



Government of South Australia

Commissioner for Victims' Rights



Unlocking the Homicide Maze

Information for people affected by homicide

Comment by the Founder of the Homicide Victims Support Group of South Australia Inc.

This book was written as an informative guide to help families and friends who have lost a loved one through homicide along the difficult journey to rebuild a new life.

Information is a key to saving extra trauma for victims' families by providing answers to some of the many questions that arise, and to help unravel the complex legal system.

When the tragedy of homicide invades our lives we often don't know where to go to find simple answers, so it is hoped this book, with its dictionary of terms, flow chart of proceedings and list of resources for contact in each area, will be a useful tool.

The Homicide Victims Support Group (HVSG) of South Australia Inc was formed in 1994, in memory of my daughter Allison, and to help families struggling to come to terms with the reality of homicide feel less alone through the support of others who have suffered a similar experience, and to educate ourselves and others to the needs of our families. We are extremely grateful to Filomena Merlino, Manager of the Director of Public Prosecutions Witness Assistance Service, who undertook to co-write and oversee the creation of this handbook, and to all those who contributed their expertise to bring together a guide to cover as many aspects as possible victims' families may encounter.

I would also offer a special thanks to the Commissioner for Victims' Rights, Michael O'Connell, and his staff for their work to produce this third version of the booklet.

Even though nothing can erase the pain brought about by homicide we hope that through information your journey will be a little easier. I have often heard HSVG members say we look for something positive to come out of the loss of our loved ones. I see this book as a positive move to lighten the load for the families of future victims, and dedicate it to the memory of all the special loved ones we have lost, and the courage of HSVG members who are willing to share their experience to help others.

May you all find that glimmer of hope and support through what you gain from this book.

A handwritten signature in black ink that reads "Lynette Nitschke". The script is fluid and cursive, with the first letter of each word being capitalized and larger than the others.

Lynette Nitschke

Founder

Homicide Victims Support Group of South Australia Inc.

Foreword

Homicide is a most heinous crime. Those who survive the victim – especially family and friends – have their lives suddenly and horribly disrupted. The initial shock and disbelief are just the beginning of a myriad of emotions that families experience as they also deal with practical matters (such as arranging the funeral) and contend with the demands of the police investigation and criminal justice.

Nothing prepares these people for their suffering. For them, life will never be the same.

We all grieve when a loved one dies. Grief after homicide, however, can be accompanied by anger, anxiety, depression and fear. In the midst of their grief, families can be drawn into the police investigation, the prosecution, court proceedings and, should the killer be caught and convicted, the prison system. These people did not choose to enter this strange, legal world with its technical and formal processes.

A failure to support those traumatised can add to the harm caused by homicide. A public official's real or perceived lack of empathy, for instance, can strike a second wound. It is important that people affected by homicide are treated with respect and dignity, and that their needs are not forgotten.

This is the third edition of *Unlocking the Maze*. The first was inspired by Lynette Nitschke who has played a major role in the preparation and editing of each edition since. This edition uses clear, simple language to explain the criminal justice process and its legal terms. It describes the coronial process and criminal proceedings; and also

suggests how families might deal with the media. As well, it describes sources of help for victims, including the services offered by the Witness Assistance Service (Office of the Director of Public Prosecutions), the Homicide Victims Support Group and the Victim Support Service.

Although I wish there was no need for this booklet, crime statistics show that homicide will happen. When it does, I hope that this booklet serves homicide victims' families and others as a useful and practical guide to the criminal justice system. It will not answer all the questions victims' families will have, but it does answer some of the most commonly asked questions.

Families and friends of homicide victims have told me that previous editions of this booklet served as informative guides to a 'strange place' that they have suddenly entered. As the title suggests, this book provides some keys to unlock the mysteries of that place. Alas, it is a place that none of us ever want to visit. It is not a place of choice.

I hope, however, that families and friends of homicide victims will find this booklet as useful.

A handwritten signature in black ink that reads "Michael O'Connell". The signature is written in a cursive, flowing style.

Michael O'Connell
Commissioner for Victims' Rights

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Aims

This publication aims to:

- explain processes in simple, easy-to-understand language
- provide families and friends of homicide victims with accurate information about the prosecution services and other systems they are likely to encounter
- demystify the criminal justice system
- provide an information section for easy access to services
- ensure victims are aware of their rights as victims of crime; and
- provide a glossary of terms you may come across.

Declaration of principles governing treatment of victims of crime

The Parliament for South Australia passed a declaration of principles to govern the way public agencies and officials deal with victims of crime. The principles are not enforceable in criminal or civil proceedings; and do not give rise to any right to damages for breach; and do not affect the conduct of criminal proceedings. Public agencies and officials, however, are authorised and required to have regard, and to give effect, to the principles so far as it is practicable to do so having regard to the other obligations binding on them.

1. A victim should be treated:
 - (a) with courtesy, respect and sympathy; and
 - (b) with due regard to any special need that arises –
 - (i) because of the victim's –
 - age
 - sex
 - race or ethnicity
 - cultural or linguistic background; or
 - (ii) for any other reason.
2. A victim should be informed about health and welfare services that may be available to alleviate the consequences of injury suffered as a result of the offence.
3. A victim should be informed, on request, about:
 - (a) the progress of investigations into the offence
 - (b) the charge laid and details of the place and date of proceedings on the charge; and

- (c) if a person has been charged with the offence – the name of the alleged offender¹.
4. A victim should be informed, on request, if an application for bail is made by the alleged offender – the outcome of the application.
- If a police officer or a person representing the Crown in bail proceedings is made aware that the victim feels a need for protection from the alleged offender –
- (a) the police officer or other person must ensure that the perceived need for protection is brought to the attention of the bail authority²; and
- (b) reasonable efforts must be made to notify the victim of the outcome of the bail proceedings and, in particular, any condition imposed to protect the victim from the alleged offender (unless the victim indicates that he or she does not wish to be so informed).
5. A victim should be informed, on request, if the prosecutor decides not to proceed with the charge, to amend the charge, or to accept a plea to a lesser charge or agrees with the defendant to make or support a recommendation for leniency – the reasons for the prosecutor’s decision.

A victim of a serious offence should be consulted before any decision is made –

- (a) to charge the alleged offender with a particular offence; or
- (b) to amend a charge; or

¹ Section 64 of the *Young Offenders Act 1993* provides a mechanism for exercising this right in relation to a young offender.

² Section 10(4) of the *Bail Act 1985* requires that where there is a victim of an offence, the bail authority must, in determining whether an applicant for bail should be released on bail, give primary consideration to the need that the victim may have, or perceive, for physical protection from the applicant.

- (c) to not proceed with a charge; or
 - (d) to apply for an investigation into the alleged offender's mental competence to commit an offence or mental fitness to stand trial.
6. A victim of an offence is entitled to be present in the courtroom during proceedings for the offence unless the court, in accordance with some other Act or law, orders otherwise³.
 7. A victim should only be asked to attend proceedings related to the offence if the victim's attendance is genuinely necessary.
 8. A victim who is to be a witness for the prosecution at the trial of the offence should be informed by the prosecution about the trial process and the victim's rights and responsibilities as a witness for the prosecution.

The information should be given (if practicable) so as to allow the victim sufficient time to obtain independent advice, and arrange independent support, in relation to the exercise of those rights or the discharge of those responsibilities.

9. A victim should be protected as far as practicable from unnecessary contact with the alleged offender and defence witnesses during the course of the trial and in court proceedings⁴.

³ See also section 29A of the *Evidence Act 1929* (which requires that, where a victim of an offence is a witness in the proceedings, the court can only order the victim to leave the courtroom until required to give evidence if the court considers it appropriate to do so) and section 24 of the *Youth Court Act 1993* (which allows a victim and a person chosen by the victim to provide support for the victim to be present during Youth Court proceedings for the relevant offence).

⁴ Section 13 of the *Evidence Act 1929* contains special provisions for the protection of a person who is a "vulnerable witness" within the meaning of that section.

10. There should be no unnecessary intrusion on a victim's privacy. In particular, a victim's residential address should not be disclosed unless it is material to the prosecution or defence.
11. If a victim's property is taken for investigation or for use as evidence, the property should, if practicable, be returned to the victim as soon as it appears that it is no longer required for the purposes for which it was taken.
12. A victim is entitled to have any injury, loss or damage suffered as a result of the offence considered by the sentencing court before it passes sentence⁵.
13. A victim should have access to information about how to obtain compensation or restitution for harm suffered as a result of the offence.

If the prosecutor is empowered to make an application for restitution or compensation on behalf of a victim in criminal proceedings –

- (a) the prosecutor should bring that fact to the attention of the victim; and
 - (b) the prosecutor should, if asked to do so by the victim –
 - (i) make the application on the victim's behalf; and
 - (ii) bring to the attention of the court any relevant information provided by the victim in connection with the application.
14. A victim should be informed, on request, about:
 - (a) the outcome of the proceedings based on the charge and of any appeal from those proceedings
 - (b) details of any sentence imposed on the offender for the offence.

⁵ Sections 7 and 7A of the *Criminal Law (Sentencing) Act 1988* provide ways for exercising this right. See also part 8A *Criminal Law Consolidation Act 1935*.

15. A victim who is dissatisfied with a determination (for example the sentence) made in relation to the relevant criminal proceedings (being a determination against which the prosecution is entitled to appeal) may request the prosecution to consider an appeal against the determination. A victim must make this request within 10 days after the making of the determination. The prosecution must then give due consideration to that request.
16. A victim should be informed, on request:
- (a) if the release of the offender into the community is imminent – details of when the offender is to be released
 - (b) if the offender was ordered to undertake community service – whether the offender completed the community service; and
 - (c) if the offender was subject to a bond – whether the conditions of the bond were complied with.
17. A victim of an offence is entitled to make written submissions to the Parole Board on questions affecting the parole of a person imprisoned for the offence⁶.
18. A victim should be informed, on request:
- (a) if the offender is sentenced to imprisonment and later makes an application for release on parole – the outcome of the proceedings and, in particular, any condition imposed to protect the victim from the offender.

⁶ See section 77(2)(ba) of the *Correctional Services Act 1982*.

(b) if the offender is subject to a supervision order under Part 8A of the *Criminal Law Consolidation Act 1935* (which applies to mentally incompetent offenders) and the offender, or any other person, later makes an application for variation or revocation of the 20 order or an application for review of the supervision order is made – the outcome of the proceedings and, in particular, if the offender is released on licence, any conditions imposed on the licence.

19. A victim should be informed, on request:

- (a) if the alleged offender absconds before trial – the fact that he or she has absconded
- (b) if the offender escapes from custody – the fact that he or she has escaped; or
- (c) if the offender, having escaped from custody, is returned to custody – the fact that he or she has been returned to custody.

20. A victim should be informed, on request, about procedures that may be available to deal with a grievance the victim may have for non-recognition or inadequate recognition of the victim's rights under this Declaration.

Please note that a victim is not entitled to information that might jeopardise the investigation of an offence.

Police investigation of homicide

Key participants

Many services are involved in the investigation of a homicide. All have an important and vital role to play in solving what happened, how it happened and who was involved. The police are often the first to attend the scene when they have been notified a victim's body has been found.

The following key players are often involved in investigations.

Major crime investigation section

Investigators: a specialist homicide investigation unit in the South Australian Police, Investigators are often involved in a consultation or management role of the investigation; and

Victim Contact Officers (VCOs): police officers who provide information on support services and resources available to the victim's family. VCOs also provide referrals to professional counselling services, information about compensation and support through the identification process of the victim's body if required. The South Australian Police are the only police service in Australia to have VCOs working within the Major Crime Investigation Section. VCOs are also located at major police stations in South Australia.

Local service area investigation section

The local police station (covering the area where the offence took place), Investigators also work closely with Major Crime Investigators.

Crime scene investigators

Police officers who specialise in the collection and examination of evidence at the scene, these investigators also take photographs of the scene.

Pathologists

Pathologists from Forensic Science examine the victim's body and the immediate surrounding area where it is located.

Uniform patrols - police

Attend the scene of the crime and secure the scene by placing "DO NOT CROSS" tape around the scene. Police patrol sometimes door knock the local area and search the area outside the crime scene for clues.

Ambulance officers

Usually called by the person who has found the victim's body, the ambulance service attends and examines the victim's body for evidence of life.

Media

The media are sometimes involved at the scene of the crime. They also can play a part in assisting police collect information from the public, through programs such as Crimestoppers. All calls from the public are immediately transferred to the Investigation Team Leader. News breaks announcing the murder can happen any time from two to eight hours after the discovery of the victim's body (see page 30, Dealing with the media).

Role of major crime investigation section

The Major Crime Investigation Section may be involved in a murder investigation in a consultancy role with local Investigators or take a lead role in the management of the investigation. An Investigation Team Leader (usually a Detective Senior Sergeant), will manage the investigation.

Major Crime Investigation Section will:

- provide a specialist investigation service to local police areas and the community of South Australia;
- attend all homicides in South Australia; and/or
- act as a consultant to ensure the best available resources are used in each investigation; and
- call on the assistance of specialist services such as Forensic Science, Ballistics, Fingerprints, Medical etc.

The crime scene

The process of investigating, securing and collecting evidence from a crime scene can take between two and eight hours, depending on the circumstances. Crime scenes are often held secured, for one to two days to ensure all evidence is collected. No access to the public or the victim's family is allowed during this time.

Each case may vary but as a guide the steps in securing and collecting evidence from crime scenes can occur in the following order:

- the local uniform police are the first to attend, and ensure no contamination of evidence by placing the "DO NOT CROSS" tape around the area;
- Detectives (Investigators) from local police stations, Major Crime Investigators, Police Crime Scene Examiners and other specialist services (depending on circumstances) arrive at the scene;
- examination of the scene, photographs and evidence is collected – Forensic Science pathologists give advice to Investigators on time of death, probable cause, possible weapon used etc;
- the victim's body is placed into a body bag and transported to the City Mortuary, where the postmortem will take place;

- at some time, there is a requirement for the victim's body to be identified either at the scene or at the mortuary, by a friend or family member;
- a viewing of your loved one can be arranged at the mortuary if you wish.

Delays

Any property seized as relevant evidence to be used as exhibits in the trial, will not be returned until completion of the trial (minimum 12 months) or until legal requirements are completed.

There could be delays in releasing the crime scene, if a house or similar, until the collection of evidence has been completed (possibly up to a day or two).

There may be delays in releasing the victim's body to the family for burial, in particular when waiting for results of forensic tests and considering whether further tests are required.

Retrieval of personal belongings

If a house is being held as a crime scene, Investigators will usually allow access so family members can collect personal items. On occasion the victim may have been wearing jewellery that holds sentimental value to the family. Many family members are concerned about retrieving these valuables. In some situations police are able to hand over these items immediately. In others it may be necessary to keep certain personal items for evidence at trial.

To obtain the items after the trial, family members are requested to collect them from the police station. The police Investigator managing the case will provide an explanation as to the status of personal items worn by the victim at the time, and what is required for evidentiary purposes.

Taking statements

Police will require an identification statement and a statement from the last person to see the victim alive.

Generally statements are taken from:

- all persons involved in the investigation;
- they may be hand-written, typed directly onto the computer, tape-recorded or video-recorded;
- for trial, they must be typed onto a Declaration form, signed and witnessed for presentation to the court.

The accused right to silence

The right to silence is a fundamental right under our system of justice. Neither Police Investigators, Prosecutors nor Judges in court at the time of trial, can force an accused to answer questions or give evidence.

When a suspect is identified, he/she is questioned by the police, this is called a record of interview. Before police commence questioning, they caution the suspect that he/she does not have to answer any questions if he/she does not wish to. Failure to notify suspects of this right can jeopardise the prosecutor from using the record of interview at trial.

What happens when there is no suspect?

Unsolved murders are never filed and forgotten. Police during the investigation utilise the media, presenting public appeals to the community for information by television programs such as Crimestoppers or Australia's Most Wanted. Articles are also prepared by *The Advertiser* and new information is brought immediately to police attention and pursued by Investigators.

When police have exhausted all avenues of investigation, an application is made to the Government by police to issue a reward for more information. This may bring a response from the public.

Following this the file is 'suspended' in the Major Crime Investigation Section (this could take up to several years). After a period of time, the investigation process and file is examined by another investigation team to ensure all lines of enquiry have been followed up. Often with new forensic procedures, the file is reviewed to investigate whether new procedures will assist police in solving the identity of the accused.

In all cases a report is prepared for the State Coroner (see page 19, the Coroner's Office). When the Coroner decides to hold an inquest, the investigating police in consultation with the Senior Counsel (lawyer) assisting the Coroner, closely examine any new information that may come from the inquest.

Bail Act

What is bail?

After a person is arrested they can be released again, on their written undertaking to appear in court when required. This undertaking is a bail agreement, a contract between the accused and the court. As well as the agreement to appear in court, it will contain other conditions (see below).

Who can grant bail?

- *The police*: but this would be unusual on a murder/ manslaughter charge.
- *A magistrate*: on application by telephone, prior to a court appearance, if police have refused bail, and the accused is unable to appear before a court prior to 4pm the next day.
- *The Magistrates Court*: which is the first court to which the arrested person (accused) is taken.
- *The Supreme Court*: if the Magistrates Court refuses bail, the accused can appeal to the Supreme Court for bail.
- If the accused is granted bail in the Magistrates Court, the prosecution can appeal to the Supreme Court which can overturn the Magistrates Court decision, and refuse bail; or impose other bail conditions.

What factors are considered by the court in deciding whether to grant bail?

Pursuant to the *Bail Act, 1985*, Section 10, the court considers:

- (a) the gravity of the offence in respect of which the applicant has been taken into custody;
- (b) the likelihood (if any) that the applicant would, if released
 1. abscond;
 2. offend again;
 3. interfere with evidence or intimidate witnesses, or hinder police enquiries;
- (c) any need the applicant may have for physical protection;
- (d) any medical or other care the applicant may require;
- (e) any previous occasions on which the applicant may have contravened or failed to comply with a term or condition of a bail agreement;
- (f) any other relevant matter.

In our system of criminal law, an accused is presumed innocent until guilt is proved beyond reasonable doubt at the trial (or until the accused pleads guilty). Consistent with this, there is a presumption in favour of bail. However, when the charge is murder, the seriousness of the charge in many cases is sufficient to justify the court in refusing bail, and keeping the accused in custody until trial. This is not always the case; an accused charged with murder may still be granted bail.

However, the court, in deciding bail, must give primary consideration to the need that a victim may have, or perceive, for physical protection from the accused.

Bail terms and conditions

What are they?

A bail authority can impose the following conditions on a bail agreement:

- not to approach or contact a witness either directly or indirectly;
- reporting to police daily or weekly;
- residing at a specified address;
- home detention;
- surrendering passport;
- monetary conditions: the accused may be required to forfeit a specified amount of money if he/she breaches his/her bail; and can be required to lodge cash “up front” with the court;
- guarantors: one or more guarantors can be required, who will also forfeit a specified amount of money if the accused breaches his/her bail; and can be required to lodge cash with the court.

Who sets the conditions of bail?

The police officer, magistrate or court that grants bail sets the conditions. However, the police or the DPP is given an opportunity to request particular conditions. The investigating police would normally advise the prosecutor of any appropriate conditions required by victim's family or witnesses, in addition to the usual conditions imposed.

When can bail conditions be set?

When bail is first granted, conditions are set. If bail is granted, the accused can apply at any time, to the court (either Magistrates or Supreme) to vary the conditions. Whether that actually happens will depend on the nature of the application. The DPP is always given an opportunity to make submissions.

The DPP will make an application to vary the conditions of bail in some circumstances. This can occur at any stage in the process and requires a court hearing.

Rights of the victim's family

The victim's family, through consultation with the police, or the DPP prosecutor can:

- request that bail be opposed (bail will normally be opposed in murder/manslaughter cases);
- furnish witness statements on matters relevant to bail, for example, threats that have been made by the accused. These statements can be put before the court.

In some cases, the person may be required to give evidence but witnesses are not usually called at a bail hearing. The court makes the decision based on the witness statements and affidavits lodged by the prosecution and defence.

- request specific terms of bail (if it is granted) such as not contacting them, not coming near their house or place of work etc.
- advise police of breaches of bail, so that the prosecutor can request the court to revoke bail.

In some cases the victim's family is also the accused's family. Where the family wishes to support the bail application, they can speak to either the police, the DPP prosecutor or the accused's lawyer.

Pursuant to the Declarations of Principles Governing Treatment of Victims of Crime (see page 1), the victim's family should be advised of the outcomes of the bail hearings, by the police or the DPP.

Funerals

Release of the victim's body

While every attempt is made to finalise investigations as promptly as possible, in cases of homicide it is usually at least a week before the body can be released.

In some cases there may be delays due to the investigative process. This can include waiting for results from forensic tests and occasionally tests need to be reapplied. The police officer should be able to keep you informed of delays and why.

The death certificate

When the investigation is complete, the State Coroner advises the Registrar of Births, Deaths and Marriages of his/her findings as to the cause of death. That office will, upon your application, provide a death certificate. There is a cost associated with this process, and often time delays in processing your requested death certificate (see resource section as to the location of the office). In some cases, where legal proceedings are not finalised, an interim death certificate can be issued. For further information please call the social worker at the Coroner's Office (see page 19).

Arranging the funeral

Most families prefer to contact funeral homes directly or ask a close friend or family member to inquire about cost as this can vary considerably. Many prefer to contact a funeral director close to home, or one whom they trust and have dealt with previously. If you are having difficulty deciding who to contact please call Victim Support Services or Victim Contact Officers from the Major Crime Investigation Section. Your priest, minister or religious person can liaise with the funeral director to

make arrangements for the funeral. Don't be afraid to ask for special requirements for the service, such as certain music or flower arrangements. There are many possible arrangements and locations for the funerals. A good funeral director should be able to assist and advise you.

Victims' compensation entitlements for funeral cost

Victims of Crime Compensation is a scheme in South Australia that assists victims of crime who have suffered a loss or injury to receive compensation. The sums payable are dependent upon the date of the offence and the resultant effects on the victim-applicant.

Compensation for funeral expenses may be paid to the person who covers the cost of the victim's funeral up to the amount of \$7,000. Applications for the funeral expenses must be made within 12 months from the date of the offence¹.

To lodge an application, you should consult a private lawyer. Should you require assistance in selecting a lawyer, please contact the Victim Support Service (phone 1800 VICTIM (1800 842 846)), the Victim Contact Officer in Major Crime Investigation Section or Commissioner for Victims' Rights.

¹ The compensation payable of \$7,000 dollars or the cost of the funeral whichever is the lesser, was correct at the time of publication of this booklet in February 2015 and may be subject to change.

The Coroner's office

The role of the coroner's court

The State Coroner must enquire into every death that is reported, in accordance with the Coroners Act. The enquiry is to establish the cause and circumstances of the death, and is required when someone dies violently, or from unusual, suspicious circumstances or from an unknown cause. Deaths in custody and some deaths in other state institutions must also be investigated.

Enquiry

Police officers compile reports for the Coroner that include identification of the deceased, and details as to the place and manner of death. A pathologist will advise the Coroner as to the cause of death. Often it will take some time for these details to be compiled.

Postmortems

A postmortem examination, also known as an autopsy, is a step-by-step examination of the outside of the body, and internal organs by a specialist doctor, known as a pathologist. The examination is carried out at the direction of a Coroner and is required to establish the cause of death. Some body tissue and organs require very specialised examination which varies, depending on the cause of death. In many cases, samples of tissue are taken for further analysis. It may be necessary to retain entire organs for more detailed examination to determine or confirm the cause of death.

In homicide investigations, postmortems are a necessary part of understanding the cause of death, collecting forensic evidence and estimating the time of death. Postmortems are conducted as soon as possible after the finding of the victim's body.

Should you have concerns about the postmortem, you need to immediately discuss this with the Social Worker from the Coroner's Office on (08) 8204 0600, or the police Investigator.

Inquest

In some cases, the investigation will proceed further and an Inquest (a formal court hearing) may be conducted. The Coroner's Court operates in an inquisitorial, rather than an adversarial manner. The Coroner can therefore actively ask questions and pursue lines of enquiry, however the Coroner is prevented from making a finding of criminal or civil responsibility into a death and cannot make recommendations as to criminal charges. The Coroner can make recommendations to relevant authorities about how certain deaths might be prevented in future.

Social work service

The Coroner's Office also provides a social work service to assist families. If you have any questions please telephone (08) 8204 0600 and ask to speak to a social worker.

Coping after the trauma

Surviving

The first concern you may have on hearing the news that someone you love has been murdered is, **how am I going to survive?** Struggling with the immediate questions of why, how and when is emotionally exhausting. To add to your burden, other symptoms of grief and traumatic stress may also increase your sense of “not coping” and isolation.

Psychological and emotional symptoms may include: shock, disbelief, anguish, irritability, numbness, confusion, anger, even guilt and shame. Physical symptoms may also become apparent such as: lack of appetite, insomnia, nightmares, constant crying, fatigue, headaches and extreme weight loss or gain. Socially you may feel isolated and feel no-one really understands. You might be fearful of being alone or that you are somehow different and life will never be the same. There are no hard and fast rules about what you or other family members may experience. Your symptoms might not occur in a particular order: you may suddenly feel ‘stuck’ on one symptom or experience several in a few days or even hours. What we do know about coping with trauma is that the experience is different for every individual. Dealing with the symptoms and moving on is a very personal and unique experience. You must not feel that something is wrong with you, if it becomes difficult for you to move on at any particular time, or that you should be over the death by now. Remember that, with time, you will learn to live with what has happened. However it will take a long time, probably more than dealing with the death of a loved one through a long-term medical condition, where you have had an opportunity to say your goodbyes, to gradually begin to deal with your grief.

There is hope your energy levels will return gradually and surviving will cease to be a daily or even weekly struggle. Be kind to yourself. Recognise that you are experiencing symptoms of grief. Find someone who will listen. This may initially seem an impossible task; persist if at first you don't succeed. Do not be concerned with others' ability to cope with your anguish. It is important to seek help if you need it. If you are not able to find someone in your network of friends, family or colleagues, consider professional counselling.

The Homicide Victims Support Group (HVSG) has members who have experienced the loss of a loved one through homicide. Although your healing and coping are a very individual experience, similar feelings and thoughts have been experienced at different times by individuals in the group. Sharing your experience with the HVSG may decrease your sense of isolation and give you access to others who are willing to listen and assist you. Members also have had dealings with a range of systems with which you may be coming into contact, such as police, DPP, counsellors or the media. Useful insights into other members' experiences may provide handy hints for you and your family when dealing with these services.

Counselling

As homicide is a sudden, shocking and traumatic experience, your usual methods of surviving are strained. Professional counselling can offer someone to talk to in a confidential and safe environment, without concerning yourself about whether the counsellor is coping with your thoughts and feelings.

Professional counsellors have extensive knowledge in working with individuals who are in trauma, and about available resources and services. Specific counsellors, such as those working at Victim Support Services and the Witness Assistance Service, also have a sound

understanding of the criminal justice system and will be able to provide accurate information about your rights as a victim of crime and information about the prosecution process.

Local professional counselling is also available for those in remote country areas or outer metropolitan suburbs if transport is a concern. Victim Support Services or the Witness Assistance Service will help find a counsellor to meet your needs.

Deciding to see a counsellor does not mean you have a problem. Homicide is a traumatic experience. Accessing help if you need it is a priority.

Counselling, like other coping strategies, is a very personal decision. Some people find talking to their friends or family is sufficient. Others attend the Homicide Victim Support Group and find this support to be all they need. Some may seek assistance from their local General Practitioner to talk or for a referral to counselling.

In the early stages you might not know what you need. The decision to talk to someone might not occur until after the criminal trial or just before the trial, when you may be feeling particularly vulnerable and anxious about the trial outcome.

Whatever you decide, it is important to remember there is no miracle cure. Counselling, like all other solutions, takes time. After all, your aim is to heal and, as mentioned in *Surviving*, this is a very personal journey.

Occasionally professional counsellors will talk about post-traumatic stress. Please ask your counsellor for information on this reaction. It is the name given to describe the serious reaction you may be having to your trauma.

Accessing information

This booklet has a resource section which starts on page 83, and provides contact details of services you may require. Each section in this booklet outlines the role and services provided by a specific organisation, and provides contact details, if further clarification is needed.

If you are uncertain about where to access information, you can speak to either your counsellor, police or the Witness Assistance Officer from the DPP.

Victim Support Service (VSS)

Victim Support Service (VSS) is a community based not-for-profit organisation in South Australia that provides a comprehensive range of services for people who have suffered as a result of criminal offence. In cases of homicide it includes all those affected: family members, friends, work colleagues of the victim and the wider community or neighbourhood.

Services provided by VSS

All services provided by VSS are confidential and free of charge. Services for those affected by homicide include:

- support and advocacy at any time after the crime: from the first days to years down the track, if necessary;
- information about your rights as a victim, including victims' of crime compensation and funeral expenses;
- liaison with police and other professional groups or agencies with whom you have contact within the Criminal Justice System;
- linking with appropriate agencies and service providers that can effectively and compassionately respond to your needs;
- professional face-to-face or telephone counselling to explore and address the psychological, emotional and social impact of homicide and to identify practical and emotional support you require;
- workshops and group support;
- court support and information for family and friends when they are required to give evidence or wish to attend court (see following page);

- assistance with preparation of Victim Impact Statements.

VSS also provides support to professionals and agencies supporting those affected by homicide including:

- training seminars for professionals who have contact with those affected by crimes including homicide;
- facilitating a regular interagency meeting of those working with homicide survivors.

VSS has an extensive resource library with books, videos, DVDs, CDs and tapes that you may find helpful. You can access printable fact sheets and other homicide related information and resources on the VSS website:

www.victimsa.org

Court support service

For family and friends of the homicide victim, the prospect of going to court to give evidence or attending a trial can be emotionally demanding. Victim Support Service provides an excellent court companion service.

A Court Companion is a trained volunteer. They offer support, comfort, and information during the court proceedings, or they can simply accompany you at the trial. They can meet you prior to the trial to show you around court, so you can become familiar with the layout and facilities. The Court Companion can also give you information about the court process and explain the different roles of people you will see in the court room.

At trial time the Court Companion can:

- access safe waiting areas;
- sit with you before, during and after giving evidence;
- sit with you in court while you observe the trial in progress;

- ask court staff to assist in answering any questions you may have;
- approach the prosecutor with any questions you may have;
- accompany you in court while you give your evidence; and
- be with you after you have given your evidence or attended court.

Court Companions are available in most courts throughout the state. To arrange a Court Companion you can contact either your local Victim Support Service or talk to a Police Victim Contact Officer, Witness Assistance Officer for Department of Public Prosecution or coroners Court Social Worker.

To find out more about VSS services for those affected by homicide, please contact the Helpdesk on 1800 VICTIM (1800 842 846). You can also email: helpdesk@victimsa.org or visit www.victimsa.org.

VSS is located at 11 Halifax Street in Adelaide and has seven regional offices in:

Berri, Mt Gambier, Murray Bridge, Pt Augusta, Pt Lincoln, Pt Pirie and Whyalla.

Role of the Homicide Victim Support Group (HVSG)

What is the Homicide Victim Support Group?

The Homicide Victim Support Group (HVSG) is a self-help group that meets on the third Wednesday of every month (except January) at 7pm. The group comprises individuals and families who have suffered the loss of a family member or a friend through homicide (murder or manslaughter). The Group meets at 184 Port Road, Hindmarsh (Anglicare). Members join together for a variety of reasons:

- to help others cope with their trauma;
- to decrease their sense of isolation;
- to share their experiences;
- to provide information about services and systems; and
- to listen to others and share insights into surviving.

The HVSG also acts as an advocate for victims of homicide and their families, whether they are members of the group or not by:

- attending community forums and conferences to educate others on the impact of homicide in the community;
- advocating law reform in the area; and
- ensuring victims' rights are being acknowledged to in the community.

Guest speakers are regularly invited to talk about their area of expertise. Guests have included Judges, the Director of Public Prosecutions and members of the media. This is an

ongoing program, which is developed in consultation with group members as topical issues arise in the community relating to law, policing or detention, as it relates to victims of homicide and their families and friends.

A newsletter is distributed to members regularly. This is an excellent way of keeping in touch with the group, if meetings appear too emotionally difficult to attend in the early stages.

One-to-one meetings can be arranged if you prefer, or telephone support with a group member is also available.

For further information on the HVSG please contact the mobile number 0424 628 300 or for after hours emergencies contact Crisis Care on 131 611.

Dealing with the media

This can be a difficult issue. Some victims want to tell their story and welcome the publicity. Others prefer to maintain their privacy. If you are thinking of giving any information to the media about what has happened, bear in mind the following:

First, you should not speak to the media about the case if someone has been arrested or if there are any legal proceedings in progress. It could affect the case.

Also, if police are still investigating, media publicity could affect their enquiries and you should always **discuss this with police before speaking to the media**. If in doubt about the legal position, check first before giving any information to the media.

Second, the media report may be different from what you expect. The media will gather information from many sources. Your case may be presented in a way you do not agree with, and this can be upsetting.

Third, once the matter becomes public through the media, you or your family may encounter unwanted attention. Be aware, for example, that media publicity might mean that your *children* are the subject of comment or gossip at school. Be careful about exposing children to the media. It is important that you or your family suffer no adverse effects by talking to the media, so consider carefully the possible effects on everyone beforehand.

Remember that you do not have to speak to the media, even if they are very persistent. Your first contact with the media might occur while you are feeling confused and disorientated, common reactions after a crime.

You are entitled to:

- say “no” to an interview;
- require anyone who visits your home uninvited to leave, and call the police if they refuse to do so;
- refuse an interview with a specific reporter even though you may have granted interviews to other reporters;
- say “no” to an interview even though you have previously granted interviews;
- choose the time and place for interviews that suit you;
- exclude children from interviews; children find it hard to make an informed decision about public exposure so it is better to let adults handle this;
- refuse to answer any question you do not wish to answer;
- speak with one reporter at a time;
- request a correction if a report is inaccurate;
- insist that offensive photographs or visuals not be used;
- set conditions to protect your privacy or safety. For instance, you could give an interview on condition that your face be obscured, your name not used or your voice altered, or you could stipulate no photographs in a newspaper interview.

If you choose to speak with the media, consider whether you wish to give an interview, read out a statement, or simply release a written statement. Consider also whether you wish to deal with the media yourself, or use someone else as a spokesperson, perhaps someone experienced in dealing with the media, as a go-between. If you do decide on an interview, decide in advance what you want to say and what you do not wish to comment on. Be cautious about what is recorded or filmed. Once an interview is

recorded, a photograph is taken or an event filmed you have little control over how it is used.

You may decide to wait until you are emotionally ready to deal with the media, this could take up to the end of the criminal process. Ensure at court appearances that the media are aware beforehand if you do not wish to give a statement. This can be relayed to the media by the DPP Prosecutor, Witness Assistance Officer, a Police Person or your own spokesperson.

It is important to remember

The media will compile and report a story regardless of your wishes or co-operation. Providing the media with the correct information and details is often better than journalists speculating or trying to obtain further information through neighbours or work acquaintances of the victim. Even when the correct information is provided to journalists there are no guarantees that what appears in print or on television will be correct, due to editing processes.

The media have an important job to do. If you are having difficulties dealing with or coping with the media attention, please talk to the police investigator involved in your case who will be able to advise you or suggest with whom you should talk.

If you are not happy with the way a person from the media treats you or any of your family, you can complain to:

- the media organisation concerned, ie the newspaper or television station
- the Australian Press Council (for print media)
- the Australian Communications and Media Authority (for broadcasting-related inquiries).

Keep your complaint specific.

Contact details

Check the White Pages of the phone book for specific publishers or broadcasters.

The Australian Press Council, phone: (02) 9261 1930 or 1800 025 712, or online www.presscouncil.org.au

The Australian Communications and Media Authority, phone: 1800 226 667, or online www.acma.gov.au

The decision to prosecute

Police investigation

Police investigate alleged crimes in an attempt to identify the offender(s), and gather sufficient evidence to put the offender(s) on trial. The evidence is taken down in witness statements and forwarded to The Office for the Director of Public Prosecutions (DPP). The DPP then conducts the prosecution (see page 36).

Decision to prosecute

Sometimes, even with the best endeavours of the police, the investigation may not produce sufficient evidence to prove the offence in court, beyond reasonable doubt. This can be so in cases where the police have arrested and charged someone, and even where the magistrate has found a case to answer and committed the matter to the Supreme Court (see page 39, The legal process). The DPP still needs to review the evidence, to determine whether the case should proceed, or whether the charge should be murder, or another charge, such as manslaughter.

Reasonable prospect of conviction

The DPP will only proceed with a charge if, on the admissible evidence (evidence allowed in court), there is a reasonable prospect of conviction. Sometimes following police laying the charge, and the magistrate committing the matter to the Supreme Court, the DPP will decide there is no reasonable prospect of conviction, because:

- evidence gathered by the police is not admissible in court;
- witnesses have changed their evidence during the committal hearing;

- witnesses have been shown to be untruthful or unreliable during the committal hearing;
- further material has been uncovered, which undermines some essential aspect of the prosecution case.

Even in cases where there is a reasonable prospect of conviction, the DPP can decide not to proceed, if a public prosecution is not in the public interest (for example the alleged accused is terminally ill or infirm etc). This would very rarely apply to a homicide case.

Laying the charge

The police initially charge the alleged accused immediately following his/her arrest. The magistrate decides whether there is a case to answer on that charge or some other charges, that is, whether there is sufficient evidence requiring the person to stand trial. The matter is then committed to the Supreme Court.

The DPP then reviews the evidence, and lays an Information in the Supreme Court. This Information will normally contain the same charge(s) that the magistrate committed on, but not always. In appropriate cases the DPP can change the charge. For example, the appropriate charge might be manslaughter, depending upon the circumstances. Should this occur a meeting can be arranged with the DPP to explain why this has taken place.

When a murder charge is laid, there is an alternative charge of manslaughter, which may also be considered by the jury, depending on the circumstances arising at the trial.

The Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions is the independent statutory prosecution authority for the State of South Australia. All crimes against an individual in the community are considered to be a crime against the State. This means that the DPP is the State's lawyer not your private lawyer as would be the case in the Civil or Family Court.

The DPP employs lawyers, social workers and administrative staff to deliver services to the community. Solicitors are lawyers who prepare cases for trial, and prosecutors are barristers who appear in court and present the case. A law clerk assists the lawyers with administration when preparing for a trial.

The DPP will keep you informed of the progress of the case, charges that have been laid, court dates as they arise, and whether you are required to give evidence. Any significant events, such as the accused pleading guilty, will be brought to your attention.

The DPP prosecutors appear in the following courts:

- Magistrates Court;
- District Court of South Australia (not in homicide matters);
- Supreme Court;
- Court of Criminal Appeal; and
- High Court of Australia.

The DPP also offers the Witness Assistance Service staffed by qualified social workers for your assistance.

In summary, the DPP provides the following services:

- legal preparation of cases;
- court appearances on behalf of the State;
- conduct of the prosecution in a criminal trial;
- appearing for sentence hearing;
- appearing in any appeals initiated by the accused and appeals determined necessary by the DPP (see page 55, Appeals);
- assistance and information to victims of crime through the Witness Assistance Service and legal staff pursuant to the Declarations of Victim's Rights;
- providing information and community education about criminal prosecutions and issues for victims of crime; and
- participation in law reform dealing with the core business of the DPP.

Witness Assistance Service (DPP)

The Witness Assistance Service (WAS) provides family members and friends of homicide victims and other witnesses for the prosecution, with information and support through the prosecution process.

The WAS can also:

- provide information to family members and witnesses about court procedures and legal processes;
- provide counselling and referral to available resources in the community;
- liaise between DPP staff and the homicide victim's family members;
- answer any questions you may have about the process;
- arrange a Court Companion at the trial;
- assist in the preparation of Victim Impact Statements;
- provide a tour of the Supreme Court and discuss the trial process; and
- provide information about grievance procedures and making complaints.

For further information about the DPP or the WAS, please contact the WAS on (08) 8207 1529.

The legal process

All criminal cases start with police providing the DPP with a copy of all statements and evidence collected. The DPP consider the file and make decisions on what charges, if any, to lay (see page 34, Decision to prosecute). The accused then appears in the Magistrates Court. The DPP Committal Unit deals with all homicide cases in the Magistrates Court until they are committed for trial. In the Magistrates Court, the Magistrate and lawyers do not wear a wig and gown. However, in the Supreme Court, wigs and gowns are worn by the judge and lawyers.

Magistrate Court appearance

There are three, sometimes five, appearances in the Magistrates Court in homicide matters. This can vary depending on the case. The possible appearances are:

- First Mention;
- Declarations Hearing;
- Rule 20 Argument;
- Oral Committal also called Preliminary Hearing (if Rule 20 granted by Magistrate); and
- Answer Charges (also referred to as Committal).

First mention

This is the first time the accused appears in the Magistrates Court and is usually at the next available court time following the arrest. Bail may be discussed and a time is set for the Declarations Hearing. It is your right to attend should you wish, however you are not required. Often the media attend as it is the first appearance by the accused.

Declarations hearing

The Declarations Hearing provides the Committal Unit prosecutor and defence lawyer (lawyer for the alleged accused), an opportunity to ensure declarations (statements) are handed over to defence and the court from the DPP prosecutor. This is a very brief meeting. You are not required to attend, however you have a right to be present should you wish. At the end of this meeting a date is set for the alleged accused to answer the charges.

Rule 20 Applications and the Preliminary Committal (sometimes called the committal hearing)

Occasionally defence will make a Rule 20 application in the Magistrates Court, for an oral committal. This is similar to a trial where witnesses are required to attend and answer specific questions about certain aspects of the evidence. The magistrate decides whether to approve the application for the oral committal. This can slow down the committal process by a few months while witnesses are arranged and a special time is set. Oral committals do not occur in each matter. Please do not hesitate to talk to the police or DPP prosecutor should you require further information.

The purpose of a preliminary hearing might include:

- clarification of certain elements in witness statements;
- clarification of expert evidence, for example, forensic pathologists or ballistics (guns); and
- for the magistrate to decide if there is sufficient evidence for the accused to stand trial.

Answer charges (also referred to as a committal hearing)

This is the first time the accused is read the charges in court. He/she is required to enter a plea of "guilty" or "not guilty". You are not required to attend this hearing but it

is your right to do so. Should you wish to attend please speak to the DPP prosecutor, Witness Assistance Officer or Police Investigator.

The case may then be committed by the magistrate, that is, the magistrate finds a case to answer, commits the case to the higher court for trial and a date is set for arraignment. In homicide matters the higher court is the Supreme Court.

Supreme Court appearances

Arraignment

Arraignment is the first appearance the accused will have in the Supreme Court. The charges are read out in front of a Justice (Judge in the Supreme Court), and the accused required to enter his/her plea. The accused can change his/her plea from “not guilty” to “guilty” at any time in the process. The accused also nominates his/her wish to be tried by a judge alone or by judge and jury. This is a brief appearance. You are not required to attend, but you may attend should you wish to. A time is set for the next appearance that is a directions hearing.

Guilty Plea

The accused is able, at any stage, to change his/ her plea from not guilty to guilty, even on the morning of the trial. A guilty plea means the DPP are not required to present their evidence at trial. The accused is often then given a reduced sentence, as he/she has saved the State from the burden of a trial, and reduced the trauma to family and potential witnesses of giving evidence. If the accused pleads guilty, it is rare for him/her to appeal against conviction, but he/she may still appeal against sentence (see page 55, Appeals.).

Directions Hearing

The directions hearings are not open to the public. It is a private meeting between the defence lawyer, the accused, the judge and the DPP. A date is set for the trial and any relevant issues are discussed. In complex matters several directions hearings are set as there are many issues to cover before the trial. These hearings are sometimes referred to as mentions. The DPP solicitor or Witness Assistance Officer should be able to provide any further information you may require about this stage in the process.

Trial

The purpose of a trial is to have all relevant and admissible evidence put before the court. It is then for the jury to decide, in light of the legal directions given by the judge, whether the prosecution has proved the guilt of the accused beyond reasonable doubt. If not, the accused will be found "not guilty".

The participants of a trial are:

Justice – a Supreme Court Judge with many years experience in dealing with the conduct of trials. His/her role is to ensure evidence is presented to the court fairly and in accordance with the law. The judge decides on the admissibility of evidence and rules on objections by defence and prosecution counsel. The judge is required to sum up at the end of a trial, after counsel has addressed the jury. In the summing up, the judge directs the jury on the relevant law which the jury must apply in their deliberations. The judge will apply the law to the facts of the case. The ultimate decision on the facts is for the jury.

Jury – consists of 12 people from the community, who are selected at random during the empanelling process. The jury is required to hear all the evidence before deciding on its verdict. In homicide matters a unanimous verdict, that

is, all 12 jury members, must agree on the accused guilty in order to find him guilty of murder.

Prosecutor – lawyer from the DPP, with extensive experience in criminal trials.

Defence Barrister – lawyer for the accused with many years experience in criminal matters.

Judge's Associate – lawyer who assists the judge and sits in front of the judge in court; is the person who asks the foreperson on the jury if the jury has reached its verdict.

Sheriff's Officer – ensures the smooth running of the court; deals directly with the jury and ensures the jury is comfortable in its room at the end of the trial when it is considering the facts of the case and determining its verdict.

Court Reporter – required to type a transcript of the court proceedings.

The Accused – sits in the dock throughout the court proceedings.

Witnesses – sit in the witness box when under oath and are assisting the court with their evidence.

Public Gallery – seats at the back of the court for the public to watch the trial proceedings. In murder matters the media often sit in the gallery. Occasionally the court may be closed, that is the trial is being conducted but the public is not allowed to attend. Immediate family members of the victim may receive special entry into the court. It is best to discuss this with the prosecutor before the trial if you wish to be present.

A few days before the trial starts in the Supreme Court, you may wish to attend the DPP office and meet the prosecutor. The solicitor who managed the file or Witness

Assistance Officer may also be present at this meeting. The purpose of the meeting might include the following:

- to meet the prosecutor – introductions;
- to discuss your evidence, if you are a potential witness;
- to clarify concerns you may have about the trial process;
- to discuss questions you may have about dealing with the media at trial; and
- to clarify any other issues that may arise specific to the case.

It is the prosecutor's job to prove the case beyond reasonable doubt. The prosecutor also has an obligation in relation to presenting the evidence at trial. The burden of proof in a criminal trial is high. It is important you ensure your emotional support during the trial process is being provided by either your counsellor, a Court Companion or a close friend. The prosecutor will not be able to support you emotionally at trial. Information and issues as they arise will be discussed with you, usually at the end of the court day or during the lunch break. Small adjournments during the day are often used by the prosecutor to prepare for the next witness.

Occasionally, depending on the circumstances of the case, a "junior" prosecutor may attend court to assist the senior prosecutor managing the case. It is often beneficial to approach the junior prosecutor with any concerns you may have during court adjournments. The junior prosecutor will ensure the information is communicated to the senior prosecutor. Police are also present at trial, and are available to you.

Court conduct

There are some basic rules of court conduct that all participants, including the lawyers must follow. These rules are designed to maintain a sense of the formality and solemnity of the court.

They are:

- when entering the court room, before walking toward a seat, bow to the presiding judge;
- when exiting the court room, turn and face the judge just before leaving and bow;
- before starting the court session the court is asked to rise, you then bow to the judge who will bow in return; and
- before the session ends, the court is asked to rise, and is required to bow to the judge who will then bow back before leaving the court.

If you are seated in the public gallery it is important to note that the court requires a certain level of behaviour from the public. As a member of the family or friend of the victim, it is sometimes difficult to adhere to these expectations. Should you find them difficult to manage, have a break, quietly leave the court room and return when you have had an opportunity to regain your composure and ability to cope with the court procedures.

Other important things to remember are:

- do not talk in the public gallery;
- do not take notes in the public gallery;
- you must not eat, smoke or drink in court;
- you must not call out your objections to the information in the court or call out to the accused;
- you must not applaud or cheer; and

- you must try to maintain your composure. If you are feeling emotional and need time to release your grief, please leave the court room and find a private place to cry. There are often witness rooms around the court rooms that are very private. A sheriff's officer or Court Companion would be happy to assist you.

It is the job of the Sheriff's Officer to ask persons to leave the court should they not follow these basic rules of conduct. This also applies to the accused family and other members of the public.

Giving evidence

If you are required to give evidence, you will not be able to sit in on the trial until you have given your evidence. The prosecutor will inform you when you are required to attend court. After you have given your evidence you are free to sit in the public gallery to observe the rest of the trial.

Initially the prosecutor will ask you questions. This is referred to as examination in chief. The defence barrister then asks questions which is referred to as cross examination. It is important to note that during cross examination the prosecutor is not allowed to talk to or approach you in any of the court breaks, until after you have completed giving your evidence. The prosecutor is able to object to questions deemed inappropriate according to the law. The judge has the final say as to whether to allow the prosecutor's objection. Sometimes there is legal discussion about whether the question should be allowed. You and the jury (if present) may be asked to leave the court room while this discussion takes place.

Remember when giving evidence in court:

- tell the truth;
- speak clearly and take your time;

- answer only the question you have been asked;
- if you do not understand the question, say so;
- ask the lawyers to clarify words you are not familiar with;
- do not anticipate or jump in with answers; wait for the whole question to be asked;
- state the facts of what happened, only give your opinion if asked;
- always call the judge “Your Honour”; and
- try to stay calm. If you need a break please ask the judge.

Verdict

For the charge of murder, an accused is found guilty if all 12 jury members find the accused guilty, that is, a unanimous verdict of guilty. In a trial by judge alone, only the judge needs to be satisfied that the case has been proven beyond reasonable doubt. If the accused is found guilty he/she will be sentenced in the following weeks after the trial, not on the day of the guilty verdict.

If the accused is found not guilty on the charge of murder, and is found not guilty on any other possible charges (sometimes an accused can be found guilty of manslaughter in the alternate), then he/she is free to go.

If the verdict is not guilty to any charge, and the accused is released, neither you nor the DPP is able to appeal this decision. The accused is not able to be re-tried for the same crime. On a guilty verdict the accused is able to appeal against conviction.

Hung jury

Occasionally, regardless of the best effort by the jury to reach a verdict, they cannot decide whether the DPP has proved the case beyond reasonable doubt. The DPP then has to decide whether the matter should be re-tried. In murder trials the severity of the crime usually means a re-trial would be likely. The DPP prosecutor will consult you over the decision of the Office, and also provide you with an opportunity to discuss your concerns and views about a re-trial.

Sentence

The prosecutor will provide the sentencing judge with the following to assist the court prepare for sentencing:

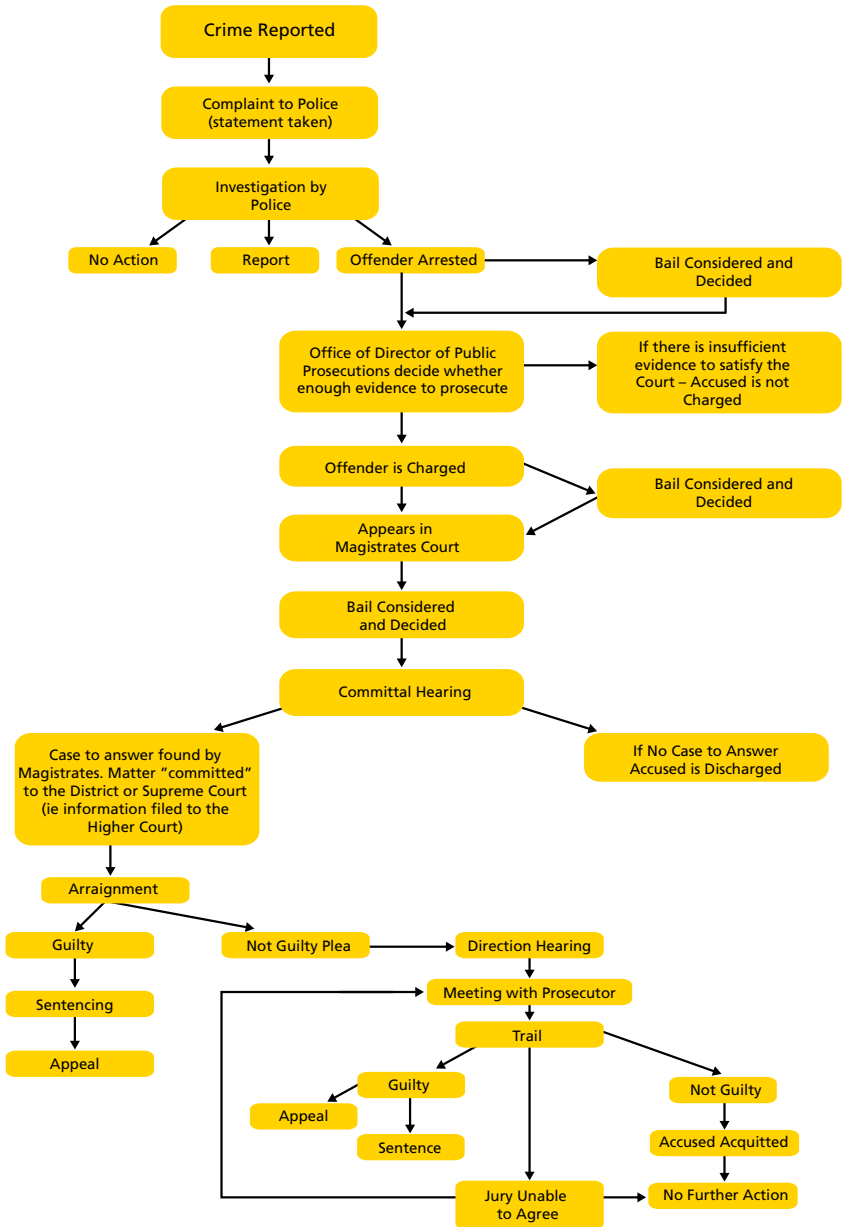
- all written and verbal Victim Impact Statements prepared by the victim's family and friends; and
- antecedent reports – that is a record (if any) of the accused previous offences and sentences. This is not made available to the jury. It is for the sentencing judge to consider.

The defence lawyer will then make submissions for the accused, possibly calling in witnesses to testify the accused character. Depending on the circumstances the prosecutor may provide the judge with further information.

The judge sentences the accused. The accused is then able to appeal against sentencing. In certain circumstances the DPP also has the right to appeal against the sentence (see page 55, Appeals).

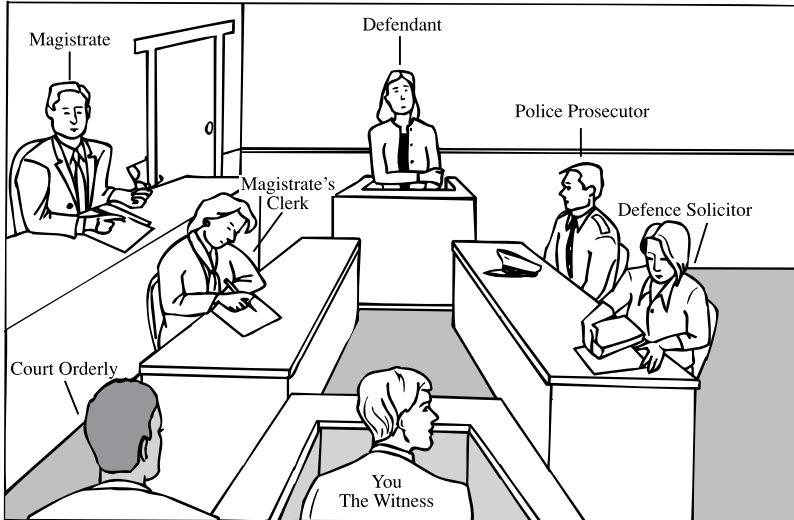
For further assistance in dealings with the DPP or understanding the legal process, contact the Witness Assistance Service on (08) 8207 1529.

The legal process - flow chart

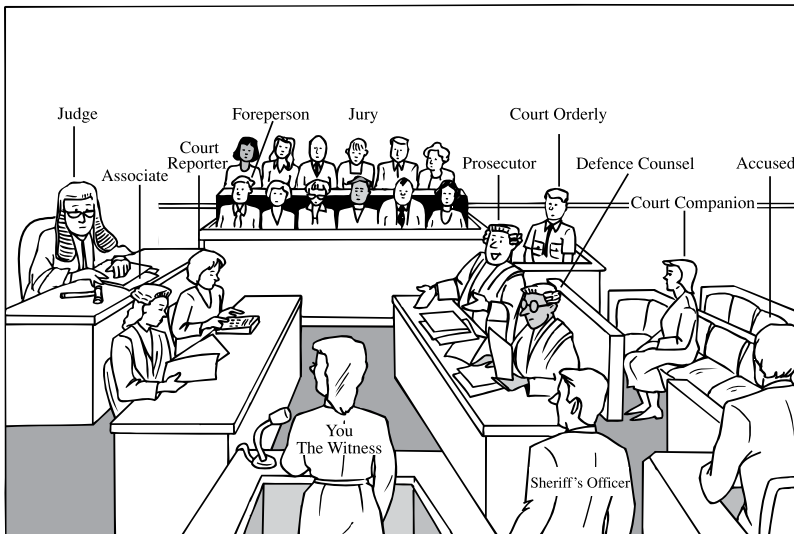


Court room layout

Magistrates Court



Supreme Court



What is a Victim Impact Statement?

A Victim Impact Statement (VIS) is your opportunity to tell the court the impact the crime has had on you or members of your family (in the case of small children). There are two ways you may like to inform the court of the impact, either in written form or by reading a prepared VIS in court before the judge, the accused, the prosecutor and defence lawyer and the public.

The VIS is only required if, at the end of the criminal trial the accused is found guilty of the offence(s). The judge sets a time for submissions to be heard before sentencing. In rare cases this occurs immediately after the trial, however the usual practice is to set a time soon after the verdict has been reached.

It is the role of the prosecutor to submit your VIS, written and verbal (as these are required in written form before being read), to the court. The prosecutor is also required to hand to the court an antecedent report, if one exists, which outlines any previous convictions and sentences the accused has received in the past. This information is not made available to the judge until submissions, or after a guilty verdict has been reached at the end of the trial.

The prosecutor is also required to provide the VIS, both written and verbal in writing to the defence. The accused has the right to access all information forwarded by the prosecutor to the judge.

Your VIS might cover the following issues:

- emotional impact;
- psychological trauma or stress;
- financial loss and suffering (inability to work etc);

- physiological symptoms of stress, for example, weight loss;
- impact on extended family or friends;
- significant changes in lifestyle/socialising etc;
- any other effects which you believe the court should be aware.

Facts not to include in your VIS:

- you must not mention the sentence you think the judge should impose;
- you must not refer to charges of which the accused has been found not guilty;
- you should not criticise the investigation or the trial process. If you found the trial or investigation process stressful, it is appropriate to mention this however;
- try not to use abusive language to express your anger to the court.

Verbal VIS

You can read your own VIS statement if you wish. If you don't feel you can read it you can ask a family member or friend, a Police Officer, or the court will appoint someone (probably the Associate) to read your verbal VIS. The media and other members of the public may be present in court while your VIS is being read.

You may update your VIS at any time before it is presented to the court. You may prepare the VIS without using the actual form, by just writing your own statement. The fact that you may choose not to read your VIS in court does not affect how seriously the Judge treats it but it may be the only time the offender is forced to face the true effects of their crime.

An aspect of reading out your statement may be that the media are able to report parts of your statement which describe the impact the murder or manslaughter has had on you or your family.

Others may feel that although they would like to read a statement out to the court to ensure the accused and court staff are aware of the impact, they may not want the media to report their statement on television or in the newspapers.

If you have concerns about the media reporting your verbal VIS, please speak with the prosecutor before reading the statement in court.

The prosecutor may make an application to Order for Clearing the Court. The court can make an order that specified persons leave the court to prevent hardship or embarrassment to the victim while they read their VIS. Whether the order is made is at the discretion of the judge.

Written transcripts of the proceedings at that point would then not be available to the media for publication, without the approval of the Court. The court also has the power to suppress evidence from publication to prevent undue hardship to a victim of crime. If you believe you will suffer undue hardship if parts of your statement are published by the media, please speak to the prosecutor or Witness Assistance Officer before reading out your statement.

There are certain rules for the conduct of verbal VIS in court. The prosecutor, Witness Assistance Officer or counsellor, will be able to discuss these with you. It is important to remember you must stick to your written VIS, as you read it in court and that the judge has the authority to edit parts of your VIS, if they believe it necessary.

With proper preparation and discussion with your counsellor, police investigator or the DPP prosecutor, problems or concerns should be kept to a minimum.

Remember, this may be the only opportunity to let the offender know the true effects their crime has had on you and it is important to give the judge as much information as possible for him to base his decision on.

For further information about VIS, and how you can receive help and advice in preparing this, you can contact the DPP prosecutor or Witness Assistance Officer, your counsellor or Victim Support Services or Police Investigator (see page 83, Resources).

Appeals

If an accused is convicted (found guilty) at the end of a trial, he/she is referred to as the prisoner. The prisoner then has the right to appeal against conviction and/or sentence. If the prisoner appeals, against conviction or sentence he/she is then referred to as the appellant.

Appeal by the prisoner

If the appeal is against conviction, the appeal papers must be lodged within 21 days of conviction. If the appeal is against sentence, the appeal papers must be lodged 21 days after the sentence has been imposed. It is not unusual for a prisoner to seek leave from the court for an extension of time to appeal.

A prisoner has an automatic right of appeal, if the grounds of the appeal relate to a question of law, that is, alleging there is some error of law in the conduct of the trial. If the grounds of the appeal relate to fact and law, the prisoner must apply for leave (permission) to appeal. This leave application is heard by a single judge of the Supreme Court. If that judge decides there is an arguable case, they will grant leave to appeal. If leave to appeal is refused, the prisoner can apply in writing to the Court of Appeal for leave.

If the grounds for appeal are grounds of law, and/or leave is granted, the court will then list the matter for hearing before the Court of Criminal Appeal.

This court consists of three judges of the Supreme Court. Before the hearing date the prisoner's lawyer and the prosecutor will file written outlines of argument with the court. On the day of the appeal both counsel will

make oral submissions. The Court of Criminal Appeal will have before it all the relevant material from the trial and sentencing process.

After hearing the argument the court will give a decision. This may occur on the same day, but usually the court will reserve its decision. This means the decision will be delivered at a later date. In those circumstances the DPP will notify you of the time set by the court, but often the DPP receives only a few days notice of the set court date. You may be present in the court when the decision is delivered if you wish.

If the appellant is successful in his/her appeal against conviction, the conviction will be quashed and an acquittal entered or a re-trial ordered. If the appellant is successful in appealing to reduce his/her sentence, the court will impose a fresh sentence. If the appellant is not successful the appeal will be dismissed.

Appeals

In certain circumstances the defendant is able to appeal against either his or her conviction or his or her sentence. The DPP has a right to appeal in certain circumstances. This right will always be exercised with restraint and only where there is a reasonable prospect of success.

You may write to the DPP asking that an appeal be considered. You must do this within 10 days of the court's determination.

Appeals by the victim's family

The family/partner or friends of the victim, do not have the right to appeal against conviction or sentence.

Appeal to the High Court

If an appellant is unsuccessful before the Court of Criminal Appeal there is a further right to seek special leave to appeal from the High Court. This special leave to appeal is rare. There are very few High Court Appeals. The DPP also has the right to appeal to the High Court in limited circumstances.

Mental impairment

The law aims to protect the rights of persons with a *mental impairment* as well as the safety of victims and the community in general.

If the *defendant* was suffering mental illness or cognitive impairment at the time of the offence one issue that may be raised is whether the *defendant* was mentally incompetent to commit the *offence* or is mentally unfit to stand *trial*. If this is established, then:

- the *defendant* may be released unconditionally; or
- the *defendant* may be released on licence, for a period of time decided by the court. The court can impose conditions as to treatment, place of residence, or the non-use of and testing for illicit drugs and alcohol; or
- the *defendant* may be committed to a psychiatric institution for a period of treatment.

The period of time set for any conditions imposed on a *defendant* will be similar to the sentence they would have received for the *offence* had they not been mentally impaired.

In deciding what order to make, the court will consider:

- the nature of the *defendant's mental impairment*;
- whether the *defendant* is, or would if released be, likely to endanger another person, or other persons generally;
- whether there are adequate resources available for the treatment and support for the *defendant* in the community;

- whether the *defendant* is likely to comply with the conditions of a licence;
- any other matters that the court thinks relevant.

The court considers psychiatric evidence and also the views of the victims, as well as the *accused's* family. Information on the attitudes of victims is usually prepared by staff from the Forensic Mental Health Service, Court Assessment Service.

A Register for Victims of Crime now also includes offenders with Mental Impairment.

Victims of Crime Compensation

What is Victims of Crime Compensation (VOCC)?

Victims of Crime Compensation (VOCC) is a government scheme in South Australia that enables victims of crime to receive an amount of money for loss or injury as a result of a crime that occurred after 1 July 1978. Under this scheme, victims are entitled to compensation from the government (via the Attorney-General's Department), up to certain limits.

Injury can cover physical and mental injury.

If you make an application as a victim of crime, you are called the plaintiff, the Crown (Department in the Attorney-General's), is called the first defendant, and the accused is called the second defendant. Victims are only required to appear in court if claims are contested.

Legal fees are covered in addition to compensation payment.

When no one has been charged

You can still make a claim, even if no one has been charged, as long as you can prove beyond reasonable doubt that an offence took place. In homicide matters the cause of death may be sufficient to discharge the Burden of Proof.

Time limit

In making the claim, you require the services of a lawyer. An application must be made within three years of the offence and for funerals, within 12 months of the date of offence. Applications are finalised as soon as possible. If

a matter cannot be finalised, a conference is held with a District Court judge. If the matter still cannot be resolved, then it proceeds to trial.

You have the right to appeal a District Court decision. Your appeal must be lodged within 21 days of the decision being handed down.

What types of VOCC claims exist?

VOCC is a last resort payment by the government. If there is another potential source of payment to the victim's family, this must be pursued. A claim can be made by a victim who has suffered an injury as a result of an offence. In relation to the crime of homicide, there are special payments that can be made to family members of the victim; they are:

Dependency claims

Dependents of the victim can make a claim to cover financial loss. This could include a spouse, a putative spouse (defacto), parents or children of the victim who were financially dependent on the victim. There can only be one claim on behalf of all dependents.

Funeral expenses

To the person who covered the cost of the funeral up to \$7,000 dollars whichever is the lesser amount. This claim must be made within 12 months of the date of the offence.

Grief payments

Are payable to spouses, defacto spouses, parents of victims under 18 years and children. Compensation to children is always kept in a trust fund by the Public Trustee, until the child is 18 years of age.

To download the claim form for funeral cost and/or a grief payment in homicide cases, please go to the following link:

See under 'Compensation' at <http://www.voc.sa.gov.au>.

Loss of earnings and medical expenses (including some counselling)

Are all claimable. However, any medical expenses claimable through Medicare are not payable. Economic loss must come from injury, for example, lost time from work to attend trial is not compensatory.

(Amounts payable have specifically not been recorded, other than funeral claims, due to the potential changes in claims. Please consult your lawyer for amounts payable).

Early payments

If someone is in necessitous circumstances, and is likely to be paid compensation, and would like those payments earlier, the Attorney-General may make an interim payment. Please discuss your eligibility for earlier payments with your lawyer if you believe your circumstances reflect this provision.

For further assistance or information on CIC, please do not hesitate to contact the contact the Victim Support Service on 1800 VICTIM (1800 842846), or the Victim Contact Officer in Major Crime Investigation Section on 8172 5439.

Correctional Services

Information about prisoners and other offenders – the Victim Register

The Victim Service Unit in the Department for Correctional Services maintains a Victim Register. Registered victims are entitled to information about the offender if he or she is in prison, if he or she is serving a Community Service Order or a Bond.

In order to register as a victim of crime and be placed on the Victim Register, you need to show that:

- you are a victim of a criminal offence; and
- the offender you wish to register against is under the supervision of the Department for Correctional Services; or
- the offender you wish to register against is in prison in relation to the offence, or offences, for which that person is a victim.

See below for information on how to register.

Offender is serving a Community Service Order or Bond

If you are the victim of crime and the offender is serving a Community Service Order or Bond, you are eligible to apply for information about the order or bond.

You should be told, on request, if the offender was ordered to undertake community service – whether the offender completed the community service; and, if the offender was subject to a bond – whether the conditions of the bond were complied with.

To register as a victims of crime and receive this information, you must be the victim of the offence for which the offender has received the order or bond.

Offender is in prison

If the offender is in prison, a registered victim is entitled to the following information:

- the name of the prison in which the offender is currently imprisoned
- sentence details
- security classifications
- details of any transfer of the offender from one prison to another
- date and circumstances under which the offender will be released (for example, on bail, leave of absence, home detention or parole)
- escape from custody and return to custody.

When a prisoner is reclassified to Low Security, he or she will become eligible for certain programs. A prisoner on a leave program could be in the community, either accompanied or unaccompanied, for a limited time, under certain conditions. Leave could be granted for home detention, education, employment or other programs in preparation for returning to society.

Before a prisoner is able to participate in any of these pre-release programs, staff from the Department for Correctional Services will contact you. They will tell you what is involved in the proposed program(s). They will also discuss with you any conditions or restrictions that need to be made to the prisoner's leave. Your comments are very important in helping the Department for Correctional Services to decide the conditions under which a prisoner may have leave to go into the community. **However, you**

do need to be on the Victim Register if you want the opportunity to have this information, and to comment on the Department's plans for the offender.

Certain emergency leaves may be granted to a prisoner at any security classification. For example, a prisoner may be granted leave under supervision to attend the funeral of a close relative. It may not always be possible to contact persons on the Register before such leave is granted.

How to register

You can have your name placed on the Register by approaching the Victim Services Unit in the Department for Correctional Services (phone 8226 9067). The application form is also downloadable, see: www.voc.sa.gov.au.

Only the Unit and, when appropriate, the Parole Board have access to your details. This ensures confidentiality. The person who committed, or is accused of committing, the offence cannot get hold of your details.

Before you are listed on the Victim Register, the Department will check details of the offence and of you with the police.

The Parole Board of South Australia

If you are listed on the Victim Register, there will be an opportunity for you to make a submission to the Parole Board in writing or, by prior arrangement with the Board, in person before the prisoner is released on *parole*.

There are no hard and fast rules about what can be included in a victim's submission. Your submission could include the following:

- if you have specific areas of concern (such as worry that the prisoner will try to contact you), you might request that certain locations or areas be noted in the conditions as restricted areas for the prisoner
- you might have outstanding issues that you feel should be brought to the Board's attention (for example, copies of Restraining Orders or other Family Court Orders that may be relevant); or
- you might mention continuing issues relating to the impact of the offence on you and your family.

Please note that the Parole Board cannot re-sentence the prisoner. The Parole Board's role is to:

- hear parole applications and decide whether a prisoner is released on parole
- set parole conditions
- monitor the progress of those on parole
- hear breaches of parole conditions and determine what action is to be taken; and
- to undertake Prisoner Reviews.

If you want to make a submission you should write to the Secretary, Parole Board of South Australia, 181 Flinders Street, Adelaide, 5000. **If you want to make a submission in-person, you should also contact the Secretary.**

All submissions to the Parole Board are confidential and prisoners will not have access to them under **any** circumstances. If, however, information from your submission is used to justify the Parole Board's decision and the prisoner asks for an explanation of that decision, the Board will summarise the relevant information in its report to the prisoner.

If the prisoner is paroled, and your name is on the Victim Register, you will be told his or her release date. You will be told of anything the prisoner must, or must not, do concerning you. For example, you will be told if the prisoner has to stay away from you, and what happens if he or she does come near you.

More information on victims' rights and parole is available on the website of the Commissioner for Victims' Rights www.voc.sa.gov.au.

Forensic Mental Health - Victim Register

Forensic Mental Health is a specialist area of the mental health system in South Australia that provides services to meet the needs of offenders with mental disorders, including: rehabilitation services; and, mental health services provided within custodial settings as well as mental health services within the community

Forensic Mental Health also incorporates the Forensic Court Service, which provides services to the victims of the offenders conduct, including preparing reports for criminal courts on the views of the victim (if any) of the offender's conduct; and if a victim was killed as a result of the offender's conduct—the next of kin of the victim. Forensic Mental Health also help the victim and the victim's next of kin identify and, as necessary access, counselling services.

Registered victims

The Victim Register Coordinator is a member of the Forensic Court Service. The Coordinator maintains a Register of victims and victims' next of kin. The Co-ordinator notifies registered victims on key information affecting them, including court decisions relating to forensic offenders, prospective release dates, escapes from detention and re-admissions, as well as when forensic offender's term in detention and/or under supervision ends. Further, the Co-ordinator advises registered victims on their rights such as the right to make submissions concerning the possible release or grant of leave to a forensic offender.

To register or make an enquiry about the Victim Register telephone: (08) 7425 6282.

Youth Register

If you are a member of the immediate family of a person unlawfully killed by a young offender and that offender is sentenced to a term of detention (or imprisonment), you may apply to be recorded on the Victims Register kept by the department responsible for detaining the offender.

To apply, you should write to the Chief Executive of the government department responsible for detaining the young offender to be recorded on the 'Victims Register'. You should include in your written correspondence:

- (a) your name;
- (b) your contact address and telephone number or the name, contact address and telephone number of a person you nominate to receive information on your behalf;
- (c) any information (including the name of the youth) that you know or have in your possession to assist the Chief Executive to identify the youth.

If you register as a victim, the Chief Executive must, when requested to do so by the Training Centre Review Board or Youth Parole Board (the Board), provide the Board with the contact information you gave when you applied to be recorded on the Victim Register. Staff for the Board will then contact you, if necessary.

You should be told if the young offender who killed your loved one escapes from detention and is re-apprehended. You should also be told when the young offender is eligible for release under supervision or on parole. You might then in writing tell the Training Centre Review Board or the Youth Parole Board (the Board) about your safety concerns and other information that you feel might help the Board determine whether to release the young offender and, if so, under what conditions.

As a registered victim, you may attend a meeting of the Board, if you have made prior arrangement with the Board to attend that meeting. You should therefore contact staff for the Board if you want to talk about this option.

The Board cannot re-sentence the young offender, so you should not ask the Board to keep the young offender in detention longer than the original sentence imposed by the Court.

Public officials are not allowed to divulge information about victims that is kept on the Victims Register, except as required or authorised by law; as required in legal proceedings; or with the consent of the registered victim to whom the information relates.

Giving feedback or lodging complaints

The Declaration of principles governing the treatment of victims of crime applies to all South Australian public agencies and officials.

If you feel that you have been treated appropriately or wish to make suggestions on how to improve the way victims are treated, your comments are welcome. Please direct your comments or suggestions as explained below.

As a victim of crime, you are entitled to complain if you believe that your rights have not been met and/or that you have been treated inappropriately. If you feel that your rights have not been recognised or have been given inadequate recognition there are a number of things you can do. These are explained below.

Police officers

You should contact the Victim Contact Officer or a supervising officer at your local police station. Telephone your local police station (see the White Pages).

If you are not satisfied with the response that you receive or you have more than a minor grievance you should contact either:

- The Commissioner of Police, GPO Box 1539 Adelaide SA 5001; or
- The Police Ombudsman, GPO Box 464 Adelaide SA 5001. Phone 8226 8677.

Your opinion is important to the South Australia Police. As part of the South Australia Police service excellence process you are invited to provide general feedback by visiting the South Australia Police website: www.police.sa.gov.au.

Public prosecutors

You should write to the Director of Public Prosecutions, GPO Box 464 Adelaide SA 5001.

Judges

Supreme Court of South Australia: you should write to the Honourable Chief Justice, 301 King William Street Adelaide SA 5000.

District Court of South Australia: you should write to His Honour the Chief Judge, GPO Box 2465 Adelaide SA 5001.

Magistrates

Magistrates Courts in South Australia: you should write to the Chief Magistrate, PO Box 6115 Halifax Street Adelaide SA 5000.

The Ombudsman

The Ombudsman is an independent officer who can:

- investigate most complaints made about government departments and authorities, and local government councils
- review decisions made about the supply of public information under the Freedom of Information Act
- receive information confidentially from a person who wishes to inform about possible improper or illegal actions in State or local government.

The Ombudsman doesn't have power to investigate complaints about judges, magistrates, prosecutors, the police or the Police Ombudsman.

You can contact Ombudsman SA by phone on 08 8226 8699 (or toll free 1800 182 150), by email to ombudsman@ombudsman.sa.gov.au, or by writing to PO Box 3651 Rundle Mall SA 5000.

Health and Community Services Complaints Commissioner

The Health and Community Services Complaints Commissioner:

- helps people – service users, carers and service providers – resolve complaints about health and community services, including child protection services, when a direct approach to the service provider is either unreasonable, or has not succeeded
- covers health and community services across the public, private and non-government sectors
- handles complaints confidentially and impartially monitors and reports complaint trends
- makes recommendations to improve safety and quality
- is an independent statutory officer
- operates a telephone enquiry service Monday to Thursday 10am to 4pm, phone 08 8226 8666, or toll free in regional South Australia 1800 232 007. Fax 08 8266 8620.

Commissioner for Victims' Rights

The Commissioner is an independent statutory officer who helps victims in their dealings with the criminal justice system, public officials and public agencies; as well as, consults public officials and public agencies on their treatment of victims. The Commissioner can recommend public officials and public agencies make a written apology if they have not treated victims properly. If you are unsure of your rights (see pages 1 - 6), you can contact the Commissioner for Victims' Rights.

- by telephone on 8204 9635
- in writing to GPO Box 464 Adelaide SA 5001
- by email vco@agd.sa.gov.au

See also www.voc.sa.gov.au

Equal Opportunity Commissioner

The Equal Opportunity Commissioner:

- helps people resolve complaints about discrimination in public areas of life, such as employment, goods and services, education, housing and clubs/associations
- takes up complaints for discrimination on the grounds of race, age, sex, sexuality, caring responsibilities, disability, marital status, identify of spouse etc. and victimisation for making a complaint
- handles whistleblowing complaints
- provides education and training to the community on discrimination issues
- handles complaints confidentially and impartially
- is an independent statutory officer
- operates a telephone and face-to-face enquiry service
- phone – 08 8207 1977, 1800 188 163 (toll free for regional SA) or 8207 1911 (for deaf, hearing and speech impaired)
- Level 17, 45 Pirie Street, Adelaide
- www.eoc.sa.gov.au

Employee Ombudsman

The Employee Ombudsman provides South Australians with intervention and support on workplace issues. They promote fair and equitable workplace relations through community liason, research and active promotion of alternative dispute resolution practices.

Contact us on 8207 1970 or email to oeo@sa.gov.au.

The Office of the Training Advocate

The Training Advocate helps people with questions or concerns about vocational education and training,

apprenticeships and traineeships, international education, higher education and adult community education. The service is free and confidential. We can assist those who are experiencing difficulties which may be impacting on their study by:

- providing information, advice and advocacy
- investigating complaints relating to training
- monitoring the training system
- supporting people in accessing services relevant to their circumstances
- negotiating alternative options to complete training

Phone: 1800 006 488

www.trainingadvocate.sa.gov.au

Commissioner for Victims' Rights

According to the Declaration of Principles Governing Treatment of Victims of Crime (see pages 1–6):

- Victims should be treated with respect and dignity.
- Victims are entitled to know if someone is charged with the offence and what happens in the court case.
- Victims may be needed as witnesses at the trial, but they should not be asked to attend court unnecessarily. If giving evidence, they are entitled to be protected from unnecessary contact with the offender and unnecessary disclosure of their address.
- Any harm caused to a victim by the crime should be put before the court when it sentences the offender. A victim who is dissatisfied with the result of the case, can ask, but cannot compel, the prosecution to appeal.
- Victims are entitled to be told if the offender escapes from custody or is recaptured. If an offender is gaoled and applies for parole, the victim is entitled to have a say before the parole decision is made.
- Victims are also entitled to information about how to claim compensation, if eligible, and about health and welfare services available to them.

Commissioner's functions

The Commissioner for Victims' Rights monitors and reports on public officials' treatment of victims.

The Commissioner's functions include:

- to advise the Attorney-General on how best to use government resources to help victims of crime;

- to assist victims in their dealings with prosecution authorities and other government agencies;
- 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;
- to consult with the judiciary about court practices and procedures, and their effect 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);
- to personally, or through counsel, make submissions at the sentencing stage on the impact of the crime on victims and victims’ families in cases resulting in the death or permanent total incapacity of the victim;
- to make submissions to the Court of Criminal Appeal on guideline sentences.

As well, the Commissioner is able to require a public agency or official to consult with him/her regarding steps that may be taken by the agency/official to further the interests of victims; and, after such consultation, may, where he/she believes that the agency or official has failed to comply with the declaration of principles, recommend that the agency or official issue a written apology to the relevant victim.

The Commissioner is required to have regard for the wishes of the person (victim).

Glossary

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| Acquit | To find an accused person not guilty at a trial. |
| Adjourn | To delay a court hearing, until later that day or a specified day or indefinitely. |
| Adversarial | Judicial investigation which presents opposing views. |
| Antecedent Report | A report that lists a person's previous criminal convictions. |
| Appeal | To take a case to a higher court in order to challenge a decision. The person who appeals is the <i>appellant</i> . |
| Appellant | When an accused is convicted and/or pleads guilty, and appeals, he/she is throughout the process referred to as the appellant. |
| Arrest | To apprehend or take into custody a person suspected of having committed a crime. |
| Bail | An accused person may be granted bail to allow him/her to go free while awaiting a court hearing. Sometimes money must be paid as a security, or the accused may simply promise (known as entering into a recognisance) to appear in court. Failure to appear is an offence. |
| Barrister | A lawyer who appears in court. |
| Burden of Proof | This refers to the level of proof required. In criminal cases the prosecution bears the burden of proof beyond reasonable doubt. |

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| Committal Proceedings | Where a magistrate in a court of summary jurisdiction hears evidence on an indictable charge and decides whether the accused is required to stand trial because there is a case to answer. |
| Defence Counsel/Lawyer | Lawyer for the accused. |
| Defendant | In the Magistrates Court the accused may be referred to as the defendant. |
| Exhibit | A document or physical item tendered as evidence in a court hearing or referred to in an affidavit. |
| Hearsay | Evidence of a fact not personally seen or heard by a witness, but proved by him or her to have been said by another. Such evidence is normally not admissible in court proceedings, but there are exceptions. |
| Indictable Offence | A serious crime for which a person may be tried by a judge and jury. |
| Information | The document to initiate a prosecution for an indictable offence. |
| Inquest | A formal Coroner's Court hearing. |
| Inquisitorial | Judicial investigation to establish facts. |
| Manslaughter | This crime is lesser than murder and can arise in various circumstances including: <ul style="list-style-type: none"> (a) where death results as a result of an unlawful and dangerous act (b) when a killing, which would otherwise be murder, is reduced to manslaughter as a result of provocation (c) where the death occurred as a result of an act of the accused in self-defence, but which act was excessive. |

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| Mentions | Court appearances. |
| Murder | The voluntary and unlawful killing by one person of another with the intention of causing grievous bodily harm, or the intent to kill. |
| Non-parole period | When a judge imposes a sentence of imprisonment, a non-parole period will also be imposed. This is the minimum period the prisoner will serve before he/she is eligible for release. If this period is greater than five years, the release of the prisoner is dependant upon the Parole Board. |
| Oath | A solemn undertaking or promise to tell the truth, usually sworn on a bible or religious text. |
| Offence | A breach of the criminal law; an illegal act. |
| Onus of Proof | Who is required to prove the case. |
| Pathologist | A pathologist is a medical officer with specialist pathology training who undertakes a postmortem. |
| Precedent | A judicial decision on a point of law which is binding on all courts lower in the hierarchy. |
| Pre-trial Arrangement | Before the trial there may be argument as to the admissibility of certain evidence that is sought to be led at the trial. If this argument requires a judge to hear evidence to decide the issue, it may be called a voir dire hearing. |
| Prima Facie | On the face of it. Prima facie evidence proves a fact or allegation if no other evidence is produced to the contrary. |
| Prosecutor | Lawyer in court for the Prosecution. |

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| Putative Spouse | A person legally recognised as having the same rights as a legally married spouse. |
| Recognizance | A bond to secure the performance of an act by the person bound by it, for example, to be of good behaviour. |
| Sentence | The penalty imposed on the accused if he/she is found guilty of an offence. For murder there is a mandatory head sentence of life imprisonment. For manslaughter the judge will fix a head sentence. In both cases the judge will usually set a non-parole period. |
| Statutory Declaration | A written statement of facts which is signed and solemnly declared to be true before a person with authority to witness such documents, for example, a justice of the peace or a lawyer. |
| Submissions | Statements made by a lawyer to a judge in court proceedings. |
| Subpoena | A writ which commands the appearance of a person in court or the production of specified documents. |
| Summary Offence | A minor offence heard and decided in a Magistrates Court and not sent for trial before a judge and jury. |
| Summons | An order to appear at court. |
| Victim | A person who identifies that they have suffered a loss or hardship due to a crime. |
| Voir Dire | An examination of witnesses by the judge in order to determine the admissibility of certain evidence, for example, the qualifications of an expert or the admissibility of a confession in a criminal case. |

Warrant

In criminal law, a legal document that gives authority to a police officer to take the action set out in the warrant.

Witness Declarations

A statement by a witness which is in accordance with the Summary Procedures Act. The statements tendered to the court at committal proceedings must be in this form.

Resources

Commissioner for Victims' Rights

GPO Box 464

Adelaide SA 5000

Telephone: (08) 8204 9635

Email: vco@agd.sa.gov.au

See also www.voc.sa.gov.au

Crisis Care

Telephone (after hours and weekends): 131 611

Department for Correctional Services

Policy Officer

Victim Services Unit

400 King William Street

Adelaide SA 5000

Telephone: (08) 8226 9067

Email: dcs@sa.gov.au

Director of Public Prosecutions (DPP)

Also **Witness Assistance Service**

Level 7, 45 Pirie Street

Adelaide SA 5001

Telephone: (08) 8207 1529

Facsimile: (08) 8207 1799

Forensic Science Centre

21 Divett Place

Adelaide SA 5000

Telephone: (08) 8226 7700

Facsimile: (08) 8226 7777

Homicide Victim Support Group of South Australia

Meeting Place: Anglicare

184 Port Road

Hindmarsh 5007

Telephone: 0424 628 300 or for after hours emergencies contact Crisis Care on 131 611.

Law Society of South Australia

Level 10, 178 North Terrace

Adelaide SA 5000

Telephone: (08) 8229 0222

Email: email@lawsociety.sa.asn.au

Magistrates Court of South Australia

One stop information call centre for enquiries phone 8204 2444.

www.courts.sa.gov.au

Major Crime Investigation Section, South Australia Police

Adelaide Police Station

60 Wakefield Street

Adelaide SA 5001

Telephone: (08) 8172 5439

Office of Births, Deaths and Marriages

91 Grenfell Street
Adelaide SA 5000
Telephone: (08) 8204 9599

Parole Board of South Australia

Ground Floor
181 Flinders Street
Adelaide SA 5000
Telephone: (08) 8224 2555
Facsimile: (08) 8224 2566

State Coroner's Office

302 King William Road
Adelaide SA 5000
Telephone: (08) 8204 0600
Facsimile: (08) 8204 0633

Supreme Court of South Australia and District Court of South Australia

Criminal Courts Registry
Sir Samuel Way Building
Victoria Square SA 5000
Telephone: (08) 8204 0484
Facsimile: (08) 8204 0543

Victim Support Service

11 Halifax Street
Adelaide SA 5001
Telephone: 1800 VICTIM (1800 842846)
Email: helpdesk@victimsa.org

Translation Service

If you speak one of the community languages and require an interpreter to understand information contained in this booklet, please call Translating and Interpreting Service (TIS) on 131 450 and ask to speak to Victim Support Service.

Notes

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Your police contact number

Please keep this information. It will enable you to contact the police should you require information about your case.

For any enquiry please contact:

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Telephone:

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Your report number is:

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Name:

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Signed:

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Rank and No:

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Station:

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Date:

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See also the South Australia Police website, www.police.sa.gov.au.



Government of South Australia

Commissioner for Victims' Rights