



"I am not the law, but I represent justice so far as my feeble powers go" [said Holmes] --

Using the powers of the Commissioner for Victims' Rights to improve victims' access to justice



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VICTIMS ACCESS TO JUSTICE - Context

- ▶ Community concern about crime and administration of criminal justice - Stir legislators to respond
- ▶ Cliché that victim was the forgotten person / people ... not a deliberate policy of neglect - rather, “because of unintentional oversight and indifference born of the complacent assumption that victims will always cooperate and are always given proper consideration” (Sumner 1993, p.310)
- ▶ Since the 1970s across Australia there has been a remarkable ‘rediscovery’ of the victim: state-funded compensation / victim support services / victims’ rights

VICTIMS' RIGHTS - International

- ▶ United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985):
 - ▶ Constitutes the basis of international standards concerning the treatment of victims.
 - ▶ “... designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power”
- ▶ Access to justice:
 - ▶ Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - ▶ Providing proper assistance to victims throughout the legal process

VICTIMS' RIGHTS - Multi-national & Domestic Implementation

- ▶ Commonwealth Statement of Basic Principles of Justice for Victims of Crime (endorsed by Senior Law Officers for the Commonwealth 2005).
- ▶ National Charter on Victims' Rights (endorsed by the Standing Committee of Attorneys-General, Australia 1993):
 - SCAG Secretariat
- ▶ South Australia - to honour international & national obligations
 - Declaration on Victims' Rights (1985)
 - Declaration Governing Treatment of Victims (1999 (administrative; 2003 in Victims of Crime Act 2001)

VICTIMS' RIGHTS - Parallel Justice



VICTIMS' RIGHTS - Rhetoric or Reality

- ▶ Victims' rights operate through human agencies, such as police, prosecutors, defence counsel, judges and magistrates, and correctional officers.
- ▶ Victims' rights are largely pious platitudes unless they are accepted as mandatory practices.
- ▶ Beloof (2005) obstacles to mandatory rights include:
 - ▶ Discretion to deny rights.
 - ▶ Lack of a meaningful remedy to enforce rights.
- ▶ Having an agency designed to enforce victims' rights is an important way to ... enhance the attainment of victims' rights (Kercher & Johnson 2005)

COMMISSIONER FOR VICTIMS' RIGHTS

- ▶ The Commissioner has the following functions:
 - a) to marshal available government resources so they can be applied for the benefit of victims in the most efficient and effective way;
 - b) **to assist victims in their dealings with prosecution authorities and other government agencies;**
 - c) to monitor and review the effect of the law and of court practices and procedures on victims;
 - d) to carry out other functions related to the objects of this Act assigned by the Attorney-General;
 - e) **if another Act authorises or requires the Commissioner to make submissions in any proceedings—to make such submissions (either personally or through counsel);**
 - f) to carry out any other functions assigned under other Acts.

COMMISSIONER FOR VICTIMS' RIGHTS

- ▶ Victim may exercise rights through an appropriate representative
 - ▶ (1) Rights granted to a victim under this, or any other, Act may be exercised on behalf of the victim by **an appropriate representative chosen by the victim** for that purpose.

- ▶ "appropriate representative", in relation to a victim, means any of the following:
 - ▶ (a) an officer of the court;
 - ▶ (b) **the Commissioner for Victims' Rights or a person acting on behalf of the Commissioner for Victims' Rights;**
 - ▶ (c) an officer or employee of an organisation whose functions consist of, or include, the provision of support or services to victims of crime;
 - ▶ (d) a relative of the victim;
 - ▶ (e) **another person who, in the opinion of the Commissioner for Victims' Rights, would be suitable to act as an appropriate representative.**

COMMISSIONER FOR VICTIMS' RIGHTS - Practical examples

▶ Charge Bargaining

- ▶ Withdrawal of charge
- ▶ Variation of charge

▶ Criminal Proceedings

- ▶ Stay of Proceedings
- ▶ Suppression Order
- ▶ Protected Communications

▶ Sentencing

- ▶ Victim Impact Statements
- ▶ Mentally Incompetent Offenders

▶ Post-proceedings / sentence

- ▶ Revocation or Variation of 'Licence' [Mental Incompetence]
- ▶ Revocation of Anti-Violence Order [Domestic Violence]

COMMISSIONER FOR VICTIMS' RIGHTS - Practical examples

- ▶ To make submissions to the Court of Criminal Appeal on guideline sentences. [South Australia: Criminal Law (Sentencing) Act 1988 / Repealed 2017]
- ▶ To make submissions for the victim (i.e. victim's family) to the Supreme Court hearing a 'dangerous offender' application. [No 27 of 2007 assented to 2.8.2007 / Repealed 2017]

COMMISSIONER FOR VICTIMS' RIGHTS - Enforcement of victims' rights

(1) A public agency or official must, if requested to do so by the Commissioner, consult with the Commissioner regarding steps that may be taken by the agency or official to further the interests of—

- (a) victims in general; or
- (b) a particular victim or class of victim.

(2) If, after consultation with a public agency or official, the Commissioner is satisfied that the public agency or official—

- (a) has failed to comply with the requirements of Part 2 in circumstances where such compliance would have been practicable; and
- (b) has not apologised or otherwise dealt with the victim in relation to the failure in a satisfactory way,

the Commissioner may, by notice in writing to the public agency or official, recommend that the agency or official issue a written apology to the relevant victim.

ACCESS TO JUSTICE - Requires Voice & Voice Recognition

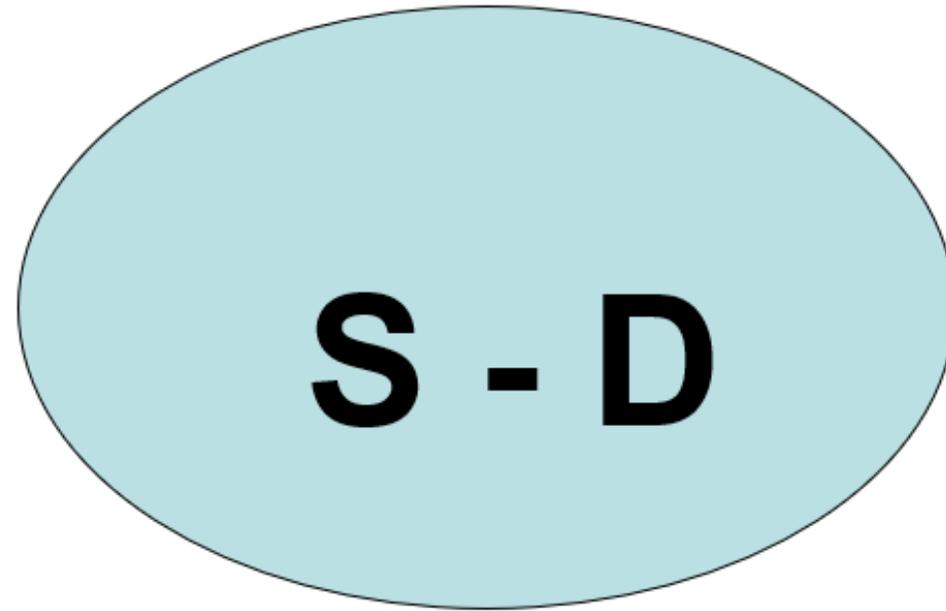
- ▶ **Access to justice is a basic principle of the rule of law.**
 - ▶ In the absence of access to justice, the victim is unable to have his or her voice heard, exercise his or her rights, challenge those who do not respect these rights or hold police, prosecutors and others accountable.

- ▶ **Access to justice includes the victim:**
 - ▶ getting the right information about the law and how it applies to him or her;
 - ▶ understanding his or her role and responsibilities in the criminal justice process;
 - ▶ getting the right help with a legal problem, including from a lawyer;
 - ▶ being able to deal with his or her legal problem and being able to understand the outcome;
 - ▶ making sure his or her voice is heard when decisions affect him or her;
 - ▶ attaining a remedy for a violations of his or her right(s).

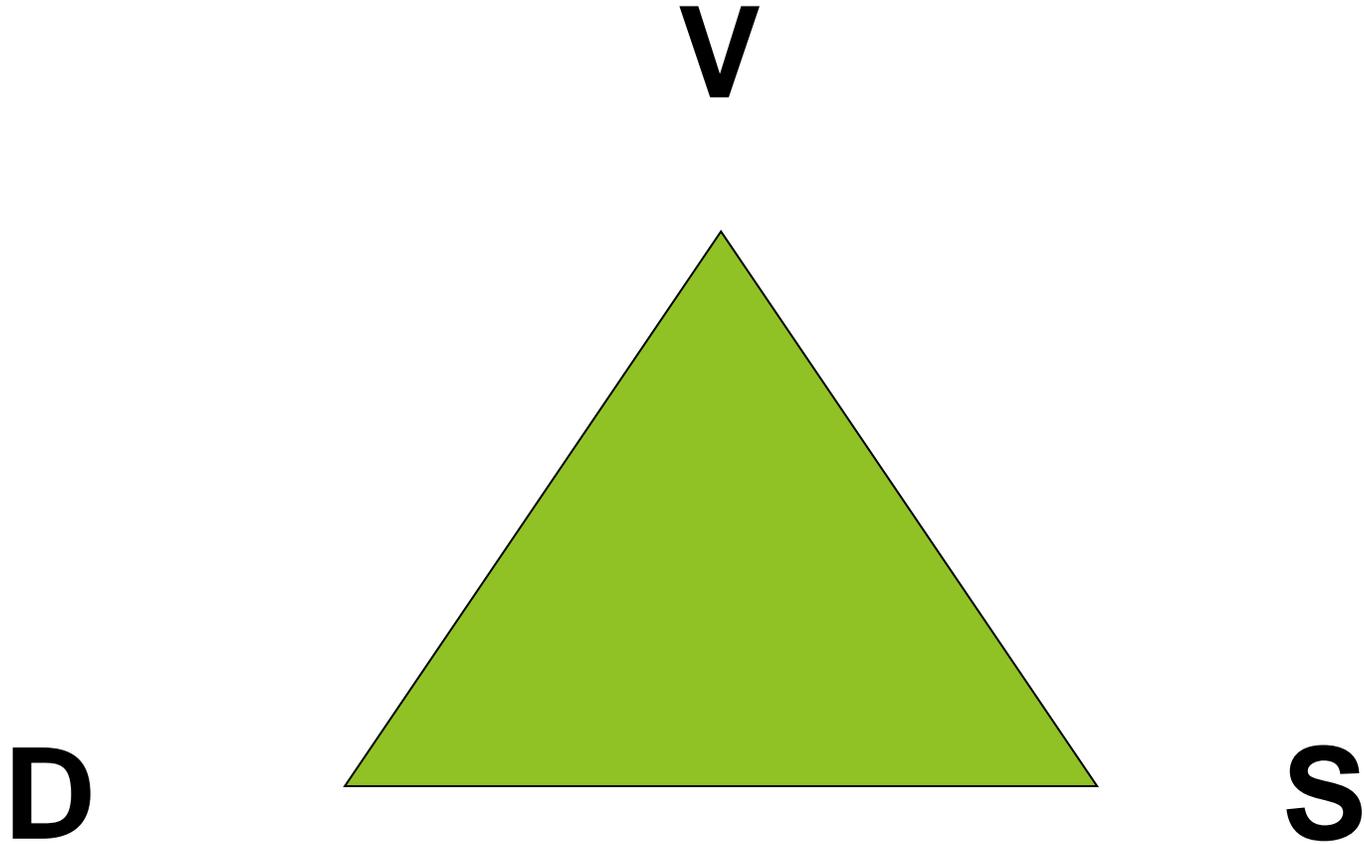


Access to Justice - Biangular of Interests

V



Access to Justice - Triangulation of Interests





Justice denied anywhere diminishes
justice everywhere.

[Martin Luther King Jr](#)

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