

## Schedule of Government Response to Recommendations on Victims' Involvement in Sentencing

Number	Recommendation	Government Response
1.1	<p>The Department of Justice should investigate ways of accommodating victims in the sentencing process in the Local Court</p>	<p><u>Supported</u></p> <p>The Government considers that a victim's right to make a VIS should not be impacted because the case is dealt with in a different jurisdiction.</p> <p>The Government will consult with key criminal justice stakeholders on ways of accommodating victims in the sentencing process in the Local Court, whilst limiting any resource impacts on the Court's operations. Agencies to be consulted will include the Chief Magistrate's Office, Courts &amp; Tribunal Services, the Office of the Director of Public Prosecutions (ODPP), police prosecutors, victims advocacy groups and the legal profession.</p>
2.1	<p>A person (the victim) should be entitled to make a Victim Impact Statement (<b>VIS</b>), if:</p> <p>(a) they have suffered personal harm as a direct result of any criminal offence, and/or</p> <p>(b) they are a member of the immediate family of a person who has died as the result of an offence.</p>	<p><u>Recommendation 2.1(a) subject to further consideration</u></p> <p>Eligibility to make a VIS under the current legislative framework focuses on whether a person is a victim of a particular offence, rather than whether the person has been harmed. The Government supports a widening the use of victim impact statements, however further consultation and analysis will be conducted on the extent to which these recommendations could be adopted without undue operational impacts, including delays in the finalisation of sentencing, and to ensure an overall improvement for victims.</p> <p>While this consultation process is being conducted, the Government will introduce legislation to enable victims of image and filming based</p>

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		<p>offences under sections 91H, 91J, 91K, 91L, 91P, 91Q or 91R of the <i>Crimes Act 1900</i> to make a VIS to better recognise the impacts of these technology facilitated offences on victims.</p> <p><u>Recommendation 2.1(b) supported</u></p> <p>Recommendation 2.1 (b) reflects the current eligibility entitlement of family victims to make a VIS where the primary victim has died. The Government acknowledges the importance of this provision and will retain it.</p>
2.2	<p>The definition of “personal harm” should include:</p> <ul style="list-style-type: none"> <li>(a) physical bodily harm</li> <li>(b) psychological or psychiatric harm</li> <li>(c) emotional suffering or distress</li> <li>(d) harm to interpersonal/social relationships</li> <li>(e) economic loss or harm, so long as it arises from the other forms of “personal harm”</li> <li>(f) any of the above harms to the victim’s immediate family</li> <li>(g) where a person has died as a result of the offence, any impact on the victim’s immediate family.</li> </ul>	<p><u>Supported in principle</u></p> <p>The Government acknowledges that the harm suffered by victims of crime can expand beyond actual physical bodily harm, psychological or psychiatric harm, and have wide reaching impacts on many aspects of victims’ lives. The Government will introduce legislation to allow existing eligible victims to more broadly and holistically explain the personal harm they have experienced because of the offence when they make a VIS.</p>
2.3	<p>The definition of “member of the victim’s immediate family” should be expanded to include:</p> <ul style="list-style-type: none"> <li>(a) the victim’s step-grandparent, step-grandchild, aunt, uncle, nephew, or niece</li> </ul>	<p><u>Supported</u></p> <p>The Government supports this recommendation. It is reflective of the diverse and changing nature of immediate families within our society.</p>

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	<p>(b) a person who is a close family member or kin of a victim who is an Aboriginal person or a Torres Strait Islander according to their culture</p> <p>(c) a person who is outside the above categories whom the prosecutor is satisfied is a person:</p> <ul style="list-style-type: none"> <li>(i) who is a member of the victim's extended family or culturally recognised family to whom they were close, or</li> <li>(ii) with whom the victim had a close relationship analogous to family, or whom the victim considered to be family.</li> </ul>	<p>The recommendation can be implemented within the existing statutory VIS scheme and the Government will introduce legislation to progress it.</p>
2.4	<p>A victim of a Form 1 offence should be able to make a VIS about that offence in the same way as a victim of an offence where there has been a conviction.</p>	<p><u>Supported</u></p> <p>The ODPP's Prosecution Guidelines provide that counts on an indictment should reflect each individual victim. As a result, the practical impact of implementing this recommendation will involve a small number of victims in the current VIS scheme. These victims should not be excluded from the sentencing process. The Government will introduce legislation to progress this recommendation.</p>
2.5	<p>The provisions for making a VIS should be extended to apply in cases where the defendant has been found guilty on limited evidence after a special hearing or has been found not guilty by reason of mental illness.</p>	<p><u>Supported and adopted</u></p> <p>The Government supports this recommendation and acknowledges that victims in such matters may experience harm and should be given a voice. This recommendation is being implemented through the Government's forthcoming reforms to the <i>Mental Health (Forensic Provisions) Act 1990</i>.</p>
3.1	<p>A limit of one VIS should apply to each victim</p>	<p><u>Supported and adopted</u></p>

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		<p>The <i>Crimes (Sentencing Procedure) Regulation 2017</i> already provides that only one VIS may be tendered for a primary victim and, where the primary victim has died as a result of the offence, each family victim. This principle will continue to apply.</p>
3.2	<p>There should be provision for victims to adopt a VIS other than by signing, including by electronic submission to the prosecutor.</p>	<p><u>Supported</u></p> <p>The Government acknowledges that the current requirement to sign a VIS can be an unnecessary formal barrier for victims who are unable to provide a signed VIS to the prosecutor. The Government will introduce legislation to progress this recommendation.</p>
3.3	<p>Provisions enabling people to make a VIS on behalf of victims who are incapable of providing information for a VIS because of age, impairment or otherwise, should be amended to:</p> <p>(a) enable the victim's carer and other important people in the victim's life to make a VIS on the victim's behalf, and</p> <p>(b) clarify that any person making a VIS on the victim's behalf may also make their own VIS if they are otherwise eligible to do so.</p>	<p><u>Supported</u></p> <p>The Government acknowledges that this small change is necessary to allow other important people in the victim's life, including a carer, to make a VIS on the victim's behalf. The Government will introduce legislation to progress this recommendation.</p>
3.4	<p>The <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) (<b>the Act</b>) should provide that only the prosecution may tender a VIS.</p>	<p><u>Supported</u></p> <p>This recommendation reflects the current practice as contained in the <i>Crimes (Sentencing Procedure) Regulation 2017</i>. The Government supports the movement of this provision into the main Act and clarification within the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) of this principle. The Government will introduce legislation to progress this recommendation.</p>

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3.5	<p>The <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) should expressly allow that, prior to the sentencing hearing:</p> <ol style="list-style-type: none"> <li>(1) the prosecution may provide a copy of a VIS to the offender's lawyer (in the case of represented offenders), and</li> <li>(2) the court may provide supervised access to a VIS to the offender (in the case of an unrepresented offenders).</li> </ol>	<p><u>Supported</u></p> <p>The Government supports this recommendation. It acknowledges current practices relating to service of a VIS but also the sensitive nature of VIS content and the need for safeguards to ensure that offender access to a VIS is not a barrier to victim participation in the sentencing process.</p> <p>The Government will introduce legislation to progress this recommendation. In implementing recommendation 3.5(2), the Government will have regard to availability of resources in court houses.</p>
3.6	<p>The defence should be prohibited from retaining, copying or disseminating a VIS. Any copy of a VIS must be returned to the prosecution or the court at the conclusion of the sentencing hearing.</p>	<p><u>Supported</u></p> <p>This recommendation acknowledges the highly personal and sensitive content of VIS. The Government is committed to prevent any re-victimisation of victims or misuse of a VIS. The Government will introduce legislation to progress this recommendation.</p>
3.7	<ol style="list-style-type: none"> <li>(1) All special arrangements that are available for victims of prescribed sexual assault offences in a court should be made available, upon request and with the leave of the court, to victims reading a VIS.</li> <li>(2) All victims should be entitled to have a support person present in court and seated close to them.</li> <li>(3) It should also be possible for a victim to read out a written VIS by pre-recorded media.</li> </ol>	<p><u>Recommendation 3.7 (1) and (2) supported</u></p> <p>The Government acknowledges the stressful and difficult experience delivering a VIS can be for victims and their family members.</p> <p>The Government will introduce legislation to progress recommendation 3.7 (1), subject to a requirement that facilities are reasonably available to the court for any special arrangement to be implemented (in addition to already existing arrangements for prescribed sexual assault offences).</p>

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	(4) Victims should be afforded an opportunity, where practicable, to familiarise themselves with the courtroom.	<p>The Government will introduce legislation to progress recommendation 3.7 (2).</p> <p><u>Recommendation 3.7 (3) supported in principle</u></p> <p>This recommendation is supported in principle and the Government will undertake further investigation and consultation to better quantify the likely impact on court operations.</p> <p><u>Recommendation (4) supported in principle</u></p> <p>The ODPP provide court preparation to the majority of victims under the current VIS scheme. Court preparation includes, where possible familiarisation with the courtroom and the court process and a court support assessment.</p> <p>This recommendation is supported in principle. Due to resource and operational implications for the Local Court, the Government, as part of its consultation with key criminal justice stakeholders, will further investigate and consult on how this recommendation can be progressed.</p>
4.1	A VIS may address personal harms arising from the offences.	<p><u>Supported in principle</u></p> <p>This recommendation was made in light of the recommendation of a broader definition of “personal harm”. The Government will progress this recommendation along with recommendation 2.2.</p>
4.2	A VIS must not include: (a) material that is offensive, threatening, intimidating or harassing, or	<p><u>Supported</u></p> <p>Recommendation 4.2 (a) is an existing requirement contained in the</p>

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	(b) views about the sentence to be imposed, or the matters that the sentencing judge should take into account.	<p><i>Crimes (Sentencing Procedure) Regulation 2017</i>. The Government supports retaining this provision.</p> <p>The Government supports the further requirement recommended in 4.2 (b) to assist with expectations about the use of a VIS. The Government will introduce legislation to progress this recommendation.</p>
4.3	The court should not have regard to anything in a VIS that goes beyond a statement of the “personal harm” caused to the victim as a direct result of the relevant offence.	<p><u>Supported</u></p> <p>This recommendation is consistent with sentencing principles and current judicial discretion.</p> <p>Legal principles require a VIS to be consistent with the charges an offender is convicted of. It is often impossible for victims to separate these events and the impact of such events in a VIS. This can be particularly difficult in domestic violence offences. Rather than requiring a victim to engage in this often artificial process, the court can disregard anything in a VIS that goes beyond the harm as a direct result of the offence. The Government will introduce legislation to progress this recommendation.</p>
4.4	A court must receive, acknowledge and consider a VIS, in appropriate form, and may make any comment on it that the court considers appropriate.	<p><u>Supported</u></p> <p>Currently the court is only required to acknowledge and consider a VIS provided by a family victim. This recommendation removes the current distinction between the court’s reception and acknowledgement of a VIS provided by a victim and a VIS provided by a family member. The Government will introduce legislation to progress this recommendation.</p>

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4.5	Wherever possible, evidence of aggravating circumstances should be adduced through evidence outside of the VIS process, by tendering relevant statements or expert reports.	<p><u>Adopted</u></p> <p>The Government supports this position. It is the current practice of the Office of the Director of Public Prosecutions.</p>
4.6	The court must not draw any inference about the harm suffered by a victim from the fact that a VIS is not given to the court.	<p><u>Supported</u></p> <p>This recommendation will strengthen the current legislative provision relating to the drawing of such inferences. The Government will introduce legislation to progress this recommendation.</p>
4.7	<p>The prosecution and courts should adopt non-mandatory guidelines, for practice and procedure surrounding the making, presentation and reception of a VIS, to the following effect: If there is at least 10 working days notice of a sentencing hearing and the victim wishes to make a VIS, the following procedures should be followed, if possible:</p> <p>(a) The prosecutor should ensure that the victim receives appropriate advice and support about making a VIS.</p> <p>(b) The VIS should be available for review by the prosecutor at least 6 working days before the hearing.</p> <p>(c) The prosecution should review the VIS and suggest any amendments to ensure it complies with requirements as to content and form.</p> <p>(d) At least 4 working days before the hearing, the prosecution should serve a copy of the VIS on the defence (subject to restrictions on copying and distribution) and advise whether:</p>	<p><u>Supported</u></p> <p>The Government supports this recommendation. The adoption and implementation of these guidelines will be progressed under the current statutory scheme. The Government views such a guideline as appropriately issued by the prosecuting authorities. The guideline will be revisited should recommendation 2.1 be implemented.</p>



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	<ul style="list-style-type: none"> <li>(i) it intends to use the VIS to establish an aggravating factor; and/or</li> <li>(ii) it intends to make an application under s 28(4) of the <i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) for a family victim VIS to be considered and taken into account by the court in connection with the determination of the punishment for the offence.</li> <li>(e) At least 2 working days before the hearing, the defence should advise the prosecution of the basis of any objections to the content of the VIS and whether it intends to cross-examine the victim.</li> <li>(f) The prosecution may, if it considers it appropriate, present the VIS to the court.</li> <li>(g) The court should hear any submissions as to any unresolved objections on the content of the VIS.</li> <li>(h) If the prosecution presents a VIS, the court must receive it and hear any submissions on its use.</li> </ul>	
4.8	There should be limitations on when the defence can cross-examine a victim on the content of their VIS.	<p><u>Supported</u></p> <p>The Government supports the Sentencing Council’s intention to limit for victims the circumstances in which they may be cross-examined on their VIS.</p> <p>Cross-examination of victims on their VIS is rare, however the possibility of cross-examination has been identified as a significant barrier to victims providing a VIS.</p> <p>The Sentencing Council set out two possible ways in which</p>

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		<p>limitations on when the defence can cross-examine a victim on the content of the VIS could be achieved however there were unable to agree on how to achieve this outcome.</p> <p>The Government will undertake further consultation to identify a proposal that limits cross-examination of a victim on the content of a VIS and balances the need for procedural fairness for offenders.</p>
4.9	<p>(1) In allowing cross-examination, the court should make such orders about the conduct of proceedings as are considered necessary in the interests of the victim. This may include making available to the victim any special arrangements for giving their evidence such as closed circuit television or the presence of a support person.</p> <p>(2) Where the offender is unrepresented, the court must be made aware of the nature of the cross-examination proposed before it grants leave for cross-examination to occur.</p>	<p><u>Supported</u></p> <p>This provision protects victims from possible distress and is similar to provisions in another Australian jurisdiction. The Government will introduce legislation to progress this recommendation.</p>
5.1	<p>Victims Services, in consultation with relevant agencies, should ensure information about VISs:</p> <p>(1) is standardised, centralised and routinely reviewed</p> <p>(2) is as brief as possible and targeted, simplified, in plain language, available in different languages other than in English and in different formats, and trauma-informed</p> <p>(3) is prepared for different categories of authors of a VIS by preparing separate information for each different category of</p>	<p><u>Supported</u></p> <p>The Government agrees that information on VIS should be relevant, clear, standardised, easy to understand and accessible to victims. Providing the right information in a timely manner will ensure victims can make an informed choice on whether or not to make a VIS and have the ability to do so if they wish.</p>

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	<p>author, and</p> <p>(4) includes content addressing:</p> <p>(a) the role of a VIS in the sentencing process</p> <p>(b) how to make and adopt a VIS (content which should include provision of pro forma forms, samples of complying VISs, and any other relevant forms)</p> <p>(c) who can obtain, retain, copy or disseminate a VIS, including the circumstances in which this may or may not occur</p> <p>(d) desirable timeframes for completing a VIS</p> <p>(e) the possibility that a VIS may be edited to comply with legal requirements, and the limited risk that the victim may be cross-examined on the VIS</p> <p>(f) the special arrangements available to victims who wish to read their VIS in court</p> <p>(g) how the court may use a VIS, and</p> <p>(h) references to all other supports and resources that are available to victims in writing a VIS.</p>	<p>Victims Services is currently reviewing its package of information to victims on VIS to make it more succinct, victim friendly and accessible. The final review of the VIS package will be conducted in coordination with other agencies to reflect the recommendations supported in this Government response.</p>
<p><b>5.2</b></p>	<p>(1) There should be more support for victims from people trained in trauma-informed care and practice, and trained in preparing a VIS</p> <p>(2) A translator service should be available for those seeking to make a VIS.</p>	<p><u>Supported in principle</u></p> <p>The Government recognises the importance of engaging people who have experienced trauma in a trauma-informed and sensitive manner.</p> <p>This recommendation is supported in principle. It will be progressed subject to further consideration of resource and operational issues.</p>

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5.3	<p>(1) The Judicial Commission, Law Society and Bar Association should offer and promote training and education for the judiciary and legal profession in issues relevant to VISs and victims</p> <p>(2) The Judicial Commission should include advice in bench books on how to receive and acknowledge VIS.</p>	<p><u>Supported in principle</u></p> <p>This recommendation is supported in principle. It will be progressed subject to interagency consultation and further consideration of resource and operational issues.</p> <p>The recommendations made to the Law Society and the Bar Association cannot be accepted by the Government on their behalf.</p>