

## **Appendix 6: VIS presentation in death matters: gender and relationship to the deceased**

### **Breakdown of statistical data on VIS presented in 18 NSW death matters in Booth 2013a**

Findings of this study with regard to the gender and relationship to the deceased being a variable in the likelihood to present a VIS appears to be supported by statistical data presented in Booth's (2013) research as follows. Her observation of 18 homicide matters where 30 oral VIS were presented (see Booth 2013a:199) reveal a gender disparity in frequency of fathers and male partners/husbands presenting VIS compared with mothers and female partners/wives. Of the 41 VIS presented in the homicide matters that she observed where gender of VIS maker was specified (to include those inadmissible, co-authored and handed up), 15 were male VIS and 26 female VIS.<sup>82</sup> Breaking her figures down further (see Table A6.1), it is evident that in the homicide matters she observed, no male partners or husbands submitted a VIS, and all VIS submitted by fathers (four) were orally presented by another (two VIS were on behalf of daughters and two for children whose gender is unrecorded).

**Table A6.1 Restructure of Booth's (2013a) Table 6.1 of victim impact statements submitted during observation of 18 homicide matters to present: number of oral VIS presented and represented, by family member**

Relationship to deceased	Personal oral presentation	Presented orally by other: Family member/victim support/Crown	Total
Mother	5	2	7
Female partner	3	1	4
Sister	2	1	3
Daughter	3	0	3
Granddaughter	1	0	1
Father	0	4	4
Brother	6	2	8
<b>Total</b>	<b>20</b>	<b>10</b>	<b>30</b>

However, results only show who VIS were made by, the relationship of the VIS maker to the deceased and how the VIS was presented. The gender of the

<sup>82</sup> Male VIS comprised four VIS from fathers and 10 VIS from brothers (four separate matters), and one VIS from a de facto partner. Female VIS comprised 10 VIS from mothers, seven VIS from partners/spouses, five VIS from sisters (five separate matters), three VIS from daughters (two separate matters) and one VIS from a granddaughter.

deceased was not reported for 12 of the 18 matters (see Booth 2013a, Table 6.1: 199).

Further, findings from this study and others (Erez, Kichling & Wemmers 2011; Miller 2013) show female VOC are more likely to present VIS and therefore have more opportunity to gain the therapeutic benefits outlined. These findings again appear to be supported by Booth (2013a). She reviewed 446 homicide sentencing proceedings in the NSW Supreme Court between 2003 and 2012 noted VIS were presented in 306. Table A6.2 reveals the disparity between numbers of mothers presenting VIS and fathers. While the gender of the deceased was not presented, it would be interesting to know how many paternal VIS were presented for sons and daughters based on findings presented in Chapter 4. Of the 130 mothers and fathers presenting VIS as individuals, fathers represent less than 30%, with only 13% reading them.

**Table A6.2 Mothers and fathers presenting VIS in homicide sentencing proceedings in NSW Supreme Court 2003–2012**

Parental VIS	VIS handed up	VIS read	VIS read by rep	Total
Mothers	44	38	11	93
Fathers	16	16	5	37
Dual presentation	14	1	5	20
Total	74	55	21	150

Source: Booth (2013a)

## **Appendix 7: Additional qualitative findings**

Additional findings regarding VOC consideration of the content of the VIS over time, and the need for some VOC to include their criminal justice experiences within their VIS as part of their criminal justice process

### **Adding to the VIS**

Many VOC interviewed reported that they would make changes to their VIS if they were to present them again. As time elapsed from the crime event, they noticed further consequences they would have wished the court to understand. For some, whose matters were dealt with quickly, the long-term ramifications of the crime had not been fully evident at the time of writing their VIS:

It would be different, because you can't imagine what the impacts will be 15 months down the track. Life changes and the impact grows. [That's] an impact that we didn't have then, which we had later. The dramas of a teenager who had lost her father. Those things that you don't think of at the time [of making the VIS].

*Fran (CD: 15), spouse murdered, VIS handed up*

I would add how long it has affected me. And decisions. How my life would have been if that hadn't happened. It's relatively fresh.

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

There is little that can be done in this regard, and VOC were aware that the VIS was part of a process determined by time. The sense of regret for some at not being able to fully convey to the ongoing consequences of the crime was viewed fatefully as part of the burden victims have to bear, with time especially closer to the event not necessarily healing, but simply compounding the hurts.

### **The criminal justice process and VIS content**

As supported by previous research (Booth 2013a; Herman 2005), both family and primary VOC at times described needing to make reference within their VIS to the frustrations with aspects of the criminal justice processes, including the lack of information during investigations, the constraint of their role within

proceedings, constraints regarding information they can present to court, and the seeming indifference of the authorities or court to their plight. This suggests that crime impact can be compounded and worsened by the investigative and legal process. For some VOC, the sense of injustice regarding their treatment by the authorities superseded the crime's impact. This is interesting, as it suggests that VOC may not see the crime event as the experience but rather the crime and its criminal justice resolution as the experience. In other words, victims remain in a state of victimisation until the crime event is resolved to their satisfaction. Repeated experiments by Kahneman and colleagues show that retrospective evaluations of an experience are in part based on positive or negative experiences near the end of the event known as the *peak-end rule* (see Miron-Shatz, Stone & Kahneman 2009).<sup>83</sup> If the totality of the crime and resolution process is seen as a continuum of the crime experience for a victim, the peak-end rule may explain why further systemic perceived injustices after the crime event are felt so keenly. VOC would naturally expect to include impacts of the criminal justice process within their VIS if perceived as significant to them, seeing them as part of the crime experience. Evaluations of events are affected by personal theories (McFarland, Ross & Giltrow et al 1992). If VOC are treated by those supporting or assisting them in an unexpectedly positive or negative manner, their evaluations of their experience will be affected in proportion to the discrepancy between what they experienced and what they believed they should experience. For this reason, it would be useful for police, victim support agencies and criminal justice personnel to regularly canvas victims regarding their hopes for their police and justice experience prior to the criminal justice process, in order to manage expectations.

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<sup>83</sup> The experiments conducted by Kahneman and colleagues leading to the conclusion of the peak-end rule were based on the evaluations of patients experiencing the pain of medical procedures. However, they suggest that memory of an experience is similarly laid whether pain, or indeed pleasure, is emotional or physical or both.

## **Appendix 8: The NSW victim impact statement described**

A victim impact statement (VIS) is an unsworn written statement prepared for the court by the primary victim of crime or by a family member of a victim of homicide or manslaughter. The statement allows a victim to outline physical bodily harm and, most recently, psychological or psychiatric harm, that they may have experienced as a result of the crime against them. In terms of family victims, their statements relate to the impact of the death of the primary victim on them as a member of the immediate family. A VIS can be received by the Supreme, District, Children's Court and Industrial Relations Commission, and in the more serious cases by the Local Court. VISs are to be submitted after conviction but prior to the sentencing of an offender, and VISs may also be submitted at the hearings of offenders applying for parole.

A VIS can be prepared by the victim or their representative and may include statements from professional support practitioners, such as physicians, psychiatrists, psychologists and counsellors. Only one VIS is permissible per victim. A VIS should be no more than 20 A4 pages in length and must not include any information that could be deemed offensive or threatening to the offender.

In NSW, the VIS of primary victims may be accepted by the court, if the court feels it appropriate; however, the VIS of family victims must be accepted and acknowledged. In terms of sentencing, the VIS of primary and family victims may be considered with regard to sentencing if deemed appropriate by the judge or magistrate to do so.

VISs are tendered in writing and can be read out in court by the victim or a support person designated by the victim.

A VIS may be made available to the offender, although the offender is not permitted to hold a copy and the victim may be cross-examined on details raised in the VIS by the defence. Should the VIS contain information regarding matters not concerning the actual offence, the VIS will be amended. Once a VIS

has been accepted by the court it becomes part of the court file. As there is no legal requirement for VISs to be treated confidentially, the contents of a VIS may become public and can be reported by the media in general, unless in matters of a particularly sensitive nature a suppression order is granted by the court.

In NSW, an information package and a form to prepare a VIS have been developed by the NSW Department of Justice, the Office of the Director of Public Prosecutions and the NSW Police Force as part of the 'NSW Government's commitment to Victims of Crime with the Victims Rights Act 1996' (VISIP 2014).<sup>#</sup> As victims of crime appear as part of a prosecution case, victims of crime may often be supported by the Witness Assistance Service, which operates as a division of the ODPP. Further assistance to prepare a VIS can be given by the police, or designated court support/victim support organisations such as Mission Australia Court Support, HVSG, Enough is Enough, and VOCAL\*.

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<sup>#</sup> To view a full copy of the VISIP provided to VOC eligible to make a VIS, see <<http://www.victimsservices.justice.nsw.gov.au/Documents/bk03-vis.pdf>>.

\* For an example of information given to VOC on VIS by victim service agencies, see VOCAL <<http://vocal.org.au/stories-statements/victim-impact-statements/>>.