



INCORPORATED
(N.S.W.) HUNTER

VICTIMS OF CRIME ASSISTANCE LEAGUE

THE VOCAL CENTRE

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House of Representatives Standing Committee on Legal and Constitutional Affairs
Suite R1 109, Parliament House
CANBERRA ACT 2600

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Submission 96

Dear Committee,

Re: Crime in the community – victims of crime

BY: *John Gould*

Background

I am the Executive Director of VOCAL Inc NSW (The Victims of Crime Assistance League Inc NSW) a registered charity dedicated to establishing and monitoring the rights of crime victims and others affected by crime, and to addressing the needs of victims created by the impact of crime and process. The organisation has formally operated in NSW since 1989 and has been partially funded by the NSW Attorney General's Department under its Victims Services portfolio since 1999, to provide a support service to victims of any crime in the Hunter Region of NSW. There are just one-and-a-half paid positions and volunteers take up much of the work of running and managing the charity and lobby group VOCAL Inc. The organisation, while grossly understaffed to address its growing workload of greater than 5000 client contacts per annum, receives few complaints because of its broad, generous, humanitarian and needs-based approach.

It is because of the complexity and uniqueness of what we do that this submission is late, and I apologise for that. I have been quite ill and have just returned to work – yet because of the stand alone nature of my work, there really was no-one else to complete this response to the important review you are conducting.

While I am funded to operate within the Hunter Region, in practice I am often approached from services and victims anywhere in Australia and indeed overseas, or who have overseas issues. My organisation helped form and is still part of Victim Support Australasia, and often – even in that group - in today's climate of bureaucratisation of processes, are one of the few members to truly represent the needs and real-life experiences of today's victims of crime as life after crime unfolds and traverses (or not) the various legal and other processes that arise from crime.

This response

Having introduced my service, I want, because of time constraints, to restrict my response to those issues affecting Australians broadly, and at the Federal level. If the Committee is interested in local NSW issues and our thoughts, I have recently completed papers representing the victims' perspective around Charge Bargaining, and for both the NSW Government's review into Child Sexual Assault and to its review of the Victims Rights Act and the Victims Compensation Act and would be happy to e-mail or post copies of those reports to you if you are interested..

853

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* Support and Guidance * Practical Assistance * Advocacy

This report will cover:

1. Federal and State boundary limitations and the impact on victims of crime
2. The lack of integration between state and federal court and legal processes affecting victims of crime
3. The lack of an integrated information flow and access limitations to service providers for victims of crime
4. The impact of Model Criminal Code issues on states
5. The unsatisfactory and under-resourced processes of crime investigation and prosecution

- **Federal and State boundary limitations and the impact on victims of crime**

A NSW resident holidaying in Tweed Heads NSW needs to be careful – if they were to be assaulted – to be on the “right” side of the highway so as not to be in Queensland if a crime occurs. Being on the wrong side of the road disqualifies a NSW resident from accessing services provided by the NSW Government under its Victims Services Policy. Getting service from interstate after one returns home is problematic and often unsatisfactory – not dependent on need or on what a local victim might receive, but on where the crime occurred and the local rules prevailing. However, being murdered in Queensland results in a possible payout that is 50% higher than in NSW for the eligible relatives. Not so in Victoria though.

A NSW person shot at close range by a gunman in a St Kilda restaurant area in Victoria, may find themselves – if they survive - stranded interstate, without resources, support, without clothing, and be left to get themselves back home at their own expense, then, on arrival find they are entitled to no help whatsoever from victim services in either state. A family member called to the dying man’s bedside would perhaps be eligible to have a contribution made to her expenses, but if he failed to die – as expected – she may then find herself entitled to no reimbursement of expenses whatsoever.

A NSW mother may hear her son has been murdered in Victoria, and wish to have his body returned to her for a funeral. She may later want to hear the legal case in court but as she isn’t a witness, the question of whether any government agency will assist her to do either will depend on who she asks for assistance and local interpretation of rules. Our processes after crime often ignore the needs of those most affected by a crime as we move to respond to some of the issues, to investigate and to prosecute and beyond. Ignoring those needs, I suggest, costs more in the not-so-much-longer term by creating dysfunctional people whose life expectations are really doubly affected, described by such a victim as “losing their child to murder **then**, instead of being assisted and supported, being betrayed by the system and the country in which they live”. The direct, individual impact is the loss of trust in bureaucracy and the system, as well as associated health and welfare costs and unnecessarily extended loss of meaningful existence and productivity.

I suggest this is one of the most tangible and developing traits discernable in this country today – a lack of cooperation with and respect for ‘law and order’, because

the system is not protecting the rights and costs to citizens and victims in balance with the rights and costs given to an accused.

While I use real NSW resident's cases as examples, the same differences can be found in any state. There are no special provisions available to assist overseas visitors dreadfully injured in a crime (eg serious burns) to allow them to have family support at a time of such pain and horror that it is beyond the comprehension of anyone who hasn't experienced the impact of serious burns first hand and the associated costs can be very detrimental to families, finances and relationships in both the short and the long terms. Then add the legal system where such a victim receives no special assistance – becoming 'just a witness – if and when we need you!'

I suggest:

- **that if states won't do so**, that the Federal Government could support the establishment of an Australian Act of Grace fund to reasonably financially assist certain victims of crime where no other remedy exists, and in these special circumstances,
- **and / or citizens travelling within the country across state borders**, and visitors to Australia be educated and informed (perhaps via NRMA – RAC etc) of the need to take out private insurance in case of crime or road injuries or death.
- **and / or there needs to be a minimum base of support** within any Australian citizen's crime victim's residential state of the equivalent that would be available if the crime happened in the home state, that should be negotiated between states and territories.
- **The lack of integration between federal and state courts in legal processes affecting victims of crime**

Pathways - The Federal Government has spend millions of dollars on pathways and other programs aimed at reducing and dealing with Domestic Violence at all levels of the community. Wonderful work has been done which sets up community expectations that we are winning the fight against violence. But that expectation does not pan out in practice.

Why programs fail - I say that such programmes utterly fail the victims when victims are forced to leave their homes for a refuge (if one exists), often with their children while the violent perpetrator retains the family castle. In every other environment it is the troublemaker who is ejected, not the victim. What we are doing in this transaction is supporting the power of the abuser and reducing that of the victims. The victims then have to battle every step of the way, while the perpetrator remains often quite comfortably ensconced in his domain, choosing whether to upkeep the premises or not. The victim can choose to live in a refuge if they can bear it, or return to the violent bully where at least the kids have their own beds.

Bullying - What does this teach the children about bullying? Government sanctioned bullying? About domination? That violence wins?

Child support - is, I understand the area of greatest complaint for the federal government. Unless the Federal Government gets serious about enforcing the obligation of each parent to contribute to the reasonable upkeep, costs and welfare of children, it is allowing financial abuse – one of the essential underpinnings of Domestic and Family Violence in the first place.

A parent ought to have no expectation of avoiding financial responsibility for existing children because they choose to re-parent, any more than they ought to expect to buy a new flash car if they don't have the income to pay for it.. The Government needs to get serious and treat Child Support like taxation – with enforceable penalties for non-compliance. Threats related to Child Support need to become criminal issues, not a reason to absolve the violent person from paying because they will continue a reign of terror over their victim. Such processes are rewards for violence, and many perpetrators are only too happy to oblige if it releases them from any financial penalty. The children soon learn where the power lies. We teach them that violence has tangible rewards, and we perpetuate the violence. Why do we allow it if we are serious about “Violence is a crime?”

Matters at courts – when matters reach courts (and often before) whether for Apprehended Violence Orders, or for the prosecution of breaches and crimes, including serious injury or even murder, victims consistently and with great validity, complain about the lack of care, input and a fair go for their issues. Further, I am certain after 10 years of personal practice and observation, that until changes are enforced to the legal and other professions – in universities, in courts and in practice, to teach students to comprehend the concept of rights for society including victims of crime, the blatant abuse of crime victims rights will continue. Clearly, it is the Federal Government who must lead.

University law Schools, Criminologists, Victimologists, the Social Sciences, medicine and financial managers must begin to address the rights and needs of citizens who are victimised by violence to examine their role and impact on stopping the violence.

If Government strategies and resources cannot keep its citizens safe, then it must expect to have to pay for the cost of restoration or rehabilitation. It ought to be the right of every citizen to expect society to support them if society's rules for living are broken making them a victim of an illegal act.

Yet in practice, a victim of even serious violence will receive minimal preparation, be kept in the dark about investigation, have no legal support in an often hostile legal and court environment and where they have absolutely no rights at all, and no real right of appeal or complaint. Achieving Victims Compensation is as uncertain as winning Lotto, but its processes are often more abusive and re-victimise crime victims. This is unacceptable. Too many people are financially ruined because of crime's impact and no adequate account is given to restoration, need, temporary loans etc which might assist. If Governments are serious about violence, it needs to support the victims to recover and return to productivity, not kick them while they're down.

For example, Telstra could assist crime victims if it were to allow time-to-pay without pressure after a verified crime. As crime victims reach out to try to access

"all that help out there" their phone bill soars as they are sent from one place to another in search of sensible, appropriate remedies. The more complex the matter, the more they will pay. Country and regional victims are greatly affected.

I know from personal experience that the phone, my only life line from my wheelchair after the crime, became an object of terror as the seconds and minutes ticked by, waiting for a bureaucracy, the police, the service providers, the information givers, the politicians etc. As time ticked away I knew I wouldn't be able to pay the bill. I had to choose either debt or isolation and ignorance. Choosing debt impacted on my ability to provide – and sometimes I had to choose ?bread or milk for the children. Before the crime I owned a freehold business. Hard to manage all the change from a wheelchair, in isolation and pain, under ongoing threats of death. Crime cost me more than \$500,000 of personal assets, ongoing income and thirty years of my life.

Life issues like loss of income, loss of business, inability to stay in the residence, inability to pay mortgage or rent, physical impacts, finding and moving house, bond money, establishing children in new schools, liaising with Centrelink and Housing often for the first time ever, lack of knowledge of systems, process, resources and opportunities make life very complex after a crime. Add the psychological impacts of all these and the scales of stress are overwhelming.

To the best of my knowledge there is still no holistic information available to a new victim to help negotiate the complex web of change that can follow a crime. Resources are few, minimalistic and usually quite understated and unrealistic to effectively guide victims of crime through life-change process and the legal and other systems.

If victims of crime complain about what in any other environment would be harassment, abusive behaviour, negligence, bias, corruption or perjury (often engaged in or apparently endorsed by police, lawyers, barristers, magistrates, judges, service providers and bureaucrats) these already traumatised people can generally expect no more than to be trivialised, dismissed, accused or patronised. This is not the way to engender faith in a safer Australia or cooperation with authorities. The impact of these abusive processes is more and more being felt and reflected everywhere, with the growing disdain for any type of community intervention or cooperation with authoritarian response to law breakers.

Members of juries are constantly complaining to me about the idiocy of court process and the unsuitability of many of the members of juries who are disinterested, biased or incapable of participating. Juries also lose heart and interest when Courts of Appeals overturn their decisions on a legal pretext, rather than on whether the appellant committed the crime or not.

Even Nicholas Cowdery QC, the Director of Public Prosecutions in NSW, who has never really apparently accurately grasped the concept of why victims are very often dissatisfied with his office's performance, or legal process, has called for an inquisitorial system rather than the badly out of balance adversarial system that has little to do with what victims endure in crime, or truth. Somewhat frustrating though, is that his staff, despite his musings on the topic nevertheless still prepare today's victims of and witnesses to serious crime with the age old misleading direction to

“Just tell the truth, that’s all you have to do!” Victims cannot sue the DPP for incompetence, negligence, sloth or unprofessional conduct. More’s the pity.

- **I’d like to see Australia change the legal standard to “Proven” or ‘Not Proven” rather than “Guilty” or “Not Guilty”. This would actually reflect the process of whether the Crown proved its case or not, laying responsibility where it ought to be – with the State.**
- “Not guilty” is often confused with “innocent” yet that is not what it means at all!
- **Most importantly though, is the lack of consistency of process and order where a case that has been in the state courts – say over violence or sexual abuse, moves into the federal arena in Family Court matters.**

It is all too common for such matters to arrive in the Family Court where evidence can be ignored, excluded, where the real victim is then misportrayed as the offender or as acting from spite, and where Legal Aid is often available to the perpetrator but not to their victim. This makes an absurdity of the policies that claim “You don’t have to put up with Domestic Violence or sexual abuse”.

I see far too many cases where this federal court has acted (in all levels and processes) as if it were ignorant of the dynamics of power and abuse, and indeed, has become both the abuser, and the perpetrator’s ally. When this occurs because of process, lack of transparency, lack of balanced legal support, bullying or blatant misuse of power by operatives within the system at **ALL levels**, the concept of safety for victims, who, more often than not are women and children, the expensive rhetoric becomes very baseless and false. Such victims have few rights to have their matter independently examined or reviewed.

I am aware that a review of process around Domestic Violence and the Family Court is underway, but I have to report that even as it proceeds, victims are still, today being abused by the process and the people who are employed by the system. No proper rights of review of abuse of process exist. I can provide details if the Committee requires them.

- **The lack of an integrated information flow and access limitations to service providers for victims of crime**

Services for victims of crime across the country are diverse and fragmented. What governments and researchers are currently involved in and what has taken place in the past is really a huge but uncoordinated research bank. Rationalisation of these resources could mean savings of millions of dollars, with organisations of limited resources able to access current, accepted thinking – instead of the rather hit-n miss access that currently prevails and is demonstrated daily in out-of-date statistics and practices across the country.

I believe **this is why vast government resources are repeatedly spent going over old ground, reinventing the wheel**, as it has been for example for the last thirty odd years relating to domestic violence. Domestic and Family Violence is getting worse.

Every day people contact me to tell me another way that 'all that help out there' doesn't really exist or doesn't deliver what it promises.

Yet if my service and I can provide, within our limited resources, a practical, coordinated, effective, humane, friendly, needs-based service that is up-to the minute in addressing what people – victims of any type of crime need, right now and in the future, why does the problem keep on keepin' on? Naturally I'm not saying I could possibly be aware of all initiatives, reports and outcomes. The question for government is, I imagine, how to allocate resources for the best use in addressing the issues. Whatever governments decide, there needs to be a well-promulgated and upkept register of information and resources for service providers, lecturers, academics etc. In the real world of supporting victims of crime at the grass roots level, there are no resources within agencies to endlessly research, source the web, interact with others. Without access to these information and opportunity sources, victims of crime are being misled, and failed.

It is also crucial that citizens of this country have available to them a standard of behaviour, preferably with accountability that our courts and other bodies of judgement expect – whether it be in parenting skills, strategies around separation and divorce, inter-racial family issues, around violence, professional standards etc. Without a clear statement that the ruling community accepts, the opportunity for subjective, judgemental, biased and destructive decisions by individuals and organisations will continue to rip the fabric of our society apart. Professional 'guns for hire' are a well-paid part of the adversarial system.

By way of example to assess today's reality, on 2nd September this year I attempted to establish "the ground rules" for what a person should do if one of their children reported sexual abuse to them. I spent half a day on the exercise contacting well-known agencies – state and federal government and non-government, in the child abuse field. Now, I have ten year's experience in this field so I knew what to look for and what to ask. It was a most frustrating day of non-answers, prevarication, deflection, misinformation and conflict, clearly being offered by a range of people who have had no experience of what actually happens in practice in the real world.

Imagine if I was the victim's parent how confused and misled I would be? Try it – experience what victims actually endure and then translate that to what would happen if a person were to try to act on the conflicting, misleading, non-advice given and think about how that might be used against them in a hostile legal environment..

I see it in my work everyday – so-called experts who are racist, gender biased, I see the adverse impact on victims and process of the sub-judice or non-publication orders, I see reports by educated experts who didn't properly record victims' stories - setting the victim up to fail as being "inconsistent" or "a liar", I see inconsistent and shoddy work by police, lawyers, counsellors, doctors, politicians, committees, I observe the real ignorance of the media and that of many of the educated "experts" about crime victim issues, and I see a "I'm the expert - it's not my problem" or 'a blame the victim mentality'. There is rarely any real strategy or power for the victim to address any perceived injustice at ANY level.

Once standards are developed and accepted then compliance mechanisms must be enforced.

- **The impact of Model Criminal Code issues on states' crime victims**

Endless discussion can take place over the multitude of issues confronting our courts, as it has done over the years. For victims of crime, nothing will make any real difference until the concept of decency, respect for needs, rights and the truth are equally balanced between the rights of the accused and the rights of victims.

As any advance for victims reaches our courts, what happens? The DPP's guidelines prevent "vigorous" prosecution but no such limitation affects the defence. The defence can usually undermine any such advance. Case Law contributes to the erosion of truth where the facts of a specific case are often manipulated then subsumed by a legal principal from another case. It makes a mockery of the concept of justice to all in the community (including offenders) outside the legal fraternity who benefit from these often nonsensical, time and money wasting legal games.

After all, for several hundred years we, the people, have blindly excepted the legal excuse "the law is an ass" haven't we?

Despite the interesting reports of Model Criminal Code efforts, I have to report that in practice, victims of crime remain at the mercy of anyone with power and rights in the legal and other systems. From the victims perspective, little has changed to help the individual victim. **In death cases, the family hears their loved one called "The deceased" as if they were less than every other player in court.** It is deeply distressing. A simple thing, but the federal government could easily bring about a change that granted a dead victim the right to use their name during a court process about a crime that happened to them.

- **The unsatisfactory and under-resourced processes of crime investigation and prosecution**

It is a fact that new victims of crime are usually ignorant of process, just like the majority of ordinary Australian citizens, irrespective of occupation, who have never been touched by crime. My practice shows consistently that even members of police forces, doctors, psychiatrists, media, politicians, lawyers etc are shocked and dismayed because their life held beliefs and expectations about the impact and response to crime issues do not pan out in practice if and when they experience a crime. They constantly report "I didn't know it would be like this!" as they gain what I call "The Knowing" – (knowing what it really is like in practice, not based on beliefs or learning). **I think this is probably the most important concept for the Committee to comprehend, because it is here that many strategies fail.**

Victims, as citizens, tend to believe and trust they have an obligation to report a crime – indeed that they would be 'breaking the law' by failing to report a crime. The vast majority of crimes are, in fact, directly reported to police by victims of crime and by

witnesses to crime. The system then, relies on victims of crime to believe in the need to report crimes.

Victims of crime as members of the broader community, generally have simplistic expectations that laws exist to establish the rules of society and to keep us safe. They further tend to believe that if they are generally 'a good person' who is harmed by a crime, that the community will act to assist them, and to support them as it moves to stop the criminal behaviour through investigative and prosecution processes.

Victims cannot really easily accept that once a crime is reported they have few rights at all, and that 'society' will take over any investigation and prosecution with little regard to the reality or impact of their life experience as crime victims. The system will pick and choose what, if any, input it requires from crime victims then expect them to 'deliver the goods' often without adequate preparation to understand the legal process they will endure. Investigations and every process will rely on the subjective decision-making of each operative – and their resource and personal limitations – of police, prosecutors, counsellors, doctors, etc. Investigations, even in the most serious of matters rarely reflect the expectations of victims, trained by expert, short, television crime shows.

Then, when in legal, policing and court processes victims and witnesses are subjected to abusive (call it vigorous if you like) cross examination but little challenge is made to an accused's story, when witnesses evidence is minutely gone over time and time again but the accused's is not, when charges are bargained or negotiated and then ALWAYS reflect not the truth of a crime but a much watered down version, and Victim Impact Statements can reflect only the bargain and not the crime's impact, we're playing smoke and mirrors and the concept of truth, comprehension about what the crime has done to the victim is minimised and trivialised. It's just not true. And if its not true, its false.

We even put little children who have already been grossly, indecently dealt with through these abusive processes and call it 'pursuit of justice'. It is a national disgrace.

Little wonder victims of crime are sceptical about any future cooperation with the legal system, and little wonder that election Law and Order Auctions are the current flavour of state elections. It's a pity the parties don't research and direct resources to the real issues by coordinating with victims groups broadly (rather grabbing special interest media opportunities that don't address the systemic failures) and by establishing the concept of restoring an expectation of safety to communities over the rights of a person who chooses to commit crime. France has an Inquisitorial System yet from my enquiries, knowledge of legal systems outside the broken Westminster System is very poor – even amongst teaching legal academics (who I have often found to be really ignorant of crime victim issues with their focus only on the rights of the accused.)

Prosecutions are the source of more serious complaints by victims of crime to my service than any other agency other than police. Considering the relative numbers of cases handled by police compared with prosecutors, the need for positive, crime-victim supporting change seems self-evident – if complaints are a valid measure of

satisfaction. Yet complaints by victims about prosecutions largely fall on deaf, disinterested and dismissive ears – the prosecution has no role to act for or in the victim's favour. Independent of Government, the DPP's around the country exercise their powers but derive from a trained background where only the rights of the accused prevail.

Victims of crime expect their position to be that of the agent of society injured in an illegal act. The prosecution, representing society, paid by society to keep the law and order balance, find victims of crime issues to be expendable, victims themselves to be largely misinformed, bothersome and somewhat less than tractable puppets in a game of law. Unfortunately victims see it as no game, but real life.

Therein lies the dispute.

Prosecution budgets are used to excuse poor preparation of cases, and the conclusion of matters by plea negotiations as a matter of course. Bring on the economic rationalists to the criminal legal system and train them by ensuring they understand what Charles Dickens' remark "The business of the law is to make business for itself" really means in current practice.

To conclude this brief response to your Inquiry, there is a very long way to go before United Nations standards about the treatment of victims of crime can be shown to have been adopted and practised throughout this 'fair' land.

- I have not dealt with the particular problems of migrant families who encounter criminal behaviour and racist responses.
- I have not dealt with the huge issue of inter-racial marriages and the children of such marriages, nor the abuse of the rights of Australian-born children and spouses if a parent chooses to remove the children or retain the children overseas.
- I have not dealt with the issue of racism adversely affecting Australian-born citizens when Federal courts are so concerned to avoid a racist tag that they are actually racist against white, Australian-born citizens and the children of such liaisons, even when violence and sexual violence is an issue. (See my Child Sexual Assault paper if required).

Victims of crime issues are just in their pioneering stage. It would be quite wrong to assume that because governments have poured some money into systems that those systems are working to the advantage of the crime victims and a safer society. In practice, experts providing counselling, legal and other services to victims may benefit financially from government schemes, but often to the actual victim's disadvantage.

I leave you with a final thought. That is "What is the definition of a victim of crime?" Who "deserves" support and guidance?

My service describes a victim as a person who has been affected or harmed by the impact of a crime or similar trauma, and extends to individuals and communities affected by threatened crime, actual crime or events which have similar processes – like road crashes during the commission of a crime. The mother of two boys – one injured then jailed, the other killed in a car crash when the now jailed boy drove

drunk, (because his brother, the car owner, simply couldn't drive), is welcome at my service. No other service exists for her.

My service is generic. Any victim, any crime. Some entitled to try their luck on the government hoopla, supported and guided if they qualify to 'have a go, are supported, then picked up and dusted off when they are rejected. Some aren't even entitled to try, so we find them suitable support services or offer it ourselves. It works because it is dealing with grass-roots, every-day impacts of crime and process and what victims need in their day-to-day lives, empowering traumatised people to do their best, for themselves and their families, in a very foreign and often hostile environment in which victims of crime find themselves. We work to help them gain understanding and power in process, to recognise and reject re-traumatisation that so often is dished out to victims of crime.

I hope you have found this brief response directed to the needs of victims of crime thought provoking. I can be of any assistance or you wish to speak with me directly, please invite me to do so.

Regards



Robyn Cotterell-Jones

Executive Director

Victims of Crime Assistance League Inc NSW

3rd September 2002