

REINFORCING THE NSW GOVERNMENT'S COMMITMENT
TO VICTIMS OF CRIME WITH THE VICTIMS RIGHTS ACT 1996.

Victim Impact Statements

INFORMATION PACKAGE



New South Wales Government
Attorney General's Department
Victims Services



NSW Police Force



This information package relates to the preparation of victim impact statements to be given in the Local Courts, Children's Courts, District Courts and Supreme Court. The information was jointly prepared by the Office of the Director of Public Prosecutions, NSW Police Force and Victims Services, Attorney General's Department of NSW.

Jointly produced by the

Office of the Director of Public Prosecutions,
NSW Police Force, and
Victims Services, Attorney General's Department of NSW

Further copies may be obtained from

Victims Services
Locked Bag 5118
Parramatta NSW 2124

P: 02) 8688 5511
F: 02) 8688 9632
E: vcv@agd.nsw.gov.au
W: www.lawlink.nsw.gov.au/vs

The information package may also be accessed on the websites of each agency or at:
www.lawlink.nsw.gov.au/voc

ISBN 978-1-921301-91-9

August 1998

Revised January 2009

© State of New South Wales through Victims Services, Attorney General's Department of NSW (AGD) August 1998 (REV 01/09). You may copy, distribute, display, download and otherwise freely deal with this work for any purpose, provided that you attribute the AGD as the owner. However, you must obtain permission from the AGD if you wish to (a) charge others for access to the work (other than at cost), (b) include the work in advertising or a product for sale, or (c) modify the work.

This information is available on our website www.lawlink.nsw.gov.au/vs (go to 'Forms and Publications'). For alternative formats such as Braille, audiotape, large print or computer disk, contact Diversity Services on (02) 8688 8460 (voice), (02) 8688 7733 (TTY - for people who are deaf or have a speech impairment) or diversity_services@agd.nsw.gov.au

This document has been prepared by Victims Services for general information purposes. While every care has been taken in relation to its accuracy, no warranty is given or implied. Further, recipients should obtain their own independent advice before making any decisions that rely on this information.

(BK03 • 01/09)

WHAT IS A VICTIM IMPACT STATEMENT?

A victim impact statement is a written statement about the impact that a crime has had on the victim, once an offender has been convicted and is to be sentenced. A victim impact statement can provide the victim with an opportunity to participate in the criminal justice process by informing the court about the effects of the crime on them.

In the case of a primary victim, the statement relates to the personal harm suffered as a direct result of an offence. The personal harm suffered relates to actual physical bodily harm, or psychological or psychiatric harm.

In the case of a family victim, the statement relates to the impact of the death of the primary victim on the members of the immediate family of the primary victim.

Legislation allows a victim impact statement to be received and considered in certain cases in the Supreme Court, the District Court, the Local Court, and the Children's Court. A victim impact statement may be received by the court in relation to an offence that involves:

- actual or threatened violence (including sexual assault); or
- the death of, or any actual physical bodily harm, to any person.

A victim impact statement is given to the court after a person has been convicted and before the person is sentenced and relates to the charges for which the offender has been convicted.

Once a victim impact statement has been accepted by a court, a victim (or their representative) is entitled to read all or part of the statement to the court, at such time as the court determines after conviction but prior to sentencing.

A victim has the right to information and assistance for the preparation of a victim impact statement to ensure that the full effect of the crime on the victim is placed before the court.

WHO MAY MAKE A VICTIM IMPACT STATEMENT?

The following people are able to make a victim impact statement:

- 1 A primary victim, who is either:
 - a person against whom the offence was committed who has suffered personal harm as a direct result of the offence; or

- a witness to the act of actual or threatened violence, the sexual offence, the death or the infliction of the physical bodily harm concerned, who has suffered personal harm as a direct result of the offence.
- 2 A family victim is a member of the immediate family of a primary victim who has died as a direct result of the offence. A family victim may be:
 - the victim's spouse, or
 - the victim's de-facto spouse or same sex partner, being a person who has cohabited with the victim for at least 2 years, or
 - a person to whom the victim is engaged to be married, or
 - a parent, grandparent, guardian or step-parent of the victim, or
 - a child, grandchild, or step-child of the victim or some other child for whom the victim is the guardian, or
 - a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim.
 - 3 A representative of the victim:
 - where a victim is incapable of providing information for a victim impact statement, a family member or other representative may act on behalf of the victim.

The victim impact statement may be written either by a primary victim, a family victim, a victim's representative or by a qualified person, for example, counsellor, psychologist, social worker or medical specialist.

WHEN SHOULD A VICTIM IMPACT STATEMENT BE PREPARED?

A victim impact statement is given to the court after the offender has been convicted. The victim must let the prosecutor know as soon as possible if he/she wants a victim impact statement to be given to the court.

The victim impact statement can only refer to those offences that the offender has been charged **AND** convicted of in the court. If you are unsure, the prosecutor can clarify what the specific offences are for which the offender is being sentenced.

Arrangements for the preparation of the victim impact statement may then be made. The prosecutor may arrange for the victim impact statement to be prepared, or, the victim may make his or her own arrangements.

A victim impact statement may be prepared in one of the following ways:

- written by the victim; or
- written by the victim but with some assistance from a relative, friend or support person; or
- if the victim is incapable (because of age, impairment or other) of writing or providing information for a victim impact statement, a member of the victim's immediate family, someone with parental responsibility, or any other representative, may write the statement, or
- written by a counsellor with whom the victim has had contact as a result of the offence, and for whom writing a victim impact statement is considered part of their role as a counsellor; or
- a professional report prepared by a qualified person designated by the prosecutor.

PROFESSIONAL REPORTS

In some circumstances, a professional report may be required by either the victim or the prosecutor. This may take the form of a medico-legal report or a social work/psychological assessment. The emphasis of this report must be on the impact of the offence and the personal harm that resulted to the victim.

Please note that all formal requirements referred to in this information package also apply to professional reports.

The prosecution may arrange for qualified reports to be written where these are required. Please contact the prosecutor for further information.

A VICTIM IMPACT STATEMENT IS VOLUNTARY

It is the victim's choice whether they wish to make a victim impact statement. No one may make a statement on behalf of a victim if the victim objects to the statement being made.

The court may not assume that because there is no victim impact statement, that there was little or no harm suffered by the victim as a result of the crime.

A VICTIM IMPACT STATEMENT MAY ONLY RELATE TO THE CRIME(S) OF WHICH THE OFFENDER HAS BEEN CONVICTED

The victim impact statement describes the direct effects of the crime on the victim. The court will only consider the effect of offences of which the offender is convicted.

If the victim impact statement refers to other offences for which the offender was not convicted by the court, those parts cannot be allowed. If it is unclear as to the offences for which the offender was convicted, the victim or author of the statement should speak to the prosecutor before preparing the statement.

WHEN MAY A VICTIM IMPACT STATEMENT BE RECEIVED AND CONSIDERED BY A COURT?

The court may accept and consider a victim impact statement at any time after it convicts, but before it sentences, an offender. In some instances, the court may need to consider the possibility of an adjournment in order to give the victim time to prepare a victim impact statement.

The final decision about whether to submit the victim impact statement, or parts of the victim impact statement, to the court is made by the prosecutor.

If the primary victim has died as a direct result of the offence, the court must receive a victim impact statement given by a family victim and acknowledge its receipt, and may make any comment on it that the court considers appropriate.

The court will only consider the victim impact statement in connection with the determination of the sentence to be imposed if it considers that it is appropriate to do so.

READING OUT A VICTIM IMPACT STATEMENT

Once a court has accepted a victim impact statement, the victim or victim's representative is entitled to read out part or all of the statement to the court. The reading of the victim impact statement to the court is optional and voluntary.

If the victim wishes to read out their statement, or have their victim impact statement read to the court, they should discuss this with the prosecutor before the victim impact statement is given to the court.

Generally the judge or magistrate will decide from where in the court the victim may read out their victim impact statement. The judge or magistrate will accommodate the wishes of individual victims as far as practicable.

A victim can have a support person at court if they wish, when they read the victim impact statement.

If a victim of sexual assault or a vulnerable victim, such as a child or intellectually impaired person had been entitled to give their evidence using closed-circuit television, then the victim may read out their victim impact statement using closed-circuit television.

WHAT INFORMATION SHOULD BE CONTAINED IN THE VICTIM IMPACT STATEMENT?

The victim impact statement must contain accurate information about the personal harm suffered – that is, for example, any physical injury, short or long-term and any psychological emotional harm, short or long-term. If the victim is preparing his/her own statement, he/she may attach any relevant medical reports, photographs, images or drawings that support the statement.

It is important that the victim or the author of the report is aware that the defence is entitled to cross-examine him/her about the contents of the statement. This may happen because the offender does not agree with parts of the statement.

The victim impact statement must not contain anything that is offensive, threatening, intimidating or harassing towards the offender. The victim impact statement is about the impact on the victim – it is the victim's opportunity to participate in the criminal justice process by fully informing the court about the effects of the crime on the victim.

ATTENDANCE AT COURT

The prosecutor will give the victim impact statement to the court and will inform the victim if he/she is required at the court. If the victim is not required by the court to attend, the victim may still attend if he/she wishes. If the victim wishes to read the victim impact statement to the court he/she will need to be in attendance at the court at the relevant time.

If the victim is unsure about whether he/she needs to be at court for the sentencing or the time to attend, he/she should check with the prosecutor prior to the sentencing.

This applies particularly to a victim who wishes to attend court to read out the victim impact statement.

AMENDING THE VICTIM IMPACT STATEMENT

A victim impact statement may be amended by the prosecutor in consultation with the person who wrote the statement before it is handed up to the court.

The final decision about whether to submit the victim impact statement, or parts of the victim impact statement, to the court is made by the prosecutor.

POINTS TO CONSIDER BEFORE PREPARING A VICTIM IMPACT STATEMENT

Before preparing a victim impact statement, a victim or author of the statement should be aware that when a victim impact statement is given by the prosecutor to the judge or the magistrate, it becomes part of the court case. As a result:

- A victim impact statement may be made available to the offender, the offender's legal representative, or any other person, but the offender will be prevented from retaining copies of the statement.
- The victim or the author of the statement is subject to possible cross-examination about the contents of the victim impact statement. This may happen if the offender does not agree with parts of the statement.
- There is no legal requirement for a victim impact statement to be treated confidentially.

There is also no legal requirement to prevent publication. Once the victim impact statement has been handed to the court it becomes part of the court file and may become a public document, except in relation to children.

The media may gain access to the victim impact statement through the court registry and may report on the contents of the victim impact statement that is read out or referred to in court.

TALKING TO THE PROSECUTOR

The prosecutor or relevant support officer will provide information about preparing the statement.

The original signed copy of the victim impact statement should be faxed or handed to the prosecutor. The victim or author of the statement should keep a personal copy.

If the victim impact statement is emailed to the prosecutor you will need to sign this before it can be given to the court.

It is important that the victim impact statement is given to the prosecutor before the sentencing hearing and preferably one week before the sentencing hearing. This is because:

- a victim impact statement may not be handed to the court after the court has sentenced the offender; and
- the prosecutor needs time to read the victim impact statement and let the victim know if any changes need to be made, or anything taken out.

The victim or author of the statement should check the exact date and location of the sentencing hearing with the prosecutor.

If the victim or their representative wishes to read out their victim impact statement at court he/she should discuss this with the prosecutor as soon as possible.

FORMAL REQUIREMENTS OF A VICTIM IMPACT STATEMENT

As well as containing details of the personal harm suffered, the victim impact statement must:

- identify the victim or victims
- include the full name of the person who wrote the statement and be signed and dated by that person
- include reference to the fact that the victim does not object to the statement being given in court (where the statement has been written by the victim's representative or a qualified person), and be signed by the victim or the victim's representative to that effect (see sample cover sheet at the end of this booklet)
- if the family victim is the person preparing the victim impact statement, state who the primary victim is and the nature and duration of the relationship between the primary and family victim (unless the family victim is a relative by blood or marriage)
- if the victim's representative is the person preparing the victim impact statement, state who the primary victim is and the nature and duration of the relationship between the primary victim and the victim's representative (unless the victim's representative is a relative by blood or marriage)

- be in writing and presented in a legible format. It may be either typed or handwritten. It must be on A4 size paper and except with the leave of the court, be no longer than 20 pages in length (including medical reports, photographs, drawings or other annexures).

Please note that only **one** victim impact statement may be made for **each** primary or family victim.

WRITING YOUR VICTIM IMPACT STATEMENT

There are a number of different ways of writing a victim impact statement, depending on what is easiest for you.

The victim impact statement can be written in paragraphs or dot points, in letter style or using headings such as physical injuries and emotional impact.

The victim impact statement must be on A4 paper and may be up to 20 pages long. Statements commonly range from being a short paragraph to a few pages long.

You can include photographs, drawings or other images if that is a more effective way for you to convey the harm you have suffered as a result of the crime.

The crime itself and the impact of crime are different for everyone. This is why your victim impact statement must be written in your own words.

Impacts of the crime you may wish to tell the court about could include:

- Physical injuries, impact on health, medical treatment.
- Emotional impact and wellbeing.
- Psychological or mental health impact.
- Changes in your behaviour, attitudes, or how you think about things.
- Changes in your normal coping skills.
- Changes in your social life or impact on relationships with others.
- Impact on your financial or housing situation; education or employment.

The victim impact statement is not an opportunity to express your feelings towards the offender, and it is not a letter to the offender. It is also better not to write about the facts of the case, make assumptions regarding the offender's behaviour, or discuss court outcomes in your victim impact statement.

You may write about how the crime impacted on you at the time of the offence and/or any ongoing effects on your life. Some people may write a little about their history, and then compare their life before and after the crime. The thoughts, feelings and experiences must be your own as the victim of crime, rather than those of others.

INFORMATION AND ASSISTANCE FOR VICTIMS, THEIR REPRESENTATIVES AND SERVICE PROVIDERS WHO ASSIST VICTIMS OF CRIME

For further information about preparing or reading a victim impact statement, victims, their representatives and service providers may approach a range of people, such as:

- in cases prosecuted by the police, the police officer in charge of the case or the Police Prosecutor;
- in cases prosecuted by the Office of the Director of Public Prosecutions (ODPP), the DPP Prosecutor or Witness Assistance Service Officer;
- a counsellor who works with victims of crime;
- victim support services and victims support groups; and
- the 24-hour Victims Support Line on 1800 633 063 (Freecall). A person who is hearing impaired and is using a TTY machine may call on this number: TTY (02) 8688 5575.

For assistance with interpreting, please contact Telephone Interpreting Service (TIS) on 131 450.

VICTIMS WHO REQUIRE ADDITIONAL ASSISTANCE

Some victims may require additional assistance in order to be able to write a victim impact statement, for example:

- Victims who are children may write a victim impact statement or have a statement written by a qualified person on their behalf. It is important to consult with children about whether they wish to make a victim impact statement and that they know it is their choice. For children who wish to read their victim impact statement to the court themselves, the prosecutor should be consulted about reading the victim impact statement using closed circuit television.

- If the victim requires assistance with writing or reading out their victim impact statement because they have a disability or special need, assistance may be arranged.
- If the victim is incapable of writing a victim impact statement, the statement may be prepared on their behalf by a representative of the victim or by a qualified person who is designated by the prosecutor. The author of the statement should give the reasons for the victim being incapable.
- If the victim or their representative cannot write or speak English, an accredited interpreter and/or translator may be arranged to assist with the preparation and/or reading of their victim impact statement.

Victims of crime, and those assisting victims who wish to prepare a victim impact statement, may contact the 24-hour Victims Support Line on 1800 633 063 (Freecall) or (02) 8688 5400. A person who is hearing impaired and is using a TTY machine may call on this number: TTY (02) 8688 5575. For assistance with interpreting, please contact Telephone Interpreting Service (TIS) on 131 450.

See over for contact details of agencies who can provide assistance.

RELEVANT LEGISLATION

Victims Rights Act 1996

Crimes (Sentencing Procedure) Act 1999 No. 92

Crimes (Sentencing Procedure) Regulation 2005

Children (Criminal Proceedings) Act 1987

The tear-off page contains a guide that may be used as a cover sheet to attach to your victim impact statement.



AGENCIES WHICH MAY BE ABLE TO HELP YOU PREPARE A VICTIM IMPACT STATEMENT

ENOUGH IS ENOUGH

Level 1, 4 Gray Street, Sutherland NSW 2232

Phone 02) 9542 4029
Fax..... 02) 9542 4036
Email.....team@enoughisenough.org.au

HOMICIDE VICTIMS SUPPORT GROUP

Level 1a, 239 Church Street, Parramatta NSW 2150

Phone 02) 8833 8400
Toll free.....1800 191 777
Fax..... 02) 8833 8425
Email..... info@hvsgnsw.org.au

MISSION AUSTRALIA COURT SUPPORT SERVICE

19 Denham Street, Surry Hills NSW 2010

Phone 02) 9356 0604
Fax..... 02) 9356 0605
Email..... courtsupport@missionaustralia.com.au

VICTIMS OF CRIME ASSISTANCE LEAGUE (VOCAL)

2nd Floor, 3 Market Street, Newcastle NSW 2300

Phone 02) 4926 5826
Fax..... 02) 4926 5866
Email.....ceo@vocal.org.au

VICTIMS SERVICES

Level 1, 160 Marsden Street, Parramatta NSW 2150

Victims Services conducts the Victims Support Line where victims or their supports can ring to obtain information, support and referral about a range of issues including information on victim impact statements and the Charter of Victims Rights.

Victims only..... 02) 8688 5400
Administration 02) 8688 5511
Freecall1800 633 063
TTY 02) 8688 5575
Interpreter Service131 450
Email..... vcb@agd.nsw.gov.au
Website.....www.lawlink.nsw.gov.au/vs

WITNESS ASSISTANCE SERVICE (WAS), OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

**Office of the Director of Public Prosecutions
265 Castlereagh Street, Sydney NSW 2000**

There is a Witness Assistance Service Officer at each of the offices of the DPP who can provide additional information:

Sydney..... 02) 9285 2502
TTY (Sydney)..... 02) 9285 8646
Fax (Head Office)..... 02) 9285 2528
Email.....was@odpp.nsw.gov.au
Bathurst 02) 6332 2555
Campbelltown 02) 4629 2811
Dubbo 02) 6881 3300
Gosford 02) 43371111
Lismore 02) 6627 2222
Newcastle 02) 4929 4399
Parramatta 02) 9891 9800
Penrith 02) 4721 6100
Wagga Wagga 02) 6925 8400
Wollongong..... 02) 4224 7111
Toll free (outside Sydney)*.....1800 814 534

* For toll free callers wanting to speak to a regional WAS officer, please ask the Head Office switchboard operator to put you through to the regional office where the WAS officer is located.

VICTIM IMPACT STATEMENT COVER SHEET

Crimes (Sentencing Procedure) Act 1999, Section 30

Name of victim.....

If you are a family victim:

Name of the deceased primary victim

Your relationship to the deceased victim

Name of offender

Charges to which this statement relates.....

.....

.....

Sentencing court..... Sentencing date / /

Attached is the victim impact statement. This statement is true to the best of my knowledge and belief.

I do not object to this statement being given to the court.

Signed..... Dated / /

If this victim impact statement was written by someone other than the primary or family victim, please provide the following details:

Name of author.....

Relationship to victim

Please explain why you have prepared the victim impact statement on the victim's behalf:

.....

.....

.....

Note: Use of this cover sheet is optional. However if not used, all the relative information above should be included at the beginning of the victim impact statement and the statement needs to be signed.

CHARTER OF VICTIMS RIGHTS (*Victims Rights Act 1996*)

1 COURTESY, COMPASSION AND RESPECT

A victim should be treated with courtesy, compassion, cultural sensitivity and respect for the victim's rights and dignity.

2 INFORMATION ABOUT SERVICES AND REMEDIES

A victim should be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

3 ACCESS TO SERVICES

A victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

4 INFORMATION ABOUT INVESTIGATION OF THE CRIME

A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim should be informed accordingly.

5 INFORMATION ABOUT PROSECUTION OF ACCUSED

1. A victim should be informed in a timely manner of the following:
 - a) the charges laid against the accused or the reasons for not laying charges,
 - b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges,
 - c) the date and place of hearing of any charge laid against the accused,
 - d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.
2. A victim should be consulted before a decision referred to in paragraph (b) above is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm, or psychological or psychiatric harm to the victim, unless:
 - a) the victim has indicated that he or she does not wish to be consulted, or
 - b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.

6 INFORMATION ABOUT TRIAL PROCESS AND ROLE AS WITNESS

A victim who is a witness in the trial for the crime should be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

7 PROTECTION FROM CONTACT WITH ACCUSED

A victim should be protected from unnecessary contact with the accused and defence witnesses during the course of court proceedings.

8 PROTECTION OF IDENTITY OF VICTIM

A victim's residential address and telephone number should not be disclosed unless a court otherwise directs.

9 ATTENDANCE AT PRELIMINARY HEARINGS

A victim should be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

10 RETURN OF PROPERTY OF VICTIM HELD BY STATE

If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim should be minimised and the property returned promptly.

11 PROTECTION FROM ACCUSED

A victim's need or perceived need for protection should be put before a bail authority by the prosecutor in any bail application by the accused.

12 INFORMATION ABOUT SPECIAL BAIL CONDITIONS

A victim should be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.

13 INFORMATION ABOUT OUTCOME OF BAIL APPLICATION

A victim should be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.

14 VICTIM IMPACT STATEMENT

A relevant victim should have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

15 INFORMATION ABOUT IMPENDING RELEASE, ESCAPE OR ELIGIBILITY FOR ABSENCE FROM CUSTODY

A victim should, on request, be kept informed of the offender's impending release, or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

16 SUBMISSIONS ON PAROLE AND ELIGIBILITY FOR ABSENCE FROM CUSTODY OF SERIOUS OFFENDERS

A victim should, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

17 COMPENSATION FOR VICTIMS OF PERSONAL VIOLENCE

A victim of a crime involving sexual or other serious personal violence should be entitled to make a claim under a statutory scheme for victims compensation.