

# VICTIMS' RIGHTS AND ROLES

This fact sheet focuses on the rights and roles of victims when cases come before the County Court. A victim in the context of the criminal justice system is a person who has directly suffered harm as a result of the actions of an offender.

In cases heard before the County Court, this could be a person who has been injured or suffered financial loss as a result of the offender's actions. A person is called a complainant prior to the determination of an accused's guilt, and is called a victim after an offender has been found guilty of an offence (see Fact Sheet 2).

In addition to the harm that a victim suffers as a result of an offence, the experience of the legal process as a victim can be stressful and confronting.

The County Court has jurisdiction to hear **indictable offences**, which are a broad range of serious offences except treason, murder and related offences. Therefore, cases heard by the County Court will regularly involve offences involving serious harms to victims and their families, that significantly affect them and witnesses to the offence. It is thus very important that victims receive appropriate support and assistance and that their rights are acknowledged and upheld before, during and after the criminal court process in the County Court.

## SUPPORT AND INFORMATION FOR VICTIMS OF CRIME

The Victorian Government has a dedicated **Victims of Crime** website for people who are affected as a victim of crime. It includes free information and support to help victims manage the effects of crime, to help them navigate the criminal justice process and ensure that they have an understanding of their legal rights as victims, a principle of justice underpinning the Victorian legal system (see Fact Sheet 5). The website also has a **comprehensive guide** for victims.

One of the services provided is a Victims of Crime Helpline, which is the first step to getting help as a victim of crime. Victims can contact the helpline by phone or email for:

- advice about how to report a crime;
- information about the different steps of the legal process, including the police investigation, charges being laid, going to court, and after court, if the offender is in prison;
- how to apply for compensation and financial help; and
- connections to other support such as the Victims Assistance Program where victims can be assigned a support worker to receive tailored services to help manage the effects of crime on them.

The Office of Public Prosecutions also helps victims, witnesses and bereaved family members navigate the Victorian criminal justice system through its dedicated **victims and witnesses website** and other services.

## REPORTING AND INVESTIGATION OF A CRIME

Before a criminal charge can be made against a person and the case heard by the County Court, it must be reported to and investigated by police. The investigation process is very important in order to determine whether there is sufficient evidence for the charge to be prosecuted in court, and to gather that evidence by examining the scene of the alleged crime or by interviewing possible witnesses.

The Victims of Crime website contains information for victims and family members about the processes for reporting a crime, the police investigation and laying charges.

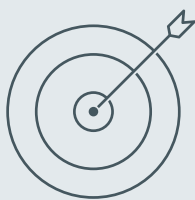
# VICTIMS' RIGHTS AND ROLES

## THE VICTIMS' CHARTER AIMS AND PRINCIPLES

Since 2006, there has been a **Victims' Charter** in Victoria. The Charter is contained in statute law, in the *Victims' Charter Act 2006 (Vic)*. It sets out the principles on how the criminal justice system and agencies that work with victims of crime should respond to victims of crime. This includes investigatory agencies, such as Victoria Police, prosecuting agencies, such as the Office of Public Prosecutions, and victims' services agencies, such as the Victims of Crime Helpline.

The Charter establishes three key aims.

### Aims of the Victims' Charter



- recognise the impact of a crime on the victim, including on family members, witnesses to the crime, and sometimes the broader community;
- recognise that all people who are adversely affected by crime should be respected by agencies in the criminal justice system and should be given information so that they can access services to help them recover; and
- help reduce the likelihood of a victim experiencing trauma as a result of going through the criminal justice system, also called 'secondary trauma'.

The Charter also sets out the principles that should govern the response that victims of crime receive when they are involved in the criminal justice system. Many, if not all of these principles, will come into play in matters that are heard in the County Court (although ensuring adherence to the principles is the responsibility of all parts of the justice system). These principles also reflect the fundamental principles of justice that underpin the Victorian legal system, in particular the principles of fairness and access to justice (see Fact Sheet 5).

### Victims' Charter: principles for responding to victims of crime in the criminal justice system



- being treated with courtesy, respect and dignity;
- receiving information and referrals about possible entitlements and legal assistance;
- receiving information about the progress of an investigation and prosecution of the offence;
- receiving information about whether the accused is applying for or granted bail;
- receiving information about the court process;
- minimising contact between the victim and the accused during a court proceeding and within the court building;
- making a victim impact statement;
- privacy and having any property respected and secured;
- the ability to apply for compensation and financial assistance; and
- being included on the Victims Register and receiving information about an offender while under a sentence or following completion of a sentence.

# VICTIMS' RIGHTS AND ROLES

## ATTENDING COURT

The **Witness Assistance Service** provides support to victims of crime, family members and witnesses in cases being heard in the County Court (and the Supreme Court). This service is provided through the Office of Public Prosecutions and provides victims, family members and witnesses with:

- information about the progress of the case;
- information about the prosecution and court process;
- support through meetings with solicitors and prosecutors;
- help to attend court;
- connections with other support services.

Court Network can also help by providing support when victims, family members and witnesses are attending court (see Fact Sheet 4).

## COURTROOM LAYOUT

Contact between the victim and the accused is also an important consideration in County Court matters, as there may be multiple hearing dates where both the victim and the accused will be attending court. This may be a stressful aspect of the court process for both the victim and family members and can contribute to secondary trauma. If the accused is on bail, they will be entering the court building and going through security in the same way as the victim. The victim and the accused may be waiting inside the court building near the allocated courtroom for periods of time in close proximity to each other.

If the victim is worried about seeing the accused person, they can seek assistance from the police informant (the officer who has investigated the matter) or his or her Victims Assistance Program worker before the court hearing. Some courts have special waiting rooms for witnesses, and special efforts are made to ensure separation of the parties when vulnerable victims and/or witnesses are involved.

As shown in this diagram, the courtroom itself is also set out in a way that separates the different parties and ensures each person who has a role has an allocated seat.



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## GIVING EVIDENCE

When a victim of an alleged crime is required to give evidence, they may feel overwhelmed or stressed about what the process may entail. It may also be traumatic for them to 're-live' the events of the crime. This is especially the case in matters involving sexual assault and family violence as the victim has to talk about very personal and intimate details and may be cross-examined about these details in the presence of the accused and other people in court.

In these cases, adult victims can be vulnerable when giving evidence and require additional support. For example, if the case involves a sexual offence or other very personal matters, such as family violence, there can be an increased risk that a victim will be traumatised by the experience of giving evidence. Adults with a **cognitive impairment**, such as an intellectual disability, can be particularly vulnerable and require additional support when giving evidence to reduce the stress of the process and assist them to understand the questions being asked of them.

There are special arrangements for adult victims of sexual assault and family violence, and adult victims and witnesses with a cognitive impairment. For example, a screen can be set up in the courtroom so that a victim does not have to see the accused person, or the victim may be able to give evidence through a video link, so he or she doesn't have to be in the courtroom. The victim or witness may also have a support person present in court (or remotely via video link) when they give his or her evidence, or the courtroom may be closed to the public.

The same special arrangements can be made for child victims who have to give evidence in court, for whom the criminal justice process can be especially daunting and traumatising. Additional arrangements for child victims (and adult victims with a cognitive impairment) are special hearings, which minimise the number of times victims are required to give their evidence. In sexual offence cases, child victims and victims with a cognitive impairment are required to give evidence only once. In the County and Supreme Courts a video recording of a child victim's police interview may be used as their main evidence in court. Chief Judge Peter Kidd and former Chief Justice Marilyn Warren published an [article](#) in *The Age* in March 2017 outlining the significant reforms courts have made to minimise trauma in abuse trials (see Fact Sheet 2).

## KEEPING COMPLAINANTS INFORMED

There are a number of stages in the County Court process when the principles around keeping victims informed need to be upheld. This is to ensure the fair and equal treatment of victims as well as access to the criminal justice system and an understanding of their legal rights within that system.

### COMMITTAL HEARING

A key stage before the offence is listed to be heard by a judge in the County Court is the committal hearing where a Magistrate assesses the strength of the prosecution evidence against the accused (see Fact Sheets 3 and 6). The victim should be informed about the outcome of the committal hearing and the hearing date in the County Court when the proceeding is committed for trial. If the accused has decided to plead guilty, the matter will be committed to the County Court for plea and sentence.

### BAIL APPLICATION

When an accused is charged with an offence, they are generally entitled to apply for bail. The accused can apply for bail at the police station following arrest. If he or she is not granted police bail, the accused can apply for it in court. There is a general presumption that bail will be granted, except for some types of offences and some kinds of offenders. County Court judges can hear and determine bail applications. A bail application in a court is a legal hearing. If the prosecution opposes bail, both parties will argue their case for and against a grant of bail. The judge has the discretion to decide whether the accused can be bailed to reside in the community or whether he or she is to remain in custody until their guilt or otherwise has been determined. The outcome of this will clearly have an impact on the victim as they may be worried about seeing the accused in the community if they know them or live nearby to them.

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## DETERMINATION OF GUILT

Another key stage in the County Court process where the principles around informing and supporting victims and family members is when a finding is made as to whether the accused is guilty or not guilty of the crime charged. A finding of guilt can be made by the judge if the accused pleads guilty. This is very significant from a victim's point of view because the accused accepting responsibility for what he or she has done can represent an important step in the recovery process. It is also significant because when an accused pleads guilty, witnesses (including some witnesses who may be victims of the crime) do not have to give evidence in a trial before a jury and be cross-examined by defence counsel, which reduces the risk of secondary trauma. Findings of guilt will be made by juries, in jury trials, and judges, in judge-alone trials. This is also a significant moment for the victim's recovery process. The finding of guilt may also have followed lengthy evidence from victims and family members if they were witnesses to the offence. If the accused is found not guilty, they are free to be released from bail conditions or custody and cannot be charged with the same offence, except in certain circumstances (i.e. there is new evidence that was not before the jury in the first court hearing).

## VICTIMS REGISTER

If an offender has been sentenced to imprisonment for a serious offence, the victim may apply to be included on the Victims Register. This entitles the victim to find out information about the offender, such as the length of sentence that was imposed and when the offender may be released from prison. A victim on the Victims Register can also ask the Adult Parole Board to take into account the effect on the potential release of the offender on parole. Any victims on the register are also entitled to receive notice from the Adult Parole Board if it decides to release an offender.

## SENTENCE

When a person is found guilty of an offence (either by plea or by a jury finding), victims have a right to make a victim impact statement. This right is set out in the Victims' Charter and includes the right to:

- prepare a Victim Impact Statement, which the court may consider in determining sentence; and
- receive assistance to prepare their statement.

It is a requirement that the court consider the impact of the crime on any victims. This is a requirement under statute law set out in the *Sentencing Act 1991* (Vic). The court must take into account:

- the impact of the offence on any victim of the offence; and
- any injury, loss or damage that has directly resulted from the crime.

The court must also consider the personal circumstances of any victim of the offence.

Victims of crime may also receive compensation from the state or apply to receive compensation from the offender.

## RECENT REFORMS AND CURRENT ISSUES

In 2014, the Victorian Government created the role of a Victims of Crime Commissioner. The commissioner is an independent role from government and inquires into issues that victims may experience in their dealings with the justice system and government agencies; the commissioner advocates for issues relating to victims of crime.

In 2016, the Victorian Law Reform Commission completed a **review of the role of victims in the criminal justice process** and published a report on its advice to the Attorney-General, including recommendations for law reform.

Following a **review of the law in relation to restitution and compensation orders for victims**, at the directive of the Attorney-General, the Sentencing Advisory Council made eight recommendations in 2018. Most notably, it recommended restitution and compensation orders remain separate from sentencing orders. Combining restitution and compensation orders with sentencing orders was a recommendation made by the Victorian Law Reform Commission in its review of the role of victims in the criminal trial process.