

# 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).