



Supreme Court of Victoria

Guide for people seeking a victim privacy order

1 INTRODUCTION

- 1.1 Under Victorian law, there are restrictions on publishing information that could identify a victim¹ of a sexual offence (**‘restricted information’**).² From 15 December 2021 the law will clearly provide that this general restriction does not apply to a victim who has died.
- 1.2 From 15 October 2021 application will be able to be made to a court for a victim privacy order (VPO) to prohibit or restrict the publication of any matter that may identify a deceased victim of a sexual offence (referred to in the Act as an ‘affected person’).
- 1.3 This guide seeks to explain in simple terms the process for applying to a court for a VPO and how applications will be determined. Reference should be made to the *Judicial Proceedings Reports Act 1958* ([the Act](#)) for the full and precise legal requirements.

2 APPLYING FOR A VPO

Who can apply?

- 2.1 A person with a sufficient interest can apply for a VPO in respect of a deceased victim of a sexual offence. The Act sets out a number of factors to be taken into account about the applicant’s relationship to the victim to establish that sufficient interest. An application cannot be made by the offender or alleged offender.
- 2.2 Application can be made whether or not anyone has been charged with an offence, but a complaint must have been made about the offence to police or

¹ For simplicity the term victim is used throughout this document to encompass a person against whom the sexual offence is/was alleged to have been committed (in the court context a complainant) and a person against whom a sexual offence has been found to be committed. This is not a prejudgment of legal proceedings. It is acknowledged that different terms such as survivor or victim/survivor are preferred by some individuals.

² The *Judicial Proceedings Reports Act 1958* (Vic) prohibits publication of ‘any matter that contains any particulars likely to lead to the identification of a person against whom a sexual offence... is alleged to have been committed’ – s 4(1A).

have otherwise been brought to the attention of police.

Which court should I apply to?

2.3 If there are current court proceedings about the offence or alleged offence against the victim, application should be made to the court that is hearing those proceedings. If there has been a court proceeding in the past about the offence or alleged offence the application should be made to the court which heard the proceeding. Where there was an appeal in that case that has concluded, the application should still be made to the trial court.

2.4 For criminal matters, if you know the name of the person charged, you can call the court registries to confirm which court is hearing or heard the proceedings and obtain the proceeding number:

Supreme Court Criminal Registry – (03) 8600 2059

County Court Criminal Registry – (03) 8636 6570

Magistrates’ Court Criminal Registry – (03) 9628 7826

2.5 For civil proceedings (e.g. a compensation claim against an institution), if you know the names of one or more parties you can call the court registries to confirm which court is hearing or heard the proceeding and obtain the proceeding number.

Supreme Court Common Law Registry – (03) 8600 2046

2.6 In the rare event that an application is sought to be made while there is a current appeal proceeding in the Court of Appeal, an application can be made to the Court of Appeal. Contact should first be made with the registry

Court of Appeal Registry- (03) 8600 2001

What form should I use?

2.7 The form of application will depend on whether and what type of proceedings have already started in the Court. The table below sets out the forms to be used

Situation	Which Division	Which Form
Current or concluded criminal proceeding	Criminal Division	General Application Form 6-1D
Current civil proceeding in the Supreme Court	Common Law Division	Summons Form 46A
No proceedings in the Court	Common Law Division	Originating Motion If no defendant Form 5D

- 2.8 An application should be accompanied by an affidavit which is a formal written statement which sets out facts you know to be true which are relevant to your application. You sign this document under oath or affirmation. Guidance about preparing an affidavit can be found [here](#). You can also provide written submissions in support of your application which is a summary of why you say the VPO should be made given the requirements of the Act and the facts set out in your affidavit.

Is there a fee?

- 2.9 The fees payable in the Supreme Court are governed by the *Supreme Court (Fees) Regulations 2018*. Fees are not payable under those regulations for applications arising from a criminal proceeding. If an application is not one that arises from a criminal proceeding then fees may be payable. Fees are waived if you have been granted legal aid or are represented on a pro bono basis. Applications for the waiver of fees can also be made in circumstances of financial hardship. Further information on fees can be found [here](#).

What should the application include?

- 2.10 There are a number of criteria for making a VPO and matters the law requires the Court to take into account. The Court must have evidence or sufficiently credible information about those matters. This is done by providing affidavit material. As an applicant you are required by the Act to tell the Court all the facts that you know relevant to the application whether or not those matters are favourable to your application.

- 2.11 The affidavit material you provide should set out:

- the name of the victim of the sexual offence and information about that offence including whether it was reported to police and whether there are any proceedings before the courts
- your relationship to the victim to establish you have a sufficient interest to apply (see above). The Act provides for considerations including:
 - nature and closeness of relationship, social and emotional ties
 - duration and frequency of contact
 - whether you lived together
 - financial or other dependence between you
 - provision of care
 - any history of family violence
 - cultural recognition of a family like relationship
- facts relevant to the reasons you believe it is necessary to prohibit or restrict publication of the victim's identity
- any views the deceased victim may have expressed to you in their lifetime about being publicly identified as a victim of a sexual offence after their death
- any inquiries you have made about the views of the victim
- facts relevant to why publication of the victim's identity would cause you undue distress.

- 2.12 The Act prohibits an application for a VPO if other types of similar orders or

restrictions are in force or could be sought, including under the *Open Courts Act 2013* and the *Children, Youth and Families Act 2005*.

- 2.13 To make a VPO, the Act requires that the Court must be satisfied it is necessary to displace the public interest in the principles of open justice and freedom of expression or the free communication and disclosure of information.
- 2.14 The principle of open justice is that court proceedings should be open to the public and able to be reported on by the media so the community knows what is happening in the courts. This principle will only apply if there are or have been court proceedings about the offence. The principle of freedom of expression applies more generally.
- 2.15 You may wish to make submissions addressing these matters.

How do I file my application?

- 2.16 If you are represented by a lawyer they will have access to the Court's electronic filing system. If you do not have a lawyer it is suggested that you contact the self-represented litigants co-ordinator who can discuss with you how to file documents

Self-represented Litigants Co-ordinator (03) 8600 2031

Email: unrepresented@supcourt.vic.gov.au

What happens once I file my application?

- 2.17 If you apply to the Supreme Court but it is more appropriate for another court to deal with your application, we will contact you.
- 2.18 Once the Court receives your application, we must notify relevant news media organisations. This gives those organisations an opportunity to make submissions to the Court if they oppose your application. In order to assist with the process, in addition to filing your application, you should also email a copy to media@supcourt.vic.gov.au. You may be contacted by a media organisation seeking further information to decide whether they oppose an order being made.
- 2.19 If there are current proceedings before the Court at the time you make your application you will need to serve the lawyers representing those parties. You can contact the relevant registry to obtain contact details for those lawyers. The views of an alleged offender cannot be taken into account but they will need to know about the application and any order made.
- 2.20 The Court may also require you to serve your application on anyone else who may have a relevant interest in the application (e.g. family members of the victim, other victims of the same offender who in speaking about their experience may identify the deceased victim). A directions hearing may be held to determine whether this should occur.
- 2.21 The Court will let you know when the application is to be heard.
- 2.22 You will have the opportunity at a hearing to make submissions in support of

your application on the basis of the affidavit material you have provided.

- 2.23 In some circumstances orders may be made on an interim basis to allow time for the substantive application to be heard and determined.

3 WHAT HAPPENS IF AN ORDER IS MADE?

- 3.1 If the Court is satisfied the conditions for making a VPO are met and an order is made you will be provided with a copy of the order and the reasons for making it. The order will be provided to relevant news media organisations and anyone else involved in the proceeding so they are aware of the terms of the order and can abide by it.
- 3.2 The order will specify the restriction on publication and how long it operates for. Orders cannot be made for a period of longer than 5 years, although application can be made to extend the period of operation.
- 3.3 A VPO does not prohibit all forms of publication of the identity of a victim. Publication for a purpose connected with a judicial proceeding is still permitted. For example a court may publish reasons for sentence or a judgment which identify a deceased victim.
- 3.4 A VPO cannot prevent publication of details about a sexual offence where those details are not likely to lead to identification of the victim.
- 3.5 It is an offence to contravene a VPO where the person knows about the order. If you believe someone has done so you can report this to Police.
- 3.6 Applications can be made to review or vary an order.

4 DO I NEED A LAWYER TO APPLY TO THE SUPREME COURT?

- 4.1 No, but you may be represented by a lawyer who can advise you about the legal requirements, assist you with your application and represent you in court.
- 4.2 Information about free and low cost legal services is available [here](#).