

A hand holding a globe with silhouettes of people in the background. The background is a light blue color with white outlines of people's heads and shoulders. The hand is positioned at the bottom, holding the globe. The text is centered over the image.

Victims' Rights: International Students

**Commissioner for Victims' Rights
ISANA & ANZSSA National Conference
Adelaide 2014**



Government of South Australia
Commissioner for Victims' Rights

Overview

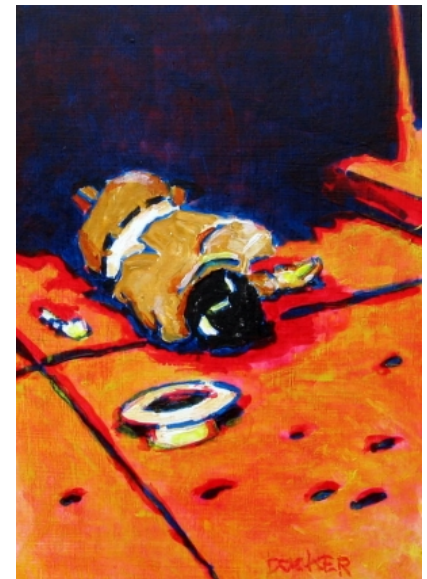
- Victims' rights
- Commissioner for Victims' Rights
Functions (& practical examples).
- Case Studies



Crime, says van Ness (1986, p.3)

- *...is not simply an incident which begins a contest between the State and a defendant, between a prosecutor and a [defence counsel]*

...Crime is first of all an encounter between a victim and an offender. It is an unexpected personal crisis in the life of one person brought on by another...



Victim-centred justice – Pre-state-centred justice



- Early systems emphasised the need for offenders to give satisfaction to victims
- Victims - party in proceedings
- Focus – (arguably) on how to restore the victim
- Community responsibility for recompense



The rise of state-centred justice – Inherited in Australia

- Victim's role restricted
- The party that is represented by the state, namely the victim, is so “thoroughly represented” that she or he for most of the proceedings is pushed completely out of the arena...
- Yet the famous jurist Blackstone acknowledged that when crime happens there are two victims: the wronged person & the state.



Increasing focus on victims

- Since 1970s victims expressed dissatisfaction
- Gradual evolution of victims' rights
- In recent years –dramatic increase in pace of evolution/expansion
- Victims have become more prominent in CJ policy
- Victim benchmark for determining the success of CJ



- Without victim co-operation, the criminal justice system would collapse and law enforcement would become very difficult



- The absence of a precise role for the victim, other than as a prosecution witness, belies the victim's actual importance
- Elevating victims' rights is seen (by some) as an appropriate way to ensure victims are given their proper status in the criminal justice system



Victims' Rights Instruments

International -

- United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- Commonwealth Statement of Basic Principles of Justice for Victims of Crime (endorsed by Senior Law Officers for the Commonwealth 2005).

National -

- National Charter on Victims' Rights (endorsed by the Standing Committee of Attorneys-General, Australia 1993)



Australia's Declarations / Charters

Victims of Crime Act 1994 (ACT);
Victims Rights & Support Act 2013 (NSW);
Victims of Crime Rights & Services Act 2006 (NT)
– administrative statement;
Victims of Crime Act 2008 (QLD);
Victims of Crime Act 2001 (SA);
Victims Charter Act 2006 (VIC);
Victims of Crime Act 1994 (WA); and,
Declaration on Victims' Rights (TAS) –
administrative statement.

No federal declaration / charter
National Charter on Victims' Rights – agreed by all
jurisdictions in 1993



Who is a Victim?

For example, *Victims of Crime Act 2001* (Sth Aust) –

In relation to an offence, means **a person who suffers harm as a result of the commission of the offence.**

(It does not include a person who was a party to the commission of the offence)



Who is a victim of crime – internationally?

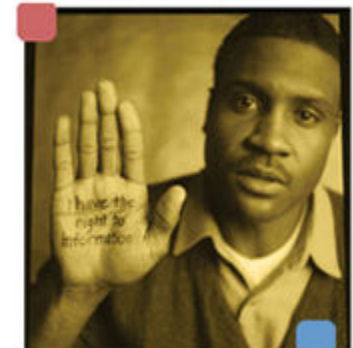
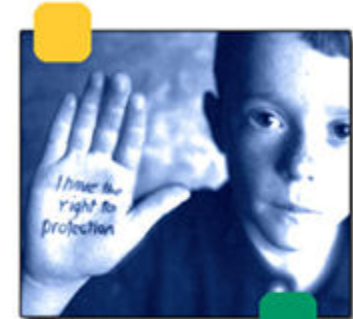
A person may be a victim, regardless of whether the perpetrator is:

- Identified,
- Apprehended,
- Prosecuted, or;
- Convicted.



Common features of declarations / charters

- Services
 - Help lines, counselling programmes & victim-compensation
- Information
 - Booklets, contact officers & victim-letters
- Consultation
 - Bail (e.g. conditions) & prosecution process (e.g. charge-bargaining)
- Participation
 - Victim Impact Statements, family conferences & parole



Principles Governing Treatment of Victims of Crime

1. A victim should be treated with kindness and respect.
2. Right to be told about services that can help the victim (and how to contact them).
3. Right to be told about the progress of the investigation.
4. Right to have perceived safety concerns presented to a bail authority.
5. Right to know what is happening to the suspect (including his or her name) and/or personal property taken as evidence.
6. Right to know if the accused person is not charged or charged with a less serious offence.
7. Right to be present in court, unless the court orders otherwise.
8. Right to be informed on role and responsibilities as a witness.
9. Right to be protected from unnecessary contact with offender / offender's family.



Principles Governing Treatment of Victims of Crime

10. Right to privacy (e.g. residential address not disclosed).
11. Right to have property returned as soon as practical.
12. Right to make a VIS
13. Right to information about restitution and compensation.
14. Right to be informed on court outcome (e.g. details of sentence) and have such explained.
15. Right to ask for a review for purpose of determining whether an appeal is appropriate.
16. Right to notification about release / escape and return to custody of offender.
17. Right to make submission to Parole Board
18. Right to be informed on parole conditions or licence conditions if mentally ill offender
19. Right to be informed if prisoner absconds
20. Right to information on how to make a complaint



Victims and their rights

There is **no statutory obligation** on public officials to require or compel them to advise victims of their rights and ensure victims understand their rights.

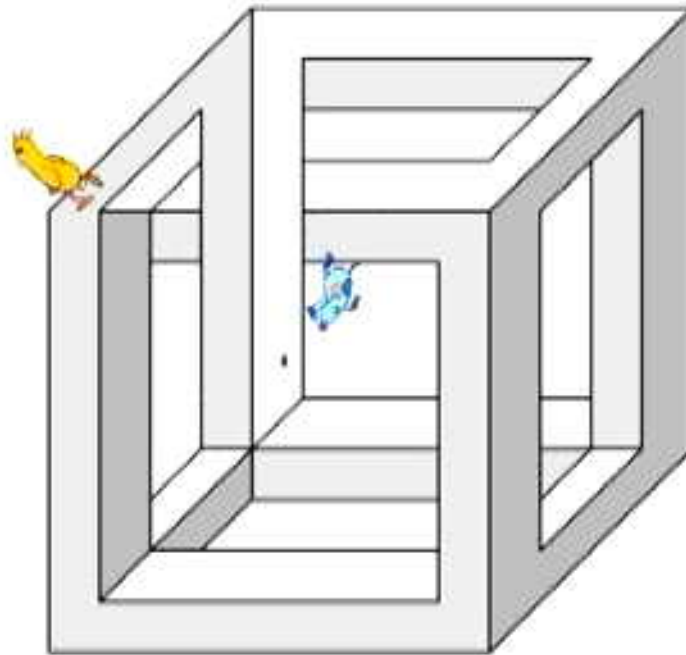
This presumes victims are conversant with their rights and are aware that they must take some action such as requesting information.



Victims' Rights – Parallel 'Procedural' Rights



The 'words' of declarations on victims' rights do not always mirror (match) the acts of those tasked with helping victims.



Commissioner for Victims' Rights



Commissioner's functions:

- To marshal government resources to assist victims of crime
- To be an *ex officio* member of the Victims of Crime Ministerial Advisory Committee (or similar)
- To assist victims in their dealings with prosecution authorities and other government agencies.
For example, provide 'limited' legal assistance to a victim when the prosecutor & defense had agreed a variation to a restraining order without first consulting the victim



Functions cont.

- To consult the Director of Public Prosecutions in the interests of the victims in general and in particular cases about matters including victim impact statements and charge bargains.
- To monitor and review the effect of the law and of court practices and procedures on victims.
- If another Act authorises or requires the Commissioner to make submissions in any proceedings – to make such submissions (either personally or through counsel).
 - Before the Supreme Court hearing a ‘dangerous offender’ application.
 - Before the Court of Criminal Appeal on guideline sentences.
- To make victim impact statements, incl. neighbourhood & social impact statements



Functions cont.

- Advocacy –

- Non-criminal/civil – Freezing order
- Coroner's Court – Interested person
- Steele's case – s269P Interested person
- Bowen's case – s269P Interested person
- Marshall's case – Report on meaning of 'community safety' as a prime concern of the law



Case Study One

International student 'stabbed' – request for financial assistance to enable a parent to travel (return) to Australia and to enable both parents to remain in Australia whilst victim was treated in hospital and during out-patient after-care.

Consultation with support services.

Paid accommodation for several months & advanced cash for food & incidentals.

Referral to state-funded victim compensation lawyer.



Case Study Two

International student ‘sexually assaulted’ – anguish, distress etc so ‘significant’ that student unable to continue studies & other factors compound ‘problem’ so the student is in ‘breach’ of visa.

Consultation with support services.

Advocacy with DIMMI (as was known at that time) & paid for ‘visa renewal’.

Referral to state-funded victim compensation lawyer



Case Study Three

International student 'serious assault' – hospitalised for several weeks resulting in loss of employment & 'risk' of eviction from place of residence.

Consultation with support services.

Paid 'financial assistance' to cover loss of income for period hospitalised & for residential rent arrears.

Referral to state-funded victim compensation lawyer.



Some Practical Strategies

- Use vocabulary that is understood by the victim
- Respond in a non-judgmental manner
- Provide accurate and realistic information. Victims want and need to be kept informed about
 - What to expect
 - All the options available to them
 - Decisions affecting them as they happen
 - Procedures and likely timeframes
 - The likelihood of continuances or other potentially traumatic procedures
- Communicate the outcome to victims/ witnesses to ensure fully understood
- Allow victims to make their own choices and thus regain a sense of control
- Individualise each victim, each crime and each victim's reaction to that crime
- Follow-up – update regularly
- Let victims know that expressions of grief or anger are okay
- Respect the rights and needs of the victim without endangering the rights of the accused.



Information for Victims of Crime

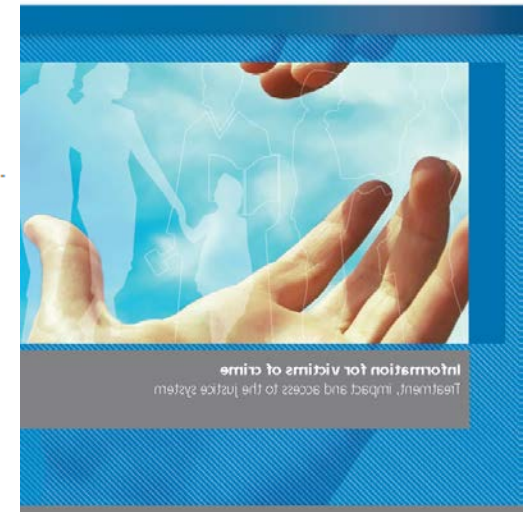
Publications

Non English Information

Please click the link for the desired language to download the PDF Information Sheet for that language.

- [Albanian](#)
- [Bosnian](#)
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Vielen Dank
Gracias

Thank You

Ringraziarla

Спасибо

Victims Rights – Right for international students

Justice requires there be fair, moral and impartial
treatment of all persons.

Merci

謝謝

Dank u

Obrigado

ありがとう

Takk deg

