



### Victims & Offenders in the Criminal Justice System

In public debates about law and order, it is often argued that the justice system is soft on criminals and unfair to victims of crime. The rights of victims are frequently depicted in the public arena as being in direct opposition to the rights of offenders.

When sentences are deemed too short, or penalties too soft, community groups and the media often express dismay and/or outrage at such outcomes because they are seen to negate the rights and experience of those who have suffered directly as a consequence of the crime committed.

It is clear that victims of crime are frequently disappointed by the court system, and can feel alienated and sometimes further victimised by the criminal justice process. It is also often the case that victims of crime can feel extremely angry, traumatised and distressed about the crime and its subsequent impact on their lives.

For a long time in NSW, the experiences of victims of crime were overlooked in the criminal justice process, and victims' groups have understandably worked very hard to ensure that their voices are heard in law and order debates. However, does it follow from this that offenders should suffer more? Or that if offenders have rights, then victims lose out? This fact sheet examines some of these issues.

### Is it the case that victims have no rights?

In fact, in NSW there have been a number of legislative changes in the last decade that have acknowledged explicitly the 'rights' of victims in legislation. These changes have included the 1996 Victims Rights Act. This Act provides rights of participation to victims of crime and enables them to have input into most stages of the criminal justice system including bail proceedings, sentence hearings, classification (of prisoners) hearings and parole decisions.

At each of these stages of the criminal justice process, victims are able to request and access information, and put submissions forward (to the court, to the prisons and to the parole board) expressing their opinions about any proposed action or changes in terms of an offender's bail, sentencing, classification or parole.

It is interesting to note that recent research in South Australia found that only a minority of crime victims (5.6%) want to be actively involved in parole decisions, whilst the majority (53.2%) want no involvement at all. Even so, it is still important to consider the rights and role of those victims who do wish to be involved in the processes of the criminal justice system.

It is useful also to make the distinction between the 'right to information', and the 'right to active participation' in the criminal justice process. There would be very few people nowadays that would argue that victims should not have the right to information about the processes of the criminal justice system, and the decisions made



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that impact on the sentencing decisions relevant to their case. However, the extent to which victims should participate in the decision-making processes of the criminal justice system is a more complicated and contentious issue.

### **Should crime victims have a *greater* role in the criminal justice system?**

The criminal justice system in NSW is intended to operate according to principles of objectivity and fairness. The weighing up of guilt or innocence and the decision of an appropriate penalty is a process that attempts some degree of consistency. This process runs the risk of becoming deeply unfair if these decisions are also trying to incorporate the desires of the crime victim. There are a number of reasons for this.

#### *1. Victims do not all want the same thing*

People respond to crime in many different ways. Although the media tends to be interested in people who want 'revenge' or those who want harsher penalties and longer sentences, there are many victims of crime who do not share these sentiments. There are, for instance those who want to feel safe, but do not believe lengthy prison sentences are the best way to achieve this. If decisions in court and throughout peoples prison sentences were made primarily according to what the victims of crime thought should happen, this could result in very inconsistent sentencing decisions. One person convicted of murder could serve a life sentence, whilst another could be given a community service order.

#### *2. Victims of crime have varying degrees of skill at articulating and expressing the impact of a crime on their lives.*

Again, decisions made primarily on the basis of victims' reports would be arbitrary, influenced by how well a victim of crime had articulated their experience rather than on the facts of the case itself.

#### *3. Having experienced crime does not make the victim an expert at formulating justice policy or deciding on sentencing decisions in our current criminal justice system.*

The impact that a crime has had on its victim or victims is one of the points that judges and magistrates take into consideration when they are making their sentencing decisions. However there are a number of other goals of the criminal justice system that must be taken into consideration as well including the prospect of rehabilitation for the offender, and all of the facts of each case. Although victims of crime are certainly the most reliable 'experts' in terms of assessing the 'impact' of a crime, there is no reason why victims of crime should be expert at determining the other factors that influence sentencing.

### **Are victims rights and offenders rights in opposition?**

Even though victims and offenders are often discussed as two separate groups, this is not the case much of the time. Offenders have often been victims of crime themselves. For instance, in NSW prisons, the estimates of the percentage of women prisoners who have been the victim of physical and/or sexual assault as adults or children are as high as 90%, and the most conservative estimates have the figure at around 50%. Having been a victim of crime does not of course make offending okay. But it does complicate the idea that victims and offenders exist only in opposition to each other.

Often arguments that construct victims rights as being in opposition to offenders rights are based on an assumption that not only are these two groups completely separate, but that one represents the 'good' majority (the victim), and the other represents the 'bad' minority (the offender). Again, things are a little more complicated than this. In the majority of violent



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crime, victims and offenders frequently know each other. They are not two separate groups. They are friends, partners and family members.

All domestic violence, most sexual assault and most common assaults are perpetrated by family or friends upon each other. 1 in every 2 victims of murder, attempted murder, assault and sexual assault knew the offender (*ABS 2002*). This of course does not excuse the crime, it just means the victim and offender are not necessarily on opposite sides of the fence.

Another problem with viewing offenders' rights and victims rights as being 'opposite' to each other is that if the rights of one group are increased this automatically decreases the rights of the other group. Some would argue however, that it is entirely possible to protect the rights of victims at the same time as protecting the rights of offenders. This does however raise some quite difficult questions about what it is that we mean when we talk about 'rights'.

Human rights activists might argue that rights are not intended to be dependent on the status of somebody as a 'victim' or an 'offender', just as they are not dependent on one's skin colour or country of origin. If the human rights of one group in the community are violated by the state, even if this is the rights of 'offenders', this may put the rights of any other members of the community in jeopardy including of course the victims of crime.

### **How might crime victims become more involved in the criminal justice system?**

Over the last fifteen years, as the victims' rights movement has grown, so too have connected movements that do not necessarily advocate for harsher penalties, or see victims and offenders as existing in opposition. Such

movements acknowledge the importance of incorporating the experience of crime victims into processes for responding to crime.

The most obvious example of this is restorative justice conferencing and the many variations on this style of response to crime. Common to most variations of conferencing is the meeting of the victim and the offender as well as their friends, families and other supportive people. Generally the victim, the offender, and all those present take it in turns to discuss the 'incident' of the crime and the impact that the crime has had on their lives. Conferencing gives the victims of crime an opportunity to confront the offender with the impact that the crime has had in a way that is much more personalised than the court process.

Early research into Youth Justice Conferencing has found that re-offending rates can be reduced by between 15 and 20 percent, compared to rates for young people dealt with through the traditional court system.

Restorative justice conferencing is of course not suitable for all kinds of crime. Nor is it available for adult offenders in NSW as an alternative to court. There are numerous other limitations to the process. However it does provide an example of the manner in which the desires of victims to have a voice in the proceedings that follow the committing of a crime can be fulfilled without necessarily compromising the rights of offenders.

It is clear that often appeals to 'victims rights' are really a code for calls for harsher penalties and reduced rights for offenders and suspects, rather than a means for addressing the practical concerns of victims, like compensation, counselling, assistance and information. The rights and needs of crime victims should be taken extremely seriously. This however, is not possible when they are viewed only in contrast or opposition to the rights of offenders.



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*This pamphlet is based on a range of material, including significantly, the work of Russell Hogg, David Brown, Tim Anderson, and Sam Garkawe*

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