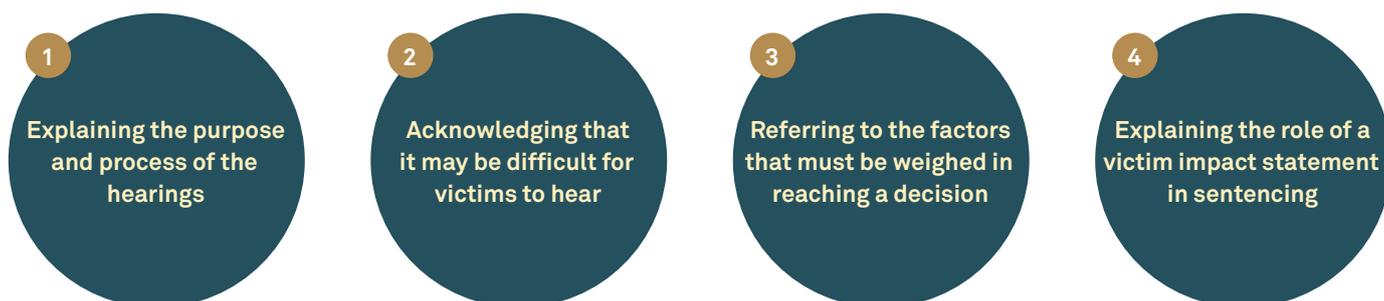


Note 5:

Plea Hearings, Victim Impact Statements and Sentencing

Victims can find both plea and sentencing hearings challenging. Victims may feel embittered when an offender has pleaded guilty to a lesser charge. It may be difficult for victims to hear submissions in mitigation of a sentence, to understand how sentencing regimes differ across courts or appreciate the different factors that the judicial officer is required to consider in the sentencing exercise.

Positive steps judicial officers may consider taking to engage with victims at this stage include:



Depending on the matter, this can happen at either the plea or sentencing hearing, or both.

Victim impact statements

If a person is convicted of an offence, a victim can make a victim impact statement to assist a court in determining a sentence for that offence.

Victims will not always want to make a victim impact statement, but prosecution should inform them of their right to do so. If a victim is unaware of that right or aware but has not yet prepared a statement and expresses a wish to do so, judicial officers should consider whether to stand the matter down or adjourn it to facilitate a statement.

Content

A statement can specify the impact of the offence and any injury, loss or damage a victim suffered as a direct result.



Statements can include:

- Photographs
- Poems
- Drawings
- Other material related to the impact of the offence (i.e. songs, DVDs, PowerPoint slides).

A written medical report concerning the victim can also be attached to a statement.

Admissibility

Statements may at times include inadmissible material. Admissibility issues may be dealt with differently depending on where the matter is heard and whether a statement will be read aloud in court or read in person by the judicial officer.

For example, a statement might contain information outside the scope of charges. This often occurs in family violence proceedings where a statement may refer to years of offending. Judicial officers can acknowledge the information provided in a statement but explain that they can only sentence on the charge/s before them.

Lawyers involved in County Court or Supreme Court matters should agree on which material they consider inadmissible in advance of sentencing and present this to the judicial officer.

Unless the statement is to be read aloud, the court may receive the whole of a victim impact statement despite the statement containing inadmissible material.⁴

If the court receives a victim impact statement that contains inadmissible material, the court should not rely on that inadmissible material in sentencing the offender. However, the court is not required to specify which part of the material is not being relied upon.

... as victims of crime are usually laypersons with little understanding of the rules of evidence, and who are likely to be emotional about the subject of their statements, it is to be expected that they may include inadmissible material.

R v Swift (2007) 15 VR 497, 498 [6]

⁴ *Sentencing Act* 1991 ss 8L(5), 8Q

Note 5: Plea Hearings, Victim Impact Statements and Sentencing

Victim impact statements read aloud

If a victim has prepared a statement, judicial officers can ask the victim, or the prosecutor if the victim would like to read it aloud or have it read by someone else. Reading a statement can be important for victims who are seeking to explain how a crime affected them.

The judicial officer can:

- Explain the role of victim impact statements in sentencing at the hearing;
- Invite the victim to nominate how and where they would like to present their statement;
- Consider whether the victim should present the statement from a position which does not face the offender;
- Consider whether alternative arrangements should be made (reading from an alternate venue, use of screens, limiting people in court, modifying dress, use of pre-recordings and allowing a support person to stand with the victim).

Victim impact statements that are read aloud must not contain inadmissible material.⁵ To comply with this rule, prosecutors and defence counsel will need to work together before the hearing to identify and remove inadmissible material from the statement.

Effect of ongoing relationships

A victim may have an ongoing relationship with an offender and may be supporting them in criminal proceedings. Victims often do not wish to make a victim impact statement in these circumstances but they should still be informed of their right to do so. Court staff and the prosecution can liaise about this prior to the hearing and advise the judicial officer what steps have been taken.



Sentencing

Judicial officers can acknowledge a victim's experience in sentencing remarks where it has been communicated to the court regardless of whether there was a victim impact statement.

If the victim impact statement is not read aloud, the judicial officer should state in their remarks that they have read the statement and consider whether to acknowledge the difficulty involved in preparing the statement and thank the victim/s for participating.

There are differing views among victims about judicial officers quoting parts of the victim impact statement in the sentencing remarks. Some victims have reported that this affirms their decision to provide the statement and shows it has been considered. However, where victims have elected not to read out the statement, victims may not want their words read aloud by the judicial officer or to have them included verbatim in the published sentencing remarks.

Key points to consider

Refer to, summarise or quote from admissible portions of statements (but avoid conveying information a victim may not want published or which may be detrimental to wellbeing).

Comment on the impact of the offender's actions.

Highlight positive behaviour by the victim such as kindness previously shown to the offender.

Recognise that sentences cannot undo what has been done.

Acknowledge loss experienced by loved ones of a victim who has died.

Emphasise that a sentence does not reflect the value of a life.

Ask the prosecution to inform the victim of the sentencing decision.

⁵ *Sentencing Act* 1991 ss 8L(5), 8Q

Note 5: Plea Hearings, Victim Impact Statements and Sentencing

Acknowledging the victim while respecting privacy

A victim can still be acknowledged without having their words read out or included in the published sentencing remarks.

I received a statement from Dennis as to the impact your crimes have had on him. These are matters which I very much take into account in deciding the appropriate sentence.

As Dennis did not want the statement read out in court, I will not refer specifically to his words. But I want you to realise that when it comes to children, it is presumed that they suffer harm from a sexual offence being committed against them, harm which can be long-term and serious and both physical and psychological, and which includes future harm. All of these aspects apply to Dennis.

I have some things to say to Dennis, who was in court at the plea hearing. Nothing that I say can give him back his childhood, or his life. I know he is struggling with the effects of this serious abuse and that this struggle continues.

All I can do is impose a sentence in accordance with the law, that recognises the impact on him, denounces the sexual abuse perpetrated on him and provides what the law demands as just punishment.

Taking into account things that are in the offender's favour is part of the sentencing exercise that the law requires me to undertake.

From my experience as a Judge, I am aware that speaking about these things that he kept to himself for so long is very, very hard. But I acknowledge his bravery and spirit for coming forward and seeing this process through.

I know that he does not see his future in bright terms and he does not know where he goes from here. But at least let me say that I do wish him well for the future with this case behind him after today.

DPP v Latimer [2017] VCC 87 [18]-[19]
(citations omitted)

Identification of the victim

A victim can be acknowledged without being named. This often occurs in sexual offence cases where a victim and their family may be referred to by pseudonyms to protect their identities.

The law requires that a victim of sexual offending not be identified. Because of the relationship between the parties in this case, it is necessary to use a pseudonym for the offender to prevent identification of the victim. The name I will use in these remarks is Conrad Leon.

For the same reason, I will refer to the victim of the offending as 'the complainant', and not refer to any other person in the family by name, only by relationship. I mean no disrespect to anyone in not using their names.

DPP v Leon (A Pseudonym) [2014] VCC 237 [1]
(citations omitted)

Referring to apologies

An offender may apologise, or seek to apologise, to a victim during the proceedings. Judicial officers should be cautious with references to apologies in their sentencing remarks, particularly in family violence proceedings where apologies can be part of a cycle of violence.

In such circumstances, a judicial officer may acknowledge an apology, but observe that the best apology is for an offender to do the hard work required to change their behaviour.

Many victims are assaulted on several occasions before they summon the courage to leave an abusive relationship. Often they require considerable support in order to do so.

In my view, these are matters which should be given considerable weight by a judge who is considering the weight that should be given to a victim impact statement made by a person who has been the victim of domestic violence. ... Evidence of forgiveness of the victim of domestic violence should be treated with extreme caution.

R v Hester [2007] VSCA 298 [27] (Neave JA)

