

OFFICIAL

Guideline Number 13¹

Victim Impact Statements

Issued: 9 August 2023

In the *Victims of Crime Act 2001 (SA)* (VOCA) the Parliament declared the principles that should govern the way victims are dealt with by public agencies and officials such as the Office of the Director of Public Prosecutions and the Director of Public Prosecutions. The principles are contained in sections 6-14 of the VOCA.

Section 10(1) of the VOCA provides that a victim is entitled to have any injury, loss or damage suffered as a result of an offence considered by a sentencing court before the court passes sentence. The section confers a right on the victim of an offence in relation to which sentence is to be passed. The right is personal to the victim and does not belong to the prosecution.

In a footnote to s 10(1), the VOCA advises that the *Sentencing Act 2017 (SA)* provides a mechanism for the exercise of the right contained in s 10(1). That same footnote distinguishes between the mechanism for the exercise of the right and the duty imposed by the *Sentencing Act* upon the prosecutor to place before the sentencing court the details of any injury, loss or damage resulting from the offence.

Turning to the *Sentencing Act*; the mechanism for the exercise of the right which s 10(1) of the VOCA confers is contained in s 14, and the duty to which the footnote to s 10(1) of the VOCA refers is contained in s 13.

Dealing first with the right. Section 14(1) provides:

- (1) A person who has suffered injury, loss or damage resulting from an indictable offence or a prescribed summary offence committed by another may provide the sentencing court with a written personal statement (a ***victim impact statement***) about the impact of that injury, loss or damage on the person and the person's family.

¹ This Guideline replaces any and all previously issued Guidelines that deal with the exercise of the right and the discharge of the duty contained in ss 13 and 14 of the *Sentencing Act 2017 (SA)*, respectively.

OFFICIAL

Consistent with the personal right conferred upon the victim by s 10(1) VOCA, s14(1) vests a discretion in the victim. That is, it is for the victim to determine whether they wish to provide the sentencing court with a victim impact statement. Neither s 10(1) VOCA nor s 14(1) of the *Sentencing Act* provide for the prosecution to play any part in the exercise of the right conferred by s 10(1). This is understandable because a victim impact statement is, as s 14(1) indicates, a *personal* statement of the impact of the injury, loss or damage on the person and the person's family resulting from the offence.

Notwithstanding that neither s 10(1) VOCA nor s 14(1) of the *Sentencing Act* provide for the prosecution to play any part in the exercise of the right conferred by s 10(1), legal officers and witness assistance officers working within the ODPP, and counsel briefed by the ODPP, are expected to ensure that a victim is aware of the right and to provide reasonable assistance to a victim in the preparation of a victim impact statement if requested by the victim. Assistance does not include editing or censoring in any way a victim impact statement contrary to the wishes of a victim.

It may be expected that on occasion a victim may use emotive and intemperate language in their victim impact statement as, in their own words, they attempt to convey the depth of the injury, loss or damage they have suffered. Generally, the courts understand this. The use of emotive and intemperate language by a victim in their victim impact statement does not trigger any obligation on a prosecutor to edit or censor the statement, and a prosecutor should not do so.

On occasion a victim may use gratuitously insulting and abusive language. In such circumstances, a prosecutor may inform the victim that they risk the rejection by the court of their statement in whole or in part and that they may wish to reconsider the language used. If the victim is adamant that their statement be provided as written, including the insulting and abusive language, then that is the victim's right which must be respected. If the statement is objected to, or parts of it are objected to, and the sentencing court accepts the objection, it will be for the victim to consider what course of action, if any, they might then take.

OFFICIAL

It may also transpire that a victim will include in their victim impact statement information that is irrelevant to the sentencing task. Generally, the inclusion of irrelevant material will not prevent the victim impact statement being received by the sentencing court. If a victim impact statement contains irrelevant material the victim may expect the sentencing judge to refer to that material and indicate that it will not be taken into account in sentencing. If this occurs, the prosecutor should explain to the victim, if required, the judge's determination. If the prosecutor is put on notice by defence that they intend to object to the receipt of a victim impact statement because it contains irrelevant material, the prosecutor should inform the victim of this fact and appraise them of the risk that the court may refuse to receive the statement or to have regard to parts of the statement. It will be for the victim to consider what course of action, if any, they might then take. An option is to edit the statement to remove the irrelevant material, but whether the victim does so is a matter for them.

When informing a victim of the right to provide a sentencing court with a victim impact statement, prosecutors should also inform the victim that:

- a. ordinarily the statement is provided to the sentencing court by the prosecution in advance of the date for sentencing submissions.
- b. the court may, if the victim so requested when providing the statement—
 - (i) allow the victim an opportunity to read the statement aloud to the court; or
 - (ii) cause the statement to be read aloud to the court; or
 - (iii) give consideration to the statement without the statement being read aloud to the court.

OFFICIAL

- c. in deciding whether to read their statement, request that it be read aloud by another, or agree to the statement being considered by the judge without it being read aloud to the court, the victim should be informed that the defendant will be present in the courtroom unless special reasons exist which make it inappropriate for the defendant to be present, or that the presence of the defendant may cause a disturbance or a threat to public order and safety (however, in such a case, the court will ensure that the defendant is present by means of an audio visual link or audio link, if such facilities are reasonably available to the court, or that arrangements are otherwise made for an audio visual record of the statement to be made and played to the defendant or other person).
- d. if the court considers there is good reason to do so, it may, in order to assist a victim who wishes to read their victim impact statement to the court—
 - (i) allow an audio visual record or audio record of the victim reading the statement to be played to the court; or
 - (ii) exercise any other powers that it has with regard to a vulnerable witness.²
- e. the court will not be closed to the public (unless an order of the court is made).
- f. the prosecutor can apply for a closed court and/or suppression order in appropriate cases.
- g. the statement will not be disclosed to the defence prior to conviction unless it contains material that on a reasonable appraisal might be relevant to an issue in dispute at trial.
- h. the victim may amend the statement at any time prior to sentencing.
- i. the victim may withdraw the statement at any time prior to sentencing.

Turning to the duty contained in s 13(1) of the *Sentencing Act*. Under s 13(1), prosecutors are obliged to assist a sentencing court in determining sentence by providing the court with particulars of any injury, loss or damage resulting from the offence or offences for which the defendant is to be sentenced, from any offence committed by the defendant that is to be taken into account in determining sentence, and from any course of conduct consisting of a series of criminal acts of the same or a similar character of which the offence for which the defendant is to be sentenced forms part. The prosecutor is only relieved of this obligation if the victim has expressed a wish to the effect

² The powers that a sentencing court has with regard to a vulnerable witness are contained in s 13A of the *Evidence Act 1929 (SA)* which includes the power to make orders such as the victim may read their statement from a location outside the court that is transmitted to the court by means of closed circuit television, or that the statement be read outside the court and that an audio visual record of the reading of the statement be made and replayed in the sentencing court.

OFFICIAL

that they do not want any information about the injury, loss or damage they personally sustained provided to the court.

In relation to offences that have a victim, routinely prosecutors rely upon victim impact statements as the means of discharging their obligation under s 13(1) of the *Sentencing Act*. But the duty imposed by s 13(1) applies irrespective of whether a victim impact statement is provided unless the victim has expressed a wish that the court not be provided with particulars of the injury, loss or damage that they suffered from the offence.



.....
M G Hinton KC
Director of Public Prosecutions

9 August, 2023