



VICTIMS OF CRIME ASSISTANCE TRIBUNAL

Chief Magistrate's Chambers  
Melbourne Magistrates' Court

**PRACTICE DIRECTION**  
**NO. 2/2003**  
**ACCESS TO VOCAT FILES**

PRACTICE DIRECTION ISSUED PURSUANT TO SECTION 58  
OF THE VICTIMS OF CRIME ASSISTANCE ACT 1996

The Victims of Crime Assistance Tribunal ("VOCAT") is a Tribunal of public record.

Access may be restricted in certain circumstances having regard to a number of legal considerations including statutory protection, immunity from production, privilege and the following specific legislation:

- the *Victims of Crimes Assistance Act 1996* ("VOCA Act"), particularly Sections 42, 42A & 43;
- the *Information Privacy Act 2000*; and
- the *Freedom of Information Act 1982*.

This practice direction sets out the procedure to be followed when access is sought to the content of all or part of a VOCAT file for the purpose of:

- Inspection; and/or
- The obtaining of information; and/or
- The taking of copies of documents; and/or
- The production of all or part of the file.

**A The procedure for dealing with requests to access the file**

1. ***Requests by the applicant and/or the applicant's legal representative***

The Registrar is permitted to grant the applicant and/or the applicant's legal representative access to all parts of the Tribunal file except:

- a) Medical and/or psychological reports which have been filed on behalf of the applicant and which have a notation to the effect that the report is to be treated confidentially; and/or
- b) Police briefs and related police documentation;
- c) Hospital records;
- d) Other documents not filed by the applicant.

With respect to documents (a) to (d) inclusive (hereinafter referred to as “classified documents”):

- (i) The applicant is permitted to access classified documents with the consent of the author or the person who provided the documents to the Tribunal as the case may be (hereinafter referred to as “the classified document owner”);
- (ii) Subject to subparagraph (iii), if the classified document owner does not consent to the applicant having access to the classified documents, unless the Tribunal otherwise orders, the matter shall be listed for a directions hearing, and the classified document owner shall, in addition to the applicant, be notified of the date and place of the directions hearing;
- (iii) Where the police do not consent to access being given to the police brief and related police documents because the matter is still under investigation and/or relevant criminal proceedings have not been completed; unless the Tribunal otherwise orders, a directions hearing shall not be listed until after the police investigation/criminal proceedings have been completed;
- (iv) In certain circumstances, the Tribunal may require an undertaking as to confidentiality be given by the applicant.

In all other cases or where there is some ambiguity or uncertainty, the file should be referred to a Tribunal member for directions.

2. ***Requests by a person who has a substantial interest pursuant to Section 35(1) of the VOCA Act including requests by the alleged offender.***

Where a request to access a VOCAT file is made by an alleged offender, or a person who has a substantial interest pursuant to Section 35(1) of the VOCA Act, or his/her legal representative:

- a) Subject to sub-paragraph (b), access is permitted with the written consent of the applicant.
- b) If access is requested to a classified document, the procedure outlined in section A 1 of this practice direction shall apply subject to:
  - (i) such modifications being made as are appropriate; and
  - (ii) section A 1 (a) being read as a reference to all medical and/or psychological reports.
- c) If the written consent of the applicant has not been obtained, the file shall be referred to a Tribunal Member for directions.
- d) Permission to access the file shall not be granted until and unless the applicant has had the opportunity to be heard as to whether or not the application for access should be granted.
- e) In all cases where there is some ambiguity or uncertainty, the file should be referred to a Tribunal member for directions.

3. ***Requests by way of subpoena***

Where a subpoena is served upon the Tribunal, the Registrar must comply with the following procedure:

- a) Forward a copy of the subpoena to the Principal Registrar. The Principal Registrar shall enter the details into a central register.
- b) Unless the Tribunal otherwise orders, give notice of the receipt of the subpoena to the applicant and the classified document owner of any classified documents which are contained on the Tribunal file.
- c) Make copies of any orders made pursuant to Sections 42, 42A and/or 43 of the VOCA Act.
- d) Place the subpoenaed documents in an envelope and attach a letter addressed to the appropriate court officer in the following terms:

“The attached envelope contains documents which may be subject to statutory protection, immunity from production, privilege or be subject to the provisions of the *Freedom of Information Act 1982* and/or the *Information Privacy Act 2000* and/or the *Children and Young Persons Act 1989* and/or the *Judicial Proceedings Reports Act 1958* and should not be opened except by order of a Judge (or Magistrate or Tribunal member, as appropriate).

It is requested that if the Court (or Tribunal, as the case maybe) is considering allowing access to the documents in the envelope, the Victims of Crime Assistance Tribunal and other interested persons be afforded the opportunity to be heard.”

- e) Refer the file to a Tribunal Member.
- f) Upon the Tribunal member returning the file to the Registrar; act upon the instructions of the Tribunal Member.

4. ***Requests pursuant to purported statutory, common law or other authority, eg. TAC, Victorian Workcover Authority, Social Security.***

The Registrar must comply with the following procedure:

- a) Forward a copy of the request to the Principal Registrar. The Principal Registrar shall enter the details into a central register.
- b) Unless the Tribunal otherwise orders, give notice of the receipt of the request to the applicant and the authors of other classified documents which are on the Tribunal file.
- c) Refer the file to a Tribunal Member.
- d) Upon the Tribunal member returning the file to the Registrar; act upon the instructions of the Tribunal Member.

5. *All other requests*

- a) Refer the file to a Tribunal Member.
- b) Upon the Tribunal member returning the file to the Registrar; act upon the instructions of the Tribunal Member.

**B The procedure for authorisation**

1. The following particulars of authorisation to access the file must be recorded on the file:
  - a) The name of the Tribunal member or Registrar authorising access.
  - b) The date of authorisation.
  - c) The name of the person who is authorised to access the file.
  - d) The terms and conditions of the authorisation. For example: Access to all or part of the file, whether copies are permitted to be taken, if so how many, and whether copies must be returned.
2. If an undertaking is signed by the person accessing the file, this undertaking must be placed on the file.

**C The procedure for access**

1. Access to the file is permitted at a time appointed by the Registrar of the Tribunal.
2. Where the terms of the authorisation permit copies of documents to be taken; copies will be made available upon the payment of the applicable fee and subject to such conditions as directed by the Tribunal.

**This Practice Direction has effect from 1 July 2003**

IAN LESLIE GRAY  
CHIEF MAGISTRATE

16 May 2003

## FORM OF UNDERTAKING

VICTIMS OF CRIME ASSISTANCE TRIBUNAL  
OF VICTORIA

No.

IN THE APPLICATION OF:

**Applicant**

### UNDERTAKING

I, *(name and address of person giving undertaking)*

the *(status of person giving undertaking eg. applicant/counsel/solicitor for the applicant)*

**give this undertaking to the Tribunal** to enable me to inspect and/or copy the following documents:

*(description of documents eg. Victoria Police documents)*

**The terms of the undertaking are:**

1. I will keep the information in the documents confidential.
2. I will not disclose the information in the documents to any person save in the course of the conduct of these proceedings and I will take all reasonable steps to ensure that no other person shall have access to the documents save for that purpose.
3. I will comply with Section 26 of the *Children and Young Persons Act 1989* and Section 4 of the *Judicial Proceedings Reports Act 1958*, where applicable.
4. I will use the documents and the information in the documents solely for the purposes of this proceeding.
5. I will return the documents to the Tribunal immediately after viewing the material.
6. I will comply with any specific directions made by the Tribunal as to the terms upon which I am permitted to have access to the Tribunal file.
7. This undertaking operates from the time I sign, date, and file this undertaking with the Tribunal.

Dated:

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Signature

## **CHILDREN AND YOUNG PERSONS ACT 1989**

### **Section 26 Restriction on publication of proceedings**

- (1) A person must not publish or cause to be published—
  - (a) except with the permission of the President, a report of a proceeding in the Court or of a proceeding in any other court arising out of a proceeding in the Court that contains any particulars likely to lead to the identification of—
    - (i) the particular venue of the Children’s Court in which the proceeding was heard; or
    - (ii) a child or other party to the proceeding; or
    - (iii) a witness in the proceeding; or
  - (b) except with the permission of the President, a picture as being or including a picture of a child or other party to, or a witness in, a proceeding referred to in paragraph (a); or
  - (c) except with the permission of the Secretary granted in special circumstances in relation to a child who is the subject of a custody to Secretary order or a guardianship to Secretary order, any matter that contains any particulars likely to lead to the identification of a child as being the subject of an order made by the Court.

#### **Penalty:**

- (a) In the case of a body corporate—500 penalty units;
  - (b) In any other case—100 penalty units or imprisonment for 2 years.
- (2) The Court in making an order may direct the Secretary not to grant permission under sub-section (1)(c) with respect to the order.

## JUDICIAL PROCEEDINGS REPORTS ACT 1958

### Section 4. Prohibition of reporting of names

- (1) In this section—  
“**publish**” means—  
(a) insert in a newspaper or other periodical publication; or  
(b) disseminate by broadcast, telecast or cinematograph; or  
(c) disclose by any means to any other person—  
other than for a purpose connected with a judicial proceeding;  
“**sexual offence**” means an offence under subdivision (8A), (8B), (8C), (8D) or (8E) of Division 1 of Part I of the **Crimes Act 1958** or under any corresponding previous enactment or an attempt to commit any such offence or an assault with intent to commit any such offence.
- (1A) A person who publishes or causes to be published any matter that contains any particulars likely to lead to the identification of a person against whom a sexual offence, or an offence where the conduct constituting it consists wholly or partly of taking part, or attempting to take part, in an act of sexual penetration as defined in section 35 of the **Crimes Act 1958**, is alleged to have been committed is guilty of an offence, whether or not a proceeding in respect of the alleged offence is pending in a court.
- (1B) If a proceeding in respect of the alleged offence is not pending in a court at the relevant time, it is a defence to a charge under sub-section (1A) for the accused to prove—  
(a) that no complaint about the alleged offence had been made to a member of the police force before that time; or  
(b) that the matter was published or caused to be published in accordance with the permission of—  
(i) the Supreme Court, the County Court or the Magistrates’ Court granted on an application by a person; or  
(ii) the person against whom the offence is alleged to have been committed.
- (1C) If a proceeding in respect of the alleged offence is pending in a court at the relevant time, it is a defence to a charge under sub-section (1A) for the accused to prove that the matter was published or caused to be published in accordance with the permission of that court granted on an application by a person.
- (2) Any person who is guilty of an offence under sub-section (1A) is liable, if a corporation, to a penalty of not more than 50 penalty units and, if a person other than a corporation, to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than four months or to both such penalty and imprisonment.
- (3) Where a corporation is guilty of an offence against this section any person being a member of the governing body or being a director manager or secretary of the corporation shall severally be deemed to have committed the offence and shall be

liable to the aforesaid penalty or imprisonment or both unless he proves that the offence by the corporation took place without his knowledge or consent.

- (4) No prosecution for an offence under this section shall be commenced by any person without the sanction of the Director of Public Prosecutions.