

# 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



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**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](#).