



## Victims of Crime Assistance Tribunal

Chief Magistrate's Chambers  
Melbourne Magistrates' Court

### Practice Direction

No. 9 of 2008

## ACCESS TO FILES

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

#### Purpose

The purpose of this Practice Direction is to specify the procedure to be followed when a request is made under section 42A of the *Victims of Crime Assistance Act 1996* to access:

- information about an application for assistance; and/or
- documents contained on a Tribunal file.

#### Background

Section 42A of the *Victims of Crime Assistance Act 1996* provides as follows:

#### **42A** *Inspection of documents*

- (1) When the office of the Tribunal is open, the applicant in the proceeding, and on payment of the prescribed fee (if any) any other person, may inspect and obtain a copy of any document filed in a proceeding in the Tribunal.
- (2) Despite subsection (1) –
  - (a) a person may not inspect or obtain a copy of a document which the Tribunal has ordered remain confidential;
  - (b) a person, not being the applicant in the proceeding, may not, without the leave of the Tribunal, inspect or obtain a copy of a document which in the opinion of a registrar of the Tribunal ought to remain confidential.

#### Access

Parties, non-parties (including media representatives), persons with a substantial interest or alleged offenders may request access to information and/or documents contained on a file (the file) of the Tribunal.

Access to information and/or documents contained on a file includes:

- inspection of documents on the file;
- obtaining information contained in a document on the file;
- obtaining information about the current status or outcome of an application for assistance;
- taking copies of documents on the file; and
- the subpoena of all or part of the file.

The Tribunal may restrict access to certain information, documents and materials on the file including documents prepared by third parties.

Access to information and/or documents contained on a file may be restricted because of a number of legal considerations, including immunity from production, privilege and statutory protection. Some specific statutory protections are contained in the following legislation:

- *Victims of Crime Assistance Act 1996*
- *Evidence Act 1958 (Part 2 Division 2A Confidential Communications)*
- *Information Privacy Act 2000*
- *Health Records Act 2001*
- *Freedom of Information Act 1982*
- *Judicial Proceedings Reports Act 1958*
- *Children, Youth and Families Act 2005*

### **Classified documents**

Classified documents may form part of a file and require special treatment. Classified documents for the purpose of this practice direction include:

- medical, psychological, psychiatric or counselling reports which have been filed on behalf of the applicant;
- police briefs and related police documentation;
- hospital records; and
- other documents filed by a third party.

### **Procedure for requests to access a file**

Requests to access information and/or documents contained on a file will be dealt with as follows:

1. All requests shall be made in writing by filing the attached Form 1 (Application to Access Information).
2. The registrar may grant the applicant or the applicant's legal representative access to the information and/or documents requested, except to classified documents.

3. The registrar may grant access to third parties (including media representatives) to information and/or documents contained on the file, except to classified documents, with the written consent of the applicant.
4. The registrar may grant access to the classified documents with the consent of the applicant, the author or the person who provided the document, excluding medical, psychological, psychiatric or counsellor reports.
5. If the applicant and/or the author or person who provided the classified document does not consent to access, the matter will be referred to a tribunal member. The Tribunal Member may require an explanation for the refusal of consent.
6. All requests for access to medical, psychological or counsellor reports will be considered by a tribunal member.
7. If the police do not consent to access to the police brief and related police documents because of ongoing investigations or criminal proceedings, a directions hearing will not usually be listed until after the investigations or criminal proceedings are completed.
8. Access to information and/or documents contained on a file will be at a time appointed by the registrar.
9. Unless otherwise ordered by the Tribunal, all applicants requesting access to information and/or documents contained on a file must sign an undertaking in either the attached Form 2 or Form 3 (media representative only) prior to being given access to the documents and/or information.
10. Access to the documents and/or information will be subject to any further directions or conditions imposed by the Tribunal.

## **Subpoenas**

The Tribunal requests that parties serving subpoenas on the Tribunal provide at least seven (7) business days in which to respond to the subpoena.

All subpoenas in relation to the Tribunal should be served on the Principal Registrar, addressed as follows:

Principal Registrar  
Victims of Crime Assistance Tribunal  
1/233 William Street  
Melbourne Vic 3000

Where a subpoena is served on a person other than the Principal Registrar, the person served must advise the Principal Registrar of the subpoena prior to the subpoena being referred to a tribunal member.

Subpoenas will be responded to as follows:

1. Upon direction from the Principal Registrar, the file and subpoena will be referred to a tribunal member to determine if the applicant and/or author of a classified document should be notified of the subpoena and for any other directions as the Tribunal Member determines.
2. If the Tribunal Member directs, the registrar will give notice of the subpoena to the applicant and/or author of a classified document.

3. The registrar will make copies of any orders under section 42, 42A and 43 of the *Victims of Crime Assistance Act 1996* that have been made by the Tribunal (closed hearings, inspection of documents and restriction of publication of material).
4. The registrar will place the subpoenaed documents in an envelope and attach a letter addressed to the court officer who issued the subpoena advising that:
  - a. the subpoenaed documents may be subject to statutory protection, immunity from production or privilege, and request that if access is to be granted by the court, that interested persons be afforded the opportunity to be heard in relation to that access; and
  - b. a copy of the file has been provided, however the original can be produced upon further request.

The Principal Registrar will maintain a register of subpoenas.

### **Revocation of previous Practice Direction**

This Practice Direction revokes Practice Direction 2/2003 (Access to Files).

### **Commencement**

This Practice Direction has effect from 1 January 2009.

**IAN L GRAY**

Chief Magistrate

11 December 2008



## APPLICATION TO ACCESS INFORMATION

### Section 1: Details of person requesting access to information and/or documents

Name:

Address:

Please indicate whether you are making this application as:

1. The applicant:
2. The applicant's legal representative:
3. A representative of the media:  \_\_\_\_\_  
*(please specify media organisation/publication)*
4. Other:  \_\_\_\_\_  
*(please specify)*

### Section 2: Details of application to which access to information and/or documents is sought

Application *(name of applicant in the application for assistance)*

Tribunal reference number

Tribunal venue

### Section 3: Application to access information and/or documents

I make application to access the following *(please specify the nature and description of information and/or documents sought)*:

Detail reasons for seeking access:

**Note:** Information and documents are provided on the basis that you have familiarised yourself with all relevant legislative requirements and will comply with them.

**UNDERTAKING****Section 1: Details of person giving undertaking**

Name:

Address:

**Section 2: Undertaking**

**I GIVE THIS UNDERTAKING TO THE TRIBUNAL** to enable me to access the information and/or documents listed in my Application to Access Information:

1. I will comply with all legislative requirements where applicable, including Sections 42, 42A and 43 of the *Victims of Crime Assistance Act 1996*, Section 534 of the *Children, Youth and Families Act 2005* and Section 4 of the *Judicial Proceedings Act 1958* (see Attachment A).
2. I will follow the directions of the Tribunal Member releasing the information or documents and/or registry staff as to the location, time, duration and manner of accessing the information or documents.
3. I will take all reasonable care in accessing and handling the information or documents.
4. I will access and use the information or documents solely for the purposes of the proceeding/application listed in my Application to Access Information.
5. If permitted to take a copy of any accessed material, I will not provide a copy of that material to any person save in the course of the conduct of this proceeding/application and I will take all reasonable steps to ensure that no other person shall have access to the documents save for that purpose.

These undertakings are given in the knowledge that any breach of them by me may be dealt with as a contempt of court or otherwise as the Tribunal considers appropriate in the circumstances.

These undertakings operate from the time I sign, date and file this form with the Tribunal.

Signature of applicant

x

Date

**Section 3: Tribunal Member's Directions**


Tribunal Member's signature

Judiciary number

Date



## UNDERTAKING BY MEDIA REPRESENTATIVE

### Section 1: Details of person giving undertaking

Name:

Media Organisation  
/Publication:

### Section 2: Undertaking by media representatives

**I GIVE THIS UNDERTAKING TO THE TRIBUNAL** to enable me to access the information and/or documents listed in my Application to Access Information:

1. I will comply with all legislative requirements where applicable, including Sections 42, 42A and 43 of the *Victims of Crime Assistance Act 1996*, Section 534 of the *Children, Youth and Families Act 2005* and Section 4 of the *Judicial Proceedings Act 1958* (see Attachment A).
2. I will follow the directions of the Tribunal Member releasing the documents and/or registry staff as to the location, time, duration and manner of accessing the information or documents.
3. I will take all reasonable care in accessing and handling the information or documents.
4. I will access and use the information or documents only for the purpose of making a fair and accurate report of the proceeding/application listed in my Application to Access Information.
5. If permitted to take of copy of any accessed material, I will not provide a copy of that material to or allow a further copy of that material to be made by any person other than a member of my organisation or a lawyer acting for my organisation unless that person has also made, signed and filed a like application and undertaking with the Tribunal. By giving this undertaking I intend to bind in a like manner other employees of my organisation and lawyers acting on my organisation's behalf to whom copies of the materials have been given.
6. Unless permitted otherwise by the Tribunal, I will destroy all such copy material within seven (7) business days of the end of the hearing to which it relates and will retain securely at all times until it is destroyed.

These undertakings are given in the knowledge that any breach of them by me may be dealt with as a contempt of court or otherwise as the Tribunal considers appropriate in the circumstances.

These undertakings operate from the time I sign, date and file this form with the Tribunal.

Signature of applicant

x

Date

### Section 3: Tribunal Member's Directions

Tribunal Member's signature

Judiciary number

Date

## **ATTACHMENT A – RELEVANT LEGISLATION**

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### ***VICTIMS OF CRIME ASSISTANCE ACT 1996***

#### ***Section 42 Hearings open to public unless Tribunal directs otherwise***

- (1) A hearing conducted by the Tribunal in relation to a matter is to be open to the public unless the Tribunal directs—
  - (a) that the whole or any part of the hearing is to be closed to members of the public; or
  - (b) that only persons or classes of persons specified by it may be present during the whole or any part of the hearing.
- (2) A direction under this section may be given on the application of a party or on the Tribunal's own initiative.
- (3) The Tribunal must give a direction under this section if an application for the giving of the direction is made by—
  - (a) an applicant who is a primary victim of an act of violence and who the Tribunal is satisfied is a person—
    - (i) whose injury resulted from an offence referred to in paragraph (b) of the definition of relevant offence in section 3; or
    - (ii) who is a child; or
    - (iii) with a cognitive impairment; or
  - (b) an applicant who the Tribunal is satisfied is likely—
    - (i) to suffer distress; or
    - (ii) to feel intimidated or be stressed—if the direction is not given.

#### ***Section 42A Inspection of documents***

- (1) When the office of the Tribunal is open, the applicant in the proceeding and, on payment of the prescribed fee (if any) any other person, may inspect and obtain a copy of any document filed in a proceeding in the Tribunal.
- (2) Despite subsection (1) —
  - (a) a person may not inspect or obtain a copy of a document which the Tribunal has ordered remain confidential;
  - (b) a person, not being the applicant in the proceeding, may not, without the leave of the Tribunal, inspect or obtain a copy of a document which in the opinion of a registrar of the Tribunal ought to remain confidential.
- (3) The Tribunal may, if satisfied that it is in the public interest to do so, order that—
  - (a) a document filed in a proceeding in the Tribunal remain confidential; or
  - (b) a person have leave to inspect or obtain a copy of a document filed in a proceeding in the Tribunal.
- (4) An order under this section may be made on the application of a party or on the Tribunal's own initiative.



***Section 43 Tribunal may restrict publication of material***

- (1) The Tribunal may, if satisfied that it is in the public interest to do so, order—
  - (a) that the whole or any specified part of the evidence given at a hearing; or
  - (b) that the content of all or any specified documents produced to the Tribunal; or
  - (c) that any information likely to lead to the identification of a party or another person who has appeared at a hearing—  
be published in the manner and to the person specified in the order.
- (2) An order under this section may be made on the application of a party or on the Tribunal's own initiative.
- (3) Except in accordance with an order under this section, a person must not publish or cause to be published any material referred to in subsection (1).

Penalty:           500 penalty units in the case of a body corporate;  
                      100 penalty units or imprisonment for 2 years in any other case.

## ***CHILDREN, YOUTH AND FAMILIES ACT 2005***

### ***Section 534 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, other than the Koori Court (Criminal Division) or the Neighbourhood Justice Division, 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 President, or of the Secretary under subsection (3), 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 subsection (3) with respect to the order.
- (3) The Secretary may, in special circumstances, grant permission for the publication in relation to a child who is the subject of a custody to Secretary order, a guardianship to Secretary order or a long-term guardianship order of 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.
- (4) Without limiting the generality of subsections (1) and (3), the following particulars are deemed to be particulars likely to lead to the identification of a person—
  - (a) the name, title, pseudonym or alias of the person;
  - (b) the address of any premises at which the person resides or works, or the locality in which those premises are situated;
  - (c) the address of a school attended by the person or the locality in which the school is situated;
  - (d) the physical description or the style of dress of the person;
  - (e) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;
  - (f) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;
  - (g) the recreational interests or the political, philosophical or religious beliefs or interests of the person;
  - (h) any real or personal property in which the person has an interest or with which the person is otherwise associated.
- (5) Subsection (1) does not apply to the publication of accounts of proceedings of the Court, where those accounts have been approved by the President.

## 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 subsection (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 subsection (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 subsection (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.