

Magistrates' Court of Victoria

Guide for people seeking permission to publish information about victims of sexual offences

1 INTRODUCTION

- 1.1 Under Victorian law, there are restrictions on publishing information that could identify a victim¹ of a sexual offence ('restricted information').² An example of restricted information is a victim's name.
- 1.2 The restriction relates to publications like newspapers, radio or television broadcasts, and electronic communications. 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 I CAN 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 victims, you can seek permission 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.¹ 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 Different views have been expressed about whether permission is required if the victim is deceased. This issue has not been decided by the courts. If the victim is deceased and you wish to seek permission from a court to publish restricted information, the court will receive and consider your application.
- 2.10 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 Sex Offence Registry – (03) 9628 7826

- 2.11 If there are not, and have not been, proceedings about the offence or alleged offence against the victim, permission should be sought from the Magistrates' Court.

3 HOW DO I APPLY TO THE MAGISTRATES' COURT FOR PERMISSION?

- 3.1 Any person with sufficient interest can apply to the Magistrates' Court for permission to publish restricted information unless they are the alleged or convicted offender. You can apply in writing, by completing the 'Application for Permission to Publish Details' form (<https://mcv.vic.gov.au/form-finder/application-permission-publish-details-form>) and emailing it to your local court. For Melbourne metropolitan matters, please email sexoffences@courts.vic.gov.au or phone (03) 9628 7826. For regional courts, please contact your court coordinator. Contact

¹ *Guardianship and Administration Act 2019* s 5.

details are on our website.

- 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 or family member of a deceased 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 Magistrate 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 Magistrates' 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 Magistrates' 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 MAGISTRATES' COURT DECIDE MY APPLICATION?

- 5.1 When deciding whether to give permission, the court must:
 - consider the victim's views (including, if known, the views of a deceased victim);
 - if the victim is deceased, consider the views of the victim's family members (other than any family member who is the alleged or convicted offender); 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 Magistrates' 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 order 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 magistrate 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 MAGISTRATES' 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 court. For Melbourne metropolitan matters, please email sexoffences@courts.vic.gov.au or phone (03) 9628 7826. For regional courts, please contact your court coordinator. Contact details are on our website.

7.2 Legal advice and assistance is available to victims through the following agencies:

Women's Legal Service

This service is staffed by female lawyers who can advise individual women on how the current law might affect them. Mondays to Fridays between 9am and 5pm.

Metro Melbourne: (03) 8622 0600

Regional callers: 1800 133 302

Victoria Legal Aid advice line: (03) 9269 0442.