



**RESEARCH REPORT**



**AN OVERVIEW OF  
RESEARCH AND POLICY**

**office of CRIME STATISTICS**

Attorney-General's Department

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# VICTIMS OF CRIME:

## AN OVERVIEW OF RESEARCH AND POLICY

127569

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## PREFACE

This report Victims of Crime: An Overview of Research and Policy is the first in a series from a two year research project on victims and the criminal justice system in South Australia. It includes an overview of previous research findings and other literature in the field of victimology and summarises policy initiatives that have been developed, particularly in South Australia, to improve the position of people who become victims of crime.

The report was written by Ms. Gloria Rossini who was assisted by an extensive literature search and synopsis undertaken by Ms. Kate McIlwain and Ms. Christine McMahon. This project was supported by the Criminology Research Council which provided a grant to employ an additional interviewer for twelve weeks, thus enabling Ms. Rossini to devote time to writing the text. The views expressed are the responsibility of the author and are not necessarily those of the Council.

Thanks are due also to the Project Steering Committee members, Ms. Helen Paige, Mr. Mark Pathe, and Mr. Ray Whitrod, who offered valuable advice on drafts of the report, as well as to the government departments and other organisations who prepared submissions. Ms Julie Gardner revised and edited the text and the Word Processing Section of the Attorney-General's Department typed numerous drafts. Ms Lesley Giles advised on layout and prepared the report for publication.

Dr. A.C. Sutton  
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## SUMMARY

1. Over the past two decades there has been a growing emphasis, both overseas and in Australia, on recognising the needs and rights of victims of crime - citizens who suffer harm as a result of the criminal acts of others. As Grabosky (1987) points out it has become almost a cliché to describe victims as the 'forgotten people' in criminal justice. Nevertheless it is clear that in the past victims' interests had been neglected not only by agencies administering the legal system but by criminologists and researchers. This situation is changing however; increasingly, victims of crime are becoming a focus for research, and significant moves are being made to accommodate their perceived needs within future justice frameworks.
2. This report reviews findings from the recent proliferation of victim oriented studies, and documents South Australian reforms aimed at improving the position of crime victims. Several distinct issues are analysed including: the impact of offences, fear of crime, role and status of victims within the criminal justice system, and the need for better information or consultation. The history of victim oriented reform and prospects for further initiatives also are canvassed. A key issue to emerge from these discussions is that more empirical studies are required - in particular research which asks victims themselves about their problems and needs, rather than taking their views for granted.
3. Another issue reviewed critically in this report is the concept that Western society is in retreat from a previous "golden age" where crime victims had much greater involvement in and control of justice procedures. More accurate historical analysis suggests that while victims may, in previous centuries, have had greater opportunities to play a role in the prosecution process in practice the right was rarely exercised - and even then only by the very wealthy. Rather than yearning for a return to some utopia, victimologists might be well advised to see the current emphasis on victims rights as part of a general need to create more just, responsible and responsive criminal justice systems, a process which in no way automatically conflicts with protecting the rights of the accused.
4. Other questions which researchers have found difficult to answer are: who are victims of crime? and how often does victimisation occur? Although

victim surveys have some inherent methodological problems they do provide researchers and planners with valuable information on the incidence and nature of offences. This report analyses the results of recent Australian surveys, and points out that unless such studies are conducted more regularly, governments will continue to be hampered in efforts to identify issues of concern for victims and to evaluate crime strategies.

5. One aspect which has been comparatively well researched is the physical, mental and financial impacts of crime. The report discusses the (sometimes conflicting) findings on victims' social welfare needs. It also reviews recent British research (Shapland et al, 1985) which presents a different perspective. According to these latest studies, victims' primary need is not for "services" but for information, involvement and some control over "their" case. As with many studies however, the researchers have consulted only victims of personal (often violent) crime, and it is not clear whether an individual effected by property offences would have the same outlook.
6. The report then considers South Australian initiatives, and notes that the State already has implemented a wide range of policies for victims. These include compensation and restitution schemes, special facilities and provisions for sexual assault victims and, more recently, reforms to sentencing procedures and adoption of a victims' rights charter. Despite this, a number of key issues still must be addressed. In particular there is an absence of first-hand evidence on personal and property crime victims' real problems and needs, and government agencies must be able to ensure that they can actually provide the information services that increasing numbers of victims are perceiving as their right.
7. Finally the report summarises a two year study which the Office of Crime Statistics is conducting to identify victims' concerns and assess their level of satisfaction with the criminal justice system. This study is looking closely at the types of information, assistance and involvement victims need, and will provide a firm factual basis for developing future victim policy. The study will be completed early in 1989.

## 1. INTRODUCTION

Over the last two decades there has been a rapid growth in the victims' movement. There have been a number of inquiries into the needs of victims of crime, for example the President's Task Force on Victims of Crime (1982) and the Canadian Federal-Provincial Task Force on Justice for Victims of Crime (1983). South Australia conducted its own inquiry in 1980 (Committee of Inquiry on Victims of Crime, 1981) and New South Wales and Victoria both completed an inquiry last year (New South Wales Task Force on Services for Victims of Crime, 1987; Legal and Constitutional Committee, A Report to Parliament upon Support Services for Victims of Crime, 1987). As well as these major inquiries the literature is becoming abundant with research in this area.

The extent to which there has been a greater focus on crime victims internationally is demonstrated through the recent Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 1985) which adopted a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; which was later adopted by the United Nations General Assembly. This declaration covers access to justice and fair treatment, restitution, compensation and social assistance (Appendix 2).

The victims' movement has a number of themes, including: a need for greater attention to the victim; a delineation of the rights of victims; and the need for victims to participate in legal procedures and have greater access to information.

These concerns have found expression in a range of administrative and legal initiatives, and in many respects South Australia is in the forefront in introducing relevant reforms. However, the victims' movement also has a number of issues which it needs to resolve. Such issues include: the lack of an adequate definition of crime victims with the associated lack of perspective on victims' real needs; and whether rights advocated for victims represent the wishes of the majority.

A lack of perspective on crime victims is in part attributable to drawing on an historical background which has led to the notion that Western societies are in a retreat from a "golden age" where victims had full rights of participation; and through contemporary research which has a tendency to base statements about victims' demands on needs or stereotypes rather than realities, and to use



research findings on small, atypical samples of victims as a basis for generalising about all victims' needs. These approaches have dangers in that they result in implementing unrealisable policies which far from enhancing, could in fact lead to greater disillusionment among victims (Staff, 1987; Shapland 1986; Elias, 1986).

The purpose of this report is that by reviewing developments to date and identifying areas where knowledge needs to be enhanced such pitfalls can be avoided in South Australia. The report covers areas such as: the rights of victims from an historical perspective; statistical information on crime victims; a review of contemporary research on the impact of crime on victims including, from an international perspective, the likely effect of greater participation by victims in the criminal justice system; and a review of major initiatives in South Australia. One of the main findings is that although South Australia is in the forefront, there is a need to consolidate initiatives and establish contact with victims to identify their needs.

A study currently being undertaken by the Office of Crime Statistics is making such contact with crime victims and interviewing them about their experiences and attitudes towards the criminal justice system.

Questions on whether victims are satisfied with treatment accorded by various agencies (ie. police, welfare organisations, prosecutions, courts, compensation procedures); about whether the degrees of satisfaction or dissatisfaction change as cases progress through the system; whether victims see a need for changes in criminal justice procedures; and what types of information, consultation and assistance victims require are being asked of a sample of both personal and property crime victims over a two year period.

As part of the initial research study various departments and organisations who have contact with crime victims or offenders were surveyed to consider the perceived needs of victims, the adequacy of current services, and whether there is consensus about the role crime victims should play within the criminal justice system. Information was also sought on government practice in light of the Rights of Victims declared in the Statutes Amendment (Victims of Crime) Bill (1985). Submissions were received from twelve departments/organisations (Appendix 1), and their comments are discussed in chapter 9.2 of this report.

2.

## DEVELOPMENT OF THE VICTIMS' MOVEMENT

Recognition of the needs of crime victims is a recent development in law. The field of criminology has to a large degree had as its focus the offender. It has been principally concerned with the causes of crime and implications in terms of penalty.

Victimology has been concerned with issues which are more victim oriented such as: victim typologies and their relationship to the causes of crime; fear of crime and crime prevention; the impact of crime on victims; victim roles and responsibilities; and their needs in terms of protection, support and compensation (Jakovljevic, 1985). By asking the question "what made it happen?" victimology shifts the emphasis from focusing largely on the offender to considering all the circumstances and participants in a given event (Cohen, 1985).

Although comparatively recent, the victims' movement is having a major practical impact on the law. The debate over victims' rights initially centred around the issue of compensation. In 1951 Margery Fry, an English magistrate, proposed that offenders pay compensation to victims, arguing that compensation could both ameliorate the effects of the injury and serve as an educative process for the offender. Whilst her recommendation was widely publicised within the Commonwealth, it was not adopted by any country. She refined her proposal in the late 1950s and recommended state compensation for victims, as most offenders did not have the financial means to provide adequate restitution to victims.

In 1963 New Zealand was the first country to enact compensation legislation. Great Britain followed in 1964. In the United States California was the first State to pass victim compensation legislation; this was in 1966, and within the next twelve years twenty-five states enacted similar legislation. New South Wales enacted the first Australian compensation scheme in 1967 (Criminal Injuries Compensation Act, 1967) followed by Queensland in 1968 (Queensland Criminal Code Chapter LXVA), South Australia in 1969 (Criminal Injuries Compensation Act, 1969), Western Australia in 1970 (Criminal Injuries Compensation Act, 1970), Victoria in 1972 (Criminal Injuries Compensation Act, 1972) and Tasmania in 1976 (Criminal Injuries Compensation Act, 1976).

The development of the victims movement within Australia has also been influenced by the efforts of the women's movement.

"Since the early 1970's, by focussing attention on domestic violence and sexual assault, the women's movement has played an important part in gaining recognition of these serious social problems. Not only has this assisted in the examination of society's attitude to and treatment of women, but it has directed attention toward an examination and understanding of the role of the victim in the criminal justice system." (New South Wales Task Force on Services for Victims of Crime, February 1987 p. 29).

South Australia during the 1970's saw several reforms in the area of sexual assault. The South Australian Police Department established a Sexual Assault Enquiry unit, the Queen Elizabeth Hospital set up a Sexual Assault Referral Centre and voluntary agencies such as the Rape Crisis Centre were founded.

Reforms were made also to the criminal process to minimise the impact of the trial experience on sexual assault victims. Changes to the Evidence Act occurred so that a victim's prior sexual history may be introduced into evidence only when deemed relevant and justified by the presiding judge. A victim of sexual assault is also not required to attend a preliminary hearing unless a magistrate finds that "special reasons" exist (Justices Act (S.A.) Section 106). This minimises the need to give evidence twice.

Victims of crime in general have also emerged as an identifiable group within the community. In 1979 the Victims of Crime Service Inc. (VOCS) was established, arising out of a public meeting held with concerned citizens after a series of murders in this State. Shortly after VOCS was founded the Victorian Police Commissioner initiated the establishment of the Victims of Crime Assistance League Inc. (VOCAL). Both these groups not only provide emotional support and counselling for victims, but they also work in the community raising awareness of victims issues and lobbying to achieve victims rights in the legal process.

Recently two groups of victims have been identified by the South Australian Government as being in need of close attention: victims of domestic violence and children who have been abused. Task forces have been

established and reports issued on the problems experienced by these victims, together with a list of recommendations for action by the community and relevant government departments (South Australia: Domestic Violence Council, 1987; South Australian Government Task Force on Child Sexual Abuse, 1986). There has also been legislative reform in these areas. In 1982 Section 99 of the Justices Act was amended to allow a person to obtain a restraint order where they fear personal injury or damage to their property. This provision can provide support for victims in any domestic assault situation. In 1981 it became compulsory for a wide variety of professionals in contact with children to report any suspected cases of child abuse, exposing cases that may previously have remained hidden (Community Welfare Act, Amendment Act, 1981 (s. 91)).

VICTIMS' RIGHTS - AN HISTORICAL PERSPECTIVE

Often a rationale for legal reform has been the argument that historically, victims were given greater rights and control over criminal proceedings and that reforms are needed to restore the balance. Weigend (1985) noted that before the middle ages victims played an influential role in judicial proceedings, but this role changed with the developments of the 18th Century which saw the State assuming a more prominent position in judicial proceedings with the victim being reduced to the role of a mere witness. The early common law did not distinguish between civil wrongs and crime. Offences generally were seen as an act against the individual; resulting both in private prosecutions by individuals and attempts at restitution from the offender.

In early Europe and England there was no formal government criminal justice structure, and "justice" was a matter of self help or using the help of kin.

"The blood feud constituted the major enforcement mechanism, both in England and on the continent. The victim, or his or her kin, exacted vengeance against and repayment from the perpetrator or his kin. At the same time, however, a rudimentary public enforcement mechanism, "outlawry", existed both on the continent and in England (Henderson 1985, p. 939)."

With the organisation of English society the focus changed from individual law enforcement to the importance of "public" interests. Criminal law became enforced through the payment of compensation to victims and their kin ("bot" and "wer") and fines which were paid to the King ("wite"). Henderson notes that whilst this system of compensation would appear to be in the interests of victims receiving restitution, in practice few victims received compensation. This was because of the oppressive levy of fines paid to the King, and the fact that few people paid restitution as most could not afford it and were outlawed or sold into slavery.

With the development of a more public system of criminal law, victims retained some discretion through the system of "private" prosecution. For example larceny victims had discretion both in bringing charges and determining whether larceny

should be a capital offence. But in reality this system did not provide many tangible benefits to victims.

"By the nineteenth century, the expense of conducting investigations and of bringing private prosecutions placed a burden on victims ... and while compensation and reward schemes were used to encourage prosecution, these frequently were insufficient. The poor could not prosecute at all ... in serious cases the constable had played an important role, and the coroner had become largely responsible for prosecuting homicide. Finally, the severity of criminal penalties in England for hundreds of crimes - death or transportation - effectively foreclosed any chance for victims to obtain tort damages." (Henderson, p. 41)."

The development of the American legal system showed a comparable shift in emphasis from a system reliant on victims for its enforcement. In colonial America

"victims paid for warrants, did their own investigative work, and retained a private attorney to write an indictment and prosecute the offender. Restitution was seen as more important than incarceration. During the nineteenth century the goals of the criminal justice system changed from restitution to deterrence and punishment, as a distinction was drawn between offences against the social order (crimes) and offences between individuals (civil wrongs)" (Davis, Kunreuther and Connick 1984, p. 491)."

Thus today the debt owed by the offender is perceived to be a debt to society rather than to the victim. A clear division exists between criminal activities and civil wrongs, with the State assuming responsibility for initiating the prosecution of crime. Whilst in theory the "control" which victims have over the prosecution process and the likelihood of receiving restitution for an offence has diminished, arguments based on a historical perspective are to some extent false as traditional rights in these areas were arguably only available to those who could afford it - a minority of victims.

DEFINITION OF VICTIM OF CRIME

A basic weakness in victimology literature is that it is not entirely clear who is referred to by the term "victim". Quinney (1975) argues that the notion of a "victim" is a social construction based on underlying values and beliefs. He argues we define an act as criminal because there is something or someone whom we can identify as a "victim". Alternatively it has been argued that the way in which society perceives or defines "crime" will determine who is defined as a "victim" and that society's perception of victim is culture-bound (Johnson and Wasielewski, 1982; Barbour, 1985; United Nations Secretariat, 1985).

Under legislation it is usually the criminal activity which is defined rather than the victim. Thus the victim will be referred to within the parameter of making the complaint or being awarded compensation. For example, the Criminal Law Consolidation Act (S.A. 1935) does not define who is a victim. Under the provisions for restitution or compensation for malicious damage, injury, spoil or theft of any real or personal property including assault or battery (ss. 46, 101, 102, 116, 126, 149, 151, 201) the victim is considered to be the owner of the property or the person who has been assaulted or suffered injury. Similarly under the Offenders Probation Act (1913) and the Children's Protection and Young Offenders Act (1979) provision is made for compensation (Section 4(5) and Section 73 respectively) with the criminal activity once again defining who is the victim. Under the Wrongs Act (1936) the victim is characterised as a "dependant" who has suffered damage which "includes loss of life, personal injury, and suffering for which a sum by way of solatium may be awarded under Section 23a or 23b of this Act" (s. 27a). Under Section 28(1) the extent of injury can include mental or nervous shock.

Both the Criminal Injuries Compensation Act (1977-1978), and the Bail Act (1985) are exceptions to other legislation in that they define the victim. Under both acts the victim is defined as being the "person who suffers injury in consequence of the commission of the offence". The Criminal Injuries Compensation Act goes further in elaborating the concept of a victim by defining injury as physical or mental injury, and includes pregnancy, mental shock and nervous shock. Under the Act victim also includes, in the case of homicide, his or her dependants (ie. the spouse, putative spouse, and parents or children of the victim) who are financially dependent on the victim.

The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 1985) defines a victim of crime under Part A:

"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

A person may be considered a victim ... regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation" (p. 45).

Whilst for crimes against the person and for many property thefts it is relatively clear who has been victimised; for other crimes such as welfare and insurance fraud the victim is less clearly defined. In the case of company fraud the victim may be defined as the shareholder, for welfare fraud the victim may be the taxpayer. The literature discusses types of victimisation in terms of primary, secondary and tertiary victimisation. Primary victims are considered to be those persons who are personally victimised, secondary victims are those who are financially or psychologically dependent on the primary victims eg. a child, spouse or parent. Tertiary victims have been described as those persons whose lifestyles have been greatly inconvenienced by excessive fear of crime, as well as taxpayers, rate-payers, insurers and consumers who have to bear the cost to society of crime. Whitrod (1980) has elaborated on this classification by adding a category of those persons who are financially or psychologically dependent on the offender. As the discussion above illustrates, the term victim may refer to many categories of people, from the



victim of an individual assault through to the general public inconvenienced in some way by the criminal actions of others. For convenience however, "victim" in this report (unless otherwise stated) will refer to those people directly involved and adversely affected by a criminal offence against their person or property.

5. WHO ARE CRIME VICTIMS

5.1. Sources of Information

In Australia there are two main sources of information on the number of crime victims and patterns of victimisation. Official police statistics provide information on the number of illegal incidents that become known or are reported to the police over a range of offence categories. There are several difficulties with basing victimisation rates only on official statistics.

- What constitutes a crime is defined under legislation and the legal definition of certain offences can vary between the States: for example rape is more broadly defined in both South Australia and New South Wales than elsewhere. In comparing crime rates between the States this should be borne in mind.
- Similarly, legislative changes may lead to an increase in the reporting of incidents to the police rather than reflecting an increase in the type of offence per se. This is arguably a factor with child abuse figures. In South Australia there have been legislative changes to widen the responsibilities for reporting suspected child abuse, and notifications in South Australia have increased by more than 1,000% in seven years.
- As police recording procedures are based on the numbers of incidents rather than the number of victims involved, it is difficult to establish the rate of victimisation. For example, it was noted in the study conducted by the South Australia Police Department (Rape: A Four Year Police Study of Victims, 1986).

"during the three months period ended 30th September, 1983, a total of 46 rapes and attempted rapes on males was recorded by the South Australia Police Department. 36 of these offences were committed against the same victim over a period of several months. This has inflated the number of rapes against males recorded in the Annual Report as occurring during 1983/84 financial year." (Weekly 1986, p.1.)

- Official statistics often contain limited descriptive data on crime victims.
- The statistics only show incidents that become known to the police, ie. reported victimisation.

Over recent years victimisation surveys have been used in an attempt to assess the extent of unreported crime existing within the community. In Australia two national surveys have been carried out by the Australian Bureau of Statistics, the first in 1975 and more recently in 1983. As with official statistics there can be problems with victimisation surveys: they rely on memory or willingness to tell of a victimisation; and people might not perceive themselves as being victims.

Any attempt to describe the rate of victimisation should draw on both sources of information.

## 5.2 South Australia

Table 1 shows categories of offences reported or becoming known to the Police during 1985/86. It should be noted that these are selected categories - for example traffic offences are not included. As noted, the figures do not necessarily show individual victimisation rates as counting procedures are based on the total incidents recorded. The notion of a "victim" tends to suggest an homogeneous group within society. Victims however do not represent a discrete group. Offences can vary both in the type of offence and the degree of seriousness. These crimes can be broadly categorised into three groups:

- offences against the person, for example assaults and sexual assaults;
- robberies, which may include both an offence against the person and a property offence;
- property offences, for example fraud, break and enter, larceny of a motor vehicle, and shop theft.

Totals reported in the period July to June, 1985/86 for these broad categories are shown in Table 1. This shows that of the total reported or becoming known to the police, 92% involve offences against property, a total of 120,698 incidents. Within this category a quarter represent break and enter offences. Offences against the person and sexual offences account for 7.1% of all recorded incidents, a total of 9,319 incidents. The majority of offences against the person are classified under other assault

(68.4%, a total of 6,371 reported incidents) which would include a large proportion of common assaults; the more serious offences such as rape and homicide account for about five percent of this category and less than one percent of all reported crime. (Office of Crime Statistics, 1986c).

TABLE 1 - CATEGORIES OF OFFENCES REPORTED OR BECOMING KNOWN TO SOUTH AUSTRALIAN POLICE, 1 JULY 1985 - 30 JUNE 1986

OFFENCE TYPE	NUMBER	PERCENTAGE OF TOTAL OFFENCES
Offences against the person (including sexual offences)	9,319	7.1
Robbery	595	0.5
Property Offences	120,698	92.4
TOTAL	130,612	100.0

Source: Office of Crime Statistics, Attorney-General's Department, South Australia.

One way of assessing the degree of seriousness of an offence, is to consider official statistics from the perspective of legal classifications. Thus for example, with assault the degrees of seriousness are reflected in the differences between assault occasioning grievous and actual bodily harm (major assault) and common assault. As noted, over 80% of offences against the person are from the 'other assault' category, which would comprise mainly common assaults where the offence could be of a minor nature.

There are other criteria which are relevant to assessing the extent of serious victimisation occurring within the State. The definition on which official statistics are based include whether a person was physically injured and required medical treatment or hospitalisation. Other relevant factors in considering seriousness include:-

- the value of any property stolen or damaged;
- whether the offence was part of repeated victimisation;
- the number of offenders involved;

- whether the victim knew the offender, in particular where a relative is involved, the impact on the family from the relationship.

It also has to be accepted that to some extent the seriousness of an offence is related to the coping level of a victim which is influenced by individual characteristics rather than the type of offence per se (New South Wales Task Force on Victims of Crime, 1987).

It is the subjective element which is difficult to quantify. Thus "a verbal threat, for example, may well be more disturbing for one victim than a physical attack on another. Similarly a break and enter offence where nothing was stolen may be more disturbing for one victim than for another break and enter victim who lost an insured television." (ABS Victims Survey 1986, p. 68).

Overall these results suggest that statistically people who become victims of crime are generally more likely to be victimised by an offence of a less serious nature. This conclusion however is based on offences which become known to the police.

Information from the ABS survey shows differences in the reporting rate depending on the type of offence. Whilst the information is not broken down by State, the results show that sexual assault has the lowest reporting rate followed by assault. When considering the reasons why police were not told of the offence, the principal reason for sexual assault offences was that respondents felt the police couldn't or wouldn't do anything about it. However for victims of assault the two main reasons were that firstly it was considered too trivial or unimportant to report, and secondly that it was a private matter and respondents felt they would take care of it themselves. Overall the rate of unreported victimisation is around 59% of all incidents which are alleged to occur (Table 2). The main reasons given for not reporting offences was that they were too trivial or unimportant, (29.3%) followed by the police couldn't or wouldn't do anything about them (11.9%) (Table 2). Although it is hard to draw any clear conclusions, it appears that whilst about half of all crime goes unreported, for many people it is because it was of such a minor nature.

**TABLE 2 - VICTIMS OF PERSONAL CRIME, SOUTH AUSTRALIA AND AUSTRALIA: MAIN REASON WHY POLICE WERE TOLD OR WERE NOT TOLD, AS PERCENTAGE OF ALL VICTIMS**

MAIN REASON	SOUTH AUST. %	AUST. %
Why police were told -		
Crime committed/moral obligation	4.0	7.3
To try/hoped to get property back	11.6	15.0
Insurance/compensation	3.0	2.0
One of a number of incidents/try to stop it happening again	3.8	4.1
Wanted offender caught/punished	4.3	2.5
Fear of harm to self or another person	*2.1	2.3
Other	*1.3	2.0
Incident reported by any household member	30.1	34.3
Incident not reported by any household member	12.1	10.0
Police aware of incident	41.8	43.8
Why police were not told -		
Too/trivial unimportant	32.0	29.3
Someone else did	**	*0.2
Police couldn't/wouldn't do anything about it	11.7	11.8
Private matter/would take care of it themselves	8.7	8.1
Told someone else instead	3.4	3.4
Offender thought/known to be a child	**	*0.4
Did not want offender to be punished	**	0.6
Afraid of reprisal	*1.6	1.3
Too confused/upset/injured	**	0.9
Other	7.7	7.2
Police not aware of incident	63.1	59.9
<b>TOTAL PERSONAL VICTIMS</b>	<b>100.0</b>	<b>100.0</b>

Source: Australian Bureau of Statistics, Victims of Crime Australia, 1983, table 6.8 (Part 2).

- \* Estimate is subject to a relative standard error at between 25 and 50 per cent.
- \*\* Estimates with relative standard errors greater than 50 per cent have not been shown.

### 5.3 Crime Victims - Selected Descriptive Details

The ABS Crime Victims Survey (1986) provides the most detailed descriptive information on persons who become victimised. Overall, males are more likely to be victimised than females and the highest victimisation rate is for males who have never married. People who are married or widowed are less likely to be victimised. Both males and females who are separated and divorced show high victimisation rates. The difference in terms of marital status has been largely explained in terms of lifestyle. It has been hypothesised that those people in less stable relationships are at higher risk because of their tendency to for example, go out alone at night. "Lifestyle patterns influence the amount of exposure that people have to places and times with varying risks of victimisation and the prevalence of associations that people have with others who are more or less likely to commit crimes." (Garofalo, 1986, p. 136). This could largely explain the fact that higher levels of victimisation occur for people aged between 15 and 29 years, particularly those in the 20-24 year age group, a pattern which is shown over all the States (Table 3). As a single group, unemployed people are more likely to be victimised, followed by armed service workers and service, sport and recreation workers. Many of these latter groups may be victimised as part of their employment. Considering country of birth, people from New Zealand show the highest victimisation rate. The lowest victimisation occurs for people from Italy and Greece.

Information on victim/offender relationships show that for offences involving theft (break and enter, household property theft, motor vehicle theft and other theft) over 90% of victims reported the offender to be a stranger. This is in contrast to victims of offences involving threatened or actual attack (robbery, sexual assault and assault) where nearly half reported having seen the offender before. In most of these cases the person was a relative. Where the offender was a relative they were more likely to injure the person than when the offender was not related or not seen before. Overall, one in eleven victims of actual or threatened attack was related to the offender (ABS, 1986).

TABLE 3 - VICTIMS OF PERSONAL CRIME, AUSTRALIA:  
NUMBER AND RATES PER THOUSAND BY AGE GROUPS

AGE GROUPS	NUMBER (,000)	RATE*
15 - 19 years	206.0	163
20 - 24 years	244.3	185
25 - 29 years	170.5	135
30 - 34 years	120.4	98
35 - 39 years	110.7	98
40 - 44 years	70.8	80
45 - 49 years	55.0	72
50 - 54 years	47.6	64
55 - 59 years	34.4	46
60 - 64 years	25.1	38
65 - 69 years	14.9	28
70 - 74 years	9.8	24
75 and over	11.4	25
TOTAL	1,121.0	98

Source: Australian Bureau of Statistics, Victims of Crime Australia 1983, table 2.2.

\* Rates per thousand are based on all persons aged 15 years and over.

#### 5.4 Overseas

Information from overseas shows that the demographic profile of crime victims is comparable with that of Australia. For England, Wales, Scotland, Canada and the United States young, single, unemployed males run the greater risk of becoming a victim of assault or robbery (Grabosky, 1985). Similarly comparing Australia and the United States, Braithwaite and Biles (1984) concluded that for both countries men were more likely than women to become crime victims, unemployed people had higher rates of victimisation for theft, break and enter, and assault, and those people who were never married, separated or divorced had higher victimisation rates for most offence categories.

Considering the incidence of crime, Grabosky (1985) concludes that in general, Australian crime rates tend to be lower than those of the United States and Canada,



but higher than those of England, Wales and Scotland. In the United States in 1983 it was estimated that 15% of households were effected by crimes of household theft, (Bureau of Justice Statistics 1985) compared to 9% of households in Australia during the same year (ABS, 1986).

#### 5.5 Conclusion

Together the information contained in the official police statistics and the crime victim surveys can provide a more detailed picture on the incidence of crime in the community than either one alone. Victim surveys can provide the public with a more accurate indication of their 'risk' or 'susceptibility' to crime than they would otherwise receive (usually via the media). Surveys also allow public officials to design crime prevention strategies and allocate resources more efficiently. In order to fulfill these roles however victim-surveys need to be conducted on a regular basis. With regular surveys a data base can be established from which to determine trends in victimisation rates. The data can also be used in evaluating reforms and programs in the area of crime prevention.

6. THE IMPACT OF CRIME ON VICTIMS - AN OVERVIEW OF RESEARCH

6.1. Effects of crime on victims

One of the main purposes of collecting statistical information is to provide a basis for assessing the impact of crime, and victims' short and long term needs. The immediate consequences of an offence may include physical injury, shock and loss of property or money. Other direct costs to a victim may include time off work, transport costs and loss of earnings in recovering from the offence and participating in police investigations or the court process. Other effects may be more long-lasting and indirect, in particular the psychological effect of the offence and deteriorated family and social relationships.

Maguire and Corbett (1987) note that research in this area has produced conflicting results.

"For example, how would [one] reconcile on the one hand, statements such as:

'A large proportion of victims reported neither practical nor emotional problems (Hough and Mayhew, 1985): 32) ... with those of, for example, Friedman et al. (1982), that:

'... the most common problems, affecting three-quarters of the sample... were psychological problems including fear, anxiety, nervousness, self-blame, anger, shame and difficulty sleeping ... We were stunned at the general impact of a crime on the victim's psychological state, and at the alterations to daily life which were so often a part of the victimisation experience.'"  
(p. 36-37).

This discrepancy, the authors argue, may be explained by three factors: a tendency to compare studies based on samples of different victim populations and to draw conclusions about "victims" as a whole; confusion through using words such as "needs", "problems" and "effects" loosely without recognising their ambiguity and subjectivity, and the fact that measuring any impact will vary according to how questions are asked.

Maguire and Corbett surveyed victims of different types of offences and reported significant variations depending on the offence type. For offences such as serious assault, burglary, robbery "snatch" theft,

major vandalism and threats, 30-40% of victims rated themselves as being "badly affected" by the victimisation. This can be compared with offences such as larceny of a motor vehicle and ordinary personal theft where only a small proportion of victims reported any serious effects. Maguire and Corbett also note that even within the same offence categories, the effect on a victim is also influenced by how the offence occurred, the outcome of the offence and whether in fact the offender was a stranger. Where the offender is known to the victim prior to the event, victims report stronger adverse effects.

Shapland et al (1985) conducted a longitudinal survey of victims of violent crime (physical assaults, sexual assaults and robberies). Her results show differences between these categories. Victims of sexual assault showed the most persistent social and psychological effects which could last for a considerable time after the offence. Robbery victims also reported social effects, in particular a disruption of social activities due to fear of subsequent attack. The main effects reported for victims of physical assault were physical, and for less serious assaults these were only minor. Overall, Shapland suggests that physical assault victims suffer less effects than victims of sexual assault and robbery.

Maguire and Corbett summarise research which has shown the "devastating" problems which many victims of sexual assault experience.

"The threat of being killed, mutilated or injured doubtless underpins many of the ensuing symptoms and effects, which may last for months or even years, whatever the initial response may have been. The most frequently reported reaction is that of fear (eg. Kilpatrick et al 1984). This may be accompanied by exhaustion, anger and anxiety (Vetonen et al, 1979), lethargy, irritability, and feelings of guilt, shame and loss (King and Webb, 1981). The latter effects may stem from the experience of loss of control over one's body, and the sense of helplessness associated with the shattering of former beliefs in the "safety" of the world (Silver and Workman 1980)." (p. 176).

They reported psychological changes, which may include changes in sleep and eating patterns and withdrawing

from sexual contact. Many behavioural responses are described as avoidance oriented, for example severely restricting their normal routine to avoid situations in which they feel insecure. This may include absence from work or a decision to move home.

Many writers have listed the emotional problems experienced by crime victims. This can include anger, confusion, disbelief, loss of memory and insecurity (Maguire 1980; Harrison 1983; Smale, 1984). Friedman et al (1982) found that 75% of victims reported emotional reactions ranging from nervousness, anger, shame, self-blame, helplessness and frustration, and 43% feared re-victimisation. In contrast, Maguire and Corbett (1987) reported that amongst their sample of crime victims (excluding victims of sexual assault) feelings of guilt and loss of memory were experienced less often than may have been expected on the basis of previous research. The results of their research showed that anger, fear and worry were the effects most often mentioned although this varied with the type of offence. Threats, violence and to a lesser degree burglary were most likely to produce fear and worry, and anger was most commonly reported by men for thefts of personal items and by women for vandalism.

The actual costs to organisations or individuals involved in crimes of fraud or corporate illegality are not documented enough to discuss in detail; it would be safe to assume however that the financial burden placed on these victims would be substantial. The monetary cost to victims of personal property or violent crime has been examined by Friedman et al (1982) who noted a third of victims in their sample reporting having experienced financial problems as a result of the offence, and 23% had difficulties repairing or replacing property. The Canadian Federal - Provincial Task Force (1983) concluded that overall the financial costs of crime are significant, taking into account unrecovered property and cash, damage to property, medical costs, insurance payouts, and lost work days due to incapacitation.

"The gross figures, however, may be somewhat misleading. The mean net loss per incident (exclusive of medical expenses and lost wages) came to slightly more than \$167. The actual dollar figures should not, however, blind us to the suffering that financial loss can entail. The impact of similar financial loss will be experienced differently depending on the income of victims or their ability to recover

through private insurance. Obviously, the financial impact of victimisation falls most heavily on those with lower fixed incomes. Lower-income families are less likely to be able to recover their losses and, even if they do make some recovery, the waiting period is likely to produce significant hardship." (p. 59).

Maguire and Corbett (1987) argue that the financial consequence for victims of sexual assault can be considerable, taking into account time off work, changing employment and housing as well as the costs of security precautions; for example, changing a telephone number, improving home security and taking taxis when going out. Shapland (1985) noted that only a small proportion of victims mentioned the need for financial support and the importance of this declined after a few months: "The few victims who did suffer these hardships, however, felt them very deeply and there was considerable hardship." (p. 116).

#### 6.2. The Needs of Crime Victims

The expressed needs of victims for support following an offence have been considered by various researchers. However as with the impact studies, there is no clear consensus from research on the nature of victims real needs. It has generally been concluded that the primary needs of crime victims are for social support and information. The South Australian Report of the Committee of Inquiry on Victims of Crime (January 1981) noted that "among the most pressing needs of crime victims is the need for sympathy and understanding - qualities which do not flow from ignorance" (p. 12). Similarly the Canadian Federal - Province Task Force on Justice for Victims of Crime (1983) concluded that "the most frequently expressed need by the great majority of victims interviewed is the need for information. To meet this need, it is not new services which are required, but a firm commitment on the part of the various criminal justice officials to let the victims know what is happening to "their" case (p. 150) ... the key words are concern, consideration and communication" (p. 152).

Shapland et al's (1985) four year study of victims of violent crime highlighted the needs of those victims in terms of their perceived role and lack of status within the system. The survey revealed a growing dissatisfaction by victims as their case progressed through the system. Victims expressed concern that

they were not adequately consulted or informed on what was happening once the incident was reported to the police. Examples were given of cases being finalised without victims' knowledge that an offender had been prosecuted, changes to charges without consultation with, or knowledge by, the victim as well as lack of basic information to victims, for example, follow up police investigation details, dates of court hearings and whether a victim was required to attend. It was suggested that a victim's satisfaction was linked to the amount of information he/she received as to the progress of a case. Many victims felt they had little involvement or "control" once an incident had been reported to the police and entered the criminal justice system. This Shapland notes is the dilemma for a system based on centralised powers of prosecution - that of "ownership" of the case. Many victims did not understand the basic legal framework within which the criminal justice system operates, for example, the implications which flowed from agreeing to press charges and make a statement. Where a victim is in shock or has been injured as a result of the offence, it may be difficult to comprehend the nature of this step, and to consider future roles in the legal process at the time of initial contact with the police.

Research on victims' needs for assistance and use of support services has not produced clear findings. Pakula (1979) has argued that one of the greatest needs is that of access to counselling, to assist in dealing with the effects of the offence. However Friedman et al (1982) noted that only few victims expressed a need for services of this sort. Shapland's study showed that victims rarely used any outside agency apart from the police. A few victims approached a solicitor, or used a woman's refuge or a rape crisis centre, however "for most, the police were the agency seen as providing the major practical and emotional support" (p. 114). Friedman has argued that the most common form of help sought by victims was that of a practical nature such as installing locks or borrowing money. The use of informal support through family and friends was identified by almost all victims (95%) in Shapland's study.

7. FEAR OF CRIME

Another important dimension of victimisation is the fear of crime, both at an individual and community level. Fear of crime and rates of victimisation do not always show positive correlations. Research shows that women have a greater fear of crime than men, and that this fear increases dramatically with age. These findings are inconsistent with the probability of victimisation. Older females are the least victimised groups, whilst younger men who show higher victimisation rates have the lowest fear of crime (Braithwaite, Biles and Whitrod 1982). However researchers (Gottfredson, 1985; Lindquist and Duke 1982; Stafford and Galle, 1984) have drawn attention to the need to take into account relative vulnerability or exposure to crime. It has been argued that for those groups that have low victimisation rates, their actual rates of victimisation may be lower because their exposure to risk is lower. Thus the elderly and women with young children are more likely to spend time at home, the elderly are often accompanied when they go out, and young women may be more closely supervised than young men. Generally both groups may take more precautions to avoid crime than other groups in the community. Skogan (1986) argues that the more vulnerable groups (that is women and the elderly) rate their risk of victimisation as higher and this corresponds to the actual risk if presented with situations that may lead to victimisation. Both groups are comparatively more "vulnerable to physical attack, more powerless to resist if they are assaulted, and are exposed to more traumatic physical and emotional consequences when they are attacked" (p. 173).

Researchers have also considered the possibility of an immunizing effect from prior victimisation. Biderman (1980) argues that for some victims the experience of being victimised may either make the victim less vulnerable to subsequent victimisation either through developing better self protection or taking better security precautions or being able to respond more calmly to any further events. However research on this latter point is not clear. Hindelang et al (1978) found that fear of crime was not closely associated with the number of personal victimisations. Whilst rape, robbery and larceny victims showed the greatest fear, this may be influenced by age and sex characteristics as females are more likely to be the victims of rape and the elderly were more likely to be affected by robbery and larceny than by incidents involving personal crime without theft. Maxfield (1984) reported that victims of assault fear less for personal safety, and past victims were less fearful

than people experiencing more recent victimisation; suggesting that the effects of victimisation may be attenuated with time.

It has been suggested that fear levels appear to be higher than warranted by actual crime rates, even allowing for unreported crime, and that a decrease of crime does not bring a corresponding decrease in fear of crime (Henig and Maxfield, 1978; Taylor and Hale, 1986). This has led to speculation on the role of the media. Liska (1985) considered the correlation between the direct experience of victimisation, as measured by victimisation rates, and the "indirect" experience as expressed in newspaper reports of crime. He found that newspaper coverage of homicide and robberies affects fear of crime independent of official victimisation rates. Similar conclusions were reached in a survey of public opinion on sentencing conducted by the Western Australian Department of Corrections (Indermaur, 1987). The findings suggested that public attitudes towards crime are dominated by images of violent crime as distinct from crime in general and that most people grossly over-estimate the extent of violent crime and their risks of victimisation. A study conducted in New South Wales (New South Wales Bureau of Crime Statistics and Research, 1974) showed that 42% of respondents believed that the crime rate had increased in their area in the past year, with the most commonly cited reason for this belief being the "media publicity given to the crime".

Fear of crime and its relationship to actual victimisation is an important issue in victimology. Factors such as: vulnerability; previous victimisation; the role of the media; lifestyles; and behaviour altered by fear (which in turn may pre-empt victimisation) are all topics that are being explored when attempting to understand the dynamics of crime and victim behaviour.



8. THE ROLE AND STATUS OF CRIME VICTIMS

Despite considerable research, there still appears to be disagreement amongst researchers on such basic issues as the impact of crime on victims and their needs and fears. Part of the reason for this disagreement undoubtedly is the fact that victims are not a homogeneous group and the consequent tendency to either generalise on the basis of different samples or to be so specific as to be of no benefit. Similar problems have affected discussion on another important issue, namely the role and status which victims should assume within the criminal justice system. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted the following provisions in relation to access to justice and fair treatment:

"6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) 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."

Under 6(b) the crucial areas to assess are how a victim's views would best be presented, at what critical stages, and how to fit the process within the parameters of an adversary system upon which our legal structure is based. This latter point was noted by Damaska (1985) who argued that the demands and ideals of the victims' rights movement tend to overlook structural aspects of some legal systems that simply cannot allow victims more input than occurs at present.

There are two principal ways which have been advocated to allow victims' interests to be presented through the criminal justice process. It has been argued that victims always should have an opportunity to appear in person rather than being represented by the Crown in its prosecuting role. An alternate or complementary process would be the use of Victim Impact Statements or some other procedural process which allows victims' views to be noted by sentencing authorities.

Where an offence has occurred there are a number of critical stages for a victim:

- the initial investigation and if appropriate apprehension of the offender;
- prosecution process: determining the charge and the plea, any preliminary hearing and bail;
- the court process including sentencing, where appropriate;
- release from custody where an offender is imprisoned as a penalty.

In common law countries it is not the victim who directs whether an offence should be prosecuted. While a victim cannot object to the initiation of proceedings, he/she can institute proceedings by laying the complaint as the complainant rather than the police. However, where a person has been committed for trial the complainant does not remain a party to the prosecution as under the Criminal Law Consolidation Act (s 276) it is the Attorney-General who presents information against a person on trial. It has been argued that it is in the interest of public policy that the victim not be the final arbiter of whether or not a prosecution should proceed (Sumner, 1987).

Altering the criminal justice systems to give victims legal standing would allow them to initiate criminal proceedings, contest a prosecutor's decision by means of an appeal to the court (for example, if a decision was made not to proceed with a case because of uncertainty of outcome, or to prosecute on less serious charges), examine evidence in the course of a court trial, and make submissions regarding sentencing and parole. Some commentators have argued that this could have serious implications:

"One of the fundamental principles of justice is consistency, and the disparity which characterises the existing system of sentencing and parole has been the subject of extensive criticism (Australian Law Reform Commission 1980, pp. 127-59). To inject another element, particularly one so variable by virtue of its dependence upon the resiliency, vindictiveness or other personality attributes of a victim, is to invite further inconsistency, a situation which

Australian criminal justice systems could ill afford." (Grabosky, 1985 p. 80).

This issue was raised in a submission that this research project has received from the Legal Services Commission, who argued that it would be "unjust for alleged offenders to be punished at the mercy of varying degrees of vindictiveness displayed by a victim. The victim's need for revenge as the sentencing principle, is a retrograde step in a civilised society".

Critics of greater victim participation also have argued that victims will choose to participate only occasionally, which may make the criminal process more arbitrary. The cost of separate legal representation for a victim may well be prohibitive for the majority. Use of Government funds for this purpose (eg. through Legal Aid) would add enormous financial costs to the State. The alternative of using Crown Prosecutors to act on a victims' behalf could lead to conflict of interest, particularly where the issue in question is the prosecution of a lesser charge or a decision not to continue with the case. There is also the question of determining at what stage the victim should appear. There are a number of critical stages in the criminal process, and appearance at one critical stage does not prevent an important decision occurring at some other point. Appearing at all critical stages would be time consuming and costly. For some victims the loss of time at work would be prohibitive.

Limited research available from overseas seems to indicate that where in fact rights to appear are accorded to them, only a minority of victims take up the opportunity. The President's Task Force on Victims of Crime (USA, December 1982) recommended a constitutional amendment, adding the following language to the present Sixth Amendment. "Likewise, the victim in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings." However although Arizona, Connecticut and California have laws which give the victim a right to participate, use of this right has been low. In Connecticut victims appear at only about three per cent of all sentencings (Walker, 1985). A similar situation exists in California. Under its Victims' Bill of Rights victims or the next of kin if the victim has died has an allocution right, that is, the right to attend sentencing proceedings for felonies in the Superior Court and to appear personally or by counsel and express views concerning the crime, the

person responsible and the need for restitution. Recent research (Villmoare and Neto 1987) has shown that appearance by victims has had little effect on the system or the sentence. The reason for this appears to be twofold. Less than 3% of victims have actually appeared, partly due to a lack of awareness of this right. However the potential impact is considerably lessened by the high percentage of plea bargaining which occurs. "Plea bargaining effectively resolves the vast majority of all sentences before the victim can have a say" (Villmoare & Neto 1987 p. 5). It was argued that victim impact statements included in pre-sentence reports provided a satisfactory alternative for many victims to express their views.

In West Germany, victims are accorded legal rights through three areas:

- (1) At the commencement of criminal proceedings - demanding the stated penalty for the offence, bringing a private prosecution provided financial security is given in advance, and the right to appeal, firstly to the Chief Prosecutor against a decision not to proceed with the prosecution, or to apply for judicial review if the appeal is not granted by the Chief Prosecutor;
- (2) During the course of a trial, being joined as joint plaintiff and having the right to summon witnesses and to appeal independently from the State. This is only allowed in law for minor offences, or in special circumstances for more serious offences.
- (3) Enforcing civil law claims within the criminal procedure (the "adhesive procedure").

Research on the utilisation of the above procedures (Hans-Heine Kuhne, 1985) has shown that overall, the rights listed above are rarely used. Victims are automatically informed of their right to appeal against any discontinuation of an investigation, but use of the appeal mechanism has been limited. This suggests that it is not only a lack of awareness of the right which results in its limited use. Accessory prosecutions have mainly been used as preparation for enforcing a civil law claim, with the results showing no clear influence on the probability of conviction or the penalty. Use of the adhesive procedure (enforcing civil claims within the criminal procedure) is virtually non-existent, reflecting in part judicial reluctance to implement the procedure, the high cost of solicitor's fees, and the possibility of obtaining recompense for the offence from other sources (for example, insurance to compensate damage to property). The South Australian Committee of Inquiry on Victims of

Crime (1981) briefly addressed the suggestion that victims should have private representation in court. They argued that it is the role of the prosecutor and judge to protect a victim within the confines of the rules of evidence and that a victim would not derive any better protection from separate legal representation if this role is being effectively performed. The difficulty posed for the criminal law is that of reconciling the interests of a victim with the rights of the accused. As Martin (1981) notes, the debate over the laws of evidence with respect to the needs of victims can overlook the "fundamental right of the accused, namely, the presumption of innocence that remains unless and until the prosecution adduces evidence that proves guilt beyond reasonable doubt." (p. 11). As he points out, one of the critical areas is the "scope and nature of cross examination and in particular the fact that a victim may have to give evidence twice as a result of the preliminary hearing." Giving evidence can cause distress to a victim who is being subjected to recounting what may have been a traumatic experience and having his or her credibility tested through cross examination. However our legal structure based on the adversary system requires that counsel for the defence be able to test the reliability of the evidence being presented to the court. Martin raises the issue of whether the provisions in the Justices Act, which specifies that victims of sexual assault only give evidence in preliminary hearings in exceptional cases, should be extended to all committal proceedings - or at least to cases involving special circumstances, for example where the victim is aged, infirmed or very young.

Recent legislation (Criminal Law (Sentencing) Act 1988, Section 7 - yet to be proclaimed) makes provision for a prosecutor to furnish information on a victim's injuries to the Court. This should contain "particulars (that are reasonably ascertainable and not already before the court in evidence or pre-sentence report) of injury, loss or damage resulting from the offence." Arguments in favour of informing the sentencing authority of the effect of the crime on victims are twofold. On the one hand it has been suggested that this will help the victim to regain a sense of control over his or her life and to give effect to their needs for retribution through the court process. Alternatively it is argued that this will enhance the efficiency and effectiveness of the criminal justice system through increasing victim satisfaction and encouraging future victim involvement (McLeod, 1986).

Where there is no information before the court on the effect of the crime on the victim, the court acts on the assumption that the victim is an average person who has suffered to a normal degree as a result of the offence. However where appropriate the court will take into account in sentencing the age, conduct, character, antecedents and status of victims as well as the effect of the crime on the victim (Fox and Freiberg, 1985). For example the vulnerability of a victim is treated as an aggravating factor in sentencing (Butler v R. [1971] VR 892; Webb v. R. [1971] VR 147). This may be on account of the youth, the advanced age or other incapacity such as mental or physical handicap. The Criminal Law Consolidation Act specifically defines the status of certain victims as an aggravation factor, for example, assaulting or obstructing clergymen in the discharge of his duties (s. 42) or assaulting police in the execution of their duties (s. 43). The effect of a crime upon a victim may also be reflected in sentencing.

The consent by a victim to certain statutory offences does not make the action non-criminal. For example, victims under 16 years of age cannot consent to sexual intercourse, and consent to incest is not a defence. However the fact that a victim co-operated with an accused may be regarded as a mitigatory factor by the court. Where a victim encouraged or provoked an offence this may similarly be regarded as mitigatory.

After canvassing those issues Sumner (1987) has listed a number of reasons why he believed Victim Impact Statements should be introduced in South Australia despite the hesitancy that has been raised elsewhere in relation to their usage (for example, The Victorian Sentencing Committee Discussion Paper, 1987; New South Wales Task Force on Services for Victims of Crime, 1987).

- Courts already take into account the effects of the crime on the victim. Use of victim impact statements will aid the court through informing by means of a formal process.
- they may reduce feelings of retribution and any alienation and dissatisfaction victims feel in their contact with the criminal justice system.
- a statement of the extent of the victim's injury and loss will assist the court in making any restitution orders.

It may be that demands for greater victim involvement within the criminal justice system to some extent

reflect an expression of community concern that courts deal too leniently with offenders:

"It is obviously important that the public should have confidence in the criminal justice system. If they do not, then not only will they refuse to report crimes or appear as witnesses, but they will also be tempted, as victims, to take the law into their own hands ... public confidence in the criminal justice system is also related to the appropriateness of sentences imposed on offenders" (Kilroy-Silk 1985, p. 17).

A similar point was raised in the submission from Offenders Aid and Rehabilitation Services. They argued that "unless victims needs are satisfied the result is calls for vengeance and harsher penalties which are ineffective in solving the problem of crime in any community." (Ibid p 17)

The South Australian Committee of Inquiry on Victims of Crime (1981) noted this was an issue where victims, as well as members of the public at large, could be misinformed sometimes on the basis of widely publicised departures from conventional practices and concluded that the public should be properly informed on aspects related to bail, sentencing, imprisonment and parole.

## 9. CRIMINAL JUSTICE SERVICES FOR VICTIMS

### 9.1 The Law

In South Australia there are two principal ways in which a victim can be awarded compensation. In 1986 the Criminal Law Consolidation Act was amended to allow the Court to award compensation for injury, loss or damage resulting from the offence at the time of a convicted person's trial (s. 299). This may be on application by the prosecutor or on the court's own initiative. The legislation directs that where an offender has insufficient means to pay both a fine and compensation, priority should be given to the compensation order. The same principles are now incorporated in the Criminal Law (Sentencing) Act, 1988 (s. 14).

Alternatively a victim may apply under the Criminal Injuries Compensation Scheme administered through the State Government. The Criminal Injuries Compensation Act 1977-78 has been amended over the years. A 1986 amendment broadened the definition of injury from physical or mental injury sustained by any person, including pregnancy, mental shock and nervous shock to include in certain cases financial loss or grief suffered. Thus in the case of homicide dependants, the spouse or putative spouse of a deceased or the parents of a deceased under 18 years of age can apply for compensation by way of solatium. A discretionary interim payment can also be made in cases of immediate financial hardship, and an ex gratia payment awarded to victims in certain circumstances. A Criminal Injuries Compensation fund was established in 1985 to provide funds for compensation claims by way of proceeds of assets from persons convicted of certain indictable offences and a prescribed percentage of fines and money recovered from offenders. During 1987 the maximum amount of compensation payable was increased from \$10,000 to \$20,000.

Table 4 shows the number of claims and the amounts paid through the Criminal Injuries Compensation Fund over the period 1979-1987. There has been an increase in the number of claims paid and during 1986/87 there were 265 claimants for compensation. The average amount per claim paid during this financial year was \$5,104. Considering the breakdown of claims for different offence categories, the majority of claims are in relation to an assault with the average claim paid for this offence category being approximately \$4,500. The second major category is rape and attempted rape which has a higher average amount per claim, approximately \$9,000. Over the last few years there has been an



increase in the number of claims for murder and attempted murder, which might in part be a reflection of the broader definition of injury to include claims by way of solatium. A later report by the Office of Crime Statistics will assess victims satisfaction with criminal injuries compensation procedures.

TABLE 4 - NUMBER OF APPLICATIONS, CLAIMS PAID, AND TOTAL PAYMENTS UNDER THE CRIMINAL INJURIES COMPENSATION FUND, 1 JULY 1979 - 30 JUNE 1987

Year	Number of Applications	Number of Claims Paid	Total Amount Paid (\$)
1979/80	N.A.	32	\$87,879
1980/81	N.A.	112	\$107,544
1981/82	N.A.	153	\$588,646
1982/83	N.A.	230	\$970,000
1983/84	323	240	\$937,186
1984/85	357	278	\$1,350,791
1985/86	356	282	\$1,231,966
1986/87	431	265	\$1,352,657

N.A. = Not Available

Source: Attorney-General's Department, South Australia.

In 1980 the Criminal Law Consolidation Act was amended to allow the Crown to appeal against a sentence it judged as too lenient. Although this initiative was not specifically aimed at victims of crime it does provide protection against sentences considered inadequate when regarding the circumstances and nature of the offence, part of which may be the effect of the offence on the victim.

The Bail Act, introduced in 1985, provided legislative acknowledgment of the needs of victims through Section 10, which allows the police or the court to impose as part of the conditions of bail any need for protection of a victim.

Under Section 10 an applicant should be released on bail unless there is sufficient reason for exercising the discretion not to release on bail. Amongst the factors listed under Section 10 is included:

"(c) where there is a victim of the offence - any need that the victim may have, or perceive, for physical protection from the applicant."

A victim is defined under Section 3: "in relation to an offence, means a person who suffers injury in consequence of the commission of the offence." The conditions that may be imposed in relation to the grant of bail may include under Section 11(2):

"ii where there is a victim of the offence in respect of which the applicant has been charged - to comply with such conditions relative to the physical protection of the victim that the authority considers should apply to him while he is on bail."

The Act also stipulates that Section 99 of the Justices Act, which provides for the imposition of restraint orders and for arrest without bail where such orders are breached, should not be disturbed by the new provisions.

It would be expected that there would be a number of offences where this type of condition would be unlikely to be relevant, for example drug and driving offences, unlawful use or theft of a motor vehicle and break and enters. To consider the extent to which the provisions under the Bail Act are achieving its objectives the legislation should be assessed in terms of instances where the provisions are relevant, as either perceived by a victim and/or the police or magistrate and the number of times where a condition was set as part of bail. To examine familiarity with procedure a comparison could be made between imposition as part of police bail compared with any changes made by a judge or magistrate. It would be useful to consider, from the victim's point of view, the extent to which the bail condition and its enforcement achieved the desired results, presumably the protection of a victim and possibly the victim's family and/or the victim's property.

Information to assess the "success" of Section 10 is not available. The Office of Crime Statistics conducted a small survey on the working of the Bail Act three months after its introduction (October 1985). The purpose was not to look specifically at the implementation of Section 10, but to consider instances where bail was granted, the conditions of bail and any changes in bail from the time bail was granted by police through to the first court hearing and any subsequent higher court hearings. Among the conditions of bail set, non-contact with a specified person could include a condition for the protection of a victim.

The results of the survey are shown in Table 5. Where police bail was granted by police, 1.3% involved non-contact with a specified person. Where the bail status was altered at the first hearing, ie. the conditions of bail either altered or bail being granted by the court (11% of cases), non contact with a specified person was a condition of bail in 10.2% of applications.

These results raise issues rather than answer any questions. For example, is the discrepancy in number between police bail and conditions set at the first hearing a reflection of unfamiliarity with the new procedure or due to a need for protection subsequently being identified by the court? To what extent does non-contact with a specified person reflect procedures for protection of a victim? Has there been an increasing tendency to use a Section 10 condition since the Bail Act has been implemented? These issues need to be assessed in a follow-up study.

TABLE 5 - BAIL CONDITIONS SET BY BAIL AUTHORITY\*: NUMBER OF CONDITIONS AND PERCENTAGE OF CASES, OCTOBER 1985

CONDITION	Authority			
	Police (227 cases)		Court** (108 cases)	
	N	PCT cases	N	PCT cases
Unconditional	86	37.9	44	40.7
Recognizance (monetary) - own	112	49.3	41	38.0
Recognizance (monetary) - other person	20	8.8	15	13.9
Cash - own	-	0.0	1	0.9
Cash - other person	-	0.0	1	0.9
Guarantor	2	0.6	8	7.4
Reside at specified address	3	1.3	11	10.2
Non contact with specified person	3	1.3	11	10.2
Supervision by parole officer	-	0.0	1	0.9
Report to police	1	0.4	3	2.8
Surrender passport	-	0.0	1	0.9
Not leave state	126	55.5	57	52.8
Other	4	1.8	4	3.7
TOTAL RESPONSE	357		198	

Source: Office of Crime Statistics, South Australia, Unpublished data.

\* If bail altered or initially granted by that bail authority.

\*\* Cases appearing before Courts of Summary Jurisdiction throughout Australia with a first Court appearance in October 1985.

Note: Percentages will not add to 100 because each case could have more than one condition

To improve the legal remedies for domestic violence situations, restraint orders were incorporated in the Justices Act in 1982. Figures for 1986/87 show that 2,535 restraint orders were issued and about half of

those orders (43.3%) were known to relate to domestic violence situations (Table 6). Breaches of restraint orders during the same period totalled 360, with 238 cases leading to arrest and 183 cases resulting in a report.

TABLE 6 - RESTRAINT ORDERS ISSUED: RELATIONSHIP TO APPLICANT  
SEEKING A RESTRAINT ORDER, 1 JULY 1986 - 30 JUNE 1987

RELATIONSHIP	NUMBER	PERCENTAGE
Married	485	19.1
Ex-married	105	4.1
Defacto	215	8.5
Ex-defacto	92	3.6
Child/Parent	99	3.9
Other Family	103	4.1
Friend	396	15.6
Neighbour	253	10.0
Other	75	3.0
Unknown	712	28.1
TOTAL	2,535	100

Source: South Australia Police Department, Restraint Order Unit.

In 1985 the Women's Adviser's Office, Department of the Premier and Cabinet, undertook a review of the operation of Section 99 of the Justices Act after two years of operation in South Australia (Naffin, 1985). The principal aim was to consider whether restraining orders work in domestic violence situations, that is, do they act as a deterrent to a violent spouse and are they the best legal means of combatting domestic violence. The review concluded that Section 99 orders were not redundant because of the particular difficulties of dealing with domestic disputes both from the perspective of a victim and an offender. It was argued that a civil court order of restraint provided an "intermediate" legal remedy to deal with situations where the victim/offender relationship may be ongoing. Victims may feel hesitant to charge a spouse with the criminal action of assault and a

restraint order could serve as a legal warning without having to set in motion the criminal justice process. However it was noted that from a victim's perspective, the success of the restraint order depended on the "goodwill, endeavour and competence of the police" and the attitude of the offender to the order.

The report of the Domestic Violence Council of South Australia (1987) made recommendations in the areas of community education, professional training, improvement of restraint orders and extension of emergency services in order to help prevent the occurrence and recurrence of domestic violence in Australian society. The establishment of the Victims of Crime Branch within the South Australia Police Department (which has as one of its focuses domestic violence), may help towards addressing some of the problems identified by the various reports.

9.2(a) Statutes Amendment (Victims of Crime Bill (1986))

In 1985 the Attorney-General, in his second reading speech for the Statutes Amendment (Victims of Crime) Bill, listed seventeen rights of victims of crime at various stages of the criminal justice process. Although most of these principles are not incorporated in legislation, all relevant government departments in South Australia have been instructed to ensure that their practices and procedures comply. (Appendix 3). These principles were largely in response to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, August 1985). In addition to instructing departments on the seventeen principles; principle 12 (a victim's need for protection to be considered at bail applications) and principle 14 (the impact of the crime on the victim to be made known to the sentencing court) have been backed by legislation (Bail Act (1985) and Criminal Law (Sentencing) Act (1988)).

To consider government practice in light of the rights declared in 1985, government departments were surveyed and asked to comment on how current practice reflects the declared principles, any changes made within the organisation in response to these principles, and any plans for change to better reflect these principles. A decision was made not to survey the Department of Correctional Services as they had recently published a report containing proposals for implementing the relevant principles and legislative requirements (Victims of Crime Response Group (July, 1986)). Comments from the report regarding principles 16 and 17 (notification

of parole proceedings and offender's release from custody) are included below with the summary of responses from the surveyed agencies.

Principle 1: (dealt with in a sympathetic, constructive and reassuring manner)

"This is now and has been for sometime, established procedure. The treatment of victims is addressed in training programs, and operational supervisors are aware of the rights, through the publication in the Police Gazette. Any victim who is not accorded the right has the option of reporting the matter to the Police Complaints Authority." (comment from the Police Department)

"Officers of the Department are directed to treat such persons with the utmost consideration and tact." (comment from the Court Services Department)

Principle 2: (be informed about the progress of investigations being conducted by the Police)

"Until the Justice Information System (J.I.S.) is fully operational the Police Department is only able to implement this right for those victims who specifically request the information. Once J.I.S. is operational it is envisaged that all victims who register an interest will be supplied with the necessary information." (comment from the Police Department)

Principle 4: (have a comprehensive statement taken at the time of the initial investigation which shall include information regarding the harm done and losses incurred. The information in this statement shall be updated before the accused is sentenced)

"It is a little early to be able to determine if this right is fully implemented. The current system relies on victims notifying police of additional losses. Invariably police officers are able to determine the losses at the time of taking the initial statement. Victims are supplied with the Crime Report number and the name of the Criminal Investigation Branch responsible for the subsequent investigation. These details are sufficient to enable any victim who discovers additional losses to report the matter to any police station, either personally or by phone, and for that subsequent information to be matched to the initial report. The matching of the additional information will be greatly assisted when J.I.S. is operational. J.I.S. should also enable prosecutors, whether they be

police or Crown, to determine if the information; as originally reported, has been updated." (comment from the Police Department)

Principles 3, 5 and 6: (be advised of charges laid, modifications to charges, justifications for accepting a plea of guilty to a lesser charge or accepting a guilty plea in return for recommended leniency in sentencing, or for entering a nolle prosequi where the decision is taken not to proceed with the charges)

"Full implementation of this right is again dependent upon J.I.S. When that system is operational, all victims, who register an interest will be supplied with the information. Currently victims who request the information are advised of the charge laid ... Police prosecutors are required to document the reasons for accepting lesser charges in exchange for pleas of guilty. They are also required to obtain permission from a senior officer before doing so. However, this information is not currently made available to victims as a matter of course. Should a victim ask for the information it is supplied. J.I.S. will facilitate the flow of this type of information to those victims who register an interest." (comment from the Police Department)

"This is generally a matter for the Police at committal stage etc, however where alterations to charges are made by this Section (which are of substance) the victim is generally informed." (comment from the Attorney-General's Department)

Principle 7: (have property held by the Crown for purposes of investigation or evidence returned as promptly as possible. Inconvenience to victims should be minimised where possible)

"Police Regulations already embody this requirement. The method of handling all property is being examined. J.I.S. will facilitate prompt notification and enable property to be released." (comment from the Police Department)

"The Courts return all exhibits held in secure storage to the owner via the Police Department within ten days of the conclusion of the case. The Coroner's Office transfers all valuables to the control of the Property Section of the Police Department. Personal effects of the victim are delivered to the next of kin via the Police Department's patrol officers within one to two weeks of the conclusion of a Coroner's investigation. A



Committee chaired by Judge Newman of the District Court is examining ways to further expedite the return of property." (comment from the Court Services Department)

Principle 8: (be informed about the trial process and of the rights and responsibilities of witnesses)

"In addition to current procedures the development of a pamphlet is being examined. This is also an issue which could be considered in the material to be published by your [Attorney-General's] Office." (comment from the Police Department)

"This issue cuts across the three criminal jurisdictions, the Crown and the police department. Sheriff's officers function as court orderlies during some court sittings and as such may acquaint witnesses in attendance of general court procedures. The primary responsibility for providing information to victims of their rights, should reside with the Police Department as they are the first point of contact. The Court Services Department has facilities in all courts for displaying any pamphlets on the rights of victims. Some of the current brochures already provide relevant information, in general terms, to victims and others." (comment from the Court Services Department)

"It is almost invariable that victims are witnesses (often of importance) at trials prosecuted by this office. Witnesses are usually proofed (interviewed) by the prosecutor during which time court procedures etc are explained. In cases of sexual assault, the victim is usually seen by a solicitor some months prior to trial and procedures etc are explained. At this stage a booklet for victims/witnesses is being drafted to assist with understanding the court/trial process:" (comment from the Attorney-General's Department)

Principle 9: (be protected from unnecessary contact with the accused and defence witnesses during the course of the trial)

"Procedures for protecting victims at court do not require changing. Police will always have the obligation to protect victims." (comment from the Police Department)

"Facilities at the Sir Samuel Way Building handling Supreme and District Court criminal cases and the Children's Court sensitively provide for designated witness seating areas. Private interview rooms are available for the Police, Crown Prosecution and Court

companions of the Victims of Crime Service to assist victims before and after giving testimony. At the Adelaide Children's Court ... on-site Department for Community Welfare officers assist child abuse victims in an outside room before they appear as witnesses. Stage 2 of this complex, in due course, will replace the temporary building at the rear of the main building. Victims who are witnesses at Coronial inquests are allowed to use two rooms, as victim support areas, which are adjacent to the inquest room. These are the only facilities currently available. The Department's Buildings and Accommodation Strategic Plan 1986-1997 recognises that most of the Department's accommodation requires upgrading. The new Holden Hill court has facilities for the victims of crime and is a clear indication of the Department's intention to remedy the situation." (comment from the Court Services Department)

Principle 10: (not have his/her residential address disclosed unless deemed material to the defence)

"This has been established procedure for some time. The security of the information on J.I.S. is being considered by the Police Project Team responsible for its implementation." (comment from the Police Department)

"Witnesses' addresses and occupations are not disclosed any longer in Court. It was considered that disclosure of this kind could jeopardise the victim." (comment from the Court Services Department)

Principle 11: (not be required to appear at preliminary hearings or committal proceedings unless deemed material to the defence)

"...this has been a long standing procedure. Prosecutors must retain a discretion to call victims where necessary." (comment from the Police Department)

"Principle 11 is being examined by the Chief Magistrate as part of the review of Summary Courts. The following options are being considered to minimise the trauma to victims:-

- allowing a victim to submit a written declaration to the Court for its consideration at the preliminary hearings;

- restricting cross-examination of victims who must appear to selected topics particularly pertinent to the deliberations of the preliminary hearings."  
(comment from the Court Services Department)

Principles 12 and 13: (be entitled to have his/her need or perceived need for physical protection put before a bail authority which is determining an application for bail by the accused person; be advised of the outcome of all bail applications and be informed of any conditions of bail which are designed to protect the victim from the accused)

"The right reflects the requirement of the Bail Act and has been implemented. As a general rule, police bail authorities do not release offenders where there is any danger to the victim. Where the conditions relate to the victim's safety, victims are advised. This will be particularly so where conditions change, J.I.S. will also assist in recording the conditions to enable breaches to be detected." (comment from the Police Department)

Principle 14: (be entitled to have the full effects of the crime upon him/her made known to the sentencing court either by the prosecution or by information contained in a pre-sentence report; including any financial, social, psychological and physical harm done to or suffered by the victim. Any other information that may aid the court in sentencing including the restitution and compensation needs of the victim should also be put before the court by the prosecutor)

"...it is a little too early to determine the effectiveness of this right. Police prosecutors have been advised of their obligations." (comment from the Police Department)

Principle 14 is a matter "which will require consultation with the judiciary. Victimology studies have consistently shown that victims feel treated as pawns in the administration of justice and that the prosecution has not done all it might have to present the victim's interests. The prosecution's interest is to represent the broader community in criminal proceedings. However, there ought to be room in the prosecution process to be more responsive and to satisfy more of the victim's needs. A report by the Victims of Crime Response Group suggested that Victim Impact Declarations should be prepared by staff of the Department of Correctional Services. It would be far more appropriate for such Declarations to be completed by staff of the Department for Community

Welfare or a person associated with the prosecution." (comment from the Court Services Department)

"In an increasing number of cases the Crown tenders a report as to the effect of crime upon the victim at the sentencing stage of proceedings. This whole area has been given much greater attention and solicitors/prosecutors are mindful of putting any known material (or reasonably obtained) as to the effect of the crime to the sentencing court. Procedures are being finalized for a system of Victim Impact Statements to be prepared and tendered in all appropriate cases. Compensation orders are still infrequent as the offender often has little/no means. Where restitution/compensation is apparently possible, this Office takes all steps to ensure it takes place. The amendments to the Criminal Law Consolidation Act (S. 299) have had little effect on such orders." (comment from the Attorney General's Department)

"There is a deficiency in two sections of Part III which relates to an amendment to the Criminal Law Consolidation Act, 1935: Section 25, 299 (12): In this section - "injury" in relation to an offence includes mental injury, pregnancy, shock, fear, grief, distress or embarrassment resulting from the offence. "Offence" means any offence whether an indictable or summary offence. In neither of those sections is sexually transmitted disease included as an injury. It is suggested the Act should be amended to read: "injury" in relation to an offence includes mental injury, pregnancy, sexually transmitted disease, shock, fear, grief, distress or embarrassment resulting from the offence." (comment from the South Australian Health Commission)

"Definition of Injury Section 299(12) as amended of the Criminal Law Consolidation Act - and in Section 301(3). The Bureau suggests that a reference to emotional damage is a more appropriate term for children, for example "injury means the child has suffered mental injury to the extent that emotional damage has occurred." (comment from the Children's Interests Bureau)

Principle 15: (be advised of the outcome of criminal proceedings, and to be fully appraised of the sentence, when imposed, and its implications)

"Currently only those victims who seek the information are advised. J.I.S. will enable results to be forwarded to the victim. The question of

whether this is a police, Crown Prosecutor or court function is to be resolved." (comment from the Police Department)

"Where victims specifically request information as to the outcome of proceedings they are informed directly by this Office. In other cases, the Police Department is informed as part of the normal system between the Departments. It is important to note that needs and wishes of victims vary tremendously from case to case and the response from this Office therefore varies also. It should be noted that most cases in this Office resolve by way of guilty plea. Where the matter proceeds to trial the victim is usually a witness and is informed of the outcome." (comment from the Attorney-General's Department)

Principles 16 and 17: (be advised of the outcome of parole proceedings; be notified of an offender's impending release from custody)

"Police officers do not become involved in parole hearings and as such cannot implement this right."

"This [notification of release] is beyond police control. The J.I.S. Team will be considering the advisability of all victims being informed of the imminent release. In those cases where there is any suggestion of reprisals security of information becomes paramount." (comment from the Police Department)

"It is recommended that the onus be on the victim to apply to the Department for information related to the outcome of parole proceedings or the offender's impending release date from custody. The reason for this is primarily the fact that some victims have no desire to have any further knowledge about the offender and if notifications were to be distributed automatically, it could be detrimental for the offender in some circumstances if a victim is convinced of the need for revenge. On a practical level, notification may not reach victims if their residential address has changed and records are not updated."

(Victims of Crime Response Group (1986) p. 16.)

#### 9.2(b) Summary

In assessing these responses, readers should be aware that relevant organisations were surveyed early in 1987, and since then there have been several significant developments. An information pamphlet for victims of crime has been finalised, procedures

whereby police and prosecutors will prepare victim impact statements are well advanced, the South Australian Police Department has established a Victims of Crime Branch, the Criminal Law (Sentencing) Act (1988) is close to being proclaimed, and an inter-agency victim liaison committee has been established to ensure that victims' rights are addressed in a co-ordinated way.

Nonetheless, victim reform represents an ongoing challenge. Concern has been expressed overseas that, unless followed through administratively, laws which give rights to victims can have the effect of either raising victims' expectations to unrealistic levels or "because legislatures have failed to match each new right with a mechanism for enforcing it, victims sometimes become more upset with the criminal justice system than they would have been if they had not been told of their rights in the first place." (Criminal Justice Newsletter, 1987). Care must be taken that the principles adopted in South Australia can be effectively met by criminal justice agencies.

The heavy emphasis placed by many agencies on the J.I.S. to provide much of what is covered in the seventeen declared principles of victim rights is a matter which merits close consideration. The J.I.S. will not be fully operational for several years and there are still unresolved issues, ie. how the provision of outcome and sentencing information to the victim will be achieved now that the Court Services Department is developing a separate system. Another area of concern to emerge from the departmental survey is the lack of agreement as to whose responsibility it is to provide victims with information on the outcome of a case or of bail applications.

Despite the concerns listed above, the survey provides heartening evidence that government departments are meeting the declared principles either in current practice or have plans to do so in the future.

### 9.3 Service Provision

The Police Department is usually the first point of contact for victims where an offence has been reported to the police. Where an offence has not been reported, victims may present for assistance through the Casualty Department of a local hospital or through their own local doctor.

The traditional service provided to victims by the police in South Australia include:

- protection and safety of victims;
- referral of victims to support services;
- investigation of an offence, including the collection and assessment of evidence;
- apprehension of an offender;
- recovery of property;
- prosecution of an offender.

Where the offence involved is a sexual offence, these are generally investigated by the Sexual Assault Unit staffed by female police officers whose members are sensitive to the needs of victims. However, as noted in the submission from the Police Department "the unique responsibilities imposed on police officers make it difficult to draw a line between their role in the investigation and apprehension of offenders and the needs of victims. The need to act impartially and objectively will always be important and this need can lead to victims' perspectives not fully being appreciated. The implementation of the "victims' rights" has led to a greater awareness of victims' needs.

In 1986 the Police Department introduced changes to its policy designed to promote greater interaction between the police and the community. Crime prevention initiatives have included decentralisation of operational police, establishment of the Community Affairs and Crime Prevention Branch, development of the Neighbourhood Watch scheme in the Adelaide metropolitan area, and establishing a Police Education Programme in a number of high schools in South Australia (South Australia Police Department, 1987).

In June 1987 a victims of crime branch was established in the South Australian Police Department with its main objective being to co-ordinate police services to victims of crime. The initial focus of the branch is on victims of child abuse and domestic violence and implementing recent task force recommendations in these areas. The many initiatives proposed by the branch however, will assist victims of crime in general. Although the N.S.W. police force has victims' liaison officers, the establishment of a police unit with a co-ordinating

and development role in regards to victims is the first of its kind in Australia. Funding of the unit and its proposals is a concern as costs are only met from within the budgets of other units, and while the Justice Information System (J.I.S.) has the potential to help in realising the aims of the branch, no resources have been allocated within the J.I.S. for victim-related projects.

Services provided through the South Australian Health Commission include treatment, rehabilitation and follow-up of crime victims, both for physical care and treatment and/or emotional support and psychological treatment. The Sexual Assault Referral Centre at the Queen Elizabeth Hospital provides specialised services to victims of sexual assault. Glenside Hospital provides intervention to victims of past child abuse and there are specialised units to which past abuse victims are referred. The Willows provides a therapeutic community for young behaviourally disordered adults and the Family Unit treats puerperal women who are psychiatrically disturbed.

Crime victims may also have contact with the Crisis Care Unit operated by the Department for Community Welfare, which provides a 24 hour crisis intervention service. Victims may also present to the generalist service of the Department for Community Welfare for longer term counselling and support or for Emergency Financial Assistance through one of the Departments local Community Welfare Offices. There are also a number of non-government services which provide support to victims. The Rape Crisis Centre provides immediate medical and emotional support to victims of sexual assault as well as being a lobby group for relevant reforms. There are a number of women's shelters which meet short term housing needs and support for victims of domestic violence.

The Victims of Crime Service Inc. was established in 1979 and provides support and assistance to victims and their families as well as lobbying for law reform. For many years, the service was required to depend almost entirely on volunteer support. However during the 1987/88 financial year it also had the services of a full-time victimologist seconded from the Correctional Services Department and in 1988/89 it will receive substantial government funding.



10. MAJOR ISSUES

A review of the literature has raised a number of issues which are being examined in the research study. Many studies have concluded that the primary needs of victims as a "general group" are:

- for information and support;
- for better status (i.e. to be more than a mere witness);
- to have more "control" over a case once it enters the criminal justice system;
- to have their entire role within the criminal justice system re-examined.

While many of these points have validity, it is debatable whether most victims would take up the opportunity to become "actively involved" with their case because of the likely cost and time involved.

Crime victims are not an homogenous group. The majority of offences committed against individuals fall into the less serious offence categories. It can be questioned whether victims as a group all have the same needs for information and involvement. The task of informing all victims of the significant stages in an investigation and, if appropriate, prosecution process would be enormous - particularly if one adds to this the need to consult at key stages and the right for victims to be adequately involved in the criminal process. It could be argued that a more pragmatic approach to responding to victims of crime is to consider the best response to different types of offences, taking into account the resources available to assist victims.

Legislators have to make sure that they are not basing any reforms to give victims greater rights on the "celebrated" cases which represent only a minority of cases entering the criminal justice system.

11. CONCLUSION

The victims' movement already has had a major impact on South Australian criminal law and procedure. A number of reforms have been introduced to improve the position for people who become victims of crime. This includes changes to the Evidence Act for victims of sexual assault, introduction of Section 99 orders for victims of domestic assault, implementation of Section 10 of the Bail Act, amendments to the Criminal Injuries Compensation Scheme, as well as the declaration of principles of victims' rights. Indeed the pace of change has been so great that some reforms still need to be digested. This finding is a cause for some concern because there is evidence that reforms purely at a symbolic level can raise expectations and then leave victims feeling more disillusioned with the system when these expectations can not be met. Empirical research should help to overcome this difficulty through providing a structure to review relevant reforms, to assess whether in practice these are achieving desired results, and to consider their priority in terms of the problems experienced by victims.

A major study being conducted by the Office of Crime Statistics is based on a longitudinal approach where the same victims are being interviewed at different stages within the criminal justice system:

- as soon as practicable after the offence has first been reported to the police;
- where an offender has not been apprehended or prosecuted, six months after the finalisation of the case;
- where an offender has been prosecuted, at the outcome of the case.

Victims involved with the following offence categories are being included in the survey:

- offences against the person (serious assault, sexual assault, common assault);
- robberies (excluding those from large businesses or organisations);
- property offences (household break and enter and larceny or illegal use of a motor vehicle).

This will allow a comparison between serious and less serious offences and between offences where there is

less likelihood of the offender being apprehended (in particular property offences).

The following information is being collected through the survey: degree of satisfaction with police and other justice agencies and whether this alters over time; whether victims want to be kept informed about the case after the initial investigation; how involved victims feel they should be in different areas of the criminal justice process (i.e. initial investigation, charging, modifications to charges, court, sentencing, imprisonment) and whether they would have any difficulties making any of the practical arrangements (eg. taking time off work) or on being involved in what could be new situations for them; any assistance needed or received; views on compensation, restitution and victim-offender mediation; whether the victim experienced any difficulty with the court process e.g., physical layout, time involved, giving evidence; and whether the victim is satisfied with the case outcome (ie. conviction, factors taken into account in sentencing, the actual sentence).

This research data will provide a clear basis for implementing effective victim policies.

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APPENDIX 1 - SUBMISSIONS FROM DEPARTMENTS/ORGANISATIONS

South Australia Police Department

Attorney-General's Department

Court Services Department

South Australian Health Commission

Legal Services Commission

Children's Interest Bureau

Offenders Aid and Rehabilitation Services

North Adelaide Women's Shelter

Adelaide Women's Shelter

Christies Beach Women's Shelter

Irene Women's Shelter

Riverland Women's Shelter

APPENDIX 2 - SEVENTH UNITED NATIONS CONGRESS ON THE  
PREVENTION OF CRIME AND THE TREATMENT OF  
OFFENDERS: DECLARATION OF BASIC PRINCIPLES  
OF JUSTICE RELATING TO VICTIMS OF CRIME

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions which are in violation of criminal laws operative within Member States, including those laws which proscribe criminal abuse or power.
2. A person may be considered a victim under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.
3. The provisions contained herein shall be applicable to all without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to

the mechanisms of justice and to prompt redress as provided for by national legislation for the harm which they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
  
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
  - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of disposition of their cases, especially where serious crimes are involved and where they have requested such information;
  
  - (b) 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;
  
  - (c) Providing proper assistance to victims throughout the legal process;
  
  - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well

as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

7. Informal dispute resolution mechanisms, including mediation, arbitration, and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

#### Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure,

replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

#### Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes.
  - (b) The family, particularly dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose including those cases where the State of which

the victim is a national is not in a position to compensate the victim for the harm.

Social Assistance

14. Victims should receive the necessary material, medical, psychological, and social assistance through governmental, voluntary, community-based, and indigenous means.
15. Victims should be informed of the availability of health and social services and other relevant assistance, and be readily afforded access to them.
16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.
17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.



APPENDIX 3 - STATUTES AMENDMENT (VICTIMS OF CRIME) BILL,  
1986: PRINCIPLES FOR VICTIMS OF CRIME

The principles provide that a victim of crime shall:

- (1) be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to the victim's personal situation, rights and dignity;
- (2) be informed about the progress of investigations being conducted by police (except where such disclosure might jeopardize the investigation);
- (3) be advised of the charges laid against the accused and of any modifications to the charges in question;
- (4) have a comprehensive statement taken at the time of the initial investigation which shall include information regarding the harm done and losses incurred in consequence of the commission of the offence. The information in this statement shall be updated before the accused is sentenced;
- (5) be advised of justifications for accepting a plea of guilty to a lesser charge or for accepting a guilty plea in return for recommended leniency in sentencing;
- (6) be advised of justification for entering a nolle prosequi (ie to withdraw charges) when the decision is taken not to proceed with charges.

(Decisions which might prove discomfoting to victims should be explained with sensitivity and tact);

- (7) have property held by the Crown for purposes of investigation or evidence returned as promptly as possible. Inconveniences to victims should be minimized wherever possible;
- (8) be informed about the trial process and of the rights and responsibilities of witnesses;
- (9) be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
- (10) not have his/her residential address disclosed unless deemed material to the defence or prosecution;
- (11) not be required to appear at preliminary hearings or committal proceedings unless deemed material to the defence or prosecution;
- (12) be entitled to have his/her need or perceived need for physical protection put by the prosecutor before a bail authority which is determining an application for bail by the accused person;
- (13) be advised of the outcome of all bail applications and be informed of any conditions of bail which are designed to protect the victim from the accused;

- (14) be entitled to have full effects of the crime upon him/her made known to the sentencing court either by the prosecutor or by information contained in a pre-sentence report; including any financial, social, psychological and physical harm done to or suffered by the victim. Any other information that may aid the court in sentencing including the restitution and compensation needs of the victim should also be put before the court by the prosecutor;
- (15) be advised of the outcome of criminal proceedings and to be fully appraised of the sentence, when imposed, and its implications;
- (16) be advised of the outcome of parole proceedings;
- (17) be notified of an offender's impending release from custody.

APPENDIX 4 - PUBLICATIONS OF THE SOUTH AUSTRALIAN OFFICE OF  
CRIME STATISTICS (NOVEMBER, 1988)

Series 1: Crime and Justice in South Australia  
- Quarterly Reports

- Vol. 1 No. 1 Report for the Period Ending 31st December,  
1978 (February, 1979)
- Vol. 1 No. 2 Report for the Period Ending 31st March, 1979  
(June, 1979)
- Vol. 1 No. 3 Report for the Period Ending 30th June, 1979  
(September, 1979)
- Vol. 2 No. 1 Report for the Period Ending 30th September,  
1979 (December, 1979)
- Vol. 2 No. 2 Report for the Period Ending 31st December,  
1979 (March, 1980)
- Vol. 2 No. 3 Report for the Period Ending 31st March, 1980  
(July, 1980)
- Vol. 2 No. 4 Report for the Period Ending 30th June, 1980  
(September, 1980)
- Vol. 3 No. 1 Report for the Period Ending 30th September,  
1980 (December, 1980)
- Vol. 3 No. 2 Report for the Period Ending 31st December,  
1980 (May, 1981)
- Vol. 3 No. 3 Report for the Period Ending 31st March, 1981  
(July, 1981)
- Vol. 3 No. 4 Report for the Period Ending 30th June, 1981  
(September, 1981)

Series 11: Summary Jurisdiction and Special Reports

- No. 1 Homicide in South Australia: Rates and Trends in  
Comparative Perspective (July, 1979)
- No. 2 Law and Order in South Australia: An Introduction  
to Crime and Criminal Justice Policy (First  
Edition) (September 1979).
- No. 3 Robbery in South Australia (February, 1980)

- No. 4      Statistics from Courts of Summary Jurisdiction:  
Selected Returns from Adelaide Magistrate's Court:  
1st January - 30th June, 1979 (March, 1980)
- No. 5      Statistics from Courts of Summary Jurisdiction:  
Selected Returns from South Australian Courts:  
1st July - 31st December, 1979 (September, 1980)
- No. 6      Statistics from Courts of Summary Jurisdiction:  
Selected Returns from South Australian Courts:  
1st January - 30th June, 1980 (December, 1980)
- No. 7      Statistics from Courts of Summary Jurisdiction:  
Selected Returns from South Australian Courts:  
1st July - 31st December, 1980 (September, 1981)
- No. 8      Statistics from Supreme Court and District Criminal  
Courts: 1st July 1980 - 30th June, 1981  
(November, 1981)
- No. 9      Homicide and Serious Assault in South Australia  
(November, 1981)

Series A: Statistical Reports

- Odd numbered reports (1-23):    Statistics from Criminal  
Courts of Summary Jurisdiction  
(covering 6 monthly periods  
from 1 January, 1981 through  
to 31 December, 1986)
- Even numbered reports (2-22):   Crime and Justice in South  
Australia (Police, Corrections,  
Higher Criminal Court and  
Juvenile Offender statistics)  
(covering 6 monthly periods from  
1 July, 1981 through to 31  
December, 1986)

Series B: Research Bulletins

- No. 1      Shoplifting in South Australia (September, 1982)
- No. 2      Law and Order in South Australia, An Introduction to  
Crime and Criminal Justice Policy (Second Edition)  
(October, 1986)
- No. 3      Bail Reform in South Australia (July, 1986)
- No. 4      Decriminalising Drunkenness in South Australia  
(November, 1986)

Series C: Research Reports

- No. 1 Sexual Assault in South Australia (July, 1983)
- No. 2 Evaluating Rehabilitation: Community Service Orders in South Australia (May, 1984)
- No. 3 Victims of Crime: An Overview of Research and Policy (November, 1988)

Series D: Social Issues Series

- No. 1 Random Breath Tests and the Drinking Driver (November, 1983)