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| *Judicial Proceedings Reports Amendment Act*  |
| Overview of reforms |

The Victorian Government last year passed legislation to amend the *Judicial Proceedings Reports Act 1958* (JPRA) to empower victim-survivors of sexual offending to tell their stories without having to seek court permission. The changes responded to strong community advocacy and public sentiment that victim‑survivors should have more control over if, when and how their identity and story is published.

The *Judicial Proceedings Reports Amendment Act* *2021* makes further amendments to the JPRA to clarify how the law applies to deceased victims, and introduce a new victim privacy order scheme. These changes have been informed by extensive stakeholder consultation.

# Identifying deceased victims

The JPRA makes it an offence to publish material likely to identify a victim-survivor of a sexual offence, subject to specific exceptions and defences. It is currently unclear whether this publication prohibition applies after a victim’s death.

## The publication prohibition will end upon the death of the victim

From 15 December 2021, the publication prohibition on identifying sexual offence victims will end immediately upon the death of the victim. This will allow any person, including family and friends of the deceased victim, and the media, to publish identifying details about the deceased victim.

## Privacy of other victim-survivors protected

Publication of identifying details of a deceased victim must not be likely to identify a living sexual offence victim-survivor who has not given permission.

## Benefiting families and the community

* **Reducing trauma for loved ones** by enabling family and friends to speak about the offending against the deceased victim without fear of committing an offence and without the cost and stress of obtaining a court order. This may assist families grieve and honour the memory of their loved ones.
* **Raising awareness** by enabling media to immediately report on sexual assault-homicides, which raises awareness of sexual and gender-based violence, enhances public safety, and may assist police with investigating these crimes.
* **Reducing stigma** around being a victim of sexual offending. Protecting a deceased victim’s identity may reinforce the myth that there is something shameful in being a victim of a sexual offence.
* **Preventing inadvertent protection of offenders’ identities**. In some cases, usually those involving intra-familial offending, a sexual offender’s identity might not be published because identifying the offender is likely to identify the deceased victim.
* **Aligns with strong public interest** in open justice, free media reporting and the right to freedom of expression.

# Victim privacy orders

Consultation with stakeholders, including victim-survivors and families of deceased victims made clear that there may be some cases where ongoing protection of a deceased sexual offence victim’s identity is desired.

The Act provides for a victim privacy order scheme which enables a person close to the deceased victim to apply for a court order to protect the identity of their loved one.

## Eligibility

From 15 October 2021, a person with a sufficient interest (for example, a family member, partner, or close friend) may apply for an order in respect of a deceased sexual offence victim.

**Offenders/alleged offenders are explicitly prohibited** from applying for a victim privacy order, even if they are a family member or close friend of the deceased victim. Nor can someone apply on behalf of the offender or alleged offender.

There is **no time limit** on making an application following the death of a sexual offence victim. However, the offence/alleged offence **must have come to the attention of police**.

## Making an order

A court may make a victim privacy order if it is satisfied that:

1. an order is necessary to avoid ‘undue distress’ to the applicant, and
2. the particular circumstances make it necessary to displace relevant public interests in, for example, open justice and freedom of expression.

This high threshold means that orders will likely only be granted in limited circumstances.

The court must take into account any views of the deceased victim that were expressed during that person’s lifetime, if known.

The court will be prohibited from considering the views of the offender/alleged offender as to publication in making, varying or revoking an order.

The court will be required to take into account any risk that the application is vexatious or may be used to perpetrate family violence.

Courts will need to notify relevant news media organisations of applications (as is the case for suppression orders) and the court may hear from those organisations if they appear.

## Effect and duration of an order

The court may tailor a victim privacy order, allowing applicants to control which identifying details are published.

Depending on the circumstances, an order may apply:

1. only to certain details likely to identify the individual as a victim of sexual offending, for example the deceased victim’s name, age, place of employment or cultural background
2. to specific persons or organisations, or to the public at large
3. to persons or organisations located anywhere in Australia.

An order will not prevent a person publishing that an offence has/may have occurred or information identifying an offender/alleged offender, so long as that is not likely to identify the victim covered by the order. It will also not prevent a person publishing identifying details in a way that is not likely to identify the deceased person as a victim of sexual offending.

Orders can be made for a maximum of five years, with applicants able to apply for an extension before the expiry of an order.

## Interim orders

A court may make an interim victim privacy order in urgent situations, such as where the publication prohibition under the JPRA has ended due to the victim dying, and family or friends want ongoing privacy protection for the victim’s identity.

## Penalties for breaching an order

Knowingly breaching a victim privacy order will incur a maximum penalty of four months imprisonment and/or a fine of 20 penalty units for an individual and 50 penalty units for a body corporate.

## Commencement

Eligible applicants will be able to apply for victim privacy orders from 15 October 2021, two months before the publication prohibition is lifted on 15 December 2021.