

Chapter 4: The Decision to Make a VIS

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

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

An overarching theme emerged in the VOC data—namely, a common belief system drives the desire to participate in the VIS process. Most VOC participants were connected by a ‘just world’ worldview, where, as Murray, Toth and Clinkinbeard (2005:88) describe, ‘the self is worthy and the world is benevolent, just and meaningful’. Within this paradigm, control and mastery are valued, and there is an assumed fit between efforts and outcomes. The ‘just world’ worldview also encompasses the notion of ‘just deserts’, which assumes that the good will be rewarded appropriately for their goodness and the bad will be punished in proportion to the severity of their badness/crime. The term *worldview* is defined as the way in which individuals make sense of their world regarding how they wish it to exist and operate (Lerner 1980). The responses of

VOC participants reveal that they used the participatory opportunity of the VIS to particular ends within the adversarial CJS where their opportunities for control and mastery are limited or absent (Winick 2011). However, as Locke and Bailey (2014) describe, the notions of justice held by individuals are varied and distinct.⁴²

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

4.1 VIS motivators

4.1.1 To inform the court of the impact

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

⁴² Among the different concepts of justice to have emerged through the ages of ongoing philosophical debate are justice as revenge (retributive justice), justice as mercy, justice as harmony, justice as equity (impartiality and fairness), justice as equality (equals must be treated equally), justice as an equal distribution of benefits and burdens (distributive justice and redistributive justice), justice as what is deserved (to each according to merit or worth), justice as love and justice as reconciliation and reparation (restorative justice) (Locke and Bailey 2014:281).

listener to accept their point of view. In other words, only particular information supporting their narrative is included. This is not unusual or unexpected (see Reissman 2008). Within the court setting, all discourse is purposive and persuasive, with particular elements of the truth more useful to the argument highlighted. Consistent with other VIS research (Rock 2010; Wemmers 2011), few VOC participants included in their VIS any information about negative aspects of themselves or of their loved ones prior to the crime. Previous criminality on behalf of the victim, if mentioned at all, was done dismissively, as alluded to by Irene, whose son was in prison when he was murdered:

Feelings of [my son] growing up. What he did from a young age, cricket, guitar, keyboard ... and I said that [he] was no angel, but now he is.

Irene (CD:18), son killed by another inmate while serving a custodial sentence, VIS handed up

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

and I guess I was quite open about issues of substance abuse and gambling and I know I thought it was important to be honest, to let people know how I had been affected.

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

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

during counsel's examination of a witness (Graham et al 2004; Morgan & Sanders 1999):

What happened was there were times when I was emotional, and they said that this was not the time for that emotional content. That time was in the VIS.
Oscar (CD:53), victim of HCSA, VIS read

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

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

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

4.1.2 To redress the balance in sentencing proceedings

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

It made me glad that I put in a VIS, otherwise it's just poor old them.

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

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

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

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

4.1.3 To reveal the personhood of the deceased victim

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

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

make a VIS is an appreciation of and a need to challenge the existential crisis of a life unexplored, unfulfilled or unknown (Yalom 1989).

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

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

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

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

masculine identities, such as adventurer, father figure and lamplighter, as they struggled to reconcile feelings of vulnerability with manly ideals of strength and stoicism. The normative gender expectation for men is to present a VIS as part of their protector role:

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

Crown prosecutor, Sydney (2)

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

Yes it's [writing a VIS] the hardest part of the process, but it is important. Until that time you don't get it, that your girl is not coming back, and she was so young. This is the moment that it becomes real.

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

It does make you think in terms of the loss of the person, of the family and of their life. You may not have thought about it so deeply, and voicing these things are such a personal matter. It does make you think about it. ... You can get it all out, to feel the loss and acknowledge the feelings. It's such an emotional time.

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

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

⁴³ This was the only instance where a VSP participant suggested male family victims were more likely to make a VIS. This VSP participant was male.

presented during the prosecution process. Here, the VIS described past and present, with any reference to the future described in terms of future effects on the children:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I was glad it was me and not my Dad.

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

⁴⁴ Two male secondary victims presented a VIS regarding deceased females other than daughters or sisters, one for a mother: *I talked about the impact on the family and the children and about Mum and who she was* (Jack, CD:66); and one for a granddaughter, whose VIS was written to the DPP in the form of a letter requesting clemency for the offenders. The impact of his granddaughter's death was described as devastating but was not the focus of the VIS: *They [prosecution] said there wasn't enough grief in it. I should have said I grieve. I can't sleep* (Ian, CD:10, granddaughter killed in a boating accident, offenders charged as negligent contributing to death).

Recent research reports that most women killed in Australia die at the hands of a current/ex partner or spouse, perhaps explaining why fewer male partners/spouses present VIS in homicide matters.⁴⁵ No males whose female partners or spouses had been murdered participated in this study. The AIC statistics of Australian crime (AIC 2012) report more male victims of homicide than females, with adults more likely to be killed than children. In addition, more women aged 25–44 years were victims of homicide than those aged 15–25 years. In terms of the VIS, these figures may suggest that the lack of fathers presenting a VIS for daughters may indicate that women over 25 years have others to speak for them, such as partners, mothers, siblings and/or children. Alternatively, it may point to cultural pressures as protector and to stereotypical expectations within the father–daughter relationship creating special challenges for fathers considering making a paternal VIS.

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

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

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

⁴⁶ Male VIS comprised four from fathers and 10 from brothers (four separate matters), and one from a de facto partner. Female VIS comprised 10 from mothers, seven from partners/spouses, five from sisters (five separate matters), three from daughters (two separate matters) and one from a granddaughter.

deceased sisters and two for deceased mothers. Six (40%) female participants presented a VIS on behalf of males—four for sons and two for spouses. Of nine male family VIS makers, six (67%) presented a VIS on behalf of deceased males, with five of the six presenting a VIS for sons.⁴⁷ Three male participants presented a VIS on behalf of females, but no males presented a VIS for daughters, wives or female partners.

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

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

Primary victim participants described wanting to present their own personhood to the court and to the offender. This appeared particularly important to participants in cases where the offender was a stranger. Gender, culture,

⁴⁷ The remaining three male participants presented a VIS on behalf of a deceased sister (1), deceased mother (1), and deceased granddaughter, although this VIS was used to request clemency for the male offenders.

relationship to the offender and nature of crime were variables affecting participants' likelihood to make a VIS and its content and presentation. Some male VOC wished to stand before their offender to reassert their masculine status, to make the court and offender aware that being a victim was atypical for them, symbolically indicating that, had they met the offender in a fair fight, they would not have been overcome. VIS was used as a show of strength:

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

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

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

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

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

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

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

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

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

Many primary and family victims appeared to want to reveal their personhood prior to the crime, linking to notions of blameworthiness and innocence, in

accordance with the 'just world' worldview described earlier. They did not want to present as victims, but as victimised (Dolan 2000):

The sacrifice was really worth it for my voice to be seen. To be seen as a person. To break down barriers ... It was just [to say] who I am. A mother, a grandmother and married for 47 years, because they [the perpetrators] kept calling me names that I had never been called before. I really wanted them to know my humanity. I am a human being and an important human being ... It was just important for me for them to see the human being that they had dragged out of bed, who thought they might die.

Olga (CD:65), victim of robbery and aggravated PA, VIS read

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

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

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

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

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

4.1.5 To inform the offender of the impact

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

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

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

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

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

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

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

Adam (CD:2), sister murdered by partner, VIS read

I didn't have to think about it at all. It was something I wanted to do. May as well shatter the perpetrator's world as well.

Fran (CD:15), husband murdered in shooting, VIS handed up

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

⁴⁸ One female participant victim (Jane, CD:48) of sexual assault saw part of the cathartic bonus of the VIS being a release of pent up feelings of anger, but she stated her main motivation for making VIS was to raise awareness of the consequences of sexual assault to assist others and to regain her personal autonomy. Another female participant (Anna, CD:01), whose daughter had been murdered, described her need to hold on to her feelings of anger in order to survive because moving from anger to acceptance was too painful a step to contemplate. For her, the VIS was a very difficult document to write as it required personal acknowledgement of the loss of her daughter.

qualitative data suggest the therapeutic benefits of the VIS for some VOC partly result from engagement with the VIS process, as it requires them to move forward along a loss/grief-work therapeutic timeline (Worden 2008).⁴⁹

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

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

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

If there is any chance for rehabilitation for criminals, they have to understand the impact of the crime. It's the only tool we victims have.
Jenny (CD:19), mother of daughter killed by drunk driver, VIS read

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

⁴⁹ The nature of progressive movement away from victimhood is further explored in discussions regarding the victim, survivor, thriver model (see Kezelman & Stavropoulos 2012; and Morris Centre 2006).

should be proactively responsible for their offender's rehabilitation should be considered.

4.1.6 To create community awareness

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

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

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

I hoped that people would take domestic violence more seriously.

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

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

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

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

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

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

⁵⁰ Studies report community condemnation of the offence is of particular importance to victims of DV and SA (see Feldthusen, Hankivsky & Greaves 2000 and ten Boom and Kuijpers 2012).

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

The results suggest victims of SA and DV differentiate between personal duty to others in a similar situation and duty to society as a whole. This is supported by Miller (2014:797), who suggests that female victims of SA demonstrate 'relational caring' in their use of the VIS, by prioritising the need for protection of others over themselves, such as children, future or hypothetical victims or their

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

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

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

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

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

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

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

Wishing to raise societal awareness of the reality of victimisation and issues victims face is tied to victims' notions of civic duty (Braithwaite 2008; Tyler 2006b) and altruism, both themes that permeated VOC responses. In terms of theories of trauma and recovery (Batson 2008; Herman 2005, 1992; Raphael 1983), reaching out via the mechanism of the VIS to re-engage with the wider

community fulfils an important need on the part of VOC to reconnect positively to society as a useful, valued and worthy citizen. As this appears to be another therapeutic benefit of making a VIS, it seems important to understand extrinsic and intrinsic factors that may prevent VOC from considerations of civic duty or that may undermine their societal connectedness and resilience, in order to counter impediments stalling their abilities to reconnect fully within their communities.

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

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

I had to think about it for a while. The pollies were keen because they thought it would help with the sentence.⁵²

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

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

Carrie (CD:12), sister murdered, VIS handed up

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

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

⁵² 'Pollies' here is a reference to the police investigating the matter.

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

MACSS, Sydney

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

Victims Services worker

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

Crown prosecutor, Sydney (1)

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

4.1.8 To affect sentence

The quantitative and qualitative data reveal that sentence is a focus for both primary and family VOC and a motivation to make a VIS, replicating findings in previous studies (Leverick, Chalmers & Duff 2007; VSA 2009). Lens, Pemberton and Groenhuijsen (2010) found around 50% of respondents delivering an oral VIS did so with the expectation of affecting sentence, as did two of four families in death matters (50%) presenting a VIS in Rock's (2010) study.

In this study, 74% of family victims and 62% of primary victims stated that they had hoped their VIS would affect sentence (see Table 3.15). Daly (2014) describes sentencing as supporting VOC justice interests of vindication, where the court—as a representative of the wider community—censures the offence and publicly declares solidarity with the victim, with an affirmation that the perpetrator’s actions against the victim were wrong. Responses such as the two below were sentiments repeated by other participants:

My understanding is that the VIS was to get the people a severe sentence.

Ian (CD:10), grandfather of granddaughter drowned while on a boat due to others’ negligence, VIS handed up

One reads of people who get light sentences for serious matters. I was hoping my VIS would prevent that happening.

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

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

They [judges] don’t understand those [particular] consequences sometimes.
So I think it [the VIS] informs them, it makes them more sympathetic and it

highlights the objective seriousness. It may not change it, but it just brings it back into focus, I think. So yes, I think the answer is that you could end up with two different sentences for exactly the same crime if you had a victim who didn't do a victim impact statement and one that did. And it was an articulate, eloquent expression of what had happened to them. Even though in both instances the judge would say that 'the harm was significant, the crime was terrible', and in the case where the victim did the victim impact statement, 'I've read the victim impact statement and taken it into account but it hasn't affected the length of sentence', I think it does.

See I tell people that I believe it [VIS] does [affect sentence], which is probably a bit naughty of me. But I say to them, basically what I am saying to you. That it is totally voluntary. It is your opportunity to tell the court the impact that it has. Judges are human beings and they are affected by real people, and being told real things. And they may not understand the impact that this has had on you. So, erm. But I believe they do have an impact.

Crown prosecutor, Sydney (1)

I take it to mean that they don't take it [VIS] into consideration. That's what I think, in practical terms, but um, but um, but that it's acknowledged. I don't think it affects the sentence. I don't think that. I know what it says [the legislation], but I don't think it [the VIS] has any effect on, on, increasing sentence ... I think the whole victim impact statement legislation is couched in euphemisms. Um it's, it's, I think it's a pretty fundamental principle in sentencing and that is that you really can't adjust a sentence to take into account the circumstances of the victim, which flows from a concept that some people aren't worth more than other people, and that's pretty fundamental. That some members of society are more valuable than other members of society, and we just can't have, *accept* that. And the difficulty is that, because of that fundamental principle. And I think the problem with the VIS really having an impact on the sentence is that as soon as you say, well, the better the impact statement, the more heartfelt the sentiments in the impact statement, the more serious the offence because of it ... And that, just out of principle I don't think we can have a system like that, and so there is a conflict between VIS and what some victims would like the VIS to achieve and

the fundamental principles of the justice system and I don't know how you accommodate the two.

Crown prosecutor, Sydney (2)

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

⁵³ However, it should be noted that of 220 judges and magistrates contacted for the VSA study, only 42 completed the survey (19%). Of 220 interviewed, 28 (13%) stated that VISs were often or occasionally— with no distinction between those categories—useful in determining sentence (see VSA 2009:96).

Prior to changes to NSW VIS legislation in June 2014, the NSW Supreme Court consistently argued against taking the VIS of family victims into consideration, stating that to do so would 'offend the fundamental concepts of equality and justice' due to the potential for the VIS to influence the court's decision to value more greatly one homicide victim's life over another (Roth 2011:9), especially as the voluntary nature of the VIS means it may be presented in some matters and not others. While this logic appears generally understood, the argument of inconsistency between sentencing in matters where VISs are presented and where they are not is strangely not raised regarding primary victim matters where the VIS is also voluntary:

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

WAS, Newcastle

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

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

I've seen judges cry when victim impact statements have been read. And I have no doubt that, as human beings, they are affected. And they might say

in their judgements, it hasn't changed my sentence. But it has an impact. I see it every day. That of course is not the 'official response' to that because it's not supposed to ... because nobody ever talks about this. Everybody pretends that they make no difference at all and the Court of Criminal Appeal says over and over again 'they make no difference. They make no difference to the sentence' ... I think it [VIS] does.

Crown prosecutor, Sydney (1)

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

⁵⁴ 'The principle of proportionality operates to guard against the imposition of unduly lenient or unduly harsh sentences. The principle requires that a sentence should neither exceed nor be less than the gravity of the crime having regard to the objective circumstances', Judicial Commission of New South Wales (2014) *Sentencing Bench Book*, Purposes of Sentencing: [2-230] To ensure that the offender is adequately punished for the offence: s 3A(a). See: www.judcom.nsw.gov.au/publications/benchbks/sentencing/purposes_of_sentencing.html.

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

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

Crown prosecutor, Sydney (2)

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

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

CEO, Enough is Enough

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

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

Olga (CD:65), victim of robbery and aggravated PA, VIS read

I didn't do it for that reason [making a VIS to affect sentence]. I did it for myself.

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

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

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

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

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

4.1.9 To achieve catharsis

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

⁵⁵ See Section 4.1.7 *Carrie (CD:12), sister murdered*.

experience as powerful, as reported in Booth's study (2013a). Many participants, not necessarily happy with some criminal justice procedures or the sentencing outcome of their matter, still saw the VIS as having a positive personal effect.

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

I did it because I felt I had to do it. I had the need to do it. It was personal for me and the court.

Fran (CD:15), husband murdered, VIS handed up

It needed to be done. Without that he would wander off and not know how he had affected not just me, my whole family, and once it was done, it was like 'Phew! That was done.'

Natalie (CD:55), victim of HCSA, VIS read

Those concerned that the VIS has the potential to affect an offender's right to an impartial sentencing judgement question whether the court is the appropriate place for victims to seek emotional catharsis (see Hoyle 2011). However, the findings from this study suggest that the opportunity to publicly and formally present within the legitimacy of a court setting the hurts VOC suffer as a result of the crime, or to ultimately choose not to, is for many important:

It's a good thing that people get a chance to say something in a court of law. You can say what you like to friends or the press, but to speak to a judge and other people [in the court] and it is approved that we can say it.

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

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

4.2 VIS barriers

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

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

I think there is a big discrepancy between what they want to write and what they are allowed to write, and what they think for them is important to be included. Something that might have affected them most might be something that they are not allowed to say. So it sort of defeats the purpose. And they may come to the conclusion that it is pointless.

Victims Services worker

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

Crown prosecutor, Sydney (2)

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

4.2.2 Awareness of the VIS in the Local Court

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

Findings from this study not only confirm far fewer VISs being made in the Local Court (see SALRC 2010; O'Connell 2009; VSA 2009) but also suggest VOC in

the NSW Local Court are less likely to have their wishes to present a VIS taken up. This appears to be because the VIS is generally viewed by police and police prosecutors as a 'feel good' measure, adding no instrumental value to a matter where the offender has already been convicted, especially when court time is precious and pressing:

[The VIS] probably wouldn't bog the court time down, but there would still be an inherent resistance to anything that was going to take longer if it wasn't actually going to have a practical effect. They're [magistrates] very, very, they're very, very motivated about keeping things moving. Court time for them, court time is the most precious thing on earth and anything that takes up court time needs to be justified.

Police prosecutor, Sydney

Lack of time within the Local Court was cited as a reason VISs are less likely to be made; however, although no statistics on NSW Local Court VIS have been kept, VSA (2009) reported that in Victoria, matters fitting the criteria for a VIS accounted for only 5% of Local Court business and would therefore be unlikely to cause significant court delays.⁵⁶ The lack of recognition of the usefulness of the VIS to the determination of sentence in the NSW Local Court may explain why opportunities to make a VIS are less discussed with VOC, with their wishes to present a VIS sometimes ignored, dismissed or not acted upon. Certainly the study results suggest any therapeutic value a VIS may provide VOC does not appear to be a particular consideration of those prosecuting or judging matters in the NSW Local Court. This finding is novel and unexpected in light of previous research based on interviews with the judiciary (Erez, Kichling & Wemmers 2011; Roberts and Manikis 2011; VSA 2009).

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

⁵⁶ Interestingly, while three quarters of the magistrates surveyed by VSA stated VISs were always or almost always useful when determining sentence, only 22 of 120 magistrates (18%) contacted actually responded to the survey; in other words, 16 magistrates responding (13%) commented on VIS usefulness. A factor given for the low response rate was that not all magistrates contacted were sitting during the data-collection period.

investigation into the VIS (SALRC 2010).⁵⁷ The NSW *Sentencing Bench Book* states that eligibility to present a VIS ‘extends to indictable offences dealt with summarily in the Local Court that result in actual physical bodily harm, or that involve an act of actual or threatened violence, or that are prescribed sexual offences referred to in Table 1 of Sch 1 Criminal Procedure Act (previously “or an act of sexual assault”): s27(3)(c) and (d).’ Such matters, though less prevalent, are heard in the Local Court depending on circumstance. VIS awareness, access, procedures and timing are all issues that affect VIS uptake in the NSW Local Court:

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

Director, Victims Services NSW

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

Police prosecutor, Sydney

I was not aware I was able to make a VIS. I read the information on the Victims Services website, that’s where I read about it ... I didn’t have any

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

support from the DPP. It was at the Local Court in Campbelltown ... I had tried to contact the police to discuss VIS but I had huge problems trying to get hold of the police to get information.

Tracey (CD:30), victim of PA, non-VIS maker

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

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

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

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

WAS worker, Newcastle (1)

Sexual assault counsellors, look some aren't [in favour of VIS] and some are. But some services actually refuse to help people write one. Some people

actually say 'don't write one', and some in other areas help and will go and read one for you at the court, so there is inconsistency everywhere.

WAS worker, Newcastle (2)

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

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

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

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

Hua (CD:46), victim of SA, non-VIS maker

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

At sentencing following a guilty plea, the VIS was the first time that VOC could reveal the impact of the crime to the court. Participants appeared to view the

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

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

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

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

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

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

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

Of non-VIS makers (all primary victims), 80% stated a fear of retribution from the offender as a reason not to make a VIS. Qualitative data reveal this was mainly an issue for victims of DV or PA committed by an offender known to the victim. It could be suggested that VOC who fear retribution by the offender or the offender's family or community would not bring charges, or these concerns would be apparent and discussed prior to proceedings. However, police will prosecute DV matters and other matters they feel will be successful, even when the victim wishes to drop charges. DV is the leading cause of death and injury in

women under 45, with more than one woman murdered by her current or former partner every week in Australia. Two-thirds of females murdered in NSW are killed by their intimate partners (Domestic Violence Death Review Team 2012). Some DV participants stated that although the VIS offers an opportunity to reveal to the court their legitimate concerns for future offender violence, this was outweighed by fear of the offender's retaliation for using their voice in this way. In a guilty plea, a VIS may be the only chance for these victims to voice their ongoing safety concerns, but ignorant of the sentence the offender will receive prior to VIS presentation, making a VIS can be high risk:

I feel safe because he's locked up in jail. I'm moving to New Zealand. I feel safe because he's locked up, but I'm scared he's going to come after me. The [sentence] was five years. I have an AVO out on him.⁵⁸ I am scared, because last time he hit me in my house, so I'm scared he will come after me. So I'm moving away from Australia before he gets out. I want to find out when he gets out, so we can go before, because he *will* come after me. And that's why I said I was safe, because he's in custody now, and while he's in jail I know I'm safe.

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

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

WAS worker, Newcastle

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

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

⁵⁸ AVO refers to an Apprehended Violence Order, a court order restricting the proximity of movement and behaviour of a person deemed to be a threat to the safety of the person (to include their children) applying for the order. They are sometimes called restraining orders or protection orders. More information regarding AVOs can be found at: www.legalaid.nsw.gov.au/what-we-do/community-partnerships/womens-domestic-violence-court-advocacy-program/what-is-an-avo.

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

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

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

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

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

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

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

understanding, remorse or contrition on the part of the offender, despite knowing their attempt was likely to be futile:

Trying to get it, because most wouldn't understand the relationship, because most wouldn't understand ... I guess like knowing it was my form of contact to him ... If I could have made him understand, it would have made things better. Not that it changed anything.

I think, personally, I'm used to dealing with stuff like that without talking to people. That's just the way I deal with stuff like that. I don't talk to people.

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

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

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

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

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

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

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

There were lots of fors and againsts. At the end of the day, I felt I had to say something ... Like if you are the victim of an accident and you had survived [you could make the VIS yourself], but my brother was not able to do that. And I wanted to give X a voice and mention how that had affected us. [But]

the guy's been through a lot, and feeling remorse. I didn't want to rub salt into the wound, but I needed to have something be said ... Here, it was a tragic accident, but he wasn't paying attention. That's what we were looking at all the way through.

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

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

4.2.7 Trauma

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

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

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

Of non-VIS makers, 60% cited trauma as a reason why they chose not to make a VIS. Trauma begins as a normal response to overwhelming stress. Kezelman and Stavropoulos (2012) suggest that trauma only '*becomes pathological if traumatic experience remains unresolved after the precipitating event/s have passed*' (Kezelman & Stavropoulos 2012:30, italics added). For many VOC,

criminal justice processes and proceedings create an extension and complication of the resolution process, undermining recovery (Herman 2005).

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

More needs to happen than being handed an envelope. I remember the police giving me a pack [VISIP] too, but I was so traumatised. You need people to go through it and point out what is important. It's like giving a drowning person an envelope and saying, 'When you have time, read this. See you!' Just so they cover themselves by tossing you an envelope.

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

You see, at that time, even to make a cup of tea, it was difficult. So imagine trying to write a statement [VIS]

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

Awareness of how trauma affects VOC is important in terms of service provision and support provided in the initial stages of the VIS process. Without it, services may misunderstand a dismissal of the opportunity to make a VIS as an informed choice rather than as an indication of an inability to cope with further process demands.

4.2.8 Shame, literacy and language and perceived intellectual inadequacy

Some VOC participants stated they were ashamed of what had happened to them and did not want to expand on the nature of their victimisation publicly

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

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

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

⁵⁹ Fohring's study (2012), unlike the present study, also included victims of less-serious crimes.

another. Some VOC instinctively understood and internalised the 'just world' paradox necessitating victim blame, acknowledging that the more they exposed themselves to the court the more they risked their suffering being judged.

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

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

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

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

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

The intrapersonal status of a victim refers to their internal understanding of their sense of self, in terms of their abilities, autonomy and efficacy developed over time through internalisation of experience in relation to expectation. Elements creating perceived self-worth are only prohibitive if understood and internalised as deficient. Thus, intrapersonal status is situational, relational, reactive and

fluid. The facets of the 'ideal victim', first described by Christie (1986), could be described as resultant from the 'just world' worldview. Only victims seen to be completely innocent and beyond reproach by observers can be accepted as being without blame and, therefore, without shame, as earlier described. Therefore, all those groups historically tainted as being of minority status, subordinate or disenfranchised are at risk when personally victimised, such as females, the aged, the young, those of different and minority ethnic, sexual identity or religious groups, and those challenged by intellectual, physical or mental health impairments. The shame some VOC from these groups described appeared to be generated from an intrinsic perception that they were, or would be, viewed as being of lesser status, leading them to fear that their emotional or physical hurts would not be believed or validated:

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

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

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

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

Victims falling outside the paradigm of the ideal victim may challenge the dominant legal and political narrative, because they sully the notion of the ideal offender (Christie 1986). Other studies have noted judicial evaluation of victim harm in SA cases based on the status and perceived complicity of the victim (Rogers & Erez 1999; Schuster and Proppen 2006, 2010). If VOC view themselves as not wholly deserving of community sympathy, it follows that offenders may not understand themselves as wholly deserving of communal contempt. This grey morass of assumption and perception is highly uncomfortable to negotiate and manage for an adversarial system based on

absolutes. Unless all VOC are treated as equally deserving by the CJS and those supporting them, some victims will feel illegitimate. The degree to which this is felt by VOC is exaggerated or ameliorated by their internalised understanding of their personal worth within their community (Ziegenhagen 1978 cited in Brennan 2001) and how comfortably the community accepts the nature and context of the crime.

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

I'm not a public speaker. But speaking in that kind of environment with highly qualified, educated people. It was that environment that made me nervous. I was terrified to begin with.

I'm a nothing ...

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

Previous studies have pointed to the likelihood that poor literacy and not having English as a first language prohibits some VOC from making a VIS (Department of Justice Canada 2005; Herman 2005; VSA 2009). Although this reason was not given by the small non-VIS sample, 60% proved to have been born outside Australia, with accents or distinguishing features that would identify them as from culturally and linguistically diverse backgrounds or non-Australian born. Herman (2005) suggests that those who are not part of the dominant culture experience more barriers when engaging with criminal justice processes. Previous VIS studies have not focused on different cultural perspectives to

crime, nor highlighted specifics of cultural identity within their samples. Of the 28 respondents in the UK Home Office study (Graham et al 2004), 23 identified as 'White UK'. Booth (2013a) noted the monocultural bias of respondents in her study, who were all of white Anglo-Saxon descent. The Scottish study (2007) and VSA (2009) did not provide information regarding the country of origin, culturally and linguistically diverse background or ethnic status of their samples.

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

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

Manager, HVSG

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

Crown, Sydney (1)

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

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

Cultural coordinator, Enough is Enough

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

Manager, VWCCS

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

4.2.9 Fear of cross-examination

VOC are alerted to the possibility of cross-examination in the NSW VISIP (2013:5) in 'Points to consider before making a VIS':

The victim or the author of the statement is subject to possible cross-examination about the contents of the victim impact statement. This may happen if the offender does not agree with parts of the statement.

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

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

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

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

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

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

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

⁶⁰ *Sentencing Bench Book /Victim Impact Statements (12–830).*

have been impacted in your VIS, but first we are going to edit it, and then we are going to challenge it ... to portray a façade of empathy and taking your needs and feelings into account, but behind the scenes, we are going to cut it down and fashion it to our uses.

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

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

4.3 Summary

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