

# **Guidelines for making a Victim Impact Statement**

## **What is a victim impact statement?**

A victim impact statement is information on how an offence has affected you.

The information you provide in your victim impact statement will be considered by the judge when sentencing the offender.

## **What is the purpose of these guidelines?**

These guidelines are to help you prepare a victim impact statement.

They cover:

- the purpose of a victim impact statement
- what information you can include in a victim impact statement
- what you need to do to make a victim impact statement
- who you can contact for assistance.

These guidelines apply to the adult criminal justice system. There are separate guidelines for the youth justice system.

## **PART 1 – PURPOSE OF A VICTIM IMPACT STATEMENT**

### **What is the purpose of a victim impact statement?**

The purpose of a victim impact statement is to:

- give information to the court about how the offence has affected you
- help the court understand your views about the offending
- make the offender aware of how their offending has affected you

The judge will consider this information when sentencing the offender.

A victim impact statement can be in writing or recorded in another way (eg on audiotape). It can also include photographs or drawings if they assist the court to understand how the offence affected you.

## **Does a victim impact statement affect the offender's sentence?**

Yes. A victim impact statement can affect the offender's sentence. The judge is required to consider all relevant information when deciding on the most appropriate sentence for an offender.

For example, the judge will consider:

- the maximum penalty for the type of offence
- the seriousness of the offending in the particular case
- anything about the offender that is relevant, such as their age or a history of previous offending
- how the offending has affected you or your family
- what sentences other offenders have received in similar circumstances.

Victim impact statements are one of many factors the judge must balance in order to arrive at an appropriate outcome.

The offender can ask to see a victim impact statement. This is because it is one of the matters considered by the judge and can affect the sentence they receive.

## **Who can make a victim impact statement?**

If you are a victim of an offence, you can make a victim impact statement.

"Victim" is defined in the Victims' Rights Act 2002 and includes:

- a person against whom an offence is committed
- a person who suffers physical injury as a result of an offence
- a person who suffers loss of, or damage to, property as a result of an offence
- a parent or legal guardian of a child or young person who is a victim
- a member of the immediate family of a person who dies or is made incapable as a result of an offence.

The prosecutor will sometimes ask someone who is not a victim to provide a victim impact statement. This could happen if they have been disadvantaged by the offence, for example, a victim's employer if they suffer loss due to absence from work.

In these instances, a victim impact statement can only be provided if the judge agrees.

## **Do you have to provide a victim impact statement?**

No. You can choose whether or not to make a victim impact statement.

The benefits and challenges of making a victim impact statement will be different for each person. This will depend on the nature of the offence and how it affects you.

Making a victim impact statement is encouraged because it:

- provides a means for the court to focus on how the offence has affected you
- gives you an opportunity to participate in the criminal justice process
- gives you an opportunity to tell the court and the offender how an offence has affected you
- can sometimes help you recover from the effects of a crime.

## **PART 2 – HOW TO PREPARE A VICTIM IMPACT STATEMENT**

### **How do you make a victim impact statement?**

The Police Officer in Charge of the case will ask you to prepare a victim impact statement.

You will usually be asked to do this when charges are being filed, but before the defendant's first court appearance (where possible).

You can write your own victim impact statement. Police are available and trained to assist with this. If you are unable to write a victim impact statement, the Police can do this for you if you agree.

If you include information that falls outside the purpose of a victim impact statement, the Police Officer in Charge of the case will help you change it so it can be submitted to court.

You will be asked to confirm that the information you give is true to the best of your knowledge and that you know it is for the purpose of a victim impact statement. You can do this by signing the victim impact statement, or asking the Police Officer in Charge of the case to sign it on your behalf.

Once completed, the Police will hold on to your victim impact statement as part of the case materials.

## **Can you change your victim impact statement later?**

Yes. You can make changes to your victim impact statement to ensure it stays up-to-date as the case progresses through court.

It is important that a victim impact statement is prepared early on in the criminal justice process and stays up-to-date.

The Police Officer in Charge of the case will ensure that your victim impact statement is completed by the second appearance of the defendant in court, as this is the defendant may enter a plea.

You will be asked to check if your victim impact statement needs updating The Police Prosecution Service will manage this with the Officer in Charge of the case.. The timing of this will be aligned with key stages of the court process, such as when a sentence indication is requested, or for sentencing.

## **What is a sentence indication?**

The defendant can request a sentencing indication at any time before the trial. This involves the court giving an indication of the sentence the defendant is likely to receive if he or she pleads guilty at that time.

A sentence indication is at the discretion of the judge and will only be given if the judge has sufficient information, which may include any victim impact statements.

## **What happens to the victim impact statement?**

The prosecutor must submit your victim impact statement to the court at sentencing, if one has been prepared.

The defendant can ask to see a copy, but cannot keep it without you agreeing.

A judge can order that part of a victim impact statement be withheld from the defendant if there are concerns for a victim's safety. If this happens, the judge cannot take this information into account when sentencing the offender. This is because defendants are entitled to see any information that may affect his or her sentence.

## **Can you read your victim impact statement in court?**

You may make a request to the judge to read your victim impact statement to the court, or have the prosecutor or another person read it for you.

When reading your victim impact statement, you may address the court and the offender.

If you are a victim of a 'specified offence', you have the right to read your statement aloud in court, or ask the prosecutor or another person to read it out on your behalf.

A 'specified offence' is defined in the Victims' Rights Act 2002 and includes:

- an offence of a sexual nature
- a serious assault
- an offence that has resulted in serious injury, death or incapacity
- an offence that has led to the victim having ongoing fears, on reasonable grounds, for the physical safety of themselves or their family.

If you are a victim of one of these offences, a judge may only refuse your request to read your statement aloud if doing so is inappropriate because of:

- the number of victims wanting to read their statement aloud
- the age and maturity of the offender
- concerns about the risk of serious disruption to the proceedings
- concerns about the safety of any person.

If this happens, the Police or a Court Victim Advisor will discuss it with you.

### **What happens to a victim impact statement once the case is completed?**

At the end of proceedings, copies of a victim impact statement must be returned to court staff.

Victims, court staff, police officer, probation officer, prosecutor, or other people allowed by the court may keep a copy. The defendant cannot keep a copy without you agreeing.

## **PART 3 – CONTENT OF A VICTIM IMPACT STATEMENT**

Police are available and trained to assist you to prepare a victim impact statement. If you decide to make one, you should contact the Police Officer in Charge of the case.

### **What form should a victim impact statement be in?**

The Police can provide you with a copy of a victim impact statement template.

A victim impact statement does not have to be in the template and can be on any plain A4 sheet of paper. It should be typed and include the following details:

- the case number
- the name of the Police Officer in Charge of the case
- your name and date of birth.

The victim impact statement must be signed by you, or on your behalf by the Police Officer in Charge of the case.

Victim impact statements do not have to be in writing. If you wish, you can record your statement in another way (for example, by audiotape).

Victim impact statements can include photographs, drawings, or any other visual representation, if they assist the court in understanding how the offence has affected you.

For example, young children may draw pictures to accompany a parent or guardian's victim impact statement. Photographs may be useful for families of victims who have died or been seriously injured to show the court how the victim looked before the crime occurred.

Victim impact statements should be written as clearly and concisely as possible. This helps ensure there is time for the judge to thoroughly consider your victim impact statement, especially if more than one victim provides one. If you choose to read your victim impact statement to the court, the judge may give you a time limit.

If a victim does not speak English as their first language, the Police can arrange for an interpreter to assist. Victims can also submit a victim impact statement in Māori or NZ sign language.

### **What information should be included in a victim impact statement?**

It is important that the content of a victim impact statement is appropriate and includes information that will assist the court at sentencing.

A victim impact statement should include relevant information on:

- any physical injury or emotional harm you have suffered as a result of the offence
- any loss of, or damage to, property as a result of the offence
- any other effects of the offence on you
- any other information that is consistent with the purpose of a victim impact statement.

Examples of the information to include are:

***Physical injury***

- injuries you received as a result of the offence
- an illness you have developed that relates to the offence
- the type and extent of your injuries, including any long term effects
- any medical treatment you have received
- the impact of the injuries or illness on your lifestyle, e.g. sport or hobbies.

***Emotional effects***

- changes in your attitudes or feelings (eg how you feel about yourself and others, whether your outlook on life has changed as a result of the offence)
- changes in your behaviour (eg, change of lifestyle, ways of coping, sleep patterns, eating and drinking habits, sexual behaviour)
- changes in your relationships with spouse, family, friends or work associates
- short and long term mental health trauma (eg, post traumatic stress disorder, depression and anxiety)
- any counselling you have sought or received.

***Financial effects***

- the value and description of any property that has been damaged, lost, or destroyed
- any costs not covered by your insurance or ACC
- financial loss from time off work
- medical, therapy and/or counselling expenses
- lost educational or work opportunities
- consequential loss (ie, the difference between the compensation ACC pays you and your total costs).

The judge can take these costs into account when considering whether the offender should pay reparation.

The court will not necessarily require the offender to pay you reparation. The offender's financial situation will influence whether any fines or reparation can be imposed.

### ***If the victim has died***

If a victim has died as a result of the offence, their family may wish to talk about them and the life they led, as well as the impact on those left behind.

### ***Other information***

You may include information on the impact of the crime on your family, if they agree.

A victim impact statement can include information contained in the 'summary of facts' of the case. However, this should be kept brief because the court already knows what has happened. The victim impact statement should focus on the harm you have suffered.

### **What information should not be included in a victim impact statement?**

A victim impact statement must not include information that is inconsistent with the purpose of a victim impact statement.

For example, a victim impact statement must not include content that:

- **you know is false** – all information submitted to the court must be truthful. The inclusion of false information could discredit the entire victim impact statement.
- **makes threats** against the offender or their family – threatening to harm a person is a crime and will be dealt with accordingly.
- **is abusive** – comments should focus on how the offender's actions in committing the offence affected you, rather than your views on the offender themselves.
- **is irrelevant** – it is not necessary or appropriate for a victim impact statement to contain information about things that are not relevant to the offence.
- **is confidential** – it is important not to divulge confidential information relating to a victim, offender or any other person.
- **refers to other offences you think the offender committed** – the judge is sentencing the offender for the crime for which he or she has been convicted. Alleged offending cannot be considered.
- **makes comments about the judge, prosecution, defence, jury or witnesses**

This list is not exhaustive. It simply gives examples of content that would fall outside the purpose of a victim impact statement.

No-one else can change your victim impact statement without your agreement. However, the prosecutor needs to make sure the content is suitable for the court and might advise you to change it.

The judge can prohibit some or all of a victim impact statement from being read out in court.

This would only occur if there is a good reason eg, the content is inconsistent with the purpose of a victim impact statement, there is a risk to someone's safety, or there is a chance it would cause serious disruption to the court proceedings.