

Participation of Victims of Crime in New South Wales Court Processes

A Study Commissioned by Victims Services, NSW

Final Report – Executive Summary

by

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Abbreviations and Definitions

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

Summary

This is the Executive Summary Report of the study, *Participation of Victims of Crime in NSW Court Processes*. It presents the main analysis of data, findings and recommendations and is intended to be read in conjunction with the Final Full Report. All references to appendices refer to the appendices that accompany the Final Full Report. Section numbers may not appear in sequence as they refer to the section numbers of the Final Full Report. 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 Force, 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.

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.

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.

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.

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.

1.5 Confidentiality

This final report should be considered private and confidential unless declassified 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.

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.

1.8.2 A Survey of Victim Expectations

Surveys of victims of crime who have participated in the court process 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.

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.

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 which is presented in chapter 5.

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.

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

Director of Public Prosecutions Act 1986 s 9A,10

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 cl 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 (as set out in the Full Report).

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, ie. post-sentencing. The questionnaire is contained in Appendix 1 in the Full Report.

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 form 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 in the Full Report.

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

Q. 1 Are you	Response percent	Response total
Male	17.61%	25
Female	82.39%	117
Transmale	0.00%	0
Transfemale	0.00%	0

Q. 2 How old are you?	Average age	Range
	43.18	15-79

Q. 3 Which country were you born in?	Response percent	Response total
Australia	87.32%	124
Other	12.68%	18

Q. 4 Are you an Australian citizen?	Response percent	Response total
Yes	95.77%	136
No	4.23%	6

Q. 5 Do you identify as Aboriginal or Torres Strait Islander?	Response percent	Response total
Yes – Aboriginal	5.63%	8
Yes - Torres Strait Islander	0.70%	1
Yes - Aboriginal and Torres Strait Islander	0.00%	0
No	93.66%	133

Q. 6 What is your marital status?	Response percent	Response total
Single	43.66%	62
Defacto	14.79%	21
Married	28.17%	40
Other	13.38%	19

Q. 7 Do you have any children?	Response percent	Response total
Yes	75.35%	107
No	24.65%	35

3.1.2 Section 2 - Types of Victimization

Q. 1 What was your involvement in this crime? (check all that apply)	Response percent	Response total
I was physically injured	53.52%	76
I suffered psychological or emotional harm	73.24%	104
I suffered financial loss or property damage	42.25%	60
I was a witness	17.61%	25
One of my family members died	24.65%	35
None of the above	0.70%	1

Q. 2 What was the nature of the crime committed?	Response percent	Response total
Murder/Manslaughter	22.54%	32
Assault	26.76%	38
Sexual assault or act of indecency	27.46%	39
Robbery	3.52%	5
Fraud	0.70%	1
Other theft (including motor vehicle theft)	0.00%	0
Property damage	1.41%	2
Other	17.61%	25

Q. 3 When did the crime occur?	Response percent	Response total
<6 months ago	7.75%	11
6 to <12 months ago	9.86%	14
12 months to <2 years	9.15%	13
2 years or more	61.97%	88
Ongoing	11.27%	16

Q.4 Where did you live when the crime occurred?	Response percent	Response total
Sydney/Newcastle/Wollongong	56.34%	80
Regional area	23.94%	34
Rural or remote area	19.72%	28

Q. 5 What was your relationship with the offender(s) involved in this crime?	Response percent	Response total
Partner or ex-partner	28.87%	41
Other family member	18.31%	26
Friend or acquaintance	16.90%	24
Workplace colleague	4.23%	6
Stranger	23.24%	33
The offender was unknown	8.45%	12

Q. 6 Have you received compensation for an injury (or injuries) as a result of this crime?	Response percent	Response total
Yes	21.13%	30
No, but a compensation claim is currently being considered	26.76%	38
No, but I intend to seek compensation in the future	11.97%	17
No	40.14%	57

Q.7 Are you a member of or associated with a victim rights groups/organisation?	Response percent	Response total
No	77.46%	110
Yes	22.54%	32

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.

Q. 1 Did you or someone else report this crime to the police?	Response percent	Response total
Yes, I did	62.68%	89
Yes, someone else did	29.58%	42
No	7.75%	11

Q. 2 Did the police investigate the matter?	Response percent	Response total
Yes	90.84%	119
No	4.58%	6
Don't know	4.58%	6

Q. 3 To what extent were you kept informed regarding the police investigation of this crime?					
Response percent	1. Always kept informed	2.	3. Neutral	4.	5. Not kept informed at all
	33.61%	18.49%	14.28%	13.45%	20.17%
Response total	1. Always kept informed	2.	3. Neutral	4.	5. Not kept informed at all
	40	22	17	16	24

Q. 4 Was anyone charged as a result of the police investigation?	Response percent	Response total
Yes	82.35%	98
No	14.29%	17
Don't know	3.36%	4

Q. 5 Did the police consult with you when determining what the offender(s) should be charged with?	Response percent	Response total
Yes	37.76%	37
No	62.24%	61

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

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

Statement	Number of Responses
Police were of little to no assistance	23

Police were helpful to primary victim	46
Police were helpful to secondary or family victim	2
Police took out AVO on behalf of victim	4
Police charged offender	12
Police kept primary victim informed	32
Police gave advice as to what actions were possible	2
Police gave emotional support	34
Police referred victim to support group	8
Police provided incident number	1
Police took a statement	4
Police assisted in court	11
Police accused victim of lying	1
Police downgraded charge without notifying victim	1
Police spoke to victim re plea/charge bargain	1

Q. 8 Are there any areas where the police could have done more to assist you?	Response percent	Response total
Yes (please specify)	61.34%	73
No	38.66%	46

Q8 Specify:

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

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.

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

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

Q3. To what extent were you kept informed regarding the progress of your court case?					
Response percent	1. Always kept informed	2.	3. Neutral	4.	5. Not kept informed at all
	29.49%	20.51%	20.51%	14.10%	15.38%
Response total	1. Always kept informed	2.	3. Neutral	4.	5. Not kept informed at all
	23	16	16	11	12

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

Q. 5 What other information would you have received?

Statement	Number of Responses
No information	9
Little information	2
Counselling and/or support	1
Details on offender	1
Relied on personal research	2
Advice from ODPP	3
More information more needed	4
Updates on court appearances	2
Projected outcomes	2
Some literature/pamphlets to read	2
Meetings with the ODPP	1
Information on ODPP bargaining process	1

Victim's rights re plea deals	1
MHRT processes	1

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).	Response percent	Response total
Yes	60.25%	47
No	32.05%	25
The ODPP was not involved in the court case	7.69%	6

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

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

Q. 9 Did you expect to have greater involvement in the court case compared to what you experienced?	Response percent	Response total
Yes (please specify)	43.59%	34
No	56.41%	44

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	1. Very Helpful	2. Helpful	3. Neutral	4. Unhelpful	5. Very Unhelpful	6. No Support
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%

Court Officers (including sheriffs and registrars)	20.75%	9.43%	18.87%	0.00%	1.89%	49.06%
Non-Government /organisations	39.66%	6.90%	10.34%	0.00%	0.00%	43.10%

Response total	1. Very Helpful	2. Helpful	3. Neutral	4. Unhelpful	5. Very Unhelpful	6. No Support
Witness Assistance Officers (from the ODPP)	19	8	8	3	0	25
ODPP Lawyers	18	12	8	3	3	25
The Police	25	16	9	7	5	10
Legal Aid	1	1	9	1	2	34
Victims Services NSW	13	10	12	4	0	22
Court Officers (including sheriffs and registrars)	11	5	10	0	1	26
Non-Government /organisations	23	4	6	0	0	25

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

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

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

Statement	Number of Responses
Competent people to deal with	8
Counselling	3
Contact with the police	3
Kept updated	2
Not sure	2
Information on plea bargaining	1
ODPP could have pursued case	1
Better notice of key dates	2
Financial assistance	1
Access to court transcripts	1
Input into ODPP decisions	2
Explanation of effects of crime	4
Child care	1
More information generally	13
Advised of outcomes eg. sentencing	3
Abide by Charter of Victims' Rights	1
More victim's assistance	1
No	20

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)?					
Response percent	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied
	19.23%	16.67%	17.95%	11.54%	34.62%
Response total	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied
	15	13	14	9	27

Q. 2 Overall, how satisfied were you with the sentence handed down in court?							
Response percent	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied	6. Don't know sentence	7. Didn't understand sentence
	7.69%	12.82%	14.10%	16.67%	44.87%	1.28%	2.56%
Response total	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied	6. Don't know sentence	7. Didn't understand sentence
	6	10	11	13	35	1	2

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?	Response percent	Response total
Yes, Parole Board register	19.23%	15
Yes, Mental Health Review register	25.64%	20
Yes, Juvenile Justice register	0.00%	0
No, the offender was not gaoled	19.23%	15
No	17.95%	14
Don't know	17.95%	14

Q. 4 Have you been kept adequately informed of the custodial status of the offender by the agencies that maintain the register?	Response percent	Response total
Yes (please provide details)	91.43%	32
No (please provide details)	8.57%	3
Comments		18

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?	Response percent	Response total
Yes	80.00%	20
No	8.00%	2
Don't know what a victim impact statement is	12.00%	3

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)

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

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

Statement	Number of Responses
Nothing	2
Not sure	1
Acknowledgement of feelings	3
Help judge with sentencing	1
Show offender how I feel	2
Let go of anxieties	1
Address offender	2
Resolution	1
Provide voice in offender focused court	1
Have my say	4

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

Statement	Number of Responses
Yes, to make the offender squirm	1
Yes, to show offender effect upon victim	3
Yes, to have say	3
Yes, to inform court of injury	4
Yes, to feel empowered	1
Yes, to inform court of family issues	1
No, v will be too emotional	3
No, can't face offender	8
No, would be terrifying	2
Not sure	1

Q. 5 Have you heard of any of the following court processes in which victims can participate in criminal proceedings?			
Response percent	1. Yes	2. No	3. Unsure
Forum sentencing	16.00%	72.00%	12.00%

Circle sentencing	12.00%	72.00%	16.00%
Youth Justice Sentencing	16.00%	68.00%	16.00%
Response total	1. Yes	2. No	3. Unsure
Forum sentencing	5	18	3
Circle sentencing	3	18	4
Youth Justice Sentencing	4	17	4

Q.6 Would you like to participate in any of these court processes if they are applicable to your court matter?				
Response percent	1. Yes	2. No	3. I'm unsure of what that is	4. Not Applicable
Forum Sentencing	20.00%	24.00%	44.00%	12.00%
Circle Sentencing	16.00%	20.00%	52.00%	12.00%
Youth Justice Conferencing	12.50%	25.00%	45.83%	16.67%
Response total	1. Yes	2. No	3. I'm unsure of what that is	4. Not Applicable
Forum Sentencing	5	6	11	3
Circle Sentencing	4	5	13	3
Youth Justice Conferencing	3	6	11	4

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)?

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

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

Statement	Number of Responses
CCTV room and cameras intimidating	1
Not listened to	3
System is corrupt/incompetent	1
Worried about cross-examination process	1
Scared of the defence	1
Being witness stops me from seeing whole case	1
Frightened of offender and government departments	3
Victims classed as witnesses	1
Health consequences	1
Fear of process	2
Seeing offender again	2
Disruption to life of victim	1
No barriers	7

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.)?					
Response percent	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied
	12.00%	16.00%	24.00%	4.00%	44.00%
Response total	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied
	3	4	6	1	11

3.1.7 Section 7 - Reasons for Not Talking with the Police (where no crime reported)

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.

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

Q. 2 How likely is it that you will report the crime to police in the future?					
Response percent	1. Very Unlikely	2. Unlikely	3. Neutral	4. Likely	5. Very likely
	36.36%	0.00%	27.27%	0.00%	36.36%
Response total	1. Very Unlikely	2. Unlikely	3. Neutral	4. Likely	5. Very likely
	4	0	3	0	4

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

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?	Response percent	Response total
Yes (please specify agency)	63.64%	7
No (please specify why)	36.36%	4
Please specify		10

Q. 4 Specify Agency?

Q. 4 Specify Why?

Statement	Number of Responses
Don't know	2
DV support	1
Employee assistance	1
Not sure	1
HVSG	2
Counselling	1
Don't want to	2

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?

Statement	Number of Responses
No point	2
Didn't know where to go for help	1
Police referred me	1
PTSD	1
To get help	2
HVSG contacted me	1
To find family	1
Don't know VS existed	1
Couldn't afford counselling	1

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?

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

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

Statement	Number of Responses
Don't trust police./ODPP/courts	2
More communication	3
Victims are made to feel like criminals	4

Expedite process	2
Equality	2
Feelings of retribution increase due to poor system	2
Judicial process favours accused	4
Child victims could be more involved	1
Let victims make own decisions	2
Help with reporting/protection	2
DV liaison officer was good	2
Treat DV seriously	3
Unlimited counselling for victims	2
Poor treatment of victims	4
No right to silence for offender	1
MHRT review of custody is worrying	1
Victim's family to be treated better	3
Inform victim re change of offenders custody status	2
Police/ODPP supportive	4
Victims is owed more of a say	6
Victim is owed publically funded legal representative	1
Court should care about victims	6
Stricter sentences	2
Discrimination against Aborigines a problem	1
Victim not mentally strong enough to participate	2

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.

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

Gender - Sexual assault/indecency more likely associated with females

Age – Significant difference between average age of Murder/manslaughter (49 yrs) versus sexual assault/indecency (39 yrs).

ATSI – Not significant.

Type of Injury – Murder/manslaughter and assault more likely associated with physical injury. Murder/manslaughter less likely associated with psychological injury. Sexual assault/indecency and domestic violence more likely associated with psychological injury. Domestic violence more likely associated with financial/property loss. Murder/manslaughter less likely associated with financial/property loss. Domestic violence more likely associated with participation as a witness. Assault less likely associated with participation as a witness. Murder/manslaughter more likely associated with family death. Murder/manslaughter less likely associated with all types of injury.

Location – Not significant.

Relationship to Offender – 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/indecency assault less likely associated with partner and more likely to be associated with friend/acquaintance. Domestic violence more likely to be associated with partner.

Compensation – Murder/manslaughter more likely associated with active claim; and less likely associated with claim being considered. Assault less likely associated with

compensation claim. Sexual/indecent assault more likely associated with claim considered and less likely associated with no claim for compensation.

Membership Victims' Group – Murder/manslaughter more likely to be a member of a victim's group. Assault and Sexual assault/indecent more likely not to be a member of a victim's group.

3.2.1.10.2.4 Satisfaction with Overall Criminal Justice System and Demographics

Gender – Not significant.

Age – Not significant.

ATSI – ATSI less satisfied than non-ATSI.

Type of Injury – Weak negative correlations: Physical injury weakly related to younger victim. Weak positive correlation: Family death weakly related to older victim.

Nature of Crime – Not significant.

Location – Regional less satisfied than rural/remote.

Relationship to Offender – Not significant.

Compensation – Not significant.

Member Victims' Group – Not Significant.

3.2.1.10.3 Completed Sample Tests (Completed Court Case)

3.2.1.10.3.3 Satisfaction with Overall Criminal Justice System and Demographics (Completed Cases Only)

Gender – Not significant.

Age – Not significant.

ATSI – Non-ATSI more satisfied than ATSI.

Nature of Crime – Not significant.

Location – Regional less satisfied than rural/remote.

Relationship to Offender – Not significant.

Compensation – Not significant.
Member Victims' Group – Not Significant.

3.2.1.10.3.4 Satisfaction with Sentence and Demographics (Completed Cases Only)

Gender – Not significant.

Age – Not significant.

ATSI – Non-ATSI more satisfied than ATSI.

Nature of Crime – Not significant.

Location – Not significant.

Relationship to Offender – Not significant.

Compensation – Not significant.

Member Victims' Group – Not Significant.

3.2.1.10.3.7 Type of Injury (Completed Cases Only)

Financial/property loss more likely to be associated with wanting more involvement.

Family death less likely to be associated with wanting more involvement.

3.2.1.10.3.9 Support Variables (Completed Cases Only)

Those with police support less likely than expected to have received no 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, the victim was more likely to have NGO support.

3.2.1.10.4 Correlations

There is a weak, negative correlation between Informed against helpfulness of a VAO/WAO/WAS Officer.

There is a weak, negative correlation between Satisfied with police against helpfulness of a VAO/WAO/WAS Officer.

Satisfaction police investigation against kept informed: There is a high positive correlation between satisfaction with police investigation and being kept informed, 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 against satisfaction with the system: Moderate positive correlation.

Satisfaction with the system by kept informed: Moderate positive correlation.

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 in the Full Report. 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 of the Full Report.

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 bails... (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:

[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. (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 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. (Supreme Court Judge)

VIS were also commonly noted:

[O]nly 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)

[I]s 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)

[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. (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 they're 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, 4.2.11):

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)

[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. (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. 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. (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 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.

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.

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 more 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.

5.6.3 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 ODPD 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 in the Full Report as to methods used. The Full Report also contains a copy of the questionnaire 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)?					
Response percent	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied
	19.23%	16.67%	17.95%	11.54%	34.62%

Response total	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied
	15	13	14	9	27

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).

Overall, how satisfied were you with the sentence handed down in court?							
Response percent	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied	6. Don't know sentence	7. Didn't understand sentence
	7.69%	12.82%	14.10%	16.67%	44.87%	1.28%	2.56%
Response total	1. Very Satisfied	2. Satisfied	3. Neutral	4. Dissatisfied	5. Very Dissatisfied	6. Don't know sentence	7. Didn't understand sentence
	6	10	11	13	35	1	2

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).

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	1. Very Helpful	2. Helpful	3. Neutral	4. Unhelpful	5. Very Unhelpful	6. No Support
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%
Court Officers (including sheriffs and registrars)	20.75%	9.43%	18.87%	0.00%	1.89%	49.06%
Non-Government /organisations	39.66%	6.90%	10.34%	0.00%	0.00%	43.10%

Response total	1. Very Helpful	2. Helpful	3. Neutral	4. Unhelpful	5. Very Unhelpful	6. No Support
Witness Assistance Officers (from the ODPP)	19	8	8	3	0	25
ODPP Lawyers	18	12	8	3	3	25
The Police	25	16	9	7	5	10

Legal Aid	1	1	9	1	2	34
Victims Services NSW	13	10	12	4	0	22
Court Officers (including sheriffs and registrars)	11	5	10	0	1	26
Non-Government /organisations	23	4	6	0	0	25

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.

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

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).

Did you expect to have greater involvement in the court case compared to what you experienced?	Response percent	Response total
Yes (please specify)	43.59%	34
No	56.41%	44

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 ODPD 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 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?

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.

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

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.

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

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.

Comments included:

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

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 ($r=.57$). There was also a moderate positive correlation between satisfaction with the overall justice system by kept informed of investigation ($r=.51$). 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 matter.

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 in the Full Report.

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).

[I]f 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:

[L]et 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]he Charter of Victim Rights... is transferred into our policy (Police Prosecutor 1)

And:

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

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

[T]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... (Police Detective)

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

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. (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:

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

Is this the UN charter or..? (Magistrate)

[I]s 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)

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]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. (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 (see Full Report) 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 statement, making submissions on appeal and at parole hearings (see Kirchengast, 2013; Cassell, Mitchell, and Edwards, 2014).

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:

[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. (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)

[W]ell 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 an understanding of 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. 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 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 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, ODP 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, Full Report) 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. 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.

5.10 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 (see Full Report) in accordance with its legislative and policy remit.

Chapter Six - References

6.1 References

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