electronically via the Victims Services website. It involved a number of exclusionary questions to ensure that we gathered views of participants who had completed processes relevant to their court matter. Excluded participants were able to complete the general open ended responses. See section 3.1 as to the operation of the exclusionary questions and data integrity.

As to survey data collection, the number of victims completing each section included:

- 142 victims completed the survey.
- 119 victims reported matters where charges were laid.
- 103 victims reported matters which proceeded to court.
- 78 victims reported matters where their court case was complete/finalised at the time of completing the questionnaire.
- 25 victims reported that their court case was incomplete/pending at the time of completing the questionnaire.

Discussion of the survey data is provided in Section 5.7.1.

5.3 Interviews

Interviews were conducted across a range of metropolitan and regional centres with a view to interviewing justice officers at all levels. A significant number of interviews were gained from judges in the District Court and Supreme Courts. Magistrates were represented despite the Chief Magistrate requiring that the CI and RA approach all magistrates through his office only. Interviews were gained from members of the NSW State Parole Authority, Mental Health Review Tribunal, Children’s Court, Drug Court and Court of Criminal Appeal.

19 justice officials were interviewed for this study.

13 were judicial officers, 2 sat in the Children’s Court, 1 was a Magistrate, 6 were District Court Judges, 4 were Supreme Court Judges, 1 was a member of the State
Parole Authority, 2 were Police Prosecutors, 1 was an ODPP Prosecutor, 1 was a Detective with NSW Police, and 1 was a solicitor with DVCAS.

Discussion of the interview data is provided in section 5.7.2.

5.4 Relationship between Court Processes and Alternative Pathways to Justice

Although we did not seek to assess restorative justice, interventions and alternatives to court processes, the interview participants frequently raised them as modes of victim participation. This is a notable distinction between those insights gained from victims in the survey to those insights from judicial officers. While victims directed their attention to how they would meaningfully participate in court processes, judicial officers often recited alternative pathways as a means of participation. This is not to say that some instances of actual court participation were not recalled by judicial officers. Most recognised the role of victims as witnesses and observers of proceedings as an important mode of participation in their court. Rather, there seemed to be a disjuncture between the capacity to invite greater victim involvement and nominal court processes. While victims sought to involve themselves in decision making processes with police and prosecutors, judicial officers saw greater potential in alternative pathways outside the court room.

5.5 Normative Assumptions and Perspectives

A significant aspect of this study involves the extent to which victim participation is identified and made sense of by reference to normative perspectives and assumptions on what it means to be a victim in the first instance (see discussion of the difference between a nominal or broader definition of victim in 1.9.1). The notion of normative assumptions and perspectives draws from the tendency to construct victims in relation to the dominant paradigm of criminal law in common law systems of justice. This dominant paradigm is the adversarial trial. Adversarialism defines, in an authoritative context, who is relevant and who is not. Put simply, adversarial process indicates that criminal law is a matter of state concern that is dependent on an interaction of police and public prosecutor, defendants and their counsel, before an independent magistrate or judge. This paradigm expressly excludes the victim as an active participant. Rather, the victim is identified as relevant only in so far as they are useful to state prosecutors who bring charges in the public interest. This paradigm is considered to be dominant in common law systems but may be applied or adhered to unevenly by court or individual judicial officer, depending on the offence, court, counsel attending, or as a matter of discretion.

While this study did not utilise a particularly restrictive definition of victim, the question ‘who is a victim for the purpose of the criminal law?’ became relevant to the explanation of the potential scope of victim participation in both the response to the survey and the interview questions. Victims identified their role in a normative context although they did not generally see a problem with increased levels of participation so long as the police and public prosecutors, and judicial officers, applied the law evenly and fairly. Judicial officers, however, almost always tended to identify the relevance of the victim in the context of adversarial process and further
sought to maintain the integrity of proceedings by referring to the need to maintain the
adversarial character of their courts (see Doak, 2005; Edwards, 2009). This point on
the significance of normative adversarial assumptions is an important element of this
study because it is applied as a means through which victims are often excluded or
undermined against the more prominent needs to the state, the community, the
defendant or independent justice (see Doak, 2005). This focus on the central concerns
of criminal justice may be legitimate and necessary, and well accepted by the
professions and the community generally, however, it may also characterise the
attitude of justice officials to the extent that they see only a limited or marginal role
for victims in an inherently broader system of justice.

Note that not all respondents to the survey nor interviewees adhered to normative
propositions on the adversarial trial and the relevance of the victim within that
discourse. Realisation of the dominance of adversarial interaction thus merely sets a
point of reference (albeit a significant one) from which to gauge responses from the
stakeholders accessed in this study.

5.6 Modes of Participation

This section sets out the modes of participation and typology of participation drawn
from the law considered in Chapter 2 and the data presented in Chapter 3 and 4. While
there are connections with the way victims participate in alternative common
law jurisdictions, this typology is founded upon the NSW experience and is intended
to speak to the NSW context.

Typologies of modes of participation may assist in our understanding of local variants
in participation according to defined criteria. Edwards (2004; also see Bailey, 1994)
demonstrates this with regard to modes of participation in England and Wales.
Edwards (2004) identifies four relevant areas of victim participation in England and
Wales, including control, consultation, provision of information, and expression.
Wemmers (2010) has identified a fifth area, victim notification, writing from the
Canadian and international law perspective.

While the typologies developed by Edwards (2004) and Wemmers (2010) do assist in
the current analysis they are relevant only to a general descriptive assessment of
known modes of victim participation. Known forms of participation refers to those
that may be garnered by a plain reading of law and policy and does not necessarily
indicate the depth and extent of variants in participation by connecting such law and
policy to local jurisdictionally specific examples and the way in which that law is
experienced by victims and justice officials.

This study, through a detailed consideration of law and subordinate forms of law and
regulation, allows for a more detailed and jurisdictionally specific typology of
participation, and importantly, the mapping of local variants in participation according
to the knowledge, experiences and expectations of each stakeholder group in NSW.

There are a range of ways of setting out the modes of participation elicited through
this study. The following is a descriptive assessment of modes of participation cross
referenced to relevant law and the primary data gathered in Chapters 3 and 4. The
latter section sets out modes of participation in tabular form allowing for visual cross referencing.

5.6.1 Modes of Participation – Descriptive Analysis

This section presents a summary of modes of participation identified in the data sets. Participation is identified by general theme or issue relevant to either victim or justice officials as set out in section 5.6.1. Participation relevant to victim or victim group is set out in section 5.6.1.1. Participation relevant to justice official per question asked in the interviews is set out in section 5.6.1.2.

This data is further discussed and connected to extracts of data gained via survey and interviews in section 5.7.

The breakdown of modes of participation evidenced through the sources of law may be stated as the:

- Right to information and services, including:
  - the right to information about services, remedies, relevant officials with whom the victim may have contact, where the victim is a witness in the trial for the crime will be informed about the trial process and the role of the victim as a witness in the prosecution of the accused
  - bail applications and special bail conditions;
  - the offender’s impending release, escape or eligibility for absence from custody;
  - the charges laid against the accused or the reasons for not laying charges;
  - any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges; the date and place of hearing of any charge laid against the accused; the outcome of the criminal proceedings against the accused (including proceedings on appeal); and
  - the sentence (if any) imposed as well as welfare, health, counselling and legal assistance as required.

- Right to consultation, including:
  - the right to be consulted before a decision is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless;
  - the victim does not wish to be so consulted, or the whereabouts of the victim cannot be ascertained. Also see NSW ODPP Prosecution Guidelines cls 19,20.
• Right to present evidence and/or make submission on substantive matters in court, including:

  - provision of a VIS, where a victim will have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court;
  - victims will also be entitled to make submissions on parole and eligibility for absence from custody of serious offenders, including the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

• Right to make a complaint, including:

  - where a victim may make a complaint about a breach of the Charter and will, on request, be provided with information on the procedure for making such a complaint.
  - Also see the Office of the Commissioner of Victims Rights, ss 11, 12 Victims Rights and Support Act 2013 (NSW).

These sources of law are set out in Chapter 2.

However, a more detailed assessment of the way these sources invite or enable participation range through the following:

• To be treated with respect and courtesy as a minimum procedural requirement (this includes all persons charged with the responsibility of the administration of the affairs of the state of NSW, except judicial officers, see s 7(2) Victims Rights and Support Act 2013 (NSW));

• To be kept informed of factual developments (specifically those relating to persons involved in the investigation; officers of the state; charges brought and to relevant decision made by the ODPP; the movements of the offender once imprisoned, and where bail is granted or conditions modified);

• To be advised as to legal rights and powers (including the right to compensation or victims support; to be consulted with regard to ODPP decisions where a serious offence is involved);

• To be consulted in pre-trial or out of court processes with the view that the victim will be able to make submissions that will be factored into the decision-making process to the extent that the submission is relevant and allowed by law (eg. Prosecution Guidelines cls 19, 20);

• To be invited to participate in court or trial proceedings although the participation may not impact on the decision being made (for instance, where a victim may be able to provide a VIS which may be entered into proceedings but may not be taken into account in sentencing); and
To be invited to participate in court or trial proceedings with a view that the evidence presented may impact on the decision being made, where relevant and allowed by law (where a victim presents as a witness or otherwise makes a submission that is tendered into evidence and that submission is deemed relevant to a substantive decision being made).

Some examples of these rights to the different modes of participation may include (but are not limited to):

- Provision of information generally (mainly regarding out of court information as to the nature of the justice system; what to expect of a criminal prosecution; expected modes of victim participation in summary of indictable matters, sentencing and parole hearings);

- To be kept informed of new or future developments with regard to a reported incident or matter before the courts (further charges laid; police decisions and ODPP decision regarding the charge or indictment or a plea-deal made with the offender; decisions to discontinue or withdraw a charge);

- To be informed of relevant charges or deal made with regard to charges or disposal by indictment following a plea-deal;

- To be consulted with regard to final charges arrived at or plea-deals made;

- To be informed of the opportunity to present evidence in court where relevant and if called, to be supported throughout the process (to be advised of services relevant to a court appearance; the availability of a WAS Officer and the services that may be reasonably made available via a WAS Officer; to be advised of special status as a protected or vulnerable witness, and to be afforded protections allowed under the Criminal Procedure Act 1986 (NSW) and Evidence Act 1995 (NSW), with particular regard to the protections afforded to child and sex offences victims);

- To present a VIS and have it considered as potentially relevant to sentence for a non-fatal offence (including the significance/necessity of a VIS for certain offences where the impacts of the offence is often ongoing and where such evidence of ongoing harm may not be before the court in evidence as adduced at trial – such as sex offences);

- To present a VIS in a homicide offence (and informed of potential therapeutic benefits of presenting a VIS to aid and assist family members by providing a vital opportunity for actual participation); and

- To be directed to Victims Services for additional support or information with regard to court process or additional claims, including compensation and victims’ assistance.
5.6.1.1 Modes of Participation – Victims’ Perspectives

The survey identified that victims who responded to the questionnaire:

- Were primarily victimised by offences to the person – homicide, assault and sexual assault;
- 42.76% of respondents were secondary victims or witnesses;
- Overwhelmingly the offender was known to the respondent, being a member of the immediate, extended family, or friend. The type of crime were principally offences to the person, homicide, assault and sexualised offending, as well as other offences such as domestic violence;
- A majority of open ended responses indicated that the police were helpful to victims in some way, resolving issues with the accused, providing information on additional support, information on court appearances, and support during court appearances were common modes of help identified;
- 62.24% of respondents reported that the police did not consult with them when charging (note that police do not have a duty to consult, rather to keep informed, but that some victims may expect consultation);
- Respondents varied as to how police handled their matter (30.25% very satisfied to 23.53% very dissatisfied);
- Open survey data indicates some victims concerned with a lack of engagement in early investigation and not being taken seriously by police (see Questionnaire section 3 – Qns 7 and 8 open data);
- 46 open ended responses notes that police were helpful to the primary victim;
- 22 open ended responses requested more information or updates from police;
- Most complaints led to a charge that ended up in the Local Court (33.61%), District Court (32.77%) and Supreme Court (19.33%);
- Varied as to whether kept informed of progress of court case (29.49% always informed to 15.38% not at all informed);
- Police and ODPP were the main source of information as to progress of case;
- Victims generally unsure as to what other information they needed or were given during the case. Open ended statements requested more information or updates but this was stated generally. Most could not state what information they sought;
• Where the matter preceded on indictment the ODPP usually discussed the nature of the evidence, what to expect in court, plea deals, and who to contact for further support with respondents;
• Most respondents either gave evidence in court and/or provided a VIS, but many sat in gallery. Some victims that provided a VIS also sat in gallery;
• 56.41% of respondents did not expect greater involvement in court;
• Respondents found that Witness Assistant Officers (ODPP), police, or NGO’s were mostly helpful to very helpful during the case;
• 37.7% of respondents found Victims Services helpful or very helpful. Although not charged with the responsibility to keep victims informed during a court case some victims may turn to Victims Services for help (support phone line, information on justice journey provided via internet, etc.);
• Most respondents dissatisfied (11.54%) or very dissatisfied (34.62%) with the way their matter was dealt with, however, many were very satisfied (19.23%);
• 44.87% of respondents were very dissatisfied with the final sentence;
• A significant number of eligible participants (by offence type) are not on the victim registers (35.90%);
• Of pending cases, 80.00% of victims wanted to give a VIS;
• Participants with matters pending saw the opportunity to give a VIS an important way of participating;
• Some participants identified personal therapeutic benefits from giving a VIS (to be a stronger person; to feel empowered);
• Most participants do not know of the option to proceed to forum or circle sentencing, or a youth justice conference (where relevant);
• Of respondents who did not talk to the police, most did not do so out of fear of reprisals or for other (unspecified) reasons;
• Such respondents were divided (36.36 very likely to report, 36.36% very unlikely to report) as to whether they would report any future crime to the police;
• 63.64% of respondents who did not report to police did wish to seek assistance from Victims Services.
5.6.1.2 Modes of Participation – Judicial Officers’ Perspectives

The interviews identified the following issues with modes of victim participation. Some points will appear contradictory as this is a grouping of points raised across all interviews:

**Question 1/2 - Experience of Justice Official**

- Most interviewees preside over a range of criminal offences (mostly offences to the person) with Local Court judges dealing with a range of minor and trivial matters and District Court judges more likely presiding over sexual assault and serious assault matters. Homicide cases are generally held in the Supreme Court with the exception of some s 52A charges where death results;

- Most interviewees sit across a range of procedures, from pre-trial hearing including bail applications, to judge and jury trials, to sentencing, to appeals in the District Court and before the Court of Criminal Appeal. Also canvassed were members of the NSW State Parole Authority and Mental Health Review Tribunal;

**Question 3 – How victims participate in Justice Official’s court**

- Participation as identified by interviewees was generally limited to:
  - Victims giving evidence in person or by statement;
  - By VIS;
  - Rarely in sentencing hearings other than by VIS (ie. victims do not often take the witness stand to give evidence);
  - Sexual assault cases where a subpoena may be contested;
  - Challenges to evidence elicited on the victim’s sexual history and reputation;
  - Eligibility of out of court statements provided by young victims and witnesses;
  - Charge bargaining with ODPP – where consultation required;
  - Bail Act 1978 s 32 considerations on victims;
  - Crimes (Sentencing Procedure) Act 1999 s 21A considerations – matters in aggravation of sentence;
  - Notification of victims registers;
- Availability of WAS Officer in court;
- Provision of information to victim prior to court;
- Information on prosecution guidelines to facilitate consultation between victim and ODPP;
- Availability and relevance of AVO’s;
- Victim as a police informant;
- Youth Justice Conferences and Circle Sentencing.

Question 4 – What are the processes victims currently participate in

- Modification of trial process not relevant as the trial is not about victims;
- The extent to which adversarial processes ought to be modified to accommodate victims depends on the situation as this may vary;

Question 5 – Should the level of victim participation change

- ODPP Consulting a victim before and after evidence is important;
- No support needed especially where victim is a witness as this may taint evidence;
- Need to conference with victim prior to giving evidence – especially by police or ODPP;

Question 6/7/8 – Processes relevant to the victim be changed, abolished, or mode consistent

- No processes currently available to the court need to be abolished;
- Keep VIS within their current constraints;
- We have come a long way in terms of sexual assault matters;
- Abolish verbal VIS;
- Better explanation provided to victim as to their role in proceedings is needed;
- Give witnesses a liaison to assist in their job of giving evidence;
• New processes such as conferencing between witnesses, victims and offenders;
• Greater interaction between offender and victim could be encouraged;
• Expand Witness Assistance Scheme via ODPP;

Question 8 – Charter of Victims Rights
• Limited knowledge of Charter of Victims Rights;
• Charter is built into all court processes, and hasn’t had any negative impact;
• Charter does not impact on role as judge;
• Victims are heard and given a role in proceedings;
• Domestic Violence victims require special application of the Charter;
• Domestic Violence victims need a special version of the Charter;

Question 9 – How does Charter of Rights for Victims apply
• Courts deal badly with psychiatrically disturbed people;
• In the lower courts there is scope to looking at alternative processes that involve the victim;
• Improved integration of victim support groups into proceedings;
• Judges can attend support groups to better educate victims as to what can be expected and this can be part of the educative experience of courts;

Question 10 – Reflecting generally, which court/tribunal allows for victim participation best
• The Supreme Court provides for better participation because of VIS;
• Children’s Court allows for different modes of sentencing that involve victims;
• The needs of Aboriginal persons may be better dealt with in the Local Court re Circle Sentencing;
Question 11 – Reflecting generally, in which court/tribunal is victim participation limited

- Victims may be able to stay after giving evidence but not so at the risk of the integrity of future evidence and recalls;

- Victims should not be included in sentencing;

- After giving evidence the victim does not participate;

Question 12 – Relevant alternative pathways, restorative justice, etc.

- A restorative justice model may be useful;

- Youth justice conferencing was identified as indicative of a successful alternative pathway or program of restorative justice;

- Important that the offender see firsthand what they have done;

- Circle Sentencing is important;

- Judge is constrained in court room so victim is best placed outside it;

- Depends on victim, some want to be in the courtroom;

- Diversionary programs are relevant;

- Some involvement in court is useful;

- Outside court process can help with the healing process;

- A flexible approach is needed;

- VIS allows for participation;

Question 13 – Substantive impact of processes for victims

- Victims should view processes to see that justice is done;

- Repetition of the incident/crime and participation in court may be helpful to the victim;

Question 14 – Victim lawyers and victim advocates

- Job of a victim advocate may be already done by the police/police prosecutor;
• Retrograde step to allow victims access to lawyers in the trial context;
• Victim does not need a lawyer as they are only a witness;
• Pro bono work is already conducted by criminal bar to represent clients to stop sensitive materials being subpoenaed in sexual assault cases;
• Judge will protect witness in court;
• Victims are not parties to proceedings and to have them involved at trial would significantly undermine the trial;
• Trials will go awry if a third party was present;
• WAS Officer from ODPP already do that;
• Lawyers to assist with victims’ compensation claims is a good idea but now there is a lack of resources to allow for such claims;
• What more could a lawyer advocate on behalf of a victim?;
• Police Prosecutors act as victim counsel already;
• Alternatively, having a lawyer to discuss issues with would help.

5.6.2 Modes of Participation – Diagrammatic Analysis

This table set out the sources of law referred to by each interviewee. Other than those sources of law directly raised in the interviews, the table also sets out the sources of law that raises a process relevant to victims generally. The table is marked where an interviewee refers to that source of law, either directly or indirectly through representation (the exercise of a police power, etc.).

Where the interview clearly refers to the source of law the box is marked with an ‘X’. Where the interviewee possibly refers to the source of law but in a perhaps more ambiguous or indirect way, the box is marked with a ‘X?’.
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5.6.3 Modes of Participation – Overall Synthesis

- Offences to the person, including homicides, dominates the characterisation of victimisation in NSW. This is consistent with past research into harms and victimisation (Wemmers, 2005).

- Secondary victims or witnesses or family members in homicide cases understand their victimisation through the harms of the primary victim

- Victims identify the criminal process as beginning with police contact (which has a statistically significant relationship with overall satisfaction with the criminal justice system)

- Victims identify access to information and being kept informed as a mode of participation

- Victims become more dependent on police prosecutors and the ODPP prosecutor as the matter proceeds

- WAS Officer were seen to be helpful or very helpful.

- 56.41% of victims did not want greater involvement other than through contact with police and prosecutors, to be kept informed. These victims did not want greater actual involvement in court cases by in court participation.

- VIS is well anticipated by victims whose matters were pending (80.00%) or not yet completed (proceeded to sentence) but only 36.46% of completed cases gave a VIS. There is thus a possible disconnect between expectations to present a VIS and actually getting or taking an opportunity to present a VIS.

- Otherwise victims participated by observing (47.44%) or by giving evidence (25.64%).

- Justice officials sought to characterise victims as witnesses, that is, as persons testifying in court.

- Justice officials tended to characterise participation through known adversarial processes, specifically attendance in court as a witness or through presentation of a VIS. To a lesser extent, justice officials characterised victim participation through the following modes of participation: use of counsel in sexual assault proceedings, ODPP plea deals, out of court statements, bail application (specifically, s 32 considerations), victim registers, AVO’s, conferences and other alternative pathways, issues with discrete groups of victims, such as mentally ill victims, advocacy for victims by justice professional other than a lawyer of private counsel.
5.7 Discussion

This study and the initial questions which guided it (see section 1.2) were based on several assumptions prevalent in the literature. These assumptions question the extent to which victims interests are being catered for in conventional court processes and suggest the need for innovation in existing court processes in order to better serve the interests of victims (Shapland 1986). This has, however, been recognised as a difficult task given the inherent diversity (Spalek, 2006) of victim interests across the criminal jurisdiction and the rigidity of current court processes connected to the adversarial system of justice.

The rigidity of adversarial systems of justice has been well noted as connected to a series of assumptions held by key stakeholders in criminal justice, namely, those empowered to make decisions and set agendas. It is also connected to fervent nationalism, ie. identification amongst stakeholders that ‘their’ system of justice is adversarial and that this is the most superior and only way in which justice may be effectively met out (see Summers, 2007; Kirchengast, 2010). The stakeholders empowered to make decisions and set agendas include those justice officials accessed in this study, specifically judicial officers, prosecutors, the police, lawyers and executive officers (ie. parole).

This study confronts the assumption that victims have little input into the shaping of the criminal justice system by seeking input from victims directly by way of questionnaire, and by interviewing justice officials as to their knowledge, values and assumptions as to how the victim may be accommodated in court in a procedural sense.

In terms of the aims of this study, the questionnaire sought to determine the extent of victim participation across NSW criminal courts from victims whose court matters were either completed or underway, while also eliciting opinions from those victims as to their expectations as to how they wish to participate. Barriers to effective participation were then assessed in terms of the wishes of victims to participate, including the form of that participation, and the attitudes and assumption of justice officials as to the possible and practical extent of victim participation.

The data from the questionnaire generally revealed that victims wish to participate in court processes but seek to do so in diverse ways. This supports former studies into victim interests in court processes (Shapland and Hall, 2007). This also reflects the reality that court participation in the criminal jurisdiction is necessarily diverse. This diversity depends on a great many variables, including the type of offence, the court in which the offence will be disposed of, the stage at which the victim seeks or is required to participate (pre-trial, trial, sentencing, parole, etc.).

This study affirmed that not all victims seek active participation. However, all victims wish to be listened to and taken seriously by justice officials. Of victims whose court matters were completed all noted that engagement with the police and ODPP and the provision of information on their matter was important. 37.18% and 29.49% indicated that the police and ODPP mostly kept them informed respectively. Some victims wish to have greater input into decisions made. 23.40% wanted greater involvement in plea deals, 51.06% sought greater involvement in what charges ought to be laid, and
65.96% sought to discuss the nature of the evidence with the ODPP prosecutor. Analysis of the data indicates some statistically significant relationships and correlations. This data is discussed at 5.7.1.6.

Interviews with justice officials revealed that most justice officials, including non-judicial officials, understand victim participation through the lens of adversarial justice where the victim is only accorded a narrow role in terms of the state’s prerogative to police and prosecute crime. Any further participation was generally seen to be an impediment to the interests of criminal justice and the types of participation expected of victims was largely identified in terms of normative modes of victim participation, such as informing police, and as witness for the prosecution. Nuanced modes of participation were identified in terms of the statutory remit of victims, in particular, tendering a victim impact statement during sentencing. Some interviewees identified alternative modes including restorative justice and access to victim advocacy schemes as important new developments for victim participation.

5.7.1 Discussion of Survey Data

The questionnaire was completed by 142 persons self-identifying as a victim of crime. All responses were anonymous. The questionnaire was available electronically through UNSW and the link made available via the Victims Services NSW website. The questionnaire was made known to victim organisations and disseminated amongst victim groups as well as advertised generally around court complexes in Sydney and regional areas by poster.

The questionnaire primarily sought information from victims whose matters were completed (ie. post-sentencing) but also asked questions of victims whose matters were ongoing. See section 1.7 and 1.8.2 as to methods used. A copy of the questionnaire is available in Appendix 1.

This section analyses the survey data relevant to the aims of this study.

5.7.1.1 Victim’s Overall Satisfaction with Court Processes

Victims whose court matters were completed indicate, as a general cohort of victims, varying levels of satisfaction and dissatisfaction with the way the criminal justice system has dealt with the crime. This is consistent with crime victimisation studies (Johnson, 2005; Shapland and Hall, 2007) where satisfaction was deemed to hinge upon a number of variables, personal and institutional.

| Overall, how satisfied were you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc)? |
|-------------------------------------------------|-------------------------------------------------|-----------------|-----------------|-----------------|
|------------------|------------------|-------------|-------------|----------------|-------------------|
|                  | 19.23%           | 16.67%      | 17.95%      | 11.54%         | 34.62%            |


Alternatively most victims who understood or knew the sentence of their offender were very dissatisfied with the sentence handed down. This is also consistent with prior research into victim satisfaction in sentences (Johnson, 2005; Shapland and Hall, 2007).

Victim’s suggestions for improved court processes were also varied. The largest number (n = 28) had no suggestions for improvements although some (n = 12) did suggest that the provision of more information would benefit. The diversity of responses for improved court processes for victims is expected in accordance with the inherent diversity of victim interests, backgrounds, offences and experiences. Depth of participation and the desire for further participation would also be reflected in the diverse suggestions for improvements. These improvements are discussed in the following sections on direct participation and indirect participation, below.

Overall satisfaction with the way the criminal justice system dealt with the offence has been connected to levels of support available to the victim (Johnson, 2005; Cassell, Mitchell, and Edwards, 2014).
5.7.1.2 Direct (In Court) Participation

The types of participation identified by victims in this study were direct or in court participation (ie. the victim addressed the court themselves, or made a decision to attend court themselves, or the victim attempted to be otherwise active in the management and organisation of their interactions with justice officials while the matter was ongoing) or indirect or out of court participation (ie. the victim participated by seeking information and support from a justice official, namely, lawyer, police officer or prosecutor outside of the court environment). This section examines outcomes based on direct participation.

Not all victims directly participated in court processes and the extent of most victim’s direct participation included sitting in the public gallery. Other frequent modes of direct participation included providing a victim impact statement and attending to give evidence, with some victims going on to give evidence.

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<th>Were you involved in the court case in any following ways (select all that apply)</th>
<th>Response percent</th>
<th>Response total</th>
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<td>Private Prosecution</td>
<td>0.00%</td>
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<tr>
<td>Provided a Victim Impact Statement</td>
<td>38.46%</td>
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<td>Attended court as an observer (sat in public gallery)</td>
<td>47.44%</td>
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<tr>
<td>Attended court to give evidence but was not called</td>
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<tr>
<td>Gave evidence in court</td>
<td>25.64%</td>
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<td>Gave evidence via CCTV</td>
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<td>Gave evidence but did not attend court</td>
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<td>6</td>
</tr>
<tr>
<td>Participated in forum sentencing</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Participated in youth justice conferencing</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Participated in circle sentencing</td>
<td>0.00%</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>12.82%</td>
<td>10</td>
</tr>
</tbody>
</table>

The majority of victims did not seek greater direct involvement in court processes. Lack of knowledge of available options may have impacted on this result. Some sought greater indirect involvement (see discussion below).

<table>
<thead>
<tr>
<th>Did you expect to have greater involvement in the court case compared to what you experienced?</th>
<th>Response percent</th>
<th>Response total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes (please specify)</td>
<td>43.59%</td>
<td>34</td>
</tr>
<tr>
<td>No</td>
<td>56.41%</td>
<td>44</td>
</tr>
</tbody>
</table>

The suggestions for greater direct involvement tended to reflect a desire for more court support that keeps the victim informed of developments both in and out of court, including while the matter was proceeding. The following statements recognise the general isolation victims feel from direct court participation in court processes, in particular, from ODPP prosecutors who are not specifically charged with the duty to keep the victim updated as to developments:
I believe every victim should have the right to tell the Magistrate/Judge and or Jury what happened to them in their own words. Victims need closure to be able to move on from what event took place. I feel like I have never been given the opportunity for closure.

I thought I would have had to be present for the case.

I thought I would be required to attend.

I expected to be able to provide a victims impact statement.

The defendant lied and lied in court to cover his tracks regarding the constant breaches but I was told not to attend so had absolutely no say.

I thought Police may have contacted me pre the trial to discuss what would happen at court.

To be given opportunity to give evidence and [our] personal account. Offenders are and it is an injustice as victims we are not given an opportunity to speak of the impact on us and our children.

I was prepared to give a victims impact statement but wasn't given the opportunity. This made me feel unrecognised. I wasn't given a chance to state my feelings and this left me feeling very let down, almost like it wasn't important.

To be called as a witness.

Greater inclusion of me by the ODPP and certainly in a more caring, compassionate manner than the way in which I was treated by the prosecutor.

Yes, but what was to be a 10 day trial turned into a 2 day hearing where both prosecutors had previously planned the outcome for the sake of saving money for the court system.

The judge delivered a fait accompli finding and then passed us onto victim services.

Went outside for recess break. Wasn’t even called in by the ODPP to hear ruling.

I was a minor and didn’t know what to expect, had no idea how it worked (or not).

I feel like I did not exist in the court case it was all about the accused and accommodating his needs, not mine.
A chance to express the impact that the crime has had on our lives both personally and within the community and for this to be taken into account when sentencing.

Thought I would have to testify and face the offender but it was not necessary in [the] first hearing. I expected to give evidence, but someone decided it wasn’t necessary, and they didn’t want the hearing carried over for another day.

Yes the victims should have the right to input into sentencing, and offenders should not be allowed to remain silent when questioned by the prosecution offenders can have legal aid services provided by the taxpayer to avoid or lessen being convicted/sentenced whereas the victim has to stand alone and be attacked by the defence...who has committed the crime here?

Give evidence.

I would have liked to have spoken to the prosecutor just once.

I didn’t have to enter the court room or give any evidence that I had been made to prepare for being the victim.

These statements refer to the diverse modes of direct participation and expectations of victims. However, trends do present. These include the desire to be treated with dignity by the prosecution by being kept informed of hearings, return of court following adjournment, to be provided an explanation as to why hearings may be shortened, why witnesses were not called, and why victims may not be required to testify. Explanations as to adverse outcomes contrary to victim expectations may also need to be accommodated.

While victims identify this as a prosecution duty these expectations more fairly fall upon Witness Assistance Officers although several of the requests of victims may extend beyond current duties. Expectations need to be managed prior to attending court and even following hearings, especially where victims may need to attend further hearings or may have other dealings with the criminal justice system, such as a compensation claim. In this instance, feelings of isolation and exclusion may be reduced if a support person is appointed that carries the victim through their justice journey, which is necessarily individual and personal for each victim.

There is a clear connection between support for direct participation and indirect participation. Although fewer victims sought support to allow for direct participation, most victims who did seek some mode of direct participation sought information that allowed them to understand proceedings, decisions made by others during proceedings, or to be kept informed so as to know which hearings to attend or not. Some victims wanted greater contact with the prosecutor during proceedings. Some were disappointed in not being able to address the court directly, by not being called as a witness or by not being asked to present a victim impact statement. Although it is not feasible for victims to have direct access to prosecutors (or other justice officials other than a private lawyer) during proceedings, many victims felt a desire to speak to
the prosecutor and this desire may be better addressed through comprehensive court support.

### 5.7.1.3 Indirect (Out of Court) Participation

Indirect participation may include those situations where the victim did not seek to actively participate in proceedings, but sought information, support or involvement in decisions made prior to going to court. Modes of indirect participation may include out of court decisions, such as consultation as to charges laid (where available), requests for information or to be kept updated on developments, to seek explanations as to decision made, or plea-deals or negotiations. While there are clear connections between modes of direct and indirect participation, indirect participation does not involve the victim attempting to engage with the court directly.

While the majority of victims did not seek further direct participation in their matter (56.41%), victims expressed significant interest in information and support to allow them to keep track of the investigation and prosecution process that led to court proceedings, or information that made sense of decisions made or available options.

Statements seeking indirect involvement were common:

*More contact and information made available to victim.*

*Having a Police/Victim Liaison officer at the court - above and beyond the DVLO's who tend to be busy with the actual case*

*The police need a victim liaison officer in each station to liaise with victims and keep them updated. Police are hard to catch with their leave and duties and one gets the feeling they are too busy to talk to you. Someone charged with multiple counts of rape should not be given police bail! The OPP support people kept on changing and I have not been contacted by them in months.*

*Perhaps a better explanation at the very beginning about what to expect with so many mentions and a better understanding of the bail and why someone accused as an accessory would be released on bail.*

*Police could return calls, advice when asked a question, do some courses in empathy. Not be rude/aggressive-assertive.*

*Don't know enough about current system to comment;*

*Most victims and their families have very little knowledge of the criminal system when a serious crime has been committed. I would like to see a facility put in place where one can go and have everything explained to them in a language that can be understood. In homicide cases most families do not have legal representation apart from the ODPP. I feel at some stage during the court process the victim's family should be allowed to participate in some way when they don't understand or agree*
with what has been said or wish to query different points. When a case
does not go to trial for whatever reason, i.e.; mental health reasons.
Families should be apprised of the decisions made between the ODPP
and the Judge before the final Court hearing and explained in full why
these decisions have been made and not the half-hearted answers we
were given in our particular case. This would somehow make it easier to
understand and accept.

I think the police should be kept better informed by the OPDD of the
progress of charges and plea deals etc. Especially in regional areas
where the victim has more contact with them then they do with the
OPDD.

Keep them informed from the start to the finish of the whole process. We
were the victims and we felt totally left out.

Yes be told after each court date what is happening.

A chance to express the impact that the crime has had on our lives both
personally and within the community and for this to be taken into account when
sentencing.

The police actually inform the victim at each stage what is happening.

Kept more informed.

Kept informed of his appeals and release date.

The police should inform victims on the progress of a case and give them
an opportunity to attend court.

Keep victims informed. Criminals know and play the system victims
don't.

More understanding or explaining rights, etc.

Victims’ families should have more access to information and be kept up
to date with the process and progress of the case each step of the way. If
wanted, all evidence should be available and explained to families
(victims) so they are not surprised when it is presented in court.

Victims who requested better support and access to information throughout their
matter tended to focus on contact with the police and prosecutors. This is expected
given that for most victims engaged with the system, their knowledge of the system
would be largely provided by contact with these justice officials (Camacho and
Alarid, 2008; Cassell, Mitchell, and Edwards, 2014). Contact with police and
prosecutors was affirmed by the data gained in the survey. The vast majority of
victims noted the police (37.18%) and prosecutors (29.49%) as keeping them
informed. Other justice officials noted (23.08%) included police liaison officers and
social workers, especially amongst domestic violence victims.
Victims generally sought information on their role in the court case. This included the nature of the evidence in the matter (65.96%), giving evidence (40.43%) and the charges that will be brought (51.06%). General information as to court process was also very common (68.09%) as was who to contact for further information and help (51.06%). Other information included personal conversations with the ODPP, plea-deals agreed to, or dissatisfaction with the prosecution’s conduct of their matter.

### 5.7.1.4 Opinions on Reform/Change

Throughout the questionnaire victims expressed various attitudes and opinion on what they identified as areas of reform and change. Some mentioned areas of reform or change which undoubtedly flowed from their personal experiences. Often these were expressed as dissatisfaction with the way their matter was handled by police, prosecutors, lawyers, or the courts (including the judiciary), while other recommendations reflected upon the system as a whole.

A selection of recommendations for reform or change that may be classified as more personal are as follows:

- **Lots.... harsher penalties!** The system put innocent people in jail and let's criminals walk free.

- **Yes. Tougher sentencing for sex offenders!!!**

- Alleged murderer had more rights than our deceased son. Jury should hear that the accused is in gaol and didn't apply for bail. Hear all of the facts from ERISP. Needs to be a better process in getting jurors. half of them do not want to be there. Jurors should be directed as to what is reasonable doubt.
Change the judges and the judicial system. The judges are useless. If they keep giving weak sentences or suspended sentences to vicious criminals, victims are less likely to report a crime, as are police in following it up.

I believe that the perpetrator can say 'sorry' without really meaning it and that is accepted by officials. In my case it was conveyed through my barrister leaving me believing the perpetrator was truly remorseful.

New tattoo on my left arm ‘It's not a justice system, it's just a system’. We were made to feel that every part of the judicial process favours the accused, everything seems to [be] built around assisting the criminal. So now, congratulations to the system. My son's murderer is out there with you and me, free to strike again.

However, more suggestions were presented which offered detached reflection on possible changes to court processes that may benefit all victims:

Enforcement of the charter of victim services.

More understanding sometimes the court treats the victim worse than the offender.

Less victim's time wasted.

Firstly why do magistrates ignore breaches as if they don't matter at all. AVO's should be valid and enforceable. NO EXCUSES.

Having rooms available to sit apart from the perp. Having someone in there to just talk to you - without them being privy to your case.

Not give the option of whether charges will be laid or an AVO applied for.

Look at the bigger picture and facts leading up to the event.

I believe that the victim have a voice, and a say in court, that they be present if so wished,

There obviously needs to be more transparency between solicitors and prosecutors of the ODPP and the community they represent. The cure for corruption is public scrutiny.

The same police prosecutor should be kept with the case even through appeal. The police should attend appeal hearings.

Make it mandatory for both party's to have counselling.

It's tokenistic. Only there to make the victim feel appeased when generally the system wants nothing more to do with them. Entire thing needs overhauling.
A telephone conference, to verify the nature and effect of the injuries or the psychological effect on victims and how they have coped so far.

The parameters of ‘victim’ could be broadened. As I was not married to the deceased our 10 year relationship and the crimes' impact upon me was largely dismissed by the police and judicial system.

Video link available to all victims.

Defence lawyers should be limited to a set number of questions and/or time during cross examination of a child. 6 hours/hundreds of questions is too long, as our seven year old had to endure.

Change ‘Not Guilty on the grounds of mental illness’ to (say) ‘Guilty, and subject to mandatory confinement and treatment for mental illness’. Also make victim impact statements normal process in such cases.

A Board or Tribunal independent of political structure will give a compassionate credibility to the whole process.

Unlimited counselling. Access to psychiatrists in preference to a psychologist. A psychiatrist can prescribe medication; a psychologist cannot. If impact is long term and assistance from Centrelink is required (disability pension). They do not accept a psychologist report. Cost unreachable is [sic] if low income or unemployed. Another unnecessary traumatic event.

While it is beyond the remit of this study to investigate all suggested options most victims did turn their mind to a meaningful analysis of ways in which the justice system may be improved. Most points were mindful of the broader issue of fairness to the accused on trial, such that the recommendations are not necessarily biased, and therefore ought not be dismissed as necessarily denying the accused of their right to procedural justice and due process.

5.7.1.5 Modes of Desired Participation

Victims expressed a range of modes of participation through the questionnaire. While most of these conformed to known or expected modes of participation in pre-trial, trial or sentencing phases of the criminal process, some novel modes of participation were also noted.

Expected modes of direct participation included providing written statements, presenting as a witness for the prosecution, providing a victim impact statement. Indirect participation included talking about their matter with the police or prosecutor. These modes of participation are discussed above at 5.7.1.2 and 5.7.1.3.

Novel modes of participation identified flowed from the common request for more information and support. Many victims identified this through the need for a support agent who could then advocate their interests throughout the entire process.
Absolutely. I believe if someone is charged the victim should be allocated an officer that can explain the court system, the legal system, the police system to them in as much or as little details as the victim needs.

Full explanation as to what the court process is, and who's who in court, support persons present.

I could have representation at some point that would be good.

In addition to a support person, in the case of CCTV closed court for children, it would be beneficial to have a person that can intervene if a defence barrister is acting out of order. A judge may not always catch the defence barrister in time.

A stricter and more frequent system that monitors the actions and compliance of the lawyers, court staff, judges and offenders, which has a scale of consequences for breaches of the laws of conduct and practice. Currently lawyers and Judges can basically do and get away with daylight murder, new laws and amendments are ignored and if you are self-litigating you become a worse off victim, they do not do you any favours and basically try to bully you out. It's just absurd that this professions has such a high pay scale for what seems like glorified pen pushers and really good bullies and bullshit artists. All victims should be provided a support system if they wish. They may not have one, I have never had one.

Let the victim make their own decisions, they feel they had no power/control, let them have it now.

I think good trained case workers are vital, that stay with the victims throughout the process, as emotional support and someone that can debrief the victim every step of the way, to ensure the victims does not miss anything.

There should be more opportunities for the victim to participate and have publicly funded legal representation so that their rights are protected.

I pulled out of the process as I was not strong enough to proceed. I feel that if the police or ODPP had been more in contact I may have been able to continue.

I believe that victims should be able to have more of a say with the prosecution of the offender to a certain point. I do understand although that the prosecutors need to be able to make the final decision’.

I think there needs to be more Counsellors or professionals to help with the mental support of it all. I think the mental scars take a lot longer to heal than the physical ones.
Most victims and their families have very little knowledge of the criminal system when a serious crime has been committed. I would like to see a facility put in place where one can go and have everything explained to them in a language that can be understood. In homicide cases most families do not have legal representation apart from the ODPP.

I should have had competent representation. The defendant was prosecuted by the state and I was a witness for the State. So I was not involved in decision-making. The defendant had $145,000 of my money in his account and used the money to buy a Barrister and Solicitor. I have a lot to say.

A victim just needs reassurance that reporting the crime is not all there is to it. The CJS allows so much time and attention to the criminal that the victim is left totally lost.

While the need for this mode of support may be conventionally provided by court support staff or WAS Officers from the ODPP, the support requested by victims was broader and focused on connecting the need for out of court with in court services. Some victims required legal representation while others sought someone with a broader skillset, specifically case work or counselling skills. This goes beyond the current scope of support workers currently available to victims in NSW.

Various jurisdictions now provide for victim assistance that is offered from the outset of the matter being reported to police through to the conclusion of the matter, whether that be trial and sentencing, appeal or even post-conviction, parole and release. Assistance can be provided by the same professional and associated applications, for counselling and compensation, may also be completed by the same professional. While such professionals may be legally qualified they need not be a lawyer. Studies of victim advocates have been conducted widely in the United States where such schemes are more common (Kirchengast, 2013; Camacho and Alarid, 2008).

5.7.1.6 Variants in Victim Participation by Group

The data analysed in this section is presented in section 3.2.1.10.

Modes of participation were identified by demographic group, offence type and injury. These groups included:

- Gender
- Age
- Aboriginal and Torres Strait Islander (ATSI)
- Type of Injury
- Nature of crime/offence
- Geographic location
- Relationship to offender
- Active compensation claim
- Member of a victim’s group
Data was analysed in two sets, all victims participating in the survey (n=142) and those victims whose court matters were completed (n=78).

The data revealed trends throughout but discussion focuses on statistically significant relationships, with the exception of general comments on offences (see below).

Unless otherwise specified, all tests of significance are at $p<.05$.

### 5.7.1.6.1 Offence Type

There is no statistically significant difference between overall satisfaction with the criminal justice system and offence type. This finding may require further research on the basis that there are assumed differences as to levels of satisfaction based on offence type. However, there are statistically significant findings from the analysis between offence type and other factors, such as gender, age, victim/offender relationship, and tendency to claim compensation, membership of a victim’s group, and geographic location.

Data from the ‘Other’ offence category was recoded as Domestic Violence, given the number of specified responses to Domestic Violence.

### 5.7.1.6.2 Whole Data Analysis (n=142)

The following section comments on those statistically significant relationships prevalent in the data based on all responses.

Overall System Satisfaction: ATSI less satisfied than non-ATSI with overall system (as to social issues faced by ATSI people in Australian justice context, see Wood, 2014). This is consistent with expectations as to the specific needs of ATSI victims, and their identification as an at risk group. While services are targeted to ATSI victims (note discrete Aboriginal Contact Line offered by Victims Services) these services may be incomplete or require focused research in order to determine the individual needs of this group. Whole data analysis also indicated that regional victims less satisfied than rural/remote with overall justice system.

Offence Type: As to offence type, sexual assault/indecency more likely associated with females (see Wheatcroft, Wagstaff and Moran, 2009). Significant difference between average age of murder/manslaughter (49yrs) compared to sexual assault and indecency (39 yrs). This data indicates that sex offences victims are more likely to be female, at least in terms of those persons reporting matters to the police that end up being dealt with by a criminal court. Sex offences victims also tended to be younger, especially against murder/manslaughter victims (family members of primary victims).

Injury Type: Murder/manslaughter and assault more likely associated with physical injury. Murder/manslaughter less likely associated with psychological injury. Sexual assault/indecency and other (coded as domestic violence) more likely associated with psychological injury. This data is consistent with expectations as to family members
of homicide victims (psychological injury includes diagnosable injuries but excludes trauma, stress, grief and loss). However, sex offences victims did report statistically significant higher levels of psychological injury. This is consistent with the literature and with compensation arrangements elsewhere (Wheatcroft, Wagstaff and Moran, 2009; GBMJ, 2012). Domestic violence more likely associated with financial and property loss. Murder/manslaughter less likely associated with financial and property loss. Property loss is common amongst domestic violence victims especially where such offending leads to relationship breakdowns or having to relocate from the family home (GBMJ, 2012). Additionally, there is a weak, negative correlation \((p<.01)\) between physical injury and age indicating subjects suffering a physical injury are younger. Weak positive correlation \((p<.01)\) where family death is related to an older victim. There is a weak negative correlation between psychological/emotional injury and age, with those experiencing this injury more likely to be younger.

Court Processes: Domestic violence more likely associated with participating as a witness in court proceedings. Assault less likely associated with witness in court proceedings. Murder/manslaughter more likely to participate in court by sitting in public gallery. Where domestic violence victims request an apprehended violence order attendance as a witness is generally required in order to gain a final order. Family members of homicide victims will be more likely to sit in the public gallery than give evidence.

Relationship to Partner/Offender: Murder/manslaughter more likely associated with family death. Murder/manslaughter less likely associated with all types of injury. Murder/manslaughter less likely to be associated with partner and more likely to be associated with other family. Assault more likely to be associated with partner, less likely to be associated with other family and friend/acquaintance. Sexual assault/indecency less likely associated with partner and more likely to be associated with friend/acquaintance. Domestic violence more likely to be associated with partner. Data presents common trends that are expected. Homicide results in a death in the family, and domestic violence is associated with a partner. Assaults also likely to be with partner, however, some of these may be domestic violence cases where the victim elected to represent their matter as an assault when answering the questionnaire. Sex offences are also more significantly related to friend/acquaintance than any other relationship (Schwartz, Cavanaugh, Pimental and Prentky, 2006). This is consistent with known patterns of sex offending.

Compensation: Murder/manslaughter more likely associated with active application for compensation; and less likely associated with ‘no claim’ or ‘no claim considered’. Assault less likely associated with active application for compensation. Sexual assault/indecency more likely associated with no claim for compensation but application being considered at time of questionnaire, and less likely associated with no claim whatsoever. This is consistent with the compensation mechanisms available under the *Victim Support and Rehabilitation Act 1996* (NSW) which set different payments for offence type and injury. Most survey participants did not fall under the revised compensation scheme. Additionally, in relation to applications for compensation and police involvement, if active compensation claim on average more satisfied with police involvement compared to no compensation; and those considering a compensation claim on average more satisfied with police involvement than those receiving no compensation.
Victims’ Groups: Murder/manslaughter more likely to be a member of a victims’ group. Assault and sexual assault/indecency more likely not to be a member of a victims’ group. Sexual assault more satisfied than domestic violence victims. This trend is consistent with known victim rights support groups in NSW and Australia. There are organised support groups for family members of homicide victims and members of such groups may have been more motivated to participate in this research.

5.7.1.6.3 Completed Cases Analysis (n=78)

The following section comments on those statistically significant relationships prevalent in the data based on completed cases only.

Overall System Satisfaction: Non-ATSI were more likely satisfied than ATSI with regards to the overall criminal justice process. Rural/remote victims more satisfied than regional victims with overall criminal justice process (see Wood, 2014; see Bryant and Willis, 2008 as to social factors that relevant to ATSI community that increases risks of victimisation). There was a moderate positive correlation between satisfaction with the police investigation by satisfaction with the overall justice system \((r=0.57)\). There was also a moderate positive correlation between satisfaction with the overall justice system by kept informed of investigation \((r=0.51)\). Those victims that were satisfied with the police investigation are more likely to be satisfied with the overall criminal justice system. This is consistent with known helpful early intervention on the part of the police (Kirchengast, 2011b; Allen, 2011; Karmen, 2012: 168). Those wanting more involvement were on average less satisfied. Victims who felt that they were kept informed of their matter also had a moderate positive correlation with their overall satisfaction with the criminal justice system.

Satisfaction with Sentence: Non-ATSI more satisfied than ATSI with sentence (as to Aboriginality and victimisation see Roach, 1999: 255). Those who submitted a VIS more satisfied with police and more satisfaction with overall system compared to those who did not. Those who did not have some ‘other’ process involved were more satisfied with sentence compared to those where some ‘other’ process was involved (other processes identified by victims included: attending an identification parade, ODPP plea bargaining, giving CCTV evidence but not being called, giving a written statement, or having no involvement despite case proceedings to court). These ‘other’ processes referred to either involved non-participation where participation may have formerly been promised, or being excluded from a process that the victim might have wanted to participate in (ie. plea bargaining, where there is no formal role for the victim). Research on tendering a victim impact statement does indicate that it promotes the restoration of the victim and their satisfaction with the justice process (see Erez, 1999).

Age: On average those wanting greater involvement in court case were 41 years of age compared to those who did not, who were on average 47 years of age.

Satisfaction with Police: Those wanting more involvement were on average less satisfied with the police.
Kept Informed: Those wanting more involvement on average perceived that they were generally less informed during their mat.".

Location: Rural/remote less likely to be associated with wanting more involvement. No explanation was given to warrant this difference, however, likely reasons may include court services and offence types. Further research may be warranted.

Relationship to Offender: If the victim had a partner, more likely than expected to be associated with wanting more involvement.

Compensation: Those receiving no compensation more likely than expected to be associated with wanting more involvement. Those with police support less likely than expected to have received no compensation. Shapland’s (1984: 144) early work into compensation and victims indicates a positive correlation between awards of compensation and the victim’s view of their standing within the justice system. Victims took an award of compensation as more than meeting their immediate financial needs but associated the payment as an acknowledgement that their case is important to the system.

Offence Type: Victims who experienced financial/property loss were more likely to be associated with wanting more involvement.

Kept Informed: Of those victims claiming compensation most were kept informed (of matters generally, not necessarily compensation claim) by the police or ODPP. Police kept most compensation cases informed. Those with NGO support more likely than expected to have received compensation. There is a high positive correlation between satisfaction with police investigation and being kept informed (r=.82), meaning that as perceptions of the extent to which victims believe they were kept informed increase, so does satisfaction with the police investigation. This is consistent with known understandings on victim satisfaction in the early stages of the prosecution process, where the investigating officer may be the relevant point of contact with the victim. Where this relationship is satisfactory to the victim then this satisfaction may be cast across the whole system, including court proceedings. Skogan’s (1989) research on the integration of police and victims is seminal here and continues to indicate a strong correlation between policing practices and victim satisfaction with justice processes.

Victims’ Group: If the victim was a member of a Victims’ Group, more likely to have received NGO support. Where a family member died, more likely to have NGO support. This is consistent with known membership parameters and availability of support, and that family members in homicide cases may be more likely to experience support through Victims’ Groups given that discrete groups exist to accommodate those victim’s needs.

Court Support: Data indicated that males perceive greater average helpfulness than females from WAS Officer. There was no explanation given for this and further research may be warranted.

Involvement with Court Case: Those victims who wanted greater involvement with their court case perceive greater average helpfulness from a WAS Officer than those
who did not want greater involvement. There is a weak, negative correlation between being informed against helpfulness of witness assistance officer ($r=-.31$). There is a weak, negative correlation between being satisfied with the police against the helpfulness of the witness assistance officer ($r=-.4$). Family death less likely to be associated with wanting more involvement. This may warrant further research given that no explanation was offered to justify this relationship. The supportive role of Victims’ Groups may explain why family members do not seek further court participation. The lack of opportunity for actual participation may also explain this statistic, given that homicide victim family members are less likely to be called as a witness unless they are connected to the actual offence. Those wanting more involvement were on average less satisfied with the criminal justice system overall.

5.7.2 Discussion of Interview Data

Interviews were conducted with 19 justice officials comprising judicial officers from all tiers of the NSW criminal court structure: a member of the State Parole Authority, ODPP prosecutors, police prosecutors, a police detective, and a solicitor working with domestic violence victims. Select extracts from the interviews conducted are categorised by theme and presented in chapter 4. The interview questions are available in Appendix 2.

This section analyses the interview data by theme relevant to the aims of this study.

5.7.2.1 Attitudes of Justice Officials by Theme

Various themes presented across the interview data. These were developed by the nature of the questions asked, however, the questions were deliberately left open to elicit the interviewee’s attitudes and assumptions on victim participation in court. Thus, the following themes largely flowed from the information provided by each interviewee in the consideration and construction of their answer, rather than by the themes posed in the question itself. This is significant when assessing how justice officials come to understand victim participation, and how such officials have a significantly determinative effect on the nature and extent of victim participation, and satisfaction thereto, in criminal courts.

The analysis of interview data in this section is predicated on the assumption that the attitudes of justice officials are significant to and at times wholly determinative of the experiences of victims in court (see Shapland and Hall, 2007; Camacho and Alarid, 2008; Johnson, 2005). The survey data, including the open comments provided by victims, indicates that victim satisfaction is at least closely tied to their connection and interaction with justice officials.

Attitudes which allow for participation are therefore more likely to have a positive impact upon victims, even where victims may choose not to take up the option to participate. Attitudes which see no or only minor roles for victims are more likely to see negative consequences for victims.

5.7.2.1.1 Adversarial Justice and Victim Participation
The attitudes and opinions of justice officials are central to the evaluation of victim participation out of recognition that opportunities for participation are not solely dependent upon processes being made available by law. Opportunities for participation are dependent on an actual process existing at law. However, the extent to which that process is made available to the victim in a court room is dependent on the justice official allowing the victims access to that process in a full and open way. Thus, an opportunity for participation at law does not guarantee that process will be available for victims in a way that leads to their satisfactory participation. Research into the tendering of victim impact statements indicates that different judges make the process available to victims in different ways (Booth, 2012). The reception of the victim in court has a significantly determinative effect on the satisfaction a victim may derive from that process (Booth, 2012).

The themes which present across the interviews with justice officials indicate trends in attitudes towards victims that generally identify them as peripheral to the interests of criminal law and justice. The victim tends to be identified as a site of evidence for use in court by lawyers – both prosecution and defence – and this view is largely affirmed by judicial officer’s reception of victims in the trial process:

*I think the victim should be protected and assisted by everyone, but we’ve got to keep in mind that it’s the police, the prosecutor, the state that’s taking the action against the offender, and that when the offence is committed it’s an offence against the victim or several victims but it’s an offence against the law of the state, so it’s the state protecting the security of the state that’s important.* (District Court Judge)

The views of judicial officers toward the reception of victim impact statements tended to be obligatory in that they exercised little choice but to receive the testimony, despite it not always being relevant. Arguably, this does little to advance the cause of victim participation as it encourages participation in a way that conflicts with the remit of adversarial criminal practice, although it is noted that victims are not generally aware that their evidence is not always well received by the court:

*It’s a question of definition like... for instance the, I’ve recently had victim participation in a confidential, confidences type situation where there was a separate representative for the complainant in a sexual assault case where it was necessary for the defence to subpoena material – sorry – it was necessary for them to attend in order to resist the subpoena of material about confidential communications. That I think is certainly appropriate. But if you’re talking about the participation in terms of the litigation of a criminal trial, I’m a fairly conservative person in terms of how many parties there should be.* (District Court Judge)

However, all justice officials found value in victim participation even where it may not have a material impact on proceedings. All were supportive of any perceived therapeutic value of participation for victims, despite there being a paucity of evidence to support beneficial outcomes in each instance (see Armour and Unbreit, 2006; Wexler, 2008; King, 2009).

*If they are not giving evidence then their participation is limited to providing a victim impact statement at the end of the case in the event*
that there’s a conviction. They have no place in the process other than that, and it’s important to recognise that. (Supreme Court Judge)

All justice officials recognised that victim participation was important, however, as a matter of principle and should be encouraged on that basis.

Where victim participation is inappropriate? I can’t think of anywhere where it would be inappropriate, at all.

I personally think victims are best placed, if we’re talking about physically, they need to be in the courtroom. I know that there is often a push, say - I think it should be a choice for some victims, such as sexual assault matters whether they appear in the court room or by AVL video link. I think that’s the victim’s choice. (Solicitor)

However, this participation ought to proceed on that basis that it conforms to known or established adversarial processes that accede to the understanding that crime is a matter between the state (prosecution) and defence. Thus, where a victim’s role in proceedings conflicts with this known understanding of criminal law and justice the victim’s role ought to be reconsidered. For most interviewees, victim participation ought to be reconsidered to the extent that their participation does not conflict, in form or substance, with the duties of either party. This is perhaps why victim impact statements sit so ambiguously for most justice officials (see Kirchengast, 2010, Erez, Kilchling and Wemmers, 2011).

Justice officials were, however, supportive of alternative pathways to justice, such as restorative justice. Youth justice conferencing was cited as meeting the participatory needs of victims in a way that conformed to the needs of the courts. This is because the victim is removed from the courts for a complementary process that affords the victims a judicial/court like experience. Note, however, that victim participation is contextualised in the perceived benefits to the accused, which may mean that access to restorative processes may not in themselves be valuable unless such processes also provide a benefit to the accused:

Let me approach it from the um, in reverse because it’s obvious in my view that things like conferences, youth justice conferences in the children’s court, and conferences generally where victims and the perpetrators are brought back - sorry - are brought together for there to be an understanding as to how the crime impacted on the victim, I think that’s very important for the accused or defendant to be aware of what impact his or her actions have and on the victim, and to perhaps explain to the victim where the um where the accused was coming from. (Magistrate)

5.7.2.1.2 Charter of Victims Rights

The data reveals that most justice officials other than police officers possessed a poor knowledge of the Charter of Victims Rights. While the charter does not bind judicial officers (see s 7(2) Victims Rights and Support Act 2013 (NSW)), some knowledge of
the charter’s existence and its potential impact on public officials in the executive, specifically the police, ODPP prosecutors and even court staff, would assist judicial officers in their identification of service standards regarding victim participation (in so far as court matters and prosecutors are concerned).

Police prosecutors indicated a good knowledge of the charter, its application and function, and generally supported its role in proceedings:

\[T]\text{he Charter of Victim Rights... is transferred into our policy} \text{(Police Prosecutor 1)}

And:

\text{Well we are compelled to do what it says and we do.} \text{(Police Prosecutor 2)}

The police detective interviewed indicated a keen knowledge of the charter:

\[T]\text{he Charter of Victims’ Rights that we have essentially tells us how we are to go about dealing with our victims. So we know that we need to keep them informed, we need to let them know what’s happening...} \text{(Police Detective)}

The solicitor interviewed also indicated a good knowledge of the charter, despite not being explicitly bound by it:

\text{I mean we are mindful of the charter of victims’ rights...and particularly around the area of you know, the victim being kept informed about what is happening...} \text{(Solicitor)}

Not all judicial officers exhibited a lack of knowledge of the charter, with some indicating that the charter encouraged them to consider the welfare of the victim in court, especially while testifying. The comfort of the victim ought to be considered.

However, most judicial officers did not know of the charter’s existence, despite being enacted into NSW law since 1996:

\text{I didn’t even know about it. I don’t know when it came in.} \text{(District Court Judge)}

\text{Is this the UN charter or..?} \text{(Magistrate)}

\text{Is it a federal charter or an international charter?} \text{(District Court Judge)}

\text{It hasn’t been brought to my attention by the Crown or anyone.} \text{(District Court Judge)}
Supreme Court judges offered a better understanding of the existence of the charter, but sought to clarify that it either does not apply to them or takes its form through known processes:

*I think the impact of that is...or manifests itself through the victim’s impact statements that I’ve referred to and I think its impact is necessarily within those bounds.* (Supreme Court Judge 1)

*I don’t impact my conduct as a judge, but it impacts on the way in which other institutions such as the police and the prosecution deal with victims.* (Supreme Court Judge 2)

### 5.7.2.1.3 Breadth of Victim Participation

Justice officials tended to reflect upon court processes that involve victims that fell within their immediate area of practice. Despite the interview questions being phrased broadly to invite wide consideration of modes of victim participation almost all responses were narrowly construed in accordance with normative and nominal modes of victim participation. These modes of participation were continually referenced to accepted modes of adversarial engagement, or otherwise as modified by statute, ie. presentation of victims as witnesses for the prosecution, or through victim impact statement. Few other modes of participation were recalled.

*I mean that presupposes- again this is the difference between trials, sentence matters, participation in the justice system may involve being an active participant which victims inevitably are, if we’re talking about trials.* (District Court Judge 1)

*Well, pre-trial, you’re talking about the trial where there’s been no admission of guilt. The victims would well firstly make a complaint I’m sure to police. They would then be dealt with by the, either the police or the Director of Public Prosecutions with regard to the seriousness of the offence. I’m sure there are protocols there* (District Court Judge 2).

One interviewee did not see the victim as having a role in court. At times, victim participation was re-classified as that of witness participation, ie. their victim status was not relevant to proceedings, and the victim was a mere witness:

*So far as before trial is concerned, I don’t see a role for the victim at all. I think that they should be properly advised as to what their role is and I see that as the role of the Director of Public Prosecutions or the police.* (District Court Judge)

*At trial the only involvement with victims is when they appear as witnesses. There’s rarely any other involvement.* (Magistrate)

Some associated processes were identified, specifically victim involvement of the subpoenaing of private counselling documents of a sexual assault victim:
[T]o the extent I've had any recent contact, there's the issue of subpoenaing the victim's medical material, which has lots of complexities...They've both had quite a big say in that being separately represented by legally-aided funded counsel. (Supreme Court Judge)

Chapter 2 mapped the diverse modes of participation across NSW law. Section 5.6.2 charts those modes of participation identified across the interviews with known NSW laws that provide for some form of victim participation (whether direct or indirect). Chapter 2 consolidates court processes currently available to victims of crime. This chapter demonstrates that victims are currently offered numerous opportunities for participation, either directly or indirectly, from police investigation through to pre-trial hearings, trial, sentencing and even on appeal and then parole. As this chart indicates, most justice officials did not comprehensively recall a significant number of processes available to victims. Although interviewees were not pressed or tested against the table of known processes few interviewees went beyond the nominal adversarial processes.

Exceptions included brief mentions of sentencing powers that include victims, law of subpoena relevant to sexual assault victims, apprehended violence orders, provisions for sexual assault victims, and youth justice conferences. There was no mention of bail, domestic violence policing powers, domestic violence considerations on bail or for apprehended violence orders, ODPP guidelines (other than ODPP interview), private prosecution, committals, pre-trial conferences, rules for vulnerable victims (other than sexual assault victims), plea-bargains, forensic provisions, mental health provisions, police interview rules, and rules of evidence relevant to the victim.

5.7.2.1.4 Victim Lawyers and Victim Advocates

Questions were directly put to interviewees as to the suitability of the appointment of private counsel for victims of crime. This question sought to test the extent to which justice officials may be open to emerging trends in criminal justice that directly confront normative assumptions on adversarial justice as between state and accused, while also providing room for discussion on the extent to which it may be desirable to better support victims by providing them access to an independent criminal justice professional. Both victim lawyers and victim advocates are used in common law jurisdictions such as the United States, although neither has gained footing in Australian law (see Kirchengast, 2013).

Victim lawyers are legal practitioners that are appointed privately to act on the victim’s behalf. Victims may already appoint private counsel to act for them in a compensation claim or in a civil action, for example, following tort of assault. However, victim lawyers may also intervene in criminal proceedings to advocate the victim’s interests alongside those of the state. This is more common in inquisitorial jurisdictions where the victim may appoint a lawyer as a subsidiary prosecutor. While this is not envisaged in common law jurisdictions, a victim lawyer may act for a victim to contest bail or contest a subpoena that involves the disclosure of information personal to the victim. Other uses may involve contesting evidence at trial, containing questioning to that which is reasonable, protecting the victims vulnerability in court ensuring all lawful protections are afforded to the victim, delivering the victim impact.
Victim advocates differ from victim lawyers in that advocates are not necessarily lawyers but trained criminal justice professionals that may assist a victim at any stage of the justice journey. They may have training in welfare, social work, case management, counselling, be a non-practicing lawyer or possess generalist skills across the criminal jurisdiction. In the United States, victim advocates may be appointed to the victim at the time of reporting an offence and may stay with the victim until the conclusion of their matter. They will assist the victim with compensation claims, access to counselling, welfare support, as well as attend hearings and, with leave of the court, make submissions on behalf of the victim (see Camacho and Alarid, 2008).

Views as to the utility of victim lawyers were generally negative. In fact, most interviewees were adamant that the appointment of private counsel during most phases of the criminal prosecution process would be entirely problematic given that the current system is adversarial between state and accused, with no room for a third party. Such views were common:

_A victim is not a party to the proceedings unlike some European systems and other systems around the world. If we were to go further than we have already I suspect that we would need a fundamental change in the philosophy behind the structure of our system. We would need to start recognising the role of victims as some sort of a party to proceedings if we were to go further than we have already. I can’t see that happening._ (ODPP Prosecutor)

_You’ve got the fundamental dichotomy between the victim who isn’t a party and, and the state who brings the prosecution not on their behalf but in relation to the crime that’s been committed against them, and I think sometimes there’s a breakdown in, if you like, the communication between the prosecution and the, and the victim who is a witness..._ (District Court Judge 1)

_If a witness is being harassed by a barrister, if a barrister’s being unduly repetitive, then the witness will be protected because the judge has the power to direct the witness not to answer the question and to admonish the questioner. So I don’t believe that during the course of proceedings that witnesses require an advocate to assist them._ (District Court Judge 2)

_There is no role for an advocate or private counsel for a victim that is regardless of whether they’re a witness or they’re a witness and they provide a statement. Witnesses, except in very limited areas have, no right of representation, there’s no reason to displace that rule in favour of victims of crime, and in terms of their victim impact statement there is simply no role for counsel or an advocate in those circumstances._ (Supreme Court Judge 1)
Well it depends what role you’d envisage for that specific victim lawyer. I don’t think that victims should have a right of appearance in the criminal process, as I believe they do in some European countries. (Supreme Court Judge 2)

It would mean that no step can be taken, procedural step of any kind, so instead of a case being a contest between the Crown and a defence, you will just have a third party there that will inevitably lead to, ah, trials going awry. (Supreme Court Judge 3)

I’d love ‘em to have private counsel. It’d take a lot of my work away [laughs]. But, no, we...We appear on behalf of the victims as their counsel if you like. We’re - Police prosecutors are - all expert trained in criminal law and that’s what we do. So I’m not going to say that we are better trained than lawyers as such, but we have different style of training and we work probably ten times the amount of court work that you’re normal lawyers would work in the criminal system so we’re very well experienced. (Police Prosecutor)

Comparative approaches were raised, in particular the ICC Model where victims are provided funded representation:

During the, the hearing process, again I can’t think of anything that would be applicable in the children’s court but as I mentioned earlier at the international criminal tribunal in The Hague there was a suggestion, and some serious thought given, to allowing the victims to be separately and legally represented in the trial process, in the criminal trial process, and the very thought of that horrified me knowing that particularly in an adversarial trial. There may have been some scope for it in the continental civil law system, but in a criminal trial where a prosecution has to establish guilt beyond reasonable doubt, then having other legal representatives there to present the victim’s position, well I thought- it could run completely counter or contrary to what the prosecution is trying to establish. It wouldn’t be hard for me at least to foresee a scenario where it could just destroy the prosecution case. (Magistrate)

Costs associated with the provision of publically funded counsel were also raised:

Unless they rise to the status of a party to proceedings, I don’t think there is any basis for them to be separately represented. Of course, if they want to obtain legal advice about what is happening and what they can do, well, they’re perfectly entitled to do that at their own expense. But I don’t think there’s any obligation on society to provide separate legal representation. (ODPP Prosecutor)

It would be an expensive exercise to provide that, I mean there would be no harm in it, but I’m not sure that the expense would be, would warrant the greater representation, again because many of them appear with their victims group, currently, and they, that’s adequate, and so I wouldn’t oppose it, but, I’m not sure, what, how much more a lawyer
would be able to advocate on behalf of the victim. (State Parole Authority)

The use of private counsel was only advocated where a victim seeks to challenge a subpoena requesting discovery of otherwise confidential counselling notes in sex offences cases, a procedure already used and recognised within the legal profession:

Well they are provided private counsel in relation to the subpoenaing of confidential material which relates to them. And the private counsel comes from, I think the bar association has a pro bono scheme whereby they...maybe it’s the law society as well. But in my experience it’s been, mainly counsel appear on behalf of the victim to prevent material going into court. The victim’s a protected person under the Act. (District Court Judge)

The availability of counsel for compensation claims was also considered more favourably:

In terms of compensation claims, I believe they should be represented and I deplore the, lack of resources to allow for that representation. (District Court Judge)

Suggestions for the use of advocates as non-legal representatives or persons able to assist the victim were met with greater favour:

On the other hand, having someone available to the victim to explain the process and the significance of the various steps and who can perhaps help the victim prepare a full, cogent and detailed impact statement could be a very good idea. (Supreme Court Judge)

Yes, yeah, I think victims’ advocates, and if you look at some of the UK procedures where victims, where in certain areas or certain jurisdictions where they’re given a, like allocated a victim advocate, I think that would come to court on each occasion - that’s probably a little bit like we do anyway, that’s what we are: advocates. (Solicitor)

I mean they’re always entitled to get their own legal advice, but I don’t think- I don’t see any need for- Well let me put it this way: there may be cases where it’s appropriate for a victim to be given independent legal advice separate from the prosecution, and I think that should be looked at on a case by case basis, but by and large I see no need for, if you like, separate independent advice being given to, legal advice I assume you’re talking about. What they do need is counselling services and support services... (District Court Judge 1)

Whereas the victim could be so sure that that is one thing that is going to turn the tide and things like that but doesn’t understand the consequences of, so to have someone that is their own personal advocate to explain, ‘this is why’, and to- It would help the victim remove the emotion out of it as well. When the- I mean, as you know, when someone
gets riled up about something and they really feel hardly (?) that this should be done, the emotions take over, the logic side recedes, so when that happens they can’t articulate exactly what they want. If they have an independent advocate for them specifically, that person can step in and do that job for them. So, that person can be their logical side while they can be the emotional side if that’s what they need to be. (Police Detective)

Views as to the role of victim’s advocate already being serviced also emerged:

*That doesn’t mean, and I understand ... that there are victim assistance people within the Director of Public Prosecutions Office who are pretty good in my experience, in fact, excellent, and there should be more of it. I’d encourage that. The same should be with the police and I don’t think it exists within the police.* (District Court Judge 2)

*Well we’re an advocate at the moment so I think we’ve already got an advocate, but private counsel...well, I don’t know, I don’t think so.* (Police Prosecutor)

### 5.8 Identified Areas of Policy Development

The literature, survey and interviews each raise several issues of victim court participation in NSW criminal courts. Resolving obstacles to victim court participation is complex. There is no one easy solution. Victims are required to participate in a system that they did not seek to enter into. At times, victim participation may be at odds with established systems of justice that follow legal and cultural traditions that provide no formal place for the victim. Instead, the victim is asked to participate in order to assist the state in its task of apprehending and prosecuting crime.

While therapeutic processes may exist that afford the victim a measure of participation to give victims a chance of voicing the harms that have occurred to them, this participation is usually limited to a select number of processes, and may not be available for all victims. Collectively, enhancing the experience of victims in NSW criminal courts requires solutions that address the complexity of the problem, without disrupting the very important role of the state in the policing and prosecuting of offenders.

The following areas of policy development flow from the issues that have emerged in the literature, the survey and the interviews. They seek to build upon existing areas of policy concern and development. The following areas of policy development are designed to be complementary to existing pathways to justice for both victims and justice officials, working within the NSW criminal justice system.

### 5.8.1 Communication between Justice Officials and Victims
A fundamental issue indicated in the survey was the lack of communication with justice officials. Many victims turned to those officials who would provide help, who may or may not have been the best official to respond in the context of court participation. This is problematic and flows from the fact that no justice official is actually charged with victim support (with the exception of the WAS). Public officials are bound by the Charter of Victims Rights but members of the judiciary are not. Solicitors are not identified as public officials for the purpose of the charter. Victims Services may be instrumental here although not specifically charged with court assistance. See 5.8.5 below.

5.8.2 Provision of Information for Victims on Court Processes

No victim or justice official indicated a significant depth of knowledge of the Charter of Victims Rights or ‘justice journey’ that may assist victims in understanding the complexities of their rights in court processes in NSW. Broader institutional knowledge and advocacy of the charter and ‘justice journey’ is recommended amongst members of the profession (incl. police and other justice officials) in order to fully connect victims with these valuable resources. See 5.8.6 below.

It is also vital that the expectations of victims are managed throughout the justice journey, and this is difficult in the current environment where victims may be informed by various stakeholders and justice officials, or may be self-informed or uninformed.

5.8.3 Therapeutic Processes

The availability of therapeutic processes to allow victims access to court experiences was raised by victims in the survey but in particular also by justice officials in the interviews. All respondents sought to gain some benefit from participating in court processes although such participation did not always lead to a benefit. In fact, participation could be detrimental, especially for vulnerable victims or where expectations were not met, or where actions of the prosecution or defence unnecessarily expose the victim to harsher questioning, and doubt as to their version of events, etc.

The issue as to whether processes are valid because they provide the possibility of a therapeutic outcome is vexed and the literature is increasingly critical of the genesis of therapeutic processes that have no substantive basis in the decision being made (see Wexler, 2008; Erez, Kilchling and Wemmers, 2011).

5.8.4 Charter of Victims Rights

Both survey respondents and interviewees possessed some understanding of the Charter of Victims Rights, though not a significant one. Much of this understanding flowed less from a technical or precise knowledge of the clauses of the charter than a general understanding of the basic premise of the charter – fair, courteous and respectful treatment, to be kept informed, etc. A significant number of judicial
officers of mid to senior level criminal courts did not know of the existence of the charter nor its content. The survey also revealed a poor understanding of the existence or content of the charter, and what the charter may mean for victims. Although victims were not asked about the charter directly, most only made requests consistent with basic rights in the charter, such as being kept informed of developments. The new office of Commissioner of Victims’ Rights may play a role further developing the profile of the charter and encourage discussion as to the extent to which the charter is now enforceable.

See 5.8.7 below as to options as to encouraging a more detailed knowledge of the charter amongst justice officials.

5.8.5 Victim Lawyers

Interviewees did not generally support the idea that victims should be appointed private counsel in criminal proceedings (cf. interview 19). Judicial Officers were noted as against this idea in particular. Police prosecutors saw themselves as already representing victims, at least in terms of the victim’s broader interests. However, it is not appropriate, for reasons noted by all police interviews, that police be encouraged to act as personal representatives of victims. Police clearly have a broader and potentially conflicting remit of community protection. Further research may be warranted given the developments toward the provision of victim counsel in other common law jurisdictions and the controversial impact this has had on legal proceedings, however, little support presently exists amongst justice officials in NSW for such a change. Some victims sought legal counsel as noted in their open comments, while other victims thought the idea of private counsel would be beneficial.

5.8.6 Victim Advocates

There may be a role of non-lawyer victim advocates to better connect victims with justice officials (police, ODPP solicitors, lawyers in private practice, relevant government departments, NGO sector support, etc). This may be one way of bridging the gap between what is a very complex and fragmented set of processes for victims (a result of the development of criminal law, see chapter 2) and the victims need to be actively supported through the entire legal process (and potentially beyond). The survey noted that most victims felt let down by justice officials at some point in the court process. Most victims turned to police for support in court. While some victims noted that the support was excellent, there is a real problem expecting service from officials that are not always in a position to provide it (and sometime cannot as a conflict of duty). The benefits of a personal advocate could be further explored to bridge this gap.

5.8.7 Continuing Legal Education
Victims Services may have a role encouraging a better understanding of the numerous and diverse ways in which victims are actually supported and provided opportunities for participation in the NSW criminal court system. Victims Services may do this by targeting three groups: judicial officers, lawyers/officials in practice and law students. Victims Services already provides victims with information on the ‘justice journey’ (as an example of the type provided) but this could be expanded to justice officials so that it is advocated or recommended by all stakeholders in the system.

A continuing education package aimed at judicial officers, lawyers/officials in practice and law students, could be adapted to all three audiences but would need to challenge the assumption that the victim is not relevant in adversarial proceedings. An educational package could do this by raising the consciousness of all three groups to the actual scope of processes in existence with emphasis on the way in which victims are already supported in diverse ways. This package would in turn challenge the normative assumption that most lawyers usually developed in law school – that the victim of crime is not part of the system. The results of the survey generally indicate a level of satisfaction with NSW court processes although communication between victims and officials was noted as an area of improvement. Such continuing education may assist in the removal of barriers between professionals and victims where professionals act under an unchallenged assumption that victims are not really part of the system.

A continuing education package would have the added benefit of demonstrating the important work done by the Department of Justice, NSW (formerly Department of Attorney-General and Justice) over the last 40 years and that victim rights are already significantly integrated into NSW court processes. This message should reach at least two broad audiences: lawyers/officials (ie. professionals in practice) and the public.

A continuing education package could also provide an opportunity to develop more formal ongoing continuing education for the purpose of updating the profession and public as to new reforms and policy changes.

5.8.8 Victims Services and the Criminal Justice Professions

In accordance with 5.8.6 the provision of information from Victims Services may be relevantly extended to other stakeholders, specifically justice professionals, such as the police, lawyers and judges, in order to better advocate the position of the victim and pathways open to victims that are currently poorly understood or unacknowledged by the professions.

This is not a suggestion for the re-visioning of the role of Victims Services (in accordance with its statutory obligations), nor is it a suggestion of any limitation on its part. However, formal and informal boundaries do separate Victims Services from the professions that inhibit its capacity to fully advocate victim interests in the justice system. The lack of knowledge of the charter of victim rights amongst most judges speaks volumes as to the separation between Victims Services and the professions, however, this presents an opportunity for better integration between victims and justice officials. This is not a recommendation that addresses a weakness in Victims Services to any extent, rather it speaks to the reality of the separation of the victim
from the criminal process and the manifest concern of the criminal justice profession with other participants – defendants, lawyers, corrections, etc.

5.9 Conclusions

5.9.1 General Reflections on the Data

Much of the evidence gained through the mapping of law contradicts a strict adherence to adversarial process. It would appear that legal process in NSW provides numerous opportunities for victim participation but this diversity and scope of participation is often not well recognised nor acknowledged by justice officials or even victims.

The survey data supports the general conclusion that victims are drawn into an adversarial process to which they have limited access. Where victims do gain access, they usually have to proceed through one or more of the justice officials identified in this study. Access is thus limited due to each victims lack of awareness of the justice system and/or a result of the lack of engagement of victims by justice officials – police, lawyers, ODPP officers, witness assistants (where available). Most victims found Victims Services helpful with particular regard to the provision of additional information, referrals, or fair treatment in the compensation process.

Survey responses indicated varying levels of overall satisfaction with their degree of participation although most indicated that their participation was indirect, ie. proceeded through the police or ODPP solicitor, rather than direct, ie. witness, VIS, etc., or other in court participation.

The degree to which victims sought further participation from that which is already offered varies significantly between responses. This may be accounted for in two ways: 1. Victims experienced different responses from justice officials giving each victim an individualised experience in the justice system, and 2. Not all victims follow the same processes ie. summary disposal in the Local Court is very different from disposal by indictment in the District or Supreme Courts.

Victims did not possess a knowledge of court processes other than those conventionally understood, police involvement, role of prosecutor, judge, jury, giving evidence, and perhaps VIS. Few victims expressed any knowledge of the Charter of Victims Rights and what this means for this participation other than requests for better treatment and further information. Victims affiliated with NGO’s or groups held a better knowledge of rights under the charter, and also sought higher level modes of participation including access to decision-making processes with police and prosecutors. This is evidenced through the coded responses of those identifying as members of victims groups and the overall extent to which victim group members felt informed, especially family members in homicide cases (see 5.7.1.6). Although victims were not questioned on the charter directly, few expressed these rights in the form of general concerns or desires for different modes of participation.

Tests for significance and correlations (see 3.2.1.10 and section 5.7.1.6) in the survey data indicated that ATSI victims were overall less satisfied than non-ATSI victims.
This included satisfaction with sentence. Rural and remote victims were less likely to want greater court involvement. Financial and property loss victims were more likely than expected to want greater involvement in their matter. Perceived helpfulness of WAS Officers was also statistically higher for males. There was no statistical significance (per tests used, see section 3.2.1.10.1) as to offence type and overall satisfaction level based on the data gained. As to modes of participation, domestic violence more likely associated with participating as a witness in court proceedings. Assault less likely associated with witness in court proceedings. Murder/manslaughter more likely to participate in court by sitting in public gallery. Where domestic violence victims request an apprehended violence order attendance as a witness is generally required in order to gain a final order. Family members of homicide victims will be more likely to sit in the public gallery than give evidence.

However, those victims that were satisfied with the police investigation were more likely to be satisfied with the overall criminal justice system. Those wanting more involvement were on average less satisfied. Victims who felt that they were kept informed of their matter also had a moderate positive correlation with their overall satisfaction with the criminal justice system. Those victims who submitted a VIS were more satisfied with police and had more satisfaction with the overall system compared to those who did not.

As to interviews, some judges acknowledge that victims of crime are able to participate in a variety of direct and indirect ways (through police, ODPP involvement, as witness, or by VIS, etc.). However, most identify victim participation in accordance with normative notions of the adversarial trial. Adherence to adversarial discourse is expected from common law judges, but adherence to the notion that the victim is not relevant perhaps masks the true extent of victim participation through a variety of agents and processes. Compare comments of DJ Judge 6 in Q 14 (see Appendix 4) to other answers which generally tend to limit or exclude participation other than via commonly accepted modes of adversarial engagement (witnesses, VIS, etc.). There was wider agreement that the victim does not present as a victim per se, but rather as a witness, as a person called to give evidence. Justice officials thus tended to decontextualize the victim as an injured person and identify them as a witness relevant to proceedings – as a known entity in a procedural sense.

Few, if any, interviews indicated a significant breadth of knowledge of the various ways in which victims can participate in court proceedings in NSW. This is not surprising given that the sources of law that allow for victim participation are diverse, being found throughout the criminal law of NSW, statute and regulations in particular. There is no consolidated instrument. This means that interviewees discussed those modes of participation that first came to mind. There was a strong correlation between direct experience with victims and those processes that were raised in the interviews, however, most raised popular and well understood (albeit sometimes controversial) modes of participation – with VIS, compensation, and attendance as witness, being most often cited in the data.

Chapter 2 of this report indicates the numerous modes of participation and the complex relationship of these modes with existing/other court processes. Against the interview data, no interviewees demonstrated a depth of knowledge/recall as to the real scope of modes of participation for victims of crime. See section 5.6.2 above as to
the diagrammatic analysis of modes of participation identified. This table demonstrates the number of discrete processes relevant to victims in NSW and the number of processes that were recalled during interview. Most processes recalled reflect the normative scope of the adversarial trial where the victim presents as witness or perhaps gives a victim impact statement.

Against other jurisdictions, NSW has demonstrated a commitment to law reform for victims of crime. This is most notable from the late 1970s with regard to sexual assault law reform. Further waves of reform occurred in the 1980’s and 1990s and reforms are continuing today. Of those justice officials interviewed, most did not possess a breadth of knowledge of the numerous ways in which victims are supported and did not recall the vast number of ways in which victims may gain real participation in the NSW court system in a direct or indirect way.

5.9.2 Revisiting the Aims of the Research

The aims of the research provided broad objectives with regard to identifying levels of satisfaction with modes of victim participation and to also determine ways of improving victim participation.

The original aims of the research were as follows:

• What is the nature and extent of victims’ participation in NSW court processes?
• What are victims’ expectations and actual experiences with court processes? How do they wish to participate in these processes?
• What are the barriers to effective victim participation in court processes and how can they be overcome?

The survey mapped the nature of victim participation and their expectation with regard to their desire to participate. While some victims were disappointed with aspects of their participation, most did not seek to engage further or did not know how to engage further in the criminal justice system.

The interviews determined that justice officials perceive victim participation through the lens of adversarial justice which as a model of justice, provides few opportunities for participation other than as witnesses and the provision of a victim impact statement.

Areas of policy development that arose from the four stage methodology indicates that various opportunities now present which may allow for better and more coherent victim participation. These areas of development should add to the current complement of policies implemented across NSW. They generally seek to raise awareness amongst victims and justice officials to the nature and limits of the criminal justice system, while also asking justice officials to recognise the diverse and significant ways in which victims are already integrated into the justice process.

This awareness raising will challenge and in time dismantle the current normative barriers to victim participation by encouraging both victims and justice officials to
view victims not as some removed entity that only participates by virtue of state focused processes, but as a standalone subject within the criminal justice system. This shift in normative reasoning will take time but recognition of the victim as a participant of right should see the dominant and hegemonic attitude towards victims shift to a more moderate perspective where victims are not viewed as ‘outsiders’ but as instrumental participants in a justice process that involves the integration of various perspectives.

5.9.3 Limitations of Present Study and Future Research

This research is limited to four methodologies which ask fairly general questions on victim participation. In this way, this research has been a scoping exercise that determined: 1. The laws that impact on victim participation; 2. How victims generally self-identify as victims and what they expect of the justice process; 3. How justice officials characterise victim participation in a general way, what processes are currently available and how justice officials see those processes developing into the future; and 4. A typology of modes of victim participation in the NSW criminal justice system.

Some specific issues were addressed, including the role of the Charter of Victims Rights, victim impact statements, and the movement toward victim advocates and victim lawyers. While this study has provided useful findings on each of these areas of victim participation, each area was raised to elicit assumptions as to how stakeholders view victim participation in a general sense.

Thus, no conclusions can be drawn as to how to implement, specific, structural or actual changes on the individual topics addressed. Rather, this study indicates that further research may be warranted on each of these areas. In particular, this study indicates that further, focused research may be warranted on:

- The relevance of the Charter of Victims Rights as an organising and constitutive set of principles that may be used to better integrate victims into the justice process. This may include research into the reception of such rights by victims themselves (including their knowledge and expectations of such rights) and the possible desirability of the enforcement of such rights;

- How identified groups of victims (per this study) may each engage the justice process differently, with regard to their own specific risks and needs. In particular, this study identified domestic violence and victims of offences to property or fraud as under-represented or hidden groups, in need of further research. While all victims were entitled to participate in this study the research did tend to collect responses from victims of crime under NSW law. Further research may be warranted into victims of Commonwealth offences.

- Tests for significance and correlations in the survey data indicates some victim groups may require further research in order to investigate those issues that obstruct further participation. These groups included:
  - ATSI victims (low satisfaction);
• Victims in rural and remote locations (less likely to want greater participation);

• Victims of financial and property loss (wanted more participation);

• Gender differences and the perceived helpfulness of the WAS Officer (males found more helpful than females);

• Family members in homicide cases (on data received family members sought less involvement in court case).

• The possible use and limitations of victim advocates as general representatives of victims throughout the justice journey;

• The possible use and limitations of victim lawyers as private counsel for victims;

• The possible role of continuing education on court processes for justice officials;

• How offering services to the justice professions may enhance the objectives of Victims Services NSW in accordance with its statutory or professional remit.

5.10 Recommendations

5.10.1 Communication between Lawyers and Victims

Encourage better communication between victims and justice officials (specifically prosecutors and other lawyers engaging victims directly). Consider feasibility of the extension of the Charter of Victims Rights to justice officials currently excluded from charter. This potentially includes judicial officers and/or solicitors representing victims.

5.10.2 Provision of Information for Victims on Court Processes

Provide information on the Charter of Victims Rights, including how the charter impacts upon role and service delivery in the criminal justice system to better manage victim expectations of the system.

Connect the charter to the justice journey to establish how the charter impacts upon service delivery at key points in the criminal justice process.

5.10.3 Therapeutic Processes
There was general support for therapeutic processes for victims although not all justice officials understood the importance of such processes for victims of crime.

Provide information and training to the justice professions, including judicial officers, on the significance of therapeutic interventions for victims.

5.10.4 Charter of Victims Rights

The Charter of Victims Rights is instrumental but not well understood by justice officials in particular. Enhance the profile of the charter to better reflect its significance in service delivery for victims of crime.

5.10.5 Victim Lawyers

Other than a continuation of current arrangements (challenge of subpoena), there is no tangible support amongst justice officials for the provision of private counsel for victims of crime.

5.10.6 Victim Advocates

Further research is warranted on the potential role of victim advocates as a professional role expressing victim interests at key points in the justice journey. Justice officials were generally supportive and victims continually identified the need for consistent advice and representation throughout the justice journey.

5.10.7 Continuing Legal Education

The significant and diverse ways in which victims are integrated into criminal processes was poorly understood by justice officials/professionals in particular. Develop a range of continuing legal education packages to facilitate a better understanding of the procedural basis of victim participation in NSW. This could be offered to judicial officers, lawyers, and law students.

5.10.8 Victims Services and the Criminal Justice Professions

Victims Services is in the unique position of offering leadership on victim rights and interests in NSW. This leadership may be expressed to victims of crime but justice officials may also benefit.

There is a role for Victims Services to extend its service delivery to justice officials by way of continuing legal education and other educative programs for justice officials. This will locate Victims Services more centrally within the NSW criminal justice system which will enhance the standing of victims generally.

5.10.9 Further Research
That Victims Services, NSW consider the usefulness of the areas of future research listed in section 5.9.3 in accordance with its legislative and policy remit.
Chapter Six - References

6.1 References


Appendix One – Questionnaire

A1.1 Questionnaire Instrument

VICTIM SURVEY

FINAL QUESTIONNAIRE

INTRODUCTION

You are invited to participate in a study of victim participation in NSW court processes. We hope to learn about victim experiences’ with the NSW criminal justice system and to identify how service delivery can be improved in NSW to better assist victims of crime.

Participation in this study is voluntary. If you decide to participate, we invite you to complete a questionnaire. This questionnaire will take about 30 minutes to complete. The questionnaire will ask about your experiences with government departments/agencies and other people working within the NSW criminal justice system. You will not be asked about the particular crime your have suffered. You will be asked about your interaction with police, prosecutors, lawyers and judicial officers, and how you engaged in court processes.

Any information that is obtained in connection with this study will remain confidential and anonymous, except as required by law. If you give us your permission by completing this questionnaire, we plan to present the results to the academic community and the legal community. In any publication, information will be provided in such a way that you cannot be identified.

Note that should your matter be ongoing, researchers may contact you again to invite you to comment on those court processes you have yet to experience (eg. sentencing). If you would like to discuss any of the matters raised in this survey or would like further information regarding this research please contact the Chief Investigator of this research Dr Tyrone Kirchengast on 02 9325 2249 or at t.kirchengast@unsw.edu.au. If you would like to receive a summary of the findings at the completion of the project, please send an email to t.kirchengast@unsw.edu.au.

We understand that sometimes people feel upset when discussing personal experiences. If you feel distressed whilst completing this questionnaire you can stop at any time. If you would like to talk to someone about any problems you are experiencing you can contact the Victim Access Line on 1800 633 063.

This study has been approved by the University of New South Wales Human Research Ethics Committee. You can make a complaint to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA (phone 9385 4234, fax 9385 6648, email ethics.sec@unsw.edu.au). Any complaint you make will be investigated promptly and you will be informed about the outcome. Your decision
whether or not to participate will not prejudice your future relations with the University of New South Wales or Legal Aid NSW. If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice.

Thank you for participating.
SECTION 1: DEMOGRAPHICS

The questions in this Section ask for information about you. Remember all responses to this survey will be kept confidential.

1. Are you:
   - Male
   - Female
   - Transmale
   - Transfemale

2. How old are you? (in years)

3. What is your Country of birth?
   - Australia
   - Other (please specify)

4. Are you an Australian citizen?
   - Yes
   - No (please specify)

5. Do you identify as an Aboriginal or Torres Strait Islander?
   - Yes Aboriginal
   - Yes Torres Strait Islander
   - Yes Aboriginal and Torres Strait Islander
   - No

6. What is your marital status?
   - Single
   - Married
   - Other (please specify)

7. Do you have any children?
   - Yes (please specify no.)
   - No
SECTION 2: TYPE OF VICTIMISATION

The following questions ask about your experience as a victim of crime. If you have been a victim of crime on more than one occasion please write about the most recent event that happened to you.

1. What was your involvement in this crime (tick all that apply)?
   - I was physically injured
   - I suffered psychological or emotional harm
   - I suffered financial loss or property damage
   - I was a witness
   - One of my family members died
   - None of the above (screen out)

2. What was the nature of the crime committed?
   - Murder/Manslaughter
   - Assault
   - Sexual assault or act of indecency
   - Robbery
   - Fraud
   - Other Theft (including motor vehicle theft)
   - Property damage
   - Other (please specify)

3. When did the crime occur?
   - < 6 months ago
   - 6 to <12 months ago
   - 12 months to <2 years
   - 2 years or more
   - Ongoing (please specify how long it’s been going for)

4. Where did you live when the crime occurred?
   - Sydney/Newcastle/Wollongong
   - Regional area
   - Rural or remote area

5. What was your relationship with the offender(s) involved in this crime?
   - Partner or ex-partner
   - Other family member
   - Friend or acquaintance
   - Workplace colleague
   - Stranger
• The offender was unknown

6. Have you received compensation for an injury (or injuries) received as a result of this crime?
• Yes
• No, but a compensation claim is currently being considered
• No, but I intend to seek compensation in the future
• No

7. Are you a member or associated with a victim rights group/organisation?
• Yes (please specify)
• No
SECTION 3: POLICE INVESTIGATION

1. Did you or someone else report this crime to the police?
   - Yes, I did
   - Yes, someone else did
   - No (skip to section 7)

2. Did the police investigate the matter?
   - Yes
   - No (skip to section 8)
   - Don’t know (skip to section 8)

3. To what extent were you kept informed regarding the police investigation of this crime?
   very little => large extent (5 point likert scale)

4. Was anyone charged as a result of the police investigation?
   - Yes
   - No (go to qu. 6)
   - Don’t know (go to to qu. 6)

5. Did the police consult with you when determining what the offender(s) should be charged with?
   - Yes
   - No

6. Overall, how satisfied were you with the police involvement in this matter?
   very dissatisfied => very satisfied (5 point likert scale)

7. What are some of the ways in which the police helped you?

8. Are there any areas where the police could have done more to assist you?
   - Yes (please specify)
   - no
SECTION 4: GOING TO COURT

1. Did the matter proceed to court?
   - Yes, Local Court
   - Yes, District Court
   - Yes, Supreme Court
   - Yes, Children’s Court
   - No (skip to section 8)
   - Don’t know (skip to section 8)

2. At what stage in the court process is this matter currently?
   - The court case is at the pre-trial or committal stage (skip to section 6)
   - The court case is before a Magistrate (Local Court) (skip to section 6)
   - The court case is at trial before a Judge and/or Jury (District and Supreme Courts) (skip to section 6)
   - Other (please specify) (skip to section 6)
   - Don’t know (skip to section 6)
   - The court case is completed

3. To what extent were you kept informed regarding the progress of your court case?
   Very little => large extent

4. Who mostly kept you informed regarding the progress of your court case?
   - Police
   - Lawyer(s) from the Office of Director of Public Prosecutions (ODPP)
   - Witness Assistance Program officers
   - Court officers (e.g. sheriffs, registrars)
   - Victim Services (part of NSW Attorney General & Justice)
   - Other (please specify)

5. What other information would you have liked to receive?

6. Did you have any contact with a lawyer from the Office of the Director of Public Prosecutions (ODPP) regarding this court case? (note: The ODPP is separate from the police. Police investigate and commence criminal proceedings but in serious criminal matters the police will refer the matter to the ODPP who then prosecutes the matter, in court, on behalf of the community).
   - Yes
   - No (go to qu 7)
   - The ODPP was not involved in this court case (go to qu 7)

7. Which of the following matters did you discuss with the ODPP (select all that apply)?
8. Were you involved in the court case in any of the following ways (select all that apply)?
   - Private Prosecution
   - Provided a Victim Impact Statement (go to questions on VIS)
   - Attended court as an observer (sat in the public gallery)
   - Attended court to give evidence but was not called
   - Gave evidence in court
   - Gave evidence via CCTV
   - Gave evidence but did not attend court
   - Participated in forum sentencing
   - Participated in youth justice conferencing
   - Participated in circle sentencing
   - Other (please specify)

9. Did you expect to have greater involvement in the court case compared to what you experienced?
   - Yes (please specify)
   - No

10. Did you receive support from any of the following people or organisations while the court case was being heard? Of the agencies/people who did support you, how helpful were they (5 point likert scale very => not so helpful)?
    - Witness Assistance Officers (from the ODPP)
    - ODPP lawyers
    - The Police
    - Legal Aid
    - Victim Services NSW
    - Court officers (including sheriffs and registrars)
    - Non-Government Organisation (please specify)

11. What are some of the ways in which you were supported during the court case?

12. Are there any areas where you would have liked to receive greater assistance during the court case? (if yes, please provide details)
SECTION 5: AFTER COURT (for cases that are completed)

1. Overall, how satisfied were you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc.)?
   • very dissatisfied => very satisfied (5 point likert scale)

2. Overall, how satisfied were you with the sentence handed down in the court case?
   • very dissatisfied => very satisfied (5 point likert scale)

3. Is your name on a victim register so that you can be kept informed about the custodial status of the offender charged in relation to the crime?
   • Yes, Parole Board register (go to qu 4)
   • Yes, Mental Health Review register (go to qu 4)
   • Yes, Juvenile Justice register (go to qu 4)
   • No, the offender was not gaol ed
   • No
   • Don’t know

4. Have you been kept adequately informed of the custodial status of the offender by the agencies that maintain the register?
   • Yes
   • No (please provide details)

(SKIP TO SECTION 8)
SECTION 6: KNOWLEDGE AND EXPECTATION OF COURT PROCESSES  
(For those whose court case is pending)

1. If the offender pleads guilty or is convicted, would you like to give a victim impact statement during sentencing?  
   • Yes  
   • No (go to qu. 5)  
   • Don’t know what a victim impact statement is (go to qu. 5)

2. What do you think you can say in an impact statement? (describe the general types of statements you think you can make – you do not need to refer to your own personal experiences)

3. What do you expect to gain from writing an impact statement?

4. Would you like to read the statement to the court? Yes (please specify why) No

5. Have you heard of any of the following court processes in which victims can participate in criminal proceedings?  
   • forum sentencing  
   • circle sentencing  
   • youth justice conferencing

6. Would you like to participate in any of these court processes if they are applicable to your court matter? Yes, no  
   • forum sentencing  
   • circle sentencing  
   • youth justice conferencing

7. Are there any other ways in which you hope to participate in the current court case (include details on what role you expect to play)?

8. Are there any barriers which may prevent or inhibit your participation in the current court case? Yes (please specify) no

9. So far, how satisfied are you with the way that the criminal justice system has dealt with the crime (including the police investigation, prosecution and court etc.)?  
   • very dissatisfied => very satisfied (5 point likert scale)

(SKIP TO SECTION 8)
SECTION 7: REASONS FOR NOT TALKING WITH POLICE (for victims who did not report the crime)

1. What is the main reason you did not report the crime to police?
   • Of a trivial nature or unimportant
   • Police could not do anything
   • Police would not do anything
   • Private matter
   • Afraid of reprisal/revenge
   • Did not want offender punished
   • Other (please specify)

2. How likely is it that you will report the crime to the police in the future?
   Not very => very likely (5 point likert scale)

3. Did you talk with any of the people listed below about this crime (select all that apply)?
   • GP or other medical professional
   • Counsellor or psychologist
   • Private lawyer
   • Family or friends
   • Work colleagues
   • Religious pastors
   • Legal Aid
   • ODPP (Office of the Director of Public Prosecutions)
   • Other (please specify)

4. Have you contacted or do you intend to contact any victim support services (i.e. government and non-government organisations) to assist you in relation to this crime? Yes (please specify the agency) No (go to qu. 5)

5. What are some of the reasons why you have not contacted or will not contact victim support agencies in relation to this crime?

(SKIP TO SECTION 8)
SECTION 8: FINAL GENERAL OPEN-ENDED COMMENTS (FOR ALL)

1. Can you think of any changes that could be made to the NSW criminal justice system in order to improve victim participation in court processes?

2. Are there any other comments you would like to make in relation to victim participation in the criminal justice system in NSW?
Appendix Two – Interview Questions

A2.1 Interview Questions

Victims and Court Processes - Questions for Semi-Structured Interviews

Part 1 – Interviewee’s Court

Q1 What courts/jurisdictions do you preside over/appear in?

Q2 What types of criminal matters do you preside over/appear as counsel? How frequently?

Q3 How do victims participate in your court/your matters? Probe for forms of participation in pre-trial (including police investigation and ODPP negotiation), trial and sentencing matters. Any difference in levels of actual participation in these phases?

Q4 Are the current processes by which victims participate in your court satisfactory?

Q5 Should the level of participation in your court change? How/to what degree?

Q6 What particular process should be changed or abolished?

Q7 What new processes should be adopted, or made consistent?

Q8 How does the Charter of Victim Rights impact on practice in your court?

Part 2 – NSW Courts and Tribunals Generally

Q9 Not necessarily thinking about your court/matters, how can victims participate in court processes in NSW? Probe for any court or tribunal. Probe for forms of participation in pre-trial (including police investigation and ODPP negotiation), trial and sentencing matters. Any anticipated difference in levels of actual participation in these phases?

Q10 Which court or tribunal allows for victim participation best?

Q11 In which court(s) (or proceeding) is victim participation limited or inappropriate?


Q13 Should victims have processes to allow them to participate even through their evidence is not considered? (clarify with a possible eg. VIS may be accepted but cannot be used to influence sentence).
Q14 Should victims be provided an advocate or private counsel (clarify – to help negotiate with officials, compensation claims, representation in certain contested matters, ie. sexual assault counselling notes discovery, tendering of VIS).
Appendix Three – Unedited Open Ended Questionnaire Data

A3.1 Unedited Open Ended Data

NOTE THAT THIS DATA IS RAW AND HAS NOT BEEN EDITED FOR SPELLING OR GRAMMAR.
IDENTIFYING PARTICULARS HAVE BEEN REMOVED TO PRESERVE ANONYMITY.

Q. 7 What are some of the ways in which police helped you?

- Police ignored requests for information or further assistance; referred victim to Victims Services; took out AVO on behalf of victim; accused charged after months of contact with police; plea bargained with offender without input from victim; police were of little help; police were of assistance; police discussed matters with victim;

- ignored me for three months;

- referred to victims services took out avo;

- after calling and visiting the police each month for several months in a row the offender was finally charged

- they understood that my ex was going to plead not guilty to force me to go to court so they allowed him to plea bargain to a lesser charge as I felt if he went to jail he would come out being more vandictive against me and it would continue;

- They didn't help at first and I was trapped in my house my mother reported it to the police, but I was held in a headlock etc, they came about 14 times over 4 days and when I went into the police station with his accomplice they refused to talk to me and noted that I appeared distressed, the 2nd time I was hospitalised they came to see me in hospital but I was told that if I told anyone he would kill my family. When they removed my son from my care he was with his carer I had been taken to Hornsby, 4 cars and two paddy wagons turned up but that never happened for me, they told my mum that I had to report the incident even though I was in hospital attached to drips etc’

- Discussing the matters with me

- only after approx 18 yrs after the murder;

- very supportive an senstive to my needs and expirence;
police were useless. He walked because they 'forgot' to get the evidence that was sitting on the doctors desk. I did complain to the ombudsman but the ombudsman put it back into the polices hands to handle & investigate & they sent the ombudsman a letter stating that I was so happy with the result. When I told the ombudsman that I knew nothing of the letter, they sent me a copy, it was sent to a bogus address. I have the copy of the letter still attatched to the ombudsmans letter. Want a copy: ______________@gmail.com;

After we made severe complaints the original incompetent bozo's were replaced by professional police personnel. Sadly this was too little, too late and valuable time was lost;

They never helped us through investigation as such;

They put out an AVO;

Immediate arrest and removal of offender. Comforted my baby;

By processing the court attendance notice - all other assistance was provided by witnesses or my family.;

Keeping me informed;

Talked to me about what I saw, what was happening;

They took my report. Eventually organized Victorian police to visit perpetrator at his house, but he had already died by that time;

The police were great with their investigation and information unfortunately it was the court system let us down;

Kept us informed;

gave guidance & direction as to what course of action i should take;

The detective initially was persistent in trying to get him to go see her for an interview. He said he would multiple times but never did go in;

The first month they were good but after that I have not heard from the police handling the case at all;

Arrested the perpetrator & informed me of the arrest;

Listened and acted on the offence. Represented me in court;

Support, clarification and kept me informed. The detective was excellent;

Told me what they were going to do and why. Supported me emotionally;
• I was accused if lying and making everything up I didn't seek help again for 7 years;

• They conducted the investigation which led to a conviction;

• they attended promptly and advised me of my options;

• They helped to explain the process;

• Listened and kept me informed;

• They eventually breached my AVO that was all I was basically on my own at every opportunity, treat me with some respect, acted on breaches rather than telling me not to report breach after breach and once officer even asked what I did to deserve my physical abuse and suggested I had done something to prompt it;

• They should have told me to see a doctor for forensic examination the day I reported the rape, rather than informing me a week later that it probably would have helped, but now it was too late.;

• ring me ______________ to much to type;

• They Kept us informed with regular meetings and informed us about any court details as Many families were involved.;

• Charged the offender;

• They arrested the perpetrator;

• Not really very much to be honest. It has taken a lot of pushing for them to do anything after they released him on police bail and the Superintended sat on the extradition order due to 'budgetary reasons.' It has been pure hell.

• information compassion communication;

• They did not belittle me and explained every step of the way.;

• They could of told me that they could be relised sooner then the sentantance given and the the day and date;

• they acted quickly;

• The police did not advise of the downgrade of charge nor the appeal of the convicted person which on appeal the Judge gave him a bond with no conviction;

• The officers involved were very caring and compassionate. they assisted me immediately after the crime and during the lengthy court processes. They
helped me with support networks, gave solid advice on how to handle the matter in a dignified manner;

- Respectful, polite, compassionate and professional;
- Very supportive and caring. Always kept me informed and tried their best to provide me with as much information as possible within the law;
- They helped me to get me and my cat into a refuge;
- They didn't usually contact us but if we contacted them for information they were usually helpful;
- They kept in touch and took us through the crime scene;
- The Police were very open with me, answering any questions I had, making contact with me to ensure I had been informed of upcoming court dates and whether I would need assistance to be there if I wanted. Every step of the way the Police kept me well informed in a very professional and caring manner;
- The police chaplain put me in contact with the H.V.S. group;
- The police kept us informed about every aspect of the murder and although we lived interstate they continued to ring us and keep the lines of communication open. They also brought my daughters personal affects to QLD for us;
- None;
- Gave us as much information that was possible at the time. Were always available to us all the way through the process from begin to the end of the court case. They gave us information on support groups and recomended we contact them which we did. They became part of our family with the support we were given;
- Provided contact details of Strike Force spokesperson for duration of investigation. Contacted me soon after an arrest was made;
- None. I suppose they just processed another murderer for the legal system to release in a few years. Police must get disappointed when they close a case and Judges sentence the offender with a slap on the wrist;
- direction sympathy duty of care do there jobs properly;
- I was kept informed, my sister was spoken of as a "real" person, my emotional state was always foremost in my dect. Mind;
- they were very considerate to me and helpful where possible. One officer more so than another present;
Detective met with us regularly up until court trial. He showed great empathy at a harrowing time;

Promptly informed in the day of the murder. Kept us updated on the trial process and the defendant's plans for how she would plead. Assigned a case worker to help us understand the process (not sure if this was the police or another group as my parents dealt with them);

Phoning me to see how I was quite regularly. Visiting me. Being empathetic;

Referred us to HVSG;

The offender was under suvaliane 24/7 until he was arrested. The Homicide detectives kept me informed of what they were doing to arrest the offender. The Detectives came down from Sydney to talk to me a few times. They helped with assistance with the court process;

ey were always polite, and nice to me;

kept me informed;

They haven't really, I was told someone had to be charged to apply for victims compensation which was a lie, I asked for a copy of my statement which I was denied. It is still being investigated because one of the offenders was an off duty police officer. Meanwhile I'm off work for months with no financial support!! Stinks really!!;

They shared information on who they were investigating and when, shared all the information they could as I had requested and facilitated meetings with counsel and other people to help me understand what was going to happen during trial. I developed a friendship with the lead detective who is now a family friend. They also listened and shared experiences to support during the investigation and trial period. Also, after the incident, they helped keep media away from the house and protect us from privacy invasions;

Took statements, looked after me;

None;

They pursued a conviction for breach of ADVO. they really didn't help in any other way;

The police have been by far the biggest support. I was always kept up to date as events unfolded. They acted very professionally and were always happy to explain things to me.;

They always kept me up to date. My detective personally took me through the crime scene photos in order to do this he travelled from Newcastle to Sydney
and was very thoughtful and compassionate. Also he still keeps in contact with
me all these years after.;

• None;

• Police took three months to start investigating by which time the offender had
left the country and traveled around Europe on my money. The Police told
me the legal process would go on for a long time and I would not get my
money back. Thanks for nothing;

• I was told that they are near to have someone charged;
• Our Detective was very caring and always replied to any questions we had;

• Came to see me at home; gave me email address to contact him;

• Put him in prison, yet my life is still ruined because of him. Credit rating and
all;

• Being supportive through my recovery of my injuries sustained from the
assault. Regular updates on the case and just being caring by calling me to see
how I was going and offering extra support if needed;

• They showed up promptly;

• The police always answered my questions and assisted with enquiries
regarding the progress of the investigation

• They took me back to the station and were nice;

• Kept us informed;

• It has taken them 11 months to now tell me he can't be charged as he claims it
didn't happen and I'm not allowed to have him in a line up to identify him;

• Fabulous amount of empathy and support during the statement and processing
of information;
• in the initial contact i felt their conduct was super attentive and supportive;

• They were very supportive and seem to be understanding;

• VERY LITTLE;

• did not;

• Asked me questions of the sexual assault. they interviewed me in regards to
this matter. They took a statement from me. The police are still proceeding for
the Intervention order. They have supplied me with counselling;

• close contact when able;
• he cared & kept me in the loop;

• with phone calls – visiting;

• Detectives assigned to the case were willing to discuss their process of identifying catching and charging the offenders, and their own struggles with this process. This helped to somewhat reduce feelings of isolation and ongoing trauma after the attack;

• gave me a incident number;

• Finding temporary accommodation, organising transport for judicial proceedings, just general attitude - everyone was so kind and thoughtful;

• They did what they could to maintain our safety and alleviate any ongoing fears for mine and my kids safety. Were available at all times;

• they didn't. escalated the issues leading to vehicle pursuit, 'siege' style standoff, negotiator,allowed media involvement which in a semi rural area meant that everyone knows our family business;

• gave me time and wok 24 7 getting him state wide;

• I have nothing to report for this question;

• Support links;

• NOT VERY HELPFUL AT ALL;

• Counselling;

• Of no assistance whatever; indeed a brief police report was provided to the ___ in which they upheld the decision of the ___ to grant Victims Compensation to the alleged victim (in fact the story he provided was COMPLETELY fictional. The report did not analyze the trial transcript or the additional evidence I provided to the ___ (I did not find out about the ___ hearing until after it was concluded, so the additional evidence was not considered by the ___);

• by finally removing him from our home;

• avdo order on 4th request;

• Court hearing.g dates ,i.e. Offender was out on bail;

• understanding of my difficulty to describe the incident in words, they kept me updated through all steps, they helped my heal as I felt they really wanted to help me and persisted with the case;
- they took a statement;
- they charged him;
- Detective kept us informed but only if we called him and asked questions;
- They did not help at all. It was up to me to find out if the offender was charged and even if he had been convicted. I am still not sure if I was told the truth by the police;
- Keeping me updated on progress of evidence & findings;
- The DPP called me and said that the victim support person would be in touch. They also told me the charges - aggravated sexual assault;
- As a 15 year old girl experiencing domestic violence to get the courage to call the police was hard enough, they assured me I had done the right thing, they were understandable and offered a lot of support, I was frightened to attend court and a hearing but with the assurance of safety with the police I was able to attend;
- Kind, caring and wanting justice too;
- They haven't;
- Believed in me and supported me.
Q. 8 Are there any areas where the police could have done more to assist you?

Q. 8 Specify if Yes:

- everything;
- they need some help with people skills in general;
- advised me of the outcome of the court case and advise me that the AVO was finalised earlier than the sentencing. Also ask me how long i wanted the AVO for it was only granted for 1 year and i wanted 2 years at least. other people i have heard of got a 2 year avo for less than what i went thru;
- I don't know I've never been in trouble with the law;
- investigated properly and not allowed the perpetrator to take the evidence;
- Could have gotten the evidence to support our daughters case. Could have followed through & charged the woman who was supplying other little children to the convicted paedophile. This woman publicly admitted to abducted her child. Was wasn't she charged? Who is protecting her? She gave the girls $10 each time they were;
- left with the convicted paedophile. See http://mako.org.au/Mother_held_after_kidnap_claim.html;
- Open and regular lines of communication, egos in _________ LAC ruined our investigation;
- Do a media release a lot sooner than they did, not leave 6 weeks to announce to public our son is missing with fowl play feared.. Follow up leads a lot quicker than they did. Keep internal politics out of the investigation. Take statements a lot sooner from some of the witnesses. Take the case more seriously when my son first went missing;
- they could have actually pressed charges;
- Faster response. More detailed statement for court hearing.;
- better information/updates, better consultation re charges, better victim support;
- No emotional support provided during traumatic interviews, multiple interviews with lengthy delays in between, did not keep me updated on the investigation, waited to interview perpetrator until it was too late. Sergeant (supervisor) was impatient and intolerant of my distress when he reinterviewed me.;
- the criminal was originally charged and convicted unfortumatly when he appealed to a different court the police were not present we also had a
different prosecutor which allowed the criminal to produce alot of lies and his conviction overturned;

- They could have returned my police report to the Tribunal in time. My compensation case had its day in court and then was postponed because they did not have the report, I have been waiting 42 months and have recently been told that my claim is now being considered under the new law.;

- I not sure from what I have heard from other people in the same place that I'm in that the police handling there cases have and still are in contact with victims I have not had that at all;

- Disclosin the perpetrators correct name & age instead of me reading it on the interim avo. They could have informed me of the avo details instead of me finding it in a plain envelope amongst my usual mail. They could have informed me of charges against the perpetrator. They ran late to attend my home for forensic investigation (by 2hrs) & did not ring to inform me of same. I'm sure there was more things but this is what has come to mind with a few minutes thought;

- Potentially informed me of the outcome of the court case;

- Believed me;

- by being prepared for court, returning my calls, not forgetting to submit the medical evidence to court;

- Pretty well every area.;

- charge my ex;

- Kept me informed, treat victims with respect and try to help if possible;

- They could have actually done as they said they would, for example appealing against the bail granted to the offenders.;

- Listen;

- Keeping me informed and keeping me safe;

- Police attending were quite negative in their treatment of me when called;

- Kept promise to lock him up without bail, didn't tell me anything about progress of case, had to keep asking, had to chase up extradition order which Superintendent didn't sign and extradition took ages. They finally got him but they said that he was going to be placed in prison elsewhere but they put him here and he has been causing rumours and innuendo amongst dangerous inmates who have threatened me when they got out.
• told me when he was relised day and date thank you;

• seeking support;

• Advised me on the appeal so I could have represented my children and of the downgrade in charge;
• Once the DPP took over police were less available and there were minor difficulties having property returned etc;

• Keep me informed about the events and have him charged with assault not just damage to property;

• Not treated me a the perpetrator jut because I was 1st on scene;

• ivestigation techniques;

• Dealing with the media. We were advised to give a no comment which we felt made the media believe we had something to do with the murder;

• I felt like the criminal. I have never broken the Law and have no understanding of Criminal behaviour. I believe the criminals have more rights than the victims;

• kept me informed. had the run about too many times;

• having an aquired brain injury it would have worked alot better if more patience was applied when taking my statment and when rewording it into her own words to shorten it told me the court didnt want to know the lead up to the incident so she could shorten it for me and she would tell the court so if they didnt like it,thenm had me sign it saying they were my words.To not have police offside i just did what i was told...???

• Provide copy of offenders police interview transcript or at least sections of it where I was mentioned;

• Not pounded on front door when advising us of crime;

• Yes, pulled their finger out & charged somebody rather then stuff around cause its one of their own.;

• explain the court process properly and the consequences. Warned me about making an admission in a statement, or explaining self defence, took two statements, poor advice, didn't turn up at appeal, mislead me. Didn't take his guns, didn't take photos of injuries, didn't help with my safety;

• Encouraged court appearance instead of stating we would not succeed. I insisted;
• Information on what happened at court and more assistance with showing up when they were called out to incidents before I could leave the house, better DV knowledge, better attitudes towards me;

• All areas;

• I was represented by the Police Prosecutor who was not as good as he thought he was. The Defendant was found guilty but apparently appealed and was let off his custodial sentence. I knew nothing of the appeal or the subsequent dismissal of charges;

• less waiting time for police statement from my child;

• Should have arrested offender when caught him driving unlicensed the week before accident;

• Multiple;

• They we unhelpful and kept asking if the my attacker was from a minority group when I continually said he was Anglo. They never called back or informed me of any support services. They never left me know if they caught the mugger;

• It was difficult to get in contact with the Police Detective I originally reported to who was in charge of the case. Also the case took 4 years to get to court as it was a historical case. This was very difficult to deal with as a victim;

• if they hadve gone to his address as i gave details to police they would have dna;

• KEEP ME INFORMED OF WHAT WAS BEING DONE;

• could have informed me of being a witness at the inquest;

• They could have got on the ball and have searched the offenders house for evidence on my behalf.IMMEDIATELY;

• the police who intially attended the crime scene could have got there more quickly as they were just a down the road and should have been less concerned about whose duty it was to address the situation, lost time meant the attackers continued their rampage and we were left waiting for the "appropriate officers" for some hours;

• told me more about the offender and how they were charging them;

• police should not have engaged in pursuit, should not have been rude, should have shown some understanding or empathy, do not return calls or help in any way with retrieving property or advising about process;
They could of been more sympathetic, they could have spoken up at court for me, they could of gone to their Inspector and demanded i be protected, they could of over the past 20 years come speak to me and listened to me. They could of ALWAYS sent a female officer to my home after an assult and not 2 male officers aged 22 that have no idea and no experience and no softness about them. Im in my loungeroom sobbing, shaking after being thrown around the house and bashed the past 4 hours and i have 2 constables aged 22 in my loungeroom. Its a joke;

- arrival times;

- VERY SLOW IN RESPONDING .1HR-30MIN;

- Read the transcripts of the trial; read the additional evidence I provided and consulted with me;
- believing me when i went to LAC that he was in our home even with them having him on the wanted list for 5 days and not being able to locate him;

- a better system, which assigns one officer to case;

- keep contact at less once month.

- i didnt get told what he is charged with and i have to keep phoning to find out how it goes in court

- They could have actually contacted me and kept me informed about the progress of the matter instead of keeping me totally in the dark with the offender living right next door!!;

- To keep informed on the release date, any appeals etc;

- Kept in contact.
Q. 5 What other information would you have received?

- very little.;
- cant remember;
- none;
- counselling and victims compensation scheme;
- personal knowledge;
- Only what I went out & found for myself.;
- Advice from DPP court support staff;
- n/a;
- Not much;
- Unsure;
- told me that the offender had left the country;
- no one;
- None;
- updates from my solicitors;
- Possible court dates.;
- N/A;
- DV Case worker kept me informed as well.;
- Not sure.;
- Nothing;
- I would have appreciated knowing when they were getting released?;
- I received nothing;
- What the court process involved and what to expect in court;
- Nil;
- No information was given at all;
i was told that he was appealing the sentence when day and date of just one appeal i had to call to see when the other days went for appeal more then once which I knew nothing of which was scary;

my sopena and the courts decision;

Mostly information on what would happen next, where and when;

I am a criminal lawyer so attended each mention etc myself. I arranged for the rest of my family to be given information from an independent barrister;

Was provided with information about what was likely to happen to the offender. As the offender was a mental health client my partner was caring for, the outcome of the case was obvious and the ODPP explained all aspects of how the case would run and how the offender would be subsequently treated;

Why was he not charged with assault;

Not sure;

Projected outcome of trial;

None;

An officer of dpp was a friend of victim and kept me informed;

My huband andi were contacted by mail about the date and place of the trial and who could attend with us;

None;

Victim support groups and police;

Key family member victims SHOULD have had communications with/from DPP;

None;

few leaflets;

Nil;

That person handling it at DPP had moved on;

Not sure, as my parents were the main contact for the family;

Meetings at the DPP;

A 15 year AVO;
- I can't remember as I was a minor;

- As above;

- I was interested in getting as much information about the case and court process as possible so spoke with the ODPP lawyer and police frequently;

- What does this question mean? And the one above should have allowed multiple answers;

- Notification of placement of accused by mental health team;

- The police kept me up to date with mention hearings, and court dates. If it was not for the detective helping me I would not have known which day to even turn up to court;

- Witness assistance service dealt with me poorly by sending a person that I had never met to be with me on the day of sentencing. And I was appalled by the treatment of the ODPP where they accepted a plea bargain from murder to manslaughter and never consulted with myself or the detective in charge of my case. I found out by myself making a routine phone call a month after to plea was accepted to see how my case was going and was told about the plea. Also my last meeting with police prosecutors before sentencing I asked where the kidnapping charges were and was told quite matter of factly "I suppose we can put it on a form 1. Because of myself and my surviving children being kidnapped for 8 hours and not knowing what was going to happen I still suffer from PTSD I just couldn't believe how flippant the crown prosecutor was about such a serious crime as well, although I know it is not comparable to the death of my daughter;

- None;

- I still don't know;

- Info about victims rights;

- Charges that will be put forward in court regular calls and updates with court dates and proceedings and the conclusion of each court date. Regular calls from DPP's social worker offering assistance information and support to cope with any emotional damage from the assault offering counselling and other supportive services;

- ? I do not understand this question;

- n/a;

- None really, but all I needed to know;

- Nothing I don't think;
• I received no information;
• ?;
• NA;
• Victims register, lawyers for DPP, detectives, legal clerks all made contact at various stages
  • how they accept a plea bargain;
• Communication with solicitor re compensation;
• ?;
• Nil;
• NOTHING;
• just a notice from the court when the next court date would be. it was adjourned three times by the defendant;
• producers when taking the stand, provided me different options when testifying providing other support for my needs.
• constant updates from the DPP lawyers, and support and procedure information from a witness assistance program officer;
• We only found out about the court case by asking questions from police;
• Updates on when to expect to go to trial updates on procedures & mentioning;
• Counsellors office, domestic violence support groups and assistance;
• I got all the info I needed;
• Nil.
Q. 11 What are some of the ways in which you were supported during the court case?

- n/a;
- counselling support person to attend court;
- i wasn’t;
- the safe room for domestic violence as i did not wish to face my ex partner at all was a great help where they advised of counselling etc;
- absent - family issues;
- Thats a laugh;
- Support staff would sit with us in court and help us to understand the process;
- Police, QC, DDp Lawers would keep us in the loop. The lady from Victim Assistance Officer was most helpful;
- Counselling;
- Extreme Trauma required assistance finding ongoing support for young baby and the trauma effects on us both. Information relating to property of the offender and what to do with it while he in prison. eg.signing over the car which was joint loan and registered my name;
- Told the court date and given a subpoena;
- no support;
- None, Our case was before their were many of these services;
- not well informed at all;
- I had a WAS officer with me for each and every court appearance, she also met with me in the community in-between appearances. The crown prosecutor assigned to my case was brilliant and really went the 'extra mile' for me;
- I cannot say I was supported but then I didn't need to attend court;
- Emotional support was excellent;
- I was told what to expect;
- I was able to lie down in a room away from the normal waiting room;
• I was permitted to have a support person in a closed court during my evidence;

• I was only supported by DVCAS;

• Kept informed, advice for VIS, kept up to date regarding when and where court cases were. Counselling and informed at end of each day regarding what happened in court and what was the next step.;

• DV support people;

• No ways;

• i had support from the local womens centre and police;

• i was supported by friends and family;

• I attended a lot of psychology sessions during the time of the court process. I found that attending a few days before and directly after a day in court that it helped me deal with the outcomes. The police were a constantly reassuring me that they were doing everything in their power with the evidence they had that it would be a good outcome. The Victims Assistance officer provided support at the final court appearance;

• Phone calls from and court attendance by HVSG counsellor. Advice from crown prosecutor and prosecuting solicitor re distressing evidence likely to be made public during the trial;

• As the court case regarding the offender was brief and there was no point in attending, the only information I received (requested) was on the progress as well as detailed explanations about what would happen. ------ The court case regarding my partner's employer was however extremely long drawn out and I received constant updates from WorkCover. They would also organise phone conferences with their lawyers to answer questions I had. Counselling was offered through official channels and a listening ear was constantly present. During the court case, I had more than enough assistance with finances (for flights to attend the case), counselling support and friendship;

• No support;

• Victim Support Officer always attended Court with us;

• The Victim Support group offered to attend court with my family. The police were supportive in that they expected a guilty verdict and even though that was not forthcoming, at the time it seemed helpful;

• A counsellor from the Homicide Victims Support Group attended every court date with me and provided details of the process very clearly. One of the investigation Police officers was also there at each court date and always approached me outside the court to ask if I needed anything;
• The H.V.S.Group sent a representative to go to court with me;

• The victims of crime support group contacted us and ha a representative at the trial. they continued to keep us informed of current agendas in NSW re victims. The police/detectives were in contact and very approachable at all times;

• Emotional;

• With information and explanation. Support group and family;

• The findings were explained. The Justice Health pathway was outlined;

• Victims services staff sat with me. I couldn't of sat there without them not knowing what to expect when they brought my brother -the murderer into the room. They also took me back to there office and provided further support;

• duty of care better explanation of the law & rulings & what will be ahead in this long drawn out process;

• NSW Homicide Victims Support Group offered support by being in court with me;

• Police met with me several times and at court. Explained process well;

• Information beforehand of what to expect, able to provide Victim Impact Statement;

• DPP supplied liaison officers for me. Als, a social worker;

• HVSG came to court with us;

• In the earlier court cases had a victim support from DPP support me at the court. DPP would talk to me before and after the court proceedings. I received enough support;

• my mum and counsilors supported me;

• wasn't supported at all;

• I used information gathering as part of my coping and grief processing, so both the police and ODPP lawyer were amazing in providing this and going above and beyond in helping me understand and answer my questions;

• The detective sat with me after we had given evidence. It was a shamozzle - wrong charges, poor investigation, therefore victims impact was trivial rather than thorough, DPP pathetic in local court, worse in Appeal court;

• None;
- A detective kept me up to date on when I was required to be at court. My case was pushed back 3 times in one day, then adjourned. It then had to sit twice more as they video link did not work the first time. Very poor and extremely taxing on me;

- I was supported by the homicide victims support group who were very understanding and also provided me with a very holistic care and support through my court process and beyond. The WAS Officers also helped although I wasn't happy overall with the service they provided;

- Supported by dvacas;

- I had my girlfriend in the courtroom;

- Emails questions were answered;

- Free victims services such as counselling and other support services were offered throughout the process of all the court proceedings after the assault police were extremely helpful by offering their time and support also;

- The Final DPP lawyer was passionate and showed empathy and gave the victims hope without creating unreasonable expectation. The Police Detective also showed enthusiasm and passion for a final result. He showed great empathy also;

- n/a;

- They sat with our family;

- I was supported only by my family once we reached the court;

- None;

- in no way was i supported;

- Attendance by detectives at all hearings;

- accompanied by the detectives during the intial hearing and the appeal...the DPP shared our view that the sentence was too lenient and persued an appeal which was successful and increased the sentence but not as much as I or the DPP wanted;

- police told me where to sit;

- Always someone there for me, organising transport and accommodation, keeping me informed;
• My son and I were still at risk of harm so we had the police and court sheriffs protecting us as well as the support and counselling of the domestic violence ladies who provided us with a safe room;

• Confrence with dpp prior to hearing;

• KEPTED INFORMED BY DPP AT ALL TIMES;

• information for services to help us afterwards being in the safe room the whole time with my son;

• Speak to social works which provideda with all the support I need during court case ,provided me with financial support For acomodation and travel.

• being allocated a victim assistance officer, i was constantly kept in the loop but also consulted on matters that I may have been able to influence etc. this assisted with my empowerment;

• Not at all;

• Nil;

• The domestic violence office were a great support to me and where very flexible when it came to working with my fees;
• Emotionally and practically, being informed and supported about the process;

• Nil.
Q. 12 Are there any areas where you would have liked to receive greater assistance during the court case? (If yes, please provide details)

- This matter relates to an incident where I was assaulted by a stranger, it was an unprovoked attack and family members came to my aid. As a result of the investigation and subsequent court proceedings, the instigator whom attacked me was charged with assaulting me, the level of injuries mentioned in the police facts amounted to a split lip when it was actually a fractured jaw and permanent nerve damage. The facts were more about the injuries sustained by the instigator from my family members whom were acquitted because they defended themselves and myself at the subsequent court proceedings. The matter was heard at a local court level and the instigator plead guilty was convicted to 18 month section 9 bond. The instigator appealed to district court and somehow his sentence was reduced to a 12 month bond before it was even heard by the district court judge, whom stated that he was dealt with too leniently. In summary, I do not believe the police represented me fairly, the courts mislead me, the DPP and the police failed to abide by the charter of victims rights and so on.;

- child care;

- more communication;

- to be advised of the outcome of the court case and his sentence;

- absent - family issues;

- competent people handling our case. that being told bullshit. not being spoken to about our case in front of strangers;

- No;

- We were told our travel costs would be met, they never were.;

- I should have received more Counselling;

- Definitely. I would have liked to be given the opportunity to do a Victims Impact statement.;

- more information, more care/rapport;

- yes, it would have been more appropriate to have had the same dpp and police through all court hearings. the appeal hearing our dpp had only time to read the case the morning of the case this allowed the criminal to bring false witnesses and false information. had the investigating police had been there this would not have happened;

- yes;
• yes would liked to have been kept updated on all aspects;

• Yes as I was 16 at the time I didn't understand the long term impact of the crime on me. I would have liked guidance and support from victim support to help me determine that the behaviour of an abusive partner is unacceptable.

• No, I think they did everything possible to help me trough the process.

• Not sure.

• Yes, regular feedback from the police. Having given up the evidence to the police, it would have been nice to have it used - especially when it was medical evidence directly relating to my injuries. Explanations of the court process, and of any hold ups.

• The entire process was frightening and confusing. All victims need more help understanding the crap they have to go through.

• More information, more respect, more say in court case, or even to be told what happened in the case, and to be able to refute lies told by defendant.

• No;

• Deals done between police and offender stopped and for all matter to be decided in court

• More information and referral to a dv service;

• to be kept inform of any appeals after setanced;

• counselling and support from ngo;

• Yes. I felt as though the DPP didn't push the case enough. It was clearly evident that the offender had history but I felt as though something had been overlooked;

• On the day of judgment there was no one from the DPP or the police investigating team available to attend court. That lack of continuity was disappointing. It also felt like the result was such a certainty (not guilty by reason of mental illness) that no one was very interested. The lack of any person (except HVSG) who had been through the process with us meant that there was less of a sense of closure with the other agencies;

• No;

• Yes, I was a mess, and no one, no one stood for or by me, I was left to fend for myself and still carry the scars;

• Not really;
• Yes. At one stage my family was travelling from rural NSW to Sydney for the next court appearance, and as we were travelling there (it takes 7 hours to get there) we were phoned to be told the case had been moved to Lismore. A little more notice would have been immeasurably helpful, as we then had to turn round and drive for hours in the other direction;

• The Prosecutor was cold, abrupt and seemingly disinterested every step of the way. On a day when he told me he was busy and must leave, as he stood up he asked if I had any questions. "No more of a request - please fight this for my brother". His response was "It is not my role to 'fight' for the deceased or any individual. My role is to prosecute a case, Goodbye." Greater assistance for me would have been for that man to show basic human compassion;

• Would have liked more info on what was being done once the matter had proceeded out of the local court;

• The ODPP were challenged by myself during a break as to whether they would handle this case the same ie. appalling prosecution and with-holding of evidence in the form of a different assessment by a psychiatrist regarding the murderers mental state. The outcome deeming the murderer not guilty on grounds of mental incapacity and never going on her police record because of this is abmissal to our family as it seems no-one was responsible for my daughters death. No one helped us to deal with this outcome;

• Financial assistance to attend court as case was taken out of area, to Sydney we are in Hunter Region;

• No;

• I suspect a plea bargain behind closed doors following admission of guilt by perpetrator. Motive(s) of perpetrator were not fully examined as the DPP had an uncontested, "solved" case. A pathway for key family members to communicate with the DPP and vice-versa wasn't established or if so was not made clear to me (us);

• Yes. But Criminals always have the rights. I was told he would be locked away. All he had to do was plead mental illness let the do gooders think they have done a great job making him better so he can be released soon be on the streets and murder again. While myself and my family will be in fear of our life;

• the whole thing;

• No;

• In hindsight I wish DPP had shown me the statement of agreed facts BEFORE the trial. After the trial I received a copy and was shocked to find important information that showed the real motive was left out. I only became concerned because DPP told me before trial offender would be locked up for good and
given the viscousness and massive number of stab wounds. BUT after the trial I learnt from MHRT that he could get out in a couple of years. I was lied to !!!;

• No;

• I had no access to the court transcripts. They are very difficult to access, especially if you the victim;

• No;

• I also had support from friends and family;

• No;

• complete treatment for injuries sustained;

• No;

• someone to explain just what was going on, the process, my role and rights, how i should act after the hearing and sentence, in Victims Compensation, how to make legitimate complaints, but more, how to be actually heard. This survey is minimal -no appeals, retrials, access to court docs, cost of transcripts;

• NA;

• I would have like the prosecutor who prepared the case to have been at court and not have an under prepared prosecutor who either didn't care or had too much work on his plate. Victims need to be told what to expect at court. The standard victims package of leaflets is not enough, it needs to be more face to face;

• yes I would of like a more consistent service from the WAS officers and also they shouldn't send an unknown person for support, (especially when you have already built a repale with another two officers) on the day of sentencing;

• By police and prosecutor;

• I should have had competent representation. The Defendant was prosecuted by the State and I was a witness for the State. So I was not involved in decision making. The Defendant had $145,000 of my money in his account and used the money to buy a Barrister and Solicitor. I have a lot to say;

• Yes;

• no everyone was more than helpful and committed to helping me throughout that time;
• It was very difficult time for me when the court case was delayed twice at the last moment each time. I had read my statement each time thoroughly and this resulted in me having a nervous breakdown of which I required hospitalisation. It should have been referred to the Sydney courts from Wollongong much earlier on as the Wollongong courts were too small to prioritise historical cases;

• i would of liked to be a bit more informed i read all of the information from newspaper reports;

• No;

• No;

• yes not sure;

• input to and with the prosecution;

• NA;

• not really.. I feel the DPP lawyers and the detectives, and the restorative Justive Unit did their best with the limited resources available to them.. I was rather dismayed by the shambolic and luck-of-the-draw nature of the court hearings..obviously the system is overloaded as the case was intially heard by a civil court judge( who appeared to have limited expreince of criminal matters) who happened to be available on the day because the criminal court judge called in sick;

• police could have explained how they will proceed with the case;

• Victim assistance and councilling would have been good, but I don't think it existed at that time;

• No;

• Voccc response times being kept informed very little;

• NO;

• to be kept informed and not sit in the safe room for hours and then be told that is adjurned again or even be told that it had started;

• No;

• Would have liked to explain how the crime affected us. Perpetrator was give a very lenient Sentence;

• Nil;
• No;
• N/a;
Q.2 What do you think you can say in an impact statement? (describe the general types of statements you think you can make – you do not need to refer to your own personal experiences)

- I'd like to describe the trauma, being hospitalised twice, Psychological damage, having my son taken from my custody, money stolen, having to move house, having no money, unable to work, unable to process VOC application as my baby's dad is now fighting me in court, damage done to my car, slander of my name, not being able to eat hamburgers for 6 months cos I couldn't open my jaw properly and everything else;

- I have written an impact statement, I have also decided on my on will to have read it out in court ___________________.

- how he hurt me, how i have to live with this for the rest of my life an how much he change my life for the worse;

- How the incident has had an effect / affect on you;

- I'm not sure yet;

- Physical injuries, ongoing psychological trauma, family breakdown, loss of income, reduced employment capacity, self-harm, insomnia, hallucinations, related medical expenses, etc.;

- how the crime has impacted on my business, relationships, trust of people, financially how it has affected me and the family;

- The effect it had on my children as they had no say in the process;

- That it haas altered my whole lifestyle in that i have to relocate for safety reason and am not safe where i am living at present. I fear going out of my house even be it to my garden. Have ioncured expenses of taxis transporting me in and out of the house day to day. Etc;

- I would have like to have a say in the court proceedings, to have had a voice in the court, to stand up and show the human cost and the emotional, physical, and financial damage that this persons criminal acts cost me, the victim and my children, also victims. I would have liked to refute his lies about us getting back together and working through our marriage that the judge ate up- I was in HIDING from him and yet the magistrate didn't hear my side, as I wasn't there and was told not to come to court. The system very much failed me;

- Don't know;

- How the perpertrator has effected my life, how he has mentally and physically destroyed my life, how he has effected my sons life, how he has effected me financially;
• how the crime has effected me;

• I shouldn't have to stand and make a impact statement. Judges should be smart enough to understand the effects of violence - physical, verbal, emotional, When a man holds his partner at home for 4 hours and pushes, screams, uses the most foul words ever, does this in front of his children, smashes things, destroys things, leaves partner and children in a bloody mess;

• How i feel about what he did, my daughter will never see her kids grow up, get married or have kids. He not only robbed them of their mother but they now don't have a father. He has robbed me of my daughter. A parent should never have to bury their child. I can never hear my daughter say I love you Mum. I cannot tell you how much my heart aches;

• explain and highlight the impact these crimes have on so many facets of our lives, that other find hard to understand and therefore do not take seriously. The long term effects of emotional abuse, and loss of respect from children, and the years it takes to rebuild. Also that the court system is set up to make most women in a worse position and be continued to be a victim by the action of standing up for themselves;

• explain how i feel and how it has impacted my life;

• I could say how I was attacked on my own property and now I do not feel safe in my own home. My partner now lives in fear with a knife in bed of a night time. The offender has caused this fear and the court should recognise that the effects of the attack go further than just the physical injuries and any sentencing should take this into account;

• It will be all about my daughter and what she was like and what she has missed.
Q. 3 What do you expect to gain from writing an impact statement?

- Nothing, I think he will just get kicks out of it as he's a sociopath;
- I have became a stronger person
- acknowlegment on my feelings;
- Having a voice, and hopefully having it heard by the Court;
- I'm not sure yet 
- To encourage the judge to come up with an appropriate sentence (rather than the lenient bullshit this country most commonly offers);
- Show him how I feel. However, he is such a nuff-nuff who believes everything is everyone else's fault, he probably wouldn't give two hoots about it. I want the Judge to listen though but I wonder with our patriarchial bench and archaic evidence laws in rape trials whether it is worth it and would I just be ripped to shreds’
- to be able to verbalise hard to describe feelings, to 'let go' of any anxiousness, to be heard and to speak on behalf of the deceased;
- Conclusion - resolution - feeling like I did not fail as a Mother - allow my children to heal especially the older of the two;
- So as the court has an overall look at the entirety of the suffering incurred by the assault etc and that that perpetrator has some idea of the damage done at there hand to. The serverity of the suffering innurred cannot be known without an impact statement;
- To have a voice in an offender focused court room to show the damage that DV has on the victims;
- To demonstrate how the trauma has impacted my life to the defendant and the judge before making their decision;
- some inner peace, and an understanding of verbalising what he has done to me;
- i finally get to have my say;
- I don't expect anything from it, I would view it as a waste of my time;
- I want him to realise what pain he has caused;
- Awareness;
• hope that they might not do it again to somebody else;

• Satisfaction that my voice was heard and it may sway those involved in his sentencing to consider the impact on me and those others effected;

• For the courts to know what my daughter was like.
Q. 4 Would you like to read the statement in court? Please specify why or why not

- not really I will probably break down and cry;
- As stated above I have read it out in court. I read it out in court because I have put a lot of effort into writing up this documentation at my own will.;
- no..i cant face him;
- I am unsure as to whether I would be able to read it - still too emotional about it;
- If I can I would like you;
- Yes- because the offenders should be squirming with as much discomfort as possible.;
- Yes. I want him to see what affect this has had on me.;
- yes, to feel empowered;
- Yes - so I can show I am not afraid of him anymore but No - as he scares me;
- No This would be terrifying,.the assault was enough suffering incurred and dont want to feel any more trauma taken on by that ordeal;
- I would have loved the chance to have a voice. my voice was silenced by the police who dismissed me as a mere witness to the crime and told not to come to court;
- No because I am scared of him;
- Yes - to prove to myself I can do it and face him. No - I don't know if I can I am unsure if I will be able to do this or not;
- Yes, to have my say;
- The court room in Griffith is a joke. The lawyers joke amongst themselves, the judges hardly seem to care about each case. I just want to get out of there asap;
- Yes. I would like the judge to hear how I feel. Maybe the judge will then take into consideration my 7 grandkids;
- yes, more impact;
- no i wouldnt want to face him;
- No. Knowing the offender he would be glad with the effects he has
caused;

• Yes to let people know what my daughter was like.
Q. 7 Are there any other ways in which you hope to participate in the current court case (include details on what role you expect to play)?

- I am his second victim I just want to keep him locked up;
- No, everything was fine the way it was.;
- No;
- Don't know;
- I would like to get in touch with the monkeys at the DPP and have them explain themselves.;
- I want to be able to actively help the prosecution. They stuffed up my case by granting him bail even though he had failed to appear and then an extradition warrant was required. As a lawyer, I know that sometimes the OPP don't want to actually hear what the victim may have to say to some of the evidence. I spend so much time in court it would be weird for me not to!;
- No;
- I should have been advised of the downgrade and appeal;
- Yes i dont feel that victims should have to face their perpetrators after extreme trauma frm any type of assault taken. I had the __________ put the video link service on trial for 12mnths and now it is country wide. In my appl to the assembly to enforce this it was asked that this be put in place initially so that victims did not have to face their perpetrators.Yet i have to enter a court to do this. Why is this service not more widely used for all victims in this instance as it was introduced to do?????;
- No I believe the matter was dealt with already, somehow;
- Court Case is over;
- Too many women go through this and just like I was, are too scared to leave. Just putting them in prison for a few years doesn't just make it all better;
- Yes I would like to know where it is upto, what happens if he pleads guilty, or not guilty, which court it will go to. As a victim I feel like I have been left in the dark, isolated and his court case shouldn't worry me - it does..... I want to be informed. I understand that everyone is different, I wish to be treated as a victim not just a number in a fucked up legal system (sorry very angry);
- i guess i might have to give my version but so far i dont know what progress has been made if any;
- no;
• no;

• I suspect police will call us witnesses. Also that defence will call us;

• got him locked up not much more I can do;

• Id like to be able to tell what happened without the Barristers butting in all the time and id like it if the Police Prosecutor got up of his chair occasionally and fought for me;

• No;

• I would like to see better court systems and processes that do not victimise the victims and help the perpetrator, assist in the support and awareness of informing and educating the wider community for a change in attitudes to violence.

• i would love to be phoned after every court date and told what is happening;

• It is over, at least that is what the police told me when I enquired. So obviously the police thought I had no part to play;

• To be listen to.
Q. 8 Are there any barriers which may prevent or inhibit your participation in the current court case? If yes, please specify.

- No I have to do this;
- No, just the CCTV room and the camera's were intimidating. Otherwise it was fine.;
- not at all impressed. I was made drop my court case causr they wanted to run an old fashion rape trial i was told,i was also told i would not win yest criminal comp found him guilty. i feel ripped off;
- No;
- Yes this is my daughter your talking about;
- Yes- a system so incompetent and/or corrupt that a gang rape with a witness, forensic evidence and supporting psychological profiles doesn't make it to trial because "conviction is too unlikely to justify the expense of the trial".;
- I am so worried about the cross-examination process and would I say the wrong thing. I suffer from extreme anxiety and am very scared. I told my counsellor I would rather be raped again than go through a court trial where I will be shred to bits. I will never forget what is said to me by the defence lawyer. I am a good person. I have won awards for my contribution to the community, I do so much pro bono work for the Aboriginal community. It will all count for naught I fear. I didn't want it to happen. He locked me in a caravan and I couldn't get out and I didn't know where I was in this outback town 100km from anywhere else. I was asleep and started punching into me and throwing me around the caravan. I was so frightened he would really hurt me. He then made me drive him home. I am so scared what the defence rep would say, especially as they will be someone I know from my own legal fraternity out here in the outback. I don't know that I will live past the trial. I have active plans to kill myself when it is over.;
- no, although being a witness prevents me from seeing and hearing the opening of the case in front of a jury I would have liked that opportunity but fully understand why i can't;
- Frighten of further recourse from the ex partner and government departments;
- YES FEAR and lack of support so far;
- Only the way that victims are classed as witnesses;
- Court case is over;
- Fear that he will come after me and my family when he is released;
• my fears of the unknown, being left alone and isolated during the court system;

• no barriers;

• no;

• no;

• health, emotional and psychological;

• I got it charged with other offenses prior to me;

• Yes, emotionally and mentally im very afraid to appear next month. After the Dec 1st incident I feel I suffered a breakdown again as I lyied on my lounge for 15 days and cried and didn't attend work. I am not strong enough to attend court on my own and I am scared I will start crying and the judge will see me as this female who should be committed.;

• No;

• The emotional roller coaster of confidence.. then self doubt due to the constant road blocks and discouragement from lawyers, and friends and family, telling you to just walk away (your safe now). The barriers are other people not supporting your actions;

• i dont want to look at him;

• No;

• Yes I have booked a holiday and might have to cancel because of court.
Q. 4 Have you contacted or do you intend to contact any victim support services (i.e. government and non-government organisations) to assist you in relation to this crime?

Q. 4 Specify Agency?

Q. 4 Specify Why?

- There is no point as the offender has died;
- I don't know who to turn to;
- Attended domestic violence support group;
- I have had counselling from a work related Employee Assistance Programme but not very helpful;
- Not sure;
- Homicide Victims Support Group NSW;
- It was a long time ago;
- Counselling;
- Won't do anything or can't;
- HVSG;
Q. 5 What are some of the reasons why you chose to contact a victim support service? If you chose not to contact a victim support service, why not?

- No point because the offender is dead and it happened years ago so I don't think I would be able to receive help;
- didn't know where to go for help.;
- the police referred my contact details to them after the crime (when I finally left my husband and reported it, but did not press charges).;
- I have no doubt that I suffer from PTSD. I have had three counts of agoraphobia from ages 21, 28,30. It was only after my first child was born that I learned to identify my symptoms and willed myself to mother my child. This entailed being proactive with my life and being a part of my child's life.;
- to get help;
- The Homicide Victims Support Group made contact with us and we accepted their help and support;
- to make sure that I know where abouts of my nephew at all times and in fear that if he is released he would kill either myself or my daughter or innocent person;
- I don't you could help me it was in other state i was trying at the time get on with my life and i was't believed;
- I can't afford to pay for counselling myself. I didn't know I could apply for free counselling until the domestic violence worker told me;
- N/A;
- I did not know the service even existed until I picked my sister up from their office after a court hearing.
Q. 1 Can you think of any changes that could be made to the NSW criminal justice system in order to improve victim participation in court processes?

- enforcement of the charter of victim services;
- more understanding sometimes the court treats the victim worse than the offender;
- no;
- no;
- The compensation payout shouldn't take so long, I've been homeless unable to work due to trauma and the trial is always sooo long after the event so the work you do to help deal with the trauma then makes your status as a victim incredibly shaky as the timelines are unclear, then the trauma is dragged up again during the court process. I needed money before and because I can't look after myself I'm finding it hard to get my son back into my care full time.;
- - have witnesses relaxed by giving them pens and paper to doodle while waiting for the procedure to commence.;
- Lots.... harsher penalties! The system put innocent people in jail and let's criminals walk free;
- Yes.. Tougher sentencing for sex offenders!!!;
- UN able to comment as mine did not go to court;
- Accountability;
- get it right the first time...if juries break the law like they did in my case they should be held accountable;
- honesty;
- not at the moment;
- Evidence act needs revision. Numerous pieces of prosecution evidence were omitted due to successful objection from the defence, who behaved like a smart ass throughout the trial.;
- Alledged murderer had more rights than our deceased son. Jury should hear that the accused is in goal and didn't apply for bail. Here all of the facts from ERISP. Needs to be a better process in getting jurors. half of them do not want to be there. Jurors should be directed as to what is resonable doubt.;
- People should do their time for the crime they committed;
• To be given opportunity to give evidence and personal account. Offenders are and it is an injustice as Victims we are not given an opportunity to speak of the impact on us and our children.;

• Less victim's time wasted;

• The authority's not making you feel so insecure;

• Make Truth In Sentencing retrospective;

• Trust assurance and safety. Plenty of knowledge about court process, procedures, what terms is speech used means etej;

• Improve resources to expedite investigation. Educate police re trauma experienced by victims, and retraumatization when required to undergo interviews for report. Specialist investigators needed for child sexual assault cases. Provide the option of female detectives for female victims of sexual assault, including historical cases.;

• the same police prosecutor should be kept with the case even through appeal. the police should attend appeal hearings;

• No;

• more contact & information made available to victim;

• No, I am not a lawyer.;

• Change the judges and he judicial system. The judges are useless. If they keep giving weak sentences or suspended sentences to vicious criminal victims are less likely to report a crime, as are police in following it up.;

• I was in a domestic violence relationship which involved intimidation, control and torment. I was made to have sex with my partner when I didn't want. The police initiated ADVO but he was not charged with offences such as intimidation. sexual assault, harassment and stalking. I was pregnant while this was happening to me. Now I have a child, have to deal with Post Traumatic Stress and he gets to continue on with his life with no impact other than an order to stay away from me.;

• To make it faster as there is some cases that have been going on for 2 years plus;

• My perpetrator was on bail for the same thing, even though it is not directly related to this question tougher laws around bail may have prevented my assault.;

• N/a;
• No;
• Make it mandatory for both party’s to have counseling;
• Teach them about mental health How to treat and approach not dismiss matters of abuse;
• Having rooms available to sit apart from the perp. Having someone in there to just talk to you - without them being privy to your case.
• not give the option of whether charges will be laid or an AVO applied for;
• Yes all concerned tell the truth Judge should look at the evidence The judge should be non biased particularly when the victim is a female or child;
• Make it less about the damn perpetrator.
• i went through the family law system, not criminal law, so i can only speak for that. i think more weight should be placed on the seriousness and emotional effect of domestic violence; even though my husband admitted to violence towards me i was made to feel as though i was the perpetrator and he the victim because i left and took the children without telling him (i lived in fear as he had guns in the house). in court i continually felt as though i was not believed or that it was not very serious. also, my husband was self represented, meaning he was allowed to cross-examine me in depth for 3 days. That was traumatic for me after living in an abusive, controlling relationship for so long with him, and was extremely intimidating.
• Look at the bigger picture and facts leading up to the event;
• I beleive that the victim have a voice, and a say in court, that they be present if so wished;
• There obviously needs to be more transparency between solicitors and prosecutors of the DPP and the community they represent. The cure for corruption is public scrutiny;
• Yes;
• I was the beneficiary of my late fathers Will. My abusive brother was left $1000. The Trustee and Guardian were the Executors of the Will. They knew about the sexual abuse as a letter was left with the Will outlining what had happened. The had me sit in a mediation with this "brother" and following this I paid him $80,000, $20,000 to his solicitor and $13,000 to the Trustee and Guardian for "executing the Will". They disregarded everything and permitted me to go through a mediation with this abuser. He has a past criminal record, lied in his affidavit etc. The entire process was a criminal offence. I know have a $340,000 mortgage on my home and a $220,000 on my parents home It is a battle axe block and I
retained their property because it is in close proximity to my home and I knew an investor would buy it and then I would have no say in who lived there. My brother submitted minimal documents and the entire process was a farce. I have paid him $100,000 compensation to thank him for stealing my childhood, my adulthood and my sanity. I am now severely depressed but self medicate with alcohol as I was on anti depressants for years and did not like the fact that I felt as though I was feeling nothingness. This abuse happened when I was 9 or 10 and everyday I still feel the challenges just to exist and put one foot in front of the other;

• No;

• Support given to the victims - not advised by the police when I asked for help for DV to be advised the offender would always be in my life as I had children? No need for the police to give their personal opinions. For the ODPP to be independent and not do deals with offenders as it is easier or less time consuming. For repeat offenders or those that breach ADVOs with acts of violence to be given a jail sentence;

• Having a Police / Victim Liason officer at the court - above and beyond the DVLO's who tend to be busy with the actual case;

• The police need a victim liaison officer in each station to liaise with victims and keep them updated. Police are hard to catch with their leave and duties and one gets the feeling they are too busy to talk to you. Someone charged with multiple counts of rape should not be given police bail! The OPP support people kept on changing and I have not been contacted by them in months;

• perhaps a better explaination at the very beginning about what to expect with so many mentions and a better understanding of the bail and why someone accussed as an accessory would be released on bail;

• yes victims should be treated with compassion I was shot in October 2005, i asked the newcastle police if they could put me under the witness protection program due to the offender of the crime new were I lived nd I was refused witness protection and was told by the police that they did not have the resources to put me in the witness protection program so I did not receive any information from the Newcastle police about compensation nor counselling, i have suffered from PTSD since 2005 and I am still getting knock backs from victims services and am told to go look into the community for counselling from victims services itself;

• If a female from my background (white, middle class, educated, professional) has not reported the abuse, it doesn't mean that it didn't occur. There would be other ways of substantiating the claim. eg financial records;

• yes, I had a witness and she hid behind the right to not speak law. One of the men who assaulted me took a false AVO out on me and the police never
investigated it and it made me even more devastated. I relived it all over again;

- That they given a big sentence then on appeal its drops tp less then half;
- support workers for victims;
- Allow the police prosecutor to communicate with each victim instead of having a pile of files to get through in one session. There is no way a prosecutor can argue effectively for a harsher sentence when they are not given time to review and draft submissions;
- I believe every victim should have the right to tell the Magistrate/Judge and or Jury what happened to them in their own words. Victims need closure to be able to move on from what event took place. I feel like I have never been given the opportunity for closure;
- Victims (or family members) of people found not guilty by reason of mental illness should be able to make confidential submissions to the Mental Health Review Tribunal. It is absurd to expect family members, who may have insights that a treating team does not, to provide sensitive information about a person that will be made available to that person in circumstances where that person suffers from a mental illness which causes paranoia and has demonstrated violence (homicide) against another family member due to paranoid beliefs;
- No;
- Yes, they can be asked to testify;
- In our case the Offender was found Not able to stadh Trial as Mentally unstable. This was very frustrating as we felt he did not pay for his crime but I understand that these cases are very difficult;
- No;
- Allow for a Victim Impact Satement to be made in cases of a mental health plea. Ensure that there is seating close to the bar table for victims families if they choose to attend hearings. Ensure that staff of ODPP, especially prosecutors, have suitable training in basic communication and caring skills;
- Victims families should have more access to information and be kept up to date with the process and progress of the case each step of the way. If wanted, all evidence should be available and explained to families (victims) so they are not surprised when it is presented in court;
- The parameters of 'victim' could be broadened. as I was not married to the deceased our 10 year relationship and the crimes' impact upon me was largely dismissed by the police and judicial system;
• anybody who comments a crime such as murder should never be released into the public again;

• I think the ODPP should have informed us of what they were about to present in court prior to the trial and to be honest about it so that the victims/family members could discuss the proceedings. It was a shock to see how they were supposedly prosecuting to defend the community at large but not presenting all the evidence collected to incriminate this woman. The woman had been involved in drug use which was her choice and then affected her mental state which resulted in her murdering my daughter. None of this was presented because the 2 prosecutors had collaborated prior to the trial and decided on the outcome before one word was spoken in court. The judges words confirmed this;

• Financial assistance to attend court, we suffer financial loss at no fault of our own this is unfair to victims, members could not attend court for this reason;

• We were lucky as everything was explained to us so understood what was happening;

• Outlaw secret plea bargaining. Mandate DPP liaison with victims or their representatives before case commences. Disallow trial by judge alone in cases of brutality and extreme violence;

• Keep victims informed. Criminals know and play the system victims don't;

• more understanding or explaining rights etc;

• The words NOT GUILTY to be removed when it is a "mental" outcome in cases of MURDER;

• VIDEO LINK available to all victims......................;

• When a murderer is found Not Guilty by Mental Illness no conviction is recorded. As a result they still have access to the will/estate of the deceased. I had to hire lawyers and spend a bucket load to have the forfeiture rule applied. This is so wrong. I was never advised by DPP that seeking NGMI verdict would have this affect on the estate. The system should allow a verdict of Guilty by Mental Illness with a conviction so that victims family do not have to go back to the courts to fight the offender over the estate;

• No;

• Access to court transcripts on a daily basis;

• i don't know?;
• Change "Not Guilty on the grounds of mental illness" to (say) "Guilty, and subject to mandatory confinement and treatment for mental illness" Also make victim impact statements normal process in such cases;

• no contact with the defendant. Being in the same room as him while he listened to me give evidence was humiliating and frightening;

• no. I had good victim partcipiation during the court processes;

• A Board or Tribunal independent of political structure will give a compassionate credibility to the whole process;

• No;

• No;

• more support for victims;

• No;

• I gained information because I vigorously sought it out and asked a lot of questions. Others involved in the case seemed to be swept along in the process without fully understanding what was happening, when and why. Perhaps they could have been given the option;

• I do not know what happens in the court processes As I was not involved (i have never had the opportunity to have my voice heard) and at no point did the police or court contact me. That is one of the reasons why I registered as a victim. I am also registered as a victim of crime so I know where he is and when he will be released;

• 1. Explain to victims how to make a statement, what not to include. 2. Don't take statements from traumatised victims because the legal process exploits trauma-affected evidence - give them a fair go. 3. Don't take more than one statement. 4. Don't change the victim's words because later they will 'get them wrong'. 5. Let the victim know the difference between role of prosecutor and defence, and that in cross-examination, they can be tested on anything in their history. Unlike the accused. 6. Properly prepare the victim for appeals process. 7. Have an inquisitorial system re complaints etc;

• NA;

• I believe that ALL victims should have the right to be able to write statements to be read to the judges. It gives victims back their voice, it shows the stress, the costs, the damage that the victims go through. I believe that FDV needs to be taken more seriously by some police also;

• Judges need to listen to the victim impact statement more and use that more in the sentencing process. Prosecutors need to be better prepared for court;
• I believe that victim's need to be kept informed about their case and also consulted before big decisions are made in relation to the case or offender during the court process;

• More support for victims;

• Have a Victims Compensation Scheme like they do in Queensland where a Victim of (non-violent) crime can be compensated. I had a breakdown and combined with prior physical disabilities, am unable to work. I had borrowed the money ($145k) I lent, under contract, to the Defendant and I am paying it back to the bank out of my Disability Support Payment. I had to sell everything I had to get the loan balance down and I will be repaying the debt to the bank for another 24 years. So I'll still owe money when I'm dead;

• No;

• Defence lawyers should be limited to a set number of questions and/or time during cross examination of a child. 6 hours/ hundreds of questions is too long, as our seven year old had to endure;

• Matters should be heard quicker; ours took 15 months to be finalised - also too many court appearances got postponed dragging the time out. Yet we had to appear each time, just in case. Ask victims what sentence should be. The system is on the side of the perpetrator; very biased;

• Keeping victims statements confidential against the criminal.. He didn't need to know everything I said and done because it made him want to come after me more;

• No";

• The police should inform victims on the progress of a case and give them an opportunity to attend court;

• Faster resolution;

• NO;

• the police told me for my own safety it was best i didnt stay in my home for the night.why didnt they offer me a protection order. i was alone, my partner had just died.i was bullyed from the day he died.they could see i was at breaking point, they really werent listening to me, i told them what happen. they had to ask my deceased partners family to leave, they wouldnt get out of my house.they could see all my partners and my belongings were all thrown outside on the yard. and 8 people were still sitting in my house. the police took 4 hours to get to me.i had to stay in the shed, i was thrown against our tv.then thrown outside the back door. i asked for help over, and over again. just so i could get better, i needed a little financial help. if i didnt work i couldnt, work, i became a vegetable, i could think, i couldnt eat. i lost alot of time off work, i
had to travel to and from counselling, doctors, trying to find a home for me and our animals. I couldn’t get well, I didn’t have the money to help me. My job was casual only. When I needed to go to a specialist I couldn’t, couldn’t even go to see a shirk I had no money. I couldn’t even get a benefit and yet we were together 2 1/2 YEARS. I can’t even afford my antidepresse, I’m homeless now, I live in an outside room its all I can afford. If I had been given financial help from the beginning and no I wouldn’t be the way I am now. I was running around like a lost sheep. How do you get better when your doing that. If I had been able to take time off work to grieve and just consinstrate on me and healing and getting all the support I really needed, I wouldn’t be where I am now. I will never be the same, my life was taken away from me. I told victims comp I need help I don’t want the money I just want to get well, to do that I need to get rid of all the pain that I wasn’t sure of. The police said to me when I went to do a statement that it was my word against theirs. Do you think they are going to admit it they did it. The whole family was in the house. They wouldn’t leave. I had to ring the eldest brother who was at work to come remove them. The police should have offered me protection in an AVO. I didn’t no about that. I’ve never had to endure this kind of ugly pain and violence. I went to press charges but I was told its been too long I can’t. My mail was taken by the family, and everything we both owned and I was elegantly evicted. I lost everything and had no where to turn. 1 ( A social worker should be appointed, at hand to help you. 2 ( The police knew my safety was at risk ( offer the AVO). I didn’t no about that. I would have got it if I knew. 3 ( Financial help in regards to specialist, you can’t go to a specialist with no money ) to help get better. 4 ( Make sure you have a roof over your head. ) safe house, refuge etc... 5 ( to get help for traveling to and from doctors, etc...traveling cards, pension etc...? 6 ( taking time off work, to help with getting well ) 7 ( womens groups for women who have lost their partners..) 8 ( a nurse to visit, or you have to report to mental health hospital for check ups. 9 ( to make sure you are treated like a victim and not the criminal. ) In my case I needed alot of help not only with counsellors, doctors, I needed a social worker;

- no;

- No;

- I was king hit and knocked out in front of my kids and was rushed to hospital I moved away to feel safer and I don’t feel enough was done to arrest the man. His friends at the house I was invited to on Christmas day will not in witness for me I now want to sue them for it;

- Absolutely. I believe if someone is charged the victim should be allocated an officer that can explain the court system, the legal system, the police system to them in as much or as little details as the victim needs;

- Firstly why do magistrates ignore breaches as if they don’t matter at all. AVO’s should be valid and enforceable NO EXCUSES;

- Yes, don’t make rape victims face the attackers in court;
• THAT THE VICTIM BE KEPT INFORMED BY THE POLICE AND ANY ONE THAT THAT HAS RELAVANT INFORMATION;

• full explantion as to what the court process is, and who's who in court, support persons present;

• Allowing the victim to make a video statement and not have to see the offender face to face. Being able to tell my story in private so it doesn't feel like I am having to live it all over again;

• involvement in the court proceedings;

• no;

• I believe that the perpetrator can say 'sorry' without really meaning it and that is accepted by officials. In my case it was conveyed through my barrister leaving me believing the perpetrator was truly remorseful;

• yes the victims should have the right to input into sentencing, and offenders should not be allowed to remain silent when questioned by the prosecution offenders can have legal aid services provided by the tax payer to avoid or lessen being convicted/sentenced whereas the victim has to stand alone and be attacked by the defence...who has committed the crime here?;

• I could have representation at some point that would be good;

• Don't know enough about current system to comment;

• I think the police should be kept better informed by the OPDD of the progress of charges and plea deals etc. Especially in regional areas where the victim has more contact with them then they do with the OPDD;

• police could return calls, advise when asked a question, do some courses in empathy. not be rude/agressive-assertive;

• no;

• Do not be in the same room as the offender. Whilst having to wait for the case to be called NEVER allow the offender to verbally abuse the victim at the top of his lungs as happens to me everytime. I arrive at court at 9.30 am and from 9.35 until we are called into court Robert continually calls out...Not once do any police officers arrest him for harassment, which is part of the AVO, or do they ask him to stop. Its a real bad time for me going to court;

• No;

• Communication;

• LONGER SENTENCES TO FIT THE CRIMES;
• No;

• When it comes to allegations of child or adult sexual assault, the alleged offender is automatically viewed by the NSW criminal justice system as guilty. Yet, it is just one person's word against another person's. It may be the truth or it may be fiction brought for malicious purposes or an abuse of process. I was assaulted & kidnapped, escaped and reported these matters immediately to the Police who charged the two perpetrators involved. After they were committed to the District Court, both provided statements of alleged sexual assault by me to the Police. They were assisted by a solicitor, the now deceased _____________________ who was the homosexual partner of the older felon (a man who had a string of serious criminal convictions and had previously claimed child sexual assault by adult men whom he had assaulted and who had had him charged for that assault). I was then charged and had to go through the CJS resulting in not guilty verdicts. The District Court awarded me $25,000 on appeal from the _____, while the two felons (__________ victims) were awarded $50,000 and $7,500 respectively. In the case of the larger award the _____ did not find that I was the perpetrator but persons unknown. I was not informed of the _____ hearings and therefore could not provide further important evidence to the ____. In the case of the felon who received $50,000 I had been found not guilty by jury after 20 minutes discussion following a Prasad Direction by the Trial Judge. The jury returned to the Courtroom and said "we have heard enough, not guilty". Subsequently, the defense was not required to give evidence which in turn could not be made available to the _____ on the present scheme as alleged perpetrators (or nominated defendants) are not a party to the proceedings. After I discovered that a fraud had been committed on the _____ I provided them with the additional evidence. The _______________ told my solicitor "We have been had" and requested my permission to send the additional evidence to the Police. A _______________ allegedly viewed all the evidence and came to the conclusion that the ____ had made the correct decision. There was no analysis of the evidence, no mention of the fact that the ____ had NOT named me as the perpetrator and in fact no evidence whatever that the Sergeant had read the trial transcript or the additional evidence I had provided to the ____. I complained to the Ombudsman who wrote back saying that he did not require the transcript or the additional documents as the _____ decision was on the civil standard which was a lower standard than the criminal standard. The Attorney-General's of both political parties have distanced themselves from the issue and refused my request to legislate an administrative review mechanism. I am now seriously giving consideration to seeking a Declaration from the NSW Supreme Court to the effect that all NSW Victims Compensation Schemes since 1988 are unlawful on the basis of denial of natural justice for nominated defendants and that all judgments not backed with a criminal conviction should be declared null and void. A Tribunal which does not hear all the evidence places itself in a position to be easily abused and to consequently make wrong decisions;

• keep them informed from the start to the finish of the whole process. we were the victims and we felt totally left out;
• Victim should be placed into a concealed room with video contact with the Judge and be given the right to identify the assailant once only and not have to be in the same room the other person to reduce stress and anxiety attacks;

• a stricter and more frequent system that monitors the actions and compliance of the lawyers, court staff, judges and offenders, which has a scale of consequences for breaches of the laws of conduct and practice. Currently lawyers and Judges can basically do and get away with daylight murder, new laws and amendments are ignored and if you are self litigating you become a worse off victim, they do not do you any favours and basically try to bully you out. Its just absurd that this professions has such a high pay scale for what seems like glorified pen pushers and really good bullies and bullshit artists. All victims should be provided a support system if they wish. They may not have one, I have never had one;

• No.

• I like the idea of the choice for victims of childhood sexual abuse to provide evidence via cctv, even though I chose to not go through this route. I find it absolutely ludicrous however that in such a case as a female victim of sexual crime committed by a male, 11 out of the 12 jurors were allowed to be male. It is disheartening and disconcerting and is incredibly uncomfortable. I would have thought I would have at least been able to have a 1:1 ratio of males to females;

• repeat juvenile offenders should be given jail sentences;

• yes be told after each court date what is happening;

• A chance to express the impact that the crime has had on our lives both personally and within the community and for this to be taken into account when sentencing;

• The police actually inform the victim at each stage what is happening;

• Informing victims by DPP asap if a plea offer or reduction of sentence has been negotiated with the offender - didn't find out until the day before court that the offender was offered a deal. It wasn't discussed with me at all prior to offer being negotiated despite my request to do so;

• Perhaps for the victim to be assigned a support person to regularly be in touch and offer encouragement;

• I didn't receive forms for the victims register until today when my mother had called the domestic violence office and they sent out information and forms;

• Not sure;

• To have more information;

• Be given a voice offender was given more rights.
Q. 2 Are there any other comments you would like to make in relation to victim participation in the criminal justice system in NSW?

- I will never trust the NSW Police, ODPP or the courts again.;
- No;
- more communication;
- no;
- It seems incredibly long winded as a process and it all depends on court proceedings which take forever and it makes me concerned that my centrelink will be affected when I'm already struggling, how does it help you give back the time with your son that you lost or help you sleep at night until he's arrested or what happens when he gets out after marinading in a cell for 20yrs?;
- It has been difficult, although the crimes have been committed and have had sentencing wasn't enough.;
- Lots.... victim's are made to feel like criminals too you need to change that!;
- No;
- UN able to comment as mine did not go to coirt;
- treat people equally - the reason this court case failed was because it was a white fella murdering 3 black children and the police didn't take it seriously;
- yes there is...My name is _______________, I am a rape victim. My rapist got away with it cause i slept with three of the whitmesses 3 years before the event even happened.I was made drop my court case an every day i sit here with hate. I now have many mental issues and problem as he walks around free...how is this fair;
- the criminal justice system did to this family what the convicted paedophile did to our daughter. I have no fear of committing a crime now that I know how useless they are, If anyone in my family is a victim of crime again, I feel it would be better to kill the offender & take what the joke of the justice system hands out.;
- no;
- NEW tattoo on my left arm "It's not a justice system, it's just a system". We were made to feel that every part of the judicial process favours the accused, everything seems to built around assisting the criminal. So now, congratulations to the system. My son's murderer is out there with you and me, free to strike again.;
• In our case the alleged murder was acquitted. We had no course of appeal. The defence can bend the truth to almost a lie where the prosecution has to stick to facts truth. Too much of the evidence was left out in legal argument. If the accused is acquitted there should be a right of appeal from the prosecution when there is so much evidence against them;

• The system is screwed;

• Offenders have more Rights upheld then Victims;

• uncomfortable and unpleasant;

• No;

• Allow children who are witnesses to serious crime be more involved, and be able to take the stand in court to provide evidence - in 1987, I was the ONLY ACTUAL witness to my sister's rape and murder, and I was not allowed to give evidence, not even via video link;

• Let the victim make there own decisions, they feel they had no power/control, let them have it now;

• If fundamental changes are not made to the attitudes in the NSW police force, the victims of child sexual assault and indecent assault will lose confidence in the justice system. Prior to my report of historical child sexual abuse, I was very supportive of the NSW police and held it in high regard. I encountered many delays, in fact found it very difficult to find anyone actually interested in taking my initial statement. Many delays, a complete lack of empathy and compassion, ongoing lack of information provided regarding the progress of the investigation, and when I dared to complain to a supervisor, that supervisor was almost brutal in his interview technique, and insisted on repeating my report interview, despite my obvious distress due to retraumatization. Lengthy delays in the investigation meant that by the time the police acted, the perpetrator had already died. I no longer have an confidence in the police force when it comes to dealing with historical child sexual abuse. I would seriously consider whether it is worth making a report in this kind of case. It is like being abused all over again;

• No;

• No;

• speed up whole process;

• The police investigation failed and now the compensation is failing even moreso. I tried to fight him off and then I just prayed that it would be over soon, he left and I went into shock. He then came back in and laughed at me for crying so much. Reporting to the police was like when I tried to fight him off, waiting 3 years and 6 months for compensation was like when I turned my
hope on it being over soon. This new law is when he comes back in a laughs in my face.;

- I have also witnessed vicious assaults but have Ben too scared to report them as police will ot or cannot protect us.;
- While I was at court the process was fine, there were woman support workers and DV liaison officers;

- The criminal justice system is all about the person who done the crime and the victims get no help no justice and are left to pick up the peace's also the money it cost is unbelievable while criminal get lots of help, free accommodation free food free health care, and a roof over there heads for free;

- I do believe domestic violence is not treated seriously enough and victims are not aware of the support that could be available to them - emotionally;

- I think good trained case workers are vital, that stay with the victims throughout the process, as emotional support and someone that can debrief the victim every step of the way, to ensure the victims does not miss anything.;

- It would be good for victims to have support after the court case.;

- Unlimited counselling Access to a psychiatrists in preference psychologists A psychiatrist can prescribe medication; a psychologist cannot. If impact is long term and assistance from Centerlink is required (disability pension) they do not accept a psychologist report - cost unreachable is if low income or unemployed another unnecessary traumatic event;

- Getting some feedback from the courts - stating the decision in writing after the event. Getting reasons for judgement so you can go through them later, getting an understanding of why the decision was made the way it was made.;

- No;

- I think the justice system continually fails the victims;

- It's tokenistic. Only there to make the victim feel appeased when generally the system wants nothing more to do with them. Entire thing needs rehauling.;

- No;

- No;

- No;

- My experience with the criminal justice system was almost as bad as being kidnapped, tied up and gang raped. You should be disgusted with yourselves.;
• Ring __________________ to find out;

• What can happen after 51 years? How can I prove anything? I would gladly undertake a polygraph test. My brother admits to nothing and even in his affidavit he said "and I can see that my sister would go to any lengths to discredit me as I did not sexually touch her". This adds to the problem because the worthlessness which you have grown up with continues unabated. His admission to this crime would provide me with some sense of justice and that my life was validated. That he allowed me to suffer alone and in silence says more about him but does not lessen the emotional, physical, psychological burden with which I have grown up and harboured for 51 years.;

• No;

• Disgusted at the way victims are treated. Offenders get represented by Legal Aid solicitor and sometimes barrister to defend them - victims get no support at all to look after their rights. You are alone in the process - you do not get any help at all;

• No;

• I just wonder how the Judge will treat me. Some are better than others. I am worried about the defence prosecution and how he will make the 1/5 of a person that I am survive the experience.;

• Yes. I think the compensation act needs to be reviewed. As a single self employed person I have struggled to keep my business afloat while all of this has been going on. I don't necessarily mean to be awarded large sums. But to have some compensation available whilst inconvenienced would have been gratefully received. One of the greatest difficulties has been 'carrying on a normal life' while these matters have been ocuring, I have suffered from post traumatic stress disorder making it difficult to concentrate, I have lost large contracts because I couldn't commit to them while the trial is on. I also believe there is a large gap in the system for families when a person is assaulted and does not die immediately. In our case my father was in a coma for 3 months and subsequently died a month after that. We had extensive travel costs backwards and forwards to the hospital and 4 months with no income was horrendously stressful. Had it not have been for extended family, I would have had to close the business and may have even lost my house. ;

• I have suffered since 2005 lost my job, lost my kids nd lost a relationship due to physical nd phycological injuries i sustained from the shooting in 2005, I have not received n e sought of support from the nsw police or victims services, at the time of the incident, I would appreciate some sought of help to get my life back on track, because i have been suffering since the incident in 2005 i know suffer with anxiety attacks, post traumatic stress disorder, and depression in the severe range and some physical injuries and severe scarring;
• I could never go to court, or make any complaints to anybody, because my ex-husband's family would seek retribution. If you have any doubts about this, just look up the number of firearms they have registered.

• I don't think the criminal have a right to silence or if your a witness. If you know something speak up. Take a look a the criminals history that says it all.

• To be keep inform after sentencing and any appeals and time reduction;
• they should be heard;

• Allow for secondary victims greater access to services;

• No;

• Victims' views and participation is but one aspect of many factors that should be taken into account in determining questions. Ensuring that there is an appropriate means by which those views can be put forward is essential. The parole board is able to receive and take into account submissions that are not disclosed to the person applying for parole. In contrast, the MHRT do not have this ability. This is despite the fact this Tribunal, by its very nature, is dealing with people suffering illnesses that may render them paranoid and/or incapable of receiving submissions with a rational mind;

• No;

• It is more for the perpetrator than the victim;

• In our case the Offender in under the Mental Tribunal and is reviewed every 6 months. That is fair enough but there is always the worry - what if he is let out. That is a constant fear. As long as he stays where he is we feel safe enough;

• I have written to the MHRT every time the perpetrator is up for a review to put the case that this man should not be out on day release, or be out working. I would have preferred to make these statements anonymously (due to fear for my safety) but I was told that this was not possible. I went ahead with my statements as I felt so strongly about it, and can only hope that I don't one day meet the same fate as the victim;

• Victims and their families need to be treated with kindness along with professionalism. They are already devastated by the crime and fear of being made to feel stupid or ignorant is sufficient to keep victims out of the process;

• Most victims and their families have very little knowledge of the criminal system when a serious crime has been committed. I would like to see a facility put in place where one can go and have everything explained to them in a language that can be understood. In homicide cases most families do not have legal representation apart from the DPP. I feel at some stage during the court process the victims family should be allowed to participate in some way when
they don't understand or agree with what has been said or wish to querie
different points. When a case does not go to trial for what ever reason, ie;
mental health reasons. Families should be apprised of the decisions made
between the DPP and the Judge before the final Court hearing and explained
in full why these decisions have been made and not the half hearted answers
we were given in our particular case. This would somehow make it easier to
understand and accept;

• No;

• just to keep intouch with the victims and report any changes;

• We the victims remain a victim as our lives are affected for life but because
the murderer isn't convicted because of mental health is a double blow.
Regardless she should be convicted as guilty. Our voice needs to be heard
regarding this and the justice system needs to come out of the dark ages and
change the law regarding this;

• Mental patients should be found GUILTY due to MENATL ILLNESS, as a
verdict of NOT GUILTY due to Mental Illness gives perpetrator and victims
the wrong out come. They are guilty there is to much grey areas within
verdicts, one murder is no less than another it is murder the greatest crime that
can be committed;

• I believe that a guilty due to mental illness would have made it easiier for
family and friends to understand;

• Relevant participation ceases when the criminal successfully pleads Not
Guilty due to Mental Illness. The Justice Health system is far too closed;

• No;

• what justice system....;

• As it was a mental health case that included both adult and juv. offenders there
was not much scope for my involvement;

• It has got alot better in recent years but i feel the majistrates are very
uniformed on brain injuries and have been victimised by a majistrate on more
than one occasion due to it.A remark made was that i was asked for short answ
and gave long 100worded stories so i must of been lieing..this was in the past;

• I was not impressed by the amount of time to wait for this to go to trial
because Legal aid kept stalling, it took them 6 months to get first psyche
assessment done. Court mention after mention with no progress because of
this, adds to the victim's anxiety of waiting for the trial and sentence;

• No;
• The police and DPP were very supportive. I was very badly injured at the time;

• No;

• No;

• I felt like I was the one being judged. I was did not feel the process was fair and did not think the Magistrate understood why I continued to stay in a violent relationship. He didnt understand I was powerless;

• No;

• A telephone conference; to verify the nature and effect of the injurys or the psychological effect on victims and how they have cope so far;

• No;

• No

• was jailed for something related to the assault that I dont even know if I did it. I was told to plead guilty, so the charges against the perpetrators werent lessened. But after I pleaded guilty, the charges got dropped against the perpetrators. They were given less of a sentence than I was;

• No;

• No;

• From my experience the justice system does not acknowledge the victims of a crime that has been committed by a mentally ill person that has person is found not guilty on the grounds of mental illness. The matter was dealt with by a judge no jury as my brother was found not guilty of murdering my father because he is mentally ill and is currently forensic patient and has day leave from the facility he is in. He will be released back into the community and at no point throughout this entire process have we being given an opportunity to express how this crime has impacted on our lives…;

• Yes. Victims are not weak, or stupid. They ought to be entitled to respectful treatment, which involves accurate, appropriate preparation for the legal process - FROM THE vICTIMS needs PERSPECTIVE. (nOT AS SEEN BY SOME OTHER PART OF THE PROCESS EG THE LAW, the DPP, the Police (which are all different.;

• NA;

• No;

• The trauma I experienced has changed my life profoundly. I have had to change every aspect of my life, including leaving the area I was living in. I
found the justice system to be extremely lenient on juvenile offenders (as there actions are very adult like - especially as it was a sexual assault). Rehabilitation needs to focus on the victim and not just the accused. Offenders need to be held accountable for their actions and not hide behind their childhood circumstances or drug addictions;

- I believe that victims should be able to have more of a say with the prosecution of the offender to a certain point. I do understand although that the prosecutors need to be able to make the final decision’

- There needs to harder sentencing on domestic violence perpetrators;

- The man who deceived me and has/had $90,000 left of my money didn't spend one second in gaol and he told me I would be able to find him because of Privacy legislation. I cry each and every day and there is noone to help me. If the crime had been committed in Queensland I could have claimed up to $50000 Victims Compensation to help me;

- No;

- In addition to a support person, in the case of CCTV closed court for children, it would be beneficial to have a person that can intervene if a defence barrister is acting out of order. A judge may not always catch the defence barrister in time;

- Listen to them!;

- Victims would participate more if they were to be safe after participating;

- Note;

- There should be more opportunities for the victim to participate and have publicly funded legal representation so that their right are protected;

- Faster Resolution. A limit of one deferral per case. The system and prolonging of the case and rereading my statement three times caused great trauma mentally/emotionally;

- NO;

- A VICTIM IS TREATED LIKE THE CRIMINAL. MAKEING SURE THE CRIMINALS ARE PUNISHED LIE DETECTORS SHOULD BE IN PLACE, SO IT DOESNT TAKE 3 YEARS TO GET HELP. VICTIMS NEED TO BE TREATED LIKE VICTIMS POLICE NEED TO REALLY LISTEN TO THE VICTIM. IF YOU ARE A VICTIM, AVO SHOULD BE OFFERED. SHOULDN'T HAVE TO GO RUNNING AROUND LIKE WHEN YOU ARE LOST, HURT AND IN PAIN. IT SHOULD ALL BE IN ONE PLACE, THE HOSPITAL. YOU FEEL SAFER AT THE HOSPITAL. ROAMING THE STREETS TO GO TO DOCTORS OR COUNCELLORS.
PERSONALY. YOU SHOULD BE SENT TO THE HOSPITAL FOR OBSERVATION. THE HOSPITAL IS BEST FOR VICTIMS, SO YOU CAN TELL YOUR STORY TO MENTAL HEALTH STAFF. I NOW JUST TAKE ONE DAY AT A TIME, IVE GIVEN UP FIGHTING. MY HOUSE, MY FURNITURE, MY GOOD WAGES GONE, WORKING IS HARD, MOST OF ALL I AM NO LONGER THE SAME. THE love of my life is gone.

PERSON I USE TO BE, I ALWAYS HAVE TO HOLD BACK TEARS OF PAIN. i think the police could have done more on that day.;

i think there needs to be more Councillors or professionals to help with the mental support of it all. i think the mental scars take a lot longer to heal than the physical ones;

No;

It should not take the police 11 months to tell me that i can't do anything now.. i was always contacting the police to find out what was happening;

Yes - you need to remember that as a system I feel you are violating the Victim more than should be happening. I find it traumatic, the lack of information, the unknown, having to chase information... it is a very flawed system - I was the innocent one, yet I feel like the perpetrator;

a victim just needs reassurance that reporting the crime is not all there is to it. the CJS allows so much time and attention to the criminal that the victim is left totally lost;

No;

As far as I am concerned the system is a joke;

No;

NO;

see above;

i would like the court to care more about the victims rights and stop having so many things protecting the offender;

I have no ideas for making this more acceptable;

much more emphasis needs to be put on the rights of the victim..eg the victims of the ongoing rampage (I was just one victim at one of several locations) were verociously grilled by the defence in the first hearing while the offenders were allowed to remain silent.. this is very unfair and unbalanced, increases the trauma of the victims, makes the victim unwilling to give evidence and all this produces ineffective and expensive "justice";
• no;

• See above;

• The feelings of the victim don't seem to be taken into consideration by the judge so why bother;

• I don't know enough about it yet;

• No;

• Maybe us as the Victims need to make the changes and make suggestions. This "Adjournment thing" that happens 4-5 times is cruel and unwarranted when the offender has a criminal history that's dates back to when he was 10 yr old. Always take a look at both parties criminal history because in 98% of cases you will find the victim has no criminal history but the offender has a whole chapter or 5 chapters in my case. The judges need to be breath tested on a weekly basis, they need to sit in a chair for 3 hours and listen to our stories and the damage that happens when your left with so many bruises on your body you cant function as a mother, a human, you cant roll over in bed because your ribs hurt so much, you cant pick your 2 yr old up because it hurts for weeks sometimes,. As a 34 yr old you and your kids have to move in with your parents because you cant take care of your kids, after a violent attack you just want to sleep for a week so your body can heal, you end up having to take tablets for ever to stop you shaking and to stop you waking up every morning crying,. How sad it makes you when you see your mother and father crying because their daughter is broken after another episode. Fuck, I could go on for days;

• No;

• There is no justice in our 'system';

• NO;

• No;

• Victims should be informed by Victim Services if perpetrators have been required to pay restitution. I was informed that I (as a victim of a serious assault and Kidnapping) had no right to this knowledge due to privacy concerns. What an absolute farce;

• We were totally let down by the magistrate final decision and so were the police;

• They need to be believed and have their story told once and not be victimised by the offenders legal council and with the use of video and audio equipment they do not have to look continuously upon the faces of these people;
• The courts and police should be enforcing stricter penalties, and not just compensation. People who have loads of money are even more powerful, gaining more power the money they get and the act of giving someone money is an abuse in itself. Consequences for their actions and acknowledgement of their actions is needed to be hopeful of any reform if any;

• No;

• Nila;

• aboriginals should be treated with the same laws as every one else;

• No;

• Felt undervalued;

• This is not the first matter in which the police have completely ignored my rights as a victim to know what is going on with their matter. As far as I am concerned the police are a disgrace. They should be accountable for losses caused by their failure to let victims know when or even if their matter is going to court;

• No;

• No;

• Don't know how to word it but something about re traumatising victims and the weight of favour towards perpetrators;

• It's not a justice system;

• Information and knowledge more available.
If your matter has not gone to court or proceeded to sentence, the researchers may wish to contact you to complete this questionnaire. Please enter your email if you wish to be contacted once your court matter is finalised.

- Data omitted to preserve anonymity.
Appendix Four – Unedited Interview Data

A4.1 Anonymised Transcribed Interview Data

This data is transcribed from audio recording.

Apart from anonymity, this data is otherwise unedited.

Transcribed Interviews – Responses compiled by question

Notes

Comment/clarifications of interviewer (‘Q’) plus editing notes are contained in square brackets.

1. Local Court/Children’s Court Magistrate
2. District Court Judge 1
3. Supreme Court Judge 1
4. Children’s Court/District Court Judge 2
5. District Court Judge 3
6. District Court Judge 4
7. MHRT/District Court Judge 5 (F)
8. District Court Judge 6
9. Supreme Court Judge 2
10. Supreme Court Judge 3
11. Supreme Court Judge 4
12. District Court Judge 7
13. State Parole Authority
14. ODPP Prosecutor
15. Police Prosecutor 1
16. Police Prosecutor 2
17. Magistrate
18. Detective, NSW Police

19. Solicitor, Sydney Domestic Violence Court Advocacy Service (SDVCAS)
Q1 What courts/jurisdictions do you preside over/appear in? AND
Q2 What types of criminal matters do you preside over/appear as counsel?
How frequently?

1. Magistrate: Children’s Court. [Q: Do you do any of the regional circuits as well?] No, I just do _______________. Q2 1. Magistrate: Um, reckless woundings, armed robberies, armed robberies in company. I do committals for murder, shoplifting, um, apprehended violence orders – lots of those – um, a variety. Some driving matters, not as much, but some driving matters. And yes, whatever happens to be in the list on any particular day. [Frequency]…In crime, four days a week. Oh, well yeah, up to four days a week.

2. DC Judge 1: I was ten years in the workers compensation court. It’s called the Compensation Court, not the Workers, but the Compensation Court and for five or six years in the District Court. Q2 2. DC Judge 1: Um, there were assaults occasioning grievous bodily harm, occasioning grievous harm, a lot of sexual assaults, possession of guns, drive-by shootings, drugs, a lot of importation of drugs, large amounts of drugs from overseas and drug possession, um, those kind of cases.

3. SC Judge 1: The Common Law Division of the Supreme Court in both civil and criminal jurisdictions. I also preside as a member of the Court of Criminal Appeal for probably six or seven weeks a year. I also, I mean within the common law division of course, I do trial work, jury trial work in crime, judge-alone trials in civil, bails and also duty judge, which means that you can get anything within the course of a week.

4. CC/DC Judge 2 Well, at the moment I’m the__________ of the Children’s Court of New South Wales. That position requires me to be a ________________, which I have been for the last, nearly seven years. So I was appointed to this position at the end of, at the beginning of, um, May last year so I’ve been here about nine months. Q2 4. CC/DC Judge: Our criminal jurisdiction relates to juvenile crime, that’s children from the ages of ten through to seventeen. Once they turn eighteen they go into the adult system. [Q: And, how frequently do you appear?] How frequently do you mean do I appear, or do I sit? [Q: Do you, do you sit. Sorry.] Well I sit um in a care list...on the crime side, I sit once a week at least. That’s for- I do a regular crime list every Tuesday and then occasionally I sit on, um, specific fixed matters for either sentence or defendant matters.

5. DC Judge 3: District Court at Newcastle. Q2 5. DC Judge: Jury matters primarily. Indictable matters basically, and appeals from magistrates.

6. DC Judge 4: District Court. [Q: asks about regional work] Well I’ve only been appointed at __________, so I’m in Sydney for most of the time up until just before mid year, then I go to Parramatta and then I come back to Sydney and I don’t know what’s happening to me after that. Q2 6. DC Judge: All indictable crime, which includes kind of the full range of offences against the person, drug offences, fraud, um, anything that involves the possibility of trial by jury.

7. DC Judge 5: District Court and I’m also involved in the __________. Q2 7. DC Judge Um, jury trials in all matters except for murder…essentially. Oh, and, sentences obviously, sentences and also appeals from the Local Court. [Q: frequency]
Do I preside? Daily. Most days, I mean except when I’m sitting in the civil jurisdiction, but I’d say the majority, the majority of the time.

8. DC Judge 6: Well firstly I should indicate who I am. __________, Judge of the District Court. Q2 8. DC Judge 6: Um, I preside over criminal cases which are brought before the District Court. Most of the cases I preside over are jury trials and, um, a small percentage of judge-alone trials. Each of the trials relate to indictable crime and, which means that, the cases are generally of a serious nature. I also hear appeals from magistrates and those cases are summary cases brought before the magistrates and I do appeals both by way of sentence appeals and also by way of conviction, conviction appeals. I do have other jurisdictions, but they’re not relevant for this discussion because they’re civil in nature.

9. SC Judge 2: Supreme Court Q2 9. SC Judge: Trials, sentences and appeals. [Q: How frequently?] In one way or another, I suppose about a third of my time.

10. SC Judge 3: Supreme Court. Q2 10. SC Judge: Murder trials. [Q: how frequently] Uh, in a twelve month, first twelve months of la- of the calendar year last year, three murder trials.

11. SC Judge 4: I sit in the common law division of the Supreme Court of New South Wales. That means I do criminal trials, I sit in the Court of Criminal Appeal and I do bails amongst - when I’m not doing civil work.

12. DC Judge 7: I preside over the District Court, primarily criminal trial and sentence court. I do do some civil but that is rare and I generally sit about forty per cent of the year in Sydney, about forty per cent in Campbelltown and the rest at country circuits such as Bega, Wollongong and Griffith.

13. Parole Authority: Well, they’re not really a court. I’m the __________ of the __________. It’s an independent statutory authority, which administers parole orders for sentences particularly those where a sentence is imposed which is greater than three years. Other sentences which are three years or less, parole orders are made by the court. And, the parole authority deals only with those in relation to revocations and other matters that arise other than the initial grant of parole. Q2 13. Parole: I sit usually about three to…three days per week.

14. ODPP: The Local Court, the District Court, the Supreme Court and the Court of Criminal Appeal and the High Court. All of them - criminal jurisdiction - at one time or another. Q2 14. ODPP: As a private barrister both defending and prosecuting in a wide range of criminal matters, as Director of Public Prosecutions appearing for the Crown of course on appellant proceedings and one trial. The offences over the years have been a very wide range of offences - offences against the person, offences against property, public justice offences. Um. In the prosecution area I have myself appeared in the prosecution of drug offences, fraud offences of one sort or another. Um, pretty wide range. Early in my career I was a public defender in Papua New Guinea so I was appearing for the defence in very, the serious range of offences. So pretty broad, um, in both the New South Wales state and Commonwealth spheres.
15. Police Prosecutor 1: Local court. ______ here, Wyong. Yep, I’ve prosecuted in a lot of places in New South Wales. [Q: Have you done any rural areas as well?] Yeah, been to a number of rural areas, yeah, not often, probably about five times in eight years, nine years. Q1 15. Police Prosecutor 1: Oh, lots of them. All the different criminal charges from domestic violence through to until property crime, fraud, traffic matters, except for the strictly indictable ones. The DPP do those, so I will mention them though. But um, yeah. [Q: How often] Every day.

16. Police Prosecutor 2: Well, when you say what courts, jurisdiction-wise or areas? [Q: both] Well, as a prosecutor we deal with, ah, kids court, juvenile court, and then we have our local court. Um, we also appear in coroners court. They’re the main ones we deal with as a rule. Q2 16. Police Prosecutor 2: Um, now that’s a two-edged question simply because we appear in everything from parking fines to murder. Um, obviously murder can’t be dealt with in the Local Court to finality so they go off to a higher jurisdiction. But we- Everything begins in the Local Court and everything begins with us. So we do everything. Um, your summary matters. I’ve dealt with two finalities, so therefore we appear to the finality of those matters. Table matters, table one and two, they can be elections to go up the District Court, so then they’ll leave our jurisdiction if those elections are made, and then there’s strictly indictable matters that start with us but have to go up to the superior courts.

17. Magistrate: [So just for the recording can I get your name] Yes, my name is ___________ and I am a magistrate of the children’s court. [other jurisdictions?] Yes um my headquarters is at ___________. It’s a ___________ circuit so my headquarters is at ___________, the other courts I sit at are _______________.

18. Detective, NSW Police My name’s ___________. I’m a Detective Senior Constable at ___________ police station. I am a detective here at ___________, so we deal with the, the larger sort of crimes that require further investigation and just your day-to-day sort of things so, um I could deal with people in the Local Court um through to the District Court, up to the Supreme Court, um, depending on what the matter is that we’re investigating. Q2: Um, everything really. That’s, that’s one thing about the Local Area Commands - or the ‘LACS’ as they’re known - is that they pretty much have to cover everything so we do a range of robberies, armed robberies, sexual assaults. We get a murder, um, break and enters, domestics- You name it, if it’s going to happen, it’s one thing that we could end up responding to.

19. Solicitor, SDVCAS Ok, I’m ___________ and I’m um a solicitor and I’m the _______________ of Sydney Women’s Domestic Violence Court Advocacy Service. Q 2: Um, well our service goes to um the Downing Centre, Waverley, Balmain and
Newtown courts on AVO list days. Um, we’re based at the Downing Centre five days a week. At the other courts, the other three courts, we go on AVO list day. [Q: *Just for domestic violence matters?*] Yes, that’s right.
Q3 How do victims participate in your court/your matters? Probe for forms of participation in pre-trial (including police investigation and DPP negotiation), trial and sentencing matters. Any difference in levels of actual participation in these phases?

1. Magistrate 1: They don’t. No. [Q: Ok. Is that um…] Apart from I suppose, their versions are given in a statement of facts… But what they say happened in the events is included in the statement of facts. [Q: clarifies, asks further questions – Is that because um, you don’t have the children appear as witnesses?] Victims don’t ever participate. Are you talking about in hearings? I suppose it depends on…When I gave you that answer then I was thinking of a list when people might have plead guilty. I’m sorry. Yes, they do participate in hearings. Um, so yes, they come into court and give evidence as witnesses.

2. DC Judge 1: Um, well, they, the victims gave evidence first of all and when I sentence somebody on rare occasions, not usually, about I’d say thirty per cent of the cases, of the time I had a victims impact statement.

3. SC Judge 1: The predominant and probably the only way is, or the only jurisdiction in which they participate at all is in crime. I suppose their participation in the trial process can be as a witness. They can also participate in the sentencing process by the provision to the court of a victim impact statement. When we say victim we’re talking about the victim of a criminal offence, but it’s those two, either as a witness or in the event of a conviction, as a victim of crime.

4. CC/DC Judge 2: Well the victims, the only participation of the victims is generally by way of giving evidence, um, and we also do have of course victims impact statements.

5. DC Judge 3: Well, ah, how do they participate? Well, they [tape skips] victims impact statements, and occasionally I get victims who, um, say their bit when I’m sentencing.

6. DC Judge 4: Well I have a limited experience in terms of victims participating. Um, so far as trials are concerned, obviously where there is an issue the victims participate by giving evidence. If it’s a sentence, which may either follow a trial or be a sentence proceeding, they may or may not attend. In some instances they may provide a victim impact statement. Um, there is rarely any occasion during a sentence when a victim gives evidence, oral evidence. However, again in my limited experience a number of them have attended after the plea of guilty to observe the sentencing process.

7. MHRT/DC Judge 5: Um, in relation to criminal trials obviously they’re giving evidence in criminal trial, and then in sentence proceedings that may be, they may be involved in terms of Victims Impact Statements. [Q: asks question about difference in levels of participation in the different stages of the criminal justice process?] Well I mean the nature of the participation is different…. If an allegation is contested and there is a hearing then they’re a witness, um, and if it’s a sentence matter then they’re involved in terms of just delivering the victims impacts statement or having it read on their behalf or something of that nature.
8. DC Judge 6: Victims participate in my trial court by giving evidence in respect of the facts which surround the incident which brings the matter before the court. Um, the victims also on occasions present material to the court by way of a victims impact statement and that victim impact statement is either in one of three forms: firstly, a written form which is tendered by the Crown; secondly, by way of an oral, oral form which evidence is given to the court, and thirdly, a combination of the two. The most common form is that of a written form of victims impact statement.

8. DC Judge 6: [8. DC Judge 6 added to this question later on in the interview in the course of answering question 8 and 9. He specifically indicate he was ‘going back’ to this question on participation and have included these statements here so they can be considered as part of his response to this question] [From question 8] But could I just go back, um, and a- There’s another area where victims can be heard and that relates to, in a sexual assault trial, a victim can, um, make an objection to the subpoenaing of documents from, which relate to her, his or her health, his or her involvement with social workers or sexual assault workers and, in the last number of years the government has legislated to create a facility to assist victims or alleged victims from disclosing by way of subpoena much of their, much of their past. In addition to that, which is something I didn’t mention before, but the sexual history of a complainant in a sexual assault case is protected, and may only be disclosed at the, at a trial with the discretion of the judge so that the victim’s rights are maintained and looked after in those circumstances. So, there’s some matters I haven’t thought of. [From question 9:] And...I'm just going to go back again to the general matters before my court. Um, If a young person is an alleged victim of a sexual assault then to protect that person from the trauma of being interviewed by a police, a police officer and then giving evidence in court, there are facilities available whereby that alleged victim can in a benign environment talk to a police officer and to a counsellor about the incident or incidents. In those circumstances the court can agree to the interview being used as the evidence in chief of the young person so they are looked after in those circumstances.

9. SC Judge 2: Well, victims don’t participate at all in the appeals of course because they are questions of law. The accused doesn’t [tape skips. I think he says ‘appears’] except through counsel, doesn’t personally participate. In trials, um, if acquitted they will only have been involved as witnesses. If convicted, they would be involved by making a victims impact statement. If it’s a sentence matter, then they would give a victims impact statement. Since overwhelmingly this court does murder trials the actual victim is dead, but you have family members.

10. SC Judge 3: Ah, only at the sentencing stage when a relative of the victim gives a victim impact statement. Um. It’s possible though I never see it that at times when there’s discussion about charge bargaining or anything like that that I assume the DPP consults with them and things like that. But that’s, but I don’t have any role in that.

11. SC Judge 4: Well victims participate in the sense that at the trial level the complainant in the criminal case – where it’s not a murder trial or homicide trial – will, will often give evidence of course. When it is a murder or a homicide, the victim is treated as being the secondary victim - the family members and friends of the primary victim. In the bails court one of the things we are required to consider under section 32 of the Bail Act is the need to protect any particular person and in the case
of crimes against the person or allegations of crimes against the person that will obviously include the primary victim and naturally on sentencing whether it’s at first instance or on sentence appeals the impact on the victim is always a significant consideration when one is looking at…the objective seriousness of an offence or considering the aggravating factors, which are referred to in section 21 capital ‘A’ of the Sentencing Act.

12. DC Judge 7: There are three ways. The first is as witnesses in trials. The second is rarely as witnesses in sentence proceedings, and third by the tender of victim impact statements or standard witness statements.

13. Parole Authority: Fairly extensively. First of all, in serious matters such as murder, manslaughter and various matters, there is a victims register maintained by the Department of Corrective Services and if a victim places their name on the register then as a matter of course when a parole consideration is being given to the perpetrator of that crime then the victims are entitled to make a submission and we always take into account those submissions. They, submissions cannot oppose, cannot prevent, parole being granted if it would otherwise be somebody who was eligible for parole but it certainly has a very significant affect on the sort of orders that are made and particularly matters for protection of the victims.

14. ODPP: Well um, my career goes back __________ so things have changed enormously in that period. At the beginning of my practice victims were really just another witness in the proceedings if indeed they were a witness at all. Direct victims of crime were usually a witness. The families of deceased victims of crime, um, had no role to play at all. They were just there as spectators if they chose to be there and there was very little care or attention given to victims in those days. If they were witnesses they were just dealt with as another witness. Once they’d given their evidence and finished they were sent on their way with their bus fare or whatever it would happen to be and that was it. Now over the last twenty to twenty-five years that situation has changed significantly and progressively. And so now, um, in more recent times direct victims of crime in addition to being witnesses in the case are contacted and consulted with prior to the hearing by prosecutors. They are treated differently by police during the course of an investigation. Their direct personal interests in the case is recognised much more than used to be the case and the police have adjusted their proceedings accordingly. In the courtroom itself there are many more support services provided. There are volunteers who provide victim support services at some courts like the Downing Centre Local Court, places like that, and in the Director of Public Prosecutions office there is the witness assistance service, which provides specialised support and acts as a go between, between the victim and the prosecutor trying to make communications easier, trying to familiarise victims with what is going to happen in court and support them while it is happening, um, to provide referral services to specialist service providers for counselling, psychological support, social support, health support, financial support, whatever the needs of the victim might be. … The process of consultation between prosecutor and victim continues right through the proceedings and there are now prosecution guidelines in place that require that to happen. Victims are consulted directly if there is going to be any change to an original charge that has been put on by the police, um, if any charges are going be dropped, if they’re going to be replaced by other charges, um, if for example there is a charge negotiation process which results in a plea of guilty to a different charge from the one
originally put on, prosecution guideline 20 requires consultation with the victim. It requires the prosecutor to explain to the victim what is happening and why. It requires the prosecutor to listen to the victim and the victim’s views and to take them into account, not by way of instructions but by way of hearing another point of view that might have an impact on the decision that’s ultimately made. Families of deceased victims are usually not witnesses. It can happen, but usually the death has occurred away from family members and so they are there, um, in the interests of the deceased member of the family to satisfy their own wishes for justice to be done and an appropriate outcome to be achieved… Although they don’t have the direct personal connection with the events that were the substance of the case, they have a very intense interest in what happens and how the proceedings resolve, so those same duties of consultation, of support, of assistance, arise for police and for prosecutors and indeed for the courts. And in the case of all victims now, both direct victims and families of deceased victims, there’s the opportunity for victim impact statements to be made and that is something that has only come about in recent, in fairly recent, years. So, the landscape has changed enormously for victims over, certainly over my forty years. Um, so I think that’s the stage we’ve reached now. Um, individual victims and victims groups like the homicide victims support group, victims of crime assistance league, enough is enough, all those organisations, continue to press for more engagement with victims and for more participation by victims and families of deceased victims, but I think it’s a process that has to be undergone carefully and with much thought and planning.

15. Police Prosecutor 1: Well they give evidence obviously in relation to matters when you’re running matters. They also participate sometimes, they’re just there as victims for mentions, domestic violence sort of AVO matters. Um, they pretty much participate in the whole process really. We’ve got to inform them of what’s going on and um, yeah, they’re the main — that’s why we’re here pretty much for the victims and the police, so yeah, we’re here for them.

16. Police Prosecutor 2: Victims? Um, as witnesses. [Asked to elaborate] Um, do you mean by way of what do they do? [Q: yes] Because everybody’s a witness. We call the evidence of police witnesses etcetera but victims especially. Obviously, if they’re a victim of crime they became a, they become a police witness. The police are informants so victims, um, like I said, they’re witnesses. But, do you mean how we deal with them? [Q: yes] Ok um alright. Well you’ve got victims of crime of many different styles. You’ve got victims of— you’ve got victims of a car accident. You’ve got victims who’ve had their fences kicked in by some drunk on the way home. Um, if you’re talking specifically domestic violence victims, um, again they’re a witness. They’re called to give evidence. They’re subpoenaed. Um. Police attend on the night. They take, hopefully take, a statement by way of evidence for court. That witness is called to court to give that evidence. Um, we normally speak to them depending on the matter and if they need to speak to us, conference them, and then, um, call them as a witness.

17. Magistrate: Primarily only as witnesses. In the pre-trial stage, um, there’s no face to face involvement with the court. Any involvement would be more with the police taking their statements and incorporating it into the brief. If there’s a plea of not guilty and they’re— it’s hard to generalise, but there ah- the majority of cases in the children’s court are pleas of guilty. Um. But again if there’s a plea of not guilty then the brief is
supplied and that requires the police to take a statement from the victim, so that initial involvement is with the, um, the police. At trial the only involvement with victims is when they appear as witnesses. There’s rarely any other involvement. There may be on occasions in both sentence matters and um hearing matters a victim impact statement. But in my experience, and this is only my experience, they’re somewhat rare. I guess in the six or seven years that I’ve been in the children’s court I’ve probably had no more than a dozen of those over that period of time. In the sentencing part of the proceedings, the victim rarely gets involved; the victim is rarely in court. If it’s a, um, apprehended violence matter where there is an AVO being sought well then the victim is, well the victim is generally excused, that person in need of protection is usually excused. On some occasions they’re in court. But again there- in the children’s court all parties are legally represented by Legal Aid or the duty solicitor so it’s very rare that the court itself has any face to face interaction or dealings with a victim. I have had some sort of more serious criminal matters that are being sentenced where the victims are in court to witness what is happening. The ones that I can remember, I can certainly remember a driving case involving a death. The victim’s family throughout those proceedings were present. Um they - they didn’t play a part in the proceedings but were observers. The children’s court is a closed court so you get told who the other people in court are and it’s rare that um, that victims are present during the proceedings. Um, if there’s as part of the sentencing process a referral to a youth justice conference, there’s potentially direct involved of the witness – sorry, of the victim – in that process, but that doesn’t take place in the court’s presence. It takes place with Juvenile Justice organising youth justice conference. So I think in the three scenarios you pointed out there [pre -trial, trial and sentencing] primarily in my view the areas where there’s interaction with victims.

18. Detective, NSW Police Ok. Um, for us to investigate a matter we need to have a victim, well for most of our crimes anyway, um, in which case they would need to come in and report the matter to start with, unless we find them out in the street or if there’s, like a brawl or an assault or something like that we attend, then we usually have the victims there and then. Um, they will give us a statement, and that statement is generally a written statement. If we are on the run or on the fly we get a video recorded statement. But they have to sign off on it to say that we can use it and what they’re telling us is the truth and that sort of thing. So that’s the first step with the statements. And then from there we carry out our investigations. If it goes to court and we have a not guilty plea we have to put a brief of evidence together which incorporates that statement. Um, if it then goes to trial, the victim will then have to attend the court and give their evidence. Essentially what they’ve given us in writing is what they will then give us on the stand.

19. Solicitor, SDVCAS Um, well usually often, for about half of the victims that become our clients, they will be referred to us before court, um, through a process, it’s called the police yellow card. They might sign- They might sign this yellow card when there’s a domestic violence incident and that means that police can refer them to us um pre court and we will make contact with them. So we might get a referral this morning and we will have contacted her within hours and spoken with her, um, and talk to her about participating, um, in the AVO process or the AVO and criminal charge process. Um, for the other half of our clients we’d see them on the first occasion at court and they would come to our room at one of the four courts, and um, we would um, speak to them then about participating um in this AVO process.
Q4 Are the current processes by which victims participate in your court satisfactory?

1. Magistrate: I don’t really know what that means. It depends. Everybody’s different I suppose. Sometimes…I’m not sure that the criminal justice system will ever satisfy some victims. So- it’s not about them really. It is to get details of the crime so that the court can sentence, but I don’t know that it’s a venue for them to have their, the other things, the consequences of the crime dealt with and that’s really what I presume you’re talking about. So it’s not the appropriate for it.

2. DC Judge 1: No. Definitely not.

3. SC Judge 1: Yes I do. I don’t think that... As far as a witness, a victim participating as a witness is concerned, that takes care of itself. As far as victims who are victims of crime and who participate in the sentencing process is concerned, I think that the system at the present time is adequate. I think it is important to give victims a voice as it were. I also think at the same time that it is important to recognise that it is judges and not victims who sentence people who are found guilty of criminal offences, and I think that the system that operates at the moment strikes a reasonable balance between those two concepts.

4. DC Judge: Well that’s a big question. Um [laughs]. Let me just put it this way: I suppose we can always do better. You have to understand that the Children’s Court is a jurisdiction, which is not open to the court so that the usual principles of open justice don’t apply and, and we limit the persons that can attend. But more often than not there’s no objection to relatives or friends of victims being in the court. Of course if its sexual assault matters then they’re not in court at all. They appear by a remote, from a remote location or by way of, um, pre-recorded video.

5. DC Judge 3: Sorry, say again? [Q: repeats question] No. [Q: How do you think they could be improved?] Well um, victims shouldn’t give victims impact statements, um, in person unless they’ve been assessed I think, that doing it is to their psychological or psychiatric advantage and certainly not harmful. So and it- The whole process needs to be shortened, that is, that people only have a limited period of time if they are going to say anything rather than, um, going on, for you know, forever as it does at the moment, sometimes, which is unfair on the staff who have to sit and listen to it all, and I don’t think it helps victims.

6. DC Judge 4: Um…well I mean if we kind of divide that into two, are they satisfactory in respect of their participation in the trial process. Um, particularly when it comes to sexual assault there are a number of protections and particularly when they are children or were children at the time of the offences there are quite a number of protections in respect of certainly distance from the accused. I don’t think that there is much in the way of keep- extending that distance that can be really undertaken without compromising the process. So far as their participation in sentencing, um, their victim impact statements are allowed although they don’t seem to be particularly rare, ah particularly common. Yes, I’d say they were satisfactory. That’s, that’s kind of a difficult question because satisfactory as to what as to their feelings, the feelings of, well, the interests of the community, due process. Yeah, I think they’re probably
satisfactory. They may not be happy about outcomes I suppose but that’s only one measure.

7. MHRT/DC Judge 5: It’s difficult to say. I mean, I don’t know behind the scenes as to what the liaison has been between the prosecution and the victim. I think it would hinge on whether there’s been adequate liaison between the prosecution and the victims to ensure that the victims have an adequate opportunity to participate.

8. DC Judge 6: Well, they’re necessary in relation to the determination of guilt. And...so when you ask, are they satisfactory what do, what do you mean by that? [Q: I guess, do you think they should change in any way?] Well they have changed over the, over years. Victims of a sexual assault can choose to give their evidence by way of video link with the court or they may choose to give their evidence in front of the alleged perpetrator. So I think that’s satisfactory. Insofar as a victim expressing his or her pain as a consequence, well pain and suffering, as a consequence of the perpetrator’s acts, I’m happy with the way in which the victim has the opportunity of giving evidence or writing a document. Um. Of course there has been quite a deal of judicial consideration as to how a judge deals with a victims impact statement. For example there was a case, I don’t recall its name, where a victims impact statement was given by the family of a person who’s, who had, um, been murdered, and who had suggested that this particular person who had been murdered was a fine upstanding person and the Court of Criminal Appeal said, ‘well is one person’s life more significant than another’s and is the pain any greater?’ Um, but that’s not really on point. Is that satisfactory? Yeah, I think it’s, I think it’s satisfactory. Um, there’s only a limited way in which the victims impact statement can be used by a court and I think that’s appropriate. Yes, I’m happy with the current system.

9. SC Judge 2: Yes.

10. SC Judge 3: Oh you know I mean, I think they’re fine.

11. SC Judge 4: I believe they are.

12. DC Judge 7: Yes.

13. Parole Authority: Yeah, I think they’re very good. And in fact, we get significant feedback. One of the members of the parole order of, of our state parole authority - is the executive officer of the homicide victims support group, which is I think the largest victims support group in New South Wales and that executive officer regularly tells us of feedback she gets from victims who have been involved with us particularly where we’re having public reviews of parole matters. Let me give you an example: if an offender committed a murder, we think they’re otherwise eligible for parole, they’ve been supported for parole by the probation and parole service by the serious offenders review council, but it may be that the state has opposed...lodged a submission opposing parole. In those instances, there’s a public hearing. And, the victims are entitled to make a submission either in writing or orally; sometimes they do both. And, we always hear the victims’ submission as the last matter before we retire to consider what decision we’re going to make. In many of those instances where we’ve... instances...[tape skips] made conditions, first of all in the way we treat them to allow them to make the submission and in some instances they say that it’s
the first time since the crime has been committed that they have felt that they have been listened to and that their voice has been heard. And that’s incredibly important. And we regard the overall matter, is a matter for the victims to get some closure and to realise that they are important in the scheme of things.

**14. ODPP:** I think they provide an enormous amount of increased satisfaction for victims and by providing that they add legitimacy to the criminal justice process itself, um, because the process is acting on their behalf and on behalf of the community generally. Um, we have discussion going on at the moment about victim impact statements for families of deceased victims, um and I think that question needs to be considered separately from the rights and privileges of direct victims because they are in a different situation, um, there are…we’re all individuals, everybody is different. Some victims are very happy, for example, to put in a victim impact statement to describe exactly what effect the crime has had on them and on their families and those close to them. Other victims on the other hand, don’t want to have any part of that process. They don’t want to show to the offender, for instance, what impact that person has had and therefore they think maybe to give the offender some sort of satisfaction having caused such problems and they run a mile from victim impact statements. So I think, um, when we’re talking about victim impact statements for instance we need to be very careful not to get into a situation where there’s a sort of de facto compulsion on victims to provide a statement because that will cause difficulties for some. Um, otherwise I think given our system of criminal justice, we’ve probably reached a stage where I think the rights are being recognised appropriately. In our system of justice there is no formal position for a victim of crime in the criminal trial in the criminal process. A victim is not a party to the proceedings unlike some European systems and other systems around the world. If we were to go further than we have already I suspect that we would need a fundamental change in the philosophy behind the structure of our system. We would need to start recognising the role of victims as some sort of a party to proceedings if we were to go further than we have already. I can’t see that happening.

**15. Police Prosecutor 1:** Processes. Um, I think they are. Um, obviously that’s only my personal view. You’d probably have to speak to victims to see whether they’ve…There’s a lot of policies in place that are victim-focused and based that, you know, that try and support them and um I think at the moment they’re probably doing a, it’s probably serving a purpose I think and there’s continual work in relation to especially to domestic violence and in relation to how we can improve their understanding of what’s going on and um, making them involved earlier in the process so they can get a better understanding I suppose, because they don’t know the process of what we do so, but they’re being developed as we speak. [Q: so you’re the domestic violence officer here?] No, not at the moment. There’s another lady here that’s doing that at the moment, but I do do it when she’s not here and... We’ve got a program running here now in relation to bringing witnesses along before the hearing date, conferencing them sort of thing so I’ll be doing that apparently.

**16. Police Prosecutor 2:** [not asked]

**17. Magistrate:** From the children’s court point of you, yes, I think. Um. Whether victims find that to be the case I, I don’t know, but from, from the judicial officers point of view, well it’s a- The children’s court is a busy court, it’s a busy circuit and
um so I think the involvement of victims more directly than that would tend to slow the process down and I don’t know in the end that it would achieve much more, but, but if the victims’ feel it’s necessary then yeah, I certainly would not oppose that process, but from my point of view of getting rid of the work quickly, I’m very happy with the process.

18. **Detective, NSW Police** Um, yes and no. I think, um, a lot of people are not aware of the processes of what is involved. Um, if they give a statement they don’t necessarily know where it’s going to go or what’s going to happen with it. I can honestly say I don’t think that there are many officers that go through the whole explanation with the person when they’re sitting here giving a statement to say, ‘ten years down the track you could then be called upon to go to court and give this statement’ and that sort of thing. Um, the court system is a very long drawn out process and it is really quite brutal. I can say that with the victims I’ve dealt with. And, it’s not a very pleasant experience for them. So when they come in to initially report something, they’ve had a bad day obviously because they’re a victim. Um, they get over it in a very short period of time and then they’re faced with it all again once it has to go to court. So… I know I personally try to minimise that impact on them but, by just giving them a- having a little chat and saying this is what’s going to happen and the processes and all of that sort of thing to try an minimise that. Did that answer the question?

19. **Solicitor, SDVCAS** Um, I think in this process, I think in the AVO process, if we’re just talking about domestic violence victims here, I do. I’m sure there’s other processes that victims don’t get to participate. Um, I’m sure that we could um do better as far as early referrals from police. It would be great to be getting more early, early referrals and there are domestic violence reforms that are in the pipeline at the moment that are to begin next year, and I’d hope then that we would be getting um referrals for all, all victims of domestic- all female victims of domestic violence to our service.
Q5 Should the level of participation in your court change? How/to what degree?

1. *Magistrate*: I would say no.

2. **DC Judge 1**: Well, first of all, I think there should be some kind of counselling for the victim before and after giving evidence and the victim should be supported in some way in court, I think. They are, when it’s a sexual assault case, those kind of cases, they’re allowed to give evidence in a…room away from the court via CCTV and they’re supported by an officer really, but I think there should be some kind of assistance. I think they should be supported by financially, that is, I think the state should pay them to come and give evidence and I they should be encouraged to attend the sentencing and to do impact statements. Normally- It seems to me that the sentencing is treated a bit cavalierly in many cases. I mean by that that counsel acting for the victim, um, often, often doesn’t assist the court very much.

3. **SC Judge 1**: [not asked]

4. **CC/DC Judge 2**: Um. No. I think it’s adequate at the moment…for the victims. Um. That’s obviously an ongoing dialogue and something that you’re no doubt very interested in. But, I don’t see any particular need for change, but we’re always amenable to any suggestions that will improve the capacity for victims to be represented or for their particular interests to be advanced.

5. **DC Judge 3**: [not asked]

6. **DC Judge 4**: Um. I certainly think- When you say the level of participation in the court, the role that they play obviously in trials is absolutely pivotal, um, almost always they will be the central witness. I can’t see that changing without actually compromising the level of convictions. So far as their role should change in sentencing…I’m not certain at the moment how much background material they get about what’s happening, um, I think the more information they’re given about what courts do the more they would, um, be satisfied that all interests are being dealt with properly according to law, but I’m no expert in how to, you know, provide that information to them.

7. **MHRT/DC Judge 5**: Mmm, possibly. [Q: how so?] … Well I think there may be scope for looking at other processes that might involve some sort of resolution between perpetrators and victims.

8. **DC Judge 6**: [not asked]

9. **SC Judge 2**: No.

10. **SC Judge 3**: I don’t think so, no.

11. **SC Judge 4**: No, I don’t. I’d be obviously open to suggestions for reform or improvement but I think that today compared to say when I was a law student that there’s a lot more emphasis in an appropriate way on the interests of the victim including the impact on the victim.
12. **DC Judge 7:** No. Do you want me to give reasons? [Q: yes../]...The previous answers and question... [Judge's phone rings] In a trial context, so far as I’m concerned they’re witnesses and not victims and so far as they’re concerned, they’re victims and it’s that, um, duality that can and does cause problems in court particularly for witnesses who are giving evidence in proceedings where an accused is entitled to the benefit of the doubt, and so I don’t distinguish between victims and witnesses because all witnesses are entitled to courtesy and understanding of their position, but I try not to approach it from the position that they are in fact victims because I don’t see that that distinction has to be made. The courtesy that you extend to people whether they be witnesses or victims, what you consider is the evidence they will be giving, who they are in terms of their experience is, age, capacity, and make arrangements regardless of whether you believe them or not, in the sense that you don’t know initially, and even if you don’t you still extend the same courtesy to them. You try not to pre-judge, but it’s reading the thing in advance. It is, it is a problem with the justice system dealing with people who are victims or crime, but are not necessarily either victims at law or if they are victims may not be the victims of the accused in this particular trial.

13. **Parole Authority:** No I think it’s adequate at the moment. It’s... they are always listened to, they’re always taken into account what they want.

14. **ODPP:** I don’t, I don’t think that it’s possible unless as I said we change the jurisprudential basis of the way that we proceed. In our system the prosecution brings a case against an accused. The accused can attack that case and can mount a case of its own and then it’s for the tribunal to adjudicate whether the prosecution case has been proved beyond reasonable doubt. So it’s not structured as a truth finding mechanism; it’s structured as a case presentation and testing mechanism, and unless we change the character of the whole proceedings as happens with some civil systems and European and Asian systems, unless we change that, I don’t think there’s much more that we can do. Now, if we do change it of course, it’s a whole new ball game. [laughs] What was the question? I’ve forgotten what your question was. [Q repeats question] Given that our present structure of proceedings, no, I don’t think so.

15. **Police Prosecutor 1:** I don’t think so. I think it’s appropriate as it is. As I say, they’re becoming more involved in relation to um you know, letting them know what’s going on, so they’re becoming probably a bit more involved than what they would of had been years ago. You know, there’s been changes to try and make them more aware...So no, I think it’s going in the right place. I don’t think there needs to be any more involvement. As long as um...Because I think more involvement would um I don’t know it might, it might go the other way. You know it might... You know, we want to make it at least restrictive as possible. As long as they’re informed and they’re aware, I don’t think they need to be involved any- anymore. Some victims want to get too involved I think and it can backfire on them sometimes. Um, they go off on another tangent that’s maybe not relevant that can get them into a bit of strife so I think, I think its ok at the moment. That’s only my view. I’m not a victim so, it’d be hard for me to say. But if they want the involvement usually they’ll say something and we can sort of give them some answers. Yeah.

16. **Police Prosecutor 2:** Um, yes and no there. Some victims are professional witnesses, professional victims. But um. No, it’s a daunting place obviously. The
witness box is the loneliest place in the world so we try and conference our victims as much as possible. We deal with them on mention days when they’re here. If its domestic violence related, with apprehended domestic violence orders etcetera, we conference them prior to going into court, um, where possible – sometimes that’s just not possible. But they’re certainly are looked after because we have our DV section that assists them. We also have our DV liaise who are police officers who also assist them, and the police themselves also assist.

17. Magistrate: Yeah, I- I don’t know that there’s a need for it um, there may be specific cases where direct involvement would assist in the healing process and of course if that was identified to be the case then I would never sort of oppose any involvement of victims in whatever way. Prior to being appointed to the, um, local court as a magistrate I was working in the Hague at the international criminal tribunal for the former Yugoslavia and there was a suggestion that victims be separately legally represented in the, in the trials and I was opposed to that [I: I’ve actually got a question about that..]. Have you? Well, we’ll come to that then.

18. Detective, NSW Police I do, to a degree. Um, I- I know that when a victim gives a statement such as a sexual assault victim, um, it is a very, very traumatic event. And, they go through counselling, um, after the event – well, we try to get them to go through counselling after the event – um, then, they start to deal with it, and then all of a sudden I’m ringing them and saying, ‘well, great, we need to go to court now.’ And, they have to sit there in front of twelve people that they’ve never met before, a judge they’ve never met before, the courtroom area that is very old-fashion, stifling, traditional, that they’ve never had to participate in before, and relive the whole event, and of course the offender is there. So, I like the fact that most of the time they get to participate through CCTV footage, but they still have to go through it all again which is, is- to my of thinking, it is a very horrible way of doing it. I- I think it could be improved in many ways, such as when we actually do the statement, if we record it, video-recording and then that gets played in court so you have at the time, this is what happened, this is what was said and they don’t have to rehash it months and months, years down the track. So, there are many ways that things, I think, could be improved.

19. Solicitor, SDVCAS Um, do you mean in the ac- do you mean in the actual courtroom or in the court process? [I: either, you can talk to either point] Um, again I’m only speaking about domestic violence, and I think at the moment- I think that um there is a system in place with our services where um victims of domestic violence do, um, get a satisfactory level of ability to participate. I think if you were talking about as far as the actual hearing, a defended hearing, um, where a victim really is only kept to the statement that they’ve made to police, there may be, um there may be areas there that um we could improve upon. Say where um, perhaps, a victim might like to give a lot more context to um, the violence say for example, and they’re only kept to the actual incident that’s brought them to court that day if that makes sense.
**Q6 What particular processes should be changed or abolished?**

1. **Magistrate:** Um, what do you mean? [Q: clarifies] No, I think their role is pretty limited so, no, I don’t think there’s anything like that. But, I’m not sure I fully comprehend, um, what you’re asking me and I may not be directing my mind appropriately I’m sorry. [Q: discusses, then asks question about who can be in court] If they’re the young person, they’re the accused, then yes, they must. [more questioning] Yes they [the victim] can sit in if they choose to after they’ve given evidence. [Q: clarifies] Um, well, that would be... No, I don’t think that it should be abolished, no, because they need to know that the matters been dealt and perhaps need to have some understanding of what’s gone on, so I think it’s appropriate that they listen to what has occurred in court.

2. **DC Judge 1:** [Not asked this question]

3. **SC Judge 1:** No, I don't think- I don’t think anything should be abolished. I think that the-- I think the important thing is to keep victims impact statements within their present limits. There have been a couple of incidents that I’ve had last year. There have been a tendency to perhaps go beyond what a victims impact statement was intended to do and what it’s properly permitted to do. On those occasions when I thought that the statements went, had gone beyond those limits, I let it go. That said, if I’d of seen the statement in advance I probably would have said something about it. I mean I think it’s important that things...a reign be kept, if you like, on the process.

4. **CC/DC Judge 2:** Ah. Nothing that I can think of off the top of my head. Um, I think we’ve come a long way particularly in relation to sexual assault cases where, where the victims can give their evidence by...well they can be cross-examined, well they give their evidence from a remote location and, in the case of young people, by way of a pre-recorded interview. The advantages, one of the real advantages of that is that if there’s an appeal or a re-trial, they don’t have to give evidence a second time. I think that’s a terrific advance and I think that whole system’s working well. Otherwise I don’t see any real need for, for change at the moment.

5. **DC Judge 3:** Well they should abolish victims being, giving verbal statements. If they want to do it in writing, that’s fine, but they shouldn’t get up there in front of everyone and do their bit because, um, it doesn’t in my mind, one, assist the victims and two, it doesn’t help the sentencing process.

6. **DC Judge 4:** None that I can think of. I don’t want to be too socially conservative, but no, I can’t think of any off hand, um, because anything that makes the process less traumatic whilst preserving you know the right to due process would be good, but I suspect that’s more in the way of background material. For the most part...shouldn’t in my very limited experience, both counsel go out of their way usually, that is defence counsel and crown counsel, prosecution counsel, not to appear so that they are bullying or harassing the witnesses. I know that there are exceptions to that, but so far I haven’t seen that in my court. So yeah, again, no...

7. **MHRT/DC Judge 5:** Um. I can’t really be specific about that. I can’t think of anything that should be abolished. Um, I think there may be some scope for providing some other options in the sentencing process.
8. **DC Judge 6:** Being happy with the system, I certainly don’t think anything should be abolished. I think victims must have a say in court if they wish to have a say either by oral evidence or by presenting material to the court. No, I don’t think they should be changed or abolished, no. I’m happy with the way they are.

9. **SC Judge 2:** [not asked]

10. **SC Judge 3:** In relation to victims’ participation…um, no, I don’t think so. I think the degree is adequate.

11. **SC Judge 4:** Well, I don’t. I think things are, I think things are good. As I’ve said, it’s my understanding of it from my point of view that there’s been significant reform in this area over the past generation and I think that’s been appropriate.

12. **DC Judge 7:** Um, I hope that in preparation for trial witnesses have what I’ve just said explained to them so that they understand the necessary impartiality that the judge has to adopt. But otherwise, no. I think that some facilities in some court could be improved. If you walk outside into court number six in Darlinghurst, where I am now, there is one TV screen for the jury to view any exhibit or any remote witness facility. It’s just not good enough. They couldn’t see or understand the nuances of the victim and I’ve always had a problem with remote access – and this may come up later – but if, where the technology is insufficient to convey the nuances of the witness’s testimony other than their verbal testimony or even sometimes their verbal testimony and the same applies to where evidence is given by way of initial interview. Again the mere fact that technology is being used can generally diminish the impact of the evidence but I’m aware of the countervailing reasons why those procedures are adopted.

13. **Parole Authority:** No, I wouldn’t see anything changed or abolished; I sometimes think that the advice victims get as to what their part in the process is isn’t always adequately explained to them. For instance sometimes victims will come to us and they will complain that the… about the original sentence. Now we can’t alter the original sentence. They think that they should stay in gaol for life… but they’ve only been sentenced to 22 years or something like that. So somewhere along the line they either haven’t had the processes explained to them or they’ve misunderstood what’s been put to them. So I think there needs to be greater clarity so that they really understand the true position.

14. **ODPP:** So far as victims are concerned? [Q: Yes] Hmm…. I can’t think of any processes that should be abolished…Changed? … Well I think it might be possible to streamline somehow the question of victims compensation. At the moment it’s a rather cumbersome and expensive process to provide compensation to victims of crime, um, and it might be possible to take a leaf out of the European’s book maybe and in some way bring that process into the trial process itself particularly in relation to homicides where everybody gets the maximum compensation, $50,000, pretty much automatic. But there’s a huge process that has to be gone through with the Victims Compensation Tribunal to get to that point and I think that certainly could be streamlined. Whether it goes further, well that would require more work to be done in the court hearing itself, um, but I just think there could be a better marriage between the process that determines guilt and the process that adjudicates on compensation.
15. **Police Prosecutor 1:** Um, it’s hard to say. You know, the more policies and processes there are obviously the more, um, it can be a bit restrictive, you know what I mean like, you know you’ve got a lot of things to consider and things when you, you know, process after process can draw things out longer than usual and…Me personally I think, and that’s the way it’s going you know. People have jobs to try and fix this and fix that and you can get to a point where as a prosecutor you’ve got a lot of considerations and sometimes conflicting considerations, which doesn’t help, but…I wouldn’t say there’s too many, but I think it’s getting to a stage where I think they’ve got to cut it back a bit to make it a bit more simpler. Yeah.

16. **Police Prosecutor 2:** Oh, I think it’s pretty good the way it is.

17. **Magistrate:** Mmm. I don’t know that I’m really in a position to be able to answer that. Um, when I used to work in the DPP many years ago I know there was no focus on victims as such and in fact some crown prosecutors would refuse even to speak to witnesses before they testified including in sexual assault cases and I know that practice changed after I left the DPP and that was in 1985 and that there were- there was more a focus on supporting victims and witnesses in giving their testimony and I saw that as being a good thing, a positive thing. When I was later involved in more serious and long prosecutions there was a great deal of interaction between the prosecution and the witnesses who in more- in most cases were victims as well. So that process was a changing one and in serious cases, I would never - In fact I think it’s a good idea - to have a close liaison with the witnesses to give them confidence in the process so when they do get into court, you know they know who’s on their side.

18. **Detective, NSW Police** Um, I’m just trying to think at the moment ‘cause there’s -a lot of the processes - I’m just going through a court matter at the moment that’s for a um a grievous bodily harm with intent matter, and our victim in that one suffered brain injury. So, he wasn’t able to get up on the stand, so we were able to get the doctors and that sort of thing to get up for him, which was great. But, everyone else that came forward, the victims, and there were, - um sorry the witnesses as well as the other victims that had the minor injuries on the day, um, they had to come and give evidence, and they’ve all moved – this is three years ago – so they’ve all moved all around the state, overseas and we’ve had to keep trying to get them back and get them back. And the court process – this is three years down the track – ‘a’: they don’t remember much of what’s happened. But um, they’ve been so many stoppages where we get them up here and say, ‘ok this is it, we’re going to go to court’ and then we turn up at court and they say, ‘no, no, we’re not doing it for another month’ or whatever, so. Little things like that I think can be streamlined and- well, I don’t know how, but I think changes need to be made with the court system in that regard. It’s mainly just the court system that needs to be changed in my way of thinking to make it easier for the victim. I think what we do here and what support we give them is, is good support um – if it’s done properly of course. But I think that that’s yeah, an adequate way of doing it.

19. **Solicitor, SDVCAS** [not asked]
Q7 What new processes should be adopted, or made consistent?

1. **Magistrate:** Oh look, I was listening to a discussion on the radio the other day about Professor Ian – I can’t remember his name, his last name, just off the top of my head – from Victoria who was talking about a particular matter and recommended there should be sort of more like, um, a community justice, um, no, that’s not what he said. Um, like the youth justice conference idea where the victims are able to express in person to the offenders how the offence has impacted on them, that followed a driving offence, and that might be a more satisfactory way of their needs being met because the court really is not designed for victims, I don’t think anyway.

2. **DC Judge 1:** No, I don’t know of anything.

3. **SC Judge 1:** There’s nothing, nothing of which I am aware of in either case. I think you have to come back to the fundamentals, and the fundamental or one of the fundamental objectives of a victim impact statement is as I say to provide victims with a voice as it were and to demonstrate, you know, how the crime of the accused person had affected them in particular ways. We in this jurisdiction deal largely with murder cases and so the victim impact statements are generally centred around a particular and obvious theme. But no I’m not aware of anything that’s operative in other jurisdictions, which having been brought to my attention I think ought to be adopted.

4. **CC/DC Judge 2:** In relation to victims? [Q: Yes] Um, no. Nothing that, that I think we need to change. I think the system, as I say, works fairly well in terms of, um, the way victims have the opportunity to have their particular perspective portrayed. You sometimes hear stories – I haven’t had any examples yet – where you get people, um, in court, you know, they get a whole group of people in court and they all wear a badge and that sort of thing. I think those sort of things are unsatisfactory, but I haven’t had any experience of those. But we have the power and capacity to deal with those sorts of issues. Um, there’s- One of the increasing problems in court is that people are tweeting and sending messages from within the court, so that’s something that’s being addressed in legislation. That can be a problem.

5. **DC Judge 3:** Well I’m sure there’s something, and I’d like to know what are the various options because the present situation, um, which is not, where the victims aren’t really assisted other than by the DPP social workers, um or counsellors – I don’t think they’re even qualified counsellors – is inadequate for them.

6. **DC Judge 4:** [not asked]

7. **MHRT/DC Judge 5:** Well I just think that there may be more opportunity for interaction between perpetrators and victims, um, to achieve greater resolution on behalf of victims.

8. **DC Judge 6:** Are there any new processes which could be adopted or made consistent? I don’t understand the second part of the question. [Q: Sure. I guess anything from maybe other states or other countries that you’ve heard of that you believe could be adopted into NSW legislation regarding victims?] I don’t know very much about other jurisdictions and I don’t know how they, how they handle it, so as
to adopting other jurisdictions’ practices, I can’t say. Um. As to consistency...well if I
don’t what the systems are I can’t comment as to the consistency with those systems,
yes.

9. SC Judge 2: Um, I can’t think of any new processes, and I’m not sure that ...I
think they are consistent. I’m not sure what, how they could be made more consistent.

10. SC Judge 3: Ah, well the experience is so limited in my case, uh, I think the
answer to that’s, not that I’m aware of.

11. SC Judge 4: [not asked]

12. DC Judge 7: Well I think that technology has to be consistent. Um, I think that
the way, particularly for child victims at initial evidence, that’s improving and all I
can do is encourage the improvement. In the early days, so bad were the interviewers
that it just created a fundamental unfairness for everyone, and I’ve noticed an
improvement particularly in police training of interviewers of children. But I’m not
aware of any fundamentally different processes that I believe are necessary.

13. Parole Authority: I think generally just to make sure that they do understand the
clear legal processes and a number of the victims groups -I’ve mentioned the
Homicide Victims Support Group, there are others VOCAL and I think there are
others whose names I can’t remember- they do a very good job in trying to support
the victims throughout the whole process.

14. ODPP: [takes phone call] … Well I think the processes of assisting victims and
vulnerable witnesses should be expanded so I think the Witness Assistance Service in
the DPP’s office should be expanded to provide greater coverage and support for
victims and for vulnerable witnesses. Um… I’m reserving judgement on the question
of victim impact statements for family members of deceased victims. A big area of
ongoing dispute is the reaction to victim impact statements - what should the courts
do in response to them? Or, are they purely and simply a cathartic mechanism for the
victims to get their thoughts out in public and acknowledged by the court and by
people who are there. Um and…it’s an important issue. It’s still under discussion, as I
understand it now, at various levels. But it comes back to the basic issue that a life is a
life is a life, all humans are to be regarded as equal. If somebody takes the life of a
very eminent member of society with strong family connections and all that sort of
thing, and another person takes the life [tape skips] person, and it’s quite a, it’s a
serious philosophical argument and thought has to be given to how that’s carried out
in the practices that are put into place. Um, the case of Privitera is important where
David Hunt in effect said, ‘well yes, you can get up and tell us all about it, but it’s not
going to make any difference to the sentence that is imposed for that offence’, and I
think philosophically that’s the only legitimate way to proceed at the moment. But I
know there’s a lot of argument about it so we might see some changes in that area,
I’m not sure. But apart from that I don’t have any particular [resources(?)].

15. Police Prosecutor 1: No, not really. I don’t have much to do with. Um. Obviously
gun crime and things is probably the hot topic at the day at the moment in relation to
overseas and policies overseas, and there’s a lot of conflicting views about which is
the best way to go but I don’t, I don’t really know of any or have a view in relation to
whether this should work here or we should have this or we should have that. It’s really a matter for the policy makers really to make that. I just...if I don’t agree with something I don’t vote for it you know but there’s nothing I can really think of at the moment that is really a bugbear which I’ve got a problem about.

16. Police Prosecutor 2: No, not really.

17. Magistrate: Oh gosh, nothing springs to mind. Um, I- I think that goes with the earlier that I’m fairly content with the way things are in the children’s court in terms of moving the work along. I’m aware that um, you know, the prosecutors spend a great, well not a great deal...spend time with the victims and the witnesses and in fact in this hearing that I’ve just completed the prosecutor asked me to delay the proceedings for ten minutes whilst she went out and spoke to her two witnesses who are giving evidence today. So you know that just reinforces the fact that the prosecution are conscious of the feelings and the needs of witnesses. These two are not victims as such, but they were witnesses. The victim gave evidence last week. So no, I wouldn’t change anything.

18. Detective, NSW Police Um, I can honestly- I haven’t really thought of that to tell you the truth. Um, I do like the, the English um caution that I know that we’re going through the process of trying to adopt, um, in relation to dealing with the criminals. So, it’s basically saying to them that if you do have an alibi and you don’t give it to us now, you can’t rely on it later on down the track. Whereas at the moment we go to court and we’ve started the trial, and they come up with an alibi and then we have to...but this is, well, it makes our job a lot harder, which again in turn makes it horrible for the victims and witnesses and that sort of thing. Um, I know over in England in relation to sexual assaults, their system is a lot better than what our system is in dealing with victims at the first instance. Um, each patrol car will carry around special kits, um, and at that stage they are able to get urine and swabs from the victim right there and then without having to go sit at the hospital for hours waiting for the counsellor to come in, then waiting for a doctor to be- carry out intrusive examinations. So that gives them evidence at the first point. So we- at the moment we can’t- we turn around and say, ‘ok, well we don’t’ really want you to drink anything and we don’t really want you to go to the toilet if you can help it’ and that sort of thing. So that would alleviate that, that process. Um, there’s also there the fact that over in England, I don’t know about it first hand, but I have been told that once that your DNA is taken over in England it goes on a database and stays there for life, which is a fabulous thing to my way of thinking. Over here, we get rid of DNA once it’s served its purposes. So, to keep it all and come back and put through old cases and new cases that come up and that sort of thing, is a, a great of doing it I think. So something like that would be nice to be adopted.

19. Solicitor, SDVCAS Um alright. So each time I’m talking I’m only really talking about victims of domestic violence, so- but I’m sure there are other victims that come to court, where you know things could be improved. Look I’m not, I’m not aware of anything happening in any other jurisdictions that I could say was, you know, that could be applied. Um, I think that at the moment, especially with domestic violence there, the review, the review of the legislation, and the review of um some of the processes, I think that we’re actually, um- Things have improved a lot over the years for victims of domestic violence and I think they are continuing to improve and I
think they’ll be next year in 2014 um the domestic violence reforms will address um some of the issues where we might not have been…Well, one of things that will happen next year is that women whose um safety is at high risk or who are deemed to be at high risk, they will, their matters will be sent to what’s going to be called a safety action meeting. And, um those meetings will be with police and other government agencies or non-government agencies depending on who’s involved with the woman and um there will be decisions made around her safety that um that will be helpful to her in the court process, I would hope. So, that’s one of the improvements that I think is, is coming next year.
Q8 How does the Charter of Victim Rights impact on practice in your court?

1. Magistrate: [not asked]

2. DC Judge 1: I didn’t even know about it. I don’t know when it came in. Maybe it came in after I left because I’ve been retired for four years.

3. SC Judge 1: …I think the impact of that is…or manifests itself through the victims impact statements that I’ve referred to and I think its impact is necessarily within those bounds.

4. CC/DC Judge 2: It doesn’t, um, impact in the adverse way. We’ve taken it into account and tried to build it into to all of our processes so, but it hasn’t had any negative impact except where I mentioned earlier where there’s, um, where we close our court. That’s the only area of cross over.

5. DC Judge 3: Well it doesn’t. [Q: Did you want to elaborate on that?] Well I don’t see in terms of my job of sentencing people having heard victims say their bit, I, as a matter of law, I’m not allowed to take into account what they say in the sentencing process. So victims making statements is caus...is unrelated to the process that I have to fulfil, which is sentencing the prisoner. And I think that, um, having them say that is confused with what actually goes on in the court.

6. DC Judge 4: Well… I understand the background of that charter and I understand the need for victims to have a function within the criminal justice system that’s dealt with as sympathetically as possible and with them having the various rights to consultation and things like that as they have… I don’t know that I actively keep that in mind when I have victims before me as witnesses but I, as a general practice I attempt to ensure that they are dealt with in a manner that is consistent with dealing with their trauma and making their passage through what is effectively an alien system as comfortable as possible.

7. MHRT/DC Judge 5: I’ve no idea what the Charter of Victims Rights is.

8. DC Judge 6: Well it may shock you but I don’t know what the Charter of Victims, Victims Impact…[Q: Victim Rights] Um, is it a federal charter or an international charter…? [Q: It’s a state charter] Well I must admit I don’t know what the state charter is. Where does one find the state charter? [Q: answers] It hasn’t been brought to my attention by the Crown or anyone. But could I just go back, um, and a- There’s another area where victims can be heard and that relates to, in a sexual assault trial, a victim can, um, make an objection to the subpoenaing of documents from, which relate to her, his or her health, his or her um prior – I withdraw that – his or her involvement with social workers or sexual assault workers and, in the last number of years the government has legislated to create a facility to assist victims or alleged victims from disclosing by way of subpoena much of their, much of their past. In addition to that, which is something I didn’t mention before, but the sexual history of a complainant in a sexual assault case is protected, and may only be disclosed at the, at a trial with the discretion of the judge so that the victim’s rights are maintained and looked after in those circumstances. So, there’s some matters I haven’t thought of.
9. SC Judge 2: Um, it doesn’t impact my conduct as a judge, but it impacts on the way in which other institutions such as the police and the prosecution deal with victims. But that’s outside the courtroom itself, except of course they might have a support person or something like that. Yes.

10. SC Judge 3: To the extent I know anything about the Charter, it’s um, it- the impacts not- Well when you say ‘my court’, you mean my court at trial level, um, for the perhaps poor taste fact that most of the victims are dead it’s not too much- It doesn’t have a significant impact. I mean there’s no- I’m all for members of the family being told about adjournment dates and consulted about those sorts of things. Um, I would not go- It would- There would have to be a particular reason why I’d, for example, on an adjournment date that the interests of a relative of the victim would alter given that the interests that are at stake…It might be different with sentencing. If I was told that a particular member of the family couldn’t make it to the sentencing date to deliver a victim impact statement then I’d, I’d have no problem with adjourning to accommodate that need. Um, so, more- In those sort of procedural ways it would be involved, but um, in terms of the direct running of the trial because we’re not dealing with armed robbery victims or rape victims or anything like that, to date it hasn’t been- it’s not a big impact.

11. SC Judge 4: Well I think in the ways which I’ve already described.

12. DC Judge 7: Um…It is of- I don’t believe in treating witnesses, no matter who they are, any differently than what is required by the Charter so far as a victim is concerned, so um it impacts only in being the bottom line for the way you treat any witness in a courtroom so that’s the only way I can answer that. It doesn’t have an adverse impact but it doesn’t have a positive one other than being a standard that should be applied to all witnesses.

13. Parole Authority: Well, only that we make sure that victims are heard, that they’re given a voice.

14. ODPP: [not asked]

15. Police Prosecutor 1: A lot. Obviously they, the Charter of Victim Rights, and I think there’s just been one in relation to domestic violence released by the government recently in relation to our involvement. Also they want trained DV prosecutors doing matters and things like that. So the Charter of Victim Rights I think is transferred into our policy and the Attorney General’s policy at the moment. So obviously it forms a big part in relation to informing them. They have, as I say, we appear for them so they need to be kept in the loop as to what’s going on and um, they’ve got a voice, and…we hear that voice and that’s part of the decision making process. So um yeah, but obviously a big part. Yeah, it has to be. If I was a victim, I’m sure I’d want some involvement I could imagine as well. So you’d want to know what’s going on. Definitely yeah.

16. Police Prosecutor 2: Um, well we are compelled to do what it says and we do. So it’s not that it doesn’t, doesn’t impact us, on us, as such…It’s just the way we work. We follow that and that’s what we do.
17. Magistrate: Is this the UN charter or..? [Ah, no the NSW] The NSW charter. Um, I’m not sure that I’m in a position to answer that. Provided the police doing the investigations are conscious of what their obligations are and meeting the, the needs and desires of victims and witnesses then I think from the court’s point of view, provided there’s no abuse of those, then it’s being compliant with.

18. Detective, NSW Police Yep, um, that, the Charter of Victims Rights that we have essentially tells us how we are to go about dealing with our victims. So we know that we need to keep them informed, we need to let them know what’s happening and that’s, I’ve found part of um the, the problems with victims is that they are…most of them are kept in the dark. So it’s hard sometimes because we do have an element of our investigation that we do need to keep under wraps until we’ve gone a little bit further, so it’s hard to let them know what’s going on but then we can’t leave them completely in the dark. So the victim, the charter of victims rights, tells us that we need to talk to the victims, we need to keep them updated when there’s an improvement in the case or an offender is found, an offender is released from gaol, an offender applies for parole or little things like that. So they have a bit of, a bit of an idea of what’s happening, and they don’t feel completely left out of the process and out of control. Um, that’s, that’s one thing I think a lot of people have said is that once they give their statement, that’s it. It’s like they’ve got no input whatsoever any more. They don’t know what’s going on and that sort of things so. Um, general common sense things as well, like we’ve got to be courteous, and, and all of that sort of stuff. But yeah, it’s there to give us a guideline as well of what we need to do for our victims.

19. Solicitor, SDVCAS Um, I mean we are mindful of the charter of victims’ rights…and particularly around the area of you know, the victim being kept informed about what has happening. Um, police could do better around the victims’ rights…and it’s probably where a referral to our service is helpful um to a victim because the police might not always have the time to be continually keeping the victim updated on what’s happening with the court process or procedurally. So in that regard, we do, we’re very aware of the charter and in that regard we are, um, certainly fulfilling the, well, probably a lot of what police really should be doing, but we um, one of the things we do do is keep the victim advised about what’s happening with their matter.
Q9 Not necessarily thinking about your court/matters, how can victims participate in court processes in NSW? Probe for any court or tribunal. Probe for forms of participation in pre-trial (including police investigation and DPP negotiation), trial and sentencing matters. Any anticipated difference in levels of actual participation in these phases?

1. Magistrate: Um, have you spoken to anybody from the DPP yet? They have a system where they consult victims and all of that sort of things in relation to crime. They’ve got quite a [Q: I’m just trying to understand your view of it, so processes that you know that exist] Well I know about the DPPs process, but you’re asking me in my role as a magistrate rather than as a solicitor when I used to be a solicitor? [Q: Yes] Um, they have their opportunity to give evidence in a hearing. They have, um, they can make a Victims Impact Statement, which they can do in the Children’s Court as well. Um, I’m not quite sure what you’re getting at really, what ideas that you have, so if you have something that you wish to suggest for me to comment on it. [Q: clarifies] Sometimes for some serious wounding matters or where somebody has been seriously hurt I would occasionally like to know what has happened to the victim. So I would like an update on their current medical condition, um, and how a particular offence may well have impacted on their current, usually their physical situation, and to some extent their psychological state of mind bearing in mind that everybody will respond differently in that, particularly with the psychological impact, some people are more fragile than others so, um, yeah I think it’s certainly, um, an assistance particularly in a matter where there’s been a serious assault or a, yeah, a serious assault is what comes to mind firstly, and secondly maybe some, um you know, serious motor vehicle accident.

2. DC Judge 1: Are you talking about crime? [Q: yes]. I think the courts are very badly…with disturbed people in general, civil or criminal. I think that the criminal law deals badly with psychiatrically disturbed people. They assume that they’re all sane and do everything with a free will…I’m speaking generally of course, because often enough you get psychiatric evidence tendered into the sentencing, but in general psychiatrically disturbed people are treated very badly in court, and very few allowances are made for them. That’s number one. I think there’s probably a fair amount of protection for witnesses. They can’t be bullied or punched around or mocked or humiliated. I think- But I’d be inclined to recommend that any person who comes into a court should be advised that there evidence is critical, is valuable and that they are in charge that they…should insist on not being bullied and they should take control, not feel as though they are subjected to unnecessary embarrassing questions. They should be told when to answer questions, the way that they wish and as fully as they like. They shouldn’t be, um, kind of bullied or…overborne by the judge or by the barristers.

3. SC Judge 1: Well in terms of pre-trial, the participation of a victim is centred upon I suppose firstly the police investigation. The victim or victims participate by assisting the police with their investigation and where appropriate providing a statement of, if its appropriate, a statement of the circumstances in which the offence was committed. Now that doesn’t always happen because you may have a victim who was not there when the offence was committed. I’m doing a trial at the moment where one of the victims was the wife of the deceased who was in bed with him when he was stabbed. Um, so she - and this is a retrial from a previous trial – she fulfilled a dual role on the
last occasion. She gave evidence as a witness in the crown case and she provided a victim impact statement. So I suppose that in terms of participation ... in the processes, you need to draw that distinction – is it a victim who’s also a witness or isn’t it. If it’s a victim who’s a witness then he or she participates even before the matter gets to court by assisting the police in their investigation. He or she assists then assists in perhaps giving evidence in any committal process before a magistrate, he or she then gives evidence in the jury trial, and then in the event of a conviction, he or she provides a victim impact statement, so depending on whether or not the victim can give evidence which impacts upon the commission of the offence, his or her participation can start right at the very, perhaps even before anyone is arrested...can start at that point, and in the event of an arrest, an arrest and a successful prosecution it can then and will then end by the provision of the victim impact statement at the end so, um, in that sense, the participation can be virtually ongoing from the very start of, the very commission of the offence. I mean to take the present case as an example, it was an alleged home invasion and the wife of the deceased gave her statement to the police within a matter of hours of the murder, so um its extended for the entire path of the process.

4. CC/DC Judge 2: [Judge asks about question. Interviewer clarifies] Um, well, I mean...You’ve got the fundamental dichotomy between the victim who isn’t a party and, and the state who brings the prosecution not on their behalf but in relation to the crime that’s been committed against them, um, and I think sometimes there’s a breakdown in, if you like, the communication between the prosecution and the, and the victim who is a witness...and sometimes the communication levels aren’t great in terms of the timing of getting them to court and, um, and those sorts of things. But apart from those sort of, if you like, mechanical difficulties, my perspective is that victims are well represented in court by the DPP in the more serious cases and by the police in the less serious cases, and they always have the opportunity as you say, as I said to give an impact statement. Sometimes I think the quality or the nature of the impact statement needs to be explained in a better way by the prosecution to the, to the victims because they don’t always appreciate ...The effect of a crime upon the victim is just one factor to be taken into account by the court and I think a lot of victims think that their impact statement is in effect more important than it actually is in the process, but that’s just a matter of properly advising and instructing the victims before coming to court.

5. DC Judge 3: How can they? [Q: yes] They shouldn’t. They shouldn’t. There’s no point to it.

6. DC Judge 4: Well, I mean that presupposes- again this is the difference between trials, sentence matters, um...Participation in the justice system may involve being an active participant which victims inevitably are, if we’re talking about trials. So far as sentencing goes they are, um, classically observers of a process which is designed to vindicate their rights and to engage in an element of personal protection and general protection of the community. I always find that there’s a tension between victim rights and due process. Their participation, I would of thought, is by way of information, empathising with what has occurred and sympathy for the cost of crime, which is what I do to them. I’m not a supporter of them becoming a third advocate in the judicial process.
7. MHRT/DC Judge 5: Yes um, well in relation to the lower courts where the offences are less serious, um, I think there is a lot of scope for, for looking at processes, which are focused on resolution between victims and perpetrators as opposed to punishment. That’s about it.

8. DC Judge 6: Pre-trial, trial and post? [Q: yeah] Well, pre-trial, you’re talking about the trial where’s there’s been no admission of guilt. The victims would well firstly make a complaint I’m sure to police. They would then be dealt with by the, either the police or the Director of Public Prosecutions with regard to the seriousness of the offence. I’m sure there are protocols there. And...I’m just going to go back again to the general matters before my court. Um, If a young person is an alleged victim of a sexual assault then to protect that person from the trauma of being interviewed by a police, a police officer and then giving evidence in court, there are facilities available whereby that alleged victim can in a benign environment talk to a police officer and to a counsellor about the incident or incidents. In those circumstances the court can agree to the interview being used as the evidence in chief of the young person so they are looked after in those circumstances. But coming back to what you have asked about other tribunals or tribunals of this state. Pre: I’m sure there are protocols for the police and the DPP. During the trial: I’m sure all, well if we don’t have it, all courts should have the capacity to have the victim give them evidence not in front of the perpetrator. That should be at the judge’s discretion or the magistrate’s discretion or the tribunal officer’s discretion to do that. And post-trial, well as I’ve said, victim’s impact statements can be used by magistrates, um, when they consider sentence I’m sure. Um. Victims also have the right to bring an application for compensation under the victims compensation act. That’s post- well not necessarily post-trial, although it’s always better if there’s a conviction. But if there’s no conviction there can still be, there can still be a compensation payment, and uh, the way in which that’s administered by the state is bureaucratically and, uh, and that proceeds quite well, and I think its funded, in part by the proceeds of crime, which is, if that’s the case is a good irony.

9. SC Judge 2: How can they? You mean, do you mean by ‘can’ as distinct from the way they’re doing it now or…? [Q: clarifies] I think that the- Leaving aside circle sentencing processes, I don’t think that, I mean I think you have to put aside tribunals. People are not victims in the ordinary sense because they’re not dealing with criminal matters. They may be dealing with discrimination or other matters, but they are then in those cases, I think they are the moving party so they get full participation. But so far as magistrates’ courts or the district court is concerned, I think the processes are fundamentally the same.

10. SC Judge 3: Well, I mean- You got to place my experience in context. I didn’t have a lot of exposure to criminal law before I came, and to the extent I did it was white collar and the victims consisted of share market, you know, five thousand investors, so that doesn’t really involve- So since then it’s just been the trials at, ah, first instance level which they’ve been three and what I’ve observed in the Court of Criminal Appeal. Um so, what was the question again? [Q: repeats] Well, they can…It’s a bit open ended, but I wouldn’t like- I’ve not seen anything in the Court of Criminal Appeal or in my trials where I’ve thought, that the victim was somehow not given, their interests weren’t given proper consideration, because I don’t think they should be running the prosecution. Um, I don’t think they should be telling the
prosecutor what the appropriate level of penalty is. Um, to the extent I’ve had any recent contact, there’s the issue of subpoenaing the victim’s medical material, which has lots of complexities…They’ve both had quite a big say in that being separately represented by legally-aided funded counsel. So. And, then on the victim’s impact side, um, I’ve done two sentences, had victims impact statements in both of them, and I thought the process was pretty good. Um, and everyone pretty much respected it. It’s not treated as evidence, which is good, because if they are then they could be cross-examined and that raises all sorts of other, you know, difficult issues, and everyone I think treated it with the solemnity that it warrants.

11. SC Judge 4: Well, um, I think it’s very important for victims to take an interest in the legal process at all levels and I must say I think from my observation as a judicial officer that the police are astute to make sure the victims do participate in the legal process right from the start. They seem to keep them informed of what’s happening, they encourage them to come along to I guess, you know, mentions of the matter in the early stages, committal proceedings, trials, sentencing hearings, even – I know you asked me to speak generally, but I’ve noticed you know victims are often present on a hearing of appeals in the Court of Criminal Appeal. So I think that’s a very important, I think just being there and seeing for themselves how justice works and also by their presence reminding the judge that it’s not just the community generally who has an interest in what’s going on but there are individuals who are specifically affected by the crime is of fundamental importance I think. Obviously the preparation of a, of good and accurate victim impact statements is always, I think, taken into account by judicial officers who have the obligation to sentence people and I think they’re important and significant and…I think those are the ways in which they do participate. I think that everyone in the legal process, the crown, well let’s say the police, the crown and the court should be aware of their involvement in the process as people who have a specific interest in what’s happening.

12. DC Judge 7: So far as before trial is concerned, I don’t see a role for the victim at all. I think that they should be properly advised as to what they’re role is and I see that as the role of the Director of Public Prosecutions or the police. I have in the past had experience of support agencies, and in one occasion a DPP support officer giving quite misleading and potentially prejudicial advice as to how they were to present their evidence and that came because the DPP officer thought I was the crown prosecutor and told me how that they had geared the witness up and what to appreciate. It was just quite wrong and that led to a mistrial. But that’s rare. In terms of victim participation in sentencing proceedings, which are next most important, I’m reasonably happy with the way victim impact statements are now presented. It is rare to have an exegesis on what they think my role, punishment should be, and the, on the main handle them with a degree of sensitivity. Some are too long and that just diminishes the impact. Sometimes there is a…Thought has to be made by the person themselves as to giving evidence or giving their victim impact statement in court. Um. Many years ago, I acted for the state government in the inquiries into victims compensation matters and one of the studies I found particularly with children was from the present, the American Psychological Association – I’ll give you the reference before you go – which basically said with regard to child victims particularly of sexual assault that people should turn down the volume, that the court process was, and the rehabilitation process could sometimes be so overwhelming that it did more damage than the initial crime, and it meant that the victim had to go
through it time and time again and they couldn’t put it behind them and that was supported in the case I was involved in by reputable scientific- psychological evidence that the children who had, had their parents be supportive and turn the volume down were much better psychologically three years later than were the ones who were the key witnesses, the ones whose parents insisted they go into therapy etc., etc, etc. So there is a disconnect occasionally between the needs of the victim and the needs the of the justice system and sometimes the justice system can impose things on witnesses which cause them harm and I am always concerned about that. Um, yeah that’s...

13. Parole Authority: I think, many people have a fear of courts, and I assume many victims do too, and so they don’t necessarily feel comfortable, in participating in the court processes. I think generally all people and particularly including victims should be made to understand that courts are not places to be feared, they should feel comfortable there and should be able to participate to the extent that they can, that is by making submissions in appropriate cases and listening carefully to the reasons and all that’s… that’s given. And the support groups that help them are very valuable in this regard. [Q So do you think, is there kind of difference, between pre trial…?] Well obviously… I think the victim’s support groups do give victims support from the very beginning, but of course, until there’s been a finding of guilt and a conviction at court, the perpetrator of the crime, the offender remains, has got the right of innocence until it’s found guilty. But once they’re then, they’re found guilty, and then a term in prison is imposed, invariably witnesses, victims, think that the punishment for the offence is not nearly heavy enough. Now this is, I think... only because of a lack of understanding of how the court systems work. They do need more education, and I think their misunderstanding is aggravated by the media. You regularly see on television some particularly horrific crime and they’ve received a punishment in the Supreme Court and the television cameras hone in on the victims and say, ‘what do you think about that?’ What are they going to say? Obviously it was not enough because the victim is someone they loved probably more than life itself and yet this person’s only going to do twenty, thirty years, when they’ve lost this person their entire life. The media I think are to blame for a great deal of the misunderstanding here.

14. ODPP: [Not asked]

15. Police Prosecutor 1: Well that’s right, as I say um especially with Apprehended Violence Orders where they got a program coming in to place where we’ll be contacting victims and getting them to come for meetings and conferences before the hearing date rather than doing it on the hearing date where they might have some hesitations [sic] about coming to court because they don’t know what’s going to happen. Um, it’ll give them…hopefully feel at ease with coming to court and being involved in the process. Obviously the process can be daunting to some people and that frightens a lot of people away…It’s often the case that you’ll get a matter and the victim won’t turn up…That’s probably one of the biggest problems actually for police, um, obviously with the cycle of domestic violence and other matters where, you know, people have a break up, ring the police, they get back together and then for a number of reasons they don’t want to come to court and give evidence and then all of a sudden down the track it goes back to the same way, the circle of violence and, um, you know then they come to court. I had one the other day that came to court and
um she didn’t want to give any evidence no matter how much pushing the court could do or I could do. She was never going to tell the court what happened. You know obviously you know maybe if she’d been spoken to maybe before she may have changed her view in relation to things or have- the DV CAS(?) ladies here, they do a good job. They try and do as much as much as that as they can, but um, yeah. That’s the way to do it I think [Q: So you anticipate when this gets implemented...?] Yeah, that this will help to resolve some of the issues and that might get more victims to court. [Q: that might be less frustrating for you guys] Yeah, well that’s right because we get her on the day, the police have got to put all the work together to get the brief together and obviously, the defendant in relation to paying their fees and the court time and all that sort of stuff, um if we can get…as I say, if victims come to court it’s got to be a good thing I think, anything that can get them to court to give evidence because that’s the, that’s the big issue at the moment. And the courts are sort of, I’m not going to say they’re powerless, but they’re reluctant to, you know, there are processes you can to get witnesses here like issues warrants and things but the courts are reluctant to issue warrants for victims so really your hands are tied. It’s all up to the victim, that part of it is all up to the victim. If they don’t want to come and give evidence they pretty much, they stay at home and, um, they’ve got some control especially if they don’t want to…probably maybe too much control, so hopefully that pre-trial conferencing will get more of them to court…see how it works I suppose at the end of the day.

16. Police Prosecutor 2: How can they? [Q: Yep] I don’t really know the answer to that. Victims participate in courts and I’ve dealt with many courts in this state. I’ve just spent the last five and a half years down in, um Monaro, which is Queanbeyan, Cooma and Bombala. Um. I’ve done as far north as the border, and as far west as Broken Hill. So read the question again? [Q: repeats question] Well, they’re not really part of a court process. The - they…The process is undertaken by the AGs courts obviously and the police. They become entwined in that process just because of the circumstances as they’re a victim. But, they’ve got no control over what happens. So no, they got, they can’t get involved in the process.

17. Magistrate: Well, let me approach it from the um, in reverse because it’s obvious in my view that um things like conferences, youth justice conferences in the children’s court, and conferences generally where victims and the perpetrators are brought back - sorry -are brought together for there to be an understanding as to how the crime impacted on the victim, I think that’s very important for the accused or defendant to be aware of what impact his or her actions have and on the victim, and to perhaps explain to the victim where the um where the accused was coming from. Sometimes there are sad stories to tell and sometimes an understanding of those issues may sort of lessen the um, the bitterness that may have been caused by the commission of the crime. Now I know conferencing is not a, a um, common occurrence outside the children’s court, but it seems to me that um if there’s been real harm done to a victim by a defendant then - unless the victim says: ‘no, I don’t want to participate or want to have anything to do with the defendant’ - it seems to me that a process that would allow some interaction between the two groups could be part of the healing process for the victim, and it may also spark some empathy in the, in the accused so that person may not be inclined to do that sort of thing again. So it seems to me that there’s room for that. During the, um, the hearing process, um, again I can’t think of anything that would be applicable in the children’s court but as I mentioned
earlier at the international criminal tribunal in The Hague there was a suggestion, and some serious thought given, to allowing the victims to be separately and legally represented in the trial process, in the criminal trial process, and the very thought of that horrified me knowing that um—particularly in an adversarial trial. There may have been some scope for it in the continental civil law system, but in a criminal trial where a prosecution has to establish guilt beyond reasonable doubt, then having other legal representatives there to present the victim’s position, well I thought— it could run completely counter or contrary to what the prosecution is trying to establish. It wouldn’t be hard for me at least to um foresee a scenario where it could just destroy the prosecution case. Whilst the good intentions may be there, that a prosecution is based usually on a tactical strategy on available evidence and on what inferences you’re hoping a court will draw from a set of circumstances to have a—It’s bad enough that the accused is legally represented is interfering with that process by putting up defences and what have you, but to think of a victim also being involved in that process is in my view a nightmare. I’m not aware that it, it happens in any sort of common law based trial process. I may be wrong on that, but I’m not aware of any. When it was proposed for the ICTY I was certainly opposed to it, and it never really got off the ground. Pre-trial, I don’t think there’s any role for a court pre-trial. It’s more the prosecuting and investigating agencies that need to do all that liaison and the court itself will only get involved once a charge has been laid and once the proceedings are before the court. So I don’t really see that there’s an opportunity for the court itself to get involved. Um, having said that, um, I am—twice now I have been invited to attend a victims’ support group and to just inform the group of trainees as to what’s involved in a criminal hearing from the court’s point of view. And that’s obviously—it doesn’t involve any particular victim but it does involve groups who are there to support victims and witnesses in giving their evidence in a criminal trial. So to that extent that the, the court can be part of the education process, I think that’s certainly very important.

18. Detective, NSW Police

Um, they can attend at any time so even for a mention, which they don’t have to. So at this stage they only need to attend court if they’re um, if there’s a trial or it goes to hearing. But they can attend at any time so if the person goes for a bail application or just a mention about the matter they’re more than welcome to go so they can participate that way if they want to. Um, they can ring and speak to the OSE to find out what’s going on or even to the prosecutors if they need to do that. The prosecutors will probably refer them back to the OSE and say, speak to them, but they can make phone calls to be able to do that. [I: to next Q] Sorry. If I can go back. Um, once a matter has been um has gone through the trial process and the person is found guilty, the victim has the opportunity to put in a victim impact statement. And, that impact statement will be…in their own words what the crime has done to their life. So, how they’ve reacted to it, adverse effects, what it’s now created in their life, how it’s affected them, how it’s affected their close family members and that sort of thing. And, it’s really quite powerful um because especially in their own words you, it’s um, that it one of the things…So, the victims’ impact statements are definitely at the district court. I’ve had a few of those handed up, and as I’ve said, they’ve been very powerful. The Supreme Court…um, not so much in the Local Court areas that we get them, but…[I: by powerful do you mean for the impact or its impact on sentencing?] Both, both. Um, definitely for the victim because it’s their way of airing, saying to this person ‘cause they don’t really want to see the person, but it’s their way of saying to the person, ‘you’ve hurt me and this is what your actions have
now made me feel and what they’ve done to me’, so it’s their way of, I suppose getting out their anger, their frustration, their sadness, and everything that they possibly can in a letter form, which is great because essentially it can be directed straight at the offender. Um in sentencing as well because the- it gives the judge an idea of the impact that this crime has happened, that’s happened to this person, and they wouldn’t generally know so – unless they get up on the stand. It’s not- It’s usually not a question that the prosecutor or the defence will ask. They won’t turn around and say, ‘well, how’s your life now?’ Like ‘what’s the impact?’ and generally the victims are better off I think… But yeah, it’s a great way for the judge to see the long-term impact on, on what happens, so very powerful stuff. So, I have to admit I have read quite a few that, of my cases and it’s brought me to tears, absolute tears, just to- Because even we don’t realise the impact, because we deal with them on a, well on the worst day of their life and then we sort of do all the paper work, we go in to business mode and ‘let’s find this person’ and get this done and that sort of thing and we don’t have to worry about them going to sleep at night and things like that so…{I: Or, ‘I haven’t been to the shops in six weeks because I’ve been too scared or…} Exactly, exactly. And I can’t sleep in my bedroom anymore, and I can’t go out if my husband’s not with me and- yeah, very powerful stuff.

19. Solicitor, SDVCAS I think victims should always be encouraged and I think there should be a process by which victims um get assistance with victims impact statements um in the sentencing…when matters go to sentencing. Um I think that would be one area. I probably don’t know enough about um just criminal processes as to whether or not- I know that um in District Court matters that the DPP have Victims Assistance Officers who do keep victims updated and probably encourage them to participate. Um, but I’m sure that there are a lot of areas there that well, where victims could possibly participate more, be encouraged to participate more, but I really don’t know about all those practices and procedures.
Q10 Which court or tribunal allows for victim participation best?

1. Magistrate: Oh, it’s more common in the Supreme Court because they do Victims Impact Statements...It happens much more frequently when, you know, following a charge of murder, you know, that the victim has an opportunity to speak.

2. DC Judge 1: Um, I can’t tell you, I don’t know. I think that - What in New South Wales? [Q: yes] Look, I don’t really know but I presume that it’s the Supreme Court because they have fewer cases and they take longer. I presume it is because in the end it’s a question of magistrates being extremely busy and not having time to really consider anything very...with an even wisdom, and in the district court its very similar, there’s a pressure about, about production, about figures, about efficiency. So I presume it’s the Supreme Court but I don’t know.

3. SC Judge 1: I don't think there’s any, there’s frankly any differentiation. I think the system being what it is, um, all levels of courts allow participation in the manner that I’ve outlined, I’ve outlined on an equal basis. I don’t think there’s any differentiation between jurisdictions. The District Court have people who provide victim impacts statements, I think the local court does as well. We do in this jurisdiction. There’s no appreciable difference across the board.

4. CC/DC Judge 2: Um. I can’t answer that question because I’ve only got experience in the District Court and the Children’s Court...I’m not aware that anyone does it better than anybody else. But if there is a best practice then it would be good for it to be rolled out and the other courts could learn from it.

5. DC Judge 3: Well I suspect that victims compensation, um, tribunal, and the roundtable meetings between victims and a prisoner or the offender, which – what was it, that Terry O’Connell was doing, I can see in cert- in many cases how that is of advantage. But that is unrelated to the process that I do of sentencing people.

6. DC Judge 4: I would have thought criminal injuries compensation would be the one where their effectively dealt with in a manner... because the whole tribunal is set up for them.

7. MHRT/DC Judge 5: I am not really in a position to compare. Um. I can’t really, I can’t really compare that. I think that, I suspect not having been involved in it, but I suspect that circle sentencing may, um, may give a large amount of scope to victims, circle sentencing which is conducted by some Local Courts in relation to Aboriginal offenders.

8. DC Judge 6: I don’t know, but I should imagine the District Court because we are the major trial court, and in our particular courts - the victims that I’ll be thinking of most would be victims of sexual assaults, which come before this court and also victims of robberies which also come before the court and so I think the District Court would be the best to deal with victims.

9. SC Judge 2: Oh well, since I said they’re all the same. I don’t think- I would rather- I suspect that the lowest level of participation, but I don’t know this, would be in magistrates courts. They’re extremely busy dealing with sentences like a factory.
Um, you simply have to get through it, through the work, and also, um, although theoretically victims can certainly make I think victims impacts statements in those cases, I think the police don’t get them if it’s just an assault or perhaps even a robbery. The magistrate has to kind of deal with- You make assumptions of course that if there’s an assault someone’s been hurt and frightened and so on, but I would think with magistrates there would be less opportunity for victim involvement. Of course, usually those offences are not quite so serious that’s why they’re in the magistrates’ court.

10. SC Judge 3: To be quite honest, I wouldn’t have a clue.

11. SC Judge 4: Well, I have to say that when I practiced at the bar I had a civil practice so I really can’t speak about the courts generally in a first hand way and I’ve only been on the Supreme Court for, since May last year.

12. DC Judge 7: That’s loaded. Best form the courts view or the best from the victims view? From the victims view, I don’t think any court could provide the remedy that the victim wants because I’ve come across victims who take completely different attitudes to the crime, even the same crime, so I’ve had sexual assault victims who proceed with a degree of understanding and forgiveness and I’ve had crime victims who have an unrealistic Old Testament view of punishment. Ah, that - yeah. It’s Old Testament. It completely ignores the foundations of our justice system, which is basically New Testament 2. Christianity [laughs]. So ah…I can’t answer that any more than saying from the point of view of the courts, I don’t - I think the critical role is the prosecution and the police, and it’s the initial contact with the justice system that in my experience - that is with the police - that has been the most damaging for victims time and time again, and the biased, prejudiced, reluctance, um, inability to get a, sometime to take a claim seriously or get the same officer time and-one time after the other, creates more problems for the justice system than what happens at the end of the process when you get to court...and that’s where in my view the focus of victims assistance should be, at the front end, not…on the small minority of cases that get to trial or sentence.

13. Parole Authority: I can’t really…it’s a bit unfair, it’s a bit unfair. Look…the law requires, provides, has provided over recent years for witnesses’, for victims’ submissions to be taken into account. I rather think, and have reason to believe, that the way the parole authority deals with victims, because not only do they put in formal submissions when they are required to, but we make… our secretariat provides for them, for instance, when they’re, the offender is coming up for parole, for them to get a appropriate list of, for instance, the courses that the prisoner has done. They don’t get all the information, because a lot of that is, has to be, highly confidential. But the secretariat goes to, and spends hours at a time with victims trying to explain the system to them. They also are, they are also supported by the victims register which is not of the part of the…is part corrective services, not part of the parole authority. So I think that our system does it well. I can’t really comment, seriously comment, on whether that’s better or worse than the other courts really, because I haven’t sat on the bench of the normal courts now for fifteen years.

14. ODPP: I think probably the District Court, which is the major trial court. But then again it varies a little from judge to judge because not all judges are the same. They
don’t have the same attitudes to the participation of victims in cases, but overall I think comparing court to court, the District Court is probably our best.

15. Police Prosecutor 1: That’s a hard question because I’m only involved in the Local Court. I suppose it would be a bit hard for me to answer that question. I think, I think the Local Court with domestic violence because they’ve a room where the ladies can come and stay, I think- I think- even though they’re not involved in the actual court room saying anything, but they tend to have a say in that form. I suppose forum sentencing. There’s a program called forum sentence, which is where someone pleads guilty and um as part of the penalty regime the victim comes along and gets to participate in the, their feelings and letting the defendant know their feelings. I suppose that’s where they get a opportunity to come along and give their version. Obviously in the local court you can give, victims can give um if it’s a serious enough offence and it’s an appropriate offence, you can do a victim impact statement where they get [tape skips] stand up in court sometimes and read out um the impact that the crimes had on them in the sentencing proceedings. So um there’s a number of- Local Court- I think the District Court does that as well. Forum sentencing’s not available in the District Court but um I think the Local Court as I say victims are more and more now becoming involved. There’s things in place where they’re getting involved. Whether that’s a good thing, I don’t know. I know if it was a traumatic experience for me and um you know you’d suffered from a crime I don’t think I’d want to relive the experience but some victims want to do that to get it off their chest, I understand that. There’s pros and cons for everyone. I guess it depends on the victim I suppose […] …And, a lot of police, you know, they don’t like to come and you know [give a VIS]…Anyway, that’s only my personal view. Every victim’s different and sometime it’s going to work for those victims and I think that’s an example of where they get to participate in the court process, if that’s what you’re asking. Yeah.

16. Police Prosecutor 2: I think they all do. I don’t- I can’t differentiate between any of the jurisdictions. Though we have, and- You’re only really talking your children’s court matters and your local court matters. Um, no.

17. Magistrate: Can I ask what - Do you know what is meant by victim participation? [I: clarifies] Just thinking off the cuff, the only involvement that I’m aware of I think – and as I’m talking I’m reflecting - that is when they’re actually giving evidence as a witness. I’m not aware of any other involvement of victims in the court process apart from the fact that they’re there to be witnesses. I guess a participation- If they’re not going to be a witness or if they’re a witness who has finished, allowing them to remain in court to hear evidence is probably not a bad idea. It run the risks- It runs the risk however of, if there’s a need to recall a witness and the victim has been sitting in court after the victim has given evidence then any value of a recall is lost because the victim has been present during the hearing, but if that’s not going to occur and if it’s done with consent, then um, yeah, it may be useful for a victim to be allowed to sit in and listen to the remainder of proceedings and perhaps including the sentence. Um I know because I’ve had cases where the prosecution have asked for witnesses to remain in court after they have given evidence, defence counsel have objected to that and they don’t want them in court. I think primarily because they’re going to be critical of that witness’s evidence and they don’t want to offend the witness and they’re more free to criticise if the witness is not there. Um, that may or may not be legitimate. If the victim or witness is present in court then it may control some of
things that are said, but ah, I guess you’d have to deal with that on a case-by-case basis. But apart from that I can’t think of any other way that victims could participate in the process.

18. Detective, NSW Police Um, look I’ve had the most dealings with the District Court so I would say that the District Court would be the best.

19. Solicitor, SDVCAS Mmm, because I don’t know- I’m sure that in some of those tribunals that there would be much more victim participation but I don’t attend those so I don’t know sorry.
Q11 In which court(s) (or proceedings) is victim participation limited or inappropriate?

1. Magistrate: Um, well. You’ve got to remove somebody’s objective view of what’s happened to them in relation to how somebody must be dealt with, and I think sometimes it would be very difficult for a victim to necessarily assess the criminality, for example, in a matter. So, whilst I understand that they may wish, and I suppose make sure that there’s no vengeance involved as well, because that’s why we have, um, an independent prosecuting authority to prepare the matters to remove people from confronting each other in a face-to-face version. Um, I do think in some matters it would be difficult for a victim bearing in mind what they might see as being a huge catastrophe in their life, which it may well be, but um, them having any role in sentencing procedure, proceedings and I think of maybe driving offences where the level of criminality might be, um, low, very low, but yet the consequences are huge. So the criminal justice system doesn’t adequately deal with that at all, with their rights, with their role at all, which is really something quite separate.

2. DC Judge 1: Um…Look, as a matter of principles, I think it has to be borne in mind that the state brings the prosecution and it’s an offence committed against the law of the state, and it brings a prosecution against an offender and that the victim is a witness and not…a party to proceedings so that um I don’t think that the role of the victim should be um overemphasised. I think the victim should be protected and assisted and everyone, but we’ve got to keep in mind that it’s the police, the prosecutor, the state that’s taking the action against the offender, and that when the offence is committed it’s an offence against the victim or several victims but it’s an offence against the law of the state, so it’s the state protecting the security of the state that’s important. Does that answer your question? It’s a backdoor way of answering it, but I think the victims should be involved and they should be considered and they should be protected and they should be supported, but I don’t think that their role should be over-emphasised.

3. SC Judge 1: No, I don't. I think… it’s presently under the current system that we operate set at an appropriate level and that level is generally speaking consistent across the three jurisdictions: Local Court, District Court and Supreme Court.

4. CC/DC Judge 2: Well…Not from a fundamental viewpoint. I don’t see why there’s any type of process that’s any different from any others except as I say in children’s courts we do have closed courts because we protect the name and identity of the children. But apart from that, um, as I said, I think there’s an appropriate basis for differentiating in sexual assault cases and maybe the concept that applies in sexual assault cases could be rolled out to other similar cases where, where there’s a disparity in power between the victim and the perpetrator for example. So I think that process where persons are giving, cross-examined from a remote location or giving their evidence by, um, CCTV could apply in other situations, parallel type situations where there’s an imbalance.

5. DC Judge 3: Yes, it’s inappropriate in the sentencing process of the District Court of New South Wales…and the Supreme Court, and the Local Court, any criminal proceedings, it is inappropriate. For all the reasons that you’ve heard, that is, that it’s the articulate who go on or the better than most who are less articulate, and it
becomes, well if their views are to be taken into account well then, the person who hasn’t got relatives, why should they be, um, why should there be any weight placed upon what the relatives of the victim or the victim and the extended family have as against the single person.

6. DC Judge 4: Again…I hate to be a lawyer [laughs]. It’s a question of definition like…for instance the, I’ve recently had victim participation in a confidential, um, confidences type situation where there was a separate representative for the complainant in a sexual assault case where it was necessary for the defence to subpoena material – sorry – it was necessary for them to attend in order to resist the subpoena of material about confidential communications. Um. That I think is certainly appropriate. But if you’re talking about the participation in terms of the litigation of a criminal trial, um, I’m a fairly conservative person in terms of how many parties there should be. Participation I suppose is a very general term. If it’s suggested that victims participate in a manner that makes them parties to a proceeding, I find it difficult to work out how to deal with that because to a certain extent the whole structure of the criminal law presupposes that the conduct, assuming that the person is found guilty, carries within it a significant element that needs to be denounced because of the very consequences to the victims themselves. There is a built in assumption in crime, criminal law that the victim- There’s an element of retribution in crime, in sentencing and an element of denunciation in crime and an element of personal deterrence in crime. All of those are factors that are directed either wholly or in part to the victim. The difficulty philosophically is distinguishing the consequences to each victim, to individual victims of what may be the same action by the accused, sorry, the offender. No, I don’t support victims taking part in the sentencing process because one element of - I think a fairly sophisticated - system is that it is the prosecution that seeks the vindication of their rights.

7. MHRT/DC Judge 5: Um. Obviously victim participation at most levels of the criminal justice system is limited, um, because they’re not a party to proceedings. But, um, as for inappropriate – no. I don’t find anything inappropriate.

8. DC Judge 6: No, I don’t. I don’t know of any.

9. SC Judge 2: You mean more limited that it ought to be? [Q: Yes] I don’t believe so.

10. SC Judge 3: Well as I said victim, specific victim input to the appropriate sentence I think is, in terms of nominating years or types of penalties, um, is generally not desirable. And, also I think there’s some role for input into the level of charges, but not much. I think we should let prosecutors figure that out.

11. SC Judge 4: Well, I can’t speak generally but what I’ve said already about my appreciation from my position as a Supreme Court judge would suggest to me that at least on my more limited experience time-wise that I think there is appropriate participation.

12. DC Judge 7: Yes, the trial as I’ve said because they shouldn’t participate as victims, they should participate as witnesses. Sentencing, the purposes of sentences even the statutory purposes of sentencing in 3A of the - 3 capital ‘A’ - of the Crimes
(Sentencing Procedure) Act, put recognition of the victim and denunciation as one of the factors, and so far as the victim is concerned in most cases recognition of the harm done to them and denunciation are the prime factors along with punishment. So it is hard sometimes where in sentencing procedures at least fifty per cent of proceedings are taken up with the poor accused or the poor defendant as opposed to the victim to give them what they often believe is their due when their recognition of the harm done to them is one of a number of factors to be considered and weighed.

13. Parole Authority: I really don’t want to comment on that.

14. ODPP: Well in proceedings where the victim is in effect the whole community, um, it’s not necessary or appropriate for individual victims to be involved. So in the case of...tax fraud, customs fraud, corporate fraud, Medicare fraud, social security fraud, um, those, or public order offences where there’s no individual injured or directly personally involved, in those kinds of offences where the victim is the community, then I don’t think it’s appropriate for these sort of representatives of the community to get involved. But in any case where there is an identifiable direct victim of the crime I think there’s scope for victims to be involved in some way, or families of victims.

15. Police Prosecutor 1: Um gee, I don’t know. Obviously as I say sometimes in local court proceedings the victim has no participation other than making a statement you know like minor crimes and shoplifting and some minor assaults where the offender will come and plead guilty, the local court won’t want to hear from the victim and the victim doesn’t really get a say at all. Even if the victim wanted to have a say, they probably don’t get to have a say unless it’s a certain type of offence, as I say, where they can make a statement and give that but for a minor offence really the magistrate acts for the victim really or we act for the victim so, they don’t really get any actual involvement in it so far as we’re there for them and we do that, I do that anyway.


17. Magistrate: [Not asked]

18. Detective, NSW Police Um…Look, I can’t really say where there’s anywhere it’s limited because if you’re a victim of a matter then, and if it goes to court, generally you’ve got to give a, get up in court and give your evidence because statements aren’t handed up because they need to be cross-examined on the truthfulness and that sort of thing, of what they’re telling. So I can’t say that it’s really limited in that regard. But as I mentioned pretty much back at the start and I think, especially in sexual assault cases, it really does need to be limited a lot more than what it is.

19. Solicitor, SDVCAS Where victim participation is inappropriate? I can’t think of anywhere where it would be inappropriate, um, at all. Or limited- and probably these questions are one’s that would have been good like I- they’d be good for me to have. Have you got these electronically? Because some of them, yeah, but I can’t think of any, um, yeah, I don’t know enough about those to, to answer that question, yeah.

1. Magistrate: Um, I’m not quite what you ask me by that either. [Q: clarifies]. Restorative justice is what I was meaning before by conferencing, but that, I think that would be a more useful thing. I don’t think they should be placed outside, no, because they will then think…particularly in the other courts - the children’s court is a closed court, the other courts aren’t. That would be terrible to think that something has happened when they couldn’t see it or hear it. I think for the purposes of open justice so it can be assessed, I think they need to be able to sit in court. But I really think for their needs maybe some piece of restorative justice needs to come into play as well. Particularly because of the adversarial system in the way it works, it must be confronting for victims to find that somebody is defending something, um, and I’m sure it must be difficult for them to understand…to wonder why somebody hasn’t offered them an apology at times. Um, perhaps on the basis of legal advice that you’re not permitted to admit anything. You know, because there’s certain defences to things that I think a victim would struggle with, understandably. But, the consequences, um, can be extreme…I think also some defendants really would be better placed being in a position to confront the consequences of what they’ve done. I mean I don’t know that jail is the only solution for a lot of matters. I think perhaps restorative justice has a much bigger role to play.

2. DC Judge 1: Um…as distinct from being inside the courtroom or somewhere else? [Q: clarifies] Well look, I think the victim should be free like anybody else after he or she has given their evidence to be in the court or outside the court. I just think that once they’ve given their evidence – of course they shouldn’t be in the court until their evidence has been given. But it depends you see. It might be the victim’s mother who is being called to give evidence or there might be a psychiatric doctor, psychologist, psychiatrist coming to say how disturbed the victim is. That might be very threatening or very dangerous, very injurious to hear all that, so I mean it’s not…it’s a question to the advisor of the victim about whether the person should be in the court or outside the court I think.

3. SC Judge 1: Sorry what’s the, just run the question by me again [Q: repeats, clarifies] It depends in what sense you’re talking about. Um, strictly speaking- Well, again you need to draw a distinction, a distinction between the victim who’s a witness and the victim who’s not. Um. The victim who is a witness comes in and gives evidence. Once they give their evidence they are excused. My experience both in practice and in the little over twelve months that I’ve been appointed is that those who are victims remain and watch the trial process from the time that they give their evidence until the finish. I think that’s a good thing because I think that it’s important that they see the process in operation so I certainly don’t think that they should be outside as it were be it in a physical or other sense. I think it’s very important having given their evidence they watch the process in action.

4. CC/DC Judge 2: …I’m not sure I understand the question. Do you mean should they be excluded from the proceedings? [Q: clarifies] Oh I see what you mean. Well I mean I guess our whole system is dependent on the victims giving the evidence otherwise the case can’t be proved. But, I think there’s always room for improvement
in terms of enabling them to give their evidence, um, in writing in advance and then only being required if they are required. Um, there’s a lot of scope in criminal proceedings for adopting some of the civil processes where, where they can give their evidence in writing and then only, only come to court if they are required for cross-examination on a specific aspect. Although in a jury trial, for example, more often than not the jury will want to see the person and assess them for themselves. I guess in judge-alone trials there’s more scope for the written word to be used and for the, um, witness not to have to appear at all. That’s all I can think of on the spare of the moment. [Q: …Do you use restorative justice in the children’s court?] Not as much as we’d like to. Um, certainly the whole idea of youth conduct orders and youth justice conferencing is, is entirely based on restorative justice principles so that we’re…They’re required to if you like, um, have a – confrontation is the wrong word but they’re required to meet with their victims and part of the whole process is for them to, for the perpetrators to be able to see it firsthand the impact that they’ve had on their victims and also to make, to make amends if you like to show their genuine contrition. So I think we in particular in the Children’s Court do more in terms of restorative justice than any other jurisdiction…in those processes.

5. DC Judge 3: Well I’m not in a position to judge it. The position is that they should not be in the court unless their therapist, psychologist or person says that is, there is some advantage in them being there, and all this nonsense these days of having victims in there thinking there’s going to be a cathartic release of emotion at the end of the sentencing process is nonsense. And I don’t know where it comes from, but I keep saying to people that they should get professional psychological advice before they put themselves through all this. I mean it’s terrible to watch them there, you know, going through the whole thing again. And it is con- it is contrary to what used to be, and I think still is, the general psychiatric advice that the body and mind heal themselves by time, and you should not go back there unless it is professionally guided, and just that courts do it at the behest of a counsellor most often without any psychiatric and certainly little psychological competence is dangerous to the victims and those who support them. You can see it. I sit there watching all this, and saying ‘this is not helping them’. And if anyone thinks it is then they need, they should, in respect of this whole question, it’s really a question for psychiatrists and…a study by psychologists. I mean that’s what we’re really assessing…The only exception to that is, if the premise of these questions is, is that victims have a greater role in the sentencing process. Of course they’re called in the trial process, but that’s only going to the facts in issue, but we’re really talking about sentencing aren’t we? [Q: Yes] Right well, if that’s so then I can’t- There needs to be a study properly funded by a psychological and/or psychiatric research body on this point, about what is the point of it, when it doesn’t mean anything as a matter of law to the sentencing process, and not only to the victims but to the persons who are in the court including the court staff.

6. DC Judge 4: Physically? [Q: not physically, more directed at processes, restorative justice and forum sentencing] I’d encourage any positive step that brings home to offenders the consequences of their actions to individuals. Um, whether that’s entirely successful is a bit of an open question. But if they, that is the consequence, yes, then I think it’s a good idea to have victims participating in those kinds of things in order to reinforce issues of personal responsibility for perpetrators. I think perhaps one of the, one of the issues for the criminal justice system is that
perpetrators can engage in a form of detachment from the, their actions and view them as, in a less serious light than they might otherwise do if they were confronted by the consequences.

7. MHRT/DC Judge 5: So what do you mean by placed outside the court? [Q: clarifies] Oh right, well depending upon the attitude of the victim and the offender then- and depending upon the seriousness of the offence, then in many cases it may be, it may be more appropriate or it may be appropriate that those things happen.

8. DC Judge 6: Would you repeat that please? [Q: repeats and clarifies] You mentioned circle sentencing as one of those. Well it’s very, it’s part of the, of the process that the victim does agree to, to attend the circle sentencing. Um. So I put that one to one side. Um…I think the victim should have the, make the decision as to whether he or she wishes to physically participate in the proceedings. Um, I’d be very concerned if the only way in which a victims impact statement could be presented would be by way of the victim coming to court and reading it because in those circumstances the victim would have to face the perpetrator and in addition to that the victim may feel constrained to explain his or her true feelings and the effects in open court, and also people may be highly embarrassed. I think the way in which we presently have it where people can take part in the proceedings either physically or by presenting material…read the question again to me. Sorry, this it’s the third time. [Q: repeats] Well…I don’t know if they’re best placed. In certain circumstances they’re best placed. I gave the examples where people would feel it difficult to give evidence in open court. Um, in those circumstances, they’re best placed out of the courtroom and others may want to come in. And um yeah, so, I can’t really answer that question.

9. SC Judge 2: Look I’ve had no experience with that except what I’ve read in various papers, so I can’t make any useful comment. I should say that it seems to me that victims’ involvement in the trial process, even the sentencing process, is necessarily limited. The major opportunity for their involvement in the process is really before the matter gets to court with police and prosecutors and so on, um, because there you can have, how should I put it, you can have relatively untrammelled conversation and untrammelled communication one way and the other depending on the circumstances. A judge is very constrained, necessarily constrained, in what can happen in the courtroom. So I think that in a way although the courtroom as it were - what would one say? – the dramatic focus of the conduct of a case, it is necessarily governed by formal rules, and so there’s less opportunity really for, necessarily less opportunity for people just to speak their mind and say what they feel. But outside the courtroom of course, they are not subject to the same limits.

10. SC Judge 3: Um, well. In answer to that second part, I think to conduct sentencing procedures on the basis that, um, one of their fundamental objects is to as it were…compensate or ameliorate the victim is an impossible objective, um, so an elevated status as to their input, which is victim impact statement I think is a good thing. But I think once we start to stick them very close to being a party then we will be going down a road which will be, um, counterproductive. Um, in terms of physical presence in court…Look in the trials I’ve had the victim’s family is or representatives have been in court and it’s been entirely appropriately. They’ve behaved impeccably even though it’s been, must have been incredibly distressing, so I’ve got no difficulty with that. I just don’t know about, ah, say sexual assault trials or things like that,
about having the victims staying in there. I can’t see why not. They should be able to
observe ju- Once they’ve given their evidence, then they should be entitled to, um,
provided they behave and don’t do all the usual things and there’s no other reason
why they don’t, there’s no reason why they shouldn’t be there. It’s important for then
I think to see the process work.

11. SC Judge 4: … Again because I’m a judge I have more experience with what
happens in the courtroom and, but I can imagine that those type of alternative criminal
procedures have a part to play in as a much as they may provide, and I stress in
appropriate cases and I wouldn’t regard every case as being appropriate, a direct
opportunity for the victim to confront the offender and confront the offender directly
with the effect of the crime on the victim. And given that the whole criminal justice is
accusatorial, I think there’s a place for that as I’ve said. But I think there is a danger in
overemphasising the direct and personal rights and interests of the victim because
although I hope I’ve indicated that their interests are a central consideration, I think
the traditional idea that the injury to the victim is vindicated by the whole community
acting in the criminal justice system and the whole community having an interest in
bringing the offender to justice and to the extent to which it’s a relevant factor,
insisting upon retribution and denunciation, then the victims’ rights shouldn’t enlarge,
as it were, in the process to such an extent that the interests of the whole community is
pushed out from the centre as well.

12. DC Judge 7: In a physical sense, I have no problem with people giving their
evidence by closed circuit television or other means. I have a problem with the old use
of screens and things like that, but that’s long gone. I have no problem with victims
being in court. I do have problems with victims and friends of victims with, who seek
to participate by carrying badges or slogans, which I’ve had on occasions. I have had
problems with the victims or victims groups who carry the abuse outside the
courtroom, but they’re again very rare. So far as other participation, I bel- my
experience has been that alternative dispute resolution can sometimes be useful. I had
a number of clients who went through the Cedar House sex offender diversion
program very successfully, again with the consent of the victims and their family,
usually because perpetrator was part of the family, and I thought that was [a]
particularly successful program in terms of ultimate outcome, but then I come from a
view that punishment per se is often a waste of time in both general and specific
deterrence and that the focus on prevention, which involves a degree of reconciliation
and acceptance by the accused and acceptance back into their community, which
includes acceptance by the victim, is part of the process of healing after crime and I
don’t- I want to encourage that as much as possible because if the victims are happy
with the outcome and the outcome is one that prevents further crimes from occurring
either with this perpetrator or others, then- and the victims are happy with that, then
it’s a win-win. If there’s an expectation that there’ll be severe punishment then
victims are often sadly disappointed. And if there is a retributive expectation then
some crimes the punishment can never provide sufficient retribution, so there’s
automatic disappointment if that’s the view that they take and that’s particularly in the
homicides I did as counsel. I occasional do manslaughter matters but not very often.

13. Parole Authority: It depends on the victims. Some victims want to be in the
courtroom. They want to face…now we have…our inmates appear, don’t appear in
person, they appear via video link. Now we give victims the option. They can sit in
the courtroom, without being seen by the inmate, and just observe everything. Or they
can sit in a part of the courtroom where the inmate will see them on a video screen in
the studio. Or, and we’ve done this on a number of occasions, sometimes, they don’t
want to be in the same courtroom and we’ve provided another room where they’ve
watched and listened to the entire proceedings via video. And that suited them.
There’s not one rule suits all, we try to cater for the different requirements. [Q: Sure
and so what about, processes such as restorative justice and victims compensation,
those sort of things...?] For those who are interested in... where the victims are
prepared to participate and where the inmate is prepared to participate, restorative
justice is exceptionally good - I’ve always thought it is. And I know of a number of
instances where I’ve been told of the process and the enormous therapeutic value it
was to the victim. And to the inmate.

14. ODPP: Well, if they’re witnesses, they can’t be in the courtroom until after
they’ve given evidence, so that solves that problem. Um, subject to that restriction, I
think it’s appropriate for victims to be in court to hear the evidence that is given, to
see the way in which the proceedings unfold, the submissions that are made by the
parties, the rulings that are made by the judge, the directions that a judge may give to
a jury and so on. And indeed, to see the jury’s reaction if it’s a jury trial to the
evidence and the proceedings. Um it gives them a sense of engagement with the
process, involvement in the process, it enables them to make an informed assessment
about whether or not the process has been satisfactory from their point of view, and
you’ve got to do that by having them inside. That said, they’ve got to understand that
there are certain rules of conduct they have to comply with if they are going to be in
the court, and if they can’t comply with that then they’ll have to be excluded. So
it’s... there’s a bit of a balance involved. But overall, subject to the witness evidence
qualification, um, I think there’s no, there’s real objection to having them in court. [Q:
probes about extra-court processes e.g. restorative justice] Well, that’s becoming
more common. Processes of, um, conferring and cautioning, um, where victims
become involved in the discussion and processes that are underway. I think that is
very good. I think it’s, um- I think the research shows that there is some success in
the, perhaps, less serious offences, um, in engaging all the parties in a conference
situation and enabling everyone’s views to be heard and appreciated. …That won’t
apply to everybody. There are always going to be some people who don’t engage
appropriately in the process, and there are going to be some people that are never
satisfied with the process. …I think it the majority of cases I think these alternative
courses are good.

15. Police Prosecutor 1: [Asks about question. I: clarifies] No, I don’t think that’s-
No, I think they have to have some involvement. I don’t really reckon they should be
put in a dark room and not told anything. That’s not the way it should be. If I was a
victim, I wouldn’t like that. And um, as I say, the victims have rights and that’s their
right at the end of the day. It’s a public court room unless for some reason the court
should be closed for some particular reason for example for sexual assaults and things
and obviously in relation to those sort of matters you know they can give evidence not
in the courtroom, they can give evidence via remote witness room and stuff like that
so in those certain circumstances…they don’t want to be in the courtroom to face the
offender or whatever and that’s fine with me. That should be a good thing. It really
comes down to the victim…what they want, their wishes I imagine at the end of the
day…The last thing we want to do you know is frighten them off or make the
experiences worse for them so I think there’s a lot of processes in place where the victims have a lot of you know protection there nowadays. So, it’s a good thing.

16. Police Prosecutor 2: Right. I’ve had very little to do with forum sentencing. Um, but my way of thinking it’s very similar to what they do in the Children’s Court where they can actually deal with it under the *Young Offenders Act* where it cannot be dismissed as such, but dealt with by way of conferencing and the like. And, my understanding of forum sentencing is something similar where they can get the victim in, the defendant in, um, and the victim can ask why it happened or something along those lines. It’s supposed to be confronting for the defendant, but it could, and I think again that’s another double-edged sword – some victims don’t want to know who broke into their house, and don’t want to ever see them again. Um, so I think that would be an individual thing. [Q: *asks further question to probe about whether victims should come to court*] Well, I don’t think they need to come to court. Nobody wants to go to court. I have to be here. Um, some people want justice. That’s understandable. I’ve seen a number of victims that attend on every mention just to make- so they know what’s going on with the accused and I’ve got others that refuse to come to court even when we’ve subpoenaed them to come to give evidence. [Q: *At the end of the day, how do you think that works out for them? Is it...*] Again, it’s an individual thing. I can’t tell what my victim is going to be like. Um. Like I said, it’s probably not so much in domestic violence. They don’t want to be here and have that involvement because they’re involved with that person out of court especially if it’s husband and wife, mother/ daughter, anything like that, ‘cause a lot of the times our domestic violence victims, um, don’t want to be victims anymore. They were a victim on the night. The following day they’ve made up. The police come and got rid of the problem for ‘em. He might have been charged, but now that it’s all good the following day, following week, following month, they don’t want to be a victim anymore. They don’t want to come to court. Um, they become what’s called an unfavourable witness then. And, if we can get them to court by way of subpoena, and if it’s serious enough the magistrate can issue a warrant for their arrest if they don’t turn up. Even if we can get them to the witness box sometimes they just refuse to help. So each of those things, you’ve got to deal with on its own merits. Some victims refuse to give the police a statement, but they’re happy to come to court and say what happened. Um, some victims give a statement and then don’t want to come to court and say what happened. Sometimes you can get them to court and they still won’t say it or they lie through their teeth, so they can get their husband/partner off.

17. Magistrate: Can you just ask the question again…? [I: *repeats*] Um. It depends, I suppose. That’s a hard question to answer. I can readily think of scenarios where outside the courtroom is the best place for them, but in other scenarios where it would probably help the healing process. So I guess it really depends on whether the witness really wants to be there or not. If there’s some technical reason that they can’t be there, but if not... Um, I don’t know. I find that a hard question to answer and I wouldn’t want to be dogmatic about it. I think it would depend on the circumstances of the case. I don’t think there should be any hard and fast rule that they should be obliged to remain out of court, nor should I think, should there be a requirement that they actually be in court. It really depends on the wishes and the feelings of the victim. Um, so I, I would be comfortable with a flexible approach depending on the circumstances.
18. Detective, NSW Police

OK. Um, the first part…the victims are required to attend court so generally we try and keep them separate especially if the um offender is out on bail and they’re coming to court freely themselves. So you want to protect them as much as you can by keeping them away and um and having, well-being there yourself to make sure that there’s no adverse… Again, they’re reliving the worst day of their life, and it’s just, well it’s a horrible process to have to see your offender again, even for just little matters, um, it’s quite horrible. I know with domestic matters um, at the Downing Centre Local Court, there’s a special room for the victims so they get to sit in there until their matter’s called so the- all of the offenders are out in the main area so they don’t have to deal with them, and they can’t be further harassed and things like that, which is fabulous. And you’ve got the um, the victim services in there as well, the court services, because they can come out and help, which is a great service. The sexual assault cases, as I said, they actually give CCTV evidence and that can be done from another building. But it’s not an automatic right. So…

19. Solicitor, SDVCAS

Um… I personally think victims are best placed, if we’re talking about physically, they need to be in the courtroom. Um, I know that there is often a push, say um- I think it should be a choice for some victims, such as sexual assault matters whether they appear in the court room or by AVL video link. I think that’s the victim’s choice. Um, but I think they should be given the choice. Um…And, as far as other, other ways of participating I think- do you mean taking it away from being a criminal matter and having them participating in say, like circle sentencing or something like that? [I: clarifies, not necessarily, alongside criminal justice] Yeah um, and I can’t speak for anything but domestic violence… I would say no to mediation or restorative justice or circle sentencing for domestic violence. I don’t think it’s appropriate so just, I don’t know about for other processes, others would have different opinions but for those processes, I would say no, I think it shouldn’t be taken away um into other, other processes.
Q13 Should victims have processes to allow them to participate even through their evidence is not considered? (clarify with a possible eg. VIS may be accepted but cannot be used to influence sentence).

1. Magistrate: Well they’ve got the Victim impact statement. I’m not quite sure. I would be concerned if they were sitting in the court calling out. I’d have them removed because, um, that just interrupts the proceedings and it doesn’t assist. It’s emotional for them; it’s hard. Look some people are very well behaved in extreme circumstances. But others are not and really it does take the focus away from what you’re trying to do. So, I don’t know really and there’s probably roughly equal numbers of well behaved and poorly behaved people so, um, I don’t know that I’d want them to have a greater role. It would mean a complete change of the way we run criminal proceedings in the country, in fact in the English speaking world where we have this adversarial system if you adopted that. [Q: asked about poorly behaved victims – is that most of the time the victims or their families?] Oh no, both. Well once a day in matters, I’m thinking of a particular incident where it was a driving matter where there was a low level of criminality but it was a serious, really serious, accident, and I mean it was inadvertence and inexperience, I suppose. Now, everybody suffered serious physical injuries and I did not send that young woman to jail, and the victim went ballistic in the back of the court. So it’s a really difficult thing. To satisfy him, I would need to send her to jail, but that would not have assisted his physical symptoms and to assess the level of criminality, I think I did the right thing by the way I did deal with her, which is convicting her and placing her on a good behaviour bond for I’ve forgotten how long, which I think was [words unclear at 15.53]. Maybe I got it wrong. I don’t know.

2. DC Judge 1: Um, I don’t really know what you mean. Why won’t evidence be considered? [Q: clarifies] I think they do, they do carry weight under section 21. The damage, the psychological damage to the person its caused, if its extreme or significant or not is something you take into account all under kind of subjective- you do take victim impact statements into consideration, and um victim impact statements—I know there was some kind of decision…that you don’t take them into consideration, then why are they read, of course they do. So, I don’t really know what the question means.

3. SC Judge 1: No. [asked to elaborate] because…if they are not giving evidence then their participation is limited to providing a victim impact statement at the end of the case in the event that there’s a conviction. They have no place in the process other than that, and it’s important to recognise that. As I say, if they’re witnesses well then that’s quite different, but if they’re not witnesses victims have to understand that the process has to take its course, that there has to be a fair trial for the accused, that the jury will be told to consider the evidence and to return a verdict according to the evidence and if at the end of that process, it having worked in that way a jury convicts the person, then the- I’ll call the non-witness victim, then has the opportunity to express their feelings about relevant matters through their statement.

4. CC/DC Judge 2: Sorry, just ask me that again. I’m not quite sure I follow the question [Q: clarifies] Um well…they can always have their evidence considered by way of a victims impact statement. Is the question along the lines of should they be given a greater ability to give evidence orally or to have a say in the sentencing? [Q: I
guess, yeah, well with victim impact statements obviously that doesn’t impact on your sentencing... Well they, they do. I mean victims impact statements, um, are always taken into account, but maybe not, maybe not to the level that a lot of victims would like it to be. And I don’t think it would be constructive, for example, for…Sometimes the victims can, are called to give their evidence in person; sometimes the impact statement’s just tendered. But, um, I don’t think there’s any value in giving victims a greater role in the process in terms of our current system, which is adversarial in process provided there’s an opportunity for them to put their perspective before the court, I think that’s sufficient.

5. DC Judge 3: Well like anyone, they should be entitled to view the proceedings, seeing that justice is done. That’s their right.

6. DC Judge 4: Well, again that’s about therapeutic jurisprudence. Yes, subject to all other things, subject to issues of fairness generally. Whether that itself is therapeutic, I don’t know. I’d rely on experts for that I suppose. Um. Can you repeat the question.[Q: repeats and clarifies] Yeah, look in some ways those things are a good thing, but I don’t know enough about how, whether that effects people...There’s some psychological evidence to suggest that the process of reliving trauma is in fact a significant negative rather than a positive, and the individuals involved may actually suffer more by repeating the process than it being therapeutic and I don’t know whether there’s enough information to determine whether that kind of process for all victims is necessarily good and if its not and we can’t distinguish between who it will help and who it will harm, I would be very loathe to do it. That’s a question for people who have some, you know, expertise in posttraumatic stress disorder and other things to be able to tell courts. Yeah, I’m…if repetition and participation help an individual victim then I can’t see any down side to their participation. If it in fact- that is participation in that way. If it in fact relives trauma and actually cements them in some kind of cycle of repetition that’s harmful then that’s a bad thing.

7. MHRT/DC Judge 5: Um, what do you mean? [Q: clarifies] Um, I can’t see, I can’t see what those processes might be. I mean a victim impact statement allows them to inform the court of the impact of the crime upon them. Um, I can’t think of what other processes within the courtroom might be appropriate.

8. DC Judge 6: Give me that question again? [Q: repeats and clarifies] Well they give evidence. They give evidence if the, if the perpetrator, the alleged perpetrator pleads not guilty. So what you’re really asking is, if the perpetrator does plead guilty if there’s some other way that they could express. Well, they do. Statements are taken from victims as to the circumstances of the offence. When a person pleads guilty those statements are given to the presiding judicial officer so there is participation that way. But in terms of the participation as to the effect on the victim as he or she feels it, no.

9. SC Judge 2: Look that is a very difficult question. Um, I think that the present system strikes the right balance.

10. SC Judge 3: Well as I said, I think victim impact statements are a very good idea. Anything beyond that gives them the status...as a party would be certainly not in their interests and not anyone else’s interests.
11. **SC Judge 4:** Well I think...Do I think the VISs are a good idea? *Q: yes, or any other processes similar.* Yeah, I think they're a very good idea and I think that...you're right you don’t require necessarily the victim to go in the witness box and be, and be subject to the stress of giving evidence, no, I think they’re a good idea, and should be given appropriate weight and also as I said, you shouldn’t underestimate the importance of the victim showing himself or herself in court during the process. The judge is aware that he or she is there and that has an effect.

12. **DC Judge 7:** Yeah, I don’t see why a victim who hasn’t put in a victim impact statement should not be informed as to what went on in court and the bureaucracy involved sometimes makes that difficult, um, and sometimes because things are done orally, not everything is transcribed so they can’t even get access to the file or an understanding of what the court did. So I’ve recently had a trial transcript obtained which I can only presume was being obtained so that the victim could know, have explained to them what occurred, and perhaps make a compensation claim, even though there was an acquittal. I’d encourage that and frankly, there are some cases where even though there is an acquittal, um, I think it is entirely appropriate that the victim pursue compensation or pursue some- there be some avenue to explain the process to them because there is a tendency to think that it’s a black and white distinction, which is not what the beyond reasonable doubt test is. Um, it’s not in civil cases, it’s not balance of probabilities, and I’ve had a number of cases where - there’s one in particular - where there was an acquittal. I respect the jury’s verdict, I would have reached a different view and I thought that the victim of this sexual assault was particularly hard done by. But there’s no way I can convey that without undermining the justice system, and I think that if steps are made that others can access the transcript or proceeding- evidence to explain that to them, it’s entirely appropriate.

13. **Parole Authority:** No, they can’t influence the sentence, but I think what it can do, what we try to do, is to allow them to be heard and to allow the court to understand the trauma that the particular crime has caused them. And very importantly, for the inmate to understand that. And I think that some victims impact statements, victims’ submissions that have been put to our authority, and have been heard by the inmate, are particularly eloquent, particularly powerful. And I think that that’s good for everyone involved.

14. **ODPP:** No, I don’t think, for example, they should be in a position to be able to cross-examine witnesses or to make submissions unless, as I said before, there’s a fundamental change in the way that we structure our processes. In some jurisdictions around the world I know victims can, are regarded as a party to the proceedings. They can cross-examine witnesses, they can call evidence, they can make submissions, they can make claims for compensation all in the trial process. But we don’t have a system like that and unless we make a very serious change, no I don’t think there is.

15. **Police Prosecutor 1:** Well as I say, maybe they could open it up to all matters, you know, where a victim could have a say rather than just the serious matters that that would give them a voice about how its affected them personally...That’s probably...say if someone was convicted, there’s a lot of matters to be taken into account in sentencing obviously there’s the specific deterrence to the offender, rehabilitation, and the um general deterrence in relation to deterring others not to
commit crimes but the victim then doesn’t get to have a personal say about how its affected them. Maybe open it up to um...If the victim would like to, just like a defendant would, handing up references, for all offences if the victim wanted to, wanted to have a say we should be allowed. And I have done it. Victims have obviously come in with letters and things and I have got them into evidence on sentence proceedings, but um there’s no law in place that would allow that, but maybe it would make it clearer to magistrates. That’d be a good thing. That’d be an idea I imagine.

16. Police Prosecutor 2: Well, there’s areas for victim impact statements, um, but it’s only in certain jurisdictional areas and that’s for table one matters or above. They’re not available and can’t be used in summary matters and table two matters dealt with in the local court. Um, that impact is normally through the police and through either the brief of evidence or the fact sheet.

17. Magistrate: [Not asked]

18. Detective, NSW Police Um, I…They could get a family member to give the evidence that they need to give for them. Um, again I’ll touch on the sexual assault cases because I have done quite a few of those, which is a bit shameful but um the, one of the statements that we get when we do an investigation is the um first complainant, so the person that the victim tells the very first time. Because that’s considered um, well, very good evidence as to the truthfulness of the matter and who they’re telling and why they’re telling and what they’re telling and what that person can then impart assists in the investigation. Um, I- I think that should carry a little bit more weight, um, to take away from the victim. So …little things like that. So if you have a victim that is completely traumatised or something like that, to be able to get a family member to sit in and even to read they’re statement to say this I what’s happened and this is what I observed afterwards, and that sort of thing, could be a process that may help.

19. Solicitor, SDVCAS So if you have a matter where um you’ve got say a secondary not a primary victim [long pause] So, they would just want to put in a statement saying something that happened to them. Um. The legal part of me says no to that [laughs].
Q14 Should victims be provided an advocate or private counsel (clarify – to help negotiate with officials, compensation claims, representation in certain contested matters, ie. sexual assault counselling notes discovery, tendering of VIS).

1. Magistrate: [Q: Clarifies what an advocate would be] What, what, to participate with somebody who had been charged with a criminal offence? Is that what you’re saying? Nothing to do with these civil proceedings? [Q: clarifies – in respect of criminal trials] Has somebody worked out the cost of this to the community? [Q: No, but it would be extensive I would suggest]. And the trials would go for [Q: a long time. Yes, so you would kind of feel on the negative]. So, then what, that’s, that’s a change? So, you’re actually suggesting that victims have an impact on what the sentencing, are they then proposed…I’m not familiar with the English system, they’d then have a role in the sentencing? [Q: clarifies] So you’re not talking about another representative? [Q: Yes] You are. Right, but are you meaning that they cross-examine people in the trial? [Q: No. Discussion. “From a lot of the interviews I’ve done regarding this question people sort of feel as though the prosecution do an adequate job, and that…”] I must say, I think they do. [Q: “and that the introduction of a victim lawyer would be kind of pointless as that job should already be…”] Certainly in the more serious…Look, I’m talking about local court stuff because I don’t know what happens there but really when I was a solicitor, um, in more serious matters, they have got a whole victims service, the DPP I’m talking about, and they do it very well. And, yeah, so I wouldn’t be suggesting that we did, um, duplicate it. As much as… I do think the prosecution adequately, um, look after victims, in most matters I suppose. There are sometimes where I think perhaps maybe not. Look you know that’s the failure in any system. Even if you had an advocate, you’d still have the same result. Um. I suppose we’re trained to just keep an eye on the cost of things. The cost of that is what I think is prohibitive, and it perhaps, it might be more necessary in the lower courts than in the higher courts. We’ve…Look, always these things depend on the experience of the practitioner. Like an experienced police prosecutor won’t miss stuff, but an inexperienced one will. An inexperienced crown prosecutor will miss it, an experienced one won’t. The same goes for the other side, so, I’m uncertain of the absolute value of that.

2. DC Judge 1: …No, not as a matter of principle. First of all that’s- In rare cases yes, but not as a matter of principles, no. I think that the…no. Do you want the reason? The prosecution is the advocate for that. They’re leading the case. Now, as far as when a victim’s making a claim for compensation, victim compensation then maybe they should have a solicitor preparing documents, but in court where they’re giving evidence in criminal proceedings, no I don’ think so.

3. SC Judge 1: Absolutely not, um, because for the same reason that I just indicated. There is no role for an advocate or private counsel for a victim that is regardless of whether they’re a witness or they’re a witness and they provide a statement. Witnesses, except in very limited areas have, no right of representation, um, there’s no reason to displace that rule in favour of victims of crime, and in terms of their victim impact statement there is simply no role for counsel or an advocate in those circumstances. They can provide the statement, be given the opportunity to read it themselves, have it read to the court, or not have it read out aloud at all. That provides
them with adequate protection and the suggestion, well the presence of an advocate or counsel for them in either role is just superfluous.

4. CC/DC Judge 2: Um, at the cost of the state? [Q: yes] I mean they’re always entitled to get their own legal advice, but I don’t think- I don’t see any need for- Well let me put it this way: there may be cases where it’s appropriate for a victim to be given independent legal advice separate from the prosecution, um, and I think that should be looked at on a case by case basis, but by and large I see no need for, if you like, separate independent advice being given to, legal advice I assume you’re talking about. Um. What they do need is counselling services and support services and maybe that’s an area that, um, particularly the support services, is an area where the current system maybe has some deficiencies.

5. DC Judge 3: For what process? For Sentencing [Q: For the whole process, so in the UK…] For the process of what? Of sentencing? [Q: Ah, no, from the beginning of the offence through to sentencing, so in the UK they’ve introduced victim lawyers…] And, why? [Q: They’re there to negotiate with officials and help with compensation claims and make sure their represented properly in contested matters]. Well, if the contested matter is what compensation that they get from the state or from somewhere else, then I have no difficulty with that. But I do have a problem if they are represented by a lawyer in respect of the criminal prosecution -that’s the DPPs job … Of course the question of what the victim has and the interests of justice can, are two different things. Rights of victims and the process of justice in respect of the prosecution of matters are two different things, and already the DPP doesn’t stand its ground as is its charter in making difficult decisions because of victims and their supporters complain that justice hasn’t been done. That is, cases proceed because the victims, you know, complains loudest, and that’s a big problem in respect of the DPP now. It’s a huge problem. That proper decisions, that proceeding with matters that shouldn’t, and I’ve had a number of those already, and that is not of help to the victim. It doesn’t help years later for the victims to be there thinking that going through all this…will give them any relief from what they are suffering from. That’s for professionals to treat, and shouldn’t be confused with the legal process.

6. DC Judge 4: Uh, again, very open ended question. Where, when and in what circumstances? [Q: clarifies] The reason we have a criminal justice system is that we don’t have a, in order to avoid a payback system. A payback system is the ultimate participation of victims and their families. I have had a very small experience of a payback system, say in New Guinea, it can be quite formalised. I regard it as a mark of a more sophisticated system that there is a independent prosecutor who engages in the process of advocacy rather than victim advocates. Um. Naturally, victim advocates so far as the criminal justice system which serves the whole lot of possibly sometimes contrary objectives, I’m not sure that would be helped by a third advocate, and I don’t in any way support the withdrawal of an independent prosecution service and the substitution of that with victim advocates. I think that would be a very retrograde step.

7. MHRT/DC Judge 5: Within the courtroom? [Q: Yes] No. The victim is only a witness. Other witnesses are not provided with representatives.
8. DC Judge 6: Well they are provided private counsel in relation to the subpoenaing of confidential material which relates to them. And the private counsel comes from, I think the bar association has a pro bono scheme whereby they...maybe it’s the law society as well. But in my experience it’s been, um, mainly counsel appear on behalf of the victim to prevent material going into court. The victim’s a protected person under the Act. So, um… That’s a broad question. If a victim’s giving evidence, should that victim have an advocate in court to protect their interests? No, because the Evidence Act provides that a person doesn’t...is not required to incriminate themselves without the protection of a certificate from a judge to say, if the evidence is given, it can’t be used against that person in any proceedings in Australia. So there are protections of a witness, for a witness or a victim in our law. For example, if a victim of a sexual assault was taking drugs allegedly with the perpetrator and the victim’s asked ‘did you take an ecstasy tablet before you, before this man had sex with you?’ – that’s committing an offence, and in those circumstances the judge is made aware that question’s going to be asked, when the question is asked the judge would say to the person ‘well you can refuse to answer that question’. And if they refuse to answer that question, then the judge considers whether it’s in the interests of justice for the question be answered. If the judge considers it is in the interests of justice then the judge will direct the witness to answer the question, but will provide the witness with a certificate pursuant to 128 of the Evidence Act that they, that the evidence given, with the exception of perjuring himself or herself cannot be used, can’t be used in proceedings in Australia. So there are, there are protections. And ah… If a witness is being harassed by a barrister, if a barrister’s being unduly repetitive, um, then the witness will be protected because the judge has the power to direct the witness not to answer the question and to admonish the questioner. So I don’t believe that during the course of proceedings that witnesses require an advocate to assist them.

9. SC Judge 2: It rather depends in what context, but because our general rule is that witnesses are not parties and that’s a very important distinction. I know that victims think of themselves as parties, but they are not and to have them involved in a trial as a party would entirely undermine - not entirely - would significantly undermine a proper criminal process so you could not have it, unless of course there’s some important issue that affects them, for example, privilege of one kind or another. Of course there are limits on asking questions and that kind of thing, and so that where they have as it were a forensic interest to put forward, I think it is appropriate that they might be represented for those purposes, but that’s very, very limited. And we almost never have it in our court. That’s, usually that’s in the sexual offence area but not invariably, and we simply don’t do those trials. Occasionally they might come into a murder trial, which is our major area of activity, and then there would be no difficulty in them being represented. [Phone rings. Some unrelated discussion of how many interviews etc] But our, our court because of our jurisdiction is very limited. [Answers phone].

10. SC Judge 3: No. Well once you make them a party they then assume obligations, and you don’t want to put them in that position. So, that there...They will become under all the ethical duties that apply to, ah, both the parties and then their the legal representatives will be under the obligations that oppose [? unclear] to parties. It would mean that no step can be taken, procedural step of any kind, so instead of a
case being a contest between the Crown and a defence, you will just have a third party there that will inevitably lead to, ah, trials going awry.

11. SC Judge 4: I...Well it depends what role you’d envisage for that specific victim lawyer. I don’t think that victims should have a right of appearance in the criminal process, as I believe they do in some European countries. I think, what I’ve said already about the primary importance of vindication and denunciation and justification of the victim’s position happening by the whole community through a lawyer who represents the whole community including the victim is the most appropriate way to go...On the other hand, having someone available to the victim to explain the process and the significance of the various steps and who can perhaps help the victim prepare a full, cogent and detailed impact statement could be a very good idea. Although having said that, I think, I think as I say the police and the prosecutors are sensitive to the position of the victim and explaining the nature of the process and bearing in mind the victims’ interest when they make their, certainly when the prosecutors, make their submissions.

12. DC Judge 7: Um, different levels. In terms of compensation claims, I believe they should be represented and I deplore the, um, lack of resources to allow for that representation. Now, it was when the victims compensation act came in in the 1990s common and there was a scale of fees and a number of lawyers…properly represented people. I often appeared for the state government opposing some claims, and they were proper civil court hearings and I think that’s a better way of resolving it than going to a tribunal and putting in a form, but you don’t, we don’t get any money to pay for the lawyer to prepare on your behalf. In terms of a criminal trial, no, because they’re not a victim as far as I’m concerned, they’re just a witness. That doesn’t mean, and I understand …that there are victim assistance people within the Director of Public Prosecutions Office who are pretty good in my experience, in fact, excellent, and there should be more of it. I’d encourage that. The same should be with the police and I don’t think it exists within the police. If it does I haven’t had any evidence of it, but I don’t do much…Local Court work.

13. Parole Authority: Well, they can be but I usually the victims groups I think give them adequate representation. It would be an expensive exercise to provide that, I mean there would be no harm in it, but I’m not sure that the expense would be, would warrant the greater representation, again because many of them appear with their victims group, currently, and they, that’s adequate, and so I wouldn’t oppose it, but, I’m not sure, what, how much more a lawyer would be able to advocate on behalf of the victim. [Q: Ok, so perhaps the introduction of a victim lawyer, you’re saying, might just be a bit fruitless, because...] The value could be in that the lawyer might more adequately explain the legal processes so that they understand the limits of what’s been done yes.

14. ODPP: Well again, unless they rise to the status of a party to proceedings, I don’t think there is any basis for them to be separately represented. Of course, if they want to obtain legal advice about what is happening and what they can do, well, they’re perfectly entitled to do that at their own expense. But I don’t think there’s any obligation on society to provide separate legal representation. There is much more emphasis these days on prosecutors providing appropriate levels of advice and
support to victims, and we seemed to have reached a fairly good balance so far as that is concerned, and so I think that’s preferable to engaging separate legal representation.

15. Police Prosecutor 1: Um, we’ll we’re an advocate at the moment so I think we’ve already got an advocate, but private counsel…well, I don’t know, I don’t think so. It would be very costly I’d imagine. They’re not cheap and I don’t know whether at the end of the day, at the end of the day the police prosecutors do probably ninety odd per cent of the criminal matters in the New South Wales court jurisdiction. Only about ten per cent or so matters go into the district court where the Director of Public Prosecutions prosecute, so I don’t think they, I don’t think- and solicitors obviously only generally come in for one matter… We pick up maybe four, sometimes five, six, seven, eight, nine hearings in one day. We run them all ourselves. If you allocated those out to private counsel, I could imagine the cost’d be in the billions and I don’t know that they’d be the number of lawyers out there that would be able to cover it so but in saying that, um, even though it would probably never happen, there’d be advantages in having the one lawyer all the time…We’re trying to implement that through the prosecutors at the moment, having one domestic violence prosecutor that deals with the matters all the time so you’re getting that one person all the time, which is…I think I’ve answered- I don’t think I can answer that any better.

16. Police Prosecutor 2: I’d love ‘em to have private counsel. It’d take a lot of my work away [laughs]. But, no, we…We appear on behalf of the victims as their counsel if you like. We’re- Police prosecutors are all expert trained in criminal law and that’s what we do. So I’m not going to say they we are better trained than lawyers as such, but we have different style of training and we work probably ten times the amount of court work that you’re normal lawyers would work in the criminal system so we’re very well experienced.

17. Magistrate: Yeah, no, I’m not in support of that in the context of a criminal trial. Now if it’s not a trial as such where the prosecution has got to establish guilt beyond a reasonable doubt then I can see other circumstances where presence and representation –separate representation – could um, could be allowed, you know for example compensation for offences depending what the offence is. I see no problem with that at all. But in terms of a victim participating as a party in a criminal litigation I don’t think I could ever support that. But if it’s not a trial, it’s not a criminal hearing, a hearing in…a contested hearing… as a question of principle I would have no problem with it. [Q: inquires further whether MB talks about it with colleagues]. Um, well, one of my personal problems in being based in Port Kembla is that it’s a lonely job. It’s only when I come to Sutherland where I meet other magistrates so, so I don’t really get much of an opportunity to interact with my colleagues. Tuesdays here at Sutherland is the only time that that happens [Q: You probably want to catch up on footy scores and that kind of thing] Yeah, well that’s right. It’s- Yeah- Unless someone has a specific question that they want to discuss and hopefully seek guidance or on an answer, rarely do we discuss sort of cases and um and policies. But, you know, it happens from time to time. But you know sitting in court all day the last thing you want to do is come out of court and talk about it.

18. Detective, NSW Police Yes. Someone to look after their interests. Um, you’ve got the police, the prosecutors – we’re all focused on the investigation, so we’re focused on putting that person behind bars or making them pay for what they have
done to the victim. So we are working for the victim, but the victim’s interests are not solely what we’re focusing on. So, when it gets to the court process, you’ve got the prosecutors that are bound by the rules of law and the evidence rules and things like that, so there are certain things that can’t be put in or they don’t feel is going to strengthen the case so they won’t put it in. Whereas the victim could be so sure that that is one thing that is going to turn the tide and things like that but doesn’t understand the consequences of, so to have someone that is their own personal advocate to explain, ‘this is why’, and to- It would help the victim remove the emotion out of it as well. When the- I mean, as you know, when someone get’s riled up about something and they really feel hardly(?) that this should be done, the emotions take over, the logic side recedes, so when that happens they can’t articulate exactly what they want. If they have an independent advocate for them specifically, that person can step in and do that job for them. So, that person can be their logical side while they can be the emotional side if that’s what they need to be. Whereas the police and prosecutors, I don’t think can do that adequately for the victim. So yes, definitely agree with that.

19. Solicitor, SDVCAS Yes, yeah, I think victims advocates, and if you look at some of the UK um procedures where victims, where in certain areas or certain jurisdictions where they’re given a, like allocated a victim advocate, um I think um that would come to court on each occasion - that’s probably a little bit like we do anyway, um, that’s what we are: advocates. And I think it is…it surely must make the process easier for a victim if they have somebody. Not just a court companion, but somebody who knows what’s going on and who understands the system and who can explain things and advocate for them, I think definitely yeah. [I: Do you think that would ever be implemented in NSW] Um, well really with domestic violence we do have it implemented so I guess with other things, I guess in New South Wales we’ve got DPP who do act like an advocate, like if a woman is coming to court for sexual assault you’ve got the DPP. If it could be even more widely um applied um that would be great. I guess the reason why it wouldn’t happen I guess is cost. So yeah.
**Anything to add/reiterate**

1. **Magistrate:** Um. I wonder whether as judicial officers we have enough understanding of victims. I think it does come with more experience, but - and perhaps I’m of a more particular background - and I think my empathy for victims is growing. I have a defence lawyer background. And, I certainly think it grows and I’m certainly able to, and as I said before, I really would like in a lot of matters more information about how victims are travelling later on, particularly when they’ve been a victim of a serious assault or if they’ve been seriously injured in some way. I would really like to know their progress. But, perhaps just, um, more reminders of the victims…But I think that can be done in judicial education is what I mean, rather than in, um, in necessarily having to set up a whole new system for it. But I also just repeat that I think restorative justice has a lot bigger role to play.

4. **CC/DC Judge 2:** No, not really. I think…It’s really my perception I guess that the system works tolerably well as it is. If there are specific recommendations that come forward from groups like yours, this court’s always open to being…amenable to change or improving its systems. But I think we would look at case-by-case propositions. But other than that we take the view that our victims are adequately catered for in terms of their capacity to be represented. As I said, there may be some scope for increased support in certain circumstances, but that’s really all.

5. **DC Judge 3:** Well I want to emphasise that they shouldn’t be participating, that is, their input as is to what happens or doesn’t happen with the vic- with the prosecution of cases. Indeed, its gone too far now in my mind that their views are considered in respect of whether matters proceed or not. And, I have one example of a matter- a fellow who got off on appeal and had served the time, almost the time…before his appeal was heard that he would have got, had the matter, had it been retried, and, and yet the DPP insisted that the whole thing go over between two young men, who at that time were consenting homosexuals. Now, that is ridiculous and that is the sort of nonsense that goes on, and that’s being confused with what’s called victims rights.

7. **MHRT/DC Judge 5:** Um…No, no, the only thing I’ve really go to say is that I think that, that as you say within the sort of context of restorative justice that particularly at the less serious end of the criminal justice spectrum that there’s, um, there’s scope for more involvement of victims. And there is one issue which I don’t have a strong, don’t have a view on, but it is an issue, and that is whether the views of victims should have any impact upon the sentence imposed. Um. On the one hand it would be unfair if there was a, a cooperative victim if you like who didn’t want the offender punished heavily, it would just be a matter of luck whether an offender got a cooperative victim. On the other hand, if a victim, a victim might feel some degree of sympathy for the offender and, if they have some influence in a positive way in that way on the sentence then that might be something that is good for the victim as well as the offender. But, its obviously a very difficult issue.

14. **ODPP:** I think I’ve probably covered the relevant points…I think it’s very good that we’ve got to the position that we have. Um, it really goes back to the 1985 UN Declaration on the Rights of Victims of Crime and Abuse of Power. Australia was instrumental in getting that Declaration through the UN, and around the country we have built on that. Um, victims’ rights acts have put a lot of that into statutory effect,
1996 in New South Wales. The only state or territory that doesn’t have a victims’ rights act is Tasmania, and they say they don’t need it because they look after victims anyway [laughs]. But, putting those sorts of rights and privileges into statutory form I think was a very positive move because it just emphasises the importance of these things being looked after by police, prosecutors, courts and acknowledged by the defence.

16. Police Prosecutor 2: No, not particularly. I think it works reasonably well the way we run here in Gosford. Um, also it runs reasonably well throughout the state. There are new processes coming in. Um. There’s one that’s running through Sydney at the moment that we’re about to become part of. I’m not real sure what it’s about but we’ve been approached and well, when I say been approached, my court’s been volunteered [laughs]. [Q: asks about rural areas. Is there a difference between] Again, it’s a- there can be. Um, you’re supposed to have a certain amount of staffing this, that and the other. As prosecutors we’re supposed to have one and a half persons per court. It doesn’t work real well sometimes and if you’re a rural prosecutor like I was, I had five years on my own. So sometimes you just don’t have that luxury of being able to sit down and conference with your victims or your witnesses prior to hearings or prior to mentions and that style of thing. You rely heavily on your support staff which is domestic violence liaison officers, police, ah, and also you’re…community domestic violence people. So a lot of times I’m speaking through them, or they’re speaking to the victims on my behalf while I’m sitting in the chair at the big table and they’re helping me helping them so to speak. So here [in Gosford] we’re good. We have the staffing levels where we can actually have a spare prosecutor on our DV days who does the domestic violence matters whether they’ve got charges related or just applications. They conference the witnesses and we have another prosecutor in court doing the general list, and then we can bring all our DV people in, deal with them all in a hurry so they can all leave because they don’t want- they don’t like being in court. Yeah, so that’s the difference.

18. Detective, NSW Police Um, I don’t think so. I know- I’ve dealt with a lot of victims in my time and a lot of people that are victims, but are not necessarily victims because there is a broad spectrum of the victim terminology(?) I suppose you could say. There are those that literally just don’t want to help themselves, and want someone else to do it for them, and a lot of those cases come through so we do feel a little bit sort of under- we still have to work- they’re still a victim, so we still have to follow our victim charter of rights and that sort of stuff but when they’re lying to you, and you know that they’re lying because you’ve got evidence to prove it, it’s very hard to turn back on them and say, ‘ok well, I’ve got this evidence, what are you going to say, because you’ve signed this and, I don’t what to now have to get you up for perjury’ and things like that. Little things like that do make it very, very hard. But then when you do get that true victim, that’s when your heart and soul goes into it and you try and fight in every way you can. But then to sit there when the jury comes back with a not guilty plea is just heart wrenching. So…Suppose the nature of our job. That’s the way we deal with it. But, I suppose the victims have to deal with it in their own way as well.
Appendix Five – Additional Interview Extracts Grouped by Theme

A5.1 Additional Interview Extracts Grouped by Theme

Quotes are represented by office:

- S = Solicitor
- PD = Police Detective
- PP = Police Prosecutor
- M = Magistrate
- CC = Children’s Court Magistrate
- DCJ = District Court Judge
- SCJ = Supreme Court Judge
- ODPP = ODPP Prosecutor
- SPA = State Parole Authority

A5.1.1 Experience of Justice Officials

All interviewees practiced/sat across a range of criminal and other matters and most possessed a comprehensive pre-trial, trial, and sentencing experience. Interviewees were selected to encompass a range of perspectives from investigative police through to police prosecutors and judicial officers across all levels, including appellate courts. The NSW Parole Authority was also represented in the sample.

PD: …pretty much have to cover everything so we do a range of robberies, armed robberies, sexual assaults. We get a murder, um, break and enters, domestics- You name it, if it’s going to happen, it’s one thing that we could end up responding to.

CC: In the children’s court we deal with all types of criminal matters. Comparing it to the Local Court, um I think the children’s court deals with more serious criminal matters than in the Local Court.

M: I do committals for murder, shoplifting, um, apprehended violence orders – lots of those – um, a variety. Some driving matters, not as much, but some driving matters.

DCJ: [A]ssaults occasioning grievous bodily harm, occasioning grievous harm, a lot of sexual assaults, possession of guns, drive-by shootings, drugs, a lot of importation of drugs, large amounts of drugs from overseas and drug possession, um, those kind of cases.

DCJ: Indictable matters basically, and appeals from magistrates.

DCJ: Most of the cases I preside over are jury trials and, um, a small percentage of judge-alone trials. Each of the trials relate to indictable crime and, which means that, the cases are generally of a serious nature. I also hear appeals from magistrates and those cases are summary cases brought before the magistrates and I do appeals both by way of sentence appeals and also by way of conviction, conviction appeals.
SCJ: Murder trials.

SCJ: … I do criminal trials, I sit in the Court of Criminal Appeal and I [also] do bails…

SPA: …administers parole orders for sentences particularly those where a sentence is imposed which is greater than three years. Other sentences which are three years or less, parole orders are made by the court. And, the parole authority deals only with those in relation to revocations and other matters that arise other than the initial grant of parole.

ODPP: The Local Court, the District Court, the Supreme Court and the Court of Criminal Appeal and the High Court. All of them…

PP: All the different criminal charges from domestic violence through to until property crime, fraud, traffic matters, except for the strictly indictable ones. The ODPP do those…

PP: [A]s a prosecutor we deal with, ah, kids court, juvenile court, and then we have our local court. Um, we also appear in ________ Court.

S: AVO lists day… [in] the ________________________________________ courts.

**A5.1.2 Procedures Identified by Justice Officials**

Justice officials tended to identify victim relevant court processes in accordance with their known practice areas. When asked to think about all courts other than their own most justice officials raised court processes consistent with identified adversarial processes common to each court, specifically victims presenting as witnesses and tendering a victim impact statement upon sentencing.

S: for about half of the victims that become our clients, they will be referred to us before court, um, through a process, it’s called the police yellow card.

PD: [F]or us to investigate a matter we need to have a victim, well for most of our crimes anyway, um, in which case they would need to come in and report the matter to start with, unless we find them out in the street or if there’s, like a brawl or an assault or something like that we attend, then we usually have the victims there and then. Um, they will give us a statement, and that statement is generally a written statement. If we are on the run or on the fly we get a video recorded statement.

CC: The children’s court is a closed court so you get told who the other people in court are and it’s rare that um, that victims are present during the proceedings. Um, if there’s as part of the sentencing process a referral to a youth justice conference, there’s potentially direct involved of the witness – sorry, of the victim – in that process, but that doesn’t take place in the court’s presence.

M: …what they say happened in the events is included in the statement of facts….
M: [A]pprehended violence matter where there is an AVO being sought well then the victim is, well the victim is generally excused, that person in need of protection is usually excused. On some occasions they’re in court.

DCJ: [T]he victims gave evidence first of all and when I sentence somebody on rare occasions, not usually, about I’d say thirty per cent of the cases, of the time I had a victims impact statement.

DCJ: [T]he only participation of the victims is generally by way of giving evidence, um, and we also do have of course victims impact statements.

DCJ: Well, they [tape skips] victims impact statements, and occasionally I get victims who, um, say their bit when I’m sentencing.

DCJ: [I]n sentence proceedings that may be, they may be involved in terms of Victims Impact Statements.

DCJ: [T]he victims also on occasions present material to the court by way of a victims impact statement and that victim impact statement is either in one of three forms: firstly, a written form which is tendered by the Crown; secondly, by way of an oral, oral form which evidence is given to the court, and thirdly, a combination of the two. The most common form is that of a written form of victim’s impact statement.

DCJ: [W]hen it’s a sexual assault case, those kind of cases, they’re allowed to give evidence in a…room away from the court via CCTV and they’re supported by an officer really…

DCJ: There’s another area where victims can be heard and that relates to, in a sexual assault trial, a victim can, um, make an objection to the subpoenaing of documents from, which relate to her, his or her health, his or her um prior – I withdraw that – his or her involvement with social workers or sexual assault workers…

DCJ: …there are facilities available whereby that alleged victim can in a benign environment talk to a police officer and to a counsellor about the incident or incidents. In those circumstances the court can agree to the interview being used as the evidence in chief of the young person so they are looked after in those circumstances.

SCJ: In trials, um, if acquitted they will only have been involved as witnesses. If convicted, they would be involved by making a victim’s impact statement.

SCJ: In the bails court one of the things we are required to consider under section 32 of the Bail Act is the need to protect any particular person and in the case of crimes against the person or allegations of crimes against the person that will obviously include the primary victim…

SCJ: [T]he impact on the victim is always a significant consideration when one is looking at…the objective seriousness of an offence or considering the aggravating factors, which are referred to in section 21A of the Sentencing Act.
SPA: [T]here is a victims register maintained by the Department of Corrective Services and if a victim places their name on the register.

SPA: [I]f an offender committed a murder, we think they’re otherwise eligible for parole, they’ve been supported for parole by the probation and parole service by the serious offenders review council, but it may be that the state has opposed…lodged a submission opposing parole. In those instances, there’s a public hearing. And, the victims are entitled to make a submission either in writing or orally; sometimes they do both. And, we always hear the victims’ submission as the last matter before we retire to consider what decision we’re going to make.

ODPP: There are volunteers who provide victim support services at some courts like the Downing Centre Local Court, places like that, and in the Director of Public Prosecutions office there is the witness assistance service, which provides specialised support and acts as a go between, between the victim and the prosecutor.

ODPP: The process of consultation between prosecutor and victim continues right through the proceedings and there are now prosecution guidelines in place that require that to happen. Victims are consulted directly if there is going to be any change to an original charge that has been put on by the police, um, if any charges are going be dropped, if they’re going to be replaced by other charges, um, if for example there is a charge negotiation process which results in a plea of guilty to a different charge from the one originally put on, prosecution guideline 20 requires consultation with the victim.

PP: [T]hey give evidence obviously in relation to matters we’re you’re running matters. They also participate sometimes, they’re just there as victims for mentions, domestic violence sort of AVO matters.

PP: [A]s witnesses… if they’re a victim of crime they became a, they become a police witness. The police are informants so victims, um, like I said, they’re witnesses.

PP: We deal with them on mention days when they’re here. If its domestic violence related, with apprehended domestic violence orders etcetera, we conference them prior to going into court

**A5.1.3 Expected Modes of Victim Participation**

Justice officials identified acceptable or expected modes of victim participation consistent with the adversarial process. The limits of victim participation include the point at which their participation impacts upon the fair trial rights of the accused.

S: [W]e might get a referral this morning and we will have contacted her within hours and spoken with her, um, and talk to her about participating, um, in the AVO process or the AVO and criminal charge process. Um, for the other half of our clients we’d see them on the first occasion at court and they would come to our room at one of the four courts, and um, we would um, speak to them then about participating um in this AVO process.
PD: If it goes to court and we have a not guilty plea we have to put a brief of evidence together which incorporates that [victim’s] statement. Um, if it then goes to trial, the victim will then have to attend the court and give their evidence. Essentially what they’ve given us in writing is what they will then give us on the stand.

M: At trial the only involvement with victims is when they appear as witnesses. There’s rarely any other involvement. There may be on occasions in both sentence matters and um hearing matters a victim impact statement. But in my experience, and this is only my experience, they’re somewhat rare.

M: Primarily only as witnesses. In the pre-trial stage, um, there’s no face to face involvement with the court.

M: Yes, they do participate in hearings. Um, so yes, they come into court and give evidence as witnesses.

DCJ: I’d say thirty per cent of the cases, of the time I had a victim’s impact statement.

SCJ: I suppose their participation in the trial process can be as a witness. They can also participate in the sentencing process by the provision to the court of a victim impact state. When we say victim we’re talking about the victim of a criminal offence, but it’s those two, either as a witness or in the event of a conviction, as a victim of crime.

DCJ: If an allegation is contested and there is a hearing then they’re a witness, um, and if it’s a sentence matter then they’re involved in terms of just delivering the victims impacts statement or having it read on their behalf or something of that nature.

DCJ: Victims participate in my trial court by giving evidence in respect of the facts which surround the incident which brings the matter before the court.

DCJ: The first is as witnesses in trials. The second is rarely as witnesses in sentence proceedings, and third by the tender of victim impact statements or standard witness statements.

DCJ: [re VIS] The whole process needs to be shortened, that is, that people only have a limited period of time if they are going to say anything rather than, um, going on, for you know, forever as it does at the moment.

SCJ: [V]ictims don’t participate at all in the appeals of course because they are questions of law. The accused doesn’t [tape skips. I think he says ‘appears’] except through counsel, doesn’t personally participate.

SCJ: [O]nly at the sentencing stage when a relative of the victim gives a victim impact statement.

SCJ: [V]ictims participate in the sense that at the trial level the complainant in the criminal case – where it’s not a murder trial or homicide trial – will, will often give evidence of course.
SPA: [During parole hearings] victims are entitled to make a submission and we always take into account those submissions.

SPA: And we regard the overall matter, is a matter for the victims to get some closure and to realise that they are important in the scheme of things.

PP: [I]f you’re talking specifically domestic violence victims, um, again they’re a witness. They’re called to give evidence. They’re subpoenaed. Um. Police attend on the night. They take, hopefully take, a statement by way of evidence for court. That witness is called to court to give that evidence.

**A5.1.4 Satisfaction with Current Processes**

Justice officials gave mixed opinions as to the satisfaction of victims with court processes. Many identified routine modes of participation as satisfying victim needs. These ranged from AVO applications through to attending as a witness or tendering a VIS.

S: I think in the AVO process, if we’re just talking about domestic violence victims here, I do. I’m sure there’s other processes that victims don’t get to participate. Um, I’m sure that we could um do better as far as early referrals from police.

M: I’m not sure that the criminal justice system will ever satisfy some victims. So- it’s not about them really. It is to get details of the crime so that the court can sentence, but I don’t know that it’s a venue for them to have their, the other things, the consequences of the crime dealt with…

M: Obviously in the local court you can give, victims can give um if it’s a serious enough offence and it’s an appropriate offence, you can do a victim impact statement where they get [tape skips] stand up in court sometimes and read out um the impact that the crimes had on them in the sentencing proceedings. So um there’s a number of- Local Court- I think the District Court does that as well. Forum sentencing’s not available in the District Court but um I think the Local Court as I say victims are more and more now becoming involved. There’s things in place where they’re getting involved. Whether that’s a good thing, I don’t know. I know if it was a traumatic experience for me and um you know you’d suffered from a crime I don’t think I’d want to relive the experience but some victims want to do that to get it off their chest, I understand that…

SCJ: As far as victims who are victims of crime and who participate in the sentencing process is concerned, I think that the system at the present time is adequate. I think it is important to give victims a voice as it were…

DCJ: Yes, I’d say they were satisfactory. That’s, that’s kind of a difficult question because satisfactory as to what as to their feelings, the feelings of, well, the interests of the community, due process. Yeah, I think they’re probably satisfactory. They may not be happy about outcomes I suppose but that’s only one measure.
DCJ: I think it would hinge on whether there’s been adequate liaison between the prosecution and the victims to ensure that the victims have an adequate opportunity to participate.

DCJ: …I think they’re fine.

SCJ: I believe they are.

ODPP: Some victims are very happy, for example, to put in a victim impact statement to describe exactly what effect the crime has had on them and on their families and those close to them. Other victims on the other hand, don’t want to have any part of that process. They don’t want to show to the offender, for instance, what impact that person has had and therefore they think maybe to give the offender some sort of satisfaction having caused such problems and they run a mile from victim impact statements.

A5.1.5 New/Modified Procedures to Better Accommodate Victims

Most justice officials struggled to think of new processes to better accommodate victim interests. Most raised known processes that already accommodate victims. Some raised pre-trial rights not historically available to victims, such as right to consultation where it previously did not exist.

S: I think that um there is a system in place with our services where um victims of domestic violence do, um, get a satisfactory level of ability to participate. I think if you were talking about as far as the actual hearing, a defended hearing, um, where a victim really is only kept to the statement that they’ve made to police, there may be, um there may be areas there that um we could improve upon.

S: Well, one of things that will happen next year is that women whose um safety is at high risk or who are deemed to be at high risk, they will, their matters will be sent to what’s going to be called a safety action meeting. And, um those meetings will be with police and other government agencies or non-government agencies depending on who’s involved with the woman and um there will be decisions made around her safety.

PD: I know over in England in relation to sexual assaults, their system is a lot better than what our system is in dealing with victims at the first instance. Um, each patrol car will carry around special kits, um, and at that stage they are able to get urine and swabs from the victim right there and then without having to go sit at the hospital for hours waiting for the counsellor to come in, then waiting for a doctor to carry out intrusive examinations. So that gives them evidence at the first point.

DCJ: I don’t see any particular need for change, but we’re always amenable to any suggestions that will improve the capacity for victims to be represented…

DCJ: Well I think that technology has to be consistent. Um, I think that the way, particularly for child victims at initial evidence, that’s improving and all I can do is encourage the improvement.
M: I think there should be some kind of counselling for the victim before and after giving evidence and the victim should be supported in some way in court, I think.

ODPP: At the beginning of my practice victims were really just another witness in the proceedings if indeed they were a witness at all. Direct victims of crime were usually a witness. The families of deceased victims of crime, um, had no role to play at all. They were just there as spectators if they chose to be there and there was very little care or attention given to victims in those days. If they were witnesses they were just dealt with as another witness. Once they’d given their evidence and finished they were sent on their way with their bus fare or whatever it would happen to be and that was it. Now over the last twenty to twenty-five years that situation has changed significantly and progressively. And so now, um, in more recent times direct victims of crime in addition to being witnesses in the case are contacted and consulted with prior to the hearing by prosecutors. They are treated differently by police during the course of an investigation. Their direct personal interests in the case is recognised much more than used to be the case and the police have adjusted their proceedings accordingly. In the courtroom itself there are many more support services provided.

ODPP: And in the case of all victims now, both direct victims and families of deceased victims, there’s the opportunity for victim impact statements to be made and that is something that has only come about in recent, in fairly recent, years.

ODPP: Well I think the processes of assisting victims and vulnerable witnesses should be expanded so I think the Witness Assistance Service in the ODPP’s office should be expanded to provide greater coverage and support for victims and for vulnerable witnesses.

SCJ: I’d be obviously open to suggestions for reform or improvement but I think that today compared to say when I was a law student that there’s a lot more emphasis in an appropriate way on the interests of the victim including the impact on the victim.

A5.1.6 Knowledge of the Charter of Victims Rights

Most judicial officers did not know of the Charter of Victims Rights or had a limited knowledge of it. While not bound to the charter, some judicial officers identified key provisions regarding rights to courteous treatment, information, etc.

S: I mean we are mindful of the charter of victims’ rights…and particularly around the area of you know, the victim being kept informed about what has happening.

PD: Yep, um, that, the Charter of Victims’ Rights that we have essentially tells us how we are to go about dealing with our victims. So we know that we need to keep them informed, we need to let them know what’s happening and that’s, I’ve found part of um the, the problems with victims is that they are…

M: Is this the UN charter or..?

M: I’m not sure that I’m in a position to answer that. Provided the police doing the investigations are conscious of what their obligations are and meeting the, the needs
and desires of victims and witnesses then I think from the court’s point of view, provided there’s no abuse of those, then it’s being compliant with.

DCJ: I didn’t even know about it. I don’t know when it came in.

DCJ: We’ve taken it into account and tried to build it into to all of our processes so, but it hasn’t had any negative impact except where I mentioned earlier where there’s, um, where we close our court. That’s the only area of cross over.

DCJ: … I understand the background of that charter and I understand the need for victims to have a function within the criminal justice system that’s dealt with as sympathetically as possible and with them having the various rights to consultation and things like that as they have… I don’t know that I actively keep that in mind when I have victims before me as witnesses but I, as a general practice I attempt to ensure that they are dealt with in a manner that is consistent with dealing with their trauma and making their passage through what is effectively an alien system as comfortable as possible.

DCJ: I’ve no idea what the Charter of Victims’ Rights is…

DCJ: [I]s it a federal charter or an international charter?

DCJ: It hasn’t been brought to my attention by the Crown or anyone.

DCJ: I don’t believe in treating witnesses, no matter who they are, any differently than what is required by the Charter so far as a victim is concerned, so um it impacts only in being the bottom line for the way you treat any witness in a courtroom so that’s the only way I can answer that.

SCJ: I think the impact of that is…or manifests itself through the victim’s impact statements that I’ve referred to and I think its impact is necessarily within those bounds.

SCJ: [I]t doesn’t impact my conduct as a judge, but it impacts on the way in which other institutions such as the police and the prosecution deal with victims.

SCJ: To the extent I know anything about the Charter, it’s um…

SCJ: The courtesy that you extend to people whether they be witnesses or victims, what you consider is the evidence they will be giving, who they are in terms of their experience is, age, capacity, and make arrangements regardless of whether you believe them or not, in the sense that you don’t know initially, and even if you don’t you still extend the same courtesy to them.

SPA: [T]hey are always listened to, they’re always taken into account what they want.

PP: A lot. Obviously they, the Charter of Victim Rights, and I think there’s just been one in relation to domestic violence released by the government recently in relation to our involvement.

PP: Um, well we are compelled to do what it says and we do.
A5.1.7 Breadth of Victim Participation – Pre-trial through to Sentence, Appeal and Parole

Most justice officials identified processes consistent with their direct courtroom experiences. Some reflected generally on process available elsewhere, including those available to sexual assault victims, but none considered the dynamic breadth of processes available to NSW victims. See Chapter 2.

DCJ: I mean that presupposes - again this is the difference between trials, sentence matters, um…Participation in the justice system may involve being an active participant which victims inevitably are, if we’re talking about trials.

DCJ: Well, pre-trial, you’re talking about the trial where’s there’s been no admission of guilt. The victims would well firstly make a complaint I’m sure to police. They would then be dealt with by the, either the police or the Director of Public Prosecutions with regard to the seriousness of the offence. I’m sure there are protocols there.

DCJ: During the trial: I’m sure all, well if we don’t have it, all courts should have the capacity to have the victim give them evidence not in front of the perpetrator. That should be at the judge’s discretion or the magistrate’s discretion or the tribunal officer’s discretion to do that. And post-trial, well as I’ve said, victim’s impact statements can be used by magistrates, um, when they consider sentence I’m sure. Um. Victims also have the right to bring an application for compensation under the victims compensation act.

DCJ: So far as before trial is concerned, I don’t see a role for the victim at all. I think that they should be properly advised as to what they’re role is and I see that as the role of the Director of Public Prosecutions or the police.

SCJ: Well in terms of pre-trial, the participation of a victim is centred upon I suppose firstly the police investigation. The victim or victims participate by assisting the police with their investigation and where appropriate providing a statement of, if its appropriate, a statement of the circumstances in which the offence was committed.

SCJ: Um, to the extent I’ve had any recent contact, there’s the issue of subpoenaing the victim’s medical material, which has lots of complexities…They’ve both had quite a big say in that being separately represented by legally-aided funded counsel.

A5.1.8 Alternative Pathways for Victims

Various points were raised as to the relevance of alternative pathways for victims. Some thought that restorative justice provided an acceptable means by which victim interests and rights of participation could be addressed.

CC: Um, if there’s as part of the sentencing process a referral to a youth justice conference, there’s potentially direct involved of the witness – sorry, of the victim – in that process, but that doesn’t take place in the court’s presence. It takes place with Juvenile Justice organising youth justice conference.
M: Well, let me approach it from the um, in reverse because it’s obvious in my view that um things like conferences, youth justice conferences in the children’s court, and conferences generally where victims and the perpetrators are brought back - sorry - are brought together for there to be an understanding as to how the crime impacted on the victim, I think that’s very important for the accused or defendant to be aware of what impact his or her actions have and on the victim, and to perhaps explain to the victim where the um where the accused was coming from.

M: [C]ommunity justice, um, no, that’s not what he said. Um, like the youth justice conference idea where the victims are able to express in person to the offenders how the offence has impacted on them, that followed a driving offence, and that might be a more satisfactory way of their needs being met because the court really is not designed for victims, I don’t think anyway

DCJ: [W]ell in relation to the lower courts where the offences are less serious, um, I think there is a lot of scope for, for looking at processes, which are focused on resolution between victims and perpetrators as opposed to punishment.

DCJ: Well I just think that there may be more opportunity for interaction between perpetrators and victims, um, to achieve greater resolution on behalf of victims.

DCJ: Well I think there may be scope for looking at other processes that might involve some sort of resolution between perpetrators and victims.

PP: I say um especially with Apprehended Violence Orders where they got a program coming in to place where we’ll be contacting victims and getting them to come for meetings and conferences before the hearing date rather than doing it on the hearing date where they might have some hesitances [sic] about coming to court because they don’t know what’s going to happen.

DCJ: [C]ertainly the whole idea of youth conduct orders and youth justice conferencing is, is entirely based on restorative justice principles so that we’re…They’re required to if you like, um, have a – confrontation is the wrong word but they’re required to meet with their victims and part of the whole process is for them to, for the perpetrators to be able to see it firsthand the impact that they’ve had on their victims and also to make, to make um, to make amends if you like to show their genuine contrition.

SPA: For those who are interested in… where the victims are prepared to participate and where the inmate is prepared to participate, restorative justice is exceptionally good - I’ve always thought it is. And I know of a number of instances where I’ve been told of the process and the enormous therapeutic value it was to the victim. And to the inmate.

A5.1.9 Therapeutic Processes

Most justice officials identified the significance of therapeutic outcomes for victims and keenly supported a movement toward therapeutic jurisprudence, but could not
always identify how this might impact on their court where it was constituted as expressly adversarial.

M: I don’t know that I’d want them to have a greater role. It would mean a complete change of the way we run criminal proceedings in the country, in fact in the English speaking world where we have this adversarial system if you adopted that.

DCJ: I think they do, they do carry weight under section 21. The damage, the psychological damage to the person its caused, if its extreme or significant or not is something you take into account all under kind of subjective- you do take victim impact statements into consideration, and um victim impact statements…I know there was some kind of decision…that you don’t take them into consideration, then why are they read, of course they do.

SCJ: No… because…if they are not giving evidence then their participation is limited to providing a victim impact statement at the end of the case in the event that there’s a conviction. They have no place in the process other than that, and it’s important to recognise that.

DCJ: Well, again that’s about therapeutic jurisprudence. Yes, subject to all other things, subject to issues of fairness generally. Whether that itself is therapeutic, I don’t know. I’d rely on experts for that I suppose.

DCJ: I can’t see what those processes might be. I mean a victim impact statement allows them to inform the court of the impact of the crime upon them. Um, I can’t think of what other processes within the courtroom might be appropriate.

SPA: I think that some victim’s impact statements, victims’ submissions that have been put to our authority, and have been heard by the inmate, are particularly eloquent, particularly powerful. And I think that that’s good for everyone involved.

**A5.1.10 Victim Advocates**

There was some support for the idea of a victim advocate to guide the victim of crime through the justice journey from initial investigation through to sentence and possibly appeal.

DCJ: I’d be very concerned if the only way in which a victims impact statement could be presented would be by way of the victim coming to court and reading it because in those circumstances the victim would have to face the perpetrator and in addition to that the victim may feel constrained to explain his or her true feelings and the effects in open court, and also people may be highly embarrassed. I think the way in which we presently have it where people can take part in the proceedings either physically or by presenting material…

M: I do think the prosecution adequately, um, look after victims, in most matters I suppose. There are sometimes where I think perhaps maybe not. Look you know that’s the failure in any system. Even if you had an advocate, you’d still have the same result.
DCJ: I mean they’re always entitled to get their own legal advice, but I don’t think- I don’t see any need for- Well let me put it this way: there may be cases where it’s appropriate for a victim to be given independent legal advice separate from the prosecution, um, and I think that should be looked at on a case by case basis, but by and large I see no need for, if you like, separate independent advice being given to, legal advice I assume you’re talking about. Um. What they do need is counselling services and support services…

DCJ: Of course the question of what the victim has and the interests of justice can, are two different things. Rights of victims and the process of justice in respect of the prosecution of matters are two different things, and already the ODPP doesn’t stand its ground as is its charter in making difficult decisions because of victims and their supporters complain that justice hasn’t been done. That is, cases proceed because the victims, you know, complains loudest, and that’s a big problem in respect of the ODPP now. It’s a huge problem.

DCJ: Naturally, victim advocates so far as the criminal justice system which serves the whole lot of possibly sometimes contrary objectives, I’m not sure that would be helped by a third advocate, and I don’t in any way support the withdrawal of an independent prosecution service and the substitution of that with victim advocates. I think that would be a very retrograde step.

SCJ: On the other hand, having someone available to the victim to explain the process and the significance of the various steps and who can perhaps help the victim prepare a full, cogent and detailed impact statement could be a very good idea.

SPA: It would be an expensive exercise to provide that, I mean there would be no harm in it, but I’m not sure that the expense would be, would warrant the greater representation, again because many of them appear with their victims group, currently, and they, that’s adequate, and so I wouldn’t oppose it, but, I’m not sure, what, how much more a lawyer would be able to advocate on behalf of the victim.

PD: Whereas the victim could be so sure that that is one thing that is going to turn the tide and things like that but doesn’t understand the consequences of, so to have someone that is their own personal advocate to explain, ‘this is why’, and to- It would help the victim remove the emotion out of it as well. When the- I mean, as you know, when someone gets riled up about something and they really feel hardly(?) that this should be done, the emotions take over, the logic side recedes, so when that happens they can’t articulate exactly what they want. If they have an independent advocate for them specifically, that person can step in and do that job for them. So, that person can be their logical side while they can be the emotional side if that’s what they need to be.

S: Yes, yeah, I think victims’ advocates, and if you look at some of the UK um procedures where victims, where in certain areas or certain jurisdictions where they’re given a, like allocated a victim advocate, um I think um that would come to court on each occasion - that’s probably a little bit like we do anyway, um, that’s what we are: advocates.
PP: You rely heavily on your support staff which is domestic violence liaison officers, police, ah, and also you’re…community domestic violence people. So a lot of times I’m speaking through them, or they’re speaking to the victims on my behalf while I’m sitting in the chair at the big table and they’re helping me helping them so to speak.

A5.1.11 Victim Lawyers

Almost all justice officials has significant reservations as to the suggestion of appointing private counsel to cater for victim interests in criminal proceedings. The introduction of a third party to proceedings was largely deemed to be incompatible with known adversarial processes.

M: During the, um, the hearing process, um, again I can’t think of anything that would be applicable in the children’s court but as I mentioned earlier at the international criminal tribunal in The Hague there was a suggestion, and some serious thought given, to allowing the victims to be separately and legally represented in the trial process, in the criminal trial process, and the very thought of that horrified me knowing that um- particularly in an adversarial trial. There may have been some scope for it in the continental civil law system, but in a criminal trial where a prosecution has to establish guilt beyond reasonable doubt, then having other legal representatives there to present the victim’s position, well I thought- it could run completely counter or contrary to what the prosecution is trying to establish. It wouldn’t be hard for me at least to um foresee a scenario where it could just destroy the prosecution case.

ODPP: A victim is not a party to the proceedings unlike some European systems and other systems around the world. If we were to go further than we have already I suspect that we would need a fundamental change in the philosophy behind the structure of our system. We would need to start recognising the role of victims as some sort of a party to proceedings if we were to go further than we have already. I can’t see that happening.

DCJ: You’ve got the fundamental dichotomy between the victim who isn’t a party and, and the state who brings the prosecution not on their behalf but in relation to the crime that’s been committed against them, um, and I think sometimes there’s a breakdown in, if you like, the communication between the prosecution and the, and the victim who is a witness…

DCJ: Well they are provided private counsel in relation to the subpoenaing of confidential material which relates to them. And the private counsel comes from, I think the bar association has a pro bono scheme whereby they…maybe it’s the law society as well. But in my experience it’s been, um, mainly counsel appear on behalf of the victim to prevent material going into court. The victim’s a protected person under the Act.

DCJ: Obviously victim participation at most levels of the criminal justice system is limited, um, because they’re not a party to proceedings…
DCJ: If a witness is being harassed by a barrister, if a barrister’s being unduly repetitive, um, then the witness will be protected because the judge has the power to direct the witness not to answer the question and to admonish the questioner. So I don’t believe that during the course of proceedings that witnesses require an advocate to assist them.

DCJ: No, not as a matter of principle.

SCJ: There is no role for an advocate or private counsel for a victim that is regardless of whether they’re a witness or they’re a witness and they provide a statement. Witnesses, except in very limited areas have, no right of representation, um, there’s no reason to displace that rule in favour of victims of crime, and in terms of their victim impact statement there is simply no role for counsel or an advocate in those circumstances.

SCJ: It rather depends in what context, but because our general rule is that witnesses are not parties and that’s a very important distinction. I know that victims think of themselves as parties, but they are not and to have them involved in a trial as a party would entirely undermine - not entirely - would significantly undermine a proper criminal process so you could not have it, unless of course there’s some important issue that affects them, for example, privilege of one kind or another.

ODPP: [U]nless they rise to the status of a party to proceedings, I don’t think there is any basis for them to be separately represented. Of course, if they want to obtain legal advice about what is happening and what they can do, well, they’re perfectly entitled to do that at their own expense. But I don’t think there’s any obligation on society to provide separate legal representation.

SCJ: It would mean that no step can be taken, procedural step of any kind, so instead of a case being a contest between the Crown and a defence, you will just have a third party there that will inevitably lead to, ah, trials going awry.

SCJ: Well it depends what role you’d envisage for that specific victim lawyer. I don’t think that victims should have a right of appearance in the criminal process, as I believe they do in some European countries.

DCJ: In terms of compensation claims, I believe they should be represented and I deplore the, um, lack of resources to allow for that representation.

DCJ: That doesn’t mean, and I understand …that there are victim assistance people within the Director of Public Prosecutions Office who are pretty good in my experience, in fact, excellent, and there should be more of it. I’d encourage that. The same should be with the police and I don’t think it exists within the police.

PP: [W]e’ll we’re an advocate at the moment so I think we’ve already got an advocate, but private counsel…well, I don’t know, I don’t think so.

PP: I’d love ‘em to have private counsel. It’d take a lot of my work away [laughs]. But, no, we…We appear on behalf of the victims as their counsel if you like. We’re-Police prosecutors are all expert trained in criminal law and that’s what we do. So I’m not going to say they we are better trained than lawyers as such, but we have different
style of training and we work probably ten times the amount of court work that you’re normal lawyers would work in the criminal system so we’re very well experienced.

A5.1.12 Normative Assumptions on Adversarial Justice

Throughout the interviews justice officials commented on the nominally minor role expected of a victim in adversarial proceedings.

Most commonly, interviewees identified victim participation in accordance with a strict interpretation of the limited role provided for victims in adversarial court processes. This included presentation as a witness, talking to the police following an incident, participating as a witness for the prosecution, and submitting a victim impact statement during sentencing.

Few other opportunities for participation, either directly or indirectly through other justice officials or stakeholders in relation to specific court processes (see Chapter 2), were recalled.

A5.1.12.1 Informing the Police

PP: Well, they’re not really part of a court process. The- they...The process is undertaken by the AGs courts obviously and the police. They become entwined in that process just because of the circumstances as they’re a victim. But, they’ve got no control over what happens. So no, they got, they can’t get involved in the process.

SCJ: The major opportunity for their involvement in the process is really before the matter gets to court with police and prosecutors and so on, um, because there you can have, how should I put it, you can have relatively untrammeled conversation and untrammeled communication one way and the other depending on the circumstances. A judge is very constrained, necessarily constrained, in what can happen in the courtroom.

PD: Um, the first part…the victims are required to attend court so generally we try and keep them separate especially if the um offender is out on bail and they’re coming to court freely themselves. So you want to protect them as much as you can by keeping them away and um and having, well-being there yourself to make sure that there’s no adverse… Again, they’re reliving the worst day of their life, and it’s just, well it’s a horrible process to have to see your offender again, even for just little matters, um, it’s quite horrible.

PD: Yes. Someone to look after their interests. Um, you’ve got the police, the prosecutors – we’re all focused on the investigation, so we’re focused on putting that person behind bars or making them pay for what they have done to the victim. So we are working for the victim, but the victim’s interests are not solely what we’re focusing on.

SCJ: I think as I say the police and the prosecutors are sensitive to the position of the victim and explaining the nature of the process and bearing in mind the victims’
interest when they make their, certainly when the prosecutors, make their submissions.

A5.1.12.2 Witness for the Prosecution

DCJ: Look, as a matter of principles [sic], I think it has to be borne in mind that the state brings the prosecution and it’s an offence committed against the law of the state, and it brings a prosecution against an offender and that the victim is a witness and not…a party to proceedings so that um I don’t think that the role of the victim should be um overemphasised.

DCJ: I think the victim should be protected and assisted and everyone, but we’ve got to keep in mind that it’s the police, the prosecutor, the state that’s taking the action against the offender, and that when the offence is committed it’s an offence against the victim or several victims but it’s an offence against the law of the state, so it’s the state protecting the security of the state that’s important.

DCJ: Yes, the trial as I’ve said because they shouldn’t participate as victims, they should participate as witnesses.

DCJ: I think the victim should be free like anybody else after he or she has given their evidence to be in the court or outside the court. I just think that once they’ve given their evidence – of course they shouldn’t be in the court until their evidence has been given.

A5.1.12.3 Victim Impact Statements

DCJ: Yes, it’s inappropriate in the sentencing process of the District Court of New South Wales…and the Supreme Court, and the Local Court, any criminal proceedings, it is inappropriate. For all the reasons that you’ve heard, that is, that it’s the articulate who go on or the better than most who are less articulate, and it becomes, well if their views are to be taken into account well then, the person who hasn’t got relatives, why should they be, um, why should there be any weight placed upon what the relatives of the victim or the victim and the extended family have as against the single person.

DCJ: It’s a question of definition like…for instance the, I’ve recently had victim participation in a confidential, um, confidences type situation where there was a separate representative for the complainant in a sexual assault case where it was necessary for the defence to subpoena material – sorry – it was necessary for them to attend in order to resist the subpoena of material about confidential communications. Um. That I think is certainly appropriate. But if you’re talking about the participation in terms of the litigation of a criminal trial, um, I’m a fairly conservative person in terms of how many parties there should be.
M: I wonder whether as judicial officers we have enough understanding of victims. I think it does come with more experience, but - and perhaps I’m of a more particular background - and I think my empathy for victims is growing. I have a defence lawyer background. And, I certainly think it grows and I’m certainly able to, and as I said before, I really would like in a lot of matters more information about how victims are travelling later on, particularly when they’ve been a victim of a serious assault or if they’ve been seriously injured in some way.

S: Where victim participation is inappropriate? I can’t think of anywhere where it would be inappropriate, um, at all.

S: I personally think victims are best placed, if we’re talking about physically, they need to be in the courtroom. Um, I know that there is often a push, say um- I think it should be a choice for some victims, such as sexual assault matters whether they appear in the court room or by AVL video link. I think that’s the victim’s choice.

DCJ: Well I want to emphasise that they shouldn’t be participating, that is, their input as is to what happens or doesn’t happen with the victim- with the prosecution of cases. Indeed, its gone too far now in my mind that their views are considered in respect of whether matters proceed or not.

M: That would be terrible to think that something has happened when they couldn’t see it or hear it. I think for the purposes of open justice so it can be assessed, I think they need to be able to sit in court. But I really think for their needs maybe some piece of restorative justice needs to come into play as well.

SCJ: But I think there is a danger in overemphasising the direct and personal rights and interests of the victim because although I hope I’ve indicated that their interests are a central consideration, I think the traditional idea that the injury to the victim is vindicated by the whole community acting in the criminal justice system and the whole community having an interest in bringing the offender to justice and to the extent to which it’s a relevant factor, insisting upon retribution and denunciation, then the victims’ rights shouldn’t enlarge, as it were, in the process to such an extent that the interests of the whole community is pushed out from the centre as well.

PP: I don’t really reckon they should be put in a dark room and not told anything. That’s not the way it should be. If I was a victim, I wouldn’t like that. And um, as I say, the victims have rights and that’s their right at the end of the day.