



# Supreme Court of Victoria

## Guide for people seeking permission to publish information about victims of sexual offences<sup>1</sup>

### 1 INTRODUCTION

- 1.1 Under Victorian law, there are restrictions on publishing information that could identify a victim<sup>2</sup> of a sexual offence (**'restricted information'**).<sup>3</sup> An example of restricted information is a victim's name. From 15 December 2021 the law will clearly provide that this does not apply to a victim who has died.
- 1.2 The restriction relates to publications like newspapers, radio or television broadcasts, and electronic communications including social media. The restriction does not apply to an individual telling a family member or friend, reporting matters to the police or for other purposes connected with court proceedings.
- 1.3 If you want to publish restricted information, the permission of the victim or a court may be needed. This guide explains:
  - who you can seek permission from; and
  - the process for applying to a court for permission.

### 2 WHO CAN I SEEK PERMISSION FROM?

- 2.1 If you are proposing to publish restricted information, you must think about all the victims whom your proposed publication may identify (or lead to the identification of). A publication about one victim might unintentionally lead to the identification of another victim.
- 2.2 If you are the victim, you may publish restricted information about yourself, as long as your proposed publication does not include restricted information about any other victims. If it includes restricted information about other

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<sup>1</sup> This guide has been updated to reflect amendments to the *Judicial Proceedings Reports Act 1958* (Vic) commencing 15 October and 15 December 2021.

<sup>2</sup> For simplicity the term victim is used throughout this document to encompass a person against whom the sexual offence is/was alleged to have been committed (in the court context a complainant) and a person against whom a sexual offence has been found to be committed. This is not a prejudgment of legal proceedings. It is acknowledged that different terms such as survivor or victim/survivor are preferred by some individuals.

<sup>3</sup> The *Judicial Proceedings Reports Act 1958* (Vic) prohibits publication of 'any matter that contains any particulars likely to lead to the identification of a person against whom a sexual offence... is alleged to have been committed' - s 4(1A).

victims, you can seek permission in relation to them as explained below.

2.3 If you are not a victim, you can seek permission as explained below.

*The victim is an adult who has decision-making capacity*

2.4 If the victim is an adult who has **decision-making capacity**, publication can be made with the permission of the victim. The publication must be in accordance with any limits set by the victim. For example, if the victim has given permission for their name to be published but not their image, then the publication must not include the victim's image.

2.5 Whether an adult has **decision-making capacity** depends on a number of factors, including whether they are able to understand the information relevant to the decision and the effect of the decision, and whether they can communicate the decision.<sup>4</sup> A person is presumed to have decision-making capacity unless there is evidence to the contrary.

*The victim is a child and has a supporting statement*

2.6 Where the victim is a child and a **supporting statement** has been made about the victim, publication can be made with the permission of the victim. The publication must be in accordance with any limits set by the victim. For instance, if the victim has given permission for their name to be published but not their image, then the publication must not include the victim's image.

2.7 A **supporting statement** is a statement from a registered medical practitioner or psychologist that the child victim understands what it means to be identified as a victim of a sexual offence and the consequences of losing anonymity and must include the name, qualification and business address of the person making the statement.

*Any other victim*

2.8 If the victim does not fall into either of the above two categories, or if it is unclear whether the victim falls into either of the above two categories, application can be made to a court for permission to publish restricted information.

2.9 If there are, or have been, court proceedings about the offence or alleged offence against the victim, permission should be sought from the court that is hearing or heard the proceedings. If you know the name of the person charged, you can call the court registries to confirm which court is hearing or heard the proceedings:

Supreme Court Criminal Registry – (03) 8600 2059

County Court Criminal Registry – (03) 8636 6570

Magistrates' Court Criminal Registry – (03) 9628 7826

2.10 If there are not, and have not been, proceedings about the offence or alleged

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<sup>4</sup> *Guardianship and Administration Act 2019* s 5.

offence against the victim, permission should be sought from the Magistrates' Court.

### **3 HOW DO I APPLY TO THE SUPREME COURT FOR PERMISSION?**

- 3.1 Any person with a sufficient interest can apply to the Supreme Court for permission to publish restricted information unless they are the alleged offender or convicted offender. You can apply in writing, by completing the ['Application for permission to publish details otherwise prohibited by the Judicial Proceedings Report Act 1958'](#) form and emailing it to [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au).
- 3.2 If it is not practicable to make a written application, an oral application can be made during court proceedings. The information contained in the application form should be referred to, as this information will be required by the Court.
- 3.3 If you are a victim you may wish to speak to the police or prosecution service you have been in contact with who can advise you of upcoming court dates. Please note, police or the prosecution cannot make the application on your behalf. If you need help with your application, see section 7 below.
- 3.4 There is no fee for making an application.
- 3.5 If you apply to the Supreme Court but it is more appropriate for another court to deal with your application, we will contact you.

### **4 IF I APPLY IN WRITING, WILL I NEED TO GO TO COURT?**

- 4.1 Once you have emailed your application form to the Supreme Court, we will check to see if your form includes all the necessary information. If we require further information, we will contact you.
- 4.2 If your form is complete, the Supreme Court will consider whether:
- your application can be decided 'on the papers', meaning there does not need to be a hearing, and you will receive an email about the outcome of your application; or
  - there needs to be a court hearing to decide your application.
- 4.3 If a court hearing is required we will provide you with more information about the process, including whether you will be required to attend the hearing. If you are required to attend Court you will have the opportunity to speak at the hearing, but depending on the circumstances you may not need to.

### **5 HOW WILL THE SUPREME COURT DECIDE MY APPLICATION?**

- 5.1 When deciding whether to give permission, the court must:
- consider the victim's views and;
  - be satisfied that it is in the public interest to give permission.
- 5.2 The court will not take into account the views of the offender or alleged offender.

- 5.3 The law states that the Court cannot give you permission to publish restricted information if the restricted information would disclose the identity of a victim who has not given permission to the publication and is:
- an adult with decision-making capacity; or
  - a child with a supporting statement.
- 5.4 In more complex matters, for example where multiple victims are involved, the Supreme Court may seek the assistance of the Director of Public Prosecutions before deciding your application. The Court may also make inquiries about whether any other person may be affected by, or should be notified of, your application.
- 5.5 There may be orders which restrict the publication of information in relation to court proceedings for other reasons. The Court may have used pseudonyms in judgments to protect the identity of victims. The Court may bring these matters to your attention and seek your views.
- 5.6 After considering your application, a judge will make a decision and orders to give effect to that decision. The Court will notify you of the decision and orders.

## **6 DO I NEED A LAWYER TO APPLY TO THE SUPREME COURT?**

- 6.1 No, but you may be represented by a lawyer if you would like.

## **7 WHAT IF I NEED HELP WITH MY APPLICATION?**

- 7.1 If you would like help completing your application form, you can contact the Supreme Court's Criminal Registry on (03) 8600 2059 or at [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au).
- 7.2 Information about free and low cost legal services is available [here](#).