

## **Chapter 2: Methodology**

### **2.1 Study design**

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

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

In this approach, the researcher uses empathic understanding to seek to experience the world of the participant from the participant's perspective (Rogers 1980). However, it is unlikely that the researcher will completely understand the experience of the participant. The construct of both the researcher and the participant are unique, and therefore the interaction between the two will also be both constructed (Laing 1967) and interpretive as the researcher attempts to understand the experience described by the participant and the participant attempts to understand the researcher's understanding of that experience. The researcher acknowledges that participants come to the research process from a particular personal position affected by their subjective experience of their own multidimensional background and value system, and the researcher must maintain an awareness of their own personal triggers and agenda. As Laing (1967:16) writes:

I cannot avoid trying to understand your experience, because although I do not understand your experience, which is invisible to me (and non-tasteable, non-touchable, non-smellable and inaudible), yet I experience you as experiencing.

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

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

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

For the study design, I intentionally combined both quantitative and qualitative methods. I used quantitative analysis to determine key areas of interest to be explored further in the qualitative data (Cresswell 2003; Walter 2010). The numerical recurrence of factors revealed by the quantitative statistics provided unexpected focuses for in-depth descriptive study (see Cupchick 2001:8).

Qualitative methods were appropriate for producing the rich data needed to cover the breadth of the research questions. The qualitative approach recognises that an interpretive position requires the development of a contextual understanding and seeks to understand the processes by which events and actions take place (Babbie 2004). Qualitative data were collected through interviews with VOC and with key victim service and support stakeholders, referred to as 'victim service professionals' (VSP) for the purposes of this study.

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

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

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

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<sup>7</sup> Ethics Approval HREC Approval No. 9-2009/12149 Modification 2009/16168 – 23.02.2011.

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

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

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

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

In addition, the Scottish study used interview questionnaires relevant to some of the interests of this study. The questionnaires had been rigorously prepared by a team of University of Aberdeen academics commissioned by the Scottish

Government. Adapting existing questionnaires to suit the purposes of this study was beneficial in terms of resources, as the Scottish team had done much of the groundwork in terms of research development, allowing me to collect data effectively in ways that they had already tested and validated.

## **2.2 Research instruments**

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

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

adapted for relevance to criminal justice processes and supports available in NSW.<sup>8</sup>

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

## **2.3 Permissions and HREC approval**

### **2.3.1 Gatekeeper approvals**

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

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

<sup>9</sup> The NSW Witness Assistance Service (WAS) assists victims of crime during the trial and sentencing proceedings of their matter. WAS is required to inform a victim about their right to make a VIS at sentencing proceedings if the defendant in their matter is convicted or pleads guilty to the charges and to provide assistance to the victim to prepare a VIS if required. WAS is funded by the Office of the Director of Prosecutions and its remit is to support victims and witnesses to crimes during their court matter. Dealing in more serious matters mainly heard in the District and Supreme Courts, WAS supports victims in death matters, sexual assault matters, serious physical assault matters, serious domestic violence matters, historical abuse matters and matters of serious harms or abuse of children.

information and study consent forms to be disseminated in the VISIP distributed by WAS, Victims Services and victim support agencies on the proviso that the NSW Police Force and Victims Services, a unit within the Department of Justice, also gave their permission as co-authors of the VISIP.

### **2.3.2 HREC approval process**

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

#### ***2.3.2.1 Modification to include family victims in death matters***

WAS requested the inclusion of family victims, arguing that family victims might react negatively if excluded and that their VIS experiences were valid to the study data, particularly as family VOC were actively lobbying government to change the legislation to allow their VIS to be taken into account in sentencing.<sup>10</sup> As the participant information sheet was to be pre-packed in the VISIP, WAS argued that it would be too burdensome for their officers to remove the participant information sheet from VISIPs sent to family victims and that they feared mistakes would be made, causing potential distress to family victims.

#### ***2.3.2.2 Modification to permit recruitment of subjects via websites***

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

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<sup>10</sup> For response to the then Liberal Attorney General Greg Smith's proposal to allow the VIS of family victims be taken into account at sentencing in NSW courts see:

- <[www.legalaid.nsw.gov.au/.../family-impact-statements-and-sentencing-homicide-cases,-may-2011](http://www.legalaid.nsw.gov.au/.../family-impact-statements-and-sentencing-homicide-cases,-may-2011)>
- <<https://www.lawsociety.com.au/cs/groups/public/.../455449.pdf>>
- <[www.nswbar.asn.au/docs/webdocs/impact2.pdf](http://www.nswbar.asn.au/docs/webdocs/impact2.pdf)>.

After discussions regarding the study with non-government victim service agencies, study information and links to the participant information sheet information were uploaded to more websites offering assistance and support to VOC.

### ***2.3.2.3 Modification to include a second interview sample of key VSP***

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

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

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

## **2.4 The research samples**

Two research sample groups were recruited for the study.

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

Participants in this sample comprised primary or family VOC eligible to make a VIS in sentencing proceedings in NSW following a conviction in their matter. A prerequisite for participant inclusion was that the sentencing of all their matters must have concluded, including any appeal processes. Due to ethical and practical implications of interviewing child VOC, it was decided that all study participants must be over 18 years of age.



Sample size was difficult to determine prior to recruitment commencement as it was dependent on response rates, but the target was an initial response of between 100 to 200 VOC, commensurate with the 2007 Scottish study of 182. It was intended that participants would initially be interviewed over the telephone, with a smaller sample of 10 to 20 participants attending a follow-up face-to-face interview, again to be commensurate with the Scottish study where 20 in-depth face-to-face interviews were conducted.

#### ***2.4.1.1 Method of recruitment***

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

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

comprising a further 200 to WAS Sydney and 100 to Victims Services (NSW Department of Justice).

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

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

#### ***2.4.1.2 Outcome of recruitment***

Sixty-six VOC contacted the study.<sup>11</sup> Twenty-six were family victims, of whom two were ineligible for interviewing, because their matters concluded prior to the introduction of the VIS. Forty were primary VOC, with 11 ineligible for

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<sup>11</sup> The broad-based dissemination of study information might suggest there would be a higher response rate than the 66 VOC who contacted the study. Without accurate statistical data on numbers of VOC eligible to make a VIS and numbers of VIS actually made in NSW, it is impossible to assess whether this participant response rate is proportionately low. It was not possible to assess how many VOC eligible to make a VIS actually received or viewed the study's call to participate or to make any assumption regarding the level of seriousness of matters of VOC receiving or viewing the study information, beyond an understanding that VOC receiving participant information from WAS or the HVSG were victims in serious criminal proceedings.

interviewing for various reasons outlined in Chapter 3. A small number of primary victims were not able to make a VIS within their proceedings; however, their observations regarding why they would wish to make a VIS were useful to the study and they were interviewed. These were mainly victims of institutional historical child sexual assault. Basic demographic data were taken from all victims who contacted the study and, where appropriate, were recorded within the quantitative data. In total, 56 semi-structured interviews with VOC were performed: 55 were conducted over the telephone and one conducted face-to-face. Of these, 24 were family victims and 29 were eligible primary victims.<sup>12</sup> Due to the recruitment approach, which included alerts to the study through websites, it was not possible to calculate a response rate.

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

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

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<sup>12</sup> Three primary victims interviewed were victims of IHCSA who approached the study from the Forgotten Australian victim support service and who had hoped to make a VIS but whose matters had not proceeded to conviction.

they desired. These elements were better supported by the telephone interview method.

#### **2.4.2 Sample 2: Victim service professionals**

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

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

##### ***2.4.2.1 Method of recruitment***

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

##### ***2.4.2.2 Outcome of recruitment***

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

## **2.5 VOC sample**

### **2.5.1 Data collection**

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

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

The subsequent telephone interview was conducted within a particular framework. While it was not structured as a therapeutic exchange in the sense of counselling where topics are led by the client/participant, elements of the therapeutic conversation were adopted. Interviews were conducted under the Rogerian (Rogers 1959) premise of unconditional positive regard, meaning that the information participants provided was taken at face value. Their point of view and the veracity of their explanation and description were accepted without challenge. In addition, the stance I adopted was one of congruence, using authentic engagement and empathic understanding when responding. Using open-ended questions at times, the exchange was non-directional in parts, indicating to participants that they retained autonomy to choose how they would explain their experience and themselves within the interview structure.

The questionnaire was structured to assist the participant to ease into and out of the interview. Early and concluding questions were mainly closed and monadic, requiring simple answers. Monadic, or direct questioning, focuses a respondent on a particular issue to be discussed in order to evoke a more targeted and authentic response. As the study was interested in the nature of the therapeutic challenges and possible benefits of the VIS, it was necessary to ask straightforward questions in the emotional domains as well as in the physical and procedural. When further detail was required, following the monadic question, Socratic questioning was used to explore issues further (Corey 2001; Egan 2002). The questions that were most sensitive and likely to trigger emotions were deliberately placed mid-interview.

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

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

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

### **2.5.2 Method of coding**

Within the coding of victim information, details including gender, nature of the crime and whether the participant was a primary or family victim were included.

The nature of the familial relationship of family victims to the deceased was also recorded.<sup>13</sup> As the study was interested in possible connections between victim gender, victim culture, crime category and relationship to the offender and deceased in relation to the VIS experience, such details needed to remain unmasked during both quantitative and qualitative analysis. While it could be argued that removal of all identifying features from the data would allow it to stand alone to be reviewed and analysed without context, to do so would ignore the theoretical standpoint of the research, which acknowledges that all human experience and interaction are contextual and that human behaviour is reactive to context and therefore can only be contextually understood.

### ***2.5.2.1 Quantitative analysis***

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

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

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<sup>13</sup> 'Family victims' within the study refers to participants whose family member, to include spouse or defacto partner, had died as a result of a criminal act.

### **2.5.2.2 Qualitative analysis**

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

### **2.5.3 Timeframe**

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

## **2.6 VSP sample**

### **2.6.1 Data collection**

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

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<sup>14</sup> As mentioned, (FN:12), three interviews were performed with VOC who had wished to make a VIS but whose matters did not conclude with a conviction. Some of their experiences and opinions about the purpose, process and recommendations regarding the VIS were valid; however, as they had not made a VIS, their data were differently coded and not included within the non-VIS maker group.



clients. I approached the DPP, requesting interviews with Crown prosecutors and police prosecutors, and interviews with two Crown prosecutors and one police prosecutor were arranged. The choice of interviewee was not mine; however, I was informed that those chosen had experience with VISs in court. All interviews were conducted at the VSP's place of work and usually took between one and two hours to complete.

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

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

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

## **2.6.2 Method of coding**

### ***2.6.2.1 Quantitative analysis***

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

their interview, or discuss with me any parts of it that concerned them, before it was included in the data for analysis.

### **2.6.2.2 Qualitative analysis**

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

### **2.6.3 Timeframe**

VSP interviews were performed between February 2011 and July 2011.

## **2.7 Method of analysis**

### **2.7.1 Quantitative analysis**

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

### **2.7.2 Qualitative analysis**

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

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

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

## 2.8 Ethical considerations

### 2.8.1 VOC sample

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

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

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

The needs described are derived from practical needs expressed by VOC: acknowledgement; restoration of relationships, sometimes with the offender, but sometimes with the community (Herman 2003); being treated as an interested party; being given an opportunity to provide input at criminal justice proceedings; being consulted; and being given assent and power to make decisions (Rohl 1997). According to the theories of procedural and restorative justice, such needs are met by treating the victim with courtesy, consideration and respect, allowing them to express themselves and affording them some process control and decisive power in matters that concern them (see ten Boom & Kuijpers 2012:165, Table 4).

It was expected that some participants might be dealing with psychological, emotional and physical consequences resultant from the crime/s against them. Another consideration was the possibility that, of those, some may have been struggling with psychological and health problems prior to the crime. All correspondence was carefully drafted to ensure that recipients did not feel they had been particularly targeted for selection, and the questionnaire was designed in such a way that questions were asked in a straightforward manner, focusing on the VIS experience alone.

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

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

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<sup>15</sup> On two occasions, VOC requested legal advice about issues relating to their matter. I referred them to Victims Services and WAS, who could provide appropriate referrals.

It was possible that some participants might perceive the research process as exploiting their suffering for an academic exercise, viewing the process as minimising or dismissive of the seriousness of their trauma, also a concern of Booth (2013a). To address this, I was mindful to thank each one for their participation, to remind them of the significance and potential outcomes of the research, to include them within the dissemination of findings and to update them should any recommendations eventuate in drives towards procedural change. These measures were designed to facilitate their empowerment as integral to any outcomes from the research, as described previously.

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

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

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<sup>16</sup> Domestic violence is a crime that features particular complexities due to both the social stigma associated with its disclosure and to the nature of the relationship between the offender, victim, and their familial and social group. Victims of domestic and family violence, and indeed those suffering crimes of historical child physical and sexual abuse, are often silenced by the constraints of their situation and controlled by their offender. Such victims face particular challenges and risks when engaging with criminal justice processes, and the study was interested in the particular challenges of the VIS experienced by these victims.

However, interviewing participants on the telephone in the knowledge that the only support available to them was provision of support service contact details was a grave concern. Prior to interview, participants were not asked whether they were suffering any mental health or substance abuse issues. It seemed ethically inappropriate to do so, anticipating that it would be intrusive to try to ascertain whether such issues were pre-existing conditions or resultant from being VOC; also, practically, it was questionable whether this made a difference to their appropriateness to participate. During the interviews, I was aware a small number of victims appeared particularly emotionally unstable, and two may have been affected by alcohol or drugs, which may have coloured their responses. However, as explained earlier, regardless of their psychological state or any impairment, participants chose to present their responses as they wished them to be understood at that time (Rogers 1980), because they controlled the scheduling of their interview and participated freely in the interview.

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

### **2.8.2 VSP sample**

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

### **2.9 Confidentiality and privacy**

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

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

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



## **2.10 Strengths of the study design and methodology**

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

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

A strength of the chosen interviewing technique was that it allowed participants to volunteer information that was unexpected and undirected. The interview style supported the status of the participants as experts of their experience, allowing them the scope to describe not only their experience but also the manner in which that experience was enhanced or diminished. There appeared to be a genuine interest on the part of many participants to present to the study as full a picture as possible, and after reflection on their interview, some re-contacted me by email to present further information about their VIS experience they thought would improve the process for others. In the interview, participants

were able to be self-reflexive in their consideration of their personal engagement with, and responses to, the VIS process and mechanisms, giving a much more rounded understanding of the unique and multifaceted influences on VOC that affect their experience of the VIS.

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

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

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<sup>17</sup> Examples of recent VIS studies supported by government funding include:

- Department of Justice Canada (2005) *Multi-Site Survey of Victims of Crime and Criminal Justice Professionals across Canada*, Prepared by the Research and Statistics Division for the Policy Centre for Victim Issues, Department of Justice Canada.
- Erez, E, Roeger, L & Morgan, F (1994) *Victim Impact Statements in South Australia: An Evaluation*, Office of Crime Statistics, South Australian Attorney-General's Department.
- Graham, J, Woodfield, K, Tibble, M & Kitchen, S (2004) *Testaments of Harm: A Qualitative Evaluation of the Victim Personal Statements Scheme*, London, National Centre for Social Research, Prepared for The Home Office UK.
- Leverick, F, Chalmers, J and Duff, P (2007) *An Evaluation of the Pilot Victim Statement Schemes in Scotland*, Edinburgh: Scottish Executive Social Research, Scottish Government.
- Morgan, J & Sanders, A (1999) *The Uses of Victim Impact Statements*. London: Home Office UK.
- VSA (2009) *A Victim's Voice. Victim Impact Statements in Victoria*, Victims' Support Agency, Prepared for the Department of Justice, Victoria, Australia.

## **2.11 Limitations of the study**

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

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

Third, this study is based on interviews about matters sentenced in NSW and focuses on NSW VIS practice. The VIS process differs between states in Australia and between jurisdictions in other countries; thus, results must be

understood within the framework of NSW VIS legislation and practice and may not be generalisable to other jurisdictions.<sup>18</sup>

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

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

Hand-scribing had three additional limitations:

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

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

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

<sup>19</sup> After each interview, if there had not been time to note particular emotionality or tone, I took time to make reflexive notes on the nature of the interview and how the participant presented themselves and their information, especially if it appeared in any way unusual or pronounced.

and rationale for their feelings. The ways in which VOC reconstruct narratives of traumatic events has been described in therapeutic terms as a way of making sense and giving meaning to what has happened in order to restore the self (Baumeister & Newman 1994; McLean, Pasupathi & Pals 2007). Unconscious self-protective mechanisms adopted by those who are required to listen to the traumatic information of others, such as emotional hardening or desensitisation, are well documented in literature regarding risks to practitioners in psychological clinical practice (Figley 2002). Mindful of this, I was also aware that the depth of physical and psychological harms suffered by those coming forward could not be assumed to be understood by me, nor the severity of their full impact comprehended.

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

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

Ninth, the VOC sample was self-selecting. Participants were required to read the participant information sheet and consent form, which were dense in information. A certain level of literacy, or literacy support, was needed to respond to the study. Participation required the signed consent form or online form to be returned by mail or email, requiring motivation, effort and ability to write and, for those preferring to consent online, access to a computer and

email. Thus, the design of the study paperwork, mode of dissemination and participation possibly made engagement more difficult for those VOC challenged by literacy, cognition, access or language issues, whom the study was hoping to reach. Further, as there was a potential onus for participants to discuss private and emotionally challenging experiences with a stranger, it could be argued that only individuals highly motivated by the study's focus would have taken the time to engage, and only those VOC who felt strongly towards the provision of the VIS, either positively or negatively, would have wished to participate, polarising the data between two extremes. To counter this, data presented was analysed thematically, looking for similarities and differences across both VOC and VSP data sets in an attempt to present a more generalised understanding of the VIS experience.

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

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

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

workplaces may have consciously or subconsciously reminded participants of their duty to their employer and may have affected levels of disclosure.

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

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