

Chapter 5: The Experience of Making a VIS

This chapter presents analysis of the qualitative data regarding the VIS writing experience, the information and supports that VOC seek and receive when contemplating writing a VIS and the presentation of the VIS in court, including procedural processes that affect the quality of that experience. It was apparent from the data that after making the decision to make a VIS (see Chapter 3), VOC go through a staged process as part of their VIS experience:

1. writing the VIS
2. checking the VIS
3. editing the VIS
4. presenting the VIS in court
5. response to VIS
6. consequences of VIS.

The sections in this chapter follow the sequence of this process, with an analysis of views presented by both data sets regarding each stage.

5.1 Writing the VIS

The experience of writing a VIS from the point of view of VOC has been little explored in depth.⁶¹ This study asked primary and family VOC to expand on the nature of their personal VIS writing experience, with a view to understanding how VISs are constructed in order to determine whether the mere writing of a VIS provided any therapeutic benefits and, if so, their nature.

Writing a VIS is a complex process. VOC must fashion a narrative. They must consider how much information they wish to reveal, to whom and to what end, and take themselves back to the crime event to evaluate its consequences and consider how this information will be received and how they will be perceived.

⁶¹ The Scottish study (Leverick, Chalmers & Duff 2007) surveyed respondents about whether making the VIS was 'upsetting' and reported that while 39% found it distressing, 61% reported feeling better having done so. However, writing the VIS was not separated from the totality of the VIS process. Booth (2013a) analysed the narrative content of 38 family VISs presented in 18 homicide sentencing matters, in conjunction with data she collected during 14 in-depth interviews with family VIS makers regarding the preparation of their VIS, but the focus of her study was the impact of victim participation (to include VIS presentation and content) on the emotionality and process of the sentencing court in death matters.

Finally, they must be mindful of the constraints of the VIS and work within set guidelines of admissibility and relevance. The VIS once tendered becomes part of the public record, freely accessed and used by media, which is another consideration.⁶² Referred to as ‘testaments of harm’ (Graham et al 2004:i), VIS are not benign.

Salmon and Reissman (2008:199) point to the co-constructed nature of narratives, suggesting that the audience, whether present or not, ‘exerts a crucial influence on what can and cannot be said, how things should be expressed, what can be taken for granted, and what needs explaining’.⁶³ Reissman (2008:8) highlights the complicated relationship between narrative, time and memory, suggesting ‘we revise and edit the remembered past to square with our identities in the present’. In considering the writing of the VIS, VOC are required to make assumptions regarding the context in which their narrative will be presented—and choose a personal stance as author—within the timeline of pre-victimisation, victimisation and post-victimisation.

Narratives are political in that they have a social role (Reissman 2008). Rock (2012:7) suggests that within the victim’s movement, there is no more-potent force than that of victims of serious personal crimes of physical and sexual assaults/abuses or relatives of homicide victims. He describes family victims in particular as having a ‘compelling intensity’ that makes ‘an impression’ within the political and cultural sphere. Findings suggest that VOC participants intended their VIS to have influence, understanding the VIS as an opportunity to exercise their right to reveal the impacts of the crime against them to their chosen audience to achieve a desired outcome.

In general, writing the VIS was reported as difficult and, for some, traumatic and emotionally distressing. However, in analysis, variables such as the nature of

⁶² The VIS can be freely used by the media unless a ‘no publication order’ has been sought from the judge, through the Crown. This order prevents contents of the VIS being published by the media and is granted at the judge’s discretion, based on the sensitivity of the criminal matter.

⁶³ In the case of primary VOC, ‘audience’ can include themselves; their supporters; their community and wider community; the offender; the offender’s supporters police; criminal justice professionals; victim support services; the media; those politically, culturally or religiously interested; and may also include persons to whom the VOC would wish their feelings known, including those no longer living. ‘Audience’ for family VOC would most importantly include the deceased.

the crime, relationship to the offender, understanding of VIS purpose, experience and attitude towards the criminal justice process, gender, literacy, culture and perceptions of self-worth are important. These factors can affect not only the content of the VIS but also the nature of the distress suffered when preparing it.

5.1.1 Family victims

For family victims, the sentencing hearing is the end of a journey with no saving grace. Some described the VIS as the final task they could perform for their loved one. In writing it, they had to confront the nature of their loss and its consequences:

I do feel this is a process. Probably with the VIS and judgement you get to the point where this is all real. You really feel flat. VIS makes it even more real. A lot of the time I am still in denial, and in saying that, when you look at it, this [the sentencing] is the funeral so the VIS, it's almost a eulogy.

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

The difficulty was that when you make the VIS, that makes it all real and very final. It's extremely difficult. The minute you put pen to paper, you have to realise that she is never coming back.

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

The content of female family VISs tended to be concerned with the reality and totality of the loss. Perhaps for this reason, participants more often described issues with not knowing where to start, with procrastination and completion within the timeframe and with concerns that their VIS would not properly convey their trauma or do justice to the enormity of their loss:

It [VIS] was upsetting and it wouldn't leave me. I'd wake up and think of things I should have said. It was in my subconscious all the time.

Jenny (CD: 19), mother of a daughter killed in motor collision by an intoxicated driver of another car, VIS read

At the time, when you're so traumatised, it's hard to do. I was still sick with the shock, so I couldn't do it how I wanted, and when, when I did want to do it, they brushed it aside and said 'we'd go with what we'd got'.

Linda (CD: 21), mother of a daughter murdered by boyfriend. Linda suffered a heart attack and required triple bypass surgery after her daughter's death. Her VIS was read by her son, brother to the deceased.

Male family participants tended to describe writing the VIS in more pragmatic terms and, as previously mentioned, most wrote their VIS for sons. They tended to focus on the purpose of their VIS, which was eulogistic, written to introduce the positive personhood of the deceased and to draw a comparison with the offender in terms of relative societal worth:

You're trying to help your son and trying to do your best. No, I didn't feel better for writing it, but it had to be done, [like] cleaning your teeth, to counter what the lawyers were saying. I just made it short and sweet, and didn't think of anything like, just to help my son.

Jeff (CD:11), father of a murdered son, VIS handed up

I think I wrote it with pride. No not upsetting. It gave me a wonderful feeling. It was difficult. I'm not sure if it was therapeutic. It was reminiscing over a young person's life. Just remembering our life together and I was so proud of what he had achieved. Obviously it was written with great care.

Francis (CD: 07) Father of a murdered son, VIS read

With men, they do tend to keep the emotion out of it to a certain degree, and they will write the facts and the figures. They will write the story. They will write about the experiences that they had with this person, like the camping trip or the fishing trip. So they bring them to life in a different way. Where with the females, it is about the missing. It is about the yearning. It is about the knock on the door. It is about the grief, the pain, all of that. The men want to talk about the process. The women talk about the reactions.

Manager, HVSG

The sudden and unexpected loss of a loved one often results in 'complicated grief' where 'normal' grief processes maladapt (Horowitz, Bonanno & Holen

1993; Murray 2001). In deaths caused by crime or misadventure, there is no opportunity to prepare for the loss. Family victim participants often reported their distress at not knowing why the offender took the life of their loved one. Worden (2008:127) notes that a special feature of the grief experience of sudden death is an increased need to understand. Many theorists describe stages of grief or mourning, to assist those grieving to understand the emotional and often somatic reactions they experience (see Bowlby 1980; Kübler-Ross 1969; Parkes 1993, 2001). Stages are interchangeable and not necessarily universally experienced in either order or totality. Worden (2008), expanding on the grief process, developed four tasks of mourning: (1) to accept the reality of the loss, (2) to work through the pain of grief, (3) to adjust to an environment where the deceased is missing and (4) to emotionally relocate the deceased and move on with life.

In reviewing the ways in which family participants described writing the VIS and its content, it appears the last two tasks of mourning are difficult, if not impossible, for parents of murdered children, whether lost in childhood or adulthood. Superficially, it appears females move through Tasks 1 and 2, and males through Tasks 1 and 3, although this is a very simplistic reading of the results. However, undoubtedly, VIS assists family victims towards the difficult first task of acceptance, countering potential maladaptation of the adaptive behaviours of denial and isolation, for it is only possible to assess the consequences of loss by its acceptance.

While the writing process was challenging, some described it as useful, cathartic and positive. The VIS appeared to give family victims a reason to consider the life lost and the reality of the impacts. There was a practical value to forcing oneself into what, in therapeutic terms, would be described as 'grief work' (Worden 2008), and safety in its containment, by its purpose:

In some respects it has a cathartic value. Just the process of writing it. You can get it all out, to feel the loss and acknowledge the feelings.

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

The writing was difficult. Very harrowing. I locked myself away for three to four days. It was horrific, but therapeutic ... I found finally being able to open up and speak about what I was feeling—it was two and a half years ago at that stage—it was extremely cathartic. It took me back to the beginning, to lay it all out and let me grieve ... those three to four days was being in her presence and feeling her and the loss of her and how the loss of her had impacted on me, to now. The role I had to play [in the future of my niece]. To be immersed in that in a safe place and at a safe time, for a reason. There was a purpose [to consider the impact] which made it safer. When you are dealing with so much grief, to let it out of the box—it was for a purpose and there was a deadline and purpose that made it much safer.

Bev (CD:03), sister of a woman murdered by partner, VIS read

I certainly felt better for the process. It helped somewhat in putting things into perspective. Things that you wouldn't be able to tell people. I don't know what it does for me. I pull that VIS out often and read it.

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

As supported by Booth (2013a), family participants described taking great care in writing their VIS. This was a considered document, written over a period ranging from days to weeks—for some, even months. Some participants described keeping a diary of feelings and events from the death to sentencing. It appears many anticipated the likelihood of presenting a VIS, even at the start of homicide or manslaughter investigations. Many saw the VIS as an important part of the role they would play in sentencing proceedings and looked forward to that opportunity. The VIS was not written recklessly, and participants reported investing much worth and pride in its content:

I took a long time to write it. You read it over and over. No mistakes. Nothing. It took me a week to write it. But if I'm putting pen to paper, it's got to come from the heart. It was a time to say what (X) meant to me and to the family as a whole.

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

When those prosecuting, defending and judging death matters and those supporting family VOC fully understand the agonising emotional process family members go through to complete the first draft of their VIS, negative reactions they may display when editing is required can be better anticipated and managed.

Some family participants described writing the VIS as an ordeal, angered by even having to consider it. Some suffered confusion, not knowing what they were supposed to say. Others viewed the VIS as a final task they needed to complete in criminal justice proceedings, which had, to that point, delayed complete grieving. Although the deceased was no longer alive, they continued to exist as part of a living discussion within their criminal justice matter. Not mentioned in the literature, data from this study suggest that the prospect of the termination of relationships developed over time by family VOC with police, criminal justice personnel, prosecutors, victim support workers and media, once sentencing was complete, was another loss to be anticipated for some family VOC.

5.1.2 Primary victims

Primary VOC approached the writing of the VIS differently. In basic terms, their VIS represented the impacts on them personally. They needed to consider how much of themselves they wished to reveal to the court and the offender. Those who knew their offender needed to consider how they would position themselves regarding their interpersonal and intrapersonal safety. Primary VIS makers reported writing their VIS more quickly than did family victims, often within a matter of hours, and rarely more than a few days. While this is likely due to less time taken between conviction and sentence in primary matters, primary participants often described the speed of writing the VIS as an outpouring, providing a cathartic, relieving effect:

I probably wrote it in two hours and it just flowed. Once I started, it just flowed. It was easy to write. But it was hard, because I started to think of all these things I hadn't thought about or [had] forgotten about.

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

It was a relief. There are things that I missed out on, like my son's Easter hat parade, because I had a black eye. I sat outside the school and wept. It [VIS] was sad to read, but a relief too.

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

Writing the VIS is not easy for many primary VOC and puts some at great psychological risk. Herman (1992) states that recovery from the trauma of victimisation cannot commence without the secure knowledge that one is safe. For those suffering abuse as children, or those who have endured protracted, systematic abuse, acknowledgement of harms buried, internalised or previously dismissed can be highly challenging and traumatic (Kezelman et al 2015; Kezelman & Stavropoulos 2012; Wall & Quadara 2014). Such participants described constructing their VIS as revelatory; they were suddenly able to understand how their lives had been fashioned from the crime event:

The VIS made me realise how much it had affected me, and suddenly I could see the connection and I saw how it had formed my life. My feelings were legitimate and my actions, and that I had done what I had done because of it. It was cathartic, therapeutic. Upsetting at times, but out in the open. All the clichés. It does help. It clarifies things and legitimises feelings. I don't feel as heavy. It's very light. A weight lifted.

Maggie (CD:52), victim of HCSA, VIS read

I suffer from depression, anxiety. I've tried to commit suicide. It happened to me when I was a kid, about four or five. Affected pretty much all of my life. At the time, I didn't notice it ... I'd shut it out, and I knew what I hid. It [VIS] made me realise that I had been kidding myself that nothing has been wrong, and I realised it had had an effect, in that I had done this and that because of it.

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

Despite the traumatic nature of experiences that participants needed to recall to write their VIS, many appeared to do this without support, writing their VIS at home, in isolation. This concerned some VSP, who felt recalling the crime and considering its impacts put some victims at risk of secondary traumatisation. For this reason, some services took the view that the potential therapeutic benefits

of VIS are outweighed by the likelihood of the writing process triggering psychological distress, exacerbated if the victim is unsupported and the content presented in the VIS is treated without appropriate understanding and empathy:

Preparing victim impact statements can be highly triggering and traumatic, and we would not recommend that they do it alone ... because often, even though you would say that kind of recognition is amazing—it's kind of like a penny dropping often for people, when they realise the impact and are able to trace it back to these events—the amount of grief and rage that can come from that is quite huge. So it can be a period that's very hard and also very risky. Um, we wouldn't want people to be doing that by themselves.

Counsellor, Adult Survivors of Childhood Abuse

It was torture for me [writing the VIS]. God, I think, I felt incredibly panicked, like a panic attack to have to do it. Very difficult. Much more difficult than I thought. I really hadn't considered it, and I was really surprised how difficult it [writing the VIS] was. I think it was the pressure of wanting to get it right. I knew it was going to be in the media, which [pause]. He would be there with his family.

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

Implicit in the responses of primary and family VOC was the core therapeutic value of the VIS.⁶⁴ In telling the story of the impact, or in considering doing so, participants were forced to locate the crime event in the past, reframing it in a perspective of their choosing. Telling stories of difficulties in our lives creates order and contains emotions, giving events and our reactions to them a context (Harney 2001). Through the story, distance from the event is created, allowing a different perspective from which the storyteller can search for meaning. When shared, this constructed, completed narrative enables connection with those who listen with understanding and empathy (Reissman 2008). In Herman's (1992) trauma and recovery model, the three fundamental stages to recovery from trauma are (1) establishing safety, (2) reconstructing the traumatic story

⁶⁴ Erez, Ibarra and Downs(2011), a qualitative study comprising in-depth interviews with 27 criminal justice professionals points to the therapeutic effect of reframing the trauma story. Evaluating the therapeutic effects of victim voice and empowerment, they write, 'Participation may result in self-insight regarding one's victimisation, which can be in its own way empowering, allowing victims to look at their past victimisation in a different light, and to re-interpret the experience and make changes in their lives' (20).

and (3) restoration of connections between victim and community. The VIS allows VOC to reconstruct their trauma story and, in doing so, choose how they wish their victimhood to be understood intrapersonally and interpersonally, in both the present and the future:

Upsetting yet cathartic. I guess I got to share with people that cared about me the torment I suffered, and suffer, and to do so allows them to better share my support.

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

This process allows some VOC to intellectually and emotionally distance themselves from victimhood and the offending behaviour. By choosing to confront and acknowledge the event and its consequences through writing a VIS, VOC report being able to take control of how they move forward, by reframing their past:

I had, in a sense, it was erasing the damage done, and the shame lifted from me and I had found my own voice. It was liberating.

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

The VIS was a different sort of thing, a positive thing, because it was a chance for me to have my say about what happened. It was hard to do because you have to think about all the things that have happened as a result, but it was empowering. I guess, sitting back, and looking at it and knowing you are doing something about it, and knowing that it isn't going to control your life. Even though it's called a victim impact statement, it felt good not to be 'the victim', and actually have a say.

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

Primary VOC put themselves through considerable emotional distress when considering and writing their VIS, and, for some, the VIS is potentially a psychologically dangerous endeavour. It does not appear congruent that VOC would go through such anguish and take such care in authentically representing their harms merely in the hope that the VIS would affect sentence or touch a, seemingly (in many cases), indifferent or unknown offender. VOC appear to

appreciate that writing the VIS offers important personal therapeutic returns. The VIS facilitates catharsis, reconstruction of events and identity, and supports a positive and empowered re-engagement with society.

5.1.3 Perceptions of appropriateness of VIS content and emotionality

5.1.3.1 Primary victims

Some VOC choose to draft their VIS in a way that seems unusual for the severity of the crime, which was a novel finding. Rose, Nadler and Clark's (2006) US study, of the reaction of participants reviewing written descriptions of two severe and less-severe crimes against varied presentations of subsequent victim responses, found there is a proportionality perspective to the level of emotional expression expected of a victim. In other words, victims are expected to portray a level of emotional and psychological response in keeping with the severity of their crime experience as understood by others. Where victims portray insufficiently strong emotions, or appear to be mild mannered in their presentations to the court, they are viewed as being comfortable with their role as victim and are stigmatised. Victims who display too much emotion in proportion to the severity of the crime are viewed as over-reacting and thus unreliable (see Tsoudis & Smith-Lovin 1998).

Rose, Nadler and Clark (2006) suggest there are norms and rules that govern what appropriate emotion should look like, created by multiple influences, such as personal internalisation of dominant culture; cultural identity; social, economic, religious and political environments; and life experience. However, they admit empirical understanding of such norms is limited. My qualitative data suggest that some VOC, despite the VIS being an opportunity to describe the full impact of the harms against them, will pointedly choose not to make one, will deliberately minimise the content of their VIS or, for various reasons, will present a VIS that is not a 'good fit' between what Rose, Nadler and Clark (2006) describe as the normative expression of emotion for the severity of the crime. Rose, Nadler and Clark (2006:210) suggest the display of unexpected levels of emotion are problematic for VOC within the criminal justice setting and are likely to result in disproportionate sentencing outcomes of their matters:

'Emotions are a fact of life in legal settings—either because they are an inherent part of a decision-making task (e.g. the right amount of compensation for “suffering”) or, as in the case of VIS, because the law has expanded evidentiary rules to make emotional reactions relevant to decisions’.

So why would VOC ‘get it wrong’? What influences would affect them to the extent that they present an atypical emotional response through their VIS? The data do not suggest VOC lack understanding about how to present an emotional response; rather, some VOC are presenting the most powerful response they can, in light of understanding and learned experience of other more dominant influences that form their perception of how their voice will be received. These VOC balance their need to be heard and acknowledged with competing needs of extrinsic and intrinsic safety. Dissociative disorders are not uncommon in victims of sustained abuse, where, as Putnam (1992:31) describes, ‘The personality [presented] is almost never the [victim’s] original personality—the identity that developed between birth and the experience of trauma. That self usually lives dormant and emerges only after extensive psychotherapy’. It is not unusual for victims of sustained abuse to present in their VIS a short, unemotional, matter-of-fact and minimised account of their suffering:

And I’ve seen some very rigid women who give clinical, very unemotional victim impact statements as well, so. Yeah, I don’t know. That’s [nature of VIS content] an interesting thing to look at.

Crown prosecutor, Sydney (1)

Although VOC are permitted to submit a VIS of up to 20 pages in length, it is not unusual for VOC conditioned to accept their abuse as normal or as deserved to submit a VIS of one or two paragraphs, featuring little detail of the emotional or physical toll of the crimes against them. Data show these VISs are often handed up or read by court support workers without the attendance of the victim at sentencing. If the VIS of primary victims educate the judiciary and

inform sentencing, such VISs are important to recognise and understand.⁶⁵ The quantitative results reveal that offenders pled guilty in 70% of HCSA matters and 45% of DV matters, with charges being negotiated in 57% of HCSA matters and 86% of DV matters. Therefore, such matters were less tried and charges more often contested than other matters, with the offender known to the participant in 100% of these cases.⁶⁶ Offenders of these crimes characteristically use fear, shame and conditioning to ensure their victims remain silent, and they often deny the abuse by discrediting the accounts of their victims (Middleton 2012). Those suffering sustained trauma define their harms within a hierarchy of harm and use denial, minimisation and dissociation from reality as a way to cope and exist (Platt, Barton & Freyd 2009):

When you've been abused over 16 years, you're used to the punches, sticks and burns. Rapes. When it's over, you don't know it's over. They have ... my body's aching, so you hit yourself to feel. A world just in turmoil. You don't know when you are going to come back ... Thinking about the hurts ahead. You can't be back in society emotionally, physically. You are a nobody. You don't exist. You get hurt. You don't even think you are human.

Penny (CD:34), victim of DV, VIS handed up

Victims of these crimes often described their need to protect themselves in order to survive:

It would have been nice to know he [offender] didn't get to read it, and knowing that the defence counsel wouldn't go through it and pick holes in it. You offer a lot of private information. I kept it brief because I didn't want him to have the information, but also so they couldn't mess with it ... I'm giving all this information that he can use to terrorise me more.

Amanda (CD:39), victim of DV, VIS handed up

I don't really deal with things by talking to people. WAS did say I could call them if I had any questions [about VIS]. I did see a counsellor when I was

⁶⁵ It was out of the scope of this study to provide a content analysis of the VISs. However, a content analysis of the VISs of victims of systemic physical or sexual abuse and the nature of their relationship to the offender at time of sentencing might prove enlightening.

⁶⁶ It is noted that quantitative results show charges in PA matters as the most negotiated at 100%.

younger. Mum made me go. I didn't like it. I found it easier not to talk about things.

Lucy (CD:50) victim of HCSA, VIS handed up, did not attend court

Understanding the personal safety needs of VOC suffering complex trauma who choose to minimise or deny harms they have suffered is important to ensure they are validated and supported within the VIS process, should they decide to proceed.⁶⁷

5.1.3.2 Family victims

Family VOC data reveal that they want to powerfully convey the tragedy of their loss and its ongoing repercussions. To do so, it is most likely they will embrace victimhood as an appropriate stance (Fohring 2012). Primary VOC report the need to demonstrate their abilities to survive, move on or make positive meaning of the crime within their VIS. Presentation of such abilities in a family VIS would be emotionally counterintuitive, counterproductive and, for VOC of many cultures, culturally deviant. Family VISs are generally testaments of grief, loss and relational destruction (Joh 2000). In other words, within the dominant Anglo/European Australian culture, there is a normative expectation for family VISs to present content consistent with being devastated, grief-stricken and angry⁶⁸ (Ekman 2003; Parkes 2001). This behaviour fulfils cultural expectations and strengthens the reconnection of family VOC to society through mutual understanding:

You can't get over something like this, or ever get back to normal. It's about finding a new kind of normal. It's about falling over and [pause]. Before (X's) death and after (X's) death. Nothing is the same.

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

However, people from different cultures react differently to death. For some, quite violent displays of grief are appropriate, whereas for others grief is

⁶⁷ For an explanation of the aetiology of complex trauma, see Kezelman & Stavropoulos (2012).

⁶⁸ Booth (2013) presents the content of family VISs presented at sentencing proceedings. She observed and analysed the nature of the narrative in death matters, providing valuable insight into the emotional content of family VISs (221–266).

personal and contained (see Parkes, Laungani & Young 1997; Rosenblatt, Walsh & Jackson 1976). The cultural norms of individual victims are important and should be discussed, as first-generation migrants making a VIS may hold different justice notions or see it as culturally inappropriate to divulge or display personal, emotional feelings.

5.1.4 The media

Increasingly, news outlets and popular media are including the content of VISs in their copy. The expressive nature of the VIS makes them particularly appealing, especially in matters easily portrayed as innocent victim versus evil villain (see Greer 2007). Data reveal that VOC are not blind to this, and some fashion their VIS knowing that the media will use it:

A journalist from the *Daily Telegraph* asked me, 'Have you prepared a VIS? It's your chance to say how you feel.' I said I'm definitely going to do one of those ... By this time I was good friends with the *Daily Telegraph* reporters and I had written some stories for them. So X [*Daily Telegraph* journalist] helped in terms of looking at the expressionism. How it would come across.

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

Some VOC wanted their VIS content made public, positioning themselves as spokespersons, making meaning of their suffering by raising community awareness of the consequences of such crimes in order to support VOC less able to take a stand:

Mine was a heavily publicised case and I wanted those words to be heard by a broader audience ... No, writing it was not hard for me. Very personal. I'm a pretty gifted writer.

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

So I wanted to look at him, and him know how it had affected my life. I knew the media would use my VIS.

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

Other participants expressed sadness that their VIS was not used as they had hoped. VSP report that many VOC are happy to give their VIS to the media, anticipating publication. However, the media has no obligation to publish VISs, nor publish them in their entirety:

I was told that it was [available to the media]. Nobody would publish it.

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

I naively downloaded the [VIS] information and understood it would give me a voice: 'X read her VIS over the TV'. I felt inspired. I did want a voice, so I never thought about not doing it, and even when I understood the limits, I felt I would write as much as I can, and fight to have a voice [pause], which didn't work.

Sandra (CD:29), victim of PA, original charge of attempted murder pled down, VIS handed up

However, many participants found media attention distressing and were challenged by the fact that their VIS might be published. While it is concerning that some journalists might seek to collude with victims of high-profile matters to construct their VIS, data suggest many victims would rather keep the explicit details of their suffering out of the public arena. Concern regarding media access to VISs has been noted in other studies (Erez, Ibarra & Downs 2011; Herman 2005; Leverick, Chalmers & Duff 2007; Schuster and Propen 2006):

Some are concerned that the media will get hold of it. And that their very private thoughts will be exposed. And often they are. Especially when they [VIS] are read. Generally a 'Non-publication Order' is sought. And they [VIS] often contain very emotional passages that are attractive to journalists. And I always tell people this is a possibility. So there's sometimes privacy reasons for not wanting to do it [VIS].

Crown prosecutor, Sydney (1)

As the 24-hour news cycle and digital global news become ingrained, it is likely that the VIS will be an increasingly prevalent feature of news stories of convicted crimes. The knowledge that the media have the power to use, edit

and broadcast the VIS as it sees fit has the potential to affect the emotion and content of the VIS, as the anticipated audience becomes far wider than those at court. As seen above, some victims may hope to influence public and political opinion through their VIS, while others will see potential publication of their VIS as so intrusive as to minimise its content or not make one at all. It would be useful to canvass VOC eligible to make a VIS regarding the extent to which media concerns are personal to the victim or crime specific, especially considering media use of VIS appears a deterrent (Erez, Ibarra & Downs 2011; Herman 2005).

5.2 Supports available to victims when drafting the VIS

In NSW, a WAS officer is allocated to assist VOC whose matters are heard in the District Court or Supreme Court.⁶⁹ The WAS sends or emails a VISIP to the VOC once a conviction has been made, unless the VOC is already being supported by a particular service relevant to their needs.⁷⁰ In addition, various court support services assist VOC either through referral prior to the court date or by offering their services to VOC once at court. Most VOC meeting the criteria to make a VIS in the Local Court would not be supported by WAS and rely on services they seek out themselves or are referred to by the police.

Time is a factor in the preparation of the VIS. Lens, Pemberton and Bogaerts (2013) suggest that the longer the period between the crime event and VIS presentation, the more likely a VIS will be made. Lack of preparation time was a barrier to making a VIS mentioned by non-VIS makers, including those whose matters were expedited owing to an unexpected plea of guilty:

One of the reasons as well, she [WAS officer] said I had a month before making it. The booklet said I had to send it in before the sentencing, and then

⁶⁹ WAS provides a service to adults and children who have matters prosecuted by the ODPP. Priority is given to victims of sexual assault and domestic and family violence, family members of the deceased in driving or homicide cases, children and young people under the age of 18 years, people with a disability, people who are older or frail aged, people with history of mental health concerns, people from culturally and linguistically diverse backgrounds, people who are experiencing particular trauma difficulties about coming to court, people who identify as Aboriginal or Torres Strait Islander. See: <www.odpp.nsw.gov.au/witness-assistance-service/about-the-was>.

⁷⁰ Some VOC receive immediate referrals to specialist support services when the crime is reported to police, who provide VIS information when appropriate.

she called me a couple of days before the sentencing to see if I wanted some assistance and I just felt there wasn't enough time.

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

The manager [of the Family Violence Team] said we could sit down and write one [VIS]. But we didn't do it before, because we thought he would be sentenced on another day.

Catherine (CD:41), victim of DV, non-VIS maker

I think I had to consider it. When I was first told, it was rushed because he was trying to negotiate the plea. So I had 28 hours to write it, which was overwhelming.

Amanda (CD:39), victim of DV, VIS handed up

VOC participants often wrote or attempted their first VIS draft in isolation, usually working from information in the VISIP. Those who found the initial drafting difficult enlisted the help of a friend, victim support worker or WAS officer. Female SA participants were more likely to have been assisted by a sexual assault counsellor. Some VOC attending psychiatric or counselling sessions chose to tender a professional VIS in addition to, or in place of, their VIS. VSP reported a high number of victims needing information regarding VIS purpose, content and format prior to writing the VIS. As reported in Chapter 3, some services provided templates or examples of previous VIS to work from. It was not unusual for WAS or victim support agencies to meet with VOC to help them prepare or complete the initial draft. This included:

- meeting VOC to discuss and write up the VIS, for those unsure how to construct the VIS or what to include
- transcribing a handwritten VIS to a typed format for VOC without computer access
- facilitating a translator to discuss or prepare the VIS for VOC for whom English was not their first language.

It appears that services are much more involved in constructing the VIS of some VOC than of others. VOC challenged by literacy or language issues, or those

unsure not only of the purpose and parameters of VIS but also of the content they should include, are most likely to seek help. While the VISIP provides guidelines regarding VIS format and content, different services may have different attitudes to the VIS (see Chapter 4) and may serve slightly different policy and political agendas.⁷¹ In addition, data suggest that levels of available VIS support are greatest in areas where most VISs are made. In regional areas, support is more difficult to access and, in some cases, response towards making a VIS more negative, due to concerns of possible secondary traumatisation of the victim or a familial or communal backlash. Some VSP were aware that assisting VOC with the construction of their VIS had the potential to affect the emotion and emphasis of its content:

Again, because we generally get someone to be assisting [in writing the VIS] we might leach some of the emotion out of the VIS in some ways, as in by getting assistance sometimes, it's not going to always be exactly, because by getting assistance I guess it is saying, 'Well these are the things we actually can talk about, and these here are other things that we're not actually going to be allowed to put into our victim impact statement'.

Women's Domestic Violence Legal Aid, Sydney manager

Sometimes I think things can be lost in translation. For, you know, we are getting a lot more African communities here, and sometimes you can't get the interpreter who speaks their [language], yeah. And also they say that their VIS is fine, but yeah, I think some things get lost in translation. They sometimes don't come out how, like sometimes they seem exaggerated or underplayed. Or just because it's, the meanings different for them in their language, as opposed to when it comes out in English words. I've found that, or assume it could be happening, I guess.

WAS, Newcastle (3)

While VSP data findings suggest every effort is made to ensure VOC are provided with the information and support they seek, there do appear to be

⁷¹ See Rock (2012) for an analysis of the sociopolitical criminal justice agenda with regard to advances made in victims' rights in the UK.

issues regarding consistency and influence of advice provided. Further research in this area would be useful.

5.3 Editing the VIS

Editing the VIS can occur at a number of stages, from informal discussions of the VIS draft with victim service agencies or family and friends through to suggestions regarding content admissibility or tone by WAS or the prosecuting solicitor, or to edits required by the prosecution, defence or judge to satisfy the legislation. Booth (2013a) explains this as a deliberate process, providing an opportunity for VOC to be educated and supported to accept the reasons for the VIS being edited, suggesting this filtering of the VIS serves to minimise chances of VOC non-compliance. This 'cooling out process' manages the expectations of VOC regarding their VIS, by subjecting VOC and the VIS to a process of emotional and content containment, as both are honed for presentation in the sentencing court (Booth 2012, 2013a).⁷²

Despite this, the high levels of VIS editing reported in VOC and VSP data point to inconsistencies in interpretation of the content that a VIS can or can't contain. There appears to be tension between whether VIS content should be accepted as subjective and unsworn or be treated as subject to rules of evidence (Erez 2000; Erez, Roeger & Morgan 1994; Roberts 2003). This tension is especially evident in matters where charges are negotiated, when VOC are required to fashion or amend their VIS to fit with the agreed statement of facts on which the offender agrees to plead guilty.⁷³ In the case of DV participants, their VIS was reported as being edited at each stage of the VIS process by WAS, the prosecution and defence:

And I think that there's a lack of consistency of approach to VISs, and I think that's fairly well known, and I think that the reason that they are knocked back

⁷² In Booth's (2013) study of the VIS of family victims in death matters, all 14 interview participants had submitted a draft of their VIS to the Crown prior to the sentencing hearing to ensure that material conformed to the guidelines set out within the law. Booth concluded in her observation of 18 sentencing proceedings of death matters in the District and Supreme Court that VIS presented in 15 of those matters 'appeared to have gone through this process' (229).

⁷³ Over half of VOC participants reported charges being negotiated in their matters, with 86% of victims of DV and 100% of victims of PA reporting the highest level.

or edited is either very personal reasons by the prosecution who's dealing with the matter, the defence or the judiciary, which the victim has no control over. Where in fact the VISs don't have an impact on sentence technically, so they shouldn't be, so they shouldn't be subjected to evidence rules. So that understanding I don't think is very clear.

Director, Victims Services NSW

Editing of the VIS can be highly traumatising for VOC, especially if they do not understand or accept the reasons given for such editing (Booth 2013a; Rock 2010). Not only is it possible that the victim will be so angered as to disrupt sentencing proceedings but they may also make their feelings of being treated poorly plainly known to the media (see Booth 2013a and Rock 2010), potentially undermining sentencing decisions (Hoyle 2012), a concern in both justice and political domains (Greer 2007; King 2008).

5.3.1 Editing the VIS: Stage 1

Once the initial draft is complete, especially in more-serious matters, the VIS is formally submitted—first to the WAS officer, or to the prosecuting solicitor directly or via the police investigator—to be checked, and, second, to the police prosecutor or Crown prosecutor, where it is similarly checked.⁷⁴ At this stage, the VIS can be edited for content deemed inadmissible, irrelevant or prejudicial. Recent VIS studies note that courts often accept VISs that contain information beyond what is deemed permissible in the legislation. While mainly focusing on the VIS of family victims (Bandes 2009; Booth 2013a; Hoyle 2011; Rock 2010), primary VISs have also been noted to exceed legislated limits (Schuster & Proppen 2006, 2010; VSA 2009). Despite this, high levels of editing reported in this study suggest that editing is not necessarily solely due to VOC misunderstanding the legislated parameters of the VIS. Rather, data show VIS editing to be eclectic and haphazard, based on what those who are advising VOC understand to be admissible and considered appropriate by the judge/magistrate and defence. With little guidance from the NSW legislation regarding boundaries around admissibility, VSP are often required to use their

⁷⁴ Any editing or checking of the VIS made prior to this point by family and friends was not described by VOC as contentious.

own judgement, based on personal understanding of VIS purpose, sentencing experience and value to the victim. Those viewing the VIS in functional terms are more likely to edit the VIS, whereas those viewing the personal therapeutic value to the victim are more likely to allow inclusion of contentious material, leaving editing to the defence and judiciary (Stage 2):

I haven't had one knocked back. But again, we're very careful about how we word it, satisfying the needs of the victim. There's issues that they have, that go close to what I would say would be verging on unacceptable, and sometimes you'll put that through, but I haven't had one knocked back. I guess being around it for a while now, so you pretty much know what you can and can't get away with.

Crown prosecutor (1)

Again there's such diversity. Some Crowns and solicitors will say that they would not edit someone's victim impact statement and that they will just serve it on the defence, and others will go to enormous lengths to edit it, and to ask you to go through those edits with the victim, so that there is no question of there being any problem. It just depends on the Crown, it depends on the solicitor, it depends on the judge.

WAS, Wollongong (1)

I don't think they [prosecution] understand what the victim impact statement is about themselves, to be honest. I don't think they know what can and can't go in it. So if they're reading it and thinking 'that's a bit ...', and it's often there are things, they're not things that are comfortable things, or not things that they would expect to hear or they're not things that fit with 'Well this is what the impact on a victim of a sexual assault is', or [pause] so there are things that they're 'Well, gee, I'm just not too sure about that', and because they're not too sure about it, they get rid of it before it even goes to the, before the judge, magistrate or before defence even.

WAS, Newcastle (3)

Certainly, VSP data suggest that best efforts are made to support VOC to present a VIS that will be accepted to prevent the distress of further editing by the defence and judiciary. Quantitative results suggest that the VIS is most

likely to be edited at Stage 1 by the prosecutor (Crown or prosecuting solicitor) and WAS (see Chapter 3, Tables 3.28 & 3.45). However, lack of consistency in Stage 1 editing can be deeply distressing for some victims. This is worsened if reasons are unclear or appear arbitrary, or where VOC refuse to change their VIS, which is subsequently accepted without revision:

And they [victim support agency] edited my VIS. It was just cold. They edited it like it was going into a newspaper. And I cried. They took out all the 'me's' and called it 'the family'. It was from me. My heart! And they sent back an edited one back to me, and put in 'murder'. Murder? That terrible gruesome crime? If I wanted to say that word, I would have put it in. The DPP lady was ringing to see how I was going. [She said] 'I don't see any problems with it [the VIS]'. I sent her the one [I had written]. They submitted it how I wrote it.

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

The subjective and unique nature of the VIS can be challenging for those assessing admissibility of content. While VSP reported an understanding of the therapeutic value of victim expression, the reality that some VISs contain information deemed irrelevant to the court was difficult to manage. VOC described wanting to tell the court about the impact of the crime as they perceived it, and they questioned how something that they themselves understood as subjective could be challenged objectively by others:

The prosecutor vetted it and scrubbed bits out. I was angry about that, about that censorship. She explained why, but I was still angry. It's not part of the evidence but part of the story I wanted to tell.

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

Most difficulties in terms of content edited at Stage 1 regarded references to previous offending (reported or unreported) irrelevant to the matters charged. In terms of the narrative story, the desire to include such material makes sense, as it allows VOC to give meaning to reasons for the crime event. Editing contextual content—necessary to conform to the legislation—takes away meaning and informs VOC that their expert knowledge of their experience is of no importance to the sentencing court.

It appears the cooling out process of Stage 1 editing may not reduce the emotional response of VOC (see Rock 2010) in the event of editing by the defence and judge (Stage 2). Data from this study suggest that primary and family victims object generally to the editing of VIS, especially once it has been accepted by the prosecution, unless reasons for further edits have been anticipated and discussed (supported by Booth 2013a). Main reasons VOC objected to VIS editing were:

- concerns regarding the discretionary nature of VIS editing
- the inconsistency in VSP guidance on the boundaries of admissibility of certain content
- perceptions of editing as unjust in terms of justice notions of equity.

5.3.2 Editing the VIS: Stage 2

Editing of the VIS by defence was generally viewed as giving the offender the right to decide which part of the victim's suffering was admissible. The idea that offenders were permitted to undermine and challenge personal assessments of a crime's impact was deeply offensive and distressing to some VOC. Judicial editing tended to occur on the day of VIS presentation, leaving VOC little time to process or accept changes needing to be made, especially if unexplained:

The judges [edit the VIS]. On the day. Yeah. On the day. So, therefore, there's no preparation. There are paragraphs that they cross out. Or the family member may be reading them, reading their victim impact statement, and the judge will say, 'Now stop there. Now go to paragraph whatever' and that happened quite recently. 'Now go to, skip the next two paragraphs.' And they're like, 'Skip the next two paragraphs? But it's not going to make any sense.' 'Skip the next two paragraphs and go!'

HVSG, manager

For the VIS, written with such care, to be edited on the day of sentencing was traumatic for some VOC (supported by Department of Justice Canada 2005). Unlike Booth (2013a), data from this study suggest last-minute editing of the VIS may not always be anticipated, and while angry or negative reactions within the court to last-minute editing seem rare, this may be more likely due to VOC

acknowledging court etiquette and adhering to its protocols ('the cooling out') than to an acceptance of the rationale of its decisions (see Booth 2012; also Tyler 2006a).⁷⁵ VOC participants reporting their voice (VIS) as unfairly curtailed were more dissatisfied with the criminal justice process:

They slaughtered my VIS. Reading the information clued me in that it wasn't going to be easy. Rather than doing anything for me, it was making a fool of me. The fact that it was graded and supervised by the man who did this to me, and his defence team. It's embarrassing, re-traumatising ... I don't like the fact that he gets to take a look at my VIS. In my case, he's going to discuss it with his barrister and he is going to let *you* know what is acceptable to *them*.

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

While quantitative findings reflect low levels of editing by defence and judiciary, the VSP qualitative data suggests this did occur with some frequency. Recognising the real potential for secondary traumatisation of VOC following VIS editing at Stage 2, statistics regarding frequency of defence and judicial editing of VIS, including reasons and types of matters, would be most useful.

There appears to be continuing confusion and contention regarding the functional and expressive value of the VIS, leading to inconsistencies in how they are dealt with. Although VISs are accepted as unsworn, VSP reported that some magistrates in one District Court insisted VIS be sworn in, arguing that as VIS could be challenged in cross-examination they had evidentiary status. While this study did not observe the VIS at sentencing hearings, data suggest there is most inconsistency of VIS editing within the Local Court and rural District Court where VIS are less used. Rock (2010) and Booth (2012) discuss the potential for victims to go 'off script', attempting to present the unedited version of their VIS to the court. Some VOC in this study reported that had their VIS been edited, they would have ignored the edits and read the full VIS, preferring to be ejected from proceedings. Some VSP also reported knowledge

⁷⁵ In her observation of 18 sentencing proceedings of death matters, Booth (2013a) noted only two matters where objections were made to a family VIS, noting that the reactions from the family members suggested that the objections were anticipated and therefore not reacted to negatively.

of VOC attempting to include edited material during oral VIS presentation. It appears from the data that the more the VOC are informed about, and comfortable with, reasons why changes to the VIS are necessary, the more compliant their adherence and higher their satisfaction with the VIS and sentencing processes.

5.3.3 Charge negotiations

Charge negotiations affect the VIS, as impacts of the crime need to relate to the statement of agreed facts on which the offender is convicted. To secure a plea of guilty, charges will often be negotiated, with more-serious charges pled down to lesser charges. Charge negotiations are viewed positively by court protagonists on both sides, saving court time and costs and protecting victims from the ordeal of being witnesses, while securing a conviction: a 'win-win' in criminal justice terms (Forsyth 2009). However, some VOC reported changes to charges as distressing and felt further challenged when they realised this meant their VIS would be constricted. While most did not relish the idea of a trial, the realisation that by accepting a guilty plea to lesser charges the full experience of their victimisation would not be validated was frustrating at the least and psychologically damaging at worst:

Nothing could be in the VIS that wasn't in the agreed statements of fact for the plea bargain, but I did not see that agreed statement. When I did [pause] it was like reading about someone else's crime. It bore little relation to what happened to me, and then the accused and barrister could go through [the VIS] and toss out what they didn't like.

Sandra (CD:29), victim of PA, charges pled down from attempted murder, VIS handed up

It made me angry that he was able to make me change my [VIS]. So that was hard ... I was flying blind. I didn't know what a good offer was. He went from 17 charges to four charges, and those were reduced. I had very minimal guidance. They said 'It's up to you', and I didn't know, and had no idea.

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

It appears in the case of primary victims, the VIS is not a consideration for the prosecution when negotiating charges. Prosecution were alert to the possibility that without an agreement to a plea of guilty on lesser charges, VOC risked charges against the offender not being fully proven or dismissed if their matter went to trial:⁷⁶

It's always a bit of a weighing up process because I actually, I'm always, I'm probably there on the side of encouraging the women to accept a guilty plea to a lesser charge rather than go through the unpleasantness of proceedings. It can be terrible. I see hearings even now after all these years and my stomach will turn, and I'll think this is terrible ... and perhaps that's something we should think about in terms of putting it to the women that we see, saying that if you do agree to this lesser charge and we strike all of this out, then anything you've got to say in the victim impact statement can't refer to any of [pause]. But here we are really only thinking about 'is this what we're going to do today? He's going to put in a plea to common assault and not aggravated bodily harm'.

Women's Domestic Violence Legal Aid, Sydney manager

When it comes to even negotiating a plea, which may mean taking the plea of guilty to lesser charges, again the extent to which that may impact on the VIS doesn't feature in my mind very much at all ... Within that process, I'll be taking the plea to lesser charges, the victim or family member will be consulted, but I can't ever remember addressing the issue of 'well by the way, that means that with the VIS, that's going to inhibit you'.

Crown prosecutor, Sydney (2)

Understanding the lengths and anguish VOC go through to write the VIS, more consideration should be given to the fact that VIS content can only relate to the agreed statement of facts if charges are negotiated. This issue causes most anguish for primary VOC, whose matters can proceed quickly, especially if an offender suddenly changes his or her plea from not guilty to guilty. Procedural justice suggests that VOC who are consulted, included in the decision-making process and treated with consideration and respect are much more satisfied

⁷⁶ In death matters, negotiation of charges needs to be canvassed with the family victims, who are required to sign an acceptance agreeing to changes to charges before the trial or judgement can continue.

with, and therefore supportive of, the criminal justice process (Tyler 2011). To ensure the best therapeutic outcome, VOC should be offered time to process information regarding charge negotiations, and how these might affect their ability to present the full impact of the consequences of the crime as they see it should be discussed and their expectations managed.

5.4 Presentation of the VIS

5.4.1 Significance for VOC of the VIS in sentencing proceedings

Presenting the VIS within the sentencing hearing, where harms suffered can be publicly recognised and acknowledged (Daly 2014) was powerful for many participants (also see Booth 2013a). The inclusion of the VIS gave some participants hope that the court and the offender would focus on what they had to say. Many were empowered by the fact that the offender was mandated to be present to hear the VIS if it was read—effectively forced to listen, even if they chose to ignore it:

Because I wanted him to know how I felt and how this shit affected me. I didn't have to be there, but he HAD to listen to it because the judge reads it to him. Not that it would have made much difference to him [offender], but it made me feel better.

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

I guess the main one was for him to hear what he had done and how it had affected me, knowing he would *have* to be there and *had* to listen to it.

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

Effectively where else do they get an opportunity to get someone to sit down and listen, and tell the person who has damaged their life, say what they think and hopefully make them listen? If not in the criminal proceedings discussing the events that damaged their lives, where are they going to get the opportunity?

Crown prosecutor, Sydney (2)

An important intrapersonal function of the VIS was that it allowed VOC an opportunity to do something positive for themselves in revealing their personhood and resilience to the court and the offender. For VOC who made an oral VIS, this was an important consequence:

Since I read the VIS I have had changes in my dreams. Previously in my dreams X was trying to control me. Since the VIS there is me, being powerful and in charge in his presence. Reclaiming my own power and control. From being able to stand up and tell him how I felt.

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

The ability to not only write but also present their VIS was described as empowering, most commonly by those primary VOC who had been victims of forms of SA. Frazier and Haney's study of female rape victims (cited in Herman 2003:626) suggests that 'the rape victim's experience in the legal system may have less of an impact on her recovery than other factors over which she has more control'. An oral VIS allows VOC to express their harms to the offender within a safe environment and to reconnect with the community as a survivor. VOC described the therapeutic benefits of empowerment as 'redressing the balance', or taking back power from the offender:

It was empowering [to read the VIS], because I was a child. It's nice to be equal. I'm an equal and what you did was [pause] I had to see him and see his face. He looks the same, but he was old and not scary any more.

Maggie (CD:52), victim of HCSA, VIS read

It was empowering to the max to be able to do that and to look at him [pause] I did break, and for him to see me not broken and to look down on him and not allowing him to take control of my life through my VIS ... The eye contact with him was amazing. To say that [in the VIS]. I've never felt so powerful in my life.

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

For me it was my chance to be empowered. This is my turn to take control back. 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. I told him I wasn't a victim anymore and that there is no shame. Yes, it was empowering.

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

Challenging the offender and taking back autonomy appeared to be an important therapeutic consequence of the VIS, but its potency can be diminished if the VIS is not perceived as positively received or acknowledged:

Why was I treated so differently? Is it because X was killed in prison? I was criminal? It is to do with the circumstances of the crime. If this had happened in a different environment, not prison, this would be different ... Maybe it [VIS] wasn't worded right, but I'm not going to apologise for saying I was treated differently.

Irene (CD:18), son killed by another inmate while in custody, VIS read

VOC who feel that their status is in question, or that they are judged regarding the circumstances of the crime, report being less supported during the VIS process. Allowing for the small number of primary victim participants, data show that the decision to read a VIS may be influenced by fear of facing the offender; fear of offender retribution; concerns about breaking down in court; fear of public speaking; issues of privacy, and issues of culture, literacy and self-worth already discussed; and, finally, whether the matter is heard in the Local Court.

VOC data support recent research showing that oral presentation of the VIS provides VOC the most satisfaction, with most oral VIS presented by family victims (Booth 2013a; Roberts & Manikis 2011).⁷⁷ Hoyle (2011), concerned that the emotionality of family VIS in death matters have the potential to affect sentencing judgements, suggests VIS should be presented at the conclusion of sentencing proceedings or on another date, after sentence has been handed down. This appears to miss the point. While some VOC stated they directed their VIS to the offender, most wished their VIS to be heard by the judge and be acknowledged by the court, understanding their inclusion within sentencing

⁷⁷ VIS can be presented orally by its author, by a nominated person or representative, or handed up to the Magistrate/Judge through the Police or Crown Prosecutor.

proceedings as symbolic of the fact that their voice was sanctioned and validated by those in authority (supported by Booth 2013a):

If it was done after [the sentencing hearing] I think you would lose the emotion ...The process is really over once that sentence is handed down, and the formality of it. And I think it'll [VIS] lose its lustre and lose its importance. I think while it's in sentencing, at sentencing submissions, you've got everyone's attention

HVSG, manager

While a VIS may not influence sentencing, its inclusion within sentencing proceedings, however perfunctory, indicates to the VOC, and to the wider community, that their suffering is not outside the interest or concern of the sentencing court. To position the VIS outside sentencing proceedings takes away its symbolic legitimacy (see Booth 2013a:311). Such exclusion prevents victim interests of validation and vindication (Daly 2012) and diminishes the therapeutic benefits of catharsis, transformation and reconnection by taking away the communally sanctioned forum where they can be acknowledged.

5.4.2 Timing in sentencing proceedings and position in court from which the VIS is read

Data show there is some confusion regarding when in sentencing proceedings oral VIS should be heard. Booth (2013a:194) noted that oral VISs were generally heard at the start of sentencing proceedings, almost 'to get them out' of the way before the real work of the court could begin. She further observed that it was usual for the sentencing hearing to continue immediately after the reading of the VIS, sometimes before the victim had returned to their seat, with no time set aside for distressed VIS readers to recover their composure. VOC and VSP data confirm Booth's findings, with VIS usually being the first matter of business once the sentencing proceeding begins.

Data also reveal an apparent variation and confusion regarding where in the court the VIS should be read (supported by Booth 2013a). In the higher courts, VOC were often asked to present their VIS from the witness stand or jury box, looking into the court, able to clearly see the judge, offender, counsel and public

gallery. At other times, especially in the District Court and Local Court, VOC would be asked to stand next to (on the left of) the prosecutor, with their back to the public gallery, with their view of the offender (usually to their right) often obscured. Both VOC and VSP report how unsettling this can be:

The part that I have a problem with mostly is the awkward way that the person who is to make the statement is suddenly called upon to come forward and it always seems stressful and uncomfortable for them, and it's 'where shall I stand?' and 'should I be reading it?', or 'what should I be doing?' It's quite uncomfortable how it evolves. There seems to be confusion sometimes. 'We have a statement'. 'Who's giving it?' 'They are'. 'Oh! Would you like to come forward?' 'Well I don't know! I've never given one and I'm never going to give one again, so I don't know!' It seems a bit awkward. Bit uncomfortable and so a bit stressful, because it seems the people there are not in control of the game and don't know how to receive it.

Crown prosecutor, Sydney (2)

Even when you are going to read one out, there's no common way where we're placed. I mean sometimes I'm asked to stand at the bar table with the microphone, other times I'm in the witness box. Sometimes there's all this discussion about whether I need to be sworn in or not, and I clearly don't because it's not evidence, but there's all these different varieties of me just getting up there to read it out! And then other people say 'let's just get this over and done with' particularly if there's no victim there, and so you just read it and leave. It's kind of like, what the hell was that all about? It just feels like they just want to get it over and done with. They know they have to, so they tick the box.

MACSS, volunteer

Supports provided for VOC presenting an oral VIS varied. While some were provided with seating and drinking water, others were not. Some, concerned that they might break down, had arranged through the prosecutor to have a support person or family member with them who could take over. However, VOC explained it was difficult to know prior to presentation how they would

cope. Some who had felt confident to present described becoming overwhelmed:

I broke down 10 minutes into it, and the Crown had to complete it. He read it so differently and slowly, I wished it was shorter. Delivering it was one thing, but hearing it read out was another. I should have been given the opportunity to complete it ... I do regret that. I do wish I had been given time, 30 seconds even, and then carried on. I think it's important that it's your words, spoken by you.

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

So they're standing there not realising that they're going to have to stand in the body of the Court. And they're shaking, and they want a tissue and they're wiping their noses with their hands, and it's like. It is chaotic. But that's because the victim doesn't know how they're going to be. It's daunting for a lot of people.

HVSG, manager

Booth (2013a) notes that when there was a clash between VIS rituals and traditional legal rituals, legal rituals were followed. Considering VISs were first introduced in NSW courts in 1999, it seems surprising that protocols of how they should be orally presented within the various court settings have not been established. Confusion regarding VIS presentation only adds to the stress for VOC (Englebrecht 2012), and the lack of standard procedural protocols for dealing with orally presented VIS in the court, or lack of mandatory formal acknowledgement of VIS tendered or read aloud, suggests to some that the presentation of the VIS is merely tokenistic—a measure designed to appease victims and the wider public, but of no value or interest to the business of sentencing proceedings.

5.5 Offender reaction to the VIS

Consistent with other studies (Booth 2013a; Roberts & Manikis 2013; Rock 2010), offender reaction to the VIS—while sought by some VOC—was rare, with 92% of VOC reporting the offender showed no reaction to the VIS. VOC and VSP data suggest some VOC can be comforted by displays of remorse

during the reading of the VIS, and VSP data suggest that at times the VIS can move the offender's family to tears, consistent with Booth's (2013a) observations. On rare occasions, VOC and VSP reported offenders being asked by the judge to respond to a VIS, with 'sorry' the usual response, which most VOC viewed as disingenuous (see Miller 2013; Stubbs 2007):

And after he heard the VIS he [the judge] asked ([the offender]) if he had anything to say, and he said 'Sorry'. That's all he said.

Linda (CD:21), mother of daughter murdered by partner, VIS read by brother of deceased

It could be argued that a remorseful reaction to a VIS would be prudent on the part of the offender. VSP data suggest that the defence are aware that challenging a VIS prior to sentencing could be viewed as lacking compassion for the victim and counterproductive, as displays of offender contrition at this stage are more likely to be viewed favourably by the judge. Victim service Enough is Enough, who visit offenders in prison, suggest VISs offer valuable information to the offender and their families in terms of understanding the consequences of the offending. VSP data confirmed that, while rare, offender response does occur:

[The] young man who was the perpetrator of the crime was asked if he had anything to say after the victim impact statement was read out. And he just cried. And he said 'I had no idea that I had done that. And made him feel that way, and his family feel that way. I just didn't know'. And he was absolutely genuine. He was in tears.

VWCCS, manager

However, the level to which such one-way responses, especially if undirected, are restorative for VOC is difficult to assess. If the VIS is the first time the full impact of the crime has been fully understood by the offender, their lack of response may reflect the fact that the information is too overwhelming to comprehend immediately and to respond to authentically. If this was proven, the offender's lack of VIS recognition might be easier for VOC to bear. However, it

must be noted that no VOC reported being contacted by the offender in response to hearing the VIS. Booth (2013a:262) noted that most offender acts of contrition, such as an apology, were not related to hearing the VIS but usually prompted through questioning by the defence or presented in final submissions. Further research is needed regarding the impact of VIS content on offender remorse.

Primary VOC displaying ambivalent feelings towards their offender suggested an emotional reaction to the VIS can be challenging to observe:

No, I didn't think it [VIS] would affect him [offender] at all, but [pause] it did have an impact. He was crying. It didn't feel good.

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

VSP suggested that some VOC use their VIS strategically, not wishing the offender to show remorse, concerned that it might lessen the sentence:

If they [offenders] are being seen to be showing remorse or contrition because of the victim impact statement, the victims don't want that, because that's going to go in their favour. So they are very mindful of that when they're reading their victim impact statement.

HVSG, manager

Offenders, and more often their supporters, can respond negatively to a VIS, making it obvious to the victim that they disregard its contents by shouting out, talking loudly or laughing, or pointedly and noisily leaving the court during the VIS reading. While such behaviour appears rare, VOC described these reactions as expected, annoying or offensive and were angered or upset by them. Therapeutic effects already gained through writing a VIS are undermined when offenders and their families do not respond to the VIS as VOC expect. VOC who know their offender are most desirous of a visible offender response to the VIS.

5.6 Judicial reaction to the VIS

Judicial reaction to the VIS was highly regarded by VOC, who perceived it as an indication that the judge was on their side, believing and acknowledging their suffering and sympathetic to their position. VOC viewed judicial support differently from the support of other officials, understanding judges to be knowledgeable, powerful and representing the interests of the community. Many VOC sought the judge's approval and studied his/her reactions during the VIS presentation.

The judge looked directly at myself and my wife [when we read the VIS] and his head gave a little shake, to say he couldn't believe it.

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

When a judge referred to the VIS in his/her summation, this was seen as an affirmation for VOC and was significant to them:

I liked the judge. On the day of sentencing, when he mentioned my statement, he choked up. It was important that the judge recognised my statement. I went into shock afterwards. Just afterwards. After he read it. He referred to something I said. He did listen. On the day of judgement, he [pause]. I felt proud I had done it. He did notice.

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

When the judge in sentencing brought up things in my VIS, it was a validation of my feelings. I thought, 'You heard'. If the judge hadn't [pause]. It felt very empowering when he [judge] was talking about the impact on me. I'm not just a cry baby. He's actually saying 'Poor you', and the court is agreeing and validating my trauma.

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

I looked up frequently and turned to the judge to address him. [His reaction] was very important. It showed me that they were very interested. Nobody fidgeted. They were all focused on me. In that respect, I was pleased with how it all went off. [My daughter said] Dad that was terrific. The fact he [judge] mentioned it in his summing up and said how ... it meant a lot to me.

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

VOC reported placing themselves under considerable pressure to get their VIS 'right'. Many took great satisfaction from the judge not only acknowledging their VIS but also referring to the quality of its content. Some VOC remembered the judge making positive comments about their VIS in submissions that, when reviewed, were not in the court transcript. This suggests that positive judicial oral acknowledgement of the VIS, coupled with positive judicial regard and respectful behaviour towards VOC, creates an environment of such support that VOC internalise their experience as more positive than it in fact was (see Kahneman & Riis 2005 for a discussion of positive and negative memories of experience over time):

[I was] pleased, oh yes. When the judge read them and said, 'I'm impressed'.

Jeff (CD:11), father of murdered son, VIS read

In the summary from the judge, he mentioned the VISs and especially mine. He said it was moving and said I had done a good job of reading it. For the judge to say what a good job I did made me feel good.

Diana (CD:13), mother of murdered son, VIS read

The court is seen as the big institution that is supplying justice. And the judge is the representative of that. Then if the judge acknowledges it [VIS], then it's this really big institution that is acknowledging the harm, even on behalf of the community as well. I think it's a big deal. Particularly for people who don't have a lot of contact, which is most of our victims anyway, with court and those sorts of systems. You see court as a really big deal, and a judge as a really important person. For that big, important person, who has so many other things to think about, to comment on, in judgement, about you, and how you feel, is incredibly important.

WAS, Campbelltown (3)

In therapeutic terms, judiciary acknowledgement of the VIS serves an important function. The judge is viewed as not only a representative of the community but also an arbiter of righteousness. Conviction of the offender confirms that the

State acknowledges the crime against the VOC has been proved; however, positive judicial response to a VIS indicates to VOC that the constructed narrative they shared is believed, their suffering is legitimate and their worthiness acknowledged, affirming they are supported by the community and their reconnection to it is formally sanctioned. In Herman's (1992) trauma recovery model, reconnection to the community is the third and final stage.

From the data, it is difficult to assess how regularly judges refer to the VIS in summation. Whereas some VSP reported this was common, especially in death matters, others felt it was rare. However, there was general consensus from VSP that victims' needs were an increasing focus of the criminal justice process, and therefore judicial acknowledgement of and reference to VISs was increasing. VOC data show judicial reference to the VIS in summation was most prevalent in death matters and matters involving forms of SA where an oral VIS had been made. Similar to Booth's (2013a) findings, in matters where VISs were handed up, it was much less likely for them to be acknowledged or referred to, especially if VOC were not in attendance, leaving some wondering whether the judge or magistrate had read their VIS or taken it into account:

Because I did not read it out, it was not acknowledged, so I didn't know if he [the judge] had read it. There was nothing mentioned about it at all. I would have liked some acknowledgement that he had read it.

Amanda (CD:39), victim of domestic violence, VIS handed up

In therapeutic terms, VOC who hand up their VIS but attend sentencing proceedings are less likely to receive the empowerment of judicial sanction on behalf of the community:

Judges are very pressed for time, and when you give them a document to read, they'll skim it. And even a victim impact statement. And, we're all the same. If you are given a document, you read it and you go, 'OK'. Somebody speaking the words, full of emotion, tears in their eyes, looking at the person who has done this thing to them is an incredibly powerful, you know, part of what happens in that court room on sentence.

Crown prosecutor, Sydney (1)

Understanding factors that may prohibit VOC from presenting an oral VIS, and cognisant of the importance to VOC of judiciary acknowledgement, mandatory judicial recognition of VISs tendered but not read out to the court might be worth considering.

In some cases where judges did not seem interested or appeared antagonistic towards the presentation of a VIS, the response of VOC was one of anger, and the therapeutic potential of the VIS was undermined:

I feel very bitter about the judge. When we came out, we were more angry with her than [with] the defendant. We felt very let down. She actually didn't want us to read any [VIS]). I felt one was about all we could get in, so I chose the one I felt best covered how we all felt. I don't know why she didn't want them in the court. Maybe it was because of time, or maybe she didn't want the emotion in court, but I had no faith she read them. It was a very negative experience. We are still recovering. It took us right back to where we were 18 months ago [time of daughter's death]. I'm quite disgusted by the process and to have a representative of government which is what the judge is, to be so pro the defendant, someone with 30 years before the courts, and not to focus on an innocent victim. I don't think they [the court] care. They have no thought for the individual. They're really favouring the accused all the time.

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

In early VIS literature, critics of the VIS suggested that victims given a voice would most likely use it vindictively to exact revenge (Arrigo & Williams 2003; Ashworth 1993). Previous studies (Booth 2013a; Schuster & Propen 2010) found that VISs that demonstrate a level of understanding towards the offender and victim stoicism and personal strength to rally against tragedy are well received by judges, and this stance may be strategically used by victims (see Miller 2007, 2013). It could be argued that such VISs relieve the judge of the emotional challenge of responding sympathetically to traumatic information, enabling the more removed and comfortable response of distanced compassion.⁷⁸ As Booth (2013a:254) reports, when VISs were read 'there was

⁷⁸ Severity of sentence can be appealed on the grounds that a disproportionate sentence has been handed down, based on an overly sympathetic or visibly supportive judicial response to a VIS.

an element of discomfort at times that stemmed from public displays of grief and the disclosure of highly personal, private matters by family victims to an audience of strangers, ... [and] the vehement expressions of anger by the victims were at times disturbing'. However, informed by learned philosophical debates regarding notions of justice, the culturally normative intellectual understanding of judges would endear them towards victims able to demonstrate their ability to survive tragedy through fortitude and rationalisation, by moving beyond lower order justice needs of retribution and revenge towards higher-order justice ideals of mercy, harmony, equity, equality and love. Victims able to display such sentiments in their VIS would therefore be recognised as deserving of judicial praise rather than sympathy because they represent the civilised 'us' (those ruled by logic) rather than 'them' (those ruled by emotion) (see Lerner & Goldberg 1999; Maslow 1954).

Overall, data show that judicial response to VIS is important to VOC. Further, judicial reference to VIS content in summation is an effective tool to aid victim satisfaction and, in some cases, is able to ameliorate negative experiences of other elements of the sentencing process.

5.7 Gender

Findings from this study and others (Erez, Kichling & Wemmers 2011; Miller 2013) show that female VOC are more likely to present a VIS and, therefore, have more opportunity to gain the therapeutic benefits outlined. In 446 homicide sentencing proceedings in the NSW Supreme Court between 2003 and 2012, VISs were presented in 306 (Booth 2013a). Table 5.1 shows the disparity between the numbers of mothers and fathers presenting a VIS. While the gender of the deceased was not identified, it would be beneficial to know how many paternal VIS were presented for sons and daughters, given the findings presented in Chapter 4. Of the 130 parents presenting a VIS as individuals, fathers represent fewer than 30%, with only 13% reading them.

Table 5.1 Parents presenting a VIS in homicide sentencing proceedings in NSW Supreme Court 2003–2012, by gender

Parent	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: Data taken from Booth (2013a)

5.8 Satisfaction

All but one of the VOC participants reported being happy to have made a VIS, despite some reporting their VIS had been unfairly edited or ignored or had not affected sentence as they had hoped and some reporting dissatisfaction with VIS procedures, sentencing process or outcome of sentencing proceedings. Previous research also shows VOC reporting feeling better for having made a VIS and that they would choose to do so again given the opportunity (Chalmers, Duff & Leverick 2007; Department of Justice Canada 2005 Miller 2007). This is intriguing in light of all the obstacles, barriers, process inconsistencies and emotional challenges VOC endure during the VIS process, as revealed by this study. Participants appear to separate the personal usefulness of their VIS experience from the VIS process and its effect on sentencing outcomes, which confirms that the VIS provides VOC with internal, intrinsic benefits that exist in spite of negative experiences of criminal justice mechanisms and disappointed expectations of justice. For example, Michael, an elderly man physically attacked at home by two younger male offenders was not happy with the trial process and felt the treatment and sentence his offenders received was too lenient:

I was surprised they had not been charged with attempted murder. The police said it was too difficult to prove. But when you come with a meat cleaver? ... I

felt his [prosecutor's] job presenting the case was very average and very poor. (X) court. And he didn't intervene when I was attacked by defence barristers. I felt under attack. They had two barristers each. I didn't feel supported by the prosecutor.

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

Despite this, Michael reported he was well supported by the police and WAS during the trial and sentencing process and he was satisfied with having made a VIS:

I think I did a very good statement [VIS]. I'm quite proud of it.

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

With very few exceptions, for the VOC who participated, VIS satisfaction appears universal—across all categories, individual circumstances, challenges and experiences. The nature of the lasting benefits described by VIS makers appear so powerful that despite the personal challenges and frustrations with VIS handling, all VOC participants acknowledged the importance to them of making the VIS and that they would make a VIS again.

5.9 Summary

This chapter has presented the emotional and process challenges faced by VOC when writing and presenting their VIS. Results show how multivariate factors affect the VIS experience, but they also show that despite difficulties, challenges and negative outcomes within the criminal justice process, participants were able to isolate the personal value to them of the opportunity to make a VIS.