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***What's it to do with You? The
Victim in the
Criminal Justice System***

by

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**“WHAT’S IT TO DO WITH YOU”
The Victim in the Criminal Justice System**

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This paper will examine the place of the victim in the criminal justice system, some of the changes that have been made to accommodate the interests of victims of crime and whether they are appropriate and, the relationship between the victim and the prosecutor.

It is only comparatively recently that victims of crime have been provided any formal recognition in the criminal justice system. Many will recall the days when victims were regarded as being no more and no less than another witness in the case; relatives of victims were regarded as nuisances who got in the way of the prosecutor performing his or her tasks and were to be avoided at all costs.

That in a criminal trial, procedural fairness might be extended to parties other than the accused, is a novel concept to some, but the concept of fairness towards the accused is to be balanced against the right of society to expect that wrong doers will be brought to trial.¹

Persons disenchanted with the criminal justice system, particularly victims and those who spoke on their behalf have become vocal and outspoken in criticising the system.

¹ See for example Jago v District Court (NSW) (1989) 168 CLR 23 at 33 per Mason CJ

Unpalatable solutions have been proposed and in some cases adopted.² If understanding the process and accepting the result were to be the yardstick, then the system was failing those victims. Endeavours to produce change that might improve the position of victims of crime have, in most jurisdictions, followed similar paths.

Awareness within the criminal justice system of the special position of victims of crime probably commenced when consideration started to be given to the law and procedure related to rape and other sexual offences. Most jurisdictions enacted provisions limiting the range of cross-examination of victims of sexual assault, which provisions for the first time really recognised victims as genuine stakeholders in the process.

No doubt due to the various legislative provisions that related to sexual complainants, the culture slowly changed. Importantly, during this period, the victim of crime and those who spoke on their behalf had become more vocal.

In 1985 the UN general assembly approved the *Declaration on Basis Principles of Justice for Victims of Crime and the Abuse of Power*.³ Thereafter, all State Governments issued charters or declarations of victim's rights, having the force of administrative guidelines only⁴.

² eg Mandatory sentencing

³ See Appendix 1

⁴ Victoria in 1989

There followed, in virtually all jurisdictions, provision for Victim Impact Statements.

A further development in Victoria was, by virtue of the Public Prosecutions Act, 1994, to require those involved in the prosecution of serious crime *"to ensure that the prosecutorial system gives appropriate consideration to the concerns of the victims of crime."*⁵

The Victorian Director has also published policies and guidelines that relate specifically to the treatment of victims of crime.⁶

Generally speaking, within Australia the right of the victim of crime to be informed and to make some contribution to the sentencing process is now well established.

Most prosecuting authorities in Australia have now established Witness or Victim assistance Services. These services, usually staffed by social workers with a healthy mistrust of lawyers, have proved to be of great assistance in not only providing support and explaining procedures, but also by providing a conduit through which the victim might better communicate with the prosecutor.

The interests of victims are also recognised in such schemes as those diversionary programs now either in operation or being trialed in many Australian jurisdictions where, for example, in more minor crime, should the victim agree, the offender is required to

⁵ Public Prosecutions Act, ss 24, 36 and 38)

⁶ See Appendix 3

contact the victim, either directly or by letter to tender an apology and hear from the victim the effect of the offending and, in some cases, the offender might be required to provide some form of compensation or restitution.

Similarly, most if not all jurisdictions now provide for compensation or restitution orders to be made at the time of sentencing. Such orders are enforceable against the offender as a civil order. In Victoria the *Sentencing Act, 1991* was amended in 1996 so that a compensation order can now include an amount for pain and suffering.⁷ The order is not part of the sentence, application can be made at any time up to six months after conviction and the application can be made either by the person seeking the order or the prosecutor on that person's behalf.⁸

Victims as witnesses now enjoy much greater protection of their privacy. Devices such as closed circuit TV or even screens erected in court so that the victim witness is not directly confronted by the accused are now common.⁹ In Victoria it would now be the exception rather than the rule that the victim of violent crime would, when giving evidence, provide details of a residential address. Similarly, Victorian provisions relating to the preparation of hand up briefs for committal proceedings prohibit the disclosure of the address or telephone number of the person who made the statement "*or of any other living individual*" except in certain stated circumstances.¹⁰

⁷ Sentencing Act, 1991, s 86

⁸ Ibid, s.86(5)

⁹ See Evidence Act 1958 (Vic) s. 37C, but note that in Victoria such provisions are limited to victims in cases of sexual assault under the age of 18 or with impaired mental functioning.

¹⁰ See Magistrates' Court Act, 1989, 5th Schedule.

Each of the above provisions recognises that the victim of crime now has recognised rights and a place more than that of a "mere witness" in the criminal justice system.

The purpose of this paper is to examine the effect of these developments and to consider, in particular, the voice of the victim and the relationship of the victim to the prosecutor.

Traditionally, criminal offences have been prosecuted by the state rather than the individual victim because crime is seen as having threatened society as a whole. Hence, the State is the injured party and the victim simply another witness.

Although there is a limited role for prosecutions to be brought privately by the victim in person, such procedures are not often used and, in any event, usually confined to minor crime.¹¹ Hence, for all practical purposes, it is the prosecutor, on behalf of the State, who makes the decision to prosecute, decides appropriate charges and conducts plea negotiations.

The victim does, however have the power not to report crime and, thereby has some control over the process. It may well be that much unreported crime should, in the interests of the society, have been prosecuted. Likewise, once the prosecution process has begun, there are instances where the victim "forgives" the offender and does not want the proceedings to continue. It is often very much in the interests of not only the

¹¹ See Crimes Act 1958 (Vic) s353 where the power to make presentment in the Supreme or County courts is restricted to the Director of Public Prosecutions or any Crown Prosecutor. In Victoria a private individual has the power to bring most charges in Magistrate's Courts and there remains the power for an individual to seek an indictment from a Grand Jury (Crimes Act, s. 354).

community at large, but also that particular victim that those proceedings continue to conclusion.

Similarly, although retribution might be a legitimate factor in sentencing, vengeance clearly is not.

Given the appropriateness of the discretion to commence, continue or compromise prosecutions being exercised by the prosecutor or prosecuting authority, it is easy to understand how it came about that the victim was relegated to a position of mute powerlessness. This, however, is not to deny the important right of an individual to prosecute minor offences in person or, to seek relief in the Civil Courts in respect of criminal conduct.

The two areas of particular interest for the prosecutor are the role of the victim in the exercise of the prosecutorial discretion and the voice of the victim in the sentencing process.

The various Charters of Victim's Rights all make clear the right of the victim to be informed to a reasonable degree throughout the process. Few would argue that this is not desirable. Interestingly, although most charters provide that a victim should be informed if a prosecution has been resolved by a decision to accept a plea of guilty to a lesser charge, few require the victim to be consulted before any such decision is made. Many might argue that to do so would be in conflict with the duties of a prosecutor,

*“Prosecuting counsel in a criminal trial represent the state. The accused, the court and the community are entitled to expect that, in performing his function of representing the cases against an accused, he will act with...fairness and detachment..”*¹²

No conflict arises provided that it is made clear that the decision is that of the prosecutor and not the victim. Leaving questions of courtesy aside, seeking the views of a victim on the compromise of a matter will often be of assistance to the prosecutor as well as accommodating a legitimate right of the victim. If the prosecutor is able to explain to the victim the appropriateness of accepting a plea to a lesser count, then that course is probably sound. On rare occasions a victim might point to some overlooked or unknown piece of evidence that would provide support for proceeding on the major charge.

Of particular importance, in the writer's view, is the need to seek the views of the victims of sexual offences when the future conduct of the proceeding is being considered. The wish of a victim to avoid further cross-examination, for example, is a factor that would not only be properly taken into account out of consideration for the victim, but is also material that would assist in assessing the prospects of success of the trial. Similarly, if consideration is being given to the acceptance of a plea to a lesser count in a murder, the relatives of the deceased surely have the right to be informed that such a decision is being considered and a right to express a view, before that decision is made.

¹² Whitehorn (1983) 152 CLR 567, 663.

A decision not to continue with a prosecution can, if not properly explained to a victim, be not only distressing but can also leave the victim wrongly thinking "they didn't believe me". The standard of proof and questions of poor recollection or lack of supporting evidence can be explained – it only needs a little time.

Again, it is the experience of the writer that where victims are consulted about such matters in advance rather than simply informing them after a decision is made, those victims will usually accept the decision and the basis on which it was made, even when they strongly disagree with it.

Such decisions about the future conduct of proceedings can impact significantly on the interests of victims. There are good reasons why the victim does not make the decision, but there are most compelling reasons to ascertain the views of and explain the reasons for the decision to the victim.

During trial, victims ought to have the expectation that reasonable steps will be taken to inform them of the progress of the trial and to explain the more arcane aspects of the trial process.

During the sentencing process further questions arise. Many victims regard the prosecutor as representing them on the sentencing hearing. This is not so and again, for good reason. The community interest is very often at odds with the interests of the victim. Most people, when a criminal offence is committed against them, understandably

react in a most subjective manner. To invite a sentence in accordance with the wishes of the victim would very often be to advocate a sentence that was not only disproportionate but also one that paid no heed to questions of rehabilitation.

The victim does have a right to present a Victim Impact Statement. Although advanced by the prosecution, in Victoria it is not part of the prosecution material.¹³ The defence has a right to object to material in the statement and to cross-examine the maker. In practise it is rare that a victim is cross-examined and no doubt defence counsel often faces the dilemma of asserting remorse on the part of the offender whilst wishing to challenge the assertions of the victim as to the impact of the crime. There are critics of Victim Impact Statements who assert that they play a very minor role, tend to all be somewhat formulaic and are paid scant regard by the bench. In practise the contrary is the case. Many statements are simple, eloquent and moving documents that help draw proper attention to a factor that is too often brushed aside, the actual effect of the crime in human terms. A clear example of this is found in the remarks of a Victorian Judge in a recently imposed sentence:

*"I have read the victim impact statements made by members of the family of the deceased.....Yet again I have sensed the terrible and continuing distress which such conduct can produce. As I have remarked on a number of occasions victim impact statements serve to ensure that sentencing judges remain acutely aware of what can be properly described as the human or personal impact of crime. They have certainly done so in this case"*¹⁴

¹³ See Sentencing Act, 1991 (Vic) s.95C and 98, which require the victim to prepare the statement, file it in Court and to provide copies to the parties and see Appendix 3.

¹⁴ R v J, 8/6/01, Vincent J

The Victorian Court of Appeal has confirmed that the purpose of the victim impact legislation

“was to give victims of crime an opportunity to place before the courts their own statement of the impact a crime has had upon them and their families and in doing so both to involve victims in the workings of the criminal justice system and to ensure that judges are educated as to the consequences of the crimes with which they are concerned in sentencing”¹⁵

The same court stressed that the reception of victim impact statements should not be surrounded by procedural rules, but should be received in evidence and considered with *“a degree of flexibility”¹⁶*

Importantly, the Victim Impact Statement allows the victim a formal role in the process. When properly used they can be of considerable assistance to a sentencing judge, at worst they at least remind a court of those touched by the process.

By virtue of the victim impact statement, the victim need not remain an alienated outsider but instead has an acknowledged place in the proceeding, a place that does no insult to the traditional doctrine which places the interests of the community as a whole above those of the victim.

It is important at the sentencing stage that the victim be well informed. Again, this role probably best falls to the prosecutor. There will generally be a great disparity between the sentence expected by the victim and that which is likely to be imposed. It is important that a victim be forewarned that the process will be predominantly about the

¹⁵ R v Dowlan (1998) 1VR 123 at 140 per Charles JA

offender. Rather than be left bewildered and angered by a sentence, it is desirable that the sentencing process is explained. If a victim can at least be cognisant of the various matters that a court is required to take into account other than "just deserts" then it is more likely that the basis of the sentence will be understood even if not accepted.

In conclusion, it is appropriate that victims of crime have now been recognised as parties to the criminal justice process with legitimate interests. There have been simple changes in procedure to make the process a little more comfortable for the victim.

There has been a major change in providing the victim with a voice in the sentencing process.

There is a continuing need for the system and for prosecutors in particular to put aside their traditional reluctance to deal with victims and to consult and inform them at all stages of the process; it really isn't so difficult!

If victims of crime feel that they have a legitimate place in the system then there will be less dissatisfaction and accordingly, it is argued, less calls for offensive change.

¹⁶ Ibid

APPENDIX 1

United Nations Declaration on Basic Principles of Justice for Victims of Crime and the Abuse of Power

Approved by the UN General Assembly, on 29 November 1985
(resolution 40/34), on the recommendation of the Seventh Congress

Published in Monograph No. 7, Putting Victims on the Agenda, November 1996

Victims should be treated with compassion and respect to their dignity, and are entitled to prompt redress for harm caused.

Judicial and administrative mechanisms should be established and strengthened to enable victims to obtain redress.

Victims should be informed of their role and the timing and progress of their cases.

The views and concerns of victims should be presented and considered at appropriate stages of the process.

Steps should be taken to minimise delay and inconvenience to victims, ensure their privacy, and protect them from intimidation and retaliation.

Offenders should, where appropriate, make restitution to victims of their families or dependants.

Where public officials have violated criminal laws, victims should receive restitution from the State.

When compensation is not fully available from the offender, States should provide compensation to victims of their families in cases of significant physical or mental injury.

APPENDIX 2

DIRECTOR'S GENERAL POLICIES AS TO ASSISTANCE TO WITNESSES

General policies as to assistance to witnesses

Traditionally, the prosecutorial system has seen its responsibility as an instrument of the State bringing offenders to justice. Victims of crime and their families were important participants in the process but were not regarded as the direct responsibility of those prosecuting offences. The Public Prosecutions Act 1994 introduced a new requirement. It imposed a new obligation on the Director, the Solicitor and staff employed in the Office of Public Prosecutions to have regard to the need to ensure that the prosecutorial system gives appropriate consideration to the concerns of the victims of crime. This marks a new emphasis in the approach to witnesses and, in particular, victims of crime.

In response to increased awareness of the needs of victims of crime and relatives of victims of crime, the Office established the Witness Assistance Service in 1995. The role of the Service is to ensure witnesses have been made aware of their rights and the processes they are likely to experience, and to ensure they are kept aware of the progress of their case. The Service has accepted the role of co-ordinating and liaising with solicitors in the Office and also with other bodies such as Centres Against Sexual Assault to encourage appropriate regard being paid to the needs of victims.

The Committee for Public Prosecutions (which consists of the Director, the Chief Crown Prosecutor, the Solicitor for Public Prosecutions and a person appointed by the Governor in Council) has established guidelines on the treatment of victims of crime by the prosecutorial system having regard to the duties of the Director, Crown Prosecutors, the Solicitor for Public Prosecutions and the Office of Public Prosecutions.

The Committee has established such guidelines and they have been adopted in their entirety by the Office of Public Prosecutions. The guidelines are set out below.

Definition of Terms

For the purposes of these guidelines, "victim" means:

- (a) a person who has suffered physical or emotional harm or loss or damage to property through the commission of a criminal offence; or
- (b) a member of the immediate family of a person who dies or is seriously incapacitated as the result of the commission of a criminal offence; or

- (c) the care giver of a child, or the person responsible for a person who is incapable of managing his or her affairs, who suffers physical or emotional harm or loss or damage to property through the commission of a criminal offence.

Also for the purposes of these guidelines, the term "prosecutor" means:

- (a) the Director of Public Prosecutions; or
- (b) a Crown Prosecutor; or
- (c) the Solicitor for Public Prosecutions; or
- (d) a member of the Staff of the Office of Public Prosecutions; or
- (e) Counsel, other than Crown Prosecutors, briefed by the Solicitor for Public Prosecutions.

Guidelines

1. A victim is entitled to be treated by the prosecutor with courtesy and compassion having regard to the victim's personal rights and his or her physical and mental well-being.
2. A victim has the right to be informed by the prosecutor of the availability of the Witness Assistance Service. Particular consideration will be given to victims with special needs (for example children, persons with intellectual disabilities and persons with mental health issues).
3. A victim has the right to consult the Witness Assistance Service established by the Office of Public Prosecutions and to receive information, support and assistance from appropriately trained staff, including information about and referral to other support services where appropriate.
4. A victim has the right to be informed upon request of the charges laid against the accused person and, where appropriate, of the reasons for charges not being laid.
5. A victim has the right to be informed, where appropriate, of any modification to charges laid against an accused person or of the reasons for the acceptance of a plea of guilty to a lesser charge or fewer offences.
6. A victim has the right to be advised of the withdrawal of a charge or the filing of a nolle prosequi (that being the discontinuance of a criminal prosecution in one of the higher courts).
7. A victim has the right to be provided, where appropriate, with the details of the venue and hearing date of a matter and the outcome of the court proceeding.

8. A victim has the right to be informed about the processes and procedures of the criminal justice system and the victim's probable involvement in that system.
9. A victim has the right to be informed as to the making of any bail applications where a prosecutor is aware that an accused has made such an application and where there is a possibility that the victim may be endangered should bail be granted, he or she has the right to be consulted with respect to any conditions of bail.
10. A victim has the right to be informed of his or her entitlement, after the conviction of the accused person, to prepare and file with the court a Victim Impact Statement setting out the full effect of the crime upon him or her, which may be taken into account by the court in the sentencing process and in support of any proceeding for compensation. A victim should be informed of his or her right to attach a medical report to the Victim Impact Statement.
11. A victim has the right to be advised, where appropriate and possible, of the institution of any relevant appeal proceedings and the outcome of those proceedings. A victim in whose favour an order for restitution or compensation has been made should be informed if the operation of the order has been suspended by the institution of appeal proceedings. A victim should also be informed of the powers the Court of Appeal may exercise in relation to the order upon determining whether or not a sentence or conviction should be quashed.
12. A victim has the right to be informed of his or her entitlement to make application for compensation in respect of loss or damage to property or pain and suffering as a result of the offence and to make application for restitution of property. A victim should be informed of the circumstances in which the Office of Public Prosecutions will become involved in the making of applications on behalf of an applicant pursuant to s.84, s.85 or s.86 of the Sentencing Act.

A victim should also be informed of their ability to receive compensation from the Victims of Crime Assistance Tribunal, prior to any finding of guilt. "Special financial assistance" is available from the Tribunal for "significant adverse effects" of an act of violence in addition to compensation for medical and counselling expenses; see ss.8, 8A, 10, 10A and 12 Victims of Crime Assistance Act 1996.

In addition to the established guidelines on the treatment of victims it is important that witnesses generally are kept informed of the progress of proceedings in which they are interested. Upon request witnesses should be advised of the final outcome of criminal proceedings, the sentence imposed, and any appeal proceedings. This may be particularly relevant where an order for compensation pursuant to s. 85B or 86 or an order for restitution pursuant to s.84 of the Sentencing Act has been made and the operation of the order has been suspended.

At an early stage of proceedings it is desirable that witnesses are informed about the prosecution process and their role in it. In the case of a child witness the prosecutor should ensure that the child is appropriately prepared for and supported in his or her appearance in court. Special needs or conditions of all witnesses should be given consideration and where appropriate witnesses should be referred to the Witness Assistance Service.

APPENDIX 3

DIRECTOR'S POLICY WITH RESPECT TO VICTIMS' ELIGIBILITY TO MAKE VICTIM IMPACT STATEMENTS, AND THE ROLE OF THE OPP AND THE DIRECTOR THEREIN.

Section 95A(1) Sentencing Act 1991 ("the Act") which was amended by Act 24/1994, states that where a court finds a person guilty of an offence, a victim may make a Victim Impact Statement (V.I.S.) to the court for the purpose of assisting the court in determining sentence. An additional purpose for the V.I.S. was provided for in Act 19/1999, s.11. The V.I.S., including any medical report attached to it, may be referred to and relied on by the court when considering the making of a compensation order under s.85B [s.85F(2)]. The statement may be made in writing by statutory declaration, or in writing by statutory declaration and orally by sworn evidence (s.95A(2)). A medical report attached to a V.I.S. must be in writing and may include any document which the medical expert intends should be read with the statement [s.95BA(2)].

The effect of the relevant transitional provisions of Act 19/1999 is that the amendments will apply to any application for compensation and any V.I.S. made to the court on or after 1 January 2000 regardless of "when the offence was committed, or the finding of guilt made, or conviction recorded or the application for compensation made."

The following policy specifies who is a "victim" for the purposes of making a V.I.S., the role of the Office with respect to the production of a V.I.S., the exclusion of inadmissible material contained within a V.I.S., and the prosecutor's role with respect to witnesses who give oral evidence under s.95D and s.95E of the Act.

Eligibility of "victim" to make a Victim Impact Statement

Section 3 of the Act exclusively defines a "victim" as a person who suffers injury, loss or damage as a *direct* result of an offence regardless of whether it was reasonably foreseeable (emphasis added). Notwithstanding that this may appear to restrict the making of a V.I.S. to persons against whom the offence was committed, there is common law which supports an extended interpretation of a victim to include family members of the "direct" victim in certain circumstances. In light of the common law and the Explanatory Memorandum to the Bill which was tabled at the time of the Second Reading Speech, the Director's policy is that a victim includes:

- (a) a person who has suffered physical or emotional harm or loss or damage to property through the commission of a criminal offence;
- (b) a member of the immediate family of a person who dies or is seriously incapacitated as the result of the commission of a criminal offence;

- (c) a member of the immediate family of, or the guardian of, a child who suffers physical or emotional harm or loss or damage to property through the commission of a criminal offence.

This broad interpretation of "victim" is supported by the Explanatory Memorandum to the Bill which was tabled at the time of the Second Reading Speech, and which stated *inter alia* that "It is intended that the definition of victim may include for example the parent of a child who has been sexually assaulted or the relatives of a murder victim". Further, S.35 of the Interpretation of Legislation Act 1984 clearly allows such statements to be used as an aid to the interpretation of the terms used in the Act, and consequently supports the broad interpretation. This interpretation is consistent with the Information Booklet on V.I.S. provided by the Attorney-General.

This broad interpretation has received curial support from cases such as *R v Miller* [1995] 2 VR 348 at 354, *R v Van Den Boom* (1994) 20 MVR 210 and *R v Barling* ([1995] 79 A. Crim. R. 131). Furthermore, the Court of Appeal in *R v El - Rahi* (unreported judgment 19 August 1997) took into account V.I.S. from the deceased's victim's mother, father, sister and girlfriend which described the deceased victim's character and the effect of his death on the family, in sentencing the accused. Notwithstanding that there were earlier cases that appeared to support the narrow definition of a "victim", they are no longer good authority.

It should be noted that once the eligibility of a person to make a V.I.S. is satisfied, s.95A(3) allows others to make the V.I.S. on behalf of that person:

- (a) who is under the age of 18 years; or
(b) who the court is satisfied is incapable of making the statement because of mental illness or for any other reason; or
(c) that is not an individual, for example a corporation.

By an amendment made by Act 19/1999 a medical report may be attached to a V.I.S. [s.95BA(1)]. A medical report is defined in s.95BA(2) as "a written statement on medical matters concerning the victim made and signed by a medical expert..." A "medical expert" includes "medical practitioner, dentist or psychologist". Counsellors would not appear to be included in the definitions contained in s.95(BA).

Role of the O.P.P. with respect to V.I.S.

Section 95C of the Act makes it clear that where the "victim" produces a victim impact statement, the obligation is upon him or her to file a copy with the court and to provide copies to the defence and the prosecutor including any medical report attached to the V.I.S. Sections 95A and 95C make it clear that the preparation and making of such a statement is the responsibility of the victim. Following from these sections, it is the Director's policy that the O.P.P. has no formal role in assisting the preparation of drafting of a V.I.S. However, staff should inform victims that the Information Booklet provided by the Attorney-General provides guidance in drafting a V.I.S., and also refer victims to the Victims Referral and Assistance Service (V.R.A.S.) on 9603 9797 or 1800 819817 for assistance in drafting V.I.S. and counselling.

With regard to excluding inadmissible material from a V.I.S. or any part of a medical report attached to the statement, it is the Director's policy that this determination is primarily the responsibility of the sentencing judge. This follows from the policy expressed above as to the role of the O.P.P. in relation to the production of a V.I.S., and from s.95B(2) of the Act which states that "... the court may rule as inadmissible the whole or any part of a victim impact statement including the whole or any part of a medical report attached to it" (emphasis added). Notwithstanding this, where a prosecutor has possession of a V.I.S. and identifies clearly inadmissible evidence in it or in an attached medical report, he or she should bring it to the attention of the Court to prevent sentencing error. Regard should be had to the definitions of "medical report" and "medical expert" in s.95B(2). It should be noted that a sentencing judge is not required to aver to the particular material contained within a V.I.S. which he/she relies upon, unless objection to certain material contained therein is taken (*R v Dowlan* [1998] 1 VR 123, 140).

Where a victim, or a person who has made a V.I.S. on behalf of a victim, or a medical expert who has made a medical report attached to a V.I.S., is called to give oral evidence as per s.95D and/or evidence is lead from any other witness in support of or relating to a matter contained in a V.I.S. or medical report attached to it, pursuant to s.95E of the Act, prosecutors should make relevant objections where the questions seek to elicit inadmissible material. Further, where it appears that a witness wishes to place material before the court, the prosecutor should re-examine where appropriate, and in so doing act *amicus curiae*.

This Policy, which will be monitored and reviewed during its implementation, supersedes all previous policies with respect to the material contained herein. Further, this Policy should be read in conjunction with Policy 4.6.5 with respect to the evidentiary status of a V.I.S., the relevance of a V.I.S. to sentencing and to applications under s.85B of the Act and Policy 7.6.9 with respect to making pain and suffering compensation applications on behalf of victims of crime pursuant to s.85B of the Act.