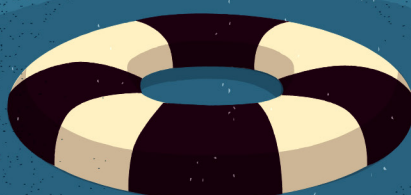
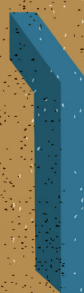
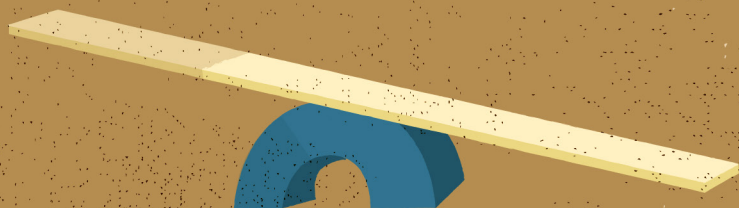
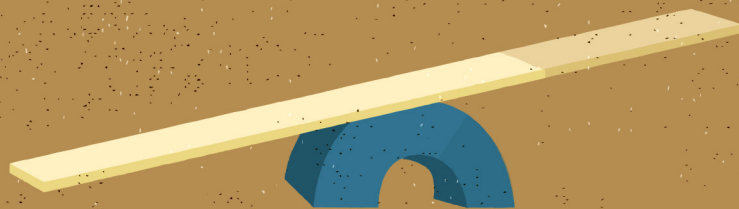


# VICTIMS OF CRIME IN THE COURTROOM: A GUIDE FOR JUDICIAL OFFICERS



Judicial  
College of  
Victoria

**In 2016 the Victorian Law Reform Commission recommended that judicial officers be provided with information and guidance on responding to the needs and interests of victims in the courtroom. The Judicial College has undertaken a broad consultation process and developed a comprehensive guide for judicial officers.**

This guide outlines steps that might be available to judicial officers and court staff to limit the potential for the court experience to re-traumatise victims, witnesses and complainants without compromising the integrity of the criminal justice system.

### Terminology

In developing this guide, a regularly arising issue was controversy around the appropriateness of the term 'victim'. While acknowledging this, we have chosen to use the language of 'victims' as a single term to cover any person who has, or is alleged to have, suffered harm as the result of unlawful action. This includes a parent of a child victim and a family member of a homicide victim. More information about this is set out in the guide.

## Contents

1. Introduction: The Language of 'Victims'	<a href="#">2</a>
2. Understanding Trauma	<a href="#">3-5</a>
3. The Courtroom Experience and Public Confidence	<a href="#">6-10</a>
4. Victims as Witnesses: Facilitating Best Evidence	<a href="#">11-12</a>
5. Plea Hearings, Victim Impact Statements and Sentencing	<a href="#">13-15</a>
6. Culturally and Linguistically Diverse Backgrounds	<a href="#">16-19</a>
7. Aboriginal and Torres Strait Islander Peoples	<a href="#">20-21</a>
8. Diverse Religious Backgrounds	<a href="#">22-23</a>
9. Disability	<a href="#">24-25</a>
10. LGBTI Community	<a href="#">26-27</a>
11. Victims of Family Violence	<a href="#">28-29</a>
12. Victims of Sexual Offences	<a href="#">30-31</a>
13. Cases Involving Loss of Life: Communicating With Family Members	<a href="#">32-34</a>
14. Children and Young People	<a href="#">35-38</a>
Appendix A: Obligations of Investigatory Agencies, Prosecuting Authorities and Victims' Services Agencies	<a href="#">39-40</a>





# Note 1:

## Introduction – The Language of ‘Victims’

In our adversarial criminal justice system, victims are not parties to proceedings. They have traditionally had no formal role beyond acting as prosecution witnesses when required, yet engagement with the criminal justice system can have a profound effect on their wellbeing.

### Terminology

In developing this guide, a regularly arising issue was controversy around the appropriateness of the term ‘victim’. In some kinds of cases, the term is relatively uncontroversial. In cases involving homicides and most property offences, it is usually accepted that there is a person who has suffered some wrongdoing – the question is most often whether the accused is responsible for that wrongdoing and whether the wrongdoing was criminal. But in cases involving sexual offences and some offences involving other forms of personal violence, the fundamental issue in the case is often whether there was any wrongdoing at all.

While acknowledging this, we have chosen to use the language of ‘victims’ as a single term to cover any person who has, or is alleged to have, suffered harm as the result of unlawful action, including a parent of a child victim and a family member of a homicide victim. In the guidance notes on victims of sexual offences, we have discussed this issue of terminology further, to reflect the difficult issues that arise in those types of cases.

### Contributions to this Guide

*In 2016 the Victorian Law Reform Commission recommended that judicial officers be provided with information and guidance on responding to the needs and interests of victims in the courtroom. We have developed this comprehensive guide for judicial officers drawing extensively on consultations with Victorian judicial officers from the Supreme, County, Magistrates’ and Children’s courts, prosecutors, defence lawyers, the Victims of Crime Commissioner, the Victims of Crime Consultative Committee, the Office of Public Prosecutions’ Witness Assistance Service, the Department of Justice and Community Safety, Child Witness Service and Court Network.*

***The College thanks these individuals and organisations for their contributions.***

### Victims of crime as participants

The interests of victims of crime as participants in the criminal justice system has recently been given greater recognition through legislation.<sup>1</sup> The challenges for judicial officers and other legal professionals are to understand the diverse characteristics, experiences and needs of victims, and to reconcile victim participation with legal, institutional and professional demands.

Managing the expectations of a victim of crime and treating them with dignity requires activity by multiple parties: police, prosecution, court staff and judicial officers.

This guide details a range of considerations that focus on what can be done by judicial officers and court staff to limit the potential for the court experience to re-traumatise a victim of crime and, where possible, to enhance engagement and opportunities for post-traumatic growth without compromising the integrity of the criminal justice system.

The guide provides background information and raises considerations supported by the concept of therapeutic jurisprudence and a trauma-informed approach. However, it is important to acknowledge that victim participation in adversarial systems is a developing area and no single approach will cater to all.

### ***A participant but not a party - recognising victims in the courtroom***

*“...the processes used by courts, judicial officers, lawyers and other justice system personnel can impede, promote or be neutral in relation to outcomes connected with participant wellbeing such as respect for the justice system and the law, offender rehabilitation and addressing issues underlying legal disputes.”<sup>2</sup>*

<sup>1</sup> See, eg, s 4 Victims and Other Legislation Amendment Act 2018 (which will come into effect on 4 November 2019).

<sup>2</sup> Australasian Institute of Judicial Administration, The Concept of Therapeutic Jurisprudence, [www.aija.org.au/research/resources/the-concept-of-therapeutic-jurisprudence/](http://www.aija.org.au/research/resources/the-concept-of-therapeutic-jurisprudence/) (accessed 23 April 2019).

# Note 2:

## Understanding Trauma

The criminal justice system process has often been reported as traumatic for victims, with some describing it as more distressing than the crime itself. There have also been instances in which victims have felt safe and engaged, which provided an opportunity for post-traumatic growth.

### What is trauma?

The term 'trauma' is used variably within the health sector. Physical health professionals often use it to refer to physical injury, while mental health professionals use it to refer both to an event and to psychological injury arising from an event.

In this guide, 'trauma' refers both to potentially traumatic events and possible responses, recognising that:

- An event that is traumatic for one person may not be traumatic for another; and
- Responses to traumatic events vary from mild symptoms that resolve in a short period of time, to severe symptoms that can lead to a mental health diagnosis.

#### Traumatic events:

- Traumatic events are emotionally overwhelming situations that involve exposure to actual or threatened death, serious injury or sexual violation, where a person's physiologically innate fight-flight-freeze responses are activated.

#### Reactions to traumatic events:

- Reactions arising from a traumatic event are sometimes called traumatic stress.
- Reactions can vary considerably ranging from mild to severe to debilitating.
- Reactions can be grouped into three categories, and people will generally experience responses from all three categories:

#### Traumatic events include

Serious accidents

Physical assaults

War

Natural disasters

Sexual assault or abuse

Witnessing traumatic events occurring to another person

Learning that a friend or family member has died suddenly, such as by accident or assault, was involved in a life-threatening event, or was seriously injured

#### Avoidance

Avoiding reminders of the traumatic event/s, changed behaviour and withdrawal, substance use and, less commonly, dissociation.

#### Arousal

Outbursts of anger, vigilance, increased physiological responses, anxiety, poor sleep, self-harm and risk-taking behaviour.

#### Intrusion / Changed thinking

Bias toward seeing the world as unsafe or threatening, negative beliefs about self-efficacy and ability to cope, poor concentration and memory and reliving the traumatic event/s.

#### Reactions can be influenced by

**Pre-event** factors including prior exposure to traumatic events and mental health problems.

**Event-related** factors around the nature and severity of exposure including the interpersonal nature of the event (i.e. if it was caused by another person, particularly a trusted person), the extent of the threat and suffering, and whether the traumatic events were repeated and prolonged.

**Post-event** factors including social support that provides validation and opportunities to 'process' the event, and other stressful life events.

## Note 2: Understanding Trauma

### Repeated traumatic events

People who have experienced repeated traumatic events are often the most vulnerable, have the most complex needs and experience the most significant barriers to effective participation in legal processes, particularly if they have experienced early childhood abuse.

### Acute Stress Disorder and PTSD

If reactions to a traumatic event persist, a person may develop Acute Stress Disorder, Post-traumatic Stress Disorder ('PTSD') or another mental health condition associated with traumatic stress.

Mental health conditions include anxiety, affective and substance use disorders which might present alone or together with Acute Stress Disorder or PTSD.

### Reminders of traumatic events

Victims can be adversely affected by reminders of traumatic events in court, such as:

- Retelling the story of the traumatic event;
- People standing close to them;
- People in authority who are standing up and questioning them;
- Being isolated in a room;
- Seeing people in authority whispering or having side conversations.

## Trauma and participation in the criminal justice process

Witnesses and victims who have been exposed to traumatic events can face barriers to effective participation in legal processes. Examples include:

- **Difficulties discussing or recounting the traumatic event/s** in detail when giving witness statements, evidence and victim impact statements;
- **Impaired recollection** of events due to factors such as fragmented memory and arousal that interferes with encoding and recollection of memory;
- **Historical and/or cultural experiences** of unjust outcomes with police and the legal system;
- **Fear of going to court** and seeing the accused and/or people associated with the accused;
- **Fear of possible credibility issues** if they are unable to present a coherent narrative of events and/or advocate for themselves;
- **Mental health issues**, substance use, self-harm or other risk issues and/or social, economic or other disadvantages;
- **Fear of being blamed** by the community, family members and/or legal professionals;
- **Negative perceptions of their capacity** to cope and others' capacity to help them;
- **Lack of support and access** to and/or engagement with support services;
- **Feeling unable to perform** in court at critical moments due to symptoms of post-traumatic stress such as flashbacks and dissociation;
- **Lack of trust** in, and sense of safety around, authority figures in the legal system.

### Key considerations

A judicial officer who is aware of these barriers can reduce the potential for the court experience to re-traumatise a victim by assisting victims and witnesses to understand their role in the proceedings and manage their expectations of the legal system.

**Trauma-informed judicial officers are:**

- **Informed** about the nature of trauma and its impact on participation in legal processes;
- **Able to manage the impact** of trauma on participation in legal processes to improve outcomes for courts and

victims through identifying responses to trauma and assisting, to the greatest extent possible, with the navigation of difficult processes and events;

- **Equipped to actively manage their own wellbeing** and alert to the impact of vicarious trauma.

These guidance notes focus on what can be done by judicial officers and court staff to limit the potential for the court experience to re-traumatise a victim of crime and, where possible, to enhance engagement and opportunities for post-traumatic growth without compromising the integrity of the criminal justice system.

## Note 2: Understanding Trauma

### Vicarious trauma

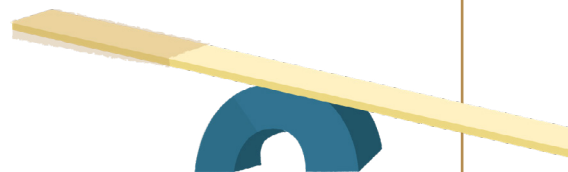
Vicarious trauma is a common term that refers to changes that can occur because of repeated exposure to, and empathic engagement with, traumatised people and traumatic material. Vicarious trauma is not a diagnosable condition but can be a precursor to the development of diagnosable conditions including PTSD.

Judicial officers, lawyers and other professionals working in and around the criminal justice system can experience vicarious trauma through:

- **Interactions with distressed court participants** including victims, witnesses and defendants;
- **Exposure to distressing material** such as witness accounts of traumatic events, photographs and audio-visual evidence.

A person's vulnerability to vicarious trauma varies depending on their individual characteristics and circumstances. Effects are often short-term, lasting a couple of days, but can persist for months or years.

Some effects of vicarious trauma may parallel the reactions of traumatised people. The effects of vicarious trauma are also cumulative.



### Common effects of vicarious trauma

#### Immediate responses

- Feelings of compassion;
- Feelings of horror and/or helplessness;
- Imagining yourself or someone close to you in the same situation.

#### Short-term effects

- Physical symptoms of anxiety, such as a racing heart;
- Difficulty sleeping and nightmares;
- Feelings of disgust and/or horror;
- Low mood, irritability and/or anger;
- Concentration and memory problems;
- Intrusive images of case material.

#### Long-term effects

- Feelings of burnout linked to cumulative stress, such as physical and mental exhaustion, a lack of motivation, work-related dissatisfaction, a sense of hopelessness, cynicism and inefficiency;
- Traumatic stress responses, such as symptoms of depression or PTSD like feeling wound up, feeling hopeless and/or experiencing nightmares and intrusive thoughts about cases;
- Changes in beliefs about self and the world, particularly a person's sense of control, safety and trust in other people.

#### Key resources for judicial officers:

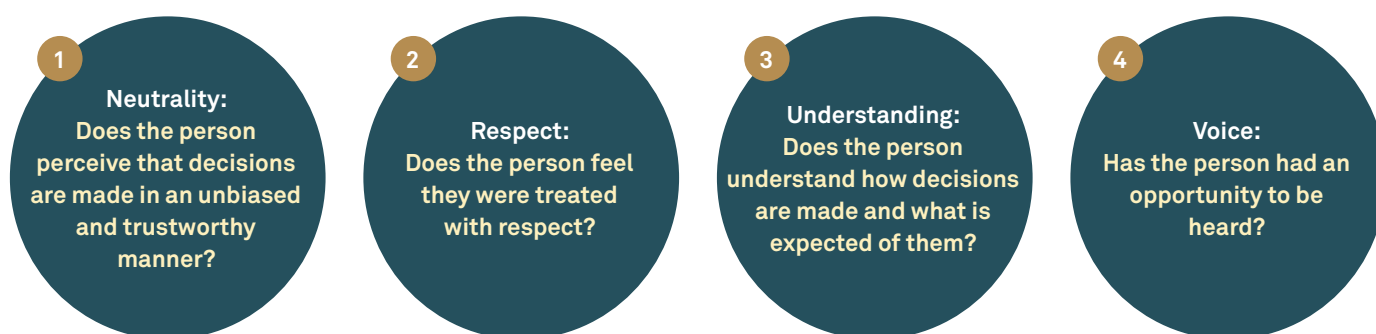
- **Judicial Officers Assistance Program:** A free, confidential counselling service provided by psychologists exclusively for judicial officers. Call 1300 326 941
- **Judicial Wellbeing Resources:** The Judicial College of Victoria and the County Court of Victoria have compiled national and international resources for judicial officers on stress, mental health and wellbeing and support services.

## Note 3:

# The Courtroom Experience and Public Confidence

The way participants, including victims, experience the criminal justice system affects their perceptions of the legal process and their likelihood of complying with the law. The idea that fair treatment is more influential than outcomes in improving public perceptions has been demonstrated in numerous criminal justice contexts.

Public confidence in the criminal justice system can promote a willingness to report crime and participate in legal processes. Four elements influence a person's perceptions of procedural fairness:<sup>3</sup>



### All victims experience the criminal justice process individually

Their needs vary widely, with some requiring limited support and others who require near constant communication with lawyers, court staff or support services about a case.

A victim's needs can depend on a range of factors, including their psychological characteristics, personality traits and the type of crime they experienced.

The challenges for judicial officers and other legal professionals are to understand the diverse characteristics, experiences and needs of victims, and to reconcile victim participation with legal, institutional and professional demands.

## Obligations of investigatory agencies, prosecuting authorities and victims' services agencies

The *Victims' Charter Act 2006* was introduced to guide investigating, prosecuting and victims' support agencies in their interactions with victims.

One of the objectives of the *Victims' Charter* is to reduce the likelihood of secondary victimisation by the criminal justice system.

The first *Victims' Charter* principle stipulates that all persons adversely affected by crime are to be treated with **courtesy, respect and dignity** by investigatory agencies, prosecuting agencies and victims' services agencies.

Amendments to the *Victims' Charter*, that will come into effect on **4 November 2019**, will impose additional obligations with respect to communication with victims and the needs of victims in rural and remote locations.

The amendments include the addition of another objective, being the acknowledgment of a victim's role as a participant, but not a party, in proceedings for criminal offences.

For more information about these obligations see [Appendix A](#).

<sup>3</sup> For more information, see Procedural Fairness for Judges and Courts, 'Theory and Research: Intellectual Foundations', [www.proceduralfairness.org/theory-and-research/theory](http://www.proceduralfairness.org/theory-and-research/theory) (accessed 24 April 2019).



## Note 3: The Courtroom Experience and Public Confidence

### Key points to consider: Engaging with witnesses and victims of crime

**Lead by example:** Encourage court staff to strive for clear, respectful and appropriate interactions with victims and visitors.

**Acknowledge the victim:**

In appropriate cases, consider directing remarks towards the victim, maintaining appropriate eye contact and thanking the victim for their participation.

**Consider victims in case management:**

Be informed about the particular needs of the victim/s and consider their role in the process.

**Consider specific needs:** Does the victim have specific needs that can be met to maximise their participation and engagement with the court process?

**Develop a trauma-informed practice:**

A trauma-informed practice is one that is attuned to all aspects of a service, how it is delivered and the myriad ways in which stress can further traumatise people whose physiology and psychology are disrupted and dysregulated. For more information see [Trauma and the Law](#). The Judicial College runs programs to support judicial officers to develop a trauma-informed practice.

**Be aware of and consider use of intermediaries and Ground Rules Hearings:** The College has produced a [best practice video](#) which can be accessed online.

**Be aware of support services:**

Consider asking whether support services have been accessed and whether a general statement about support services should be made by court staff or the judicial officer at the outset of the hearing.

**Minimise the victim's contact with the accused:**

Consider whether staff can make physical arrangements to minimise contact.

**Be aware of and consider using cultural protocols:**

See [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#).

**Consider use of language:** Be aware of the message that language and actions may convey to victims from different backgrounds.

**Recognise that courts are not workplaces for victims:**

Understand that victims may react emotionally to the court process. Consider outlining expectations of appropriate behaviour in court and addressing all participants.

**Warn observers about evidence:**

Some evidence can be particularly distressing for victims such as photographs or audio-visual recordings. Consider notifying observers when potentially distressing evidence will be displayed, explaining why it must be shown and providing an opportunity for observers to temporarily leave the courtroom. A short adjournment might allow for an inconspicuous departure.

### Open Justice Considerations

Though courts are presumptively open to the public, judicial officers can restrict information about certain victims from being publicly available and, in some cases, restrict access to court and tribunal rooms in which matters are being heard.

Restriction of information is a critical and sensitive issue for victims, particularly children, people with cognitive impairments and victims of sexual offences and family violence.

Judicial officers can also consider the use of pseudonyms for victims and witnesses and the removal of their identifying information from the judgment or public court documents.

**For more information** on open justice in Victorian courts and tribunals, see:

- [Powers to Make Orders Qualifying Open Justice](#) – Open Courts Bench Book and
- [Committal Hearings and Open Court Principles](#) – Victorian Criminal Proceedings Manual.

**Guidance Notes 6 – 14 contain further detail on steps the court can take to assist victims with diverse needs including child victims, victims of family violence and victims from culturally and linguistically diverse backgrounds including Aboriginal and Torres Strait Islander backgrounds.**





## Note 3: The Courtroom Experience and Public Confidence

### Further points to consider: Case management, access and environment, and opening court

Many of these points relate to steps taken by prosecuting agencies to satisfy their obligations under the *Victims' Charter*.

#### Before a hearing: Case management

**Prosecution** should be able to advise court staff whether the victim:

- Will attend any hearings;
- Has been given information about the legal process, court rules and the court precinct;
- Has been in contact with support services;
- Has any concern about their presence being acknowledged by the judicial officer;
- Has any other concerns that the judicial officer should know about;
- Has any specific needs.



**Prosecution** should also:

- Be aware of significant dates for the victim (i.e. birthdays, anniversaries) if they conflict with hearing dates;
- Be aware of the victim's need to travel or interruptions to schooling that might be minimised through case management;
- Notify victims and witnesses about changes to scheduled dates;
- Consider when the victim's evidence should be given during the hearing;
- Consider whether a Ground Rules Hearing would be appropriate or necessary and/or whether an intermediary should be appointed;
- Consider whether it is necessary to raise the issue of recorded evidence and special hearings.

**Court staff** should be encouraged to:

- Consider victims in case management including whether the judicial officer ought to be advised of dates important to the victim;
- Communicate listing changes clearly and, where appropriate, provide an explanation of the reason for the change and indicate that the court's expectation is that this be communicated to the victim;
- Ask the prosecution whether the victim will be attending hearings and record relevant information for the judicial officer such as names, relationship to parties and/or other victims, whether the victim has sought assistance from a support service, concerns and any information relating to the needs of the victim.

**Judicial officers** may consider:

- Raising victim participation as a topic during mentions, case conferences or directions hearings to ensure that the prosecution are complying with their obligations under the *Victims' Charter*;
- Clearly recording information for the judicial officer who will preside at the hearing;
- The use of recorded evidence or special hearings;
- Minimising disruption to schooling or other significant commitments through effective case management;
- Ensuring court staff communicate listing changes clearly and, where appropriate, provide an explanation of the reason for the change.

## Note 3: The Courtroom Experience and Public Confidence

### Before a hearing: Access and environment

**Prosecution** should be able to advise whether the victim:

- Requires special access arrangements;
- Requires any assistive devices or technologies;
- Has an assistance or support animal;
- Will have a support person with them in the courtroom or remote witness facility;
- Requires access to any other spaces during the hearing (for example, if they are breastfeeding);
- Is managing any health issues that may be impacted by seating arrangements or assisted by regular breaks.

**Court staff** should be encouraged to consider:

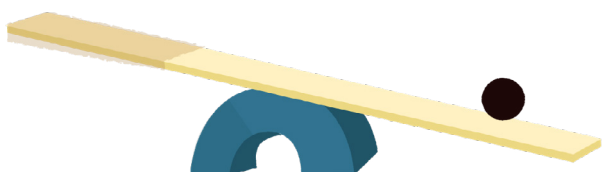
- Enquiring whether the prosecution know of any special requests concerning access;
- Whether it is necessary to ask about interpreters, assistive technologies or support animals, or whether the victim may have any other needs;
- Whether there is scope to minimise the victim's contact with the accused/prisoner (for example, can measures be taken to avoid victims and the accused arriving at the same time or through the same entrance?);
- Whether security staff need to be alerted about the background of any relationships;
- Whether court staff should assist the victim with the courtroom layout including providing direction as to where to sit, information about court etiquette and directions to the restrooms.

**Judicial officers** may consider:

- Explaining to the victim (or courtroom observers) the courtroom layout and an overview of the process for the hearing;
- Affirming advice that people may exit and enter the hearing throughout the day;
- Using clear, simple language and explaining legal terms when they must be used;
- Ensuring regular breaks are accommodated where appropriate. For example, children and vulnerable witnesses may require additional breaks.

*"If you are traumatised and you don't want to be there, you're stressed and you're anxious ... you're not always going to see what's right in front of you."*

*"Cognitively, you're not focused on your surroundings, you're thinking of what you are going to face or what you've just faced and that takes a toll. Simple and clear language – whether written or verbal would help you to know what is required."*



### Note 3: The Courtroom Experience and Public Confidence

#### During the hearing: Opening court and setting expectations

**Prosecution** should consider:

- Providing the victim with advice about the court process including court etiquette and key stages of the hearing/trial process;
- Reminding the victim about court etiquette, taking breaks and entering and exiting the courtroom;
- Advising court staff as to where the victim is sitting, particularly if the courtroom is full, so that the judicial officer can be advised.

**Court staff** should be encouraged to:

- Confirm with counsel the presence of the victim in court and advise the judicial officer;
- Consider introducing themselves to the victim and observers and offering to answer any questions about court etiquette, seating, entering and exiting the courtroom and access to restrooms.

**Judicial officers** may consider:

- Acknowledging the presence of victims;
- Avoiding informal or familiar exchanges with staff and counsel or the accused;
- Using direct communication with victims, such as:
  - Stating their name;
  - Making eye contact;
  - Explaining the legal process;
- Explaining actions that may give the impression of disinterest. For example, explaining that they will take notes and will look down during some of the hearing;
- Inviting the victim to sit where they are comfortable;
- Informing the victim that they may enter and exit the courtroom throughout the hearing;
- Informing the victim about court adjournments and likely break times.

For more detailed information, see [Guidance Note 4: Victims as Witnesses – Facilitating Best Evidence](#).



# Note 4:

## Victims as Witnesses: Facilitating Best Evidence

Many victims find the criminal justice process traumatising. Giving evidence can be a particularly distressing experience and involves a significant risk of re-traumatising the witness. This note outlines key steps that those involved in the process can take to ensure a witness can present their best evidence.

### Key points to consider

**Giving notice:** It is important for victims to know when they will be called upon to give evidence. The lead up and giving of evidence can be extremely stressful.

Certainty around the likely date and time can assist the victim in managing their wellbeing and preparing to give their best evidence.

**Considering the time of day:** Some victims, particularly children, may be more likely to give their best evidence at the start of the day.

**Being clear on the time frame:** Ask counsel to estimate how long they will be. Witnesses should know roughly how long they will be giving evidence.

**Anticipating objections:** Explain to counsel how the examinations will run and give them an opportunity to object to any issues raised, such as when victims can take breaks and how questions will be monitored.

**Providing direction:** When victims enter the courtroom, they do not always know where to go.

Judicial officers can direct victims into the witness box, explain the process and ask them to stand while court staff swear them in.

**Asking introductory questions:** Judicial officers can ask a few uncontroversial introductory questions to help put the witness at ease and acclimatise them to the process before examination starts.

**Deciding whether the victim/witness should see the accused:** If a victim is giving evidence in a remote witness facility, they should not be able to see the accused in court.

If a judicial officer has permitted the use of a screen, check with court staff that the screen is in place before the start of the hearing.

If the witness will give remote evidence, court staff need to conduct thorough 'sight and sound tests' for both the courtroom and the remote witness room.

**Alternative arrangements:** Judicial officers can order that victims of sexual offences, family violence offences and certain summary offences give evidence via alternative arrangements.

See [Alternative Arrangements](#) - Victorian Criminal Proceedings Manual.

### Examples of alternative arrangements

Allowing evidence to be given outside the courtroom

Allowing the use of screens

Allowing the presence of a support person

Allowing only certain people in court

Directing the dress and behaviour of lawyers



## Note 4: Victims as Witnesses: Facilitating Best Evidence

**Showing empathy:** Witnesses should be as comfortable as possible when giving evidence.

- Ask them if they feel settled and comfortable before their evidence begins.
- Inform them that they can request breaks at any time.

**Being attentive:** Look for non-verbal cues of distress such as flushed face, blank stare, or agitated movements.

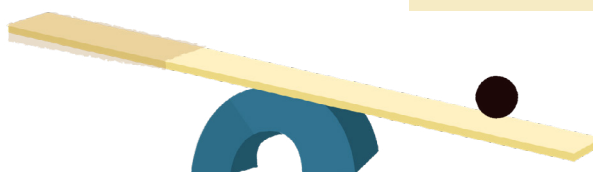
Enlist the assistance of court staff to monitor the witness's demeanour.

**Exercising restraint** in ordering victims to leave the courtroom. When appropriate judicial officers may order a witness to leave the courtroom until they are required to give evidence.

For more information, see [Ordering Witnesses Out of Court](#) – Victorian Criminal Proceedings Manual.

**Remaining vigilant:** Monitor conduct and questions during examination and cross-examination but avoid undermining the credibility of counsel.

Ensure criticism is, to the greatest extent possible, delivered in the absence of the jury. If counsel ask repeated, poorly-phrased questions that are irrelevant or unfocused, consider a short break to address them in detail in the absence of the jury.



Judicial officers can explain the process to victims and witnesses. For example:

- Who is in court?
- What is the process of examination and cross-examination?
- What happens when a legal issue is raised?
- How long will it take?
- Can they ask a question to be repeated?
- Can they temporarily leave the courtroom?
- How do they request breaks?
- Can they ask other questions of counsel or the judicial officer?
- Is the court open or closed? Why has it been closed?

### Managing cases in which a victim supports an accused/offender

A victim may support an accused or offender in criminal proceedings. This occurs more commonly in family violence cases than in other criminal proceedings.

In cases of family violence, the victim is often the only person who can provide eyewitness evidence. However, a victim may appear uncooperative with police and/or may refuse to give supporting evidence.

Judicial officers are in a difficult position when this occurs. Options such as issuing a warrant for the victim's arrest or the prosecution seeking to question a victim as an unfavourable witness may further traumatise the victim.

The judicial officer can **consider emphasising roles**. It is the prosecution's role to prove its case, and it is not the judicial officer's role to persuade reluctant witnesses or victims to co-operate.

Judicial officers can nevertheless consider relationship dynamics when assessing the evidence and when determining whether more stringent bail conditions are needed to protect a victim from intimidation.

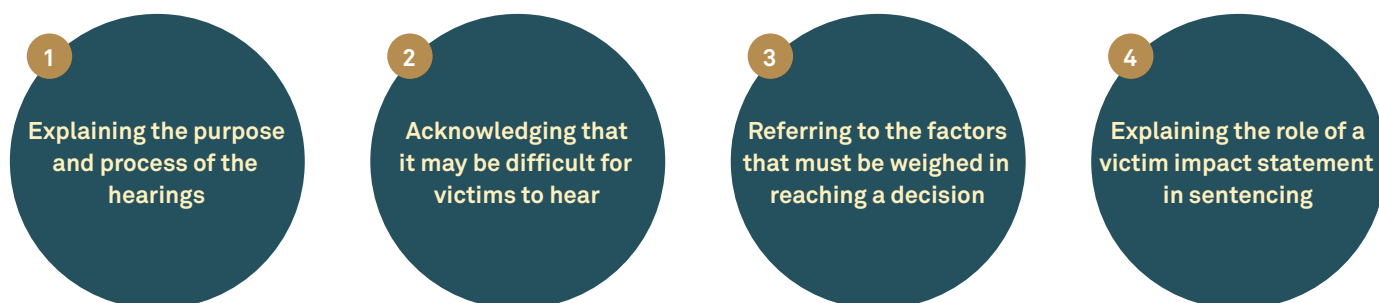
For further information, see [Guidance Note 11: Victims of Family Violence](#).

# 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.<sup>4</sup>

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]***

<sup>4</sup> [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.

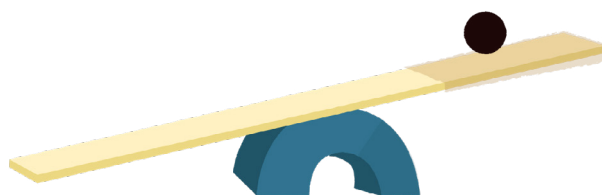
#### The judicial officer can:

- 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.<sup>5</sup> 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.

<sup>5</sup> *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)**



# Note 6:

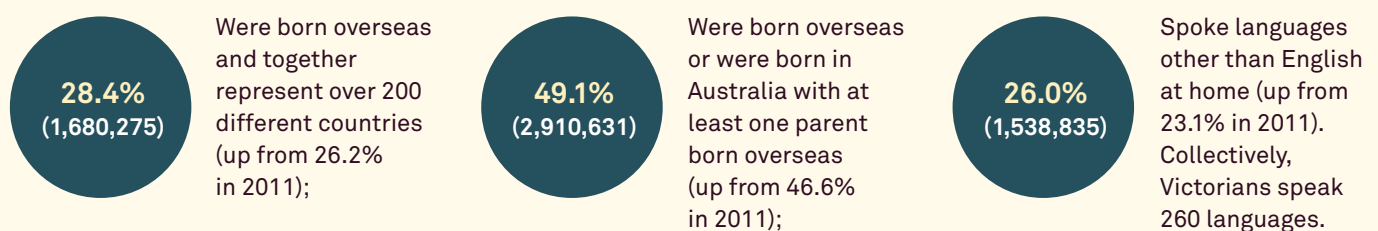
## Culturally and Linguistically Diverse Backgrounds

A person's demeanour, behaviour and use of language are influenced by their cultural and linguistic background. Understanding important cultural and linguistic differences can assist judicial officers to enhance the court's engagement with victims from diverse backgrounds.

The following information is largely drawn from the [Equal Justice Bench Book](#) - Supreme Court of Western Australia and the [Equality before the Law Bench Book](#) - Judicial Commission of New South Wales.

### Cultural diversity in Victoria

At the 2016 Census, Victoria's population was **5.93 million**. Of that total population:



### Names and forms of address

Names and forms of address can be influenced by a person's family, cultural and/or religious background. Some ethnic groups have very different naming systems from the generally gender-specific "first" or "given" name, middle name and family name system often used by English-speaking Australians.

However, it is important not to assume all members of a particular group will follow the cultural norm for that group. Many have adopted the mainstream naming system or use alternative names when they deal with Australian bureaucracy.

**Some examples of different naming systems involve:**

- **Reversing the order of names:** starting with a family name and ending with a given name, for example, Chinese and Vietnamese;
- **No family name**, for example, Icelanders;

- **Not using a family name when referring to someone else**, for example, Russians tend to use their given name and middle name only;
- **Particular words, prefixes or suffixes** to indicate certain things such as:
  - Gender (the Vietnamese names of "Van" for men and "Thi" for women);
  - Marital status ("Achi" after some Indian women's names indicating marriage);
  - Son of, daughter of, father of or mother of (for example, the Muslim prefix "Ibn" or the Jewish "Ben" which both mean son of);
  - Terms like 'sister', 'brother', 'mother', 'father', 'aunty', 'uncle' and 'cousin' which can refer to extended family and community members in who are not blood relatives in Aboriginal and Torres Strait Islander communities (for more information see [Guidance Note 7: Aboriginal and Torres Strait Islander Peoples](#)).

- **Tonal language:** Some names may be difficult for English-speaking monolingual Australians to pronounce if the original language is tonal. In tonal languages each word has a marker that indicates the pitch or "shape" of the word, and therefore how it should be pronounced;
- **Formality:** Some people may prefer or expect to be addressed formally in court, or when addressed by someone younger than themselves or of the opposite gender.

For example, they may prefer to be addressed as Mr/Ms/Mrs given name, or Mr/Ms/Mrs family name. Others may prefer to be addressed by their given name only.





## Note 6: Culturally and Linguistically Diverse Backgrounds

### Key points to consider

**Approach of counsel:** Counsel should have confirmed pronunciation when interacting with the witness or victim prior to the hearing.

**Directing court staff to ask** counsel about pronunciation before the hearing commences.

**Using the phrase “given name”** rather than “Christian name”.

Where necessary, **clarifying what each part of a person’s name represents** – that is, whether it is a given name, nickname, family name. This may be better done ahead of time.

**Avoiding asking the victim or witness directly:** If asked directly, they may feel uncomfortable at having to pronounce their name or preferred form of address, and/or may choose to agree to whatever the judicial officer suggests despite unease.

**Useful resources containing further information about naming conventions and modes of address include:**

- [Names and Forms of Address](#) – Equal Treatment Bench Book, Supreme Court of Queensland
- [Appendix B – Naming Systems](#) – Equal Treatment Bench Book, Judicial College – Courts and Tribunals Judiciary (United Kingdom)
- [Modes of Address](#) – Equal Justice Bench Book, Supreme Court of Western Australia
- [Modes of Address](#) – Equality before the Law Bench Book, Judicial Commission of New South Wales

### Improving verbal communication in court

**Victims may be reluctant to disclose their need for language services or they may overstate their linguistic ability for a range of reasons, including:**

- Embarrassment; • Fear of being mocked;
- Distressing prior experiences;
- Reluctance to disclose their story to a stranger;
- Privacy concerns; or
- A mistaken belief that they can communicate effectively in court.

If it is unclear whether an interpreter is required, judicial officers can invite the person to paraphrase what has been said to them, in their own words.

This may assist the court to determine their level of comprehension. Should the need for language services become evident, judicial officers can reassure witnesses that the aim of language services is to ensure their full participation.

**Judicial officers, court staff and the prosecution can:**

- **Consider whether the victim speaks more than one language** other than English. It may be easier to arrange language services for one language compared to another;
- **Consider the use of multiple interpreters** particularly where the accused also requires language assistance;
- **Consider whether interpreting services can be provided by telephone or videoconferencing**, where they will not be available to be delivered in person;
- **Consider causes of reluctance:** A witness may be reluctant to use an interpreter, particularly if the interpreter is likely to be drawn from their community, due to concerns about privacy and confidentiality. Can these concerns be addressed by emphasising the professional nature of the role of interpreter and their obligations of confidentiality?

### Working with an interpreter

Interpreting faithfully does not mean interpreting ‘literally’ as word-for-word translations may produce nonsensical renditions. However, interpreters must interpret everything including questions and answers, evidence, objections and legal arguments, and vulgar language.

#### National Accreditation Authority for Translators and Interpreters (NAATI)

NAATI is the only body in Australia authorised to issue accreditations for interpreters and translators, but there is no statutory requirement for accreditation. At times, there may be no NAATI accredited provider available.

#### Australian Sign Language (‘Auslan’) Interpreting

Sign languages are unique to each country. Auslan is the sign language used by Australians who are hearing impaired. It is a visual-spatial language that uses hands, eye gaze, facial expressions, and arm, head and body postures.

Auslan has its own grammar and syntax, which are quite distinct from English. People who are hearing impaired often acquire sign language as their primary means of communication, along with the written or spoken language of the local community, but their English proficiency should not be assumed.

## Note 6: Culturally and Linguistically Diverse Backgrounds

### Key points to consider: Working with an interpreter

For a detailed guide, see the [Recommended National Standards for Working with Interpreters in Courts and Tribunals](#) produced by the Judicial Council on Cultural Diversity.

#### Before a hearing

**Briefing:** Consider whether and to what extent the interpreter should be briefed by the parties before proceedings begin. Materials may be provided in advance to avoid an unseen sight translation of documentation.

**Access and conditions:** Consider whether a private area can be made available to the interpreter to store their belongings and material.

**Time:** Ensure additional time has been allocated for the giving of evidence. Giving evidence through an interpreter will usually take at least twice as long as without an interpreter.

#### At the start of the hearing

**Ask for an introduction:** Ask the interpreter to introduce themselves and state whether they are accredited and their level of certification with NAATI, their formal qualifications, membership with a professional interpreting association, court experience and understanding of their obligations.

**Give an explanation:** Explain the role of the interpreter to ensure that participants in the court understand the conduct of the proceedings.

- If an interpreter has not worked in court before, judicial officers should explain that the interpreter's role is **'to interpret everything faithfully and impartially in the first or second grammatical person'**.

**Swear in the interpreter:** Interpreters are required to take an oath or make an affirmation when they interpret in criminal proceedings. Courts must swear an interpreter in before administering an oath or affirmation of a witness through an interpreter. The correct form of oaths and affirmations for interpreters can be found in Schedule 1 of the [Evidence Act 2008](#).

**Give instruction:** Instruct the interpreter to alert the court or interrupt if they:

- Did not accurately hear what was said;
- Cannot interpret a question or answer for any reason;
- Need to consult a dictionary or reference material;
- Need a concept or term explained;
- Need to correct an error;
- Are unable to keep up with evidence; or
- Need to take a break for any reason.

**Confirm resources required:** Ensure the interpreter has copies of the documents being referred to and read aloud so that they can follow the process more easily. Ask whether the interpreter requires any other resources in court such as a dictionary.

**Appropriate location:** Ensure the interpreter is in a position where they can easily see and hear all participants.

#### During the hearing

**Breaks:** Give the interpreter regular breaks or allow a swap with another interpreter.

- Spoken language interpreters: every 45 minutes;
- Auslan interpreters: every 20 minutes.

**Speak to the witness:** Speak directly to the person being assisted by the interpreter and avoid directing the question to the interpreter. Instruct counsel to do the same, if necessary.

**Communicate clearly:** Speak slowly and in plain English – pause after each concept and instruct counsel and witnesses to do the same.

**Explain legal concepts:** Consider explaining legal concepts, jargon, acronyms and technical terms if required. If there are no direct equivalents for a legal term, the interpreter may ask for an explanation which they will then interpret.

**Avoid complex questions and double negatives:** Avoid complex forms of questioning that rely on double negatives or tag questions. Encourage counsel to do the same. Tag questions are statements which add a question to the end of a statement: 'You went to work on that day, didn't you?'

**Intervene if necessary:** Intervene as required to avoid courtroom participants speaking over each other or in complex language.

**Direct the witness to give the answer in stages (if required):** If the witness appears to be giving lengthy answers that appear to have the potential to be lost in translation, the judicial officer can direct the witness to give their answer in stages to allow for the interpreter to accurately convey the full detail of the answer.

**Be alert to signs the interpreter may be paraphrasing:** Consider whether there is any marked disparity between the length of answer and the length of interpretation.

**What to do if someone criticises the interpretation?** Do not take the criticism at face value. People who are bilingual, but not trained interpreters, can overestimate their competence. Consider comparing qualifications and giving the interpreter a chance to respond to criticism.

## Note 6: Culturally and Linguistically Diverse Backgrounds

### Improving other forms of communication – behaviour and body language

**Assessment of credibility is often informed by perceptions of demeanour. However, demeanour is often influenced by cultural norms and so cross-cultural demeanour assessments are especially unreliable.**

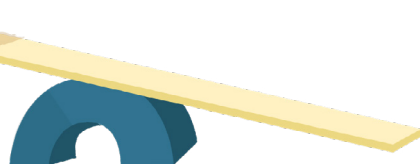
It is therefore vital that judicial officers are equipped to identify culturally-determined assumptions that have the capacity to influence assessments of credibility. Judicial officers should be able to take measures to counter such influence in their own decision-making and in directing other decision-makers, such as the jury.

#### Some common differences in appearance, behaviour and body language:

- **No direct eye contact** with a questioner, or someone in authority, or someone of a different gender may be the cultural norm. For example, it would generally be considered culturally inappropriate for Vietnamese people and women from most other South-East Asian backgrounds to make direct eye contact with persons in authority. For many Aboriginal and Torres Strait Islander people, avoidance of eye contact is customarily a gesture of respect.
- **Dress that appears eccentric:** This may or may not be eccentric for someone of that culture. It may also reflect their understanding of what they are expected to wear in court.
- **Hand, finger and other gestures and movements**, such as eye movements and head nods, head shakes, a lowered head or bowing. These movements may not necessarily mean the same thing as they mean in mainstream English-speaking Australian culture.
- **Silence or appearing to avoid answering:** This may not mean that the person is dishonest or evasive. It may mean:
  - There is a lack of understanding about what is going on or expected of the particular person;
  - The person feels they cannot answer such a question because it is considered too personal or intimate;
  - The person considers that it should not be answered in front of someone in authority or in front of a particular family member or someone of the opposite gender.

#### To deal with this issue, judicial officers might consider measures such as:

- Making sure the person fully understands what is going on and/or why the question is being asked;
- Excluding people from the courtroom while the witness is giving evidence;
- Allowing the witness to give evidence remotely by video-link or at a pre-recorded special hearing;
- Allowing a support person to attend.



**Further Resources:** For more detailed information about working with interpreters, see [Recommended National Standards for Working with Interpreters in Courts and Tribunals](#) – Judicial Council on Cultural Diversity

#### See also:

- [Providing Auslan and Other Interpreters](#) – Disability Access Bench Book
- [Right to an Interpreter](#) – Victorian Criminal Proceedings Manual
- [Interpreters to Act on Oath or Affirmation](#) – Uniform Evidence Manual
- [Interpreters](#) and [Culturally and Linguistically Diverse People](#) – Family Violence Bench Book
- [People from Culturally and Linguistically Diverse Backgrounds](#) and [Interpreters and Translators](#) – National Domestic and Family Violence Bench Book
- [Equality before the law Bench Book](#) – Judicial Commission of New South Wales

# Note 7:

## Aboriginal and Torres Strait Islander Peoples

Aboriginal and Torres Strait Islander people are at high risk of experiencing sustained trauma (including the psychological and spiritual damage caused by personal violence). Aboriginal and Torres Strait Islander communities are regularly reported as experiencing a disproportionately high volume of violent crime.

The National Aboriginal and Torres Strait Islander Social Survey (NATSISS), a six-yearly multidimensional social survey most recently conducted in 2014-15, shows that more than one in five (22%) Aboriginal and Torres Strait Islander people aged 15 years and over had experienced physical or threatened physical violence in the previous 12 months.

This had not changed significantly since 2008 (23%). The proportion was similar according to both sex and remoteness (22% in non-remote areas compared with 23% in remote areas).

Aboriginal and Torres Strait Islander women are particularly overrepresented as victims of crime. There is widespread research demonstrating that Aboriginal and Torres Strait Islander women experience greater levels of violent crime than non-Indigenous women. They are more likely to be the victim of homicide, sexual assault, violent crime, domestic violence and to suffer grievous bodily harm in an assault.

It is important to note that the disproportionate violence experienced by Aboriginal and Torres Strait Islander people is experienced in 'the context of colonisation, discrimination and subsequent markers of disadvantage such as low income, unemployment, lack of access to traditional lands and substance use'.<sup>6</sup>

The experience of Aboriginal and Torres Strait Islander victims of crime within the criminal justice system has the potential to reinforce the context of discrimination and disadvantage, and to compound the negative health effects of the experience of violent crime.

There are some steps available to judicial officers which can demonstrate respect for Aboriginal and Torres Strait Islander people and cultural protocols to minimise the significant potential for re-traumatisation.



### Collective terms for Aboriginal people

Aboriginal people from different parts of Australia sometimes refer to themselves in collective terms, like some Aboriginal Victorians who refer to themselves as Koori. This is a personal choice. Aboriginal people often say which term they prefer, or judicial officers can ask directly or through court staff and counsel how they would like to be referred to.

Not all Aboriginal people who attend court are Aboriginal Victorian or Koori. While Victorian courts include 'Koori Courts' and are supported by Court Services Victoria's 'Koori Programs and Initiatives Unit', these services are designed for all Aboriginal and Torres Strait Islander people.

Judicial officers and court staff should be aware that some court users from other parts of Australia may not recognise that the Koori services are available to them and may need to be encouraged to access support.

### Some of the collective terms used by Aboriginal people from different parts of Australia are:

- **Koori:** Victoria/Southern New South Wales, particularly along the Murray River border;
- **Murri:** Queensland/North West New South Wales;
- **Nunga:** South Australia (pronounced with a soft 'g');
- **Noongar:** South West Western Australia, south of Geraldton;
- **Yamatji:** Western Australia, between Geraldton and Port Hedland;
- **Wongi:** Western Australia;
- **Yolgnu:** Arnhem Land, Northern Territory ('pronounced with a silent 'g');
- **Ananagu:** Central Northern Territory;
- **Palawa:** Tasmania.

It is also common for members of Aboriginal and Torres Strait Islander communities to identify by reference to their clan or tribe. For example, a Koori woman from East Gippsland may identify herself as a Gunai Woman.

<sup>6</sup> [Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report](#) (2.10 Community Safety). For more information, see the [Aboriginal and Torres Strait Islander Healing Project Report 2013](#).

## Note 7: Aboriginal and Torres Strait Islander Peoples

### Key points to consider

**Seeking advice on cultural protocols:** Seek advice from the Koori Court Officer, Koori Family Violence Officer or the Koori Programs and Initiatives Unit about cultural protocols and language use. Communities have different cultural protocols including gender-specific protocols. The Koori Programs and Initiatives Unit can be contacted via [kpi@courts.vic.gov.au](mailto:kpi@courts.vic.gov.au).

**Referring to victims who have passed:** Some Aboriginal and Torres Strait Islander peoples have cultural protocols around the naming of people who have passed away, and often avoid naming or using the image and voice of a person for a certain period after they have passed.

For example, the person's name may be modified or they may be referred to using a circumlocution (eg. 'the old man who painted').

- **Consider using language such as 'has passed' or 'passed away',** rather than 'has died' or 'is deceased', as Aboriginal and Torres Strait Islander peoples who have passed away are believed to live in spirit.

**Use of images and voices:** Parties may need to present images and voices of Aboriginal and/or Torres Strait Islander victims who have passed away.

Sensitivity to cultural protocols can be shown by providing forewarning that such images and voices will be visible or audible in court, explaining why this is necessary for the hearing, and providing an opportunity to temporarily leave the courtroom.

**Understanding kinship:** Kinship in Aboriginal and Torres Strait Islander communities has implications for the definition and naming of family members and the nature of familial obligations. Terms like 'sister', 'brother', 'mother', 'father', 'aunty', 'uncle' and 'cousin' can refer to extended family and community members who are not blood relatives, as well as immediate family members.

**Being aware of barriers to communication:** Prior negative experiences with authorities as well as language barriers may adversely impact communication.

### Familiarity with language practices of Aboriginal

**people:** Aboriginal people from south-eastern Australia have specific ways of communicating through grammar, language, sounds, tones, timing, politeness, humour, visual communication and body language. See [Koorified](#) for information about communication, wellbeing and a list of common words and phrases.

**Use of silence:** Some Aboriginal and Torres Strait Islander peoples use silence to demonstrate respect, contemplation, disagreement, reflection or to wait for support from community members.

**Avoid interruptions:** In Aboriginal and Torres Strait Islander cultures it is considered impolite to interrupt when another person is speaking, particularly when that person is an Elder or respected person.

**Use of swearing:** Swearing may be a common and accepted aspect of conversation in some cultures and communities.

**Consider English proficiency:** A victim may have limited English proficiency because they come from a community where English is not their first language. Consider adjusting the pace, clarity, ordering and vocabulary in speech. Consider whether to sensitively ask if a victim requires assistance with reading and writing, avoid speaking loudly or patronisingly, and use an interpreter if necessary (see [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#)).

### Family Violence in Aboriginal and Torres Strait Islander Communities

Some courts have services for victims with diverse needs, such as Umalek Balit ('Give strength' in Woiwurrung) a service providing support, information and referrals to Aboriginal and Torres Strait Islander families attending Melbourne Magistrates' Court for family violence intervention orders, family violence related criminal matters and Victims of Crime Assistance Tribunal matters.

**For more information, see:**

- [Indigenous Peoples](#) – Family Violence Bench Book
- [Aboriginal and Torres Strait Islander People and Interpreters](#) – National Domestic and Family Violence Bench Book



# Note 8:

## Diverse Religious Backgrounds

Aspects of religious belief and practice may affect a victim's participation in criminal proceedings, such as commitments on certain religious holidays or days and times of the week, or gender specific norms that can affect how a victim feels in court.

The following information is largely drawn from the [Equal Justice Bench Book](#) - Supreme Court of Western Australia and the [Equality before the Law Bench Book](#) - Judicial Commission of New South Wales.

Appropriate account should be taken of the relevant religious affiliation of those attending court (particularly if they come from orthodox or conservative traditions within their religion), to limit the potential for them to:

- Feel uncomfortable, resentful or offended by what occurs in court;
- Feel that an injustice has occurred; or
- Receive unfair and/or unjust treatment.

### Religious beliefs and practices

There are many religions practised in Victoria. At the 2016 Census, Victoria's population was **5.93 million**.

Of that total population, 59% (3,493,927) followed one of more than 130 different faiths.

The top five religions listed were Western Catholic, Anglican, Uniting Church, Islam and Buddhism.

Awareness of different religious faiths and practices and how they may impact on participation in proceedings can improve courtroom interactions.

**Useful resources that provide descriptions of religious beliefs and practices of most impact in court situations include:**

- [People with a particular religious affiliation](#) – Equality before the Law Bench Book, Judicial Commission of New South Wales. This publication contains a brief overview of belief and court-relevant practices of five common religions in Australia: Christianity, Buddhism, Islam, Hinduism and Judaism.
- [Appendix D: Glossary of Religions: Religious Practices and Oath-Taking Requirements](#) – Equal Treatment Bench Book, Judicial College – Courts and Tribunals Judiciary (United Kingdom).
- [Religions Affiliations](#) – Equal Justice Bench Book, Supreme Court of Western Australia.

### Practical considerations

#### Swearing in witnesses

Witnesses must take an oath or affirmation before giving evidence. Victims who are giving evidence can swear an oath on a religious text, such as the Bible or the Qur'an. Court staff must treat all religious books and objects with respect.

The correct form of oaths for witnesses in Victoria can be found in Schedule 1 of the [Evidence Act 2008](#).

#### Considering significant days and times when scheduling hearings

Certain days of the week, or dates in a year, are significant to victims who are religious. The Department of Home Affairs website maintains a [calendar of cultural and religious dates](#).

Judicial officers can consider whether it is necessary to make allowances for regular breaks for those who need to pray at certain times of the day, adjourning for relevant holy days and making allowances for religious festivals.

#### Names and forms of address

Names and forms of address can be influenced by a person's family, cultural and/or religious background.

In most cases, religious leaders should be addressed by their religious leadership title followed, in most cases, by their family name.

However, it might be appropriate to ask the religious leader or legal representative (if they have one) what form of address they would prefer.

For more information about naming conventions, see [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#).

## Note 8: Diverse Religious Backgrounds

### Key points to consider: Appearance, behaviour and body language

**Do not generalise:** Most, if not all, religions have many approaches and forms. For more information, see the [Equality Before the Law Bench Book](#) – Judicial Commission of New South Wales.

#### Exercise discretion before asking someone to remove religious dress in open court:

The [United Kingdom's Equal Treatment Bench Book](#) contains detailed guidance in relation to the wearing of veils in court. As in the United Kingdom, the wearing of a veil in court remains a matter of judicial discretion.

That discretion will, to some extent, be fact-dependent and jurisdiction-dependent, and what may be appropriate in one situation may not be appropriate in another.

Judicial officers can ask for the removal of a veil during evidence but only if a fair trial requires it. It should be done only if the judge reasonably believes it necessary in the interests of justice and only after reflection on whether, in the context, effective evidence (which includes the court's effective ability to assess the evidence) could be given without removal.

Consideration should be given to alternative measures such as the use of screens, closed circuit television or closing the court, where appropriate.

See Chapter 9 of the [United Kingdom's Equal Treatment Bench Book](#) and *Elzahed v NSW* [2018] NSWCA 103 for further guidance.

**Lack of eye contact:** As discussed in [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#), not looking someone in the eye is not necessarily an indication of dishonesty.

There are some religions for which it is taboo for some people to make direct eye contact with others (particularly the opposite sex).

**Be aware of touching or court staff standing too close:** Many religions have rules that members of the opposite sex who are not family members should not touch each other or, in some cases, stand too close to each other.

**Use appropriate language to describe any God(s) or religious values or practice.** For example, always use 'the' before any reference to the Buddha or the Dharma/Dhamma.

**Avoid discussion of morality or rationality:** When making orders that are contrary to a religious practice, explain the decision on the basis of jurisdiction and avoid discussing morality or belief.

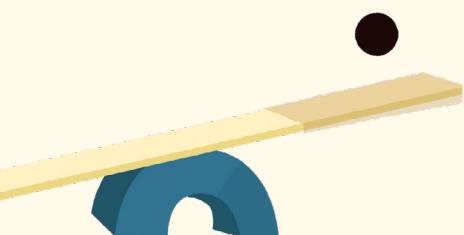
An example might involve a situation in which medical treatment is being ordered which may be inconsistent with a religious practice.

**Seek clarification** if unsure about whether a behavioural trait is to be expected within a particular religious group, or how best to deal with it to ensure justice is both done and seen to be done.

Judicial officers may consider either asking the person's legal representative (if they have one), the person themselves, or their interpreter (if they have one, and are from the same religious background as the person themselves).

It should be noted that some interpreters may be skilled in language but may not be the most suitable source of information about behavioural traits.

Consider whether the court requires evidence from someone with expert knowledge about the particular religion. It may be difficult to get that clarification from the person themselves or the interpreter as they may feel it is not their place to inform the court, they may not understand why the explanation is needed or they may be reluctant to explain for some other reason.



# Note 9: Disability

Disability is a broad term, encompassing varying types and levels of impairment. A person may have multiple disabilities, with each disability affecting them in a different way and requiring its own adjustments. Victims who have a disability can face barriers to effective participation in criminal proceedings, from inaccessible courtrooms to misconceptions about their reliability as witnesses.

## Capacity

Judicial officers should be aware of orders or appointments affecting a person's legal capacity before hearings in criminal proceedings occur.

### Key questions to consider

Does the victim have a disability that may impact their participation?

Does the victim have any difficulty seeing or hearing or need additional time to answer questions?

Is the victim giving evidence? Will additional time be required?

Is there a need to familiarise the victim with the courtroom and court facilities?

Has the victim been connected with support services?

Should an intermediary be appointed?

Would a Ground Rules Hearing be beneficial?

Does the victim use assistive devices and technologies? Can they access them in court?

#### Examples of assistive devices and technology

- Wheelchairs
- Prostheses
- Hearing and visual aids
- Courtroom hearing loop
- Computerised software/hardware that increases mobility, hearing, vision or communication
- Assistance dog or animal

Does the victim require access to an audio frequency induction loop?

Is information in accessible formats wherever possible? (Easy English, Braille, larger fonts, audio)

Does the victim have a support animal? Does the animal require breaks or access to water?

Does the victim require an interpreter? (language or Auslan – see [Guidance Note 6: Culturally and linguistically diverse backgrounds](#))

Are any adjustments to procedural matters necessary? For example, a person's disability or level of literacy may affect the manner in which they swear on the religious text, or their ability to read or speak to a script.

For more information about the law on capacity, see [Orders and Appointments Affecting Capacity – Disability Access Bench Book](#).

## Note 9: Disability

### Challenging assumptions

**Understand the difference** between speech problems and language problems: a speech problem does not necessarily mean there is a language or cognitive problem.

**Expect some unexpected behaviour:** Some people with disabilities may behave in ways that appear disruptive, disrespectful or confronting, such as giggling, laughing, smirking, or expressions, eye contact or other behaviours that seem inappropriate and out of context.

### Sexual offences against people with a disability

- People with disabilities are over-represented as victims of sexual offences, and often face additional barriers to reporting offences.
- Many offenders target people with disabilities because they perceive them as powerless, vulnerable, and unable to make reports that will be taken seriously.
- People with disabilities are capable of relaying accurate details about their abuse, particularly if they are interviewed in a developmentally sensitive and non-intimidating manner. Judicial officers may consider whether the appointment of an intermediary would be of assistance to the person giving evidence.

### Family violence against people with a disability

For more information about family violence against people with a disability, see:

- [People with Disabilities \(Cognitive, Physical or Mental Health\)](#) – Family Violence Bench Book
- [People with Disability and Impairment in the National Domestic](#) – Family Violence Bench Book
- [Interpreters and Translators](#) – National Domestic and Family Violence Bench Book

For more information on Ground Rules Hearings and intermediaries, see the Judicial College's [best practice video](#).

**Consider statutory provisions that assist victims:** Judicial officers can give directions on the way in which witnesses who cannot hear or speak adequately can appropriately give evidence.

For more information on these provisions, see:

- [Deaf and Mute Witnesses](#) – Uniform Evidence Manual
- [Adjustments for Witnesses who Cannot Hear or Speak](#) – Disability Access Bench Book



### Further resources

- [People with a Disability and the Justice System](#) – Disability Access Bench Book
- [Types of Disabilities, Considerations for People with Specific Disabilities and Glossary](#) – Disability Access Bench Book
- [Disability Glossary: Impairments and Reasonable Adjustments](#) – UK Equal Treatment Bench Book

# Note 10:

## LGBTI Community

The term LGBTI refers collectively to people who are lesbian, gay, bisexual, trans and/or intersex. Other acronyms such as LGBTIQA+ include other forms of identity, such as 'Q' for queer or 'A' for 'asexual'. People in LGBTI communities are diverse and have different opinions about the best terminology to describe themselves or may reject these terms altogether.

The following information is drawn largely from the [Equality Before the Law Bench Book](#) – Judicial Commission of New South Wales.

LGBTI victims may face challenges in court due to a range of factors relating to their sexual orientation or gender identity or expression.

### Common concerns

LGBTI people have unique concerns as victims and witnesses in court proceedings. For example, they may:

- Fear potential consequences of 'coming out' or being 'outed', such as rejection by family, friends, colleagues or cultural communities;
- Be concerned about media coverage and fear discrimination, harassment and violence.

For example, trans or gender diverse people may be upset by being referred to by their previous name or the gender they were assigned at birth, or having their previous name or gender being unnecessarily revealed in court;

- Self-censor due to ongoing discrimination. For example, lesbian, gay, bisexual or queer people may limit discussion of their weekend activities or change their partner's pronouns in an effort to avoid discrimination and mistreatment;
- Appear evasive or selective when answering questions about their personal lives or activities.

### Key points to consider: Respectful language

#### Use appropriate terminology:

Court staff and judicial officers should be aware of appropriate terminology associated with LGBTI people.

For example, some trans or gender diverse people may prefer to refer to their 'gender affirmation' or 'aligning their body and gender' rather than referring to a transition or transitioning.

Adopting the same language shows respect for that approach.

**Avoid misgendering:** Consider what pronouns you use to describe victims and seek advice, in private if possible, if this is likely to be an issue.

Be aware that gender diverse people may use gender-neutral pronouns, such as 'they', 'zie' and 'hir' and gender neutral titles such as 'Mx'.

#### Avoid heteronormativity/

**heterosexism:** Avoid using language which reflects an assumption that everyone is heterosexual (straight).

For example, consider using the term 'partner' rather than 'wife' or 'husband' where the gender or sexual orientation of a person is unknown.

#### Acknowledge diversity

**within diversity:** LGBTI people may also be members of other groups, such as Aboriginal and Torres Strait Islander communities or other culturally and linguistically diverse communities.

LGBTI people might also be members of multiple LGBTI communities.

For example, a victim may be trans and bisexual.

**Actively monitor questioning** about sexual orientation, gender identity and sexuality or expression of sex characteristics and restrict such questioning where appropriate.



## Note 10: LGBTI Community

Resources that describe appropriate and inappropriate terminology associated with sex, gender, sexual orientation, gender identity and sex characteristics include:

- [Inclusive Language Guide](#) – Victorian Government;
- [Glossary of Common Terms](#) – Child Family Community Australia, Australian Institute for Family Studies;
- [Lesbians, Gay Men and Bisexuals – Explanations and Terminology](#) and [Sex and Gender Diverse People – Explanations and Terminology](#) – Equal Treatment Bench Book, Judicial Commission of New South Wales;
- [Gender Identity and Sexual Orientation](#) – Equal Treatment Bench Book, Supreme Court of Queensland.

### Family violence in LGBTI communities

The Magistrates' Court is trialling a one-year program aiming to improve inclusion and services for LGBTI people experiencing family violence.

For more information about family violence experienced by LGBTI people, see [People in Same-Sex Relationships](#) in the Family Violence Bench Book and [People who are Gay, Lesbian, Bisexual, Transgender, Intersex and Queer](#) in the National Domestic and Family Violence Bench Book.

For more information generally, see:

- [Lesbians, Gay Men and Bisexuals – Common Misconceptions](#)
- [Sex and Gender Diverse People – Common Misconceptions](#) – Equal Treatment Bench Book, Judicial Commission of New South Wales
- See also [Guidance Note 11: Victims of Family Violence](#)

# Note 11:

## Victims of Family Violence

An understanding of the dynamics of family violence can help judicial officers avoid unintentionally affirming the perpetrator's narrative in the courtroom or in sentencing reasons.

### What is family violence?

Family violence is characterised by a pattern of abusive behaviour involving a perpetrator's exercise of control over a victim, often for an extended period. It can occur within a range of relationships including extended families, kinship networks, intergenerational relationships and through family-like or carer relationships.

It can take different forms and occur throughout a relationship or be initiated or exacerbated at particular times, such as during pregnancy, attempted or actual separation or court proceedings dealing with children or property.

Family violence can involve a range of actual or threatened behaviours, including physical violence, sexual violence, emotional or psychological abuse, economic abuse, social abuse and property damage.

**Key features:** It is important to bear in mind that anyone can be a victim or a perpetrator of family violence.

#### Research shows that family violence:

- Is predominantly committed by men against women, children and other vulnerable persons;
- Affects the entire community;
- Occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;
- Extends beyond physical and sexual violence and often involves emotional or psychological abuse and economic abuse;
- Involves overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.

It is difficult for victims who have experienced repeated traumatic events within a relationship to isolate details of specific incidents. They may remember different things at different times.

For more information about the nature and dynamics of family violence, including common misconceptions, see [Nature of Family Violence](#) and [Men in the Family Violence Bench Book](#).

### Why victims stay or return to abusive relationships

There are many reasons which include:

- They blame themselves and feel responsible for the violence, particularly if a perpetrator has expressed feelings of depression or wanting to take their own life;
- Pressure from children, other family members and friends;
- Religious or cultural beliefs that make leaving a relationship difficult;
- Concerns for the welfare of children, family and pets;
- Shared contact arrangements in relation to children;
- Financial dependence on the perpetrator;
- Increased risk of harm if they leave the relationship;
- Feelings of intimidation and fear of retaliation by the perpetrator;
- Attempting to manage risk by knowing the whereabouts of the perpetrator;
- Belief that the abusive behaviour will stop, with the perpetrator expressing remorse or promising to seek counselling;
- The perpetrator uses coercive and manipulative tactics to reassert and maintain control over the victim, which can include violence;
- Lack of alternative, safe accommodation and risk of homelessness;
- Inadequate formal support systems or social networks.

#### Family violence against people with diverse needs

Family violence occurs in all sectors of society however certain groups of people may be at greater risk of experiencing family violence, more vulnerable to its impacts, and require different judicial responses. Some people may belong to multiple groups and experience heightened risk or vulnerability. For more information about the impact of family violence on diverse groups, see [Specific Considerations for Diverse Groups](#) in the Family Violence Bench Book and [Vulnerable Groups](#) in the National Domestic and Family Violence Bench Book.

## Note 11: Victims of Family Violence

### Key points to consider

Judicial officers have an important role in making sure victims of family violence feel safe and supported when seeking intervention orders or when otherwise engaging with the court system.

#### Encourage access to courts and support services:

Victims should feel welcome to return to court if they need to. Consider informing parties that withdrawal or dismissal of an application does not prevent them making future applications or accessing support services.

**Be alert to safety issues:** Victims must be able to safely attend and participate in court proceedings. All stakeholders in the court process should work together to maximise the protection of the law. Perpetrators may abuse a victim in or near the court by:

- Making threatening gestures; ● Stalking;
- Obstructing; ● Assaulting;
- Verbally abusing; ● Following the victim home.

These issues can be difficult to manage, particularly in regional or rural courts, which often have fewer resources and where victims may face additional visibility and privacy concerns. Clear communication between counsel, court staff, support services and court security may assist.

#### Be alert to the attempted misuse of the legal process:

Perpetrators can attempt to use court processes to intimidate victims by seeking adjournments without legitimate reasons, making baseless cross-applications, failing to appear or evading service of orders.

To minimise the risk of a false cross-application being used against the victim to silence them or trivialise their claim, closely scrutinise applications and impose appropriate sanctions if misuse of court processes is identified.

#### Consider alternative arrangements for giving evidence:

Is the victim able to give evidence in open court and/or in the accused person's presence? Can alternative arrangements be made? Is an intermediary required?

**Raise awareness of support services:** For example, the Victims of Crime Helpline, Court Network, Office of Public Prosecutions Witness Assistance Service and, if relevant, the Child Witness Service.

#### Minimise contact between the accused and the victim:

- Can staff arrange for entry via different entrances or at different times?
- Can the seating in the courtroom be arranged to minimise communication or opportunities for confrontation?
- Are Protective Services Officers or other security required to escort the victim/s to their transport?
- Are staff trained in and following safety and risk procedures?

**Consider adjournments:** Would it be useful to synchronise civil and criminal matters? Are there any other concerns that could be addressed during an adjournment? For example, clarity around child and parenting arrangements, concerns about safety at court or obtaining language or other support services.

**The importance of non-collusive language:** Perpetrators of family violence often attempt to evade responsibility and blame victims for their behaviour. It is important to be aware that judicial officers may unintentionally adopt or affirm this narrative during hearings or in sentencing reasons.

**Avoid diminishing the victim:** Avoid statements like: '[insert name], your partner's behaviour may have been erratic, but your response is not appropriate'.

#### Avoid exhibiting a familiar demeanour with perpetrators:

Avoid statements like: '[insert name], I acknowledge that you have been violent to your partner but you seem like a very good father'.

**Be cautious about labels:** Avoid using labels to describe behaviours which indicate they could be resolved through counselling or reconciliation. For example, 'relationship conflict', 'lovers' quarrel' or 'matrimonial dispute'.

**Don't collude:** Identify when a perpetrator is inviting collusion (verbal or situational invitations). Use language that focuses the perpetrator on their choices and behaviours: '[insert name], I'd like to invite you to reflect on your choice to use violence'.

**Invite reflection:** '[insert name], the impact of your choice to be violent has been significant. This is an opportunity for you to think about what type of father or partner you want to be'.

**Provide information:** '[insert name], I'd like you to contact Men's Referral Service. They will be able to work with you on addressing your use of violence'.

# Note 12:

## Victims of Sexual Offences

Sexual offences are violent crimes that often occur in the absence of witnesses. People of all ages, backgrounds and genders experience sexual offending, but women and children are especially vulnerable. Victims can experience a wide range of emotions when reporting sexual offences and during the legal process, including shame, anguish, embarrassment and guilt.

Sexual offences are also a group of offences where there is most likely to be a dispute about whether a person is a victim of crime. To recognise this, the term 'complainant' is used before a jury finds the accused guilty, or before an accused pleads guilty, and the term 'victim' is used at sentencing.

### Key understandings

- Sexual offences are significantly under-reported;
- Most rape offences are committed by a person known to the victim (often a family member or intimate partner in a familiar residential location);
- Sexual offences committed by strangers are rare;
- Most offending occurs away from public view;
- Most victims delay in disclosing or never disclose or report sexual offences for many reasons, including:
  - Blaming themselves for the offending;
  - Feelings of shame, confusion, guilt and/or shock;
  - Fear of not being believed;
  - Fear of the offender and the consequences of reporting the offence;
  - They know the offender and are protecting them;
  - They do not recognise they have experienced a sexual offence;
- Many victims are young women but older women are victims more often than the public is aware;

- Perpetrators often do not need to use significant additional violence;

*Clearly, both digital and penile rape are inherently violent acts which the community will not tolerate.*

***R v Brown (2002) 5 VR 463 [57]***

*The crime of incest involves sexual penetration of a child which is, by its very nature, an act of violence.*

***DPP v Dalglish (a pseudonym) [2016] VSCA 148 [46]***

- Perpetrators often have power over victims and groom them into compliance over time;
- Victims may consciously or unconsciously freeze or cooperate during offending;
- Unwanted sexual arousal and physiological responses can occur during sexual offences, and do not indicate that a person consented to sexual activity;
- Avoiding the perpetrator may not be a realistic option for the victim and could place the victim at risk of violence and death (see [Guidance Note 11: Victims of Family Violence](#));

- Victims of one-off traumatic events typically recall only a few clear details of the events;
- It is difficult for victims who have experienced repeated traumatic events within a relationship to isolate details of specific incidents. They may remember different things at different times;
- Memories are vulnerable to the impact of alcohol and other drugs, injuries, illnesses and previous experiences of traumatic events (see [Guidance Note 2: Understanding Trauma](#));
- Alcohol is the most common drug perpetrators use to incapacitate a victim before committing a sexual offence;
- Many offenders are opportunistic and take advantage of victims who are already incapacitated.

For more information on misconceptions about sexual offending, see [Challenging Misconceptions about Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners](#) – Australian Institute of Family Studies and Victoria Police.

## Note 12: Victims of Sexual Offences

### Victims giving evidence

Parliament has legislated extensively to ensure complainants are provided with the best opportunity to give their evidence in trials for sexual offences. Relevant provisions include:

- Limitations and prohibitions on evidence about a complainant's other sexual activity (*CPA 2009* Part 8.2 Division 2);
- Prohibition on the accused personally cross-examining the complainant (*CPA 2009* Part 8.2 Division 3);
- Prohibition on cross-examination at a committal hearing where the complainant is a child or a person with a cognitive impairment (*CPA 2009* s 123);
- Obligation to order the use of closed-circuit television and a support person when complainants are giving evidence (*CPA 2009* Part 8.2 Division 4);
- Limitations on who may be present when the complainant is giving evidence (*CPA 2009* Part 8.2 Division 2);
- Availability of police interviews to stand as the evidence-in-chief of a complainant who is a child or who has a cognitive impairment (*CPA 2009* Part 8.2 Division 5);
- Obligation to record the evidence of a complainant who is a child or who has a cognitive impairment (*CPA 2009* Part 8.2 Division 6);
- Availability of recordings of complainant giving evidence in a previous trial to avoid the need for the complainant to give further evidence (*CPA 2009* Part 8.2 Division 2);
- Mandatory jury directions about delay in complaint and inconsistencies in account (*Jury Directions Act 2015* Part 5 Divisions 2 and 3);
- Restrictions on what the judge and practitioners can say about the credibility of complainants and the significance of delay in complaint (*Jury Directions Act 2015* s 51).

For more information about these provisions, see the [Victorian Criminal Charge Book](#) and [Chapter 13 – Witnesses](#) in the [Victorian Criminal Proceedings Manual](#).

#### Credibility unrelated to emotional display

Victims can be visibly stressed, anxious, irritable, numb and/or controlled. Judicial officers, police, media and the public may unconsciously assess victims as more credible if they are visibly upset and emotional, even though credibility is unrelated to emotional display.

Victims may present as controlled as a coping mechanism, or because they have not received enough support.

Victims' emotions are likely to change throughout the legal process.



# Note 13:

## Cases Involving Loss of Life:

### Communicating With Family Members

Victims who have lost a family member or loved one because of a criminal act such as murder will have both similar and unique experiences when compared to direct victims of crime.

In situations of sudden and unexpected loss, friends and family will have had no opportunity to mentally prepare themselves for the loss and grief as they would have, had their loved one been seriously ill. They may experience denial and shock, and feel anger and grief, for longer and more deeply.

#### Some common reactions of family members and loved ones:

##### Physical reactions

- Fatigue, exhaustion and lethargy;
- Sleep problems - insomnia, disturbed sleep or nightmares;
- Hyperactivity;
- Health problems – colds, headaches, digestive issues;
- Loss of appetite or comfort eating;
- Startled reactions and sensitivity to sudden noises or movements.

##### Thought patterns

- Difficulty concentrating;
- Flashbacks to the scene of the crime;
- Difficulty problem-solving;
- Memory disturbance, particularly short-term memory;
- Absent-mindedness, forgetfulness;
- Difficulty making decisions.

##### Emotional reactions

- Extreme focus on the offending and preoccupation with revenge;
- Fear;
- Guilt, self-blame;
- Emotional numbing;
- Over-sensitivity;
- Anger;
- Irritability, 'snappiness';
- Frustration;
- Anxiety;
- Depression;
- Feelings of helplessness.

**For more information** about the potential reactions of victims who have lost family members to crime, see the [Homicide Victims Support Group website](#).

#### Involvement in the legal process: Potential exacerbation

The experience of grief has many expressions and involvement in the legal process may exacerbate trauma or contribute to a feeling of resolution.

Some victims may want to be involved in the legal process, others may not. Some may want to confront the perpetrator whilst others may not. There is little guidance on how to approach the needs of such victims when engaging in the legal process.

Many of the considerations set out in the other Guidance Notes will be applicable, depending on the circumstances. For example, if the victim is giving evidence or reading aloud a victim impact statement.

However, there are some unique considerations that apply to victims who have lost loved ones. Some of these are set out on the next page, along with examples of acknowledgements in recent judgments.

*During my 30 years working in the criminal justice system, I have witnessed first-hand the impact of violent crime on its victims, particularly family members and friends who have lost a loved one. While grieving for their loved one, they are thrust into the unfamiliar world of the criminal justice system and can feel bewildered, stressed and anxious.*

**John Champion, Director of Public Prosecutions, 'Taking the Next Step: A guide to the Victorian court system for bereaved families', 2012**

## Note 13: Cases Involving Loss of Life: Communicating With Family Members

### Key points to consider: Communicating with family members

#### **Avoid using the term ‘the deceased’ or other clinical terminology when referring to or describing a victim:**

It is generally best to acknowledge the deceased victim by name rather than by reference to ‘the deceased’. This consideration applies throughout the court process.

There may be additional considerations as to the mode and form of address to be used. Some family may expect formal titles to be adopted such as Ms, Mr, Mx etc. Others may find formality alienating and distressing. In some circumstances, the victim may have been known by a name different to their legal name.

It is also important to consider the cultural background of the family when deciding how to refer to the deceased victim (see [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#)). For example, without prior warning, deceased Aboriginal and Torres Strait Islander victims should not be referred to by name, nor should their image or voice be used (see [Guidance Note 7: Aboriginal and Torres Strait Islander Peoples](#)).

Other considerations may be the nature of the crime, the family’s desire for privacy (consider the use of pseudonyms) and legal restrictions on the publication of the victim’s name.

Where the deceased victim’s preferred name or the family expectations are not clear from the material presented, it may be appropriate to raise the question with counsel during any preliminary hearings or to direct court staff to make that enquiry of the solicitors or counsel in advance of hearings.

When referring to principles from other cases concerning a deceased victim, it can be appropriate to refer to the victim in the other case as ‘the deceased’.

#### **Acknowledge family and friends as victims:**

Acknowledge the distinct position of family members and friends as victims of crime. This might be assisted through the use of victim impact statements.

*“... [the VIS] allows the family of the victim one single opportunity to bring that person’s life into the court, to speak about their presence within their family and of course their painful absence”*

*A Victim’s Voice – Victim Impact Statements in Victoria, October 2009*

**Be aware of the journey of family members before prosecution commenced:** There are many disruptions to daily life associated with the legal process that victims may have had while managing their grief and loss and significant tasks associated with funerals and administering an estate.

They may have been treated as suspects by police or by other family members or friends; they may have had to engage actively with the police investigation; they may have had to deal with the media; and there may have been coronial investigations.

For more information see [‘Taking the Next Step: A guide to the Victorian court system for bereaved families’](#) produced by the Victorian Office of Public Prosecutions and [‘Unlocking the Homicide Maze: Information for people affected by homicide’](#) produced by the South Australian Commissioner for Victims’ Rights.

**Be aware of family dynamics:** There may be situations in which relationships with the deceased victim are contested.

For example, a long-term partner may not be considered family by the parents and may not be formally acknowledged by them and vice versa. The prosecution should inform court staff of such dynamics and court staff may be able to assist in seating victims separately in the courtroom.

**Desire for privacy:** Consider whether the court can assist the victims to avoid any large media congregations that may be waiting at the entrance to court by facilitating arrival and exit through an alternative entrance. Judicial officers can also consider what degree of personal detail discussed during the hearing or on the plea is required to be published in the formal sentencing reasons.

Can the inclusion of personal details be balanced against an expressed desire for privacy?

**Graphic content warning:** Consider encouraging counsel to discretely warn victims in advance when graphic content will be presented or described to the court or jury.

Some victims may not want to be reminded of the violence of offending in such detail but fear missing out on other important aspects of evidence if they do not sit through the entire hearing. A short adjournment may allow for an inconspicuous departure

## Note 13: Cases Involving Loss of Life: Communicating With Family Members

**Achieving recognition and balance:** It can be challenging to express appropriate recognition of victim impact. It is important to avoid placing excessive weight on victim impact and to avoid any implication that the value of a lost life is measured by the degree to which it is mourned by others.



### Examples: Acknowledging victims

*Mr Kocjancic's family and a close friend provided moving victim impact statements, which described him as a warm, generous and loving husband, father and son, with a big personality. Mr Kocjancic's wife described the difficulties she experienced coming to terms with his death emotionally, as well as with becoming the sole parent to their then 16-year-old son who has severe autism, and 13-year-old daughter.*

*As a result of the collision, the family lost its sole source of income and she had to sell the family home to provide for her family. Mr Kocjancic's daughter described her sadness at her father not being there for milestones in her life and how her brother, who does not fully understand his father's death, had lost his best friend.*

**DPP v Guseli [2019] VSCA 29 [19]**

*Before I consider your personal circumstances, I want to say something about the effect your actions have had on others. Victim impact statements were filed by Mr Jonuzi's three sisters, and by his former long-term partner. Mr Jonuzi was the youngest sibling, and the only son, in his large and close-knit family. His loved ones all miss his happy, caring nature, and his infectious laughter. Understandably, they are struggling to make sense of how and why he died.*

*There is nothing this court can say or do that will bring back Mr Jonuzi, or heal his loved ones' grief and pain. The sentence I am going to impose is not a reflection of the worth or value of Mr Jonuzi's life; rather it is a reflection of the large number of factors which judges are required by law to take into account, only one of which is the victim impact statements.*

**DPP v Colton [2019] VSC 154 [28]-[29]**

*From the way the victim impact statements have been framed, I discern not just heartbreaking grief but also thorough decency in acknowledging neither you, Kevin Perry, nor you, Ian Perry, intended to cause anyone's death or injury. What I need to say is that the sentences I impose are not to be taken as the measure of the lives of Rossleigh Younger or Charlotte Younger. Their lives were and are still felt to be priceless. My sentence ultimately expressed in mathematical terms of a period of time or the amount of a fine cannot return things to the way they were before. The pain of such a loss is enduring. What I have to do is simply fix a just and appropriate sentence.*

**DPP v Perry [2017] VCC 1383 [23]-[24]**



# Note 14:

## Children and Young People

Being in court and giving evidence can be frightening for children and young people. Children and young people have vulnerabilities that can impact their communication skills and their effective participation in criminal proceedings. Further, many children involved in court proceedings have been repeatedly exposed to traumatic events, are in dysfunctional or fractured family situations, are subject to family violence and/or have parents who have been exposed to traumatic events.

### A child's communication skills can be affected by:

- Developmental stage, which is different to age;
- Low socioeconomic status;
- Stress, fear, anxiety, hunger and/or fatigue;
- Adults not 'tuning in' or paying attention;
- Speech-sound disorders;
- Neuro-disabilities;
- Sensory disturbances, especially hearing loss;
- Forms of maltreatment;
- Disrupted schooling.

### Speaking in court differs from a child's typical experience of conversation because:

- The adults are strangers;
- The physical surroundings are new;
- There is stress, confusion and anxiety present;
- It is not a conversation, but it sometimes resembles conversation;
- Adults are not trying to promote communicative success, as in typical everyday interactions between adults and children;
- Reliance on monologue(s) versus co-construction of a narrative is counter to most children's experiences;
- Children have few 'speaker rights'.

### Common misconceptions

All children are suggestible.



Children are prone to giving false accounts.



Children are easily manipulated into giving false reports of sexual abuse.



Retraction and inconsistencies are evidence of lying.



Child sexual abuse can be detected by a medical examination.



### Research shows:

- Even very young children can accurately remember and report things that have happened to them;
- Developmental differences may mean children do not report memories in the same manner, or to the same extent, as adults;
- An incomplete or inconsistent account does not necessarily mean the child is fabricating the account;
- There is no evidence that children tend to lie more than adults;
- Children under five years typically report less detail than older children or adults, but the information they recall is just as accurate;
- Children under five years can be more open to suggestion than older children, but they have difficulty remembering suggestions put to them after a short period;
- Children over five years are highly resistant to suggestions of abuse and it is difficult to make them give false reports.

For more information about the impact of trauma on adults and children see [Guidance Note 2 – Understanding Trauma](#).

## Note 14: Children and Young People

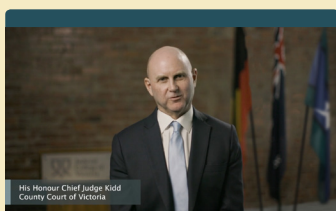
### Key points to consider

#### Before a hearing

- Court staff or judicial officers can ask counsel about any issues that may affect a child's evidence;
- Consider the use of Ground Rules Hearings and intermediaries;

#### A Ground Rules Hearing in Action:

The College has produced a [best practice video](#) to equip judicial officers and practitioners with an understanding of how to conduct a Ground Rules Hearing, both with and without an intermediary.



- Arrange for children to give evidence early in the day when they are most alert;
- Minimise delays, adjournments and changes and maximise predictability;
- Consider limiting formality of court dress to make the child feel more comfortable in court;
- Schedule additional time for children giving evidence to allow regular breaks;
- Consider whether the child speaks English at home. Is an interpreter required? (see also [Guidance Note 6: Culturally and Linguistically Diverse Backgrounds](#)).

#### During the hearing

##### Improving courtroom communication with child victims:

- Introduce yourself and others in the courtroom (including counsel and court staff). Explain your role and the role of others and outline the sequence of how the hearing will proceed:
  - For example, 'Mr X, the prosecutor, is going to ask you some questions. Then the defence counsel, Ms Y, is going to ask you some questions. Then Mr X might ask you some more questions';
  - For a special hearing, 'We are recording the hearing today, so hopefully you won't have to come back to give evidence again';

- Be conscious of demeanour and maintain eye contact with the child. Avoid multitasking when addressing child witnesses;
- Exercise reflective listening and avoid interrupting;
- Inform counsel how the hearing will proceed. For example, advise how often there will be breaks. Consider advising the child witness that it is ok to ask for breaks;
- Remind counsel to consider the age and developmental stage of the witness when asking questions;
- Instruct counsel to avoid speaking while the witness is speaking. An answer from a remote witness facility will not be transmitted if someone else is speaking at the same time;
- Enforce any Ground Rules and the advice of intermediaries;
- Disallow improper questions;
- Encourage counsel to signpost separate topics and avoiding switching between topics;
- Encourage counsel to ask questions about events in a logical sequence.

##### Modify the language used in the courtroom:

- Encourage counsel to use simple language, avoid jargon and ask for one thing in each question;
- Avoid non-literal language like metaphors and idioms ('getting the ball rolling', 'barking up the wrong tree', 'rocking the boat');
- Use the child's vocabulary to describe people, places, objects, actions and times:
  - 'What did you play at playtime?' instead of 'What did you do at recess?';
- Limit the use of pronouns such as 'he', 'she' and 'they' when referring to people:
  - In the question 'When Tom hit John, did he say it was okay?' it is unclear who 'he' refers to;
- Ask open questions and encourage additional open-ended questions to prompt a free narrative:
  - 'Tell me all about the party' and then 'What else can you tell me about the party?' or 'And then what happened?';
- Phrase questions in the active voice;
- Phrase questions positively;
- Avoid negatives and double negatives;
- Reword a question when repeating it;
- Provide context for questions;
- Avoid 'tag' questions which add a question to the end of a statement such as 'You went to school on that day, didn't you?';
- Avoid confrontational questions by limiting the use of 'why' at the start of questions.



## Note 14: Children and Young People

### Assessing the evidence

When assessing the weight to be given to children's evidence, it is important to consider how the children were questioned.

- Were the questions open-ended or leading?
- Did this affect the child's ability to express themselves?

Successful questioning of children requires knowledge of developmental differences in language comprehension, questions that are developmentally appropriate and accurate interpretation of children's responses.

In criminal proceedings, it is possible to admit opinion evidence from people with specialised knowledge about certain types of victims and offences including specialised knowledge about sexual offences and child development and behaviour.<sup>7</sup>

#### In general:

- **Children tend to be literal**, which can affect how they understand and answer questions. For example, asking a child how many times they were touched may elicit a response about the number of touches, instead of the number of occasions when touching occurred;

- **Children can struggle to answer questions about concepts** such as time, frequency, duration, chronology, distance and size. These skills develop gradually in children.

Judicial officers and lawyers should explain what they mean by time, for example, the hands on a clock, or how often something happened.

They should avoid using actual times to describe events, particularly with younger children, and instead use descriptive terms to refer to times of the day, such as 'morning', 'afternoon', 'night', 'before school', 'after school' and 'after dinner'.

- **Children can struggle to place events in the correct sequence over time.** It is best to order questions to children chronologically, such as first asking about things that happened in the morning and then the afternoon;
- **Children find it easier to understand questions asked in the active voice and questions phrased positively rather than negatively;**
- **Children may interpret being asked to repeat an answer as an indication it was wrong.** This may prompt them to change their answer. Lawyers and judicial officers should avoid repeating questions if the child has already given a response. A question may need to be repeated if, for instance, it was misunderstood.

### Child victims of sexual abuse

#### Child sexual abuse typically involves:

- An offender known or related to a child;
- Grooming by the offender over time to engage a child's trust and test reactions to non-sexual and sexual touching;
- A relationship of dependence, control or power between the child and the offender;
- No eyewitnesses to the sexual contact;
- Delayed complaint;
- No scientific evidence such as the presence of semen or medical evidence of penetration.

Because of these factors, criminal proceedings involving allegations of child sexual abuse tend to focus on a child's credibility, including assessments of their responses to the abuse and their relationship with the accused.

Research shows that there is **no single set of symptoms or behaviours** that all children who are or have been sexually abused display.

Depending on each child and their circumstances, some children may exhibit numerous symptoms while others exhibit none.

- Often victims of sexual abuse do not cry out for help, resist or escape from the offender.
- Some children may exhibit behaviours resulting from sexual abuse that are counterintuitive and may not appear to make sense to adults.
- Behaviours reported in the literature include:
  - delay in complaint for months or years (common response);
  - disturbed sleep patterns and/or nightmares;
  - bedwetting;
  - disturbed behavioural patterns;
  - learning difficulties;
  - fearfulness and general emotional upset;
  - retraction of the complaint;
  - sexualised behaviour;
  - ongoing contact with, and/or affection for, the alleged offender.

*None of these behaviours, on their own, are diagnostic of sexual abuse.*

<sup>7</sup> See *Criminal Procedure Act 2009* s 388 and [Exception to the Opinion Rule: Opinions Based on Specialised Knowledge](#) in the Uniform Evidence Manual.

## Note 14: Children and Young People

### Further resources

For more information about child witnesses, see [Children in the Victorian Criminal Proceedings Manual](#).

[Child Witnesses: Testing Competency and Questioning – A Practical Guide](#): The College developed this resource with the Child Witness Service to provide an accessible guide to the competency and questioning of children, including principles that relate to all child witnesses and age-specific sample scripts.

[Child Witness Service Factsheets](#): These factsheets include information about communication in early childhood (3-6 years), middle years (7-10 years) and adolescence (11-18 years), and about children with intellectual disabilities, autism spectrum disorders and learning difficulties.

[Bench Book for Children Giving Evidence in Australian Courts](#): Produced by the Australian Institute of Judicial Administration, this publication provides information about child development and communication across different age groups, child sexual abuse and children's experiences of the criminal justice system.

[Speech Pathology Australia](#): This website describes communication milestones for children aged between one and five years old.

[Institute for Human Services for The Ohio Child Welfare Training Program – Developmental Milestones Chart](#): This guide describes developmental milestones for children, and possible effects of maltreatment.



# Appendix A:

## Obligations of Investigatory Agencies, Prosecuting Authorities and Victims' Services Agencies

The *Victims' Charter Act 2006*, was introduced to guide investigating, prosecuting and victims' support agencies in their interactions with victims. The amendments to the *Victims' Charter*, that will come into effect on **4 November 2019**, will require additional special treatment of victims and will impose additional obligations with respect to communication with victims.

The below table sets out some of these obligations, along with identifying which agencies are responsible for giving effect to the obligations.

Charter Principle	Agency	Section number	Status
<b>Treatment</b>			
To treat all persons adversely affected by crime with courtesy, respect and dignity and to take into account, and be responsive to, the particular needs of persons adversely affected by crime, particularly needs relating to differences such as: (a) race or indigenous background; (b) sex or gender identity; (c) cultural or linguistic diversity; (d) sexual orientation; (e) disability; (f) religion; (g) age.	Investigatory agencies, prosecuting agencies and victims' services agencies	S 6	In force
To respect the rights and entitlements of victims as participants in proceedings for criminal offences and to, so far as reasonably practicable, take into account, and be responsive to, the particular needs of victims living in rural and regional locations.	Investigatory agencies, prosecuting agencies and victims' services agencies	S 7A	To come into effect on 4 November 2019
<b>Communication and provision of information</b>			
To provide information about relevant support services, possible entitlements and legal assistance and, if appropriate, referrals to support services.	Investigatory agencies, prosecuting agencies and victims' services agencies	S 7	In force
To take into account, and be responsive to whether the victim wishes to be contacted, their preferred method of contact (which may vary throughout the process) and issues that may affect the victim's ability to understand the information being communicated including: (a) the victim's understanding of English; and (b) whether the victim has a disability; and (c) whether the victim is a child.	Investigatory agencies, prosecuting agencies and victims' services agencies	S 7B	To come into effect on 4 November 2019
To inform the victim, at reasonable intervals, about the progress of an investigation into a criminal offence unless the disclosure may jeopardise any investigation of a criminal offence.	Investigatory agencies	S 8	Amended section to come into effect on 4 November 2019.
To inform the victim of: (a) the offences charged; (b) if no offence is charged, the reason why no offence was charged; (c) any decision to substantially modify or discontinue the offences charged, or accept a plea of guilty to a lesser charge; (d) how to find the date, time and place of hearings (non-DPP prosecuting agencies only); (e) the outcome of the proceeding, including any sentence imposed (non-DPP prosecuting agencies only); (f) any appeals, the grounds of appeal and the result of the appeal.	Prosecuting agencies	S 9	Amended section to come into effect on 4 November 2019

## Appendix A:

### Obligations of Investigatory Agencies, Prosecuting Authorities and Victims' Services Agencies

Charter Principle	Agency	Section number	Status
<b>Communication and provision of information</b>			
To take all reasonable steps to advise a victim of: (a) the date, time and location of any contested committal hearing, trial, plea hearing, sentencing hearing and appeal hearing; and (b) the progress of a prosecution, including the outcome of any committal mention, contested committal hearing, initial directions hearing, trial, plea hearing, sentencing hearing or appeal hearing, or guilty plea.	DPP	S 9A	To come into effect on 4 November 2019  *some of these requirements are covered in the current version of the Act
To seek the views of a victim before making a decision to: (a) substantially modify the charges; or (b) discontinue the prosecution of the charges; or (c) accept a plea of guilty to a lesser charge; or (d) appeal a sentence; or (e) appeal an acquittal, unless the victim cannot be contacted or it is not practical to contact the victim because of the speed or nature of the proceedings.	DPP	S 9B(1)	To come into effect on 4 November 2019
To give the victim information about the matters taken into account in making a decision to: (a) agree to or oppose an application to cross-examine the victim at a committal hearing; or (b) apply for, agree to or oppose an application for summary jurisdiction, unless the victim cannot be contacted or it is not practical to contact the victim because of the speed or nature of the proceedings	DPP	S 9B(2)	To come into effect on 4 November 2019
To give a victim, as soon as practicable, reasons for any decision to substantially modify the charges, discontinue charges or accept a plea of guilty to lesser charges, unless the disclosure may jeopardise any investigation of a criminal proceeding or prejudice any other proceeding. The reasons may be given orally or in writing.	DPP	S 9C	To come into effect on 4 November 2019
To ensure the victim is informed of the outcome of bail applications and any bail conditions.	Prosecuting agencies	S 10	In force
To ensure the victim is informed about the court process and the victim's entitlement to attend any relevant court proceedings unless the court orders otherwise To ensure a victim appearing as a witness for the prosecuting agency is informed about the process of the trial or hearing, the victim's role as a witness for the prosecution, that after the victim has given evidence they may remain in court unless the court orders otherwise and, if relevant, to ensure they are informed about any special protections or alternative arrangements for giving evidence. To ensure the court is informed about the victim's preferences for the use of any special protections or alternative arrangements for giving evidence.	Prosecuting agencies	S 11	Amended section to come into effect on 4 November 2019
<b>Minimise contact between the victim and accused</b>			
So far as is reasonably practicable, to minimise the victim's exposure during the proceedings and within a court building to unnecessary contact with defence witnesses, the accused and the accused's family members and supporters. So far as is reasonably practicable, to protect the victim from intimidation by defence witnesses, the accused and the accused's family members and supporters.	Prosecuting agencies and the courts	S 12	In force
<b>Victim impact statements</b>			
To refer a victim who wishes to make a victim impact statement to an appropriate victims' services agency for assistance in making the statement. To give a victim who wishes to make a victim impact statement general information about the types of material that may be ruled inadmissible and the consequences of such a ruling. This does not extend to advice about the admissibility of a particular victim impact statement.	Prosecuting agencies	S 13	Amended section to come into effect on 4 November 2019