Te Tari Ture o te Karauna
Crown Law

Victims

Ngā pārurenga

As at 1 January 2025

The Solicitor-General's Prosecution Guidelines
Te Aratohu Aru a te Rōia Mātāmua o te Karauna

All guidelines should be read alongside the Principal guideline | te Aratohu mātāmua

Summary | Te whakarāpopototanga

1. Different victims have different needs relating to their rights to be kept informed about the progress of proceedings and to be consulted on certain decisions. The appropriate level of support for each victim should be determined through consultation with the victim. Prosecutors should treat the victim with respect, courtesy and compassion, and respect the victim's dignity and privacy. It is important for prosecutors to act in a manner that demonstrates that, while the victim's views are important, they are not determinative.

Introduction | Ngā kupu whakataki

2. Victims occupy a special and unique place in the prosecution process. Depending on the type of case, they may be required to play a significant role in the prosecution (such as being a crucial witness for the prosecution) or they may not be required to participate at all if they do not wish to do so. Different victims will have different needs depending on the nature of the case and their own circumstances. In all cases, prosecutors should give effect to the victim's rights to be kept informed about the progress of the proceeding and, in certain cases, to have the opportunity to provide their views in respect of certain decisions. Prosecutors should be mindful of the effect of the offending on the victim and seek to minimise the possibility of further harm wherever possible.

Scope | Te korahi

3. This guideline is designed to assist prosecutors, and prosecuting agencies, to support victims throughout the life of a prosecution, as well as meeting their own obligations under the Victims' Rights Act 2002.

4. The Victims' Rights Act sets minimum standards for providing information to all those who meet the definition of "victim" in that Act. Section 29 of the Act imposes additional obligations in respect of victims of specified offences. These guidelines recommend additional ways in which prosecuting agencies, investigators and prosecutors can support victims, which go beyond the requirements of the Act and represent best practice. Some of the recommendations apply to all victims; some apply only to victims of specified offences; and others apply only in serious cases (as defined below). It is a matter for prosecuting agencies to determine whether and how they will support victims beyond the requirements of the Act.

5. Subject to those qualifications, this guideline applies to prosecutions for all types of offending. Additional guidance for sexual violence offending is provided in the guideline on Prosecuting sexual violence | Te aru i te taitōkai.

Roles | Ngā tūnga

6. When conducting a prosecution, the prosecutor acts on behalf of their agency, or the State (as applicable), and does not act for a victim in the same way as other lawyers act for their clients. Prosecutors should nonetheless always be mindful of the consequences for the victim and their whānau, and take their views into account where required by the Victims' Rights Act or recommended by these guidelines, in relation to any significant prosecution decision.

7. The prosecutor, the investigator and the court victim advisor all have different roles to play with respect to victims. Those roles may be further refined depending on a particular victim's needs and wishes. Prosecutors should establish clear lines of communication between all three parties so that responsibilities for the provision of information are clear and victims receive the information they should while not being "over contacted".

8. Similarly, prosecutors should liaise with court victim advisors to determine who will provide the victim's views to the court. In general, it will be the prosecutor's role to provide the victim's views to the court unless agreed otherwise.

Glossary | Kuputaka

9. A *serious case* will be defined differently within each prosecuting agency. In this guideline it includes, without limiting the nature of other cases which might properly be described as serious, any case which involves a death, or very serious violence (such as would justify a charge under s 188 of the Crimes Act, or a charge of sexual violation). It is a narrower class of cases than those defined as specified offences in s 29 of the Victims' Rights Act. A *specified offence* is an offence specified in s 29 of the Victims' Rights Act.

Guideline | Te aratohu

Principles

10. Section 7 of the Victims' Rights Act provides that the overarching principles for prosecutors to follow when dealing with victims are:[1]

    10.1 To treat victims with respect, courtesy and compassion.

    10.2 To respect victims' dignity and privacy.

11. To give effect to these principles, prosecutors should, at a minimum, be cognisant of the mandatory statutory requirements in the Victims' Rights Act to inform victims about matters concerning them and significant events throughout the prosecution. In some cases, prosecutors are required to seek victims' views on certain matters and convey those views to the court.[2]

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1 Victims' Rights Act 2002, s 7.

2 Victims' Rights Act, ss 28-30. See also relevant provisions in the Bail Act 2000 and the Criminal Procedure Act 2011 regarding bail and name suppression respectively.

12. Different victims have different needs. Some need more support than this guideline recommends; others need less. Some are opposed to the prosecution and do not wish to engage at all. Prosecutors should consult with victims, the investigator and other relevant people (for example the court victim advisor or independent victim advocate, if applicable) to determine the appropriate level of support in each case. Prosecutors should also be aware of the NGOs operating in their region to provide support to victims.

13. This guideline will need to be applied flexibly to meet the needs of individual cases. In particular, in Crown prosecutions, the Crown Solicitor determines how a matter should be prosecuted, in the particular circumstances of the case. The conduct of a proceeding in court is a matter for the presiding judge.

The decision to prosecute

14. Prosecutors should seek victim's views when making the decision to prosecute or not, particularly where a specified offence is alleged. However, the prosecutor should not give the impression that the victim's views will be determinative; while a victim's views are important, the decision always remains with the prosecutor. There will be cases where, for example for reasons of public safety, it is important to bring a prosecution over a victim's objection. Conversely, if the Test for Prosecution is not met, a prosecution cannot be commenced, irrespective of a victim's views.

15. Prosecutors should ensure victims are advised of prosecution decisions, preferably before they are made public. If the decision is not to prosecute, the victim should be told why. There will be exceptions, such as where the reasons are sensitive or private to the defendant or another party. Prosecutors should provide as much information as is appropriate, and explain why they cannot provide the full reasons, if that is the case.

16. In serious cases, prosecution decisions should be explained to the victim in person where practicable, particularly if the decision is not consistent with the victim's views. Victims should be given the option of having a suitable support person (who is not a witness) present at such meetings.

Providing information to, and consulting with, victims

17. Information and consultation are important, not only to the court's decision-making, but also to the victim's experience of, and preparedness to continue to engage with, the prosecution. Better information and consultation will help reduce stress for a victim, support their wellbeing and thereby improve the quality of their evidence in court if they are required to give evidence.

18. There are mandatory statutory obligations to provide victims with information about the prosecution. Under the Victims' Rights Act, that information may be provided by the investigator, the prosecutor (usually via the investigator) or court staff (such as a court victim advisor). The prosecutor or investigator will almost always be best placed to provide information to the victim; court staff will not have the same contextual understanding of the prosecution. The investigator will also have had the most prior contact with the victim, as the prosecutor and court staff do not become involved until charges are filed, which in most cases will be some time after a complaint is made to the prosecuting agency.

19. Engagement with a victim should be informed by the victim's own wishes. Some victims will want more information about the prosecution than others. Some may have a preference for receiving information from the investigator rather than court staff, or vice versa. Victims are also entitled to nominate, in writing, a support person to receive information on their behalf.[3] Consultation with the victim at an early stage, as to the level of engagement they wish to have, is essential.

20. Subject to the victim's wishes, the investigator should be the person who has presumptive responsibility for providing victims with information about the prosecution, unless some other course has been agreed with the prosecutor and court victim advisor. References in this guideline to the prosecutor providing information should therefore be taken to include the investigator. The prosecutor remains responsible for providing information to the investigator (for example about what has happened in court) so that information is provided to the victim quickly and accurately.

21. In relation to victims of specified offences, prosecutors should, from an early stage, be aware of the following:

    21.1 Who, if anyone, a victim wishes to have as their support person and the role that person will play in the provision of information (both to and from the victim), pre-trial meetings (if applicable) and court hearings.

    21.2 Whether there are any safety needs the prosecutor needs to know about, particularly where they may impact on the frequency and/or method of communication with the victim.

    21.3 Whether there are any religious or cultural protocols that should be observed, whether in hui | meetings with the prosecutor or at court, and whether other people may need to be involved to facilitate those processes (such as kaumatua to say karakia at court).

    21.4 Whether the victim has any particular accessibility needs, whether generally or specifically for court, or any other needs which may need to be accommodated. The need for translation or other communication assistance should be advised to the court as soon as possible.

Information required to be provided by statute

22. Section 12 of the Victims' Rights Act provides that the following information **must** be provided to victims:

    22.1 Decisions on charging and all changes thereto.

    22.2 The victim's role as a witness.

    22.3 The possibility of the court suppressing the victim's name and the steps the victim may take in respect of suppression of their own name.

[3] Victims' Rights Act 2002, s 14. In these guidelines, references to the victim include any support person nominated under this process.

22.4 The date and venue of:

22.4.1 the first appearance;

22.4.2 any preliminary hearing;[4]

22.4.3 any trial;

22.4.4 any sentencing hearing; and

22.4.5 any appeal hearing (whether the appeal is against conviction, sentence or both).[5]

22.5 Any referral of the conviction or sentence by the Criminal Cases Review Commission under s 17 of the Criminal Cases Review Commission Act 2019.

22.6 The outcome of the prosecution, including:

22.6.1 any guilty plea or finding of guilt, and the sentence imposed;

22.6.2 any finding that the defendant is unfit to stand trial;

22.6.3 any finding that the charge was not proved;

22.6.4 any acquittal or deemed acquittal (eg a discharge under s 147 of the Criminal Procedure Act 2011); and

22.6.5 any pardon.

Additional obligations in respect of bail and name suppression

23. The Victims' Rights Act also provides that victims of specified offences must be advised of, and their views sought in relation to, the following:[6]

23.1 Any application by the defendant for permanent name suppression.[7]

23.2 Any application by the defendant for bail (including EM bail).[8]

24. Where practicable, in serious cases, victims should also be advised of applications for interim name suppression and applications for variation of bail conditions (particularly those which may mean the victim is more likely to see the defendant somewhere or at some time they do not expect, such as variations to residential or curfew conditions). As with applications for bail and permanent name suppression, prosecutors should ascertain the victim's views and convey them to the court, unless that is not practicable.

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4 While still technically a statutory requirement, this is redundant given that preliminary hearings are no longer a feature of the criminal process.

5 These are the only types of appeals mentioned in the statute, but victims should also be advised of other appeals, such as significant pre-trial appeals.

6 Provided they have asked to be kept advised of such matters under s 32B of the Victims' Rights Act.

7 Victims' Rights Act, s 16B.

8 Victims' Rights Act, s 30.

Commentary

An example where this may not be practicable is where the prosecutor is confronted with an application in court, without prior notice, and an adjournment has been refused or is not appropriate.[9]

A prosecuting agency may choose to advise victims of other offences of, and seek their views on, bail and name suppression, but they are not required to do so.

25. Any decisions about bail or name suppression should be communicated to victims of specified offences as soon as possible.[10]

26. If the defendant is remanded in custody at any point (whether bail was sought or not) the investigator should be notified as soon as possible, as this will trigger the operation of the Victim Notification Register (VNR).

Other information to be provided

27. In serious cases, prosecutors should consider notifying victims of the following matters, and explain the outcomes or implications to them (as well as consulting with them where appropriate):

    27.1 Procedures for determining fitness to stand trial or insanity, under the Criminal Procedure (Mentally Impaired Persons) Act 2003, if triggered.

    27.2 Notifications and/or applications by the prosecutor for the victim to give evidence in a particular way (whether the ordinary way or an alternative way), under the Evidence Act 2006.

    27.3 Applications by the prosecutor for the victim to have communication assistance when giving evidence, under s 80 of the Evidence Act.

    27.4 Significant pre-trial applications filed by the defendant that may affect them, such as:[11]

        27.4.1 Applications for stay or dismissal of the charges, under s 147 of the Criminal Procedure Act.

        27.4.2 Applications for severance under s 138(4) of the Criminal Procedure Act.

        27.4.3 Applications to transfer the trial to a different court, under s 157 of the Criminal Procedure Act.

        27.4.4 Applications to offer evidence about the victim's veracity or propensity, under ss 37 or 40 of the Evidence Act.

        27.4.5 Applications for non-party disclosure of personal information about them, under ss 24-29 of the Criminal Disclosure Act 2008.

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9 Victims' Rights Act, ss 28-30; Bail Act 2000, s 8; and Criminal Procedure Act 2011, s 200.

10 Assuming the victim has asked to be kept advised of such matters under s 32B of the Victims' Rights Act.

11 Prosecutors will need to determine whether and when to advise victims about pre-trial applications and decisions. Much will depend on the merits of the application and the circumstances of the victim. However, prosecutors should at least consider providing this information, and have a good reason for deciding not to do so.

27.5 Applications by the defendant for communication assistance, and/or to give evidence in an alternative way.

27.6 A proposed plea arrangement that the prosecutor is considering offering or accepting.[12]

27.7 Any sentence indication hearing sought by the defendant.

27.8 Where the defendant has been convicted, or acquitted on account of insanity, the victim's right to provide a victim impact statement to the court.

27.9 Where the defendant has been convicted and there is associated family violence offending, the possibility of a protection order being made at sentencing.[13]

27.10 The possibility of appeals, whether in respect of pre-trial matters, conviction or sentence. The consequences of an appeal being filed should also be clearly explained (for example, where a pre-trial appeal means the trial may be delayed). Where relevant, the prosecutor may also consider advising the victim of the possibility of an application to the Criminal Cases Review Commission once appeal rights have been exhausted.

28. If a mistrial is declared or (in the case of jury trials) no verdict is reached, prosecutors should consult with the victim before deciding whether to proceed with a further trial, to explain what has happened and seek their views about a retrial. If a further trial is required, prosecutors should consider pre-trial matters afresh.

Commentary

For example, the way in which a victim gave evidence may no longer be suitable because of the passage of time or some other factor. Prosecutors should consult with the victim about such matters at an early stage.

29. In serious cases, prosecutors should ensure the victim has been referred to both Court Services for Victims (court victim advisors) and Victim Support. Court victim advisors can assist by explaining the court process, ascertaining and communicating the views of the victim and showing the victim the courtroom. They can also organise an appropriate support person for a victim with special needs to be in the courtroom if required and organise other special arrangements for the trial. Victim Support can assist victims and their whānau to access their entitlements to financial assistance, for example to attend the trial. There may be other services available depending on the type of case and its location; prosecutors should be familiar with the supports available in their area.

How information should be provided

30. Prosecutors should provide information in a timely way and in a manner the victim can understand.

31. Prosecutors should bear in mind that trauma may affect a victim's ability to process information about proceedings, particularly when that information concerns unknown or new terms or processes. In some cases, prosecutors may need to repeat

[12] It is not necessary to advise a victim of every proposal made by a defendant where the prosecutor has no intention of agreeing to it.
[13] Sentencing Act 2002, s 123B.

information on multiple occasions, or provide information even where the prosecutor knows someone else (such as the investigator) has already provided it.

32. Prosecutors should avoid making promises to victims and provide realistic time estimates. In any case where there is a change of circumstances that affects advice or information that has been given to a victim, prosecutors should ensure any change in the advice or information is explained promptly.

33. When ascertaining the victim's views before the court makes a decision (for example, about bail or name suppression), the prosecutor should make clear to the victim that their views will not be determinative, and that the court will need to consider a range of factors when coming to its decision.

34. When providing information to the court, prosecutors should be mindful of the statutory prohibition on disclosing the victim's contact details (including their residential address, email address or telephone numbers).[14] Prosecutors should also exercise caution when disclosing personal information about other witnesses.

35. When there are very large numbers of victims (as may be the case, for example, with certain types of dishonesty and property offending) it may not be practicable to identify or contact each victim individually. Prosecutors may consider alternative ways of meeting their obligations to provide information about proceedings.

Commentary

For example, information may be provided on a website or via an email address. In these cases, victims should be made aware of how they can access information.

36. Some victims may view court proceedings and prosecutors with suspicion; they may have felt disrespected, or experienced bias or prejudice, in the past. Prosecutors should be aware of such concerns and address them appropriately.

37. Prosecutors should be sensitive to matters that are important to the victims and their whānau in an individual case.

Commentary

For example, in serious cases, where prosecutors are aware of any significant dates (such as the birthday of a deceased victim, or other dates of cultural or religious significance to the victim or their whānau), they should avoid communicating information which could be distressing on those dates. Prosecutors should also take such dates into account in the setting of trial and sentencing dates, where practicable.

Meeting victims prior to trial

38. It will not be practicable for prosecutors to meet with victims in every case, particularly if they are not required to attend court. However, in serious cases, prosecutors should consider offering to meet with victims at an early stage (prior to callover in jury trial cases), irrespective of whether they are required to give evidence.

39. It is important that such meetings are not rushed, and take place in a respectful manner. Prosecutors should avoid meetings being scheduled shortly before they have to attend court or leave to meet other commitments. They should think carefully

[14] Victims' Rights Act, s 16. See also Evidence Act 2006, ss 87-88.

about the venue for a meeting.

Commentary
For example, the Crown or prosecutors' room at a courthouse may not be appropriate if there are likely to be interruptions as other prosecutors come and go.

40. Where a meeting is to take place, the prosecutor should make sure they know how to correctly pronounce the name of the victim, and any other people attending, as well as their pronouns. They should also make enquiries to find out whether there are any religious or cultural protocols which should be observed at the meeting, and whether the victim has any accessibility issues that need to be met.

41. The victim should be given the option of having a support person present. If a communication assistant has been appointed, the prosecutor should consider whether they should also attend (where practicable). The prosecutor should also consider whether an interpreter is required.

42. In addition to the matters set out above, and answering any questions the victim may have, prosecutors may wish to discuss the following with the victim, where relevant:

    42.1 The role of a prosecutor and, in particular, that they are not the victim's lawyer. This should be done sensitively; some victims may be surprised the State provides the defendant with a lawyer but not the victim. Prosecutors may need to reassure the victim that they will take account of the victim's views when making important decisions even though they do not act as the victim's lawyer.

    42.2 The prosecutor has to prove the case; defendants cannot be compelled to give evidence. Whether the defendant gives or calls evidence will be their decision to make and there should be no expectation they will do so.

    42.3 The media will be entitled to be present and report on any aspect of the proceeding, subject to any suppression orders.

    42.4 The level of engagement the victim wishes to have with the prosecution. Some victims wish to know about every court date and every development; others prefer to put the matter out of their minds until they are required to come to court or otherwise be involved. Victims should also have the opportunity to express a preference as to who provides information to them as between the investigator (on behalf of the prosecutor) or the court victim advisor.

    42.5 The position with respect to bail and name suppression and what that means. If the defendant is remanded in custody, the prosecutor should explain they may apply for bail at any time. The prosecutor should tell the victim what to do if they become of aware of a breach of bail (for example if they are contacted by the defendant), or if they are concerned by any other matters (such as unwanted contact from supporters of the defendant).

    42.6 The way in which the case will be determined and how the victim will be advised of the result. This will depend in part on whether the defendant has elected trial by jury.

42.7 If the defendant has not elected jury trial, the victim should be advised that the judge may reserve their decision so that the outcome is not known at the end of the trial. Prosecutors should have a procedure in place to receive and communicate judge-alone verdicts so that there are no delays (for example, if the prosecutor is on leave or in trial when the decision is emailed to them). In some cases, it may be appropriate to seek an embargo on the decision to allow victims to be notified before the verdict is public.

42.8 If there is to be a jury trial:

42.8.1 the need to alert the investigator, or the prosecutor, immediately if the victim or witness realises they know a juror personally; and

42.8.2 the victim will need to be able to attend court at very short notice if they wish to be present when the verdicts are taken. Otherwise, the prosecutor should put a plan in place to advise the victim of the verdict as quickly as possible, in a manner they are comfortable with.

42.9 The possible outcomes of the trial and the consequences of those outcomes. In particular, it can be distressing for a victim to see an offender released after being found guilty, if they have been granted bail pending sentencing. Expectations about a remand in custody following a guilty verdict should be carefully managed. Equally, the prosecutor should explain that a not guilty verdict will see the defendant's immediate release even if there has been a previous remand in custody.

43. Prosecutors should identify any specific needs such as translation or accessibility issues if the witness is intending to attend court. It may also be appropriate to ascertain whether there are any cultural processes the victim would like to observe, such as saying karakia at court.

44. If a victim or their whānau is intending to watch a trial, they should be warned about any aspects which might be particularly distressing (such as medical evidence or the presentation of graphic photographs) so they can decide whether to attend those parts of the trial.

Special considerations when meeting with victims who are to be witnesses

45. Pre-trial meetings have value for both victims and prosecutors. Most victims will not have given evidence in court before and may feel anxious about doing so. Meeting the prosecutor ahead of time and establishing a rapport supports the victim to give the best evidence they can. It is also an opportunity to identify any issues, such as accessibility issues, that have not yet been identified.

46. The investigator should always be present at any meeting between a prosecutor and a victim who is to be a witness. There should be no evidential discussions during meetings with witnesses. Meetings should be confined to the matters set out below as well as any other non-evidential matters raised by either the prosecutor or the witness. The attending investigator should create a record of who was present and the nature of the meeting (for example, "meeting with prosecutor"), which should be disclosed, but there is no need to keep a full record of the discussion.

47. There will be occasions when evidential matters are raised by either the prosecutor or the witness. These discussions should take place separately.[15] The attending investigator should keep a full record of any evidential discussions, which may need to be disclosed to the defence.

48. Prosecutors should explain to the victim that the prosecutor cannot rehearse their evidence with them, and the reasons for that. However, prosecutors may prepare witnesses for court. Preparation must not extend to coaching but should include:

    48.1 Confirming that, when giving evidence, the most important thing is to tell the truth.

    48.2 Reassuring them that all that is otherwise expected is that they be themselves.

    48.3 Explaining what to expect in evidence in chief, cross-examination and re-examination and judicial questions (and what those terms mean). The witness should listen carefully to all questions, irrespective of who is asking them, and if they do not understand or need clarification, ask for the question to be repeated or rephrased.

    48.4 In some cases it may be appropriate to tell the witness they may be challenged on some specific topics (without suggesting possible answers, which would stray into coaching). For example, it may be appropriate to tell the witness if they are likely to be accused of lying, or questioned about sensitive issues or previous criminal convictions. Similarly, it may be appropriate to warn the witness that they may be confronted with sensitive material such as photographs or text messages.

    48.5 Showing the witness exhibits about which they might be asked questions, particularly where it is potentially confusing (such as spreadsheets of phone data, or floor plans), so they can orient themselves to the material ahead of time. This may save time at trial and assist the witness to feel more confident when giving evidence.

    48.6 Advising that cross-examination is not a personal attack, but a professional task that is part of defence counsel's duty to their client. In particular, witnesses should be warned that they may not always understand the relevance of a question, or wish to answer, but that they must do their best to do so. If having difficulty, they may pause before answering (at which point the prosecutor may object to an improper question), ask for a break or ask for clarification.

49. Where relevant, prosecutors should explore the possibility of the victim giving evidence in an alternative way.

Particularly vulnerable victims

50. Some victims are particularly vulnerable for reasons which may or may not be immediately apparent to the prosecutor. Prosecutors should be mindful that some victims may have more difficulty participating in the criminal justice system than others, and attempt to mitigate that as far as practicable. It is important to identify

[15] For convenience, such a meeting could directly follow an initial or pre-trial meeting.

barriers that might limit their capacity or willingness to participate and to consider ways to overcome them.

51. Without limiting the reasons why a victim may be particularly vulnerable, the following populations are likely to fall into that category:

    51.1 Children.

    51.2 Victims of family or sexual violence. Prosecutors should be aware of the guideline on Prosecuting sexual violence | Te aru i te taitōkai and consider applying it, where relevant and appropriate, in family violence cases. In particular, prosecutors should consider the ways in which victims should give evidence and either give notice, or make applications, to the court as soon as possible.[16]

    51.3 Members of communities that may be under-served by the criminal justice system or otherwise marginalised are more vulnerable to becoming victims of crime and may feel unprotected by, and mistrustful of, that system. People are more likely to have been impacted by these factors if they have had previous interactions with the criminal justice system as a victim or defendant, or have been subject to abuses in care. Populations which may be under-served by the criminal justice system or otherwise marginalised include:

        51.3.1 The elderly, who are more likely to live with physical or cognitive limitations which may affect their ability to participate effectively.

        51.3.2 Disabled people.

        51.3.3 Minority populations, particularly those with limited or no proficiency in English (the effect of which is likely to be exacerbated in stressful or unfamiliar settings).

        51.3.4 People who are vulnerable by virtue of particular circumstances such as homelessness, incarceration or immigration status.

        51.3.5 Members of LGBTQI+ (or "Rainbow") communities.

52. Some victims will fall into more than one of the above communities.

Victims who have experienced trauma[17]

53. Victims may experience physical, emotional, psychological, and/or pecuniary harm as a result of an offence. Multiple types of harm may result from the same crime. Emotional harm can be caused by a variety of crimes, including those that do not involve violence.

54. Prosecutors should use their best efforts to follow a trauma-informed approach, and recognise that victims may have experienced multiple forms of trauma. This includes trauma from the crime itself, trauma from their injuries or losses, trauma from their

[16] Family violence complainants are entitled to give their evidence in chief by way of video records in certain circumstances: Evidence Act 2006, s 106A. Where those criteria are not met, the prosecutor should consider making an application to the court for them to do so.

[17] In this context, the word trauma has its technical meaning whereby a person has been so impacted by an experience that they experience some or all of the following: hypervigilance, psychological and physical avoidance, and, in response to internal or external triggers, a re-experiencing of the past event.

involvement in the criminal justice process and other forms of pre-existing trauma that may affect their experience in the criminal justice process.

Commentary

A trauma-informed approach involves understanding the vulnerabilities and experiences of trauma survivors, including the prevalence and physical, social, and emotional impact of trauma. A trauma-informed approach recognises signs of trauma in victims and witnesses and responds by integrating knowledge about trauma into the prosecutor's practice. Trauma-informed approaches seek to empower the victim's feelings of safety, choice and control.

Emotional harm may result in a range of physiological and psychological reactions, from temporary impairment in the ability to cope and function to acute stress reactions and post-traumatic stress disorder. Visual imagery related to the event and the emotional and physical reactions associated with reliving the experience may remain with a victim for many years. Victims who have experienced violence, threats of violence, intimidation, exploitation or harassment over an extended period may also suffer from complex trauma, which can entail severe emotional injury. In appropriate cases, prosecutors should endeavour to identify how trauma might impact a victim's ability to give evidence and take steps to mitigate the risks of further harm as far as possible (such as seeking orders for the victim to give evidence in a different way or asking the court to take more frequent breaks than usual while the victim is giving evidence).

55. Without limiting how prosecutors may implement a trauma-informed approach, prosecutors may consider the following:

    55.1 Asking a victim how they would like the prosecutor to refer to the offender (use of the person's name may be triggering). The prosecutor may need to explain that other participants (such as defence counsel) are not required to meet such preferences.

    55.2 Asking a victim whether there are any particular words or phrases which the prosecutor should avoid in discussions with the victim, or anything else the prosecutor should or should not do, to reduce the difficulty of communicating and participating for the victim as much as possible.

    55.3 Ensuring that, in meetings, there is sufficient space to allow for a victim to sit apart from others and there are no obstructions between them and the exit.

    55.4 If relevant, preparing a victim for the use of exhibits (such as photographs) so they are not confronted with them for the first time at trial.

    55.5 Taking additional steps to avoid any possible contact between victims and defendants. For example, arranging for a victim to arrive earlier or later than a bailed defendant to avoid them going through court security at the same time.

56. Prosecutors are often very busy and working on multiple cases at any one time. However, victims who have experienced trauma may interpret normal signs of being busy as suggesting the victim does not matter, such as when a prosecutor forgets details of the case or makes errors such as mixing up people's names. Prosecutors

should try to avoid those sorts of errors and apologise if they do occur.

Commentary

When arranging a meeting with a victim, prosecutors should ensure they have sufficient time to prepare for it immediately beforehand. This will enable them to refamiliarise themselves with the file and ensure the details are fresh in their minds. It is inevitable that mistakes will occasionally be made; when that happens it may be appropriate to reassure the victim that their case is important.

Changes to charges and plea arrangements

57. Significant amendments to charges, including a reduction in charge, or amalgamation of multiple charges, whether for the purposes of a plea arrangement or not, are likely to be of great importance to victims and their whānau. The choice of charges is exclusively a decision for the prosecutor to make in accordance with the guideline on Decisions to prosecute | Te whakatau ki te aru. However, in serious cases, prosecutors should make all reasonable efforts to discuss any significant amendments to charges with victims beforehand to explain the reasons for, and implications of, the change and seek their input, unless that is impracticable. Prosecutors should consider seeking adjournments for this purpose in appropriate cases.

58. Prosecutors should be aware that victims have an interest in seeing those who have harmed them held accountable for their actions and may be concerned about the withdrawal or amalgamation of individual charges. Removing individual charges can be disempowering for victims who may perceive that the prosecutor, or the justice system generally, is being dismissive of the harm they have suffered from those individual charges, even if they are unlikely to impact the final sentence.

The summary of facts

59. The summary of facts is an important document. If a guilty plea is entered, the summary will form the factual basis for sentencing. As with plea arrangements, in serious cases the victim's views should be considered when determining whether the prosecutor will agree to significant amendments to the summary of facts. The summary of facts should represent a comprehensive summary of the circumstances giving rise to the offending that the prosecutor can prove beyond a reasonable doubt. A summary of facts which bears little resemblance to the victim's account of the offending risks undermining their confidence in the process. There will be cases where the victim disputes aspects of the summary, but the prosecutor is not in a position to prove the victim's account beyond reasonable doubt (or the disputes are not sufficiently material to warrant a disputed facts hearing). This should be clearly explained to the victim before the summary is read out in court or otherwise made public.

60. Prosecutors should tell victims that the content of the summary of facts could be made public at any time: if a defendant pleads guilty, the prosecutor must provide the summary to the court and it becomes a matter of public record that can be accessed and published by the media unless the court makes an order prohibiting publication.

61. There will be cases where some of the information in a summary of facts cannot be disclosed to victims prior to a guilty plea being entered (for example, where they are to be a witness at trial). In other cases, parents or caregivers may request certain details to be withheld from young or vulnerable victims. In such cases the investigator and prosecutor should work together so that victims are not surprised by information published in the media or discussed in court at a sentencing hearing.

Sentencing

62. Sentencing is a particularly important event for victims and their whānau. In serious cases, prosecutors should consider meeting with victims beforehand to discuss the process and the options for their attendance at, and involvement in, the sentencing hearing, particularly if they have not had to attend court previously in the proceeding (for example, where there has been a guilty plea).

63. If a prosecution is proceeding to sentencing or disposition following a trial, guilty plea, or acquittal on account of insanity, prosecutors should do all of the following (or ask the investigator to do so):

    63.1 Explain the victim's right to provide a victim impact statement to the court. In order for the victim to make an informed choice, they will need to understand the nature and purpose of the victim impact statement, and who will see it, as well as what type of material should not be included (such as overly inflammatory material, references to unrelated matters or offending other than that before the court, and comments addressed to the defendant directly).

    63.2 Where inappropriate material appears in a victim impact statement, prosecutors should either redact the material or acknowledge in their submissions to the court that it should not be taken into account. Any redactions should be discussed with, and explained to, the victim prior to the sentencing hearing. Prosecutors should agree with the victim on a deadline for providing a draft victim impact statement so these discussions can occur and avoid last minute redactions.

    63.3 Consult the victim as to whether any parts of their victim impact statement should be withheld from the defendant,[18] or whether other directions about disclosure should be sought.[19]

    63.4 If the victim wishes to provide a victim impact statement, ask the victim whether they wish to read it in court (or have someone read it on their behalf) and, if so, how they wish to present it.[20] Prosecutors should explain that the judge will ultimately decide. The prosecutor should also explain the sentencing hearing will be public (and may, therefore, be reported in the media).

    63.5 Where s 24A of the Sentencing Act applies, explain that someone will be in contact with the victim to discuss the possibility of restorative justice. Where s 24A does not apply (for example, where no guilty plea was entered), the prosecutor may wish to explain what restorative justice is and ascertain the

[18] Victims' Rights Act, s 25.
[19] Victims' Rights Act, s 27.
[20] Victims' Rights Act, ss 22 and 22A set out the way in which a victim impact statement may be presented.

victim's willingness to participate.

63.6 Where the case involves family violence offending, consider applying for a protection order as part of the sentence. This will require consultation with the victim as an order may only be made if the intended protected person does not object.[21]

64. The prosecutor (or investigator) should also do the following in serious cases:

64.1 If it becomes apparent that the sentencing hearing may be adjourned (for example, because required reports have not been prepared in time), proactively alert the court and have the matter formally adjourned. Victims should be notified as soon as possible if a matter is likely to be adjourned so they have time to change practical arrangements, such as taking time off work or school.

64.2 Prior to the sentencing hearing, advise victims about the sentencing process. Victims should be made aware they may attend in person even if they do not want to present their victim impact statement personally, and should be advised that the hearing will be open to the public. Anyone in the public gallery will hear the victim impact statement if it is read out. It should be clearly explained that the facts of the offending will be outlined by the judge in some detail so the victim is prepared for that.

64.3 Advise victims of the full range of sentencing options available to the court, and the submissions the prosecutor will make as to the appropriate sentence. If the defendant is seeking a discharge without conviction the victim should be made aware of that.

64.4 If the sentencing hearing is in a list court, and the victim is planning to attend, consider asking for it to be heard at a fixed time (or first or last in the day) to minimise waiting time for the victim.

64.5 If the victim and/or their whānau is attending the sentencing hearing, alert the court so that the judge is aware.

64.6 After sentencing, explain the sentence imposed and any practical implications. Some victims may wish to have a copy of the sentencing notes; prosecutors should facilitate that request where practicable (or explain that sentencing notes are not always transcribed).

Post-trial appeals

65. If a convicted defendant files an appeal, the prosecutor should ensure the victim is informed of the nature of the appeal (whether against conviction, sentence or both) and the process for dealing with it. In the case of appeals from Crown prosecutions (which includes all jury trials), that process will be facilitated by Crown Law together with the investigator and/or court victim advisor. However, in serious cases prosecutors may consider informing the victims themselves as well, such as where the victim is particularly vulnerable and will benefit from receiving this advice from the prosecutor personally, given the prosecutor will be best placed to explain the grounds

[21] Sentencing Act, s 123B.

of appeal.

66. It is rare for appeals to be determined at the hearing. Prosecutors should explain the process for being advised about a reserved decision. In serious cases it may be appropriate to ask the appeal court to embargo a reserved decision for a short period of time, so the prosecutor can notify victims before the decision is made public.

67. If a retrial is ordered on a successful appeal, prosecutors should consult with the victim about matters relevant to a retrial from the victim's perspective.

Dealing with complaints and requests for reviews of prosecutorial decisions

68. Prosecutors should ensure the victim is aware of the Victims' Code and should themselves be familiar with it. The Code outlines victims' rights, details the services available to victims and sets out the complaints process for a victim to follow in the event they consider their rights have not been met.

69. Section 49 of the Victims' Rights Act confirms victims' right to complain if they have not been afforded their rights under the Act. All prosecuting agencies should set out, either in their prosecution policy or some other publicly available document, their process for dealing with complaints from victims. Such policies should incorporate natural justice processes.

70. Victims do not have a statutory right to a review of a prosecution decision but a victim may nevertheless seek such a review. Each prosecuting agency should determine for itself whether and when it will engage in a review process. This should be set out in the agency's prosecution policy or some other publicly available document. Any review process should ensure the independence of the review from the original decision. The guideline on Prosecuting sexual violence | Te aru i te taitōkai stipulates the procedure to be followed in cases where a decision is made to take no action where there is an allegation of sexual violation.

Other relevant guidelines | Ētahi atu aratohu e whai pānga ana

Decisions to prosecute | Te whakatau ki te aru
Prosecuting sexual violence | Te aru i te taitōkai
Case management | Te whakahaere kēhi
Bail | Peira
Sentencing | Te whiu
Media | Te pāpāho
Retrials | Te whakahaere anō i te whakamātau
Appeals | Ngā pīra
Non-party disclosure | Te tūhura i hunga kē
Diversion | Te autaki
Stays of proceeding | Te whakamoe kōtitanga