



Victims in the Sentencing Process: South Australia's Judges and Magistrates Give Their Verdict

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Abstract

Should crime victims have more than a voice in court? Two or three decades ago this question would have provoked a strong emotional response on both sides of the debate. Today the question is more likely to be, should victims have a *stronger voice* in court? This paper reports on the results of a survey of the views of South Australia's judges and magistrates on victim impact statements. Their perspective is important because many victims expect their impact statements to have an effect on the sentence, and those who believe that that effect has not materialized are more likely to be dissatisfied with the sentences judges and magistrates impose. The survey shows that victim impact statements do assist the courts but there is no strong indication among judges and magistrates in South Australia that giving victims a *voice* necessarily alters the structural position of the victim in the criminal justice system.

Should victims of crime have a voice in court? Two or three decades ago, this question would have provoked a strong emotional response on both sides of the debate. Today, the question is more likely to be, should victims have a *stronger voice* in court? In South Australia, as in other Australian states and territory jurisdictions, victims of crime have the right to participate in the sentencing process by submitting, and for some offences reading, a victim impact statement. The introduction of impact statements aroused considerable discussion, and even heated debate in some places.

In 1981 the South Australian Committee of Inquiry into Victims of Crime acknowledged the importance of information on the impact and effects of crime to sentencing courts but the committee did not recommend victim impact statements. In 1985, however, victims were given the right to have "the full effects of the crime on him or her," presented (by a prosecutor or in a pre-sentence report) to a sentencing court before it passed sentence.

This right was enshrined in the Criminal Law Sentencing Act 1988, which came into effect in 1989. Since then, in 1998, victims of indictable offences have been given the right to read, or have read, their impact statements during the sentencing process. Both the right to submit a written victim impact statement and the right to

read a personal impact statement have been reinforced in the Declaration of Principles Governing Treatment of Victims in the Criminal Justice System that forms Part II of the Victims of Crime Act 2001. Recently, the Government for South Australia introduced a bill to give co-victims of any offense resulting in the death or total and permanent disability of the victim the absolute right to read impact statements – and, to provide for neighborhood and social impact statements.

The limited research on victim impact statements in South Australia has produced mixed results. Whether these statements have proven "successful" or "unsuccessful" depends on what one sees as their purpose or function. Most of the research has concentrated on victims' views. Judges and magistrates views on impact statements are also important. If they do not support the use of impact statements, or do not use the information on the effects of crime and personal circumstances of victims, then victims are likely to be more dissatisfied with sentences and lose confidence in the criminal justice system. In late 2005, the judiciary and the magistracy in South Australia were asked to complete a survey on their views. This paper reports on the survey findings.

About one third of over 460 victims who participated in a study in 1987 to 1989 (Gardner, 1990) stated they would have liked to tell the court about the personal impact of crime. When asked about their wish to be involved in the criminal-justice system, just over 20% of victims wanted to be consulted during sentencing and about 8% wanted to be actively involved in setting the sentence. Reasons for being consulted included: "[to] put forward their point of view and opinions" and "to determine if a sentence is appropriate" (p. 49). In an unpublished paper, O'Connell (1990) reported on a review of 151 victim impact

statements which showed almost one half of victims wanted the prosecutor to "furnish particulars" of the injury and loss or damage suffered as a result of an offence for which the offender was convicted. Just over 40% of victims wanted the prosecutor to apply for compensation as the sentence, or a condition of the sentence. There was no significant correlation between the two responses, which O'Connell interpreted as demonstrating that many victims wanted information about the effects of crime made known to offenders and the court, but not necessarily to attain compensation.

The evaluation of victim impact statements in South Australia in 1994 (Erez, Roeger, & Morgan, 1994) showed that the majority of victims wanted to make impact statements and many saw these statements as a way of "ensur[ing] that justice was done," or of "communicat[ing] the impact of the crime to the offender." A much smaller number stated that they prepared their statement to "influence the sentence given to the offender." Simply providing victim impact statements, however, was not found to be associated with an increase in satisfaction with the sentence, nor satisfaction with justice. Another survey in 1999 (Justice Strategy Unit, 2000) asked victims for, among other things, their views on the rationale for victim impact statements. It also showed more victims made their impact statements to "ensure that justice was done," than to "influence the sentence given to the offender." When asked to elaborate on their answers, only one victim wanted to "see that [the offender] was properly dealt with," and another wanted "to try and get [the offender] away ... so that he [the victim-respondent] could walk the streets safely." Both surveys showed many victims have unfulfilled expectations on sentencing. Many who knew the sentence their offender received felt it was too lenient. Some victims wanted more use of imprisonment and some wanted greater emphasis on compensation. Victims also believed community service could be an appropriate sentence. Notably, an analysis of victim impact statements and sentencing patterns by Erez et al. (1994) found these statements had not had a discernable impact on overall patterns of sentencing; in other words, victim impact statements had not lead to harsher sentencing.

The evaluators in the mid-1990s also explored criminal justice practitioners' attitudes to victim impact statements. They attributed a reluctance of prosecutors, defense counsel and judges to accept direct victim input as indicative of their socialization in the law and their propensity to focus on formal criminal procedure rules. Nevertheless, all but two of the judges surveyed said they felt victim impact statements "are worth the trouble and expense involved." One judge commented, "Victim impact statements ought to be what it is advertised, that is a statement by the victim The important thing is that the victims know they had a fair go and this is only when they know the judge heard their story." A comment attributed to a judge who stated he did not read victim impact statements drew condemnation and, as recent as 2000, was still being cited internationally.

The 1999 survey, unlike the one done in 1994, did not solicit judges' or magistrates' views on victim impact statements. During the course of the Review on Victims of Crime, however, several cases were identified in submissions where sentencing had been delayed pending the preparation of victim impact statements. These cases were mainly in the District Court and were seen as *indicative* of greater recognition of the victims' participatory right, rather than as an additional burden on a court already struggling with delays. Furthermore, several members of the judiciary stated they generally found victim impact statements useful. One judge went so far as to say, "I can't conceive being able to sentence properly and take proper account of the effect of the crime without (a victim impact statement)." It is unclear whether these latter views are representative of the judiciary. They certainly do not suggest the views of magistrates. Several papers, however, have reflected on the views of judges in South Australia but none of these have presented data beyond the 1994 evaluation. This paper is intended to fill these knowledge gaps.

Method

A survey, based on that devised by Roberts and Edgar (2003), was constructed and forwarded to the Chief Justice, the Chief Judge and the Chief Magistrate for assessment and comment. This highlighted the need for several amendments. Once these had been made, the survey, together with a covering letter, was sent to all Supreme Court justices, District Court judges and magistrates. They were invited to voluntarily complete the survey. Also by letter, the Chief Justice, Chief Judge and Chief Magistrate informed their colleagues that they endorsed the survey. A cut-off date of three months was imposed although this time limitation was not communicated to those who were asked to complete the survey. This strategy allowed adequate time for those involved in lengthy trials, appeal hearings and so on, or on leave, to receive and decide whether or not to complete the survey.

The items addressed general issues pertaining to the use of impact statements. As well, several questions related to the 1998 amendment to the Criminal Law (Sentencing) Act 1998 that gave victims of indictable offences a right of allocution. Some questions related to the purpose and usefulness of victim impact statements.

The survey was sent by email to 12 justices in the Supreme Court (excluding the Chief Justice), 17 judges in the District Court (excluding the Chief Judge) and, 33 magistrates (excluding the Chief Magistrate). Responses were received from four justices, eight judges, and 12 magistrates. Of these, all justices completed the survey, although one did not answer all questions; seven judges completed the survey and one provided a general comment due to his recent appointment; and, 10 magistrates completed the survey while two declined due to their recent appointment to the position. The overall response

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Table 1

Change in Number of VIS Presented in Court

	Magistrates	DC Judges	SC Justices	Total
Noticed decrease	1	0	0	1
Noticed no change	4	1	1	6
Noticed increase	5	5	2	12
Total*	10	6	3	19

Note. One DC Judge and one SC Judge did not respond.

Table 3

Sentence Hearings Proceeding Without a VIS

	Magistrates	DC Judges	SC Justices	Total
Often	9	2	0	11
Sometimes	1	4	1	6
Almost never	0	0	2	2
Never	0	1	1	2
Total	10	7	4	21

rate was one third of justices, two fifths of judges, and one third of magistrates (Should this be joined with words above & appear before tables?).

Results

Supreme Court justices sentenced offenders two to 10 times per month and estimated they received victim impact statements in 80% of the cases they heard. District Court judges sentenced, on average, 20 offenders each month and estimated they received victim impact statements in between 60% and 90% of the sentencing hearings they conducted. Magistrates, however, averaged about 175 sentencing hearing each month and estimated they had victim impact statements available to them in less the 3% of these hearings.

In 1998, victims of indictable offences were given the absolute right to read their impact statements, or to ask the court to cause their statements to be read. Respondents were asked (Table 1), "Have you noticed any change in the number of victim impact statement (VIS) submitted since the 1998 amendment that gives victims of indictable offences a right to present, or have presented, orally their personal impacts?" Of the 19 respondents to this question, two justices, five judges, and five magistrates noted an increase in the number of VIS, although most felt the

Table 2

Knowledge of Victim Awareness of Right to Submit/ Read a VIS

	Magistrates	DC Judges	SC Justices	Total
Always told?	1	3	3	7
Sometimes told?	8	3	0	11
Never told?	0	1	1	2
Total*	9	7	4	21

Note. One Magistrate did not respond.

Table 4

Frequency of Victim Requests to Orally Deliver VIS

	Magistrates	DC Judges	SC Justices	Total
Often	0	0	0	0
Sometimes	0	4	2	6
Very occasionally	6	2	2	10
Never in my court	4	1	0	5
Total	10	7	4	21

increase was only slight.

South Australian law requires the prosecutor to furnish particulars on the effects of crime and the personal circumstances of the victims. It does not require the court to inquire of the prosecutor, the victim, or a person representing the victim, if the victim is aware of his or her right to make an impact statement. That is, courts rely on prosecutors. Notwithstanding the law, justices, judges and magistrates were asked, "Are you told whether the victim has been apprised of the right to submit, or read, a victim impact statement?" Three justices and three judges stated they were sometimes told, but only one magistrate could recall this happening. Eight of the 10 magistrates were never told (Table 2). In the current survey, however, when asked, "How often do you have to proceed with a sentencing hearing without being given a VIS (e.g., prosecutor tenders a VIS) or hearing a VIS (e.g., a victim reads his or her VIS)?" two of the 11 justices/judges had never passed a sentence without a victim impact statement (Table 3). Of the 10 magistrates who responded to the survey, nine had often had to sentence without an impact statement.

Respondents were then asked, "How often do victims express a desire to deliver their statement orally?" (Table 4) Five of the 21 respondents (i.e., one District Court judge and four magistrates) indicated they had never had a victim ask to read his/her VIS. Sixteen respondents reported that

Table 5

Frequency of Victims Delivering VIS Orally

	Magistrates	DC Judges	SC Justices	Total
A significant increase	*	1	*	1
A moderate increase	*	2	*	2
A slight increase	4	1	3	8
No change	5	1	0	6
Total	9	5	3	17

Note. * no response. One MC, two DCs & one SC did not respond.

Table 7

Frequency of Victims Being Cross-examined on VIS

	Magistrates	DC Judges	SC Justices	Total
Often	0	0	0	0
Occasionally	0	0	0	0
Almost never	2	0	0	2
Never	8	7	4	19
Total	10	7	4	21

this happened sometimes or occasionally and no respondent indicated this often happened.

Respondents were asked, "Have you noticed any increase since the 1998 amendments in the number of victims who want to deliver their statements orally?" Eleven of 17 respondents observed an increase since the 1998 amendment (Table 5).

These respondents were then asked whether the increase had impacted on the amount of time required to conduct the hearing. Ten of the 11 respondents replied, and seven considered there had been an increase in the amount of time involved (Table 6).

Given previously expressed concern that victims could be cross-examined on their impact statements, respondents were asked whether or not this had happened. Not one of the justices or judges identified a case where a victim had been cross-examined on his or her impact statement (Table 7). Only two of the 10 magistrates could recall a victim being cross-examined. This was despite six of the 10 magistrates replying when asked, "How often does a VIS contain the victim's wishes regarding the sentence?" that victim impact statements sometimes contain victims' comments on the sentence they desired (Table 8). One of these was among the two magistrates who recalled a victim being cross-examined on his or her impact statement, but the survey results do not show whether the answers related to the same case. Two magistrates had never seen a victim impact statement with comment on the

Table 6

Impact on Time Required to Conduct Hearing

	Magistrates	DC Judges	SC Justices	Total
Increased amount time	2	4	1	7
No impact on time	1	0	2	3
Not applicable (no increase)	6	1	0	7
Total	9	5	3	17

Note. One MC, two DC and one SC did not respond.

Table 8

Frequency of Victim's Wishes Regarding Sentence in a VIS

	Magistrates	DC Judges	SC Justices	Total
Always or almost always	0	0	0	0
Often	0	0	0	0
Sometimes	6	2	0	8
Almost never	2	4	2	8
Never	2	1	2	5
Total	10	7	4	21

sentence that ought to be imposed. All four Supreme Court justices said this had never or almost never happened – as did five of seven District Court Judges.

One magistrate, however, said that impact statements almost always included a request for compensation (Table 9). This magistrate saw a higher percentage of impact statements than nearly all other magistrates who answered the question. Two magistrates stated that this happened often, whereas six magistrates stated that victims sometimes asked for compensation in their impact statements. Four of the seven judges reported victims sometimes or often asked for compensation, whereas all four justices said they almost never or never received victims' requests for compensation in impact statements. The usefulness of impact information in sentencing is a matter to be determined by the justices, judges and magistrates. All justices, six judges, and five magistrates felt impact statements were useful in most, or all, of the cases in which they are submitted (Table 10). One District Court judge felt impact statements were only useful in a few cases. Respondents also ranked from 1 (most important) to 6 (least important) the purposes of impact statements. Eleven ranked providing the court with information on the effects of crime as most important. Three indicated informing offenders of the impact of their offence as most important; and two respondents ranked providing the victim an opportunity to participate in sentencing as most important. One respondent respectively

Table 9

Victim Requests For Compensation

	Magistrates	DC Judges	SC Justices	Total
Always or almost always	1	0	0	1
Often	2	3	0	5
Sometimes	6	3	0	9
Almost never	1	1	2	4
Never	0	0	2	2
Total	10	7	4	21

Table 11

Usefulness of Information in VIS

	Magistrates	DC Judges	SC Justices	Total
Always	0	1	0	1
Almost always	2	2	2	6
Often	4	2	0	6
Sometimes	4	1	2	7
Almost never	0	1	0	1
Never	0	0	0	0
Total	10	7	4	21

replied that making the court aware of the personal circumstances of the victim and providing the offender with a more complete explanation of the consequences of his or her offending as most important. No respondent stated that the most important purpose of impact statements was to give offenders the chance to accept responsibility for their offense(s). In contrast, two Supreme Court justices, four District Court judges and five magistrates ranked "giving the offender a chance to accept responsibility for his or her offending," as the least important purpose of impact statements, and one justice and two other judges ranked this as among the least important. One justice and one magistrate did not answer the question. The justice commented that the question was inappropriate and the magistrate, that the purpose varied case-by-case.

Respondents were then asked, "Are VIS useful in terms of providing information about the factors that, according to the Criminal Law Sentencing Act, criminal courts should, if relevant, take into account when passing sentences?" and the personal circumstances of the victims (Table 11). Two justices, two judges and two magistrates stated that impact statements almost always had useful information. Two justices, one judge and four magistrates, however, felt impact statements sometimes contained

Table 10

Usefulness of Impact Information in Sentencing

	Magistrates	DC Judges	SC Justices	Total
Useful-all cases	2	5	1	8
Useful-most cases	3	1	3	7
Useful-some cases	4	0	0	4
Useful-just a few cases	0	1	0	1
No answer	1	0	0	1
Total	10	7	4	21

Table 12

Frequency of VIS Information Relevant to Sentencing Not Emerging During Trial or in Crown's Sentencing Submissions

	Magistrates	DC Judges	SC Justices	Total
Often	3	4	1	8
Sometimes	5	2	2	9
Seldom	0	1	0	1
Almost never	1	0	0	1
Total*	9	7	3	19

Note. One MC and one SC did not respond.

useful information. Not one justice, judge or magistrate found impact statements "never useful," when sentencing offenders.

When asked, "How often [does a] VIS contain information relevant to sentencing that did not emerge during the trial or in the Crown's sentencing submissions?" only one justice, however, felt that impact statements often had information that did not emerge during the trial or in the prosecutor's sentencing submissions (Table 12). Four judges and three magistrates stated that impact statements often had information that would not otherwise emerge. Three quarters of justices believed impact statements were useful in most cases, and about two thirds of judges believed impact statements were most useful when sentencing offenders for violent crimes, with 11 justices/judges specifically stating that impact statements were useful in sexual assault and domestic violence cases. Similarly, nine magistrates stated there are cases for which impact statements are helpful.

One magistrate felt impact statements were useful in all cases that he or she had received them. This magistrate passed about 100 sentences a month but estimated victim impact information was available in only about 1% of these cases. One third of magistrates felt impact statements were useful in some cases and one sixth that they were

Table 13

Reference to VIS or Contents in Reasons for Sentencing

	Magistrates	DC Judges	SC Justices	Total
Always or almost always	3	4	3	10
Often	4	3	0	7
Sometimes	2	0	1	3
Almost never	0	0	0	0
Never	0	0	0	0
Total*	10	7	4	21

Note. 0 = no response. One MC did not respond.

useful in most cases. Like their judicial counterparts, all magistrates said impact statements, when made available, were most useful when sentencing for violent crimes.

Next, when asked to rank the reasons for victim impact statements, justices, judges and magistrates provided a range of diverse responses, however, giving victims the opportunity to participate in sentencing and giving courts information on the effects of crime were most often ranked as "important," or "most important." Giving victims the opportunity to inform offenders of the impact and effects of crime was also ranked as "important." However, one justice believed that it was inappropriate to answer this question.

Respondents were asked how often they referred to victim impact statements or its contents in reasons for sentencing. Three justices, seven judges and seven magistrates stated that whenever they are given information on the impact and effects of crime, they "often" or "almost always" referred to it in their sentencing remarks (Table 13). No respondent "almost never," or "never," referred to this information.

Fourteen of 20 respondents who indicated whether or not they addressed the victim directly in delivering oral reasons for sentencing, indicated that they "almost never," or "never" did so (Table 14). Of the six respondents who reported "sometimes" or "occasionally" doing so, five were magistrates.

Discussion

The percentage of cases where victims' impact statements were made available, as identified by justices in the Supreme Court and judges in the District Courts in South Australia, are consistent with the findings of Erez et al. (1994). The low number of statements available in Magistrates Court is also consistent with the preliminary, although unreported, finding of that evaluation. This suggests that despite the shift from police preparing victim impact statements to victims writing their own statements (which happened after the 1994 evaluation), as well as the

Table 14

Addressing Victim in Delivering Oral Reasons for Sentencing

	Magistrates	DC Judges	SC Justices	Total
Yes-often	0	0	0	0
Yes-sometimes	1	0	0	1
Only occasionally	4	1	0	5
Almost never	3	6	4	13
Never	1	0	0	1
Total*	9	7	4	20

Note. 0 = no response. One MC did not respond.

1998 amendment giving victims of indictable offenses the right to read their impact statements, very few victims are given the opportunity to have the full effects of the crime made known to their offenders and to magistrates. The survey findings do not show whether this is due to victims electing not to make impact statements in summary cases, or the attitudes of public officials such as the police who are charged with telling victims that they can submit impact statements.

It might also be, in part, explained by the limitations of the survey instrument. Respondents were presented with a preamble explanation of the purpose of the survey. They were then asked to estimate the number of hearings they conduct in a month followed by a question asking them to estimate the number of victim impact statements presented at those hearings. Given the range of the magistrates' responses, it is possible some magistrates' estimates were the total number of hearings whereas others were the number of hearings for offenses with at least one victim. In relation to this, the magistrates' responses were reviewed in comparison to 2004 Magistrates Court statistics. In that year about 38% (i.e., 10,302 offenses) of case outcomes by major offense type were likely to have had at least one victim, which equates to about 860 case outcomes per month. In sum, 38% of the total of the estimated number of hearings conducted by magistrates was about 730. Using either of these figures, the estimate that victim impact statements were only available on average in 3% of hearings, remains very low. It still indicates, however, that only a small number of victim impacts are presented to magistrates. On a more positive note, the results suggest that there has been a slight increase in the availability of victim impact statements in the higher courts since victims were given the right to read their statements when offenders are convicted of an indictable offence.

Unless the prosecutor informs the sentencing court, it is unlikely that justices, judges or magistrates will know if victims were informed of their right to make an impact statement. The current law in South Australia does not make it necessary for the court to ensure that all victims are given an opportunity to make an impact statement, yet

it does require the court to take into account, if relevant, and taking into consideration other factors, the effects of an offense or, the personal circumstances of the victim. Relative to other findings of this survey, it would benefit both victims and the court if, in fact, it was made clear that all victims had the opportunity to do so, and that their replies were communicated to the court.

Some critics of victim participatory rights have claimed that impact statements may lead to further delays and add yet another burden on sentencing courts (see, for example, Davis & Smith, 1994 and Erez et al., 1994 for a contrary finding). In this survey, no respondent stated that victim impact statements had significantly delayed the sentencing process, although some judges and magistrates noted at least a slight increase in time spent on sentencing since victims of indictable offences were given the right to read, or have read, their impact statements.

Fears have been expressed that victims will be cross-examined on the content of their impact statements. Advocates for victims of sex offences who made a submission to the Review on Victims of Crime were particularly concerned that unrepresented defendants would exploit the chance to further victimize their victims. This survey did not produce any evidence to confirm such fear. It appears that victims are rarely, if ever, cross-examined during sentencing on the effects of crime and/or their personal circumstances.

Apart from providing the courts with information on the impact of offences, victims could contribute to the actual sentencing decisions. Some opponents to impact statements, however, warn that victims who make such statements might expect courts to place greater weight on retribution, which could fuel calls for harsher penalties. An American commentator, Elayne Rapping (2000), for example, asserts that, "Beneath the compelling emotion that informs the demands of victims, there is all too often an ugly and irrational cry for blood that smacks of mob violence and vigilante justice." Research, however, shows that victims are no more retributive than the public at large (cf. Ministry of Justice (NZ), 1995; Hough & Roberts, 1998; Holder, 2005; Erez, 1990). Indeed, victims' preferences for what should happen to their offenders tend to be consistent with the applicable tariff sentence (Maguire, 1982; Shapland, Willmore, & Duff, 1985). A recent English survey of almost 1,000 crime victims showed that 61% did not believe prison reduced re-offending by non-violent offenders. Rather, 54% stated that making these offenders work in the community would be more effective (Victim Support Service (UK), 2006; see also Travis, 2006). Like the earlier surveys in South Australia, many victims wanted courts to order offenders to pay compensation. Results of the survey reaffirm these findings. This survey shows that victims have in general exercised restraint and not used impact statements as a means to appeal for harsher sentences. Rather, victims' views on the actual sentence are largely confined to requests for the court to order the offender to pay compensation. In other words, there is nothing in the

results of this survey that supports assertions that victims would use their right to participate irresponsibly and try to exert undue pressure on courts for harsher penalties.

Some critics of impact statements argue that these statements contain no useful information that has not emerged during the trial or is evident from the charges. This survey counters such objections as it demonstrates that justice, judges and magistrates, in the main, find victims' impact statements useful. Moreover, they accept that these statements give victims an opportunity to give information on the effects of crime and to participate in the sentencing, if they choose. It also appears that justices, judges and magistrates cite victim impact information in their sentencing remarks, thereby positively influencing victim satisfaction. Victims tend to be more satisfied with sentences when judges acknowledge their input, especially by quoting the victim's own words from impact statements, in sentencing remarks. Despite this influence, justices, judges and magistrates seem reluctant when they are giving these remarks to directly address victims. Perhaps this is because they wish to avoid any claim of bias towards victims who are still not, in most common law countries, considered to be a party to the proceedings. Leaving aside this issue, it is evident from the survey results that the judiciary and the magistracy in South Australia have recognized the benefits of victim participation in the sentencing process. The indifference, even pessimism, of some judges that was evident from their replies to semi-structured interviews conducted during the mid-1990s evaluation of victim impact statements, appears to have given way to a preference for these statements and a willingness to regard victim participation by the use of such statements as making the criminal justice system more efficacious.

Conclusion

Giving victims participatory rights has aroused considerable debate. Victim impact statements do assist victims, but have not necessarily altered the structural position of the victim in the criminal justice. Offering victims opportunities to participate, and then allowing them to choose whether or not they accept the opportunity, is important to the well being of victims. Many victims have an innate need to "tell their stories," including describing the harm that has been done to them. Some studies on victim impact statements and on victim-offender mediation highlight the beneficial effects of giving victims the right to tell how crime has affected them and impacted their lives. Importantly, victims want offenders, as well as justices, judges and magistrates, to listen to their stories. Many derive personal benefits, even a sense of closure, when the harm done to them is formally acknowledged in sentencing remarks.

Individual justices, judges and magistrates can tailor (as they do daily) the role of the victim in the sentencing process to make sure that victims do not unduly interfere

with offenders' due process rights. Victim impact statements are a way of giving victims a voice but they do not give victims decision-making power, nor do they curtail offenders' rights (including the right to a fair and just sentence). Courts continue to determine sentences but do so, according to the survey results, better informed of the consequential harms resulting from offenders' crimes.

The survey gives an insight into the views of justices, judges and magistrates on many matters pertaining to impact statements. Overall the results suggest widespread support for victims' impact statements in that the respondents appear to support victims' right to participate in the sentencing process. This important finding should alleviate the apprehensions expressed by some victims and their advocates that the judiciary and magistracy are not sensitive to the desire of victims for acknowledgment of the harm done to them by offenders. The results should also allay some of the criticisms expressed by opponents of victims' participatory rights as, in South Australia at least, impact statements have not undermined the fundamental tenets of the prevailing conventional criminal justice paradigm.

Impact statements are available in most cases dealt with in the Supreme and District Courts. Justices and judges, in the main, not only find impact statements useful but also refer to the impact and effects of crime when sentencing offenders. However, victims and their advocates will be disheartened by the very low percentage of cases with victim impact statements in the Magistrates Court. Conversely, they should find some comfort that when impact information is available, magistrates generally find it useful, even if they do not always specifically refer to it in their sentencing remarks. Notably, half the magistrates stated that they occasionally addressed victims directly in their verbal sentencing remarks. Despite the fact that victim impact statements have been a feature of the South Australian criminal justice system since the mid-1980s, more needs to be done before the potential of these statements is fully realized. A priority must be to find ways to place a far greater volume of victim impact information before magistrates. In some jurisdictions, post-conviction/pre-sentence victim-offender conferences appear to be one such way (see Cannon, 2005; Goldsmith, Halsey, & Bamford, 2005).

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