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Secretary
Standing Committee on Legal & Constitutional Affairs
House of Representatives
Parliament House
CANBERRA act 2600

Dear Secretary

May I commence by thanking the Committee for allowing me to speak, albeit briefly, at the open forum in Adelaide and for excusing the lateness of this submission.

We are only a small organisation with limited resources which makes preparation of such documents somewhat challenging.

Victim Support Service Inc is South Australia's crime victim service, is a non-government agency and partly funded by the government. Victim Support Service has provided service to over 2000 new victims per year for many years and has two metropolitan and seven regional offices. We have been established since 1979 and are the oldest and largest non-government crime victim service in Australia. There has been a growing rather than declining trend in the need for services.

What we offer to victims of crime includes practical support (for example by attending court with victims), court preparation, counselling by qualified professional social workers and psychologists, and individual advocacy within the system with other specific issues. In a general sense we also offer community education and system advocacy on behalf of victims of crime. Our services are primarily offered to adults because other services are more specialised in responding to the needs of children who have been victims and our resources are very limited. Notwithstanding this, Victim Support Service has advocated strongly on behalf of children and youth services and does provide some limited services to young people. We engage the service of trained volunteers in a range of administration functions as well as providing some practical support for clients.

Victims referring to us for service are generally accepted on face value if and when they have been subjected to criminal victimisation regardless of



**VICTIM
SUPPORT
SERVICE**
INCORPORATED

*25 Years
Assisting
Victims Of Crime
1979 - 2004*

Adelaide
11 Halifax Street
PO Box 6610
Halifax Street
Adelaide SA 5000

Tel: (08) 8231 5626
Fax: (08) 8231 5458
1800 182 368

info@victimsa.org
www.victimsa.org

Port Augusta
(08) 8641 1115

Murray Bridge
(08) 8531 3987

Port Lincoln
(08) 8683 0111

Port Pirie
(08) 8633 4888

Riverland
(08) 8582 2801

South East
(08) 8723 2968

Whyalla
(08) 8649 2522

*Member of
Victim Support
Australasia*

whether they have seen fit to report the crime to police or not. Our philosophy is underpinned by a commitment to client choice and victims' rights. We also provide support when necessary to the families, friends and other community members who have been affected by a specific crime or a crime related issue in general. Unlike some services we provide on-going, potentially long term therapy and support, whilst other services are more restrictive, insisting upon the crime having been recent, or only offering short term assistance. We have no such restriction and can see survivors throughout many changes in their lives or trauma and their participation in the criminal justice system.

Crime

While the focus of the Committee appears somewhat to be on civil rather than criminal matters our expertise and comments relate to the latter. I hope this is useful and relevant given that some of the federal criminal offences are highly relevant to elderly people.

Some of the major areas of federal offences are tax fraud, social security fraud, drug importation and customs offences. One thing we think should be explored is the scope of federal offences from victimless crime or crime where the market as a whole is the victim, to crimes such as terrorism, child sex tourism and sexual servitude, which are more akin to state offences in terms of having individuals as victims. Terrorism and trafficking have devastating effects on victims, although it is generally the aforementioned first groups of offences which are most relevant to the elderly.

Statistically the majority of crime victims come from the 20-45 year old age group with a relatively small percentage being from the elderly.

Fear of Crime

The elderly tend to have a stronger fear of crime than the actual occurrence of victimisation warrants, however this fear is highly relevant and strongly influences emotional well-being and behaviour.

The media treatment of crime by publicising the worst crimes and those most likely to gain sympathy or public reaction (eg the vulnerable elderly) tends to skew and exaggerate the perception of both how much and the intensity of the crime. The elderly rely heavily on the media for news and interaction with the community – hence this reporting contributes to escalating fear of crime.

Within this population, it seems evident that fear of young people gathering together, identifiable gangs (eg Aborigines identified by police; motorcycle clubs), and drug addicts are of general concern.

Federal legislation to contain the media could provide a vast improvement.

Elderly people are particularly vulnerable to home invasion, abuse and robbery on public transport and in shopping precincts. We recognise these are primarily state-based issues. However, at a federal level, fraud and financial abuse and terrorism are of major and growing concern. It is these federal offences which presumably are the focus of the committee. Our main concerns regarding these relate to the participation of crime victims in the legal process – which currently virtually ignores victims except as 'witnesses' for the Prosecution with a minimal role to play in court.

Criminal Justice Process

All states and territories have progressed a long way during the last 10 years in addressing victims' rights and roles in participation in the criminal justice processes by way of Victim Impact Statements, vulnerable witness protection, Correctional Services registers, rights to information and protection and right to compensation. However the federal jurisdiction offers victims nothing.

Victim Impact Statements (VIS)

We support federal provision for VIS for federal offences. South Australia was the first state to have VIS and there have been several reviews. Generally the reviews have been very supportive. There has been positive acclaim for them across the board. Judges have said that they don't make a difference to the sentencing decision, but they still want them. There is universal support for them. VIS provide information that judicial officers can refer to in their sentencing remarks. They can use them to make a point to the offender.

Our concern is that there is an imbalance in the information provided to the court about the defendant and the victim. We would like to see an improvement in this in our jurisdiction and avoided if introduced federally.

Judicial officers are reluctant to include this information in sentencing remarks sometimes as it can be quoted in the press, but they can be more creative about protecting it from the press by placing it under embargo. Internet access to sentencing remarks has had some impact on this. Across the nation there are some differences in the legislation dealing with VIS. There is a process here that operates where the VIS becomes an agreed document. The victim prepares the document with assistance, frequently from our qualified counsellors, or volunteers. Then the VIS is discussed between the prosecution and defence as part of the informal process, because of the possible introduction of new information after the outcome, and may be put into the court as an agreed document for the benefit of everybody. The process is similar to that for an agreed statement of facts, and could be applied to federal cases.

Also, under South Australian legislation, a victim can present the VIS verbally, themselves or get a third party to speak. The legislation provides for written statements in the lower courts and written or verbal statements in the higher courts, but magistrates are allowing verbal statements.

The third party presenting the VIS might be an investigating officer, a volunteer, or a member of a victims' service. They have to read a statement written prepared by and signed by the victim.

In South Australia, it is now a requirement that the offender be present in court at sentencing to hear the VIS. These opportunities should be introduced federally.

Involvement in Charge Determination

Victims want to be genuinely involved. Typically, they want to be listened to but do not want to make the decisions. In the 'charges' area we have had extensive discussions with our Director of Public Prosecutions (DPP). Guidelines around the country indicate that the DPP should consult or inform victims in relation to charges. We think the NSW guidelines are a model.

We think victims should be not only informed but consulted about charge arrangements, and that this should apply federally.

We do not think victims should have a right of veto, but should be involved regularly, automatically and genuinely in the process. We have alternative diversion courts, drug court and mental impairment court. This court has just been re-funded and formalised and has been very successful. The driver for this was to stop the growing use of mental incompetence defence. We also have the Nunga court. Aboriginal people can go to this court, which has a much more restorative process. Three elders sit alongside the bench.

Federal offences are tried in state and territory courts. There is a parity issue. The federal Act picks up state and territory sentencing options, but these are not consistent.

One of the problems is that periodic detention is only available in NSW and the ACT. If that sentencing option is to be available in all states and territories, facilities would have to be established and funded. We believe this should be addressed .

There is an issue of consistency of treatment for all federal offenders. There is disparity for example between the treatment of the federal crime of fraud and the state crime of fraud. With state law, there is some crime where the level of sentence is questioned. Victims sometimes disagree with the court on the non-parole period. There is a general disquiet in the community in relation to sentencing. It might be that the states and territories are more responsive to community and victim needs. The sentencing range provided in the legislation can sometimes knock victims out at the beginning of the process, for example, where the maximum sentence is too low. Sometimes community attitudes can be disconnected with the legislative maximum. This needs to be addressed.

The amount and cost of the time required by victims in court processes is often considerable and a particular imposition on the elderly. Thus it becomes a disincentive to participate in the process and may contribute to the withdrawing of a complaint or not wanting to give evidence. If elderly victims can be involved from the outset in charge determination (resulting often in admission of guilt and therefore no need to attend long court processes) or participate in often shorter Restorative Justice processes/courts, then this is likely to improve justice outcomes.

Sentencing

From a victims' perspective, at sentencing there needs to be a thorough assessment of what happened to them and an appropriate response to that, a meaningful sentence. Judges have complained about the limitations on sentencing options and we would support the development of meaningful options. The sentence, for example community service, needs to be related to the offence committed to have meaning for the offender and the victim. For example, Restorative Justice provides for the involvement of offenders and victims before, during or after the court process. There needs to be some restoration of trust to bring the victim and the offender back into the community. Only then will the community benefit. Older victims may well find these processes less stressful, more therapeutic and easier than traditional courtrooms.

Alternative sentencing includes treatment for addictive behaviours, driver training, developmental training around offending behaviour and anger management. There should be a broader range of community options. In NSW, the Rivkin weekend detention sentence is the classic case. These things need to be explored. They can enable the offender to maintain family links and an income for the family. If you take these things away you can build a disabled individual. Punishment per se doesn't change or prevent behaviour and it doesn't educate. You need to value add, to engage the offender to work for change in his or her thinking and behaviour. Sentences are not just about the offender. They should be about the victim as well. Part of the outcome of the court process should include what the victim needs. This might be court ordered compensation or work directly related to reparation of harm to the victim.

On paying reparation, some of the state legislation provides that if a person is fined and has insufficient means to pay the fine and is also ordered to pay some form of reparation, priority is given to reparation. Such reparation should take priority. If it is not able to be met, then the Commonwealth should pay compensation.

Compensation

Compensation, reparation and restitution are aspects of a community's restorative response to crime and the harm that it has caused.

Compensation by the community indicates acknowledgement of the victimisation and provides therapeutic and practical value to many crime victims. Criminal injuries compensation or financial assistance is available in all Australasian state and territory jurisdictions. Usually it provides a range of payments for expenses, loss and – in some cases – an amount for pain and suffering. The level of compensation should provide a package, or variety, of options that responds to the range of needs of crime victims.

Restitution by offenders to victims is a way of offsetting some of the harm done and of introducing a sense of personal accountability. It can be associated with Youth Court Family Conferencing where the victim and the offender, by consent, meet and determine an outcome as part of a formal sentence by a court or as a voluntary undertaking by the offender.

We are keen to improve a national sense of coordination and consistency among victims' services. We favour central coordination and central leadership. Victims' rights legislation is very different in each jurisdiction. Compensation is a key issue. South Australia was the only state to compensate the victims of the Bali bombings. The Commonwealth refused to provide any compensation.

Compensation can and has been provided under the state legislation for a victim of the 9/11 bombing, but it is very ad hoc. It needs national coordination especially in relation to overseas crimes or national crimes, and federal funding for victim compensation.

In Conclusion

In concluding this brief submission it is important for me to acknowledge that many, if not all the matters identified herein, relate not only to the elderly but to all crime victims. They are issues relating to the criminal justice system itself, however they are inadequacies which are arguably worse for the elderly who may be more frail and frightened than other more resilient

victims. They are barriers to participation in the justice process. In addition to the aforementioned matters we believe it is vital to empower victims and establish effective systems to ensure that victims can participate meaningfully – hence there must be appropriate information about their rights and how they can participate, and about support services while doing so. While some ad hoc reliance is made on the local jurisdiction, there are none of these provided at a federal level.

The necessity to provide information, services and processes as described herein is even more vital for vulnerable witnesses such as the elderly, children, Culturally and Linguistically Diverse, Aboriginal or Torres Strait Islanders and also those with intellectual or mental health deficits. The Federal Government and federal legislation continue to ignore victims' rights and needs in a justice environment in which all states and territories, and many international jurisdictions, are leaving the federal response to victims embarrassingly deficient.

Thank you to the Committee for showing interest in these issues and encouraging a response from Victim Support Service.

Attached is an additional paper from Victim Support Australasia, the national peak body of victims' services, which sets a context and background for this submission.

Yours sincerely
Victim Support Service Inc

Michael Dawson
Chief Executive

Encl.