

# Evolution of Victims' Rights & Services in South Australia?



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Crime, says van Ness (1986, p3),

*... is not simply an incident which begins a contest between the State and a defendant, between a prosecutor and a [defence counsel]*

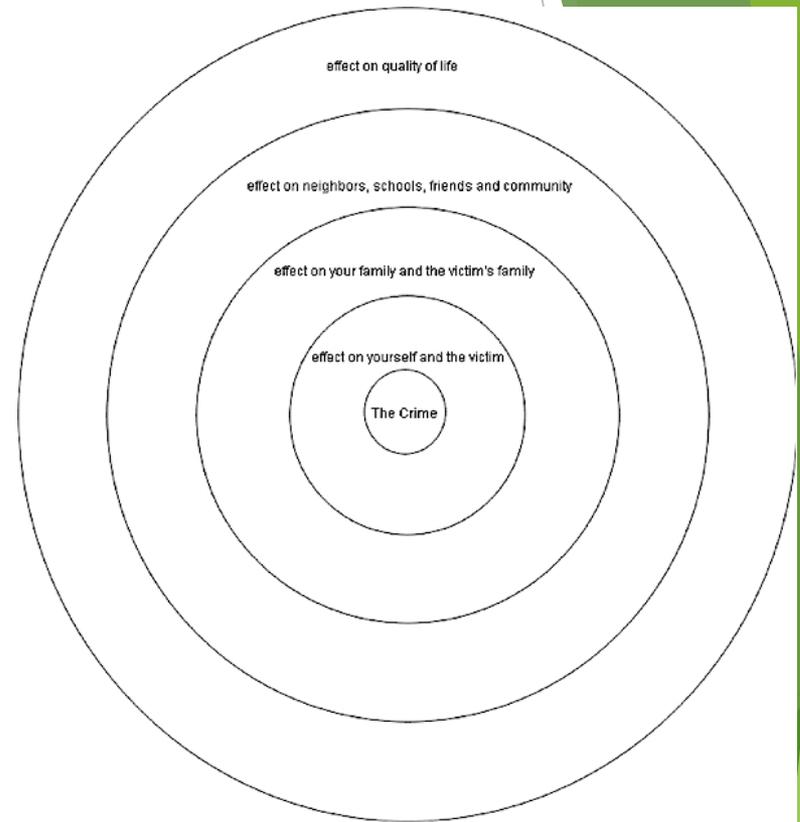
*... Crime is first of all an encounter between a victim and an offender. It is an unexpected personal crisis in the life of one person brought on by another ...*

# Definition of VICTIM

**Primary** – those who directly suffer harm from the criminal act or omission

**Secondary** – dependants or relatives of the primary victims (especially the deceased) and first responders

**Tertiary** – vicarious victims, for instance, those in the wider population in whom fear is stimulated by the threats or acts of violence (Letschert et al 2010)



# 1960: Statutory, state-funded victim compensation

Margaret Fry - most offenders impecunious

Nils Christie - ideal victim

Rationales - social contract, humanitarian, crime prevention

Research - mixed results

Crime / victim surveys - growth of statistics to inform

# 1970: Advent of the victims' movement & growth of victim assistance

Civil rights - spurred on other causes

Women's movement - unenviable & powerless  
position - crisis centres & shelters

Victim activism - self-help organisations

Professionalisation - social work paradigm

Government intervention - funding

Research - mismatch: victims' needs v victim  
services

# 1980: Promulgation of victims' rights

Inquiry into victims of crime - South Australia

President's Task Force - USA

Victim activism - Victimological scholarship

United Nations - Declaration of Basic Principles of  
Justice for Victims of Crime and Victims of Abuse of  
Power

Regional victims' rights instruments

Domestic victims' rights instruments

# Victims' Rights Instruments

## International -

- ▶ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- ▶ Commonwealth Statement of Basic Principles of Justice for Victims of Crime (endorsed by Senior Law Officers for the Commonwealth 2005).

## National -

- ▶ National Charter on Victims' Rights (endorsed by the Standing Committee of Attorneys-General, Australia 1993)

## South Australia's Declarations:

- ▶ Declaration on Victims' Rights (1985):
  - ▶ Administrative Direction.
- ▶ Declaration of Principles Governing Treatment of Victims in the Criminal Justice System (2000):
  - ▶ Endorsed by the Attorney-General, then Cabinet
- ▶ Declaration of Principles Governing Treatment of Victims in the Criminal Justice System (2001):
  - ▶ Enshrined in the Victims of Crime Act 2001 (SA)
  - ▶ Amended by inserting new 'rights' 2008 & 2010

1990: Consolidating victims' rights yet  
contracting victim compensation

National Charter on Victims' Rights

Government 'intrusion' into victim assistance  
efficiency, effectiveness, efficacy

Victim compensation - contracting as financial  
assistance schemes evolve

# 2000: The promise of better justice by giving victims stronger rights

## Victims' views on criminal justice

- on sentencing

## Alternative approaches to criminal justice

- Restorative justice
- Therapeutic jurisprudence

## Research - shortcomings in implementation of victims' rights declarations

## Political response - independent statutory officers

# 2010: A fundamental shift towards collaboration and cooperation

National Victims of Crime Working Group

National Framework on Victims' Rights & Victim Assistance

National Implementation Plan

Victims' participatory rights - using the law and practice to strengthen the victim's position in criminal justice

# Victims' Rights - Parallel Rights



# Principles Governing Treatment of Victims of Crime

1. A victim should be treated with kindness and respect.
2. Right to be told about services that can help the victim (and how to contact them).
3. Right to be told about the progress of the investigation.
4. Right to have perceived safety concerns presented to a bail authority.
5. Right to know what is happening to the suspect (including his or her name) and/or personal property taken as evidence.
6. Right to know if the accused person is not charged or charged with a less serious offence.
7. Right to be present in court, unless the court orders otherwise.
8. Right to be informed on role and responsibilities as a witness.
9. Right to be protected from unnecessary contact with offender / offender's family.

# Principles Governing Treatment of Victims of Crime

10. Right to privacy (e.g. residential address not disclosed).
11. Right to have property returned as soon as practical.
12. Right to make a VIS
13. Right to information about restitution and compensation.
14. Right to be informed on court outcome (e.g. details of sentence) and have such explained.
15. Right to ask for a review for purpose of determining whether an appeal is appropriate.
16. Right to notification about release / escape and return to custody of offender.
17. Right to make submission to Parole Board
18. Right to be informed on parole conditions or licence conditions if mentally ill offender
19. Right to be informed if prisoner absconds
20. Right to information on how to make a complaint

# Commissioner for Victims' Rights



# Restitution - Offender-paid compensation

- ▶ *Section 13 Victims of Crime Act 2001 - Rights in relation to compensation and restitution*
- ▶ *Section 123 Sentencing Act 2017* refers to the restitution of property.
- ▶ *Section 124 Sentencing Act 2017* addresses the issue of compensation for injury, loss or damage resulting from the offence.
- ▶ *Section 125 - Certificate for victims of identity theft*

# Statutory compensation - VOC Act

## ▶ State-funded victim compensation for personal injury

- ▶ Compensation
- ▶ *Ex gratia* payments

## ▶ Discretionary payments

- ▶ Personal security - CCTV / Security screens & doors
- ▶ Emergency accommodation
- ▶ Attendance at funerals



Victims Rights - Right for South Australia

*Justice denied anywhere diminishes justice  
everywhere.*

Martin Luther King Jr