

# 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.aspx](http://www.proceduralfairness.org/Theory-and-Research/Theory.aspx) (accessed 24 April 2019).

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### 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.**



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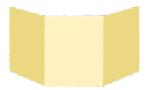
### Further points to consider: Case management, access and environment, and opening court

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.

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### 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.”*



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### 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](#).