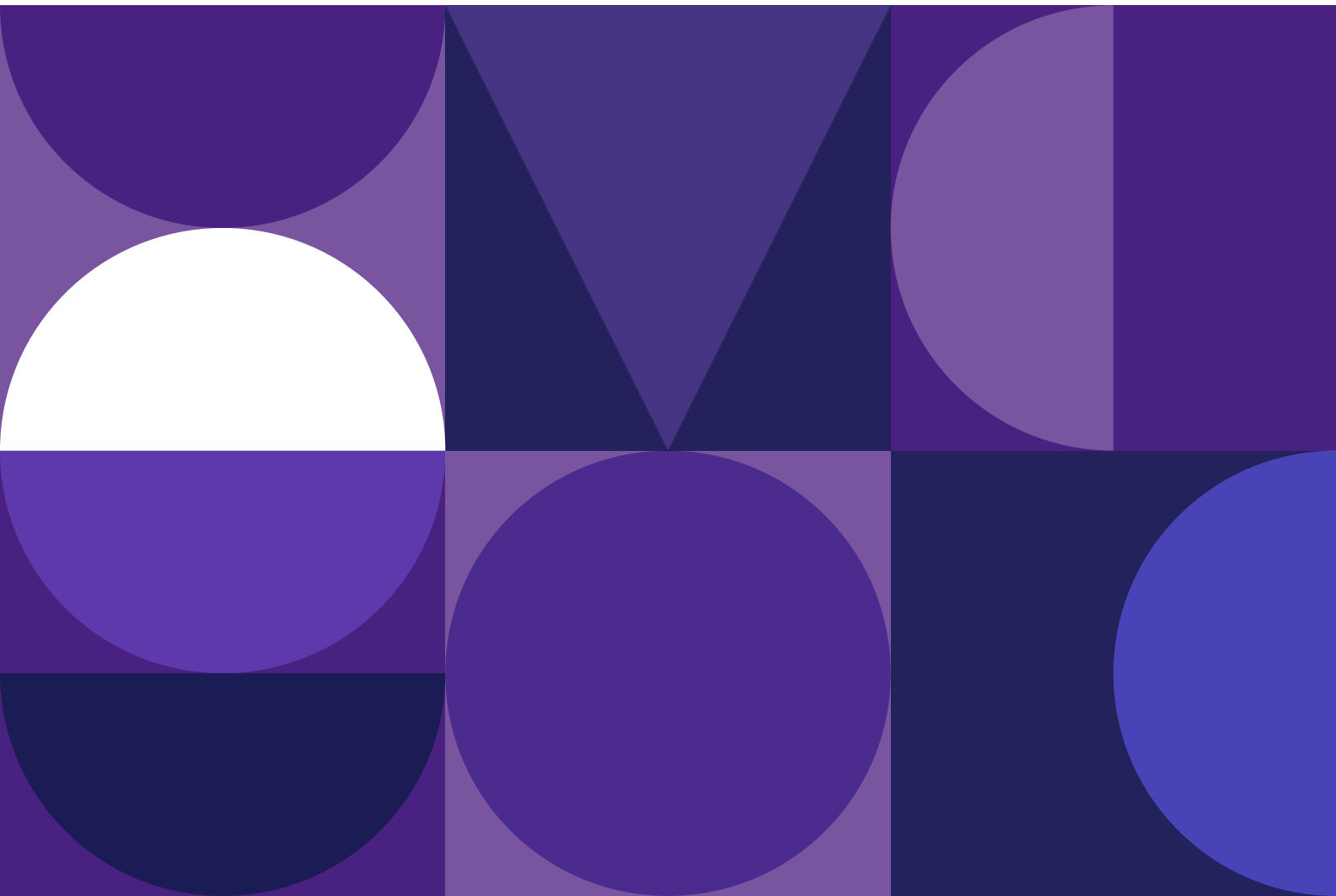


Silenced and sidelined:

Systemic inquiry into victim
participation in the justice system

November 2023



Published by the Victims of Crime Commissioner.

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This report reflects the law and research available as at 11 September 2023. Since 11 September 2023 new reports and initiatives may have been released or announced.

All efforts were made to ensure website links were accurate during the production of this report, however links may no longer be active.

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Contents

Acknowledgements	7
Note on content of report	8
Message from the Commissioner	9
Terminology	10
Glossary and acronyms	10
Executive summary	17
Many victims do not feel like participants	17
How can we improve participation?	19
List of recommendations	26
<hr/>	
Part 1: Background and introduction	39
Chapter 1: Introduction	41
The Victims of Crime Commissioner	42
The Victims' Charter	42
The Commissioner's systemic inquiry powers	43
Overview of the systemic inquiry	44
Inquiry approach and methodology	48
About this report	52
Chapter 2: Background and context	55
Who are victims of crime?	56
The impacts of crime and secondary victimisation	57
Evolution of victim entitlements in Victoria	58
Victims' entitlements in Victoria – an overview	62
Victims' experiences of the justice system	63
Chapter 3: Victim participation – an overview	69
Why describe victims as participants?	70
What is meant by participation or participant?	71
Victims' current participatory entitlements	73
<hr/>	
Part 2: Are victims participating?	81
Chapter 4: Do victims feel like participants?	83
Introduction	84
Victims' experiences of participation	84
Stakeholder views on victim participation	100
Building an overall picture of victims' participation	113
Chapter 5: Structural and systemic barriers	115
Introduction	116
Lack of safety and accessibility for all victims	116
Participation can cause secondary victimisation	132
System complex and confusing	137

Trauma and participation	139
Justice system delay	142
Chapter 6: Support and entitlements	149
Introduction	150
Victims struggle to access support	150
Participation difficult without legal assistance	161
Different levels of participation	166
Awareness of entitlements	169
Chapter 7: Reporting and investigation	177
Introduction	178
Reporting to police	178
Investigation	191
Bail	205
Chapter 8: Prosecution and trial process	211
Introduction	212
Prosecution	212
Plea negotiations	220
Committals	230
Victim-witnesses	233
Court safety	243
Chapter 9: Sentencing	255
Introduction	256
Compensation and restitution	256
Victim Impact Statements (VISs)	258
Victims' participation during sentence indications	270
Diversion programs	271
Sentencing decisions	272
Chapter 10: Post-sentencing	275
Introduction	276
Victims Register	276
Corrections – management of offenders	281
Chapter 11: Non-trial justice processes	285
Introduction	286
Civil intervention orders	286
Restorative or alternative justice	292
Coronial processes	294
Crimes mental impairment matters	296
State-funded financial assistance	299
<hr/>	
Part 3: Building authentic victim participation	307
Chapter 12: Rights	309
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Introduction	310
An enhanced rights-based framework	310
Ensuring equity in the Victims' Charter	311
Enhancing Victims' Charter compliance	315
Accountability and transparency in decision making	318
Victims' rights as human rights	323
Protecting victims from unreasonable delay	327
Improving awareness of victims' rights	330
Review of the Victims' Charter	331
Chapter 13: Reporting and investigation	335
Introduction	336
Lack of trust to report to police	336
Trauma-informed reporting process	340
Information provision	345
Chapter 14: Support and information	351
Introduction	352
Connecting victims to support	352
Enhancing the victim support system	359
Getting information from different agencies	362
Improving awareness of support	364
Chapter 15: Legal assistance	367
Introduction	368
Current approach to legal assistance	368
Victims' unmet legal needs	369
A comprehensive state-funded legal service	373
Legal representation for sexual offence matters	376
Scope of a sexual offences legal representation scheme	380
Chapter 16: Court support and safety	387
Introduction	388
Witness support	388
Intermediary Program	393
Enhanced victim support in courts	395
Court safety and accessibility	398
Chapter 17: Protections for victim-witnesses	403
Introduction	404
Cross-examination more than once	404
Giving evidence	408
Victims' personal information	412
Chapter 18: Sentencing	423
Introduction	424
Sentence indications	424

Victim Impact Statements	431
Chapter 19: Non-trial justice processes	445
Introduction	446
Bail	446
Restorative, parallel or alternative justice	448
Diversion	451
Crimes mental impairment matters	454
Parole and post-sentence decisions	456
Civil intervention orders	459
State-funded financial assistance	460
Coronial matters	460
Chapter 20: Creating and measuring change	465
Introduction	466
Systemic barriers	466
Enhancing transparency and accountability	469
Cultural change through training	473
Measuring the cost of crime	479
Appendix 1: Overview of surveys for systemic inquiry	483
Victims of Crime Commissioner’s Victims’ Survey	484
Key demographic information of respondents	486
Victims of Crime Commissioner’s Victims’ Professionals Survey	490
Key demographics of respondents	492
Appendix 2: Overview of engagement and consultation activities for systemic inquiry	497
Engagement with individual victims of crime	498
Consultation with individuals, groups, agencies and organisations	498
Bibliography	500
Articles/books/reports/internet materials	500
Legislation	510
Cases	511
Other	511

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This report would not have been possible without the victims and advocates who so generously shared their experiences and their views on how to address the shortcomings of our justice and victims' services systems.

People spoke to us in surveys, interviews and a range of consultative meetings. They spoke eloquently, insightfully, passionately, vulnerably and almost exclusively with the hope of preventing others from experiencing the pain and harm they experienced when engaging with the justice system.

Our aim is to elevate their voices in this report.

The Commissioner and VOCC Office acknowledge Victoria's Aboriginal communities and pay respect to Elders past, present and emerging. We acknowledge Aboriginal people as Australia's First Peoples and as the Traditional Owners and custodians of the land and waters on which we live and work. We recognise and value the ongoing contribution of Aboriginal people and embrace their spirit of self-determination, self-management and reconciliation. We acknowledge the leadership of Victorian Aboriginal organisations in understanding and promoting healing from trauma across generations. We acknowledge the diverse and distinct cultures of Aboriginal and Torres Strait Islander people.

We acknowledge that many people have experienced trauma and discrimination through a range of adverse circumstances and events. These include women, people with disability, Aboriginal peoples, people in LGBTIQ+ communities, immigrants, refugees and other displaced people living in our community.

Note on content of report

This report includes material that may be distressing for some people, including direct quotes from victims about their experiences of crime and the justice system.

This report includes material and discussion relating to:

- violent crime, including family violence, sexual assault (including child sexual abuse), homicide, stalking and serious driving offences
- the mental health effects of crime victimisation, including depression, anxiety, self-harm and suicide.

Support is available from the following services.

The Victims of Crime Helpline

The Victims of Crime Helpline is open 8am–11pm every day, including public holidays. To reach the Helpline, call 1800 819 817 or text 0427 767 891.

Statewide Family Violence Service

The Safe Steps Family Violence Response phone line is open 24 hours a day, every day, including public holidays. To reach safe steps, call 1800 015 188 or visit safesteps.org.au.

1800 RESPECT

1800 RESPECT is a confidential information, counselling and support service open 24 hours a day to support people impacted by sexual assault, domestic or family violence and abuse. Contact 1800 737 732 or visit 1800respect.org.au.

Women's Legal advice line

The service is operated by female lawyers who specialise in legal issues arising from violence against women, and operates Mondays to Fridays from 9am to 5pm. Contact 03 8622 0600 (Metro Melbourne) or 1800 133 302 (regional callers) or visit womenslegal.org.au.

inTouch Multicultural Centre for Family Violence

inTouch provides support, services and programs for migrant and refugee women experiencing family violence. If you are experiencing family violence and need support, call the toll free number on 1800 755 988 or visit intouch.org.au.

Other support

Lifeline's telephone crisis support is available 24 hours a day, every day, including public holidays. To reach Lifeline, call 13 11 14 or visit lifeline.org.au.

Message from the Commissioner

People do not choose to be a victim of crime. Many victims of crime experience unimaginable trauma and its consequences can be severe and long lasting. Trauma can result in damage to the health and welfare of individual victims and their families and friends. Because crime victimisation can have such profound impacts on victims, it's no surprise that they are deeply invested in the justice system response to crime.

The criminal justice process however can add to the trauma that victims have already experienced and can be a source of secondary victimisation. This is especially the case when victims are prevented from genuine participation in the criminal justice process or believe that they were treated as mere bystanders in the justice response to a crime that has affected them so profoundly.

When the Victorian Law Reform Commission (VLRC) released its report *The Role of Victims of Crime in the Criminal Trial Process* in 2016, it proposed a new era for victims—one where victims are rightfully treated as participants in the justice process.

Following the VLRC's report, the Victorian Government introduced amendments to the *Victims' Charter Act 2006* (Vic) to recognise the victim's role as a participant, but not a party, in proceedings for criminal offences.

Sadly, this report is a sobering reminder that legislative reforms aimed at improving victims' experiences do not always translate into tangible change. I have found that there continues to be a gap between the entitlements of victims 'on paper' and their actual experiences of victim participation in the justice system.

In undertaking this inquiry, I heard from many victims of crime about their experiences of the justice system. While some reported an experience that met their expectations, I have been distressed to hear the devastating impact the justice process has had on so many victims, to the extent that some have attempted to take their own lives. It shocks me that as a society we are complacent to the routine trauma that victims experience in a justice system that is central to our democratic society.

While the justice system is reliant on victims to report crime and give evidence, I heard that many victims are deterred from participating in the justice process due to the extent of trauma they see other victims experience or because they do not have enough trust in the system to report a crime. Around half of victims surveyed in this inquiry would not participate in the justice system again if they had a choice. Many victims told us they made the decision not to participate by not reporting a crime in the first place.

Aboriginal peoples, people with disability, migrant and refugee people, children and young people, older people and LGBTIQ+ people too often experience systemic and structural barriers to the justice system. They are less likely or unable to report crime while at the same time often have urgent need of legal protection.

This report identifies that Victoria has not achieved the necessary changes for victims to be true participants in the justice system, despite initial reforms by the Victorian Government, and the efforts of people working in the justice and victim support systems. Significant cultural change is still needed for victims to be viewed and treated as equal participants alongside the State and the accused. To achieve this, I recommend major structural changes to the justice and victims' service system and outline an ambitious vision for a more authentic participatory role for victims of crime.

Victims and stakeholders provide invaluable insights that can inform such change. However, they are frustrated that the same issues are raised again and again, in report after report, with no meaningful action taken. I therefore recommend greater transparency and accountability from government to the community and people who have been victims of crime.

While confronting the disheartening findings within these pages, I want to acknowledge the remarkable strength and resilience of those who have not only survived but have also found the courage to speak up, to demand change, and to share their stories so that others may find a better justice and victims' service system. I want to express my gratitude to the many victims who so generously gave me their time and insights.

This report is a wake-up call for individuals, agencies and services that make up the justice and victims' services system. I hope these recommendations serve as a catalyst for meaningful dialogue, collective commitment, and transformative action, to create a future where victims are truly participants in our justice system.

Fiona McCormack

Victims of Crime Commissioner

Terminology

The way in which those harmed by crime identify themselves, and their experience of crime, is deeply personal.

The Victims of Crime Commissioner (VOCC) recognises that there are many terms that are used to describe those who have experienced crime and are dealing with its impact. Some people identify with one of these terms more than others, and some people do not identify with any of these terms.

In this report, the term ‘victim’ or ‘victim of crime’ is predominantly used, because it aligns with the VOCC’s legislative functions and powers under the *Victims of Crime Commissioner Act 2015* (Vic), and the definition of victim in the *Victims’ Charter Act 2006* (Vic).

However, it is acknowledged that these terms may not represent all experiences for all people.

Other terms such as ‘survivor’, ‘victim-survivor’, ‘complainant’ and ‘witness’ or ‘victim-witness’ may be used where it reflects the preferred usage of an individual or organisation, or where it best reflects the legal or other context (for example, ‘witness’ may be used to demonstrate circumstances relating to giving evidence in court, even where that witness may be a victim of crime).

Glossary and acronyms

Aboriginal Community-Controlled Organisation (ACCO)	A service operated by, and for, Aboriginal peoples
Aboriginal and Torres Strait Islander/Aboriginal peoples	People of Aboriginal and/or Torres Strait Islander descent
Accused	A person charged with a criminal offence. During a criminal hearing an accused may also be called the ‘defendant’
Adjournment	Postponing a court hearing (to another time or date)
Adult Parole Board	The Adult Parole Board is an independent statutory authority that makes decisions about whether eligible prisoners can be reintegrated into the community
Adversarial	Court proceedings where parties to a case (prosecution and defence) present arguments and evidence in support of their case. Judges or juries decide the case. The court does not conduct its own investigation or lines of inquiry
Attorney-General	In this report, means the Victorian Minister responsible for the Victorian legal system
Bail	The release of a person from legal custody into the community on condition that they promise to re-appear later for a court hearing
Bail decision maker	Someone empowered under the <i>Bail Act 1997</i> (Vic) to grant or vary bail
Child Witness Service (CWS)	A service comprised of qualified practitioners who support child witnesses giving evidence in a criminal trial
Civil intervention order	An order that imposes conditions relating to contact between parties. In Victoria, civil intervention orders include ‘Personal Safety Intervention Orders’ or ‘Family Violence Intervention Orders’

Co-accused	Accused people being tried together in a joint trial
Committal hearing	A part of committal proceedings where a witness may be cross-examined by the defence
Community Legal Centre (CLC)	Independent community organisations that provide free advice, casework and legal education to their communities
Complainant	A term used to describe the person against whom an offence is alleged to have been committed
Coronial processes	Processes conducted by the Coroners Court of Victoria to investigate suspicious deaths
Corrections	Corrections Victoria is a business unit in the Department of Justice and Community Safety which oversees Victoria's corrections system including overseeing prisoners and those on parole in the community
Court Network	A community organisation that supports people accessing the court system
Court Services Victoria	An independent statutory body providing services and facilities to Victoria's courts, the Victorian Civil and Administrative Tribunal, the Judicial College of Victoria and the Judicial Commission of Victoria
<i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) (CMIA)</i>	The CMIA applies when an accused is found to have been mentally impaired at the time they committed the offence or if an accused is unfit to stand trial
Cross-examination	When a witness for one party (for example, the prosecution) is asked questions in court by the lawyer for the other party (for example, the accused) to test the evidence the witness has already given
Culturally safe	An approach that is respectful of a person's culture, beliefs and identity
Defence	The lawyers (solicitors or barristers) representing the accused
De novo appeals	An appeal that starts again from the beginning, and the evidence is heard afresh
Department of Justice and Community Safety (DJCS)	The Victorian department that leads the delivery of justice and community safety services in Victoria
Director of Public Prosecutions (DPP)	The independent officer responsible for prosecuting serious criminal offences under Victorian law. The Office of Public Prosecutions (OPP) conducts these prosecutions on behalf of the DPP
Diversion	Court-based programs that allow an accused (usually a first-time offender) to avoid a criminal record by completing certain conditions
e-Referral (VPeR) system	The Victoria Police Electronic Referral process which refers a victim from police to the victim support system
Family Violence Intervention Order	A civil order issued by the court with certain conditions to protect a person from family violence

Financial Assistance Scheme (FAS)	The Financial Assistance Scheme is replacing the Victims of Crime Assistance Tribunal (VOCAT) and will provide state-funded financial assistance to victims to assist them to recover from crime
Ground rules hearing	A hearing before a judicial officer to determine how a witness will be questioned, taking into account their communication needs
Inadmissible material	Material not allowed into evidence and which cannot be considered by a judicial officer or jury
Independent Third Person Program (ITP)	The ITP program supports people with a cognitive or mental impairment while they are being interviewed or giving a statement as a suspect, victim or witness
Indictable offence	A serious crime that may be tried in a higher court (such as the County or Supreme Court) before a judge and jury. Some indictable offences may be 'triable summarily' (see 'summary offence')
Informant	The person who files charges against the accused in the Magistrates' Court. Often a member of Victoria Police but sometimes a representative from another investigating agency
Interlocutory appeal	An appeal before or during the trial process often relating to evidentiary matters
Intermediary	A person appointed by the court to provide communication assistance during criminal proceedings to a child or a person with a disability to help them give their best evidence
Judicial College of Victoria (JCV)	A Victorian body providing ongoing education and professional development to Victorian judicial officers
Justice agencies	Agencies that operate within the justice system
Legislation	Laws enacted by Parliament. A Bill is presented to Parliament. Once passed by Parliament, it becomes an Act and becomes law. Acts can be amended, repealed (removed) and interpreted by the courts
Legislative Council Legal and Social Issues Committee	Victorian parliamentary committee that can inquire into and report on any proposal, matter or thing concerned with community services, education, gaming, health, and law and justice
LGBTIQ+	LGBTIQ+ stands for Lesbian, Gay, Bisexual, Trans and gender diverse, Intersex, Queer and questioning. The + sign is generally used to represent genders and sexualities not covered by the letters LGBTIQ
Lived experience	Refers to individuals who have lived experience as a victim of crime or of the justice or victim support system
Mental Impairment	Impaired mental functioning that may mean a person cannot be held criminally responsible for a crime
Misgendering	Misgendering means using language to refer to someone's gender that does not match that person's gender identity

Misidentification	Where the victim is incorrectly identified as the offender or aggressor, particularly in family violence or stalking matters
Office of Public Prosecutions (OPP)	The agency that prepares and conducts criminal prosecutions on behalf of the Director of Public Prosecutions
Parole	Parole allows a prisoner to serve part of their sentence of imprisonment in the community. While on parole, a prisoner will be subject to parole conditions and under supervision
Participant	A person who takes part in something. Victims are recognised as participants under the <i>Victims' Charter Act 2006</i> (Vic)
Participation	The act of taking part in something
Party	In a criminal proceeding, a party refers to the prosecution or the accused
Plea negotiations	A process in which the prosecution and defence negotiate charge(s), including the number or severity of charges or case facts in exchange for the accused entering a guilty plea
Post-sentencing	Justice processes that happen after a person is sentenced in court
Practice Direction/Note	Documents published by courts to provide instructions or guidance to parties and the public about the conduct of court proceedings
Primary victim	A primary victim of an act of violence is a person who is injured or dies as a direct result of an act of violence committed against that person
Prosecutor	A lawyer who appears in court on behalf of the State or Victoria Police to present the case against an accused person or an offender
Record of Victim Engagement (ROVE)	Record of Victim Engagement (ROVE) is a system developed by the OPP that documents all communication between solicitors and victims, or social workers and victims
Related victim	A related victim of an act of violence is a person who, at the time when the act of violence occurred was a close family member or was a dependant of or had an intimate personal relationship with a primary victim of that act and the primary victim died as a result of that act
Respondents to VOCC's Victims' Professionals Survey	Respondents to the Victims of Crime Commissioner's (VOCC's) online survey of victims' professionals conducted by the VOCC between 16 June 2022 and 31 July 2022 targeting frontline support workers in Victims Assistance Programs (VAPs), Centres Against Sexual Assault and specialist family violence services
Respondents to VOCC's Victims' Survey	Respondents to the VOCC's online survey of victims of crime conducted by the VOCC between 22 October 2021 and 1 March 2022
Restorative Justice/ Alternative Justice	Procedures which operate as an alternative, or in addition, to criminal procedures and which focus on repairing harm, encouraging offenders to take responsibility for their actions and increasing the involvement of victims, families and communities in the criminal justice system

Secondary victim	A secondary victim of an act of violence is a person who is present at the scene of an act of violence and who is injured as a direct result of witnessing that act
Secondary victimisation	When victims are further victimised by responses from agencies or organisations, or their experience in court, following their experience of crime
Sentence indication	Where a court indicates the sentence that the court is likely to impose if the accused pleads guilty, prior to a hearing or trial commencing
Sexual Offences and Child Abuse Investigation Team (SOCIT)	Victoria Police investigators specialising in sexual offences and child abuse
Statutory review	A review required under legislation, usually to determine whether an Act (or parts of an Act) is meeting objectives
Subpoena	A document compelling a person to attend court to give evidence, to produce a document or do both
Summary offence	A criminal offence that may be dealt with by a magistrate, without a jury.
Trauma-informed	A trauma-informed approach recognises the barriers that witnesses and victims who have been through traumatic events may confront. Trauma-informed responses are informed by a deep understanding of the impact of trauma and victimisation, how this may affect a victim's ability to participate, and they work to reduce and prevent re-traumatisation
Victims Assistance Program (VAP)	A government-funded service delivered by a range of community organisations which provides victims with a range of practical and therapeutic support following crime
Victim	People harmed by crime, including primary, secondary and related victims. Also includes people who are harmed by crime but do not report that crime to police or who choose not to be involved in the justice process
Victim-centred	Processes or laws that prioritise victims' safety, rights and well-being
Victim Impact Statement (VIS)	A statement in which a victim tells the court how the crime affected them. The statement is normally provided to the court at a sentencing hearing, after the offender has been found guilty
Victim support professionals	Those who work in victim support organisations, primarily support workers on the Victims of Crime Helpline or professionals working in Victims Assistance Programs (VAPs), Centres Against Sexual Assault (CASA) and specialist family violence services
Victims' Charter	Means the <i>Victims' Charter Act 2006 (Vic)</i>
Victim Survivors' Advisory Council (VSAC)	The Victim Survivors' Advisory Council (VSAC) was created to give people with lived experience of family violence a voice and ensure they are consulted in the family violence reform program

Victims and Witness Assistance Service (VWAS)	The Victims and Witness Assistance Service (VWAS) is part of the Office of Public Prosecutions (OPP). VWAS social workers and OPP solicitors work together to provide information and support to adult victims and witnesses during the court process
Victims Legal Service	A government-funded legal service that provides free legal advice and support to victims in relation to state-funded financial assistance
Victims of Crime Assistance Tribunal (VOCAT)	A body established by legislation to hear and determine applications for financial assistance made by victims of violent crime committed in Victoria. The Financial Assistance Scheme (FAS) will replace VOCAT in 2024
Victims of Crime Commissioner's Victims' Survey	The online survey of victims of crime conducted by the VOCC between 22 October 2021 and 1 March 2022
Victims of Crime Consultative Committee	A Government-led committee made up of community members with lived experience and representatives of various justice and victims' service agencies to discuss policies, practices and systems reform to improve experiences for victims of crime
Victims Register	A register which provides information to eligible victims about the offender, such as when the offender is released into the community on parole
Victims' services	Agencies that provide support to victims of crime
Victim Services, Support and Reform (VSSR)	The business unit in the Victorian Department of Justice and Community Safety that oversees a range of victim services including the Victims of Crime Helpline, Victims Assistance Programs (VAP), Victims Register and restorative justice services
Victoria Legal Aid (VLA)	The Victorian organisation which provides state-funded legal assistance to people who cannot afford it themselves
Victorian Court of Appeal	The Court of Appeal hears appeals from criminal and civil cases decided in the Supreme Court Trial Division and County Court, and some appeals from the Magistrates' Court and Children's Court.
Victorian Law Reform Commission (VLRC)	An independent statutory authority, established under the <i>Victorian Law Reform Commission Act 2000</i> (Vic), which advises the Attorney-General on how to improve Victorian laws
Witness	A person who gives evidence in a case
Witness support	Specialised support that is provided to people who give evidence (are a witness) in a criminal trial or hearing
ACCO	Aboriginal Community-Controlled Organisation
CASA	Centres Against Sexual Assault
CIJ	Centre for Innovative Justice

CLC	Community Legal Centre
CMIA	<i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)</i>
CSV	Court Services Victoria
CWS	Child Witness Service
DJCS	Department of Justice and Community Safety
DPP	Director of Public Prosecutions
FAS	Financial Assistance Scheme
ITP	Independent Third Person Program
JCV	Judicial College of Victoria
OPP	Office of Public Prosecutions
PSIO	Personal Safety Intervention Order
ROVE	Record of Victim Engagement
SOCIT	Sexual Offences and Child Abuse Investigation Team
VAP	Victims Assistance Program
VIS	Victim Impact Statement
VLA	Victoria Legal Aid
VLRC	Victorian Law Reform Commission
VOCAT	Victims of Crime Assistance Tribunal
VPeR	Victim e-Referral system
VSSR	Victim Services, Support and Reform in the DJCS
VSAC	Victim Survivors' Advisory Council
VWAS	Victims and Witness Assistance Service
VOCC	Victims of Crime Commissioner

Executive summary

This is a summary of the key insights and recommendations of the report.



A full summary of recommendations can be found in the section titled 'List of recommendations'. For more detail on specific topics, see the overview at the start of each chapter.

This report has three parts:

- **Part 1** provides the background and context to this inquiry, including the history and context of victims' entitlements.
- **Part 2** provides in-depth discussion of whether victims feel like participants and what participation feels like to them. Part 2 also discusses structural and systemic barriers to participation, along with participation across key phases of the justice system.
- **Part 3** sets out the VOCC's vision for a more authentic participatory role for victims of crime, including recommendations for reform.

Many victims do not feel like participants

Part 2 (**Chapters 4–11**) provides detailed accounts of victims' experience of the justice process.

Many victims told the Victims of Crime Commissioner (VOCC) they did not feel like participants in the justice system.



74%

74 per cent of victims surveyed **said they were either never treated as a participant or only treated as a participant sometimes**

Main themes in relation to lack of participation were:

Feeling excluded

Victims spoke about being bystanders, spectators, marginalised, powerless and being relegated to the role of a passive witness. Victims spoke about the justice system feeling like a game, with the victim 'benched' or on the sidelines.

Not being a part of decision making

Victims articulated a lack of participation during decision-making processes and feeling like their voice was unimportant or ignored. Victims clearly articulated a need to participate actively in decision-making processes rather than merely being told after the fact, particularly at key points of the process such as charging and during plea negotiations.

Not having a voice

'Voice', 'being heard', 'speaking' and 'having no say' were significant themes.

Inadequate information

Not getting sufficient information spanned the investigation, prosecution and court processes. Some victims said they were 'told nothing', while others said they did not get enough answers or updates. Victims spoke about having to chase information and being 'blind-sided' because they did not get enough information, including missing court dates.

Not having a role and losing personal agency

Victims spoke about losing choice and personal agency and feeling like an 'appendage'. Victims spoke about wanting to take a more active part during the process.

Many victims would not participate again

Almost half of Victims' Survey respondents (45 per cent) indicated they would not want to participate in the justice process again because:

- the system causes further trauma
- they lacked confidence in the justice system
- they did not feel safe to participate in the justice system.



The VOCC was told that meaningful participation for victims includes:

- feeling included in the process
- having a role in decision making
- having a voice and having the opportunity to express views and feelings
- being recognised as a party to criminal proceedings (or having official 'status')
- having a role in the court process and being able to be present in court at key times
- getting sufficient information to enable participation, including accessible and timely information
- being updated about the progress of investigations and prosecutions
- procedural fairness
- having the choice to participate and having choice and personal agency during the process
- understanding victims' role and entitlements
- getting adjustments for disability to enable participation.

Chapters 5 and 6 outline the structural and systemic barriers that the VOCC heard prevented victims from participating:

- There is a lack of safety and accessibility for Aboriginal and Torres Strait Islander peoples, children and young people, culturally and linguistically diverse populations, people with disability, LGBTQI+ victims and older victims of crime.
- Participation in the justice system causes secondary victimisation.
- The justice system remains confusing and complex.
- Justice system delay is a barrier to participation.
- Victims are not getting the support they need to participate, including comprehensive victim support and legal assistance.
- Victims have varying entitlements under legislation like the *Victims' Charter Act 2006 (Vic)* (Victims' Charter) and this inequity affects participation.
- Victims have a low awareness of the Victims' Charter and their entitlements, affecting participation.

How can we improve participation?

Part 3 sets out the VOCC's recommendations for enhancing victims' participation. Recommendations are based on the key issues raised by victims and stakeholders and outlined in detail in Part 2 of the report.

A stronger victims' rights framework

In Part 2, the VOCC heard that:

- Unequal entitlements for victims under the Victims' Charter affect victims' participation.
- Despite entitlements under the Victims' Charter, not all victims were getting the information they needed from police or prosecutions to participate.
- Victims are not always consulted about key decisions, despite Victims' Charter entitlements.
- Victims are not always aware of the Victims' Charter, or their right to participate.

Chapter 12 proposes that more needs to be done to recognise victims as participants and that an enhanced rights-based framework should be implemented that extends current participatory entitlements under the Victims' Charter and helps improve compliance with those entitlements.

The VOCC recommends:

- equal entitlements for all victims under the Victims' Charter
- expanding accountability measures under the Victims' Charter by introducing:
 - a judicial role in checking compliance with victims' rights and entitlements in individual cases
 - independent review of certain justice agency decisions
- recognising victims' rights as human rights in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- appropriate investment in justice agencies so that victim entitlements can be met in a meaningful way
- initiatives to improve victims' awareness of their rights and entitlements.

Improved participation during reporting

In Part 2, the VOCC heard that:

- Many victims still do not feel safe to report to police.
- The reporting process is not always trauma-informed or accessible.
- Some victims who tried to report received responses that were belittling, condescending, dismissive and unsupportive.

Chapter 13 proposes that more must be done to build trust in police so that victims feel safe to report crimes. Enhanced reporting options and safer environments for reporting are also needed.

The VOCC recommends that:

- Victoria Police review its programs, policies and initiatives aimed at engaging with the community and building confidence to report crime, with a particular focus on priority groups which have faced disadvantage and discrimination
- Victoria Police ensure victims have access to appropriate, accessible, private areas to safely disclose a crime
- the Victorian Government expand the work already being undertaken to create an online reporting option for sexual assault victims, broadening this to different crime types and victims who face systemic barriers in reporting to police.

Dedicated work is already underway by the Victorian Government to develop an Aboriginal Victims of Crime Strategy. To address systemic barriers to participation for Aboriginal and Torres Strait Islander peoples, the VOCC recommends this work include introduction of:

- alternative, culturally safe ways to report crimes
- an Aboriginal Social Justice Commissioner to address systemic barriers to participation and improve trust in the justice system.

Improved participation during investigation

In Part 2, the VOCC heard that many victims did not receive any, or enough, information to enable them to participate in the justice process. The VOCC heard about:

- victims not receiving any contact at all after making a report
- victims continually calling Victoria Police, with calls left unreturned
- police failing to provide victims with key information such as court dates.

Chapter 13 notes that Victoria Police has a corporate responsibility to meet Victims' Charter obligations, but this inquiry has found that Victoria Police is not meeting its obligations under the Victims' Charter for all victims of crime.

Victoria Police must urgently review its approach to meeting Victims' Charter obligations. The VOCC recommends that Victoria Police undertake a cultural review to assess its approach to liaison with victims and to adhering to obligations under the Victims' Charter, with that review considering:

- how victim liaison is culturally ingrained in police work, from the point of academy training and throughout a police member's career
- how the principles of the Victims' Charter can be elevated within Victoria Police so that victim liaison is not viewed as a distraction from 'real' police work or an optional process
- what training is required to better meet victims' diverse needs
- Victoria Police's policies, procedures and IT capabilities in relation to its obligations under the Victims' Charter.

Enhanced victim support

In Part 2, the VOCC heard that victims:

- are unaware of support options or find it difficult to locate the right services
- feel the onus is on them to locate services
- are not always referred to the right services or are referred 'in circles'.

Chapter 14 notes that the victim support system is not functioning in a way that enables victims to participate meaningfully. The VOCC recommends that:

- the Victorian Government conduct a comprehensive, independent review of the e-referral system to improve referral practices
- across-agency work be undertaken to embed the use of the Independent Third Person Program (ITPP) to enhance support to victims with disability and to ensure the ITPP acts as a link to the victim support system
- the Victorian Government implement an independent victim support program at the point where crime is reported, providing victims with immediate support, together with a more formalised link to the victims' service system
- the Victorian Government commit to rebuilding and properly funding a comprehensive victim support system that responds to the diverse needs of victims of crime, underpinned by a comprehensive branding and community awareness campaign so that victims know what support is available.

Enhanced information

In Part 2, the VOCC heard that victims struggle to access the information they need to participate, such as information about the progress of the prosecution and court dates.

Chapter 14 notes that research has highlighted the need for more automated notification systems to assist justice agencies to meet their obligations to provide victims with relevant information.

The VOCC recommends that:

- the Victorian Government undertake an independent feasibility study to explore the viability of an online Victims' Portal that would provide real-time information about cases, automatically communicate court dates and enable victims to submit Victim Impact Statements (VISs) electronically
- Court Services Victoria ensure the new Case Management System for the Magistrates' and Children's Courts enables victims to access up-to-date case information.

Comprehensive legal assistance

In Part 2, the VOCC heard that:

- Victims need legal assistance from an independent, trusted source, separate to the prosecution.
- Victims have many and varied unmet legal needs spanning the justice process.
- The new Victims Legal Service, while a crucial first step, falls short of the legal assistance victims need to address the full range of complex legal issues that arise because of victimisation.

Chapter 15 notes that there is a logical disconnect between victims having legislative entitlements to participate under the Victims' Charter while lacking access to independent legal advice to ensure these entitlements are upheld.

Victims' need for specialised legal advice and assistance has been consistently raised in Victoria in a range of reviews and inquiries over the past five years.

The VOCC recommends that the Victorian Government expand the Victims Legal Service to provide specialist state-funded legal assistance to meet the comprehensive range of legal issues that victims face arising from victimisation.

Legal representation for sexual offence matters

In Part 2, the VOCC heard that:

- Victims in sexual offence cases are subject to some of the most invasive and traumatic aspects of our adversarial trial process, including rigorous cross-examination, applications to access private or confidential records (including medical and counselling records) and applications to introduce sexual history evidence.
- Leaving protection of victims' rights up to prosecutors or judicial officers in sexual offence cases is not working well enough to protect victims' rights and protect victims from secondary victimisation.

Chapter 15 notes that a targeted approach to legal representation for sexual offence victims would provide an effective way to uphold victims' entitlements without impinging on the rights of the accused.

The VOCC recommends that victims of sexual offences have standing to appear and be entitled to state-funded legal representation at specific stages of proceedings.

The VOCC recommends that the Victorian Government establish a sexual offences legal representation scheme that provides independent legal representation in relation to justice processes occurring in the absence of a jury, including in relation to confidential communications, sexual history evidence and subpoenas for information that contains private information about the victim.

A victims' legal representative would have a protective role, asserting the victims' entitlements and would not act as a prosecutor, or alter the prosecutor's role.

Enhanced support at court

In Part 2, the VOCC heard that:

- Victim-witnesses in the summary jurisdiction are ‘falling through the gaps’ of the service system and are not receiving sufficient witness support.
- Existing witness support services are stretched and unable to meet demand.
- For victims who are not witnesses, attending court without support makes for particularly distressing experiences that often result in secondary victimisation.

Chapter 16 notes that appropriate witness and court support can reduce the likelihood of victims and victim-witnesses experiencing secondary victimisation. It also enables victims to participate in safe ways.

The VOCC recommends that the Victorian Government:

- close the gaps in witness support by:
 - providing sufficient funding for existing witness support services to meet demand
 - establishing a witness support scheme for adult victims of crimes against the person in the summary jurisdiction
- expand the availability of the intermediary scheme across all Victorian courts
- establish a dedicated and specialised victim liaison service in each court location across Victoria to ensure victims are supported before, during and after attending court.

Enhanced court safety

In Part 2, the VOCC heard that:

- Most victims were concerned about their safety while attending court.
- Lack of safe and separate entries, exits and seating options meant some victims felt targeted by accused people or their supporters

Chapter 16 notes that lack of appropriate and safe court infrastructure was raised by many stakeholders and has been raised in multiple reports and inquiries over many years.

Many courts across Victoria are not fit for purpose and do not meet the needs of all court users. Victims require safe and accessible court entrances, exits and waiting spaces. Facilities and infrastructure should facilitate alternative arrangements (such as protective screens or remote witness rooms).

The VOCC recommends that the Victorian Government:

- establish minimum standards for safety and accessibility in Victorian courts and require all courts to be independently audited against these minimum standards
- develop a multi-year infrastructure plan to upgrade facilities to meet minimum safety and accessibility standards.

More protections for victim-witnesses

Part 2 of this report presents compelling victim voices which suggest the criminal trial process is still causing many victims secondary victimisation. The VOCC heard that protections for victim-witnesses need to be enhanced to reduce risks of secondary victimisation.

Chapter 17 notes that there are specific areas of the criminal trial process for victim-witnesses where changes could be made to help reduce the likelihood of secondary victimisation.

The VOCC recommends reforms to:

- limit when a victim may be cross-examined more than once
- limit, or abolish, committal hearings in certain circumstances
- prevent personal cross-examination of a victim by an accused
- expand the availability of alternative arrangements to a broader class of witnesses
- limit cross-examination by counsel for co-accused to avoid repetitive questioning
- introduce additional legislative protections in relation to personal information
- provide victims with a substantive remedy if a court makes an error in applying laws governing access to personal information.

Enhanced participation at sentencing

In Part 2, the VOCC heard that:

- The sentence indication scheme does not have sufficient safeguards to uphold victims' participatory rights.
- More must be done to fulfil the participatory objectives of VISs and protect victims from secondary victimisation during the VIS process.

Chapter 18 notes that victims' participation at sentencing is important. It is one of the few times during a victim's justice journey that they have the right to be heard in court – in their own voice – through a VIS.

In relation to sentence indications, the VOCC recommends that:

- the Victorian Government amend the *Criminal Procedure Act 2009* (Vic) to ensure victims are consulted in relation to sentence indications
- the Victorian Government amend the Victims' Charter to ensure:
 - victims are informed about sentence indication applications or the possibility that a sentence indication may be given
 - victims can provide information to the prosecution earlier about the crime's impact on them
- the legislative review of sentence indications be independently undertaken, engage with victims whose matter has been subject to a sentence indication process and provide data on the use of sentence indications.

In relation to VISs, the VOCC recommends that the Victorian Government:

- introduce amendments to enable victims to prepare a VIS before a plea or finding of guilt and have their VIS 'quarantined' until required by the court
- amend the *Sentencing Act 1991* (Vic) to require the court, prior to sentencing, to ask the prosecution whether the victim wishes to make a VIS and provide for a right of adjournment for VIS preparation
- introduce legislative protections to restrict questioning of a victim about their VIS.

Enhanced participation in non-trial processes

In Part 2, the VOCC heard that participation in non-trial justice processes is as important for victims as participation in the criminal trial process, but many non-trial justice processes do not adequately provide for victim participation.

Chapter 19 makes the following observations and recommendations:

- **Bail:** Legislative entitlements with respect to bail do not reflect the victim's role as a participant in criminal proceedings. Currently, victims' rights relating to bail are 'passive' information rights. The Victorian Government should amend the Victims' Charter and the *Bail Act 1977 (Vic)* to require bail decision makers to enquire about a victim's views, including any safety concerns, and for victims to be told about the outcomes of bail applications.
- **Restorative justice:** More needs to be done to make restorative justice a safe option for victims who wish to use it. The Victorian Government should develop an overarching framework for 'alternative' or 'parallel' justice options and amend the Victims' Charter to enhance legislative protections for victims who participate in these processes.
- **The Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) (CMIA):** The VOCC heard that victims are not adequately informed or consulted in proceedings and that there is little transparency in decision making under the CMIA. The Victorian Government should amend the CMIA and the Victims' Charter to enhance victims' participatory rights. A specialised stream of assistance should be integrated into the existing victim support system to ensure victims receive targeted, specialised support in relation to the CMIA.
- **Diversion:** The VOCC heard that not all victims felt like participants in the diversion process. Currently, consideration of victims – and their opportunity to participate – varies across different diversion legislation. The Victorian Government should amend the *Children, Youth and Families Act 2005 (Vic)*, the *Criminal Procedure Act 2009 (Vic)* and the Victims' Charter to provide for enhanced rights and entitlements for victims during diversion processes.
- **Victims Register:** The VOCC heard there needs to be more robust information about the Victims Register and strengthened referral entitlements to address the low awareness of the Victims Register. The VOCC recommends enhanced rights in the Victims' Charter, including the right for victims to be given tailored information specifically about the Victims Register by a prosecuting agency and referred to the Victims Register at sentencing. The VOCC also heard that we need to know more about victims' experiences of the Victims Register because some victims are concerned about its scope and operation. The VOCC recommends that the Victorian Government fund an independent review of the operation and effectiveness of the Victims Register, with that review considering whether inclusion on the Victims Register should be based on an initial automatic referral. The review should also consider eligibility and the scope of information provided to victims.

Creating and measuring change

In Part 2, the VOCC heard that:

- There has been limited cultural change in the treatment of victims since the Victims' Charter was amended in 2018 to recognise victims as participants.
- Some victims and stakeholders are frustrated with the lack of action taken to address issues that have been raised countless times in previous reports and inquiries, and the slow pace of cultural change.

Chapter 20 notes that cultural change in the justice system is still required to properly recognise and incorporate victims as participants. As such, more should be put in place to track and measure cultural change.

The VOCC recommends that the Victorian Government publicly report on the implementation of recommendations from all major Victorian and Commonwealth reports and inquiries (where relevant) in relation to victims from the past 10 years in the form of a victims' reforms progress report and provide a victims' reforms progress report annually thereafter.

The Victorian Government should also fund an independent socioeconomic analysis of the costs of crime to victims and the broader community to build a deeper understanding of the true cost of crime and the value of investing in support for victims.

The VOCC also recommends that:

- the Judicial College of Victoria develop a training and education framework on victims' rights and entitlements underpinned by trauma-informed principles
- Heads of Jurisdiction in all courts direct judicial officers to participate in specified victims' training, professional development or continuing education before hearing criminal cases and appeals
- the Victorian Legal Services Board and Commissioner, the Office of Public Prosecutions and Victoria Legal Aid examine ways to improve training and education for all lawyers (prosecution and defence) in relation to victims' rights and entitlements and victim-centred legal practice
- with a view to developing a training and education framework for all lawyers.

List of recommendations



RECOMMENDATION 1

The Victorian Government should introduce amendments to the *Victims' Charter Act 2006* (Vic) to extend information and consultation requirements to the summary jurisdiction and remove the consultation exception in section 9B(3)(b).



RECOMMENDATION 2

The Victorian Government should assess funding levels and arrangements for justice agencies with statutory obligations under the *Victims' Charter Act 2006* (Vic), ensuring any changes to extend and enhance information and consultation requirements under the Victims' Charter are accompanied by appropriate resourcing.



RECOMMENDATION 3

The Victorian Government should introduce amendments to the *Victims' Charter Act 2006* (Vic) – and any other relevant legislation – to require courts to ensure that the prosecution meets its obligations concerning victims' participatory rights at key points in the criminal trial and hearing process.



RECOMMENDATION 4

The Victorian Government should establish an independent review mechanism enabling victims to seek a review of certain police and prosecution decisions once internal review mechanisms have been exhausted.



RECOMMENDATION 5

The Victorian Government should introduce amendments to the *Charter of Human Rights and Responsibilities Act 2006* (Vic) to recognise victims' unique status in the criminal justice system and uphold specific rights for victims of crime.

**RECOMMENDATION 6**

The Victorian Government should introduce amendments to the *Charter of Human Rights and Responsibilities Act 2006* (Vic) to provide victims with a right to be protected from unreasonable trial delay.

The Victorian Government should adequately fund courts and other justice agencies to reduce delays in criminal trials without eroding victims' participatory rights.

**RECOMMENDATION 7**

The Department of Justice and Community Safety should, in collaboration with the Victims of Crime Consultative Committee, review and revise *A Victim's Guide to Support Services and the Criminal Justice System* to provide victims with more comprehensive guidance about participation at key points of the process.

**RECOMMENDATION 8**

Victoria Police should conduct a review of its programs, policies and initiatives aimed at engaging with the community and building confidence to report crime, with a particular focus on priority groups that have faced disadvantage and discrimination.

This work should be informed by lived-experience expertise and be guided by the relevant Portfolio Reference Groups in Victoria Police's Priority and Safer Communities Division.

**RECOMMENDATION 9**

Victoria Police should undertake work to:

- identify any gaps in the availability of appropriate, accessible, private areas for a victim of crime to safely disclose a crime
- ensure police take steps to ensure victims are aware that they can request access to safe spaces
- ensure police members enquire about a person's needs, safety and comfort when they make an initial approach to police

**RECOMMENDATION 10**

The Victorian Government should expand the existing work being undertaken to create an online reporting option for sexual assault victims to consider its applicability across different crime types and victims who face systemic barriers in reporting to police.



RECOMMENDATION 11

As part of the dedicated work already underway to develop an Aboriginal Victims of Crime Strategy, the Victorian Government should include introduction of:

- alternative, culturally safe ways to report crimes
- an Aboriginal Social Justice Commissioner to address systemic barriers to participation for Aboriginal and Torres Strait Islander peoples.



RECOMMENDATION 12

Victoria Police should review its policies, procedures and IT capabilities in relation to its obligations under the *Victims' Charter Act 2006* (Vic) (Victims' Charter).

This review should examine Victoria Police's capability and capacity in relation to meeting victims' statutory entitlements to information, as per obligations under the Victims' Charter.



RECOMMENDATION 13

Victoria Police should undertake a cultural review assessing its organisation-wide approach to victim liaison and adherence to obligations under the *Victims' Charter Act 2006* (Vic).



RECOMMENDATION 14

The Victorian Government should conduct an independent review of the victim support e-referral system by 30 June 2025. Following this review, the government should implement any necessary changes to ensure victims are being routinely referred to victim support at relevant points of the justice process.



RECOMMENDATION 15

The Department of Justice and Community Safety should develop a time-limited working group with the Office of the Public Advocate, Victoria Police, victim support services and other stakeholders as required to develop an action plan to ensure the Independent Third Person Program (ITP) is properly used for eligible victims when reporting to police.

**RECOMMENDATION 16**

The Victorian Government should introduce an Independent Victim Support Person program to provide immediate place-based support and assistance to victims reporting crime when other victim support professionals are unavailable. The program should be available 24 hours a day, 7 days a week.

**RECOMMENDATION 17**

The Victorian Government should design, implement and properly fund an enhanced victim support system in Victoria, drawing on the findings of this inquiry and previous Victorian reviews and inquiries.

**RECOMMENDATION 18**

The Victorian Government should undertake an independent feasibility study, to be completed by 30 June 2025, to explore the viability of a Victims' Portal. The feasibility study should be made public.

**RECOMMENDATION 19**

Court Services Victoria should ensure the new Case Management System for the Magistrates' and Children's Courts enables victims to access up-to-date information on the progress of a court matter.

**RECOMMENDATION 20**

The Victorian Government should develop a comprehensive branding and community awareness campaign for the victim support system.

**RECOMMENDATION 21**

The Victorian Government should expand the Victims Legal Service to provide victims with specialist, state-funded legal assistance in relation to the comprehensive range of legal issues that victims face.



RECOMMENDATION 22

The Victorian Government should fund a sexual offences legal representation scheme and introduce necessary legislative amendments to provide sexual offence victims with standing to appear and be entitled to state-funded legal representation at specific stages of proceedings.



RECOMMENDATION 23

The Victorian Government should close the gaps in witness support by:

- providing sufficient funding for existing witness support services to meet demand
- establishing a witness support scheme for adult victims of crimes against the person in the summary jurisdiction.



RECOMMENDATION 24

The Victorian Government should ensure equity in the availability of the intermediary scheme by expanding its availability across all Victorian courts.



RECOMMENDATION 25

The Victorian Government should establish a dedicated and specialised victim liaison service in each court location across Victoria to ensure victims are supported before, during and after attending court.



RECOMMENDATION 26

The Victorian Government should establish minimum standards for safety and accessibility in Victorian courts. These standards should be publicly available and all courts should be independently audited against these minimum standards.

The Victorian Government should develop a multi-year infrastructure plan to upgrade facilities to meet minimum safety and accessibility standards.

**RECOMMENDATION 27**

The Victorian Government should:

- review reforms introduced in July 2023 to control cross-examination more tightly at committal hearings to ensure they are achieving their objectives
- continue to improve committal proceedings based on recommendations made by the Victorian Law Reform Commission in its 2020 *Committals* report
- abolish committal hearings for certain cohorts, commencing with sexual offence and family violence cases as a priority.

**RECOMMENDATION 28**

The Victorian Government should bring forward its de novo appeals reforms contained in the *Justice Legislation Amendment (Criminal Appeals) Act 2019 (Vic)* to commence as soon as possible to reduce the number of times a victim has to give evidence.

**RECOMMENDATION 29**

The Victorian Government should introduce amendments to the *Criminal Procedure Act 2009 (Vic)* to prevent personal cross-examination by an accused where a victim-witness is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.

**RECOMMENDATION 30**

The Victorian Government should amend the *Criminal Procedure Act 2009 (Vic)* to provide for alternative arrangements for any victim-witness who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.

All Victorian courts should have sufficient:

- remote witness facilities to meet demand
- assets and infrastructure to implement special arrangements at the request of victims, including screens in court.

**RECOMMENDATION 31**

The Victorian Government should introduce amendments to the *Criminal Procedure Act 2009 (Vic)* to provide courts with a general power to allocate topics of cross-examination between counsel for co-accused to avoid repetitive questioning to protect victims from unnecessary trauma, intimidation and distress when giving evidence.



RECOMMENDATION 32

The Victorian Government should introduce additional legislative protections in relation to confidential communications by requiring courts to ensure the prosecution has met its obligations under the Evidence (*Miscellaneous Provisions*) Act 1958 to notify victims of their rights.

Courts need better information about a victim's privacy and other rights and interests when determining confidential communications applications. The specialised, state-funded legal representative for victims should provide that information (see Recommendation 22).



RECOMMENDATION 33

The Victorian Government should implement recommendations of the Victorian Law Reform Commission's 2021 report *Improving the Justice System Response to Sexual Offences* in relation to sexual history evidence and strengthen the test courts apply under the *Criminal Procedure Act 2009* (Vic) when considering whether to grant an application relating to sexual history evidence.

The Victorian Government should ensure state-funded legal representation for sexual offence victims to ensure the court is properly informed about a victim's interests and concerns about disclosure of their sexual history.



RECOMMENDATION 34

To protect a victim's right to privacy, the Victorian Government should reform the process around third-party subpoena applications to provide a comprehensive victim notification and participation scheme. Victims should have access to state-funded legal assistance to uphold participatory rights in relation to third-party information.



RECOMMENDATION 35

Victims should be provided with limited appeal rights regarding decisions around applications for confidential communications, sexual history evidence, and information sought from third parties. Victims should have access to state-funded legal assistance to uphold these appeal rights.



RECOMMENDATION 36

The Victorian Government should amend the *Criminal Procedure Act 2009* (Vic) and the *Victims' Charter Act 2006* (Vic) to ensure victims are consulted in relation to sentence indications in the higher courts (the County Court and the Supreme Court).

**RECOMMENDATION 37**

The Victorian Government should amend the *Victims' Charter Act 2006* (Vic) to ensure that:

- victims are informed about sentence indication applications or the possibility that a sentence indication may be given
- victims have the opportunity to provide earlier victim impact information to the prosecution so that it can be provided to the court at a sentence indication hearing.

All prosecution agencies should introduce procedures to enable victims to exercise their role as participants in sentence indication proceedings consistent with amended entitlements under the Victims' Charter.

**RECOMMENDATION 38**

The Victorian Government should amend the *Criminal Procedure Act 2009* (Vic) to require prosecuting agencies to advise the court whether there is sufficient, or insufficient, victim impact information available to make a sentence indication.

**RECOMMENDATION 39**

The legislative review of sentence indications under the *Criminal Procedure Act 2009* (Vic) should be independently undertaken by the Sentencing Advisory Council.

**RECOMMENDATION 40**

The Victorian Government should introduce amendments to enable victims to prepare a Victim Impact Statement (VIS) before a plea or finding of guilt and have their VIS 'quarantined' until required by the court.

The independent feasibility study of an interactive Victims' Portal (see Recommendation 18) should consider how a Victims' Portal could assist victims to prepare a VIS and securely submit and store the VIS until it is required by the court.



RECOMMENDATION 41

The *Sentencing Act 1991* (Vic) should be amended to require the court, prior to sentencing, to ask the prosecution whether the victim wishes to make a VIS.

If the prosecution advises the court that a victim wishes to make a VIS, or the prosecution cannot provide sufficient information to the court about victims' wishes, the court should adjourn the proceedings to permit the victim to prepare a VIS or to permit the prosecutor to make further enquiries unless it is not in the interests of justice to do so.

If the court does not adjourn a matter for preparation of a VIS, the prosecution should also be able to apply for an adjournment.



RECOMMENDATION 42

A new test should be introduced to restrict questioning of a victim about their Victim Impact Statement (VIS). A court should only permit the questioning of a victim about their VIS where the court is satisfied that there is a clear and strong justification for doing so.



RECOMMENDATION 43

The Victorian Government should amend the *Sentencing Act 1991* (Vic) to provide that the offender cannot personally cross-examine a victim about their Victim Impact Statement.



RECOMMENDATION 44

The Victorian Government should amend the *Sentencing Act 1991* (Vic) to provide that:

- a victim has standing to appear at an application to examine a victim
- a victim may be legally represented at that application
- if the application is granted, the victim may be legally represented when the victim is examined in court.



RECOMMENDATION 45

The Victorian Government should introduce amendments to the *Victims' Charter Act 2006* (Vic) and the *Bail Act 1977* (Vic) to enhance victims' rights in relation to bail to ensure victims are respected as participants in the bail process.

**RECOMMENDATION 46**

The Victorian Government should develop an overarching framework for 'alternative' or 'parallel' justice options and amend the *Victims' Charter Act 2006* (Vic) to enhance protections for victims in relation to restorative justice programs.

**RECOMMENDATION 47**

The Victorian Government should:

- make public any previous evaluations of restorative justice programs
- commit to an evaluation of its existing restorative justice programs.

**RECOMMENDATION 48**

The Victorian Government should amend the *Children, Youth and Families Act 2005* (Vic), the *Criminal Procedure Act 2009* (Vic) and the *Victims' Charter Act 2006* (Vic) to provide for enhanced rights and entitlements for victims during diversion processes in the Children's and Magistrates' Courts.

Victoria Police should also update its policies, practices and training to create a clear and transparent best-practice model for consulting with victims in relation to diversion in the Children's and Magistrates' Courts.

**RECOMMENDATION 49**

The Victorian Government should amend the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) and the *Victims' Charter Act 2006* (Vic) to enhance victims' participatory rights in cases where mental impairment issues are raised.

A specialised stream of assistance should be integrated into the existing victim support system to ensure victims receive targeted, specialised support in relation to mental impairment cases.

**RECOMMENDATION 50**

The Victorian Government should enhance victims' rights in the *Victims' Charter Act 2006* (Vic) in relation to the Victims Register.



RECOMMENDATION 51

The Victorian Government should fund an independent review of the operation and effectiveness of the Victims Register and victim participation in post-sentencing decisions, with that review being made publicly available.



RECOMMENDATION 52

The Victorian Government should publicly report on the implementation of recommendations from all major Victorian and Commonwealth reports and inquiries (where relevant) in relation to victims from the past 10 years in the form of a victims' reforms progress report.

Thereafter, the Victorian Government should provide a victims' reforms progress report annually. The requirement to table this report in Parliament should be enshrined in the *Victims' Charter Act 2006* (Vic).



RECOMMENDATION 53

The Judicial College of Victoria should develop a training and education framework on victims' rights and entitlements underpinned by trauma-informed principles.

Heads of jurisdiction should:

- direct all judicial officers to participate in specified training, professional development or continuing education concerning victims before hearing criminal cases and appeals
- require all judicial officers to undertake refresher training on a regular basis
- publish data on completion of training and education in their annual reports.



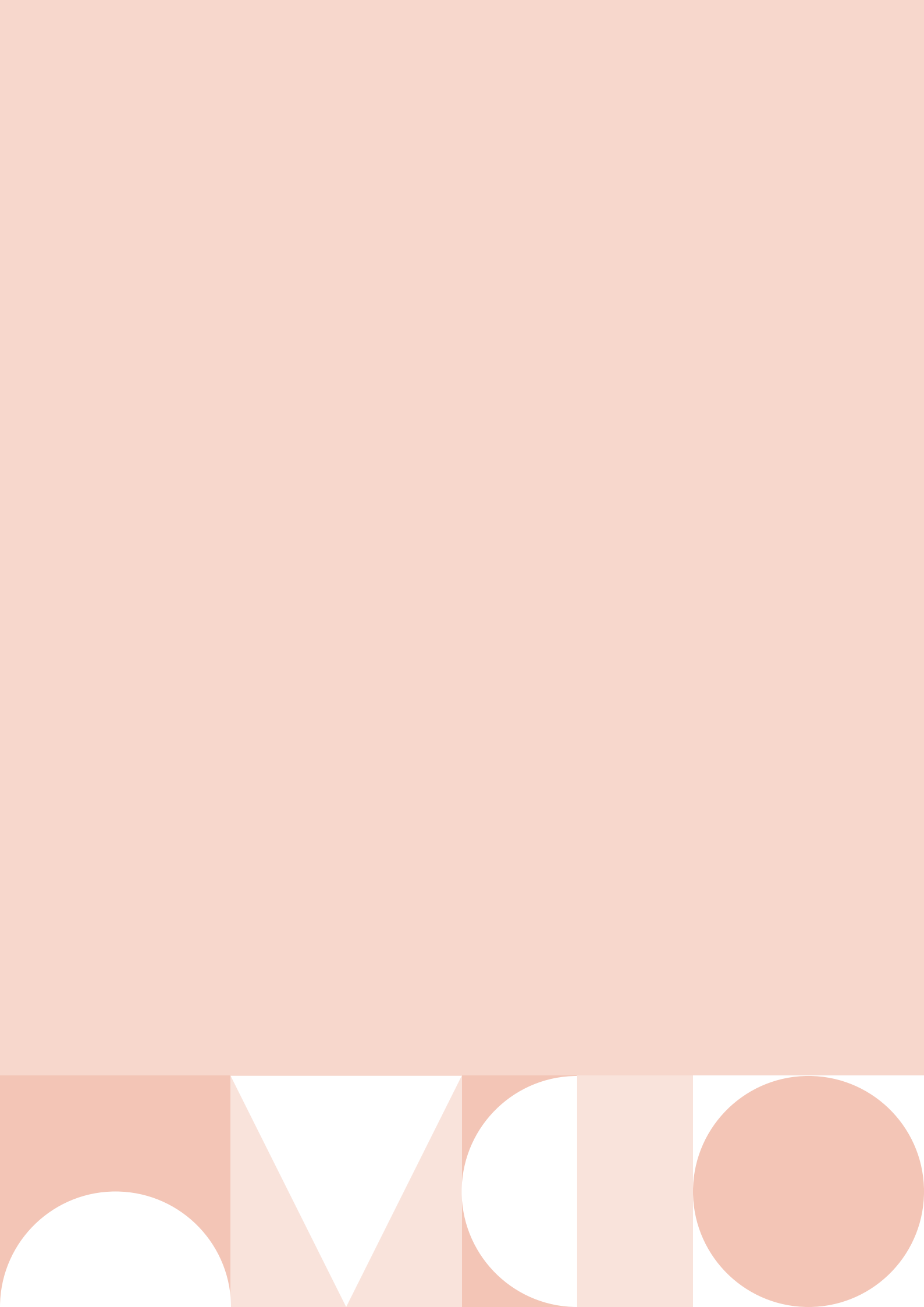
RECOMMENDATION 54

The Victorian Legal Services Board and Commissioner, Office of Public Prosecutions and Victoria Legal Aid should examine ways of improving training and education for all lawyers (prosecution and defence) in relation to victims' rights and entitlements and victim-centred legal practice with a view to developing a training and education framework for all lawyers.



RECOMMENDATION 55

The Victorian Government should fund an independent socioeconomic analysis of the costs of crime to victims and the broader community.



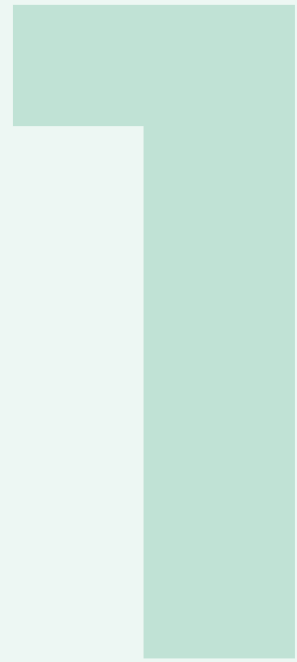
Part 1:

Background and introduction

Part 1 of this report introduces the Victims of Crime Commissioner's (VOCC's) systemic inquiry into victim participation. It includes an overview of the VOCC's inquiry approach and sets out the structure of the report.

Part 1 also provides background on victim participation, including its history and context, an overview of what participation is, how it is defined and described, and examines victims' existing participation in the justice system in Victoria.





Chapter 1:
Introduction



The Victims of Crime Commissioner

The Victims of Crime Commissioner (VOCC) is an independent statutory officer with powers to advocate for the respect, recognition and inclusion of victims of crime in the justice system.

The VOCC is independent from ministers, government departments, justice agencies and the victims' services system.

Under the *Victims of Crime Commissioner Act 2015* (Vic) (VOCC Act), the VOCC is empowered to:

- investigate complaints made by victims about their treatment by justice agencies and victims' services¹
- report on the compliance of justice agencies and victims' services with the *Victims' Charter Act 2006* (Vic) (Victims' Charter)²
- conduct inquiries into systemic issues that affect victims of crime³
- represent the concerns of victims to government and provide advice to the Attorney-General, the Minister for Victim Support and government departments and agencies about improvements to the justice system to meet the needs of victims of crime.⁴

Unlike victims of crime commissioner roles in other Australian jurisdictions, the VOCC does not deliver services to victims. The VOCC is an independent regulator who monitors the compliance of justice agencies and victims' services with the Victims' Charter as well as providing an independent complaints and oversight function.

The VOCC is committed to ensuring that victims of crime are heard and respected by justice agencies and victims' services, and that these agencies and services provide safe, inclusive and trauma-informed responses to all victims of crime.

The Victims' Charter

The Victims' Charter sets cultural and behavioural obligations for justice and victims' services agencies when they interact with victims of crime. Victims are afforded special treatment by these agencies and are allowed to participate in certain parts of the justice process. One of the objects of the Victims' Charter is to acknowledge the victim's role as a participant, but not a party, to proceedings for criminal offences.⁵

The Victims' Charter applies to a diverse and large number of agencies, including Victoria Police, the Office of Public Prosecutions, community legal centres and government-funded sexual assault, family violence and victims' support services.

Under the Victims' Charter, agencies are required to:

- treat victims with courtesy, respect and dignity
- have regard to victims who experience specific barriers to the justice system
- provide victims with information about services, entitlements and assistance
- communicate with and respond to victims in a way that recognises their preferences and needs
- protect victims' personal information
- respond to complaints from victims who believe an agency has breached the Victims' Charter.

Some agencies, such as prosecuting and investigatory agencies, have additional obligations to consult victims and provide them with information under the Victims' Charter.

Under the Victims' Charter, investigatory agencies, prosecuting agencies and victims' services agencies are to respect the rights and entitlements of victims as participants in proceedings for criminal offences.⁶

¹ *Victims of Crime Commissioner Act 2015* (Vic) s 25A.

² *Ibid* s 28(1A).

³ *Ibid* ss 13(1)(b)-(c), 23(1).

⁴ *Ibid* s 13(1)(a), (d).

⁵ *Victims' Charter Act 2006* (Vic) s 4 (1)(ba).

⁶ *Ibid* s 7A.

In addition to justice and victim service agencies, the Victims' Charter also applies more generally to policy development and criminal justice administration in Victoria. A person or body responsible for the development of criminal law policy, the development of victims' services policy, the administration of criminal justice or the administration of victims' services must, where relevant, have regard to Victims' Charter principles.⁷

The Commissioner oversees the operation of the Victims' Charter

It is vital that the Victims' Charter results in the implementation of victim-centred practice within justice agencies and victims' services agencies as well as increasing victims' confidence that their interests are protected in legislation.

Agency compliance with the Victims' Charter directly affects how victims of crime will experience both the justice and service system.

The VOCC has been given powers to publicly report agency compliance with the Victims' Charter and to consider complaints from victims about an agency that may have breached the Victims' Charter.⁸ The VOCC reports on this annually in the Victims of Crime Commissioner Annual Report.

The Commissioner's systemic inquiry powers

Under section 13(1)(b)-(c) of the VOCC Act, the VOCC can 'carry out inquiries on systemic victim of crime matters' and 'report to the Attorney-General on any systemic victim of crime matter'.

The VOCC's powers to carry out a systemic inquiry are broad and discretionary. For the purposes of her systemic inquiry powers, the VOCC defines a systemic victim of crime matter as a systems issue adversely impacting victims of crime.⁹

When the VOCC role was created in legislation, the importance of the systemic inquiry function was described as follows:

Although the commissioner will not become involved in individual cases and has no direct advocacy role in the courts, the systemic reforms that [they] will identify and promote will, in turn, promote the recognition and equality of victims before the law.

While the commissioner will listen to individual victims' experiences and problems, the greatest benefit of the commissioner's role will be the ability to inquire into and report on a broad range of systemic issues across the justice system that affect victims in a range of circumstances. Our intention is that the commissioner will focus on the big-picture issues that affect significant numbers of victims.¹⁰

Systemic inquiry planning process

In 2021, as part of the VOCC's annual systemic inquiry planning process, the VOCC assessed possible systemic inquiry topics. The following sources of data, information and insight are used during the VOCC's annual planning process:

- engagement activities with victims of crime and other stakeholders, including assessing trends and issues arising from meetings or focus groups with victims of crime and key stakeholder organisations
- policy development arising from researching and analysing victims' legislation, practice, programs and data
- matters arising from the VOCC's regulatory and complaints function
- issues arising from the VOCC's environmental scanning process, including academic research, government reports, parliamentary (or other) inquiries as well as public issues monitoring (including media monitoring).

⁷ Ibid s18 (2).

⁸ *Victims of Crime Commissioner Act 2015* (Vic) div 5.

⁹ 'Systems' in this context includes any policy, procedure, laws or services that intersect with victims' experience of the criminal justice or victims' services system.

¹⁰ Victoria, *Parliamentary Debates*, Legislative Assembly, 16 September 2015, 3278 (Martin Pakula, Attorney-General).

Together, these sources provide the basis for a systemic planning process that takes into account the breadth of issues that arise in Victoria relating to victims of crime.

Possible systemic inquiry topics are assessed against a range of criteria, including whether:

- the matter is systemic, or reasonably likely to be systemic
- victims' needs are at the centre of the inquiry topic¹¹ and it is an appropriate area of law or policy for the VOCC to review
- the systemic inquiry aligns with the objectives of the VOCC Act and Victims' Charter
- the VOCC has the ability to have an impact on this area of inquiry
- the inquiry does not duplicate other inquiries or reviews
- the inquiry would not interfere with the administration of justice.

Against these criteria, the topic of victim participation was assessed as an appropriate and necessary inquiry topic. Further background on the context of this topic, specifically as it relates to amendments to the Victims' Charter in 2018, are outlined below.

Overview of the systemic inquiry

Why victim participation?

Major changes to the Victims' Charter in relation to a victim's role as a participant occurred in 2018. These changes followed the report in 2016 by the Victorian Law Reform Commission (VLRC), *The Role of Victims of Crime in the Criminal Trial Process*, which recommended that the role of the victim as a participant in criminal proceedings be 'legislatively and operationally recognised'.¹²

The VLRC's 2016 report had found that victims felt disempowered or excluded from the criminal trial process and described their relationship with the prosecution as that of a 'passive receiver of information', an 'observer', and an 'outsider'.¹³

Following the VLRC's report, the Victims' Charter was amended in 2018 to recognise victims as participants in proceedings for criminal offences. Specifically, the amendments created:

- a new objective of the Victims' Charter recognising that a victim of crime has an inherent interest in the response by the criminal justice system to that crime and to acknowledge the victim's role as a participant, but not a party, in proceedings for criminal offences¹⁴
- a requirement for investigatory, prosecuting and victims' services agencies to respect the rights and entitlements of victims as participants in proceedings for criminal offences.¹⁵

When making recommendations to establish victims' role as participants, the VLRC had envisaged that this would drive cultural change in the justice system and would also make clear 'the parameters of the victim's legitimate expectations'.¹⁶ At the time, the VLRC stated: 'Without a properly articulated role, victims are not always respected as having a legitimate interest in criminal proceedings.'¹⁷

Five years on from the Victims' Charter amendments, little is known about how victims in Victoria are experiencing these new participatory entitlements and whether, as envisaged by the VLRC, these entitlements are resulting in tangible improvements to victims' status as a participant.

This inquiry examines whether recognising victims as participants under the Victims' Charter has driven the necessary cultural change envisaged by the VLRC and whether victims feel like participants in the justice system. Key to this is what it means for victims to experience participation, and how they define or describe participation.

By prioritising victims' voices, and whether they feel like participants, this report provides Victoria with a benchmark relating to victim participation in the justice system.

¹¹ This contrasts with areas of law reform that may intersect with victims' issues but would be more appropriately dealt with by other agencies or organisations.

¹² Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, 2016) 30.

¹³ *Ibid* 33.

¹⁴ *Victims' Charter Act 2006* (Vic) s 4(1)(ba).

¹⁵ *Ibid* 7A.

¹⁶ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, 2016) 23.

¹⁷ *Ibid* 29.

Scope of inquiry

Terms of reference

The terms of reference state the Commissioner will consider:

- victims' views on what 'participation' means to them at key stages of the justice process, including whether the current scope of participatory rights meet their justice needs
- victims' views on how the current (legislated) participatory rights translate to meaningful participation at key stages of the justice system, including any barriers experienced by victims
- the respective roles of various justice and victims' services agencies in upholding victims' participatory rights, and whether the necessary processes have been put in place to meet victims' legislative participatory rights
- justice sector and victims' services views on victims' participation in the justice process, including their views on any barriers to victim participation and associated impacts on the justice system and scope of their role or operations
- victims' and other stakeholders' views on whether further reforms are required to enable meaningful participation by victims of crime, whether involving legislative reform, cultural change, procedural or service system delivery
- approaches to victim participation in other jurisdictions and academic and other literature on best practice approaches to victim participation
- whether the right tools and systems are in place to measure victims' participation in the justice system, and their satisfaction with their participation in the justice system
- any other matters of relevance to consideration of victims' participatory rights in Victoria.

Participation extends to all victims and those harmed by crime

In its 2016 report, the VLRC noted that the role of victim as a participant extends to all victims regardless of whether they appear in court as witnesses for the prosecution.¹⁸ However, the changes made to the Victims' Charter in 2018 recognise victims as participants only in relation to 'proceedings for criminal offences'.¹⁹

Victims' interactions with the justice system do not follow a linear (or automatic) path to proceedings for criminal offences. As such, the Commissioner's inquiry has examined victim participation more broadly. This means participation is considered in the context of victims and individuals who:

- do not report to police (i.e. choose not to participate in the justice process at all)
- report to police but may withdraw a complaint²⁰
- may report to police and also be required to appear as a witness (e.g. are compelled to participate in the prosecution/court process)
- are harmed by crime, but have no formal role in reporting to police or being a witness (e.g. bereaved family members who may not be required to participate in the process, but may wish to be treated as a participant because they have experienced harm arising from a crime)
- may have participated in parallel or alternative justice opportunities (like restorative justice) or civil proceedings (e.g. Family Violence Intervention Orders) and have not been involved in criminal proceedings at all
- may be involved in crimes mental impairment matters.²¹

Consideration of concurrent and recent inquiries, reviews and projects

While the concept of participation is broad, it does not touch on all the issues victims may experience as they interact with the justice and victims' service systems. Some significant issues may be touched on in this report only to the extent that they intersect with concepts of participation.

¹⁸ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, 2016) 31.

¹⁹ *Victims' Charter Act 2006* (Vic) ss 4(1)(ba), 7A.

²⁰ It is noted that 'withdrawing a complaint' can be more common in relation to certain crimes, such as family violence and sexual assault, that require the co-operation of the victim/complainant. It is the state (through Victoria Police and/or the Director of Public Prosecutions) which determines whether to pursue charges/prosecution; however, the co-operation of the complainant/witness is crucial to the prosecution of certain crimes.

²¹ As provided for under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1996* (Vic).

The inquiry has also considered the inquiries, reviews and projects already completed or underway that address more specific issues for, or barriers encountered by, victims of crime to the extent that they are relevant to victim participation.

Where possible, the Commissioner has aimed to elevate important work already completed or underway while enabling significant projects to continue without duplication. This is particularly important in the following key areas:

- **Victim Services Review:** In 2020, the Centre for Innovative Justice comprehensively examined the strengths and limitations of Victoria's victim support system. In December 2021, the Victorian Government released its *Victim Support Update* which stated that the 'review suggests an ambitious "once in a generation" reform agenda that will take time to fully consider and implement.'²² At the time of publication of this report, the Government has not publicly committed to implementing the proposed new service model outlined in the Victim Services Review report.
- **Review to improve victims' experience of summary criminal proceedings:** In November 2021, the Department of Justice and Community Safety's report, *Review to Improve Victims' Experience of Summary Criminal Proceedings* found that 'victims often feel disconnected from summary proceedings because they lack information about the process, or they feel that their experience is overlooked in the process.'²³ The report makes 12 recommendations that aim to improve victims' experience of summary proceedings. At the time of publication of this report, the Government has not responded to the review.
- **Ten-year strategy to address sexual violence and harm:** In November 2021, the Victorian Government committed to delivering a 10-year strategy to address sexual violence and harm by 2022.²⁴ The Government has not publicly committed to implementing all recommendations of the VLRC's 2021 report *Improving the Justice System Response to Sexual Offences*, but many recommendations of that report relate to victim participation. At the time of publication of this report, the 10-year strategy to address sexual violence and harm was not yet published.
- **Aboriginal Victims of Crime Strategy:** In December 2021, the Victorian Government released its *Victim Support Update*. In that update, the Government committed to consulting with Aboriginal victims of crime on a strategy for addressing their specific needs in 2022 and developing an Aboriginal Victims of Crime Strategy.²⁵ In acknowledgement of this dedicated work, particularly a comprehensive approach to consulting with the Aboriginal community, the VOCC engaged with the Aboriginal Justice Caucus and the Women, Families and Victims Collaborative Working Group to discuss the progress made on this project, rather than running parallel (and potentially duplicative) consultation processes. At the time of publication of this report, the Aboriginal Victims of Crime Strategy was not yet published.
- **Yoorrook Justice Commission:** The Yoorrook Justice Commission is exploring the injustices experienced by First Peoples in the criminal justice system. This work will include producing a report which will make recommendations for consideration in the process of negotiating Treaty with the State of Victoria.²⁶
- **Development of a new Financial Assistance Scheme:** A new Financial Assistance Scheme (FAS) will replace the Victims of Crime Assistance Tribunal in 2024.²⁷ The Department of Justice and Community Safety is developing the new scheme. The delivery of a new FAS has the potential to benefit many victims of crime and the VOCC will regulate the scheme once established.
- **Disability Royal Commission:** The Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has been running since 2019. The Royal Commission is examining all forms of violence, abuse, neglect and exploitation in all settings where they occur.²⁸ The Royal Commission has published reports across public hearings, research and policy themes. The Interim Report was published 30 October 2020 and at time of publication of this report, seven Progress Reports have been published.²⁹

22 See Victorian Government, *Victim Support Update* (2021) <www.vic.gov.au/victim-support-update>; Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020).

23 Victorian Government, *Review to improve victims' experience of summary criminal proceedings* <<https://engage.vic.gov.au/review-improve-victims-experience-summary-criminal-proceedings>>.

24 Premier of Victoria, 'Stronger Laws for Victim-Survivors of Sexual Violence' (Media Release, 12 November 2021) <<https://www.premier.vic.gov.au/stronger-laws-victim-survivors-sexual-violence>>.

25 Victorian Government, *Victim Support Update* (Web Page, December 2021) <www.vic.gov.au/victim-support-update>.

26 Yoorrook Justice Commission, *Yoorrook Justice Commission Newsletter* (Issue 2, August 2022) <https://app4.vision6.com.au/em/message/email/view.php?id=1644349&a=105697&k=EOIU_Uohx6MnF9UB1wPxxW9RwTWVVOAGvBf4Xmc_Q>. In August 2023, Yoorrook published Report into Victoria's Child Protection and Criminal Justice Systems which included a number of recommendations relating to the criminal justice system: Yoorrook Justice Commission, *Report into Victoria's Child Protection and Criminal Justice Systems* (Report, August 2023).

27 Victorian Government, *Victims of Crime Financial Assistance Scheme* (Web Page, 5 July 2023) <<https://www.vic.gov.au/victims-crime-financial-assistance-scheme>>.

28 Australian Government, *Establishment of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Media Release, April 2019) <<https://pmtranscripts.pmc.gov.au/release/transcript-42256>>.

29 Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Publications* (Web Page) <<https://disability.royalcommission.gov.au/publications>>.

Scope of systemic inquiry determined by resources

The VOCC Office undertook this inquiry within existing resources. Accordingly, the inquiry's scope was limited to the research, engagement and information/data collection able to be completed by a small policy team. Accordingly, the VOCC:

- focused on the key issues raised by victims of crime
- engaged with victims during a specific period, in line with resourcing and capacity
- engaged with stakeholders during a specific period, in line with resourcing and capacity.

This inquiry also drew on existing research and data about victims' experiences to ensure the inquiry did not:

- duplicate large-scale inquiries that had already been undertaken in relation to victims' experiences of the justice system³⁰
- require victims who had already told their story and shared their experience in another forum to have to do so again unless this was their wish.

Inquiry focuses on responses to crime

No Victorian should ever become a victim of crime and need to interact with the justice or victims' service system. Sadly, many do and the VOCC plays an important part in ensuring the justice and victims' services system is responsive to the needs of those who do become victims of crime.

The VOCC does not have a focus on primary prevention, although the Commissioner acknowledges that primary prevention should always be a key focus of government.

³⁰ The *Victims of Crime Commissioner Act 2015* (Vic) requires the Commissioner to avoid unnecessary duplication of inquiries: s 24.

Inquiry approach and methodology

Approach guided by objects of the VOCC Act and Victims' Charter

In performing her systemic inquiry functions, the Commissioner must have regard to the objectives of the VOCC Act and Victims' Charter, which are:³¹

To promote:	<ul style="list-style-type: none"> • the recognition of victims of crime in the justice system • the concerns of victims of crime in the decision making of government • the inclusion and participation of victims of crime in the justice system
To recognise:	<ul style="list-style-type: none"> • the impact of crime on victims of crime, their families, witnesses and the broader community • that all persons adversely affected by crime should be treated with respect by justice and victims' services and be offered information to enable them to access appropriate services to help with the recovery process • that a victim of crime has an inherent interest in the response by the criminal justice system to that crime • the victim's role as a participant, but not a party, in proceedings for criminal offences
To reduce:	<ul style="list-style-type: none"> • the likelihood of secondary victimisation by the criminal justice system

Phases of the systemic inquiry

This project had six main phases:

1. Engaging with individual victims of crime via a publicly available online survey and meeting with individual victims of crime
2. Preliminary consultations with stakeholders
3. Analysis of preliminary findings from victims' insights
4. Further engagement with stakeholders, including consultation meetings, engagement with lived experience groups and consultants and a survey of victims' professionals
5. Data analysis and research
6. Identifying policy solutions and developing recommendations.

Prioritising engagement with victims of crime

The inquiry prioritised the lived experiences and voices of victims of crime.

The first phase of the inquiry included a comprehensive victim engagement phase informed by contemporary understandings of trauma-informed practice principles. An overview of this approach is provided in **Table 1** below.

³¹ *Victims of Crime Commissioner Act 2015 (Vic)* s 14.

Table 1: VOCC principles of trauma-informed practice and their application

<p>1. Safety – relates to how practices and settings support physical and emotional safety, including the feeling of safety.</p>	<p>We heard from victims in places and ways that they felt safe. We had clear processes and trauma-informed support to promote safety.</p> <p>We included a trigger warning at the start and end of the survey, and information about how victims can access further support should the survey content raise issues for them.</p> <p>We ensured our engagement materials communicated the VOCC's independence from government to promote safety among people who have had challenging experiences with government departments.</p>
<p>2. Trustworthiness and transparency – involves maintaining clear and appropriate boundaries, honouring confidentiality, and being clear and consistent.</p>	<p>We exercised our duties in good faith and did not promise outcomes that are beyond our power to achieve. We provided people with a clear explanation about the purpose, the process and how victims' input would be used.</p> <p>We ensured victims provided their informed consent, that their data was de-identified, and we only use their stories in ways that they have consented to.</p> <p>We were clear with people who participated about how the VOCC Office will uphold data security and privacy requirements to ensure victim information is kept private.</p>
<p>3. Peer support – relates to support provided by people with lived experience.</p>	<p>We provided opportunities for peer support by enabling victims to use support people during their engagement with us.</p>
<p>4. Collaboration and mutuality – means allowing people to play an active role in their engagement, and having providers acknowledge the expertise that they bring to the process.</p>	<p>We communicated to victims that we are here to learn from their experiences and expertise, and that we believe that they are active participants in the justice system who should be treated with courtesy, respect and dignity.</p> <p>We enacted processes to ensure that we reported back to victims about how their collective contribution has informed the VOCC's work in advocating for victim-centre policy, practice and law reform.</p>
<p>5. Empowerment, voice and choice – involves people having control over their recovery and independence and their preferences regarding support services. Empowerment involves building consumer skills and allowing clients to be involved in the planning, operating, and evaluating of services.</p>	<p>We facilitated engagement in a way that built on victims' strengths and ensured their voices are heard and taken seriously.</p> <p>We provided victims with a series of choices about when, where, and how they engage with us (i.e. different methods of engagement, the ability to not respond to questions).</p> <p>We provided victims with resources and informed them of the VOCC's role and their rights and options around consent and participation.</p>

Table 1: VOCC principles of trauma-informed practice and their application

<p>6. Culture, historical and gender issues – involves a recognition of stereotypes and bias, historical trauma, and a commitment to practice that works to redress inequities and is responsive to victims’ diverse needs.</p>	<p>We worked to remove barriers to participation by ensuring our engagement work is accessible in various formats.</p> <p>We ensured our engagement work asks victims about systemic barriers that they have experienced.</p> <p>We also worked with and alongside trusted specialist services to communicate that the VOCC was seeking victims’ input into her inquiry in a way that is ethical, trauma-informed and promotes cultural safety.</p>
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Before starting to engage with victims, the VOCC Office consulted with 13 expert stakeholders to gain a deeper understanding of trauma-informed engagement methodologies and tools that have been tested and implemented with victims of crime, with a focus on victims who experience systemic barriers. This process allowed VOCC to seek insights into:

- current trends and patterns in the demographic profile of victims of crime
- the types of victimisation they experience
- the systemic barriers and challenges they encounter with the justice system.

Through sector consultation, the VOCC Office gained an understanding of how these organisations are tailoring ways to engage with victims of crime who experience systemic discrimination and may be marginalised. The organisations consulted had specialist expertise working with victims of crime who are:

- Aboriginal and Torres Strait Islander people
- people with disability, including those who experience poor mental health
- multicultural, migrant and refugee communities
- children and young people
- women, including those who experience family violence and sexual offences.

The VOCC Office also consulted with universities who specialise in research practices with a diverse range of people who are victims of crime, as well as with several justice agencies.

How the VOCC heard from victims of crime

The VOCC released a survey seeking input from individuals about their experiences of the justice system, with a specific focus on victims’ participatory rights.³² Victims were also invited to contact the VOCC’s office if they wished to talk about their experience in another way.

The VOCC received a total of 156 responses to the survey. **Appendix 1** outlines:

- the survey methodology, including survey design, distribution, accessibility, response rates
- limitations of the data, including response rates
- key statistics on the demographics of respondents.

The VOCC also invited individuals to meet with staff from the VOCC Office, either in individual interviews or focus groups, to discuss their experiences of the justice system.³³ Victims were also invited to contact the VOCC’s office if they wished to talk about their experience in another way.

The VOCC Office spoke with 17 individuals who identified themselves as victims of crime.

Due to COVID-19, and to make contact easier for victims from different locations, interviews were conducted via telephone or online where this was safe.

³² The survey was available from 22 October 2021 to 1 March 2022 at: Victims of Crime Commissioner, *Victims of crime online survey (2021)* <<https://www.victimsofcrimecommissioner.vic.gov.au/survey>>.

³³ Victims were advised that they could register for an interview with VOCC staff, and were able to book a telephone interview or an online interview. See Victims of Crime Commissioner, *How victims of crime can be involved in the system inquiry (Web Page, 2021)* <<https://www.victimsofcrimecommissioner.vic.gov.au/victim-engagement-inquiry>>.

Adopting a trauma-informed approach, victims were consulted on the best way to represent their voices and were offered multiple options and opportunities to amend or add to their contributions. Victims were also consulted about their preferences for confidentiality and/or anonymity, including how they wish to be identified (or anonymised) in the report. The VOCC aimed to respect the many and varied ways in which victims wished to contribute to the inquiry, and references to victims interviewed in this report reflect victims' preferences to the extent possible under legislation.³⁴

The VOCC also met with a number of lived-experience experts and consultants via existing advisory or committee mechanisms. Where this occurred, the Commissioner was guided by the trauma-informed practice and safety mechanisms already in place and managed by the secretariat for these groups.

Engagement with other experts and stakeholders

As noted above, the VOCC has a statutory obligation to promote the concerns of victims of crime. For this reason, victims' voices are at the centre of the VOCC's inquiry.

The VOCC also consulted with other experts and justice and victims' services system stakeholders. **Appendix 2** outlines who the Commissioner consulted with.

Research, data and information gathering

The VOCC undertook a range of complementary research and data and information gathering to supplement the views of victims participating in the VOCC's inquiry. This included:

- conducting a comprehensive literature review of relevant reviews, inquiries and research
- surveying victim support professionals, targeting frontline support workers in Victims Assistance Programs (VAPs), Centres Against Sexual Assault (CASAs) and specialist family violence services. **Appendix 1** outlines the methodology for this survey.
- in addition to consulting stakeholders, seeking written responses to requests for information from key agencies and organisations.

Appendix 1 outlines the limitations of the VOCC's Victims' Survey in detail. In summary, this includes a relatively small number of responses (156 responses) which cannot be considered a representative sample of all victims of crime in Victoria.

The VOCC wanted to give victims the greatest, and most flexible, opportunity to have their voices heard and has also aimed to account for the complexity of crime victimisation whereby victims often do not have a singular experience of victimisation. Therefore, there was no instruction or requirement for respondents to focus on a single victimisation experience or an experience between specific date ranges. For this reason, some experiences may pre-date certain justice agency or victims' services program or policy reforms. They may also pre-date certain legislative changes aimed at improving victims' experiences.

The survey was designed to be as simple as possible for victims to complete. For this reason, the VOCC did not require respondents to identify the relevant jurisdiction or prosecutorial agency of a criminal matter. This is because some victims of crime do not know what jurisdiction their matter was prosecuted in and do not understand the various justice agencies involved. Accordingly, the survey does not distinguish between crimes heard in the summary or indictable jurisdictions and therefore between agencies prosecuting the matters, although some victims (in free text answers) did provide more specific information about which prosecuting agency had managed their case.

³⁴ *Victims of Crime Commissioner Act 2015 (Vic)* s 30(2).

A note on survey and interview referencing in this report

In this report, survey responses are not referenced as survey respondents cannot be identified due to their anonymity.

Victims, lived-experience experts and advocates who participated in individual interviews or meetings have been anonymised, unless an individual has specifically asked to be identified and identifying them will not prejudice legal proceedings.

Some quotes from victims of crime have been used multiple times throughout the report where the quote is relevant across areas. For example, a victim may have talked about their feelings of participation during the prosecution process. This may be referred to in sections of the report describing victims' feelings of participation overall, as well as in sections of the report specifically relating to participation during the prosecution process.

The VOCC has not changed victims' direct words even where there may be spelling or grammatical errors so as to respect and preserve victims' direct voices.

About this report

This report has three parts:

- **Part 1** provides the background and context to this inquiry, including the history and context of victims' entitlements.
- **Part 2** sets out the VOCC's key findings on the central question of this inquiry – do victims feel like participants? Part 2 provides in-depth discussion of whether victims feel like participants and what participation feels like to them. Part 2 also discusses structural and systemic barriers to participation, along with participation across key phases of the justice system.
- **Part 3** sets out the VOCC's vision for a more authentic participatory role for victims of crime, including recommendations for reform.

Policy and law reform over the past fifty years has created increased opportunities for victims of crime to engage with, and be supported by, the justice and broader victims' services system.¹ After a long history of neglect, victims are now recognised as legitimate 'stakeholders' in the justice system.²

The criminal justice system and its traditional focus on the fairness of the trial to the accused is changing and is increasingly recognising victims' interests when considering what is required for a trial to be described as fair.

This chapter provides background and context in relation to victims of crime and the evolution of victim entitlements in Victoria.

¹ Malini Laxminarayan, 'Interactional Justice, Coping and the Legal System: Needs of Vulnerable Victims' (2013) 19(2) *International Review of Victimology* 145. Malini states: 'While 30 years ago it was correct to assert that the victim was the forgotten party of the criminal justice process, today this would be at odds with the actual situation of victims.': at 148.

² Deirdre Healy, Exploring Victims' Interactions with the *Criminal Justice System: A Literature Review* (Department of Justice, Ireland, October 2019) 8; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 29.

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Chapter 2:
**Background
and context**



Who are victims of crime?

The word 'victim' has different meanings across Victorian legislation dealing with victim entitlements, state-funded financial assistance, sentencing and the regulation and oversight of victims' services and the justice system.

Table 2: Overview of victim definitions in Victoria

Act	Definition
Victims' Charter Act³	<ul style="list-style-type: none"> • someone who suffers injury as a direct result of a criminal offence • the family member of a person who has died as a direct result of a criminal offence • a family member of a person injured as a result of a criminal offence who is under 18 years of age or incapable of managing his/her own affairs by reason of mental impairment • in the case of the criminal offence of 'grooming for sexual conduct with a child under the age of 16 years', the child and a family member
Victims of Crime Commissioner Act⁴	<ul style="list-style-type: none"> • a victim as defined by the Victims of Crime Assistance Act or/Victims of Crime (Financial Assistance Scheme) Act • a victim as defined by the Victims' Charter Act
Victims of Crime Assistance Act/Victims of Crime (Financial Assistance Scheme) Act⁵	<ul style="list-style-type: none"> • primary victim⁶ • secondary victim⁷ • related victim⁸
Sentencing Act⁹	<ul style="list-style-type: none"> • a person or body that has suffered injury, loss or damage (including grief, distress, trauma or other significant adverse effect) as a direct result of the offence whether or not that injury, loss or damage was reasonably foreseeable by the offender

For the purposes of this inquiry, the VOCC adopts a broad definition of victim to include those who have been harmed by crime, whether they are the 'primary', 'secondary' or 'related' victim.

We also consider victims to include people who are harmed by crime but:

- do not report that crime to police or who choose not to be involved in the justice process
- have no formal role in reporting to police or being a witness
- have participated in parallel or alternative justice opportunities (like restorative justice) or civil proceedings
- may be involved in crimes mental impairment matters.¹⁰

³ *Victims' Charter Act 2006* (Vic) s 3.

⁴ *Victims of Crime Commissioner Act 2015* (Vic) s 3.

⁵ *Victims of Crime Assistance Act 1996* (Vic) s 3; *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) s 3.

⁶ A primary victim of an act of violence is a person who is injured or dies as a direct result of an act of violence committed against the person: *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) ss 3, 9.

⁷ A secondary victim of an act of violence is a person who is present at the scene of an act of violence and who is injured as a direct result of witnessing that act: *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) ss 3, 13.

⁸ A related victim of an act of violence is a person who, at the time of the occurrence of the act of violence was a close family member or was a dependent of or had an intimate personal relationship with a primary victim of that act who died as a result of that act: *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) ss 3, 15.

⁹ *Sentencing Act 1991* (Vic) s 3(1).

¹⁰ Under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).

The impacts of crime and secondary victimisation

The impacts of crime

Many victims of crime experience unimaginable trauma. Becoming a victim of crime can have far-reaching consequences, destabilising victims' physical and psychological health, employment, study, finances, relationships and overall wellbeing.¹¹

Victims of crime experience various short- and long-term effects following a crime. Effects may include shock, loss of trust, guilt at becoming a victim of crime, a sense of uncertainty, disempowerment, increased feelings of vulnerability, and symptoms of fear, anxiety, depression, confusion, sadness, anger and stress.¹²

Because crime victimisation can have such profound impacts on victims, they are deeply invested in how the justice system responds to crime. This investment in the justice system response is enshrined in the *Victims' Charter Act 2006* (Vic) (Victims' Charter) which recognises 'that a victim of crime has an *inherent interest* in the response by the criminal justice system to that crime' (emphasis added).

Justice system and victims' needs

The justice system in Victoria includes activities and organisations involved in policing and prosecuting crimes, such as Victoria Police, the Director of Public Prosecutions, courts and lawyers. Victims may interact with some or all of these types of organisations. When victims do interact with agencies that are part of the justice system, they have a range of needs. These needs can vary over time and may differ between victims of the same types of crime.¹³

Research has found that victims' needs include:¹⁴

- voice
- validation/acknowledgement/recognition
- information
- support (emotional, practical, psychological, financial)
- control/autonomy
- compensation/reparation
- offender accountability
- offender punishment.¹⁵

Secondary victimisation

When victims' needs are not met, victims can experience secondary victimisation. This means victims are further traumatised by responses from agencies or organisations following their victimisation.¹⁶

A recognition of victims' needs – and of the harms caused by secondary victimisation – has led to a range of statutory entitlements to improve victims' experience of the justice process. Outlined below is the background to these victim entitlements in Victoria. These entitlements give context to consideration of a victim as a 'participant' or victim 'participation', which is discussed in detail in **Chapter 3**.

¹¹ Tamar Dinisman and Ania Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support, United Kingdom, 2017) 3.

¹² *Ibid* 4.

¹³ *Ibid* 3. Dinisman and Moroz state that: 'While many victims have several of the same needs, not every victim has all needs; the characteristics of both the incident and the individual can influence the number and nature of the required needs.'

¹⁴ Nicole Bluett-Boyd and Bianca Fileborn, Australian Institute of Family Studies, *Victim/Survivor-focused Justice Responses and Reforms to Criminal Court Practice: Implementation, current practice and future directions* (Research Report No 27, April 2014) 28. See also Robyn L Holder and Amanda L Robinson, 'Claiming Justice: Victims of Crime and their Perspectives of Justice' (2021) 27(2) *International Review of Victimology* 129, 131; Jonathan Doak, Ralph Henham and Barry Mitchell, 'Victims and the Sentencing Process: Developing Participatory Rights?' (2009) 29(4) *Legal Studies* 651, 652.

¹⁵ As noted by Holder and Robinson, accountability and punishment are not the same: Robyn L Holder and Amanda L Robinson, 'Claiming Justice: Victims of Crime and their Perspectives of Justice' (2021) 27(2) *International Review of Victimology* 129, 134.

¹⁶ Malini Laxminarayan, 'Interactional Justice, Coping and the Legal System: Needs of Vulnerable Victims' (2013) 19(2) *International Review of Victimology* 145.

Evolution of victim entitlements in Victoria

Several reports over the past decade, including key Victorian reports, have comprehensively outlined the evolution of the victims' role in the criminal justice system.¹⁷ It is now well understood that for much of the twentieth century victims were largely marginalised in the justice process, relegated to the status of a mere witness for the prosecution.¹⁸

Significant reforms have attempted to remedy the disaffection felt by victims of crime towards the justice system. Victims' rights movements, influenced by the civil and women's rights movements before them, emerged in the 1960s and 1970s. By the 1970s, Victoria had introduced the *Criminal Injuries Compensation Act 1972* (Vic) which, like other financial assistance and compensation schemes emerging around the world, marked a new phase in the recognition and provision of support for victims of crime in Victoria.¹⁹

Policy and law reform over the past fifty years has increased opportunities for victims of crime to engage with and be supported by the justice and broader victims' services system.²⁰ After a long history of neglect, victims are now recognised as legitimate 'stakeholders' in the justice system.²¹

United Nations Declaration

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power* (UN Declaration) in 1985 marked another significant point in the development of victims' rights. The UN Declaration described basic principles for the treatment of victims, including that victims be:²²

- treated with compassion and respect for their dignity
- informed of their role and the timing and progress of a case
- entitled to redress and restitution by the offender, with financial compensation from the state where restitution is not possible
- provided proper assistance throughout the legal process
- protected in relation to their privacy and their safety
- provided the necessary material, medical, psychological and social assistance to recover from crime.

Significantly, the UN Declaration stated that the needs of victims should be facilitated by:

[a]llowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.²³

While the UN Declaration marked a significant worldwide recognition of victims and their status, translating the Declaration's principles into practice proved challenging.

In Victoria, it has been suggested that the non-specific wording of the UN Declaration hampered its effective implementation in this state. Victoria's Department of Justice (as it was then known) stated in 2005 that implementing the procedural justice aspects of the UN Declaration had proven 'problematic' because there was a lack of consensus about the extent to which victims should have procedural rights in the criminal justice process.²⁴

The need for a Victims' Charter in Victoria

In 2005, the then-Victorian Department of Justice released a consultation paper for a proposed victims' charter 'that would clearly state the rights of victims of crime'.²⁵

In attempting to chart a way forward for recognising victims' interests in Victoria, while not impacting on the operation of the justice system and the rights of the accused, the consultation paper articulated some of the tensions between victims and the state, including that:

- decisions to prosecute are based on the strength of evidence (whether there is a reasonable prospect of a conviction) and 'public interest', and such considerations do not always align with victims' interests

¹⁷ See, generally, Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016).

¹⁸ Kerstin Braun, *Victim Participation Rights: Variation Across Criminal Justice Systems* (Palgrave MacMillan, 2019) 1.

¹⁹ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Supplementary Consultation Paper, 2017) 15.

²⁰ Malini Laxminarayan, 'Interactional Justice, Coping and the Legal System: Needs of Vulnerable Victims' (2013) 19(2) *International Review of Victimology* 145, 148.

²¹ Deirdre Healy, *Exploring Victims' Interactions with the Criminal Justice System: A Literature Review* (Department of Justice, Ireland, October 2019) 8; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 29.

²² *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN GA Res 40/34 (29 November 1985).

²³ *Ibid* [Article 6(b)].

²⁴ Department of Justice (Victoria), *Victims' Charter: Community Consultation Paper* (2005) 12.

²⁵ *Ibid* 4.

- even where a victim may not wish a matter to proceed, a prosecutor may have reason to continue a prosecution in the public interest, regardless of the victim's wishes
- where a victim wishes a matter to proceed, a prosecutor may determine a prosecution should not proceed because of a determination that there is not a reasonable prospect of a conviction, regardless of the victim's wishes
- prosecutors may pursue plea negotiations (i.e. accepting a guilty plea to a less serious offence) regardless of a victim's views.²⁶

The consultation paper also stated that victims':

[I]ack of legal status in the criminal justice system has been identified as one of the major obstacles facing victims; they have become a disenfranchised group who *have ceased to be active participants in the justice process*.²⁷ (emphasis added)

As demonstrated by the above consultation paper extract, victims' lack of 'active' participation in the justice process was a major impetus for introducing a Victims' Charter in 2006.

Introduction of the Victims' Charter

The *Victims' Charter Act 2006 (Vic)* (Victims' Charter) aimed to prioritise victim recovery, minimise secondary victimisation, and incorporate the principles outlined in the UN Declaration.²⁸

The purpose of the Victims' Charter was to set out minimum standards that would apply to criminal justice and government agency responses when dealing with victims of crime.²⁹ It was considered the Victims' Charter would provide a 'benchmark' in developing service standards and victims' policies across the justice system:

Enshrining these principles in legislation provides a clear recognition by the government of victims of crime and their important role in the criminal justice process. It will form the basis for future policy development in this area.³⁰

The Victorian Government's intention was to develop a framework encompassing all existing legislative rights and entitlements for victims, but not to broaden existing rights and entitlements.³¹

The Victims' Charters' objectives were to:

- provide statutory recognition for victims of crime and the harm caused by offending
- establish principles to govern responses by the criminal justice system to victims
- minimise secondary victimisation and improve victims' experiences of the criminal justice system.³²

The Victims' Charter set out non-enforceable entitlements for victims of crime, including entitlement to:

- respectful treatment
- information
- protection from an accused in court
- make a victim impact statement
- privacy
- access compensation
- certain information about the offender.

The Victims' Charter did not create a legal right to recourse for victims experiencing breaches of their entitlements. In fact, section 22 of the Victims' Charter specifically states that no legal rights are affected by the Victims' Charter:

The Parliament does not intend by this Act – (a) to create in any person any legal right or give rise to any civil cause of action; or (b) to affect in any way the interpretation of any law in force in Victoria; or (c) to affect the validity, or provide grounds for review, of any judicial or administrative act or omission.

At the time the Victims' Charter was introduced it also did not create any independent complaints pathways or mechanisms for oversight or monitoring whether victims' entitlements were being upheld by justice and victims' services agencies.³³

²⁶ Ibid 8.

²⁷ Ibid 8.

²⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 14 June 2006, 2046 (Rob Hulls, Attorney-General).

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Changes were made in 2019 to the VOCC's role to provide the VOCC with powers to receive complaints from victims who felt their Victims' Charter rights had been breached and to monitor prescribed agencies' compliance with the Victims' Charter.

While the Victims' Charter has undoubtedly assisted with elevating victims' interests and entitlements in the justice system since its introduction,³⁴ the Second Reading Speech for the Victims' Charter made clear Parliament's intention for it to continue to 'facilitate the *ongoing* cultural change within the criminal justice system'³⁵ (emphasis added), suggesting further work would be required to elevate victims' status and role.

Introduction of the Victims of Crime Commissioner

The first Victorian Victims of Crime Commissioner (VOCC) was appointed in October 2014. The Commissioner's role was formalised through the *Victims of Crime Commissioner Act 2015 (Vic)* (the VOCC Act) which established the Victims of Crime Commissioner as a Governor-in-Council appointment with clearly stated functions and powers.

The legislative intent was to create an independent commissioner whose role would focus on recognising victims within the justice system, representing victims' interests to the government, and promoting victims' inclusion and participation within the justice system.³⁶

Inquiry into the role of victims in the criminal trial process

In 2016 the Victorian Law Reform Commission (VLRC) released *The Role of Victims of Crime in the Criminal Trial Process* (the VLRC's 2016 report). The VLRC noted that while victims' experiences of the criminal justice system had improved over the years, there was disparity between legislative entitlements and the actual experiences of victims.³⁷

The VLRC heard from many victims who had felt marginalised, had been provided with inconsistent information and services, and generally treated poorly throughout the criminal justice process.

Victims told the VLRC that they felt disempowered or excluded from the criminal trial process and described their relationship with the prosecution as that of a 'passive receiver of information', 'observer' and an 'outsider'.³⁸ The VLRC reported that victims wanted 'greater input into decisions by the prosecution and the court that affect them'.³⁹

To remedy victims' disaffection, the VLRC envisaged a triangulation of interests in the criminal trial: those of the state, the victim and the accused.⁴⁰

The VLRC's 2016 report contained 51 recommendations, including that victims be recognised as participants in the criminal justice process:

The victim is neither a bystander nor a party, *but is a participant whose role is essential to the effective functioning of the criminal justice system*...The recognition of victims as participants reflects the reality of victims' inherent interest in the criminal trial process and the various capacities in which they may be involved in that process. It gives proper regard to the hardship experienced by victims as a result of crime, their special interest in the criminal trial process, and their contribution to the detection and prosecution of crime in society.⁴¹ (emphasis added)

The VLRC asserted that providing statutory recognition of the victim's interest in the criminal justice system's response to the crime, and recognising their status as 'participants', would support the necessary shift in how victims are perceived and treated by criminal justice agencies and the courts.⁴² The VLRC also asserted that recognising victims as participants was 'consistent with modern jurisprudence on the triangulation of interests in the criminal trial: those of the state, the victim and the accused'.⁴³

Further, the VLRC stated that such legislative recognition:

would bring together conceptually the disparate legislative and procedural measures that have been introduced over the past 30 years and provide a common basis for understanding the victim's role as a participant in the criminal trial process.⁴⁴

This concept of the victim as participant, and victim participation, is discussed in more detail in **Chapter 3** of this report.

Key recommendations from the VLRC's 2016 report are summarised below.

³⁴ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 12.

³⁵ Victoria, *Parliamentary Debates*, Legislative Assembly, 14 June 2006, 2047 (Rob Hulls, Attorney-General).

³⁶ Victoria, *Parliamentary Debates*, Legislative Assembly, 16 September 2015, 3278-3279 (Martin Pakula, Attorney-General).

³⁷ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 14.

³⁸ *Ibid* 33.

³⁹ *Ibid* 33.

⁴⁰ *Ibid* 27.

⁴¹ *Ibid* 30.

⁴² *Ibid* 34.

⁴³ *Ibid* 30.

⁴⁴ *Ibid* 34.



Key recommendations of the 2016 VLRC report *The Role of Victims of Crime in the Criminal Trial Process* relating to victim participation

- **The objects of the Victims' Charter should be amended:** to include recognition that a victim of crime has an inherent interest in the response by the criminal justice system to that crime, which gives rise to the rights and entitlements that are conveyed in the Act and shape the victim's role as a participant in the criminal trial process. Section 6(2) of the Victims' Charter should be amended to require investigatory, prosecuting and victims' services agencies to treat victims with courtesy and to respect their dignity and their rights and entitlements as participants in the criminal trial process.
- **Recognising victims as participants in the *Charter of Human Rights and Responsibilities Act 2006*:** Part 2 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) should be amended to include a right for a victim of a criminal offence that contains the following minimum guarantees: (a) to be acknowledged as a participant (but not a party) with an interest in the proceedings (b) to be treated with respect at all times (c) to be protected from unnecessary trauma, intimidation and distress when giving evidence.
- **Establishment of a legal service for victims of indictable crimes:** Victoria Legal Aid should be funded to establish a service for victims of violent indictable crimes, modelled on the Sexual Assault Communications Privilege Service at Legal Aid NSW. It should provide legal advice and assistance, in accordance with the *Legal Aid Act 1978* (Vic), in relation to: (a) substantive legal entitlements connected with the criminal trial process (b) asserting a human right, or protecting vulnerable individuals, in exceptional circumstances.
- **More robust consultation requirements on prosecuting agencies:** The Victims' Charter should be amended to require prosecuting agencies to consult with victims before the prosecution makes a decision to: (a) not proceed with some or all charges (b) accept a plea of guilty to a lesser charge (c) apply for, agree to or oppose an application for summary jurisdiction (d) agree to or oppose an application to cross-examine the victim at committal (e) pursue an appeal against a sentence or acquittal.
- **Giving victims of sexual assault greater involvement in decisions about confidential communications:** Division 2A of Part 2 of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) should be amended by: (a) requiring the prosecution to notify the victim of their right to appear and the availability of legal assistance in relation to an application to subpoena, access and use their confidential communications (b) requiring the court to be satisfied that the victim is aware of the application and has had an opportunity to obtain legal advice (c) prohibiting the court from waiving the notice requirements except where the victim cannot be located after reasonable attempts or the victim has provided informed consent to the waiver (d) providing victims with standing to appear (e) permitting victims to provide a confidential sworn or affirmed statement to the court specifying the harm the victim is likely to suffer if the application is granted.
- **Establishment of an intermediaries scheme:** The Department of Justice and Regulation, in consultation with the Office of the Public Advocate, should establish a scheme for the appointment of professional intermediaries, modelled on the Witness Intermediary Scheme in England and Wales. The intermediaries would assist in obtaining evidence from child victims and victims who have a disability, as defined by the *Equal Opportunity Act 2010* (Vic), that is likely to diminish the quality of their evidence.
- **Establishment of a statutory restorative justice scheme:** The Victorian Government should establish a statutory scheme for restorative justice conferencing for indictable offences in Victoria that is supplementary to the criminal trial process.
- **Enhanced compensation and restitution processes:** The *Criminal Procedure Act 2009* (Vic) should be amended to enable victims to seek leave to appeal, independently of the Director of Public Prosecutions: (a) a refusal by the Supreme Court or County Court to make an order pursuant to Divisions 1 and 2 of Part 4 of the *Sentencing Act 1991* (Vic) (b) orders made by the Supreme Court or County Court pursuant to Divisions 1 and 2 of Part 4 of the *Sentencing Act 1991* (Vic).

Victims recognised as participants in Victoria

Following the VLRC's 2016 report, the Victorian Government introduced amendments to the Victims' Charter to recognise 'the victim's role as a participant, but not a party, in proceedings for criminal offences' in the Victims' Charter objects.⁴⁵ These amendments introduced by the Victorian Government in 2018 also require investigatory agencies, prosecuting agencies and victims' services agencies to 'respect the rights and entitlements of victims as participants in proceedings for criminal offences'.⁴⁶

Contrary to the VLRC's recommendation, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) was not amended to include a right for a victim of a criminal offence to be acknowledged as a participant (but not a party) with an interest in the proceedings.

The following recommendations relevant to victim participation have also not been implemented to date:

- establishment of a broad-based victims' legal service for victims of violent indictable crimes⁴⁷
- a statutory scheme for restorative justice conferencing for indictable offences in Victoria⁴⁸
- strengthening of entitlements in relation to restitution and compensation orders.⁴⁹

New functions and powers for the Victims of Crime Commissioner

Following the VLRC's 2016 report, the Victorian Government introduced new powers for the VOCC to report on justice agencies' and victims' services' compliance with the Victims' Charter. These powers included:

- receiving complaints from victims of crime in relation to an agency's compliance with the Victims' Charter principles
- monitoring and reporting on investigatory, prosecuting and victims' services agencies' compliance with the Victims' Charter.

Since 2019, the VOCC has been responsible for:

- reporting on how agencies meet their legal obligations under the Victims' Charter
- investigating complaints from victims of crime who believe their rights and entitlements under the Victims' Charter have not been met by an investigatory body, prosecuting agency and/or victims' service
- advocating for the respect, recognition and inclusion of victims of crime in the Victorian justice system
- conducting systemic inquiries
- representing the concerns of victims of crime to government and other decision-making bodies.

The Commissioner is also required to start a review of the Victims' Charter no later than 2024.

Victims' entitlements in Victoria – an overview

Victims in Victoria now have entitlements, both enshrined in the Victims' Charter and in other legislation to:

- respectful treatment by justice and victims' services agencies
- special treatment, by virtue of unique characteristics or their role as witness
- receive information about an investigation and prosecution, along with appropriate referrals to support
- state-funded financial assistance
- privacy and protection in court
- a range of procedural and evidentiary protections, including for certain crimes or certain victim cohorts based on specific characteristics

⁴⁵ *Victims' Charter Act 2006* (Vic) s 4(1)(ba).

⁴⁶ *Ibid* s 7A.

⁴⁷ The Victorian Government has created a 'Victims Legal Service' which is limited to helping victims to access state-funded financial assistance, compensation and restitution. See Victorian Government, *Reforms we will deliver to support victims of crime* (Web Page, 15 June 2022) <<https://www.vic.gov.au/victim-support-update/reforms-we-will-deliver-support-victims-crime#delivering-a-new-victims-legal-service>>. This is not consistent with the VLRC's vision of a broader, more comprehensive victims' legal service.

⁴⁸ The Victorian Government has introduced a 'Victim-Centred Restorative Justice Program' for some victims of crime but it is not a statutory scheme and applies to a limited cohort or victims who have been through the criminal trial process: see Department of Justice and Community Safety (Victoria), *Restorative justice for victims of crime on the Victims Register* (Web Page) <https://www.justice.vic.gov.au/vcrj/restorative-justice-for-victims-of-crime-on-the-victims-register>.

⁴⁹ Noting that the Victims Legal Service will address some barriers for victims' access to restitution and compensation.

- take part in certain justice system processes, including:
 - being consulted during certain prosecutorial decision-making processes
 - being heard in relation to applications for leave to produce confidential communications in sexual offence matters
 - making a Victim Impact Statement
 - applying for compensation or restitution
 - being heard in relation to certain treatment,⁵⁰ post-sentence⁵¹ or parole decisions
 - applying for leave to appear as an interested party in a coronial proceeding
 - applying to the court to review a suppression order.

While victims now have a range of entitlements, many of these entitlements can be categorised as 'passive', such as the right to receive information.⁵²

Doak has noted that while reforms to improve victim services have often received a 'warm reception', providing victims with procedural rights has always proved much more contentious.⁵³

In this context, Freiberg and Flynn articulate a tension between proponents of more active or participatory rights for victims and those questioning whether such participation can be accommodated in an adversarial system:

Despite the strong and cogent arguments in favour of greater victim participation, *there remain problems that have limited the adoption of many of the recommendations made by the proponents of more victim participation in the criminal justice system.* The principal arguments against such participation are founded on the traditional view of the adversarial system, which regards the criminal contest as between two parties – the state and the accused – and therefore assumes that the addition of a third party (the victim) would unfairly disadvantage the accused by diminishing their rights, rendering the proceedings more confrontational and hindering the speedy resolution of cases.⁵⁴ (emphasis added)

This more contentious notion of victim 'participation' is considered further in **Chapter 3**.

Victims' experiences of the justice system

Previous reviews and inquiries

Over the past two decades, there have been many significant reports and inquiries examining victims' experiences of the justice and victims' service system.⁵⁵ The breadth of these reviews demonstrates the complexity of the criminal justice system. Some reviews and inquiries also serve to demonstrate victims' sometimes contentious, and often precarious, place in the justice system.

One of the striking features when taking a global view of these reviews and inquiries is the similarity in key findings and recommendations, including:

- The need for cultural change and ongoing training and education in the justice system in relation to victims' rights and trauma-informed practices, particularly for police, legal professionals and the judiciary.
- Deficiencies in the provision of support to victims, including a lack of specialised, consistent and targeted support, providing victims with a single (consistent) advocate or 'one-stop shop'.
- That victims continue to have a range of unmet legal needs, highlighted across general reviews and inquiries, as well as cohort or crime-specific reviews.
- That victims need better provision and coordination of information between different parts of the service and justice system.
- 'Implementation gaps' – victims often have rights 'on paper', but they are often not implemented or able to be realised, whether because of a lack of resources or because the culture within organisations and across the justice system has not changed.

⁵⁰ Where a person is found not guilty or unfit to stand trial due to mental impairment under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).

⁵¹ In Victoria, serious sex offenders and serious violent offenders who present an unacceptable risk to the community can be made subject to ongoing supervision or detention after they have served their prison sentence. See Post Sentence Authority, *Post sentence scheme* (Web Page) <<https://www.postsentenceauthorityvic.gov.au/post-sentence-scheme>>.

⁵² Maarten Kunst, Lieke Popelier and Ellen Varekamp, 'Victim Satisfaction with the Criminal Justice System and Emotional Recovery: A Systematic and Critical Review of the Literature' (2015) 16(3) *Trauma, Violence, & Abuse* 336, 337.

⁵³ Jonathan Doak, Ralph Henham and Barry Mitchell, 'Victims and the Sentencing Process: Developing Participatory Rights?' (2009) 29(4) *Legal Studies* 651, 651.

⁵⁴ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 10 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

⁵⁵ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016); Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 38, July 2018); Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Report, November 2020); Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022). Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>. Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019).

- Agencies, including those with statutory obligations towards victims and those providing essential services to victims, face significant funding and resourcing challenges, making them unable to meet the needs and entitlements of victims.
- Victims are not a homogenous group – each victim is different, creating complexity in meeting victims' needs and entitlements. A 'one-size-fits-all' approach to victims (whether it concerns services or information) is inadequate.
- There are many barriers to recognising the interests and entitlements of victims, particularly for different victim cohorts (e.g. for children and young people, Aboriginal and Torres Strait Islander people, people with disabilities, people from culturally and linguistically diverse communities, people from LGBTIQ+ communities, victims of family violence or sexual assault, people living in rural and regional communities).

While most reviews find that resourcing for victims' services agencies and investigatory and prosecuting agencies is a significant problem, cultural problems in recognising victims' interests and entitlements remain.

Barriers to improving victims' participation

In 2016, the VLRC said that progress in changing the criminal justice system for victims 'has been at times slow and limited'.⁵⁶ There remains a tension between proponents of more participatory rights for victims and those questioning whether such participation can be accommodated, particularly in relation to the criminal trial process, which adopts an adversarial approach.

While reforms to improve victim support (and to a lesser extent, 'passive' information rights) have been more widely supported, enabling an active participatory role for victims both in the trial process and in other justice processes, such as bail or parole, has proven far more controversial.⁵⁷

Identified below are some of the barriers to enhancing victim participation in Victoria.

Changes in the law are often incremental

Changes to improve victims' participation in the criminal justice system largely reflect a process of incremental change. Incremental change in policy and law reform is not unique to victims' rights, but in this context may reflect:

- a progressive understanding and development of knowledge about what victims need, based on evaluations and research done over time
- the nature of government reform processes which take time, require dedicated resources and may be influenced by competing demands and other reform agendas
- the challenges of securing sufficient government funding to translate policy objectives into tangible outcomes for victims (i.e. many victim entitlements depend on government-funded agencies having the resources to facilitate or uphold victims' entitlements)
- the competing goals and demands of different parts of the justice system which are sometimes presented as in binary opposition to victims' interests.

Incremental change can also reflect that some reform opportunities have met with resistance. It can also mean key stakeholders in the justice system continue to interpret progress differently. For example, the VLRC's 2016 report into victims found that the Law Institute, Victorian Bar and the Criminal Bar Association believed that improper questioning of witnesses is rare and judicial officers 'are adequately enforcing existing protections'.⁵⁸ However, victims, victim support workers and some legal professionals and judicial officers said that 'judicial intervention is not always adequate and improper questioning still occurs'.⁵⁹

Similarly, in 2022, the Criminal Bar Association opposed the introduction of a bill legislating for 'affirmative consent', and was quoted in the media as stating that a suite of reforms had already been introduced over the past decade to strengthen the state's sexual assault laws.⁶⁰ This was despite a VLRC review of justice system responses to sexual assault laws in 2021 which found the law in relation to consent needed reform.

⁵⁶ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xvi.

⁵⁷ Jonathan Doak, Ralph Henham and Barry Mitchell, 'Victims and the Sentencing Process: Developing Participatory Rights?' (2009) 29(4) *Legal Studies* 651, 651.

⁵⁸ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 96.

⁵⁹ *Ibid.*

⁶⁰ Sumeeya Ilanbey, 'Lawyers Criticise State's Proposed Sexual Consent Laws', *The Age* (online, 11 August 2022) <<https://www.theage.com.au/politics/victoria/lawyers-criticise-state-s-proposed-sexual-consent-laws-20220810-p5b8mp.html>>.

Opposition to criminal justice reform more generally is well known. The criminal justice system is 'steeped in tradition' and is 'reactionary rather than proactive'.⁶¹ In part this reflects the focus of the legal profession on precedents. It also reflects the analytical focus of lawyers who are trained in deconstructing cases and arguments. A particular challenge with victim participation is that any change to victim participation is likely to be new and most people in the justice system have not had exposure to victims' experiences, perspectives, and rights as part of their training in the law.

Right to a fair trial

Opposition to increasing victim participation can arise because of a concern that reforms may inappropriately affect or limit the right of the accused to a fair trial.

It could be argued that one of the barriers to improving victim participation lies in the way victim participation is often discussed. As Manikis says, the

literature on victim participation in criminal justice has often framed the interests of victims in opposition to those of the accused. Indeed, the rhetoric of 'balancing rights' or 'balancing interests' of the accused with those of victims reinforces a zero-sum game perception of criminal processes where victims advance punitive aims.⁶²

Framing victim participation as a 'zero-sum game' suggests that there are only a limited number of rights potentially available in a trial and that any right that a victim secures comes at the expense of the right to a fair trial that the accused currently possesses.

Fair trial considerations have often focused on the accused's right to a fair trial.⁶³ In the latter parts of the 20th century, criticisms of criminal laws and criminal trials from feminist critiques and victims' rights movements have expanded what is necessary for a trial to be fair.⁶⁴ Further, fair trial principles reflect changing social and political standards.⁶⁵ The common law and fair trial principles have some flexibility to evolve with changes in society, such as changes in technology and societal expectations.⁶⁶

Lord Steyn referred to a 'triangulation of interests', reflecting the public interest in a fair trial for the accused, victim, and the community.⁶⁷ This formulation may continue to expand. The scope of changes supported or warranted by this expanded notion of a fair trial is yet to be fully realised.⁶⁸

This evolving and broader focus of fair trial interests has been criticised. Academics Anthony Duff et al have argued that the criminal trial is 'under attack' from victim-oriented changes.⁶⁹ They contend that these changes 'threaten to erode traditional conceptions of the criminal trial'⁷⁰ and may compromise the function and purpose of the trial. In the view of Duff et al, it is not necessary to recognise victims as participants because a criminal trial is a public enquiry that always considers the interests of victims.⁷¹ However, as Kirchengast says, this 'interpretation of the role of the victim' recognises victims 'as significant only to the extent interpreted by the prosecutor in the public interest'.⁷²

Describing criminal trials, as Duff et al do, with such a narrow and traditional or binary focus 'tends to reinforce the status quo'.⁷³ It focuses on the rights of the accused and does not sufficiently take account of the need to consider victims' interests through a triangulation of interests.⁷⁴ As Kirchengast observes, '[j]ust as defendants may be convicted and sentenced improperly, victims can be silenced and removed from a system with which they are otherwise intimately connected'.⁷⁵ It is therefore important to recognise that the criminal trial can change and be a more 'inclusive forum through which various perspectives and interests come to be valued'.⁷⁶ Triangulating fair trial interests provides a principled means for changing criminal proceedings in a more inclusive way.

61 Jacqueline Horan and Shelley Maine, 'Criminal Jury Trials in 2030: A Law Odyssey' (2014) 41 *Journal of Law and Society* 551, 553.

62 Marie Manikis, 'A New Model of the Criminal Justice Process: Victims' Rights as Advancing Penal Parsimony and Moderation' (2019) 30 *Criminal Law Forum* 201, 208.

63 This can be seen in the specific minimum guarantees for a fair trial set out in the *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(2), 14(3).

64 Jill Hunter, Terese Henning, Jeremy Gans and Kate Warner (eds), *Criminal Process and Human Rights* (Federation Press, 2011) 381. See also Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 27.

65 Simon Bronitt and Bernadette McSherry, *Principles of Criminal Law* (Lawbook, 4th ed, 2017) 93.

66 *Dietrich v The Queen* (1992) 177 CLR 292, 328 (Deane J); Chief Justice James Spigelman, 'The Truth Can Cost Too Much: The Principle of a Fair Trial' (2004) 78 *Australian Law Journal* 29, 43.

67 *R v A (No 2)* [2002] 1 AC 45, 65 [38].

68 See, eg, Phoebe Bowden, Terese Henning and David Plater, 'Balancing Fairness to Victims, Society and Defendants in the Cross-Examination of Vulnerable Witnesses: An Impossible Triangulation?' (2014) 37 *Melbourne University Law Review* 539, 559.

69 Anthony Duff et al, *The Trial on Trial: Volume 3. Towards a Normative Theory of the Criminal Law* (Hart Publishing, 2007) 1.

70 *Ibid* 1-2.

71 *Ibid* 214.

72 Tyrone Kirchengast, 'Recent Reforms to Victim's Rights and the Emerging "Normative Theory of the Criminal Trial"' (2010) 56 (Issues 1-2) *Criminal Law Quarterly* 82, 88.

73 Mary Jane Mossman, 'Running Hard to Stand Still: The Paradox of Family Law Reform' (1994) 17(1) *Dalhousie Law Journal* 5, 10.

74 Tyrone Kirchengast, 'Recent Reforms to Victim's Rights and the Emerging "Normative Theory of the Criminal Trial"' (2010) 56 (Issues 1-2) *Criminal Law Quarterly* 82, 111.

75 *Ibid*.

76 *Ibid* 86.

Adopting the approach to triangulating fair trial interests, the VLRC said that:

The legitimate rights of victims, properly understood, do not undermine the legitimate rights of the accused or of the community, properly understood. The true interrelationship of the three – victim, accused and community – is mutual and complementary, not exclusory.⁷⁷

The VLRC said that the interests of the victim should be considered 'alongside those of the accused and the community'.⁷⁸ As then Chair of the VLRC, the Hon P D Cummins AM said, the 'courts have remained confined by the binary interests of the prosecution and defence, whereas jurisprudence has evolved to a broader understanding of the criminal trial'.⁷⁹ This legitimate public expectation includes recognising the importance of victim participation in ensuring a (triangulated) fair trial. The VLRC said that the accused's right to a fair trial can be protected while treating victims fairly, with 'appropriate respect for their dignity and humanity'.⁸⁰

Concerns about unfairly disadvantaging the accused

In addition to a perception that victims' reforms may unfairly disadvantage the accused, opposition to victims' reforms may also reflect a view that victims are motivated by private interests or by being overly 'punitive'.⁸¹ For example, victim impact statements have been criticised as increasing the chances of biasing legal decision makers towards decisions that are disadvantageous for defendants.⁸²

There are occasions where victims have sought law reform that is more punitive in nature, for example, calling for longer prison sentences. However, research from the Centre for Innovative Justice indicates that being punitive is often not a prime motivating factor for victims. For example, procedural justice is more important to many victims than the outcome in determining their satisfaction with the criminal justice system. Procedural justice can include prosecutors taking an interest in the victim, listening to and considering victim's wishes, and according victims respect and recognition.⁸³ Other research has reached the same conclusion, namely that improving victim participation can promote 'non-punitive, moderate and parsimonious interests'⁸⁴ and that improving victim participation need not come at the expense of the accused's interests.⁸⁵

Resourcing and funding

Another barrier to improving victim participation relates to the practicalities of elevating another actor in the criminal justice system to a status that would increase demands on scarce funding and resourcing.

The costs associated with implementing changes, including the pressure such initiatives would put on other justice agencies and the courts who would be required to change processes, policies, IT and physical infrastructure (and be appropriately funded to do so), are likely to have influenced the level of support by policy makers for increased participation for victims of crime.⁸⁶

⁷⁷ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xiv.

⁷⁸ *Ibid* 10.

⁷⁹ *Ibid* vi.

⁸⁰ *Ibid* 196.

⁸¹ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 133, 151; Marie Manikis, 'A New Model of the Criminal Justice Process: Victims' Rights as Advancing Penal Parsimony and Moderation' (2019) 30 *Criminal Law Forum* 201, 208.

⁸² Maarten Kunst, Giulia de Groot, Jelmar Meester, Janne van Doorn, 'The Impact of Victim Impact Statements on Legal Decisions in Criminal Proceedings: A Systematic Review of the Literature across Jurisdictions and Decision Types' (2021) 56 *Aggression and Violent Behavior*, 1. <<https://linkinghub.elsevier.com/retrieve/pii/S1359178920302160>>.

⁸³ Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 20.

⁸⁴ Marie Manikis, 'A New Model of the Criminal Justice Process: Victims' Rights as Advancing Penal Parsimony and Moderation' (2019) 30 *Criminal Law Forum* 201, 208. See also Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconciling the Role of Third Parties* (Bloomsbury, 2008) 152–53.

⁸⁵ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 110–12 <https://link.springer.com/10.1007/978-3-030-61383-9_2>.

⁸⁶ Cost and resourcing implications were noted in a recent Victorian Government report as a policy rationale for not implementing strengthened rights for victims: Victorian Government, *Review to Improve Victims' Experience of Summary Criminal Proceedings* (Web Page, November 2021) <<https://engage.vic.gov.au/review-improve-victims-experience-summary-criminal-proceedings>>.

As outlined in **Chapter 2**, following the Victorian Law Reform Commission's report, *The Role of Victims of Crime in the Criminal Trial Process* (the VLRC's 2016 report), the *Victims' Charter Act 2006* (Vic) (Victims' Charter) was amended in 2018 to recognise 'the victim's role as a participant, but not a party, in proceedings for criminal offences' in the Victims' Charter objects.¹

The Victims' Charter further states that investigatory agencies, prosecuting agencies and victims' services agencies are to 'respect the rights and entitlements of victims as participants in proceedings for criminal offences'.²

In order to provide context to this report, this chapter considers:

- why victims have come to be described as participants in Victorian legislation
- what is meant by 'participation' or being a 'participant', including why these terms may not have been defined in legislation such as the Victims' Charter
- the extent of victims' current participatory entitlements
- barriers to victim participation in Victoria.

¹ *Victims' Charter Act 2006* (Vic) s 4(1)(ba).

² *Victims' Charter Act 2006* (Vic) s 7A.

3

Chapter 3:
**Victim participation –
an overview**



Why describe victims as participants?

Lack of participation linked to secondary victimisation

Lack of participation in the justice system – or not being treated like a participant – has been shown to be a primary source of dissatisfaction for victims and has been linked to secondary victimisation.³

Victims told the VLRC that they felt disempowered or excluded from the trial process, feeling like a “passive receiver of information”, an “observer”, and an “outsider”.⁴

Increased participation for victims is linked to procedural justice research which demonstrates that offering victims a role in proceedings enhances justice system legitimacy and the acceptance of justice outcomes.⁵ Academic Jonathon Doak states that ‘victim participation increases satisfaction with justice through giving victims a sense of empowerment and official, albeit symbolic acknowledgement.’⁶

Conversely, failure to offer victims a chance to participate in criminal proceedings can ‘result in increased feelings of inequity on the part of victims, with a corresponding increase in crime-related psychological harm’.⁷ Academics Freiberg and Flynn assert that:

increased victim participation in the criminal justice process has been said to vindicate and reinforce the rights of individuals to participate in all those government processes that most affect their lives, and to assist in restoring the dignity of the individual and in recognising the victims’ moral and emotional needs.⁸

Finding the right description for victims’ role

A major barrier for recognising victims has been their lack of legal status within the justice system.⁹ While victims have an interest in how the criminal justice system is administered, in ‘terms of substance, processes and outcomes’,¹⁰ their lack of legal status within the justice system has been a major barrier to their participation.¹¹

The criminal justice system has long recognised parties (the prosecution and the accused) and witnesses but a victim may or may not be a witness in a criminal proceeding. Because of victims’ lack of official status in criminal proceedings, victims have often not been informed or involved in ‘their’ case, despite having an inherent and legitimate interest in the way criminal justice is administered.¹²

Finding the right description for the role of victims in the criminal justice system is challenging. Some of the challenge arises from the adversarial nature of the justice system – that it is a contest between the state and the accused. However, another challenge arises because a victim’s ‘role’ in the justice system can vary considerably from one case to the next. For example, victims can be significantly harmed by a crime but have no ‘formal’ role in the justice system. A bereaved family member of a homicide victim may initially be unaware that a crime has occurred, have no role in reporting the crime to police and may not be required as a witness in the criminal trial. Their lives, however, are immeasurably impacted by the outcome of a criminal trial.

In other cases, such as sexual assault, the state often requires a victim to report the crime to police. In these cases, the victim will be integral to the prosecution as a complainant and witness. Therefore, the way in which the State and various justice ‘actors’ relate to, intersect with and ultimately inform and include victims and their varied roles, must not only ‘flex’ and adapt to the role of victims in the specific contexts of a case, but also individual victims’ preferences for their level of involvement in the justice process.

Furthermore, those working in the justice system tend to view the role of victims relevant to their specific function and role. For example:

- police are required to view victims in the context of their investigatory role, including assessing a victim’s credibility¹³

3 Antony Pemberton and Sandra Reynaers, ‘The Controversial Nature of Victim Participation: Therapeutic Benefits in Victim Impact Statements’ in Edna Erez, Jo-Anne Wemmers and Michael Kilchling (eds), *Therapeutic Jurisprudence and Victim Participation in Justice: International Perspectives* (Carolina Academic Publishing, 2011) 229; see also Kerstin Braun, *Victim Participation Rights: Variation Across Criminal Justice Systems* (Palgrave MacMillan, 2019) 3.

4 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 33.

5 Antony Pemberton and Sandra Reynaers, ‘The Controversial Nature of Victim Participation: Therapeutic Benefits in Victim Impact Statements’ in Edna Erez, Jo-Anne Wemmers and Michael Kilchling (eds), *Therapeutic Jurisprudence and Victim Participation in Justice: International Perspectives* (Carolina Academic Publishing, 2011) 229; Jonathan Doak, Ralph Henham and Barry Mitchell, ‘Victims and the Sentencing Process: Developing Participatory Rights?’ (2009) 29(4) *Legal Studies* 651, 653.

6 Jonathan Doak, Ralph Henham and Barry Mitchell, ‘Victims and the Sentencing Process: Developing Participatory Rights?’ (2009) 29(4) *Legal Studies* 651, 653.

7 Erin Ann O’Hara, ‘Victim Participation in the Criminal Process’ (2005) 13(1) *Journal of Law and Policy* 229, 244.

8 Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 9 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

9 Department of Justice (Victoria), *Victims’ Charter: Community Consultation Paper* (2005) 8.

10 Jonathan Doak, *Victims’ Rights, Human Rights and Criminal Justice: Reconciling the Role of Third Parties* (Hart Publishing, 2008) 243.

11 Department of Justice (Victoria), *Victims’ Charter: Community Consultation Paper* (2005) 8.

12 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xiv.

13 Eryn Nicole O’Neal, ‘“Victim Is Not Credible”: The Influence of Rape Culture on Police Perceptions of Sexual Assault Complainants’ (2019) 36(1) *Justice Quarterly* 127, 127.

- prosecution represent the state and are required to acquit their duties independent of the government, police, the victim or any other person,¹⁴ therefore ‘the public prosecutor’s contemporary role, which now includes helping to facilitate victims’ inclusion in the criminal justice system, can sit uneasily with their overarching duties’¹⁵
- judicial officers control how hearings and trials are conducted and are ‘impartial decision-makers in the pursuit of justice’¹⁶ – victims of crime are just one of many ‘stakeholders’ a judicial officer is required to accommodate and incorporate in the pursuit of justice.

Move towards victims as participants

In 2016, the VLRC concluded that the victims’ role had already evolved and changed and that victims were now more accommodated in the trial process.¹⁷ However, the VLRC stated that ‘the language and conceptual basis of the victim’s role had not evolved in line with the changes to the role itself’ and that this had ‘contributed to the fragmented development of victim-oriented laws and policies, and a related lack of compliance’.¹⁸

The VLRC concluded that the word ‘victim’ was insufficient to describe the victim’s inherent interest in the justice system, nor ‘their integral part in the response’.¹⁹ Nor was the term ‘witness’ sufficient or appropriate.²⁰ Stakeholders told the VLRC that victims should be described by a term that communicates victims as ‘actors’ within the justice system.²¹

The VLRC recommended that victims be described as ‘participants’ in the criminal justice system. The VLRC concluded that victims should be recognised as ‘participant[s] whose role is essential to the effective functioning of the criminal justice system’,²² stating such recognition of victims as participants reflects the reality of victims’ inherent interest in the criminal trial process.²³

The term ‘participant’ provides a way of describing the importance of victims and signifies the need to respect victims’ rights, entitlements and interests.

What is meant by participation or participant?

Legislation does not define ‘participation’ or ‘participant’

Describing a victim as a participant in the criminal justice system is designed to provide a unifying idea of the role of a victim. However, while reconceptualising the role of victims as a ‘participant’, the VLRC did not define what it means to be a participant. The Victims’ Charter amendments in 2018 that describe victims’ role as participant similarly do not define what it means to be a ‘participant’.

In a criminal proceeding, the term ‘party’ is not defined in legislation. Similarly, ‘participant’ remains free of a prescriptive definition. Not defining the exact limits of what it means to be a participant provides room for the continuing evolution of the role of a victim as a participant over time.

Providing room for the role of a victim to grow is essential. Research continues to identify different ways in which victims’ experience of the criminal justice system could be improved. As the way victims’ participation changes, fears about victim participation detrimentally affecting the adversarial process may dissipate. This kind of incremental reform allows an approach of cautious, but continuing, improvement to victim participation.

How this report uses ‘participation’

A key part of this inquiry is asking victims of crime what they think participation is. When surveying victims about their experiences, the VOCC gave a non-exhaustive list of things that participation *might* include, like being given information and regular updates, being asked their views before key decisions were made and having these views taken into account, as much as possible. The VOCC did not want to limit how

¹⁴ Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims’ Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 17.

¹⁵ Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims’ Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 18.

¹⁶ Supreme Court of Victoria, *Our Judiciary* (Web Page) <<https://www.supremecourt.vic.gov.au/about-the-court/our-judiciary>>.

¹⁷ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 29.

¹⁸ *Ibid.*

¹⁹ *Ibid.* 30.

²⁰ *Ibid.*

²¹ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 30.

²² *Ibid.*

²³ *Ibid.*

victims might articulate participation.

For this reason, we asked victims:

- whether they *felt like* participants in the justice system
- what lack of participation *looks and feels like* to them
- what meaningful participations *looks like* to them.

At the end of **Chapter 4**, we provide an overview of how victims describe meaningful participation. However, like the VLRC, the VOCC does not seek to define participation. Having regard to how victims describe meaningful participation, the VOCC considers it more significant to ask not how participation should be defined, but how participation can be facilitated. In other words, what are the enablers of participation?

Accordingly, when we talk about ‘participation’ or ‘participant’ in this report, we are talking about the common uses and concepts associated with these words, rather than any legal or other prescribed definition. That is, we mean that:

- a ‘participant’ is a person who takes part in something
- ‘participation’ is the action of taking part in something.

When referring to participation – or taking part in something – we acknowledge that this can occur on a spectrum. This report aims to explore this spectrum of participation in more detail in relation to specific aspects of a victim’s justice experience, particularly across **Chapters 6 to 11** where victims describe their participation during certain parts of the justice process.

Key elements of participation identified in research

Scholars and researchers have developed different ways of understanding what it means for victims to participate. While their approaches may differ, there are common elements across the research.

The VLRC said that ‘participation is a broad concept and takes many forms’.²⁴ The VLRC referred to:

- ‘involvement’ and ‘input’
- giving victims a voice
- considering victims’ preferences.²⁵

The VLRC did not envisage ‘participation’ as extending to victims having decision-making power.²⁶ Instead, participation was envisaged as victims having ‘opportunities to meaningfully communicate and contribute to decision-making processes, without carrying the burden of responsibility that comes with prosecutorial decision making’.²⁷

Ian Edwards describes participation as:²⁸

- providing *information* to victims (e.g. about the hearing process and when court events will take place)
- *consulting* with victims (e.g. about their views on whether to accept a plea of guilty to a lesser charge), and
- enabling victims to *express* their views (e.g. about the impact the crimes have had on them).

Edwards said that the term participant is linked to the idea of ‘citizenship’ which involves a person being able to make decisions about their life and ‘to have a say in those social and political structures forming the basis of community and state organization’.²⁹

Douglas Beloof says that as a participant, a victim has rights to participate intermittently in criminal processes, in contrast to a party who participates in the entire criminal process.³⁰ Further, a victim’s rights to participate exist independently of the prosecution and the accused and independently of whether the victim is a witness.

Kathleen Daly has defined victim participation differently, focusing on participation as victims being

²⁴ Ibid 132.

²⁵ Ibid.

²⁶ Ibid 133.

²⁷ Ibid.

²⁸ Ian Edwards, ‘An Ambiguous Participant: The Crime Victim and Criminal Justice Decision-Making’ (2004) 44 *British Journal of Criminology* 967, 975–76.

²⁹ Ibid 975.

³⁰ Douglas E Beloof, ‘The Third Wave of Crime Victims’ Rights: Standing, Remedy, and Review’ (2005) 2005 (2) *Brigham Young University Law Review* 255, 270–72.

informed, asking questions and receiving information. Daly then considers other aspects of what victims seek from the justice system, such as being a *voice* (to tell their story and the impact the crime has had on them); *validation* (affirming that the victim is believed); *vindication* (this involves both affirming that the act was legally/morally wrong and that the perpetrator's act(s) were wrong); and *accountability* (that the offender be required to give an account/take responsibility for their actions).³¹

Marie Manikis says that *accountability* is emerging as a new form of, and reason for, victim participation. This form of participation involves victims undertaking a 'monitoring and oversight role to ensure that errors are discovered and accounted for'.³² This kind of victim participation applies where a decision has already been made by the prosecution or a court and a victim is able to seek some form of review of that decision.

Victims' current participatory entitlements

Articulating the victim as a 'participant' in the criminal justice system provides a unifying idea of the role of a victim rather than a term from which rights and entitlements necessarily flow. That is, rights and entitlements do not necessarily flow because victims have 'participant' status under the Victims' Charter. In this regard, the inclusion in the Victims' Charter of victims as participants is an aspirational legislative change – one that seeks to address the perceived need for longer-term cultural change and a shift in the way in which victims are perceived by actors in the justice system.

There are, however, participatory mechanisms for victims in Victoria underpinned by legislative entitlements.

Victims' participatory interests and entitlements sit across many different pieces of Victorian legislation.

Across these provisions, victims' participatory interests and entitlements can be broadly categorised as falling into four categories, with varying levels of passivity or 'active' entitlement:

Aspirational/ guiding principles	→	Legislative provisions that espouse victim participation but do not provide specific participatory mechanisms (either in definition or procedure)
Participation 'enhancers'	→	Legislative entitlements that may enhance participation but do not involve substantive participatory rights. Such entitlements may include protections for victims (e.g. privacy, safety and special arrangements for giving evidence)
Participatory 'interest'	→	Legislative provisions that consider victims' interests (and sometimes their views) but without giving the victim any substantive participatory rights or providing any formal mechanism to include the victim in the process/decision making
Substantive participatory entitlements	→	The victim can intervene, express views, be heard or have a formal role.

An analysis of participatory provisions across Victorian legislation demonstrates that the vast majority of provisions can be categorised as participation 'enhancers' or participatory 'interests'. Provisions of this nature may enhance participation, or consider victims' interests in the process, but not involve substantive participatory rights.

As such, victims' participatory opportunities in Victoria are dominated by provisions which do not provide for substantive participatory rights or provisions, or where there is no formal mechanism to include the victim in the process at all.

Examples of these interests and entitlements in Victorian legislation are provided in **Table 3** below.

³¹ Kathleen Daly, 'Reconceptualising Sexual Victimization and Justice' in Inge Vanfraechem, Antony Pemberton, Felix Ndahinda (eds), *Justice for Victims: Perspectives on Rights, Transition and Reconciliation* (Taylor & Francis, 2014) 378, 387.

³² Marie Manikis, 'Expanding Participation: Victims as Agents of Accountability in the Criminal Justice Process' (2017) 1 *Public Law* 63, 67.

Table 3: Victims’ participatory interests and entitlements under existing legislation

Type	Examples
Aspirational/ guiding principles	<ul style="list-style-type: none"> • Under the Victims’ Charter, a victim is to be acknowledged ‘as a participant, but not a party, in proceedings for criminal offences’.³³ • Under the Victims’ Charter, victims of crime ‘are to be treated with courtesy, respect and dignity’.³⁴
Participation ‘enhancers’	<ul style="list-style-type: none"> • Under the Victims’ Charter, agencies are to have regard to the Victims’ Charter, agencies are to be responsive to the needs of victims, to provide information and referral, privacy protections, to have complaint avenues.³⁵ • Under the Victims’ Charter, victims should be given information about:³⁶ <ul style="list-style-type: none"> – outcome of bail applications – progress of an investigation – offences charged/not charged/modified/discontinued/pleas – a trial/hearing/appeal – the court process and how to attend court – their role as a witness. • Under the Victims’ Charter, victims in the indictable stream must be given reasons in relation to decisions to:³⁷ <ul style="list-style-type: none"> • modify charge • discontinue charge • accept a plea of guilty to a lesser charge. • The DPP is to give a victim information when making a decision to:³⁸ <ul style="list-style-type: none"> – agree to or oppose an application to cross-examine the victim at a committal hearing and – apply for, agree to or oppose an application for summary jurisdiction or – oppose an application for a sentence indication. • Under the Victims’ Charter, victims should be protected in court from the accused and their family/supporters.³⁹ • Certain victims have access to alternative or special arrangements for giving evidence including: <ul style="list-style-type: none"> – emotional support person⁴⁰ – limits on cross-examination⁴¹ – special hearings for giving evidence⁴² – use of audiovisual links to give remote evidence⁴³ – use of screens in court.⁴⁴ • There are limits on lines of questioning in sexual assault matters.⁴⁵ • Protection from cross-examination by the accused personally, in family violence and sexual assault matters.⁴⁶ • In mental impairment matters, victims are to be given notice of hearings and details of supervision orders.⁴⁷ • Some victims are eligible to be placed on the Victims Register and receive updates about the offender.⁴⁸

33 *Victims’ Charter Act 2006* (Vic) s 4. Under section 7A, investigatory agencies, prosecuting agencies and victims’ services agencies are to respect the rights and entitlements of victims as participants in proceedings for criminal offences.

34 *Ibid* s 6.

35 *Ibid* ss 6, 18, 7, 7A, 7B, 14, 19.

36 *Ibid* ss 8, 9, 9A, 9C, 10, 11.

37 *Ibid* s 9C.

38 *Ibid* s 9B(2).

39 *Victims’ Charter Act 2006* (Vic) s 12.

40 A complainant in a committal hearing of a sexual offence charge who is giving evidence or hearing a recording of evidence played may have a court-approved person present to provide emotional support: *Criminal Procedure Act 2009* (Vic) ss 133, 360.

41 Limits on cross-examination of children or cognitively impaired victims of sexual offences: *Criminal Procedure Act 2009* (Vic) ss 123, 198A, 350, 376.

42 At a directions hearing for a sexual offence with a child or cognitively impaired complainant, the court may require a special hearing to be held before or during the trial: *Criminal Procedure Act 2009* (Vic) ss 181, 363, 370; *Family Violence Protection Act 2008* (Vic) s 69(3).

43 *Evidence (Miscellaneous Provisions) Act 1958* (Vic) ss 42M, 42P.

44 *Criminal Procedure Act 2009* (Vic) ss 360, 364.

45 *Ibid* ss 341, 342, 343, 346, 349, 351.

46 *Ibid* s 123 (Part 4.5).

47 *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) ss 38C, 38D, 38E.

48 *Corrections Act 1986* (Vic) ss 30A, 30B, 30I.

Type	Examples
Participatory 'interest'	<ul style="list-style-type: none"> • A bail decision maker must take into account the known or likely view of a victim.⁴⁹ • The DPP must ensure the prosecutorial system gives appropriate consideration to the concerns of the victims of crime.⁵⁰ • Effect on the victims of a child offender must be considered when determining if a joint committal should proceed.⁵¹ • The court may decide not to give a sentence indication if there is too little information on the impact of the offence on the victim.⁵² • When there is a child or young person accused: <ul style="list-style-type: none"> – The court and prosecutor must consider the impact on the victim when determining whether to adjourn a proceeding to allow an accused child to participate in a diversion program or group conference. The impact on the victim is also to be considered when determining the type of diversion program.⁵³ – The victim's interest is to be considered when deciding whether a serious indictable youth offence is tried summarily. When considering sentencing options, the court must have regard to the impact on a victim.⁵⁴ • Special arrangements for giving evidence are available in sexual assault trials but require the court to consult with complainants about their preferences and wishes.⁵⁵ • The complainant in a family violence case may give evidence in chief by a recorded statement. The prosecution must take into account the wishes of the complainant.⁵⁶ • Victims must be considered if a prisoner applies to change their name or their sex if this is considered offensive.⁵⁷ • A victim of a serious offender is entitled to privacy. The court must have regard to the victim if it allows publication.⁵⁸ • On application, the Magistrates' Court may order a conviction of a person to become spent. The magistrate must consider the impact on any victim of the offence to which the application relates.⁵⁹

49 *Bail Act 1997* (Vic) ss 3AAA(1)(3), 5AAA (3)(a).

50 *Public Prosecutions Act 1994* (Vic) ss 24, 36(3), 38(2), 41(2), 43(3).

51 *Children, Youth and Families Act 2005* (Vic) s 516A.

52 *Criminal Procedure Act 2009* (Vic) s 208. Under the *Criminal Procedure Act 2009* the court may decide not to give a sentence indication if it has enough information on the offence's impact on the victim but there is no requirement or mechanism to consult with a victim: s 208.

53 *Children, Youth and Families Act 2005* (Vic) ss 356D(4)(c), 356F, 356G, 415.

54 *Ibid* ss 356(6)(c), 356A(2)(a).

55 *Criminal Procedure Act 2009* (Vic) pt 8.2 div 6, ss 376, 379, 381, 384, 385, 387.

56 *Ibid* div 7B.

57 *Corrections Act 1986* (Vic) ss 471(2)(d), 79B, 79C, s 47P(2)(d), 79HC, 79HD; *Children, Youth and Families Act 2005* (Vic) ss 488P, 488Q; *Serious Offenders Act 2018* (Vic) ss 260, 265D.

58 *Serious Offenders Act 2018* (Vic) ss 277, 280, 288, 289.

59 *Spent Conviction Act 2021* (Vic) ss 16, 19.

Type	Examples
<p>Substantive participatory entitlements</p>	<ul style="list-style-type: none"> • A victim has a right to make a complaint to the Victims of Crime Commissioner (VOCC) in relation to an agency’s compliance with the Victims’ Charter.⁶⁰ • The DPP must seek a victim’s views before making a decision to:⁶¹ <ul style="list-style-type: none"> – modify a charge – discontinue a charge – accept a plea of guilty to a lesser charge – oppose an application for a sentence indication – appeal a sentence or an acquittal. • Where the accused seeks production of records of a victim’s confidential communications with a doctor or counsellor, a victim (known as a ‘protected confider’) has a right to appear in the proceeding and make a submission and obtain legal advice.⁶² • If a court finds a person guilty of an offence, a victim of the offence may make a statement to the court (Victim Impact Statement, VIS) for the purpose of assisting the court in determining the sentence.⁶³ • In assisting the court in determining any conditions it may impose on an order made in respect of a person under the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> (CMIA), or in determining whether or not to grant a person extended leave – a family member of the person or a victim of the offence may make a report to the court.⁶⁴ • If a court finds or convicts a person guilty of an offence, a victim may apply to the court for a compensation order.⁶⁵ • Victims are entitled to apply for state-funded financial assistance.⁶⁶ • A victim is entitled to make a submission around the conditions of a supervision order, interim supervision order, detention order, interim detention order and review of orders and conditions.⁶⁷ • A victim in relation to a criminal act by a prisoner may apply (in writing) to the Secretary for information about the prisoner compensation quarantine fund.⁶⁸ A person included on the Victims Register may make a submission to the Board for consideration by the Board in determining whether to make a parole order.⁶⁹ • A victim can apply to a coroner for leave to appear as an interested party in a proceeding if they have a sufficient interest and it is deemed appropriate.⁷⁰ • A victim of an alleged sexual offence or a sexual offence can publish any particulars even where it is likely to identify themselves⁷¹ and a person with a sufficient interest may apply to a court for a victim privacy order in respect of a deceased affected person who was the victim of a sexual offence or an alleged sexual offence.⁷² • A victim of a sexual offence over the age of 16 years has a statutory entitlement to request the offence not be disclosed.⁷³ A victim of a sexual or family violence offence may apply to the court to review a suppression order relating to that offence and to that offence on appeal.⁷⁴

60 *Victims of Crime Commissioner Act 2015* (Vic) ss 25A, 25B, 25C, 25F, 25H, 25J, 25K; *Victims’ Charter Act 2006* (Vic) s 19B.

61 *Victims’ Charter Act 2006* (Vic) s 9B(1).

62 *Evidence (Miscellaneous Provisions) Act 1958* (Vic) ss 32C(5), 32D(2)(c); see also *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32BA inserted by *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic), which commenced on 7 September 2022.

63 *Sentencing Act 1991* (Vic) s 8K(1).

64 *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) ss 40, 42.

65 *Sentencing Act 1991* (Vic) ss 85B, s 85G, 85I, 85J (pt 4 divs 1 and 2).

66 *Victims of Crime Assistance Act 1996* (Vic).

67 *Serious Offenders Act 2018* (Vic) ss 27(2), 28, 30(2), 134, 135, 153, 154; *Corrections Act 1986* (Vic) s 30A.

68 *Corrections Act 1986* (Vic) ss 104X, 104Y, 104Z, 104ZA, 104ZE.

69 *Ibid* ss 74A, 74B, 104ZY.

70 *Coroners Act 2008* (Vic) ss 56, 66, 76A, 83, 115.

71 *Judicial Proceedings Reports Act 1958* (Vic) s 4(1BA).

72 *Ibid* s 4D.

73 *Crimes Act 1958* (Vic) s 327(5).

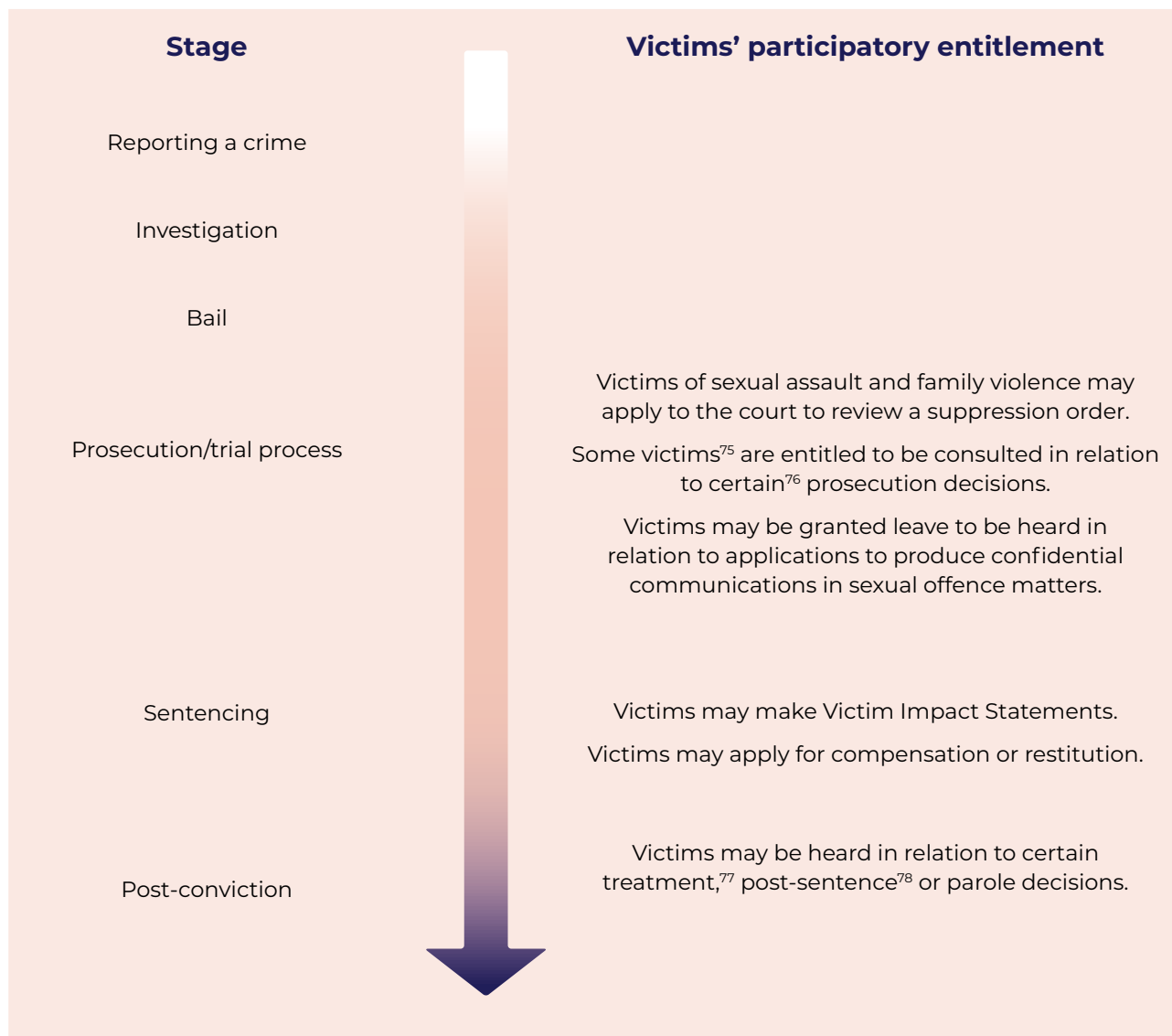
74 *Open Courts Act 2013* (Vic) s 15.

Mapping participation across the justice process

As noted above, there are few substantive participatory entitlements in Victoria granted to victims. Substantive participatory entitlements are those which specifically empower victims to participate or have a formal role at key stages of the justice process.

Figure 1 below outlines these substantive participatory entitlements mapped against the 'traditional' or formal justice process aligned with a criminal process.

Figure 1: Substantive participatory entitlements across the justice system



⁷⁵ In indictable crimes prosecuted by the Director of Public Prosecutions (DPP), the DPP is to seek the views of the victim before making certain prosecution decisions: *Victims' Charter Act 2006* (Vic) s 9B.

⁷⁶ Victims' views are to be sought by the DPP in relation to decisions to substantially modify the charges, discontinue the prosecution, accept a plea of guilty to a lesser charge, oppose an application for a sentence indication or appeal a sentence or appeal an acquittal: *Victims' Charter Act 2006* (Vic) s 9B.

⁷⁷ Where a person is found not guilty or unfit to stand trial due to mental impairment: *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).

⁷⁸ In Victoria, serious sex offenders and serious violent offenders who present an unacceptable risk to the community can be made subject to ongoing supervision or detention after they have served their prison sentence. See Post Sentence Authority, *Post sentence scheme* (Web Page, 31 January 2022) <<https://www.postsentenceauthority.vic.gov.au/post-sentence-scheme>>.

Participatory entitlements outside the criminal trial process also include:

- seeking leave to appear as an interested party in coronial proceedings⁷⁹
- having the right to make a Victim Report in *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* processes⁸⁰
- the right to seek state-funded financial assistance and to have legal representation to do so.⁸¹

Few of the participatory entitlements set out in **Figure 1** provide a mechanism for enforcement, or for a breach to be remedied in such a way that a victim's participation can be secured before that procedural step is finalised. For example, if the Director of Public Prosecutions (DPP) fails to consult with a victim about a plea decision, a victim can only complain to the VOCC when the prosecution of that offence is finalised, therefore limiting practical remedies for an aggrieved victim.

Furthermore, some provisions:

- provide for exceptions, or only apply to certain victims⁸²
- are not included in the Victims' Charter, limiting victims' ability to complain about alleged breaches to the VOCC
- are difficult to realise or uphold in practice due to the way in which the justice system (or certain aspects of it) operates, such as speed of court proceedings⁸³ and lack of coordination across agencies/services
- are almost impossible for a victim to be aware of without access to independent legal advice or representation.

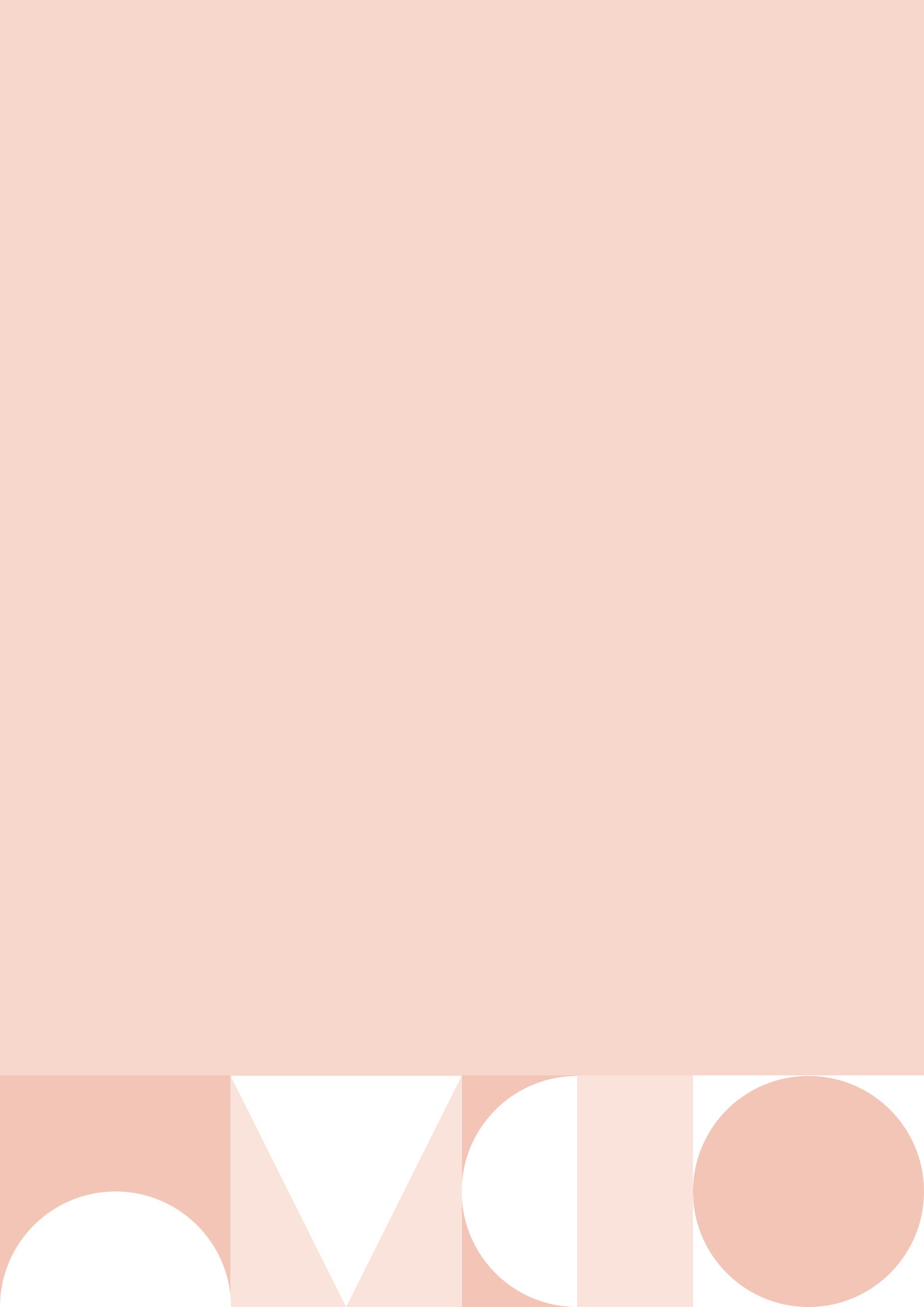
⁷⁹ *Coroners Act 2008* (Vic) s 56.

⁸⁰ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 42.

⁸¹ *Victims of Crime Assistance Act 1996* (Vic) s 48.

⁸² For example, victims' views are to be sought by the DPP in relation to a decision to substantially modify the charges, discontinue the prosecution, accept a plea of guilty to a lesser charge, oppose an application for a sentence indication, appeal a sentence or appeal an acquittal, but such requirements only apply in indictable crimes, not crimes prosecuted by Victoria Police in the summary jurisdiction: *Victims' Charter Act 2006* (Vic) s 9B.

⁸³ A key example of this is the difficulty faced by victims in the Magistrates' Court who often do not have an opportunity to make a VIS because of the processes and speed of matters heard in the summary jurisdiction. This is discussed in detail in Chapters 9 and 18 of this report.



Part 2:

Are victims participating?

Part 2 of this report explores whether victims feel like they are participants in the justice system.

This part of the report focuses on what the VOCC heard through engagement with victims and stakeholders. It examines:

- whether victims feel like participants
- structural and systemic barriers to participation
- participation at specific points in the justice process.



Overview of Chapter 4: Do victims feel like participants?

This chapter outlines whether cultural change has occurred since changes were made to the *Victims' Charter Act 2006* (Vic) in 2018 to recognise victims as participants in the justice system.

Many victims told the Victims of Crime Commissioner (VOCC) they did not feel like a participant in the justice system. Victims expressed concerns about:

- feeling excluded from processes
- not being part of decision making and not having a voice
- not getting the information needed, or not getting information often enough, to participate
- not being recognised as a party to the criminal proceeding and not having a role in the court process
- losing choice and agency through the justice process.

Many victims told the VOCC they would not want to participate in the justice process again because:

- the system causes further trauma
- they lacked confidence in the justice system
- they did not feel safe.

The VOCC heard from key stakeholders that victims' treatment and status in the justice system – and the cultural change needed to improve victims' treatment and status – was not occurring.

Victims' professionals highlighted a lack of regard for victims' views, few opportunities in the Magistrates' Court for victims to participate, and issues accessing basic information such as updates about the investigation or progress of the prosecution. This leaves many victims unable to participate meaningfully in the justice system.

Other stakeholders felt there had been some cultural change, although much more was needed.

Through victim engagement, the VOCC heard that meaningful participation for victims includes:

- feeling included in the process
- having a role in decision making
- having a voice and having the opportunity to express feelings
- being recognised as a party to criminal proceedings (or having official 'status')
- having a role in the court process and being able to be present in court at key times
- getting sufficient information to enable participation, including accessible and timely information
- being updated about the progress of investigations and prosecutions
- procedural fairness
- having the choice to participate and having choice and agency during the process
- understanding victims' role and entitlements
- getting reasonable adjustments for disability to enable participation.

4

Chapter 4:
**Do victims feel like
participants?**



Introduction

Many victims of crime experience unimaginable trauma. Becoming a victim of crime can have far-reaching consequences and victims of crime can experience various short and long-term effects following a crime.

Because crime victimisation can have such profound impacts on victims, they are deeply invested in the justice system response to crime. This investment in the justice system response is enshrined in the *Victims' Charter Act 2006* (Vic) (Victims' Charter) which recognises 'that a victim of crime has an *inherent interest* in the response by the criminal justice system to that crime' (emphasis added).

This chapter outlines what victims said about their experience of participation in the justice system. It elevates the voices of victims, lived experience experts and advocates.

The chapter is focused on whether cultural change has occurred since changes were made to the Victims' Charter in 2018 to recognise victims as participants in the justice system based on an interrogation of:

- whether victims felt like participants during their justice process
- what a lack of participation looks and feels like for victims
- victims' willingness to participate in the justice system again
- what positive experiences of participation looks and feels like for victims.

This chapter also includes broader stakeholder views on victim participation to provide further context about the culture of victim participation across the justice system.

The following chapters focus on structural and systemic barriers to participation, and on participation at specific points of the justice process.

Victims' experiences of participation

Victims' general experiences of participation were the key focus of the Victims of Crime Commissioner's (VOCC) Victims' Survey, the VOCC's interviews with victims of crime, and consultation meetings with lived experience experts and victim advocates.

Were you treated like a participant in the justice system?

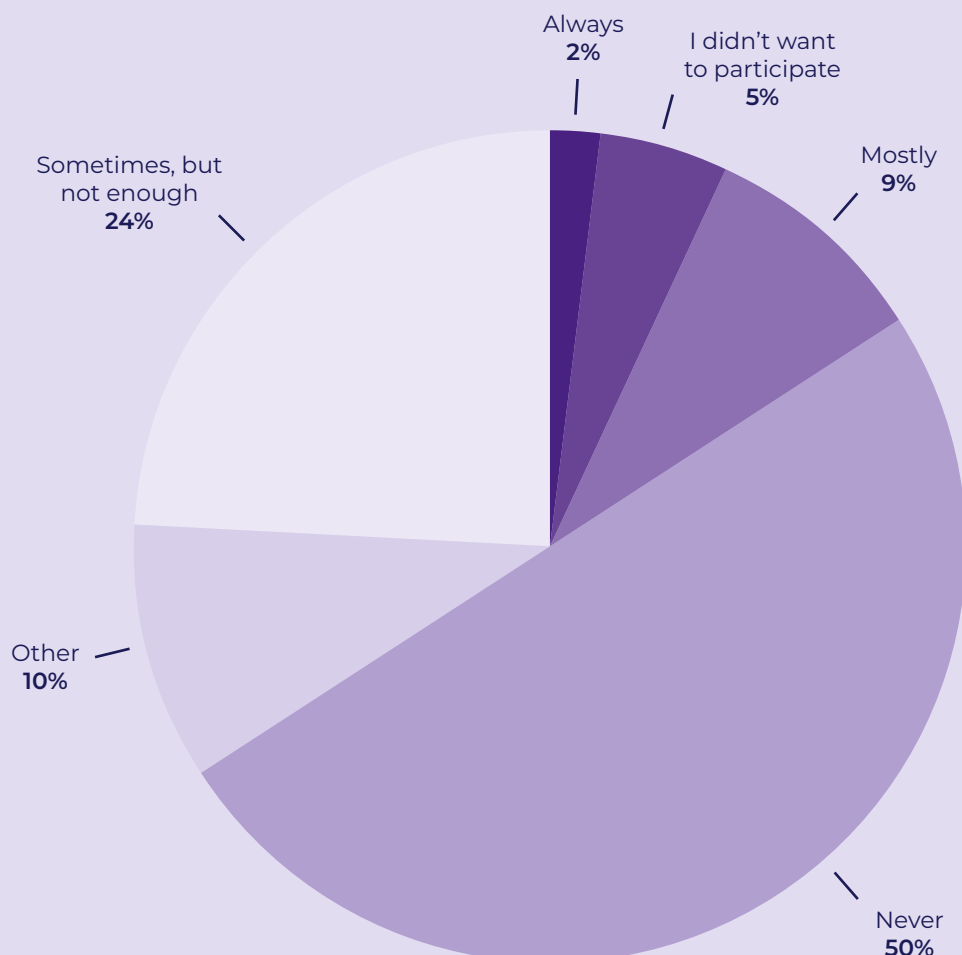
Victims surveyed by the VOCC were asked if they felt that they were treated like a participant in the justice system.

Fifty per cent of respondents stated they were never treated like a participant in the justice system. A further 24 per cent said they were sometimes treated like a participant, but not enough. Taken together, 74 per cent of victims surveyed said they were never treated as a participant, or only treated as a participant sometimes. Only two per cent of respondents stated that they were always treated like a participant.

A full breakdown of responses can be seen in **Figure 2** right.



Figure 2: VOCC Victims' Survey: Were you treated like a participant in the justice system?



In relation to general feelings of participation, victims surveyed told the VOCC:



'I've not had any participation.'

'I was never given an option to participate by the police force or court system.'

'I have never felt I was heard, understood, or believed.'

- Victims' Survey respondents

One victim of crime interviewed by the VOCC, responding to the question of whether they felt like a participant, said: 'The answer is a flat no. And I felt very detached from the system.'¹ Another victim interviewed said: 'I was absolutely not treated as a participant – only on a few occasions.'²

¹ Interview 10 – Victim of family violence.

² Interview 13 – Victim of sibling family violence.

What lack of participation looks and feels like

Key themes emerged about what a lack of participation looks and feels like for victims. These themes included:

- feeling excluded from processes
- not being part of decision making and not having a voice
- not getting the information needed, or not getting information often enough, to participate
- not being recognised as a party to the criminal proceeding and not having a role in the court process
- losing choice and agency through the justice process.

A member of the Victim Survivors' Advisory Council spoke about the potential of being a 'participant' and how this word invokes feelings of inclusion. However, this member felt that such participation was an illusion:



*'When I hear the word "participant" it is a happy feeling. It feels like I am in the game and I'm being recognised but the more I am in the process, I realise it is only an illusion. It is quite upsetting, but that is the truth for me in my current journey. We need to tackle the gaps here so that our victims' rights can become reality and not just a mere illusion.'*³

A victim representative of the Victims of Crime Consultative Committee suggested that 'participant' may not accurately represent how a victim is treated by the justice system: 'The word 'participant' is interesting to me. I have always felt more like a spectator in my own life and that other people have had more rights and control over information relevant to my circumstances than I do.'⁴

Another representative of the Victims of Crime Consultative Committee expressed feelings of cynicism in relation to victims being participants based on their experience of the justice system:



*'I feel very cynical about whether or not victims are "participants" in the justice system. I had to endure a very lengthy justice process, with contested proceedings and an appeal at the Supreme Court; the matter took 5 years to resolve. As someone who had never set foot in a courtroom, it was a nightmare. I wasn't treated as a participant or even an observer. It was like a tv show being played in front of me. It was a tick and flick process. I never felt like a participant.'*⁵

During interviews with victims, some victims were confused about what was meant by being recognised under the Victims' Charter as a 'participant' or by the concept of 'participation'. This confusion and uncertainty indicates that even though victims are entitled to be treated as participants under the Victims' Charter, because the concept of 'participation' is not defined in the Charter, and victims are rarely advised of this entitlement, it may be hard for victims to know what this means, or what this looks like in practice.

Feeling excluded from processes

Feelings of being excluded from the justice process were frequently articulated by victims. Exclusion came in different forms, but included lack of accommodation for disabilities, decisions being made without victims' knowledge or without consultation, and feeling treated as a mere 'spectator'. One victim of crime surveyed by the VOCC described being 'talked around and about often', while other victims referred to being relegated to the status of a mere witness. Consistent with previous research,⁶ victims also spoke about being bystanders, spectators, marginalised, powerless and being relegated to the role of a passive witness.

³ Consultation Meeting 11 – Victim Survivors' Advisory Council.

⁴ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁵ Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) ss 38C, 38D, 38E.

⁶ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 90.

Victims' own voices on feelings of exclusion are outlined below:



I feel like I was treated as subhuman and that they were excluding me from the court, the police and the justice system because of my disabilities.⁷

'I could have had ANY participation and it would have been better. Instead decisions were made without consulting me, without my knowledge and I just had to put up with the result. It's all performative, they don't care about real world consequences.'

'...we were never really made to feel that we were involved because we weren't able to say anything throughout the court process. You turn up, you're told not to speak to the media. You sit in the court...And you're there, but you're not part of the process. You're just spectators.'⁸

'I feel like I am talked around and about often. I get that for preservation of evidence but a trauma informed system would understand how this is deeply traumatizing given the nature of these crimes taking away autonomy to begin with.'

'I felt excluded...'

'Once the case was in the Courts, I was told I was only a witness and not entitled to any information from the Court.'

'...we were just almost bystanders in the whole process. We were informed but in no way was our experience, fears, concerns or even the consequences of the crime or the whole process really looked at...'⁹

'I've felt totally marginalized through the whole process. No voice at all.'¹⁰

'Could have been given more information as to what was happening with the investigation process or been able to participate in some way so I didn't feel so useless and depressed'

'The police did not respond in good time, did not take due care and attention of the victim, were dismissive entirely of the trauma caused and did not include the victim and family in the process at all.'

'Was not given the opportunity to be present for the verdict or sentencing and not given any information regarding what the jury thought or what the judge said.'

'Although I was the victim of the crime I felt I had not power in the process. Being called a witness and not a victim, makes it seem like you have a very minor role in something that was done to you.'

– Victims' Survey respondents and victim interviewees

Some members of the Victim Survivors' Advisory Council spoke about the justice system feeling like a game, with the victim 'benched' or on the sidelines. One victim survivor said:



'Sometimes it feels like there is a game being played when you go to court and you hope to be a participant but you are actually just benched and sidelined with no control or input. It is something happening to you rather than something you have any control over or input into.'¹¹

⁷ Interview 1 – Victim of crime.

⁸ Interview 7 – Caterina Politi.

⁹ Interview 17 – Victim of crime.

¹⁰ Interview 12 – Victim of crime.

¹¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

Similarly, another victim survivor said:

*'My wish is that we find a way to keep victims in the loop and informed so that as participants, we are not benched while the game is playing out. At this moment, victim survivor participants cannot even see the field!'*¹²

One victim surveyed by the VOCC spoke about being excluded from the courtroom, and how this felt like the accused's rights were elevated above victims' rights despite otherwise feeling included in the process:

'I have very much felt like I was included in this process, however there have been occasions when I have not been allowed to sit in on a proceeding due to the Court being "closed" – despite the accused being allowed to participate. I am of the view that Judges need to provide reasons for victims to be excluded from this process. I understand that it is necessary to ensure some information is kept restricted – but it also demonstrates that we are not all equal when it comes to procedural fairness.'

– Victims' Survey respondent

Another victim interviewed by the VOCC spoke about not feeling like a participant because of the Victims of Crime Assistance Tribunals' practice of notifying perpetrators and enabling them to attend VOCAT hearings:

*'I didn't feel like a participant because both of the men that I made statements about were invited to attend the court date. One of these men said replied that they would attend. When I told my lawyer that I didn't want to be in the same room as the man who attacked me, my lawyer made no arrangements to make sure I wasn't in the same room...'*¹³

Not being part of decision making

Many victims articulated a lack of participation during decision-making processes and feeling like their voice was unimportant or ignored. Victims clearly articulated a need to actively participate in decision-making processes rather than merely being told after the fact, particularly at key points of the process such as charging and during plea negotiations:

'I would have liked to participate more in the process. I would have liked to have been asked about the plea deal before it was offered to the offender.'

'I had very little time with the legal team and they offered a plea deal without consultation.'

*'...we had no say in [the plea decision]. The deal had had already been done. Yes, it's to save you from going through courts and all that, but if that's what we had to do, that's what we had to do. Yes, it would have been hard, but it's no harder than burying my son.'*¹⁴

– Victims' Survey respondents and victim interviewees

¹² Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹³ Interview 14 – Victim of crime.

¹⁴ Interview 7 – Caterina Politi.

Victims described wanting a greater voice, to be heard and wanting to participate actively during the process and before decisions were made. Participation was described by victims as more than just being told what the process is. Some victims surveyed by the VOCC described being included, but only in a limited way:

'We kind of felt included in the process, as in being informed, but only as a bystander. Whilst they said they would take into account our thoughts, we were told that in the end the prosecution team would make the final decisions.'

'It's not good enough to just "explain" processes. Justice involves including the victim as part of the decision making. I was not included in any decision making. I was simply told what would/wouldn't happen.'

– Victims' Survey respondents

One victim interviewed by the VOCC spoke about being included but only 'to a point' and said that 'when you ask the hard questions, you're shut down'.¹⁵

'Voice', 'being heard', 'speaking' and 'having no say' were significant themes in victim engagement, as demonstrated by these respondents to the Victims' Survey and those interviewed by the VOCC:

'I know the crime is against the state and not the victim but it is the victim that is hurt and significantly affected and they need to be given a greater voice in the process.'

'...you need that opportunity to have your voice heard. And I do feel that is such a big thing in healing yourself is to have your story told. And the effect that it has. An everlasting effect.'¹⁶

'...felt pressured to drop charges...had police turn up at my workplace randomly to get my signature on charges being dropped. Didn't view documents I was so embarrassed I just signed them. Didn't feel included in process of charges dropped.'

'You have no control and no say. That is disturbing and so disempowering and that is particularly evident when there is no follow up. This might happen in relation to court hearings or the downgrading of charges.'¹⁷

'I could've spoken for myself and not been a Jane Doe.'

'[I] should have been able to speak about how [I] felt...'

'If it is about you or someone close to you, your voice should be heard. It's going in the right direction, being a participant. The perpetrator needs their rights, but it needs to be 50/50.'¹⁸

– Victims' Survey respondents and victim interviewees

¹⁵ Interview 8 – Victim of crime.

¹⁶ Interview 5 – Victim of crime.

¹⁷ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁸ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

Inadequate information

A major theme underpinning lack of participation for victims was not getting the information needed, or not getting information often enough, to participate. This included from police and prosecutors and spanned the investigation, prosecution and court processes. Some victims said they were 'told nothing', while others said they didn't get sufficient answers or updates about the progress of their matter. For example, some Victims' Survey respondents stated:



I was told nothing!

'I didn't get enough answers and updates.'

'After initial reporting of crime had little contact from police. No information on the investigation process or my rights in relation to the crime.'

- Victims' Survey respondents

One victim of crime interviewed by the VOCC highlighted the fundamental importance of information provision as essential to participation:



*'The aspects of participation that are most important to me are timely communication. I think timely communication of what is required by all parties, but primarily the victim, about actual process you are taking part in. Because if you do not understand why certain questions are being asked at certain times, and if things are left to the last minute and you don't know what they are, it's like how come I was not given this information. So I think every step of the process should be communicated in a timely manner.'*¹⁹

Victims spoke about being 'blind-sided' because of lack of information, missing court dates because critical updates were not provided, and not being advised of plea negotiation outcomes:



'...the OPP [Office of Public Prosecutions] didn't keep us informed and we were completely blind sided by the outcome at the sentence appeal, the victim blaming and the submissions made – it was horrific'

'...the police forgot to tell me the final court date so i missed [the offender] being charged.'

'I was hardly kept up to date with what was happening with the court process and now that the main offender has had most of the charges reduced and then gotten off of all charges without conviction on appeal, I feel completely abandoned and at no point has a prosecutor got in contact with me to discuss what is going on.'

*'Police informants would advise us not to attend court, stating nothing would happen, and then something would happen, and we would miss it.'*²⁰

- Victims' Survey respondents and victim interviewees

One victim recalled learning about changes to the charges in their matter via the media:



'As I never actually asked what the charges were, I just went by what was printed in the media on the offender's arrest. The changes in position and personnel might have had something to do with this, however I only realised after conviction that the charges had changed.'

- Victims' Survey respondent

¹⁹ Interview 13 – Victim of sibling family violence.

²⁰ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

Victims spoke about the need for victims to be informed of their rights, for information to be more accessible, for information to be provided in different formats and for more opportunity to 'debrief' or ask questions:

'...was given no information about my rights as a victim and i struggled to not feel discarded by the system'

'The information/pamphlets were helpful but generic. Explanations or updates in writing after a phone call would have been helpful as I didn't always take in all the information given.'

'...being a victim of crime doesn't mean that I/we are ignorant or stupid. I mention this because the process is not victim friendly ie. Legal language can be difficult to understand (in lay men's terms), a lack of opportunity to debrief, ask questions, know what is ahead to prepare for "emotionally".'

'There should be thorough processes and abundant information available throughout the process. Not all victims will want all that information but it should still be available.'

– Victims' Survey respondents

One victim also spoke about the need for a more culturally sensitive approach to information provision:

'Being a newly arrived migrant woman with limited English at the time, I found it very difficult to understand the process and the legal system. I felt intimidated dealing with the police and the court system as in my culture they are the authority and mainly male figures. It would be great to have resources available in language other than English, someone to walk you through the process and also more female officers and judges?'

– Victims' Survey respondent

A member of the Victim Survivors' Advisory Council spoke about having to chase information from police 'to no avail', causing great distress and anxiety:

'This lack of progress of a case is not only going against the victim charter but also causes great distress and anxiety to us as victim survivors and reaffirms how we cannot rely on police. The purpose of the Victims' Charter – the very basic requirement of keeping a victim updated – is not being fulfilled. Ultimately victims are not getting updated. I have heard many victim survivors who just want to know what is happening so we can better protect ourselves. We don't care if police can't support us – we just want to know what is happening so we can protect ourselves.'²¹

Another victim interviewed by the VOCC spoke about trying repeatedly to communicate with police and feeling unheard:

'Because this offending happened over 40 years ago, you tell your story. But then as you go away, you remember other things and you think "well, if that's useful..." so I rang [police]. And I never got a reply. So...you just make yourself an irritant. I rang every day for 20 days straight. No response. Really fucked...To the point where I thought, "she thinks that I'm a lunatic". That just made it a whole lot worse.'²²

²¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

²² Interview 6 – Victim of crime.

A Victim Representative of the Victims of Crime Consultative Committee spoke about how being kept up to date and given an opportunity to say how victims felt about certain things 'are all really important ways to show that people are participants in that sphere'.²³ This same Victim Representative said:

*'You're not a participant in the system. The prosecutors didn't care to meet with us or explain anything. It goes back to secrecy to protect the perpetrator, and that secrecy lends itself to victims not feeling like they know what happened. An early plea was taken to a lesser charge, but I only got a presentation as to what was agreed. I still don't really know what happened that day, just what was agreed to in the end.'*²⁴

Not having a role during court proceedings

Some victims clearly articulated a desire to be recognised as a party to proceedings, not just a participant:

'[I wanted to be] a recognised party (not just a participant) in the criminal matter'
*'What we need is legislative changes that recognises that we have a legal interest in the matter, because it turns out life upside down. We must have a legal status. The victim is a legal nothing. We are traumatized. We are completely lost...'*²⁵

– Victims' Survey respondent and victim interviewee

Other victims of crime spoke about wanting more active participation during the process, but not necessarily as a 'party', as outlined in these responses to the Victims' Survey:

'I would have liked to be able to talk to the offender and ask questions about the offence. I would have liked to have been recognized by the judge and been able to ask a question.'
'I'd have liked the chance to explain the impact of the offending on me to my perpetrator and for him to be required to respond. I'd have liked to have been referred to by my name not called 'the complainant' as if I'm a whinger for wanting years of violence, control and rapes to stop.'

– Victims' Survey respondents

One victim interviewed by the VOCC spoke about the fact that nobody works for the victim and about feeling like an 'appendage': 'I was shocked when I found out that the barrister doesn't work for us. We're nothing. We are just like an appendage.'²⁶

Another victim spoke about their dismay at how little difference their Victim Impact Statement would make at sentencing:

*'I read it [my victim impact statement] out aloud in court in the hope – and this is where the naivete comes in – that it would make a difference to the sentence. It doesn't. In my belief, the sentence is decided before you even step into the County Court. The outcome is already decided. Going through the court system is just a formality.'*²⁷

²³ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

²⁴ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

²⁵ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

²⁶ Interview 5 – Victim of crime.

²⁷ Interview 8 – Victim of crime.

Losing choice and personal agency

A member of the Victim Survivors' Advisory Council spoke about losing choice and personal agency in the criminal justice process and how this affects participation by victims:

*'As a victim survivor as soon as you report to police you lose choice and agency over what happens next. You have no control and no say. That is disturbing and so disempowering and that is particularly evident when there is no follow up. This might happen in relation to court hearings or the downgrading of charges. I was told there was no way the charges would not be downgraded, but the charges were downgraded, and this happened without my input which was disempowering. It emboldens perpetrators and can impact their future victims.'*²⁸

A Victim Representative of the Victims of Crime Consultative Committee also told the VOCC that 'Having a choice, feeling in control are all important factors.'²⁹

Willingness to participate in the justice system again

In the VOCC's Victims' Survey, victims were asked whether they would want to participate in the justice process if they were a victim of crime again. Responses to this question, both positive and negative, help build a picture of what safe participation looks like for victims of crime.

Almost half of respondents (45 per cent) indicated they would not want to participate in the justice process again.

Responses centred on the following key themes:

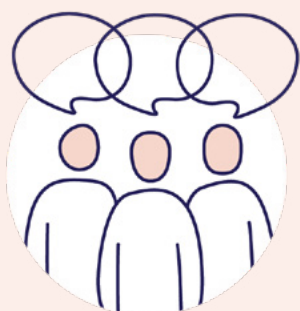
- the system causes further trauma
- they lacked confidence in the justice system
- they did not feel safe to participate in the justice system.

For those victims who said they would participate again, key themes were:

- being able to have a voice/be heard
- normalising victim participation in the justice system
- holding the perpetrator to account.

Other respondents indicated they would only participate again if there were system reforms.

Victims' views on willingness to participate in the justice system are explored further below.



45%

Almost half of respondents to the Victims' Survey (45 per cent) **indicated they would not want to participate in the justice process again.**

²⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

²⁹ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

System causes further trauma

Many victims indicated that they would not be willing to participate in the justice system again because of the trauma and harm caused by participating – that is, secondary victimisation.

Respondents to the Victims' Survey articulated the incredible toll of participating in the justice system:



'No. It's a waste of time and causes further trauma.'

'no. it only traumatises you more than you have already been traumatised. It does nothing to protect you'

'I would love to be able to say yes, but honestly, I cannot.'

'No too traumatising waste of time'

'No i would never participate in the justice system ever again. It's too invalidating and retraumatising. I tell every woman I know not to trust the police, not to trust the courts and certainly not to trust VOCAT.'

'No. It was traumatising to myself and to my children.'

'no the system is not design for the victim, systems are design for the welfare of the perpetrator'

'Absolutely not! I have experienced so many negative, dismissive responses from police that I would be extremely hesitant to even bother reporting a crime.'

– Victims' Survey respondents

Lack of confidence in the justice system

Aside from the risks of secondary victimisation, many victims lacked confidence in the justice system response to crime. Victims expressed feelings of hopelessness, unjustness, disappointment, and general distrust of the system.

Respondents to the VOCC's Victims' Survey frequently described the system as 'useless', a 'waste of time' or letting them down:



'No. For me it seems to be useless. There is no help for a victim of rape/assault/sexual assault when the bottom line is it's a "he said/she said" case.'

'No its unjust and useless'

'No it's a waste of time'

'No the court system has let me down now for 2 years so I am not sure I would report to police ever again.'

'Don't see the point as it felt to me like nothing was done.'

'I don't trust the police or the system, it's let me down every time.'

'NEVER EVER because:

- 1. There is less than a 1% conviction rate in sex assault matters that are reported to police*
- 2. The Vic OPP has disbanded its specialist sex assault prosecution service, so they've given up on these cases.'*

– Victims' Survey respondents

Some respondents to the Victims' Survey suggested the accused/offenders receive more support than victims:



'No, I feel let down by it. It seems criminals have more rights than victims and this makes it an unjust system.'

'I can't see any point. The victim is not looked after at all. And the justice if any is none. The perpetrators are cared for and given more opportunity to be rehabilitated than the victim.'

– Victims' Survey respondents

Other respondents to the Victims' Survey described concerns around the idea of receiving 'justice', with one respondent referring to it as the 'injustice' system:



'Absolutely not and as an active child sex abuse awareness advocate I would be telling other victims not to go to the injustice system.'

'I would like to believe in justice, but it doesn't come from the justice system.'

'No. There is no justice.'

'No. I have never had anything close to justice served for me.'

– Victims' Survey respondents

Not feeling safe to participate in the justice system again

Some respondents to the Victims' Survey indicated that the justice system was not safe and that participation in the justice system caused more harm:



'no, I do not feel safe and will not feel safe again'

'No. Death is safer than police, court...who do more harm and unsafe.'

'No- if I could do things again. I would just flee, relocate to a different state and stay undetected as long as possible to give us all time to recover from the horrific abuse.'

'No. I feel like I would gain better healing outcomes using the professional supports I have sought out to try and help me through this. I even said to my young adult daughter that if something happened to her I'm not sure I would advise her engage the justice system.'

– Victims' Survey respondents

Participation is an opportunity to be heard

Some respondents to the Victims' Survey indicated they would participate in the justice system again because it is an opportunity to be heard and to normalise victim participation in the process:



'Yes because then at least I feel like I have a voice and am not just a victim'

'Yes, because then you get to have your say'

'yes, bigger voice for families of victims'

'Yes I would. I believe that the more victims can participate and subsequently normalise their presence in the justice process, the more all participants will come to accept that this is a meaningful and respectful process for all. However guidance and support to participate is paramount.'

'Definitely. I now have a better understanding of my rights, and how and where to get help and advice.'

'Yes to show that you can be strong'

– Victims' Survey respondents

Holding the perpetrator accountable

A number of respondents to the Victims' Survey indicated that they would participate in the justice system again as a mechanism for holding the perpetrator accountable:



'Yes I would want to participate...Although I found the process very difficult I believe in the justice system and would report any crime and assist with prosecution, as without this there is no accountability for crimes committed.'

'Reluctantly yes. It gave me my freedom and safety – the process was re-traumatising and needs reform – but it is still vital. When victims ask for a response from the State they deserve an appropriate one. We will not achieve prevention without accountability.'

'Yes, it is important victims of crime be represented and have an opportunity for their voice to be heard and perpetrators of crimes be held to account. Sadly, not enough child abuse/sexual assault cases are prosecuted – there needs to be increased accountability for perpetrators and sentencing to represent the heinous nature of the crime'

'Yes I would participate in the justice process if needed... Law and order is important.'

'Yes I would participate in the justice system again because achieving justice after [many] years has most definitely been my greatest achievement in life despite how horrendous these experiences have been.'

– Victims' Survey respondents

Need for system reforms

Some victims spoke about their willingness to participate in the justice system in the future being contingent on system reforms, including having:

- more support and knowledge about the process
- independent legal representation
- more participatory entitlements.

For example, one respondent to the Victims' Survey stated:

'My gut says NO but my head is saying yes. I would use my previous experience/s to inform and be heard in the hope that change/s have been made based on victim responses and feedback. So, I would if it was a new and improved process.'

– Victims' Survey respondent

Some victims were unsure if they would participate again. Respondents to the VOCC's Victims' Survey tended to be unsure because they had lost faith in the justice process or because they felt the system was too traumatising. One respondent stated: 'If I were a victim of crime again I'm not even sure I would bother with getting involved in any part of the process...I have been severely traumatised by the process.' Another respondent said: 'Debatable. I don't believe we have a justice system, I believe we have a legal system.'

Another respondent to the Victims' Survey spoke about the structures and supports that need to be in place to navigate the justice system:

'All victims of crime should feel that the justice process is there to assist them and to ensure that the perpetrators are punished. As a victim of sexual assault, I consider myself fortunate as I was able to navigate the system. I am well-educated, literate, financially secure and supported personally and professionally. I feel it would be incredibly hard for victims of crime to navigate the system if any of all of those support structures weren't in place.'

– Victims' Survey respondent

One Victims' Survey respondent described participation in the justice system as necessary for her safety, but not a matter of 'choice':

'Victims like myself and my son are forced to participate or we are killed. If I did not participate I would be dead, another statistic (roughly 1 woman is murdered per week in Australia). My child would also likely be dead. If I had a choice, of course, I would not choose to participate. Extensive research has been conducted demonstrating that professionals who work in the justice system would not recommend their female relatives to report rape, sexual assault, etc in the most common scenarios.'

– Victims' Survey respondent

What does meaningful participation look like?

While a minority, some victims spoke about positive experiences of participation, including observing a change in the status and treatment of victims of crime. Some respondents to the VOCC's victim survey were happy with their level of participation:

'Overall participation was fairly good however not having anything to compare with it's difficult to judge.'

'I felt that I was happy with my participation.'

– Victims' Survey respondents

The VOCC was also told by one victim that their feelings of participation were grounded in an understanding that the case was not their case anymore:

*'I understand it's no longer my case, it's the Crown's case. I've felt included when I needed to be. I thought the OPP were very good at ringing me whenever there was something coming up...I'm not a micro manager and I quite like people just to just get on with it. I've felt included when I needed to be. I don't feel the need to drive the bus at all. You just want people to be responsive when you have a query. And that's always been the case.'*³⁰

The main themes arising from those who felt as though they participated sufficiently or were treated like a participant were themes of:

- inclusion
- procedural fairness
- understanding victims' role and entitlements and being given information
- the opportunity to express feelings/have a voice
- having the choice to participate or not.

Two victims who responded to the VOCC's Victims' Survey spoke about feelings of 'inclusion' or feeling included by the process but only at certain points:

'I have very much felt like I was included in this process, however there have been occasions when I have not been allowed to sit in on a proceeding due to the Court being "closed" – despite the accused being allowed to participate.'

'Whilst my legal team from the OPP made me feel included, however the court process you are excluded from all decision making, particularly in the way the plea bargaining process is currently conducted.'

– Victims' Survey respondents

One victim who responded to the Victims' Survey spoke about 'procedural fairness' which, for that victim, elevated them beyond feeling like a mere bystander to the process:

'I would have to say that the Justice process has worked well for me, in the context of procedural fairness. I have felt like more than just a "passive bystander" which was largely my experience first time round. I am by far better informed about my right to be informed, treated with dignity and respect and not discarded.'

– Victims' Survey respondent

Another respondent to the Victims' Survey spoke about how understanding their role was integral to their sense of participation and how they might be able to contribute to the process, saying that this had improved since they were last involved in the justice system:

'This time round, unlike last time, I understand the role I have in the criminal trial process. This was important for me, because I knew that I needed to have my expectations managed. I know that I can seek information and expect to be provided with information in a meaningful way, be guided through what I can and can't influence, and told what will be expected of me as a victim of crime, and how I might contribute to the process...I am so grateful that there is a Charter for Victims that recognises the principles that govern the way Agencies respond to Victims of Crime.'

– Victims' Survey respondent

Another respondent to the Victims' Survey described the opportunity to provide a Victim Impact Statement (VIS) as 'a life changing day for me'. Similarly, a member of the Victim Survivors' Advisory Council spoke about providing a VIS as meaningful, not because it influenced sentencing, but:

*'because it was the first time I used my voice and stood up to my perpetrator. And being and being recognised as a victim of crime was really meaningful for me. It felt profound to be legally acknowledged as a victim of crime.'*³¹

A Victim Representative of the Victims of Crime Consultative Committee also spoke about the importance of recognition as engendering feelings of participation:

*'A powerful and positive experience I had where I felt like a participant in the process was in the final sentencing hearing where the Judge made sure to recognise us as victims and showed an understanding of sentencing. It did not really address the scope of the loss, but it explained how they arrive at sentences. It really helped us understand the justice system and process better.'*³²

Choice to participate (or not) was also raised by one victim survivor from the Victim Survivors' Advisory Council:

*'In terms of being a participant, the freedom of choice and safety is most important. I really valued not having to be a participant in the VOCAT application. I wasn't as involved with the victim of crime application – I could take a back seat and let someone else help because I was absolutely exhausted.'*³³

31 Consultation Meeting 11 – Victim Survivors' Advisory Council.

32 Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

33 Consultation Meeting 11 – Victim Survivors' Advisory Council.

A Victim Representative of the Victims of Crime Consultative Committee felt that there had been some cultural change in the treatment of victims since changes were made to the Victims' Charter to recognise victims as participants:

*'The change to the Victims' Charter happened in the middle of our proceedings [which took five years]. Once proceedings finished, agencies like OPP were more invested in considering how they could do better. I feel that the OPP are making changes and are considering victims more. I have noticed a shift and change in terms of respect.'*³⁴

Another Victim Representative of the Victims of Crime Consultative Committee felt that there 'has been a slow, cultural change, however, there is a fair way to go'.³⁵

Another Victim Representative of the Victims of Crime Consultative Committee articulated what being a participant would entail for them:

*'If you're a "participant" you feel that you're really going to be involved. Victims should be approached about plea deals and discussions had about whether the prosecutor will, or even has already, made an offer to the accused, and what will or has already been offered, so that you're not in court and taken back by what happens. If you're a participant, you want to be involved in the case and being left in the lurch makes it really difficult.'*³⁶

Similarly, a Victim Representative of the Victims of Crime Consultative Committee who had had a particularly recent experience with police said they had seen a difference in how things are approached now: 'I could not wish for a better, more professional response from my most recent report. The police have been incredible.'³⁷ This Victim Representative compared their recent interaction with the justice system with an interaction many years ago and said:

*'What I'm going through now, it's actually caused a bit of grief because if I'd received this level of professionalism, compassion, respect the first time around, my life would be completely different.'*³⁸

Stakeholder views on victim participation

While victims' perceptions of participation are the VOCC's primary focus, and victims' voices have been given primacy and priority in this chapter, it is important to understand broader stakeholder perceptions of participation.

Has there been cultural change?

The VOCC asked victim support workers and other professionals in the justice system about whether they felt there had been cultural change in the way victims have been treated since the Victims' Charter was amended to recognise victims as participants.³⁹

In the VOCC's Victims' Professionals Survey, almost half of the professionals surveyed (46.3 per cent) felt there had been 'limited' cultural change since the Victims' Charter was amended in 2018 – that is, that victims are *rarely* treated as participants and whether they are treated as a participant is still influenced by the jurisdiction or the personnel involved.

As shown in **Figure 3** below, a further 33 per cent of victims' professionals felt the role of victims has changed 'somewhat' – that victims are *sometimes* treated as participants but that once again, this is dependent on jurisdiction or the personnel involved.

³⁴ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

³⁵ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

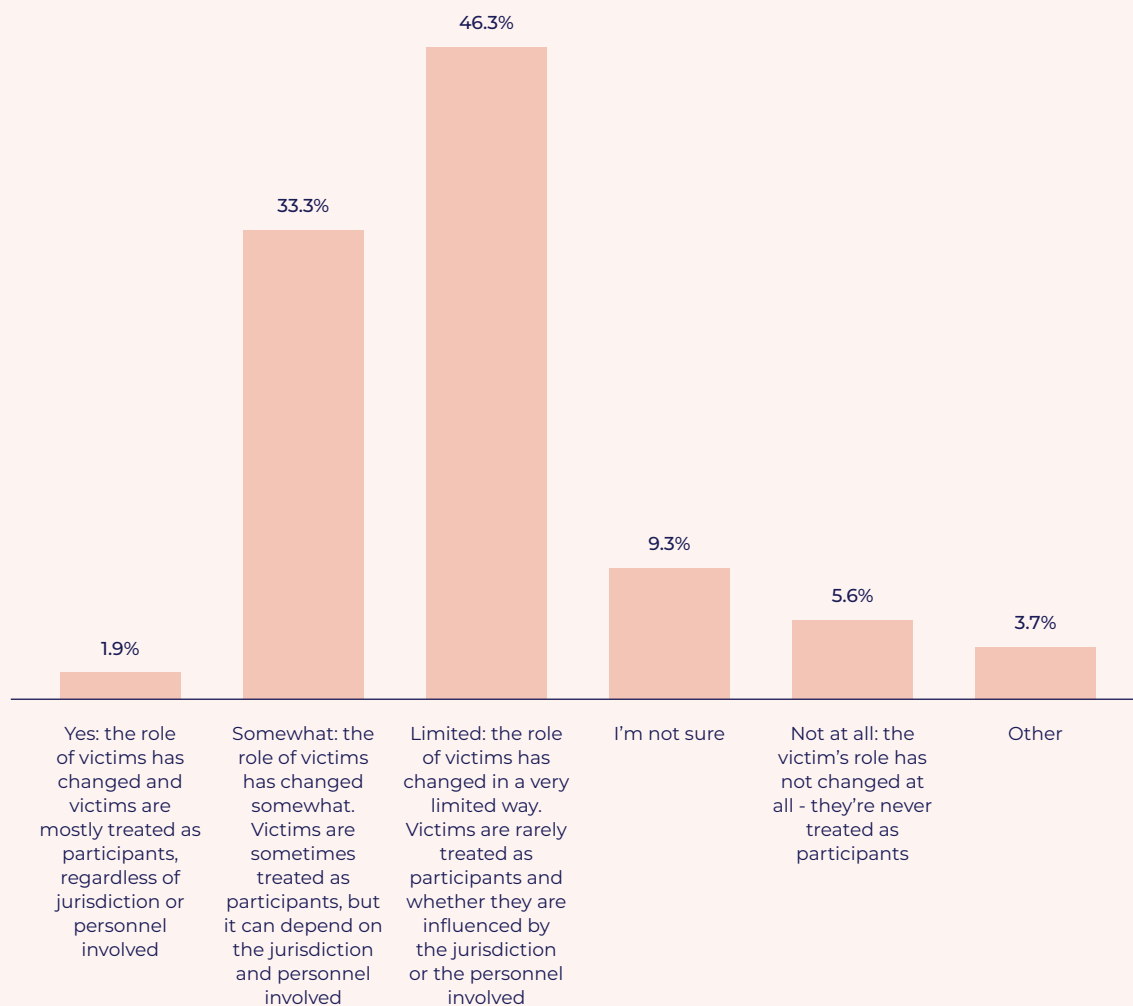
³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ As outlined in Chapter 1, the VOCC surveyed victims' professionals using an online survey. The survey methodology is set at Appendix 1.

Figure 3: VOCC Victims' Professionals Survey: Has there been a cultural change in the way victims have been treated since the Victims' Charter was amended in 2018 to recognise victims as 'participants'?



Sexual assault counsellors were more likely than other professionals to indicate there had been a 'limited' change in how victims are treated – 26.4 points higher than other types of victim support professionals at 72.7 per cent (see **Figure 4** below).

Figure 4: VOCC Victims’ Professionals Survey: *Has there been a cultural change in the way victims have been treated since the Victims’ Charter was amended in 2018 to recognise victims as ‘participants’?* (specialist sexual assault worker cohort only)



This would suggest that for those working solely with sexual assault victims, their perception of increased participation for victims was lower than that of other types of support workers who might interact with a more diverse range of victims.

A number of victims’ professionals indicated in their responses to the Victims’ Professionals Survey that the treatment and status of victims in the justice system – and the cultural change needed to improve victims’ treatment and status – was not occurring. Some victims’ professionals said that:

- victims’ treatment and status in the justice system is not improving and recognising victims as participants has not resulted in any change in victims’ treatment
- victims continue to be re-traumatised by the justice system
- victims are being missed or overlooked in the need for court officials to ‘keep things moving’
- victims still feel an offender-focus drives the criminal justice process
- victims frequently feel confused and overwhelmed by fear when participating in the justice system
- victims are often forgotten, not provided with adequate support, and feel powerless.

Connected to the broader theme of re-traumatisation, victims’ professionals also highlighted the limited opportunity for victims to have a say and be heard, suggesting:

- decisions are made regarding the progress of a case without the involvement of the victim
- victims are sometimes asked about views about key decisions, but it is generally just ‘lip service’
- victims feel aggrieved by the ‘editing’ of their VIS.

A number of victims’ professionals were also concerned about the treatment of victims in the summary jurisdiction (Magistrates’ Court) where the VOCC was advised that victim participation is particularly dire.

Key themes on cultural change are discussed further below.

Victims' treatment and status

Some respondents to the VOCC's Victims' Professionals Survey suggested there had been little improvement to the status of victims as a participant since changes were made to the Victims' Charter:

I would say that by working in the system for countless years, that victims' are rarely considered at all, particularly not during sentencing. Since the Victims' Charter was amended to recognise victims as 'participants' (but not a party) I have seen no change in how victims participate in the justice system, except for some changes in language by admin.

One victims' professional surveyed by the VOCC suggested awareness of victims' rights and entitlements was in fact reducing:

I am still seeing too many clients being retraumatized by the justice system. There was a period of time when there was much more awareness of victims rights, the charter etc however since [COVID] restrictions have eased, workloads have increased, courts have moved to judge alone trials, it seems, in my experience, that victims are being missed or overlooked in the need for court officials to keep things moving.

A number of respondents to the Victims' Professionals Survey felt there had been little cultural change and that the 'system' was still overwhelmingly focused on offenders rather than victims:

The victims still feel the offender's thoughts, feelings and actions drives the criminal justice process. Many court cases are repeatedly adjourned on the advice of the offender (or their solicitor), which means the victim has to wait for lengthy periods of time before a resolution is reached... There are many examples of victims feeling disempowered, not believed, undermined and targeted directly by professionals, the offender and offender's support network while going through the criminal justice system.

Victims are victimised over and over by the system. Its heartbreaking to witness. I hope things change dramatically soon so that perpetrators (not the victims) are the ones modifying their behaviour, suffering the financial and psychological burden of their behaviours and actually being treated like perpetrators.

Despite attempts to make changes to systems, legislation, charters etc, it unfortunately falls onto the personnel and jurisdiction to lead the changes within their system and change culture and practices which too sadly so many aren't willing to change their own practice to influence systemic change. Simple as keeping a victim up to date on proceedings from investigation through to sentencing/release doesn't happen unless a victim fights to be heard but all too often they are too traumatized to advocate for themselves in a broken system and are intimidated by a predominantly male judicial system.

One victims' professional surveyed by the VOCC advised of a number of concerning issues they indicated they experienced 'weekly', including:

- victims not being responded to by police
- victims being ridiculed or dismissed when trying to report
- police failing to arrange interpreters or safe options for victims to report
- police not informing victims of their rights under the Victims' Charter
- police not informing victims of court dates and outcomes or their right to attend
- police not making referrals to support services such as Victims Assistance Programs [VAPs]/specialist Family Violence services
- perpetrators being released on bail and victims not being notified
- VISs not being provided to the court by prosecution prior to sentencing
- victims being told they cannot read their VIS
- victims missing court hearings despite being on WebEx⁴⁰ waiting to be linked in.

Some Victoria Police members felt that further cultural change was required to see victims placed on equal footing with accused people: 'The real key would be getting victims to be given the same status within the courts and within the prosecution as the offender. It's heavily weighted towards the offender.'⁴¹

A Victims Services staff member suggested cultural change has occurred, but that the system was only at the beginning of a 'continuum of cultural change':

Yes, there have been lots of positive changes and good reform, particularly in the past 5-10 years, however, we still have quite a long way to go in terms of cultural change. We still hear horror stories about police officers who treated victims in a particular way or say something inappropriate. We still have a lot more to do at a systemic level in regard to cultural change. We have heard this repeatedly from victim services. There is certainly more awareness about victims' rights, whether that has translated into actual cultural change is another question altogether. We are somewhere at the beginning of the continuum of cultural change.⁴²

⁴⁰ WebEx is the video conferencing software used by Victorian courts.

⁴¹ Consultation Meeting 19 – Victoria Police – Session 3.

⁴² Consultation Meeting 14 – Victims Services staff.

Lack of investment in reforms concerning victims' was also highlighted as a barrier to improved participation for victims of crime:

We have had various VLRC reports, a parliamentary inquiry, reviews. We tend to know what is not happening we just need the resources to fix it. There's been years of reform but there's only so much you can do without investment. Yes, the investment needs to be targeted and spent well, but we talk about the things we already know that aren't going well, but we are not able to implement the changes because of a lack of resources.⁴³

Another Victims Services staff member said despite significant reforms, there was still a long way to go for victims to be treated as participants:

There have been significant reforms over the past four years, but there is a long way to go. In the trial process victims are not treated as a participant, particularly regarding scheduling and information. Victims do not have a place at the table. Victims still have not realised full participation.⁴⁴

Another Victims Services staff member suggested that while things have improved, it may just reflect how few entitlements victims had 10 years ago:

there have been improvements and a shift to becoming more victim-centric. When compared to 10 years ago, the difference is huge, but perhaps that shows just how far we were behind before.⁴⁵

A Community Legal Centre (CLC) representative, when asked if there had been a cultural shift for victims since the 2018 Victims' Charter amendments, said:

No, unfortunately, not. We haven't seen much of a change since the Charter amendments included naming victims as a participant. Victims are still feeling unheard. These cultural changes have not happened.⁴⁶

Another CLC representative concurred, stating that 'we haven't seen much of a change since the Charter amendments acknowledged victims as a participant in proceedings.'⁴⁷ Another CLC representative was emphatic: 'I can say, with some authority, that there has been no change associated with the 2018 Charter amendments. None at all. This is my 35th year of dealing with crime, and there has been no change.'⁴⁸ This representative said the Victims' Charter made 'no difference whatsoever' because the system simply cannot deal with the workload required to truly enable victim participation:

One, the Victims' Charter makes no difference whatsoever. Two, how can it be expected to given the workload that the police have and that they don't want to take on further responsibility? Three, the same for the courts their lists are full every day and they don't have time to read all of the paperwork. We have a broken system.⁴⁹

Another CLC representative suggested victims are not even aware of the Victims' Charter, let alone their entitlement to be treated as a participant: 'I have never had a single person refer to the Victim's Charter; they've never been provided with information on the Charter by a police officer.'⁵⁰ This was confirmed by another CLC representative who said: 'I have never had a client that was aware of the Victims' Charter, of their own accord. Victims don't know about the Victims' Charter and they don't know their rights.'⁵¹

The Principal Commissioner for Children and Young People suggested there has not 'been a substantial change in the way children experience the criminal justice system, or in the way they're treated in the criminal justice system.' The Commissioner further stated:

Agencies have been doing work to implement the words in the Charter but the reality is you are talking about such a long standing culture of not seeing victims as genuine participants with interests and rights in the first place. Combine that with children who don't have agency or rights or status in the criminal justice system and then double the impact on children. You have to imagine the situation for child victims is pretty dire and shifting that culture and practice and making the recognition of child victims real is going to take, as the VLRC recognised back in 2016, significant efforts.⁵²

One Court Network volunteer, who had been a volunteer for 10 years, agreed that there had been 'no cultural change since the Victims' Charter was amended to recognise victims as participants'.⁵³

'...there has been no change associated with the 2018 Charter amendments. None at all. This is my 35th year of dealing with crime, and there has been no change'

CLC representative

43 Ibid.

44 Ibid.

45 Ibid.

46 Consultation Meeting 22 – Community Legal Centres – Session 1.

47 Ibid.

48 Ibid.

49 Consultation Meeting 22 – Community Legal Centres – Session 1.

50 Consultation Meeting 23 – Community Legal Centres – Session 2.

51 Ibid.

52 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

53 Consultation Meeting 12 – Court Network.

On the other hand, the Office of Public Prosecutions (OPP) suggested there had been a cultural change in the way victims of crime are treated, particularly within the OPP:

We have observed a cultural change in the way that victims of crime are treated. The introduction of multidisciplinary teams and the ROVE [Record of Victim Engagement] have resulted in a shift away from treating the victim as only a witness to the crime and towards treating the victim as a participant in the court process. More broadly we have observed an increased willingness of the courts to incorporate the need for consultation with victims into new court initiatives.⁵⁴

The Victims and Witness Assistance Service (VWAS) told the VOCC a significant change has been observed within the OPP, with the OPP creating a culture where there 'is a clear expectation that victims are to be treated in the manner that is expected and reflected in the Victims' Charter'.⁵⁵

Nonetheless, the OPP also acknowledged that 'barriers to participation are still present'⁵⁶ and include:

- misunderstandings of the law and heightened expectations of potential outcomes
- a lack of information and understanding of the criminal justice system and the victim's role and rights as a participant
- courts not allowing sufficient time for a victim to complete a VIS
- vigorous cross-examination styles employed by defence counsel and tolerated by some judicial officers
- limited time for consultation with victims in relation to plea resolutions, constraining their participation in the resolution process.⁵⁷

Court Services Victoria suggested there had 'not been a seismic shift but an incremental shift with a recognition that the role of courts has changed. There has been a particular development in how to support victims as participants and in how victims are heard and their experience is both witnessed and acknowledged'.⁵⁸

Impact of legislative entitlements to be treated as a participant

Some respondents to the VOCC's Victims' Professionals Survey suggested the concept of victim 'participation' may mean very little to victims, suggesting victim participation was a theoretical or legislative concept that had no practical outcomes for victims. Victims' professionals described these changes as meaning 'little' or 'nothing' to victims:

it means nothing really as they are just the victims that have limited to no say in what happens in the justice system

I think it means little to them. Victims often feel frustrated and let down as they see themselves as a victim of a crime not a participant or party.

I don't think many know the word participate is used aside from in literature. The exception would be completing vis and sharing their experience with the court which I think is explained well and they understand it is their opportunity, and often the only one, to address the court.

Respondents to the VOCC's Victims' Professionals Survey also suggested participation for victims is different to what is provided for by legislation:

[Victims] usually commence with a belief that they are 'making charges' 'taking perpetrators to court etc. They often then feel disappointed that they are only a witness in the process.

For most their understanding/expectation of 'participation' is somewhat different to how they experience it. Most people have an expectation that that they will be far [more] involved and privileged to information about the alleged perpetrator and any criminal justice proceedings.

To participate tends to be based on what the system defines as participation, with the system's needs coming before the victim of crime, not necessarily empowering the client.

Another victims' professional told the VOCC that being a 'participant' does make some victims feel like they have a role, 'however by not being a party it doesn't truly give them a voice and continues to embed their feelings of low self-worth.'

⁵⁴ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

⁵⁵ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 9.

⁵⁶ Ibid, 2.

⁵⁷ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 9.

⁵⁸ Consultation Meeting 31 – Court Services Victoria.

A CLC representative told the VOCC there is no real enforceability within the Victims' Charter, with agencies considering it a 'checklist and not a mandatory requirement'.⁵⁹ Other CLC's suggested the Victims' Charter is a 'toothless tiger':

The Victims' Charter is similar to the Charter of Human Rights and Responsibilities, in that it is often ignored unless you directly point out the organisation's responsibilities under it, even then you might not always get a response. I have had matters where I have pointed out the obligations on the prosecution under the Victims' Charter, that they make victims aware of certain things and I've had pushback, even when I quoted the Act. The Victims' Charter is a toothless tiger.⁶⁰

The Victims' Charter isn't being used in the way it's intended. It's something of a toothless tiger. It's very hard to enforce it but you're still pushing for it.⁶¹

Similarly, the Principal Commissioner for Children and Young People said that:

The challenge with the shift in the Charter recognition of victims as participants is compounded because it hasn't been accompanied by a fully resourced independent regulator or enforcer, nor has it been accompanied by any child focused advocacy function or service, so there is very little to make the words in the Charter real.⁶²

Victims being heard

Some respondents to the VOCC's Victims' Professionals Survey highlighted a lack of regard for victims' views, particularly when key decisions are being made, with victims' views ignored or considered 'after the fact' or given 'lip service':

Decisions are nearly always made regarding the progress of a case/sentencing etc without the victim being involved until after the fact. They believe they have no say in the process or outcome and have yet another sense of 'being done to' rather than feeling involved in.

Although victims are sometimes asked about views about key decisions, generally they report they feel their opinions are not considered even when they are asked and it is lip service.

The OPP advised the VOCC about the practical challenges of ensuring victims are updated and heard in relation to key prosecution decisions, noting the fast-paced nature of the court process does not always allow this:

...occasionally there will be rapid developments in the court proceedings such as last-minute adjournment requests and unanticipated applications for bail which prevent the victim being updated until after the fact. Where last minute plea offers are made prior to a court hearing with insufficient time to consult the victim, where possible the OPP will seek an adjournment to allow for consultation to take place. Adjournments on this basis may not always be granted, resulting in decisions being made without consultation in rare instances.⁶³

Furthermore, the OPP described the tension inherent in the plea negotiation process, a key point at which victims' voices should be heard and considered but where such views may conflict with the OPP's obligations:

The challenge inherent in ensuring victims feel like participants in the plea process is the potential for the views of the victim to conflict with the responsibility of the OPP to only proceed with prosecutions where there is a reasonable prospect of a conviction, and it is in the public interest (the prosecution test). Under the Director's Policy, a resolution will only occur if it is in the public interest. The view of the victim on any proposed resolution is one of the factors that determines if the resolution is in the public interest. Although the views of the victim are regularly determinative of whether plea offers are accepted, there may be other cases where the other factors in support of resolution mean that the victim's views are not determinative. In cases where the victim's views are sought but the ultimate outcome is not in line with those views, the victim may feel like an observer rather than a participant.⁶⁴

The OPP noted that while victims generally do feel consulted, they can also feel disheartened and that consultation is tokenistic at times, particularly if the DPP makes a decision that does not support their views, and in these cases, victims may still feel let down.⁶⁵

Participation in different jurisdictions

Some respondents to the VOCC's Victims' Professionals Survey felt that victims in summary proceedings (heard in the Magistrates' Court) have fewer opportunities than victims in the higher courts to participate. This included victims not being advised in a timely way about an upcoming court hearing or the outcome of a hearing:

The victim is often not informed of an outcome from a Magistrates court hearing until a few days later and that is only if the informant is notified. Victims have often told me that they would like the courts or the prosecutors to notify them of outcomes so that they are aware of the next step or to even know that their matter has been resolved so they can move on from the event. This is more important if it involves remand or bail hearings. Participants want to be considered for any updates and be advised.

⁵⁹ Consultation Meeting 22 – Community Legal Centres – Session 1.

⁶⁰ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁶¹ Ibid.

⁶² Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁶³ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 3.

⁶⁴ Ibid 3–4.

⁶⁵ Ibid, 12.

More victim awareness for matters heard in the Magistrates court by Vic Pol members such as advising court dates, charges, whereabouts of the offender and the opportunity to complete a victim impact statement. This would enable the victims to feel more like a participant. [sic]

Respondents to the Victims' Professionals Survey also highlighted significant issues with Victim Impact Statements in the Magistrates' Court. This is discussed in detail in **Chapters 9 and 18**.

Victoria Police members also highlighted concerns about victim participation in the Children's Court, given that the focus of that court is on minimising young offender's contact with the criminal justice system:⁶⁶

In the summary stream, at the Children's Court there are some impediments to victim engagement because of the way the jurisdiction works, and because of the focus of the legislation – the Children's Youth and Families Act – and the legislation's purpose...Another issue is that some matters might resolve by way of Diversion, which doesn't allow for victim engagement. We do have a Diversion matrix, which requires that a prosecutor take into account the impact of the crime on victim, however, there's no direct requirement for engagement with the victim in terms of ascertaining their thoughts around whether a Diversion is appropriate. The victim is a silent participant in those circumstances.⁶⁷

Getting information to participate

Respondents to the VOCC's Victims' Professionals Survey highlighted that victims often do not have access to basic information updates about the investigation or the progress of the prosecution, leaving them unable to participate meaningfully in the justice system:

I find, most often, victims are let down by a lack of communication from professionals within the system who are supposed to, as part of their job, maintain communication. This is often the single most common complaint I have from victims.

Victims repeatedly tell me that they are sick of chasing things up. Police often forget to provide updates or call when they have said, meaning the victim has to chase it up.

The lack of information from courts and police is significant. The victims I speak with feel they have no part in the process even though the violence was perpetrated towards them

A lot more work is required to ensure victims are spoken to in relation to ALL updates in a timely manner. It seems to be a common theme that professionals supporting victims often know about outcomes well before the victim has been informed.

A lot of victims I support feel that there is little communication and the police don't care about what happened to them as if it's not significant enough a crime.

It has been my experience that victims are often feeling like they are unsure of exactly what is happening leading up to significant court hearings

Victims of Crime often find it very difficult even impossible to get clear information and responses from police informants about upcoming hearings, charges, victims requirements at court etc.

I don't believe that victims generally receive enough information about what their role is and what the role of police and prosecution are. The adversarial system is inherently difficult for victims even with changes made since 2018.

CLC representatives also highlighted lack of information for victims as a concern and how it is a key barrier to victim participation:

Information is a barrier to victim participation. Victims who don't understand where the matter is at, what case conferencing is. A lot of trauma and time would be saved if there was more information about the process and how it works.⁶⁸

The Principal Commissioner for Children and Young People similarly highlighted concerns with information provision to children and young people (and their parents/guardians):

...we hear from plenty of parents that their [children's] matter goes into a black hole and they don't know what decisions are based on, why the matter ultimately does not proceed to prosecution or other decisions made. Those provisions in the Charter around information provision to victims' parents and carers appear to be at best inconsistent in practice.⁶⁹

Victoria Police members agreed that many victims may not be given the level of information they may need to feel like participants in the process. This included police being unable to provide victims updates about a case due to resourcing challenges:

Police time, resources and volume of cases are the greatest barriers. Engaging and supporting victims isn't difficult for police as we do that intuitively, but time and resources are the challenge. More time, more resources, less volume are what's needed. With 300 000 cases a year, more than 200 000 of which have victims, and there are 12 000 of us, it's not physically possible to deliver statutory rights for all victims. It's just not physically possible. So, we have to prioritise.⁷⁰

⁶⁶ Section 356C of the *Children, Youth and Families Act 2005* (Vic) sets out the purposes of diversion in the criminal jurisdiction of the Children's Court, which include diverting a child from the criminal justice system where possible and reducing a child's contact with the criminal justice system.

⁶⁷ Consultation Meeting 18 – Victoria Police – Session 2.

⁶⁸ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁶⁹ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁷⁰ Consultation Meeting 18 – Victoria Police – Session 2.

Some Victoria Police members note, however, that there can sometimes be a tension between the information a victim wants and the need for police not to jeopardise an investigation: 'Sometimes the investigations are protracted and we're in a position where we don't want to jeopardize an investigation so we're withholding quite a bit of information at various times.'⁷¹

Getting appropriate support to participate

Respondents to the VOCC's Victims' Professionals Survey highlighted that a lack of access to appropriate support for victims also affects victim participation, including not being able to access legal advice or appropriate court or victim support:

Having a good lawyer who supports the client is the best way to ensure the client is supported somewhat. I feel victims are not looked at as 'victims' throughout this process, it is extremely challenging and disappointing. The system is a complete let down for victim survivors.

We often find victims wanting support in court and seldom able to access it via e.g. court social work. We end up using volunteer based services.

Funding cuts have made it difficult to support clients the way we should, eg. we aren't supposed to do full days of court support anymore.

Other victims' professionals indicated victim support was hampered by a lack of referrals or lack of referral pathways:

For a victim to participate, they must be aware there is a pathway for them to do so. I find there is still a significant number of victims that are never referred to VAP for assistance in the first instance, so how can they make a choice as to whether they was [want] support to 'participate'

Some victims need more assistance to participate than others. When victims are not referred at an early stage in the investigation that participation can be very limited.

The Commissioner for Children and Young People suggested the victims' services system was not child-friendly, with few opportunities for children and young people to engage without it being mediated through a parent or carer:

There is a frustration that there is no service where they can reach out and seek their own advice and support. There is no way to really extricate themselves from the parent or carer. From a policy and capacity and infrastructure perspective we need to develop specialisation to support children and young people...⁷²

CLC representatives highlighted key gaps in legal support and advocacy for victims, with victims left to navigate complex civil and criminal matters without legal advice, assistance or advocacy.⁷³

The OPP, while not supportive of broad-based independent legal representation for victims of crime, also felt there was a lack of appropriate legal support for victims in relation to applications to subpoena confidential communications of the victim. The OPP noted that they are unable to provide legal advice to victims in relation to such subpoenas and a 'victim who is unable to access their own legal representative is left having to navigate this process without independent advice.'⁷⁴

What does participation mean to victims?

The VOCC sought to understand what broader stakeholders felt participation means to victims of crime. Respondents to the Victims' Professionals Survey primarily articulated 'participation' as victims being:

- informed/receiving information
- involved/included/part of the process
- heard/having a voice or say/being consulted
- advised of their role/knowing their rights
- having choice
- given appropriate support.

These insights very closely aligned with victims' views of participation, which included concepts of inclusion, procedural fairness, understanding their role and entitlements, being given information and the opportunity to express feelings/have a voice. As articulated by one Victims Services staff member:

Victim participation is about being included, heard and truly consulted. Victims tell us that they need to feel that their input makes a difference. Participation is about meeting people where they're at, recognising their unique needs and accommodating their needs, whether that is around age or disability.⁷⁵

⁷¹ Consultation Meeting 19 – Victoria Police – Session 3.

⁷² Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁷³ Consultation Meeting 22 – Community Legal Centres – Session 1; Consultation Meeting 23 – Community Legal Centres – Session 2.

⁷⁴ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

⁷⁵ Consultation Meeting 14 – Victims Services staff.

Being informed

Many respondents to the Victims' Professionals Survey felt that basic information provision – being kept up to date on the progress of a matter – was the key to victim participation:

Participation – provided with timely information

Participating in the criminal justice process, having access to briefs of evidence and updated regularly by police on the current investigation

In my experience, [participation] means being regularly informed of process and where things are up to. It also means being given the information they need to be able to make informed decisions.

Being informed, being involved and finding out information from authorities, not by the media for example

Being fully informed of the criminal justice process in a timely manner

Being kept informed eg of court dates and outcomes

Being updated of the entire journey of the investigation at regular and consistent intervals

Being kept updated with each step of the proceedings, including any decisions related to the charges, dates for court hearings, and the outcomes of court hearings.

The fact that so many victim support professionals identified information provision as crucial to participation underlines the extent to which many victims struggle to access basic information about their matter.

This was also highlighted by a Victims Services staff member who said 'Information is so important in trying to address systemic barriers. The legal process is an extremely complex system that many people find inaccessible.'⁷⁶

The Australian Capital Territory Victims of Crime Commissioner also highlighted lack of information provision:

We often hear experiences from victims of crime who feel side-lined by the criminal justice system. I think this often arises where people are not getting the information they need, so they don't know what's happening.⁷⁷

Feeling involved, included and part of process

Unsurprisingly, respondents to the Victims' Professionals Survey highlighted the importance of victims feeling involved, included and part of the process for them to feel like a participant. For these victims' professionals, participation was about 'active involvement':

Participation would mean that victims were part of the process and not a bystander with decisions being made without their input, it would give them ownership of their experience.

that theoretically they're participating in a process of seeking justice for the crimes committed against them that have deeply harmed them

Being actively involved – given regular updates/information, sought feedback from police or courts as to processes and outcomes.

Having a voice, being heard and having choice

For some respondents to the Victims' Professionals Survey, participation meant having a voice and being heard:

Participation would mean being listened to, treated fairly and with respect.

Victims feel they are participating if they are being heard and their views are acknowledged.

Being able to have their voice heard and believed.

Having their views heard and respected by the criminal justice system. Actively participating in the criminal justice system process by having members of the system, including police, lawyers and magistrates, listen to their experiences and the impact the crime has had on them. Having their views heard in regards to what a fair result should be in terms of the system outcome.

Being invited to speak about their experience, to have access to those making decisions about their lives and to feel heard.

⁷⁶ Consultation Meeting 14 – Victims Services staff.

⁷⁷ Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

Active participation – via consultation or ‘a say’ on key decisions – was also highlighted by a number of victims’ professionals as key to victim participation:

Being asked their views on police decisions and ‘plea bargains’

Offered opportunity to consult on decisions that are going to affect them, plus ensure completion of victim impact statements are supported.

Participation means to be consulted and be actively considered as victims and the impact the crime has had on them during the process.

Participation – provided with timely information, having a strong say in how matters proceed.

Having in say in charges laid by police, Real consultation regarding plea bargaining, A voice in the court process, be that, plea bargaining, sentencing, responding to ‘offender excuses’ when making plea and a sense of their story being heard/told as opposed to prosecution according to the laws of the state.

A Victims Services staff member highlighted the importance of choice in victim participation:

Participation is about providing victims with opportunities. In the context of the Victims Register that means providing opportunities for victims go on the Register, opportunities to provide submissions, to provide information to the Parole Board, the Post Sentence Authority and the courts...The feedback we constantly receive is that that choice to participate is key for victims of crime.⁷⁸

Participation can be complex and varied

Respondents to the Victims’ Professionals Survey described the complex nature of victim participation which can mean different things to different people, and encompasses many and varied components:

Involvement in, and understanding of, the criminal justice process, involvement and decision making during the referral process, making decisions about their own recovery and what that looks like, deciding what level of engagement they want with services.

extremely variable but many victims are very much guided by the professionals involved in the CJ process regarding opportunities to participate in the CJ process. Some think participation is having police/other professionals keep them updated regarding the CJ process, attending all court matters, some think it is having a say in the court outcomes, including consultation with OPP throughout CJ process.

means being consulted about their wishes and needs, being informed regularly of the process, steps in that process and various people involved, updates about progress communicated regularly in the preferred method of the victim. participation can mean they feel heard and included, and can lead to a positive experience even if the outcome wasn’t exactly what they wanted to happen.

Similarly, the OPP stated that participation ‘may mean different things to different victims’ but it generally means being given updates in relation to case progress, information to understand the prosecution process and their role, and the opportunity to have their views ‘heard and taken into account in significant decisions made by the OPP’.⁷⁹ The OPP also suggested that a victim’s view of participation may go beyond what is practicable within the current system: ‘participation for them will often mean having greater decision-making power over the prosecutorial outcomes than they may actually have’.⁸⁰

However, overall, concepts of ‘control’ or ‘decision-making’ being a part of participation for victims did not feature heavily among the stakeholders consulted, although some victims’ professionals spoke of a victim’s need for autonomy in and control over their journey. For example, respondents to the Victims’ Professionals Survey said:

Being in control of their journey: the ability to make decisions around their recovery (e.g. choice of counsellor and solicitor) and the justice process (having their voice heard by the OPP and the judge).

to have the autonomy to make the decisions on their terms.

For academic Kerstin Braun, participation for victims means involvement, but not necessarily having the responsibility to make final decisions, noting ‘victims want to be involved. They want to have their voices heard, but they don’t necessarily want to be responsible for the final decision.’⁸¹

A Victims Services staff member noted that ‘participation’ for children and young people may be different to ‘participation’ for adults:

Acknowledging the victim’s role as participant, and not a party, in proceedings can be challenging for young people. Young people generally see themselves as a party to the proceedings as they were the victim of crime. They have ownership and feel that the process is also about them, and this impacts their expectations for involvement and rights.⁸²

78 Consultation Meeting 14 – Victims Services staff.

79 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

80 Ibid 8.

81 Consultation Meeting 1 – Associate Professor Kerstin Braun.

82 Consultation Meeting 14 – Victims Services staff.

Another Victims Services staff member said that being a 'valued participant' includes:

- having access to information
- being able to influence the process
- being able to understand the range of options available
- being able to express ideas, preferences and views.⁸³

What works well to facilitate victim participation?

Respondents to the Victims' Professionals Survey were asked what was currently working well to facilitate victim participation. The main areas victims' professionals described as working well to facilitate victim participation were:

- Victim impact statements
- Victim and witness support services including:
 - strong referral processes
 - collaboration between services
 - co-location of services and police
 - continuity in personnel involved.
- Accessible court facilities and supports including:
 - remote witness facilities
 - access to remote (online) hearings
 - access to interpreters, an intermediaries program and applicant/respondent workers.

Some victims' professionals also highlighted specialist police responses as working well to facilitate victim participation, along with the OPP meeting with and consulting with victims.

There was also strong support for Victim Impact Statements, although a number of victims' professionals felt victims sometimes need more time or support to participate meaningfully in the VIS process.

On the other hand, some victims' professionals responding to the Victims' Professionals Survey felt that few aspects of the current system work well to facilitate victim participation:

Minimal. The system is not set up to support victim survivors.

I believe all aspects work on a base level only.

Victims need more than a limited participation.

Not much in my experience

I find the overall experience of victims in the system to be limited and it does largely come down to who is involved in their case and that persons ability to communicate with the victim.

Other victims' professionals responding to the Victims' Professionals Survey felt that certain aspects worked well, but that it was variable or dependent on personnel or crime type:

No one aspect – it is more a case that in some situations things work well and in others they don't. There is no area which always works well.

It really depends on the type of crime. The criminal justice system seems tailored to those crimes committed between people that are not known to one another. When there is some familiarity between victims and offenders, this seems to severely limit the justice system response, especially with neighbourhood disputes (PSOs) or family violence cases for example.

I do think this very much depends though on the personnel involved and how much they include victims (especially police).

It depends on the people involved, as to what works well. Sometimes it works and others it doesn't.

I do believe that the supreme court and the County court manage it a bit better than the magistrate courts. But not always.

I think victim participation is better when the crimes are indictable and involve the OPP rather than police prosecutors. Sexual assault victims report better communication with SOCIT members and OPP.

Some victims' professionals surveyed spoke about the potential for things to go well, often where an early referral to supports is made:

when we all work together i.e police refer at point of crime, VAP support is put in place, clear and timely information is provided to all stakeholders by the OPP, court process runs efficiently, client has the opportunity to participate in the court process via attendance and VIS – we have amazing results and client recovery is good. When one area falls down, it impacts on every other aspect of process and subsequent recovery. I believe there are great processes and supports that can be put in place, we just need to all make a commitment to utilise them.

If VAP receive the referral of a victim in a timely manner, they are able to provide many more options for the victim to participate than if they receive the referral when a Victim Impact Statement is due next week. Early referrals to appropriate services is critical for victims to be made aware of their rights to participation.

VAP could also be on call to provide support during police visits to clients to facilitate referrals and engagement.

The process remains extremely difficult for Victims of Crime. Better information at the commencement of processes allows for better information and potentially, more positive outcomes for victims of crime.

The importance of early referrals to support as being key to victims' participation was also highlighted by Victims Services staff.⁸⁴

Two victims' professionals surveyed by the VOCC discussed efforts made by victim support services and prosecutors to inform and consult, noting, however, that this often falls short:

Attempts by victim and witness support services seek to smooth the process and encourage an understanding but this isn't participation e.g. OPP meeting with families to explain process yet decisions on plea bargains will be made regardless and victims role limited.

Prosecutors often do their best to explain the system and prepare the victim, but they are time poor, therefore it is inadequate.

Court Network spoke about how having the right support to victims can help create meaningful participation, even when participation or validation for victims is not built into the justice system:

Bearing witness, being alongside people, validating the importance of what they did or their being there; this all plays a role in creating meaningful participation. People can walk away feeling like they have had meaningful participation, even if the system itself cannot enable that to occur.⁸⁵

The Centre for Innovative Justice spoke about programs and initiatives that have improved victims' participation, including the Child Witness Service, Intermediaries Program and the Victims and Witness Assistance Service (VWAS) within the OPP but the Centre also said that these services or initiatives are not as widely available as they need to be.⁸⁶ For example, the intermediaries program is narrow in scope and the VWAS is only available for indictable matters prosecuted by the OPP. Victoria Police members were similarly supportive of the intermediaries program, VWAS and Child Witness Service.⁸⁷ CLC representatives spoke about the importance of 'multidisciplinary' approaches and 'wrap around' models as vital to victim support and participation.⁸⁸

Victims Services staff suggested Youth Justice Group Conferencing, when facilitated by early and appropriate referrals, can be a successful aspect of victims' participation in the justice system.⁸⁹

The OPP highlighted the importance of reforms to the VIS process as key to improved participation by victims, including reforms that have enabled:

- victims to read their VIS to the court
- victims to use alternative arrangements to read their VIS aloud
- a VIS with inadmissible material to be provided in its entirety to the judge (without redaction).⁹⁰

What additional help do victims need to participate?

Respondents to the Victims' Professionals Survey suggested victims need:

- access to more dedicated in-court support
- help with other legal issues (e.g. family law, intervention orders)
- culturally safe support and advocacy options
- more practical assistance.

⁸⁴ Consultation Meeting 14 – Victims Services staff.

⁸⁵ Consultation Meeting 12 – Court Network.

⁸⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁸⁷ Consultation Meeting 24 – Victoria Police – Session 4.

⁸⁸ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁸⁹ Consultation Meeting 14 – Victims Services staff.

⁹⁰ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 8.

Building an overall picture of victims' participation

As outlined above, the vast majority of victims surveyed by the VOCC (74 per cent) feel as though they were never or only sometimes treated as a participant.

Victims expressed a profound lack of confidence in the justice system, with victims articulating feelings of hopelessness, unjustness, disappointment, and general distrust of the system. Many victims indicated that they would not be willing to participate in the justice system again because of the trauma and harm caused by participating – that is, secondary victimisation.

However, by assessing how victims articulated both a lack of participation – and conversely, positive aspects of their participation – the VOCC was also able to identify what meaningful participation looks like for victims.



Summary of engagement findings – victim participation

Meaningful participation for victims includes:

- feeling included in the process
- having a role in decision making
- having a voice and having the opportunity to express feelings
- being recognised as a party to criminal proceedings (or having official 'status')
- having a role in the court process and being able to be present in court at key times
- getting sufficient information to enable participation, including accessible and timely information
- being updated about the progress of investigations and prosecutions
- procedural fairness
- having the choice to participate and having choice and personal agency during the process
- understanding victims' role and entitlements
- getting reasonable adjustments for disability to enable participation.

Overview of Chapter 5: Structural and systemic barriers

The *Victims' Charter Act 2006* (Vic) (Victims' Charter) aims to address some structural and systemic barriers for particular victims of crime by requiring agencies and services to be responsive to the particular needs of persons adversely affected by crime. However, a range of structural and systemic barriers to participation were identified by victims, illustrating that participation in the justice system cannot be taken 'as a given' for some victims of crime.

For some victims, barriers to participation exist before any formal interaction with police, prosecution, courts or victims' services.

Consistent with previous research, the Victims of Crime Commissioner (VOCC) heard that the justice system is not always safe or accessible for:

- Aboriginal and Torres Strait Islander peoples, with ongoing issues around safety, reporting and achieving justice and equality
- children and young people, with children feeling invisible and unsafe
- culturally and linguistically diverse populations, including difficulties navigating the justice system due to language barriers and barriers to culturally safe participation
- people with disability and chronic illness, with intersecting factors of systemic discrimination and disadvantage
- older victims of crime, with the justice system not recognising the unique dynamics of elder abuse
- LGBTIQ+ communities, with LGBTIQ+ victims of crime feeling marginalised, minoritised or even criminalised by the criminal justice system.

Also consistent with previous research, the VOCC heard that:

- the justice system continues to cause secondary victimisation
- the complexity of the justice system continues to be a barrier to victim participation
- trauma can make it difficult for victims to participate
- court delay – sometimes up to five years – impacts on individual victims' participation and recovery.

5

Chapter 5:
**Structural and systemic
barriers**



Introduction

This chapter considers the structural and systemic barriers that victims identified as affecting their overall participation in the justice system. It draws on the views of victims consulted, as well as those of other key stakeholders where that provides additional context.

The chapter does not cover all structural and systemic barriers experienced by all victims. It focuses on the key themes arising from consultation and engagement with victims of crime for this inquiry. The Victims of Crime Commissioner (VOCC) acknowledges that there are many and varied ways in which the justice and victims' services system may impose structural and systemic barriers to participation, some of which may not have arisen as key themes during consultation and engagement.

It is also evident that people can experience overlapping and interdependent systems of discrimination or disadvantage consistent with understandings of intersectionality.¹ It is therefore important to adopt an intersectional lens and acknowledge that while issues may be discussed separately, many of the systems and structures of the justice system can interact on multiple levels to create barriers to participation by victims which may be complex and interconnected.²

Lack of safety and accessibility for all victims

The *Victims' Charter Act 2006 (Vic)* (Victims' Charter) aims to address some structural and systemic barriers for particular victims of crime by requiring investigatory agencies, prosecuting agencies and victims' services agencies to take into account, and be responsive to, the particular needs of individuals adversely affected by crime. Charter Principle 6(2) requires agencies to address particular needs relating to differences such as:

- race or indigenous background
- sex or gender identity
- cultural or linguistic diversity
- sexual orientation
- disability
- religion
- age.

Many of the structures and processes of the justice and victims' services system presume a victim of crime will feel safe to enter the justice system or approach a support service.

However, it is evident that many of the structures and processes of the justice and victims' services system presume a victim of crime will feel safe to enter the justice system or approach a support service, and that these processes or organisations will be accessible to all victims.

A range of structural and systemic barriers to participation were identified by victims and lived-experience consultants, illustrating that participation in the justice system cannot be taken 'as a given' for some victims of crime. For some victims, barriers to participation exist before they have any formal interaction with police, prosecution, courts or victims' services. In fact, some victims of crime identified barriers to *any* kind of safe interaction with the justice system. For these victims, notions of 'participation' are particularly complex and nuanced.

This section explores some of the safety and accessibility barriers raised directly with the VOCC by victims of crime during consultation and engagement activities.

Victims' experiences

Participation for Aboriginal and Torres Strait Islander peoples

The VOCC heard that the justice system is not always safe or accessible for Aboriginal and Torres Strait Islander victims of crime to participate.³ This is consistent with previous research.⁴

¹ Victorian Government, *Everybody Matters: Inclusion and Equity Statement* (Web Page, 28 June 2021) <<https://www.vic.gov.au/everybody-matters-inclusion-and-equity-statement#inclusion-equity-and-intersectionality>>.

² Ibid.

³ The Victims of Crime Commissioner notes the Victorian Government is developing a dedicated Aboriginal victims of crime strategy: Victorian Government, *Reforms we will deliver to support victims of crime* (Web Page, 15 June 2022) <<https://www.vic.gov.au/victim-support-update/reforms-we-will-deliver-support-victims-crime#a-dedicated-strategy-for-aboriginal-victims-of-crime>>.

⁴ See, eg, Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 314, 336–39 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

Close to 80 per cent (78 per cent) of respondents to the VOCC's Victims' Survey who identified as Aboriginal or Torres Strait Islander said that they 'never' felt like a participant in the justice system.⁵

When specifically asked, 'Could your participation in the justice system have been better?', Aboriginal or Torres Strait Islander respondents to the VOCC's Victims' Survey outlined barriers to participation which included exclusion, systems abuse, inappropriate police behaviour, being disbelieved and lack of access to support for victims:



'There was no inclusion.'

'It is time for victims to have more rights than the perpetrator. The system systematically abuses the victim.'

'I wish I had been offered some support options when I sought help from a psychologist as an adult.'

'The first lot of detectives that looked into the case, dismissed it because one of the witnesses was an alcoholic and they didn't think that he would be believed. I did not find that out till 10 years or more later when I reopened the case, seeking justice.'

'I was bullied by both the female and male officers and they didn't believe me. The female officer threatened me insofar as she said if I didn't take it through to a hearing she would come looking for me.'

– Victims' Survey respondents

When Victims' Survey respondents who identified as Aboriginal and Torres Strait Islander were asked to consider what parts of the justice process worked well for them, most indicated there were no aspects that worked well, with respondents stating 'none', 'none – no one cares' 'truly none', 'all terrible' and 'I didn't report.'

For one Victims' Survey respondent, who tried for 20 years to have a perpetrator charged, finally finding a 'police officer that believed me' was a positive example of the system working well.

A victim representative of the Victims of Crime Consultative Committee also echoed concerns about police responses to crime impacting on participation by victims, stating:



*'In our Aboriginal community, victims aren't always treated seriously. Also, in some cases the victim has been a perpetrator themselves in the past. There can be a reluctance to engage with the process and police. I think Aboriginal victims of crime are treated differently, not taken as seriously, and not treated with respect.'*⁶

This same victim representative told the VOCC that not all people want a justice system response, particularly in family violence matters, and this too may affect participation by victims:



*'There is still a reluctance of people in the Aboriginal community to report family violence. The police are still reluctant to respond to sexual assault. The way some police view family violence is changing, but it still comes down to the individual responders. People in the Aboriginal community don't want their partners locked up, they want the violence to stop. They want to not be split up, not for the person to be charged and locked up, they just want it to stop.'*⁷

⁵ This was 28 points higher than respondents who did not identify as Aboriginal or Torres Strait Islander. Even though there were only nine respondents who identified as Aboriginal or Torres Strait Islander, the discrepancy between the cohorts is significant.

⁶ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁷ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

The VOCC's Victims' Survey also asked respondents, 'Based on your experience of giving evidence at court, would you do it again?' Of the seven Aboriginal and Torres Strait Islander respondents who answered this question, five selected 'Not sure', a much higher rate of uncertainty (71.4 per cent) than the response rates in the VOCC's Victims' Survey more broadly.

Individual responses to the survey question around challenges in the justice system provided more detailed information about the difficulties associated with giving evidence in court for Aboriginal and Torres Strait Islander victims. For example, one Victims' Survey respondent indicated that trauma and fear of the system influenced their decision not to proceed:



'I could have reported the crime as an adult but I felt too much time had passed, and I was fearful of reliving the experience and what the reaction would be by police, particularly as my memories might not have been accurate enough.'

– Victims' Survey respondent

Another Victims' Survey respondent echoed this same fear of the court experience:



'The system is not designed for victims – often cases will not get to court – trauma of the event and remembering. times and dates can be a challenge alongside fear. without the clear details and the perpetrator having all the rights there is no room for victims. As we know women have been beaten and murdered for years as the perpetrator has all the rights and its time for the system to have a complete overhaul.'

– Victims' Survey respondent.

Issues regarding accessibility and awareness of victims' services also emerged. Victims' Survey respondents were asked their reasons for not using a victims' service. When looking at the five respondents who answered this question and identified as Aboriginal or Torres Strait Islander, four selected 'I didn't know how to find victim services or what ones to use' and the fifth stated: 'Hadn't heard of a service like that.'

A member of the Victim Survivors' Advisory Council advised VOCC about barriers to receiving support and assistance from some Aboriginal organisations, including if you're a victim-survivor of family violence with a criminal record or where there might be a conflict of interest for the organisation in representing both the victim-survivor and/or perpetrator.⁸

Participation for children and young people

Respondents to the Victims' Survey illustrated several key issues relating to participation of children and young people as victims of crime. In responses to the Victims' Survey, the VOCC was told about children and young people who:

- had to navigate complex trauma following a crime, impacting their health, wellbeing and stability
- were too young to understand the justice system
- felt like they would not be taken seriously if they reported crime
- felt invisible within the justice system
- were not afforded the same status, rights and protection as adult victims
- felt unsafe and unprotected
- were particularly susceptible to secondary victimisation, including while giving evidence.

The devastating impacts of victimisation for children and young people are evidenced by this response to the VOCC's Victims' Survey:

'I had one child that tried to suicide twice and ended up in in hospital for over a month. These are the things justice agencies don't know about. These are things that are happening in my life when I'm trying to navigate a huge system.'

– Victims' Survey respondents

One victim interviewed by the VOCC spoke about the impact of crime on the young children she was now guardian for following a violent crime:

*'[I'm] dealing with ... traumatized children, trying to get them to school. They are upset at school, having to go to one of the schools, sometimes three times a day. Tears, counsellors, doctors, psychologists. Not an easy thing to manage. Each child has a different way of dealing with trauma.'*⁹

Respondents to the Victims' Survey indicated that for children and young people, not being able to access the justice system safely, and not being aware of options, were barriers to participation. For example, one Victims' Survey respondent said they were too young to understand they could even use the justice system while another said, 'I was a child and didn't know that what was happening was against the law.' Another Victims' Survey respondent spoke about being young and embarrassed: 'I was young. It was an embarrassment, and I was not even prepared to tell my parents.'

Another Victims' Survey respondent stated that their youth prevented them from feeling that they would be taken seriously if they reported a crime: 'I didn't report the crime because I didn't think police would take me seriously. I was 17 and couldn't afford a lawyer so I felt I would be dismissed and humiliated if I tried.'

One Victims' Survey respondent spoke about police inaction leading them to remain with their parents and experiencing ongoing childhood abuse.

A Berry Street Y-Change Lived Experience Consultant observed that fundamental change is required to how the system approaches child victims, noting that 'reporting a crime looks very different for a child as opposed to an adult. Being a victim of crime will feel different for a child to an adult.'¹⁰ For the Y-Change Lived Experience Consultant, 'law enforcement need a separate set of guidelines, training, policies and practices for supporting any and all children regardless of if they are a victim or not.'¹¹

A key theme in relation to barriers for children and young people was children's sense of 'invisibility', lack of agency and lack of opportunity for meaningful participation, as noted by this Y-Change Lived Experience Consultant:

*'The main thing is to be asked and included in conversations. To hear both sides of the story, especially in family violence situations. I would run away from my Dad's place because I didn't feel safe. He would call the police and put out a missing person's report...They probably thought they were doing the right thing bringing me back to my Dad but for me it was the wrong thing. They didn't ask me "why did you leave his place?"... Even after I got an IVO because of physical violence from my dad, I still wasn't asked about my experiences.'*¹²

A member of the Victim Survivors' Advisory Council said that '[c]hildren should be acknowledged within the justice system as well and recognised in their own right.'¹³

⁹ Interview 15 – Victim of crime.

¹⁰ Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

¹¹ Ibid.

¹² Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹³ Consultation Meeting 11 – Victim Survivors' Advisory Council.

When asked what part of the justice process worked well, one Victims' Survey respondent said: 'I was a child and had no voice.' Echoing this lack of agency and voice, another Victims' Survey respondent said young victims of family violence:



'are completely invisible to the system and in court even when they are named victims of offending as ours were'

– Victims' Survey respondent

Again, echoing the feeling of being invisible, another respondent to the Victims' Survey said that it was extremely sad for their child to be overlooked by the justice system, leaving them feeling unsafe and unprotected.

This sense of invisibility was similarly observed by a Y-Change Lived Experience Consultant who noted, during consultation, that with family violence cases, children are not seen or heard:

The child always has to be connected to an adult. In terms of listening and reporting and being taken seriously, then the voice of the young person should be taken seriously and placed front and centre. We need to take the young person's perspective seriously. Have policies in place to enforce confidentiality of the child with reporting procedures to match. Have independent and anonymous feedback, complaint and reporting mechanisms available to all ages, all abilities and all backgrounds; widen the net, fill the holes and strengthen it so that the smallest and quietest voice can be held and heard.¹⁴

According to the Y-Change Lived Experience Consultant, one way to address the invisibility of children and overcome their barriers to accessing the justice system is for representatives of young people to work with police 'to bridge the gap':¹⁵

That support person can ask the young person "how are you feeling, what can we do?" As an adult it can feel like the antitheses of what being a victim of crime is about. You can give a young person a pamphlet in easy English but you don't have a baseline of where the young person is at and their understanding of what is a sexual assault or what is ok for a parent to do or what body part is appropriate to touch. Two young people will see things different. It needs to be more than one size fits all approach.¹⁶

Alongside issues of invisibility, Victims' Survey respondents also highlighted the extent to which adult processes were imposed on children and young people, impacting on safe and meaningful participation:



'I was a terrified child who was stood over and intimidated by multiple men. I don't ever recall feeling safe or believed.'

'As a small child I was forced to stand in a full court room and have grown educated men yell questions at me.'

'The Detective in charge...requested a statement for court from my 6 year [old] daughter, and there seemed to be no understanding of the difficulties involved in this.'

– Victims' Survey respondents

A Y-Change Lived Experience Consultant described having to turn up at court in the morning and wait around as 'punishment in itself. Not knowing if or when you are going to be called and then you wait around all day.'¹⁷

These responses highlight the extent to which children and young people as victims of crime may be even more susceptible to secondary victimisation when participating in the justice process.

¹⁴ Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

A Y-Change Lived Experience Consultant recalled police visiting their house while they had a friend visiting. This consultant observed how the police had little regard to their preferences for when and how they might want to speak about the crime:

*'...they started to ask me all these questions and I didn't want to talk to the police in front of my friend. Also it was expected that with the friends I hang around with that you don't talk with the police. My experience of sexual assault had only just happened and it was all those things at once and I didn't want to talk to them.'*¹⁸

The VOCC was also told that some children and young people may have already had negative interactions with police and for them, police may not always represent safety: 'Children and young people have a lot of negative experiences with police and it makes an impact on feeling like you can trust them. They all look the same in the same uniform.'¹⁹

The VOCC was also told about aspects of the court and trial process that can be particularly traumatic for children and young people. One Victims' Survey respondent spoke about the accused being granted a 12-month delay to the start of the trial. This respondent said:

'I was in court with my children when that judge just accepted those pathetic excuses by Defence and with [a] flick of the pen put the trial back over 12 months. My children just broke down in silence. What am I supposed to tell them when this type of things happens?'

– Victims' Survey respondent

Children and young people may also struggle to get the support they need to navigate the justice system. The VOCC was told that:

- young people should have information given directly to them, not just their parents or guardians
- children and young people need multiple options for support, including online and via text message
- information needs to be accessible for young people.²⁰

The VOCC heard from the families of child victims who had encountered positive experiences with victim support for children at various stages of the criminal justice process. One victim interviewed by the VOCC noted that the 'support leading into the committal proceeding was exceptional all the way through, even with a 14-month delay'.²¹

On the other hand, other child victims struggled to get support, with this Victims' Survey respondent stating:

'The system is broken re victim services - they were good but they can't explain anything above the system and they don't help kids at all. Child DFV victims are completely invisible to the system and in court even when they are named victims of offending as ours were.'

– Victims' Survey respondent

This same Victims' Survey respondent elaborated: 'My kids still have not been provided with the outcome of proceedings by police. We received very little support or assistance from anyone.'

¹⁸ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Interview 16 – Victim of crime.

For other child victims, the parents had to take a proactive approach, pushing and advocating for appropriate support for their children:

'I contacted Victims of Crime. I listened, I learned, and I followed up and found a counselling company for myself and my children that deals in trauma. Nothing was handed to me on a platter when it should have been. I felt like I was in a war nobody could see. Why couldn't they see what had happened was so wrong?'

– Victims' Survey respondent

When asked if they would want to participate in the justice process again, one Victims' Survey respondent answered:

'No, as a young person under 18, I would prefer to tell my story again to a safe person and then have them provide advocacy and do this process on my behalf. I was not in any state of mind after being abused constantly to be further traumatised by adult justice processes. I had suffered enough trauma and needed safety and protection and advocacy.'

– Victims' Survey respondent

Participation for culturally and linguistically diverse populations

Consistent with previous research,²² Victims' Survey responses from those who identified as being from a culturally and linguistically diverse population illustrated several structural and systemic issues relating to participation in the justice system.

Key issues identified by culturally and linguistically diverse populations included difficulty navigating the justice system due to language barriers and barriers to culturally safe participation, particularly where there are intersecting barriers. For example, one Victims' Survey respondent spoke about how her culture as well as her identity as a woman meant dealing with police and courts was particularly challenging:

'Being a newly arrived migrant woman with limited English at the time, I found it very difficult to understand the process and the legal system. I felt intimidated dealing with the police and the court system as in my culture they are the authority and mainly male figures.'

– Victims' Survey respondent

Another Victims' Survey respondent stated that: 'Police are not safe ppl who understand cultural and religious issues.'

Survey respondents also highlighted basic issues of accessibility, such as not having resources in languages other than English and not being able to access interpreters.

'It would be great to have resources available in language other than English, someone to walk you through the process and also more female officers and judges?'

'There was also a need to communicate with his family over proceedings. This was handled very badly and interpreters were not used [when they] should have been.'

– Victims' Survey respondents

22 See, eg, Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 339–43 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/inquiry_into_Victorias_Justice_System_Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

Another Victims' Survey respondent stated the system lacked culturally diverse resources, personnel and facilities:

'Family and domestic violence is a complex social issue, the justice system plays an important role in eradicating this horrendous crime (mainly against women and children) but the system is not perfect. For example, the lack of culturally and linguistically appropriate resources, personnel and facilities.'

– Victims' Survey respondent

Participation for people with disability

A number of significant reviews and inquiries have highlighted the structural and systemic barriers to participation for people with disability.²³ Consistent with this research, issues with participation for people with disability were identified across interactions with police, courts and victims' services.

One victim interviewed by the VOCC said they felt 'treated as subhuman' and felt excluded by the police and from the court and the justice system because of their disabilities.²⁴ A member of the Women with Disabilities Victoria (WWDV) Experts by Experience Advocacy Team told the VOCC that people with disabilities are misheard, misunderstood and not believed.²⁵

In the VOCC's Victims' Survey, when specifically focusing on respondents who identified as having a disability, 63 per cent said they never felt like a participant in the justice system. When looking at respondents who did not identify as having a disability, 42 per cent said they 'never' felt like a participant in the justice system.



63%

63 per cent of survey respondents **who identified as having a disability said that they 'never' felt like a participant in the justice system.**

Responses to the VOCC's Victims' Survey also demonstrated intersecting factors of systemic discrimination and disadvantage for people with disability. When asked about factors that negatively shaped their justice system experience, a high proportion of respondents to the Victims' Survey who identified as having a disability also selected these factors:

- low income (74 per cent)
- experience of homelessness (46 per cent)
- age (43 per cent).

A major concern raised with the VOCC related to how the structure and processes of the justice system work to exclude people with disability or chronic health issues from being able to participate:

²³ Joint Family and Community Development Committee, Parliament of Victoria, *Inquiry into Abuse in Disability Services* (Final Report, 2016) 77; Victorian Equal Opportunity and Human Rights Commission, *Beyond Doubt: The Experiences of People with Disabilities Reporting Crime* (Summary Report, July 2014) 5; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 165.

²⁴ Interview 1 – Victim of crime

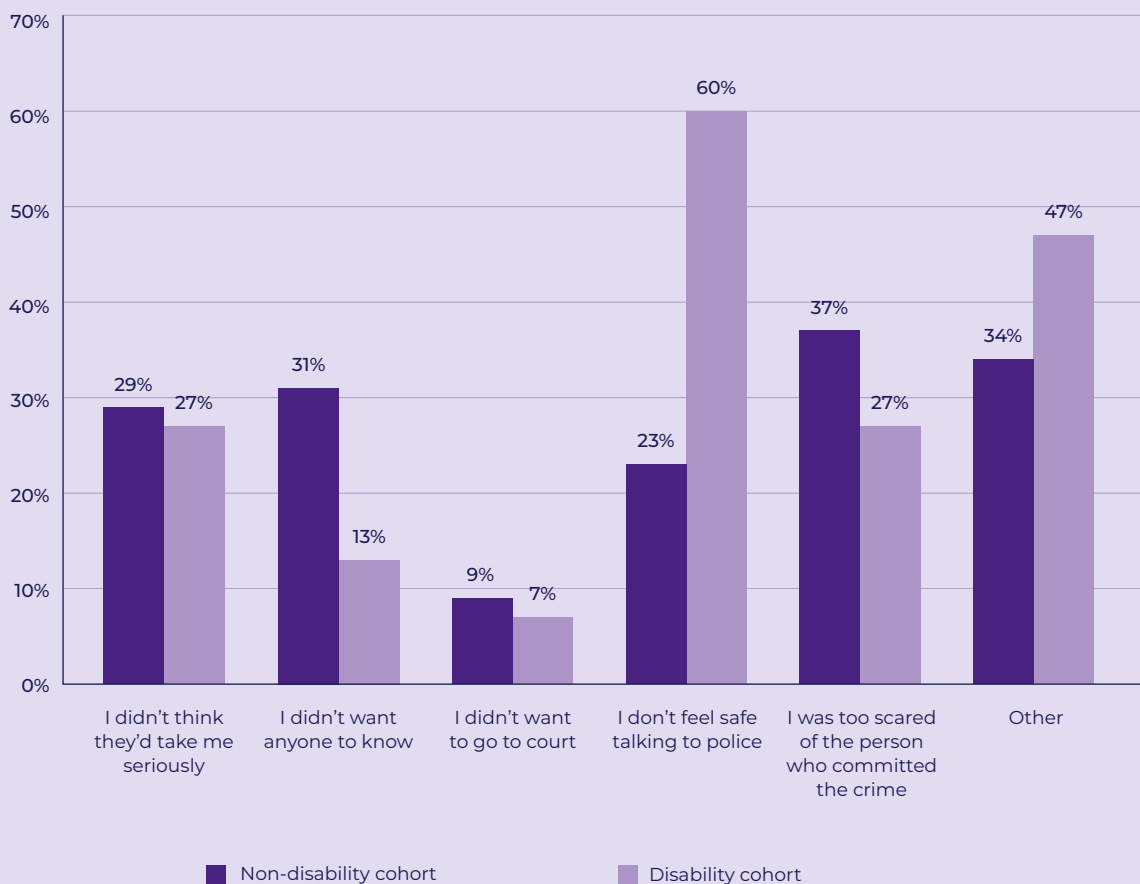
²⁵ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.



*'I'm too sick to engage with the justice system because of where my health is at, but the courts expect you to show up, be organized enough to get a medical certificate to ask for an adjournment and follow their process...They need to be more flexible with people not knowing the processes and understanding that people with disabilities may not show up to court and may not be organized enough to get a medical certificate. I've had court cases thrown out of courts because I didn't show up, even when I provided a medical certificate. They just throw it out and expect you to go through the whole reapplication process all over again...There needs to be a cultural shift. They need to show more respect for disabled people.'*²⁶

Not feeling safe and able to report to police was also highlighted as a structural and systemic barrier to participation for people with disability. In the VOCC Victims' Survey, respondents were asked why they did not report to police. Sixty per cent of survey respondents who identified as having a disability advised the VOCC that they did not report the relevant crime because they did not feel safe talking to police, compared to only 23 per cent of people who did not identify as having a disability (see **Figure 5** below).

Figure 5: VOCC Victims' Survey: Why didn't you report to police?



For people with disability, safety and accessibility are interconnected, with accessibility issues making some victims feel both excluded and unsafe. For example, a member of the WWDV Experts by Experience Advocacy Team told the VOCC that because her disability is invisible, she struggled to report to police in a safe way, experiencing the process of trying to get an intervention order as complex and overwhelming

²⁶ Interview 1 – Victim of crime.

due to the sensory challenges of being in a police station: ‘Although I presented as “held together” because my communications and body language didn’t indicate distress, I didn’t get very far in the process and I felt really unsafe.’²⁷

Another member of the WWDV Experts by Experience Advocacy Team told the VOCC that her very poor experiences with police have led her ‘to not feel safe to report anything today to police. E.g., not being believed. Facing ableism and judgement.’²⁸

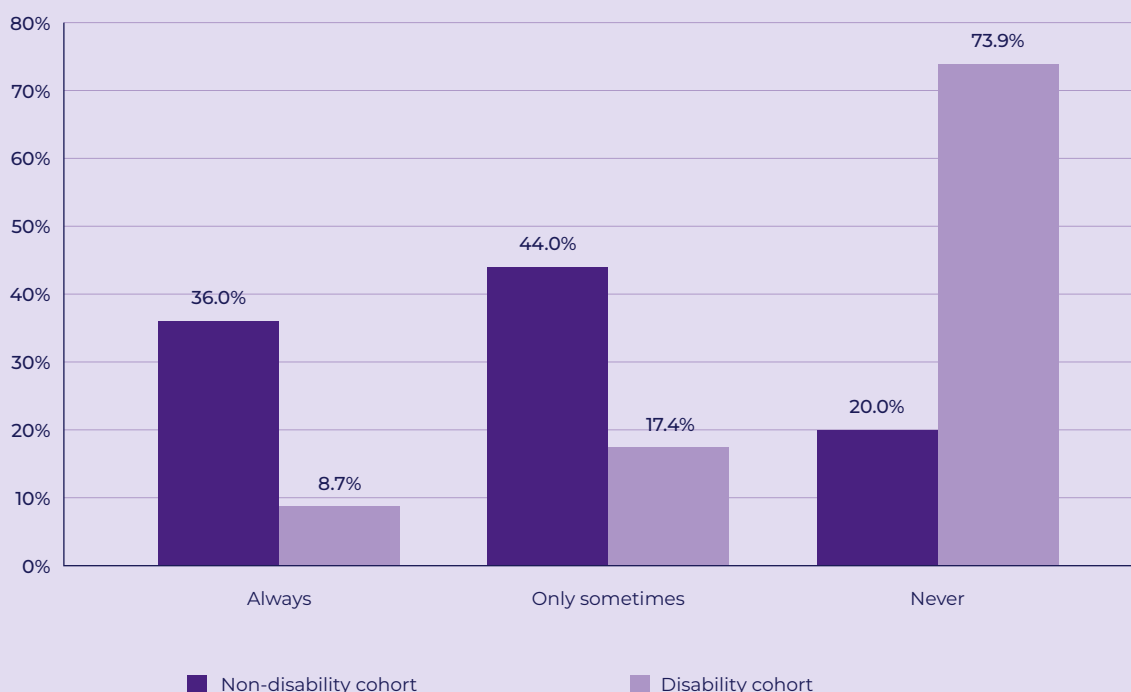
A victim-survivor from the Victim Survivors’ Advisory Council spoke about exclusion because of lack of safety modifications and reasonable adjustments in courts. This victim-survivor stated that:

‘...the justice system is very confronting and overwhelming for disabled people. They won’t let you have enough safety modifications or reasonable adjustments to participate in the process.’²⁹

This victim-survivor had tried unsuccessfully to get reasonable adjustments to attend court but said ‘the courts don’t help you with reasonable adjustments so that you can participate. There are big barriers to accessing justice because you can’t even get through the court.’³⁰

Safety in court was clearly a concern for respondents to the Victims’ Survey, with 74 per cent per cent of respondents who identified as having a disability stating they ‘never’ felt safe in court, compared to 20 per cent of respondents who did not identify as having a disability (see **Figure 6** below).

Figure 6: VOCC Victims’ Survey: Did you feel safe at the court?



²⁷ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

²⁸ Ibid.

²⁹ Consultation Meeting 11 – Victim Survivors’ Advisory Council.

³⁰ Ibid.

Lack of safety and lack of accessibility in the courts was also raised by a member of the WWDV Experts by Experience Advocacy Team:

*'I was a victim. I was put in court with the perpetrator next to me. Because my wheelchair didn't fit in the safety room in court, I couldn't go in there. Unless you know safety rooms exist, you don't know to ask for it. The safety rooms aren't big enough for wheelchairs.'*³¹

This WWDV Experts by Experience Advocacy Team member spoke about how basic safety and infrastructure needs are fundamental to participation:

*'Safety in court needs to be addressed so that we can feel more comfortable, so we can get our cases heard. We need to make sure people feel comfortable in these spaces and as much as people want to participate, they need to have choice about that participation. Court buildings are not disability accessible.'*³²

One member of the WWDV Experts by Experience Advocacy Team told the VOCC that they had had an 'awful ableist experience' attending court and this experience was so traumatic that they 'don't expect to ever willingly be able to go back to court ever again.'³³

Members of the WWDV Experts by Experience Advocacy Team also told the VOCC that they have not felt comfortable disclosing their disability to justice agencies in the past because they were not sure a disclosure would lead to appropriate support being provided, as well as fearing such a disclosure would negatively affect their interaction with the justice agency. For example, one member stated that disclosing their disability or explaining their access needs to police '...was going to make me more disbelieved. That I would be considered an unreliable witness.'³⁴ Another member of the WWDV Experts by Experience Advocacy Team said one of the biggest barriers to victim participation is unconscious bias, including encountering attitudes of 'what would they know?'³⁵ This view was supported by another member of the Experts by Experience Team who agreed that they '...encounter that idea of "what would they know" all the time' in relation to non-verbal clients they work with.³⁶

Issues around capacity and credibility were also raised by other lived-experience advocates. For example, a member of the Victim Survivors' Advisory Council said people with disability are:

*'...told we are too disabled or mentally ill to make reports. My disability advocate told me to get a letter from my GP and psychiatrist to say I have the level of ability to be a credible sound witness to give evidence about crimes against me and others.'*³⁷

Provision of appropriate information was also highlighted as an issue for victims with disability. Of the Victims' Survey respondents who identified as having a disability and had pursued a justice response, 46 per cent said they never got any useful information from police about participating in the process.³⁸

Unsurprisingly, of respondents to the Victims' Survey who identified as having a disability, 40 per cent said they would not report the crime to police again, compared to 14 per cent of respondents who did not identify as having a disability.

³¹ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³² Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

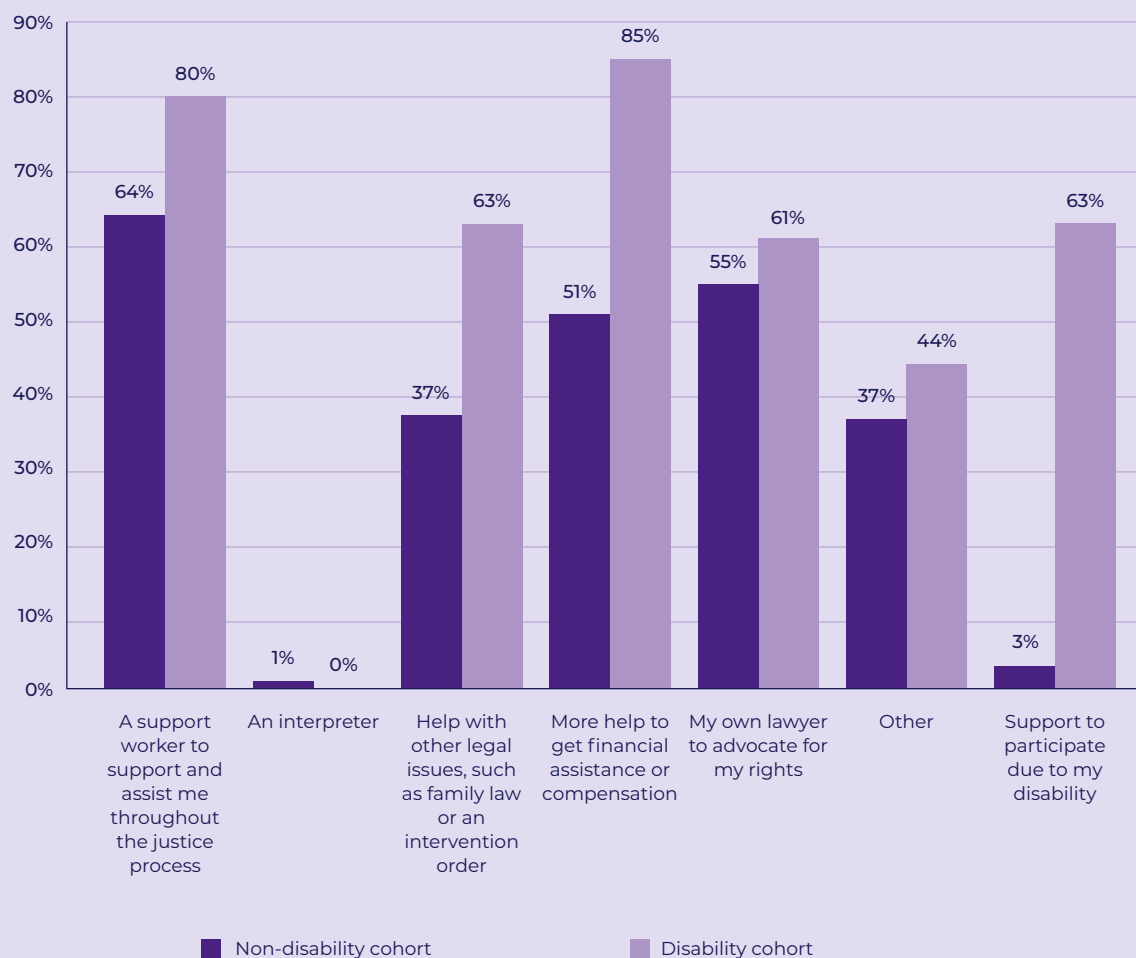
³⁶ Ibid.

³⁷ Consultation Meeting 11 – Victim Survivors' Advisory Council.

³⁸ This was in contrast to only 21 per cent of respondents who did not identify as having a disability responding with 'never'.

Victims' Survey responses also indicated respondents who identified as having a disability wanted more support and assistance to participate in the justice system across a number of domains, including getting more help with other legal issues and help accessing financial assistance (see **Figure 7** below).

Figure 7: VOCC Victims' Survey: What extra help would have made the justice system easier to participate in? (disability cohort)



Participation for victims who are criminalised and misidentified

The VOCC was told that the complexity of victimisation could be compounded by a victim's involvement with the criminal justice system as an offender or a misidentified perpetrator,³⁹ highlighting criminalisation as a key barrier to participation.

A member of the Victim Survivors' Advisory Council told the VOCC:

*'I don't think there's any justice in the injustice system as a criminalised woman. As someone who had a relationship with drugs it was very difficult for me because my character was discredited. There were lots of judgement of my character and I was discriminated against... The justice system sits alongside the carceral system with power and control. We have experienced different forms of power and control and the justice system replicates the power and control. People who use violence and exhibit behaviours of power and control use the justice system to continue to weaponise and to place power and control over victims.'*⁴⁰

The VOCC was told that for a lot of criminalised women who have already experienced harms via the justice system, to reach out to the 'very same system for help can be traumatising'.⁴¹

Misidentification in family violence contexts was raised by respondents to the VOCC's Victims' Survey, with one respondent stating: 'I have been deliberately misidentified as the perpetrator in retaliation for a complaint against VICPOL.' Another Victims' Survey respondent said 'police threatened to charge me for splashing water on my abuser while I was being attacked'.

Participation for LGBTIQ+ people

For LGBTIQ+ people, including for young LGBTIQ+ people, structural barriers can prevent reporting. A Lived Experience Consultant with Y-Change Berry Street explained that for a trans person and a victim of family violence and sexual assault, reporting crime 'is not an option' and is 'not safe'.⁴² They queried the safety of reporting to police, noting that reporting options are very limited and can result in victims feeling alienated from police:

You only have two options – call 000 or a non-emergency number or go to the police station yourself. I am aware that there are LGBTIQ+ liaison officers (LLOs). As a queer person reporting a crime you don't often have someone who is automatically in the community to support you. Inclusion and training around diversity for police still needs to go a long way. You need to question why a system built to protect people is feared by so many of them.⁴³

Stakeholder views

The issues raised by stakeholders were consistent with those raised by victims. Stakeholders told the VOCC about lack of accessibility and barriers to safe participation for:

- Aboriginal and Torres Strait Islander people⁴⁴
- culturally and linguistically diverse populations⁴⁵
- victims with disability and mental ill-health⁴⁶
- younger⁴⁷ and older victims of crime⁴⁸
- LGBTIQ+ communities⁴⁹
- victims of certain types of crime (e.g. sexual assault and family violence)⁵⁰
- victims who have been misidentified as the perpetrator in family violence matters⁵¹ or have previously offended⁵²

39 'Misidentification' in the context of family violence describes circumstances where the primary aggressor is misidentified as the victim, and the victim is misidentified as the primary aggressor.

40 Consultation Meeting 11 – Victim Survivors' Advisory Council.

41 Ibid.

42 Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

43 Ibid.

44 Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1); Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

45 Consultation Meeting 22 – Community Legal Centres – Session 1.

46 Consultation Meeting 23 – Community Legal Centres – Session 2.

47 Consultation Meeting 9 – Alannah and Madeline Foundation.

48 Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

49 Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities; Consultation Meeting 23 – Community Legal Centres – Session 2.

50 Responses to Victims' Professionals Survey.

51 Consultation Meeting 22 – Community Legal Centres – Session 1.

52 Consultation Meeting 23 – Community Legal Centres – Session 2

- victims living in regional Victoria⁵³
- victims who, for a range of reasons, may not fit the stereotype of the ‘perfect victim’.⁵⁴

Additionally, the VOCC was also advised of socioeconomic barriers to participation for victims who have unstable housing or are experiencing homelessness, those who lack access to technology, transport and other social supports such as childcare, as well as lack of education or literacy issues.⁵⁵

The Centre for Innovative Justice (CIJ) told the VOCC that services developed for victims were based on an assumption that someone is a ‘white, middle class, educated person who experiences crime perpetrated by a stranger’.⁵⁶

Aboriginal and Torres Strait Islander communities

The Aboriginal Justice Caucus (AJC) told the VOCC that Aboriginal people mistrust the system as a result of racism and lack of action, stating that there ‘is an ongoing issue of safety in reporting and ability to achieve equality and justice’.⁵⁷ The AJC told the VOCC that it is important to build trust based on tangible, positive outcomes for Aboriginal people:

You need outcomes to sell as testimony to the community to trust a particular system or agency. Once one person knows there is a positive outcome, from reporting a crime for example, then the community will trust the service. People talk within community and that is the best promotion for a service.⁵⁸

The Commissioner for Aboriginal Children and Young People told the VOCC that ‘Aboriginal children and young women – they are not seen as viable victims that the police are really interested in.’⁵⁹ The AJC also advised that barriers to reporting to police include racism and both conscious and unconscious bias:

Police see the Aboriginal person first as the problem but they must instead see the act or crime against the Aboriginal person as the problem. If the Aboriginal person has been in trouble before, the police will display unconscious bias in terms of “you’ve done something similar so why are you here now reporting that it’s happening to you?”⁶⁰

The AJC told the VOCC that a lot of Aboriginal women fear they will not be believed by police and that reports of crime have not always been actioned in the past.⁶¹

The CIJ told the VOCC that many Aboriginal victims of crime do not feel safe reporting a crime to police because of over-policing of Aboriginal communities and violence perpetrated on them by the system, meaning many Aboriginal victims of crime have had negative interactions with police.⁶²

The CIJ also told the VOCC that services for victims of crime are often delivered through large faith-based organisations – the same entities that perpetrated significant institutional abuse, creating a systemic barrier to victims seeking support.⁶³ This means victims do not feel safe reaching out to these organisations for assistance.

The AJC also highlighted that both data collection issues and funding have an impact on knowledge of Aboriginal victims’ needs. The AJC told the VOCC that improved data collection in relation to Aboriginal victims of crime is needed.⁶⁴

Older victims of crime

The Commissioner for Senior Victorians observed that older people are often not recognised as a priority group, nor is there recognition that older people have other intersecting barriers, such as cultural diversity, and that this creates systemic bias and leads to a lack of participation.

The Commissioner for Senior Victorians also noted a lack of integrated responses to crimes such as elder abuse, that require a more holistic response addressing housing, health, mental health and care arrangements:

...often elder abuse means the supports required are not only about victims of crime services, they’re also likely to be things that go to their health and wellbeing that were vulnerabilities that provided opportunity for the abuse to occur. You need to go back down stream and address those initial drivers that made them vulnerable – and they are typically a whole a combination of health, housing, mental health and wellbeing measures.⁶⁵

⁵³ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1); Consultation Meeting 18 – Victoria Police – Session 2; Consultation Meeting 23 – Community Legal Centres – Session 2.

⁵⁴ Consultation Meeting 23 – Community Legal Centres – Session 2; Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁵⁵ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁵⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁵⁷ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1), Consultation Meeting 30 – Aboriginal Justice Caucus (AJC Meeting 2).

⁵⁸ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

⁵⁹ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁶⁰ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

⁶¹ Ibid.

⁶² Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁶³ Ibid.

⁶⁴ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

⁶⁵ Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

From a structural perspective, the Commissioner for Senior Victorians queried the extent to which courts can address the complexity of elder abuse.⁶⁶

The Commissioner for Senior Victorians also suggested systemic barriers to participation may account for the low rates of conviction in elder abuse matters:

Very few matters of elder abuse ultimately proceed to the court. It is important for us to better understand what sits behind this. To what degree is it the reluctance of older people to take action, and to what degree are there systemic issues at play?⁶⁷

The Commissioner for Senior Victorians also noted that the justice system can make assumptions about a person's ability to participate that may be based on myths or misconceptions, noting a person may have declining memory while maintaining capacity for speaking truthfully and for decision making:

Some of the internalised and unintentional systemic bias are things like someone having a perception, "Oh, it's only an older person living in aged care, most likely they're going to have dementia" and "Are they going to be a reliable witnesses?"⁶⁸

Children and young people

Echoing victims' views, stakeholders spoke about children and young people not being visible and acknowledged as victims in their own right.⁶⁹

The Principal Commissioner for Children and Young People suggested there had not been a substantial change in the way children experience the criminal justice system, or in the way they are treated in the criminal justice system since changes were made to victims' status as participants under the Victims' Charter.⁷⁰

The Alannah and Madeline Foundation advised about the structural barriers to children and young people participating in the justice system, referring to children being invisible and not seen as victims in their own right:⁷¹

there are issues with the definition of victim which fails to recognise that children are deeply impacted when they witness or are exposed to violent crime – unless they themselves have been physically injured. We have children that are sitting inside these crimes as unseen victims.⁷²

The Principal Commissioner for Children and Young People provided a case example of a young victim of family violence who 'felt absolutely disregarded by the police who were engaging with him and by the whole criminal justice process', stating further that:

He talks about being referred to as "the complainant's child", not even the complainant despite that fact he also suffered physical violence. He describes every part of that process in which he felt unseen as a victim in his own right. Now, some aspects of that experience are specific to family violence and children's experience of family violence, but there's many aspects that I think go across the board.⁷³

The Alannah and Madeline Foundation told the VOCC that children and young people's Victim Impact Statements often go unacknowledged in court:

it's absolutely demoralizing for a child or young person if they take the time to either tell somebody or write something down in a victim impact statement and then have it taken no notice of in the courtroom. That happens again and again...Children think: why did they ask me to do a victim impact statement, if they weren't going to do anything with it?⁷⁴

The VOCC was told that there are still issues of implicit bias, with assumptions made that a child's evidence will be less reliable than an adult's:

Sometimes this conclusion around the reliability of evidence is explicit, sometimes it is stated as part of the rationale of the finding and sometimes it is subtle. Sometimes it is clear the only way the organisation can have reached the finding is through an inherent assumption that children fabricate allegations and that children's evidence carries less weight.⁷⁵

The Commissioner for Aboriginal Children and Young People told the VOCC that police need to be better trained to be responsive to trauma and to age and developmental stage.⁷⁶ The VOCC was also told that incidents of police violence against children and young people point to the need for deeper training and awareness among police of trauma responses.⁷⁷

66 Ibid.

67 Ibid.

68 Ibid.

69 Consultation Meeting 9 – Alannah and Madeline Foundation; Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

70 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

71 Consultation Meeting 9 – Alannah and Madeline Foundation.

72 Ibid.

73 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

74 Consultation Meeting 9 – Alannah and Madeline Foundation.

75 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

76 Ibid.

77 Ibid.

The Principal Commissioner for Children and Young People spoke about the challenges encountered when reporting to police, such as not receiving an empathetic response or not being believed. The Commissioner for Aboriginal Children and Young People noted that this can be compounded for some children and young people whose interactions with police may already be negative:

Police hold this dichotomous role of being the bad guy when young people have done something wrong, but they are also supposed to see them as someone to go to when something goes wrong. That's really quite difficult for children who are in out of home care and where the police might be called by residential workers, to deal with a child whose behaviour is supposedly uncontrollable.⁷⁸

Further, the VOCC was told that there are specific barriers for some young people to report violence or abuse because '[t]hey know that if they call the police, child protection will be called in and that is a barrier to seeking help from anybody, not just from the police'.⁷⁹

The Alannah and Madeline Foundation also spoke about the added stress and harms caused by participation in the justice process for some young people from culturally and linguistically diverse backgrounds:

For children in that context, they frequently play the role of translating for parents. So with police or with the parts of the justice system to referral agencies when the referrals being made for support, they frequently play the role of translator and interpreter within their own families. And so they then have repeated exposure to the events and in some instances reliving the traumatic story.⁸⁰

Stakeholders did point to positive initiatives assisting victims to participate in the justice system, like the Child Witness Service and the intermediaries program.⁸¹ However, the VOCC was also advised that there has to be capacity for children to engage with support services separately to their parents or to elect to have the engagement not mediated through their parent/carer.⁸²

Culturally and linguistically diverse communities

Respondents to the VOCC's Survey of Victim Support Professionals highlighted particular barriers for culturally and linguistically diverse victims. Victims' professionals frequently mentioned the lack of accessible interpreters and also spoke about the need for more systemic change to address barriers for culturally diverse victims:

Language and cultural barriers – harder to get that informal support at court when you can't make conversation/small talk in your own language. A lot of this support is just being there for someone and chatting to help them relax while they wait. This would be addressed by recruiting VWAS and VAP workers from more language groups.

More support and resources to ensure services are culturally safe for a range of marginalised cohorts

many police officers I've spoken to have made explicitly racist statements about CALD communities and individuals, which is particularly shocking considering I'm speaking to them for the first time and over the phone. If they are comfortable speaking to me like that, I can't imagine what they are saying or how they are treating either alleged victims or perpetrators.

Community Legal Centres (CLCs) told the VOCC that '[t]wo of the main issues CALD [culturally and linguistically diverse] victims experience are laziness and racism. Victims frequently can't get beyond the front desk of a police station to report their injury or report evidence of a crime'.⁸³

The VOCC was also told about structural barriers to participation in the justice system for victims who may be on temporary visas where the visa process makes any interaction with the justice system particularly precarious.⁸⁴

LGBTIQ+ community

The Commissioner for LGBTIQ+ Communities told the VOCC that LGBTIQ+ victims of crime can feel marginalised, minoritised or even criminalised by the criminal justice system, whether this is through misgendering, judging, victim blaming or shaming of such victims: 'There are LGBTIQ+ victims who have had really rough experiences over the years with the justice system'.⁸⁵

78 Ibid.

79 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

80 Consultation Meeting 9 – Alannah and Madeline Foundation.

81 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

82 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

83 Consultation Meeting 22 – Community Legal Centres – Session 1.

84 Consultation Meeting 23 – Community Legal Centres – Session 2.

85 Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities.

The Commissioner for LGBTIQ+ Communities told the VOCC that courts do not always affirm gender and LGBTIQ+ identity and that courts can 'over or under elevate' the status of a person as a queer person which affects how a person is treated:

For example, if a judge is thinking of person as an Aboriginal person, this can hetero normalise that individual. Not considering intersectionality omits the queer aspect of that person. Intersectionality and the layering of identity is complex and has ramifications for how the justice process responds to people. At times, race or culture can overshadow LGBTIQ+ identity. We need to consider people in relation to all aspects of their identities.⁸⁶

The VOCC was told that some trans men or women who are victims of crime may not wish to identify as trans to the court system for a variety of reasons, such as a fear of bias or discrimination, while some trans women and men do want to be affirmed in the justice system, but that affirmation causes further harm.⁸⁷

The VOCC was also told that victims who are LGBTIQ+ are not necessarily aware of their rights as victims of crime and are often left alone to seek support and assistance: 'Victim services are not necessarily welcoming of LGBTIQ+ persons. That is the experience.' The VOCC was also told that:

LGBTIQ+ people have to exercise caution when seeking assistance or support, especially where there is intersectionality. Providing a culturally safe service to, for example, a refugee does not necessarily mean LGBTIQ+ cultural safety. There are implications when you don't consider a person's intersectionality.⁸⁸

Victims Services staff advised the VOCC that enhancing accessibility and participation for LGBTIQ+ communities was a key focus for them:

We have put a lot of effort in in last 12 months to enhance participation with some of our key stakeholders...the work we have been doing around Rainbow Tick and LGBTIA+ communities and making sure they can access services in an inclusive and safe way. We have made changes in the technology space, made demographic changes to our systems so that participation is enhanced by understanding who victims are, and who is coming/not coming to us.⁸⁹

Participation can cause secondary victimisation

One of the objects of the Victims' Charter is to reduce the likelihood of secondary victimisation by the criminal justice system.⁹⁰

Secondary victimisation can be categorised as a 'further violation', usually in the form of psychological harm, as a result of participating in the justice system.⁹¹ In this context, it is common for victims to state that the justice process was worse than the original victimisation experience.⁹²

Research confirms that the criminal justice system often causes secondary victimisation.⁹³ Crucially, secondary victimisation is not caused solely by justice 'outcomes' (such as whether an alleged offender is found guilty or the type of sentence imposed) but is characterised by a victims' sense of procedural justice.⁹⁴

Victims' experiences

Consistent with research outlined above, the VOCC heard from many victims who attested to how the criminal justice system and its processes had re-traumatised them or caused further harm.

Some victims acknowledged points within their journey where they had experienced empathetic individuals, helpful support services or positive aspects of participation. However, many victims told the VOCC they had frequently had traumatic experiences spanning all aspects of the process, including with police, prosecution, court, corrections and victims' services. As stated by a member of the Victim Survivors' Advisory Council, 'when we acknowledge the traumatic broken process of service provision from authorities toward victim survivors, we need to acknowledge the high risk of further trauma'.⁹⁵

The VOCC heard from many victims who attested to how the criminal justice system and its processes had re-traumatised them or caused further harm.

86 Ibid.

87 Ibid.

88 Ibid.

89 Consultation Meeting 14 – Victims Services staff.

90 *Victims' Charter Act 2006* (Vic) s 4(1)(c).

91 See, e.g., Uli Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings' [2002] 15(4) *Social Justice Research* 313, 314. Orth describes other possible harms caused by secondary victimisation, such as impacts on the victim's self-esteem, faith in the future, trust in the legal system and faith in a just world.

92 Uli Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings' [2002] 15(4) *Social Justice Research* 313, 321.

93 Ibid.

94 Ibid 322.

95 Consultation Meeting 11 – Victim Survivors' Advisory Council.

Many victims recounted not just one bad experience within the justice system, but layers of negative experiences that, when combined, caused significant re-traumatisation and harm. Aspects of the criminal justice process that victims frequently raised as areas where further harm occurred usually included experiences where the victim was not:

- believed, taken seriously or kept safe
- heard, respected or informed
- provided with adequate information or advice
- adequately supported through difficult or complex processes
- treated with empathy and a trauma-informed approach.

Respondents to the VOCC's Victims' Survey offered harrowing insights into the deep trauma caused by secondary victimisation:



'[t]he justice system has continually failed me up until this day'

'the whole process has added to the incident'

'I was telling the truth and the impact of not being believed has had a long and lasting affect on my life'

'The police failed me – the courts retraumatised me'

'The system is beyond broken. It is traumatising and views things through one lens only. It is not trauma informed at all. Their understanding of family violence is limited and the actions taken are performative at best, dangerous at worst.'

'In all honesty I am not convinced reporting my cases have been worth the personal cost to me but I feel like I am this far in now with a trial to commence in 6 weeks time at this stage that I need to follow through even though statistically the odds are stacked against me. We are implored to come forward and report but the system re-traumatizes again and again.'

– Victims' Survey respondents

As stated by Ingrid Irwin, '[t]he system is meant to validate your truth, but its invalidating⁹⁶ and there 'is nothing in it for the survivor when they report. If people knew how deadly this was, they wouldn't encourage people to report.'⁹⁷

A member of the Victim Survivors' Advisory Council told the VOCC that they were 'yet to hear any victim who is not exhausted by their interactions with the justice system. From my experience it was physically and mentally exhausting to interact and a harsh environment for victims.'⁹⁸

⁹⁶ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

⁹⁷ Ibid.

⁹⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

When asked what aspects of the justice system had worked *well* for them, the majority of victims (over half of respondents) still answered in the negative. In fact, 48 responses (36 per cent) answered in variations of: 'nothing', 'nil', 'none' or 'none of it'. Select survey responses below illustrate the extent to which many victims felt let down and traumatised by the justice system:



'None of it ended up working for me.'

'The justice system has failed us in every way.'

'None of it. There is no justice system.'

'Nothing'

'The justice process did not work for me.'

'None'

'none – no one cares'

'Nil'

'unfortunately none'

'none'

'I have NOT had any justice.'

'None, police not interested.'

'none of it'

'NOT. ONE..STEP'

'zero'

'none of it'

'None to be Honest if anything the whole process has added to the incident'

'The justice system has continually failed me up until this day.'

'truly none'

'I feel the system absolutely did not work in anyway for me.'

'no one cares'

'I am powerless in a system that's supposed to help me.'

– Victims' Survey respondents

Many victims expressed disillusionment with the justice system, detailing the ways in which the system had lacked a trauma-informed approach and how they had been further harmed by the system itself. Trauma caused by the trial process was frequently raised. Victims' Survey responses included:

'Zero support during the court phase, no real understanding of what to expect. Very little compassion from the [O]PP.'

'The perpetrator had a lawyer and I broke down in Court and could not continue as I was made to feel like I had no rights and the perpetrator was the victim.'

'Being called a witness and not a victim, makes it seem like you have a very minor role in something that was done to you.'

'For 18 months there were legal arguments for the Defense seeking my psychologist full file. I thought there was legislation to protect them in sexual assault cases but turns out anything can have exemptions applied for. It is wrong and hugely distressing.'

'I understand that there has to be a process to find the truth. However the trial process is just so flawed in my opinion. How can you have an Accused please Not Guilty and at no stage during the trial does his Defence have to prove he did not do it. It is broken.'

'I can't see any point [in participating in the justice system]. The victim is not looked after at all. And the justice if any is none. The perpetrators are cared for and given more opportunity to be rehabilitated than the victim.'

– Victims' Survey respondents

The justice system was frequently described as a site of further harm and trauma. For example, a member of the Victim Survivors' Advisory Council spoke about the further harm caused by systems abuse, exacerbated by a justice system seemingly unable to detect or prevent it:

'I had gone into the legal system hoping to have an independent umpire to blow the whistle on what is going on – for the judge to issue a penalty and say stop ... [but] the system was being used to further the abuse ... Perpetrators can use the justice system as a weapon to interfere with your present and future.'⁹⁹

This member of the Victim Survivors' Advisory Council further stated:

'When I went to court I wasn't hoping for more than I should get, but when you witness the court colluding with a perpetrator you enter a new level of fear because not only are you being abused by the perpetrator, the system itself is against you. That is a terrifying place to be. When I returned to court subsequently it was with a new level of fear I hadn't previously experienced. I still have that same level of fear whenever I think about entering into the justice system'¹⁰⁰

Another victim representative also spoke about the justice system being weaponised to further control victims:

'We have experienced different forms of power and control and the justice system replicates the power and control ... People who use violence and exhibit behaviours of power and control use the justice system to continue to weaponise and to place power and control over victims.'¹⁰¹

⁹⁹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁰⁰ Ibid.

¹⁰¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

While it is acknowledged that some parts of the justice system will always have the potential to cause distress, the VOCC was also told about incidents that may have been avoided had a trauma-informed approach had been adopted. For example, a victim representative of the Victims of Crime Consultative Committee spoke about attending court without a support worker and being:

*'unexpectedly read a list of my deceased mother's injuries in court, followed immediately by having to present my Victim Impact Statement. It still shakes me to my core. If our WAS worker had been there, we would have known that was going to happen, but the prosecutors didn't meet with us to explain that.'*¹⁰²

A representative of the Victims of Crime Consultative Committee also spoke about the distress caused by feeling like victims of serious driving offences¹⁰³ are not treated the same as other victims of crime:

*'There's a sentiment in the community that driving crime isn't a crime. So, when my mother was killed by a driver, there is a narrative that pops up a lot both with the general public and legal practitioners. In my case, it felt like it was treated as an accident, not a crime. I felt that other victims were prioritised over us in terms of court support. There were times we really needed that support, but we couldn't access it. For example, our WAS worker had to make decisions about whether to attend court with us versus a victim of sexual violence who was giving evidence. They are prioritised above us. There were times that I really need that support, but to be told you're not a priority is not great.'*¹⁰⁴

Another victim representative spoke about not feeling believed by the police:

*'An officer did not believe me when I said that I did not know the home invader. They said "no one comes to your house for no reason. You obviously know who did this."'*¹⁰⁵

Victims also described being advised of the likely distress and trauma caused by participating in the justice system and this then deterred victims from choosing to participate, as evident in these responses to the Victims' Survey:

'I didn't lay criminal charges against the perpetrator as I was literally told by the police that it would be a traumatic and harrowing experience for me when being cross-examined...'

'One of the police constables actually advised me against progressing criminal charges due to the nature of the process and the impact of being cross-examined in court.'

– Victims' Survey respondents

¹⁰² Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

¹⁰³ Serious driving offences involve death or serious injury caused by the culpable or dangerous driving of a motor vehicle. See, eg, County Court of Victoria, *Serious driving offences* (Web Page, 12 August 2022) <<https://www.countycourt.vic.gov.au/court-decisions/criminal-offences/serious-driving-offences>>.

¹⁰⁴ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

¹⁰⁵ Ibid.

Stakeholder views

Respondents to the VOCC's Survey of Victims' Professionals spoke about the adversarial system being 'horrendous', retraumatising, victimising and clinical:

The adversarial system is an horrendous experience where victims feel they are on trial not the defendant.

Victims can often feel retraumatised by the justice system/court process, especially through cross examination.

Victims are victimised over and over by the system. Its heartbreaking to witness.

I am still seeing too many clients being retraumatised by the justice system.

There are many examples of victims feeling disempowered, not believed, undermined and targeted directly by professionals, the offender and offender's support network while going through the criminal justice system.

On the whole, most [victims] experience the system as re-traumatizing and unjust.

It is very clinical. The humanity is taken out of it for the victim's. They have already been treated as less than human by the perpetrator, and when they are only seen as a case number that can be disempowering.

A number of victims' professionals surveyed by the VOCC indicated that the cultural change needed to improve victims' treatment and status was not occurring.

Connected to the broader theme of re-traumatisation, victims' professionals also highlighted that victims have limited opportunities to have a say and be heard, suggesting:

- decisions are made regarding the progress of a case without the involvement of the victim
- victims are sometimes asked for their views about key decisions, but it is generally just 'lip service'
- victims feel aggrieved by the 'editing' of their VIS.

Victoria Police members also told the VOCC that 'the perception from a lot of victims is the justice system in particular is tiered towards the accused' and described a number of aspects of the system that cause secondary victimisation, including:

- courts being focused on offenders, with constant adjournments without regard to victims and witnesses
- lack of appropriate court support (e.g. no single point of contact) and unsafe court environments
- Victim Impact Statements not being acknowledged by judicial officers.¹⁰⁶

Victoria Police members told the VOCC:

There is a frustration in relation to everything during the court stage being heavily focused on the offender. These victims are terrified of the accused. Victim Impact Statements (VISs) aren't taken into account by the judge. A lot of the victim's pain and suffering is in relation to the years of court processes which is not taken into account. The harm this has caused victims is irrelevant to the court because it's irrelevant to the primary offending.¹⁰⁷

System complex and confusing

Research consistently demonstrates that victims experience difficulties in negotiating a complex justice system which, for many individuals, is their first involvement with the multifaceted web of agencies, processes and law that is the justice 'system'.¹⁰⁸ Many justice processes are not only complicated, but often protracted.¹⁰⁹ It is for this reason that many Victims' Charter principles relate to a victim's right to information, referral and support to help them navigate that complexity.¹¹⁰

¹⁰⁶ Consultation Meeting 19 – Victoria Police – Session 3.

¹⁰⁷ Ibid.

¹⁰⁸ Tamar Dinisman and Ania Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support, United Kingdom, 2017) 11.

¹⁰⁹ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 141.

¹¹⁰ *Victims' Charter Act 2006* (Vic) ss 7, 8, 9, 9A, 10, 11, 17.

Victims' experiences

Victims described the innate complexities of the criminal justice system as being a barrier to participation. Many victims advised the VOCC that they had found the criminal justice system complex, confusing and unapproachable. One Victims' Survey respondent stated:

'I don't have anything to compare with but I need to articulate that being a victim of crime doesn't mean that I/we are ignorant or stupid. I mention this because the process is not victim friendly ie. legal language can be difficult to understand (in lay men's terms), a lack of opportunity to debrief, ask questions, know what is ahead to prepare for "emotionally".'

– Victims' Survey respondent

A member of the Victim Survivors' Advisory Council described the justice system as a 'foreign land – you don't speak the language, you've got no control over anything that happens there'.¹¹¹

Victims expressed that they often felt unable to ask questions and they described feeling overwhelmed by unfamiliar legal terminology and processes. A victim interviewed by the VOCC explained that '[i]n the very early stages, a victim's brain has to take on an enormous amount of information. When you're a victim, it's like you have to learn how everything works.'¹¹²

One Victims' Survey respondent feared asking 'dumb' questions and felt overwhelmed by the legal jargon:

'There were assumptions made that I knew more about the law than I did – and my fear of asking what might be perceived "a dumb question" meant that I refrained from asking some questions, rather I would look to other sources for a response. When I first began my journey – I was overwhelmed by terms such as committals, directions hearings, mentions, Voir dire, verdins etc - terms that were used with such fluency but only added to my never-ending searches on google.'

– Victims' Survey respondent

Another Victims' Survey respondent observed that legal practitioners forget that lay-persons often possess a limited knowledge about the justice system and the law in general:

'Practitioners sometimes forget that while the Law may have been their chosen pathway, for many victims the first time they intersect with the law is after a significant and traumatic event. Assumptions about what one does or does not know must be part of the initial conversations.'

– Victims' Survey respondent

Another Victims' Survey respondent advised the VOCC that they found the criminal justice system difficult to navigate, despite their own legal knowledge and experience:

'I am a lawyer and wouldn't have been able to navigate applying for compensation with VOCAT or take action under sentencing act to receive compensation. Even as a lawyer I found it difficult to access resources and information on the latter particularly.'

– Victims' Survey respondent

¹¹¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹¹² Interview 8 – Victim of crime.

Stakeholder views

Many stakeholders spoke about the level of confusion experienced by victims entering the justice process.¹¹³ As noted by a respondent to the Victims' Professionals Survey, 'Victims frequently feel confused and overwhelmed by fear in the justice system.'

Victims' professionals described the justice system as complex, overwhelming, confusing and intimidating and that this in itself is a barrier to victim participation:

Being a victim is a barrier. It is such a complex issue for so many. On top of the trauma already associated with the crime, you then have the added complexity of mental health/intellectual disability/cultural issues/language barriers etc. I often remind the victims I support that the system is not about them, it is about the offender being held to account. I find this helps balance unrealistic expectations of a system that more often than not, victims find overwhelming and then disappointing as they do not get the outcomes they were seeking.

Lack of understanding in relation to the justice system in general. It can be very intimidating. There's also a lack of knowledge surrounding services that can support as well as how they can be supported.

Awareness of services, confusion understanding legal jargon, misconceptions of the justice system.

Court Network told the VOCC that victims are frequently confused and feel as though they have not been given basic information to participate:

we frequently get asked 'when is this going to happen', 'who's going to help me', 'what's happening next'. Individuals are often so confused because either nothing has been communicated, or it was communicated in the early stages when they were too overwhelmed to take it in.¹¹⁴

CLC representatives agreed that victims are often confused, mostly because crucial information is not forthcoming:

There is such a lack of information for victims upon reporting crime. Victims often have no idea what stage their matter is at, whether a report has been made or a statement has been taken, whether the matter is being investigated.¹¹⁵

Another CLC representative highlighted that non-compliance with the Victims' Charter exacerbated victims' confusion:

This goes to the issue of information and the lack of information that victims receive. It's about police not providing victims with information, not complying with the Victims' Charter and, because victims don't necessarily know what their rights are, they don't even know what to ask or that they can ask. More capacity is needed by CLCs to do this background work for victims.¹¹⁶

Victims Services staff confirmed that many victims who make contact with victims' services are confused, particularly 'by all of the services that start with "victim" and because the criminal justice process can be so confusing'.¹¹⁷ The South Australian Commissioner for Victims' Rights spoke of victims always 'playing catch-up' and having to quickly learn about their rights.¹¹⁸

Court Network told the VOCC that victims' sense of confusion compounds feelings of insecurity, with victims 'continually looking over their shoulder, wondering "is this person still in jail", "have any charges been laid against them" or "what's happened to them"'.¹¹⁹

Trauma and participation

While the harms of secondary victimisation are real and significant, it is important to acknowledge that the effects of victimisation alone can cause many victims to struggle in the short and longer term across a number of domains – physical and mental health, relationships, housing, employment, finances, community and social connection.¹²⁰

Victims of crime experience various short- and long-term effects following a crime which may include shock, loss of trust, guilt at becoming a victim of crime, a sense of uncertainty, feeling disempowered and more vulnerable, and symptoms of fear, anxiety, depression, confusion, sadness, anger and stress.¹²¹ Understandably, many of these affect victims' ability to participate in the justice system, particularly where they may struggle with normal daily activities.

113 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 14 – Victims Services staff; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 19 – Victoria Police – Session 3; Consultation Meeting 23 – Community Legal Centres – Session 2.

114 Consultation Meeting 12 – Court Network.

115 Consultation Meeting 23 – Community Legal Centres – Session 2.

116 Consultation Meeting 23 – Community Legal Centres – Session 2.

117 Consultation Meeting 14 – Victims Services staff.

118 Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

119 Consultation Meeting 12 – Court Network.

120 Tamar Dinisman and Ania Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support, United Kingdom, 2017) 4–11.

121 Ibid 4.

Victims' experiences

Many victims of crime told the VOCC about the extent to which trauma is a barrier to participation because it affects psychological wellbeing, cognition, relationships, finances and housing security. The VOCC was told that the criminal justice system is not set up to recognise and manage the trauma of victims. The challenges of dealing with trauma alone mean concepts of participation are illusory for some victims of crime.

The VOCC was told that the criminal justice system is not set up to recognise and manage the trauma of victims.

Victims discussed the impact that the crime had on their lives, and how difficult it is to manage the trauma on a day-to-day basis:

*'Being a victim of crime is a terrifying experience. Trauma affects us in many different ways. Our decision making is not what it was because we are dealing with so many things you don't understand – legal issues, financial issues, personal issues. Dealing with ... traumatized children, trying to get them to school.'*¹²²

*'I hadn't realized you know I used to do a crossword puzzle every morning, and all of the sudden I couldn't do them anymore and I couldn't work out why I couldn't do it when I could do it before hand. You know, I thought I was going mad. I didn't really connect that to the trauma. I couldn't sleep any more than 2 hours a night I would get up and check if I had locked the doors many times every night. I would lay there worrying about pains in my chest. If I went out during the day I would cry at the idea of just going home. I couldn't see an end to this misery.'*¹²³

A victim interviewed by the VOCC spoke of the struggle that often remains invisible to justice system personnel as families navigate trauma and the criminal justice system simultaneously:

*'You have to deal with horrific grief and trauma, and I have ... children. I had one child that tried to suicide twice ... ended up in in hospital for over a month. These are the things justice agencies don't know about. These are things that are happening in my life when I'm trying to navigate a huge system.'*¹²⁴

Another victim interviewed by the VOCC reflected on how trauma manifests differently to grief and for this victim is a lifelong experience:

*'I wanted to specifically highlight the difference between grief and trauma. They're two separate issues. I lost my brother when he was 30 years old to brain cancer, so I understand grief. Trauma is totally different. Trauma stays with you forever. Grief subsides because if you lived grief over and over, we wouldn't survive. But the trauma – well, for me it caused anxiety, depression, sleeplessness. The health issues have gone, they're under control now, but your body does things that you can't control.'*¹²⁵

122 Interview 15 – Victim of crime.

123 Interview 5 – Victim of crime.

124 Interview 8 – Victim of crime.

125 Ibid.

Victims frequently told the VOCC how trauma and grief can negatively impact on their ability to understand and retain information. As one respondent to the Victims' Survey noted:

'I need to acknowledge that it was an extremely emotional and devastating process during a deep grieving stage. Trying to cope with 'brain fog/mush' in the early stages of the process was exhausting.'

– Victims' Survey respondent

Respondents to the Victims' Survey told the VOCC about how trauma affected their information and support needs, noting victims need information in a range of different formats, and at different times:

'More written information to assist in processing the information, even after the event – it is difficult to process information when in a heightened state of distress, consistently in "flight, fight or freeze" responses as a result of the traumatic experiences and ongoing abuse, even throughout the court process.'

'The information/pamphlets were helpful but generic. Explanations or updates in writing after a phone call would have been helpful as I didn't always take in all the information given.'

'Understanding the processes, changes to the charges were not fully explained and access to information after sentencing – it as a highly stressful time and a bit of a blur, I could benefit from a written process flow to reflect on, I still have not processed or completely understood what happened. It has caused long term recovery and relationship challenges.'

– Victims' Survey respondents

Another Victims' Survey respondent noted that after the stress and trauma of the court proceedings has passed, victim recovery would be aided by providing victims with an opportunity to ask questions and access information:

'[T]here has been little support post proceedings to process and understand what occurred, and to ask questions, with reduced stress/emotional distress that was present at the time of going through the court process. I believe there should be an opportunity to reflect and have access to information when feeling emotionally safer and well supported – this could aid in recovery. Instead I think, but am not sure, I might have to apply to FOI for information to find out/understand what happened and process the impact (which did not stop when perpetrator was sentenced). I do not know where to start to get support to figure this out.'

– Victims' Survey respondent

Another respondent to the Victims' Survey spoke about how trauma affected their ability to voice their opinions and adequately participate during the criminal justice process: 'I could of spoken up more but felt I didn't have the capacity after being conditioned with childhood trauma and isolation.'

Stakeholder views

Victims' professionals surveyed told the VOCC that victims are often 'too traumatised to advocate for themselves in a broken system', pointing to the need for more training on the impact of trauma and how to interact with people experiencing trauma.

Associate Professor Asher Flynn spoke about trauma impacting victims' ability to perform even the simplest tasks, noting that any system, including complaints systems, that rely on victims to self-advocate are not accessible for most victims:

For some of the [victims] we spoke with ... they would reflect on the fact that during that time they couldn't ... even go to the shop to buy milk or butter. They would leave the house and stand there and not know what they were doing. The thought of having to do something like make a complaint was too much for them in that state.¹²⁶

The Alannah and Madeline Foundation noted the broad-ranging needs of children and young people who have experienced trauma.¹²⁷

Justice system delay

Justice system delay is widely recognised and understood as a significant issue for an accused person. Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter of Human Rights) states that a person charged with a criminal offence is entitled to be tried without unreasonable delay but there is no equivalent right afforded victims under the Charter of Human Rights, such as the right to give evidence at trial without unreasonable delay.¹²⁸ Similarly, the Victims' Charter is silent on matters of delay for victims of crime. However, as noted by the Australian Institute of Criminology, delay 'affects everyone', including 'the victims and their family who have been aggrieved by the offences against them, and the community who demand justice, safety and protection'.¹²⁹

Victims' experiences

The VOCC heard from victims who had experienced varying lengths of delay within the court system, some up to five years. Victims frequently described how the court process was slow and traumatic and that waiting for some kind of finalisation was difficult.

Victims described delay occurring in all courts within the criminal jurisdiction, and across a variety of offences. Victims told the VOCC that they had experienced delay for differing reasons, that they often felt that such delays were unnecessary and, as one Victims' Survey respondent commented, meant cases often 'dragged out for years'.

Victims frequently described how the court process was slow and traumatic and that the waiting for some kind of finalisation was difficult.

Delay is a source of secondary victimisation

The VOCC repeatedly heard from victims who had been further traumatised because of court delay, as evidenced by this respondent to the Victims' Survey:

'As a victim I was re traumatised making detailed statements, the childhood sexual abuse I experienced was magnified, analysed remembering and explaining minute by minute replays of horrific events. I was prepared for and accepted the need for this process, but I needed to stay in that traumatic space for almost 2 years with both cases running concurrently in preparation for cross examination.'

– Victims' Survey respondent

¹²⁶ Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

¹²⁷ Consultation Meeting 9 – Alannah and Madeline Foundation.

¹²⁸ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 25(2)(c).

¹²⁹ Jason Payne, 'Criminal Trial Delays in Australia: Trial Listing Outcomes' (Research and Public Policy Series No. 74, Australian Institute of Criminology, 2007) 2.

Another respondent to the Victims' Survey suggested delays render women and children's lives 'worthless':

'Victoria wonders why every week one women & potentially her children are murdered due to domestic violence. If this is not an example then what is? Waiting roughly 2 years for a criminal case of domestic violence to be heard in the Magistrates Court involving recidivism says it all. Why should we need to wait for the perpetrator who has repeatedly committed a serious crime to have the privilege of being allowed to wait this long for justice to occur and accountability. Until this is treated with the urgency & seriousness it demands, women & children's lives remain worthless.'

– Victims' Survey respondent

A member of the Victim Survivors' Advisory Council told the VOCC that victim-survivors are told to 'move on' and 'heal' but this can be virtually impossible with delays in court finalisation of up to six years: 'There's a huge contradiction between allowing victims to move on but needing them to be present and continually tap into their trauma.'¹³⁰ Similarly, a Victims' Survey respondent stated:

'Plus – it took a very, very long time to finally have a court hearing date. This meant staying in my PTSD quite a long time without being able to put it behind me with some "closure".'

– Victims' Survey respondent

One respondent to the Victims' Survey advised that delay in the criminal justice system had had devastating effects:

'Unfortunately, due to [the perpetrator] having no legal counsel the judge adjourned the hearing again. My sister and I were devastated, exhausted, in despair. Three weeks later my sister was dead, she [had taken her own life]. This is the consequence of a delayed, drawn out justice system'

– Victims' Survey respondent

Another Victims' Survey respondent described years of distress:

'it has been four years of constant distress, being told one thing only to have something else happen and these kind people making errors that end up causing a great deal of distress but nothing I can do because I am only a witness in the eyes of the law.'

– Victims' Survey respondent

Unsurprisingly, physical health can also be impacted, as noted by this respondent to the Victims' Survey:

'After an exhausting, horrendous Committal hearing ... [and] many delays and adjournments, my health suffered. I experienced hypertension, exhaustion and insomnia waiting for the trial'

– Victims' Survey respondent

The VOCC heard from victims for whom lengthy delays had meant changes of personnel in relevant justice and victims' services agencies, requiring victims to revisit traumatic events or details with new people, as noted by this respondent to the Victims' Survey:

'With the lengthy delay from arrest to appeal (5 years), I sometimes wasn't sure who to contact if I had a question with personnel changes – [the] Investigator changed Units a number of times, 3 different OPP Legal Advocates, WAS changed twice and once not available at a critical point when meeting the Prosecutor before trial.'

– Victims' Survey respondent

As outlined in **Chapter 4**, many victims advised that they would be reluctant to participate in the criminal justice process again. This Victims' Survey respondent indicated that court delays were a factor in this choice:

'I'm also unwilling to put my life on hold for years whilst a court process is underway. It is also too traumatising to pursue a complaint through the entire trial process (especially for sexual offences). I know that I am not alone in this assessment of the criminal process, which I think is a shameful reflection of how our current legal system is supporting (or rather, not supporting) victims of crime. If the majority of victims do not bother reporting, or pursuing crime in court, then how is our legal system achieving its aims?'

– Victims' Survey respondent

Too many court hearings and adjournments

Some victims felt that it took too long to obtain a hearing date while others expressed concern that the court process was littered with unnecessary court appearances and adjournments. One Victims' Survey respondent summarised it as follows:

'What didn't work so well for me was the length of time in a very drawn out process and the negative impact that has on victims. So many minor hearings, adjournments and delays. I believe this protracted system favours the perpetrator and puts the victim at a considerable disadvantage.'

The reasons for adjournments included instances where the accused appeared at court without legal representation or where the accused had not appeared at all. The VOCC heard from victims who advised of perpetrators using delay as a tactic to manipulate the court process and cause harm to the victim, as noted by this respondent to the Victims' Survey:

'The Accused was granted a 12 month delay to start the trial after another successful attempt by the [a]ccused to play the system. I was in court with my children when that judge just accepted those pathetic excuses by Defence and with flick of the pen put the trial back over 12 months. My children just broke down in silence. What am I supposed to tell them when this type of things happens?'

One victim interviewed by the VOCC felt that the delays were attributed to counsel for the defence:

*'It's not about the victims, it's about the accused always. So they've got all the rights and we have none. His solicitors are always busy so they stall the case ... Even when the judge said 'get the children's evidence sorted by Christmas', it wasn't sorted until the following June. I know they're busy people, but we're stressed people. And they are paid good money to deal with us. We're not paid anything. The minute we get off the phone they have forgotten who we are and the minute the case is over they won't remember who we are.'*¹³¹

Some respondents to the Victims' Survey described how delay affected their ability to participate meaningfully in the court process and give their best evidence:

'After an exhausting, horrendous Committal hearing... [and] many delays and adjournments, my health suffered d... I was not actually in a fit state to perform my best.'

'A physically exhausted victim, weighed down by time delays, lacks the focus, the clarity and earlier determination to give their best evidence under further gruelling cross examination so essential to a successful prosecution.'

Victims felt particularly frustrated in instances where the delay was caused by the perpetrator pleading not guilty but then, much later changing their plea to guilty: 'Then also the fact that [the accused and co-accused] dragged out the process ... numerous court hearings not guilty, not guilty, not guilty and the morning of the court trial, he pleads guilty now.'¹³²

Further, the VOCC also heard from victims who had to wait a substantial period between the perpetrator pleading guilty and being sentenced in the court:

*'That was in the Magistrates' Court. He pled guilty. There was about a 9-month delay between the plea hearing and the sentencing hearing.'*¹³³

Committals add to delay and distress

Many victims surveyed expressed their frustrations with the committal process and felt this was a major cause of delay. As one victim observed, '[a]ll the committal did was waste seven months of our life.'¹³⁴ Another commented:

*'The timeline was just horrific. It was July of the following year that we had the committal, which of course was cancelled a couple of times. The trial was in November of the next year... And that went on for a couple of weeks as well, even though he pled guilty.'*¹³⁵

¹³¹ Interview 15 – Victim of crime.

¹³² Interview 7 – Caterina Politi.

¹³³ Interview 9 – Survivor advocate.

¹³⁴ Interview 16 – Victim of crime.

¹³⁵ Interview 12 – Victim of crime.

In particular, victims felt that the committal process prolonged their stress, delayed the administration of justice and prevented victim recovery, as noted by this respondent to the Victims' Survey:

'All the Committal Proceedings did in our case was enable the [a]ccused to play the system with an empty promise of negotiating a Guilty Plea, get granted a 3 month delay which caused over 9 months of delays once the Committal Proceedings were scheduled. This causes a great deal of stress to families'

COVID-19 has caused additional delays

Victims who were surveyed by the VOCC were asked if the pandemic had affected the way they participated in the justice system, or any support they may have received from victim services. Thirty-nine per cent of victims surveyed advised that they had experienced court delay due to COVID-19, which was the second most frequent answer. Victims interviewed by the VOCC also advised that COVID-19 had exacerbated delays, with trials being cancelled and relisted on multiple occasions:¹³⁶

*'The trial was to start February 2020 and then slated for May 2021. Come the end of 2020, because of COVID and delays in the County Court, I contacted the OPP and asked what is the likelihood of this trial starting in 2021 and they said "not good".'*¹³⁷

One respondent to the Victims' Survey stated: 'I accept that the COVID pandemic has had a massive impact [on] court attendance but the lengthy delays drove me to some very dark places that I almost did not get out of.'

Another Victims' Survey respondent felt that the COVID-19 delays not only delayed the criminal justice process, but also affected their ability to provide evidence to the court:

'Time, everything took a very long time, especially when covid delayed trials. My case ended up with 3 different juries, only the first seeing me in person. I believe this impacted the other 2 juries.'

Stakeholder views

Victoria Police members and the OPP both advised the VOCC that delay causes attrition, impacting on victim participation.¹³⁸ Victoria Police members told the VOCC that:

The longer the delay, the less likely [victims] are to seek a prosecution. There's probably around a 50 per cent attrition rate. The relationship with police sours. Victims engage at the initial attending, at the crisis point, but by the time we get criminal matters to court the victim just wants to move on and their life has changed by the time the court appearance arrives. They have received support and have a safe space. The judicial process only retraumatizes them or elevates their risk. If they continue with the charges, it may elevate their risk.¹³⁹

One Victoria Police member spoke of a matter that had been delayed since 2019, experiencing six trial delays: 'The accused has been on remand the whole time and the family goes through significant trauma every time it's adjourned.'¹⁴⁰

Victoria Police members also told the VOCC that trial delays are often the point where complainants 'want to give up':

Police will tell you about the frustrations of having a trial date, with witnesses subpoenaed, and then the trial is delayed and this is frequently happening. A lot of complainants want to give up at that point. This is not recognised enough. It's less about people feeling safe and more about the delay with courts. You can't blame COVID for everything as these delays pre-date COVID and continue now.¹⁴¹

¹³⁶ Interview 15 – Victim of crime.

¹³⁷ Interview 16 – Victim of crime.

¹³⁸ Consultation Meeting 24 – Victoria Police – Session 4; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 13.

¹³⁹ Consultation Meeting 24 – Victoria Police – Session 4.

¹⁴⁰ Consultation Meeting 19 – Victoria Police – Session 3.

¹⁴¹ Consultation Meeting 17 – Victoria Police – Session 1.

The OPP also advised the VOCC that delay can affect victim participation:

Having a court matter still in progress for a protracted period of time can impact adversely on victims and their willingness to participate. Some victims feel that they can no longer tolerate the uncertainty of not knowing when the court matter will be resolved and therefore prefer to take some control and not continue with it.¹⁴²

Victoria Police advised the VOCC that public perceptions around delay in the justice system also affect victims' willingness to participate:

Victims hear that it takes 3–5 years to get to court and they don't want to subject themselves to delay, reliving this over so many years and then be cross-examined. It's not an issue around lack of confidence in police or other agencies.¹⁴³

Court Network told the VOCC that undue delay prolongs victims' trauma and can prevent their healing: 'Another key issue relates to delays in the justice system, with the victim having to sit and hold their story for long periods of time while they are awaiting going to court.'¹⁴⁴

The VOCC was told that constantly changing court dates can have considerable ramifications for victims who have to deal with impacts on work schedules, childcare arrangements, annual leave and finances on top of the 'emotional impact of the unpredictable timeframes'.¹⁴⁵

Victims Services staff suggested victim participation was particularly important at stages of the process that are subject to delay, particularly where this involves children and young people who are required as a witness at trial:

People often want more input around delay and adjournments, especially when that delay is caused by the accused person as quite often the victim can feel disrespected if those decisions are being made without due consideration of the young person's feelings.¹⁴⁶

Victoria Police members also advised that Victoria Police goes to 'great lengths to keep complainants in a good place' but that waiting three or four years for a trial is too long for people to have that burden in their life.¹⁴⁷ Police advised that adjournments are difficult to secure if applied for by the prosecution but suggested there are clear examples where the courts are too lenient towards the defence and do not consider the impact on victims and witnesses.¹⁴⁸

¹⁴² Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 13.

¹⁴³ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁴⁴ Consultation Meeting 12 – Court Network.

¹⁴⁵ Consultation Meeting 14 – Victims Services staff.

¹⁴⁶ Consultation Meeting 14 – Victims Services staff.

¹⁴⁷ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁴⁸ Consultation Meeting 17 – Victoria Police – Session 1.

Overview of Chapter 6: Support and entitlements

Access to timely and appropriate victim support is key to victim participation in the justice system. One of the objectives of the Victims' Charter is that victims should be offered information that will enable them to access appropriate services to help with the recovery process.

The Victims of Crime Commissioner (VOCC) heard that victims who were able to access sufficient and appropriate victim support discussed positive experiences. However, the VOCC heard that:

- victims cannot always get the support they need
- without access to legal advice from an independent, trusted source (separate to the prosecution), participation can be difficult.

The VOCC also heard that victims and witnesses in Victoria are treated differently. This is a result of different entitlements under the Victims' Charter, but also because eligibility for different services and supports can be based on type of crime, the jurisdiction in which a crime is heard, a victim's geographic location and a victim's characteristics (including age or disability).

The VOCC also heard from a number of victims who were not aware of the Victims' Charter or their entitlements under the Victims' Charter.

6

Chapter 6:
**Support and
entitlements**



Introduction

This chapter outlines victims' experiences of accessing support. One of the objectives of the *Victims' Charter Act 2006* (Vic) (Victims' Charter) is that victims 'should be offered information to enable them to access appropriate services to help with the recovery process'.¹ Victims are also entitled to be provided with 'clear, timely and consistent information about relevant support services' and justice agencies and victims' services are, 'if appropriate', to 'refer persons adversely affected by crime to relevant support services'.²

Access to timely and appropriate victim support is key to victim participation in the justice system. Although this inquiry is not focused on victim support specifically, access to support affects a victim's ability to participate meaningfully in the justice system and key themes about victim support have therefore arisen during consultation and engagement.

This chapter also considers victims' entitlements, including those under the Victims' Charter, and victims' awareness of their entitlements.

Victims struggle to access support

In a functional victim support system, victim support workers act as navigators for victims of crime, steering victims through the justice process seamlessly and bringing in other supports and expertise as necessary.

Victims' experiences

Victim support enhances participation

Although many victims told the Victims of Crime Commissioner (VOCC) about the difficulties they had experienced in accessing victim support, those who did access sufficient and appropriate victim support talked about positive experiences. It was clear that some victims had received a level of support that had significantly assisted them to participate in the justice process, as evidenced by these respondents to the Victims' Survey:



'Once Witness Assistance got in touch, I felt like I had someone to ask all the "stupid" questions of. Nothing was too much trouble, and they addressed all my fears, mostly around giving evidence and being in close proximity to the offender. WAS organised visiting court beforehand, provided emotional support, kept me up-to-date, supported before, during and after giving evidence remotely... I wouldn't have coped without everyone's amazing knowledge, experience and support.'

'What worked well for me was my victim support worker... she was absolutely amazing she done all the hard yards and explained everything I needed to know very thankful for her help and support.'

'I received invaluable support from social workers through the Witness Assistance Program with face to face meetings explaining proceedings, always answering my questions, offering kindness and encouragement and accompanying me to court hearings.'

'I am supported by a VAP worker who has kept me up to date regarding court. Matter still before the court & not finalised 2 years later ... in this 2 years I have had ONE phone call from the police informant who called me after my VAP worker to let me know something the VAP worker had already told me ... making me think that the VAP worker prompted this call.'

- Victims' Survey respondents

Difficulty accessing support services

Not all victims surveyed by the VOCC had used a victims' service. Victims surveyed who had not engaged with a victim service were asked why. As shown in **Figure 8** below, 33 per cent of victims advised the VOCC that they did not know how to access victims' services or which ones to use.

¹ *Victims' Charter Act 2006* (Vic) s 4(1)(b).

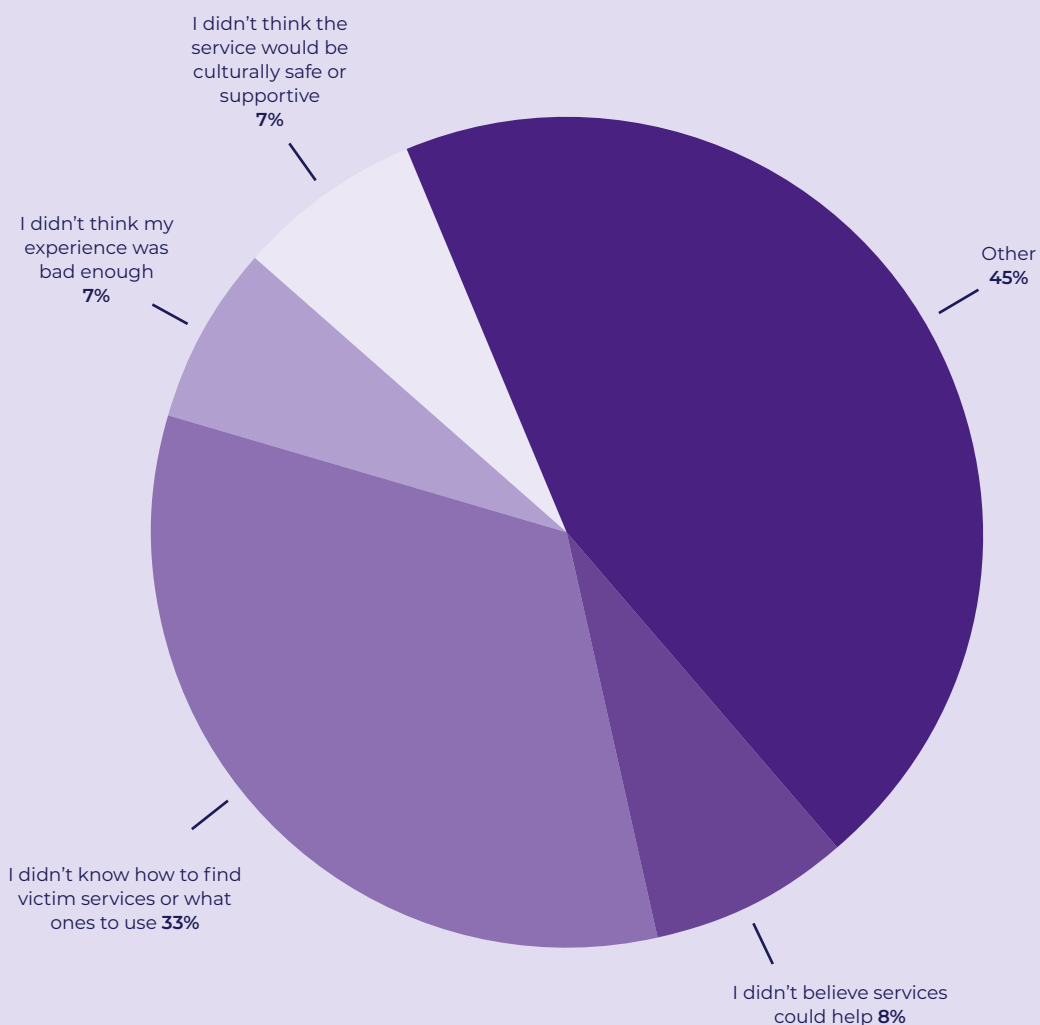
² *Ibid* 7(a)-(b).



33%

A third of victims surveyed (33%) **didn't know how to access victims' services or what services to use.**

Figure 8: VOCC Victims' Survey: Why didn't you use a victims' service?



Forty-five per cent of respondents selected 'other' as their answer to the question of why they had not used a support service. Common themes among these respondents related to not knowing that victim services existed, previous negative experiences and frustration with the relevant processes for receiving such a service, such as timeframes.

Many victims told the VOCC that they had found it difficult to find appropriate victim support, with one respondent to the Victims' Survey describing it as 'a lottery':

'Of course I acknowledge that trauma, grief and loss is different for everyone and not one fix fits all. However, it seems that getting the 'right' person/people to support in the 'right' way can be likened to a lottery.'

- Victims' Survey respondent

Victims frequently described either being unaware of support options available, referrals not being made when then could have been, or being ineligible for support, with select Victims' Survey responses as follows:

'Didn't know they existed until now.'
'Because we weren't advised of it by the police or anyone else.'
'I attempted to, but got no help because case was too old.'

- Victims' Survey respondents

Victims often reported that they were referred 'in circles' or from one agency to the next. One respondent to the Victims' Survey explained that '[t]here are tons of services but using them does not lead anywhere. They are set up in a big circle of referral without help.' Another victim surveyed stated that they had 'barely been able to get effective legal support' and listed over 50 agencies or individuals they had contacted in order to get help.

Victims frequently reflected on the lack of support that they had throughout the criminal justice process, as evidenced by these Victims' Survey respondents:

'needed more support throughout the process. Needed to have someone on my side. Needed to know what was happening and when'
'More sup[p]ort, being kept up to date on what was going on, honest, accurate information'
'A lot more support and working with less judgemental better trained individuals'
'I would have found it beneficial to have had someone assist me in navigating the court process to ensure I was adequately prepared for all scenarios.'

- Victims' Survey respondent

Victims surveyed explained the implications of not having appropriate referrals made to support services. One Victims' Survey respondent told the VOCC about a particularly negative court attendance:

'[T]he police forgot to assign a support person to sit with me in court. i didnt know my rights so I wasn't expecting one... me crying during court... while the whole court room stared at me as every 50 or so charge was read out.'

- Victims' Survey respondent

Some victims of sexual assault were also disappointed by the failure of police to advise them of victim support programs. For other victims, referrals were made but the victim advised that they received no follow-up contact from the relevant agency.

Victims regularly spoke to the fact that the onus to find support was often placed on them, as noted by this Victims' Survey respondent:

'While there is no doubt I have seen the fruits of the hard work of so many that has taken place over many years – change has been painfully slow, and gaps still exist. Gaps in terms of what I call the “hallway”. This is particularly relevant in the context of the onus still being on me to “source” information from various Agencies.'

- Victims' Survey respondent

Victims talked about how re-traumatising it was to repeatedly discuss the crime with various police members, support services, prosecutors and during the court process itself. As one Victims' Survey respondent noted:

'Trust is a basic problem. Legal process and opening up to yet more strangers who want all the details for their records – like having one's victimhood reinforced.'

- Victims' Survey respondent

Victim support was insufficient

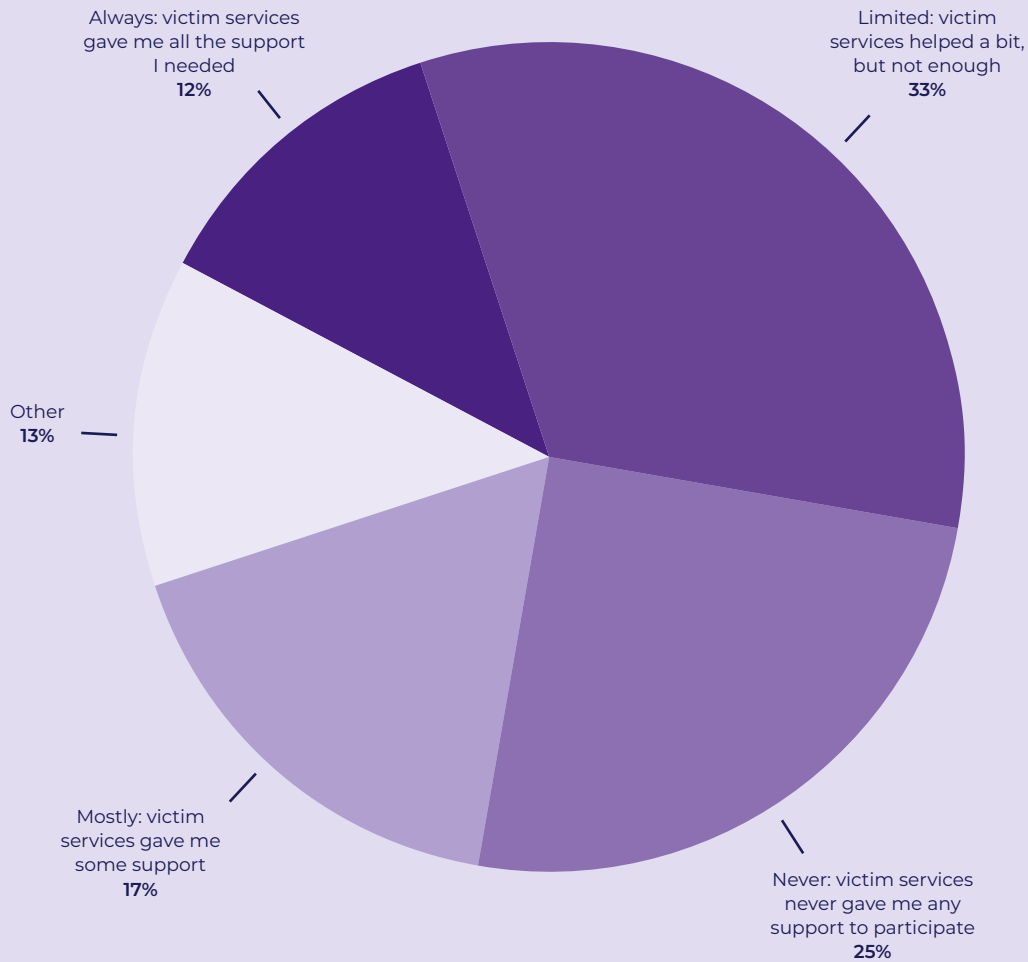
For those victims who had used a victims' service, the Victims' Survey asked victims whether that service had helped them to participate in the justice process.

As shown in **Figure 9** below, only 12 per cent said that victim services always gave them all the support they needed to participate in the justice system.



Twenty-five per cent of respondents advised that victim services never gave them any support to participate and 33 per cent advised that they had received only limited support – that is, victim services helped a bit, but not enough.

Figure 9: VOCC Victims' Survey: Did victims' services help you to participate in the justice system?



Victims told the VOCC that certain services were merely referral agencies and that they often felt like they were not provided with meaningful assistance. One respondent to the Victims' Survey advised the VOCC:



'Victims services were slap dash. They were a referral agency at best. They linked me to a psychologist, a lawyer for VOCAT and some material aid (taxi vouchers) and some funding for damage to the property where the offence occurred. That was it. I had to look for support services elsewhere online. They had NO idea what they were doing days after the murder of my mother.'

- Victims' Survey respondent

Another respondent to the Victims' Survey similarly commented:



'Victim Services did not work well. It was very disjointed in regards to being directed to the help we needed and not having one person we could go to who could give us the right information.'

- Victims' Survey respondent

The VOCC was advised that there was a lack of appropriate support relating to either the crime or victims' particular circumstances, as noted by these respondents to the Victims' Survey:



'No suitable services for victims of homicide, specialised services in the state. No recognition of this cohort of victims. There is plenty around victims of DV, but nothing for the victims of the murdered victims remaining.'

'No understanding of the needs related to road trauma'

- Victims' Survey respondents

Victims who were unable to find the support they required were consequently re-traumatised by having to re-tell their story to different professionals or having professionals unable to assist at all, as noted by these respondents to the Victims' Survey:



'Victims assistance program. No assistance whatsoever ... Had to re-tell my story 4 times in 5 sessions. No follow up treatment. Did not even refer me to other appropriate services. [Support service] only suggested I do a self referral to Secasa. I was not sexually abused!'

'Getting organisations who profess to have the knowledge, yet cannot help me at all'

- Victims' Survey respondents

One victim interviewed by the VOCC relied on a General Practitioner to refer them to services, resulting in them being referred to generalised psychological services which did not provide 'any practical advice'.³

Victims often voiced their frustration that there wasn't a consistent support worker allocated to victims. Victims discussed the need for a case management approach where victims receive a dedicated support worker and would not be required to 'rehash over and over again' their story and trauma.⁴ One respondent to the Victims' Survey referred to such a worker as being a:



"single source of truth" a person I can ask the "dumb question" of, without feeling that I am encroaching on the valuable time of our "team", would ease a weight, provide me with more control, and streamline what at times is just a need for basic information – information that I might have already been told – but I need repeated.'

- Victims' Survey respondent

The VOCC was also told that finding support that addresses victimisation appropriately by adopting an intersectional lens can be challenging. For example, a member of the Women with Disabilities Victoria (WWDV) Experts by Experience Advocacy Team said that when they tried to find appropriate counselling services, the counsellor they found was unable to address the impact of ableism on a person's experience of victimisation. This same Experts by Experience Advocacy Team member has noticed a dramatic difference with their recovery since shifting to a therapist who understands the impact of ableism, gender, disability and violence.⁵

³ Interview 13 – Victim of sibling family violence.

⁴ Interview 12 – Victim of crime.

⁵ Consultation Meeting 15 – Experts by Experience Advocacy Team - Women with Disabilities Victoria.

Another member of the WWDV Experts by Experience Advocacy Team similarly experienced challenges accessing support services that understand the complexity of ableism and victimisation: 'Whenever I have tried to talk about the ableism I have experienced to counsellors, even psychologists, I am either dismissed or spend all the sessions educating them about ableism. It has been distressing.'⁶

Another victim interviewed by the VOCC spoke of the need for victims' services to understand disability and chronic illness better:

*'There needs to be more education for staff about disability and chronic illness. They need to understand that there are disabled people and people with chronic illness who don't want to be coming into the services face to face. For all the services – police, courts – they need to have more flexibility for things to be done online.'*⁷

Victims frequently identified that after the criminal matter reached its conclusion they would often lack support and advice. For some victims it was at this point in the process that they finally had the mental and emotional headspace to process what had occurred. Victims often felt that at this point additional support would have been helpful to process the outcome. One respondent to the Victims' Survey noted that 'there was no follow up to see if I ... needed anything'. Another respondent to the Victims' Survey elaborated:

'I am eternally grateful for the support I received at the time; overall I felt supported, however, there has been little support post proceedings to process and understand what occurred, and to ask questions, with reduced stress/emotional distress that was present at the time of going through the court process. I believe there should be an opportunity to reflect and have access to information when feeling emotionally safer and well supported – this could aid in recovery.'

- Victims' Survey respondent

One Victims' Survey respondent told the VOCC that they had received poor crime scene cleaning services:

'...[T]rauma cleaning service was appalling. They did not clean the crime scene adequately. There was human tissue, hair and bone remaining on scene post their clean. When they returned to go over it again, they further traumatised myself and siblings by telling us "it was the worst crime scene they had seen since Bourke Street".'

- Victims' Survey respondent

This victim also described how the forensic cleaners had expressed unsolicited opinions as to how their mother might have been killed.

⁶ Consultation Meeting 15 – Experts by Experience Advocacy Team - Women with Disabilities Victoria.

⁷ Interview 1 – Victim of crime.

One victim surveyed felt that different parts of the system provided support and advice, but that it was not always correct or consistent:

'It became obvious at different points of the process that although everyone knew their own area of expertise really well, they didn't necessarily know much about elsewhere. For example, the Investigator said I could give evidence from another facility and the Counsellor said I would have to find a quiet spot within the courthouse until I was called. Once connected with WAS though I found out neither advice was correct, and I would be giving evidence remotely from within the courthouse. With the lengthy delay from arrest to appeal (5 years), I sometimes wasn't sure who to contact if I had a question with personnel changes – Investigator changed Units a number of times, 3 different OPP Legal Advocates, WAS changed twice and once not available at a critical point when meeting the Prosecutor before trial.'

- Victims' Survey respondent

This lack of victim support frequently impacted on the victim's ability to participate in the process, with victims missing out on key moments of the criminal justice system. One victim surveyed by the VOCC reflected:

'Zero support during the court phase, no real understanding of what to expect. Very little compassion from the [O]PP. Was not given the opportunity to be present for the verdict or sentencing and not given any information regarding what the jury thought or what the judge said... Minimal victim and immediate family support during and after court proceedings and was never notified when he was released from prison.'

- Victims' Survey respondent

Support dealing with the media in high-profile matters was also raised as a possible gap in support available to victims, as noted by this respondent to the Victims' Survey:

'For high profile crimes - media intrusion can be daunting and you don't want to become the center of a Media Circus where you can be caught off guard or say something in the early stages of grief that you might regret later on. Access to help to navigate the media would also provide a necessary buffer from unwanted media intrusion – you are at your most vulnerable when you are on the steps of the Supreme Court.'

- Victims' Survey respondent

Support can be delayed or rushed

Some victims surveyed advised the VOCC of very lengthy waiting periods for services and of feeling like they were being rushed through the system when they finally did receive support. Victims identified that this was due to a lack of resources and an overwhelmed or strained victim support system. When asked by the VOCC why they had not taken up victim support, victims surveyed by the VOCC frequently cited waiting lists:

'Orange Door/Quantum as brilliant as they are, they are under supported which means victims are rushed through the system and out the other side in the blink of an eye to make room for the next woman to support.'

'CASA Counselling was an 18 month wait on the list to then have to be rushed through to clear a space for another person waiting on the list.'

- Victims' Survey respondents

Victims who were interviewed by the VOCC also discussed lengthy waiting periods. One victim recalled that they were given a CASA pamphlet but there was a six-month waiting list.⁸

Court support is a service gap

Victims told the VOCC that lack of support at court had made for particularly distressing experiences that often resulted in secondary victimisation. Victims discussed traumatising court attendances where they were unsupported and unprepared. For example, this respondent to the Victims' Survey stated:

'The wait was really hard. The court attendance was awful. I had the choice between sitting near the family of the defendant or sitting near the estranged family of my deceased partner. There was no court support.'

- Victims' Survey respondent

Victims without support were often unaware of court processes and etiquette, with one respondent to the Victims' Survey commenting: 'At one point, I wanted to ask the judge a question and I raised my hand but the judge looked at me but did not ask what I wanted.'

Another respondent to the Victims' Survey described how they had attended court and been found, by chance, by a court support worker: '[I] praise so highly the court support worker who found me alone and crying in the waiting room.'

A member of the Victim Survivors' Advisory Council spoke about the distress of having to attend court for a Family Violence Intervention Order without support and being unaware of support available:

*'I was so confronted by the experience of getting an FVIO – just walking in the door was confronting. And a fight broke out in the court and I basically just fled the court because I was so fragile to violence – I couldn't be in the same room as something like that. Then I found out I could have accessed some support from Court Network – it was too late I was already heading out the door. She could have sat with me.'*⁹

⁸ Interview 14 – Victim of crime.

⁹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

A victim representative of the Victims of Crime Consultative Committee also told the VOCC:



*'I felt that other victims were prioritised over us in terms of court support. There were times we really needed that support, but we couldn't access it. For example, our WAS worker had to make decisions about whether to attend court with us versus a victim of sexual violence who was giving evidence. They are prioritised above us. There were times that I really need that support, but to be told you're not a priority is not great.'*¹⁰

Stakeholder views

Associate Professor Asher Flynn and Professor Arie Freiberg spoke about victims lacking consistent, independent support and advice throughout the process. They told the VOCC that in research they conducted with victims, victims had expressed a need for someone to be 'there for them but didn't feel like it was someone for the state or for the accused' and that they wanted this support 'for the whole process, from police right through to sentencing and beyond (e.g. appeals)'¹¹ Associate Professor Flynn and Professor Freiberg also spoke about victims being 'handed from one person to the next' and having to re-tell their story multiple times.¹²

Victims Services staff told the VOCC that it is essential that victims are referred from police via the VPeR¹³ process at the earliest opportunity, but that this was inconsistent. Victims Services staff suggested that the fact that VPeR referrals are consent-based acts as a barrier to timely victim support:

One of the barriers in relation to VPeR referrals is that they are consent based. So even if the conversation happens initially, the victim may be in shock, be feeling over-whelmed or not able to take the information in. Therefore, it needs to be revisited further along in the process with the victim in cases where they do not take up the offer initially.¹⁴

Windermere Victims Assistance Program (VAP) described the e-referral system as 'clunky' and lacking role clarity.¹⁵ Windermere VAP also said that victim support workers are carrying very high caseloads that are becoming increasingly complex.¹⁶

Victoria Legal Aid (VLA) told the VOCC that the victim support system is a 'complex web of services' and that there needed to be seamless integration so victims do not carry the burden of navigating the services themselves.¹⁷ VLA also told the VOCC that existing non-legal support services should be expanded.¹⁸

Some stakeholders noted the lack of specific and tailored support for certain victims.¹⁹ For example, Alannah and Madeline Foundation told the VOCC that even when children are recognised as victims, system constraints mean accessing appropriate support services is difficult: 'Even when a child is seen clearly as a victim, they can still find it hard to access the kind of supports that an organisation like ours provides.'²⁰ The Alannah and Madeline Foundation suggested victim support services for children are not holistic and comprehensive enough.²¹

The Aboriginal Justice Caucus told the VOCC that there are not enough culturally safe avenues for support, particularly in regional Victoria: 'The more remote the area, the further you are from Aboriginal workers.'²²

Court Network told the VOCC that victims who are not witnesses often miss out on support and are 'picked up' by Court Network only on the day of court. Court Network also told the VOCC that some victim and witness support services, like the OPP's VWAS, do not have the capacity to assist all victims in need, including family members and loved ones impacted by crime.²³

10 Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

11 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

12 Ibid.

13 VPeR is the Victoria Police e-referral system: Victoria Police, *Future Directions for Victim-Centric Policing* (Web Page, August 2015) <https://www.police.vic.gov.au/sites/default/files/2019-01/Victim-Centric-Policing-Booklet_web_0.pdf>.

14 Consultation Meeting 14 – Victims Services staff.

15 Consultation Meeting 21 – Windermere Victims Assistance Program.

16 Ibid.

17 Consultation Meeting 16 – Victoria Legal Aid.

18 Ibid.

19 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

20 Consultation Meeting 9 – Alannah and Madeline Foundation.

21 Consultation Meeting 9 – Alannah and Madeline Foundation.

22 Consultation Meeting 30 – Aboriginal Justice Caucus (AJC Meeting 2).

23 Consultation Meeting 12 – Court Network.

Court Network told the VOCC that appropriate court support is an integral component of enhancing victim participation, particularly where the outcomes of criminal processes may not always validate victims' experiences:

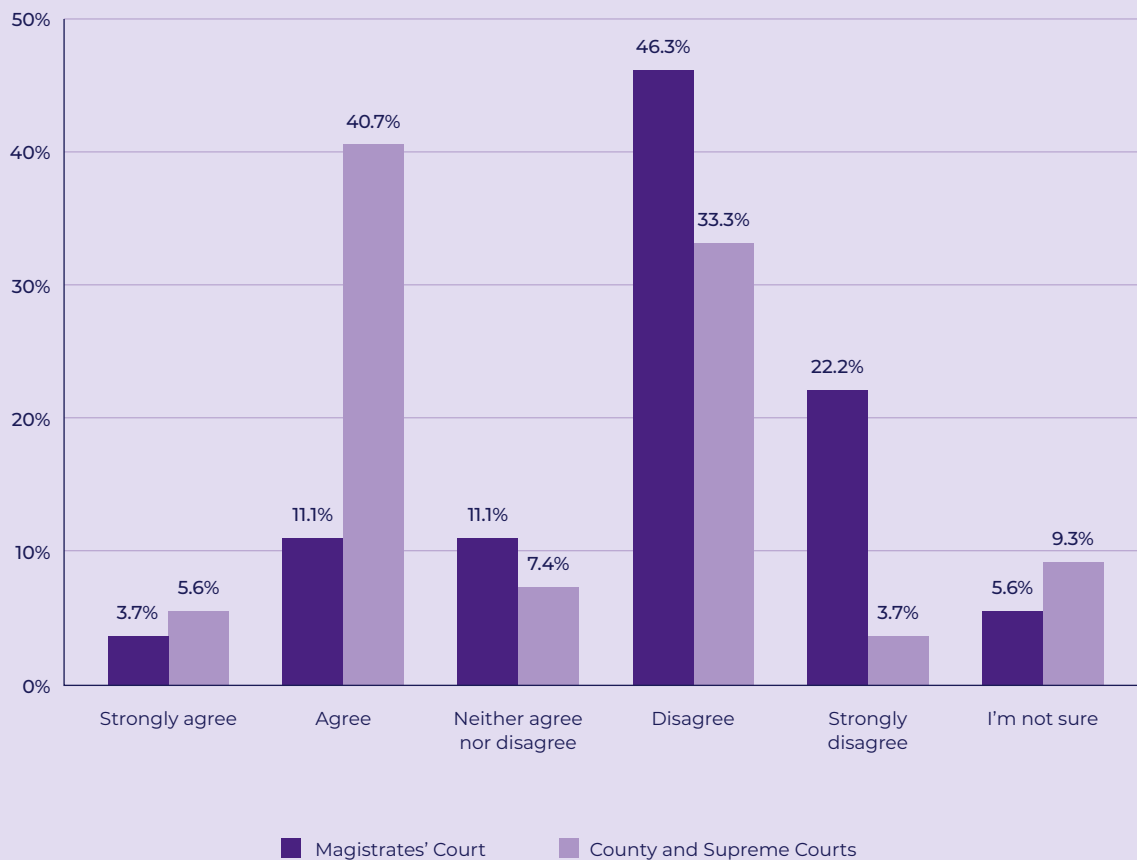
Bearing witness, being alongside people, validating the importance of what they did or their being there; this all plays a role in creating meaningful participation. People can walk away feeling like they have had meaningful participation, even if the system itself cannot enable that to occur.²⁴

Court Network, also told the VOCC that victims are not getting the necessary debriefing or post-court care that they need.²⁵ This is consistent with what the VOCC heard from victims.

In addition, victims' professionals and Victoria Police members highlighted a gap in appropriate court support for victims in the Magistrates' Court.

Victims' professionals surveyed by the VOCC told the VOCC that victims in the Magistrates' Court are not getting the in-person court support required to help them participate in the process. As shown in **Figure 10** below, only 11 per cent of victims' professionals surveyed by the VOCC agreed that victims have enough in-person court support to help them participate in the process in the Magistrates' Court. In comparison, 41 per cent of respondents agreed that victims have enough in-person court support to help them participate in the process in the higher courts.

Figure 10: VOCC Victims' Professionals Survey: Do victims have enough access to in-person court support to help them participate in the court process? (Magistrates' Court compared to County and Supreme Courts)



²⁴ Ibid.
²⁵ Ibid.

Victoria Police prosecutors agreed that there was insufficient court support for victims in the Magistrates' Court, noting they have had very distressed victim-witnesses in the Magistrates' Court, particularly in sexual assault cases, who are not eligible for any witness support because they are not children, do not have a cognitive impairment and their matters are not being heard in the indictable stream.²⁶ Victoria Police members also told VOCC that the OPP's VWAS model works very well in the County Court and that it should be replicated in the Magistrates' Court.²⁷

Additionally, Victoria Police members raised concerns that government-funded assistance and referrals for victims of crime are only for crimes against the person:

If someone is a victim of a serious crime, unless it's a crime against the person, they don't qualify. There's a gap there. There are significant effects from property crime. It doesn't need to be a crime of assault or a robbery for someone to be seriously affected. So there's a definite gap.²⁸

Participation difficult without legal assistance

Research has found that victims of crime have a broad range of unmet legal needs.²⁹ Victims' need for specialised legal advice and assistance has been consistently raised in Victoria in a range of reviews and inquiries over the past five years.³⁰

The Victims' Charter includes provisions stating that victims should be given information about 'legal assistance'³¹ but there is no state-funded specialist legal service that assists all victims who have broad-based legal needs.³²

Victims' experiences

For many victims consulted by the VOCC, enhanced participation in the justice system is directly linked to what they view as a need for independent legal advice and assistance for victims of crime.

Victims view participation in the justice system as directly linked to the need for independent legal advice.

Some victims find it difficult to reconcile that the accused automatically receives legal representation and advice, but victims are not afforded this same right. This leaves many victims feeling alone, unsupported and without voice. A member of the Victim Survivors' Advisory Council expressed dismay at the lack of legal representation for victims:

*'When there are criminal charges involved the perpetrator has their own legal representative but nobody represents victims. This is so problematic because this experience for victims can impact on their entire life. Nobody is standing in that space and representing victims and answering for victims. Without legal representation, victims become a passenger in somebody's journey with no say over the destination.'*³³

Ingrid Irwin told the VOCC that having legal representation would provide victims 'with an equal voice and say in what happens'.³⁴

26 Consultation Meeting 18 – Victoria Police – Session 2. The Child Witness Service assists children and young people, regardless of jurisdiction. The Intermediaries Program applies to relevant criminal proceedings at a participating venue of a court if the witness is a person under the age of 18 years or a person with a cognitive impairment: Supreme Court of Victoria, *Multi-Jurisdictional Court Guide for the Intermediary Program: Intermediaries and Ground Rules Hearing* (Web Page, February 2022) <<https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/multi-jurisdictional-court-guide-for-the-intermediary-program>>. The OPP's Victims and Witness Assistance Service only assists victims/witnesses in matters prosecuted by the DPP.

27 Consultation Meeting 24 – Victoria Police – Session 4.

28 Consultation Meeting 19 – Victoria Police – Session 3.

29 See, eg, Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 148.

30 See, eg, Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final report, November 2020) 148; Sentencing Advisory Council, *Restitution and Compensation Orders* (Report, October 2018) xiv; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xviii.

31 *Victims' Charter Act 2006* (Vic) ss 7(a), 16.

32 Victoria Legal Aid and Community Legal Centres provide some legal assistance, although it can be limited due to funding constraints and program guidelines. The 'Victims Legal Service' assists victims with applications for state-funded financial assistance, compensation and restitution. See Victorian Government, *Reforms we will deliver to support victims of crime* (Web Page, 15 June 2022) <<https://www.vic.gov.au/victim-support-update/reforms-we-will-deliver-support-victims-crime#delivering-a-new-victims-legal-service>>.

33 Consultation Meeting 11 – Victim Survivors' Advisory Council.

34 Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

One Victims' Survey respondent spoke about having to represent themselves in a Magistrates' Court Personal Safety Intervention Order (PSIO), and feeling acutely the inequity with the perpetrator, who was legally represented:

'When the matter went to hearing at the Magistrates Court I represented myself. The hearing was listed as a mention whereby the PSIOs were to be agreed upon. I was shocked to see that the respondent had legal representation, denied the allegations...and commented to the Magistrate how his client has suffered greatly from the ordeal. As the victim, I found this incredibly upsetting and unexpected.'

– Victims' Survey respondent

One Victims' Survey respondent remarked that 'the accused/criminal gets better than the victim', while another respondent indicated that their experience of the justice system could have been improved 'with proper legal advice and a lawyer like he had'.

Another Victims' Survey respondent shared their frustration that a scheme providing victims with legal advice and assistance has still not been implemented in Victoria, despite previous reviews and inquiries recommending it: 'The one thing I needed was the legal advocate, and I know it's been recommended so many years ago and it still hasn't happened.'



60%

Nearly 60 per cent of victims surveyed by the VOCC **said they wanted their own lawyer to advocate for their rights.**

Victims spoke about the need to be able to access legal information from an independent, trusted source, separate from the prosecution, with that independent advice available from the initial reporting stage.

When asked in the VOCC's Victims' Survey 'What extra help would have made the justice system easier for them to participate in?', 58 per cent of survey respondents selected 'my own lawyer to advocate for my rights'. As articulated by this victim interviewed by the VOCC, victims want someone independent, acting only in the victim's best interests:

'It is absolutely necessary to appoint a legal advocate independent of the OPP, and for victims to be able to request one if required. It needs to be a legal person that understands this system, as some solicitors won't deal with this sort of thing. Victims are usually traumatized. We need to be able to go to somebody we can trust, that can give us legal advice and who we know will act in our best interest. The OPP are a law unto themselves and from a victims point of view there needs to be a few more checks and balances.'³⁵

Victims consulted by the VOCC also noted the logical disconnect between victims having entitlements under Victorian legislation, while lacking access to independent legal advice to tell them about their entitlements and enforce them when they are breached. Victims told the VOCC that finding out about legal rights is impossible despite it being stated 'quite clearly in the Victims' Charter that we are entitled to legal assistance'.³⁶

³⁵ Interview 15 – Victim of crime.

³⁶ Interview 15 – Victim of crime.

Engagement with victims indicated clear support for access to state-funded legal advice and representation across all stages of the criminal process as well as for processes adjacent to it like intervention order applications, family law proceedings, compensation and coronial proceedings. Victims surveyed told the VOCC that a lawyer for victims was crucial to their participation:



'All survivors must have a lawyer in court.'

'and they say "you don't understand the law" and I don't. But if I had someone that could explain it to me, I might.'

'My top priority is the need for independent legal support for victims of crime as children and as adults.'

'I should have been assigned a lawyer to assist me in the preparation of the victims of crime statement and to inform me that I would be asked by the court what I sought from sentencing and what these options actually meant in practice.'

– Victims' Survey respondents

Ingrid Irwin highlighted the range of legal representatives in child protection matters, all paid for by the state:



'In child protection matters, children have an independent children's lawyer. Everyone who has a separate legal interest in a case has a lawyer. In child protection, do you know how many lawyers are at the bar table in those matters – sometime 10? One for the child at risk of harm, a lawyer for the department, then we have a separate lawyer for the sibling of the child, and then the lawyer for mum and dad, and so on. And the State pays for that. And we still have the State saying that a victim can't have the right to a lawyer.'³⁷

Ingrid Irwin also stated that funding for legal advice should be prioritised over witness support programs:



'The argument is always that the State doesn't have the budget. At the OPP they have the witness assistance person, the hand holder. Abandon that. You don't need witness assistance; you need legal assistance. We can then use this money for victim lawyers, for those who can't afford it and for those who can afford get their own lawyer.'³⁸

Some Victims' Survey respondents said their future participation in the justice system would be contingent on the availability of legal representation:



'If i had to i would never be left alone and i would want a legal representative with me at all times when dealing with police.'

'I would demand the right to a lawyer.'

'Yes, by having my own lawyer in the criminal matter. Yes, by being a recognised party (not just a participant) in the criminal matter.'

'...yes, with proper legal advice and a lawyer like he had.'

– Victims' Survey respondents

³⁷ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

³⁸ Ibid.

One Victims' Survey respondent highlighted the difference legal representation had made in their case:



'We seriously would have likely died had it not been for a pilot program in which a community legal service was given funding to help alleged victims prepare for court.'

– Victims' Survey respondent

The VOCC also heard about victims paying for independent legal advice, incurring significant out-of-pocket expenses. As one respondent to the Victims' Survey noted:



'It then took 4 years for an inquest, which we only ended up getting because we engaged a legal team and spent \$70,000 total. NO family should have to find that sort of money. there is no way a person with a disadvantaged background, lack of english or financial resources would EVER be able to manage a system such as this if they even wanted to. I was fortunate enough to have resources and the education to be able to persist.'

– Victims' Survey respondent

For those victims who did access lawyers, some were dissatisfied that the lawyers did not provide appropriate advice and were not specialised.³⁹ Having legal representation in itself may not be the answer to participating in the criminal trial process unless the lawyers are specifically trained in a trauma-informed approach, as evidenced by the experience of this respondent to the Victims' Survey:



'I was told if I wanted legal advice I would have to seek that independently...I eventually found a firm and had a brief conversation with a very dismissive woman who had no interest in assisting me so it left me feeling defeated and alone.'

– Victims' Survey respondent

One victim interviewed by the VOCC proposed that a network of solicitors be established, dedicated to understanding the Victims' Charter and the lived experience of victims, observing that: 'It's more than just having a credential. Its knowing that certain processes impact on victims and that you'll be kept informed.'⁴⁰

Stakeholder views

A number of stakeholders advised the VOCC that victims feel confused and dismayed when they realise they do not actually have their own lawyer.⁴¹ Dr Mary Iliadis said: 'Victims often question where their lawyer is and have often referred to police or prosecutors as their lawyer and are quite confused when that person doesn't fundamentally uphold their rights and interests.'⁴²

The Centre for Innovative Justice, which completed a large review of victims' services in Victoria in 2020,⁴³ told the VOCC that although exploring access to independent legal advice and assistance was not a part of their research methodology, most victims had identified this as a significant unmet need:

*It was our number one recommendation, with the strength coming from the fact we didn't ask victims about it – it was spontaneous and emerging in each of those 37 interviews we conducted. Unmet needs for legal issues arising from the impact of the crime were being compounded over and over again.'*⁴⁴

39 Interview 13 – Victim of sibling family violence; Interview 14 – Victim of crime.

40 Interview 13 – Victim of sibling family violence.

41 Consultation Meeting 5 – Dr Mary Iliadis; Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

42 Consultation Meeting 5 – Dr Mary Iliadis.

43 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020).

44 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

VLA also emphasised the unmet need in relation to a comprehensive, dedicated, trauma-informed legal service:

It's been a gap for a long time and creates significant barriers to victims participating in the process. It's something that has been raised many times along the way by a number of different reviews and inquiries. Victims have rights on paper, but they also need to know how to realise them in practice. The recently commenced Victims Legal Service delivered jointly by Victoria Legal Aid, Victorian Aboriginal Legal Service and Community Legal Centres provides a victim-centred, trauma-informed and collaborative model that could be expanded to services beyond assistance with financial compensation.⁴⁵

Community Legal Centre (CLC) representatives told the VOCC that victims often have multiple, compounding legal issues and lack timely, holistic advice:

victims often don't have one legal issue, there's a pile of issues and there isn't the funding to deal with that. Sometimes victims get legal advice from someone who tells them 'don't worry about the custody matter', then the IVO ends and the dad knocks on the door and takes the child. If these clients had holistic advice from the start, then they would be a true participant in the system.⁴⁶

A range of stakeholders told the VOCC about legal issues that required independent legal advice or representation, including:

- defence access to confidential communications⁴⁷
- subpoenas⁴⁸
- withdrawing or amending witness statements⁴⁹
- immunities⁵⁰
- Victim Impact Statements (VIS)⁵¹
- ground rules hearings.⁵²

Dr Mary Iliadis suggested access to independent legal representation should be available in relation to any sort of communication that can be subpoenaed or used by defence counsel to discredit a victim-survivor's character, such as phone or medical records, as well as in relation to counsel introducing evidence of prior sexual history.⁵³

The VOCC was also told that legal advice and assistance are key to victims understanding their participatory entitlements:

If community legal centres were able to be fully funded, they could provide much more comprehensive services and wrap around support for victims, and they could make sure that victims understood touch points where they can participate in the justice system. There is already some access to support workers to provide that kind of information, but there really is a key role for lawyers there too, but no one is really funded to do that work. There is a huge gap.⁵⁴

Associate Professor Kerstin Braun queried the rationale of affording victims certain rights without allowing them legal representation to enforce the rights.⁵⁵ The ACT Victims of Crime Commissioner concurred, stating that 'legal advice and legal representation is very important. You can have rights, but if people don't know about them or you don't have anyone to help them access those rights, they won't be utilised.'⁵⁶

A CLC representative told the VOCC that independent legal representation is crucial to meaningful victim participation:

If victims are to be participants in the justice process, they need their own lawyer from the beginning, not just for VOCAT matters, but from the beginning. They need someone to explain the system to them and walk alongside them throughout the whole process, from beginning to end. They need a lawyer to explain the criminal justice system, what their rights are, and how they can participate, to advise what the charges are, what a diversion is. [Victims Legal Service] doesn't cover this gap. Obviously these practitioners would need to be highly trained to deliver this specialised service, in a trauma-informed way.⁵⁷

45 Consultation Meeting 16 – Victoria Legal Aid.

46 Consultation Meeting 22 – Community Legal Centres – Session 1.

47 Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 23 – Community Legal Centres – Session 2; Consultation Meeting 5 – Dr Mary Iliadis.

48 Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 5 – Dr Mary Iliadis.

49 Consultation Meeting 16 – Victoria Legal Aid.

50 Ibid.

51 Consultation Meeting 16 – Victoria Legal Aid.

52 Consultation Meeting 23 – Community Legal Centres – Session 2.

53 Consultation Meeting 5 – Dr Mary Iliadis.

54 Consultation Meeting 22 – Community Legal Centres – Session 1.

55 Consultation Meeting 1 – Associate Professor Kerstin Braun.

56 Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

57 Consultation Meeting 22 – Community Legal Centres – Session 1.

The South Australian Commissioner for Victims' Rights uses powers under the *Victims of Crime Act 2007* (SA) and discretionary funding to engage independent lawyers for victims. The South Australian Commissioner spoke of the benefits of engaging lawyers on behalf of victims:

For example, a rape victim might have all her diaries to be presented to the court and the prosecutor will say, well, we've got to give them over because of disclosure. But we'll hire a lawyer to protect their rights around what they can actually get to in court.⁵⁸

The South Australian Commissioner also spoke about the benefits of this lawyer being independent of the prosecution process:

because often victims don't trust that the prosecution authorities are acting in their best interest, so having that sort of independent person, what they perceived to be a more objective person telling them the same thing often just helps them understand and accept a decision.⁵⁹

Some stakeholders were not supportive of independent legal representation. For example, Victoria Police members queried the advantage of adding another person to the process and the expense.⁶⁰ The Office of Public Prosecutions (OPP) was not supportive of a broad-based independent legal representation scheme but suggested there are particular points during the court process that independent legal advice and representation could be of significant benefit, including in relation to applications to subpoena confidential communications of the victim.⁶¹

Some judicial representatives of the Magistrates', County and Supreme Courts raised concerns about broad-based state-funded legal advice and representation for victims, querying the purpose and role.⁶² Some judicial representatives saw a role for state-funded independent legal advice and representation at certain points of the process, including:

- at the sentencing stage
- where there are applications to subpoena confidential communications or any personal information pertaining to the victim
- at committal or under the special provisions for pre-trial cross-examination of children or vulnerable witnesses
- where self-represented accused can cross-examine victims (e.g. in stalking matters relating to Personal Safety Intervention Orders).⁶³

One judicial representative said there is a sound rationale for legal advice and perhaps separate representation at the pre-trial stage where victim-witnesses:

are being asked questions ... that are fishing, that are designed to get information as to whether they have had counselling and from whom in order to provide a springboard for the third party subpoenas. That's an area where there is a proper basis for thinking that complainants or victims should be given independent legal advice before answering such questions, and about whether to object, because their interests may be different from the interests of the prosecution. The knowledge of the victim about their rights in respect of confidentiality of counselling records or about where a line of questioning is leading may also be different from the knowledge that the prosecution has about it.⁶⁴

Different levels of participation

Victims and witnesses in Victoria are not all treated equally. Victims and witnesses may be treated differently in terms of legislative entitlements and eligibility for services and support based on:

- the jurisdiction in which a crime will be heard (e.g. summary or indictable)
- geographic location (e.g. areas with specialist courts or pilot programs)
- type of crime (e.g. family violence versus homicide)
- a victim's characteristics, including age, disability or cultural diversity
- the age of the offender (e.g. whether they are a young offender).

Victims and witnesses may be treated differently in terms of legislative entitlements and eligibility for services.

⁵⁸ Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

⁵⁹ Ibid.

⁶⁰ Consultation 17 – Victoria Police – Session 1, Consultation 19 – Victoria Police – Session 3.

⁶¹ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

⁶² Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁶³ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁶⁴ Ibid.

Under the Victims' Charter, victims in the indictable stream (prosecuted by the Director of Public Prosecutions) are entitled to more specific information and consultation than victims in the summary stream (prosecuted by Victoria Police).⁶⁵

Eligibility for witness support and at-court support services can depend on a victim's age (such as the Child Witness Service) or whether their matter is being heard in the Magistrates' Court or in the higher courts (where victims become eligible for the OPP's Victims and Witness Assistance Service).

While there can be benefits in having entitlements and service delivery that target specific cohorts, particularly in the context of creating cultural safety, providing age-appropriate support and accommodating the gendered impact of certain crimes, some victims may also experience different levels of participation simply because they are not eligible for certain entitlements or supports.

Victims' experiences

The VOCC was told that victims can be treated differently depending on the type of crime, whether the matter is heard in the summary or indictable stream and whether they are required as a witness or not. For example, a victim representative of the Victims of Crime Consultative Committee told the VOCC:

*'I have also heard from other victims who were harmed as a result of summary offences and who feel like the court system has completely ignored them altogether. These people wanted a chance to give a Victim Impact Statement but were told they weren't able to do so for that type of offending. They therefore felt that their suffering was ignored and not taken into account.'*⁶⁶

A victim representative of the Victims of Crime Consultative Committee also told the VOCC:

*'There's a sentiment in the community that driving crime isn't a crime. So, when my mother was killed by a driver, there is a narrative that pops up a lot both with the general public and legal practitioners. In my case, it felt like it was treated as an accident, not a crime. I felt that other victims were prioritised over us in terms of court support.'*⁶⁷

A member of the Victim Survivors' Advisory Council (VSAC) also told the VOCC that there is still an implied hierarchy of victims which places physical injuries above psychological ones in terms of seriousness:

*'We are still dealing with hierarchies of victims. We don't really understand a psychological injury and the seriousness of it. While it's great that we understand coercive control in relation to the Family Violence Protection Act, we're still only recognising it in relation to the breach of an order. It's the breach of an order that's the criminal act. That's problematic.'*⁶⁸

Stakeholder views

Court Network told the VOCC that victims who are witnesses in the court process are often treated differently from victims who are not witnesses:

There is a line in the sand there. If you're a witness, then you're required as part of the court process and you would usually be communicated with. However, if you're a victim who is not a witness then you're just a member of the public who doesn't have much to do with the court system.⁶⁹

⁶⁵ For example, the Director of Public Prosecutions must seek a victim's views before making a decision to modify charges, discontinue the prosecution, accept a guilty plea to a lesser charge, appeal a sentence or an acquittal. These requirements do not apply in the summary jurisdiction where Victoria Police prosecutes: *Victims' Charter Act* (Vic) s 9B(1).

⁶⁶ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁶⁷ Ibid.

⁶⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

⁶⁹ Consultation Meeting 12 – Court Network.

Court Network told the VOCC that 'those that are not part of the proceedings are not treated as part of the system and are locked out of the update process' and that opportunities to participate and to receive support need to extend beyond victims who are witnesses.⁷⁰

A range of stakeholders were concerned about victims' participation in the Magistrates' Court, including victims' professionals, Victoria Police members and academics.

A number of victims' professionals surveyed by the VOCC were concerned about the treatment of victims in the summary jurisdiction (Magistrates' Court) where VOCC was advised that participation by victims is particularly low:

In the magistrates court I find Victims are not made part of proceedings and rarely know what to do when attending court

More victim awareness for matters heard in the Magistrates court by Vic Pol members such as advising court dates, charges, whereabouts of the offender and the opportunity to complete a victim impact statement. This would enable the victims to feel more like a participant.

The victim is often not informed of an outcome from a Magistrates court hearing until a few days later and that is only if the informant is notified. Victims have often told me that they would like the courts or the prosecutors to notify them of outcomes so that they are aware of the next step...Participants want to be considered for any updates and be advised.

As detailed further in **Chapter 9**, victims' professionals surveyed by the VOCC also drew attention to victims' relative lack of participation in the Victim Impact Statement process in the Magistrates' Court:

Victims should be given every opportunity to participate and have their say. Magistrates Courts tend to be a bit more dismissive and 'nonchalant' about Victim Impact Statements and will at times move a matter through the court to its conclusion without consideration for the victim

I've had police tell me that Victims aren't able to do a Victim Impact Statement for summary offences.

Victims often do not get an opportunity to provide a victim impact statement to attach to a brief for a Magistrates hearing and this can be a concern if the accused pleads guilty and the matter is resolved at the first mention. Police are not always explaining these impact statements and the participants feel left out of the process of having their voice heard.

Associate Professor Flynn and Professor Freiberg spoke about the challenges for victims in the Magistrates' Court, where police and court resourcing limits the extent to which Victims' Charter entitlements may be upheld, including appropriate liaison with victims during the plea process:

In the lower courts, you are dealing with thousands of cases and victims are maybe peripheral ... I mean, these people are dealing with huge caseloads and then the Magistrates' Court is dealing with huge caseloads as well. So there is that conveyor belt system of getting what you can rather than getting what's perfect. If you have to go back to a victim every time with a minor change...Because that's the dynamic and they are the ones on the front line.⁷¹

Victoria Police prosecutors told the VOCC that the logistics of managing victim liaison and consultation in the Magistrates' Court are 'simply impossible':

Prosecutors manage victims quite well, but if you have a matter that is going to proceed as a plea of guilty in a mention list, and you have a victim who would like to be part of that process, it is simply not reasonable to expect that the prosecutor is going to be able to facilitate that process. The logistics of it are simply impossible. And in those circumstances, the informant is generally not an active participant in those matters either.⁷²

Victoria Police members told the VOCC that informants (the police officer who files charges against the accused in the Magistrates' Court) may not always be aware that a matter is appearing in court until they get a notification that there's been a conviction or charges are dropped – too late in the process to update a victim, or to provide victims with a way to participate, such as by preparing a Victim Impact Statement.⁷³

Victoria Police prosecutors also raised concerns about the increased use of sentence indications, and the adverse impact on victim participation in the summary jurisdiction:

A common option at the moment to resolve matters is a sentence indication. Sentence indications are often sprung on prosecutors, and when this happens, we've really lost our opportunity to get a Victim Impact Statement. Even if we did come back another day with a Victim Impact Statement, it's not going to be factored into sentence, because the indication has already been made. This is despite the recent amendments to the Charter that prioritises the prosecution's role in seeking victims' opinions.⁷⁴

⁷⁰ Ibid.

⁷¹ Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

⁷² Consultation Meeting 18 – Victoria Police – Session 2.

⁷³ Consultation Meeting 17 – Victoria Police – Session 1.

⁷⁴ Consultation Meeting 18 – Victoria Police – Session 2.

Victoria Police prosecutors also raised concerns about victim participation in the Children's Court when the offender is a young person.⁷⁵ The VOCC was told that there are some impediments to victim engagement because the *Children, Youth and Families Act 2005* (Vic) is focused on the best interests of the young accused:

The focus of the Children's Court is about diverting out of the court system, there's a push for early intervention, cautions and not having a young person in the courtroom, which then takes away from legislative framework about the victim. One of the things we say to a victim is "no matter what happens, we believe you. Victoria Police believes you". However, without a court process it doesn't allow for that formal validation process to happen.⁷⁶

In relation to diversion, the VOCC was told there is no direct requirement for engagement with the victim to ascertain their thoughts about whether a diversion of the offender is appropriate: 'The victim is a silent participant in those circumstances.'⁷⁷

Awareness of entitlements

Under the Victims' Charter, investigatory agencies, prosecuting agencies and victims' services agencies are required to provide clear, timely and consistent information about relevant support services, possible entitlements and legal assistance available to victims and, if appropriate, to refer victims to relevant support services and to entities that may provide access to entitlements and legal assistance.⁷⁸

Parallel to concerns regarding lack of access to independent legal advice and assistance, the VOCC heard from a number of victims who were not aware of the Victims' Charter or their entitlements.

Victims' experiences

Victims surveyed by the VOCC were asked if they had been told about the Victims' Charter and if so, by whom.



As shown in **Figure 11** below, an overwhelming majority (75 per cent) of survey respondents advised that they had not been told about the Victims' Charter. Only 15 per cent of respondents indicated that they had been told about the Victims' Charter by police, a victims' service or a prosecutor. Only one respondent surveyed indicated that they had been informed about the Victims' Charter by all three.

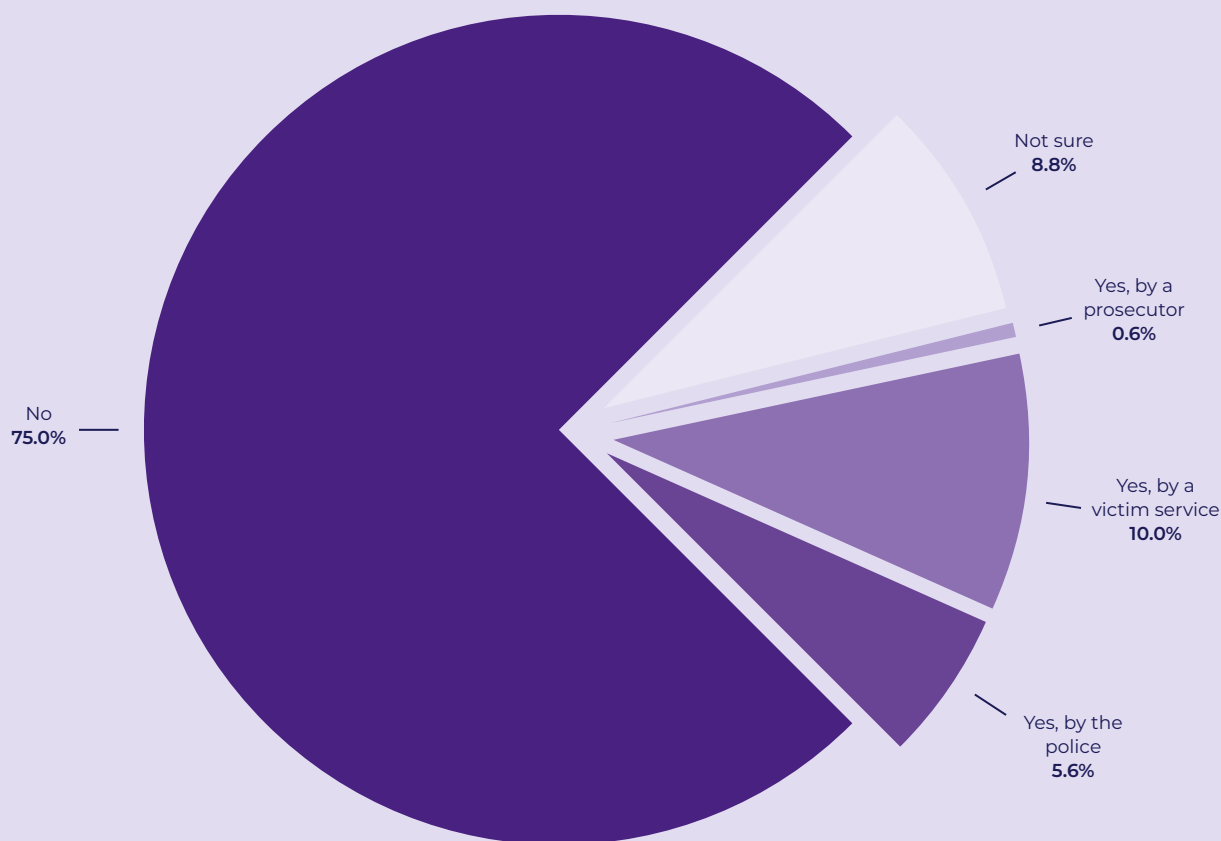
⁷⁵ Ibid.

⁷⁶ Consultation Meeting 18 – Victoria Police – Session 2.

⁷⁷ Ibid.

⁷⁸ *Victims' Charter Act 2006* (Vic) s 7.

Figure 11: VOCC Victims' Survey: Were you told about the Victims' Charter?



The Victims' Survey respondents who did talk about the Victims' Charter in further detail largely mentioned their lack of awareness of it. One Victims' Survey respondent stated: 'I was never told about the Charter and I would have felt I had some rights instead of feeling helpless within the system.'

Victims told the VOCC about their difficulty in finding out information about their legal rights, with one victim interviewed describing it as 'impossible'.⁷⁹ One Victims' Survey respondent commented:



'[M]y challenge was seeking out information I wanted a court case to help me heal and that was far from my experience. I was given no information about my rights as a victim and I struggled to not feel discarded by the system.'

– Victims' Survey respondent

⁷⁹ Interview 15 – Victim of crime.

Very few victims interviewed by the VOCC indicated that they had any awareness or detailed knowledge of the Victims' Charter, with one victim stating: 'I had no idea that I have rights like that enshrined in statute.'⁸⁰ Another victim interviewed by the VOCC said that they only became aware of the Victims' Charter after reading a media article where the VOCC referred to it.⁸¹

Victims surveyed by the VOCC advised that they were not provided with information about the Victims' Charter or their entitlements as victims when reporting crime:



'On one occasion that I reported a crime to the police, I was told by a police officer that "the offender is well known to us, and is notorious for doing that kind of thing [assaulting strangers], so unfortunately there is nothing we can do"... I was also not given any information on my rights as a victim of crime during this occasion, and felt extremely unsupported by Victoria Police.'

– Victims' Survey respondent

Some victims on the other hand thought they may have been advised about the Victims' Charter, but at that point in their interaction with the justice system they were overwhelmed and could not retain information, as reported by this Victims' Survey respondent:



*'they hand you all this information. You can't read it. I still struggle to read things. I've got booklets there that were handed to me. You're not in any fit state to be reading something, you need someone to sit there and just talking through things.'*⁸²

One victim interviewed by the VOCC expressed dismay at learning about the Victims' Charter:



*'my first reaction was being embarrassed that I didn't know, and then my second reaction was wait a minute. What the hell? How come I did not know it existed? Why didn't my solicitor tell me?'*⁸³

Although victims advised that they were largely not advised about entitlements, some victims had researched and found the information themselves. This Victims' Survey respondent said they 'found the Victims Charter [VC] on the newer OPP Victims & Witness website. Used the VC successfully at the appeals stage to request the Grounds for Appealing Conviction.'

'There is so much that is well-meaning around the Victims Charter but the accountability is slim to none'

Member of the Victim Survivors' Advisory Council.

Some victims were concerned, however, that even when victims are aware of their rights, there is a lack of enforceability and accountability:



*'When we know about our rights – that's great but that only goes so far. The lack of accountability from authorities causes many victim survivors end up feeling disempowered in the long run ... There is so much that is well-meaning around the Victims Charter but the accountability is slim to none. When I hear the word 'participant' it is a happy feeling ... but the more I am in the process, I realise it is only an illusion... We need to tackle the gaps here so that our victims' rights can become reality and not just a mere illusion.'*⁸⁴

⁸⁰ Interview 13 – Victim of sibling family violence; Interview 6 – Victim of crime.

⁸¹ Interview 13 – Victim of sibling family violence.

⁸² Interview 5 – Victim of crime.

⁸³ Interview 13 – Victim of sibling family violence.

⁸⁴ Consultation Meeting 11 – Victim Survivors' Advisory Council.

Stakeholder views

A number of stakeholders agreed that victims are rarely aware of their entitlements.⁸⁵ Court Network told the VOCC that victims are not aware of the Victims' Charter or their rights and it is hard to know whether victims are told anything:

It is hard to know if victims are advised of the Victims' Charter. Is it handed to them on a piece of paper? Do they get information in a 40 page booklet or 4 pages of information? It is not clear what victims get, but it doesn't seem to be working. What we are seeing is the people that come to us aren't aware of their rights.⁸⁶

A CLC representative suggested victims are not even aware of the Victims' Charter, let alone their entitlement to be treated as a participant: 'I have never had a single person refer to the Victim's Charter; they've never been provided with information on the Charter by a police officer.'⁸⁷ This was confirmed by another CLC representative, who said: 'I have never had a client that was aware of the Victims' Charter, of their own accord. Victims don't know about the Victims' Charter and they don't know their rights.'⁸⁸

Another CLC representative felt that victims' lack of knowledge of the Victims' Charter was part of the overall lack of information provided to victims about the process:

This goes to the issue of information and the lack of information that victims receive. It's about police not providing victims with information, not complying with the Victims' Charter and, because victims don't necessarily know what their rights are, they don't even know what to ask or that they can ask. More capacity is needed by CLCs to do this background work for victims.⁸⁹

The Commissioner for LGBTIQ+ Communities noted that he was aware of a victim of assault who had no awareness of their rights as a victim of crime and was only able to seek assistance via social media and asking his community for help:

Victims who are LGBTIQ+ are not necessarily aware of their rights as a victim of crime. There is the example of a queer man, living with a disability, who was the victim of an assault. This victim could not navigate the complex system or locate the assistance and support he required. In the end the victim could only find the right assistance by taking to social media and asking his community. We need something more formal than this. This isn't fair or just.⁹⁰



57%

More than half of victims' professionals (57 per cent) surveyed by the VOCC **do not believe victims of crime are aware of their Victims' Charter entitlements and where to go if the Charter is breached.**

As shown in **Figure 12** below, a majority of respondents to the VOCC's Victims' Professionals Survey did not believe victims of crime were aware of their entitlements under the Victims' Charter and where to go if the Victim's Charter was breached.

85 Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 12 – Court Network; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 22 – Community Legal Centres – Session 1; Consultation Meeting 23 – Community Legal Centres – Session 2.

86 Consultation Meeting 12 – Court Network.

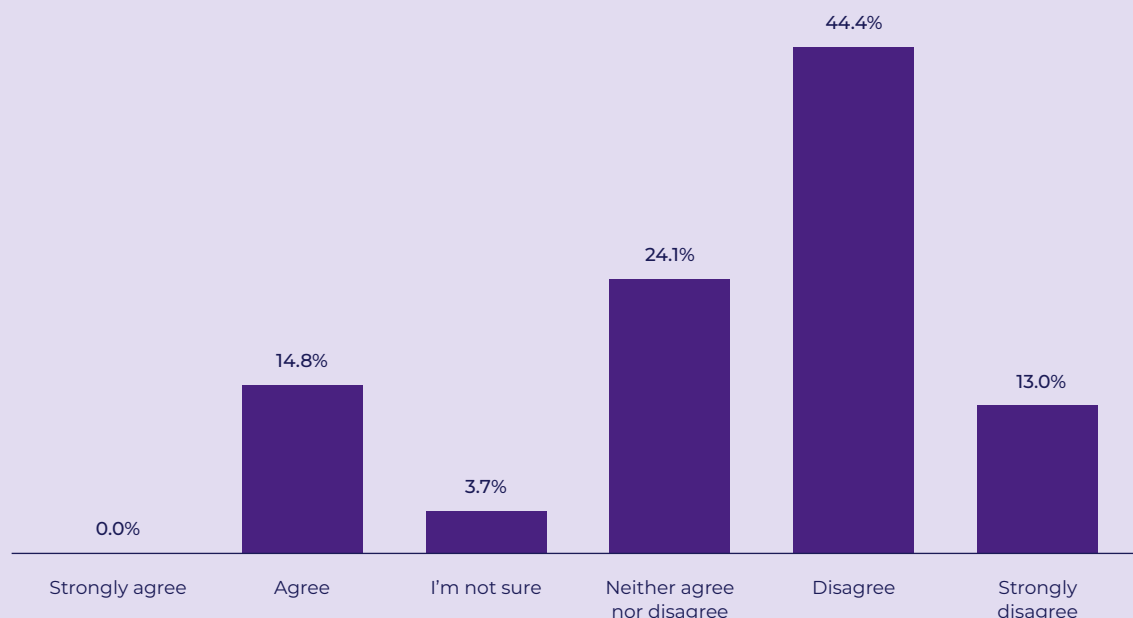
87 Consultation Meeting 23 – Community Legal Centres – Session 2.

88 Ibid.

89 Ibid.

90 Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities.

Figure 12: VOCC Victims' Professionals Survey: Are victims of crime aware of their entitlements under the Victims' Charter and where to go if the Victims' Charter is breached?



Victims' professionals surveyed by the VOCC were concerned about both victims and personnel in the broader justice system lacking knowledge of the Victims' Charter, and also about the Charter's effectiveness as a result:

[I] don't believe many victims are aware of the charter, nor are police.

Even our program doesn't automatically inform Victims of the charter.

It is great that there is a victims charter however if police, officers of the court and victims don't know about it, how can it be of any use?

I doubt most victims have heard of it, or most police members.

I don't think the Victims Charter is well known by support services, police or victims. A large part of my role is using the charter to hold police to account, with many police not acknowledging it's existence.

it only works if the victim is informed. it doesn't work for everyone

We provide the victims charter to every consumer but I don't think the average victim would be aware of it.

Other victims' professionals surveyed by the VOCC felt that the Victims' Charter 'lacks teeth' and that remedies for victims are ineffective, including the VOCC's complaints powers:

Effective how? If Police don't update on proceedings, victims can't make a complaint until the end of the process. The Charter doesn't actually do anything to correct victims individual experiences. The charter is not respected at all, victims who make contact with Charter staff to complain, say all they hear is what the Commissioner can't do and get told to go away and put the complaint in writing. Enforcing the Charter will mean getting your hands dirty and actually helping people.

I don't think it's well known or that effective to be honest.

The charter should be an effective process for victims however so far it isn't being used effectively in the area where I work.

I am unsure if this one bit of paper really effects outcomes of victims of crime. I think its overplayed and used as a tick box to be honest.

I also don't see many complaints change outcomes for victims.

Feels more like a broad statement and lacks any teeth if not followed

The Victims Charter is a wonderful document on paper, but I question if it is effectively put into practice, particularly with police processes.

It is great to have one, but the system needs to back it up.

If there was some kind of penalty for failing to inform victims of things all the way through a case

I would like to see it expanded to include the courts/court staff etc as i am finding this is where a lot of distress is coming from at this point in time.

Associate Professor Kerstin Braun reflected that without independent legal representation, victims have little chance of knowing their entitlements and having them enforced:

There are an abundance of provisions and different Acts and then we have the victims charters. Theoretically victims have a many rights but they don't always know where they are. There are so many different Acts and it's not just a one stop shop. A legal representative could say "look we can make a victim impact statement, but you can't include XYZ yet because then they will edit it or you can't include that because they might cross examine you. So be aware of that or you must be informed about this. I'm going to ring up and follow up on this for you."⁹¹

CLCs also suggested that victims' lack of awareness of their entitlements could be remedied by access to independent legal advice and assistance:

I assume that victims are also unaware that they can make a complaint under the Charter to the Commissioner. There may be a role that lawyers can play there, under a wrap-around service, where they can identify that a Charter principal hasn't been complied with and could help make a complaint, and follow up with the Commissioner.⁹²

Dr Robyn Holder also reflected on the lack of awareness of victims' rights within the broader community and victims' advocacy sector, pointing to a gap in training for non-legal advocates. Advocates might otherwise be able to advise victims of their rights and advocate on their behalf.⁹³

CLCs also suggested that even if victims were aware of their entitlements, there 'currently is no real enforceability within the Victims' Charter'.⁹⁴ This view was shared by Associate Professor Tyrone Kirchengast, who reflected that regardless of victims' awareness of rights or entitlements, they simply do not have the enforceability of offenders' rights:

...everyone is left confused by this ambiguous standing of victim rights that don't fit with conventional rights discourse. Where if you look at offender rights, they're always presented in the context of being substantive and enforceable. There aren't any rights for offenders that can't be enforced. They might be levels of enforcement, but they're all real and substantive rights. But victims have not shared in that history of rights development.⁹⁵

91 Consultation Meeting 1 – Associate Professor Kerstin Braun.

92 Consultation Meeting 22 – Community Legal Centres – Session 1.

93 Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

94 Consultation Meeting 22 – Community Legal Centres – Session 1.

95 Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

Overview of Chapter 7: Reporting and investigation

For many victims, reporting to police marks the beginning of their participation in the criminal justice system and the initial response of police can influence their willingness to participate.

The *Victims' Charter Act 2006* (Vic) (Victims' Charter) includes rights that span the reporting and investigation process, such as the right to be treated with courtesy, respect and dignity. Under the Victims' Charter, victims also have a right to be provided information at key points of the investigation.

Reporting

Victims told the Victims of Crime Commissioner (VOCC) they chose not to report to police for a variety of reasons, including because they did not feel safe talking to police, or they did not think they would be taken seriously.

Despite some victims having a positive experience of reporting a crime, the VOCC also heard from victims who had experienced a reporting process that lacked a sensitive or trauma-informed approach. Some victims were dismissed, dissuaded or prevented from reporting. Some victims told the VOCC that they did not feel believed by police members when reporting a crime and in some cases, police refused to take a statement.

Investigation

For those victims whose matter did proceed to investigation, many told the VOCC that they did not receive any, or enough, information to participate in the justice process, including information they are entitled to under the Victims' Charter.

Victims told the VOCC about:

- not receiving any contact at all after the initial report, continually calling Victoria Police and leaving messages, with calls left unreturned
- having to continually chase up actions, such as whether an intervention order had been served
- police failing to provide victims with key information like court dates
- not being given information about, or referrals to, relevant support services.

The VOCC heard that lack of information affected victims' opportunity to participate, including causing them to miss court dates.

Delays in investigations, compounded by a lack of communication and information, were a frequent source of frustration and distress for victims, affecting their ability to participate.

Victoria Police members told the VOCC about overwhelming workloads and being unable to meet Victims' Charter requirements due to resource constraints.

Stakeholders highlighted the need for police to have more resources, and better systems, to help victims participate during the investigation process.

Bail

The VOCC also heard that the bail process and decisions need to better acknowledge victim safety.



Chapter 7:
**Reporting and
investigation**



Introduction

This chapter outlines victims' experiences of participation during the police report and investigation stages.

Police are often victims' first contact with the justice system, and research suggests that how police treat victims is more important for victims' sense of procedural justice than how they are treated by other justice agencies or individuals.¹ As one victim interviewed by the Victims of Crime Commissioner (VOCC) said, police 'are the gatekeepers to justice'.²

For many victims, reporting to police marks the start of their participation in the criminal justice system and the initial response of police can influence their willingness to participate.³ In the case of crimes that may be cumulative, such as stalking and family violence, a positive reporting experience is also crucial to a victim's ongoing safety.

Participation at the police report and investigation stage includes victims' entitlements under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to:

- be advised of the progress of an investigation at reasonable intervals⁴
- be told the outcome of bail and any bail conditions that are intended to protect victims.⁵

Reporting to police

During the police reporting and investigatory stages, the Victims' Charter requires victims 'to be treated with courtesy, respect and dignity'.⁶ Further, Victoria Police is required to take into account, and be responsive to, the particular needs' of victims of crime.⁷ This includes needs relating to:

- race or indigenous background
- sex or gender identity
- cultural or linguistic diversity
- sexual orientation
- disability
- religion
- age.⁸

Victims' experiences

Victims who chose not to report

It is important to recognise that there are still barriers to victims participating at all in the justice system, with many victims choosing not to report crime. As outlined in **Chapter 5**, there are still a range of structural and systemic barriers to participation which impact on victims' willingness to report to police.

While the VOCC did not measure the percentage of victims who did or did not report to police, the VOCC did ask why victims had not reported to police where this was relevant to them.⁹ As shown in **Figure 13** below, respondents to the VOCC's Victims' Survey chose not to report to police for a variety of reasons. Close to 40 per cent (38 per cent of respondents) who did not report to police said they did not feel safe talking to police, or they thought they would not be taken seriously.

1 Jo-Anne Wemmers, 'Victims' Experiences in the Criminal Justice System and their Recovery from Crime' (2013) 19(3) *International Review of Victimology* 229.

2 Interview 9 – Survivor advocate.

3 See, eg, *Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report: Executive Summary and Parts I to II*. (Report, 2017) 194 <<https://nla.gov.au/nla.obj-2821501433>>

4 Information that would jeopardise an investigation can be withheld from victims: *Victims' Charter Act 2006* (Vic) s 8(1).

5 *Victims' Charter Act 2006* (Vic) s 10(1). A bail decision maker must consider any known view or likely view of an alleged victim of the offending on the grant of bail, the amount of bail or the conditions of bail: *Bail Act 1977* (Vic) s 3AAA(1)(j). Police generally represent the victims' concerns at the bail stage, although there is no legislative requirement for police to seek victims' views and present these to the bail decision maker.

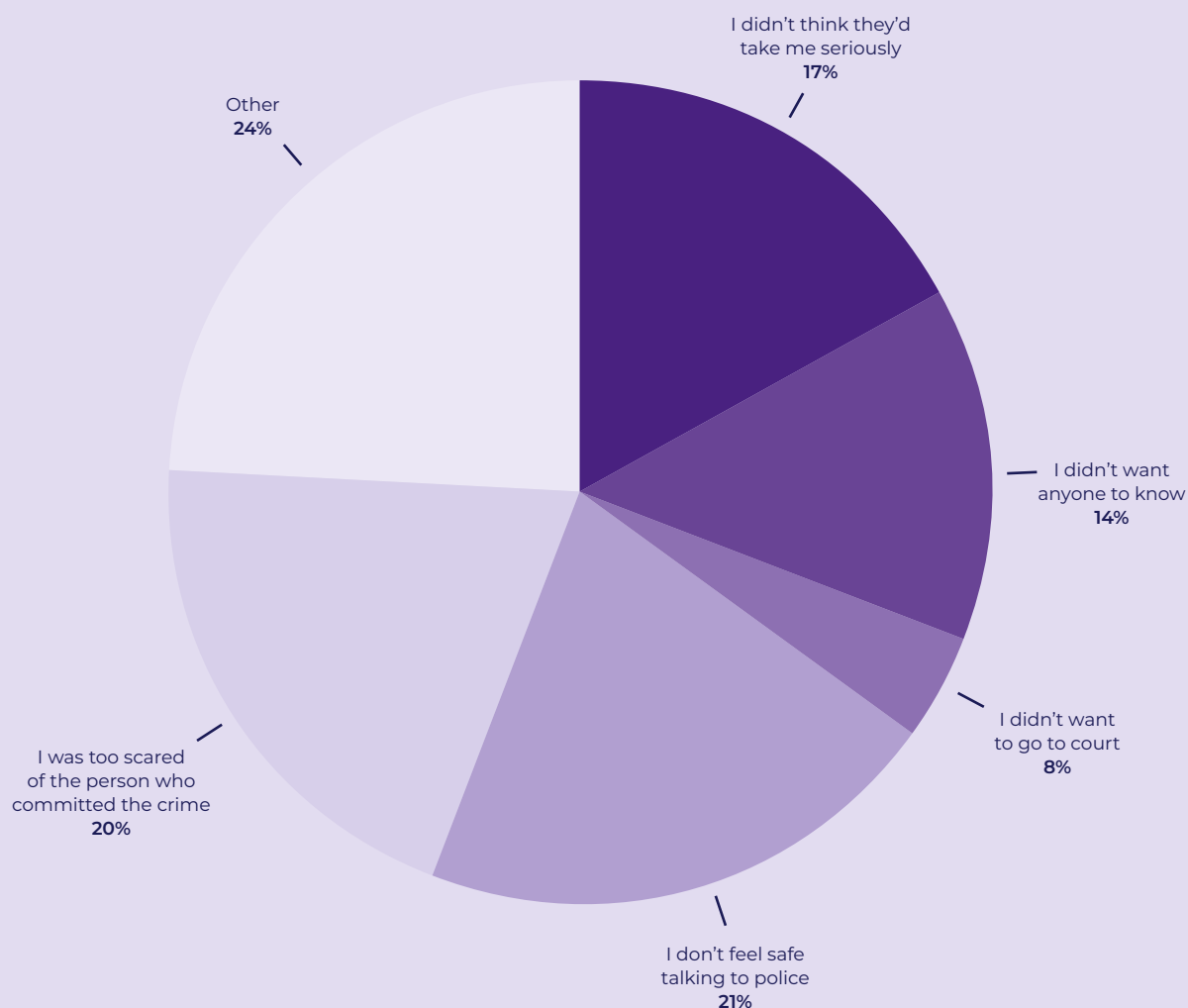
6 *Victims' Charter Act 2006* (Vic) s 6(1).

7 *Ibid* s 6(2).

8 *Victims' Charter Act 2006* (Vic) s 6(2)(g).

9 Sixty-eight out of 156 respondents to the VOCC's Victims' Survey answered the question: 'If you didn't tell the police, please tell us why.' Some victims who have been victims of more than once may have reported to police one or more times, as well as choosing not to report at other times.

Figure 13: VOCC Victims' Survey: If you didn't tell the police, please tell us why?



For those respondents who selected 'other', the main theme emerging was negative feelings towards the police and poor past experiences:



'Country towns Police repeatedly dismissed us'

'I did and I was made fun of, then gaslighted and sent home.'

'I tried to report but was dismissed despite ample evidence.'

'Police refused to take my statement.'

'Previous experiences that were unhelpful.'

'I didn't report further breaches as the police system is too time consuming, invalidating & retraumatising.'

– Victims' Survey respondents

One respondent to the Victims' Survey said that '[w]ith such a low rate of convictions for rapists, it seems the justice system supports the perpetrator not the victim/survivor'.

Another theme was to do with childhood victimisation, with victims embarrassed, unsure, unaware, and scared to report:



'I was a child.'

'I was young. It was an embarrassment, and I was not even prepared to tell my parents.'

'I was a child and didn't know that what was happening was against the law.'

'It should be noted that it took nearly 40 years to muster up the courage to report it to anyone.'

– Victims' Survey respondents

Positive experiences

Some victims described positive experiences of reporting to police, including being treated with empathy, care and professionalism.¹⁰

One victim recalled that after their loved one had died, 'the informant came and sat with us. I thought we was good. He was terrific really. I don't know how they go on and on. You know, listening to people that are dropped into this dark hole of grief and turmoil.'¹¹

Some victims described positive experiences of reporting to police, including being treated with empathy, care and professionalism.

Some respondents to the VOCC's Victims' Survey said that feeling heard, being believed and being treated respectfully resulted in positive reporting experiences:



'Reporting worked for me as I was believed & taken seriously. In hindsight I believe this was helped though because I reported as soon as I could, was attacked by strangers & had physical injuries. The investigation went no where initially but was re-opened at a later stage when new evidence was found. Both detectives (initial & recent) were respectful, and I believe tried to minimise trauma....'

– Victims' Survey respondent

A number of victims praised responses by specialist police such as the Sexual Offences and Child Abuse Investigation Team (SOCIT). Victims of sexual offences felt particularly safe when they felt believed and that the crime was not minimised, as noted by this respondent to the Victims' Survey: 'The staff at SOCIT treated me well. They didn't make me feel like it was my fault or that it was no big deal.'

Another victim interviewed by the VOCC described SOCIT as caring and engaged: '[SOCIT] were just really caring on the phone and interested. Not like when you go to a police station where they're just dealing with your car break-ins and they just want to 'tick and flick'. So, the initial part was good.'¹² Explaining further, this victim reflected on the empathetic response by SOCIT members:



'It was empathy and the other thing was they were across everything. Like they knew everything. They were good people and age appropriate and you know, not crusty, not browbeaten, not jaded. And you could actually give them a hug. They were human beings'¹³

¹⁰ Interview 16 – Victim of crime; Interview 5 – Victim of crime; Interview 6 – Victim of crime.

¹¹ Interview 5 – Victim of crime.

¹² Interview 6 – Victim of crime.

¹³ Ibid.

Another victim interviewed by the VOCC spoke about their positive dealings with the police informant in a child sexual abuse case: 'My girls would not have got through the investigation without [the police informant]. My girls were immediately at ease with his empathy and professionalism.'¹⁴

Reporting process was not trauma-informed

While some victims had a positive reporting experience, the VOCC also heard from victims for whom the reporting process was not trauma-informed or sensitive.

For some victims, the physical environment in which they reported the crime was not conducive to a victim-centred response. For example, a Berry Street Y-Change Lived Experience Consultant recounted police trying to interview them about a sexual assault at their home while they had a friend visiting:

'It was hard when the police came to my house and I had a friend over and they started to ask me all these questions and I didn't want to talk to the police in front of my friend. Also it was expected that with the friends I hang around with that you don't talk with the police. My experience of sexual assault had only just happened and it was all those things at once and I didn't want to talk to them'.¹⁵

One Victims' Survey respondent described having to initially disclose in the reception area of a police station and how this had caused them further harm and made them reluctant to report future crime:

'I had also been required to "state my case" in front of multiple officers at the reception of the police station (a mere hour after being assaulted) before they even agreed to take my statement. Such negative experiences would prevent me from even bothering to report a crime in future.'

– Victims' Survey respondent

Another Victims' Survey respondent noted that the physical environment in which they reported their crime was unsuitable:

'Both my cases were historic reportings. Reporting them was the first time I had been into a police station aside from a school excursion as a child. My initial statement was taken in an interview room that criminals are interviewed in. It was dingy, no windows and an awful place.'

– Victims' Survey respondent

Some victims told the VOCC about being rushed through the reporting process without adequate support or empathy:

'I was very, very traumatized. And the police said [on the phone] "OK, So what did he do?" ... and then "Oh, you need to come in and make a statement." And I'm aware of that but they didn't offer any supports or ease you into or no trauma informed approach. I absolutely went into meltdown and started having suicidal thoughts again. It was dreadful. So I basically got re traumatized. It's like my lips are moving but nothing would come out. I always feel like I'm choking when I'm put on the spot like that. I feel like I can't speak.'¹⁶

¹⁴ Interview 16 – Victim of crime.

¹⁵ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹⁶ Interview 10 – Victim of family violence.

Similarly, a respondent to the Victims' Survey stated they felt rushed through the process, and were unprepared for the 'callous' language used in the police statement:



'Awkwardness being rushed through making my statement about things that i'd never told anybody. being shocked at how collous the official police language was in the statement.'

– Victims' Survey respondent

One victim interviewed by the VOCC emphasised that it is important for police to have the right qualities to work with victims: 'the role is investigation, but the role is also about people ... If informants cannot work with people, if they don't have the interpersonal skills, then they shouldn't do it.'¹⁷

Other respondents to the Victims' Survey spoke about receiving police responses that were belittling, condescending, dismissive and unsupportive:



'I had an appointment with a policewoman, to talk about my options as a victim of sexual assault. I turned up at the station for the appointment and was told that the policewoman was out on a job so I had to wait to see a young male constable who I found was belittling, condescending and not at all helpful with providing me with information on how to get a PSIO and the process.'

'The Uniformed police and my local police station. I find them to be very dismissive, condescending, unsupportive....'

– Victims' Survey respondents

The VOCC heard about victims who had been subjected to inappropriate comments from police members when reporting crime. One respondent to the Victims' Survey stated that when reporting to police, 'the first question they asked was if I was drunk'. Another Victims' Survey respondent who had been raped said the police office responded with 'what do you expect if you go on a dating service'.

For some respondents to the Victims' Survey, they found the format and approach for making a report arduous:



'What also did not work for me was the arduous process of making my statements to the police. Victims need to sit through lengthy interviews waiting for police to type your narrative, checking grammar and spelling, interrupting the flow of the victim's commentary. I believe a clinical typed statement does not have the same impact as a video and audio recording. Non verbal communication apparent in a video recording would be a powerful piece of evidence.'

– Victims' Survey respondent

Another Victims' Survey respondent noted that they had to provide their statement over two different sessions which involved a 30-minute drive from their home to the station in a heightened state of anxiety, exacerbating their distress and anxiety.

Notably, several victims found that alternative reporting options were helpful. For example, one respondent to the Victims' Survey advised:



'Anonymously reporting via the now-defunded SARA reporting tool (previously overseen by SECASA) was positive. This helped give me the confidence and support (via a counsellor who checked up on me after my anonymous report) to eventually report officially to the police. It also gave me some comfort that it was officially recorded what the perpetrator had done and what his characteristics were (age, gender, locality etc)...'

– Victims' Survey respondent

Reporting to police is not accessible for all victims

As outlined in detail in **Chapter 5**, the justice system is not safe or accessible for all victims to participate in. In relation to reporting to police, the VOCC heard from victims of crime with disability who discussed additional barriers and challenges to reporting crime or attending police stations. For example, some victims noted that not all people can physically attend police stations, whether due to disability or the nature of their victimisation:



*'Even police statements and police reports, you have to go into the station and there are many people who can't go, who are disabled or are being stalked and are too scared to go in.'*¹⁸

The VOCC heard from victims of crime who had experienced discrimination by police because of their disability, including when attempting to make a police report. As one Victim Survivors' Advisory Council member noted:



*'We are discriminated by the police and told we are too disabled or mentally ill to make reports. My disability advocate told me to get a letter from my GP and psychiatrist to say I have the level of ability to be a credible sound witness to give evidence about crimes against me and others.'*¹⁹

Victims living with disability discussed how negative past experiences involving police, both in the context of reporting crime and in general, have led to them feeling unable to report crime. One member of the Women with Disabilities Victoria (WWDV) Experts by Experience Advocacy Team advised the VOCC that after they acquired a brain injury, they 'would regularly be stopped by police' and asked what they were doing.²⁰ This, along with negative experiences of reporting crime, contributed to their loss of confidence in police:



*'My past very poor experiences, have led me to not feel safe to report anything today to police. E.g., not being believed. Facing ableism and judgement. From my work with other disabled people, especially women, I find this to be a common situation.'*²¹

¹⁸ Interview 1 – Victim of crime.

¹⁹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

²⁰ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

²¹ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

Unfortunately, this member of the WWDV Experts by Experience Advocacy Team faced further barriers as a victim of crime when a perpetrator breached their intervention order:

*'After the IVO was served, my perpetrator broke into my rented house/property on 3 separate occasions to steal and damage my belongings. The first time, I tried to report this, but ended up withdrawing because I felt that the police were not listening. I chose not to report the other 2 times.'*²²

Another member of the WWDV Experts by Experience Advocacy Team spoke about their experience of reporting crime as someone living with an invisible disability:

*'I have an invisible disability. I have autism. While I've had limited interaction with the justice system, I have tried to take out an intervention order and found this experience complex, slow, overwhelming and felt unsupported. There were too many steps involved. Although I presented as 'held together' because my communications and body language didn't indicate distress, I didn't get very far in the process and I felt really unsafe.'*²³

This same member discussed the unsuitability of the police station for those with sensory challenges:

*'The sensory challenges of being in that environment – a police station – all combined. I couldn't navigate it. All these things impact on ability to report and start a process. I probably didn't "look" like a victim of crime because of my body language and communications.'*²⁴

Another member of the WWDV Experts by Experience Advocacy Team told the VOCC that because disability can be invisible, it is important that police ask what someone's needs might be:

*'It's not always obvious that someone has a disability. It needs to be a question asked rather than an assumption made as there are less visible components to disability. It's important to know that we will be supported during the process to improve the access.'*²⁵

Being dismissed, dissuaded or prevented from reporting

Several respondents to the VOCC's Victims' Survey felt that police were dismissive of their experiences or that they were discouraged from reporting crime, with one respondent to the Victims' Survey stating the process of reporting the crime was 'a waste of time and energy'. Survey respondents advised the VOCC that:

'Police dismissive, no appropriate action taken'
'Vic Pol – inadequate on so many levels. Dismissive, slow'
'the attitude of the police and the lack of support by the police'
'The police were very dismissive of us. Beyond writing a basic report, no other help or assistance was provided'

– Victims' Survey respondents

22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.

A number of respondents to the Victims' Survey stated that they did not feel believed by police members when reporting crime:

'The Sexual Offences Squad made it clear that they didn't believe me.'
'Not being believed, having my trauma turned around on to me'
'Was not believed, was treated poorly from police, on the night'
'Police - disgusting behaviour, siding with the perpetrator'
'Being taken seriously would be a great start. to have officers dismiss you as though you are insane gets tiring.'
'Police. They didn't believe me. Did not attend twice after calling 000. Did not investigate serious crimes. Belittled me. Disrespected me. Did not follow up at all.'

– Victims' Survey respondents

One Victims' Survey respondent advised that police told them '[m]aybe you imagined it' and refused to investigate the matter further.

One victim interviewed by the VOCC stated: 'I can't tell you how often I have been turned away, dismissed, ignored, ridiculed, embarrassed in my dealings with police over the years. I've been laughed at, even by a group of police.'²⁶

Di McDonald, a victim of stalking, told the VOCC that she had experienced barriers reporting to police because she 'never said the words that police look for' and that while she would be upset when reporting, the perpetrator would 'go in cool, calm and collected and his lies are believable'.²⁷

One Victims' Survey respondent who was a victim of a sexual offences said they felt that the police officer 'was cynical and dismissive' of their experiences. Another Victims' Survey respondent felt dismissed when they were advised that police were unable to assist in an assault matter, despite the offender being known to police:

'I was told by a police officer that "the offender is well known to us, and is notorious for doing that kind of thing (assaulting strangers), so unfortunately there is nothing we can do." I remain incredulous at this response, as I would have presumed that recidivist, violent offenders would attract greater attention amongst law enforcement. I... felt extremely unsupported by Victoria Police.'

– Victims' Survey respondent

Another Victims' Survey respondent felt they had been persuaded not to report because the crime was historical and was told there would be a low prospect of prosecution:

'I was able to speak to a police officer who informed me that I need a witness and remember every detail of the sexual abuse that happened more than 10 years ago... And even then I would have a very low chance of having my abuser actually prosecuted.'

– Victims' Survey respondent

²⁶ Interview 10 – Victim of family violence.

²⁷ Interview 2 – Di McDonald – victim of stalking.

The VOCC was told by some Victims' Survey respondents of police refusing to take statements or dissuading victims to pursue a complaint:



'discouraged from reporting because our perpetrator was a cop'

'After Police had refused to take my statement about the perpetrator I applied for a PSIO for protection of myself and four of my grand-daughters... This whole process has totally devastated my mental and physical health due to Police not taking my statement...'

'The first thing the police officer at...SOCLIT said to me when I walked in the room to make a statement was "we can't do anything". So, she had already decided, before I even made my statement, that police were unable to help. After she said this, I felt that by proceeding with making the statement, I must be wasting everyone's time. Police shouldn't have said to me "we can't do anything" before I had even made my statement.'²⁸

– Victims' Survey respondents and victim interviewee

One Victims' Survey respondent recalled police attending the home in response to a triple zero call 'but not conducting a proper investigation into what was happening. Just coming and asking if everyone's ok and leaving.'

One victim interviewed by the VOCC recalled disclosing sexual abuse to police but police not following up this disclosure:



'While the police were at the residence, I disclosed to them ... I specifically said to the female police officer "I have been the victim of sexual abuse". I clearly remember that the response of the officer was "I know how hard it is". In hindsight, this was a condescending and unhelpful response. This police officer did not offer to help me make a statement about what I disclosed to her, nor did she tell me anything about how the police could help me.'²⁹

Police lack training and diversity

The VOCC heard from victims who, due to their negative experiences of reporting crime to Victoria Police, felt that further training is required, particularly in relation to sexual offences, family violence and stalking:



'The key area to focus on would be adequate training, support and recruitment of specialised police and detectives to respond to sexual assault and DV/Family violence offences.'

'[p]olice...no training or understanding in family violence and narcissistic behavior'

'There is an urgent need for greater trauma informed training across police.'

– Victims' Survey respondents

²⁸ Interview 14 – Victim of crime.

²⁹ Ibid.

Similarly, a victim who was interviewed by the VOCC noted that appropriate trauma-informed training is essential for informants who engage with victims.³⁰

A member of the WWDV Experts by Experience Advocacy Team advised that further training is needed in relation to disability:

But even if I said I was autistic, I'm not sure police or a court would know what to do. I think we need more training, specialist support officers, advocates to help unpack this and consider people's needs.³¹

A number of victims consulted by the VOCC had acted as consultants to police to assist with police training. These victims felt that having those with lived-experience involved in police training was an important step in enhancing trauma-informed police responses. For example, a member of the Victim Survivors' Advisory Council, who had been asked by Victoria Police to provide training, told the VOCC that it 'facilitates true participation in the long run.'³² However, it was suggested such initiatives were not always sustained:

I was involved in a program at the police academy training police about disability but because of COVID, it was shut down. I was going to visit once a month – telling people what it's like to live with a disability. I was making them aware of disability issues. Education like, "you don't need to yell at me, I can hear" and teaching people not to touch guide dogs while they're working.³³

Another member of the WWDV Experts by Experience Advocacy Team advised that better diversity and representation of people with disabilities within the police force would help victims with disabilities to feel confident to report: 'If I knew there was a police officer with a disability, that would have made me feel safe to report. Why not have a police officer with autism? With ADHD?'³⁴

Reluctance to report future crime

Respondents to the VOCC's Victims' Survey were asked whether they would report to police if they were a victim of crime again. As seen in **Figure 14** below, more than half of the respondents said they would not (25 per cent) or that were unsure if they would report again (27 per cent), and only 39 per cent said that they would.

³⁰ Interview 10 – Victim of family violence.

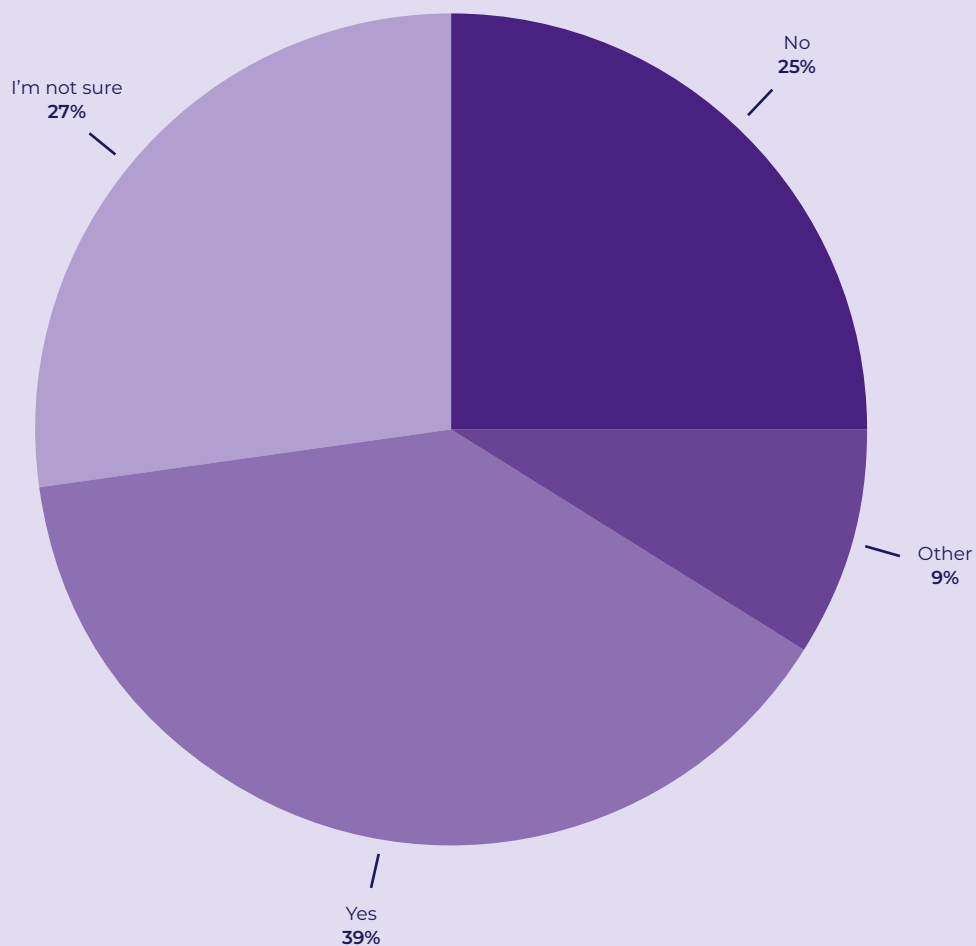
³¹ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³² Consultation Meeting 11 – Victim Survivors' Advisory Council.

³³ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³⁴ Ibid.

Figure 14: VOCC Victims' Survey: If you were a victim of crime again, would you report it to police?



Respondents who identified as having a culturally or linguistically diverse background or a disability were the cohorts with the highest 'No' response rate – almost 40 per cent each.

Stakeholder views

Stakeholders told the VOCC about the critical role that victims play in reporting crime:

It should be acknowledged that if victims of crime did not come forward to give evidence, which for many victims is basically an act of public service, then there would be no criminal justice system. So I believe victims of crime are essential and central to the justice system. They are an integral part of that system.³⁵

³⁵ Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

However, many of the structural and systemic barriers to participation discussed in detail in **Chapter 5** were raised by stakeholders as also being barriers to victims reporting crime. For example, the VOCC was told that over-policing of Aboriginal communities impacts on crime reporting:

For Aboriginal victims of crime, most don't feel safe reporting a crime to police because of over-policing of Aboriginal communities and violence perpetrated on them by the system. Many Aboriginal victims of crime have had really negative interactions with police in the context of their own offending. This means that they may not see themselves as 'worthy' victims or as eligible for support.³⁶

The Aboriginal Justice Caucus (AJC) told the VOCC that Aboriginal people experience a mistrust of the system, remain reluctant to report crime and that 'Racism will be the first barrier for Aboriginal people who report a crime.'³⁷ The AJC also said that 'We need to educate our mob to use their voices' but that this is an 'an arduous and traumatising process with little outcome' and that ultimately agencies 'need to work harder at responding to Aboriginal people'.³⁸ The AJC suggested culturally safe approaches for reporting crime might address some of the existing barriers to reporting:

Alternative reporting is also not currently available through an Aboriginal Community-Controlled Organisation (ACCO). It could be helpful to have ACCO as a site to report and then for the ACCO to liaise with Victoria Police and have a plain clothed police member attend the ACCO and speak with the victim, allowing them to report a crime in a safe space.³⁹

Community Legal Centre (CLC) representatives told the VOCC that victims 'frequently can't get beyond the front desk of a police station to report their injury or report evidence of a crime'⁴⁰ and that some victims are dismissed by police because they are not viewed as 'credible':

Mental health and drug addiction are barriers. Often the client is met with scepticism. We've had clients who have actually been laughed at by police, and police member who have suggested they're not credible because there were drugs involved, or it's been suggested that they had taken something – 'You've imagined it'. This is particularly the case in sexual assault matters. Often in sexual assault matters there's more scepticism than in other suggested offences, particularly when the victim may have mental health concerns or if drugs are involved.⁴¹

Echoing what victims told the VOCC about being dismissed or dissuaded from reporting, CLC representatives told the VOCC that:

Victims are experiencing barriers from the beginning with police where women who have experienced family violence are being buffered away from the system from making their complaint. Similarly, women who have experienced breaches of an IVO are also being buffered away by police...⁴²

The Victorian Commissioner for LGBTIQ+ Communities discussed the legacy of LGBTIQ+ treatment by police and its current impact on reporting:

There was a spate of crimes late last year which targeted gay men. These victims could not report the crime to the police because of shame around where the crime occurred, such as whilst holding a sex party or engaging sex workers. What communities have been seeking for a long time is an acknowledgement that as a system 'we messed up'. We need to address that legacy and make a change in how we proceed.⁴³

The VOCC was advised of barriers to reporting for both older and younger Victorians. The Commission for Children and Young People told the VOCC that police can be unsympathetic to young people and that children have experienced not being believed by police.⁴⁴ The VOCC was also told that:

In the specific context of children in out of home care or youth justice, it is so intimidating when police present in full uniform when they come to take a statement. They look the same as when they are responding to children as offenders. So plain clothing is simple and important when you take a children's statement.⁴⁵

The Commissioner for Senior Victorians told the VOCC that there is 'a reluctance of older people to buy into the justice system', identifying the following barriers to older people reporting crime:⁴⁶

- police not taking reports seriously
- preconceptions about the justice system
- the nature of victimisation, which is that crime is often perpetrated by someone known to the older person
- traditional views in relation to gender roles
- systemic bias alongside other intersectional barriers, such as being a member of a culturally and linguistically diverse community, affecting access to the justice system.

³⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

³⁷ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Consultation Meeting 22 – Community Legal Centres – Session 1.

⁴¹ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁴² Consultation Meeting 22 – Community Legal Centres – Session 1.

⁴³ Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities.

⁴⁴ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁴⁵ Ibid.

⁴⁶ Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

Victims' professionals surveyed by the VOCC were asked 'In your experience assisting victims of crime, what do you think is the most frequent reason why some victims do not report to police?' The response that attracted the greatest response rate was 'other' (40 per cent), followed by 'they don't think their report will be taken seriously' (24 per cent). An analysis of 'other' responses suggests the following are disincentives for victims reporting crime:

- delays in the criminal justice system having an impact on trauma recovery
- low likelihood of conviction and lack of trust in the justice system
- perceived leniency in sentencing
- fear the charges will be withdrawn after months of working with police
- the process causes secondary victimisation.

Victims' professionals surveyed by the VOCC highlighted a lack of trauma-informed and culturally sensitive practice, including victims feeling dismissed by police or feeling judged for past interactions with police (whether as an accused or a victim of crime), as noted by these respondents:

Victims can feel scared to report to police based on negative experiences with police in the past, particularly when there has been a history of mistreatment and distrust in police for Aboriginal and Torres Strait Islander people.

Victims can feel like it's not worth reporting to police and feel unsafe due to not being believed, being doubted, experiencing victim blaming or not having their report progress past investigation/prosecution stage which then places them at greater risk.

Victims can feel hesitant to report to police due to the requirements for evidence – not having the physical evidence to "prove" what the person is reporting

Victims sometimes call to report, tell a bit about their story, are told they will get a call back, only to not get a call back. When they call back, they are told that they can't find any notes of their initial complaint and ask the victim to "tell me a bit about your story" all over again.

My client's overwhelmingly report feeling dismissed by police. Many do not wish to make formal complaints because in their word "I still need police for protection", they are worried a complaint will make it harder for them to receive help next time. This issue is compounded in rural and regional communities where police all know each other and the community.

Victims can feel unsafe reporting to police if they have been misidentified as the predominant aggressor in a family violence matter.

Our clients (victims of sexual assault) report highly variable experiences with SOCIT – some very good, but not uncommonly feel unsafe, trivialised, treated with skepticism.

Victoria Police members told the VOCC that 'the way we manage victims when they come in to report is part of the participation process'⁴⁷ and noted positive reforms and improvements to reporting options for victims, including:

- purpose-built facilities for SOCITs
- use of intermediaries and Independent Third Persons
- alternative reporting options for sexual offences (e.g. through Centres Against Sexual Assault)
- online liaison with victims to build rapport
- engaging victims with relevant supports (e.g. housing) to encourage reporting.⁴⁸

As a result, the VOCC was told by police that hesitancy to report is 'more around being in a safe place where they are ready to report rather than a delay because of lack of confidence in police'.⁴⁹

Victoria Police members also spoke about trying to improve the confidence of certain priority groups to report to police:

Unbeknown to us, sometimes our policies and procedures may be discriminatory towards some priority groups, or there an incident occurs in a particular area which reduces the trust and confidence in police and that's where we use our portfolio reference groups, where we have key stakeholders from various priority communities where we discuss higher level issues that may occur ... We undertake stakeholder engagement to break down barriers and assist people to come forward and report.⁵⁰

47 Consultation Meeting 17 – Victoria Police – Session 1.

48 Consultation Meeting 17 – Victoria Police – Session 1.

49 Ibid.

50 Ibid.

Some Victoria Police members were sceptical about the benefits of expanding alternative reporting mechanisms, such as online reporting, identifying concerns around:

- delays in reports coming to the attention of police if submitted online
- police not being able to provide immediate support
- evidence being lost in the aftermath of sexual assault.

Investigation

The need for victims to be provided with information about the criminal justice system, including information about the progress of an investigation, has been long established.⁵¹ Victims' participation is reliant on receiving the right information at the right time and research has consistently found that 'one of the greatest needs for victims throughout their justice system experience is to be provided with timely, accessible and accurate information'.⁵²

Under the Victims' Charter, victims are entitled to be advised by police of the progress of an investigation at reasonable intervals.⁵³

Victims' experiences

Positive experiences of participation

Some victims told the VOCC about positive experiences of participation during the investigation process. One victim interviewed by the VOCC spoke about the police informant being available 'any time'⁵⁴ A similar response was provided by this respondent to the Victims' Survey:



'What worked well was having the one police officer from the cold case division as a contact person. This officer was caring, knowledgeable and available and was my support and resource person throughout the process.'

– Victims' Survey respondent

Another victim interviewed by the VOCC referred to the police informant as an 'angel on earth', stating 'We had a great police officer, but I've come to see that we were lucky. It is very, very rare.'⁵⁵

One victim, who had previously had unresponsive and uncommunicative officers spoke about the positive changes that occurred once their case was transferred:



*'But then two wonderful coppers came to my rescue. That's the only way to describe it. One came in and essentially said "You've been treated really badly I intend to set this straight I will look after you now" and she is true to her word. Her and another cop who was just wonderful ... He was just the most empathetic man because what you're looking for is fucking empathy. He was absolutely there until the files were passed to OPP. Just the continuity of it was sublime. Always looked after.'*⁵⁶

51 Rhiannon Davies and Lorana Bartels, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia' (2020) 9(4) *Laws* 1, 2.

52 Rhiannon Davies and Lorana Bartels, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia' (2020) 9(4) *Laws* 2. See also Haley Clark, 'What Is the Justice System Willing to Offer?' Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' (2010) 85 *Family Matters* 28, 31.

53 Information that would jeopardise an investigation can be withheld from victims: *Victims' Charter Act 2006* (Vic) s 8(1).

54 Interview 5 – Victim of crime.

55 Interview 12 – Victim of crime.

56 Interview 6 – Victim of crime.

From that point on, this victim felt they were updated appropriately but they did reflect that more frequent updates would have been appreciated:

'My informants were great at bringing me up to speed – I mean they don't tell you who they're interviewing – but you know they would come back to you on occasion with little follow up questions and context stuff. That was always really good. There are long periods of just radio silence, yes. And you do wonder what's going on? Have I been forgotten? Are people pursuing this? So maybe yes, more updates might be useful to people. Not like to call me every week, but to call me every few months'⁵⁷

Not getting sufficient information

While some victims recounted positive experiences, most victims who responded to the VOCC's Victims' Survey said they did not receive any, or enough, information to participate in the justice process. Close to 70 per cent of victims (68%) surveyed stated they either did not get any useful information (33 per cent), or not enough information (35 per cent), from police to participate.

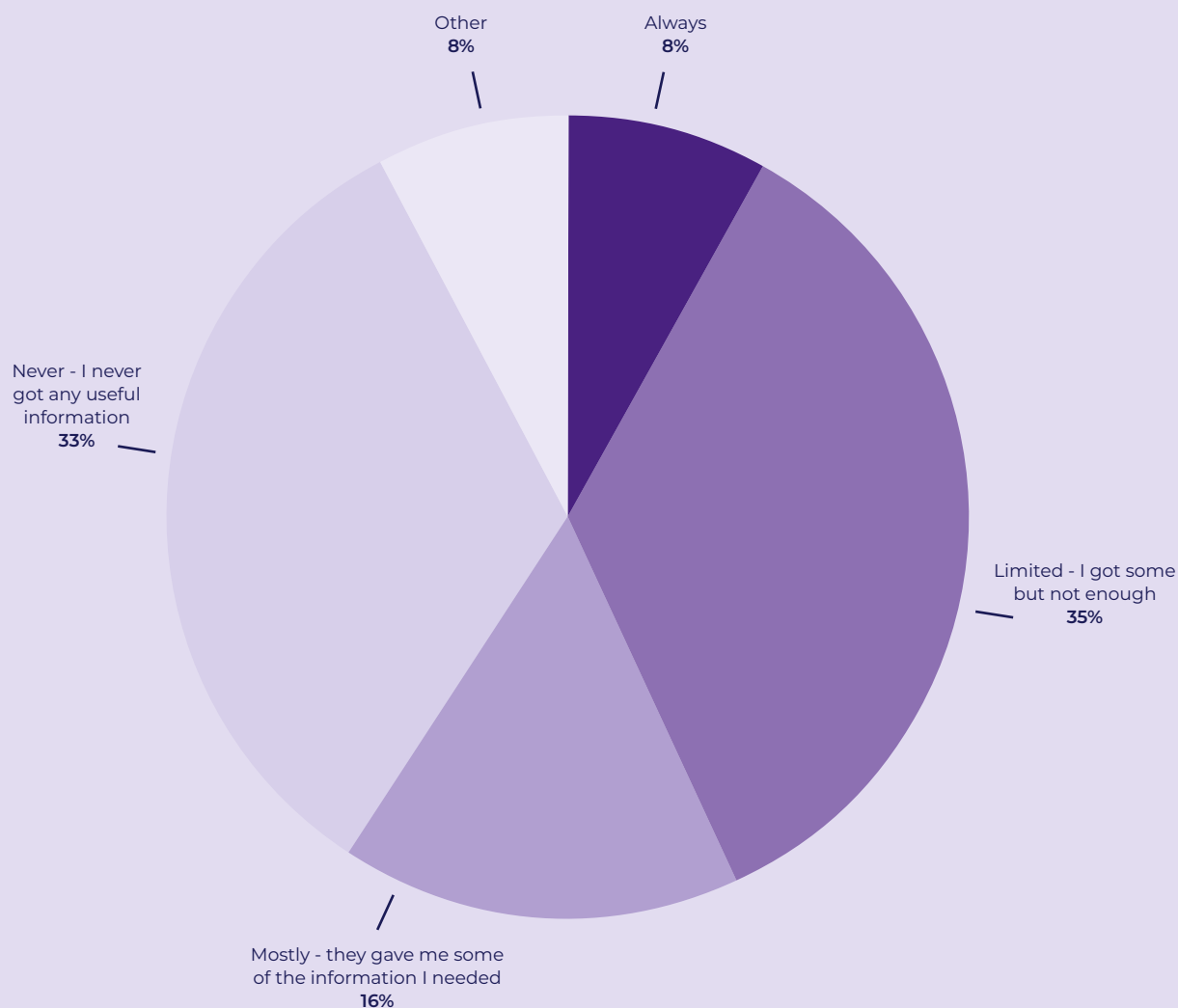


68%

Close to 70 per cent (68%) of victims surveyed **stated that they either did not get any useful information (33 per cent), or not enough information (35 per cent), from police to participate.**

⁵⁷ Ibid.

Figure 15: VOCC Victims' Survey: If you went to the police, did they give you enough information to participate in the process?



Respondents to the Victims' Survey highlighted several key issues with their participation at the police investigation stage, including:

- not receiving any contact at all after the initial report
- continually calling Victoria Police and leaving messages, with calls left unreturned
- having to continually chase up actions, such as whether an intervention order had been served
- police failing to provide victims with key information such as court dates
- lack of contact from police without prompting by the victim or their support worker.

Some respondents to the Victims' Survey told the VOCC about receiving no follow-up from police after making a report:

'They could of [kept] us up to date about what was happing with the case but once we made the report we heard nothing.'

'There was no follow up by police at all. The only way was to call every six weeks and they had no one assigned to the case. There was no offer of anything from the Police as stated no checking in with the victim ... The police after the initial statement interview were never heard from again.'

'My son was severely assaulted in the city...and he has not had contact nor was given any follow up call.'

– Victims' Survey respondents

Another Victims' Survey respondent spoke about calling police for a year to get updates, to no avail:

'There was no response at all. I was calling the Police every six weeks for 12 months and was always told the CI was away and would return the call. This never eventuated after the police officer who changed stations left. The information I did have about the crime was not taken on board and was very disturbing to think this is what the officers are being paid for. The real sad part was this affected me & I gave them vital information and I do know this was pushed aside due to no response.'

– Victims' Survey respondent

One Victims' Survey respondent advised the VOCC that over a two-year period, they only received one communication from the appointed police officer:

'I am supported by a VAP worker who has kept me up to date regarding court. Matter still before the court & not finalised 2 years later... in this 2 years I have had ONE phone call from the police informant who called me after my VAP worker to let me know something the VAP worker had already told me ... making me think that the VAP worker prompted this call.'

– Victims' Survey respondent

Another Victims' Survey respondent explained that the police officer appeared to alternate between contacting her and the deceased's family members, from whom she was estranged:

'The Detective in charge sometimes communicated with me, (the partner of the homicide victim) and sometimes with the step sister and family. As we were [e]stranged, this was very difficult.'

– Victims' Survey respondent

Victims interviewed by the VOCC also spoke about communication failures, such as police not returning phone calls. For example, one victim wanted to provide further information after giving their statement, but police were unresponsive:

*'as you go away, you remember other things and you think "well, if that's useful..." so I rang [the police]. And I never got a reply ... Essentially it would have been just a 5 minute phone call.'*⁵⁸

Ingrid Irwin told the VOCC that victims should get monthly updates 'as opposed to chasing the police, which currently happens now. This should be part of police's KPIs to keep victims up to date.'⁵⁹

A victim representative of the Victims of Crime Consultative Committee told the VOCC the investigation process felt 'tick and flick' and they didn't feel like a participant because they were having to continually chase police:

*'It was a tick and flick process. I never felt like a participant...I wanted to be informed. We made the initial approach to the police, then we were continually following police up to lay a charge. Once charges were laid no one told us what was going on. Police informants would advise us not to attend court, stating nothing would happen, and then something would happen, and we would miss it. Being kept up to date, an opportunity to say how we felt about certain things, these are all really important ways to show that people are participants in that sphere.'*⁶⁰

A member of the Victim Survivors' Advisory Council (VSAC) told the VOCC that whether a victim is updated or not throughout the investigation process is extremely variable:

*'I feel like it depends on who you get and whether or not the officer is having a good day. I have experienced getting a good officer who is supportive, caring and conscientious, but my neighbours who approached the same officer about the same matter have gotten the silent treatment'*⁶¹

This VSAC member told the VOCC that not being updated about the progress of a case not is not only a breach of the Victims' Charter, but 'reaffirms how we cannot rely on police. The purpose of the Victims' Charter – the very basic requirement of keeping a victim updated – is not being fulfilled'.⁶² This same VSAC member stated:

*'At a bare minimum, police need to prioritise victim-survivors by updating them. If that means smaller caseloads for officers, or more support, or a different process – they need to figure it out so that we can deliver the entitlements under the Victims' Charter.'*⁶³

58 Interview 6 – Victim of crime.

59 Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

60 Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

61 Consultation 11 – Victim Survivors' Advisory Council.

62 Ibid.

63 Ibid.

Victims told the VOCC they had to contact police repeatedly to try to obtain updates. One Victims' Survey respondent told the VOCC that after receiving no information, they had to attend the station in person:

'Between the first assault ... and the second assault the police didn't keep in contact to let me know what was happening. I kept contacting them to make sure this person was being charged & held accountable for his behaviour. After many calls by me to police I went to speak with them in person and I was angry and frustrated that they had not done anything.'

– Victims' Survey respondent

A failure to provide information about, or referrals to, relevant support services was also raised by victims. For example, one victim interviewed by the VOCC shared that 'after reporting to police, police did not give me any information about how to get help after reporting childhood assault.'⁶⁴

Lack of participation impacting wellbeing and safety

For many victims, lack of participation during the police investigation process resulted in additional stress, anxiety and mental health implications, as reported by this Victims' Survey respondent:

'After initial reporting of crime had little contact from police. No information on the investigation process or my rights in relation to the crime. I was left in a state of...depression.'

– Victims' Survey respondent

For victims who had experienced breaches of intervention orders, lack of contact by police often had implications for their safety, as noted by this respondent to the Victims' Survey:

'I had to keep chasing up the police to find out if the Personal Safety Intervention Order had been served. It took several weeks. One of the police constables actually advised me against progressing criminal charges due to the nature of the process and the impact of being cross-examined in court.'

– Victims' Survey respondent

For others, a lack of police communication had other ramifications. For example, one VSAC member described how gaps in police communication resulted in serious safety issues and a re-traumatising encounter for the victim's children:

*'In relation to my daughter's experience of family violence and non-fatal strangulation, her perpetrator was arrested charged and sentenced but I have seen enormous gaps in communication by police. The perpetrator was placed in jail overnight. The following morning, the police rang in the morning to advise they were bringing the perpetrator to the home to collect his clothing and asked the victim to vacate the house. The teenage children remained in the house as [it] was assumed the police would escort the perpetrator onto the premises. However, the perpetrator was not escorted by police and went into the house and spoke to the children who had just seen their mother strangled. There are real gaps in miscommunication from police to the victim about what was going to happen.'*⁶⁵

64 Interview 14 – Victim of crime.

65 Consultation 11 – Victim Survivors' Advisory Council.

Another VSAC member advised the VOCC that victims simply want updates to protect themselves:

‘Ultimately victims are not getting updated. I have heard many victim survivors who just want to know what is happening so we can better protect ourselves. We don’t care if police can’t support us – we just want to know what is happening so we can protect ourselves.’⁶⁶

Missing court dates

When a victim is not kept up to date with the progress of a matter, this often has ramifications for other aspects of their participation. For example, a victim who is not advised of an upcoming court date may miss out on the opportunity to make a Victim Impact Statement. Victims told the VOCC about missing court dates because of not being contacted by police.⁶⁷

Victims told the VOCC about missing court dates because of lack of contact by police.

One victim interviewed by the VOCC stated:

‘They didn’t notify us when it was going to court. They didn’t give us the results afterwards and we just presumed he would have got prosecuted, charged and perhaps got off with a good behaviour bond. I applied to find out what happened. I got the paperwork through to say he had pleaded guilty, but all charges were dismissed.’⁶⁸

A member of the Victim Survivor’s Advisory Council told the VOCC that they have missed important court dates because of lack of contact by police:

‘I seem to have lost [the police informant’s] commitment to supporting my case and have not received any updates since – court dates for the respondent have come and gone and I have reached out in writing and over the phone to no avail.’⁶⁹

One Victims’ Survey respondent noted that ‘the police forgot to tell [them about] the final court date’.

Perceptions of a lack of rigour

Lack of participation for victims meant victims frequently expressed concerns that police had not investigated their reports properly and that there had been a lack of rigour in the investigation process.

Respondents to the VOCC’s Victims’ Survey told the VOCC they were not given any information about why matters had not progressed. Victims often also felt confused as to why cases had been ‘dropped’ or ‘dismissed’, as these Victims’ Survey responses show:

⁶⁶ Consultation 11 – Victim Survivors’ Advisory Council.

⁶⁷ Consultation 11 – Victim Survivors’ Advisory Council; Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁶⁸ Interview 15 – Victim of crime.

⁶⁹ Consultation 11 – Victim Survivors’ Advisory Council.



'I was very disappointed and frustrated with the police as they did not handle this well, I was not given any information as to why the person did the crime, and do not believe it was a random act. The person was not charged due to being a minor and was not given any form of punishment or reprimand when he was caught, he received a caution.'

'Police dropped [the case] without question...Regardless of the medical evidence of the exam[ination].'

'The police investigation was horrible, non [existent], corrupt (proven) and inexcusable in every way.'

– Victims' Survey respondents

Some victims described feeling let down by police after the reporting stage, and expressed concerns that all the attention shifts to the perpetrator. One Victims' Survey respondent noted:



'Once I had reported and given my statement I then felt discounted, it was no longer about me, it was all about the male that assaulted me. It seemed [that] he had a set path then and I felt left in limbo.'

– Victims' Survey respondent

Another Victims' Survey respondent noted:



'the two police officers ignored the visible signs of damage and psychotic behaviour by the perpetrator and were more focused on placating the perpetrator rather than helping me.'

– Victims' Survey respondent

Delays impacting participation

VOCC was advised that investigation delays, compounded by lack of communication and failure to provide information, were a frequent source of frustration and distress for victims, affecting their ability to participate. Respondents to the Victims' Survey described delays in the investigation of matters as distressing and for some, like 'torture':



'The waiting. I just wanted to get it over with but it was months from my initial report to a formal statement. They needed to do another session and I waited another 5 weeks for that. The anticipation was really distressing.'

'Having to wait 7 months after being told I had to attend the [venue] where I was sexually assaulted, with police protection. This felt like torture, i had to think and worry about that for 7 months.'

– Victims' Survey respondent

The VOCC was told of frequent changes in personnel, affecting continuity for victims of crime:

'it took forever for the police to do the investigation, the detective assigned went on 4 months leave two weeks after our first meeting and said it was better to wait until he returned so I less people handling the case. It took nine months from first contact to the first interview with the offender.'

'The Detective in charge went on holidays before the first court mention. When he returned he went on stress leave and couldn't be contacted and nobody represented me in the following court mentions due to staff shortages at SOCIT.'

'I've had 5 Investigators and he still hasn't been questioned. The rape was reported Feb 2020.'

– Victims' Survey respondents

When the perpetrator is a police officer

Victims who experienced a crime perpetrated by a Victoria Police member encountered specific barriers to reporting to police and participating in the justice process.

For one respondent to the VOCC's Victims' Survey, it was difficult to convince Victoria Police to investigate:

'Initially Victoria Police did NOT investigate, but lied to me and told me they did. The perpetrator remained working as a police officer by this time he had moved...department[s]. At this time they told me "there's a loophole in the legislation and there are no criminal charges".'

– Victims' Survey respondent

Another victim surveyed by the VOCC spoke of privacy breaches, impacting their safety:

'Police breached my privacy and safety multiple times and the leaked information to the perpetrator...to help him navigate his way to avoid any consequences for his crime. Police perpetrator's are protected by Victoria Police and they game the system.'

– Victims' Survey respondent

Another surveyed victim experienced difficulties with reporting and then convincing police to prosecute:

'Police did not investigate and had to be nagged to investigate one of their own; we were discouraged from reporting because our perpetrator was a cop; witnesses were calling the informant saying they wanted to make statements and hearing nothing back; nothing happened until we went to the police minister; our perpetrator kept breaching and was never remanded so we were on the run for 18 months, missing school and work while the brief was compiled at glacial speed and the informant took holidays. Victoria Police cannot investigate its own for DFV.'

– Victims' Survey respondent

One victim interviewed by the VOCC spoke of the need for independent, specialist legal advice where the perpetrator is a police officer because of the added complexity:



*'In the early days, the family home sold and I've been financially destroyed by lawyers who have no idea how to manage a case like this. When it involves a perpetrator who is a member of the police force, there needs to be specialist services, management and advice. People don't know what the hell they're doing. I've been given really bad advice along the way.'*⁷⁰

Stakeholder views

Stakeholders acknowledged the significant shift and cultural change that has taken place in Victoria Police to improve victim participation but many stakeholders told the VOCC that negative experiences still occur and that further cultural change is required, as noted by Victims Services staff:

We still hear horror stories about police officers who treated victims in a particular way or say something inappropriate. We still have a lot more to do at a systemic level in regard to cultural change. We have heard this repeatedly from victim services.⁷¹

Inadequate communication

Consultation with victims' professionals echoed the issues raised by victims about lack of proactive communication and victims missing out on opportunities to participate because of information not being provided.⁷²

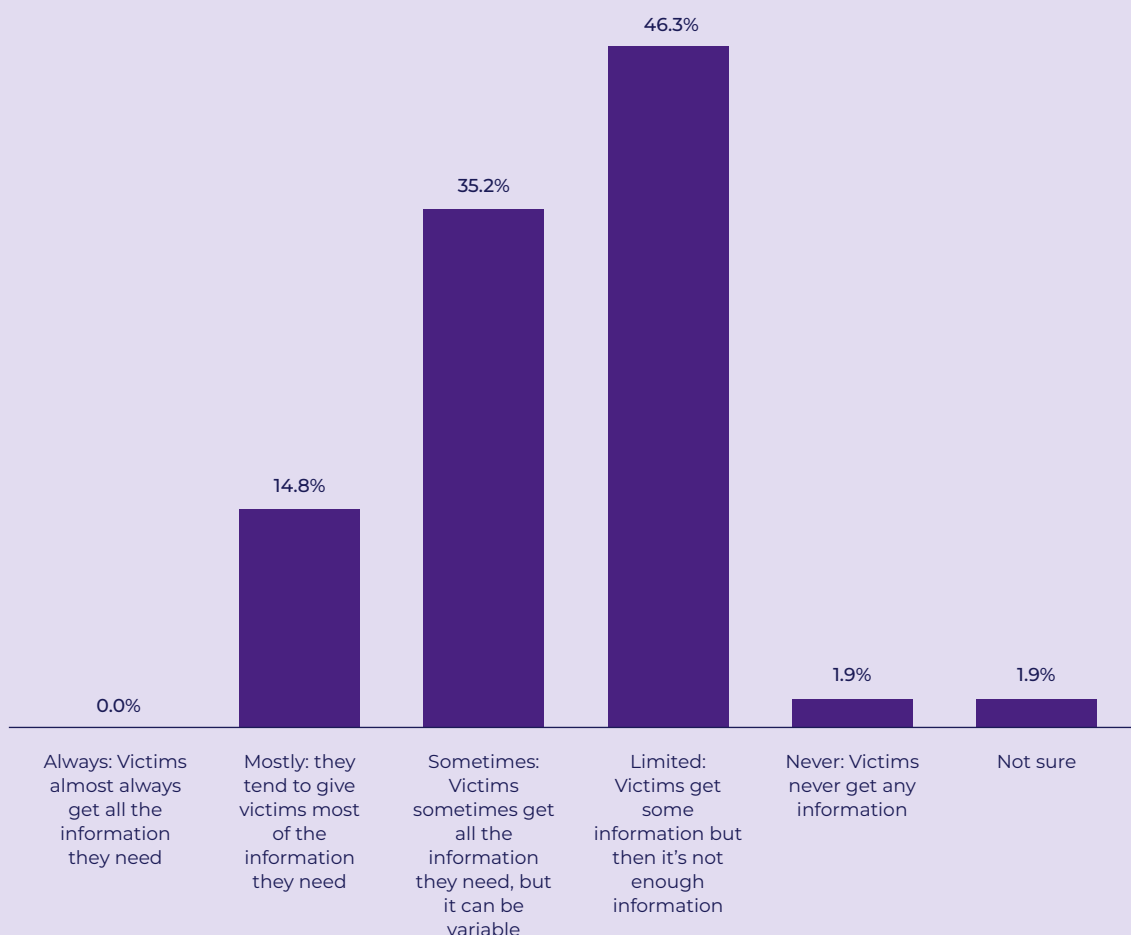
Victims' professionals surveyed by the VOCC were asked whether police provide victims with enough information to participate in the justice process. The dominant response was 'Limited' (46 per cent), followed by 'Sometimes' (35 per cent) as shown in **Figure 16** below.

⁷⁰ Interview 9 – Survivor advocate.

⁷¹ Consultation Meeting 14 – Victims Services staff.

⁷² Consultation Meeting 12 – Court Network.

Figure 16: VOCC Victims' Professionals Survey: Do you think police provide victims with enough information to participate in the justice process?



Echoing victims' experiences, victims' professionals surveyed by the VOCC said that police communication was poor or non-existent:

Victims have reported that police have not kept them updated or communicated with them regarding their matter as it has progressed

Police need to communicate with the victims at all stages of the process much better, especially with IVO hearing outcomes, and/or outcomes heard in the Magistrates Court. This communication is very very poor.

Little response from uniform members to telephone follow up enquires after a statement has been provided.

Often victims will say that they have not heard anything from Police and this seems to trigger trauma for victims.

It is very common for victims that I work with to say that they have not been contacted or updated during the investigation or court processes.

Victims find it hard to get information from police

Windermere Victims Assistance Program advised the VOCC that the 'average informant can't be relied upon to provide information to the victim, especially when it's summary matters.'⁷³ Similarly, Court Network advised the VOCC that:

the proactivity of the police with keeping victims updated has not changed at all. Often people say that they tried to ring the Informant a month ago, that they left a message as the Informant was on leave, that they called again and left a message, and they were on night shift etc.⁷⁴

'[The] average informant can't be relied upon to provide information to the victim'

Windermere Victims Assistance Program

Echoing victims' experiences, victims' professionals surveyed by the VOCC said that victims were often dismayed by the lack of communication about a matter not proceeding:

Perhaps if they could explain to the victim why it is not proceeding any further that would help. Often victims feel defeated because they have taken the brave step in reporting, but charges are not laid or it doesn't make it to court. Explaining the reason why this has occurred would be helpful.

I've had so many upset and confused victims of sexual assault that only blame themselves more when their cases are not prosecuted or no charges are laid.

A Community Legal Centre (CLC) representative also shared concerns about the lack of communication when matters do not proceed. This CLC representative told the VOCC that they often encounter victims 'who have been left in the dark through the whole process of the investigation'. They noted that this can be because the police do not want to compromise the investigation, 'but then the victim finds out suddenly that there's going to be no prosecution, and it's a big shock to them. It can be devastating.'⁷⁵

The Centre for Innovative Justice (CIJ) noted victim participation during the police reporting and investigation process is variable and comes down to individual police:

Good practice may come down to individuals. For example, one woman we spoke to for our victims' services research lived in a regional area with a wonderful police informant who communicated regularly, but she had a very different experience to everyone else we spoke to.⁷⁶

This was confirmed by victims' professionals surveyed by the VOCC who suggested that victim-centred responses were dependent on the individual police officer.

Progress in improving victim participation during investigations

During consultations with Victoria Police members, it was evident that there are many dedicated police members who are victim-centred and wish to prioritise victims' needs and their participation in the justice process, where such participation does not jeopardise investigations.

Police members spoke about tailoring communication to individual victims, allowing victims to 'take it at their own pace' and 'the Victims' Charter driv[ing] everything we are doing including milestone events to identify how and how often victims want to be informed'.⁷⁷

The VOCC was also told that police consider language needs and police members also spoke about positive communication initiatives such as SOCIT introducing a document outlining the victim's preference for how they wish to be communicated with.⁷⁸

However, the VOCC was also told by police members they cannot provide the same level of service to all victims of crime, and that it is impossible under current resources to meet their obligations under the Victims' Charter for all victims of crime.⁷⁹

⁷³ Consultation Meeting 21 – Windermere Victims Assistance Program.

⁷⁴ Consultation Meeting 12 – Court Network.

⁷⁵ Consultation Meeting 22 – Community Legal Centres – Session 1.

⁷⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁷⁷ Consultation Meeting 17 – Victoria Police – Session 1.

⁷⁸ Ibid.

⁷⁹ Consultation Meeting 17 – Victoria Police – Session 1; Consultation Meeting 18 – Victoria Police – Session 2.

Unable to meet obligations under the Victims' Charter

Victoria Police members told the VOCC about overwhelming workloads and being unable to meet Victims' Charter requirements in relation to informing victims about the progress of investigations in the vast majority of cases:

With 300 000 cases a year, more than 200 000 of which have victims, and there are 12 000 of us, it's not physically possible to deliver statutory rights for all victims. It's just not physically possible. So, we have to prioritise. We don't have this as a formal policy, we just have to do it. We have a systemic triage process, where we intuitively make a decision.⁸⁰

We don't have physical barriers to be able to make phone calls or attend a home but it is just lack of time and the volume of the workload. In the [one region] at the moment we have 220 active investigations and 160 active court cases. So you can imagine just the sheer volume of cases.⁸¹

'it's not physically possible to deliver statutory rights for all victims. It's just not physically possible. So, we have to prioritise.'

Victoria Police member

The VOCC was told that '[i]t is a large challenge for Victoria Police with staff timetabling to keep victims continually informed' and that '[f]rom a general duties perspective the workload is huge'.⁸²

In addition to the general time and resource constraints that police members face on a daily basis within their jobs, there are challenges around staff movements and timetables, which can also affect the ability of the relevant police officer to give victims information and keep them updated :

It is a large challenge for Victoria Police with staff timetabling to keep victims continually informed. A staff member might do shift work and then be absent on a roster for some weeks. That's why it is so important to also train support agency staff, such as Orange Door with family violence matters to upskill them as to what process looks like so they can keep victims informed.⁸³

Need for more resources and better systems

Some stakeholders, including Victoria Police members, highlighted the need for police to have more resources, and better systems, to help victims participate during the investigation process.

For example, Court Network said the fact many victims were struggling to get the information they need to participate suggests there is a need for 'a specific victim liaison team within Victoria Police if informants are unable to liaise with the victim'.⁸⁴

Victims' professionals surveyed by the VOCC also felt that police needed additional resourcing to improve victim liaison:

The most important improvement begins at the police station. Having additional staff and space that spends more times with victims can completely change a victims experience. Police do not have the time to do this specialist work, more staff is desperately required so that the beginning of this journey starts the right way for victims of crime.

The SOCIT units appear to be really busy and possibly under resourced.

Some police members similarly stated that ideally they could be resourced to have victim liaison officers keeping victims informed via a case management system,⁸⁵ noting 'VicPol does not have a user-friendly format where victim notifications could become – not necessarily automated – but less demanding'.⁸⁶ IT solutions were proposed, including an 'end-to-end' victim's portal with each agency updating information 'as required, from police through to corrections, through to parole'.⁸⁷

Some police felt that beyond resourcing challenges, victim liaison takes a personal toll on police members:

There's a lot of investigators who are loathe to contact their victims because they know the emotional strain that's going to be put on them from the victim, especially with sex matters, where they're high needs victims. It can be quite traumatic for the investigator as well to have to have that contact with the victim, particularly in SOCIT where you're dealing with so many victims, it can really affect the mental health of the investigator as well.⁸⁸

Further, it is acknowledged the deeply stressful and traumatic work that police officers face within their roles:

It is also important to acknowledge that frontline police can become desensitised to a crime. When we attend a crime we might think it is minor but for that particular person it might be the worst thing that has ever happened to them. So Victoria Police needs to keep focusing on the effects of the crime and not the actual seriousness of the crime itself.⁸⁹

80 Consultation Meeting 18 – Victoria Police – Session 2.

81 Consultation Meeting 17 – Victoria Police – Session 1.

82 Ibid.

83 Ibid.

84 Consultation Meeting 12 – Court Network.

85 Consultation Meeting 18 – Victoria Police – Session 2.

86 Consultation Meeting 19 – Victoria Police – Session 3.

87 Consultation Meeting 18 – Victoria Police – Session 2.

88 Consultation Meeting 19 – Victoria Police – Session 3.

89 Consultation Meeting 17 – Victoria Police – Session 1.

Not jeopardising investigations

Victoria Police members told the VOCC they cannot always provide victims with the information they want to fully participate in the investigation process because of the need to safeguard the investigation process:

From a homicide perspective, typically we have victims and families of the deceased desperate to know the detail about what has happened. Sometimes the investigations are protracted and we're in a position where we don't want to jeopardize an investigation so we're withholding quite a bit of information at various times...Withholding information causes some issues with victims who are really desperate to participate and know everything that's happening.⁹⁰

Lack of trauma informed and culturally sensitive practice

Victims' professionals surveyed by the VOCC highlighted the need for police sensitivity and trauma-informed practice, and that this is key to whether a victim will participate in the investigation process:

Police can be incredibly empathetic and understanding of victims needs. Given the sensitivity and trauma, police ability to demonstrate this can be imperative. When police aren't able to demonstrate sufficient empathy and understanding, it can be detrimental to the clients experience and likelihood of continuing with the investigation process.

Another victims' professional surveyed by the VOCC spoke of inappropriate responses to family violence complaints, including minimising breaches of intervention orders and victim-blaming comments:

Police moan and groan when victims repeatedly report breaches of IVO, which make victims reluctant to do so. They make clear that it is an "effort" to record them, or minimise the seriousness of the breach. This is a cultural issue at all stations I work with. Police repeatedly make victim blaming comments whilst taking down statements (although this has reduced over the years, but still is often.)

I have repeatedly heard different officers around victims make the statement "if we had to do family violence with your lot all day, we wouldn't have any time to do 'real' police work." I don't know how this culture will change.

Victims' professionals highlighted the need for police training around trauma and specific crimes like sexual assault and family violence.

Police need more education around trauma and impact on memory to better understand why a victims narrative may vary rather than accusing victim of lying or being a "poor witness". This embeds mistrust in the system.

Better training for Police performing general duties regarding sexual assault and family violence.

more training as a large percentage of their workload is FV/ SA related crimes

More training in the impact of trauma and how to talk clearly to traumatised people would be very helpful.

Some victims' professionals surveyed by the VOCC felt variability in how police facilitated victims' participation during the investigation process occurred regardless of police specialisation:

Depending which police informant is allocated the case will depend on whether the client is treated with respect, empathy and understanding. I have had horrific responses from SOCIT at times, however others are wonderful to work with.

It's so hit and miss depending on the police officer, some are great and some are very dismissive or minimising.

The police who do this do it very well, but some can't be bothered, or only support victims they like/feel sorry for. Some police are very proactive in getting support for victims and some aren't.

Police are individuals, some are great with giving victims information, some aren't. Make it mandatory! If police thought their promotion was at risk, they'd make sure victims were informed and updated.

Victims have a different experience, depending on what police station they attend.

There needs to be more consistency with the service delivery from Vic Pol members to victims and better communication with victims.

It is really variable. Many have poor experiences particularly with general duties police but this can also happen in other areas such as SOCIT. Many are given incorrect information and not taken seriously. Some clients have a very good experience and I think that comes down to an individual police officer who understands the needs of victims and prioritises this.

The CIJ told the VOCC: 'We need to build capacity in police to interact with victims of crime and ensure they understand their rights along the way.'⁹¹

90 Consultation Meeting 19 – Victoria Police – Session 3.

91 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

Referrals to support services

Victims' professionals surveyed by the VOCC highlight issues with police referrals to support services, noting significant inconsistency with making e-referrals:

It should be compulsory for police to offer a VPeR referral to VAP [Victims Assistance Program] for each victim. Police should be held accountable if they do not do this.

E-Referrals need to be done. There is a lot of inconsistency with making e-referrals...

I feel there are many opportunities that VPER referrals are missed in the early stages and victims would benefit greatly from VAP early intervention.

Mandatory referrals of crimes against the person cases, and med-high range crimes (assault, attempted murder, culpable driving, false imprisonment, etc.) may be helpful. And the mandatory provision of victim support information to Victims of Crime may also be an effective way to engage. Since people don't know what they don't get told. And organisations can then funnel out cases that are deemed irrelevant.

Bail

An undertaking of bail is a promise to appear at court on a certain date to answer charges. Bail can be granted with special conditions or no conditions.⁹² Under the *Bail Act 1977* (Vic) a bail decision maker must consider any known view or likely view of an alleged victim on the grant of bail, the amount of bail or the conditions of bail.⁹³ Police generally present the victims' concerns at the bail stage, although there is no legislative requirement for police to seek victims' views and present these to the bail decision maker.

Under the Victims' Charter, a prosecuting agency (usually Victoria Police or, in the most serious crimes, the Director of Public Prosecutions), on request by a victim, is to ensure that the victim is informed of:

- the outcome of any application for bail by the person accused of the criminal offence
- if bail is granted, any conditions imposed on the accused person by the court that are intended to protect the victim or family members of the victim.

Victims' experiences

Bail did not emerge as a major theme in engagement and consultation with victims of crime and lived experienced consultants. However, one victim interviewed by the VOCC was concerned about the apparent lack of medical and risk assessment during the bail process:

*'He was granted bail with no medical assessment, no assessment of danger. Why is that man walking the streets? Why was he not remanded? Why was he only assessed with paedophilic tendencies after he was convicted?'*⁹⁴

This same victim was also concerned that victims are not consulted about bail:

*'I was not consulted about bail. We heard he was grooming children in his area. I had parents ringing me. Society expects the system to protect them. I am all for the system saying you need to be proven guilty. But to just be granted bail without any medical assessment done or thought that this man lives in an area where young kids live in the streets. He can still groom young kids in the street and access child pornography. We were just very very jaded that the system would let us down time and time again.'*⁹⁵

⁹² Magistrates' Court of Victoria, *Bail and custody* (Web Page, 12 December 2018) <<https://www.mcv.vic.gov.au/criminal-matters/bail-and-custody>>.

⁹³ *Bail Act 1977* (Vic) s 3AAA(1)(j).

⁹⁴ Interview 16 – Victim of crime.

⁹⁵ *Ibid.*

This same victim told the VOCC that the accused had breached bail conditions by contacting him, but police did not act on these bail breaches:

*'One of the disappointing things is while my father was out on bail, he rang me. He was told not to contact witnesses but he did. When I reported that to the police they did nothing. What's to stop him driving to my girls' school and intimidating them? It was just another example of how protection is afforded to him and not us. Why wasn't that a breach of his bail conditions? If you breach your bail then you should go straight into remand. The whole bail process was just ludicrous.'*⁹⁶

This victim suggested that allowing a Victim Impact Statement to be prepared for a bail hearing could assist a judicial officer to understand the potential trauma that releasing an accused on bail might cause a victim:

*'I would have liked something like a Victim Impact Statement or some assessment of what trauma is going to cause if bail is granted. For the judge to hear from the girls' counsellors about the trauma caused to them if he was out on bail.'*⁹⁷

Another victim interviewed by the VOCC was disturbed by not knowing where the accused was while on bail and the relative 'freedom' enjoyed by the accused:

*'We don't know where this guy is on bail. He's allowed to go anywhere he likes in Australia because he's a truck driver. He still has all his Christmases, all his birthdays, his family, he's living the life, except that he's got a few bills.'*⁹⁸

Stakeholder views

During stakeholder consultations, some police advised the VOCC that victim participation at the bail stage was necessarily limited, stating victim participation in the context of bail is 'too broad a word for victims because the victim can't participate in the bail hearing itself as we don't want them cross-examined.'⁹⁹

However, police also spoke to their commitment to obtaining the best possible outcome for victims at the bail stage:

From a SOCIT perspective, we want to see a great outcome for victims and that means getting justice and seeing perpetrators held to account. If the perpetrator is out then our victim lives in a lot of fear ... Victoria Police members are very invested in bail proceedings and engaging with our victims in that process because it is an opportunity for the complainant to be heard and for us to convey to the court what the victim wants to say if they don't get up themselves.¹⁰⁰

Another police member noted that '[i]f someone is charged for a penetrative sexual offence, we will oppose bail at every opportunity. We will always oppose bail and our complainants are advised of that.'¹⁰¹

Police also noted that at the bail stage, they can sometimes provide the court with more information about the victim that may be inadmissible in other forums:

We can advise the court of threats received from the offender or comments made by the offender or from others – there is more liberty to say things in a bail hearing that might be inadmissible in other forums.¹⁰²

96 Ibid.

97 Interview 16 – Victim of crime.

98 Interview 15 – Victim of crime.

99 Consultation Meeting 17 – Victoria Police – Session 1.

100 Ibid.

101 Ibid.

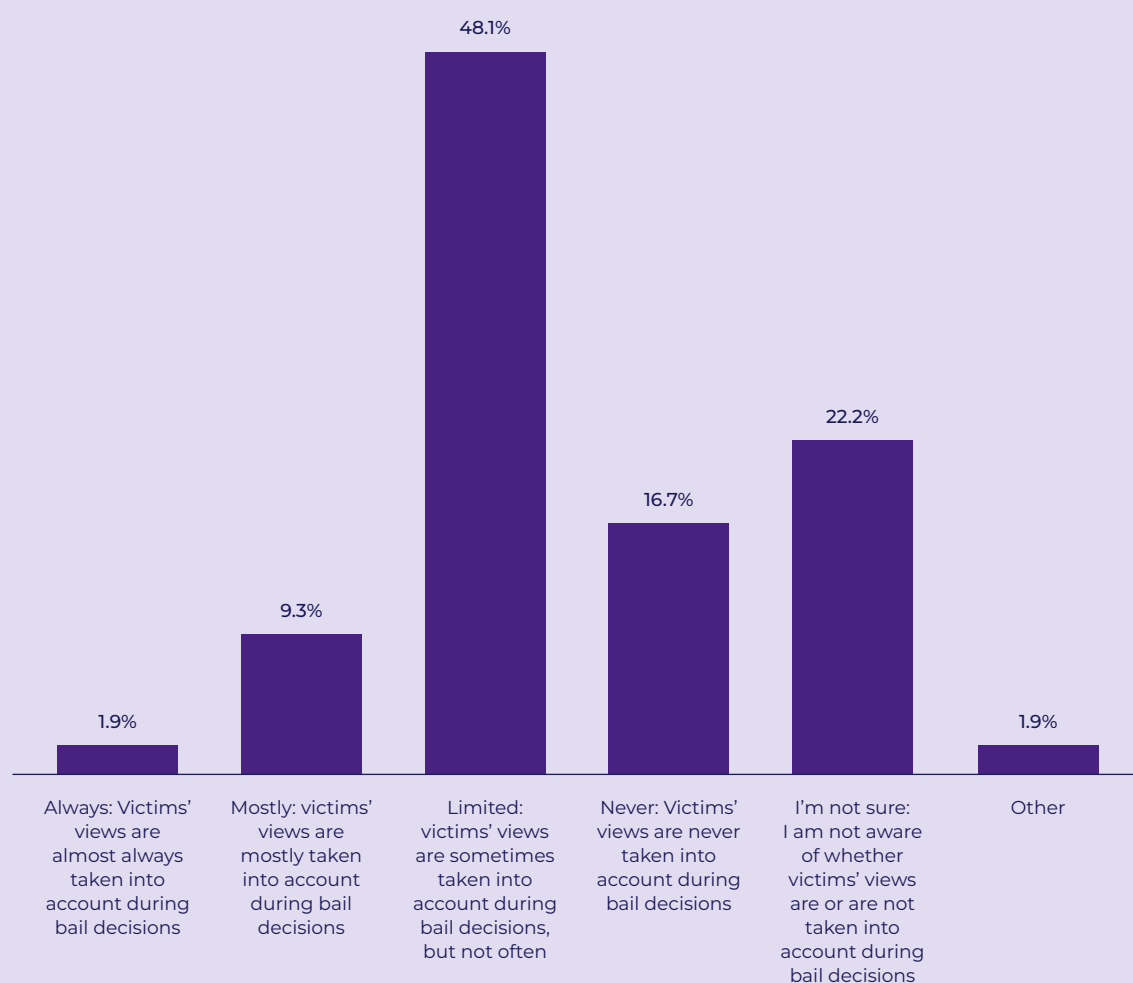
102 Ibid.

Police discussed, however, that despite their best efforts and commitment, decisions on bail are not within Victoria Police’s control: ‘An investigator may put everything to the court in regards what the victim is thinking or feeling but the decision making is beyond our control.’¹⁰³

Lack of victim participation during bail

Victims’ professionals surveyed by the VOCC were asked whether the views of victims are adequately taken into account by the bail decision maker. As shown in **Figure 17** below, the majority of respondents (48 per cent) said victims’ views are sometimes taken into account in decisions on bail, but not often.

Figure 17: VOCC Victims’ Professionals Survey: Are victims’ views adequately considered during bail decisions?



103 Ibid.

The VOCC heard from many respondents to the Victims' Professionals Survey who said that victims are never consulted about their views in relation to bail:

no one takes the victim [into] account during bail or during the majority of the negotiation stages

I have never heard of a bail decision made with the views of the victim in mind. Victims often express their distress over the alleged perpetrator being granted bail because the victim believes they still pose a serious threat to their safety.

I've never known police to ask a victim what they want or even let them know it's a thing.

over my 6 years with the program, not one of my clients have been asked their opinions on bail. Many are not even aware whether the offender is on bail or in remand.

Another victims' professional advised that victims being asked for their views during the bail application process is the 'exception', rather than usual practice:

Im not sure that I have ever had a victim who advised me their views regarding bail had ever been asked by the police before a bail application hearing. I would think this was the exception and not the norm and would only likely be done if the victims views strongly supported the police argument to oppose bail.

Lack of information on decisions and conditions

Victims' professionals surveyed by the VOCC also said that victims are frequently not informed when an application for bail has been made or granted:

Very often, victims are not told if an offender receives bail. Some find out walking down the street.

Often victims don't even get told when there's a bail application and hearing, let alone when the offender is bailed.

For victims of domestic/family violence – they are lucky to even be told if the offender is released. If the police informant is away on the day of court no one makes an effort to inform the victim of the outcome of court.

Victims are rarely told about bail, some are just told the person has been bailed and nothing else.

Poor communication with victims about what the bail conditions are is also an issue.

It is often not clear what bail conditions are, also what happens if bail is breached (i've had many victims knowing offenders have breached bail, but feel police aren't breaching them).

A CLC representative told the VOCC that although prosecutors have a duty to ensure victims are notified about bail, they 'often see clients who have not been notified'.¹⁰⁴ This same CLC representative noted this lack of communication is 'problematic from a safety perspective. If a victim isn't informed as to whether the perpetrator is bailed or what the status is, that's hugely problematic.'¹⁰⁵ Issues relating to safety from lack of notification was also noted by this respondent to the Victims' Professionals Survey:

Police should be communicating the conditions of bail better, often they'll just say "they're on bail", if a victim doesn't know what those conditions are and one of them may relate to the offenders interaction with them, how can they know to report something that might be a breach of bail.

Another victims' professional surveyed by the VOCC emphasised that unless bail conditions are communicated to the victim, it is difficult for breaches to be reported.

Better communication would improve victim safety and participation

Victims' professionals surveyed by the VOCC highlighted concerns for victims' safety stemming from the lack of consultation with victims during the bail application process, and the general lack of communication with victims about bail decisions and conditions.

Victims' professionals communicated that a victim's sense of safety isn't given enough weight in bail decisions and many felt that if victims received better information and had the ability to participate in the process, this would lead to victims feeling safer: 'Victims getting more information or being involved in some capacity with bail decisions would help with victims general feeling of safety.'

Victims' professionals surveyed by the VOCC articulated that victims should be immediately notified when bail is granted in all matters, not just those matters relating to incidents of family violence:

when an offender gets bail the victim needs to be notified immediately, and not just in FV matters

It's crucial victims are told immediately – this is often missed and can cause issues re victim's safety (not just family violence).

Similarly, another victims' professional surveyed by the VOCC thought that victims need to be notified immediately when bail is granted and that they should be advised about any conditions imposed:

Victims to be notified immediately by the court or out of hours hearings to keep them informed as to the outcome. This is often a serious concern by victims who are not notified of a release of an offender. Victims need to know what the conditions are that are placed upon the bailed person or whether they have been incarcerated or remanded.

¹⁰⁴ Consultation Meeting 23 – Community Legal Centres – Session 2.

¹⁰⁵ Ibid.

Victims' professionals overwhelmingly felt that communication and participation for victims must be improved, that greater consideration should be given to the victim's views and opinions, and that victims' participation should be enhanced during the bail process.

Bail decisions need to better address safety

Respondents to the Victims' Professionals Survey advised the VOCC that too often bail decisions and/or relevant conditions fail to adequately consider and protect the victim's safety. Victims' professionals said that the bail process often fails to adequately consider the history of the perpetrator:

The offender's pattern and history of offending needs to be taken into account, as well as the circumstances of the current crime which is being investigated, and the safety of all (victim and wider community) needs accurate assessment. Bail justice likely need assessment assistants at the time of making these decisions, particularly for after hours bail justices.

One victims' professional noted the significant risk that victims of current or past family violence are exposed to when a partner is bailed to the family home, including for a different offence:

Too often persons are bailed to their partners home when there is a history of FDV if the current charges aren't DFV related. Women have reported to me repeatedly that they experience the worst FDV by their partner when they are bailed to their address and when he is going through a criminal justice process for other offending.

Victims' professionals also advised of the implications for victims in rural areas when the perpetrator is granted bail. The VOCC heard that this particular cohort of victims was vulnerable to harm, in particular, harassment by the perpetrator's friends and family:

The bail conditions, regarding contacting of the victim, should also apply to the perpetrators friends and family, because what can happen, especially in a small town, is that once the person is out on bail, the victim is harassed by associates.

One victims' professional discussed how victims are often too overwhelmed or fearful to communicate their views to police at bail hearings, and that the process could benefit from victims' professionals being permitted to voice the victim's concerns on the victim's behalf:

Often at bail hearings victims are too fearful to speak with police to report how fearful they are but will speak with other services/supports re fear levels and this needs to be taken into account if other professionals are assessing fear and risk.

One victims' professional spoke about the flow-on effects of perpetrators getting bail for serious crimes and their perceptions of the justice system:

When victims know that perpetrators repeatedly and easily get bail for serious crimes, it discourages them to make a complaint, because they are fearful of what the perpetrator will do to them after they are bailed. This is just my opinion, however if someone has been charged with repeatedly breaching IVO or a serious assault (like breaking a victims jaw) I think they should be remanded. Victims don't see the point of reporting a breach of IVO if the perpetrator is not held accountable for their actions.

Overview of Chapter 8: Prosecution and trial process

Under the *Victims' Charter Act 2006* (Vic) (Victims' Charter), all prosecuting agencies have a duty to provide victims with information regarding a prosecution. While some victims described positive experiences of participation during the prosecution process, victims also told the Victims of Crime Commissioner (VOCC) about:

- being confused about their role during the prosecution process, affecting their ability to participate
- not always being treated with dignity and respect during the prosecution process
- communication styles that were not trauma-informed.

The VOCC was also told victims are not receiving sufficient information during the prosecution process to facilitate participation, particularly in the Magistrates' Court.

Plea negotiations

Specifically in relation to the plea negotiation process, the VOCC heard that :

- there is a lack of consultation with victims about plea decisions despite entitlements under the Victims' Charter
- victims can be confused during the consultation process and may not understand information told to them, limiting the extent to which they can meaningfully participate
- consultation with victims is not always meaningful or is seen as 'ticking the box'
- plea negotiations may not reflect victims' perceptions of the seriousness of crime, impacting victims' ability to make a frank, detailed Victim Impact Statement
- victims' experience a sense of loss at not being able to pursue the case to trial
- the court process (including the pace of proceedings) does not enable victims to participate fully in the plea negotiation process, particularly in the summary jurisdiction.

Participation at court

Many victims told the VOCC that they did not get enough information about their role as a witness to help them participate in the court process.

Stakeholders praised initiatives like the intermediaries scheme and the Child Witness Service, but the VOCC also heard that victim-witnesses could benefit from improved support, advocacy and legal advice when giving evidence and that some victim-witnesses should have independent legal representation.

Victims also described the trauma of giving evidence, including some victims feeling as if they were on trial. Victims also described the trauma caused by defence counsel seeking to access their confidential communications and other personal information.

Victims also advised the VOCC that they felt particularly harmed by the committal process.

Court safety

Lack of safety during the court process emerged as a significant issue for victim participation. Inability to participate fully or safely at court was raised by victims both in relation to physical safety in the court precinct, and as psychological and emotional safety during proceedings.

Due to courts having too few safe spaces for victims, victims frequently encountered the accused or felt targeted by the accused or their supporters.

Stakeholders told the VOCC some courts were 'past their use by date' and simply unsafe.

The VOCC was also told that while the legislative provisions regarding alternative arrangements for victims of sexual assault are comprehensive, lack of appropriate court infrastructure and lack of support services means sometimes 'special arrangements' are inadequate.

8

Chapter 8:
**Prosecution and
trial process**



Introduction

This chapter outlines victim participation during the progress of a prosecution, including the plea negotiation process, the court process and giving evidence.

Victims' participation in the prosecution and court process is important as it assists victims to feel included, rather than merely a witness or bystander.

As outlined in Part 1 of this report, victims are now recognised as participants in the justice system and as such, are entitled under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to receive information about the progress of a prosecution¹ and, for some victims in some circumstances, to be consulted during certain prosecutorial decision-making processes.²

For victims, participation at the prosecution and court stage of a criminal trial includes:

- being informed by a Victoria Police member, the Office of Public Prosecutions (OPP) solicitor or Victims and Witness Assistance Service (VWAS) about upcoming hearings or court processes
- being informed about plea discussions or a sentence indication involving the accused
- being assisted by Victoria Police member, the OPP solicitor or VWAS support staff to understand the role of a witness in a criminal proceeding.

In Victoria, prosecutions are primarily managed by either Victoria Police or by the OPP representing the Director of Public Prosecutions (DPP).³

Police prosecutors are responsible for prosecuting less serious crimes (summary crimes) which are usually heard in the Magistrates' Court. The OPP is responsible for prosecuting more serious crimes (indictable crimes) in the higher courts (County and Supreme). Prosecutors act independently – they represent the interests of the state, not individual victims or the government of the day.

While facilitating victim participation in the justice system is not solely the responsibility of prosecutors, research has found that prosecutors are the most authoritative source of information about the criminal trial process for victims and so are crucial to victims' experiences of participation.⁴

To facilitate victims' participation, the OPP has a Victims and Witness Assistance Service (VWAS) which provides information and assistance to witnesses, victims of crime and their families to ensure they are supported throughout the criminal justice process.⁵ Victoria Police does not have an equivalent victim/witness assistance service for summary crimes, but victims may also be supported by:

- the Child Witness Service
- Victims Assistance Programs (VAPs)
- victims' services.

Prosecution

Prosecuting agencies must facilitate victim participation

Under the Victims' Charter, all prosecuting agencies have a duty to provide victims with information regarding a prosecution. This information includes:

- the offences charged against the accused
- reasons why no offence has been charged
- that charges are being substantially modified, discontinued or that an accused is accepting a plea of guilty to a lesser charge.⁶

Victoria Police must give victims details about how to find the date, time and place of the hearing, the outcome of the criminal proceeding (including any sentence imposed) and, if an appeal is instituted, any

¹ *Victims' Charter Act 2006* (Vic) s 9.

² *Ibid* s 9B.

³ Other agencies, such as local councils, government departments and statutory authorities also have prosecuting powers for a limited range of specific offences. See e.g., Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 20.

⁴ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 106.

⁵ Office of Public Prosecutions Victoria, *Annual Report 2020/2021* (2021) 4.

⁶ *Ibid* s 9.

information about that appeal, including the result.⁷

For crimes heard in the higher courts, prosecuted by the DPP, the OPP has more onerous notification requirements and must provide victims with additional information, including taking 'all reasonable steps' to advise a victim of:

- the date, time and location of any contested committal hearing, trial, plea hearing, sentencing hearing and appeal hearing⁸
- the progress of a prosecution, including the outcome of any committal mention, contested committal hearing, initial directions hearing, trial, plea hearing, sentencing hearing or appeal hearing, or guilty plea.⁹

The DPP also has further obligations to seek a victim's views on certain prosecutorial matters¹⁰ and to provide victims with reasons for certain prosecutorial decisions.¹¹ The DPP is not required to seek the views of a victim or inform victims of a prosecutorial decision if the victim cannot be contacted after all reasonable attempts, or if it is not practical to contact the victim given the speed or nature of the proceeding.¹²

The DPP is also required to give a victim the reasons, in writing or orally, for any decision to substantially modify a charge, discontinue the prosecution of a charge or accept a plea of guilty to a lesser charge.¹³ However, the DPP may decline to provide reasons if disclosing their reasons could jeopardise any investigation of a criminal offence or prejudice any other proceeding.¹⁴

The DPP's obligations towards victims are also outlined in the *Policy of the Director of Public Prosecutions for Victoria* (Director's Policy).¹⁵ The Director's Policy sets the tone for how prosecutors and solicitors are to engage with victims. It includes that they should:

- treat victims with courtesy, respect, dignity and sensitivity
- establish an early relationship with the victim
- address the individual priorities of a victim and not make assumptions about what is in the victim's interests
- proactively explain the prosecution and resolution process to the victim in accordance with the Victims' Charter.¹⁶

Victims' experiences

While there were examples of positive experiences of participation during the prosecution process, the Victims of Crime Commissioner's (VOCC) engagement with victims demonstrated that victims' dissatisfaction with the prosecution process centred on prosecutors failing to keep victims informed, victims experiencing confusion about their role, and victims not always being treated with dignity and respect during the prosecution process.

⁷ Ibid s 9.

⁸ Ibid s 9A(a).

⁹ *Victims' Charter Act 2006* (Vic) s 9A(b).

¹⁰ Ibid s 9B(1).

¹¹ Ibid s 9B(2).

¹² Ibid s 9B(3).

¹³ Ibid s 9C(1)(2).

¹⁴ Ibid s 9C(3).

¹⁵ Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 12–13 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

¹⁶ Ibid.

Positive experiences

Some victims of crime described positive experiences of participation during the prosecution process. One Victims' Survey respondent observed 'marked changes' in how the criminal justice system responds to victims of crime since first being exposed to the justice system 20 years ago. This respondent to the Victims' Survey stated that they 'experienced levels of support, understanding, dignity and respect that at times were absent' when they first entered the system. This Victims' Survey respondent appeared to have a clear understanding of their entitlements and the parameters of a victims' role during the trial process:

'I know that I can seek information and expect to be provided with information in a meaningful way, be guided through what I can and can't influence, and told what will be expected of me as a victim of crime, and how I might contribute to the process. I have also appreciated the courageous but necessary conversations from our "Team" both Police and Prosecutors about why they are approaching our case in a certain way and I am so grateful that there is a Charter for Victims that recognises the principles that govern the way Agencies respond to Victims of Crime.'

– Victims' Survey respondent

Another Victims' Survey respondent praised the VWAS, who had provided them with a 'walk through' of the court prior to proceedings, while another Victims' Survey respondent acknowledged an 'incredibly supportive Police Prosecutor working in a Multi Disciplinary Centre'.

Not receiving enough information to participate

The vast majority of respondents to the VOCC's Victims' Survey indicated they did not get any, or enough, information from prosecutors to participate in the justice process.¹⁷

As shown in **Figure 18** below, almost half of the survey respondents (49 per cent) were given no information by prosecutors to participate in the justice process. A further 23 per cent were given some information, but not enough. Overall, 72 per cent of victims got no information, or not enough information, to help them participate in the justice process.

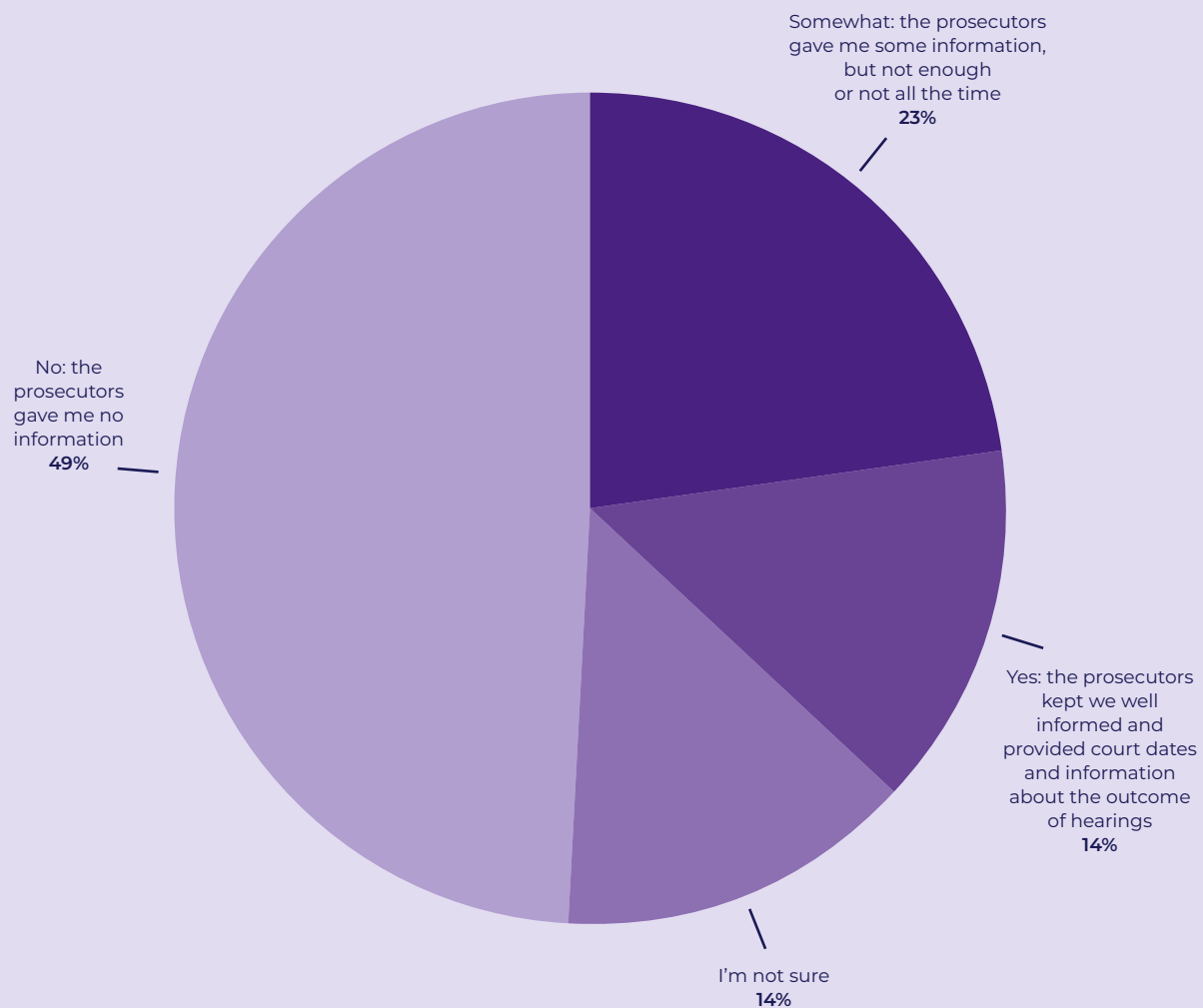


72%

72 per cent of victims **either got no information (49 per cent), or not enough information (23 per cent)**, from the prosecution to help them participate in the justice process.

¹⁷ The VOCC's survey design does not enable us to differentiate between victims whose matters were prosecuted by police prosecutions or by the Director of Public Prosecutions.

Figure 18: VOCC Victims' Survey: Did prosecutors give you enough information about the case so you could participate?



Respondents to the VOCC's Victims' Survey provided examples of where prosecutors had failed to keep them informed:

'I was hardly kept up to date with what was happening with the court process and now that the main offender has had most of the charges reduced and then gotten off of all charges without conviction on appeal, I feel completely abandoned and at no point has a prosecutor got in contact with me to discuss what is going on. Now I feel as though this person has gotten away with assaulting me.'

'I wasn't involved in the court process, I wasn't told it was going to court.'

'Crown prosecutor lawyers could have dealt with us separately. I was excluded, and yet I was left to deal with all aspects of the victim's death.'

'Very little info given, very little prep. Had to continue to go back to the detectives to get any insight into what was happening.'

– Victims' Survey respondents

A member of the Victim Survivors' Advisory Council told the VOCC that they had experienced court dates 'come and go' without any communication by police prosecutions, causing great stress and anxiety.¹⁸

As well as reporting a lack of information about the progress of the prosecution, victim interviews revealed confusion about whether the prosecutor is the victim's lawyer and whether they represent the victim's interests.¹⁹ One victim interviewed by the VOCC said: 'I was shocked when I found out that the barrister doesn't work for us.'²⁰

More generally, victims expressed confusion about how to access legal advice to enable them to participate more in the legal process. One victim interviewed by the VOCC said they could not get any advice about their rights, stating: 'It is just so overwhelming to people such as myself which I am sure there are many.'²¹

Victims not always treated with dignity and respect

The VOCC was told by victims that they did not always feel respected during the prosecution process. One victim interviewed by the VOCC recalled being told by the prosecutor while at the court: 'No crying, no sighing and no rolling your eyes. And no huffing and puffing and if you can't do that, sit over there in the corner or stay outside.'²²

One respondent to the VOCC's Victims' Survey described feeling 'dishonoured' and 'victimised' by the prosecution process:

'[all the victims] experienced the feeling of being dishonoured, victimised [and] not held in the dignity [and] honour in which we deserved to be when we had not only survived rape and abuse we were in the court system willing to be put under extreme emotional [and] physical pressure. We deserved to be honoured for the strength we had, that we were sensitive and powerful women that we are and not be treated as we were victims and treated as such as per the OPP sets us up to be'

– Victims' Survey respondent

Another victim surveyed by the VOCC described the OPP's communication style as 'arrogance and no compassion understanding or openness to explain the system in a humanly way ... you are just a pawn to get the outcome'.

¹⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁹ Interview 5 – Victim of crime.

²⁰ Ibid.

²¹ Interview 15 – Victim of crime.

²² Interview 5 – Victim of crime.

Victims also felt that prosecutors did not always appreciate that victims may lack knowledge of the justice system and may be traumatised, as noted by this respondent to the Victims' Survey:

'Practitioners sometimes forget that while the Law may have been their chosen pathway, for many victims the first time they intersect with the law is after a significant and traumatic event. Assumptions about what one does or does not know must be part of the initial conversations.'

– Victims' Survey respondent

Victims' experiences of prosecution conduct extend beyond individual interactions. For example, one victim interviewed by the VOCC recalled their shock at observing the defence and prosecution barristers engaging socially during breaks in the trial:

*'Not appropriate in that setting. Perhaps if you're waiting outside but not in that court and we're listening to this. It should never be inside the court and it was like OK, it's another day for you. In the court it's another job for you. It's another case. But this is our blood here that you're playing with and you're almost diminishing the severity of it.'*²³

Another victim interviewed by the VOCC spoke about the insensitive way in which they were offered a restorative justice process by the prosecutor just moments after being advised that charges were to be downgraded.²⁴

Ingrid Irwin pointed to the disbanding of the OPP's specialist sexual offences unit:

*'That's how much the government care about prosecuting sex assault. They are now making it just generalized prosecutors, so that no prosecutor specialises in sexual assault prosecutions. I thought wanted specialized prosecutors. Our prosecutions in sexual offences are dropping. It has been disbanded over money. The government is not steered by victim outcomes, they are steered by money.'*²⁵

Stakeholder views

Not receiving enough information to participate

Stakeholders raised concerns about the extent to which victims are receiving sufficient information during the prosecution process to facilitate participation.

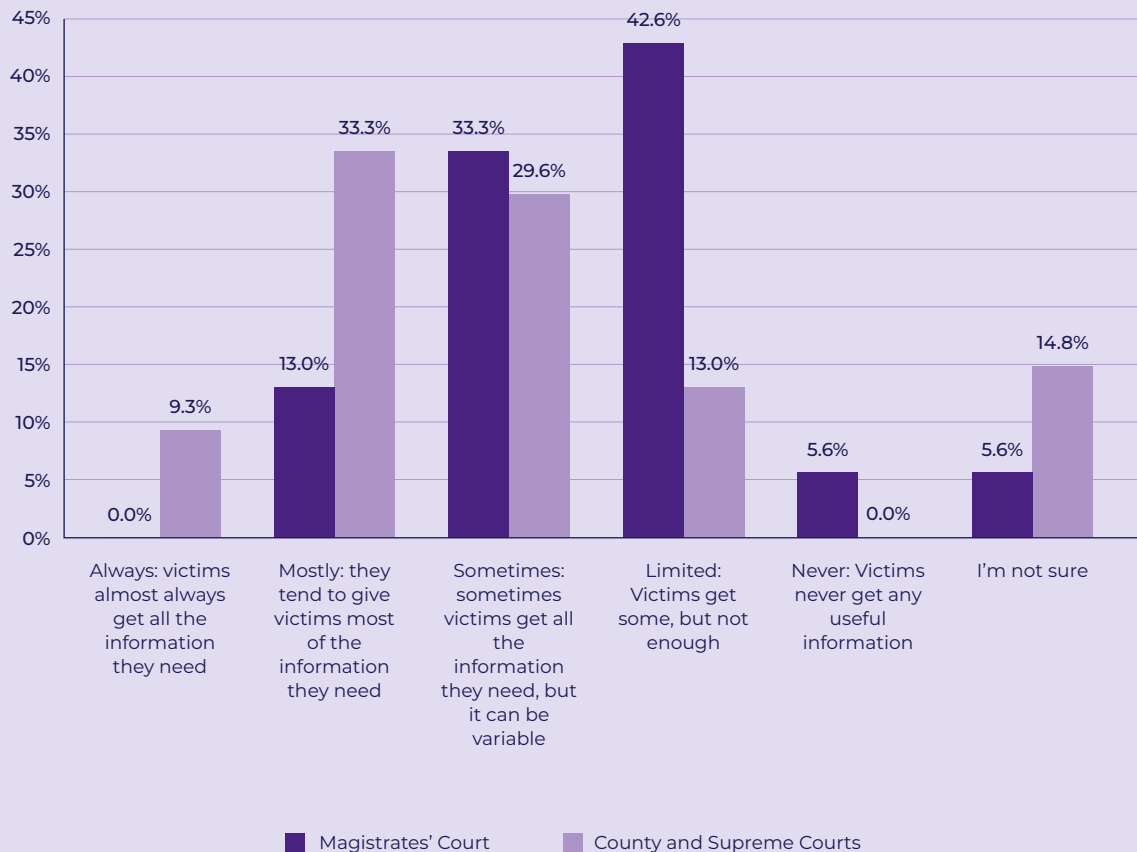
Victims' professionals surveyed by the VOCC were asked whether victims are given enough information by prosecutors to participate effectively in the court process. As shown in **Figure 19** below, victims' professionals saw a stark disparity between the information given to victims in the Magistrates' Court versus the County and Supreme Courts. Almost half of the survey respondents (43 per cent) stated victims in the Magistrates' Court get 'limited' information to participate, while a third of respondents (33 per cent) said victims in the higher courts 'mostly' get the information they need to participate.

²³ Interview 7 – Caterina Politi.

²⁴ Interview 12 – Victim of crime.

²⁵ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

Figure 19: VOCC Victims' Professionals Survey: Are victims are given enough information by prosecutors to participate effectively in the court process?



A number of victims' professionals surveyed by the VOCC raised concerns about a lack of information from police, OPP and the courts, with consequences for victims' participation, as outlined in these responses:

Information provided to victims with matters heard in the in the Magistrates court is greatly lacking and they often miss out on the opportunity to attend court and provide a victim impact statement.

Simple as keeping a victim up to date on proceedings from investigation through to sentencing/release doesn't happen unless a victim fights to be heard but all too often they are too traumatized to advocate for themselves in a broken system and are intimidated by a predominantly male judicial system.

The victim is often not informed of an outcome from a Magistrates court hearing until a few days later and that is only if the informant is notified. Victims have often told me that they would like the courts or the prosecutors to notify them of outcomes so that they are aware of the next step or to even know that their matter has been resolved so they can move on from the event. This is more important if it involves remand or bail hearings. Participants want to be considered for any updates and be advised.

I find, most often, victims are let down by a lack of communication from professionals within the system who are supposed to, as part of their job, maintain communication.

Victims' professionals surveyed by the VOCC highlighted the importance of victims being provided with immediate notifications after court hearings so they are aware of outcomes and the reasons behind decisions:

Immediate notification by the court or the Prosecutors to the victims of the final outcomes and what it all means.

every victim should receive formal notification of an outcome at court. Whether they attend/participate or not.

Victims need to feel heard and acknowledged, and also communicated with by the prosecution especially in regards to court outcomes and the rationale behind the decision made.

One victims' professional surveyed by the VOCC noted that victims need to be at 'the centre of the prosecution process. Even if decisions are made against the victim's wishes or without consultation, it must be explained to them.'

The Centre for Innovative Justice (CIJ) told the VOCC that victim participation during the prosecution process is still dependent on individuals and that the extent to which prosecutors involve victims may depend on the approach and experience of the individual prosecutor:

It is tricky for those inexperienced prosecutors who will err on the side of caution. You can't provide information to a person who you might call as a witness, so you limit the information because you have obligations not to tamper with evidence by giving information to someone who you might call as witness...The way prosecutors manage their duties and obligations to victims is very dependent on the experience and confidence of the individual lawyer and their interest in going that further mile.²⁶

Similarly, during consultation with the VOCC, Dr Mary Iliadis observed gaps in how prosecutors approach participation by victims:

there are significant issues, and prosecutors often cite workload pressures and other reasons as to why they might not be as invested as or as engaged with victims in all circumstances. That's certainly not to suggest that all prosecutors are not sufficiently upholding their duties, or...adhering to their statutory obligations. But we are still seeing gaps in their approaches. The research is telling us that there are significant problems with how this translates into practice, which does suggest the need for perhaps more innovative ways of attending to and providing to victims.²⁷

For Dr Iliadis, information provision and meaningful consultation throughout the prosecution process is directly correlated to victims feeling like true participants in the justice system. Dr Iliadis posited that if victims were consistently informed and genuinely consulted, they may feel like 'integral players rather than mere bystanders in that process'.²⁸

Court Network told the VOCC that victims frequently ask 'what's happening next' and are 'often so confused because either nothing has been communicated, or it was communicated in the early stages when they were too overwhelmed to take it in'.²⁹ Similarly, Windermere Victims Assistance Program (VAP) told the VOCC that they are often trying to chase up information about the progress of a prosecution on behalf of a victim because victims 'don't know when they're meant to go to court, what to expect at court. And so it can be quite traumatising for them'.³⁰ Windermere VAP told the VOCC they often struggle to get information from police on behalf of victims about the progress of a prosecution.³¹

Community Legal Centre (CLC) representatives advised the VOCC that prosecutors often fail to uphold their Victims' Charter obligations around victims receiving information:

I have had matters where I have pointed out the obligations on the prosecution under the Victims' Charter, that they make victims aware of certain things and I've had pushback, even when I quoted the Act. The Victims' Charter is a toothless tiger.³²

Victims' professionals surveyed by the VOCC talked about efforts made by the OPP's prosecutors and VWAS staff to inform and consult with victims, but they suggested this often falls short and does not amount to 'participation' by victims:

Attempts by victim and witness support services seek to smooth the process and encourage an understanding but this isn't participation e.g. OPP meeting with families to explain process yet decisions on plea bargains will be made regardless and victims role limited.

Prosecutors often do their best to explain the system and prepare the victim, but they are time poor, therefore it is inadequate.

As one victims' professional surveyed by the VOCC observed, it is very common for victims to not be contacted or updated about the progress of a prosecution:

If they have received information, it's often just an impersonal email from the police informant outlining the next hearing date...they will often say that they have tried numerous times to contact the police informant who hasn't returned their calls or emails. Having [VWAS] really helps, however being understaffed and underfunded, this support can often only be given to the most complex of cases.

Victoria Police members spoke about the challenges of keeping victims informed and included in the prosecution process in the summary jurisdiction, noting such participation generally relies on the police informant liaising with victims and updating them on behalf of prosecutors. The VOCC was told there is no efficient way for informants to stay abreast of the progress of a prosecution themselves and that 'the informant might forget about the matter being at court until they get notification that there's been a

²⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

²⁷ Consultation Meeting 5 – Dr Mary Iliadis.

²⁸ Ibid.

²⁹ Consultation Meeting 12 – Court Network.

³⁰ Consultation Meeting 21 – Windermere Victims Assistance Program.

³¹ Consultation Meeting 21 – Windermere Victims Assistance Program.

³² Consultation Meeting 23 – Community Legal Centres – Session 2.

conviction or that charges are dropped'.³³ The VOCC was also told that if prosecutors ask an informant to follow up information for a brief, this will trigger an informant to be aware a prosecution was proceeding, but 'if the brief is sufficient then an informant may only be updated when the proceeding is finalised'.³⁴

The OPP advised the VOCC that the main challenges for the OPP in maintaining communication with victims arise from the timing and pace of court proceedings and developments in the prosecution:

Where an extended period of time elapses between court hearings, victim contact details may change, or there may be a change in solicitor or social worker which results in the need to re-establish rapport with the victim. Conversely, occasionally there will be rapid developments in the court proceedings such as last-minute adjournment requests and unanticipated applications for bail which prevent the victim being updated until after the fact.³⁵

The OPP also advised the VOCC that the VWAS is 'instrumental in the communication process' and that OPP solicitors and VWAS workers will update victims according to victims' level of need and preferences.³⁶

Not all victims are treated equally

Court Network told the VOCC that even victims who are required to give evidence are not always being provided with the necessary information about the progress of a prosecution but that victims who are not required to give evidence are locked out of the update process entirely.³⁷ Court Network further observed that the distinction between categories of 'witness'/'victim' still occurs across all jurisdictions and that opportunities for victims to participate need to extend beyond victims who are witnesses.³⁸

Victims' professionals surveyed by the VOCC made similar observations about inconsistent treatment depending on whether a victim is a witness or not: 'Victims as witnesses are treated differently, because the prosecution rely on them giving evidence. All victims should get that level of support/respect.'

Pressure to expedite matters in the summary jurisdiction

Victoria Police articulated the challenges of facilitating victims' participation in the prosecution process in the summary jurisdiction where there is constant pressure to expedite and resolve cases:

It is a dynamic environment in the court, things can change quickly and quite often the victim isn't there. Decisions get made quickly and that's not to say we don't consider the victim, but it's a very dynamic environment. If we need to get a matter adjourned then we need to get it adjourned to have those discussions. There's a whole heap of matters backed up with COVID so there's pressure to keep things moving along. Quite often we're told to go outside and reconsider, so there's pressure to resolve.³⁹

The VOCC was told that the nature and speed of prosecutions in the summary jurisdiction make it impossible to facilitate victim participation:

if you have a matter that is going to proceed as a plea of guilty in a mention list, and you have a victim who would like to be part of that process, it is simply not reasonable to expect that the prosecutor is going to be able to facilitate that process. The logistics of it are simply impossible. And in those circumstances, the informant is generally not an active participant in those matters either... For prosecutors, the realities of the way the court rooms run, liaising with a victim is not possible.⁴⁰

The VOCC was told that the nature and speed of prosecutions in the summary jurisdiction make it impossible to facilitate victim participation.

Plea negotiations

The vast majority of cases in Australia are resolved through pleas of guilty, with estimates of the number of guilty pleas varying from 70 to 95 per cent.⁴¹ Research suggests that one of the main factors influencing the high rate of guilty pleas is the use of plea negotiations.

³³ Consultation Meeting 17 – Victoria Police – Session 1.

³⁴ Ibid.

³⁵ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2–3.

³⁶ Ibid 3.

³⁷ Consultation Meeting 12 – Court Network.

³⁸ Ibid.

³⁹ Consultation Meeting 18 – Victoria Police – Session 2.

⁴⁰ Consultation Meeting 18 – Victoria Police – Session 2.

⁴¹ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 4 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

Plea negotiation is a process whereby an accused person pleads guilty in exchange for agreed concessions from the prosecution.⁴² The negotiation can often be based on consolidating or reducing the number of charges against an accused. The commonly understood benefits of plea resolutions include:

- witnesses/victims being spared the trauma of having to give evidence and being cross-examined at a trial
- alleviation of court backlogs and delays (and associated cost savings)
- the certainty of a conviction being secured (there is a risk that the accused may be acquitted of all charges if the matter proceeds to a trial, but reaching a plea resolution ensures a guilty finding on at least some of the charges).⁴³

According to guidelines in the *Policy of the Director of Public Prosecutions for Victoria*, such a resolution may only occur if it is in the public interest. In determining whether a proposed resolution is in the public interest, regard must be had to:

- whether there is a reasonable prospect of a conviction of each offence charged
- the strength of the evidence on each charge
- any defences
- the likelihood of an acquittal on any of the charges
- whether the charge or charges to which the accused will plead guilty:
 - adequately reflect the accused's criminality
 - allow for the imposition of an appropriate sentence
 - allow for the making of all appropriate ancillary orders
- the views of the victims and the informant about the proposed resolution.⁴⁴

Under the Victims' Charter, all prosecuting agencies have a duty to provide victims with information if charges are substantially modified, discontinued or an accused accepts a plea of guilty to a lesser charge.⁴⁵

However, victims in the indictable stream (prosecuted by the DPP) are entitled to more specific information and consultation than victims in the summary stream (prosecuted by Victoria Police members). Specifically, in relation to plea negotiations, the DPP has further obligations to seek a victim's view on certain prosecutorial matters and to provide victims with reasons for certain prosecutorial decisions. These further obligations required of the DPP include:

- to seek the views of a victim before making a decision to substantially modify charges, discontinue charges, accept a plea of guilty to a lesser charge, oppose a sentence indication, appeal a sentence or appeal an acquittal⁴⁶
- to give a victim, as soon as reasonably practicable, the reasons for any decision if charges are substantially modified, a prosecution is discontinued or a plea of guilty is accepted to a lesser charge. The reasons can be given orally or in writing but may not be given if disclosing may jeopardise any investigation of a criminal offence or prejudice any other proceeding.⁴⁷

The *Policy of the Director of Public Prosecutions for Victoria* states that the OPP must proactively explain the prosecution and resolution process to the victim and that victims must be given reasons for decisions in accordance with the Victims' Charter.⁴⁸

Victims' experiences

One victim surveyed by the VOCC described their participation during the plea negotiation process positively: 'Throughout the Pre trial hearings, the plea and sentencing hearings I felt at all times the Crown Prosecutor engaged with me, listened to my needs, explained all aspects of the negotiations taking place.'

42 Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 5 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

43 Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 32.

44 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 14 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>. Victoria Police does not appear to publish a decision-making framework for prosecutions equivalent to the DPP's.

45 *Victims' Charter Act 2006* (Vic) s 9.

46 *Ibid* s 9B(1).

47 *Ibid* s 9C.

48 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 12 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

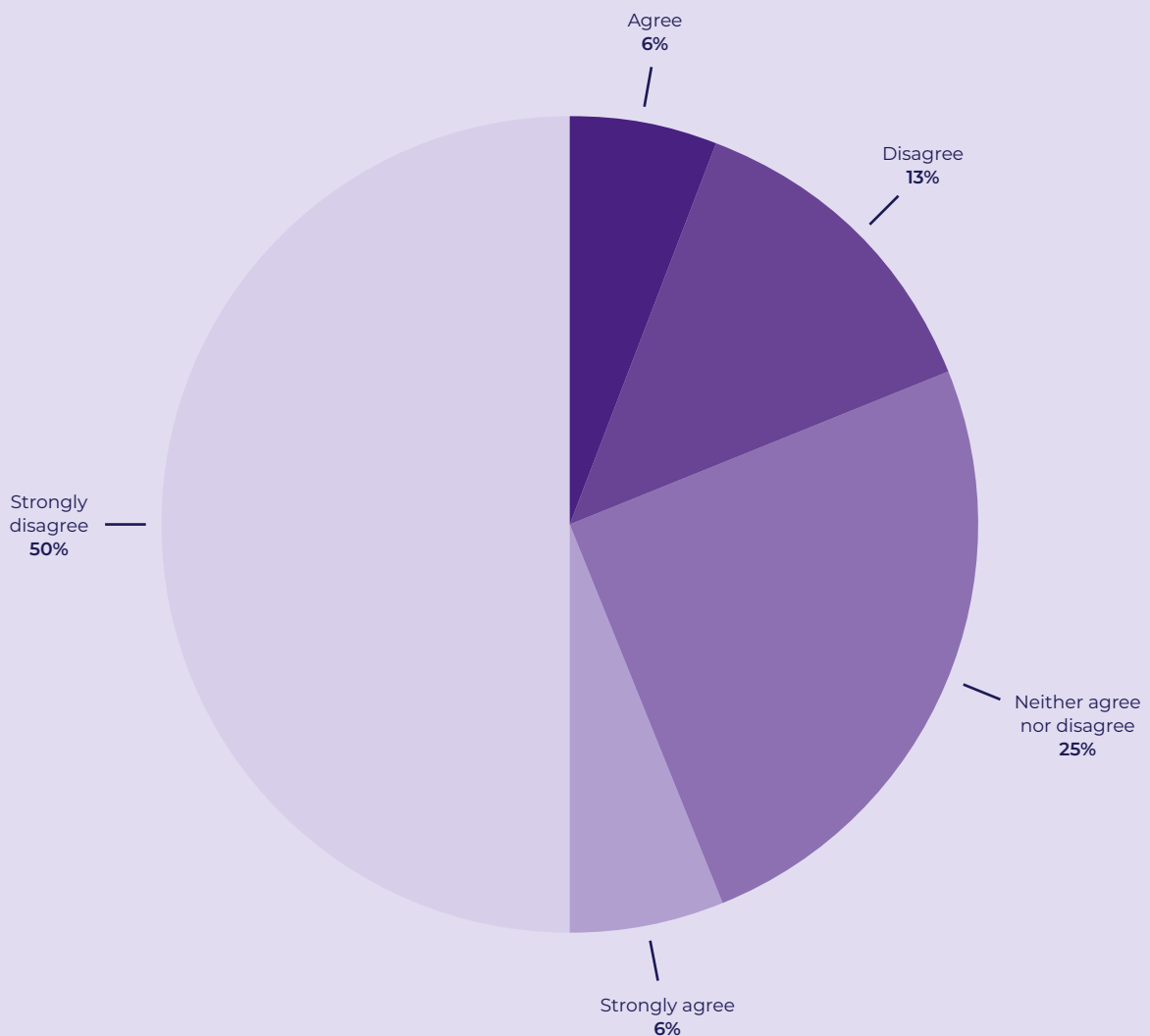
However, the VOCC’s engagement with victims of crime illustrated several key issues relating to plea negotiations, including:

- lack of consultation with victims despite their entitlements under the Victims’ Charter
- victims’ articulating a sense of loss at not being able to pursue the case to trial due to plea negotiations
- plea negotiations not reflecting victims’ perceptions of the seriousness of the crime.

Lack of consultation with victims

As shown in **Figure 20** below, the majority of victims surveyed by the VOCC (63 per cent) felt that they were not consulted about decisions to stop a prosecution or accept a guilty plea to a lesser charge. Only five per cent of victims agreed that they had been consulted about such decisions.

Figure 20: VOCC Victims’ Survey: Were you consulted about the decision to stop a prosecution or to accept a guilty plea to a lesser charge?



The VOCC's survey did not require victims to identify whether they were a victim of a summary or indictable crime, so it is difficult to determine whether those victims who felt that they were not consulted were victims in the indictable stream who are entitled to more specific information and consultation under the Victims' Charter. However, it was clear that regardless of jurisdiction, many victims felt they did not participate in these significant prosecution decisions.

When asked how their participation in the justice system could have been improved, victims surveyed by the VOCC commonly raised their experience of the plea negotiation process as an area for improvement:



'Yes – included more in the process (plea bargaining etc).'

'Absolutely!! Whilst my legal team from the OPP made me feel included, however the court process you are excluded from all decision making, particularly in the way the plea bargaining process is currently conducted.'

– Victims' Survey respondents

Victims surveyed by the VOCC also spoke of wanting more input and consultation during the plea negotiation process to enhance their participation:



'Yes I would have liked to participate more in the process. I would have liked to have been asked about the plea deal before it was offered to the offender. My main motive for agreeing to testify and supporting the process was to protect the public and putting a violent person in jail. The offer of a community correctional order went against my reasons for pursuing the prosecution.'

'I found the Resolution process to be hideous, obscene, it felt like horse trading to me. I was aware in the months prior the OPP had made attempts to resolve which I really detested. ... I didn't appreciate other making that choice on my behalf ... I felt let down when the charges were minimised and the trial did not eventuate. I feel I should have been asked if I wanted the case resolved at that last minute.'

– Victims' Survey respondents

One Victims' Survey respondent acknowledged that the crime is against the state but said 'it is the victim that is hurt and significantly affected and they need to be given a greater voice in the process'.

Another Victims' Survey respondent described being advised of a plea deal after the fact, and only after pushing for an in-person meeting:



'I had very little time with the legal team and they offered a plea deal without consultation. I met them twice, prior to scheduled trial at County Court and the second meeting I invited myself as they were going to call me and I wanted to attend in person. At this meeting they discussed a plea deal they had already been offered that was a bundling of the charges and a correctional order as an acceptable sentence. I was told that if I insisted on the offer being withdrawn, if it went to trial and the verdict was guilty, the sentence would likely be a correctional order anyway as the plea offer would be discussed and it would be looked on unfavorably that I had asked for the plea to be withdrawn. Although I was the victim of the crime I felt I had not power in the process.'

– Victims' Survey respondent

Victim representatives from the Victims of Crime Consultative Committee reflected on a lack of trauma-informed approaches from the prosecution that left victims feeling as though they are not participants:

*'You're not a participant in the system. The prosecutors didn't care to meet with us or explain anything. It goes back to secrecy to protect the perpetrator, and that secrecy lends itself to victims not feeling like they know what happened. An early plea was taken to a lesser charge, but I only got a presentation as to what was agreed. I still don't really know what happened that day, just what was agreed to in the end.'*⁴⁹

Victims told the VOCC about being unprepared for charges to be changed and dropped on the day of trial: 'The morning the trial was going to start, the informant came up to me and said "oh he's pleading guilty, and we've dropped the charge of common affray and they're just making it an affray charge"'⁵⁰

Victims also told the VOCC they were dismayed by discussions occurring without their input:

*'to know that discussions had gone on without our input or inclusion was very demeaning and very challenging. It reinforced to us that the perpetrator had more opportunities for support and excuses than anything we had. It came through very clearly.'*⁵¹

Victims interviewed by the VOCC said prosecutors should facilitate a more participatory and inclusive role for victims during the plea negotiation process. Caterina Politi articulated her vision of participation during the plea negotiation process as follows:

*'speak to the victims before [they] make a deal and allow them to participate in that conversation' and that where victims are merely informed about a plea negotiation, it feels too late: 'the deals are already done. You know, behind the doors, and then they come and tell you that the deals are done.'*⁵²

Lost opportunity to pursue case

While victims may often be told that plea negotiations can spare them the trauma of going to court, research has shown that some victims do not appreciate assumptions being made about whether a trial is a positive or negative outcome for them.⁵³ For example, one respondent to the VOCC's Victims' Survey described the perpetrator pleading guilty as a positive part of the justice process because they didn't have to go to court. On the other hand, Caterina Politi said court 'would have been hard, but it's no harder than burying my son'.⁵⁴ In fact, for some victims the court experience may be a therapeutic process and opportunity to pursue a 'better justice'.⁵⁵

For some victims the court experience may be a therapeutic process and opportunity to pursue a 'better justice.'

49 Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

50 Interview 7– Caterina Politi.

51 Interview 12 – Victim of crime.

52 Interview 7– Caterina Politi.

53 Some victims can have a strong desire for a matter to go to trial: see, e.g., Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 23.

54 Interview 7– Caterina Politi.

55 Ibid.

One victim surveyed by the VOCC explained the emotional impact of losing the opportunity to pursue a case to trial:

'I was informed that the case was not going ahead due to the perpetrator suffering from dementia and a medical condition that made him unfit to stand trial. I was told that the prosecutor believed his dementia claim and that they were not prepared to 'fund' the case continuing...I was a complete wreck at this dismissal and subsequent discarding of my case.'

– Victims' Survey respondent

Pleas not reflecting the crime

'Overcharging' – the process of filing more charges than are ultimately pursued – has been identified as a source of trauma for victims because it makes it more likely that charges will be discontinued or dropped, creating a perception that the accused is being 'let off', or that they are not being held accountable for the full extent of the harm caused.⁵⁶

Some victims are distressed by the final negotiated charges because they feel they do not reflect the gravity and impact of the crime. For example, one victim interviewed by the VOCC did not want stalking-related charges to be withdrawn or downgraded because it meant a lot to them that the perpetrator be held accountable for this specific behaviour:

*'For me, the most important charge was stalking. All he's ever done is stalking. The man's got a lifetime history of stalking previous partners. But they weren't included in anything ... They negotiate away, the stalking charge. I said no, the most important charge to me is stalking because that's all he's ever done. They just said you actually don't get a say in this.'*⁵⁷

One Victims' Survey respondent told the VOCC that the plea was 'most unsatisfactory' because this victim did not feel that it held the perpetrator to account:

'he was not held to account for what he actually did to me. The resolution was reached due to his reluctance to plead guilty to [a different charge], to expedite the matter due to his advanced age and poor health and to save me the victim of the trauma of a trial. I didn't appreciate others making that choice on my behalf...I felt let down when the charges were minimised and the trial did not eventuate. I feel I should have been asked if I wanted the case resolved at that last minute.'

– Victims' Survey respondent

Stakeholder views

Prosecutor's duty

The OPP advised the VOCC that there remains an inherent challenge in both ensuring victims feel like participants and performing its duty as a prosecutor, stating that the:

challenge inherent in ensuring victims feel like participants in the plea process is the potential for the views of the victim to conflict with the responsibility of the OPP to only proceed with prosecutions where there is a reasonable prospect of a conviction, and it is in the public interest (the prosecution test).⁵⁸

The OPP noted that in cases where the victim's views in relation to pleas are sought but the outcome is not in line with those views, 'the victim may feel like an observer rather than a participant'.⁵⁹

⁵⁶ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 83-5.

⁵⁷ Interview 9 – Survivor advocate.

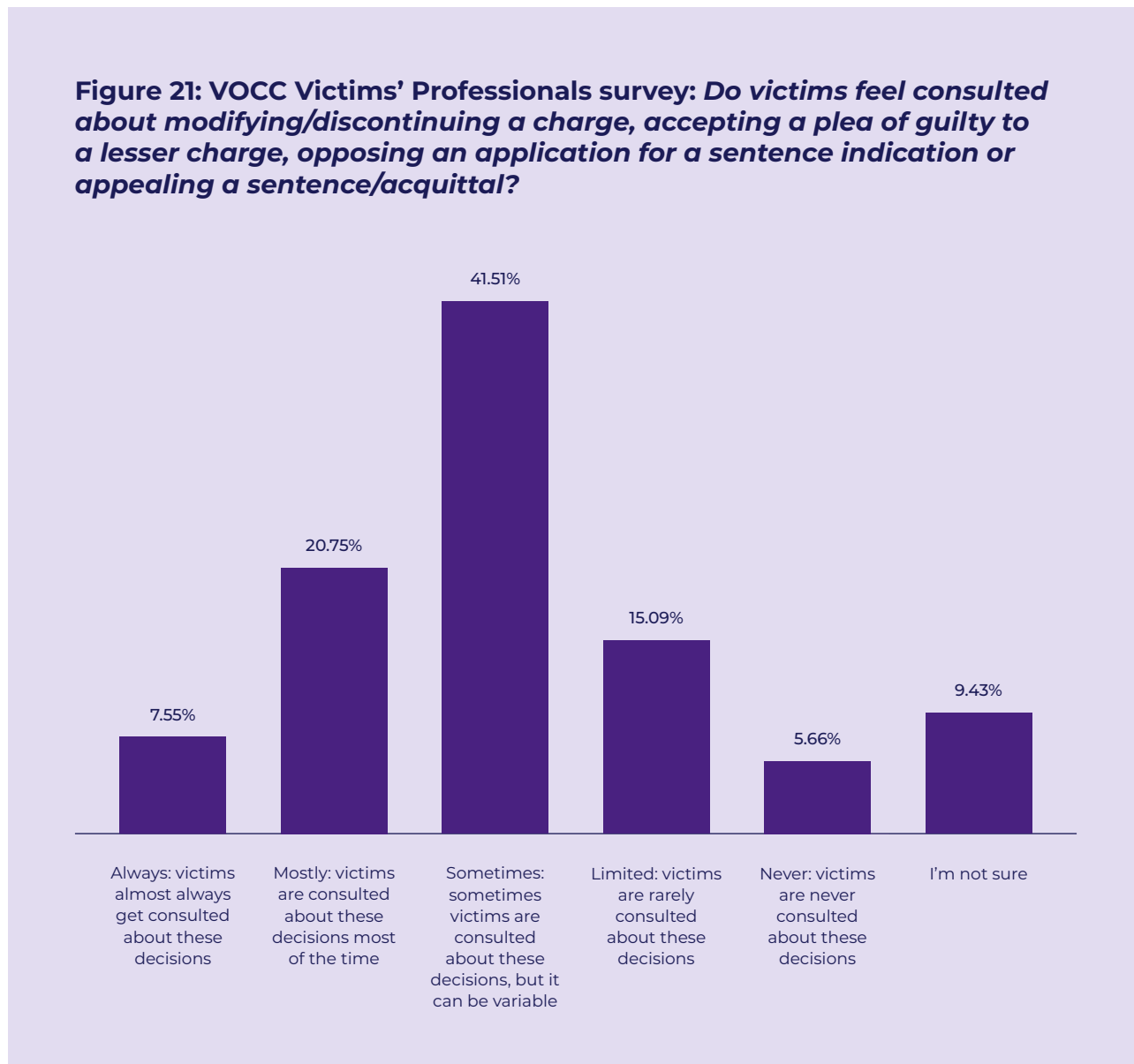
⁵⁸ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 3.

⁵⁹ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 4.

Victims are given limited opportunities to participate

Respondents to the VOCC’s Victims’ Professionals Survey were asked whether victims tended to feel consulted about decisions to modify or discontinue a charge, accept a plea of guilty to a lesser charge, oppose an application for a sentence indication or appeal a sentence or acquittal.

As shown in **Figure 21** below, the majority of victims’ professionals surveyed suggested such consultation was ‘variable’.



Some victims’ professionals told the VOCC about positive experiences for victims during the OPP consultation process:

The OPP is generally consistent with consultation with victims once the matter is listed at court.

Positive. The OPP and WAS are usually communicative and proficient – however, like all Services, some things slip & there is room for improvement occasionally.

OPP do a great job scheduling conferences pre and post court to communicate possible avenues through the court and outcomes.

Victims feel ok generally when consulting with the OPP. Their communication seems to be far better than police or lower level court staff communication.

In my experience the OPP social worker is communicative and accessible for the victim.

It would appear most appreciate the calls prior, during and after the matter is heard.

However, many victims' professionals raised concerns that consultation with victims is limited, not meaningful and that victims do not feel truly consulted or heard. Victims' professionals surveyed by the VOCC also said that victims are confused during the consultation process and are unable to understand information being told to them, limiting the extent to which they can meaningfully participate.

Many victims' professionals raised concerns that consultation with victims is limited, not meaningful and that victims do not feel truly consulted or heard.

Victims' professionals surveyed by the VOCC felt that 'consultation' sometimes did not occur and when it did, was not meaningful:

I had a client who was definitely not consulted or even informed in the process of negotiation related to charges and pleas. The negotiation resulted in the sexual offence charge being dropped. She was never clear why.

It is very rare that victims are properly consulted by the office of public prosecutions when they are modifying a charge/ or accepting a plea of guilty to a lesser charge. It seems to be the luck of the employee. Some employees seem to be good at it, others never consult the victim.

Some victims' professionals described victims feeling undue pressure to agree with prosecutors:

They can often feel pressured to agree with OPP recommendations.

Bullied & coerced into accepting what the OPP has already decided/accepted. Told better to accept something lesser rather than risk them getting off altogether.

Some victims' professionals described consultation with victims as 'tokenistic':

They feel like the consultation process is tokenistic. They get called and told OPP need to meet with them ASAP, only to take time off work to be told "we have to consult you, but we're probably going to just do what's most logical/cost effective".

Appreciate being consulted, however for some it feels more like a 'tick box' than their opinion being genuinely considered – for example if their view is different to OPP.

Most victims are not even aware that this is meant to happen.

They are asked their opinion however generally don't feel heard. They feel their opinion has no sway with the final decision and often question why they were asked.

Victims expect that if they are asked how they feel then this holds some weight, and when it proves not to, I have seen victims get very angry and disappointed.

One victims' professional surveyed by the VOCC felt that decisions are simply made by prosecutors and communicated to victims and because of this, it 'would be fairer on the victim if the word consultation was taken out of this process'. Similarly, another victims' professional said that victims 'shouldn't be asked if their thoughts and feelings are then disregarded'.

Victims are confused during the consultation process

Victims' professionals surveyed by the VOCC emphasised that consultation cannot be meaningful unless victims understand the information being provided to them. Victims' professionals said that 'these consultations are very jargon heavy' and many victims 'come away confused about what they are told and need it explained again in plain language'. Difficulties with comprehending the consultation process are typified by these respondents to the Victims' Professionals Survey:

Victims often tell me that they do not understand the complex language used by the legal staff. They are confused by legal jargon and often feel stupid if they have to ask them to explain it again. Some victims feel left out because of this. Public Prosecutors need to understand that most people are not used to court processes or the legal understanding of processes and often do not speak their mind or put forward their thoughts.

on many occasions, victims have reported is all felt 'very last minute' and rushed. In a general sense, many victims return to VAP [the Victims Assistance Program] to ask further questions about a meeting that may have occurred and found they don't understand the 'jargon' that is spoken by legal representatives. This is a very common issue, both with police and OPP.

I believe that victims are consulted but rarely explained in a way that the victim can fully understand, in order to make a real decision. Often they are told, not asked.

Some victims' professionals also highlighted the variable nature of victims' interaction with the OPP during the consultation process, indicating some victims may have positive experiences and encounter empathetic and patient prosecution staff, while others do not:

Mixed. Some get confused, and at times, coerced into providing agreement. Others find the process informative and helpful.

The majority of the time the victims feel they are included in this process, the OPP are more communicative with the victim, but again, this is only really when the matter is nearing court.

Again many variables including ability of OPP to communicate and explain complexities of a case. Unsure they receive any training in this.

Generally victims feel okay about it until decisions are made they don't agree with. They have no right then and are often told post decision.

Victoria Police members also highlighted the challenges for victims in understanding the plea negotiation process. Victoria Police members told the VOCC that information about pleas can be communicated to victims by barristers who are not trauma-informed:

Barristers don't have the skills set. They're good at what they do but they're not good at that personal engagement with victims and they don't quite understand the complexities of that victim who has made a report of a specific crime and suddenly we have a plea to something else⁶⁰

Victoria Police members suggested barristers need to get better at explaining things more effectively:

Quite often the OPP will handball the contact with the families but these pleas are often really complex – forensic analysis, strength of witness testimony etc – it is very hard for victim to come in and have understanding of that. It should come down to barristers and lawyers to explain things effectively.⁶¹

Court operates too quickly to allow participation

During stakeholder consultations, the VOCC repeatedly heard that the court system does not enable victims to fully participate in the plea negotiation process, particularly in the summary jurisdiction but also in the indictable stream in some circumstances. Professor Arie Freiberg described pressures on the criminal justice system to expedite matters: 'It [is] institutional pressures, time pressures, financial pressures, seeking to get outcomes as quickly and not always as appropriately as possible. Victims are probably an impediment [to expediency].'⁶²

Professor Freiberg noted that in the Magistrates' Court, the system is dealing with thousands of cases and victims are peripheral to this because 'there is that conveyor belt system of getting what you can rather than getting what's perfect'.⁶³ Professor Freiberg also pointed to the impracticality of consulting with a victim every time there is a change in charges, such as reducing a charge of 'intentionally' to a charge of 'recklessly'.

Victoria Police members told the VOCC that the time pressures are 'primarily driven by the courts' and 'the court's number one issue is their time'. Victoria Police members advised the VOCC that there is pressure on prosecutors and defence to progress matters and that to properly redress participation for victims around plea negotiations 'would require a level of engagement that is entirely at odds with the pressure coming from the courts'.⁶⁴

Legal complexities of plea negotiations

The legal framework and reasoning behind a change in charges can be complex and includes considerations relating to whether there is a reasonable prospect of conviction.⁶⁵ Both police prosecutions and the OPP described how these decisions, which must be made having regard to the best interest of the state, can conflict with victims' views and their needs for justice.

Victoria Police members told the VOCC that the question of how to change plea negotiations with a view to improving victims' participation is difficult because resolving a matter involves intricate legal decisions, which can be difficult to communicate to victims: 'We try to keep victims apprised of where we are at and explain the legal issues, but that can be really difficult as victims might not necessarily understand the legal issues we face.'⁶⁶

60 Consultation Meeting 19 – Victoria Police – Session 3.

61 Ibid.

62 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

63 Ibid.

64 Consultation Meeting 18 – Victoria Police – Session 2.

65 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 3 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

66 Consultation Meeting 18 – Victoria Police – Session 2.

One Victoria Police member discussed the desire to get an outcome (as opposed to no outcome), and how this can lead to pleas that may not meet victims' expectations and may also be difficult to explain.⁶⁷

Professor Freiberg similarly observed that pleas can be 'bewildering to victims' particularly where it comes down to matters of proof.⁶⁸ Associate Professor Asher Flynn further observed that for many victims of crime, the outcome of plea negotiations can be more complex when they involve defence counsel and a prosecutor agreeing to a different version of the facts which can 'be completely at odds with how [the victim] feel[s] that the crime occurred'.⁶⁹

The OPP advised the VOCC of the complexities and challenges of operating within a legal framework where the views of the victim on any proposed resolution is only one of the factors that determines whether the resolution is in the public interest.⁷⁰ The OPP told the VOCC that victims' expectations can be raised where an accused has been committed for trial on all charges but the OPP will nonetheless make an assessment that there are not reasonable prospects of conviction in respect of some or all of the charges.⁷¹ The OPP told the VOCC that:

victims generally do feel consulted, but they also feel disheartened and as though the consultation is tokenistic at times; in particular when they have a strong view about a proposed resolution but the DPP makes a decision that does not support their views. Despite best efforts to explain that there are multiple considerations for the DPP, victims may still feel let down.⁷²

The OPP told the VOCC that improved participation in plea negotiations can be achieved by 'ensuring victims are informed of their rights in the process and the responsibilities of the prosecution'.⁷³ The OPP further recognises that 'while we cannot avoid the need to advise victims of difficult decisions, we can improve how those decisions are communicated and the level of rapport and trust that has been established prior to having deliver such news'.⁷⁴

In this context, VWAS provides support to prosecutors to ensure that prior to conferences with victims, there is an agreed plan on how to deliver difficult news in a way where the victim will be supported.⁷⁵

Victims need more support to fully participate

As noted above, plea negotiations occur within a complex legal framework where legal professionals assess a range of evidentiary matters such as the admissibility, reliability and credibility of the evidence.⁷⁶

In this context, some stakeholders advised the VOCC of the need for victims to have independent advice and advocacy to ensure they can participate fully and meaningfully. Stakeholders differed on whether such advice should be provided by a non-legal advocate or an independent lawyer. For example, Associate Professor Flynn and Professor Freiberg suggested an advocate or support person, as opposed to a lawyer.⁷⁷ Associate Professor Kirchengast and Dr Holder also suggest there is a place for non-legal victim advocates.⁷⁸

Stakeholders advised the VOCC of the need for victims to have independent advice and advocacy to ensure they can participate fully and meaningfully.

Conversely, the South Australian Commissioner for Victims' Rights explained how their office hires lawyers to provide victims with independent legal advice and help explain the decision-making process around plea negotiations or where cases are discontinued:

Sometimes we just hire a lawyer to actually explain decisions, so their case might not go ahead and we might hire a lawyer to explain why it wouldn't go ahead and what the intricacies of it are.⁷⁹

The South Australian Commissioner advised that hiring a lawyer who is independent of the prosecution is helpful because 'often victims don't trust that the DPP are acting in their best interest, so having that sort of independent person ... telling them the same thing often just helps them accept a decision'.⁸⁰

67 Ibid.

68 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

69 Ibid.

70 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 3–4.

71 Ibid.

72 Ibid 12.

73 Ibid 4.

74 Ibid.

75 Ibid 12.

76 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 3–4 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

77 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

78 Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

79 Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

80 Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

Victoria Police members do not support a role for legal representation for victims during plea negotiations:

I don't think more lawyers in the equation is what we need. That's the last thing we need. Too many voices at court. The issue with plea negotiations is the explanation – giving victims the thought process and the reason a decision has been made, rather than getting a lawyer in representing a victim. Someone needs to take responsibility with having that discussion with the family about the reason for the decision.⁸¹

Judicial review of plea negotiation process

Professor Freiberg suggested victims might benefit from the introduction of a process of judicial review of plea negotiations. According to Freiberg, under this proposal:

The Judge might be an independent operator if you like that in every case, to say, well, I think that's fair and I would have thought a victim would say if an independent third party say it's OK then it must be OK. I don't trust my friend. I don't trust the prosecution. I don't trust my lawyer. I don't trust anybody, but if the judge says fair enough, that is the best we could do then I can accept that.⁸²

Freiberg recognises that such an approach would result in a 'huge workload on judges but in theory I would like a more active role for judges, as happens in a lot of the therapeutic justice areas'.⁸³ During consultation with judicial representatives of the Supreme, County and Magistrates' Courts, judicial representatives did not support such an approach.⁸⁴

Committals

Committal proceedings are heard in the lower courts before the accused has been ordered ('committed') to stand trial in a higher court.⁸⁵ A 'committal' is the decision by a magistrate to commit an accused for trial or sentence in a higher court.⁸⁶ During committal hearings, the court may hear evidence and determine whether there is evidence of sufficient weight to support a conviction and to determine how the accused proposes to plead to the charge.⁸⁷

Research has found that the committal process can be particularly distressing and traumatising for victims, particularly pre-trial cross-examination⁸⁸ and undue delay.⁸⁹

Victims' experiences

Lack of understanding about the process

Because the committal process is often the first time a victim attends court, victims told the VOCC that victims need to be better informed about the committal process and what to expect at court. One victim told the VOCC that 'after the charges were laid – this is where education needs to come into it about transparency because you don't know what the process is. Nobody knows what a committal is'.⁹⁰

This sense of confusion was supported by another victim commenting that attending the committal hearing was 'like a dog's breakfast. There were people in the foyer everywhere and we had no idea what to expect because no one prepared us for that situation'.⁹¹

Committal hearings causing secondary trauma

As a victim's first experience of the criminal trial process, the committal process can leave some victims feeling 'jaded' before the substantial trial begins and that the 'the system is set up to protect' the accused and not the victim.⁹²

Some victims felt that the committal process was an unnecessary step in the criminal trial process involving many delays, with one victim observing, 'all the committal did was waste seven months of our life'.⁹³ Similarly, a respondent to the Victims' Survey stated that such delays caused significant stress:

81 Consultation Meeting 19 – Victoria Police – Session 3.

82 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

83 Ibid.

84 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

85 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 6.

86 Ibid.

87 Judicial College of Victoria, *Victorian Criminal Proceedings Manual* (May 2022) Chapter 4 – Committal Hearings <<https://www.judicialcollege.vic.edu.au/eManuals/VCPM/index.htm#27435.htm>>.

88 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 123.

89 Ibid 58.

90 Interview 16 – Victim of crime.

91 Interview 12 – Victim of crime.

92 Interview 16 – Victim of crime.

93 Ibid.



'All the Committal Proceedings did in our case was enable the accused to play the system with an empty promise of negotiating a Guilty Plea, get granted a 3 month delay which caused over 9 months of delays once the Committal Proceedings were scheduled. This causes a great deal of stress to Families.'

– Victims' Survey respondent

Victims advised the VOCC that they felt particularly harmed by the committal process, that it contributed to significant re-traumatisation and that it was not trauma-informed for victims. One victim surveyed by the VOCC reflected that the 'the Committal hearing nearly broke me'. Another respondent to the Victims' Survey similarly commented:



'After an exhausting, horrendous Committal hearing...many delays and adjournments, my health suffered. I experienced hypertension, exhaustion and insomnia waiting for the trial and felt I was not actually in a fit state to perform my best... I believe the Committal process needs to be removed, it is not a balanced system favouring the perpetrator who does not need to face cross examination.'

– Victims' Survey respondent

Where victims attend the committal hearing with appropriate guidance and support, this seemed to enhance outcomes. For example, one victim interviewed by the VOCC recalled that the OPP's VWAS social worker provided excellent preparation for the experience of the committal hearing:



'They call you in before committal hearing to brief you, let you know what to expect and to ask questions...They said, "just remember that you're just having a conversation in a room, it's a big fancy room, but all you're doing is telling your story. It's a conversation between two people – you and his barrister". And then they said "you know it's not personal. They will ask tough questions, but they're not having a go at you. They're just doing their job." But to hear that so succinctly, it took away the power of that room and that building and the moment and the event.'⁹⁴

Committals are 'unnecessary'

Some victims felt strongly that committal hearings should be abolished. One victim described committals as a 'luxury that should be skipped'.⁹⁵

One victim interviewed by the VOCC commented that when the evidence is clear, the matter should just go to trial: 'Why would you give someone the right to have a committal, it should have just gone straight to trial. Again putting untold extra stress on the victims.'⁹⁶

⁹⁴ Interview 6 – Victim of crime.

⁹⁵ Interview 7– Caterina Politi.

⁹⁶ Ibid.

Another Victims' Survey respondent told the VOCC:

'if the police and OPP deem the evidence strong enough after investigation to lay charges for indictable offences, why then does a magistrate need to further test the evidence by cross examining the victims at committal? Why can't the case go straight to trial giving the jury responsibility for judgement? Surely by cutting out so many intermediary steps in the court process the government will save on costs and more matters could be tried in an expeditious manner for the benefit of victims and perpetrators alike.'

- Victims' Survey respondent

Ingrid Irwin told the VOCC that committal hearings should be abolished because it gives the defence an opportunity to seize on 'any slight variation from the victim'.⁹⁷ One survey respondent stated that committals should be reformed as they have been in New South Wales:⁹⁸

'If that was in NSW then the evidence would have gone straight to trial. My daughter, myself and my ex-[wife] were cross examined. The magistrate said straight away this is going to trial. We need to abolish committal proceedings and bring Victoria in line with NSW.'

- Victims' Survey respondent

Another victim interviewed by the VOCC also spoke favourably about the NSW reforms and stated that reforming committal proceedings:

*'hasn't caused wrongful convictions in NSW, all it has done is speed up the process. You could save a lot of time and stress and anxiety for families if they knew that if a brief of evidence has been followed then you can get your trial in a few months.'*⁹⁹

Stakeholder views

Giving evidence multiple times

Victoria Police members expressed concern about the number of times a victim may be required to give evidence, which may be exacerbated by committal hearings, and the negative impact these experiences can have on victims:

A victim can give evidence on two, even three occasions. And that's not even counting appeals. If they spend a day or two in the box giving evidence at a committal and then we get another adjournment, it's hard trying to explain to a victim, "you're going to have to go through this whole process again". It's a lot for them to take in and if there is any sort of jury that's knocked out, or there's another legal argument, we have to start the trial again and they're going to do it all again.¹⁰⁰

Victoria Police members suggested expanding the use of Visual and Audio Recording of Evidence (VARE) to all victims of serious crime, 'so that victims of crime don't have to tell their story over and over again'.¹⁰¹ A Victoria Police member explained that:

Using the VARE for all victims of crime. They'll still be cross-examined, but it takes away having to give evidence in chief. Other states use it for more crimes than we do. We just limit it to sex offences for children and people with a cognitive impairment. It should be all victims. It's a lot quicker and a lot easier for members. And it's a lot easier for victims. The evidence is fresher – as opposed to them telling it in detail years later in a court room. It's actually a more accurate telling of the evidence.¹⁰²

97 Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

98 Committal procedures were changed in New South Wales in 2018 to reduce delays in indictable cases being finalised in the District Court: New South Wales, *Parliamentary Debates, Legislative Assembly*, 11 October 2017, 277 (Mark Speakman, Attorney General). It is now the role and function of the DPP to determine whether a person should be tried upon indictment in New South Wales: *Criminal Procedure Act 1986* (NSW) s 66(2). A Magistrate no longer assesses the evidence to determine whether an accused should be committed to stand trial. A Magistrate may still direct that a witness attend court to give evidence: *Criminal Procedure Act 1986* (NSW) s 82.

99 Interview 16 – Victim of crime.

100 Consultation Meeting 19 – Victoria Police – Session 3.

101 Ibid.

102 Consultation Meeting 19 – Victoria Police – Session 3.

Victim-witnesses

Not every victim who experiences a criminal trial will be required to give evidence in court. For those victims who are also witnesses there is a significant risk of re-traumatisation as a result of giving evidence.¹⁰³ Giving evidence and being cross-examined can be one of the most challenging parts of the criminal trial process.¹⁰⁴

Victims' Charter entitlements

Under the Victims' Charter, if a victim is to appear as a witness for the prosecution, the prosecuting agency is to ensure that the victim is informed:

- about the process of the trial or hearing (as the case requires)
- about the victim's role as a witness for the prosecution
- that after the victim has given evidence, the victim may remain in the courtroom unless the court otherwise orders
- about any special protections or alternative arrangements for giving evidence.¹⁰⁵

The prosecuting agency is also required to ensure the court is informed about the victim's preferences for the use of any special protections or alternative arrangements for giving evidence.¹⁰⁶

Legislative protections for victim-witnesses

There are a range of legislative protections for victim-witnesses.¹⁰⁷

Broadly, legislative protections include:

- protections against improper questioning during cross-examination¹⁰⁸
- protections relating to the defence accessing a complainant's personal information¹⁰⁹
- protections relating to introducing evidence of a complainant's sexual history¹¹⁰
- alternative arrangements for giving evidence, including the use of remote witness facilities and the use of screens to remove the accused from the direct line of vision of the complainant¹¹¹
- additional considerations when the court determines whether to allow the pre-trial cross-examination of a witness.¹¹²

Ground rules hearings are also used in some criminal trials.¹¹³ Ground rules hearings are a pre-trial process addressing the communication needs of particular vulnerable witnesses. A court may hold a ground rules hearing at any venue, provided the case involves a qualifying offence.¹¹⁴

Support available to witnesses

Witness support

There are two dedicated witness support services in Victoria:

- the Victims and Witness Assistance Service (VWAS) which is part of the OPP
- the Child Witness Service (CWS) which is part of the Department of Justice and Community Safety.

These services are staffed by specialist social workers who assist victim-witnesses through the justice process, including the process of giving evidence.

VWAS is only available for victims/witnesses in the indictable stream (heard in the County and Supreme Courts). The Child Witness Service is not limited by jurisdiction, but is only available for children and young people.

¹⁰³ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 328 <https://parliament.vic.gov.au/images/stories/committees/CLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSI_C 59-10_Vic_criminal_justice_system.pdf>.

¹⁰⁴ See generally Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 93.

¹⁰⁵ *Victims' Charter Act 2006* (Vic) s 11(2)(a).

¹⁰⁶ *Ibid* s 11(2)(b).

¹⁰⁷ These protections are contained in the *Evidence Act 2008* (Vic) and *Criminal Procedure Act 2009* (Vic).

¹⁰⁸ *Evidence Act 2008* (Vic) s 41(3).

¹⁰⁹ *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32CD, inserted by *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* s 85, which commenced on 7 September 2022.

¹¹⁰ *Criminal Procedure Act 2009* (Vic) s 342.

¹¹¹ *Ibid* ss 359–365.

¹¹² Victoria, *Parliamentary Debates*, Legislative Assembly, 4 August 2022, 2906–07 (Sonya Kilkeny, Minister for Victim Support).

¹¹³ *Criminal Procedure Act 2009* (Vic) s 389A.

¹¹⁴ See *Criminal Procedure Act 2009* (Vic) s 389A for qualifying circumstances.

Intermediary scheme

While not a 'support' service for witnesses,¹¹⁵ the intermediary scheme helps some victim-witnesses to give evidence.¹¹⁶

The intermediaries scheme is available to a witness (including a complainant) who is under 18 years when the proceeding commences or has a cognitive impairment and the criminal proceeding takes place in a participating court.¹¹⁷

Intermediaries are skilled communication specialists who are neutral officers of the court and whose role is to facilitate effective communication with the witness.¹¹⁸ Intermediaries' main purpose is to enable witnesses to give their best evidence, not to provide emotional support or case management.¹¹⁹ The general function of an intermediary is to:

- assess the witness's communication style and what specific communication assistance they need
- describe the witness's communication needs
- facilitate communication between the witness and other parties to prevent or overcome a communication breakdown
- write court reports on the witness's communication needs and provide practical strategies for managing those needs.¹²⁰

Victims' experiences

Positive experiences giving evidence

Victims interviewed by the VOCC described the following aspects of giving evidence as positive:

- the OPP taking the time before the trial to prepare the witness for what to expect¹²¹
- being able to use remote witness facilities¹²²
- the use of intermediaries¹²³
- pro-active judges who managed the courtroom, intervening when defence counsel asked inappropriate questions.¹²⁴

One respondent to the Victims' Survey praised the support of VWAS in providing all the necessary information and support to enable them to give evidence remotely:



'Once Witness Assistance got in touch, I felt like I had someone to ask all the 'stupid' questions of. Nothing was too much trouble, and they addressed all my fears, mostly around giving evidence and being in close proximity to the offender. WAS organised visiting court beforehand, provided emotional support, kept me up-to-date, supported before, during and after giving evidence remotely at the contested committal, adjourned trial, interlocutory appeal, trial at the County Court and Appeal against conviction. I wouldn't have coped without everyone's amazing knowledge, experience and support.'

– Victims' Survey respondent

Not receiving enough information about being a witness

Despite some positive experiences as outlined above, 63 per cent of victims surveyed by the VOCC felt they did not get enough information about their role as a witness to help them participate in the process. As shown in **Figure 22** below, only 18 per cent of Victims' Survey respondents agreed they were given enough information about their role as a witness to help them participate in the process.

¹¹⁵ Intermediaries are skilled communication specialists who are neutral officers of the court.

¹¹⁶ The intermediary scheme was introduced by legislation in Victoria in 2018 as a pilot program. The legislative scheme relating to intermediaries and ground rules hearings is set out in Part 8.2A of the *Criminal Procedure Act 2009* (Vic) which commenced on 28 February 2018.

¹¹⁷ *Criminal Procedure Act 2009* (Vic) s 389F. Participating courts can be gazetted: *Criminal Procedure Act 2009* (Vic) s 389G.

¹¹⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 December 2017, 4359 (Martin Pakula, Attorney-General).

¹¹⁹ *Ibid.*

¹²⁰ Department of Justice and Community Safety (Victoria), *Victorian Intermediaries Pilot Program* (Web Page) <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/victorian-intermediaries-pilot-program>>.

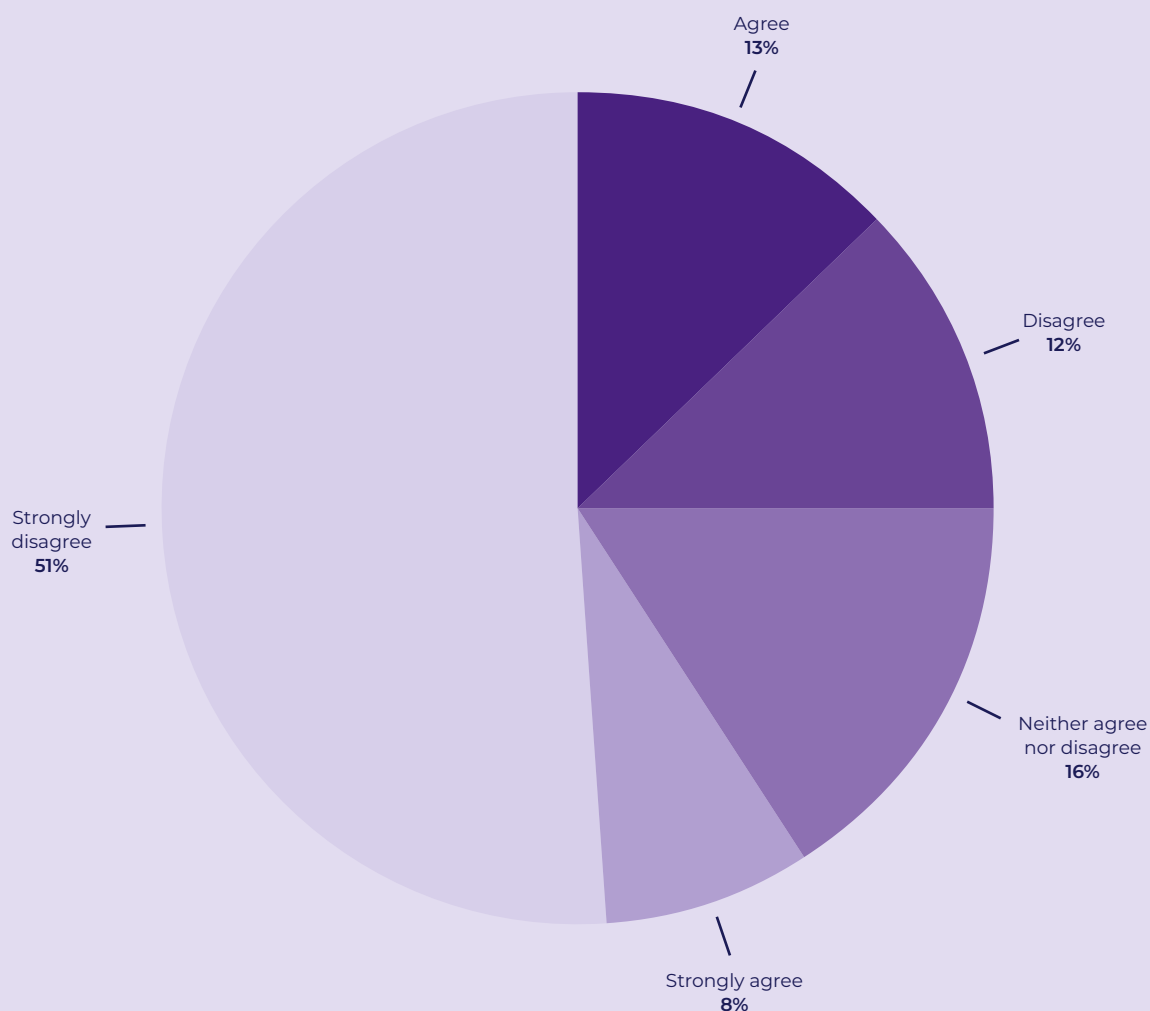
¹²¹ Interview 6 – Victim of crime.

¹²² Interview 16 – Victim of crime.

¹²³ Interview 16 – Victim of crime.

¹²⁴ *Ibid.*

Figure 22: VOCC Victims' Survey: Were you given enough information about your role as a witness to help you participate in the court process?



One Victims' Survey respondent recalled different professionals telling them different things about giving evidence:

'It became obvious at different points of the process that although everyone knew their own area of expertise really well, they didn't necessarily know much about elsewhere. For example, the Investigator said I could give evidence from another facility and the Counsellor said I would have to find a quiet spot within the courthouse until I was called. Once connected with WAS though I found out neither advice was correct, and I would be giving evidence remotely from within the courthouse.'

– Victims' Survey respondent

Another victim interviewed by the VOCC was upset that they were not informed by the OPP that when they were giving evidence remotely, the accused would be listening.¹²⁵

Trauma caused by giving evidence

One respondent to the Victims' Survey told the VOCC about the trauma caused by having to be cross-examined, exacerbated by the fact the accused has a right to silence: 'The rapist was never cross examined. Only I, the victim, was put through ridicule, cross examination 3 times.'

Another respondent to the Victims' Survey said they prepared for (and accepted) the need for the prosecution and court processes, but noted that this significantly impacted on their ability to recover, particularly in the context of preparing for cross-examination: 'I needed to stay in that traumatic space for almost 2 years with both cases running concurrently in preparation for cross examination.'

Victims described feeling as if they were on trial, as shown by this Victims' Survey respondent:

'For nearly a month the trial went on and at no stage in my opinion was HE ever on trial. We were. AT no stage did Defence ever have to prove he didn't do it. The Jury never heard him speak. The Beyond Reasonable Doubt high watermark in these types of historical Child Sexual Abuse Cases needs to be changed. All Defence was trying to do was ask enough questions enough times to create some shred of doubt in the Jury's minds. This is so fundamentally flawed and in no way protects the young victims.

...the rapist was never cross examined.'

– Victims' Survey respondent

One victim interviewed by the VOCC was dismayed that they could not have a support person of their choice accompany them to court:

*'I wasn't allowed to have a support person in court. So I'm allowed the social worker – she's allowed in because she's allocated to me. It just struck me as really strange as to why a complete stranger could accompany me to court but not someone who I knew and trusted and who wasn't involved in the events...I just think it's important that someone who you love is able to bear witness. It seems really clinical and unfair.'*¹²⁶

The VOCC heard from lived-experience consultants about their experiences of giving evidence:

*'When I was talking to a lawyer I didn't feel comfortable. It's a scary experience for anyone but especially children and young people. You know something happened but then my dad said "no that didn't happen." It's very hard for a young person to be sure of themselves. You can know every exact detail but it's difficult to be strong in yourself and say "yes this is what happened to me" especially when you are on your own.'*¹²⁷

Other respondents to the Victims' Survey had actively chosen not to seek a criminal justice response because of the perceived trauma that would be caused by the adversarial trial process:

¹²⁵ Interview 16 – Victim of crime.

¹²⁶ Interview 6 – Victim of crime.

¹²⁷ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.



'the prospect of the adversarial processes, with contemptuous questions and challenges about details was a fearful prospect. Also averse is the prospect of one's life, relationship and medical history being poured over by hostile opponents and possibly being discussed with a perpetrator triggered fear and anxiety reminiscent of exposure without escape or control – powerlessness.'

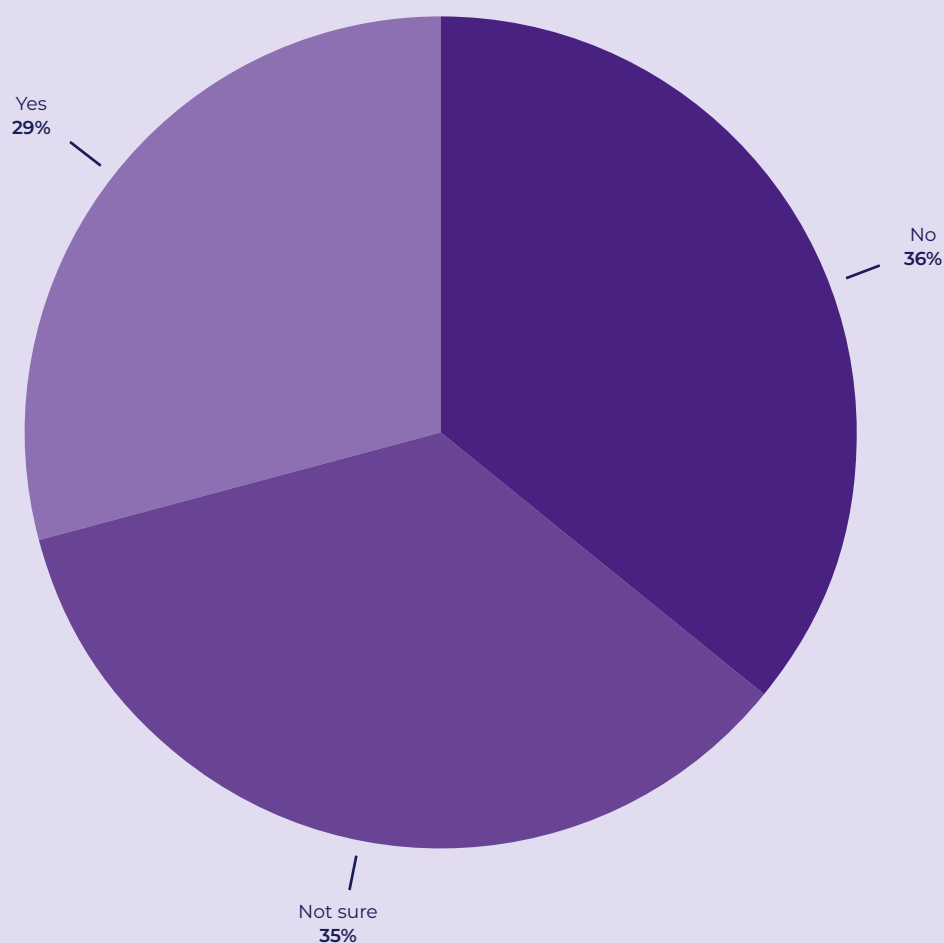
'I also chose not to go to court, despite being the victim of very serious crimes, because I felt that the overall adversarial process would be extremely detrimental to my health (being reduced to a mere "witness" in a case being controlled by the ODPP; being harshly cross-examined; having to face the perpetrator in court; and the constant fear of "payback" from the offender etc). The current legal system does not appear to be centred on recognising the rights and needs of victims of crime. We are pushed aside whilst the offender retains various legal protections and supports.'

– Victims' Survey respondents

Willingness to give evidence again

Of those respondents who gave evidence at court, just under a third would be willing to be a witness again. Around two-thirds were either unsure (35 per cent) or would not (36 per cent) as shown in **Figure 23** below. Respondents with a disability were the cohort with the highest 'No' response, which is consistent with the systemic barriers to participation discussed in **Chapter 5**.

Figure 23: VOCC Victims' Survey: Would you give evidence again?



Access to confidential communications causing trauma

A Victims' Survey respondent shared their experience of a protracted pre-trial attempt by defence to access their confidential communications, with very detrimental effects on the victim's wellbeing:

'For 18 months there were legal arguments for the Defense seeking my psychologist full file. I thought there was legislation to protect them in sexual assault cases but turns out anything can have exemptions applied for. It is wrong and hugely distressing. There have been multiple times throughout this legal process where I have considered taking my own life and I mean seriously considered and planned.'

– Victims' Survey respondent

Another Victims' Survey respondent shared their experience of having their records subpoenaed and feeling unsupported during the process, which they concluded ultimately had no relevance to the trial:

'I was subpoenaed at an earlier time for my personal emails and texts. I was told if I wanted legal advice I would have to seek that independently and I was not given any contacts etc to seek said advice. I have never intersected with the justice system until reporting these cases so I had no idea. I eventually found a firm and had a brief conversation with a very dismissive woman who had no interest in assisting me so it left me feeling defeated and alone. I attended the hearings relevant to the subpoena and the defense gained them. It was purely a fishing expedition to attempt to discredit me and none of the information was relevant to the assaults themselves.'

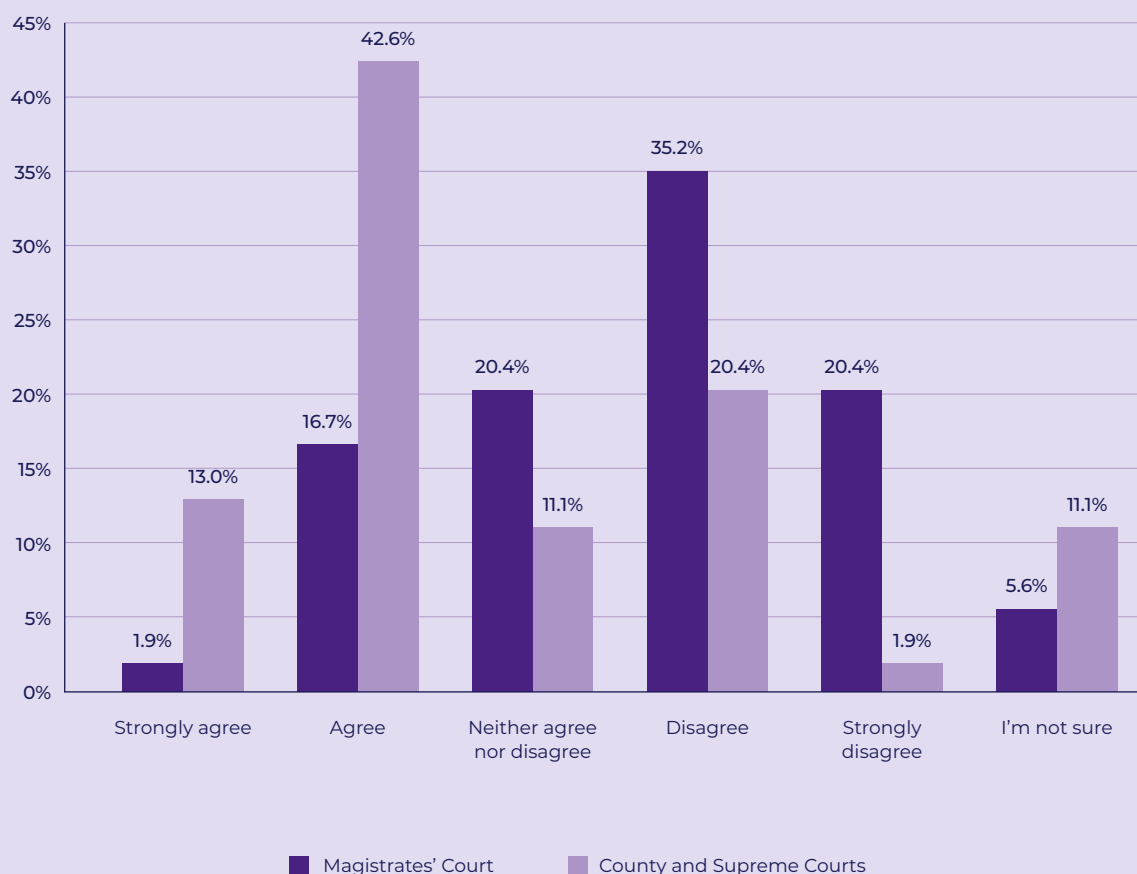
– Victims' Survey respondent

Stakeholder views

Not receiving information about being a witness

Victims' professionals surveyed by the VOCC were asked whether victims were given enough support and information about their role as a witness to help them participate in the court process. As shown in **Figure 24** below, respondents indicated that victims are not given as much information and support at the Magistrates' Court as at the County and Supreme Courts.

Figure 24: VOCC Victims' Professionals survey: Victims are given enough support and information about their role as a witness to help them participate in the court process.



Importance of witness support

A number of stakeholders indicated during consultations with VOCC that the intermediary scheme has been a positive introduction for witnesses who might not otherwise have sufficient support or accommodations made to navigate giving evidence.¹²⁸

Similarly, during consultation with VOCC, Victoria Police members praised the intermediaries program as 'fantastic'¹²⁹ and 'the most magnificent improvement in the system ... in a long time.'¹³⁰ However, Victoria Police members also observed that the eventual application at the trial of the decisions about communication made at a ground rules hearing can be variable and dependent upon individual judges:

In a couple of different ground rules hearings and trials, or special hearings, where complainants are being cross examined, there seems to be a very big difference in how judges apply rules in ground rules hearing and how stringent or strict those restrictions are. There seems to be a big disparity between what's decided and what's applied during the hearing. Some judges say the witness will not be examined for any more than 2-3 hours or will intervene where there are repeated questions. But then there are other judges who will not intervene if there are repeated questions or cross-examination goes over a number of days. Some older judges may not subscribe to these new rules or think they are too unfair on the accused. There's a big difference in how ground rules hearings are applied, depending on who the judge is.¹³¹

¹²⁸ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

¹²⁹ Consultation Meeting 24 – Victoria Police – Session 4.

¹³⁰ Consultation Meeting 18 – Victoria Police – Session 2.

¹³¹ Consultation Meeting 24 – Victoria Police – Session 4.

Some CLC representatives told the VOCC that the intermediary scheme might be more effective if victims had independent legal representation to advocate for their interests.

The CWS was also praised by the stakeholders as a positive reform in Victoria. Victoria Police members explained that the CWS provides 'extremely invaluable support' to young witnesses by taking the pressure off police prosecutors and explaining basic court information like 'who will be sitting where in court, the evidence, the way you might get asked questions'.¹³²

Similarly, the CIJ remarked on the success of the CWS, observing that when introduced, it was initially considered contentious because 'of the idea that anyone supporting or assisting a witness would impact on the prosecution process'.¹³³ The CIJ commented on the link between better support for child witnesses provided by the CWS and increased convictions, particularly around sexual offences against children:

But it's now accepted as an integral part of the process and people recognise it as contributing to a higher quality criminal justice process and particularly in an area (child sex offending) which is notoriously difficult to get a prosecution because you are completely reliant on the victim of the offence. With the CWS, you're more likely to get victims giving evidence and therefore you're more likely to get a conviction. This has been seen as a big improvement and is now kind of part of the system's DNA.¹³⁴

A judicial representative also noted that the 'child witness service plays an extraordinary part for children in summary contests in indictable sexual offences – they are sophisticated and highly trained and really help children and young people to give evidence'.¹³⁵

Need for independent legal representation

Some stakeholders told the VOCC that victim-witnesses could benefit from improved support, advocacy and legal advice when giving evidence and that some victim-witnesses should have independent legal representation.

Associate Professor Kerstin Braun sees a role for independent legal representation for victim-witnesses during cross-examination because, 'nobody is there to act exclusively on behalf of the victim who will enforce their rights'.¹³⁶ Professor Braun identifies cross-examination as the crucial point of risk of secondary victimisation, and the point at which independent legal representation for victims would be of most benefit:

I always think victims should be able to have legal representation at trial because out of all the reports that you hear and anecdotal evidence that is really the stage where most victims feel re-traumatized by the questions that are being asked. Some of the questions do not comply with all the regulations and the Evidence Act, so things are being asked that shouldn't be asked. People should be intervening, but they don't always for various reasons such as an effort to make it a fair trial and allow the defence to introduce those things. Oftentimes the situation which is the worst for the victim is at trial, especially during cross examination.¹³⁷

A number of stakeholders discussed legal representation for victims as being vital when the defence is seeking access to a victim's confidential communications. These stakeholders perceived legal representation for victims in this context as an important step in both victims' participation and the protection of their rights.¹³⁸

Dr Iliadis told the VOCC that she and her colleagues (Professor Jonathan Doak and Dr Olivia Smith) suggest providing victims with legal representation would protect a broad range of sensitive third-party evidence, including but not limited to prior sexual history, medical and counselling notes, digital communications (such as phone records containing private data), school records, 'as well any sort of communication that can be subpoenaed or used by defence counsel to adversely discredit a victim survivor's character in testimony'.¹³⁹

Similarly, CLC representatives advised the VOCC that there are gaps in the provision of legal assistance for victims within criminal proceedings, including in relation to confidential communications and where victims are called to give evidence against their wishes:

At this stage, there is no legal representation available to victims of sexual assault to assist them to participate in proceedings to object to the disclosure of confidential information (e.g., sensitive health information). For example, in matters where there is a subpoena for confidential communications to be disclosed or where victims are called to give evidence who don't want to give evidence, particularly in family violence situations, the lack of legal representation can be a huge problem. This can have serious consequences for victims.¹⁴⁰

¹³² Consultation Meeting 18 – Victoria Police - Session 2.

¹³³ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

¹³⁴ Ibid.

¹³⁵ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

¹³⁶ Consultation Meeting 1 – Associate Professor Kerstin Braun.

¹³⁷ Ibid.

¹³⁸ Consultation Meeting 5 – Dr Mary Iliadis; Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 23 – Community Legal Centres – Session 2; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022.

¹³⁹ Consultation Meeting 5 – Dr Mary Iliadis.

¹⁴⁰ Consultation Meeting 23 – Community Legal Centres – Session 2.

CLCs highlighted to VOCC how difficult it might be for victims to represent themselves adequately and to prepare pre-trial materials to oppose a subpoena for their confidential communications. CLC representatives told the VOCC there would be an advantage to having independent legal representation for victims of sexual offences and family violence in particular.¹⁴¹ Furthermore, they suggested with the increased use of ground rules hearings, victims could benefit from legal representation to ensure cross-examination and the structure of proceedings is trauma-informed and appropriate.¹⁴²

The CIJ told the VOCC that representation for victims in relation to confidential communications was 'ad hoc':

Because there is no dedicated mechanism for an independent legal representative for confidential communications matters, our understanding is that the OPP need to ask barristers to step in to represent victims on a very ad hoc basis if they are at court on the day for other matters.¹⁴³

Victoria Legal Aid (VLA) told the VOCC that they support the creation of a dedicated service for victims in relation to confidential communications, based on similar services within legal aid organisations in Queensland and New South Wales.¹⁴⁴ VLA also told the VOCC that they support 'getting a better understanding about why victims are choosing not to participate in these kinds of applications [to subpoena confidential communications], and how to reduce the barriers to participation'.¹⁴⁵

The OPP also advised the VOCC that it would support independent legal representation for victims in applications to subpoena confidential communications.¹⁴⁶ In these circumstances, the OPP suggests that the provision of independent legal representation could assist the court in ascertaining and relaying the views of the victim.¹⁴⁷ The OPP cautioned that it anticipates an increase in instances of victims being the subject of subpoenas to produce documents and records and that this is a huge gap because the OPP is unable to provide legal advice to victims, leaving victims having to navigate this process without independent advice.¹⁴⁸

Similarly, during consultation with the VOCC, a judicial representative expressed support for legal representation when victims' personal information is being sought by subpoena.¹⁴⁹ A judicial representative also indicated that separate legal representation, independent of the OPP, could be available to victims during a committal or for pre-trial cross-examination of children or vulnerable witnesses, particularly in the following circumstances:

if they are being asked questions of those pretrial examinations that are fishing, that are designed to get information as to whether they have had counselling and from whom in order to provide a springboard for the third-party subpoenas. That's an area where there is a proper basis for thinking that complainants or victims should be given independent legal advice before answering such questions, and about whether to object, because their interests may be different from the interests of the prosecution.¹⁵⁰

The Commissioner for Children and Young People felt that young people could benefit from having a dedicated children's advocate when giving evidence given that the prosecution's interests will not always align with the child's:

in terms of the child's interests being recognised, there is no advocate prior to or in court taking into account the implications for the child complainant. Sometimes the prosecution's interests will align with the child's but not always. There is a place for a child's lawyer but how does one decide which cases are deemed worthy? In both the 2016 *Victims of Crime in the Criminal Trial Process* and 2021 *Improving the Response of the Justice System to Sexual Offences* references the VLRC recommended a place for legal advocacy for victims and I think there is a place for that to be a part of the court process.¹⁵¹

Alternative arrangements for giving evidence are not always effective or available

Legislative provisions regarding alternative arrangements for victims of sexual assault and offences involving family violence require the court to direct that alternative arrangements for giving evidence be made available unless the victim does not wish these arrangements to be used. These include the use of remote witness facilities and the use of screens.¹⁵²

141 Consultation Meeting 23 – Community Legal Centres – Session 2

142 Ibid.

143 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

144 Consultation Meeting 16 – Victoria Legal Aid.

145 Ibid.

146 The OPP expressed concern about victims accessing independent legal representation more broadly.

147 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

148 Ibid.

149 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

150 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

151 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

152 *Criminal Procedure Act 2009* (Vic) ss 359–365.

Stakeholders raised concerns about how such protections work in practice. Court Network told the VOCC that lack of appropriate court infrastructure and lack of support services means sometimes 'special arrangements' are inadequate:

Sometimes the special arrangements are actually a portable whiteboard at the side of the court. Often, we're not meeting special arrangements at all. There is this 'whiteboard solution' employed across a range of metro and regional courts due to a lack of remote hearing rooms or, no support person to assist in a remote hearing room.¹⁵³

Respondents to the Victims' Professionals Survey told the VOCC that there are not enough remote witness rooms at regional courts and that VAPs are often relied upon to enable victims/witnesses to give evidence from another location.

The OPP raised concerns that the legislative provisions relating to alternative arrangements and special protections for giving evidence were not broad enough and that while discretionary applications for them for victims of other types of offending (other than sexual and family violence) 'are generally acceded to', these discretionary applications are more likely to be granted at the committal stage, rather than at trial.¹⁵⁴

The Alannah and Madeline Foundation told the VOCC that despite the progress made with alternative arrangements, children's needs in this regard remain neglected and that more needs to be done to acknowledge the invisibility of children's needs during trials and the potentially traumatic impact on children of the court process.¹⁵⁵ The Foundation suggests that:

While alternative arrangements for giving evidence are a great shift, we still lose sight of the children who are swept up in these proceedings. They really do require, much the same way we have our Cubby House program at Melbourne and Broadmeadows Children's Court, an adult that can actually scaffold them through those proceedings and be there for some support. Someone who can support the children's regulation, can look after their health and wellbeing while they're there and attend to their needs – and that you're not asking that of parents or adults who are already very stressed.¹⁵⁶

The CWS similarly noted that more regard must be had to alternative/remote arrangements, particularly as they relate to child victims/witnesses:

technology doesn't replace that one-on-one relationship that we build with young people to support them through the process. Technology cannot replace the face-to-face experience. Safety is also an issue as it is not appropriate for everything to be online (eg court evidence from home), and for some young people the offending against them has been online.¹⁵⁷

The CWS suggested that technology be offered as an 'option' but does not replace the support that the CWS provides:

Technology has been particularly helpful for some regional families and working parents. The range of options we have for contact, preparation and support we can provide has expanded. We can send staff out to regional areas for face to face support where courts may be closed, and we are able to use the neutral locations or other organisations, such as CASAs and VAPs. We can also send out equipment to families to assist their linking with us, and court hearings (pleas/sentences), but of course that doesn't provide support, it just provides the technology so that they have access.¹⁵⁸

Technology assists participation

Despite the above limitations, the VOCC consistently heard from a range of stakeholders that increased use of technology in criminal trials has assisted victims to access, and participate in, the justice system.

Victoria Police members support the continued use of technology-assisted remote witness options for victims when giving evidence. Particularly in family violence-related cases, Victoria Police members indicated that being able to give evidence remotely is the preferred option not only to mitigate risk but to spare victims from the uncomfortable experience of attending a court and waiting.¹⁵⁹ Victoria Police members reiterated the benefits of victim-witnesses giving evidence offsite, particularly in higher profile or organised crime matters, where victims may be followed to and from court:

These issues come down to safety in the courtroom itself. Victims are scared. They're going to run into these people going into the foyer of the court, sitting in court. They're intimidated by them. These people should be able to give evidence from offsite.¹⁶⁰

¹⁵³ Consultation Meeting 12 – Court Network.

¹⁵⁴ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 5.

¹⁵⁵ Consultation Meeting 9 – Alannah and Madeline Foundation.

¹⁵⁶ Ibid.

¹⁵⁷ Consultation Meeting 14 – Victims Services staff.

¹⁵⁸ Ibid.

¹⁵⁹ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁶⁰ Consultation Meeting 19 – Victoria Police – Session 3.

Victoria Police members also suggested witnesses giving evidence remotely results in better quality evidence:

We have really adopted remote evidence but the only problem is the network dropping out or not being clear enough. The courts and OPP want it and the victim feels more comfortable seeing the familiar face of the investigator or support service, rather than an unfamiliar environment and you usually get better evidence as a result.¹⁶¹

The VWAS at the OPP said that some victims have found it beneficial to give their evidence from home or another location, for the following reasons:

- not needing to travel into the city and deal with parking/public transport when you are already experiencing stress and anxiety of providing evidence
- not being at risk of accidental unwanted contact with the accused, either on public transport or in the court building and court precinct
- allowing large groups of family members to attend one location and observe a plea or sentence and support each other with a degree of privacy. This is particularly relevant in matters involving a death.¹⁶²

A judicial representative told the VOCC that offering remote facilities to victims is 'helpful for some victims and secondary victims' as it allows them to avoid having to 'confront media and the accused's family and associates'.¹⁶³ Regarding the use of remote facilities, a judicial representative said that 'having the option now and in the future is beneficial', acknowledging that for 'other people, the fact of live streaming including the accused not coming into court is something they are not happy about'.¹⁶⁴

Another judicial representative also observed that 'livestreaming and having technology involved is a significant advantage' because court 'environments are very stressful and we haven't been able to architect something less stressful'.¹⁶⁵ A judicial representative gave the example of where a victim participated in an online capacity but would have been less likely to do so if required to provide evidence in person:

We need to use the technology. Judges and Magistrates should be encouraged to allow people to come online. A quick example of ... the victim of two independent sexual assaults on one night was able to participate online because I didn't see it happening with her standing up in court and engaging. It was polite and respectful and she had a Victim Impact Statement. It allows for a less formal setting that can be managed – it won't become disorderly.¹⁶⁶

Another judicial representative observed that an increasing number of victims are appearing online in family violence proceedings and having the capacity to do so is 'important'.¹⁶⁷

Court safety

Attending court, whether as a victim or a victim-witness, can be daunting, stressful and, for some victims, unsafe. Previous research in Victoria has highlighted victims' concerns over court safety.¹⁶⁸

Under the Victims' Charter, so far as is reasonably practicable, during a court proceeding and within court settings, prosecuting agencies and the courts should:¹⁶⁹

- minimise a victim's exposure to unnecessary contact with the person accused of the criminal offence, defence witnesses and family members and supporters of the accused person
- protect a victim from intimidation by the accused person, defence witnesses and family members and supporters of the accused person.

¹⁶¹ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁶² Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12–13.

¹⁶³ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

¹⁶⁴ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ See, e.g., Victims Support Agency, *Information and support needs of victims and witnesses in the Magistrates Court of Victoria* (Report, January 2013) 5; Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 128; Elena Campbell et al, *More than Just a Piece of Paper: Getting Protection Orders Made in a Safe and Supported Way* (Research Report, Centre for Innovative Justice, February 2021) 98.

¹⁶⁹ *Victims' Charter Act 2006* (Vic) s 12.

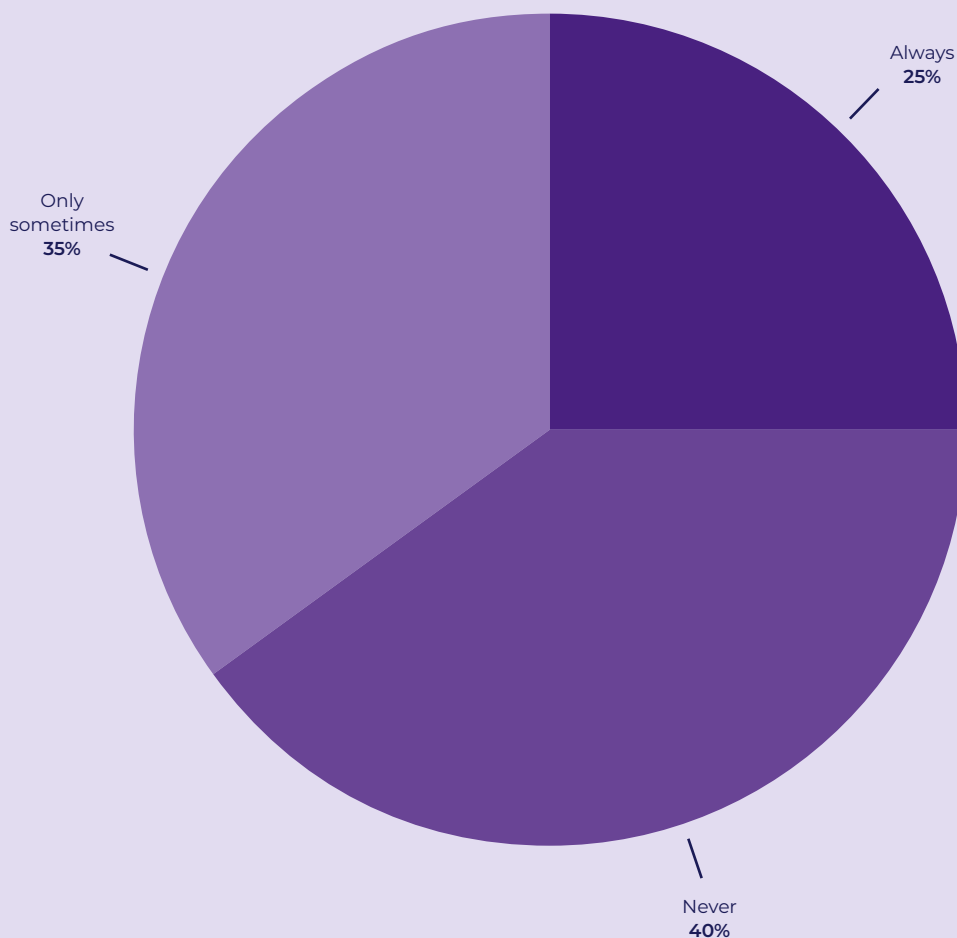
Victims' experiences

Lack of safety during the court process emerged as a significant issue for victims' participation.

Victims were asked in the VOCC's Victims' Survey about how safe they felt attending court. As shown below in **Figure 25**,¹⁷⁰ 40 per cent of respondents who attended court indicated that they never felt safe in court and 35 per cent indicated that they only felt safe sometimes. Taken together, 75 per cent of respondents were concerned about their safety while attending court.



Figure 25: VOCC Victims' Survey: Did you feel safe at court?



¹⁷⁰ The "I didn't go to court" option was filtered out of results shown in Figure 25.

Results of the VOCC's Victims' Survey show that some victims may feel more unsafe in court than others. Of the respondents who identified as Aboriginal or Torres Strait Islander, 67 per cent indicated that they never felt safe and 33 per cent said that they felt safe only sometimes.

Of the respondents who identified as having a disability, over 90 per cent indicated that they had not felt safe at court, and almost 74 per cent recorded that they never felt safe at court. Significantly, the proportion of respondents with a disability who never felt safe in court increased to 80 per cent when restricted to female respondents.

Lack of safety in court

Victims raised concerns with the lack of safe and separate seating options in the common areas of courts such as entrance ways, hallways and foyers.

One Victims' Survey respondent, who required further counselling after encountering the perpetrator in court, described the impact on them as highly distressing: 'Attending court to have to sit and wait for court hearing with the rapist perpetrator walking around near me in plain view for up to 7 hours is highly distressing.'

One victim interviewed by the VOCC, whose son had been killed, described a particularly upsetting encounter when they had unintentionally sat next to the offender in the foyer:

*'It turned out that I was sitting next to the offender. Everyone's out in the foyer and I only realised because his lawyer or barrister was chirping on about "You'll still be able to do your study. We won't worry about that" and they were laughing and talking about his future. And then they said something else and it triggered me to the fact that it was him. I got up to move away from them. The lawyer realized then who I was, and then made a fuss about me sitting next to him. We were told we had rattled him and upset him so he was taken to a private room until the hearing started.'*¹⁷¹

This victim was distressed that not only were there no safe or private areas for victims, but that the focus was placed on the perpetrator's safety and wellbeing:

*'I just could not believe that victims were just left in this environment with no guidance, no privacy, no safe zone. You think going to court you'd have some sort of safe zone. And then they took the offender into a private room for his own safety.'*¹⁷²

Another victim interviewed by the VOCC had encountered the accused's mother in the foyer of the court:

*'Another time we arrived and [the accused's mother] was sitting with this barrister and he was all sort of, you know, keeping her calm, which I can understand, however I don't think this was acceptable for us to be confronted with when we walked in the main foyer of the court. I didn't like the idea of having to pass them... Just left being in this area with someone that had just caused so much pain I suppose.'*¹⁷³

As noted by a victim representative of the Victims of Crime Consultative Committee, even 'simple things like going to or leaving court or walking past the perpetrator in the hallway at court. This can all trigger a traumatic event.'¹⁷⁴

The lack of safe, separate spaces meant some victims felt targeted by offenders or their supporters and that this provided the perpetrator with the power to cause additional distress:

'At the Magistrates Court it was the very first time we went into court. The perpetrator came

¹⁷¹ Interview 12 – Victim of crime.

¹⁷² Ibid.

¹⁷³ Interview 5 – Victim of crime.

¹⁷⁴ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

out and then yawned. Stretched, and you know looked around as if “oh you know, back here again”. He sat down, and he continued to just watch and smirk at us. It was like it amused him watching us fall apart.¹⁷⁵

Some victims were directly exposed to threats and intimidation:

‘I had to wait in the fucking foyer for my name to be called to go into court, and they’re all sitting around on chairs looking at me. All those awful shitty people saying things under their breath and wandering past and muttering threats. Why is there not even a broom cupboard set aside for me to wait in – or even the bloody judges chambers? It’s such a big building! That was really, really fucked.¹⁷⁶

Another victim interviewed by the VOCC described their distress at encountering the accused’s family member in the toilet:

‘The other thing I remember going to the toilet. I’m at the Supreme Court. And his mother was in the other cubical, and I didn’t realize that anyone was in there until I heard it flush and you know, I knew it was her because I left my kids outside and we were the only ones in there. I stayed in that toilet because I couldn’t bear to stand next to her at the washbasin. I just didn’t know how I would have reacted or how she would have so it was just easier to stay in the toilet rather than go out.¹⁷⁷

For other victims, the general experience of being in a court foyer with large numbers of accused persons, where they experienced fighting and incidents of aggression, was a confronting experience:

‘We were waiting outside the area in the Magistrates Court where they issue apprehended violence orders. There were people fighting and then there was police to keep the parties apart. And I’m thinking again, why would you organise a meeting in an area like this where there is violence going on all the time and we had to experience that again?¹⁷⁸

‘I was so confronted by the experience of getting an FVIO – just walking in the door was confronting. And a fight broke out in the court and I basically just fled the court because I was so fragile to violence – I couldn’t be in the same room as something like that.¹⁷⁹

One victim interviewed by the VOCC discussed their fears and concerns about being able to make their way in and out of the court building safely. As a result, this victim felt unable to go to court and obtain an intervention order:

‘When applying for family violence intervention orders (FVIOs) – and personal safety intervention orders (PSIOs) ... I put in writing requests for reasonable adjustments. I wanted reasonable adjustments because the perpetrators would stalk me coming and going from court. Because of my disabilities, I’m highly visible ... When going to court, I didn’t want to be stopped at security when coming and going from court. I also didn’t want the perpetrators to know which court I was in so that I could access the court and justice system safely. I’d also asked to be in a court where there was a back door that was disability accessible, and they said it didn’t exist ... Because the court wouldn’t put in place any reasonable adjustment, I could never take anything further in the courts – I couldn’t get a FVIO or a PSIO – because they couldn’t implement any of the reasonable adjustments that I requested.¹⁸⁰

The VOCC was told by a victim that courts should have dedicated areas for victims: ‘With the court room you should be able to just walk in and feel like you’re sitting in a special space. It’s yours, you know, while you’re in there, that’s where your family sit.’¹⁸¹

175 Interview 5 – Victim of crime.

176 Interview 6 – Victim of crime.

177 Interview 5 – Victim of crime.

178 Interview 7 – Caterina Politi.

179 Consultation Meeting 11 – Victim Survivors’ Advisory Council.

180 Interview 1 – Victim of crime.

181 Interview 5 – Victim of crime.

Lack of safe areas and arrangements

Many victims discussed the lack of safe seating options within the courtroom itself. Victims often had no option but to sit near the perpetrator or the perpetrator's family and friends. Caterina Politi described the distress of being so close to the accused in court and seeing the accused (who was on bail at the time) 'mingling' in the waiting area and being 'an arm's length away'.

Victims often had no option but to sit near the perpetrator or the perpetrator's family and friends.

Victims were frequently unprepared and unaware that they would be seated so closely to the perpetrator or their supporters. One victim surveyed by the VOCC said: 'I had no idea I would be seated so closely to the perpetrators.' Another victim surveyed by the VOCC said they were 'forced to sit near the family of the defendant and found this really intimidating and disturbing'.

Difficult family dynamics, often exacerbated by the crime, add further complexities for victims attending court, as noted by this respondent to the Victims' Survey: 'The court attendance was awful. I had the choice between sitting near the family of the defendant or sitting near the estranged family of my deceased partner. There was no court support.'

One victim who was surveyed by the VOCC advised that the perpetrator had smirked at them throughout proceedings and then was denied alternative arrangements for reading their Victim Impact Statement (VIS) aloud, with dire consequences for their mental health:



'Our perp smirked throughout proceedings at me. I asked her a screen to give my VIS [Victim Impact Statement] and was denied it and told the judge could deny me the chance to give my VIS and would if I wanted a screen. So I had to give it facing my perp and could not get through it. Court was absolutely horrific and I attempted suicide afterwards.'

– Victims' Survey respondent

Children and young people

Berry Street Y-Change Lived Experience Consultants told the VOCC that waiting for long periods in court is very difficult for children and young people.¹⁸² One lived-experience consultant suggested the following improvements:

- receiving a text to advise that your matter is ready
- not being in the same building as the perpetrator
- having a trusted support person to accompany you to court
- having different rooms and something to do while waiting.¹⁸³

The VOCC was also told that court waiting rooms should not resemble 'interrogation rooms'.¹⁸⁴

Attending court remotely/online

Some victims appreciated being able to attend court remotely or online, as noted by this respondent to the Victims' Survey: 'The hearings before the Magistrates' Court were both online so I didn't have to see the accused in person which was good.'

¹⁸² Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1; Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

¹⁸³ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹⁸⁴ Ibid.

However, for some victims, remote/online hearings did not necessarily avoid safety issues, as noted by this respondent to the Victims' Survey:

'just yesterday I attended a virtual hearing for my case, one of many in the past year and I was not warmed that my perpetrator could be on it (he had not been on any previous hearings) It was immediately distressing to see him there live on video. I had no follow up call from my OPP solicitor or detective to check in on me and only that I had a self organized appointment with my return to work psychologist was I able to get through the day.'

– Victims' Survey respondents

Similarly, this Victims' Survey respondent raised concerns about being cross-examined online in her home:

'The stress of trying to have my IVO against him extended with him contesting. In the end I was to be cross examined, in my home via video link with my children in their rooms due to covid.'

– Victims' Survey respondent

Stakeholder views

The inherent harm caused by the adversarial system and its impact on victim safety was noted by stakeholders.¹⁸⁵ Victims' professionals surveyed by the VOCC considered that the adversarial system, and the courts by extension, are very traumatising for victims, as noted by this respondent to the Victims' Professionals Survey:

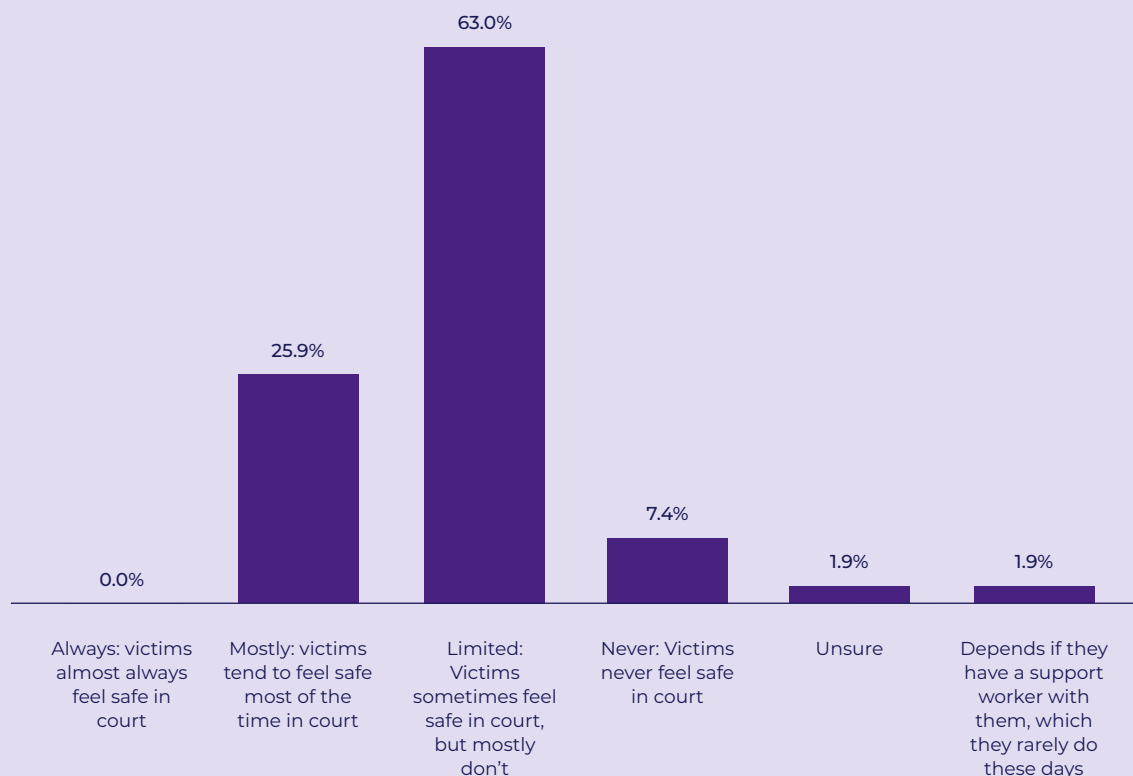
court processes in the adversarial system are harrowing and inaccessible for some clients, particularly clients who are significantly traumatised and have mental illness, or disability the adversarial system does not generally work for v/s of sexual assault/family violence. A traumatised person is very easily triggered, and the adversarial system and the way judges, lawyer and others present, the way the Court is set out, is very triggering, very intimidating...i.e. the Court needs to be less intimidating, a more calming environment, some Magistrates Courts don't even have a proper room the victim/survivor can sit in away from the perpetrator.

Lack of appropriate court infrastructure

Victims' professionals surveyed by the VOCC were asked how safe victims felt attending court. As shown in **Figure 26** below, a majority of respondents (63 per cent) indicated that victims mostly do not feel safe. Victims' professionals also said that a further seven per cent 'never' felt safe.

¹⁸⁵ Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 12 – Court Network.

Figure 26: VOCC Victims' Professionals survey: How physically safe do victims feel when attending court?



Lack of appropriate and safe court infrastructure was noted by a number of stakeholders.¹⁸⁶

Victoria Police members expressed concerns about the physical infrastructure of some courts in Victoria, describing some as 'physically past their use by date. They are unsafe.'¹⁸⁷ Victoria Police members shared concerns about the safety of Werribee Magistrates' Court, which has:

one single entrance with a court upstairs and one downstairs. On family violence listing day they might have up to about 50 or 60 cases listed. The physical security is poor and the legal services are compromised with how they can engage with parties – sitting in a foyer with a client or having two minutes in a conference room before the next person walks through. It's unconscionable.¹⁸⁸

Victoria Police members also outlined the difficulties that victims can face when trying to avoid unwanted media attention at court:

There's usually just one way in, one way out. The Supreme Court has a couple of different entrances but if the media wants to find them, they'll find them. ... The facilities at court are not ideal as there's no way of not going through the front door. Media will approach victims whenever they can.¹⁸⁹

¹⁸⁶ Consultation Meeting 9 – Alannah and Madeline Foundation; Consultation Meeting 12 – Court Network; Consultation Meeting 14 – Victims Services staff; Consultation Meeting 17 – Victoria Police – Session 1; Consultation Meeting 19 – Victoria Police – Session 3; Consultation Meeting 21 – Windermere Victims Assistance Program; Consultation Meeting 24 – Victoria Police – Session 4; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

¹⁸⁷ Consultation Meeting 24 – Victoria Police – Session 4.

¹⁸⁸ Ibid.

¹⁸⁹ Consultation Meeting 19 – Victoria Police – Session 3.

Victoria Police members told the VOCC that the facilities at court are inadequate to deal with the numbers of people supporting victims and the accused, resulting in:

basically a standoff. There's this tense environment in court, and you've got victims who are going through this day after day after day. Quite often you have these momentary adjournments and people are in the foyer together. It's far from ideal. Improvements could be made at court in those areas.¹⁹⁰

Victoria Police members told the VOCC that they have measures to support victims but it is logistically challenging and that issues largely 'come down to safety in the courtroom itself. Victims are scared. They're going to run into these people going into the foyer of the court, sitting in court. They're intimidated.'¹⁹¹

The OPP supported Victoria Police members' concerns about courts with one entry, agreeing that a single entry and exit point for all court users remains an ongoing problem and creates situations where victims 'run the risk of unwanted contact with the [a]ccused either entering or exiting the building'.¹⁹²

Court Network and victims' services staff told the VOCC that victim-friendly and safe court environments were extremely variable across Victoria. While some courts have been redesigned and upgraded, others are 'a disaster', with unsafe entries/exits and waiting spaces requiring Court Network staff to 'find nooks and crannies and ways to make sure the two parties don't come together', otherwise risking victims 'experiencing "walk-bys" by the other side'.¹⁹³ Court Network told the VOCC that safety rooms were not often provided beyond family violence situations:

Overall, the geography of the design at court is not good for safety. We need more spaces where people can be safe. Often safety rooms focus only on family violence, but it's not necessarily available for other victims who are fearful where there has not been family violence.¹⁹⁴

Victims' professionals surveyed by the VOCC also shared the concerns of Court Network, VWAS and Victoria Police members:

In old courts, sometimes a victim has to wait with the offender. This poses a significant risk to the mental wellbeing of victims and potentially poses a physical risk too if the offender/victim are aggressive to one another.

Regional and rural courts do not have the facilities or support to provide a safe environment for victims. Many victims have to wait in the same area as the offenders, there are limited facilities such as toilets in some rural courts requiring parties to walk over to the public park. There is not court support in some regional courts operating at present.

The whole process can be terrifying for victims. The police and lawyers etc forget that most victims are very unfamiliar with this environment, even going through the front doors can be scary. Victims are often so anxious they feel ill. The waiting is also terrible, even if they are in a secure room. It's very rare for a victim to have a 'good experience' of court.

I've worked across a few different regional Victorian areas and none of the courts provided safe spaces for victims and because of this the process is further traumatising for victims. It is also concerning that Victorian Magistrate Courts are not able to schedule time blocks for cases so that victims don't have to be at court all day and cope with all the challenges that come from that – time off work, childcare, seeing people you know, not being able to leave in case your case is called.

This observation by one respondent to the Victims' Professionals Survey encapsulates many of the current challenges faced by victims when attending court:

Many of our clients do not feel safe in court, often due to the isolation they experience as a result of their sexual assault (often the alleged offender is a family member and the family is split in its support). Witness assistance are often unavailable due to the number of cases they manage, leaving clients alone. There again, given they are unknown to our clients prior to arrival at court they are often not viewed as 'safe' or trusted, thus limiting the support they are allowed to provide.

Some courts have been purpose-built with safety embedded in their design, while others have been retrofitted or are still waiting for safety improvements, with Melbourne, Werribee, Frankston and Sunshine Magistrates' Courts all identified as requiring improvements to create more safe spaces for victims. The VOCC was told that because some courts have been updated, redesigned or rebuilt, it 'creates greater disparity in terms of victim experience'.¹⁹⁵ Victims' services staff told the VOCC there is:

such disparity between courts. There are courts where there is one door in, one waiting area, or where all courtrooms are off one central area, or where everyone lines up together. Glass walls provide no privacy, people outside on the street can be present without being present.¹⁹⁶

The OPP also advised the VOCC that court safety and infrastructure remains an ongoing problem:

One entry and exit point for all court users remains an ongoing problem. Victims then run the risk of unwanted contact with the Accused either entering or exiting the building. There have also been occasions in the County Court hearings have been listed in courtrooms next to the remote witness facility where a victim who is entitled to give evidence in remote room has lost the utility of this entitlement. This is very stressful for the victim and very difficult to manage the comings and goings of parties whilst a victim is giving their evidence.¹⁹⁷

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12.

¹⁹³ Consultation Meeting 12 – Court Network.

¹⁹⁴ Ibid.

¹⁹⁵ Consultation Meeting 14 – Victims Services staff.

¹⁹⁶ Ibid.

¹⁹⁷ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12.

Court Services Victoria noted the limitations of ageing buildings, such as the Supreme Court of Victoria, during consultation with the VOCC:

Judges and court staff do all they can to make court spaces safe. The Supreme Court built in 1884 has multiple entrances and terrible circulation pathways that are not designed to separate victims and the accused's supporters or family. There are limited amenities with often a volunteer through Court Network needing to ensure that the toilet is not occupied by the 'opposing' side and 'stand guard' so that in a murder trial, the victim's family can use the bathroom without an altercation with the accused's family. This approach is sub-optimal and relies on human vigilance and puts people at risk.¹⁹⁸

Children and young people

During consultations, stakeholders told the VOCC that children can often be overlooked or are even invisible in the justice process. In particular, the Aboriginal Justice Caucus highlighted that children's needs, and those of Elders, must be at the forefront because children and Elders are often invisible.¹⁹⁹ Children can have a variety of experiences as direct victims of crime or related to family members who have experienced crime, particularly in family violence situations. During consultations, the Berry Street Y-Change Lived Experience Consultant observed that when it comes to family violence and court situations, 'young people have no input at all and family violence was not talked about or looked at. Decisions are made for young people and opportunities are missed.'²⁰⁰ As the Alannah and Madeline Foundation observed during consultations:

it is really scary to hear how they may be sitting for some time in the same room as another family member who's trying to force them to change their story. Or they may be sitting in the same room as the perpetrator.²⁰¹

The Alannah and Madeline Foundation noted that the general layout of a court 'can often make it a really unsafe time for children and young people. It's really, really important that somebody takes the time to walk through the court space from the eyes of a child or young person.'²⁰² The Alannah and Madeline Foundation also noted the lack of safe spaces for children and young people to participate in the court process, noting the success of the Foundation's Cubby House program.²⁰³

According to the Alannah and Madeline Foundation, the Children's Court has also made significant progress in addressing children's needs when designing court infrastructure, including modifications such as lowering the bench to enable magistrates to promote communication that makes children feel less frightened.²⁰⁴

Attending court remotely

Staff from victims' services noted that while access to online proceedings has been welcomed by many victims of crime, and can be managed well with support, there are now additional safety issues that have to be managed. These include victims unexpectedly seeing an accused on screen, victims unintentionally logging in with their video on and victims who have experienced online harms having to attend court online.²⁰⁵

The OPP similarly observed that although online participation is beneficial for some victims, it is not appropriate for highly vulnerable victims.²⁰⁶

Court Network told the VOCC that 'we need to start thinking about local community courts having rooms or a space where someone can go to attend an online room so they do not have to attend from their living room'.²⁰⁷

Court workforce and victim safety

Victims' services staff suggested that it is important to look beyond court infrastructure when considering safety and to address how well court staff are supported to provide safety to victims entering court spaces. This kind of investment in workforce capacity will require training:

Investment is required in physical court security and safety, but it is also required in terms of workforce capability, to allow staff to appropriately identify when someone is at risk in that space. We need both happening at the same time to be able to provide an optimal sense of security and safety for victims at court. Training is going to be important in that space.²⁰⁸

198 Consultation Meeting 31 – Court Services Victoria.

199 Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

200 Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

201 Consultation Meeting 9 – Alannah and Madeline Foundation.

202 Ibid.

203 Ibid. The Cubby House program operates from the Broadmeadows and Melbourne Children's Courts. Cubby House provides a space which helps reduce trauma. It plays a critical role in promoting wellbeing as well as providing a positive environment for both children and Department of Families, Fairness and Housing staff. Alannah & Madeline Foundation, *Cubby House* (Web Page) <<https://www.alannahandmadeline.org.au/what-we-do/care-programs/cubby-house>>.

204 Consultation Meeting 9 – Alannah and Madeline Foundation.

205 Consultation Meeting 14 – Victims Services staff.

206 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 13.

207 Consultation Meeting 12 – Court Network.

208 Consultation Meeting 14 – Victims Services staff.

Respondents to the Victims' Professionals Survey observed that the Court Network, a service reliant on volunteers, do a 'great job' but are not paid for their work and there is not always sufficient coverage. Victims' professionals surveyed highlighted that there is limited access to court support across Victoria, particularly in regional areas:

Victims in outlying regional areas have less options for court support.

I work in the Gippsland Region and Court support is not available to victims in our three courts, being Morwell, Sale and Bairnsdale. The OPP often ask the VAP teams to provide court support at very late notice due to the complexities of the circuit but the VAP's are not always able to provide the support needed. More support staff at the courts during the circuits is needed.

Without the VAP in Mildura victims would NOT get enough support. The VAP in Mildura provides court support at Magistrates court, childrens court and County court. Very rarely does VWAS attend this regional area. Acknowledgement for the additional work VAP does at court in outer regional areas needs to be made.

WAS could leave the CBD for the circuit court and support victims in regional areas.

Overview of Chapter 9: Sentencing

Victims' participation at sentencing is important because it is a key point of the justice process where victims can participate by having a voice.

Victims have participatory entitlements under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to make a Victim Impact Statement (VIS) that the court must consider in determining the sentence of the offender, and to apply for compensation from the offender.

Compensation

The VOCC heard that many victims of crime were unaware that compensation existed and missed out as a result. Others described the legal requirements associated with obtaining compensation as onerous. In this context, the VOCC heard that providing victims with legal representation would be beneficial.

Victim Impact Statements

Victims emphasised that preparing a VIS was often an important stage of the justice process for them and a vital opportunity for participation. However, the VOCC also heard concerns about:

- victims not receiving enough assistance to make a VIS, including lack of independent legal advice and assistance
- lack of time to prepare a VIS
- victims feeling unsafe while reading out their VIS
- dissatisfaction that the perpetrator did not have to respond to, or indeed acknowledge, the VIS
- judges denying requests for a VIS to be read aloud in court
- admissibility of VISs, including where plea negotiations may affect which crimes are being sentenced.

Consistent with previous research, the VOCC heard that victims in the Magistrates' Court are not able to participate in the VIS process as provided for in the *Victims' Charter* and *Sentencing Act 1991* (Vic), with victims affected by the fast-pace of these proceedings.

The VOCC also heard about the ways in which the sentence indication process is impeding victims' participation in sentencing.

9

Chapter 9: **Sentencing**



Introduction

This chapter outlines victims' experiences of participation during the sentencing stage.

Victims' participation at sentencing is important because it is a key point of the justice process where victims are able to participate by having a voice.

Victims have participatory entitlements under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to:

- make a Victim Impact Statement (VIS) and for that VIS to be considered by the court in determining the sentence of the offender¹
- apply for compensation from the offender.²

To assist their participation, victims are also entitled to information under the Victims' Charter:

- to be informed by the prosecuting agency³ of their possible entitlements under the *Sentencing Act 1991* (Vic) (Sentencing Act) in relation to compensation and restitution, and to be referred to legal assistance⁴
- if the Director of Public Prosecutions (DPP) is prosecuting the case, being advised of the date, time and location of the sentencing hearing and the outcome of a sentencing hearing.⁵

Sentencing in Victoria is governed by the Sentencing Act which sets out the purposes and principles of sentencing and the framework for how sentencing decisions must be made.

The Sentencing Act requires the court to have regard to a number of victim-related factors, including:⁶

- whether the offence was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated
- the impact of the offence on any victim of the offence
- the personal circumstances of any victim of the offence.

Compensation and restitution

One of the purposes of the Sentencing Act is to ensure that victims of crime receive adequate compensation and restitution.⁷

Under the Sentencing Act, the court may make an order for the return of goods or payment of money by an offender to a victim to restore stolen property.⁸

On application by a victim, the court may also order the offender to pay compensation of an amount the court thinks fit for:

- pain and suffering experienced by the victim as a direct result of the offence
- some or all of any expenses actually incurred, or reasonably likely to be incurred, by the victim for reasonable counselling services as a direct result of the offence
- some or all of any medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence
- some or all of any other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence, not including any expense arising from loss of or damage to property⁹

An application must be made within 12 months¹⁰ after conviction by the victim (or a victim's representative) or the DPP, police prosecutor or police informant.¹¹ The DPP, police prosecutor or police informant are not *required* to make an application.

1 *Victims' Charter Act 2006* (Vic) s 13.

2 *Ibid* s 16.

3 This is regardless of which agency is prosecuting the crime.

4 *Victims' Charter Act 2006* (Vic) s 16.

5 *Ibid* s 9A.

6 *Sentencing Act 1991* (Vic) s 5 (2AC)(daaa)-(da).

7 *Ibid* s 1(f).

8 *Ibid* s 84.

9 *Ibid* s 85B.

10 An extension of time may be granted under certain circumstances: *Sentencing Act 1991* (Vic) s 85D.

11 *Sentencing Act 1991* (Vic) s 85C.

Victims' experiences

Respondents to the Victims of Crime Commissioner's (VOCC) Victims' Survey revealed overwhelmingly negative experiences in relation to compensation. Many surveyed victims revealed that they were not aware that compensation existed and as a result 'missed out':



'Was not given clear information on claiming compensation and as a result missed out.

'Asked help for compensation and to take a further step with my case, which I am still left in the dark with.'

'Received no information of how to claim compensation from my case.'

– Victims' Survey respondents

The difficulty with accessing compensation under the Sentencing Act also extended to victims with legal training, who observed:



'I am a lawyer and wouldn't have been able to navigate applying for compensation with VOCAT or take action under sentencing act to receive compensation. Even as a lawyer I found it difficult to access resources and information on the latter particularly.'

'I studied law because I wanted to effect social change and access to justice. However, I would never put myself through the time and utter depletion pursuing compensation through the justice system caused.'

– Victims' Survey respondents

For another respondent to the Victims' Survey, the legal requirements associated with obtaining compensation were onerous and contributed to re-traumatisation. This particular victim describes the psychological distress associated with the cross-examination process required by the court:



'I was involved in a ... s85B hearing under the Sentencing Act 1991. This was the process ... I had to pursue for compensation ... I found this system hideous. I ask the following question 'When the court has found a perpetrator guilty of offences, when the court has sentenced said perpetrator, when the court has witnessed me totally humiliate myself reading my victim statement at the Bar, why then do victims need to go to trial to prove our psychological injury in order to be compensated for pain and suffering? Why did... I need to relive all that detail and memory of our experiences starting at the beginning again with a court appointed psychiatrist. This experience brought me to the brink, the flashbacks still remain magnified of this experience, I cannot escape memories of this time even though ... years have passed. It is beyond my comprehension that we would need to prepare ourselves for cross examination about the impact of sexual abuse.'

– Victims' Survey respondent

Stakeholder views

Some stakeholders said that providing victims with legal representation for compensation claims could be beneficial.¹² Victoria Police members suggested that 'there may be advantages [to legal representation] when it comes to compensation orders and freezing of assets'.¹³

¹² Consultation Meeting 17 – Victoria Police: Session 1; Consultation Meeting 22 – Community Legal Centres: Session 1; Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People. The VOCC notes that in March 2023 the Victorian Government launched a Victims Legal Service which helps victims to access state-funded financial assistance, compensation and restitution. See Victorian Government, *Reforms we will deliver to support victims of crime* (Web Page, 15 June 2022) <<https://www.vic.gov.au/victim-support-update/reforms-we-will-deliver-support-victims-crime#delivering-a-new-victims-legal-service>>.

¹³ Consultation Meeting 17 – Victoria Police: Session 1.

Community Legal Centre (CLCs) observed that many victims remain unaware of the possible avenues for seeking compensation including ‘the Prisoner Compensation Quarantine Fund, restitution and compensations orders’.¹⁴

The Commissioner for Aboriginal Children and Young People observed that children could also benefit from having a legal representative appointed for compensation claims. The Commissioner told the VOCC that there is a specific stage after sentencing when orders for compensation for injury must be applied for but queried how children would know about this option and that in this context, ‘specialist legal advice is useful for children’.¹⁵

Victim Impact Statements (VISs)

The court must have regard to a number of factors outlined in the Sentencing Act to arrive at an appropriate sentence, including the impact of the crime on victims. The court must consider:

- the impact of the offence on any victim of the offence
- the personal circumstances of any victim of the offence
- any injury, loss or damage resulting directly from the offence.¹⁶

One way a court can determine the impact of a crime on a victim is through a VIS. Under the Sentencing Act, a victim may make a VIS for the purpose of assisting the court in determining sentence.¹⁷ A VIS outlines for the court the impact the crime had on the victim. The VIS scheme has been in operation in Victoria for nearly three decades and provides victims with the opportunity to participate in a sentencing hearing when an offender is sentenced.¹⁸

The Sentencing Act states that a VIS:

- contains particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence¹⁹
- allows the victim to tell the court about the impact of the offence on the victim.²⁰

All or part of the VIS may be read or presented to the court at sentencing. It may include photographs, drawings, poems and other material relating to the impact of the offence on the victim.²¹ VISs are presented to the judge or magistrate during plea hearings. During plea hearings, the offender’s defence counsel will also present personal matters and factors that are relevant to the accused for the judge to consider when arriving at a sentence. In the course of sentencing, the offender, or at any other time in the course of the sentencing hearing, the judge or magistrate, may read aloud any admissible part of a VIS.

A VIS is often regarded as the primary opportunity for victims to have a voice in the justice process and VISs are often referred to as a key mechanism for enhancing victims’ participation in the criminal justice system.²²

Victims’ experiences

Victims surveyed by the VOCC were asked whether they had provided a VIS to the court. Thirty-one per cent of survey respondents indicated that they had made a VIS, while over half (53 per cent) said they had not.²³ While around six per cent of survey respondents were unsure if they had made a VIS, respondents who selected ‘other’ as their response included victims who were not eligible to make a VIS (for example, no charges had been laid or the case had been withdrawn) or their cases had not yet progressed to court.

Overall, victims surveyed and interviewed by the VOCC described varying experiences of the VIS process. Responses to the VOCC’s Victims’ Survey indicated that where victims did not have a positive (or even neutral) VIS experience, they often experienced re-traumatisation or secondary harm.

¹⁴ Consultation Meeting 22 – Community Legal Centres: Session 1.

¹⁵ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

¹⁶ Sentencing Advisory Council, *Victims and Sentencing* (Web Page) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/victims-and-sentencing>>.

¹⁷ *Sentencing Act 1991* (Vic) s 8K. A victim may make a Victim Impact Statement (VIS) to the court and the court is to consider the VIS when determining the sentence for a person found guilty of an offence: *Victims’ Charter Act 2006* (Vic) s 13 (1).

¹⁸ VISs were introduced in 1994. Victims were given the right to submit a VIS to the court at sentencing hearings and the court was required to have regard to the victim’s personal circumstances in sentencing the offender: *Sentencing (Victim Impact Statement) Act 1994* (Vic) (now repealed).

¹⁹ *Sentencing Act 1991* (Vic) s 8L(1).

²⁰ *Sentencing Act 1991* (Vic) s 8L(4)(a).

²¹ Sentencing Advisory Council, *Victims and Sentencing* (Web Page) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/victims-and-sentencing>>.

²² See, for example, Department of Justice Victoria, *Victim Impact Statement Reforms in Victoria: Interim Implementation Report* (Report, 2014) 8.

²³ These figures only represent the percentage of victims completing the VOCC’s survey who had participated in the VIS process. The VOCC was unable to independently verify victims’ eligibility for making a victim impact statement (VIS).

VISs can facilitate victim participation

Victims highlighted that preparing a VIS was often an important stage of the justice process for them and a vital opportunity for participation. For example, one victim interviewed by the VOCC stated:

*'I had around two years before I got to court, so I had time to think about what I was going to say in my victim impact statement and I'm proud of what I wrote. I'm proud that I stood up in court and spoke to the courtroom directly. I don't look back and say to myself "I could have done better with that."'*²⁴

Another victim surveyed by the VOCC stated that the 'opportunity to provide a victim impact statement and to read it out in open court was a life changing day for me'.

Some victims clearly viewed the VIS as a communicative and expressive tool to be heard. Di McDonald told the VOCC that because she knew that the perpetrator would be given a copy of the VIS, that she 'did not hold back'.²⁵ A member of the Victim Survivor's Advisory Council told the VOCC about a VIS being a way to be heard and recognised:

*'Opportunity to give a VIS was meaningful. Not because it influenced sentencing but because it was the first time I used my voice and stood up to my perpetrator. And being and being recognised as a victim of crime was really meaningful for me. It felt profound to be legally acknowledged as a victim of crime.'*²⁶

Some victims felt that it was helpful for judicial officers to refer to the VIS in their sentencing remarks.²⁷ For example, one victim interviewed by the VOCC spoke about the importance of the judge addressing them personally by referring to their VIS in the sentence hearing.²⁸ Another victim told the VOCC that having the judge note their VIS during sentencing made the victim feel like the judge 'had heard me'.²⁹

Other victims felt that VISs could be used in other ways to enhance victim participation, such as used during bail hearings.³⁰

Assistance needed to make a VIS

Victims surveyed by the VOCC were asked whether they received help to understand the process of making a VIS, such as help from the police, a support worker, or the prosecution. The vast majority of respondents (66%) indicated that they did not get help to understand the process of making a VIS, as shown in **Figure 27** below.

²⁴ Interview 8 – Victim of crime.

²⁵ Interview 2 – Di McDonald – victim of stalking.

²⁶ Consultation Meeting 11 – Victim Survivors' Advisory Council.

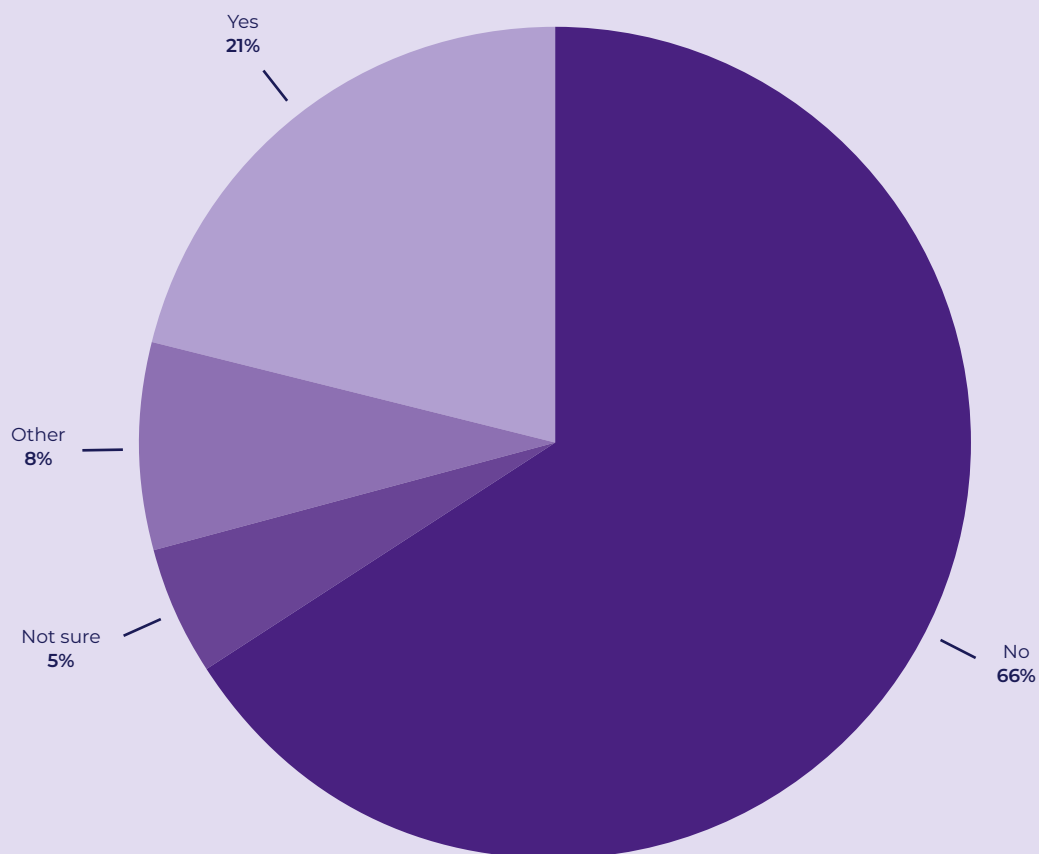
²⁷ Interview 5 – Victim of crime.

²⁸ Interview 8 – Victim of crime.

²⁹ Interview 5 – Victim of crime.

³⁰ Interview 16 – Victim of crime.

Figure 27: VOCC Victims' Survey: Did you get help to understand the process of making a Victim Impact Statement?



When looking at particular cohorts, respondents who identified as Aboriginal and Torres Strait Islander and those coming from a multicultural or migrant background both had slightly higher 'No' response rates at 70 per cent. Respondents who identified as having a disability had the highest 'No' response rate at 74 per cent.

One respondent to the VOCC's Victims' Survey indicated that independent legal representation to assist with the preparation of their VIS would have been beneficial, as would better advice surrounding the VIS and court processes:

'I should have been assigned a lawyer to assist me in the preparation of the [VIS] and to inform me that I would be asked by the court what I sought from sentencing and what these options actually meant in practice. The prosecutor asking me what I wanted 10 [minutes] before the hearing was inappropriate, I was SO traumatised from being in the same building as the stalker I could barely think or speak.'

– Victims' Survey respondent

Negative experiences making a VIS

Despite the positive experiences of some victims, a number of issues were raised by respondents to the VOCC's Victims' Survey in relation to VISs, including:

- lack of autonomy and choice surrounding the provision of the VIS to the court
- lack of independent legal advice and assistance for victims when drafting their VIS
- lack of advice/guidance provided to victims
- victims feeling unsafe while reading out their VIS
- dissatisfaction that the perpetrator did not have to respond to or acknowledge the VIS
- practical issues, such as an overseas victim being precluded from providing a VIS.

The Victims' Survey elicited diverse responses from victims about providing VISs, with some victims experiencing the opportunity as 'life changing,' whereas others felt 'totally humiliate[d]' by the experience.

Similarly, victims who were interviewed by the VOCC detailed a variety of issues relating to the VIS process, including:

- a lack of time to prepare the VIS³¹
- frustration that large sections of the VIS were objected to by defence counsel, leading to their VIS being edited or censored³²
- frustration with the limitations of the VIS, including one victim being told they could not talk about the impact of the crime on family and friends³³
- the requirement that the VIS be provided to the offender.³⁴

Although the purpose of a VIS is to assist the court in determining sentence,³⁵ many victims felt that the VIS had no impact on the sentence and that providing victims with the opportunity to make a VIS is simply a 'formality':

*'I read it out aloud in court in the hope – and this is where the naivete comes in – that it would make a difference to the sentence. It doesn't. In my belief, the sentence is decided before you even step into the County Court. The outcome is already decided. Going through the court system is just a formality.'*³⁶

Another victim described feeling like the VIS process was another 'checkbox' but was not their version of 'justice':

*'The victim impact statement is dressed up as being that's your justice. You get to stand there and say what you think and feel. But you don't because they get your statement and cross out things they don't want you to say... That's not my justice. I don't see that as justice. I read it out. I was nervous and I was trembling, but I read it out. In hindsight I wouldn't do it again because he got pleasure from hearing the distress he's caused... The whole process. It was dressed up as being really important. This tool which you know the judge will hear you. But it's part of the checkbox process to make the victim feel heard but it's superfluous.'*³⁷

Another victim surveyed by the VOCC spoke about the difficulty of participating in the VIS process, particularly for children, as well as experiencing a lack of acknowledgment by the court: 'The judge did not read any part of my or my daughters victim statement, but read from every other one submitted.'

³¹ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

³² Interview 2 – Di McDonald – victim of stalking.

³³ Interview 16 – victim of crime.

³⁴ Interview 2 – Di McDonald – victim of stalking.

³⁵ Sentencing Act 1991 (Vic) s 8K (1).

³⁶ Interview 8 – Victim of crime.

³⁷ Interview 9 – Survivor advocate.

Lack of time to prepare a VIS

The Victims of Crime Consultative Committee told the VOCC that the VIS process does not provide victims with adequate notice and support to prepare a VIS:

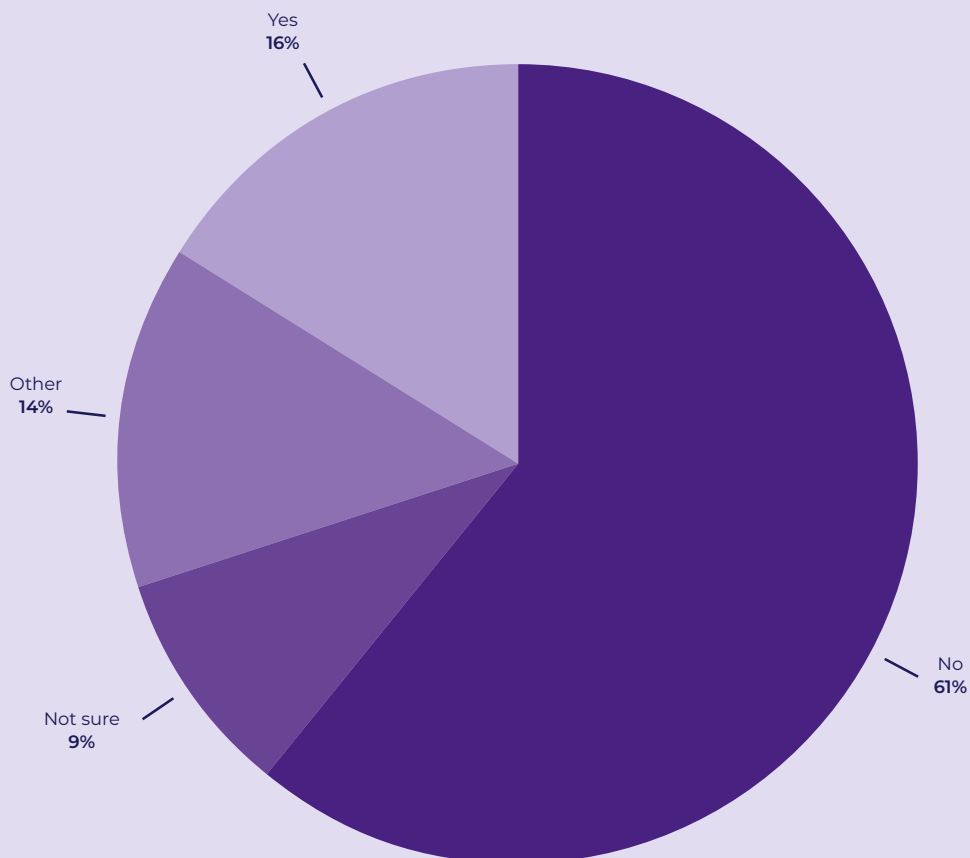
'A really good example is going to court and being told that you have to do your Victim Impact Statement tomorrow, then being told that your court supporter can't be there but not to worry as it will be ok, then being unexpectedly read a list of my deceased mother's injuries in court, followed immediately by having to present my Victim Impact Statement. It still shakes me to my core. If our WAS worker had been there, we would have known that was going to happen, but the prosecutors didn't meet with us to explain that. You're not a participant in the system. The prosecutors didn't care to meet with us or explain anything.'³⁸

'Half the time Victim Impact Statements don't get read by the court. Trying to write a Victim Impact Statement the night before court, it can be one of the most triggering things of your life.'³⁹

Reading a VIS aloud in court

The right to make a VIS was enhanced in 2011 when victims were granted the right to read it out in court or have a nominated representative do so on their behalf.⁴⁰ Victims who were surveyed by the VOCC were asked if they had been able to read out their VIS in court. Of the victims who answered this question, 61 per cent indicated that they had not, as shown in **Figure 28** below.

Figure 28: VOCC Victims' Survey: Did you get the chance to read your Victim Impact Statement out in court or have someone else read it out?



³⁸ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

³⁹ Ibid.

⁴⁰ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 19; *Sentencing Act 1991* (Vic) ss 8Q, 8R.

Of the 18 respondents who selected 'Other', the majority indicated that they either had not progressed to court or did not write one. Only one respondent indicated that they had been given the opportunity but had declined, preferring the judge to read out their statement instead.

Victims who read their VIS aloud had varying experiences, ranging from empowering to 'horrific'. One victim surveyed by the VOCC said they had experienced a particularly traumatising court experience while reading their VIS, exposing them to significant harm:



'Our perp smirked throughout proceedings at me. I asked [the judge for] a screen to give my VIS and was denied it and told [that] the judge could deny me the chance to give my VIS and would if I wanted a screen. So I had to give it facing my perp and could not get through it.'

– Victims' Survey respondent

Another victim had read their VIS out aloud but reflected that they would not do that again because the accused 'got pleasure from hearing the distress he's caused'.⁴¹

One victim was not given the opportunity to read their VIS aloud in person due to COVID-19 but told the VOCC they would have delivered the statement in person if allowed.⁴²

Use of VISs in the Magistrates' Court

A victim representative from the Victims of Crime Consultative Committee told the VOCC that victims in the Magistrates' Court are not being given the same opportunities to make VISs as victims in the higher courts:



*'I have also heard from other victims who were harmed as a result of summary offences and who feel like the court system has completely ignored them altogether. These people wanted a chance to give a Victim Impact Statement but were told they weren't able to do so for that type of offending. They therefore felt that their suffering was ignored and not taken into account.'*⁴³

Stakeholder views

VISs facilitate victims' participation

A number of stakeholders felt that VISs facilitate victim participation in the justice process. Respondents to the VOCC's Survey of Victim Support Professionals shared the following observations of the significance of VISs for victims and their positive facilitation of victim participation:

Victim impact statements are really important and assist the client to feel they have participated in the court process in addition to providing them with the opportunity to feel heard.

Victim impact statements are highly significant and where people are not given this opportunity they experience less sense of resolution in relation to the process.

VIS should always be read out in court regardless as despite outcome of proceedings it's an opportunity for the victim to finally have their voice heard within the criminal justice system.

Victims are often surprised and distressed when they realise they have little to no voice other than at the end when they can make a VIS. Many victims find providing the VIS as daunting but important to them.

Reading a VIS aloud

Some respondents to the Victims' Professionals Survey told the VOCC that despite legislative protections to ensure that victims can read the admissible sections of their VIS aloud,⁴⁴ some victims continue to be denied this opportunity:

There have been incidences where a judge has denied a request for a VIS to be read aloud in court, taking away that victim's only opportunity to have their voice heard in the court process.

I think it is important because it rarely (but does sometimes) make the magistrate or judge understand the horror the victim has gone through. Once we had a judge who wanted the sentencing quote "wrapped up by Christmas" therefore did not allow the victim to read aloud their victim impact statement. He read it in about a minute to himself. They did not return after Christmas to allow the client to read the statement or have it read aloud.

⁴¹ Interview 9 – Survivor advocate.

⁴² Interview 16 – Victim of crime.

⁴³ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁴⁴ Sentencing Act 1991 (Vic) ss 8Q, BR.

Lack of time and assistance to prepare VISs

Some stakeholders raised concerns that victims are not given sufficient time and assistance to prepare a VIS.

Stakeholders felt that assistance from a specialist victim support service is crucial to the VIS process.⁴⁵ Victoria Police members stated that with enough time and proper assistance, the VIS is 'better quality, the victim is supported, and the whole process is explained to them. But it takes time and that might take a week to facilitate.'⁴⁶

Some stakeholders raised concerns that victims are not given enough time and assistance to prepare a Victim Impact Statement.

The OPP told the VOCC that in some cases, victims are only afforded a limited time to prepare their VIS and this can create additional complications because it reduces the time available to discuss what can and cannot be included and for victims to discuss issues with support workers.⁴⁷ Importantly, the OPP also said time pressures reduce the amount of time available to discuss the need to exclude parts of the VIS that will be inadmissible: 'It is unfortunate when that discussion [about admissibility] takes place on the same day of the plea hearing, which is often already a difficult day for victims.'⁴⁸

The OPP has acknowledged that 'victim participation can be improved in instances where victims are not given sufficient time to process and understand plea resolutions, or to make Victim Impact Statements'.⁴⁹ The OPP also suggested that these time pressures can be worse in regional areas as part of the circuit trial process.⁵⁰

Victoria Police members advised the VOCC that their practice, particularly where specialised officers are involved, is to inform victims in advance that they may need to prepare a VIS quickly. Nonetheless, Victoria Police members noted that only having a short time to prepare a VIS can be very traumatic:

It can be extremely confronting for them, or traumatic for them to have to summarise what may have been the worst experience they've ever lived through with a 24 hour turn around and then have to get that witnessed by an authorized witness which is often going to your local police station and speaking to a uniform officer at the front desk who's got no knowledge of it. So I think in some senses there are practical implications in terms of getting the victim impact statement done on the hop, so to speak.⁵¹

Victims' Professionals surveyed by the VOCC similarly observed that victims often do not having enough time to properly prepare a VIS:

VAP workers are asked to get a VIS done the day before it's needed at court some victims require a longer time to express their thoughts and feelings and not seemed rushed.

It's highly important clients are given as much notice as possible when they have the opportunity to complete a victim impact statement to allow them ample time to complete this.

We often get referrals from police or the OPP to assist clients with VISs in a very limited time. This needs to be thought of long beforehand because sometimes it's already too late to submit it to the court.

Community Legal Centre (CLC) representatives suggested victims' VIS experiences varied in terms of the support and encouragement received from Victoria Police. In this context, CLC representatives suggested cultural changes from the Victims' Charter amendments are not flowing through to greater information provision for victims in relation to VISs:

We haven't seen much of a change since the Charter amendments included naming victims as a participant. Victims are still feeling unheard. These cultural changes have not happened. Sometimes we have great informants who are proactive and keep victims up to date, and explain Victim Impact Statements, but more often than not, we're not seeing victims in this position.⁵²

The VIS remains an area where some stakeholders suggest victim participation could be improved with the availability of an independent legal representative to inform a victim about what can and cannot be included in a VIS.⁵³ Victim support workers, who are generally not legally trained, assist victims with their VISs but according to Associate Professor Kerstin Braun, leaving questions of admissibility to victim support workers places them in a difficult or 'risky' position.⁵⁴

45 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria; Consultation Meeting 18 – Victoria Police – Session 2.

46 Consultation Meeting 18 – Victoria Police – Session 2.

47 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

48 Ibid.

49 Ibid 13

50 Ibid.

51 Consultation Meeting 18 – Victoria Police – Session 2.

52 Consultation Meeting 22 – Community Legal Centres – Session 1.

53 Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast; Consultation Meeting 16 – Victoria Legal Aid.

54 Consultation Meeting 1 – Associate Professor Kerstin Braun.

Braun also argues that an independent legal representative for victims could also be of assistance if a victim is cross-examined on aspects of a VIS.⁵⁵ Although cross-examination may not occur very often on a VIS, it would be a very traumatising experience for a victim – ‘perhaps equally as bad as the cross examination during the trial. Perhaps even worse, because it’s all about how someone felt or how impacted they were.’⁵⁶ Again, as Braun suggests, in these circumstances ‘legal representation would be a very good thing or perhaps even to avoid getting to this point if they were given some legal assistance before they submit the VIS.’⁵⁷

VISs not fully utilised in the Magistrates’ Court

Consistent with previous research,⁵⁸ stakeholder consultations suggested victims in the Magistrates’ Court are not able to participate in the VIS process as set out in the Victims’ Charter and the Sentencing Act.

Victims who wish to make a VIS in summary proceedings frequently have a very short time in which to do so. This is due to the fast pace of summary proceedings and the legislated timing requirements for making a VIS. Victims are advised to provide a VIS after an offender is found guilty, but it also needs to be provided a reasonable time before the offender is sentenced. However, in summary proceedings it is common for an offender to plead guilty and be sentenced on the same day. As indicated in the Department of Justice and Community Safety’s 2021 report *Improving Victims’ Experience of Summary Criminal Proceedings*, victims may not have an opportunity to make a VIS, or the opportunity may arise before they feel ready to make one.⁵⁹

Court Network told the VOCC that in their experience, VISs are almost non-existent in the Magistrates’ Court. One very experienced Court Network representative could not recall a single instance of a VIS being mentioned in the Magistrates’ Court or a magistrate referring to it in over 10 years of work.⁶⁰

Windermere Victims Assistance Program (VAP) observed that during and after the COVID pandemic, the opportunity for victims to provide a VIS in the summary jurisdiction was very limited:

Unfortunately with COVID, with the backlog of cases, particularly in the summary jurisdiction, we are having experience where the courts are finalising matters far more frequently at mention hearings. There’s absolutely no opportunity for victims to submit a victim impact statement. They don’t even know that it’s been finalised. They often don’t find out for a number of weeks. So as you can appreciate, it’s really traumatic in a system where the victim is not heard until their victim impact statement is submitted to the court. So again, it just contributes further to their trauma.⁶¹

Victoria Police members also told the VOCC that magistrates rarely adjourn matters to allow a VIS to be prepared.⁶² Furthermore, Victoria Police members told the VOCC that in their experience, VISs are not universally respected by judicial officers:

not all magistrates are interested in Victim Impact Statements. Recently, one Magistrate was heard online saying “you’ve seen one Victim Impact Statement, you’ve seen them all”. The victim heard this comment and was devastated by it.⁶³

Responses to the VOCC’s Victims’ Professionals Survey also suggest that victims do not have the same opportunity to provide a VIS in the Magistrates’ Court as in the higher courts. When surveyed about whether victims in the Magistrates’ Court are given the same opportunity to make a VIS as victims in the higher courts, there is a clear discrepancy between jurisdictions, as evident in **Figure 29** below.

55 At the request of the offender, or the prosecutor, a victim who has made a VIS may be called to give evidence. This also applies to a person who has made a VIS on behalf of a victim, or a medical expert who made a medical report attached to a VIS and who is a witness in support of any matter contained in a VIS. A victim (or other person) who is called to give evidence in relation to the content of a VIS, may be cross-examined and re-examined: *Sentencing Act 1991* (Vic) ss 80, 8P.

56 Consultation Meeting 1 – Associate Professor Kerstin Braun.

57 Ibid.

58 Department of Justice Victoria, *Victim Impact Statement Reforms in Victoria: Interim Implementation Report* (2014) 25; Victims Support Agency (Victoria), *A Victim’s Voice: Victim Impact Statements in Victoria* (Report, October 2009) 43.

59 Department of Justice and Community Safety (Victoria), *Improving Victims’ Experience of Summary Criminal Proceedings* (Final Report, November 2021) 31.

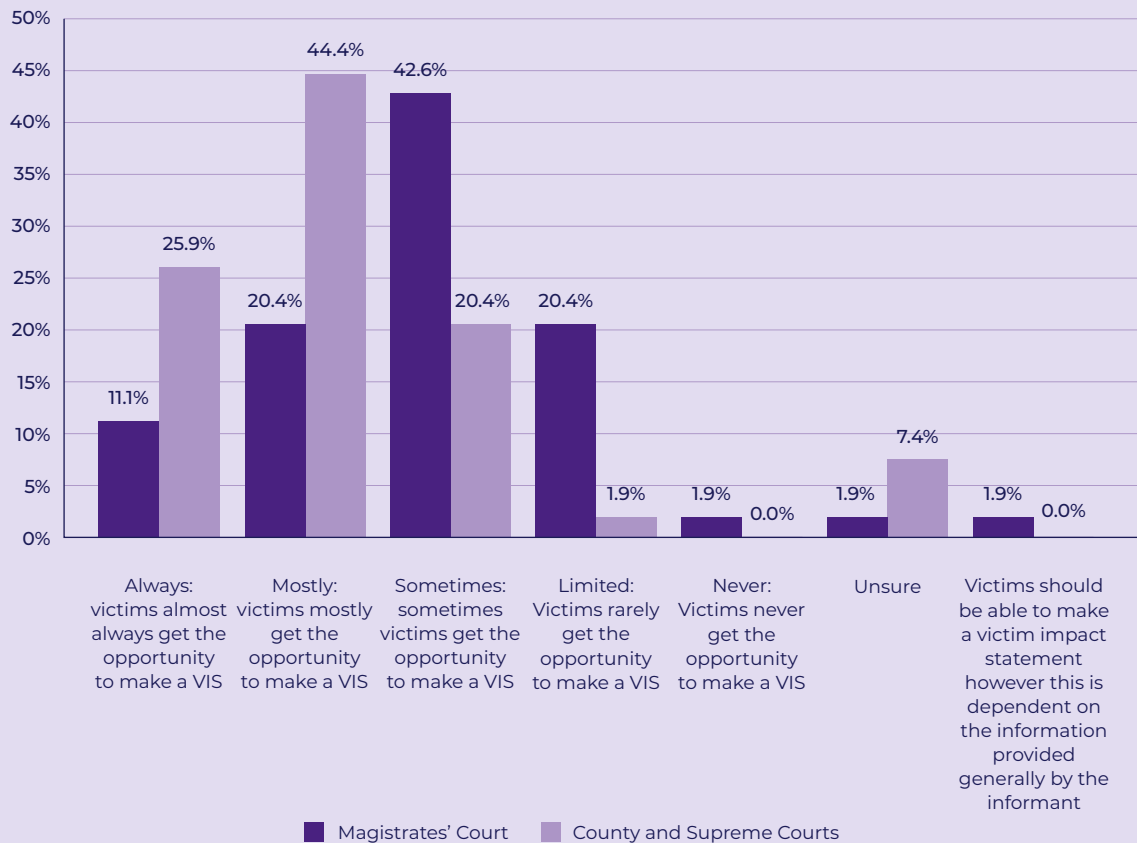
60 Consultation Meeting 12 – Court Network.

61 Consultation Meeting 21 – Windermere Victims Assistance Program.

62 Consultation Meeting 17 – Victoria Police – Session 1.

63 Consultation Meeting 18 – Victoria Police – Session 2.

Figure 29: VOCC Victims’ Professionals Survey: Victims are provided with the opportunity to make a Victim Impact Statement (including reading it aloud) where this is their wish (Magistrates’ Court versus higher courts).



As shown in **Figure 29** above, 43 per cent of respondents to the Victims’ Professionals Survey indicated that victims sometimes get the opportunity to make a VIS in the Magistrates’ Court, but it can be variable. When asked the same question relating to the County and Supreme Courts, responses clearly favoured “Mostly” (44 per cent) and “Always” (26 per cent) – totalling 70 per cent combined.

Victims’ professionals surveyed by the VOCC stated that the uncertainty and high turnover of cases in the summary jurisdiction make it very difficult to prepare timely VISs, with some victims even missing out on the opportunity entirely. They provided the following observations about the difficulties with supporting victims to prepare a VIS in the Magistrates’ Court:

Unfortunately now that things are moving through the courts rapidly to catch up on the backlog after COVID there have been things that have moved from Plea to Sentencing without the opportunity to submit Victim Impact Statements and this leaves the Victim feeling unheard and questioning what the point of them is if they aren’t even considered in the process.

Its hard to support a client to complete and submit a VIS in a timely fashion in the magistrate’s court where the hearing and sentencing may occur in one sitting...

VIS in Summary jurisdiction - can be tricky to navigate as it is rarely certain when the matter will be finalised and therefore if a VIS is completed it is often before there is a guilty plea/finding...

[We’re told] not to hand them up too early as should be used when person found guilty but this doesn’t sit well with the magistrates court as someone can plead guilty at a mention and the matter can be finished.

The timing of the VIS is also difficult. if a victim completes it to early and submits it, it is then required to be shared with defence. However at the moment, courts - particularly the Magistrates’ Court is not giving victims ANY opportunity to complete a VIS when a matter resolves. I have a number of examples of Victims not being given time to submit a VIS...

Why are courts excluded from having to comply with the Victims Charter?

Victims should be given every opportunity to participate and have their say. Magistrates Courts tend to be a bit more dismissive and 'nonchalant' about Victim Impact Statements and will at times move a matter through the court to its conclusion without consideration for the victim...

I've had police tell me that Victims aren't able to do a Victim Impact Statement for summary offences. Some police officers are better than others when it comes to keeping the victim in the loop, particularly with summary offences.

Victims often do not get an opportunity to provide a victim impact statement to attach to a brief for a Magistrates hearing and this can be a concern if the accused pleads guilty and the matter is resolved at the first mention.

Adjourning proceedings to facilitate VISs

Victoria Police members advised the VOCC that they support the use of adjournments to enable victims to prepare a VIS, observing that a 'right of adjournment for Victim Impact Statements in the summary jurisdiction' does not exist in Victoria.⁶⁴ Victoria Police members advise that it can be a high bar to overcome to obtain an adjournment in the summary jurisdiction:

We need a persuasive argument to press for an adjournment for a Victim Impact Statement for a matter that's not a sex crime. If it was a property crime, forget it. If it was a moderately serious offence against the person, it would be completely unsurprising to get knocked back to get an adjournment for a Victim Impact Statement. The message coming from the bench is that it's just not possible. The magistrate might be less likely to completely disregard the request for adjournment if it's an offence against the person.⁶⁵

Judicial representatives advised the VOCC that they are now increasingly adjourning matters to allow victims to prepare and deliver a VIS:

In the last couple of weeks I was asked to adjourn matters because victims wanted to turn up and read their statements and I haven't seen that in a long time. One victim reneged but still participated online and the prosecutor read her Victim Impact Statement. Another victim who was quite distraught participated and was told that she could take the time she needed or stand or sit where it suited and she got through it.⁶⁶

However, adjournments alone will not necessarily improve victim participation because victims still need to be allowed sufficient time and assistance to prepare their VIS, even if an adjournment is secured. Victoria Police members provided the following case example illustrating this point:

In one case, a judge adjourned overnight and told the victim to prepare a Victim Impact Statement overnight but this left the victim feeling off guard and rang the local police station in tears asking for help. Victoria Police members helped the victim as best they could but the victim has now withdrawn the Victim Impact Statement because they did not have enough time and felt unprepared and under too much pressure. This victim will never feel heard and that's just not fair. It's not fair for the victims.⁶⁷

Early preparation of VISs

If a VIS is prepared, the prosecutor is required to provide a copy to the court and the offender (or their legal practitioner).⁶⁸ It is also possible that a victim may be cross-examined on the contents of the VIS.⁶⁹

Victoria Police members told the VOCC that while VIS use is increasing, there remains 'an issue around when do we prepare them?' Victoria Police members also explained why early VIS preparation is not encouraged:

As a general rule, Victim Impact Statements are not taken from victims before the matter has been finalised, as the Victim Impact Statement, which has been made in good faith by the victim, can end up as part of the material being used in cross-examination in a contested hearing. That is incredibly unfair and offensive for victims. We don't want to facilitate that happening.⁷⁰

Victoria Police members told the VOCC that preparing a VIS before a finding of guilt 'can leave a legal loophole', but they also indicated that without early preparation, 'a Magistrate will rarely grant an adjournment to allow a victim time to prepare one'.⁷¹

One judicial representative suggested, however, that the process of not preparing a VIS early was 'artificial' and antithetical to a victim's recovery:

If this is to be trauma informed then the Victim Impact Statement can't be weaponised at a later point or become discoverable before the trial has started. It should be that victims can write what they are feeling when they are feeling it not when we let the flag down and say 'go'. They are entitled to say to social workers and counsellors what they feel. It is artificial to not have a Victim Impact Statement when the victim wants to write it and to effectively bar that the prosecution has to say 'don't write it don't write anything' because it can be weaponized through the adversarial system.⁷²

⁶⁴ Consultation Meeting 18 – Victoria Police – Session 2.

⁶⁵ Consultation Meeting 18 – Victoria Police – Session 2.

⁶⁶ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁶⁷ Consultation Meeting 17 – Victoria Police – Session 1.

⁶⁸ *Sentencing Act 1991* (Vic) s 8N.

⁶⁹ With certain alternative arrangements available for victims including giving evidence remotely, screens, a support person, limiting numbers in court, no robes and legal practitioners seated: *Sentencing Act 1991* (Vic) s 8S.

⁷⁰ Consultation Meeting 18 – Victoria Police – Session 2.

⁷¹ *Ibid.*

⁷² Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

Victims' professionals are also aware of the issues associated with the early preparation of a VIS, with one respondent to the Victims' Professionals Survey noting that 'the early preparation of a VIS can be harmful to victims. It is my understanding that if a VIS is submitted too early defence can get hold of it and potentially use it against the victim.' Respondents to the Victims' Professionals Survey expressed concern about the defence being able to receive the VIS prior to the plea and to cross-examine a victim on their VIS.

The issue of defence access to a VIS is not restricted to Victoria. The ACT Victims of Crime Commissioner's Office told the VOCC that it:

ha[s] also had clients who have poured their heart out in their victim impact statement but didn't realise that they could be cross examined on it, and that the offender would get a copy. When clients are informed of this, they may not want to provide the statement because of concerns that the offender will get some sort of form of gratuitous satisfaction from reading it. Whereas if the process had been explained and spoken about early with the client, they could have made an informed decision early on about whether to give a VIS, and what to say in it.⁷³

CLCs advised that victims need more comprehensive advice on the defence's access to VISs.⁷⁴

Children and VISs

The Alannah and Madeline Foundation (the Foundation) raised the important issue of children having their own separate right to prepare a VIS for court proceedings. The Foundation advised that children can often be overlooked in the VIS process, even when they have prepared their own VIS (separately from a parent or guardian).⁷⁵ The impact on children can be profound if they have taken the time to write down their experiences of a crime and have it go unnoticed or unrecognised by the court:

it's absolutely demoralizing for a child or young person if they take the time to either tell somebody or write something down in a victim impact statement and then have it taken no notice of in the courtroom. That happens again and again. This is what VAPs [Victims Assistance Programs] tell us happens – and that's still quite recent. Children think: why did they ask me to do a victim impact statement, if they weren't going to do anything with it?⁷⁶

As the Foundation also highlights, these child victims may have told their stories multiple times throughout the justice process and 'that in itself is traumatic, and for children, that's additionally difficult'.⁷⁷

The Foundation observed that many children have lost trust and faith in the justice process and more is needed to promote and support them to make a VIS:

We also need to recognise those children and young people who've been through the child protection system, particularly older ones, who have no trust in institutions and have been asked many times what they wanted and didn't get it. And who are pretty mistrustful of most adults but in particular those who are representing the kind of the systems that make decisions about them. So simply saying, "Oh well, there's a victim impact statement – you can do it if you want to or not do it" is not enough. There needs to be a fair bit more support for that to be a meaningful and trusted process for them.⁷⁸

Admissibility of VISs

The Sentencing Act provides that the court may receive the whole of a VIS, even if it contains inadmissible material.⁷⁹ However, when the victim (or a nominee) or the prosecutor reads a VIS aloud in court, the court may direct that certain parts of the VIS are inadmissible and cannot be read aloud.⁸⁰ This process leaves some victims feeling censored.

The Centre for Innovative Justice (CIJ) told the VOCC that issues of admissibility can have profound impacts on a victim:

In relation to VISs, if you said to anyone on the street "if you experience a crime you get to tell the court the impact it's had but the court is potentially going to take out bits of it and the court determines what bits get through", then imagine what that does to people.⁸¹

Acknowledging the legitimate procedural reasons for why some parts of a VIS may be deemed inadmissible, the CIJ recommended that more can be done to explain this process to victims. Without such support for victims, 'it is another example of disempowerment and lack of control and validation'.⁸²

Some judicial representatives felt that over time there had been an improvement in limiting the content of VISs to admissible materials, which 'results in much less distress' for victims over arguments about the content of VISs at the plea hearing.⁸³ One judicial representative observed that 'the quality of the Victim Impact Statement has changed – they are more detailed and accurate in that they only address matters

73 Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

74 Consultation Meeting 22 – Community Legal Centres – Session 1.

75 Consultation Meeting 9 – Alannah and Madeline Foundation.

76 Consultation Meeting 9 – Alannah and Madeline Foundation.

77 Ibid.

78 Ibid.

79 *Sentencing Act 1991* (Vic) s 8L(5)(6).

80 Ibid sub-ss 8Q(1), (2), (3).

81 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

82 Ibid.

83 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

prompted to answer'.⁸⁴ Another judicial representative also commented that 'the quality of the Victim Impact Statement has certainly improved' resulting in fewer disputes about admissibility.⁸⁵

Impact of plea negotiations on VISs

When a plea negotiation occurs, one or more charges may be removed from the list of charges laid by Victoria Police against an accused. This has consequences in relation to VISs, as Associate Professor Asher Flynn and Professor Arie Freiberg explain:

From a victim perspective, and also from the perspective of the general public, to think that defence counsel and a prosecutor can get together and come up with a new version of facts to describe what occurred, which can mean that the victim doesn't, therefore, get part of their victim impact statement taken into account, or it might be completely at odds with how they feel that the crime occurred e.g. what happened, how it impacted on them?⁸⁶

Windermere VAP similarly observe the impact on victims when charges of crimes against the person are withdrawn as part of a plea negotiation process:

One of the other things that really impacts is victims experience charges being amended at court, particularly again in the summary jurisdiction. There can be cases where there's property offences and then there's also crimes against the person offences or charges. Those crimes against the person are actually withdrawn on the date leaving just the property offences to proceed, which completely invalidates that person's victim impact statement and a lot of work goes into these victim impact statements. They're not easy to do. And again, it's something that can be really distressing for victims to experience.⁸⁷

Victims' participation, VISs and mitigating factors

During a plea, mitigating factors may be submitted by the defence with the aim of reducing the severity of a sentence.⁸⁸ Mitigating factors may include details about a person's background (e.g. age, socioeconomic disadvantage, good character etc).⁸⁹

Victoria Police members and victims' professionals told the VOCC that victims are often dismayed that defence counsel is able to offer numerous mitigating factors 'unchallenged' while victims can experience their VISs being challenged, leaving them feeling that there is a clear imbalance at this stage of the court process. Victoria Police members observed:

Someone should be explaining to victims [the plea] process in more detail. They get frustrated – it's all about the accused in court. The barrister will be at the court rolling off mitigation with no evidence given. There needs to be some evidentiary basis for this rather than just rattling on about personal circumstances never verified. This is one of the most common complaints from victims.⁹⁰

Quite often in closing arguments the defence will explain the offender's challenging background. You might often hear the defence saying things like "he was in a home when he was young and he was sexually abused and he had this hard life". The court will generally accept such statements as truthful but who knows if they are or not? I have an example when a Victim Impact Statement strayed a little from the offence and the judge cut the victim off, but the defence can enter evidence about the accused's childhood which appears later in the judge's summary. There seems to be a lack of balance.⁹¹

Victoria Police members' concern about the imbalance between the evidentiary treatment of mitigating circumstances for the accused and the victim's VIS was also shared by victims' professionals surveyed by VOCC. Respondents to the Victims' Professionals Survey expressed concerns about the defence submitting materials about the accused during the plea that were incorrect, causing significant distress to victims.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

⁸⁷ Consultation Meeting 21 – Windermere Victims Assistance Program.

⁸⁸ County Court of Victoria, *Sentencing* (Web Page, 25 July 2022) <<https://www.countycourt.vic.gov.au/learn-about-court/sentencing>>.

⁸⁹ Ibid.

⁹⁰ Consultation Meeting 19 – Victoria Police – Session 3.

⁹¹ Consultation Meeting 17 – Victoria Police – Session 1.

Victims' participation during sentence indications

A sentence indication is where a court indicates the sentence likely to be imposed⁹² if the accused pleads guilty prior to a trial commencing.⁹³

The court can refuse to give a sentence indication if it considers there is insufficient information before it of the impact of the offence on any victim of the offence to make a sentence indication.⁹⁴

There are obligations on the DPP when an accused applies for a sentence indication. The Victims' Charter requires the prosecution to obtain the views of a victim before the DPP makes a decision to oppose an application for a sentence indication.⁹⁵ The DPP is also to give a victim information about the matters taken into account by the DPP in making a decision to oppose an application for a sentence indication.⁹⁶

The Victims' Charter does not require the DPP to obtain the views of a victim if the DPP is *not* opposing a sentence indication. Research presented by the Sentencing Advisory Council in their 2010 report on the pilot sentencing indication scheme suggests the prosecution rarely opposes a sentence indication, meaning the views of victims on a sentence indication may be rarely sought.⁹⁷

While victims did not mention sentence indications during engagement with the VOCC,⁹⁸ stakeholders told the VOCC about the ways in which the sentence indication process obstructs a victim's entitlement to make a VIS and have the VIS taken into account at sentencing. Victoria Police members told the VOCC that sentence indications can result in victims losing the opportunity to make a VIS:

Sentence indications are often sprung on prosecutors, and when this happens, we've really lost our opportunity to get a Victim Impact Statement. Even if we did come back another day with a Victim Impact Statement, it's not going to be factored into sentence, because the indication has already been made. This is despite the recent amendments to the Charter that prioritises the prosecution's role in seeking victims' opinions.⁹⁹

Similarly, the OPP noted the inherent challenge of accommodating sentencing indications – which have been expanded from the Magistrates' Courts to the higher courts – with VISs. The OPP told the VOCC that sentence indications 'assist in the timely resolution of matters, however they do not sit neatly with the right of victims to provide a VIS'.¹⁰⁰ The OPP advised that it seeks to ensure the impact on a victim is still taken into account in this process by consulting with victims ahead of any sentence indication hearing, including ascertaining whether their VIS would include any reference to ongoing physical or psychological impact.¹⁰¹

Judicial representatives told the VOCC that there is an inherent tension in the sentence indication process in that a sentence indication is a tool to bring about an early resolution, but the impact of the crime on a victim may not be known at that early stage and it may not be practical to delay matters for the purposes of seeking information about impact on the victim.¹⁰²

One judicial representative noted that a sentence indication can be refused if not enough information is provided about the impact of the crime on the victim but noted this poses a challenge to the court to comply with legislative provisions that aim to 'bring about a resolution but if you don't know about what the [victim] impact is then you're really not informed enough to give the proper indication'.¹⁰³

Judicial representatives told the VOCC that there is an inherent tension in the sentence indication process whereby a sentence indication is a tool to bring about an early resolution, but victim impact may not be known at that early stage.

92 The sentence type or sentence or maximum total effective sentence: *Criminal Procedure Act 2009* (Vic) s 207.

93 *Criminal Procedure Act 2009* (Vic) s 207.

94 *Ibid* s 208.

95 *Victims' Charter Act 2006* (Vic) s 9B(1)(ca).

96 *Ibid* s 9B(2)(c).

97 Sentencing Advisory Council, *Sentence Indication: A Report on the Pilot Scheme* (February 2010) [51] - https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentence_Indication_A_Report_on_the_Pilot_Scheme.pdf. This is an area with little research or evidence, particularly since the *Criminal Procedure Act 2009* (Vic) was amended in 2022 to expand sentence indications to the higher courts: Part 5.6 of the *Criminal Procedure Act 2009* (Vic).

98 David Estcourt, 'Top Prosecutor Backs Law Change to Protect Victims after Joffa Case', *The Age* (28 February 2023); David Estcourt, 'Survivor Urges Prosecutors to Appeal Sentence after Joffa Avoids Prison', *The Age* (27 February 2023).

99 Consultation Meeting 18 – Victoria Police – Session 2.

100 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 8.

101 *Ibid*.

102 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

103 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

Diversion programs

In Victoria there are a range of court-based diversionary programs which provide the Magistrates' Court and the Children's Court with alternatives to trial and sentencing.¹⁰⁴ For example, the diversion stream in the Children's Court enables some young offenders to participate in diversionary programs as an alternative to a custodial sentence¹⁰⁵ and the Criminal Justice Diversion Program operates in the Magistrates' Court with the aim of enabling individuals to avoid a criminal record and to access rehabilitation or treatment.¹⁰⁶

An accused is eligible for the Criminal Justice Diversion Program in the Magistrates' Court if:

- the offence is triable summarily and not subject to a mandatory or fixed sentence or penalty (except demerit points)
- the defendant acknowledges responsibility for the offence
- there is sufficient evidence to gain a conviction.¹⁰⁷

Where a charge involves a victim, the court seeks the victim's views including:

- whether the victim agrees with the course of action
- the amount of compensation sought for damage to property
- how the crime has affected the victim.

Victims are not obliged to respond to the court's contact.¹⁰⁸

Although there is no plea of guilty (and no sentencing at this stage), for many victims diversion is closely aligned with sentencing because the accused acknowledges responsibility for the offence and the court seeks the views of victims (similar to the victim impact statement process). A diversion hearing is conducted in open court before a magistrate and the magistrate may require the offender/accused to apologise to or compensate the victim.¹⁰⁹

Despite the legislative requirement that the court must consider the impact on the victim before ordering a diversion order,¹¹⁰ the VOCC heard that not all victims felt like participants in the diversion process.

Victims' experiences

A number of respondents to the Victims' Survey indicated that when diversion was facilitated by the court, this removed their opportunity to tell the court about the impact of the crime:



'i was phoned by a police officer and asked to agree to a diversion program. I just wanted to hear that he was sorry for what he did to me and i was unrealistic as that was never going to happen.'

'i should have been able to speak about how i felt --also the police pro[se]cutor inform me or the police --the police and the pro[se]cutor should have dicussed with me his sentence and diversion...no one could tell me whos job it was i was also given the ring around by the arresting officers ... i was ignored and bullied also the court would not give me the name of the pro[se]cutor so i could ask him why [the accused] got off so lighthly assulting me leaving me with a brain injury.'

– Victims' Survey respondents

¹⁰⁴ *Criminal Procedure Act 2009* (Vic) s 59.

¹⁰⁵ *Children, Youth and Families Act 2005* (Vic) pt 5.2 div 3A.

¹⁰⁶ The Magistrates' Court also states other benefits to be restitution to the victim, reducing the likelihood of offending, and assisting community projects through voluntary work/donations: Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (Web Page, 16 March 2020) -<https://www.mcvvic.gov.au/sites/default/files/2018-10/Criminal%20Justice%20Diversion%20Program%20brochure.pdf>.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* It is noted that there is no mention of victims in section 59 of the *Criminal Procedure Act 2009* (Vic).

¹⁰⁹ Although an individual must acknowledge responsibility for the offence, they have not been found guilty.

¹¹⁰ *Children, Youth and Families Act 2005* (Vic) s 356D(4). While the *Criminal Procedure Act 2009* (Vic) does not require this explicitly, the Magistrates' Court of Victoria has indicated that its practice is to seek victims' views. This is consistent with section 59(2)(b) of the Act which states that the Magistrates' Court may inform itself in any way it considers appropriate in determining whether the accused should participate in a diversion process.

A number of respondents to the VOCC's Victims' Survey also expressed concerns about diversion being available for serious offences:



'police dropped the prosecution after the part-heard committal because the OPP decided to accept the defendant's offer of diversion for 3 counts of rape (unheard of!!) despite having a confessions and despite the Magistrate saying the matter should go to trial and that it must be resolved by way of a conviction.'

'I have seen this perpetrator get off 3 breaches, a death threat was not investigated by the Police (which I was not notified), I found out from the police. The perpetrator was granted a diversion order for sending a child sexual image and porn to a family member.'

– Victims' Survey respondents

Stakeholder views

Victims' professionals also raised issues relating to diversion programs, with one respondent to the Victims' Professionals Survey noting that:

Victims know that perpetrators will be given no punishment by the magistrate or judge, therefore they see no point in going through the trauma and effort of reporting to police. They are shown time after time that Magistrates will give their perpetrators diversion orders for fracturing their eye socket, or breaking their back, or one month in prison for shooting the leg of a child. These are real examples I have seen. They also fear the case being dropped by the prosecution after months of working with the police on statements, particularly for sexual assault.

Victoria Police members acknowledged that in the Children's Court jurisdiction, there are impediments to victim engagement because the *Children, Youth and Families Act 2005* (Vic) is primarily aimed at rehabilitating young people and minimising the harms to them of criminal intervention.¹¹¹

Prosecutors who work in the Children's Court jurisdiction advised the VOCC that there are three main impediments to victims' participation when diversion is an option:¹¹²

- **Lack of publicly available information about the case.** In Children's Court matters there is no public record or listing for a matter, so the victim has no way to check track the progress of a case – the victim is reliant on the informant who may themselves lose track of the progress of a case.
- **Diversion process does not require victim participation.** Victoria Police members advised the VOCC that they do have a diversion matrix which requires a prosecutor to take the impact of the crime on the victim into account, but there is no direct requirement for engagement with the victim and so the 'victim is a silent participant in those circumstances'. Victoria Police members also told the VOCC that 'there are issues with victims being party to the diversion process that doesn't legislatively require them to be involved'.
- **Online hearings.** During COVID-19 restrictions, Victoria Police members told the VOCC that Children's Court matters were heard online and that practice did not allow for the informant to be contacted and be informed, so the victim would not be advised.

Sentencing decisions

Although victims can have a voice in sentencing through VISs, victims do not have a role in determining sentence.

Nonetheless, victims told the VOCC about how the impacts of sentencing decisions can significantly affect not only their perceptions of participation, but of justice overall.

¹¹¹ See, e.g., *Children, Youth and Families Act 2005* (Vic) ch 5 (Children and the criminal law) div 3A (Diversion).

¹¹² Consultation Meeting 18 – Victoria Police – Session 2.

Victims' experiences

While it is a well-established pillar of the adversarial process that sentencing decisions are made by an impartial and objective decision maker,¹¹³ many victims told the VOCC that they felt betrayed by lenient sentences which did not reflect the offending. For example, one victim interviewed by the VOCC struggled to reconcile: 'trying to live with something like a Community Corrections Order for 100 hours when this person killed your child because of their reckless driving. Of course, it's not right.'¹¹⁴

Victims surveyed by the VOCC spoke about their feelings that sentence were inadequate:



'Minimal sentences inadequate for the crimes'

'he got off with a good behaviour bond. the judge said my approx 1000 cases of rape were not too bad because luckily it was by a family member.'

'The court system not sentencing and always releasing.'

'by manifestly inadequate sentencing result in us being placed in more fear for our safety.'

'Our perp had all his CCO hours written off due to covid so in practice he received no sentence at all.'

– Victims' Survey respondents

Interviews with victims of crime revealed that it can also be difficult for victims to accept reductions in sentence for offenders who plead guilty. This is exacerbated when offenders plead not guilty, delay proceedings, have a committal hearing and then plead guilty only to receive a discount.

Victims also expressed concerns that there was undue emphasis on the offender's rehabilitation as opposed to punishment, with Caterina Politi stating: 'there are the factors of sentencing. Punishment and deterrence and denunciation, and yes, rehabilitation. But do the punishment first. Then you can rehabilitate, but they're not doing that.'¹¹⁵ One respondent to the VOCC's Victims' Survey stated: 'There needs to be increased accountability for perpetrators and sentencing to represent the heinous nature of the crime'.

¹¹³ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 151.

¹¹⁴ Interview 12 – Victim of crime.

¹¹⁵ Interview 7_ Caterina Politi.

Overview of Chapter 10: Post-sentencing

Victims Register and parole

The Victims Register enables some victims to be placed on a register and receive certain information about an imprisoned offender. The *Victims' Charter Act 2006* (Vic) (Victims' Charter) outlines victim entitlements with respect to the Victims Register.

Despite the Victims' Charter entitlements, the VOCC heard there may be limited awareness of the Victims Register. This is consistent with previous research.

Some victims feel the Victims Register is too limited and does not give them enough information. The VOCC also heard that some victims on the Victims Register did not get the information they needed to feel safe.

Custodial management and parole

Some victims spoke about challenges with the Victims Register and the parole process which had impacted on their participation.

10

Chapter 10:
Post-sentencing



Introduction

This chapter explores victims' participation after the trial or court process, specifically victims' participation while an offender is under the supervision of Corrections Victoria (whether in prison or under community-based supervision) and when a prisoner is eligible for parole.

When offenders are sentenced and enter the corrections system, whether through a custodial or non-custodial sentence, participation for victims of crime can be challenging as there is a limited role for victims, but participation during this time is important for victims' sense of safety, voice and procedural fairness.

For some victims, participation at this point in the justice system, may include:

- being on the Victims Register and being kept informed about the offender while the offender is in custody
- making a submission to the Adult Parole Board when the offender is considered eligible to be released from custody.

As outlined in detail below, the *Victims' Charter Act 2006* (Vic) (Victims' Charter) provides victims with entitlements with respect to the Victims Register.

Victims Register

The Victims Register is governed by the *Corrections Act 1986* (Vic) which provides that victims may be entitled to be told:

- details about the length of the prisoner's sentence and of any other sentences of imprisonment that the prisoner is liable to serve¹
- the date on which, and the circumstances in which, the prisoner was, is to be or is likely to be released for any reason (including release on bail, custodial community permit or parole)²
- when a prisoner escapes during their sentence.³

The Victims Register is only available to victims of certain offences, including violent crimes such as assault, sexual offences or armed robbery.⁴

Victims are not provided with information about:

- which prison the offender is in
- where the offender will live when they are released
- details of any program the offender attends or completes
- details of any assessments about the offender
- details of any appeal hearings related to the case
- details of court hearings for any other crimes the offender may have committed.⁵

The Victims Register also facilitates the participation of victims of crime in decision-making processes about parole and post-sentence supervision, discussed further below.

Section 17 of the Victims' Charter also outlines victims' entitlements with respect to the Victims Register. In particular, the Victims' Charter sets out the following information for victims:

- a victim of a criminal act of violence⁶ may apply to be included on the Victims Register⁷
- a person on the Victims Register may be given information about the offender including the length of sentence, the likely date of release and the making of an extended supervision order, a supervision order or a detention order⁸

¹ *Corrections Act 1986* (Vic) s 30A(2)(a).

² *Ibid* s 30A(2)(b).

³ *Ibid* s 30A(2)(c).

⁴ Eligibility for the Victims Register includes being affected by crime such as: assault; armed robbery; stalking; kidnapping; family violence; threats to kill; sexual offences; culpable driving; manslaughter and murder: Victims of Crime, *Victorian Victims Register – Offender Information* (Web Page, 9 May 2023) <<https://www.victimsofcrime.vic.gov.au/after-court/victorian-victims-register-offender-information>>.

⁵ Victims of Crime, *Victorian Victims Register – Offender Information* (Web Page, 9 May 2023) <<https://www.victimsofcrime.vic.gov.au/after-court/victorian-victims-register-offender-information>>.

⁶ Within the meaning of the *Corrections Act 1986* (Vic) s 30A.

⁷ *Victims' Charter Act 2006* (Vic) s 17(1).

⁸ *Ibid* s 17(2).

- if the Adult Parole Board is considering ordering the release on parole of an imprisoned offender who has committed a criminal act of violence, a person on the Victims Register may make a submission to the Board about the effect of the offender's potential release and the Board is to consider any submission received⁹
- a person on the Victims Register may make a submission to the Post Sentence Authority for consideration regarding an offender who is subject to an extended supervision order, a supervision order, detention order or an emergency detention order.¹⁰

Victims' experiences

Victims unaware of the Victims Register

Previous research has highlighted that only a small proportion of victims use the Victims Register.¹¹ One respondent to the Victims' Survey referred to their lack of awareness of the Victims Register:

'I am also unaware of what a Victims Register is, despite being a victim of crime on multiple occasions, so would recommend that the existence of the Register be disseminated more widely amongst the public.'

– Victims' Survey respondent

Victims Register too limited

Caterina Politi was frustrated about the limitations of the Victims Register, stating:

*'Well we could have been told that he's applied for sports day leave, but we weren't. And I don't think that is part of the victims register. The victims register is only when they apply for parole. I would like to see more rights included on the victims register so you know they're going to be released.'*¹²

Caterina Politi suggested the rights accorded to victims on the Victims Register were too limited, and would like to see them expanded to include a requirement to notify victims when offenders are granted day release for work or sporting purposes.¹³

Caterina Politi also raised practical issues relating to the registration process for the Victims Register, noting that the even completing the form was a major barrier:

*'It took me over 12 months to complete that form to be on the victims register. I couldn't write [the offender's] name down on that form ... I thought no, I've got to do it. I've got to do it for [my loved one], so I did it. But you know, people think it's just a name. But I just couldn't write his name down.'*¹⁴

Another victim interviewed by the VOCC raised concerns about the fact that victims whose matters proceed via the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) are not eligible for the Victims Register: 'because we're not victims, you must understand we can't even go on the victims register'.¹⁵

⁹ Ibid s17(3).

¹⁰ Ibid s17(4).

¹¹ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 204.

¹² Interview 7– Caterina Politi.

¹³ Interview 7– Caterina Politi. The Victorian Government's Victims of Crime website states: 'If an offender is being considered for a permit to participate in a community team sport program, Corrections Victoria will liaise with the Victims Register to establish if there are any victims on the Victims Register that need to be considered in relation to a decision about whether to grant approval for a permit.' Notifications from the Victims Register relating to Community Team Sport Program Permits started from 1 January 2020: Victims of Crime, *Victim Notifications for Custodial Community Team Sport Program Permits* (Web Page) <<https://www.victimsofcrime.vic.gov.au/after-court/victims-register-offender-information/victim-notifications-for-custodial-community-0>>.

¹⁴ Interview 7 – Caterina Politi.

¹⁵ Interview 5 – Victim of crime.

Not receiving information from Victims Register

The VOCC was told by some victims about issues with receiving information from the Victims Register. One victim interviewed told the VOCC that the offender was released without their knowledge:

'In the end, he was actually released two weeks before his given date, so he was out and about for two weeks. Then we weren't aware of the fact he knew our address because we're not allowed to know anything. That's what I was told – that he knew where we lived.. Just absolutely no level of concern for health, safety or our deepest thoughts and worries about him now being out. We weren't prepared in any way, shape or form to know what should happen if he crosses over into our workspace or if he's on the train or whatever. What are we supposed to do?'¹⁶

A Victim Survivors' Advisory Council member told the VOCC about their experience with the Victims Register and their fears for their personal safety after not getting the notification they expected about the offender's release.¹⁷

Stakeholder views

Victims Register enhances participation

Victims Services staff told the VOCC that key to participation for victims is choice and opportunity:

Participation is about providing victims with opportunities. In the context of the Victims Register that means providing opportunities for victims to go on the Register, opportunities to provide submissions, to provide information to the Parole Board, the Post Sentence Authority and the courts. We need to also consider what weight the participation has to ensure that the participation is being meaningfully provided and that it holds merit ... The feedback we constantly receive is that that choice to participate is key for victims of crime.¹⁸

Victims Services staff also told the VOCC that participation must be 'meaningful' as the Victims Register is a 'registered service where submissions must be considered, so that forms a lot of the dialogue with victims in that context. It is about ensuring that value and validity is added to a victim's participation.'¹⁹

Victims Services staff also made a distinction between victims who wish to be informed and victims who wish to actively participate, noting both positions need to be approached through a trauma-informed lens:

Lots of people use the register to gain information rather than for participation. Not all victims are interested in participation, some victims hold more value in relation to the information they receive from us and being kept informed.²⁰

The VOCC was told about planning managed by Victims Register staff to facilitate victim participation. For example, if a victim is attending a court hearing online or in person, a range of safety measures are discussed and facilitated prior to that hearing:

This might be making sure that we have discussed with the victim beforehand that they should login with their camera off. In the post sentencing space, the offender would be the last person brought into the court, so when the judge's associate acknowledges everyone in attendance in court, the victim could turn their video on briefly, then turn it off, and then offender comes into court/logs in via video link. This has worked really well – making sure that those processes are in place with the courts and corrections. Equally with victim participation in court itself has been very similar. The victim arrives to court prior to the offender, making sure that the victim and offender are far away from each other within court, providing the option not to be in the courtroom at all.²¹

The VOCC was also told about technological improvements to the Victims Register that have enhanced victim participation, including online application forms, email and SMS communications and participation in court hearings via video link.²²

The Victims of Crime Commissioner's (VOCC) Survey of Victim Support Professionals also suggested many victims have positive experiences with the Victims Register:

The staff at the VR [Victims Register] are amazing and all clients report of feeling supported when having contact with this team.

No, it's good and important to have. I haven't really received any negative information about the Victims Register yet from clients.

¹⁶ Interview 12 – Victim of crime.

¹⁷ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁸ Consultation Meeting 14 – Victims Services staff.

¹⁹ Ibid.

²⁰ Consultation Meeting 14 – Victims Services staff.

²¹ Ibid.

²² Ibid.

The Victims Register team do a great job managing this with phone calls and subsequent emails...

The Victims Register is great at communicating sentencing. Most victims really appreciate being able to write submissions to the Adult Parole Board.

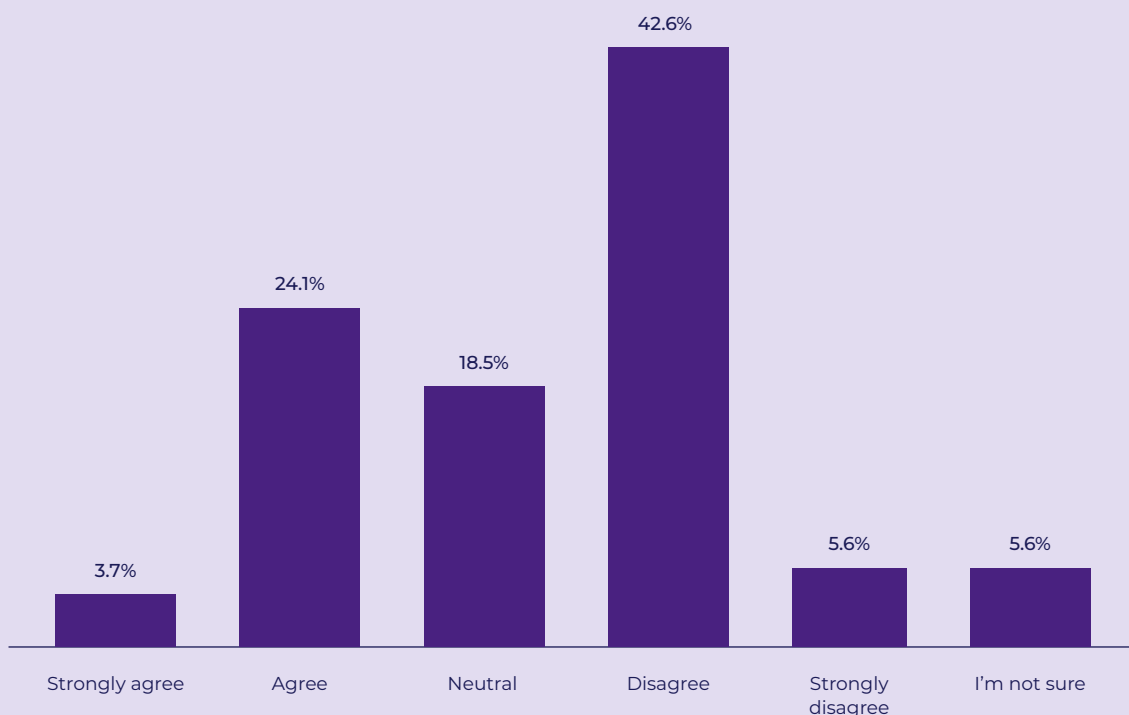
Lack of awareness of the Victims Register

The VOCC’s Victims’ Professionals Survey suggested most victims’ professionals felt there was a low awareness among victims of the existence of the Victims Register.

As shown by **Figure 30** below, many survey respondents (48 per cent) did not believe that victims were aware of the Victims Register and the information it could provide.

Most victims’ professionals felt there was a low awareness among victims of the existence of the Victims Register.

Figure 30: VOCC’s Victims’ Professionals Survey: Victims of crime are aware of the Victims Register and the information it can provide?



Victims’ professionals surveyed by the VOCC shared the following observations about the lack of knowledge and awareness among victims about the Victims Register:

This process is only known to the victims “lucky” enough to have a VAP [Victims Assistance Program] worker to assist with the forms.

Most victims I speak to do not know about the Victims Register.

I don’t think most victims are made aware of Victims register or by the time it is processed the offender may be released. Seems to work with with more serious crimes.

Victims in our region are rarely told about the Victims register by police or Prosecutors.

To overcome issues of awareness, some stakeholders discussed the possibility of registration for the Victims Register being automatic rather than ‘opt-in’ for eligible victims. The South Australian Commissioner for Victims’ Rights suggested opt-in systems place ‘the onus of responsibility on the victim, not the agency’

and that it is better for victims to be provided with information so they can choose to opt-out.²³

Community Legal Centre (CLC) representatives suggested enhancing legal advice and assistance for victims could assist victims with a range of legal issues, including 'understanding how to be on the Victims Register'.²⁴

Eligibility for the Victims Register

The Victims Register is available to victims of certain offences, including crimes such as assault, armed robbery, stalking, kidnapping, family violence, threats to kill, sexual offences and culpable driving, manslaughter and murder.²⁵ Victims' professionals surveyed by the VOCC were asked whether they felt eligibility criteria for the Victims Register were meeting victims' needs. Forty per cent of victims' professionals surveyed by the VOCC indicated that the eligibility criteria for the Victims Register are 'satisfactory'. However, a number of victims' professionals also raised concerns or had suggestions about eligibility for and scope of the Victims Register, as noted in these responses to the survey:

I think any interested party should be able to get on the victim's register, including ex partners of an offender, family members of a victim, and family members of offenders.

Victims should be able to register on the VR when the offender has been charged & is on remand.

I would like to see it extended for CCOs. Some very serious offenders have been given lengthy CCOs with stringent reporting, but there is no way the victim knows if this is being adhered to. Can leave them feeling unsafe.

It would be good to consider victims be notified of a breach where a community based order is in place.

there continues to be a lack of access for victims who's offender is sentence to a CCO with a short period of imprisonment imposed. The lack of timely feedback as to the outcome, from the prosecutors means that the opportunity to assist a victim to register with the victims register is missed.

Missing out on crucial information

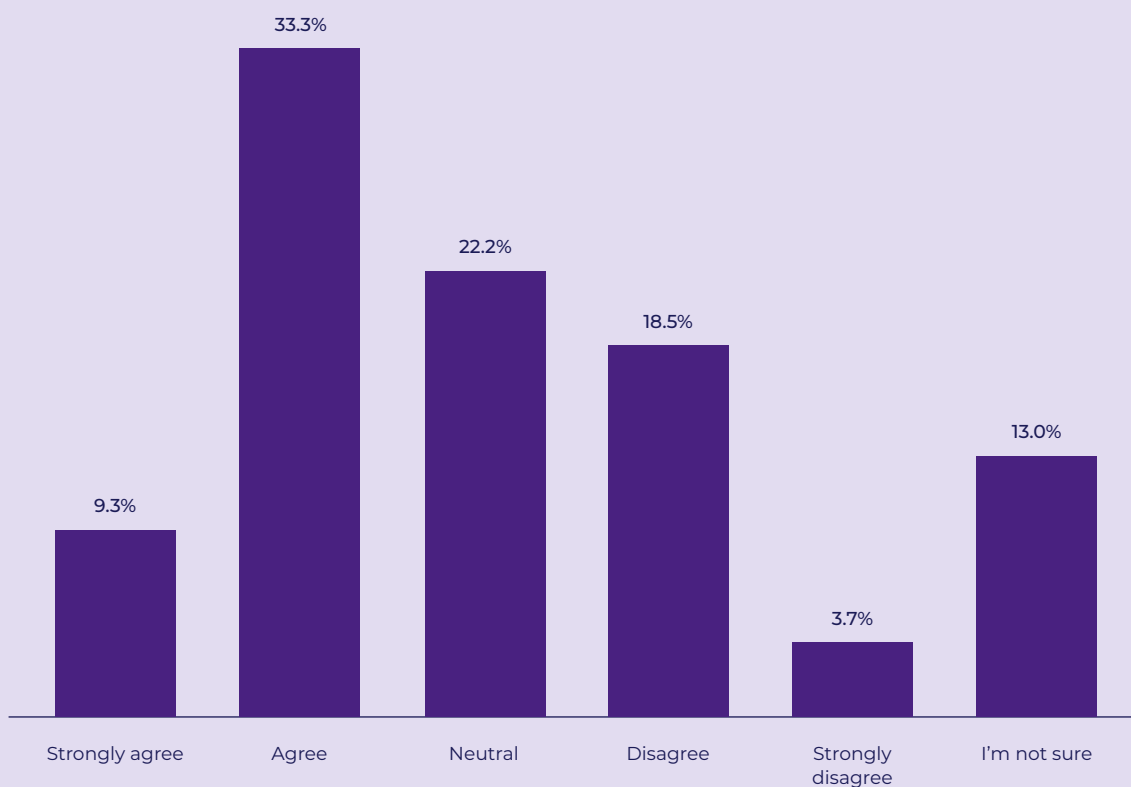
Forty-three per cent of respondents to the VOCC's Victims' Professionals Survey agreed that victims on the Victims Register receive information in a timely and sensitive way, as shown in **Figure 31** below.

²³ Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

²⁴ Consultation Meeting 22 – Community Legal Centres – Session 1.

²⁵ Information about an offender can be obtained if you or a family member has been affected by a crime such as: assault; armed robbery; stalking; kidnapping; family violence; threats to kill; sexual offences; culpable driving; manslaughter and murder: Victims of Crime, *Victorian Victims Register – Offender Information* (Web Page, 9 May 2023) <<https://www.victimsofcrime.vic.gov.au/after-court/victorian-victims-register-offender-information>>.

Figure 31: VOCC's Victims' Professionals Survey: Victims of crime on the Victims Register get the information they need in a timely and sensitive way.



However, some victims' professionals surveyed by the VOCC shared the following observations about victims not being informed and provided with important information once registered:

Often the victim is not informed when they should be.

I don't know a lot about it but I do know that I have worked with victims of FV where the perpetrator got out of jail and no one notified the victim. This seems to happen regularly.

Information isn't always updated in a timely manner.

Although it would be time consuming, advising victims prior to the release of the offender in the week/s leading up to that release would be beneficial, some victims have reported being provided with a release date via email when they go on the register, then hearing nothing further about the release.

Corrections – management of offenders

As noted above, when offenders are sentenced and enter the corrections system, whether through a custodial or non-custodial sentence, participation for victims of crime can be challenging as there is a limited role for victims. Some victims would like to receive information about the location of the offender or matters relating to an offender's day-to-day management, including any day leave provided to the offender.

Parole is also a key point where many victims wish to be considered. Parole allows a prisoner to serve part of their sentence of imprisonment in the community. Parole provides prisoners with a structured, supported and supervised transition so that they can adjust from prison back into life in the community,

rather than returning straight to the community at the end of their sentence.²⁶ While on parole, a prisoner will be subject to parole conditions and under supervision.

To be considered for parole, eligible prisoners must apply to the Adult Parole Board. A prisoner is eligible to apply for parole if they are undergoing a sentence with a non-parole period of imprisonment.²⁷

Both the Victims' Charter and the Corrections Act provide that victims can make submissions to the Adult Parole Board when offenders are being considered for parole.²⁸ When an offender applies for parole, victims on the Victims Register associated to the offender are invited to make a submission about the effect on them of the offender's potential release.²⁹

If the Adult Parole Board decides to release a prisoner on parole, a Corrections Victoria parole officer will supervise the prisoner. The Board can also cancel parole and issue a warrant for Victoria Police to arrest the parolee and return them to prison.³⁰

Victims' experiences

Victims Register and parole

Some victims spoke about challenges with the Victims Register and the parole process. One victim interviewed by the VOCC suggested the parole and Victims Register process was 'dysfunctional':

*'We were on the Victims Register. At the time it was very dysfunctional. We were informed that he was up for parole and we could put in our submission and we did work very hard on putting it together.'*³¹

In this case, the victim was informed that their submission addressing specific safety protections was not accepted by the Adult Parole Board: 'I was always told the reason that it wasn't accepted was because I didn't put in a grid [map] of the area which was just rubbish and if I'd been told I would have done it, so that was just a cop out.'³²

Emergency Management Days

A prisoner can apply for Emergency Management days (EMDs), when they have been of good behaviour and they have suffered disruption or deprivation in custody.³³ During the COVID-19 pandemic, prison visits were suspended to prevent the spread of the disease and EMDs were used by prison authorities as a tool to maintain order and safety inside prisons.³⁴ However, some victims were distressed to learn that some prisoners were granted EMDs, which reduce overall time served.³⁵

One victim interviewed by the VOCC shared their feelings of distress and outrage that EMDs were being granted to an offender while the victim was experiencing a pandemic lockdown and curfew:

*'I couldn't go anywhere. We had curfew. I could only go out for an hour a day. Could only shop within 5 kilometres and couldn't leave the house after nine. Yet he was earning credits off his sentence...I was fuming.'*³⁶

When asked 'What parts of the justice process didn't work well for you?', one victim surveyed by the VOCC listed 'Corrections Victoria authorising significant EMD's to prisoners sentence'.

²⁶ Corrections Victoria, *Parole* (Web Page) <<https://www.corrections.vic.gov.au/parole>>.

²⁷ Ibid.

²⁸ *Victims' Charter Act 2006* (Vic) s 17(3); *Corrections Act 1986* (Vic) ss 74A, 74B, 104ZY.

²⁹ Ibid.

³⁰ Corrections Victoria, *Parole* (Web Page) <<https://www.corrections.vic.gov.au/parole>>.

³¹ Interview 12 – Victim of crime.

³² Ibid.

³³ *Corrections Act 1986* (Vic) s 58E(1).

³⁴ 'Coronavirus Restrictions See Prisoners Get Reduced Sentences', *ABC News* (online, 30 January 2021) <<https://www.abc.net.au/news/2021-01-31/get-out-of-jail-free-cards-for-victorian-prisoners-locked-down-/13106620>>.

³⁵ The principles relevant to the granting of EMDs are set out in section 58E(1) of the *Corrections Act 1986* (Vic) and regulation 100 of the *Corrections Regulations 2019* (Vic).

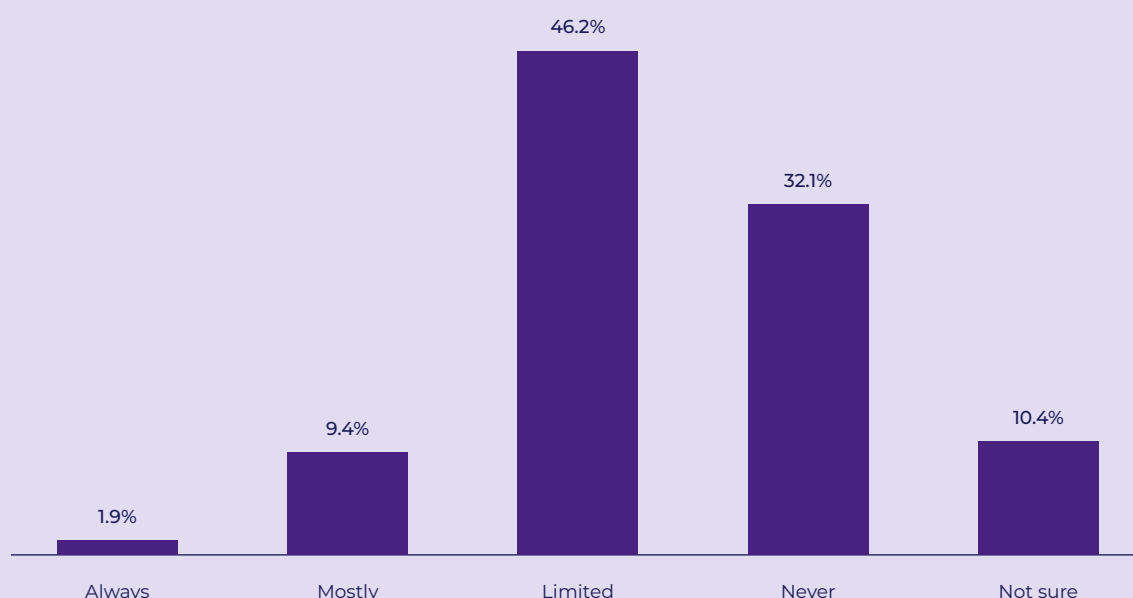
³⁶ Interview 2 – Di McDonald – victim of stalking.

Stakeholder views

Limited opportunities for victims to participate

When asked 'Do you think victims are treated as participants in the justice system while the offender is in prison/or under corrections oversight?', the majority of victims' professionals surveyed by the VOCC indicated victims were never treated as participants (46 per cent), or only treated as participants in a limited way (32 per cent), as shown in **Figure 32** below.

Figure 32: VOCC's Victims' Professionals Survey: Do you think victims are treated as participants in the justice system while the offender is in prison and/or under corrections oversight?



When asked in the Victims' Professional Survey 'What aspects of the justice system currently work well to facilitate victim participation?', one victims' professional responded that 'Most victims really appreciate being able to write submissions to the Adult Parole Board.' In contrast, another respondent to the survey said: 'I've had victims tell me it's no point having a say because the courts/parole won't take any notice.'

Independent legal representation

During consultation, the VOCC heard from various stakeholders that at specific points in the criminal justice process, the appointment of independent legal representation could be beneficial for victims. Associate Professor Tyrone Kirchengast argued specifically that there is a place for victim legal representation at the parole stage.³⁷

³⁷ Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

Overview of Chapter 11: Non-trial justice processes

The justice system is broader than the criminal trial process and victims identified that participation in these processes is equally important. However, these areas of participation are not always governed by the *Victims' Charter Act 2006* (Vic) (Victims' Charter).

Civil intervention orders

Many victims experienced issues participating in the civil intervention order process, including:

- lack of participation during the intervention order process
- lack of response to breaches of intervention orders
- challenges in getting or keeping intervention orders
- misidentification and cross-applications
- delays and lack of information provision.

Alternative or restorative justice

Few victims whom the Victims of Crime Commissioner (VOCC) engaged with had participated in restorative or alternative justice opportunities. Some victims identified alternative or restorative justice pathways as their preferred participatory method while others were unsure about its applicability to them individually, and more broadly in some cases.

Coronial process

Victims described varying experiences of the coronial process, ranging from being very supported, to not being contacted or supported throughout a confronting and difficult process. Some victims indicated that their experience with the coronial process would have been improved if they had had legal representation to assist and support them.

Mental impairment

Very few victims of crime experience justice processes where an accused says that they are, or is found by a court to be, not guilty because of a mental impairment. However engagement with victims of crime who do experience proceedings involving these issues indicates that these proceedings have the potential to cause significant secondary victimisation. The main issues raised by victims are:

- lack of access to information
- lack of participation during decision-making processes
- lack of consideration of victims' safety.

State-funded financial assistance

The current system of state-funded financial assistance has been extensively reviewed over the past five years.

Accordingly, the VOCC did not focus extensively on issues relating to the Victims of Crime Assistance Tribunal (VOCAT) during engagement with victims or consultation with stakeholders, but issues relating to state-funded financial assistance continue to be raised by victims and stakeholders.

The majority of victims interviewed and surveyed by the VOCC experienced a level of dissatisfaction with VOCAT, citing issues relating to:

- accessibility and information provision
- delays in receiving awards
- certain scheme requirements that are not trauma-informed.

11

Chapter 11:
**Non-trial justice
processes**



Introduction

This chapter outlines victims' experiences of participation outside the criminal trial process.

There are many reasons why a crime may never result in a trial. When this does happen, there are different ways that victims may still participate in the justice system. This chapter considers some of these different ways to participate, such as:

- civil intervention orders
- restorative or alternative justice options
- coronial processes
- mental impairment matters governed by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic)
- state-funded financial assistance.

The justice system is broader than the criminal trial process and victims identified that participation in these other processes is just as important as participating in the criminal trial process, although not all of these areas of participation are underpinned by rights in the Victims' Charter.

Civil intervention orders

Some victims seek safety through intervention orders. Intervention orders are civil orders¹ that impose conditions on contact between parties. Intervention orders may be put in place parallel to criminal proceedings or may be the only justice intervention.

There are two types of intervention order in Victoria:

- Family Violence Intervention Orders (FVIOs)
- Personal Safety Intervention Orders (PSIOs).

FVIOs apply in relation to any family relationships.² PSIOs apply between non-family members. FVIOs are frequently used in family violence matters, whether or not criminal matters are relevant or pursued. PSIOs are the most common response by the justice system to non-family violence stalking.³ This chapter will mainly refer to 'intervention orders' more generally as it is not always possible to differentiate between FVIOs and PSIOs when victims recount their experiences of intervention orders.

Victims' experiences

Some respondents to the Victims of Crime Commissioner's (VOCC) Victims' Survey described positive experiences of intervention orders. In response to the question 'What parts of the justice process worked well for you?', some respondents highlighted the intervention order process:



'Court for intervention orders was not too bad.'

'Contact with the Intervention Order Registry at Magistrates Court Victoria.'

'Police DV unit and Police Protection Order'

'One of the police who assisted me to retrieve my belongings was very kind. The magistrate who granted me the IVO appeared to be very understanding as well.'

– Victims' Survey respondents

1 A breach of an intervention order is a criminal offence: *Family Violence Protection Act 2008* (Vic) s 37.

2 Under section 8 of the *Family Violence Protection Act 2008* (Vic), this includes a current or former spouse, domestic partners, intimate personal relationships, relatives or people who may be regarded as 'like a family member'.

3 Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 96.

One respondent to the Victims' Survey described how obtaining a PSIO had been a positive experience for them in contrast to the prospect of pursuing a traumatising criminal justice process:

'I didn't lay criminal charges against the perpetrator as I was literally told by the police that it would be a traumatic and harrowing experience for me when being cross-examined. I did go for a personal safety intervention order, which was successful and I am happy about that.'

– Victims' Survey respondent

However, many victims whom the VOCC engaged with experienced issues with the intervention order process.

Lack of participation

Some victims told the VOCC that they did not feel like active participants during the intervention order process. For example, these respondents to the VOCC's Victims' Survey felt ignored and unheard in proceedings crucial to their safety, leading to them feeling disempowered:

'None of it worked. I had no input in the IVO, they did it without even telling me that it was being done, leaving me to feel completely disempowered.'

'Never being heard or given chance to have a voice especially when ordered by court to provide evidence why need further extension of IVO yet Magistrate could not be bothered to read what I was order to submit yet he is making judgements & determinations regarding our safety...Defies comprehension, & victims just tossed to side with no voice, nor Magistrate making time to read what they are presiding over is mind blowing disregard for the plight of the victim & a travesty of justice in simply that aspect.'

'The judge was attempting to remove the intervention order and give this man access...This man had abused this child and me and had previously pled guilty to the criminal offense of breach of an intervention order...She didn't bother to look at his criminal record, the child protection records, she didn't even bother to look at the reason why the intervention order was obtained...She did not bother to read any of the court documentation history, the victim statements...As a victim, I was not invited to attend the request of leave hearing.'

– Victims' Survey respondents

One victim interviewed by the VOCC felt that the intervention order process was not accessible for people with disability:

'The police won't let me take out an intervention order for my family member with disability even though they don't have the cognitive or decision-making capacity to do it themselves. They're also too scared to take them out for themselves. For example, one of my family members has dementia and I'm one of the few people she communicates honestly with.'⁴

This same victim said that they still encounter barriers to accessing intervention orders for themselves:

'I still can't apply for intervention orders because the courts won't make reasonable adjustments for my disabilities. I sought legal advice about it and the legal advice I got was that the courts are exempt from providing reasonable adjustments because they're exempt from the Disability Discrimination Act.'⁵

⁴ Interview 1 – Victim of crime.

⁵ Ibid.

A member of the Women with Disabilities Victoria Experts by Experience Advocacy Team encountered different challenges when seeking an intervention order.

*'I have tried to take out an intervention order and found this experience complex, slow, overwhelming and felt unsupported. There were too many steps involved. Although I presented as 'held together' because my communications and body language didn't indicate distress, I didn't get very far in the process and I felt really unsafe. The sensory challenges of being in that environment – a police station – all combined. I couldn't navigate it. All these things impact on ability to report and start a process.'*⁶

One respondent to the VOCC's Victims' Survey felt that the lack of publicly funded lawyers for intervention order matters had hampered their participation in justice system:

'my experience since 2018 with the Justice system has taken away all the healing and any respect I had previously. The Justice system does not provide Legal Aid lawyers for Intervention Order matters.'

– Victims' Survey respondent

Di McDonald described her shock when being told she could not access a lawyer to assist with the intervention order process:

*'The clerk told me to go upstairs and wait for a duty lawyer...And eventually, the duty lawyer comes out and she says, sorry, but we can't help you today. We're actually helping the respondent. So what do I do ? ... She said go down to legal aid. They may be able to help you...I am there for hours and hours and hours and all the time I'm worried that my hearing is going to be called and I still don't know what I'm doing ... No clue whatsoever ... so I eventually go into Legal Aid and he's looked at my paperwork. He said you're the applicant and we only help the respondent ... Who helps me then, who helps me? I went back upstairs. We were in courtroom three and I was very, very nervous and paranoid.'*⁷

Ingrid Irwin also advocated for lawyers to assist victims with intervention orders:

*'Like an intervention order, you should have a lawyer there that can help go through it. And say "Your honour, this condition isn't relevant and this is" or whatever the case may be.'*⁸

Breaches not actioned

Consistent with previous Victorian research,⁹ some victims, including many respondents to the VOCC's Victims' Survey, felt that breaches of intervention orders were not being taken seriously:

6 Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

7 Interview 2 – Di McDonald – victim of stalking.

8 Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

9 See, e.g., Family Violence Reform Implementation Monitor, *Report of the Family Violence Reform Implementation Monitor* (Report, November 2020) 70.

'With regard to the stalking, when the perpetrator breached the intervention order, the police ... said 'What do you want me to do?' I replied 'Arrest him.' The policeman responded: 'Rip that up (referring to the intervention order) and throw it in the bin on your way out the door'

'when he breached the order 11 times, the police still wouldn't charge him with the breaches.'

'The police investigation was horrible, non existant, corrupt (proven) and inexcusable in every way. Police support when intervention orders were breached was very poor.'

'The fact of them dropping the perpetrator back to my home after breaching him of going against family violence orders which always in return placed me at a greater risk.'

'Perpetrator breached Intervention order 3 times and was not charged, as not enough evidence. Even though camera footage from the court was provided and phone text messages supplied.'

'I have tried numerous DV breaches with no success.'

'major delays in arrest for indictable crime of persistent breach of IVO'

'I had to take out my own Intervention Order and then the same person/RESP assaulted me again and the police didn't respond for an hour after I called them.'

'I was victim blamed, police do not take breaches of intervention orders seriously. Magistrates & the entire court system is out of touch & has zero idea of what I needed.'

'no faith in police or court system after dvo refused to uphold and enforce breeches'

'During the previous 4 year IVO perpetrator repeatedly breached the IVO, yet continues to live without consequences for committing indictable offences & receiving a mere \$1000 fine. It is disgusting for us as victims who have been subjected to historical & cumulative DV & reported to Vic Police, yet because he has a lot of money hires top barristers to get case adjourned every time.'

– Victims' Survey respondents

One respondent to the Victims' Survey told the VOCC that intervention order breaches in their matter did not result in a penalty commensurate with the harm caused:

'Magistrates Court finding perpetrator guilty of persistent breach of IVO which was recidivism yet fined him \$1000. Found guilty. Perpetrator on 6 figure income. Endorsed the crime, & by manifestly inadequate sentencing result in us being placed in more fear for our safety. As a result of Magistrates decision we needed to be urgently relocated for our safety, & due to zero deterrent for indictable crime has reoffended again and before the courts now.'

– Victims' Survey respondent

One victim interviewed by the VOCC described how the perpetrator had completed a Mens' Behavioural Change Program while breaching the intervention order multiple times:

'I'd called triple zero three times while he was participating in that program. Nobody told the judge about the breaches of the IVO and the Good Behaviour Bond he was under, that were happening while he was participating. He was provided this certificate. It's a tick box process.'¹⁰

Challenges accessing intervention orders

Some victims surveyed by the VOCC highlighted issues getting or keeping intervention orders in place, such as this respondent to the VOCC's Victims' Survey:

'I've been subjected to stalking, harassment and threats for over 3 years now. Again, I've received very little support. I've applied for another AVO, on a more than one occasion, just for it to be refused, as I have relocated to NSW and "removed myself from the situation.'

– Victims' Survey respondent

One victim surveyed by the VOCC expressed concerns about the magistrate not reading material relevant to the extension of an intervention order due to caseloads:

'with regards to having to extend our IVO, I was required to provide the court with full & better particulars supporting evidence as to why we needed further extension of our IVO. Despite his criminal history. I provide over 40 pages of evidence documenting in detail the evidence & demonstrating why we needed further protection. It was headed towards a further contested hearing. I inquired with the Magistrate if the perpetrator was allowed to contest another IVO, given the first one he contested...he lost the contest & myself & daughter were granted a full 4 year IVO. During that 4 year IVO he repeatedly breached the IVO including persistent breach as mentioned previously. At the hearing for extension of our IVO, the Magistrate categorically informed me that he had in fact "not read my supporting documentation due to caseloads". So the Magistrate making judgements on the further protection & safety required for myself & my daughter due to historical violence & previous guilty persistent breach sentence, could not find enough time to read the documentation I was ordered to provide the court supporting why we needed the further extension of the current IVO.'

– Victims' Survey respondent

Misidentification and cross-applications

Consistent with previous research,¹¹ some respondents to the Victims' Survey also highlighted concerns about being misidentified as the primary aggressor and the system being used to perpetrate further harm:

'I am a VICTIM of FOUR perpetrators of violence, and the Protected Person in four intervention orders. Yet have been DELIBERATELY misidentified as the Perpetrator, by Victoria Police, who are protecting my violent ex partner.'

'FVIO are too easy to get. The perpetrator of domestic violence in my case took one out on me as retribution for commencing litigation against him in the family courts. He misused the power of an intervention order and weaponised the police against me, had me arrested and charged not once but 4 times at an extraordinary cost to me financially and emotionally as further coercive control.'

– Victims' Survey respondent

¹¹ See, eg, Family Violence Reform Implementation Monitor, *Report of the Family Violence Reform Implementation Monitor* (Report, November 2020) 83.

Victims interviewed by the VOCC were also subject to systems abuse via intervention orders.¹² One victim interviewed by the VOCC referred to this as ‘revenge intervention orders’:

‘Do you need to have evidence to go to court to get an intervention order on someone? You can’t just use hearsay? I could have made up anything at all about [the perpetrator] as well, but you know, I was going in with police statements and evidence and he was going in with hearsay of a conversation that never happened...Magistrates have to look at it a little bit more in depth and not just take their word that that the evidence they are supplying is actually factual.’¹³

Delays and lack of information

Some victims also reported delays and lack of information provision, as noted by these respondents to the VOCC’s Victims’ Survey:

‘I had to keep chasing up the police to find out if the Personal Safety Intervention Order had been served. It took several weeks.’

‘We reported further IVO breaches, in early 2020, & these criminal matters have been adjourned repeatedly still before the Magistrates Court on February 2022. We have waited far too long for this repeated criminal violent perpetrator to face justice for his violence towards myself & my daughter.’

– Victims’ Survey respondents

Stakeholder views

Although a number of victims raised concerns with intervention orders in survey responses and during interviews with the VOCC, intervention orders were not the main focus of the VOCC’s engagement with stakeholders. Accordingly, very few stakeholders spoke about intervention orders specifically.

Community Legal Centre (CLC) representatives explained that they play an important role in representing victims who have been misidentified as the perpetrator of family violence and in pushing for breaches to be actioned by police:

We advocate to police on behalf of victims of crime who have been misidentified as the perpetrator of family violence. We’ve also been doing a lot of work through our community partnerships, with police, to just get them to apply for an intervention order in the first instance and, where there is an intervention order that has been breached, really pushing the issue of charging the perpetrator with breaches and enforcing the IVO. That’s a really big issue and it can sometimes feel like you’re pushing up hill.’¹⁴

Victoria Police members mentioned challenges in the civil intervention order space where intervention orders provide a power of arrest if breached, but can’t necessarily prevent harms occurring:

We can have intervention orders – they give us the power of arrest – but it doesn’t stop a person going to an address and causing harm, which we know happens.’¹⁵

¹² Interview 2 – Di McDonald – victim of stalking; Interview 9 – Survivor advocate; Interview 10 – Victim of family violence; Interview 14 – Victim of crime.

¹³ Interview 2 – Di McDonald – victim of stalking.

¹⁴ Consultation Meeting 23 – Community Legal Centres – Session 2.

¹⁵ Consultation Meeting 19 – Victoria Police – Session 3.

Restorative or alternative justice

There is now a consistent body of work suggesting that some victims perceive restorative justice as fairer, more satisfying, more respectful, and more legitimate than what is offered by the traditional criminal justice system.¹⁶

Restorative justice can provide victims with enhanced participatory opportunities, including providing victims with an opportunity to tell their story on their own terms.¹⁷

There are several existing restorative justice pathways in Victoria, including:

- the Department of Justice and Community Safety's Victim-Centred Restorative Justice Program¹⁸
- the Restorative Engagement and Redress Scheme for former and current Victoria Police employees who have experienced workplace sex discrimination or sexual harassment¹⁹
- Youth Justice Group Conferencing²⁰
- RMIT's Open Circle.²¹

Victims' experiences

Few victims whom the VOCC engaged with had participated in restorative or alternative justice.

One respondent to the VOCC's Victims' Survey, when asked what parts of the justice process did not work well for them, stated 'Restorative Justice', going on to explain that a family member had manipulated the facilitator of the Restorative Justice program 'to protect the abusers reputation'. Another victim interviewed by the VOCC spoke about the insensitive way in which they were offered a restorative justice process by the prosecutor just moments after being advised that charges were to be downgraded.²²

For some victims, not having the option of a restorative justice pathway highlighted their lack of participation, as noted by this respondent to the Victims' Survey: 'I'd have wanted my perp participating in restorative justice with me to be a condition of his CCO. I feel like I have no justice and no closure because I couldn't participate.' Another respondent to the VOCC's Victims' Survey indicated they had sought a restorative justice process through a Centre Against Sexual Assault but the offender refused to meet with them.

Some Victims' Survey responses suggested some victims might have found a victim-centred restorative justice process useful. Some respondents specifically referred to restorative justice, while others expressed a wish to talk to the offender, ask questions or require the offender to respond:



'I would have liked to be able to talk to the offender and ask questions about the offence. I would have liked to have been recognized by the judge and been able to ask a question.'

'I'd have liked the chance to explain the impact of the offending on me to my perpetrator and for him to be required to respond.'

'I wish I'd been offered a fine and restorative justice options and sought criminal compensation from him.'

– Victims' Survey respondents

¹⁶ Meredith Rossner 'Restorative Justice and Victims of Crime: Directions and Developments' in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Routledge, 2017) 229, 238.

¹⁷ Kelly Richards, Jodi Death and Carol Ronken, 'What Do Victim/Survivors of Sexual Violence Think About Circles of Support and Accountability' (2021) 16(6) *Victims and Offenders* 1, 893–911.

¹⁸ This program facilitates restorative justice processes for victims of crime on the Victims Register whose adult offender is serving a sentence of imprisonment or has a parole order: Department of Justice and Community Safety (Victoria), *Restorative justice for victims of crime on the Victims Register* (Web Page, 5 December 2022) <<https://www.justice.vic.gov.au/vcri/restorative-justice-for-victims-of-crime-on-the-victims-register>>.

¹⁹ Victorian Government, *Restorative Engagement and Redress Scheme* (Web Page, 8 December 2021) <<https://www.vic.gov.au/redress-police-employees>>.

²⁰ Department of Justice and Community Safety (Victoria), *Youth Justice Group Conferencing* (Web Page, 27 September 2022) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-group-conferencing>>.

²¹ Centre for Innovative Justice, *Open Circle* (Web Page) <<https://cij.org.au/opencircle/>>.

²² Interview 12 – Victim of crime.

None of the victims interviewed by the VOCC had experienced restorative justice. Some victims when asked about this option were unsure about its applicability to them individually, and more broadly in some cases. For example, Ingrid Irwin was sceptical about restorative justice for sexual offences:



*'Oh yes, restorative justice. OK, that is not an answer. Restorative justice requires the perpetrator to admit what they've done. So sorry. Which perpetrators are going to do that? This is no way to push people out but the criminal justice system. Last time I checked, sexual assault is a crime and so it should be processed as a crime in the courts and in the criminal justice system.'*²³

Another victim, who was unsure whether they would use restorative justice, did note the 'the power of apology' and that such a process might lead to finding 'the pathway to forgiveness' for them and other victims more generally.²⁴

Stakeholder views

Some stakeholders viewed restorative justice as way to increase victim participation and enhance their safety, protection and wellbeing in a way that avoids systemic barriers they might otherwise face in the formal justice system. For example, the Commissioner for Senior Victorians told the VOCC that older people are often seeking alternate dispute resolution models outside the criminal justice system so that they can maintain relationships with the perpetrator, on whom they may rely for housing and caring.²⁵ In this regard, the Commissioner for Senior Victorians has urged the Victorian Government to consider older people as one of the priority cohorts for restorative justice.²⁶

Victoria Police members told the VOCC that the cohorts of victims most interested in restorative processes include parents whose children are using violence in the home, migrant and refugee communities, and Aboriginal and Torres Strait Islander people.²⁷ Victoria Police members also told the VOCC that alternative forms of participation, such as 'validation hearings', are important:

The system desperately needs what the Law Reform Commission set out, which is a Validation Hearing. There's so many cases where the matter is discontinued, you don't get a finding of guilt, or there's no consequential opportunity for a Victim Impact Statement. How do you provide a soft landing for the victim so that they don't regret coming forward to report the crime? We need some other process, some ceremony, some opportunity for the victim to speak and feel heard. It just falls to the informant to do this, to validate, and they do a great job, but this is what the courts exist for.²⁸

Victoria Legal Aid (VLA) told the VOCC that '[r]estorative justice is a really critical element of the criminal justice process, for suitable cases' and that '[r]estorative pathways facilitate accountability for people who have caused harm, and healing for the person who has been harmed'.²⁹ VLA told the VOCC that challenges in successfully prosecuting crime 'reiterate the need for restorative justice processes, especially where the main thing the victim wants is an acknowledgement that it happened and doesn't necessarily want a punitive response'.³⁰

CLC representatives told the VOCC that '[t]here is a big gap around restorative justice. There needs to be better referral pathways, because there's not much of a big service there currently'.³¹

²³ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

²⁴ Interview 6 – Victim of crime.

²⁵ Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

²⁶ Ibid.

²⁷ Consultation Meeting 24 – Victoria Police – Session 4.

²⁸ Consultation Meeting 18 – Victoria Police – Session 2.

²⁹ Consultation Meeting 16 – Victoria Legal Aid.

³⁰ Ibid.

³¹ Consultation Meeting 22 – Community Legal Centres – Session 1.

Coronial processes

The Coroners Court of Victoria (Coroners Court) has three main roles:³²

- investigating deaths and fires
- contributing to reducing preventable deaths
- promoting public health and safety and the administration of justice.

There are around 7000 reportable deaths each year.³³ A reportable death is one that is either unexpected or unexplained. There are times when the deceased is, or is presumed to be, a victim of crime. Family members navigating the Coroners Court can therefore also be victims of crime.

The Coroners Court is an inquisitorial jurisdiction where coroners actively investigate cases. The majority of matters do not proceed to a hearing in a courtroom, with most findings made 'in chambers'.³⁴ Only a small proportion of investigations require an inquest, which is a public hearing.³⁵

At the end of their investigation, a coroner will hand down a finding. Findings can be made with or without an inquest.³⁶ A coroner investigating a reportable death must find, if possible:³⁷

- the identity of the person who died
- the cause of death
- the circumstances of the death.

The coroner's findings cannot include a criminal finding of guilt against a person.

Family Liaison Officers within the Coroners Court guide families through the coronial process. They may also make referrals to external counselling and support agencies. Support may also be provided during inquest proceedings through Court Network. Aboriginal families are supported in a culturally respectful and sensitive way by the Coroners Koori Engagement Unit.³⁸

Victims can apply for leave to appear as interested parties in a coronial proceeding.³⁹

Victims' experiences

For some victims, their first experience of the coronial process is a loved one being transported to the coronial services building.⁴⁰ Coroners Court staff will talk the senior next-of-kin through key decisions, identification requirements or any medical examinations requested by the coroner.⁴¹

For some victims, this is the start of their victim 'journey' – a distressing and overwhelming time. One victim interviewed by the VOCC told the VOCC that all people working with victims of crime should walk 'in a victim's shoes' and see what that process is like:



'That's something all of you who work in the department need to see – just even to walk down the path and think to yourself, "OK so when somebody is killed this is what a victim has to do. This is the path they walked down. OK, I can see this path. I know what it looks like. I know what the Coroners Court looks like, I know how the lounge is set up" ... You're walking in a victim's shoes and you're understanding what they're having to take in ... You need to see what we look at when we go in and view, in my case, my partner. We look at pain. We look at suffering and we can't do anything. We're looking at horrendous injuries that we cannot fix. I can't fix anything, it's done.'

– Victims' Survey respondent

³² Coroners Court of Victoria, *About Us* (Web Page) <<https://www.coronerscourt.vic.gov.au/about-us>>

³³ For an overview of deaths reported each year, see Coroners Court of Victoria, *Annual Report 2020–21* (2021) 20.

³⁴ Coroners Court of Victoria, *Annual Report 2020–21* (2021) 13.

³⁵ *Ibid.* 21.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.* 15.

³⁹ *Coroners Act 2008* (Vic) ss 56, 66, 76A, 83, 115.

⁴⁰ Coroners Court of Victoria, *What happens first?* (Web Page) <<https://www.coronerscourt.vic.gov.au/families/first-48-hours-families/what-happens-first>>.

⁴¹ *Ibid.*

This victim also told the VOCC: 'You can't unsee what you have seen. When I talk about the Coroners Court and viewing my partner's body, I can never unsee that. I can tell you every little detail.'⁴²

One victim interviewed by the VOCC spoke about staff at the Coroners Court being 'wonderful', providing information and guidance, including a pathologist who took the time to explain, in person, their report on the death of a victim.⁴³

One victim interviewed by the VOCC spoke of the toll of having to lobby for a coronial investigation.⁴⁴

Another victim told the VOCC that victims should have the right to legal representation for the coronial process:

*'the state should supply a lawyer for victims of crime so that when they're coming through [the system], they've got somebody there just for them. And that particular person can act on their behalf from the very beginning to the very end ... So if you've got somebody that the state can supply for a victim of crime right from the beginning ... even to prepare them for the coroners process. I think that would be amazing.'*⁴⁵

One respondent to the Victims' Survey highlighted a lack of contact and information from the Coroners Court and suggested that victims of homicide receive little support, particularly during the coronial process:

'There is plenty around victims of DV, but nothing for the victims of the murdered victims remaining. Court process was impossible. The Coroners Court was HOP[E]LESS. My family had to chase them, make all the contact regarding next steps, release of body etc. after a traumatic homicide. no information was forthcoming. my family had to fight tooth and nail to get information out of them.'

– Victims' Survey respondent

This same survey respondent felt that their matter was not taken seriously, and that action in relation to the case relied on their advocacy, pressure and financial resources:

'My families case was not taken seriously. There were systemic issues to be addressed, yet, we had to try and fight to have an inquest hearing. The court was reluctant to engage with us, to either assist in aiding our recovery by way of giving us access to information and actually listen to what we were saying. We had to lay out the whole thing to them, due to an inadequate police investigation. It then took 4 years for an inquest, which we only ended up getting because we engaged a legal team and spent \$70,000 total. NO family should have to find that sort of money. there is no way a person with a disadvantaged background, lack of english or financial resources would EVER be able to manage a system such as this if they even wanted to. I was fortunate enough to have resources and the education to be able to persist.'

– Victims' Survey respondent

⁴² Interview 8 – Victim of crime.

⁴³ Interview 5 – Victim of crime.

⁴⁴ Ibid.

⁴⁵ Interview 8 – Victim of crime.

Crimes mental impairment matters

Mental impairment matters are governed by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIA). The CMIA applies when an accused is found to have been mentally impaired at the time they committed the crime or if an accused is unfit to stand trial.⁴⁶ An accused may be unfit to stand trial because their current mental state is so severely disordered that they cannot:

- understand what they have been charged with
- plead guilty or not guilty
- understand the trial process or what is happening in court
- understand the evidence
- instruct their lawyer.³

A person who is unfit to stand trial or is not guilty by reason of mental impairment cannot be held criminally responsible for their actions.⁴

CMIA cases are relatively infrequent, representing approximately one per cent of all cases.⁵ Although rare, the impact on victims can be profound because the complex nature of CMIA proceedings can make it difficult for victims to engage and participate meaningfully in proceedings.⁶

Supervision orders

When a person is unfit to stand trial or is found not guilty because of their mental impairment, the person will generally be placed on a Supervision Order.⁷ Supervision orders can be custodial, where the person is detained in a forensic psychiatric hospital, or non-custodial, where the person is supervised while living in the community.⁸

A custodial supervision order commits a person to an appropriate place – usually a designated mental health service, a residential treatment facility, a residential institution or a prison (where there is no practical alternative).

A supervision order is for an indefinite term. Supervision Orders are subject to variation applications (by application of the Supervised Person) as well as periodic reviews. Victims must be given notice (by the Director of Public Prosecutions) of any hearings for review/variation of an order or for an application for extended leave 'if the granting of the application would significantly reduce the degree of supervision to which the person is subject'.⁹

The court cannot order a person to be released unconditionally or otherwise release a person from custody, or significantly reduce the degree of supervision to which a person is subject, unless it has considered any report of the family members or victims. Under the CMIA, victims and family members of the person subject to a supervision order can make reports to the court for the purpose of:

- assisting counselling and treatment processes for all people affected by an offence
- assisting the court in determining any conditions it may impose on an order or in determining whether or not to grant a person extended leave.¹⁰

Reports by victims and family members contain their views on the conduct of the person and the impact of that conduct on them. Victims are advised by the Office of Public Prosecutions (OPP) that 'Victim or Family Member Reports provide you with an opportunity to express your views about what the Supervised Person has done and the impact of the crime on you'.¹¹

⁴⁶ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s1.

³ *Ibid* s 6.

⁴ Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 265.

⁵ *Ibid* 15.

⁶ Duncan Chappell, 'Victimisation and the Insanity Defence: Coping with Confusion, Conflict and Conciliation' (2010) 17(1) *Psychiatry, Psychology and Law* 39–51; Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) xxxi.

⁷ Forensicare, *Mental illness and the criminal law* (Web Page) <<https://www.forensicare.vic.gov.au/about-us/mental-illness-and-the-criminal-law/>>.

⁸ *Ibid*.

⁹ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 38C.

¹⁰ *Ibid* s 42.

¹¹ Office of Public Prosecutions Victoria, *Prosecuting Mental Impairment Matters* (Guide, 2022) <<https://www.opp.vic.gov.au/wp-content/uploads/2022/06/Prosecuting-mental-impairment-matters.pdf>>.

Forensic Leave Panel and leave

While undergoing treatment on a Custodial Supervision Order, periods of leave can be granted to assist with rehabilitation.¹²

The CMIA established an independent body – the Forensic Leave Panel – to be the main body making decisions about leave. The Panel may grant:

- special leave of absence
- on-ground leave
- limited off-ground leave.

Decisions regarding extended leave are made by the court that made the original Supervision Order.

The Forensic Leave Panel may grant an application for on-ground leave or limited off-ground leave if satisfied on the evidence available that the proposed leave will contribute to the person's rehabilitation and the safety of the person or members of the public will not be seriously endangered as a result of the person being allowed leave.

Unlike the process for making variations to Supervision Orders (which are made by the court), victims are not invited to make a submission/report to the Forensic Leave Panel with respect to leave. There is no express requirement that the Panel consider the views of victims or families when considering an application for leave of absence, and members of the community (including victims) are unable to be given details about a patient's community leave.¹³

Victims' experiences

While very few victims of crime experience the CMIA process, engagement with victims of crime demonstrates the CMIA process has the potential to cause significant secondary victimisation.

When hearing that the offender was to be tried in accordance with CMIA, one victim told the VOCC 'this was the first indication that our freedom was to be taken from us'.¹⁴ The main issues raised by victims with respect to the CMIA are:

- lack of access to information
- lack of participation during decision making processes
- lack of consideration of victims' safety
- CMIA terminology invalidates victims' experiences.

While very few victims of crime experience the CMIA process, engagement with victims of crime demonstrates the CMIA process has the potential to cause significant secondary victimisation.

Lack of access to information

The VOCC was told about lack of access to information both at the court stage and the Supervision Order stage. For example, one victim told the VOCC about asking for a lawyer during the court stage of the CMIA process so that they could better understand the process:



*'We asked for our own lawyer because there was so much evidence that was being disregarded and the doctors were not getting the full story. We asked for a QC but were knocked back.'*¹

¹² Forensicare, *Mental illness and the criminal law* (Web Page) <<https://www.forensicare.vic.gov.au/about-us/mental-illness-and-the-criminal-law/>>.

¹³ Forensicare, *Community Leave* (Web Page) <<https://www.forensicare.vic.gov.au/our-services/thomas-embling/community-leave/>>.

¹⁴ Interview 17 – Victim of crime.

¹ Interview 17 – Victim of crime.

After a person has been found unfit to stand trial or are found not guilty because of their mental impairment, they become patients under the CMIA and fall under a medical treatment model rather than a corrections model. This means victims cannot access confidential patient information although, from a victim's perspective, such information may be fundamental to their sense of safety, such as knowing what treatment a patient is receiving to address offending behaviour. One victim told the VOCC:

*'he has access to read our Victim Impact Statement. That's fine. But we've got no rights to know his diagnosis, his treatment, his progression in his treatment. He can know everything about us but we can't know anything about him. We just want to have distance from him and be safe. But there is nothing.'*²

As noted in **Chapter 10**, some victims told the VOCC that the Victims Register should be amended to include patients who fall under the CMIA regime: 'because we're not victims, you must understand that we can't even go in the Victims Register. I would really like to see that changed.'³

Lack of participation

One victim interviewed by the VOCC indicated that the patient is under a Supervision Order and has an upcoming hearing to discuss whether they can be released into the community to work. This victim told the VOCC of the devastating impacts on their family, stating that if the patient is granted community leave, they will have to:

*'uproot our family and disappear. This has disrupted our lives, our kids' lives and even our kids' kids' lives. We have to disappear and change our names. He is getting therapy and medication and they have confidence in that but it's gambling with [our lives]. The consequences for our family have been quite long term.'*⁴

When a court hearing takes place to consider an application to vary or revoke a Supervision Order, or to grant or revoke a grant of extended leave, a legal representative of the Attorney-General is entitled to be present to ensure the community's interests are considered.⁵ A victim interviewed by the VOCC was dismayed at their lack of participatory entitlements during this process:

*'if the AG office it to represent the public safety, then wouldn't it be logical for them to speak to the first hand victims as basis to conduct their concerns. As victims are the public we were advised that this was not a part of the process however a request will be made. This request was not granted due to the fact I can submit a victim impact statement. This is all fine, however this is a clear indication of a victim having no speech, no representation and perhaps gagged.'*⁶

Lack of consideration of victims' safety

Victims consulted by the VOCC spoke about relocating because of safety fears relating to a forensic patient's likely day release into the community:

*'we are obviously packing up and moving. I've raised the question to the DPP and police that if he is likely to be working and if he doesn't return to [the forensic mental health facility] after the shift, when are victims notified is it 24 or 48 hours later? We are not privy to that information, not even the police are.'*⁷

2 Ibid.

3 Interview 5 – Victim of crime.

4 Interview 17 – Victim of crime.

5 *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 37(1)(a).

6 Interview 17 – Victim of crime.

7 Ibid.

Victims described wanting to have some say over possible safety mechanisms, such as location or distance restrictions, but instead having to seek protection via separate intervention order processes:

‘Even a postcode or distance restriction would be helpful. We were granted a restraining order on someone in [a forensic mental health facility]. That sounds ridiculous but the judges even know it’s necessary because the reality is that if he goes to work but comes to our front door then legally there is not much we could do if there wasn’t a restraining order because he is not a criminal.’⁸

Legislative terminology

Victims also expressed concern that when an offender enters the forensic health and treatment model they are not found ‘guilty’ of an offence in the same way that occurs in criminal law. In its 2014 report, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, the Victorian Law Reform Commission (VLRC) recognised that it is important to victims for the accused ‘regardless of responsibility, to be held to account’. It is also important for victims to understand that an accused is not ‘getting off’ under the CMIA and that the person will be provided with treatment or supervision if necessary.⁹

While many victims support patients receiving treatment under the forensic healthcare model, they would like to also see a change to CMIA terminology – for example, findings being articulated as ‘guilty with mental impairment’.¹⁰

State-funded financial assistance

The Victims of Crime Assistance Tribunal (VOCAT) is established under the *Victims of Crime Assistance Act 1996* (Vic) (VoCA Act) to:

- assist victims of crime to recover from the crime by paying them financial assistance for expenses incurred, or reasonably likely to be incurred, by them as a direct result of the crime
- pay certain victims of crime financial assistance (including special financial assistance) as a symbolic expression by the state of the community’s sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime.¹¹

In 2018, the VLRC concluded in its review of the VoCA Act that the current approach to state-funded financial assistance for victims was ‘not victim-centred or beneficial in its approach’.¹² The VLRC made 100 recommendations, including removing financial assistance for victims from Victoria’s court system and establishing a new administrative model focused on assisting victims in their recovery. A new Financial Assistance Scheme (FAS) is replacing VOCAT in 2024.¹³

Issues with the current system of state-funded financial assistance have been well covered over the past five years, including through the VLRC’s 2018 review of the VoCA Act and more recently, the parliamentary inquiry into Victoria’s criminal justice system which, among other things, recommended that interim improvements be made to VOCAT pending implementation of the new FAS.¹⁴

Accordingly, the VOCC did not focus extensively on issues relating to VOCAT during its engagement with victims or consultation with stakeholders. However, issues relating to state-funded financial assistance continue to be raised by victims and stakeholders.

⁸ Ibid.

⁹ Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 264.

¹⁰ Interview 5 – Victim of crime.

¹¹ *Victims of Crime Assistance Act 1996* (Vic) s 1(2).

¹² Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 38, July 2018) xxi.

¹³ Victorian Government, *Victims of Crime Financial Assistance Scheme* (Web Page, 5 July 2023) <<https://www.vic.gov.au/victims-crime-financial-assistance-scheme>>.

¹⁴ See Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria’s Criminal Justice System* (Final Report, 2022) recommendation 32 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

Victims' experiences

Some victims who were surveyed reported satisfactory encounters with VOCAT:

'I have also received invaluable support from VOCAT to this day still receiving counselling from my psychologist. Without the weekly counselling sessions throughout 2 1/2 years of court proceedings I do not believe I could have endured the drawn out process ... I also received invaluable support from my VOCAT lawyer who made application for financial assistance on my behalf.'

'i received VOCAT compensation which at least recognized me as victim of crime.'

'VOCAT people were great and very sympathetic.'

– Victims' Survey respondents

A member of the Victim Survivors' Advisory Council also reflected on a positive experience with VOCAT:

*'the VOCAT application experience was positive. I had the most positive experience out of all the court proceedings because my case had been put in the public eye and police were forced to take action. I was heavily supported by [a specialist family violence service] who put me in touch with a lawyer who I didn't have to pay for. The lawyers did all the paperwork for VOCAT.'*¹⁵

This same member reflected that this positive experience was in direct contrast to their other experiences of the justice system:

*'There was a huge element of desperation. Someone could have given me a hot meal and I would have been grateful. In those moments of crisis, because I was given something, I experienced this as a 'great' experience – I got a little bit of something from the justice system which was never my experience before.'*¹⁶

This same member also reflected on the importance of *not* actively participating in the VOCAT process:

*'In terms of being a participant, the freedom of choice and safety is most important. I really valued not having to be a participant in the VOCAT application. I wasn't as involved with the victim of crime application – I could take a back seat and let someone else help because I was absolutely exhausted.'*¹⁷

However, the majority of victims interviewed and surveyed by the VOCC experienced a level of dissatisfaction with VOCAT, citing issues relating to:

- accessibility and information provision
- delays in receiving awards
- certain scheme requirements that are not trauma-informed.

One victim interviewed by the VOCC said VOCAT was:

¹⁵ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁶ Ibid.

¹⁷ Ibid.

*urgently in need of some reconstruction so as to be capable of delivering some level of service for victims. I find this department is a disgrace and again, the Victims' Charter not being enforced. I was under the impression they were there to help. Not at all.*¹⁸

Accessibility and information provision

One victim surveyed by the VOCC said that even 'as a lawyer I found it difficult to access resources and information'.

Another victim surveyed said they were not told they could have a lawyer represent them at VOCAT, while another was discouraged from applying to VOCAT without a lawyer:

'I completed the VOCAT application myself and tried to submit it myself. I tried to submit this but was discouraged because I was told if I had a lawyer I might be entitled to more and things that I needed – that having a lawyer would mean I got the best possible outcome. I didn't and all it did was give the lawyer money – more than I received as a victim.'

– Victims' Survey respondent

During COVID-19 lockdowns, VOCAT was unavailable to victims over the phone, causing victims distress and frustration. As one victim explained in late 2021:

*'my experience in general is just so awful. I have tried to contact VOCAT but you just can't call them. They never answer the phone. But shouldn't they have more staff? There are no stage 4 [COVID-19] restrictions anymore so why is that still their phone message? I have contacted them to ask them that, but they don't get back to me.'*¹⁹

Another victim told the VOCC that VOCAT's lack of accessibility via the phone was discriminatory.²⁰

Numerous victims said that it would have been beneficial if VOCAT had made follow-up contact to enquire about their general wellbeing: 'This was very lonely. I wish VOCAT had just once reached out to me and said how are you going, are you finding the psychologist helpful?'²¹

Delays with awarding financial assistance

Some victims have experienced delays in VOCAT reimbursing payment for counselling services, with these delays taking up to two years, despite victims requiring current and ongoing counselling services:

ç'VOCAT was ok but it is so hard to get invoices paid that all providers require me to pay first and then seek reimbursement which takes months and is something I cannot afford, so I'm not using my VOCAT funding as a result and gave not got the help I need.'

– Victims' Survey respondent and victim interview

18 Interview 15 – Victim of crime.

19 Interview 14 – Victim of crime.

20 Interview 15 – Victim of crime.

21 Interview 14 – Victim of crime.

In answer to 'Could your participation in the justice system have been better?', a number of respondents to the VOCC's Victims' Survey highlighted issues with VOCAT's service delivery:

'Yes – firstly to know more about VOCAT and accessing legal services to assist with VOCAT and sentencing act actions. I appreciate for VOCAT lawyers can be paid via the legislation but my experience is that a person doesn't know this initially and also incurs a lot of out of pocket costs before they might be reimbursed. I was out of pocket counselling costs and whilst they were reimbursed – it took quite a while. This meant I couldn't afford counselling whilst waiting for an award.'

'Applying for VOC payment was easy however getting the money they allocated required way too much work and still has ongoing problems.'

– Victims' Survey respondents

Scheme can cause further harm

Concerns about perpetrators being given notice of upcoming VOCAT hearings and attending hearings have been partially addressed by recent amendments prohibiting perpetrators from appearing in certain matters.²² However, this practice of involving perpetrators in VOCAT hearings has left a devastating impact on many victims, as revealed by this respondent to the VOCC's Victims' Survey:

'The VOCAT system, applied for Victims of Crime in January 2018 and the process is still ongoing to the point they are allowing my abuser more input and further traumatising towards myself.'

– Victims' Survey respondent

A victim interviewed by the VOCC spoke about how notification of the perpetrator had affected them: 'I didn't feel like a participant because both of the men that I made statements about were invited to attend the court date. One of these men said replied that they would attend.'²³

Victims also expressed concerns with the 'character' requirement, which rendered them ineligible for assistance, as noted by this survey respondent:

'I asked for grief counselling for my son's murder and was told I'm not eligible as he had a criminal history and I'm not the victim. The victim is dead. Then the OPP asked to get me grief counselling and got the same answer. Apparently the budget doesn't cover "people like me".'²⁴

Lack of focus on victims' needs

Some victims were critical that the VOCAT awards only provide up to a capped set amount to assist with recovery following the experience of a crime. These victims indicated that they would have benefited from practical assistance, rather than a capped dollar amount, such as support to find housing. One victim interviewed by the VOCC explained that 'there is an overreliance on psychologists. VOCAT's mentality is that sessions with a psychologist is some sort of magic cure. However, I needed practical assistance to rebuild my life.'²⁵

The VOCC was also told that some victims' claims were denied on multiple occasions with no reasons provided.²⁶ As one survey respondent experienced:

²² Workplace Safety Legislation and Other Matters Amendment Act 2022 (Vic) Part 9.

²³ Interview 14 – Victim of crime.

²⁴ The Victorian Law Reform Commission's 2018 review of the *Victims of Crime Assistance Act 1996* (Vic) comprehensively outlined issues with the Act's requirement to consider an applicant's general character and behaviour. The VLRC determined it was no longer appropriate, or consistent with the purpose and objectives of state-funded financial assistance, to have regard to the broad character and behaviour of the applicant 'at any time'. Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 38, July 2018) 409.

²⁵ Interview 14 – Victim of crime.

²⁶ Interview 2 – Di McDonald – victim of stalking; Interview 7 – Caterina Politi.

'I had to fight so hard to be assisted by VOCAT. I had to fight to be recognised as a victim of crime with VOCAT 'because VOCAT didn't exist when crimes against me were committed. I had to plead and beg to even have any further counselling after this total disaster. The VOCAT episode is still going on. It is much more torturous for victims than even the criminal system. It is completely insane that magistrates are making orders and decisions around people's mental, emotional and physical healing essential after being abused in every system of life.'

– Victims' Survey respondent

For other victims of crime, the evidentiary requirements at VOCAT are onerous and magistrates could be better informed about the background of each case so as to reduce or remove the need for victims to re-tell their story:

'we had to stand before a judge and he was asking why do you think we should be paying your rent. I understand but why do I have to explain that there is someone who killed someone and tried to kill me. I still had to explain myself and I felt silly.'²⁷

'didn't pursue the victims of crime for compensation as I was told it was unlikely I would be successful in this claim.'

– Victims' Survey respondent and victim interview

Application time limits may deny some victims access to compensation, as explained by this Victims' Survey respondent:

'I received compensation through a tribunal at [the time of the offence], I could not apply to VOCAT for funding for counselling. The time period for a variation to an award is 6 years which does not cater for victims of historical crimes... I felt the existence of a 6 year variation to an award was an oversight... Victims of historical crimes need support as in many ways they experience the crime twice...'

– Victims' Survey respondent

Another respondent to the Victims' Survey indicated that the failure of doctors and lawyers to provide supporting documents resulted in them missing out on much needed financial assistance:

'I tell every woman I know not to trust the police, not to trust the courts and certainly not to trust VOCAT. I had a matter before the Tribunal...and was not advised by the Victims of crime counselling service appointed lawyer that the case had been dismissed...because of the lawyer's failure and my gp's failure to provide timely and pertinent reports requested by the tribunal...I am still carrying \$20k of expenses accrued as a result of the stalking and now have totally lost faith.'

– Victims' Survey respondent

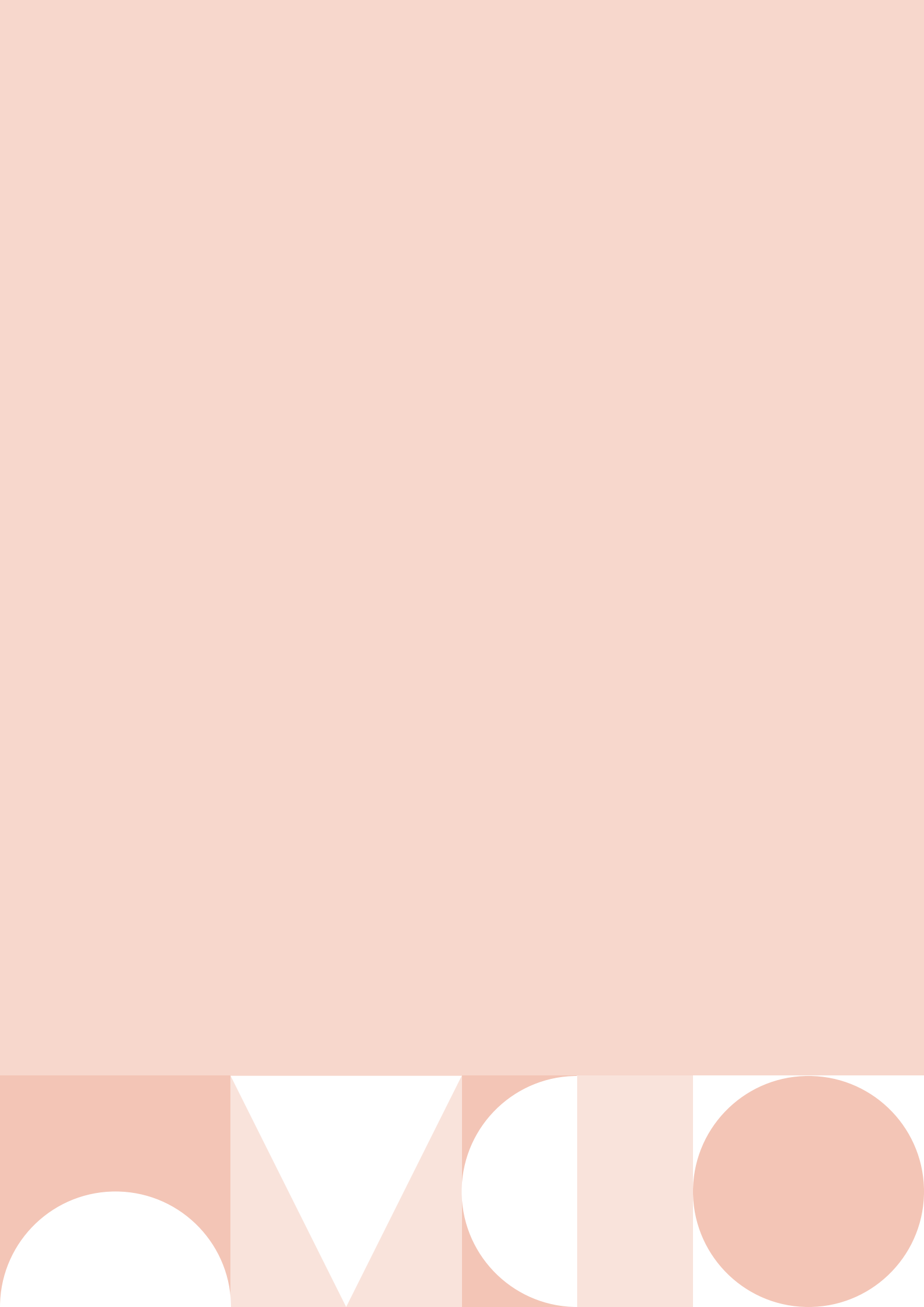
Stakeholder views

Few stakeholders specifically spoke about VOCAT, most likely because of the government's intention to replace VOCAT with a new financial assistance scheme and because the VOCC did not focus on VOCAT in its consultation activities.

However, CLC representatives advised the VOCC of extensive VOCAT delays, including a matter that is still ongoing with the tribunal after six years.²⁸ CLC representatives also told the VOCC that the section 54 (character and behaviour) provisions affect victim participation 'and is really offensive for a lot of victims' and that notifying offenders about hearings can be very off-putting for a lot of people.²⁹

²⁸ Consultation Meeting 23 – Community Legal Centres – Session 2.

²⁹ Consultation Meeting 23 – Community Legal Centres – Session 2.



Part 3:

Building authentic victim participation

Part 3 of this report sets out the Victims of Crime Commissioner's recommendations for building a justice system that enables authentic participation by victims.

Recommendations are based on the key issues raised by victims and stakeholders outlined in detail in Part 2 of the report.



Overview of Chapter 12: Rights

In 2016, the Victorian Law Reform Commission (VLRC) articulated the victim's role as one of 'participant'. In 2018, the Victorian Government introduced amendments to the *Victims' Charter Act 2006* (Victims' Charter) to recognise victims as participants.

The Victims of Crime Commissioner (VOCC) has found that more needs to be done to recognise victims as participants.

Ensuring equity in the Victims' Charter

Currently, a victim's rights and entitlements vary depending on which prosecuting agency conducts the case and the court in which the case is prosecuted. In acknowledgement of the victim's role as a participant, but not a party, the VOCC recommends that the Victims' Charter be amended to treat victims equally by providing all victims with the same entitlements to information and consultation, regardless of court jurisdiction or prosecuting agency.

Enhancing Victims' Charter compliance

The VOCC notes that a victim's priority is having their rights respected and participating in the criminal proceeding. Victims should not have to rely on complaints mechanisms to have their rights respected. The VOCC recommends there be a role for the courts during proceedings in ensuring that victims' rights and entitlements under the Victims' Charter and other laws are respected. This would reflect the triangulation of interests in a fair trial and recognises victims as participants in a more meaningful way.

Accountability and transparency in decision making

The VOCC considers that there are ways to introduce independent review mechanisms that do not interfere with the duties of police or prosecutors or erode their independence. The VOCC recommends that an independent victim right to review scheme be introduced. A review scheme should be underpinned by new rights in the Victims' Charter and enable certain decisions at both the investigatory and prosecutorial stages of the process to be reviewed after internal mechanisms have been exhausted.

Victims' rights as human rights

Legal authorities recognise and respond to those who possess rights. Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Human Rights Charter) does not specifically recognise victims in the justice system.

The VOCC recommends that the Human Rights Charter be amended to include victims' high-level rights such as a victim's right to be acknowledged as a participant, to be treated with respect and to be protected as a witness.

Protecting victims from unreasonable delay

The VOCC repeatedly heard from victims who had been further traumatised because of court delay. While the Human Rights Charter states that a person charged with a criminal offence is entitled to be tried without unreasonable delay, there is no equivalent right afforded to victims, such as the right to give evidence at trial without unreasonable delay.

The VOCC recommends that the Human Rights Charter be amended to include a right for a victim of a criminal offence to be protected from unreasonable trial delay. The VOCC also recommends that courts and other justice agencies (including Victoria Police, the Office of Public Prosecutions and Victoria Legal Aid) be adequately funded to reduce delays in criminal trials without eroding victims' participatory rights.

Improve awareness of victims' rights

Being unaware of the Victims' Charter makes it difficult for victims to understand their rights and entitlements, advocate for these rights and entitlements to be upheld, and identify Victims' Charter breaches. The Department of Justice and Community Services' (DJCS) *Victim's Guide to Support Services and the Criminal Justice System* does not recognise victims' role as participants and does not provide victims with comprehensive guidance about participation at key points of the process. The VOCC recommends that the DJCS review and revise *A Victim's Guide to Support Services and the Criminal Justice System* to provide victims with more comprehensive guidance about their participation.

Review of the Victims' Charter

A statutory review of the Victims' Charter must be commenced by the VOCC by no later than 4 November 2024. The VOCC recommends that this review include a broader examination of the enforceability of victims' entitlements, including reviewing section 22 of the Victims' Charter.

12

Chapter 12: **Rights**



Introduction

In 2016, the Victorian Law Reform Commission (VLRC) recommended that victims of crime be seen as 'participants' in the criminal justice system. The VLRC did not define what it meant to be a participant. Instead, the VLRC considered this term reflected the evolving role of victims in the criminal justice system. In 2018, the Victims' Charter was amended to recognise victims as participants.

The Victims of Crime Commissioner (VOCC)'s engagement with victims and stakeholders laid out in Part 2 of this report found that while a more nuanced understanding of victims' needs – and of their status as participants – is developing, more needs to be done to foster the cultural change envisaged by the VLRC when it articulated the victim's role as one of 'participant'.

One part of this cultural change is strengthening victims' rights and entitlements.

In this chapter, the VOCC proposes an enhanced rights-based framework for victim participation, building on the changes already made following the VLRC's 2016 report *The Role of Victims of Crime in the Criminal Trial Process*.

This chapter makes recommendations in relation to:

- securing equal entitlements for victims under the Victims' Charter
- expanding accountability measures under the Victims' Charter by introducing:
 - a judicial role in checking compliance with victims' rights and entitlements
 - independent review of certain justice agency decisions
- recognising victims' rights as human rights in Victoria's *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (Human Rights Charter).

In this chapter, the VOCC also maintains that lack of funding and resourcing cannot continue to be used as a justification for keeping victims' rights below an acceptable standard. Any changes to extend and enhance victims' entitlements should be accompanied by appropriate investment so that these entitlements can be met in a meaningful way.

The VOCC also makes recommendations to improve awareness of victims' rights and considers what should be included in a statutory review of the Victims' Charter, which is required to be commenced by the VOCC before November 2024.

An enhanced rights-based framework

Seventy-four per cent of victims surveyed by the VOCC said they were either never treated as a participant (50 per cent) or only treated as a participant sometimes (24 per cent). Too many victims and stakeholders described a justice system where victims:

- feel excluded from processes
- are not a part of decision making and do not having a voice
- are not getting the information needed, or not getting information often enough, to participate meaningfully
- are not included in the prosecution and court process
- lose choice and agency through the justice process.

Almost half of the victims surveyed by the VOCC (45 per cent) indicated they would not want to participate in the justice process again.

More needs to be done to foster the cultural change envisaged by the VLRC when it articulated the victim's role as one of 'participant'.

Ensuring equity in the Victims' Charter

Information and consultation are key to participation

A major theme underpinning lack of participation for victims was not getting the information they needed to participate. This included from police and prosecution and spanned the investigation, prosecution and court processes.

Victims told the VOCC about being 'blind-sided' due to lack of information, resulting in victims missing court dates, not being advised of plea negotiation outcomes and missing opportunities to make Victim Impact Statements (VISs).

Similarly, many victims spoke about a lack of participation during decision-making processes and feeling like their voice was unimportant or ignored.

A substantial body of literature demonstrates that a lack of timely and accurate information during the justice process remains one of the biggest causes of victim frustration and dissatisfaction.¹ However, while access to information and consultation are key to victim participation, these enablers of participation are not equally or consistently available to all victims of crime under the Victims' Charter.

A major theme underpinning lack of participation for victims was not getting the information they needed to participate.

Many victims spoke about a lack of participation during decision-making processes and feeling like their voice was unimportant or ignored.

Information and consultation entitlements are not equal

As outlined in detail in **Chapter 6**, not all victims are treated equally in Victoria.

Under the Victims' Charter, victims in the indictable stream (prosecuted by the Director of Public Prosecutions (DPP)) are entitled to more specific information and consultation than victims in the summary stream (prosecuted by Victoria Police).² The differing information and consultation requirements under the Victims' Charter effectively create two tiers of victims in Victoria.

Victims told the VOCC that they had experienced this disparity:



*'I have also heard from other victims who were harmed as a result of summary offences and who feel like the court system has completely ignored them altogether. These people wanted a chance to give a Victim Impact Statement but were told they weren't able to do so for that type of offending. They therefore felt that their suffering was ignored and not taken into account.'*³

A number of victims' professionals surveyed by the VOCC were also concerned about the treatment of victims whose cases are heard in the summary jurisdiction (Magistrates' Court), where the VOCC was advised that victim participation is particularly lacking.

As noted in the Department of Justice and Community Safety (DJCS) 2021 report *Improving Victims' Experience of Summary Criminal Proceedings*, 'victim experience [in summary proceedings] is often secondary to the need to ensure cases are finalised efficiently'.⁴

Consistent with that research, the VOCC has found that the interests and entitlements of victims in the summary jurisdiction are often considered as an 'afterthought' or left to the 'good will' of certain justice personnel.

¹ Elaine Wedlock and Jacki Tapley, *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment* (Victims' Commissioner and University of Portsmouth, March 2016) 13. See also Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016).

² The DPP must seek the views of a victim before making a decision to modify charges, discontinue the prosecution, accept a guilty plea to a lesser charge, appeal a sentence or acquittal. These requirements do not apply in the summary jurisdiction where Victoria Police prosecutes. See *Victims' Charter Act 2006* (Vic) s 9B (1).

³ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁴ Department of Justice and Community Safety, *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 17.

While reforms to secure enhanced victim entitlements over the years are promising, victims' entitlements to information and consultation under the Victims' Charter have not been based on notions of fairness and equity – or even on the Victims' Charter objective of reducing secondary victimisation.⁵ If this was the case, all victims would be entitled to the same entitlements. Instead, victims' information and consultation entitlements under the Victims' Charter have been based on matters of funding, resourcing and efficiency – primarily reducing prosecution and court delay. This is evident from the DJCS 2021 report *Improving Victims' Experience of Summary Criminal Proceedings*. In that report, the DJCS acknowledges that the Victims' Charter consultation obligations were not extended to all types of cases in previous Victims' Charter reforms 'due to time constraints of summary proceedings and a desire to avoid measures that could cause further delay'.⁶ In 2018, when introducing *The Victims and Other Legislation Amendment Bill 2018* to strengthen the rights of victims of crime as participants in the criminal justice system, the then-Attorney-General stated that expanded entitlements to information and consultation should not be provided to victims in the summary jurisdiction because this would 'compromise the early resolution of matters'.⁷

Once again, in 2021, the DJCS did not recommend that all victims have the same information and consultation rights under the Victims' Charter, prioritising the efficiency of the system over victims.⁸

When approaching Victims' Charter entitlements from a trauma-informed and victim-centred lens, and having regard to the participatory objectives outlined in section 4(1)(ba) of the Victims' Charter, it is difficult to identify a sound policy rationale for maintaining different tiers of entitlements for victims under the Victims' Charter.

Creating equity in the Victims' Charter

A lack of consultation with victims during the justice process is associated with victims' disenchantment. Victims describe having limited or no opportunity to participate or have their voice heard during the criminal justice process.⁹ On the other hand, with increased participation and voice in the criminal justice process, victims perceive a more equitable justice system.¹⁰

In acknowledgement of the victim's role as a participant, but not a party, the Victims' Charter should place all victims on an equal footing, providing all victims with the same opportunity to be provided with information and to be consulted, regardless of jurisdiction or prosecuting agency.

Given the seriousness of crimes heard in the Magistrates' Court (which can include sexual assault, stalking and serious cases of assault), it is simplistic to suggest such crimes are experienced as 'less serious' by victims (or cause 'less harm' to victims) than those crimes heard in the indictable jurisdiction.¹¹

The Victims' Charter should place all victims on an equal footing, providing every victim with the same opportunity for to be provided with information and to be consulted, regardless of jurisdiction or prosecuting agency.

All victims, regardless of the jurisdiction in which their matter is progressed, should have the same rights and entitlements enshrined in the Victims' Charter.

One of the few participatory entitlements granted to victims is that the DPP must consult with a victim of crime during the criminal justice process. Sections 9A–9C of the Victims' Charter set out the DPP's obligations to provide additional information to the victim about court proceedings and the progress of the case, to seek the victim's views before making certain key decisions (e.g. to accept a plea to a lesser charge), and to give the victim reasons for making certain key decisions.

5 *Victims' Charter Act 2006* (Vic) s 4(c).

6 Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 22.

7 Victoria, *Parliamentary Debates*, Legislative Assembly, 25 July 2018, 2321 (Martin Pakula, Attorney-General).

8 Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 25.

9 Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 44 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

10 Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 9.

11 Research suggests that the impacts of crime do not always correlate with crime types. Cook et al note that the impacts of crime victimisation vary with the individual and that each victim will react differently according to their life experience: Bree Cook, Fiona David and Anna Grant, 'Victims' Needs, Victims' Rights: Policies and Programs for Victims of Crime in Australia' (Research and Public Policy Series No 19, Australian Institute of Criminology, 1999) x.

It is unjust that such basic entitlements as consultation with the prosecution are limited to a small proportion of victims in Victoria.¹²

A victim's entitlement to participate by receiving information and being consulted at key stages of the criminal justice process should be extended to all victims, including those whose matters are heard in the Magistrates' Court.

Victims' entitlements, particularly in the summary jurisdiction, are too often regarded as 'aspirational' or 'best practice' – adherence to them is contingent on them not inconveniencing the court, prosecution or defence (or affecting case throughput).

It is not unreasonable – or disproportionate – for victims of a serious crime to be provided the same rights and dignity as other victims of crime through provision of basic information about a case and having the right to be heard in relation to key prosecution decisions. As noted by the recent Victorian Parliamentary inquiry into Victoria's justice system:

victims of crime should have *equitable entitlements under the Victims' Charter regardless of the type of offending. All experiences of victimisation or crime is traumatising for victims.* Victims' interests are focussed on ensuring an appropriate response from the justice system. Therefore, the Committee recommends that the Victorian Government amends the Victims' Charter so that victims of crime have the same entitlements to information, regardless of whether a prosecuting agency is dealing with a summary or indictable offence.¹³ (emphasis added)

Prosecutions, and the courts, must continue to adapt and evolve to better accommodate victims. The speed and nature of a court proceeding should not erode victims' entitlements to be consulted, just as the speed and nature of a proceeding should not impinge on an accused's right to a fair trial. As noted by the Victorian Parliamentary inquiry, section '9B(3)(b) of the Victims' Charter is an unnecessary roadblock for victims of crime to be engaged properly and consistently through the prosecution process'.¹⁴

The VOCC recommends that existing information and consultation requirements outlined in the Victims' Charter (as applicable to the DPP) should be extended to the summary jurisdiction.

Additionally, the Victims' Charter should be amended to remove the consultation exception in section 9B(3)(b) that relates to the DPP not having to seek the views of a victim if 'it is not practical to contact the victim given the speed or nature of the proceeding'.



RECOMMENDATION 1

The Victorian Government should introduce amendments to the Victims' Charter Act 2006 (Vic) to extend information and consultation requirements to the summary jurisdiction and remove the consultation exception in section 9B(3)(b).

Amendments to the Victims' Charter should:

- extend the information and consultation requirements in sections 9A–9C so these obligations apply to all prosecuting agencies
- remove the consultation exception in section 9B(3)(b) that removes the obligation on the Director of Public Prosecutions to seek the views of a victim if 'it is not practical to contact the victim given the speed or nature of the proceeding'.

Resourcing information and consultation rights

The DJCS in its 2021 report *Improving Victims' Experience of Summary Criminal Proceedings*, stated that extending a consultation obligation to victims in the summary jurisdiction, 'without a substantial system change and substantial increase in resourcing' would 'risk system failure'.¹⁵ Significantly, Victoria Police members also told the VOCC during consultation that the logistics of managing victim liaison and consultation in the Magistrates' Court are already 'simply impossible'.¹⁶

¹² Issues experienced by victims in the summary jurisdiction can affect the highest proportion of victims in Victoria, given that the Magistrates' Court of Victoria deals with approximately 90% of all crimes against the person in Victoria. Magistrates' Court of Victoria, *Annual Report 2021–22* (Report, 2022) 6.

¹³ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 281 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

¹⁴ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 280 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

¹⁵ Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 25.

¹⁶ Consultation Meeting 18 – Victoria Police – Session 2.

One police member told the VOCC 'If you ask anyone I work with how is their day? We are at full steam every day and it's impossible for us to be under more pressure.'¹⁷

Similarly, in June 2023, staff at the Office of Public Prosecutions (OPP) were reported as saying that they were 'at breaking point', warning that 'the quality of their work is declining, meaning lesser outcomes for victims of crime'¹⁸ as courts tackle the backlog of cases.

The VOCC acknowledges that enhancing and extending victims' rights requires resourcing, just as protecting the rights of the accused has resource and funding implications.¹⁹ The VOCC also acknowledges that the Victorian Government has committed more than \$100 million since the 2019–20 budget towards improvements for victims such as the new Financial Assistance Scheme for victims and for the Intermediary Program.²⁰ The VOCC welcomes the government's investment in these areas to support victims. However, as this report demonstrates, victims have many needs and interests and require a wide range of supports to be able to participate in the justice system, protect them from secondary trauma and to help them recover from the effects of crime.

Lack of funding and resourcing cannot continue to be used as a justification for keeping victims' rights below an acceptable standard. All victims, regardless of jurisdiction or speed of the process, should be offered the same opportunity to participate.

The Victorian justice system must adapt to better accommodate victims. Practices of the court, prosecution and defence must evolve so that victims' entitlements are respected and implemented in practice.

The VOCC expects any changes to victims' entitlements would be met by appropriate resourcing and investment in the relevant agencies, who would be required to uphold victims' rights. Victims' rights should not just exist 'on paper' – agencies must be provided with sufficient funding and resourcing to make these rights a reality.

However, the VOCC notes that bringing about fostering significant change for victims is not just a matter of funding or resourcing. Significant change requires:

- courts and agencies to change their procedures and practices
- adapting processes and business systems to support new procedures and practices
- cultural change in the understanding, attitudes and behaviours of the people responsible for supporting and upholding victims' rights and participation.

Given advances in technology, communication methods and IT infrastructure, particularly since the introduction of the Victims' Charter (and more specifically, since COVID-19), the VOCC considers that targeted work should be prioritised within justice agencies to explore how victims can be better accommodated during decision-making processes in the summary jurisdiction without unduly delaying the court.

While it is beyond the scope of this inquiry to examine individual agency responsibilities under the Victims' Charter, and the funding levels or arrangements of these agencies, it is clear that funding and appropriate resourcing of justice agencies is key to the successful implementation of victims' entitlements and the sustainability of recommendations in this report, including the recommendations outlined above.

The VOCC recommends that the Victorian Government assess funding levels and arrangements for relevant justice agencies, ensuring any changes to extend and enhance information and consultation requirements under the Victims' Charter are accompanied by appropriate investment to uphold victims' rights.

Funding and resourcing alone are also not sufficient – agencies must also adapt their business, operations and policies to realise these rights and continue to focus on cultural change.

Funding and resourcing alone is also insufficient – agencies must also adapt their business, operations and policies to realise these rights and continue to focus on cultural change.

¹⁷ Consultation Meeting 18 – Victoria Police – Session 2.

¹⁸ Shannon Deery 'Alarm Over the Office of Public Prosecution's Capacity to Tackle Court Backlogs', *Herald Sun* (online, 14 June 2023) <<https://www.heraldsun.com.au/truecrimeaustralia/police-courts-victoria/alarm-over-the-office-of-public-prosecutions-capacity-to-tackle-court-backlogs/news-story/8eee8f83e944744960aa17512a956d01>>.

¹⁹ For example, Victoria Legal Aid and Community Legal Centres assist those who cannot afford legal representation, ensuring the rights of the accused are protected and upheld during criminal hearings and trials.

²⁰ Enver Erdogan (Minister for Victim Support), 'Public Accounts and Estimates Committee: Budget Estimates Hearings' (15 June 2023) <<https://new.parliament.vic.gov.au/4a0020/contentassets/214a6d967d5f44a080307eb19a120e48/victim-support.pdf>>.

**RECOMMENDATION 2**

The Victorian Government should assess funding levels and arrangements for justice agencies with statutory obligations under the *Victims' Charter Act 2006 (Vic)*, ensuring any changes to extend and enhance information and consultation requirements under the *Victims' Charter* are accompanied by appropriate resourcing.

In assessing agencies' ability to meet victims' rights and entitlements, the Government and agencies should consider:

- ways in which agencies could adapt their business, operations and policies to better realise victims' rights
- advances in technology, communication methods and IT infrastructure and how improved IT infrastructure could better accommodate victims during decision-making processes while not unduly delaying the courts.

Enhancing Victims' Charter compliance

Victims' charter breaches are not always detected

As noted above, a major theme underpinning lack of participation for victims was not getting the information needed, or not getting information often enough or in ways that assisted victims to participate. This included from police and prosecution and spanned the investigation, prosecution and court processes, including in circumstances where victims are entitled to information and participation under the Victims' Charter.

An overwhelming majority (75 per cent) of respondents to the VOCC's Victims' Survey advised that agencies had not told them about the Victims' Charter. Being unaware of the Victims' Charter makes identifying Victims' Charter breaches difficult for victims, if not impossible.

Stakeholders told the VOCC that in addition to victims lacking awareness of the Victims' Charter, the Charter 'lacks teeth' and its remedies are ineffective for victims, including the VOCC's complaints powers. As one respondent to the Victims' Professional Survey stated in relation to the Victims' Charter: 'Effective how? If Police don't update on proceedings, victims can't make a complaint until the end of the process. The Charter doesn't actually do anything to correct victims' individual experiences.'

While victims can initiate a Victims' Charter complaints process via the VOCC, these complaints options are limited. Specifically, the VOCC cannot investigate a complaint where there is an ongoing criminal investigation, hearing or trial.²¹ The VOCC cannot set aside decisions or refer decisions back to the original decision maker for review.²² This limits the extent to which the VOCC can intervene in a substantial way. For example, if a victim was not advised of a plea hearing and missed the opportunity to make a Victim Impact Statement (VIS), the VOCC cannot intervene to require that courts provide a victim with the opportunity to make a VIS prior to sentencing.

Because of challenges in securing effective remedies for victims via a complaints process alone, the VOCC considers more needs to be done to uphold victims' rights at the time of a potential Victims' Charter breach.

²¹ *Victims of Crime Commissioner Act 2015 (Vic)* s 25I.

²² For example, the VOCC cannot review a decision involving the exercise of prosecutorial discretion: *Victims of Crime Commissioner Act 2015 (Vic)* s 25I(3)(a).

Upholding victims' rights when breached

Regardless of complaints options or remedies following a breach of the Victims' Charter, a victim's priority is having their rights respected and participating in the proceeding from the outset.

Complaints pathways should not be the sole option for breaches of individuals' Victims' Charter entitlements.

The VOCC considers that timelier 'checks and balances' during the justice process would ensure victims do not carry the burden of instigating a complaints process after a Victims' Charter breach has occurred, particularly as this means practical remedies are limited.

As noted by Wemmers, 'it is not enough to give rights to victims; one must also consider how these rights are implemented'.²³

A victim's priority is having their rights respected and participating in the proceeding in the first place.

Ensuring agencies comply with their duties towards victims

When a case is heard in court, judges and magistrates are well placed to prevent breaches of victims' rights and entitlements. At an application, or during a hearing or trial, judicial officers have the ability and authority to check whether the prosecution has met its statutory obligations towards the victim.

The VOCC considers that courts can, and should, proactively ensure that victims' rights and entitlements under the Victims' Charter are respected. Checking that a victim's rights and entitlements have been met would help to ensure that victims' rights and entitlements are respected throughout criminal justice processes.

Courts can, and should, proactively ensure that victims' rights and entitlements under the Victims' Charter are respected.

This reflects the triangulation of interests in a fair trial and recognises victims as participants in a more meaningful way.

In practice, this might mean, for example, that judicial officers would, at relevant times, ask the prosecution whether:²⁴

- they have provided information to the victim(s) about hearings and/or other court and prosecution processes and the outcome of such notification
- they have provided information to the victims about their options to attend hearings²⁵
- they have consulted the victim before accepting a plea to lesser charges²⁶
- a victim has been notified about an application to access the victim's confidential communications, asked whether they wish to be heard on the application, and notified about their right to legal assistance in relation to this application
- a victim has been advised of the availability of special protections or alternative arrangements for giving evidence
- the victim wishes to make a VIS and if so, the outcome of this.

If courts proactively focused on ensuring that victim's rights and entitlements were respected before certain proceedings are finalised or progressed, this would also provide a clear demonstration to victims that they are relevant to criminal proceedings and that their rights and entitlements matter. It would enable any failures to be addressed quickly and without significant delay to the proceeding. These preventative steps would provide victims with substantive redress for an agency's failure to uphold victims' rights and entitlements without relying on victims to instigate a complaints process.

²³ Jo-Anne Wemmers, 'Victims' Experiences in the Criminal Justice System and Their Recovery from Crime' (2013) 19(3) *International Review of Victimology* 221, 230.

²⁴ These examples are based on victims' entitlements as currently set out in the Victims' Charter or other relevant legislation. The court's enquiry would necessarily change if the victim's rights and entitlements changed.

²⁵ The Judicial College Victoria's guide to judicial officers states judicial officers should accommodate victims' needs in the court room: Judicial College of Victoria, *Victims of Crime in the Courtroom: A Guide for Judicial Officers* (Guide, 2019) 7 - https://www.judicialcollege.vic.edu.au/eManuals/Victims/Victims%20of%20Crime%20in%20the%20Courtroom_WholeDoc.pdf.

²⁶ The prosecution would not need to say whether the victim agreed or disagreed with the plea as the victim's entitlement is to be consulted.

As raised in the VLRC's 2016 report *The Role of Victims of Crime in the Criminal Trial Process*, an enforcement mechanism incorporated into the court process might improve prosecuting agencies' compliance.²⁷ Knowing that a court will check what they have done – or not done – might make prosecuting agencies and their lawyers more accountable.

Judicial checking would not provide victims with independent standing to commence an action to enforce their rights and entitlements. However, by taking preventative steps, courts could play a critical role in ensuring that victims can exercise their participatory rights and entitlements. This reflects the triangulation of interests in a fair trial and recognises victims as participants in a more meaningful way.

To ensure that victims' rights and entitlements are respected throughout criminal justice processes, the VOCC recommends changes be made to the Victims' Charter – and any other relevant legislation – to require courts to make enquiries that the prosecution has met its obligations concerning victims' participatory rights at key points in the criminal trial and hearing process.

Introducing a form of judicial checking of those rights and entitlements that affect victims' ability to participate in a proceeding would also address concerns raised by prosecutors that they are unable to meet their statutory obligations towards victims because of the pressure imposed by courts to expedite and resolve cases. During consultation, the VOCC was told that time pressures are 'primarily driven by the courts'²⁸ and 'the court's number one issue is their time'.²⁹ Victoria Police members advised the VOCC that there is pressure on prosecutors and defence to progress matters and that to redress participation for victims around plea negotiations 'would require a level of engagement that is entirely at odds with the pressure coming from the courts'.³⁰ Victoria Police members told the VOCC:

It is a dynamic environment in the court, things can change quickly and quite often the victim isn't there. Decisions get made quickly and that's not to say we don't consider the victim, but it's a very dynamic environment...There's a whole heap of matters backed up with COVID so there's pressure to keep things moving along. Quite often we're told to go outside and reconsider [the prosecution position], so there's pressure to resolve.³¹

It is important that cases are not unnecessarily delayed. This may require police, defence lawyers and the courts to consider how best to address delays while improving the way in which they respect the rights and entitlements of victims. Continuing to adapt to new environments and challenges is essential and should not come at the expense of victims' rights and entitlements.

In this context, a form of judicial checking to ensure that agencies have met a victim's rights and entitlements would ensure courts and prosecutors are working together to facilitate victim participation, with both having to turn their mind to the rights and entitlements of victims before matters are progressed.

²⁷ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 60.

²⁸ Consultation Meeting 18 – Victoria Police – Session 2.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*



RECOMMENDATION 3

The Victorian Government should introduce amendments to the *Victims' Charter Act 2006* (Vic) – and any other relevant legislation – to require courts to ensure that the prosecution meets its obligations concerning victims' participatory rights at key points in the criminal trial and hearing process.

Where a victim has a right or entitlement that is relevant to their ability to participate in a court proceeding, courts should proactively check whether the prosecution has met its obligations concerning victims' participation rights. This would include, for example, the judicial officer checking whether:

- the victim has been provided with information about their options to attend hearings
- prosecutors have consulted the victim before accepting a plea
- the victim has been notified about an application to access the victim's confidential communications and asked whether they wish to be heard on the application
- the victim has been notified about an application to question them about their sexual history or to subpoena personal information about them
- the victim has been advised of the availability of any special protections or alternative arrangements for giving evidence
- the victim wishes to make a Victim Impact Statement.

Accountability and transparency in decision making

As outlined above, the VOCC considers that stronger systems are required to uphold victims' entitlements and improve outcomes for victims. There needs to be a range of accountability measures to encourage improved compliance with the Victims' Charter and to strengthen victims' participatory rights.

While research indicates many victims do not want 'veto' or ultimate decision-making power, many victims are still dismayed by the finality of certain police and prosecution decisions.³² As noted by Dr Mary Iliadis and Associate Professor Asher Flynn in relation to prosecution decisions specifically, such decisions involve 'a high level of discretion' and 'have not traditionally been subject to external scrutiny or review'.³³

While research indicates most victims do not want 'veto' or ultimate decision-making power, many victims are dismayed by the finality of certain police and prosecution decisions.

In the VOCC's 2021-22 Annual Report, it was noted that a systemic trend emerging from enquiries and complaints data was victim dissatisfaction concerning investigatory and prosecutorial decisions, such as failure to investigate or prosecute. Victims raised concerns that these decisions lacked transparency and accountability and that there were limited avenues to have such decisions independently reviewed.³⁴

³² Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 93-6 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

³³ Mary Iliadis and Asher Flynn, 'Providing a Check on Prosecutorial Decision-Making: An Analysis of the Victim's Right to Review Reform' (2018) 58(3) *British Journal of Criminology* 550, 550.

³⁴ Victims of Crime Commissioner, *Annual Report 2021-22* (Report, December 2022) 35.

The VLRC noted in its 2021 report *Improving the Response of the Justice System to Sexual Offences*, with any exercise of public power, there are benefits in processes of review and accountability which include:

- improving the quality of decision making
- providing transparency and accountability
- ensuring that people can provide their views before key decisions are made.³⁵

Victim participation in decision making

Victims have told the VOCC about not being able to get an appropriate response from police, including not being given any information about why matters had not progressed and feeling confused as to why cases had been 'dropped' or 'dismissed'. In some cases, victims told the VOCC about being dismissed, dissuaded, or prevented from reporting entirely.

Victims raised concerns with the VOCC that police had not investigated their reports appropriately and that there had been a lack of rigour in the investigation process. For certain victims, there were additional barriers, including:

- where a Victoria Police member had perpetrated a crime
- where victims of sexual assault were made to feel unsafe, trivialised or treated with scepticism
- where a victim had been misidentified as the predominant aggressor in a family violence matter
- where police in rural and regional communities know each other and the community.

Victims also told the VOCC of their dismay at the way in which certain prosecution decisions were made and the lack of consultation with victims, despite entitlements under the Victims' Charter.

Section 9B of the Victims' Charter requires the DPP to seek the views of victims before making certain key decisions (e.g to discontinue charges or to accept a plea of guilty to a lesser charge). Victims raised concerns that consultation with victims is not meaningful or is merely a 'tick the box' exercise.

In 2023, victim-survivors raised their concerns in the media about prosecution decision making and victim consultation.³⁶



Issues raised in ABC News article *Survivors of sexual abuse and victims' families raise concerns over dealings with Victoria's state prosecutors*

- After watching their abuser plead guilty to reduced charges and receive a non-custodial sentence, victim-survivors Ms Parsons and Ms Goss 'say their experiences at the hands of Victoria's Office of Public Prosecutions (OPP) has left them feeling "abandoned" and "ignored".'
- When the OPP called Lee Little's 'family in for a meeting one week before Alicia's killer was to be tried for murder, she says they were told that he had agreed to plead guilty to dangerous driving causing death instead ... Lee Little said the representatives in the room made it clear that the decision had been made, and there was nothing the family could do. "We were gobsmacked. Our views weren't considered," she said.'
- Mr and Mrs Forrest were asked by the OPP 'to attend a meeting to discuss a potential plea before the trial and ask any questions they had. "When we got there, they'd already made their minds up and they said 'We're going to plead [to three counts of arson causing death] ... and that's the way it's going to be,'" Mr Forrest said.'

³⁵ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 381.

³⁶ Jessica Longbottom, 'Survivors of Sexual Abuse and Victims' Families Raise Concerns over Dealings with Victoria's State Prosecutors', ABC News (online, 6 March 2023) <<https://www.abc.net.au/news/2023-03-06/child-sexual-abuse-survivors-office-of-public-prosecutions-court/102031750>>.

Victims' right to review schemes

In the United Kingdom, victims have a right to seek a review of certain decisions, including where police have decided to charge or where a prosecution has not proceeded.³⁷ This is called a Victims Right to Review (VRR) scheme. The VRR involves an internal review by a separate unit within the Crown Prosecution Service (the Appeal and Review Unit), rather than an independent review (conducted by someone employed or engaged by another body).

A review of 2833 cases between 1 June 2013 and March 2015 found that 372 decisions (13 per cent) had been overturned under the UK's VRR scheme.³⁸ While the numbers are smaller, in 2021–22 the Victorian Office of Public Prosecutions handled 478 new sexual offence matters.³⁹ Victoria Police prosecutes a much larger number of matters.⁴⁰

The Independent Victims' Commissioner for London, Claire Waxman, has described the VRR as 'an important check and balance, empowering victims to challenge charging decisions that they are not happy with'.⁴¹ Academics have referred to the potential for increased satisfaction and empowerment for victims with review mechanisms.⁴² Dr Mary Iliadis has argued that there may also be further benefits if the review process operates independently. It avoids the review process being conducted by close colleagues of the original decision maker, it is more likely to identify 'gaps in decision-making processes and offer more transparency and accountability to victims'.⁴³

While Victoria does not have a scheme that provides victims with a right to an independent (external) review of police and prosecutorial decisions,⁴⁴ the possibility of a review scheme in Victoria has been raised in a number of inquiries.

In its 2016 report *The Role of Victims of Crime in the Criminal Trial Process*, the VLRC discussed, but ultimately did not recommend, an independent VRR scheme for Victoria. It did, however, consider such a scheme should be revisited in five years after further work had been done to reform internal review mechanisms within the OPP.⁴⁵

In its 2021 report, *Improving the Response of the Justice System to Sexual Offences*, the VLRC stated it was concerned that 'we do not know enough about the quality of [police and prosecution] decision-making processes'.⁴⁶ The VLRC stated that, specifically in relation to sexual assault:

We continue to be concerned that victim survivors do not feel confident in the validity, transparency and accountability of the decision-making process. Too many are left without a good enough explanation or understanding of why the case did not proceed.⁴⁷

The VLRC stated: 'We need to understand more about why police and prosecution cases do not progress and introduce more independence and accountability into decision making by police and prosecution'.⁴⁸

The VLRC recommended that an independent panel be established to review police and prosecution decisions in sexual offence cases, either individually or systemically. The VLRC recommended a model of independent review that would:

- review the quality of decision making
- make recommendations to the police and prosecution to continue with charges
- make recommendations to address other issues identified as part of that review
- leave the final decision to the police and prosecution.⁴⁹

37 In the United Kingdom, victims can seek a review of certain Crown Prosecution Service decisions, including where a prosecution has not proceeded: Crown Prosecution Service, *Victims' Right to Review Scheme*, (Web Page, 27 May 2021) <<https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme#a02>>. Victims can also seek a review of police decisions in circumstances where police have interviewed a suspect and decided not to charge the suspect or that the case does not meet the test for referring to the Crown Prosecution Service: *Rights of Women, A Guide to the Victim's Right to Review Scheme* (Web Page) <<https://rightsofwomen.org.uk/wp-content/uploads/2018/02/A-guide-to-the-victims-right-to-review-scheme.pdf>>. There are a range of police decisions outside the scope of the review scheme.

38 Mary Iliadis and Asher Flynn, 'Providing a Check on Prosecutorial Decision-Making: An Analysis of the Victim's Right to Review Reform' (2018) 58(3) *British Journal of Criminology* 550, 564.

39 Office of Public Prosecutions, *Annual Report* (Report, 2021–22), 13.

40 The Crime Statistics Agency reported that in the year ending 31 December 2016, Victoria Police recorded 12,956 sexual offences: Crime Statistics Agency, *Spotlight: Sexual Offences*, (Web page) <<https://www.crimestatistics.vic.gov.au/index.php/crime-statistics/download-crime-data/year-ending-31-december-2016/spotlight-sexual-offences>>.

41 Claire Waxman, *Review of Compliance with the Victims' Code of Practice: Findings, Recommendations and Next Steps* (Report, March 2019) 16.

42 Mary Iliadis and Asher Flynn, 'Providing a Check on Prosecutorial Decision-Making: An Analysis of the Victim's Right to Review Reform' (2018) 58(3) *British Journal of Criminology* 550, 566.

43 Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 163.

44 The DPP has a 'Discontinuance Review Framework'. A decision to discontinue a prosecution is considered by at least two of the OPP's most senior decision makers. Only the DPP, or a Senior Crown Prosecutor (SCP) with a power delegated by the DPP, can discontinue a proceeding. If a Crown Prosecutor and a SCP reach different conclusions, the decision is reviewed by the DPP and the final decision is made by the DPP. Under the Victims' Charter, the prosecution must seek the views of the victim before making a decision to discontinue a case. The OPP's policy is to seek the victim's views before a Crown Prosecutor provides their advice. If the Crown Prosecutor recommends discontinuing, the OPP's policy is to seek the victim's views again so that victims can provide any further views before a final decision is made: Kerri Judd KC, Director of Public Prosecutions (Victoria), *Discontinuance Review Framework* <<https://www.opp.vic.gov.au/Home/Resources/Discontinuance-Review-Framework>>.

45 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 76.

46 *Ibid* 381.

47 *Ibid*.

48 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 348.

49 *Ibid* 382.

Put simply, the independent review mechanism would ‘review cases with fresh eyes to assess if cases should be progressed further’.⁵⁰

Under the VLRC’s proposed model, there would also be a ‘systemic review’ function which would involve:

- conducting thematic reviews of cases and assessing the standard of casework
- identifying ways of improving procedures, including how prosecutors treat victims and improve procedural justice for victims
- identify any legal issues that act as barriers to decision making.⁵¹

A 2021 parliamentary inquiry recommended that the Victorian Government introduce a VRR scheme under the Victims’ Charter which would allow victims of sexual offences⁵² to request an internal review of decisions made by police or a prosecuting agency to not file charges or to discontinue a prosecution.⁵³

The parliamentary inquiry also recommended that the Victorian Government direct the Victorian Auditor-General’s Office to evaluate existing internal review schemes for all victims of crime (not just victims of sexual offences) to determine if an independent external right to review scheme should be open to all victims of crime.⁵⁴

A right to review certain decisions

Victims’ participation increasingly involves holding agencies accountable for their conduct. The VOCC considers that accountability includes a victim being able to seek some form of external review of significant decisions, particularly decisions made with a high degree of discretion.

For example, when deciding whether to prosecute a person, the Victorian DPP’s Policy states that prosecution may only proceed if:

- there is a reasonable prospect of conviction, and
- a prosecution is in the public interest.⁵⁵

The DPP’s Policy then sets out several pages of criteria that are relevant, or not relevant, to determining these two matters. For example, in relation to whether a prosecution is in the public interest, the prosecution must consider:

- offence-related factors (e.g. the seriousness of the offence)
- offender-related factors (e.g. the offender’s culpability, antecedents and background)
- victim-related factors (e.g. the attitude of the victim to a prosecution), and
- other factors (e.g. the likely sentence, the prevalence of the offence, the likely length of a trial).⁵⁶

In each case, prosecutors must decide the importance of each of these many factors. As Jonathan Doak says, ‘the weight attributed to each of these factors in establishing whether or not there is a sufficient public interest to prosecute is a matter of subjective assessment’.⁵⁷

As in judicial decision making, where judges can overturn the decisions of other judicial officers, ‘reasonable minds often differ on prosecutorial decisions’.⁵⁸ The OPP has recently noted in the context of crimes involving ‘recklessness’ that ‘Crown Prosecutors and the Director of Public Prosecutions are commonly faced with difficult choices, including whether to discontinue a charge, or resolve a prosecution on a basis that does not necessarily adequately reflect the gravity of the harm done to victims’.⁵⁹

50 Ibid.

51 Ibid.

52 The inquiry did not recommend this right to review extend beyond sexual offences.

53 Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria’s Criminal Justice System* (Final Report, 2022) 396 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSI_C_59-10_Vic_criminal_justice_system.pdf>.

54 Ibid.

55 Director of Public Prosecutions (Vic), *Policy of the Director of Public Prosecutions for Victoria*, <<https://www.oppvic.gov.au/wp-content/uploads/2022/10/DPP-Policy.pdf>> 3. The Victorian DPP’s policy is very similar to policies in many other common law jurisdictions.

56 Ibid 3–4.

57 Jonathan Doak, *Victims’ Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart Publishing, 2008) 121.

58 Kellie Toole, ‘Lehrmann Inquiry: What’s a Director of Public Prosecutions or DPP? A Legal Expert Explains’, *The Conversation* (online, 26 May 2023) <<https://theconversation.com/lehrmann-inquiry-whats-a-director-of-public-prosecutions-or-dpp-a-legal-expert-explains-206194>>; David Estcourt and Chris Vedelago, ‘Top Legal Minds Urge DPP to let Jury Decide Gobbo and Police Guilt’, *The Age* (online, 22 June 2023) <<https://www.theage.com.au/politics/victoria/careful-and-realistic-public-prosecutor-defends-lack-of-lawyer-x-charges-20230622-p5djjj.html>>.

59 Office of Public Prosecutions (Victoria), Submission No 10 to Victorian Law Reform Commission, *Recklessness* (3 March 2023) 5.

Significant work has been done within the DPP/OPP to provide victims with better access to reasons for prosecutorial decisions,⁶⁰ and a discontinuance review framework has been established.⁶¹ However, the VOCC considers that an independent right to review scheme in Victoria is needed to provide victims with an avenue to seek independent review of certain police and prosecutorial decisions after proper internal review processes have been exhausted.

Police and prosecutors make many and difficult decisions. In any exercise of public power, there are benefits in processes of review and accountability. These include improving the quality of decision making and providing transparency and accountability.⁶²

The VLRC said that resistance to a model of independent review of police and prosecution decisions was based on concerns that an independent review process might interfere with the independence of police and prosecution decision making (for example, if the DPP were required to prosecute a case that the DPP had decided should not be prosecuted).⁶³ However, as noted by the VLRC, assessments made in relation to evidence, reliability and credibility 'should be subject to scrutiny, so that we can be sure that flawed reasoning about a person's credibility or reliability is not the reason a case has been discontinued'.⁶⁴

The VOCC considers that there are ways to introduce independent review mechanisms that do not disrupt the duties of police or prosecutors or erode their independence.

An independent review model would allow for 'the testing of assumptions that might be held by the police and prosecution'.⁶⁵ A model of review would help to address concerns about whether misconceptions and biases are affecting decision making.

The VOCC considers that there are ways to introduce independent review mechanisms that would not disrupt or interfere with the duties of police or prosecutors or erode their independence. For example, the model proposed by the VLRC accepts that the review process should leave the final decision to the police and prosecution.⁶⁶

The VOCC recommends that an independent victim right to review scheme in Victoria should be introduced.⁶⁷ It should be underpinned by new rights in the Victims' Charter and have capacity to review decisions made at both the investigatory and prosecutorial stages of the process after internal mechanisms have been exhausted.

The VOCC considers the structure and make-up of the review mechanism to be a matter for government following extensive victim and stakeholder consultation.

The types of decisions that can be reviewed, and the trigger for a matter to be eligible for independent review, would also need to be determined after comprehensive consultation with victims, victims' professionals, Victoria Police members and the OPP. However, the VOCC considers it would be appropriate for the independent review mechanism to:

- enable individual case reviews at the request of victims
- review cases without a request from a victim for the purposes of enabling a broader oversight, review and advisory mechanism to address systemic issues relating to certain decision making
- enable review in circumstances where police have:
 - failed to take a complaint or report from victims and have failed to provide sufficient information on why, and have failed to provide information on how to request an internal review of such a decision
 - decided not to file charges and have failed to provide sufficient information on why a matter cannot proceed, and have failed to provide information on how to request an internal review of such a decision.
- enable review of prosecution decisions:
 - after a victim has exhausted avenues under the (internal) DPP's Discontinuance Review Framework

60 Office of Public Prosecutions (Victoria), *Requesting Reasons for Decisions* (2017) <<https://victimsandwitnesses.opp.vic.gov.au/witnesses/requesting-reasons-for-decisions>>

61 Kerri Judd KC, Director of Public Prosecutions (Victoria), *Discontinuance Review Framework* <<https://www.opp.vic.gov.au/Home/Resources/Discontinuance-Review-Framework>>.

62 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 381.

63 *Ibid* 380.

64 *Ibid* 381.

65 *Ibid* 383.

66 *Ibid* 382.

67 Academics point to the importance of independent review schemes operating separately from the original decision-making body. See, e.g., Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 163; Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 71 <<http://link.springer.com/10.1007/978-3-030-61383-9>>

- where a prosecutor has failed to meet their obligations under the Victims' Charter to seek the victim's views before making certain key decisions.

It is also essential that the process be developed in a way that is trauma-informed and victim-centred. Most victims seeking independent review will (at a minimum) be upset, disappointed, confused, and feeling powerless. Victims who have a case considered as part of a broader review (rather than because they have requested a review), may need support because a review may find that problems existed which affected their case. It is therefore important that review processes are developed in ways that are consistent with, and promote, Victims' Charter principles.

Further, to ensure victims can participate meaningfully in any new review process, victims should also have access to independent legal advice and assistance to facilitate their participation. Access to legal assistance is discussed further in **Chapter 15**.



RECOMMENDATION 4

The Victorian Government should establish an independent review mechanism enabling victims to seek a review of certain police and prosecution decisions once internal review mechanisms have been exhausted.

Victims should have an avenue of independent review in circumstances where police have:

- failed to take a complaint or report from victims and have failed to provide sufficient information on why, and on how to request an internal review of such a decision
- decided not to file charges and have failed to provide sufficient information on why a matter cannot proceed, and on how to request an internal review of such a decision.

Victims should have an avenue of independent review of prosecution decisions in circumstances where:

- a victim has exhausted avenues under the DPP's Discontinuance Review Framework
- a prosecutor has failed to meet their obligations under the Victims' Charter to seek the victim's views before making certain key decisions.

Victims' rights as human rights

Why are rights important?

As noted by academics Holder, Kirchengast and Cassell, rights matter because legal authorities recognise and respond only to those who possess them.⁶⁸ Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Human Rights Charter) does not specifically recognise victims in the justice system, whether as participants in the justice system or in other ways.

The Human Rights Charter does recognise victims as having 'general' rights such as the right to life, the right to protection from cruel, inhuman or degrading treatment and the right to privacy and reputation.

Holder, Kirchengast and Cassell argue that jurisdictions should recognise victims' rights and entitlements as human rights. They argue that this could help to change our understanding of victims' rights in the following ways:

- **Human rights provide a normative basis for victims' rights.** While a person's status as a victim may be transitional, their interests are not peripheral to the state's obligations to its citizens, they are 'intrinsic and inalienable'.⁶⁹
- **Characterising victims' rights as human rights changes the relationship investigatory and prosecuting agencies have with victims.** The relationship moves from one of respect (where victims' rights are essentially unenforceable) to one of agencies being 'duty-bearers' in relation to the rights of victims.⁷⁰

⁶⁸ Robyn Holder, Tyrone Kirchengast and Paul Cassell, 'Transforming Crime Victims' Rights: From Myth to Reality' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1, 3.

⁶⁹ *Ibid* 7.

⁷⁰ *Ibid*.

- **Identifying that victims' have human rights helps to separate the interests of victims from the interests of the prosecution.** It asserts that victims' interests are not simply against offenders but exist in relation to the state. It also shows that victims, like the accused, have rights.
- **Human rights can provide a robust structure, language and jurisprudence for rigorous examination of the tension that exists between rights that different persons and groups may have.**⁷¹ Using a human rights framework to recognise victims' rights focuses on the tension between rights and finding ways of resolving or reconciling those tensions rather than disregarding victims' interests.

If a person has a right, then a 'duty-bearer' (such as investigatory and prosecuting agencies and potentially courts) would have an obligation to respect that person's right. This is consistent with the view that the harm caused by a crime is not simply an act against the state but violates the human rights of victims, and that the law should separately recognise victims' rights. Wemmers argues that:

victims' rights are human rights and that crime constitutes a violation of their rights as well as an act against the state and, in turn, that victims require recognition as persons before the law.⁷²

Holder, Kirchengast and Cassell suggest that there has been a pervasive view that state entities only hold duties towards offenders because there has been a belief that the interests of victims were the same as the interests of the state. They suggest that '[u]nderstanding victims as independent actors in criminal justice processes underscores the distinct status of victims' rights'.⁷³

Holder, Kirchengast and Cassell also assert that categorising victims' rights as human rights reconceptualises a failure to afford victims rights not merely as 'unfortunate', 'unintentional', or the result of 'voluminous workloads' of justice agencies, but rather that 'these everyday administrative omissions are an oppressive, even intrusive, abuse of power'.⁷⁴

Victims' rights as human rights in Victoria

In its 2016 report *The Role of Victims of Crime in the Criminal Trial Process*, the VLRC observed that while the Human Rights Charter provides guarantees to the accused during the trial process (for example, to be informed of the nature and reason for the charge and to be afforded the right to a fair hearing), there are no rights enshrined for victims of crime. The VLRC concluded that incorporating the interests of victims into the Human Rights Charter would add to the integrity of what constitutes a fair trial in Victoria.⁷⁵

In 2016, the VLRC recommended that the Human Rights Charter be amended to include a right for a victim of a criminal offence to be:

- acknowledged as a participant (but not a party) with an interest in the proceedings
- treated with respect at all times
- protected from unnecessary trauma, intimidation and distress when giving evidence.⁷⁶

These rights would not be the only rights that victims could have in Victoria. The VLRC envisaged that these rights would act as minimum guarantees of victims' rights. Therefore, legislation such as the Victims' Charter could provide additional rights to victims, and agencies providing services to victims could provide better services than those required by these minimum guarantees.

The VLRC said that incorporating the interests of victims into the Human Rights Charter would:

- be relevant to the drafting and interpretation of legislation
- place obligations on the court to protect and secure the interests of victims
- be relevant to the policy development of legislative reforms to the criminal justice system because victims' rights and interests would need to be considered by Cabinet and by parliament in the statement of compatibility.⁷⁷

In its 2021 *Inquiry into Victoria's Criminal Justice System*, the Legislative Council Legal and Social Issues Committee (the Committee), said the rights of victims are implicitly protected under the Human Rights Charter because the accused's fair hearing rights involve a triangulation of interests.

⁷¹ Ibid.

⁷² Jo-Anne Wemmers, 'Victims' Rights Are Human Rights: The Importance of Recognizing Victims as Persons' (2012) 15 *Temida* 71, 72.

⁷³ Robyn Holder, Tyrone Kirchengast and Paul Cassell, 'Transforming Crime Victims' Rights: From Myth to Reality' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1.

⁷⁴ Ibid 7.

⁷⁵ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 48.

⁷⁶ Ibid: recommendation 2.

⁷⁷ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 35, 40.

While it may be correct that the rights of victims are implicitly protected under the Human Rights Charter, victims' rights are broader than those protected (implicitly) under the Human Rights Charter.

Furthermore, the Human Rights Charter's 'fair hearing' provisions only refer to the accused's rights. Sections 24 and 25 expressly state that they apply to 'a person charged with a criminal offence', that is, they are the accused's rights. As a result, victims' rights only exist as far as they are relevant to understanding the accused's rights. However, victims' interests often concern the relationship between victims and the state rather than victims and the accused. The Human Rights Charter therefore does not recognise all victims' rights and interests.

The Human Rights Charter is based on the International Covenant on Civil and Political Rights which was created in 1966 and the European Convention on Human Rights which was created in 1953. These human rights instruments developed in the context of a binary understanding of fair trial requirements. This explains why the Human Rights Charter only envisages victims' rights indirectly through the accused's rights. The notion of a triangulation of fair trial interests only developed (or was recognised by a court) in the last 25 years. As a result, victims' rights and the triangulation of interests are not fully recognised in the Human Rights Charter.

Victims' rights and the triangulation of interests are not fully recognised in the Human Rights Charter.

Victims should be recognised in the Human Rights Charter

The increased recognition of the legitimate rights and interests of victims through the Victims' Charter requires the justice system to continue to evolve in order to 'reconcile victim participation with legal, institutional and professional demands'.⁷⁸ Rather than destabilising concepts such as the right to a fair hearing, articulating victims' entitlements as human rights would ensure a focus on victims' rights in parallel to – not opposition with – rights of the accused. It would provide a strong framework for public authorities to make fairer decisions and balance competing interests.⁷⁹

Legal authorities recognise and respond to those who have legal rights. In the Human Rights Charter, victims' human rights are only recognised in a narrow way, namely to the extent that they are relevant in understanding the accused's rights.

Associate Professor Tyrone Kirchengast told the VOCC that victims' rights are ambiguous and unenforceable:

everyone is left confused by this ambiguous standing of victim rights that don't fit with conventional rights discourse. Where if you look at offender rights, they're always presented in the context of being substantive and enforceable. There aren't any rights for offenders that can't be enforced. They might be levels of enforcement, but they're all real and substantive rights. But victims have not shared in that history of rights development.⁸⁰

Amending the Human Rights Charter would recognise that victims have their own rights and status which are not only relevant in understanding the accused's fair hearing rights. That means victim's rights would be relevant irrespective of whether they affect the accused's rights.

The incorporation of victims' rights into the Human Rights Charter would elevate victims' status and improve consideration of their status and interests. It would also provide increased recognition of the Victims' Charter across public institutions and help guide decision making, training and development of policies and procedures. As noted by the Victorian Ombudsman, Victoria's Human Rights Charter helps public authorities 'make fairer decisions', 'balance competing interests' and 'is a tool to humanise the bureaucracy'.⁸¹ For example, the *Framework of Judicial Abilities and Qualities for Victorian Judicial Officers*⁸² which outlines the attributes the government, courts and community expect from judicial

Amending the Human Rights Charter would recognise that victims have their own rights and status which are not only relevant in understanding the accused's fair hearing rights.

⁷⁸ Judicial College of Victoria, *Victims of Crime in the Courtroom: A Guide for Judicial Officers* (2019) 7 <https://www.judicialcollege.vic.edu.au/eManuals/Victims/Victims%20of%20Crime%20in%20the%20Courtroom_WholeDoc.pdf>.

⁷⁹ Victorian Ombudsman, *The Ombudsman for Human Rights: A Casebook* (August 2021) 6.

⁸⁰ Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

⁸¹ Victorian Ombudsman, *The Ombudsman for Human Rights: A Casebook* (August 2021) 6.

⁸² Judicial College of Victoria, *Framework of Judicial Abilities and Qualities for Victorian Judicial Officers* (September 2008) <<https://www.judicialcollege.vic.edu.au/sites/default/files/2022-06/Judicial%20Abilities%20and%20Qualities%20Framework.pdf>>.

appointees,⁸³ makes reference to the abilities and qualities that are necessary to ensure fair treatment under Victoria's Human Rights Charter, but does not refer to the Victims' Charter.⁸⁴

Recognising victims' rights in the Human Rights Charter could also improve the development of criminal law policy. Section 18(2) of the Victims' Charter already provides that:

a person or body responsible for the development of criminal law policy, the development of victims' services policy, the administration of criminal justice or the administration of victims' services must, where relevant, have regard to the Charter Principles.

However, there is no method for making a person or body accountable for whether they have had regard to the Victims' Charter principles.

The Human Rights Charter provides that when introducing a Bill to parliament, a Minister must also introduce a Statement of Compatibility. A Statement of Compatibility must discuss whether a Bill is compatible with human rights, and if so, how it is compatible. It must also set out the nature and extent of any incompatibility.⁸⁵ This is to ensure that human rights are considered in the policy development of legislation.

If victims' rights were referred to in the Human Rights Charter, Ministers introducing Bills into parliament would need to provide a Statement of Compatibility indicating whether the Bill is compatible with victims' rights and/or identify the extent to which it is not.

As noted by the Federal Human Rights Commission in its consideration of a Federal Human Rights Act, the integration of human rights considerations into the decision-making processes of public authorities is important because it 'should make public servants more aware of the impacts of their decisions, and therefore help to prevent human rights breaches in decision making and policy design'.⁸⁶

For example, in the 2021 report *Improving Victims' Experience of Summary Criminal Proceedings*, the accused's rights under the Human Rights Charter were used to justify not enhancing victims' information and consultation rights.⁸⁷ Given victims' rights are not articulated in the Human Rights Charter, there was no requirement to equally balance competing rights or consider fairness to victims on the same level as accused rights.

Amending the Human Rights Charter

Academic Jonathan Doak contends that there are several key human rights standards that victims should be entitled to, including the right to protection and the right to participation.⁸⁸

The VOCC recommends that the Human Rights Charter be amended to include victims' high-level rights such as acknowledging the victim as a participant, treating the victim with respect, and protecting victims as witnesses.

This broader recognition of the need to protect victims throughout criminal proceedings – rather than limiting it to when a witness is called to give evidence – is consistent with other human rights instruments. For example, the EU directive on Victims' Rights focuses on protecting victims from 'secondary and repeat victimisation' court processes.⁸⁹ This recognises the need to protect victims because giving evidence more than once can be traumatising. The VLRC's recommendations to protect victims from harm when giving evidence should therefore be extended to protecting victims when a court is considering whether a victim should be required to give evidence.

The Human Rights Charter should also require that a Statement of Compatibility include an assessment of whether a Bill is compatible with victims' rights and entitlements as set out in the Victims' Charter and, if any part of a Bill is incompatible with a victim's rights and entitlements, the nature and extent of the incompatibility. This would provide a mechanism for improving accountability in persons or bodies responsible for developing criminal law policy by having regard to Victims' Charter principles.

⁸³ Department of Justice and Community Safety (Victoria), *Judicial appointments* (Web Page) <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/judicial-appointments>>.

⁸⁴ While courts and tribunals are not prescribed agencies under the *Victims' Charter Act 2006* (Vic), some provisions under the Act include court processes or criminal procedure that are overseen by courts. For example, section 12 of the Act requires 'a prosecuting agency and the courts' to minimise a victim's exposure to unnecessary contact with the accused. Section 13 of the Act reflects a victim's entitlement to make a victim impact statement 'to the court sentencing the person found guilty of the offence'.

⁸⁵ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 28(3).

⁸⁶ Australian Human Rights Commission, *Free & Equal: A Human Rights Act for Australia* (Position Paper, 2022) 268 <https://humanrights.gov.au/sites/default/files/document/publication/free_equal_hra_2022_-_main_report_rgb_0.pdf>.

⁸⁷ In considering why it was not appropriate to extend information and consultation rights to all victims under the Victims' Charter, the Department of Justice and Community Safety noted that the system must provide accused persons with a right to be tried without unreasonable delay: Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 24.

⁸⁸ Kerstin Svensson and Carina Gallo, 'Saying or Doing Human Rights: A Study of Victim Support Sweden' (2020) 45(1) *International Journal of Comparative and Applied Criminal Justice* 127, 128.

⁸⁹ *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime*, para 9 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>>.

The Human Rights Law Centre has said that Statements of Compatibility improve government processes because:

- departmental officers must consider human rights and justify any limitations to human rights in Cabinet documents
- ministers must make a statement to parliament about the compatibility of a Bill with human rights legislation.⁹⁰

Once a Bill is in parliament, the Scrutiny of Acts and Regulations Committee (SARC) examines Statements of Compatibility and provides a report detailing its findings. SARC's reports analyse whether a Bill affects human rights and whether there is sufficient information and explanatory material in relation to any rights and freedoms affected by a Bill. SARC's reports enable parliament to be better informed when debating a Bill.

Recognising victims' rights in this way would improve the status of victims' human rights, improve parliamentary consideration of Bills that affect victims' rights, and provide additional (albeit limited) pathways for enforcing victims' rights.



RECOMMENDATION 5

The Victorian Government should introduce amendments to the Charter of Human Rights and Responsibilities Act 2006 (Vic) to recognise victims' unique status in the criminal justice system and uphold specific rights for victims of crime.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Human Rights Charter) should be amended to include a right for a victim of a criminal offence to be:

- acknowledged as a participant (but not a party) with an interest in the proceedings
- treated with dignity and respect
- protected from unnecessary trauma, intimidation and distress when giving evidence and throughout criminal proceedings.

The Human Rights Charter should also require that a Statement of Compatibility include an assessment of whether a Bill is compatible with victims' rights and entitlements as set out in the Victims' Charter.

Where any part of a Bill is incompatible with victims' rights and entitlements, the nature and extent of the incompatibility should be set out in the Statement of Compatibility.

Protecting victims from unreasonable delay

Delays impact victim participation

Justice system delay is widely recognised and understood as a significant issue for an accused person. Victoria's Charter of Human Rights states that a person charged with a criminal offence is entitled to be tried without unreasonable delay.⁹¹

There is no equivalent right afforded victims under the Charter of Human Rights, such as the right to give evidence at trial without unreasonable delay. Similarly, the Victims' Charter is silent on matters of delay for victims of crime. However, as noted by the Australian Institute of Criminology, delay 'affects everyone', including 'the victims and their family who have been aggrieved by the offences against them, and the community who demand justice, safety and protection'.⁹²

⁹⁰ Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Department of Justice & Regulation, September 2015) 181.

⁹¹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 25(2)(c).

⁹² Jason Payne, 'Criminal Trial Delays in Australia: Trial Listing Outcomes' (Research and Public Policy Series No 74, Australian Institute of Criminology, 2007) 2.

The VOCC repeatedly heard from victims who had been further traumatised because of court delay. The VOCC heard from victims who had experienced varying lengths of delay within the court system, some up to five years. Victims frequently described how the court process was slow and traumatic, with uncertainty about whether the case would proceed at court events, and that the waiting for some kind of finalisation was difficult.

The VOCC heard from victims who described perpetrators using delay as a tactic to manipulate the court process and cause harm to the victim, as noted by this respondent to the Victims' Survey:



'The Accused was granted a 12 month delay to start the trial after another successful attempt by the [a]ccused to play the system. I was in court with my children when that judge just accepted those pathetic excuses by Defence and with flick of the pen put the trial back over 12 months. My children just broke down in silence. What am I supposed to tell them when this type of things happens?'

- Victims' Survey respondent

A member of the Victim Survivors' Advisory Council told the VOCC that delays meant victims must 'continually tap into their trauma'.⁹³ This was confirmed by Court Network who said delays require victims to 'hold their story for long periods of time while they are awaiting going to court'.⁹⁴

Research has also found that trial delays, particularly in sexual assault matters, cause victims to live in 'limbo' and feel 'stuck'.⁹⁵ Researchers Michele Burman and Oona Brooks-Hay found that a:

range of adverse consequences will likely be precipitated by inordinate delays, impacting on the personal, domestic and professional lives of victim-survivors which prevent them resuming working or studying, and which will likely include difficulties in maintaining close relationships (let alone establishing new ones); developing mental and physical health problems, including anxiety, night terrors, confusion, suicidal thoughts, depression, and trauma.⁹⁶

Devastatingly, the VOCC was told that delays had contributed to the suicide of one victim of crime. Another victim described the delays as 'four years of constant distress'. Other victims described how delay had affected their ability to participate meaningfully in the court process and give their best evidence.

Victoria Police and the OPP both advised the VOCC that court delay causes attrition, impacting on victim participation,⁹⁷ with Victoria Police telling the VOCC that this is where victims 'want to give up'.⁹⁸

Victoria Police told the VOCC they go to 'great lengths to keep complainants in a good place' but that waiting three or four years for a trial is too long for people to have that burden in their life.⁹⁹

Police also advised the VOCC that adjournments are difficult to secure if applied for by the prosecution but suggested there are examples where the courts are too lenient towards the defence and do not consider the impact on victims and witnesses.¹⁰⁰

Reducing court delays

Delay significantly impacts victims' ability to participate in the justice process.

The VOCC acknowledges the challenges faced by the courts and all justice agencies during COVID-19. The VOCC also notes the specific legislative and funding initiatives introduced during this time to help courts reduce and address backlogs. The VOCC also notes that there were significant delays in cases being completed before COVID-19.

There are also time limits for commencing trials.¹⁰¹ These time limits help to prioritise sexual offence trials. However, the time limits have been in place for many years and have not solved the problem of delays.

The VOCC recommends that the Victorian Government amend the *Charter of Human Rights and Responsibilities Act 2006* (Vic) to include a right for a victim of a criminal offence to be protected from unreasonable trial delay. This right would build on victims' rights discussed above.

⁹³ Consultation Meeting 11 – Victim Survivors' Advisory Council.

⁹⁴ Consultation Meeting 12 – Court Network.

⁹⁵ Michele Burman and Oona Brooks-Hay, 'Delays in Trials: The Implications for Victim-Survivors of Rape and Serious Sexual Assault' (Briefing Paper, The Scottish Centre for Crime & Justice Research, July 2020) 3 (references omitted).

⁹⁶ *Ibid* 4.

⁹⁷ Consultation Meeting 24 – Victoria Police – Session 4; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

⁹⁸ Consultation Meeting 17 – Victoria Police – Session 1.

⁹⁹ *Ibid*.

¹⁰⁰ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁰¹ *Criminal Procedure Act 2009* (Vic) ss 211, 212.

Victims should be protected from unnecessary trauma and distress arising from the way in which the criminal justice system operates. Delay can add to a victim's trauma, prevent a victim from focusing on recovering from the effects of crime, or limit the ability of a victim to participate, as the quality of their evidence may diminish over time.

Some reforms have already been introduced to address court backlog and delay, such as the expansion of sentence indications. However, the VOCC is concerned that too often these efforts focus on speeding up the process at the expense of victims' participatory rights rather than boosting the ability of the system to address delays while preserving victims' participatory rights. This is discussed further in Chapter 18 in relation to the impacts of the increased use of sentence indications to expedite cases.

In addition to including a right for a victim of a criminal offence to be protected from unreasonable trial delay in the Human Rights Charter, the VOCC recommends the Victorian Government adequately fund courts and other justice agencies (including Victoria Police, OPP and VLA) to reduce delays in criminal trials without eroding victims' participatory rights.

The VOCC notes that because victims are participants and not parties to a proceeding, they will not have standing in trials and summary hearings to enforce this right by opposing an adjournment. However, the existence of this right to be protected from unreasonable trial delay will be a relevant factor that the court must consider when determining, for example, whether to grant an adjournment and for how long. Courts often do consider the interests of the community and victims in having cases resolved as quickly as possible. However, including this right for victims formally recognises the victim's status as a participant with a legitimate interest in the resolution of court proceedings.

Including a right for victims to be protected from unreasonable trial delay formally recognises the victim's status as a participant with a legitimate interest in the resolution of court proceedings.



RECOMMENDATION 6

The Victorian Government should introduce amendments to the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* to provide victims with a right to be protected from unreasonable trial delay.

The Victorian Government should adequately fund courts and other justice agencies to reduce delays in criminal trials without eroding victims' participatory rights.

The *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (Human Rights Charter) should include a right for a victim of a criminal offence to be protected from unreasonable trial delay.

The Victorian Government should continue to focus on reducing delays in criminal trials. However, the Victorian Government should adequately fund courts and other justice agencies to reduce delays in criminal trials without eroding victims' participatory rights such as:

- the right to be consulted about certain decisions
- the right to make a Victim Impact Statement.

Improving awareness of victims' rights

Research suggests that when members of the community become a victim of crime, they need better information to understand victims' rights and entitlements, and better information about where to get help to navigate the justice system.¹⁰²

An overwhelming majority (75 per cent) of respondents to the VOCC Victims' Survey advised that agencies had not told them about the Victims' Charter. The Victims' Charter clearly specifies that in addition to providing information about the justice system to victims, investigatory, prosecuting and victims' services agencies are to provide victims with information about the agency's complaints system and the victim's right to have their complaint reviewed by the VOCC.¹⁰³ Being unaware of the Victims' Charter makes it difficult if not impossible for victims to understand their rights and entitlements, advocate for these rights and entitlements to be upheld, and identify Victims' Charter breaches.

Being unaware of the Victims' Charter makes it difficult, if not impossible, for victims to understand their rights and entitlements, advocate for these rights and entitlements to be upheld and identify Victims' Charter breaches.

As noted by the Canadian Office of the Federal Ombudsman for Victims of Crime in relation to their equivalent of the Victims' Charter:

While it is important that those working in the criminal justice system are familiar with the [Victims] Bill and its implications, it is equally important that Canadians are aware of the rights contained in the Bill in order to exercise them.¹⁰⁴

Better information

The VOCC considers *A Victim's Guide to Support Services and the Criminal Justice System* (the Victim's Guide), which is published by the DJCS, should provide victims with more comprehensive guidance about participation at key points of the process and what victims' specific rights are. There is no mention in the Victim's Guide about victims having a right to be treated as a participant. The Victim's Guide is also not explicit about participatory rights in relation to certain phases in the justice process, such as the requirement under the Victims' Charter for the DPP to seek the views of victims before making certain decisions.

The VOCC considers that specific rights and entitlements should be clearly identified along the justice journey and classified or clearly identified as rights to 'information', rights to 'consultation' or the right to have a 'voice' or 'role'.

The Victim's Guide should make it clear how participation should be facilitated at each step of the process by the different agencies or services involved, including who is responsible and how to advocate for their participation. The Victim's Guide should provide examples of participation by way of case studies or case/practical examples. This work should be undertaken in collaboration with the Victims of Crime Consultative Committee so that it is informed by the lived experience of those who have encountered different aspects of the justice system.

The Victim's Guide should clearly outline – at each step of the process – what a victim should do if they think their participatory rights are not being upheld. For example, victims should be clearly advised about whether they can request a review of a decision via an internal process (such as the DPP's Discontinuance Review Framework).

The Victim's Guide should also clearly outline the VOCC's role, including when a victim may make a complaint to the VOCC if they believe a Victims' Charter principle has been breached. The updated Victim's Guide should be available in a range of accessible formats.

¹⁰² Illinois Criminal Justice Information Authority, *2016 Victim Needs Assessment* (Summary Report, April 2017) 1.

¹⁰³ *Victims' Charter Act 2006* (Vic) s 19A(3).

¹⁰⁴ Office of the Federal Ombudsman for Victims of Crime, *Progress Report: The Canadian Victims Bill of Rights* (November 2020) 9 <<https://www.victimsfirst.gc.ca/res/pub/prcvbr-reccdv/index.html>>.

**RECOMMENDATION 7**

The Department of Justice and Community Safety should, in collaboration with the Victims of Crime Consultative Committee, review and revise *A Victim's Guide to Support Services and the Criminal Justice System* to provide victims with more comprehensive guidance about participation at key points of the process.

A Victim's Guide to Support Services and the Criminal Justice System should provide victims with more comprehensive guidance about their participation at key points of the process by clearly articulating:

- that a victim has a right to be treated as a participant
- the parts of the justice process where victims have specific rights and entitlements to participate
- how participation should be facilitated at each step of the process by the different agencies, including who is responsible and how to advocate for their participation
- examples of participation by way of case studies or case/practical examples
- what a victim should do if they think their participatory rights are not being upheld at each step of the justice journey.

The updated Victim's Guide should be available in a range of accessible formats.

Review of the Victims' Charter

The VOCC has heard during this inquiry that the Victims' Charter 'lacks teeth' and its remedies are ineffective for victims.

The Victims' Charter as introduced by parliament did not intend that the Victims' Charter create 'any legal right or give rise to any civil cause of action'. Section 22 of the Victims' Charter (which provides that the Victims' Charter does not affect legal rights) precludes victims from using the courts or other legal avenues to remedy a breach of the Victims' Charter.

In its *Inquiry into Victoria's Criminal Justice System*, the Legislative Council Legal and Social Issues Committee (the Committee) recommended that the Victorian Government consider ways of improving the enforceability of victims' entitlements, including reviewing section 22 of the Victims' Charter.¹⁰⁵

In this chapter, the VOCC has made other recommendations to address the issues with the enforceability of victims' entitlements, including introducing a role for courts to check for compliance with Victims' Charter rights where relevant to court proceedings.

However, the VOCC agrees with the Committee that there should be a broader examination of ways to improve the enforceability of victims' entitlements, including reviewing section 22 of the Victims' Charter. Having regard to the significance of this issue, the VOCC suggests comprehensive analysis of and consultation on this issue should form part of the statutory review of the Victims' Charter which is required to be commenced by the VOCC no later than 4 November 2024.¹⁰⁶

¹⁰⁵ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 274 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

¹⁰⁶ The Victims of Crime Commissioner is required to review the *Victims' Charter Act 2006* (Vic) and provide a report to the Attorney-General on or before 7 September 2025: *Victims of Crime Commissioner Act 2015* (Vic) s 29A.

The VOCC undertakes to consider the scope and operation of section 22 of the Victims' Charter as part of the statutory review of the Victims' Charter. The VOCC will also consider:

- the appropriateness of current complaints pathways for victims, including whether there is a need for expanded legal remedies
- whether the Victims' Charter should provide for an administrative review mechanism of certain decisions connected with alleged breaches of Victims' Charter principles
- whether the VOCC's complaints powers can be expanded to intervene in certain cases to restore a victims' rightful entitlement where it would not prejudice legal proceedings
- how restorative justice, mediation or conciliatory practices could be used when breaches of the Victims' Charter occur
- the scope and implications of section 25I of the Victims' Charter which relates to prosecutorial decisions, proceedings or investigations for criminal offences and the jurisdiction of the court.¹⁰⁷

¹⁰⁷ *Victims of Crime Commissioner Act 2015* (Vic) s 25I.

Overview of Chapter 13: Reporting and investigation

For many victims, reporting to police marks the start of their participation in the criminal justice system and the initial response of police can influence their willingness to participate. The *Victims' Charter Act 2006* (Vic) (Victims' Charter) includes rights that span the reporting and investigation process, such as the right to be treated with courtesy, respect and dignity.

This chapter has found that participation at the reporting and investigation stage requires improvement. Key issues include:

- lack of trust to report crimes to police
- reporting processes that were not trauma-informed
- victims not getting enough information to participate at the investigation stage.

Lack of trust to report to police

The Victims of Crime Commissioner (VOCC) has found that more needs to be done to increase community confidence to report crimes to police. The VOCC recommends that Victoria Police conduct a review of its programs, policies and initiatives aimed at engaging with the community and building confidence to report crime. Victoria Police should design and oversee the implementation of campaigns targeted at increasing the confidence of priority groups in the community to report.

Trauma-informed reporting processes

The VOCC heard from victims who had experienced a reporting process that lacked a trauma-informed approach. Issues ranged from concerns with the physical reporting environment to serious allegations of police dismissing reports by victims.

The VOCC recommends that Victoria Police undertake work to ensure there are appropriate, accessible, private areas for a victim of crime to safely disclose a crime in police stations. The VOCC also recommends that the Victorian Government expand the existing work being undertaken to create an online reporting option for sexual assault victims and to broaden this project to consider its applicability across different crime types, having regard to the systemic barriers faced by some victims of crime in reporting to police.

Later in the chapter, the VOCC also recommends a cultural review assessing Victoria Police's approach to victim-liaison.

Culturally safe ways for Aboriginal people to report crimes

The Aboriginal Justice Caucus told the VOCC that Aboriginal peoples mistrust of the system and remain reluctant to report crime.

The VOCC recommends that the Victorian Government include as part of its forthcoming Aboriginal Victims of Crime Strategy:

- alternative, culturally safe ways to report crimes, including reporting via an Aboriginal Community-Controlled Organisation (ACCO)
- an Aboriginal Social Justice Commissioner who would address systemic barriers to participation for Aboriginal and Torres Strait Islander peoples.

Getting enough information to participate

Receiving sufficient information from police was identified as a specific barrier to participation for victims. This inquiry has found that Victoria Police cannot meet its obligations under the Victims' Charter to provide information to all victims of crime.

Victoria Police has a corporate responsibility in meeting Victims' Charter obligations to victims. The VOCC recommends that Victoria Police review its policies, procedures and IT capabilities in relation to obligations under the Victims' Charter to assess its capability and capacity in relation to meeting victims' statutory entitlements. The VOCC also recommends that Victoria Police undertake a cultural review assessing its organisation-wide approach to victim liaison.

13

Chapter 13:
**Reporting and
investigation**



Introduction

For many victims, reporting to police marks the start of their participation in the criminal justice system and the initial response of police can influence their willingness to participate.

The *Victims' Charter Act 2006* (Vic) (Victims' Charter) includes rights that span the reporting and investigation process, such as the right to be treated with courtesy, respect and dignity. Under the Victims' Charter, victims also have a right to be provided with information at key points of the investigation.

This chapter makes recommendations in relation to:

- building trust in police among the community so that victims feel safe to report crimes to police
- improving the reporting environment so that when victims do approach police to make a report, they feel safe and feel treated with courtesy, respect and dignity
- enhancing reporting options for Aboriginal and Torres Strait Islander communities to address systemic barriers to participation.

This chapter also makes recommendations to address Victoria Police's capability and capacity in relation to meeting victims' statutory entitlements to information, as per obligations under the Victims' Charter.

Lack of trust to report to police

Close to 40 per cent of respondents to the Victims of Crime Commissioner's (VOCC's) Victims' Survey who did not report to police said they did not feel safe talking to police (21 per cent), or they thought they would not be taken seriously (17 per cent). These concerns about making a report to police are consistent with previous research.¹

The VOCC also heard about a lack of trust in police on the part of particular victim cohorts, as outlined in detail in **Chapters 5** and **7**, and summarised in **Table 3** below.

Table 3: Barriers to reporting to police

	What VOCC was told	What the research says
Aboriginal and Torres Strait Islander communities	The Aboriginal Justice Caucus told the VOCC that Aboriginal people mistrust the system, remain reluctant to report crime and that agencies 'need to work harder at responding to Aboriginal people'. ¹	A 2021 parliamentary inquiry found that a significant proportion of crimes committed against Aboriginal and Torres Strait Islander peoples go unreported. ² Djirra suggested to the parliamentary inquiry that 90 per cent of violence committed against Aboriginal and Torres Strait Islander women is not reported. ³

¹ See, e.g., Kate Fitz-Gibbon et al, *National Plan Victim-Survivor Advocates Consultation* (Final Report, 2022) 76 <https://bridges.monash.edu/articles/report/National_Plan_Victim-Survivor_Advocates_Consultation_Final_Report/16947220>.

¹ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

² Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 335 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

³ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 335 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

<p>Disability</p>	<p>Of the respondents to the VOCC's Victims' Survey who identified as having a disability, 60 per cent of this cohort did not tell police when they experienced crime because they did not feel safe talking to police.</p> <p>Victims with disability told the VOCC how negative past experiences involving police, both in the context of reporting crime and more generally, have led to them feel unable to report crime. This is consistent with previous research which has found previous negative contact with police can negatively affect reporting rates for people with disability.⁴</p>	<p>A research report for the Commonwealth Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability has noted that there is variability in 'strategic approaches to policing and disability' and that very few initiatives are evaluated, with almost nothing available publicly.⁵ The research report notes that 'while some individual police demonstrate good practices and approaches, on a systemic basis police do not respond effectively to promote safety and protect people with disability who are victims'.⁶</p>
<p>LGBTIQ+</p>	<p>The VOCC heard that victims of crime in the LGBTIQ+ community still face barriers to reporting to police and that '[w]hat communities have been seeking for a long time is an acknowledgement that as a system "we messed up". We need to address that legacy and make a change in how we proceed.'⁷</p> <p>A Lived Experience Consultant with Berry Street Y-Change explained that as a trans person and a victim of family violence and sexual assault, reporting crime 'is not an option' and is 'not safe'.⁸ They queried the safety of reporting to police, noting that reporting options are very limited and can result in victims feeling alienated from police. They also felt that inclusion and training around diversity for police 'still needs to go a long way', noting that you 'need to question why a system built to protect people is feared by so many of them'.⁹</p>	<p>In 2021, the Victorian Pride Lobby published a report that found low levels of trust in police:¹⁰</p> <ul style="list-style-type: none"> • Two in three LGBTIQ+ Victorians do not think police are generally helpful and supportive. • Three in four LGBTIQ+ Victorians do not think police can be trusted to use their powers reasonably. • Four in five LGBTIQ+ Victorians do not think the police understand the issues that impact them. • Three in five LGBTIQ+ Victorians believe the police show an inherent lack of respect toward LGBTIQ+ people. <p>A 2021 Victorian parliamentary inquiry found that people from LGBTIQ+ communities are less likely to report violence due to a lack of trust in police.¹¹ Recent research relating to the lived experience of sexual violence among trans women of colour reported feelings of judgement, blame, mistrust and a lack of acknowledgment when interacting with police and legal professionals.¹²</p>

4 Jude McCulloch, JaneMaree Maher and Kate Fitz-Gibbon, 'Justice Perspectives of Women with Disability: An Australian Story' (2021) 27(2) *International Review of Victimology* 196, 199.

5 Leanne Dowse, Simone Rowe and Michael Baker, *Police Responses to People with Disability, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Research Report, October 2021) 145.

6 Leanne Dowse, Simone Rowe and Michael Baker, *Police Responses to People with Disability, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Research Report, October 2021) 111.

7 Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities.

8 Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

9 Ibid.

10 Victorian Pride Lobby, *Upholding our rights: LGBTIQ+ attitudes towards and experiences of policing in Victoria* (Report, 2021) 8.

11 Legislative Assembly Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Anti-vilification Projects* (Report, March 2022) <https://www.parliament.vic.gov.au/images/stories/committees/lsc-LA/Inquiry_into_Anti-Vilification_Protections_/Report/Inquiry_into_Anti-vilification_Protections_002.pdf>.

12 Jane M Usher et al, *Crossing the Line: Lived Experience of Sexual Violence among Trans Women of Colour from Culturally and Linguistically Diverse (CALD) Backgrounds in Australia* (Research Report, Issue 14, June 2020) 10.

<p>Culturally and linguistically diverse communities</p>	<p>Key issues identified by culturally and linguistically diverse populations included difficulty navigating the justice system due to language barriers and barriers to culturally safe participation, particularly where there are intersectionalities. For example, one VOCC Victims' Survey respondent spoke about how her culture and her identity as a woman meant dealing with police was intimidating. Another Victims' Survey respondent stated that: 'Police are not safe ppl who understand cultural and religious issues.'</p>	<p>Research suggests victims from culturally and linguistically diverse populations still face barriers to reporting to police, including 'feeling dismissed, disbelieved, blamed and discriminated against by police officers'.¹³</p>
<p>Children and young people</p>	<p>The Principal Commissioner for Children and Young People spoke about the challenges encountered by children and young people when reporting to police, such as not receiving an empathetic response or not being believed. The Commissioner for Aboriginal Children and Young People noted that this can be compounded for some children and young people whose interactions with police may already be negative.</p>	<p>A 2010 Victoria University report surveying young people in Victoria found young people would feel more comfortable calling the police if the police were friendlier, if the police were more respectful, if they could be more confident that they would be assisted or if they could report in a more private or anonymous way.¹⁴</p>

Building trust in police

As discussed in the VLRC's recent report in relation to sexual offences, the aim of policy and law reform should not just be to increase reporting – reporting a crime is a personal decision and there are many reasons why a victim may not report. However, for those victims who do want to report to police, barriers to reporting must be reduced.

Some victims the VOCC spoke with described positive experiences of reporting to police, including being treated with empathy, care and professionalism. Victoria Police members told the VOCC about initiatives to improve confidence to report, particularly for certain priority groups.

An example of the way in which Victoria Police has made changes to improve community confidence to report is the introduction of over 450 LGBTIQ+ liaison officers who serve as contact points when a victim wishes to report a crime.¹⁵ LGBTIQ+ liaison officers also:

- make recommendations to Victoria Police about the policing needs of LGBTIQ+ people
- consider LGBTIQ+ community perspectives in the review and development of Victoria Police policies, processes, and initiatives
- conduct training and communicate about emerging issues.¹⁶

These initiatives are promising and point to improved culture and acknowledgement of the need to enhance strategies to build community trust and confidence. Research suggests that the:

presence of liaison services is a significant sign to LGBTI communities that policing organisations recognise diversity in the community and among the police. These programs also provide a meaningful way in which good policing practice towards LGBTI communities can be exemplified.¹⁷

¹³ Dr Cathy Vaughan et al, *Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia. The ASPIRE Project: Key Findings and Future Directions* (December 2016) 4.

¹⁴ Michele Grossman and Jenny Sharples, *Don't Go There: Young People's Perspectives on Community Safety and Policing* (May 2010) xiii-xiv.

¹⁵ Victoria Police, *LGBTIQ+ Liaison Officers* (Web Page) <<https://www.police.vic.gov.au/LGBTIQ-liaison-officers>>.

¹⁶ Ibid.

¹⁷ Angela Dwyer et al, *Exploring LGBTI Police Liaison Services: Factors Influencing Their Use and Effectiveness According to LGBTI People and LGBTI Police Liaison Officers* (Report to the Criminology Research Advisory Council, July 2017) 44.

However, the VOCC considers that more still needs to be done to increase community confidence to report crimes to police. This was identified in the VOCC's own research and confirmed by findings in other recent reviews and inquiries as summarised in **Table 3** above.

The VOCC recommends that Victoria Police conduct a review of its programs, policies and initiatives aimed at engaging with the community and building confidence to report crime. There should be a particular focus on priority groups that have faced disadvantage and discrimination.

Within Victoria Police there is a Priority and Safer Communities Division. It is part of Victoria Police's Capability Department and meets with peak bodies and community stakeholder organisations on a quarterly basis through formal 'Portfolio Reference Groups'. These Portfolio Reference Groups cover priority communities through the following groups:

- Aboriginal Portfolio Reference Group
- Disability Portfolio Reference Group
- LGBTIQ+ Portfolio Reference Group
- Mental Health Portfolio Reference Group
- Multicultural Portfolio Reference Group
- Seniors Portfolio Reference Group
- Youth Portfolio Reference Group.

The VOCC considers these existing groups would be best placed to drive initiatives to enhance community confidence to report to police. These groups should lead the design and implementation of targeted campaigns to increase community confidence to report.



RECOMMENDATION 8

Victoria Police should conduct a review of its programs, policies and initiatives aimed at engaging with the community and building confidence to report crime, with a particular focus on priority groups that have faced disadvantage and discrimination.

This work should be informed by lived-experience expertise and be guided by the relevant Portfolio Reference Groups in Victoria Police's Priority and Safer Communities Division.

Targeted campaigns to increase community confidence to report crimes should include consideration of the need for:

- more strategic promotional activities or advertising campaigns
- partnerships between Victoria Police and community-based organisations that have existing, trusted relationships with members of priority cohorts
- training and education opportunities across a police member's career aimed at addressing myths, misconceptions, bias or prejudice.

Consideration should also be given to:

- how dedicated liaison positions, like LGBTIQ+ liaison officers, may enhance community confidence to report
- whether there is scope to enhance or expand existing liaison programs.

Trauma-informed reporting process

For many victims, reporting to police is their first contact with the justice system and the initial response of police can influence their willingness to participate.¹⁸

Some respondents to the VOCC's Victims' Survey said that feeling heard, being believed and being treated respectfully resulted in positive reporting experiences for them. A number of victims praised specialist police responses such as the Sexual Offences and Child Abuse Investigation Team (SOCIT). Victims of sexual offences felt particularly safe when they felt believed and that the crime was not minimised.

The VOCC also heard from victims who had experienced a reporting process that lacked a trauma-informed or sensitive approach. Issues ranged from concerns with the physical reporting environment, to serious allegations of police dismissing reports by victims or persuading victims not to pursue a complaint.

Victims told the VOCC about:

- police trying to engage with them at inappropriate times or in inappropriate locations
- having to disclose sexual victimisation in the public reception area of a police station
- having to engage with police in environments that were not accessible or appropriate for people with disability
- feeling rushed through the reporting process without adequate support or empathy
- receiving police responses that were belittling, condescending, dismissive or unsupportive
- police attending incidents and not conducting comprehensive investigations
- police refusing to take statements or dissuading victims from reporting
- being subjected to inappropriate comments from police members, including questions or comments that victim-blame or perpetuate rape myths.

These issues fall under two broad reform areas:

- improving the reporting environment
- improving police responses when victims report crimes.

Improving the reporting environment

A number of victims of crime described having to disclose personal details in the public reception area of a police station. Other victims noted that not all people can physically attend police stations, whether due to disability, age or the nature of their victimisation.

There are a number of key issues to consider in relation to improving the reporting environment for victims:

- whether all police stations have appropriate, accessible, private areas for a victim of crime to safely disclose a crime
- whether a victim would reasonably be aware when approaching the front counter of a police station of the availability of private areas (if they are available) and whether they feel safe to request access to it
- whether there is scope to expand the ways in which victims can safely disclose a crime.

There is no single approach to improving the reporting environment for victims of crime. The VOCC recommends that a range of approaches be implemented.

Safe spaces in police stations

It is not clear whether all police stations have appropriate, accessible, private areas for a victim of crime to safely disclose a crime. It is also not clear whether, when approaching the front counter of a police station, a victim would be aware of the availability of private areas and whether they feel safe to request access to it.

In **Chapter 16**, the VOCC makes recommendations to ensure minimum standards for safety and accessibility in Victorian courts. The VOCC considers Victoria Police should also undertake work to identify any gaps in availability of appropriate, accessible, private areas for a victim of crime to safely disclose a crime.

¹⁸ See, e.g., Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I to II* (Report, 2017) 194 <<https://hla.gov.au/hla.obj:2821501433>>.

Where there already is access to appropriate, accessible, private areas for a victim of crime to safely disclose a crime, it is important victims know about this, and feel safe to request access to these areas. In this regard, Victoria Police should ensure clear signage and information is available in public areas of police stations regarding the availability of victim-centred spaces. This is a simple, practical step that can be taken with minimal resourcing implications for Victoria Police.

VOCC also recommends that all front-line police be directed in training, policies and procedures to enquire about a person's needs, safety and comfort when they make an initial approach to police. Victoria Police should also advise victims that they can request access to victim-centred spaces. This should be regarded as 'best practice' in encouraging reporting and confidence in police. Taking these steps would also ensure police are compliant with the Victims' Charter requirements to ensure people adversely affected by crime are treated with courtesy, respect and dignity and that police are responsive to the particular needs of persons adversely affected by crime. This includes needs relating to:

- race or indigenous background
- sex or gender identity
- cultural or linguistic diversity
- sexual orientation
- disability
- religion
- age.



RECOMMENDATION 9

Victoria Police should undertake work to:

- **identify any gaps in the availability of appropriate, accessible, private areas for a victim of crime to safely disclose a crime**
- **ensure police take steps to ensure victims are aware that they can request access to safe spaces**
- **ensure police members enquire about a person's needs, safety and comfort when they make an initial approach to police.**

Victoria Police should:

- audit police stations to identify any gaps in availability of appropriate, accessible, private areas for a victim of crime to safely disclose a crime
- develop plans to close any gaps in access to appropriate victim-centred areas including:
 - undertaking internal modifications to improve access
 - assessing alternative locations for conducting safe conversations where modifications are not possible
- install clear signage and information in the public areas of police stations about the availability of victim-centred spaces
- train all front-line police to enquire about a person's needs, safety and comfort as good practice in encouraging reporting and confidence in police.

Online reporting

Victims need flexibility and the ability to engage in the reporting process at their own pace. Given the individual and structural barriers faced by some victims of crime to reporting a crime, outlined above in detail, the VOCC considers online reporting options should be available to more victims of crime.

Previous research has found that alternative reporting options, in the context of sexual assault, serve as a pathway for survivors who may be hesitant to engage with police: 'These options allow survivors to tell their story in their own words, providing autonomy and control. They also assist police with intelligence gathering in unique ways.'¹⁹

¹⁹ Collaborative Research Team, *Alternative Reporting Options for Sexual Assault* (Web Page), <<https://alternativereportingproject.com/about-the-research-project/>>.

Victims of sexual assault are not the only victim cohorts who could benefit from options that allow victims to have more choice, autonomy and control.

Victoria Police already have online reporting options for theft and property damage.²⁰ Historical sexual abuse involving institutional or religious organisations can be reported via email.²¹ The Victorian Government has recently contracted a team of academics to provide advice on designing an online reporting pathway for sexual violence, as recommended by the Victorian Law Reform Commission in its 2021 report into the justice system response to sexual assault.²²

During consultations with the VOCC, some Victoria Police members were sceptical about the benefits of alternative reporting mechanisms, such as online reporting, raising concerns around:

- delays in reports coming to the attention of police if submitted online
- inability for police to provide immediate support
- loss of evidence in the aftermath of sexual assault.

The VOCC notes these concerns, but given the low reporting rates, particularly for certain victim cohorts, the current approaches to reporting crimes are not meeting all victims' needs.

Victims told the VOCC that not all people can physically attend police stations, whether due to disability or the nature of their victimisation. Some victims the VOCC engaged with experienced a crime perpetrated by a Victoria Police member. For these victims, they encountered specific barriers to reporting to police and participating in the justice process. Research suggests young people also want different reporting options.

Given the low reporting rates, particularly for certain victim cohorts, the current approaches to reporting crimes are not meeting all victims' needs.

An online reporting process may better support victims who face additional barriers and may provide some victims with a safer first step towards reporting.

This may be particularly important for some victims of crime who may be fearful of police or face structural or physical barriers to attending a police station. Alternative pathways to reporting could have particular benefits for people with disability, male victims of sexual assault, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people who identify as LGBTIQ+, people experiencing homelessness, mental illness and young people, including young people in out-of-home care.

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RECOMMENDATION 10

The Victorian Government should expand the existing work being undertaken to create an online reporting option for sexual assault victims to consider its applicability across different crime types and victims who face systemic barriers in reporting to police.

Alternative reporting mechanisms should have regard to the systemic barriers faced by particular victims in reporting crime to police, whether by crime type or due to an individual's characteristics.

20 Victoria Police, *Police Assistance Line and Online Reporting* (Web Page), <https://www.police.vic.gov.au/police-assistance-line-and-online-reporting?gclid=EA1aIQobChM10Irs07rO_wlVgZlmAh2YhAihEAMYAiAAEgLU_PD_BwE->

21 Victoria Police, *Reporting Sexual Offences and Child Abuse* (Web Page), <<https://www.police.vic.gov.au/reporting-sexual-offences-child-abuse->>

22 Collaborative Research Team, *Alternative Reporting Options for Sexual Assault* (Web Page), <<https://alternativereportingproject.com/about-the-research-project/>>

Improving police responses when victims report crimes

As noted above, while some victims described positive experiences of reporting to police, the VOCC heard that victims encountered varying police responses when reporting crime.

Several respondents to the VOCC's Victims' Survey felt that police were dismissive of their experiences or felt they were being discouraged from reporting crime.

The VOCC was told by some Victims' Survey respondents about police refusing to take statements.

A number of respondents to the Survey stated that they did not feel believed by police members when reporting crime. One Victims' Survey respondent advised that police told them '[m]aybe you imagined it' and refused to investigate the matter further. Some victims reported being asked victim-blaming questions such as whether they had been drunk or 'what did they expect going on a dating service'?

One victim interviewed by the VOCC stated: 'I can't tell you how often I have been turned away, dismissed, ignored, ridiculed, embarrassed in my dealings with police over the years. I've been laughed at, even by a group of police.'²³

This variability in police responses was also confirmed by stakeholders. Community Legal Centre (CLC) representatives told the VOCC that victims 'frequently can't get beyond the front desk of a police station to report their injury or report evidence of a crime'²⁴ and that police dismiss some victims because they are not viewed as 'credible'.²⁵

A number of victims told the VOCC that police require further training to respond better to victims in a trauma-informed way, particularly in relation to sexual offences, family violence and stalking:



'The key area to focus on would be adequate training, support and recruitment of specialised police and detectives to respond to sexual assault and DV/Family violence offences.'

'Police...no training or understanding in family violence and narcissistic behavior'

'There is an urgent need for greater trauma informed training across police.'

– Victims' Survey respondents

Similarly, a victim who was interviewed by the VOCC noted that appropriate trauma-informed training is essential for informants engaging with victims.²⁶

A member of the Women with Disabilities Victoria Experts by Experience Advocacy Team advised that further training is required in relation to disability:



*'But even if I said I was autistic, I'm not sure police or a court would know what to do. I think we need more training, specialist support officers, advocates to help unpack this and consider people's needs.'*²⁷

The VOCC recommends that Victoria Police undertake a cultural review to assess its organisation-wide approach to victim liaison (see Recommendation 13, below). As part of this recommendation, the VOCC suggests the cultural review consider what training is required to better meet the diverse needs of victims. This training should consider areas of improvement such as:

- ensuring police engage with victims at appropriate times and in appropriate spaces
- not rushing victims through reporting processes without adequate support or empathy
- addressing any persistent biases or prejudices that police have that may prevent or discourage victims from participating further in the reporting or prosecution process.

²³ Interview 10 – Victim of family violence.

²⁴ Consultation Meeting 22 – Community Legal Centres – Session 1.

²⁵ Consultation Meeting 23 – Community Legal Centres – Session 2.

²⁶ Interview 10 – Victim of family violence.

²⁷ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

In **Chapter 14**, we also recommend providing extra support for victims when reporting a crime. This initiative would provide a link to the victim support system and ensure victims have sufficient support when they first engage with police.

As discussed in **Chapter 12**, we also recommend that certain police decisions should be able to be externally reviewed. This would provide victims with an appropriate, independent pathway to have certain police decisions reviewed, particularly where action has not been taken and victims have not been provided with reasons in writing for certain police decisions.

More options for Aboriginal and Torres Strait Islander peoples

The Aboriginal Justice Caucus (AJC) told the VOCC that Aboriginal people experience a mistrust of the system, remain reluctant to report crime and that '[r]acism will be the first barrier for Aboriginal people who report a crime'.²⁸

The AJC also said that '[w]e need to educate our mob to use their voices' but noted that this is an 'an arduous and traumatising process with little outcome'. The AJC told the VOCC that ultimately agencies 'need to work harder at responding to Aboriginal people'.²⁹

To address the systemic barriers to reporting crime, the AJC told the VOCC that culturally safe approaches for reporting crime should be available through Aboriginal Community-Controlled Organisations (ACCOs):

Alternative reporting is also not currently available through an Aboriginal Community-Controlled Organisation (ACCO). It could be helpful to have ACCO as a site to report and then for the ACCO to liaise with Victoria Police and have a plain clothed police member attend the ACCO and speak with the victim, allowing them to report a crime in a safe space.³⁰

The AJC also told the VOCC that to address systemic barriers to participation for Aboriginal and Torres Strait Islander peoples, it was important that government introduce an Aboriginal Social Justice Commissioner. The VOCC was told about a recent serious incident involving the assault of a young person where police advised they had no staff to deal with the complaint. Following the involvement of a Regional Aboriginal Justice Advisory Committee (RAJAC), the young person was supported to report the assault to police. This was highlighted to the VOCC as an incident which, without community involvement, would have remained unreported, despite its seriousness.³¹

The AJC also emphasised the importance of an Aboriginal Social Justice Commissioner during the 2021 parliamentary inquiry into the criminal justice system, and pointed to the need for increased accountability given that the:

justice system exerts a lot of control over Aboriginal lives through legislation, policies and processes that rarely include the voices of Aboriginal people in their design and development.³²

The AJC told the parliamentary inquiry that they had:

been asking for an Aboriginal social justice commissioner for, I think, nearly 12 to 16 years, and that is just so we have Aboriginal oversight and an authority body for Aboriginal people when it comes to the justice system.³³

The 2021 parliamentary inquiry into the criminal justice system recommended that the Victorian Government appoint an Aboriginal Social Justice Commissioner to monitor the implementation of recommendations made by the Royal Commission into Aboriginal Deaths in Custody (1987–1991) and to ensure the criminal justice system responds appropriately to Aboriginal Victorians.³⁴

In 2021, the Chief Commissioner of Victoria Police told the same parliamentary inquiry that 'improving Aboriginal Victorians' trust in the criminal justice system, particularly Victoria Police, requires direct engagement with communities about reform to the current system'.³⁵

As outlined above, the VOCC recommends that Victoria Police conduct a review of its programs, policies and initiatives aimed at engaging with the community and building confidence to report crime with a particular focus on priority groups, such as Aboriginal and Torres Strait Islander peoples, who have faced disadvantage and discrimination.

28 Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

29 Ibid.

30 Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

31 Consultation Meeting 30 – Aboriginal Justice Caucus (AJC Meeting 2).

32 (Mr) Christopher Harrison (Co-chair Aboriginal Justice Caucus), Evidence to Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System*, Melbourne, 21 October 2021, 46).

33 Ibid.

34 Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022), recommendation 79, lix <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

35 Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 337 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

Victorian Police should draw on the expertise and leadership of members of the Aboriginal Portfolio Reference Group which is overseen by Victoria Police's Priority and Safer Communities Division.

Aboriginal Victims of Crime Strategy

In December 2021, the Victorian Government released its *Victim Support Update*. In that update, the government committed to consulting with Aboriginal victims of crime on a strategy for addressing their specific needs in 2022 and developing an Aboriginal Victims of Crime Strategy.³⁶ This work will involve comprehensive consultation with the Aboriginal community.

As part of this strategy, the VOCC recommends that the Victorian Government introduce:

- alternative, culturally safe ways to report crimes, including but not limited to reporting via an Aboriginal Community-Controlled Organisation (ACCO)
- an Aboriginal Social Justice Commissioner who would address systemic barriers to participation for Aboriginal and Torres Strait Islander peoples.



RECOMMENDATION 11

As part of the dedicated work already underway to develop an Aboriginal Victims of Crime Strategy, the Victorian Government should include introduction of:

- **alternative, culturally safe ways to report crimes**
- **an Aboriginal Social Justice Commissioner to address systemic barriers to participation for Aboriginal and Torres Strait Islander peoples.**

Alternative, culturally safe ways to report crimes should include, but should not be limited to, consideration of reporting via an Aboriginal Community-Controlled Organisation (ACCO).

Information provision

Receiving sufficient information from police was identified as a specific barrier to participation for victims. Almost 70 per cent of victims surveyed by the VOCC stated that they did not get any useful information, or not enough information, from police to participate.

Victims told the VOCC about:

- not receiving any contact at all after making an initial report, continually calling Victoria Police and leaving messages, with calls left unreturned
- having to continually chase up actions, such as whether an intervention order had been served
- police failing to provide victims with key information such as court dates
- failures to provide information about, or referrals to, relevant support services.

Victims told the VOCC that having to chase information from police 'to no avail' caused great distress and anxiety.

Consultation with victims' professionals echoed the issues raised by victims, with victims' professionals describing a lack of proactive communication from police resulting in victims missing out on opportunities to participate.

³⁶ Victorian Government, *Victim Support Update* (Web Page, December 2021) <<https://www.vic.gov.au/victim-support-update>>.

The VOCC was also told by operational police that it is impossible with current resources to meet information obligations under the Victims' Charter for all victims of crime.³⁷ Victoria Police members told the VOCC about overwhelming workloads and being unable to meet Victims' Charter requirements in the vast majority of cases:

With 300 000 cases a year, more than 200 000 of which have victims, and there are 12,000 of us, it's not physically possible to deliver statutory rights for all victims. It's just not physically possible.³⁸

We don't have physical barriers to be able to make phone calls or attend a home but it is just lack of time and the volume of the workload. In the [one region] at the moment we have 220 active investigations and 160 active court cases. So you can imagine just the sheer volume of cases.³⁹

The VOCC was told that from 'a general duties perspective the workload is huge'.⁴⁰

It is particularly significant that Victoria Police members struggle to meet their Victims' Charter obligations because Victoria Police is both the investigating and prosecuting agency for most crimes prosecuted in Victoria.⁴¹ Accordingly, most victims in Victoria are relying on information to be provided by Victoria Police either in relation to the investigation, or in most cases, both the investigation and prosecution.

Lack of sophistication in police case management and information technology systems was raised as a barrier to police being able to stay on top of case progression, and in turn, to update victims. Victoria Police told the VOCC that once a matter proceeds to prosecution, Victoria Police does not have an efficient way for informants to stay abreast of the progress of a prosecution even when Victoria Police prosecutes the case meaning that 'the informant might forget about the matter being at court until they get notification that there's been a conviction or that charges are dropped'.⁴² The VOCC was told that informants are frequently only aware a matter has progressed to court once the proceeding is finalised.⁴³

During consultations with Victoria Police members, it was evident that there are many dedicated police members who are victim-centred and wish to prioritise victims' needs and provide much-needed information and support. However, it is clear that Victoria Police members cannot meet their obligations under the Victims' Charter for all victims of crime.

Victoria Police review

Research has found that how the police treat victims is more important for victims' perceptions of procedural justice than how victims are treated by other criminal justice authorities such as the prosecutor or the judge.⁴⁴ This is unsurprising given police are the gateway to the justice system, and for most victims, the primary source of case information.

This inquiry has found that Victoria Police cannot meet its obligations under the Victims' Charter for all victims of crime. At present, timely and adequate information provision seems to rely on a combination of good will and good luck: good will on the part of dedicated police officers and good luck when information manages to flow from prosecutions to the police informant in a timely way.

Victoria Police must urgently review its approach to meeting Victims' Charter obligations.

Victoria Police's existing approach appears to place responsibility for meeting Victims' Charter obligations primarily with individual police officers. However, Victoria Police also has a corporate responsibility in meeting Victims' Charter obligations to victims. As holders of information, Victoria Police needs to adopt a more victim-centred approach to the corporate information that it holds, in order to provide better support for victims.

For example, there are problems with information flows between Victoria Police's prosecutors and informants. Informants often have to work shifts, making it more difficult for victims and victim support workers to contact the informant.

Other agencies have reformed their approach to victim consultation and engagement, including the Office of Public Prosecutions (OPP) which has introduced the Records of Victim Engagement (ROVE). The OPP's system reflects its corporate responsibility for supporting victims.

³⁷ Consultation Meeting 17 – Victoria Police – Session 1; Consultation Meeting 18 – Victoria Police – Session 2.

³⁸ Consultation Meeting 18 – Victoria Police – Session 2.

³⁹ Consultation Meeting 17 – Victoria Police – Session 1.

⁴⁰ Ibid.

⁴¹ More than 90% of Victoria's criminal and civil cases are heard in the Magistrates' Court of Victoria: Magistrates' Court of Victoria, *Annual Report 2021–2022* (February 2023) 6.

⁴² Consultation Meeting 17 – Victoria Police – Session 1.

⁴³ Ibid.

⁴⁴ Jo-Anne Wemmers, 'Victims' Experiences in the Criminal Justice System and their Recovery from Crime' (2013) 19(3) *International Review of Victimology* 221, 229.



Office of Public Prosecution's Records of Victim Engagement (ROVE)⁴⁵

The ROVE is updated by either the solicitor or VWAS to record any engagement with the victim, and also any correspondence regarding case management such as referrals to other agencies such as a Victims Assistance Program and Court Network, or the discussion of welfare checks with police informants. The ROVE and all previous case notes can be accessed by any new solicitor or VWAS worker allocated to a matter. The ROVE includes details such as a victim's preferred contact method and any important notes, such as the need for an interpreter. The ROVE can also be used to proactively ensure a victim is provided with all necessary information, as it contains checkpoints for each stage of the prosecution.

There are always going to be resourcing challenges but Victoria Police has obligations under the Victims' Charter to provide victims with information.⁴⁶

There are different models and approaches for meeting victim liaison and information requirements including:

- victim liaison/dedicated unit models⁴⁷
- automated notification systems.⁴⁸

During consultations, some Victoria Police members suggested a range of improvements that could be made to enhance the provision of information to victims, including:⁴⁹

- victim liaison officers
- a case management system
- automated notifications
- an 'end to end' victims' portal with information from a range of justice agencies.

Other stakeholders suggested:

- having more police staff so more time can be dedicated to victim liaison
- dedicated victim liaison units.

Victoria Police should review its policies, procedures and IT capabilities in relation to its obligations under the Victims' Charter, examining its capability and capacity to meet victims' statutory entitlements to information, in line with its obligations under the Victims' Charter.

In reviewing its policies, procedures and IT capabilities in relation to its obligations under the Victims' Charter, Victoria Police should consider:

- case management and/or IT solutions that would better enable police to manage victim liaison effectively, having regard to the high caseloads of police
- Victoria Police's capability to record and report on victim liaison, similarly to the OPP's Records of Victim Engagement (ROVE)
- how different models and approaches might better enable Victoria Police to meet their obligations, considering initiatives such as victim liaison models, dedicated unit models and automated notification systems
- how the shift-based nature of police work impacts continuity for victims of crime in the provision of information⁵⁰
- the need for a dedicated funding bid to ensure it can meet Victims' Charter obligations.

⁴⁵ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 12 September 2022, 3.

⁴⁶ *Victims' Charter Act 2006* (Vic) ss 7, 7B, 8, 9, 10, 11.

⁴⁷ See generally Dean Wilson and Marie Segrave, 'Police-based Victim Services: Australian and International Models' (2011) 34(3) *Policing: An International Journal of Police Strategies & Management* 479. In South Australia, 'Victim Contact Officers' who are police officers, offer information to victims when a victim's investigator is not available: Victims of Crime South Australia, *Getting Updates on the Investigation* (Web Page) - <https://www.voc.sa.gov.au/police-investigation/getting-updates-on-the-investigation>.

⁴⁸ Rhiannon Davies and Lorana Bartels, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia' (2020) 9(4) *Laws* 31, 19.

⁴⁹ Consultation Meeting 18 – Victoria Police – Session 2; Consultation Meeting 19 – Victoria Police – Session 3.

⁵⁰ Research has found that 'the rotations of shift work construct a tangible obstacle to continuity and the appropriate timing of communication with victims': Dean Wilson and Marie Segrave, 'Care Bears and Crime-Fighters: Police Operational Styles and Victims of Crime' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 133, 156.



RECOMMENDATION 12

Victoria Police should review its policies, procedures and IT capabilities in relation to its obligations under the Victims' Charter Act 2006 (Vic) (Victims' Charter).

This review should examine Victoria Police's capability and capacity in relation to meeting victims' statutory entitlements to information, as per obligations under the Victims' Charter.

In reviewing its policies, procedures and IT capabilities in relation to its obligations under the Victims' Charter, the review should consider:

- case management and/or IT solutions that would better enable police to manage victim liaison effectively
- Victoria Police's capability to record and report on victim liaison, similar to the Office of Public Prosecution's Records of Victim Engagement (ROVE)
- how different models and approaches might better enable Victoria Police to meet their obligations, considering initiatives such as victim liaison models, dedicated unit models and automated notification systems
- the need for a dedicated funding bid to ensure Victoria Police can meet its Victims' Charter obligations.

Funding, resourcing and cultural change

The VOCC notes that stakeholders, including Victoria Police, frequently raised lack of funding and resourcing as a barrier to police fulfilling their Victims' Charter obligations. Research also confirms this.⁵¹

The VOCC acknowledges concerns about funding and resourcing. As noted in **Chapter 12**, the Victorian Government should assess funding levels and arrangements for justice agencies with statutory obligations under the Victims' Charter. In addition, as outlined above, Victoria Police's review should include assessment of the need for a dedicated funding bid to ensure it can meet Victims' Charter obligations.

However, lack of funding and resourcing cannot continue to be used as a justification for keeping victims' rights below an acceptable standard. The need for continued and ongoing cultural change also needs to be acknowledged – agencies must also adapt their business, operations and policies to realise victims' rights.

Cultural change must continue to be a focus of justice agencies to ensure victims' status as participants is respected in day-to-day operations.

As stated above, it is evident that there are many dedicated police members who are victim-centred and wish to provide victims with information and support. Police officers are not social workers and should not have primary responsibility for victim support. As discussed in **Chapter 14**, victims need better support from an adequately funded victims' services system. However, victim feedback suggests there are instances where cultural change and improved practices are needed in police interactions with victims. In these instances, victims are not expecting to be counselled or case-managed. However, victims do wish to be treated with dignity and respect and provided with up-to-date information about the progress of their case.

Victim liaison must be seen as 'real' work

Research has previously found that not all Victoria Police members view victim liaison work as 'real' work. This view can limit communication with victims and undermine Victims' Charter principles obligations to update victims on the progress of a case. As well as being an issue raised by victims in our inquiry, inconsistent police communication with victims was raised in the VLRC's 2021 report *Improving the Justice System Response to Sexual Offences*.⁵²

Research by academics Dean Wilson and Marie Seagrave has found that some police view dealing with victims of crime as a distraction from 'real' police work: over half of police respondents to a survey about

⁵¹ Dean Wilson and Marie Seagrave, 'Care Bears and Crime-Fighters: Police Operational Styles and Victims of Crime' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 133, 154.

⁵² Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) 358.

their work with victims said that dealing with victims' needs 'impeded regular police duties'. One survey respondent said, 'We have enough to do without ensuring victims' needs are met.'⁵³

Although Wilson and Seagrave's research identified some police who viewed victims as the primary responsibility of police,⁵⁴ the majority of police interviewed by Wilson and Seagrave defined their role according to a 'crime-fighting mandate',⁵⁵ as typified by this respondent's view of their role:

I'm here to investigate a crime. I'm here to see well if someone has committed that crime, identify the person, charge them and put them before a magistrate. Where does it come in now that I suddenly have to be a social worker and I have to liaise with this victim and refer them to that person and ring them up a week later and see what they've done next? It's just increasing the workload of general duties members or any member.

Police in the study who identified as 'crime-fighters' repeatedly asserted that victims were a low priority in contrast to the 'real' police work of catching offenders.⁵⁶

At the same time, the existence of victim-centred policing was also identified in the study, as illustrated by this study participant:

We have a duty to obviously keep them up to date, ensure that if they require counselling, if they require assistance in court, if they require any other needs, that they're taken care of. Every victim should be treated obviously as best that we can.⁵⁷

Provision of information cannot be viewed as optional or 'nice to have'.
Victim liaison is police work.

This victim-centred approach to police work needs to be harnessed and embedded as part of Victoria Police's culture.

Wilson and Seagrave's research concluded that ensuring that victims of crime have more satisfactory encounters with police is inextricably linked to cultural transformation within police organisations.⁵⁸

The VOCC recommends that Victoria Police undertake a cultural review assessing their organisation-wide approach to victim liaison.

The cultural review should consider:

- how victim liaison can be culturally ingrained in police work, from the point of academy training throughout a police member's career
- how the principles of the Victims' Charter can be elevated within Victoria Police so that victim liaison is not viewed as a distraction from 'real' police work or an optional process
- what training is required to better meet victims' diverse needs.



RECOMMENDATION 13

Victoria Police should undertake a cultural review assessing its organisation-wide approach to victim liaison and adherence to obligations under the *Victims' Charter Act 2006* (Vic).

The cultural review should consider:

- how victim liaison is culturally ingrained in police work, from the point of academy training throughout a police member's career
- how the principles of the Victims' Charter can be elevated within Victoria Police so that victim liaison is not viewed as a distraction from 'real' police work or an optional process
- what training is required to better meet victims' diverse needs
- how to best address biases or prejudices that police have that may prevent or discourage victims from participating further in the reporting or prosecution process.

53 Dean Wilson and Marie Seagrave, 'Care Bears and Crime-Fighters: Police Operational Styles and Victims of Crime' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 133, 138.

54 Ibid 146.

55 Ibid 150.

56 Dean Wilson and Marie Seagrave, 'Care Bears and Crime-Fighters: Police Operational Styles and Victims of Crime' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 133, 150.

57 Ibid 146.

58 Ibid 156.

Overview of Chapter 14: Support and information

Access to timely and appropriate victim support is key to victims' participation in the justice system. Under the *Victims' Charter Act 2006* (Vic) (Victims' Charter), justice agencies and victims' services are to provide clear, timely and consistent information about relevant support services and if appropriate, refer victims to relevant support services.

The Victims of Crime Commissioner (VOCC) has found that the victim support system is not functioning in a way that enables victims to participate meaningfully.

Connecting victims to support

Victims told the VOCC that they find it difficult to locate the right victim support services and are referred 'in circles'.

The VOCC recommends that the Victorian Government conduct a comprehensive, independent review of the e-referral system to improve referral practices.

The VOCC also notes that further support needs to be available at the point of reporting to police. The VOCC recommends more work be done to embed the use of the Independent Third Person Program (ITP Program) for victims with cognitive impairment when they report to police.

The VOCC also recommends that victims have access at the reporting stage to an independent support person who can provide victims with immediate, urgent support, together with a more formalised link to the victims' service system. The VOCC recommends that the Victorian Government introduce an 'Independent Victim Support Person' (IVSP) model.

Enhancing the victim support system

The VOCC notes there have been sufficient reviews and inquiries demonstrating that the current approach to victim support is not meeting victims' needs. The Victorian Government must commit to rebuilding and properly funding a comprehensive victim support system that responds to the diverse needs of victims of crime.

The VOCC recommends that the Victorian Government design, implement and properly fund an enhanced victim support system in Victoria, drawing on the findings of this inquiry and previous Victorian reviews and inquiries.

Getting information

This inquiry, and other research, has highlighted the need for enhanced information systems to assist justice agencies to meet their obligations to provide victims with relevant information. The idea of a 'Victims' Portal' or online information gateway has been raised in previous inquiries and was raised again during this inquiry. The VOCC recommends that the Victorian Government undertake an independent feasibility study to explore the viability of a Victims' Portal.

Improving awareness of victim support

A third of victims surveyed by the VOCC (33 per cent) did not know how to access victims' services or what services to use.

Given anyone can become a victim of crime, it is imperative that there is a basic level of knowledge, awareness and brand recognition of victims' services among the general community. The VOCC recommends that the Victorian Government develop a comprehensive branding and community awareness campaign for victims' services.

14

Chapter 14:
**Support and
information**



Introduction

Access to timely and appropriate victim support is key to victims' participation in the justice system. Under the *Victims' Charter Act 2006* (Vic) (Victims' Charter), justice agencies and victims' services are to provide clear, timely and consistent information about relevant support services and possible entitlements and legal assistance, and, if appropriate, refer victims to relevant support services.¹

Receiving victim support increases victims' participation as well as perceptions of procedural fairness.² In **Chapter 6**, victims told the VOCC about not being able to get the support they needed to participate in the justice process and recover from a crime.

This chapter makes recommendations to:

- improve the victim support referral process
- improve the victim support system
- enhance the support immediately available to victims at the point of first contact with police
- improve the information provided to victims of crime
- improve victims' awareness of available support services.

Connecting victims to support

This inquiry did not focus on reviewing the provision of victim support in detail given this has been comprehensively examined in recent reviews and inquiries.³

However, in examining victims' participation in the justice system, the provision of support to victims has inevitably arisen when engaging with victims and stakeholders. This is because access to appropriate support is fundamental to victims' participation.

In a functional victim support system,⁴ victim support workers act as a guide for victims of crime, steering victims through the justice process and enabling their participation. Without tailored, specialist support, victims cannot participate in the justice process.

In a functional victim support system, victim support workers act as a guide for victims of crime, steering victims through the justice process and enabling their participation.

However, it is clear from the VOCC's engagement with victims and stakeholders that the victim support system is not functioning in a way that enables victims to participate meaningfully. Many victims do not receive enough information about relevant support services, or adequate referrals to these services.

Accessing support a 'lottery'

Those victims who did access sufficient and appropriate support discussed positive experiences. It was clear that some victims had received a level of support that had significantly assisted them to participate in the justice process. This confirms that when the victim system works as intended, victims are more likely to participate in a meaningful way.

However, as outlined in detail in **Chapter 6**, many victims advised the VOCC that they had found it difficult to locate appropriate victim support, with one respondent to the Victims' Survey describing it as 'a lottery'.

Victims frequently described how either they were unaware of support options available or referrals were not made. Victims often described being referred 'in circles' or from one agency to the next. For other victims, referrals were made but victims did not receive any follow-up contact from the relevant agency.

¹ *Victims' Charter Act 2006* (Vic) s 7.

² Jo Bryce et al, 'A Qualitative Examination of Engagement with Support Services by Victims of Violent Crime' (2016) 22(3) *International Review of Victimology* 239, 241.

³ See generally Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020); Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system>.

⁴ In Victoria, the victim support system is comprised of a range of government and non-government services. They include services overseen by the Department of Justice and Community Safety (such as the Victims of Crime Helpline and the Victims Assistance Program) as well as sexual assault and family violence services funded by government and delivered by community organisations (such as Centres Against Sexual Assault). See, e.g., Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 28; Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Supplementary Consultation Paper, 2017) 12.

Referrals are not working

Referrals are a key step in victims getting access to the right support at the right time, which is in turn fundamental to their participation. However, stakeholders advised the VOCC that referrals systems are flawed and 'clunky'.

Victims Services staff told the VOCC that it is essential that victims are referred from police to victim support services via the Victoria Police e-Referrals system (VPeR⁵) at the earliest opportunity. However, Victims Services staff said that police practices were inconsistent.

Victims Services staff also suggested that the fact that VPeR referrals are consent-based acts as a barrier to victims receiving timely support:

One of the barriers in relation to VPeR referrals is that they are consent based. So even if the conversation happens initially, the victim may be in shock, be feeling over-whelmed or not able to take the information in. Therefore, it needs to be revisited further along in the process with the victim in cases where they do not take up the offer initially.⁶

Victims' professionals surveyed by the VOCC explained the importance of early referrals for victims' participation:

If VAP [Victims Assistance Program] receive referrals early on in the criminal process we can ensure that the client is given every opportunity to participate. When referrals are received late in the process, the clients have missed out on nearly all participation opportunities and feel unheard and not respected.

For a victim to participate, they must be aware there is a pathway for them to do so. I find there is still a significant number of victims that are never referred to VAP for assistance in the first instance, so how can they make a choice as to whether they want support to 'participate'?

If VAP receive the referral of a victim in a timely manner, they are able to provide many more options for the victim to participate than if they receive the referral when a Victim Impact Statement is due next week. Early referrals to appropriate services is critical for victims to be made aware of their rights to participation.

However, victims' professionals surveyed by the VOCC advised that early referrals were made inconsistently or not made:

There is a lot of inconsistency with making e-referrals

I feel there are many opportunities that VPeR referrals are missed in the early stages and victims would benefit greatly from VAP early intervention.

It should be compulsory for police to offer a VPeR referral to VAP for each victim. Police should be held accountable if they do not do this.

Windermere VAP described the e-referral system as 'clunky' and lacking role clarity.⁷

The referral pathway to victims' services has been raised as an issue in previous reports and inquiries which found:

- police referral policies are too restrictive, not tailored to victims' needs and do not reflect contemporary understandings of trauma⁸
- an overreliance on self-referrals, as well as police referrals, with lack of alternative referral pathways for victims of crime.⁹

These previous reviews and inquiries made recommendations to improve referral pathways to victim support.

⁵ Victoria Police, *Future Directions for Victim-Centric Policing* (Web Page, August 2015) <https://www.police.vic.gov.au/sites/default/files/2019-01/Victim-Centric-Policing-Booklet_web_0.pdf>.

⁶ Consultation Meeting 14 – Victims Services staff.

⁷ Consultation Meeting 21 – Windermere Victims Assistance Program.

⁸ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 70.

⁹ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 404 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.



Previous recommendations in relation to improving referrals to victims' services

Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* recommended:

- **establishing a wider range of access pathways**, including through additional structured referral pathways, improved interfaces between VSSR services and other key victim services, and strategic community engagement and education
- **enhancing Victoria Police's capacity to ensure effective and consistent use of the e-referral system**, including building the confidence and capacity of Victoria Police members to identify needs, secure victim consent and offer referrals at multiple points in time
- **establishing an online referral portal for referrals from other professionals and key services** (beyond Victoria Police), focusing on emergency departments and key victim services, including Centres Against Sexual Assault, The Orange Door and broader specialist family violence services.

The Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System* recommended:

- **that the Victorian Government provide training and guidance to key referral agencies** on referring victims of crime to Victims Assistance Programs (VAPs) sooner.

Reforming referrals

Improvements are still needed to the referral pathways for victims. Victims told the VOCC that they:

- find it difficult to locate the right victim support services
- feel the onus is on them to locate services
- are referred 'in circles'.

Data suggests only a small proportion of victims of crime against the person are receiving a service through the Victims Assistance Program (VAP).¹⁰ This alone suggests that victims are not necessarily finding the services they need to help them participate in the justice system.

The VOCC recommends that the Victorian Government conduct a comprehensive, independent review of the VPeR system. The review should be independent of police and the victim support system and should examine how to reduce the gap between the number of victims of crime in Victoria and the number of victims receiving a victim support service.

The review should examine the process for obtaining victims' consent for referral given the number of victim support workers who have raised this as a key barrier for early referral to VAPs for support. Benefits and risks of 'opt-in' and 'opt-out' referral models should be examined, particularly looking at learnings from the family violence sector and referral models in other jurisdictions, having regard to trauma-informed practice and information privacy.

The review should also consider ways to enhance Victoria Police's capability to:

- secure victims' consent to refer them to victims' services
- offer referrals at different (and multiple) points in time, consistent with a victim's needs.

As discussed in **Chapters 5 and 7**, particular victim cohorts lack trust in police, making it less likely that they will report crimes to police and therefore making it more difficult for them to access victims' services. The review should consider ways to establish a wider range of access and referrals pathways, including through enhancing capability for structured referral pathways for other professionals supporting victims of crime, such as health and social services who may wish to refer a victim into the victim support system.

¹⁰ For the year ending June 2022, Crime Statistics Agency data indicated that 66,180 victim reports (not necessarily related to unique victims) had been recorded in relation to crimes against the person: Crime Statistics Agency, Year ending 30 June 2022, *Crime Statistics* (Web Page) <<https://www.crimestatistics.vic.gov.au/crime-statistics/download-crime-data/year-ending-30-june-2022>>. In 2021–22, 9,972 victims received a service from the Victims Assistance Program: Department of Justice and Community Services, *Annual Report 2021–2022* (2022).

**RECOMMENDATION 14**

The Victorian Government should conduct an independent review of the victim support e-referral system by 30 June 2025. Following this review, the government should implement any necessary changes to ensure victims are being routinely referred to victim support at relevant points of the justice process.

A review of the victim support e-referral system should:

- examine how to reduce the gap between the number of victims of crime in Victoria and the number of victims receiving a victim support service, including examining the process for obtaining a victim's consent for referral
- consider whether the current system is sufficiently flexible given victims are likely to be in acute stress at the default point of referral (point of first contact with police)
- consider ways to enhance Victoria Police's capability to secure victims' consent to refer to services and offer referrals at different (and multiple) points in time, consistent with a victim's needs
- enable victims to engage with referrals at different points in their justice journey, from point of first contact with police to other points in the process, including investigation, prosecution, court, post- court and when interfacing with other supports, such as health and other non-justice services
- explore how the e-referral process can be expanded to provide an online referral portal for other professionals, including specialist victims' services (sexual assault, family violence) and other health and social services.

Using the Independent Third Person Program

During consultation for this inquiry, the VOCC was told about barriers to reporting to police for people with disability.¹¹ Respondents to the VOCC's Victims' Survey who self-identified as having a disability raised the following concerns about reporting to police:



'I don't feel safe talking to police.'

'Police refused to take my statement.'

'I tried to report but was dismissed despite ample evidence.'

'I stopped reporting crimes to police because they did nothing.'

– Victims' Survey respondent

The Independent Third Person Program (ITP Program) provides support to people with a cognitive impairment or mental impairment if they are being interviewed or having a statement taken by police whether as a suspect, an accused, an offender, a victim or a witness.¹²

The Office of the Public Advocate oversees the ITP Program, but ITPs are trained volunteers who are independent of police and the investigation. ITPs act as a safeguard to ensure a person with disability is not disadvantaged when communicating with police.¹³

¹¹ Interview 1 – Victim of crime, Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria, Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹² Office of the Public Advocate, Submission No 41 to the Victorian Law Reform Commission Inquiry, *Improving the Response of the Justice System to Sexual Offences* (January 2021) 9.

¹³ Office of the Public Advocate, Submission No 41 to the Victorian Law Reform Commission Inquiry, *Improving the Response of the Justice System to Sexual Offences* (January 2021) 9.



Role of Independent Third Persons (ITPs) overseen by the Office of the Public Advocate

- Facilitate communication
- Ensure the person understands their rights
- Ensure the person understands procedures
- Provide emotional support
- Address immediate welfare needs

An ITP is an independent and objective support person.¹⁴ ITPs are 'available 24 hours a day to attend any police station in Victoria, and do not have to be booked in advance'.¹⁵

ITPs play a vital role in supporting victims of crime at the point of reporting to police, but previous research has found some key issues:

- **ITPs are not always being used when they should be.** In 2021, the Victorian Law Reform Commission (VLRC) in its report *Improving the Response of the Justice System to Sexual Offences* concurred with the findings of previous reviews 'that ITPs are not always used in interviews when they could be'.¹⁶ This was also raised by the Office of the Public Advocate (OPA) in its submission to the VLRC's same inquiry.
- **ITPs cannot meet demand.** In the same report, the VLRC concurred with the findings of research, and with the submission of the OPA, that the ITP Program needed to be better funded to meet demand.¹⁷
- **ITPs are not providing links to the victim support system.** The VLRC report also found that ITPs were not playing a role in linking victims to the broader victim support system.¹⁸
- **There is no reference to a victim's right to an ITP in the Victims' Charter.** While victims have a general right to be given information about relevant supports and where appropriate, a referral to a support service,¹⁹ there is no mention of the right to an ITP to support a victim when communicating with police at the reporting stage. The OPA has advocated for a legislated right to ITPs, stating 'legislative protection for people needing an ITP would be consistent with the legislative right for young people to have access to the support of an independent person in police interviews'.²⁰

The VOCC agrees with the overarching findings in relation to ITPs identified in the VLRC's 2021 report *Improving the Response of the Justice System to Sexual Offences*. ITPs need to be fully utilised and become part of the routine response for victims with cognitive impairments or mental illness who wish to report to police. ITPs also need to be better utilised as a link to the victim support system at the point of reporting to police.

¹⁴ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 325.

¹⁵ *Ibid* 326.

¹⁶ *Ibid* 327.

¹⁷ *Ibid*.

¹⁸ *Ibid* 329.

¹⁹ *Victims' Charter Act 2006* (Vic) s 7.

²⁰ Office of the Public Advocate, Submission No 41 to the Victorian Law Reform Commission Inquiry, *Improving the Response of the Justice System to Sexual Offences* (January 2021) 16.



RECOMMENDATION 15

The Department of Justice and Community Safety should develop a time-limited working group with the Office of the Public Advocate, Victoria Police, victim support services and other stakeholders as required to develop an action plan to ensure the Independent Third Person Program (ITP) is properly used for eligible victims when reporting to police.

The action plan should:

- identify how the use of ITPs use can be embedded in Victoria Police policies and practices
- develop policies or protocols to ensure ITPs become a crucial link to the broader victim support system, including establishing formal (warm) referral pathways
- consider the need to enhance the legislative framework with respect to ITP access, including whether a right to an ITP should be enshrined in the Victims' Charter or other legislation.

A new link to the support system

Too many victims are falling through the gaps and not receiving the support they need. Victims need urgent support and information at the point of reporting a crime and they are not always being referred to services like the Victims Assistance Program (VAP) in a timely way.²¹

Victims Services staff told the VOCC that the 'reporting stage is critical, because ... that is the first interface that a victim is having with the system'.²² Victim support professionals surveyed by the VOCC told the VOCC that timely referral to support is vital – but was not happening. One victims' support professional told the VOCC that VAPs should be on call to provide support at the police report stage.

Increased capacity in the victim support system to properly embed co-location of VAPs at police stations and other key services, including specialist and culturally safe services, is important. This should continue to be focused on as part of an enhanced victim support system. A comprehensive, independent review of victim referrals, as outlined above, should also identify ways to improve the system so fewer victims fall through the gaps.

However, the VOCC considers there are other ways to enhance the link between police and the victim support system.

After reporting a crime, too many victims are unaware of available victims' services, do not know how to access services or do not know what services to use.

The VOCC recommends that there be more support for victims at the police reporting stage. This support should be provided by an independent person who can provide victims with immediate, urgent support, together with a more formalised link to the substantive victims' service system.

The VOCC recommends that the Victorian Government introduce an 'Independent Victim Support Person' (IVSP) model. Like the ITP model outlined above, an IVSP would enable police to call an IVSP when victims attend a police station, providing immediate, urgent, place-based support and assistance, including after-hours when other victim support professionals are unavailable.

The VOCC recommends that there be more support for victims at the police reporting stage. This support should be provided by an independent person who can provide victims with immediate, urgent support, together with a more formalised link to the substantive victims' service system.

²¹ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 310 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system>.

²² Consultation Meeting 14 – Victims Services staff.

An IVSP could:

- provide immediate emotional support and address any welfare needs (e.g. calling a friend or family member, making practical arrangements relating to transport, clothing, phone-calls etc.)
- identify whether an ITP is required if a victim has a cognitive impairment or mental illness
- help victims to liaise with police in relation to making a report and facilitating communication in a safe way, including addressing immediate trauma responses that might inhibit a victim's ability to report
- assist police with a victim's specific needs, including providing advice in relation to cultural safety, disability and other accessibility matters
- promote the rights and dignity of a victim, including helping victims or the police understand victims' rights, including their rights under the Victims' Charter
- provide support to ensure victims are able to make disclosures in a way that is safe for them, including in a private, comfortable space
- provide victims with advice about other supports and services that could assist them before, during or after reporting to police, such as specialist sexual assault or family violence services
- make warm referrals to appropriate services including Victims Assistance Programs, Centres Against Sexual Assault for longer-term case management, support or counselling.

A further benefit of an IVSP program would be the ability to address concerns raised by victims and stakeholders about any additional barriers experienced in reporting to police, by building training, competencies and specialisation in relation to cultural safety, diversity and working with older or younger victims or other victims with specific needs into the program.

The VOCC does not propose that an IVSP be a substitute for existing programs or comprehensive victim support case management. Crucially, an IVSP would not:

- replace the role of ITPs, who are specially trained and crucial to enhancing participation for individuals with cognitive impairments and mental illness
- replace the role of Victims Assistance Program (VAP) workers or other victims' professionals such as sexual assault or family violence professionals.

An IVSP would be used where a VAP service is not co-located, or after-hours when VAP workers are unavailable. An IVSP would not perform any ongoing case management. Their role would be to provide immediate, urgent support and formal referrals to the victim support system.

It is possible that IVSPs could also be used in other settings (e.g. health, legal, educational) to enhance connections and referrals from other professionals and organisations to the victim support system. They could also be deployed urgently in the community where a critical incident occurs and many victims or witnesses need urgent support.

While it is beyond the scope of this inquiry to address the funding, governance or oversight of an IVSP-type model, the VOCC notes that the DJCS currently funds a range of victim support programs, as well as oversees a range of volunteer programs that provide essential services to the community, including Justices of the Peace and Bail Justices (collectively called Honorary Justice Volunteers). Similarly, the OPA oversees a range of volunteer programs, including the ITP program.

Consideration could be given to leveraging off existing victim support programs or other volunteer-based programs. Development of the IVSP program should be done in close collaboration with lived experience experts, victims' professionals and Victoria Police.



RECOMMENDATION 16

The Victorian Government should introduce an Independent Victim Support Person program to provide immediate place-based support and assistance to victims reporting crime when other victim support professionals are unavailable. The program should be available 24 hours a day, 7 days a week.

An Independent Victim Support Person program would:

- provide immediate emotional support and address any welfare needs
- identify whether an Independent Third Person is required if a victim has a cognitive impairment or mental illness
- help victims to liaise with police and facilitate communication in a safe way
- provide assistance to police regarding specific needs of a victim, including advice in relation to cultural safety, disability and other accessibility matters
- promote the rights and dignity of a victim, including helping victims or the police understand victims' rights, including their rights under the *Victims' Charter Act 2006* (Vic)
- support victims to make disclosures in a way that is safe for them, including in a private, comfortable space
- provide victims with appropriate advice about other supports and services that could assist them before, during or after reporting to police
- make warm referrals to appropriate services including Victims Assistance Programs, Centres Against Sexual Assault for longer-term case management, support or counselling.

Enhancing the victim support system

Support is not meeting participation needs

For some victims consulted by the VOCC, it was clear that they had received a level of support that had significantly assisted them to participate in the justice process. However, close to 60 per cent of Victims' Survey respondents who used a victims' service told the VOCC that they either did not get any support from that victims' service to participate in the justice system, or only got limited support to participate.

Part 2 of this report outlined in detail victims' concerns with the current provision of victim support. In summary, victims told the VOCC that:

- services felt like referral agencies, rather than providing meaningful assistance
- service provision did not meet the immediate needs of victims, including after serious crimes like homicide
- service provision was not tailored to the victims' needs, whether based on the type of crime or personal circumstances with key gaps for children and young people, Aboriginal and Torres Strait Islander peoples, people with disability
- there was not a consistent support worker/case management approach
- victims who were unable to find the support they needed were re-traumatised by having to continually re-tell their story to different professionals
- there were lengthy waiting periods for services and then they felt like they were being rushed through the system when they finally did receive support
- it can be challenging finding support that addresses victimisation appropriately with an intersectional lens, including disability, LGBTIQ+ and cultural diversity.

Victims' concerns are consistent with issues raised in relation to Victoria's victim support system in previous reports and inquiries, including that:

- the victim support system is a 'one-size-fits-all' system that is falling short of what victims need²³
- many victims struggle to access specialist services²⁴
- many victims struggle to get the appropriate support they needed to recover from crime²⁵
- victims may receive disjointed or disconnected support due to the absence of a case management approach with a single source of information through an entire support period²⁶
- the current victims' services system is not adequately structured or resourced to provide the level of support bereaved families need²⁷
- there is a lack of culturally safe support options available to victims of crime who are Aboriginal Victorians or from culturally and linguistically diverse communities²⁸
- victims need access to legal advice and assistance.²⁹

Subsequent inquiries have urged the government to implement the recommendations of previous reviews and inquiries to enhance the victim support scheme in Victoria.³⁰ For example, the VLRC recently recommended in its report on stalking that:

The Victorian Government should implement the victim support recommendations in the Centre for Innovative Justice *Strengthening Victoria's Victim Support System: Victim Services Review* report and recommendations in the Legislative Council Legal and Social Issues Committee *Inquiry into Victoria's Criminal Justice System*, especially recommendations 36, 37, 40, 42, 49 and 50.³¹

Meeting victims' needs

There have been sufficient reviews and inquiries, including reviews examining the existing system in depth, to demonstrate that the current approach to victim support is not meeting victims' needs.

In December 2021, the Victorian Government released its *Victim Support Update* which stated that the review by the Centre for Innovative Justice (CIJ) envisages an 'ambitious' and 'once in a generation' reform agenda that will take time to fully consider and implement.³² At the time of publication of this report, the Victorian Government has not responded fully to the CIJ's report.

The current victim support system has already been found to be inadequate and falling short. Victims need, and deserve, a properly resourced victim support system.

Victims need, and deserve, a properly resourced victim support system that can provide the type of support they need, including in duration, intensity and specialisation. The current victim support system has already been found to be inadequate and falling short.

The Victorian Government must commit to rebuilding and properly funding a comprehensive victim support system that responds to the diverse needs of victims of crime. The victim support system should be grounded in research relating to victims' needs, including the need for a service system that is:

- flexible
- tailored
- timely and ongoing (where needed)
- holistic

²³ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 12.

²⁴ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 13.

²⁵ Ibid.

²⁶ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 375 (Finding 34) <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system>.

²⁷ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 139.

²⁸ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 375 (Finding 34) <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system>.

²⁹ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 386-90; <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system>; Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 147-50.

³⁰ In 2022, the Victorian Government recommissioned the Victims Assistance Program: Victorian Government, *Victims Assistance Program Grants (RFA 002/22-23)* (Web Page, 16 August 2022) <<https://www.vic.gov.au/victims-assistance-program-grants-rfa-002/22-23>>.

³¹ Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 88.

³² See Victorian Government, *Victim Support Update* (Web Page, 2021) <www.vic.gov.au/victim-support-update>; Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020).

- victim-centred and trauma-informed.³³

There have been sufficient reviews and inquiries to demonstrate the essential elements of a comprehensive victim support system.³⁴ These components include:

<p>Single point of contact/single advocate</p>	<p>Victims consistently point to the need for a single point of contact throughout the justice process but the system is not currently configured to provide this consistency. Although the base components of a service system that can provide a single point of contact already exist, this is not how most victims of crime experience the support.</p> <p>Victims want a single point of contact/single advocate who can help them navigate the justice and support system from the start of their justice journey to post-justice procedure care. While some services, like witness support may be limited to a specific period, a single advocate should travel with a victim throughout their whole journey.</p>
<p>Specialist streams of assistance</p>	<p>Victims need access to more specialised streams of support, whether by crime type or need, including sexual assault, stalking, bereavement, mental impairment matters under the <i>Crimes (Mental Impairment or Unfitness to be Tried) Act 1997</i> or road trauma.</p> <p>Victim cohorts with particular needs, such as children and young people, older victims of crime, people with disability and people who identify as LGBTIQ+, need more targeted and specialised support as victims of crime.</p>
<p>Culturally safe support</p>	<p>Victims need more culturally safe support options, particularly victims of crime who are Aboriginal or from culturally and linguistically diverse communities.</p>
<p>Connected and integrated support</p>	<p>Increased co-location and sector partnerships would:</p> <ul style="list-style-type: none"> • enhance referrals and reduce referral 'drop-out' rates • meet victims' immediate needs, including as they access other services such as health, legal, cultural or wellbeing supports • enable combined approaches to victim support, while maintaining a single point of contact/advocate.
<p>Intensive support for high or specific needs</p>	<p>Intensive support needs to be able to be provided for those victims who require it.</p>
<p>Independent legal advice and assistance</p>	<p>Victims need access to legal information from an independent, trusted source (separate to the prosecution), with that independent advice available from the initial reporting stage.</p>

³³ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 223.

³⁴ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020); Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016); Victims Support Agency (Victoria), *Information and support needs of victims and witnesses in the Magistrates Court of Victoria* (Report, January 2013).

The Victorian Government should design, implement and properly fund an enhanced victim support system in Victoria, drawing on the findings of this inquiry and previous Victorian reviews and inquiries.



RECOMMENDATION 17

The Victorian Government should design, implement and properly fund an enhanced victim support system in Victoria, drawing on the findings of this inquiry and previous Victorian reviews and inquiries

An enhanced victim support system should include the following essential components of a comprehensive victim support response:

- a single point of contact/single advocate
- specialist streams of assistance, including for sexual assault, stalking, road trauma, bereavement and specialist assistance for victims with matters dealt with under the *Crimes (Mental Impairment or Unfitness to be Tried) Act 1997*
- culturally safe support, including funding culturally appropriate agencies and community-based organisations to provide Victims Assistance Programs
- more connected and integrated support, including co-location and integration with other generalist and specialist services and key sector partnerships
- more intensive support for high needs or specific needs
- comprehensive legal assistance (see also Recommendation 21).

Getting information from different agencies

Research has highlighted the need for more automated notification systems to assist justice agencies to meet their obligations to provide victims with relevant information on an ongoing basis.³⁵ The idea of a 'Victims' Portal' or online information gateway has been raised in previous inquiries³⁶ and was raised by key stakeholders again during consultation on this inquiry.

Victims' 'hub' or 'portal'

The Department of Justice and Community Safety's 2021 report *Improving Victims' Experience of Summary Criminal Proceedings* discussed the possibility of an 'online gateway' that would 'operate as an online hub for all victims' and provide:

- a single and easy-to-navigate place for victims to find the information they need
- information about typical court processes and how to access support
- specialised information for particular offence types or groups of victims automatic communication of court dates via an opt-in system of alerts
- a mechanism for victims to access information about their own case in real time
- a mechanism for victims to contact the prosecutor currently handling their case
- functionality that allows for the electronic submission of VISs.³⁷

The VOCC notes that the Department of Justice and Community Safety already operates a general victims of crime website which provides information about support and the justice process.³⁸ However, consistent with the report *Improving Victims' Experience of Summary Criminal Proceedings*, the VOCC agrees that a more

³⁵ Rhiannon Davies and Lorana Bartels, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia' (2020) 9(4) *Laws* 31, 19.

³⁶ See, e.g., Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021).

³⁷ See, e.g., *Ibid* 28.

³⁸ Victorian Government, *Victims of Crime* (Web Page, 24 May 2023) <<https://www.victimsofcrime.vic.gov.au>>

comprehensive and 'interactive' portal would be useful for victims of crime, particularly for victims who may not want to engage with a victim support service or who would like more autonomy in engaging with the progress of their case.

Such a portal would need to be appropriately funded, resourced and would require the 'buy-in' of all relevant justice and service agencies if it was to operate successfully. It would need to be a multi-agency portal providing key information from police, prosecutions, court, victim support services and corrections, providing victims with a single source of information and link to their case.

If established well, a victims' hub or portal could significantly improve victims' participation through providing more accurate and up-to-date information about their matter. Such a portal could also integrate with other 'e-information' systems such as e-referrals, case management systems and court listings.

However, if such an initiative were not properly resourced or supported by all relevant justice agencies, it could be a further source of discontent for victims – for example, if information were not kept up to date by one or more agencies.

For this reason, the VOCC recommends that the Victorian Government undertake an independent feasibility study to explore the viability of establishing a victims' hub or portal. The feasibility study should explore:

- whether a victims' hub or portal could enhance victim participation at key stages of the justice process
- successful models of multi-agency hubs or portals providing key information to members of the public
- privacy and information sharing risks
- possible efficiency gains for justice agencies and victims' services personnel, as well as any resourcing implications
- whether a victims' hub or portal could be configured to accommodate interactivity for victims (e.g. to enable victims to lodge their Victim Impact Statements³⁹).



RECOMMENDATION 18

The Victorian Government should undertake an independent feasibility study, to be completed by 30 June 2025, to explore the viability of a Victims' Portal. The feasibility study should be made public.

The feasibility study should explore:

- whether a victims' hub or portal would enhance victim participation at key stages of the justice process
- successful models of multi-agency portals providing key information to members of the public
- privacy and information sharing risks
- possible efficiency gains for justice agencies and victims' services personnel, as well as any resourcing implications
- whether a victims' hub or portal could be configured to accommodate interactivity for victims, such as submitting Victim Impact Statements electronically.

Case management in the Magistrates' Court

A new Case Management System (CMS) is being developed for the Magistrates' Court of Victoria (Magistrates' Court) and the Children's Court of Victoria (Children's Court) which will replace ageing IT systems and strengthen 'the ability to capture and share appropriate information across the courts and key external parties'. The project aims to 'bring enhanced access to justice for Victorians, through stronger information sharing and improving court processes'.⁴⁰

Court Services Victoria told the VOCC that the new CMS is predicated on the concept of unique identifiers that will allow people to track themselves through the system.⁴¹

³⁹ Whether victims should be able to lodge their VIS electronically is discussed in more detail in Ch 18.

⁴⁰ Court Services Victoria, *Case Management System Project* (Web Page, 8 May 2023) < <https://courts.vic.gov.au/projects/case-management-system-project> >.

⁴¹ Consultation Meeting 31 – Court Services Victoria.

The VOCC considers that every victim should have a unique identifier assigned so that they can log-in and access 'real time' information about their case. This is particularly important in the Magistrates' Court jurisdiction where victims are:

- more likely to miss out on crucial updates from police informants and prosecutors about the progress of a case
- less likely to be supported by a witness support service.

The VOCC recommends that Court Services Victoria ensure the new CMS for the Magistrates' and Children's Courts enables victims to access up-to-date information on the progress of a court matter.



RECOMMENDATION 19

Court Services Victoria should ensure the new Case Management System for the Magistrates' and Children's Courts enables victims to access up-to-date information on the progress of a court matter.

The new Case Management System (CMS) for the Magistrates' and Children's Courts should enable victims to access 'real time' information about their case.

The CMS should accommodate the language and accessibility needs of a diverse range of victims and ensure there is sufficient information about how to get additional support and information.

Improving awareness of support

Improving awareness of victim support

A third of victims surveyed by the VOCC (33 per cent) did not know how to access victims' services or what services to use. The implementation of recommendations in this report in relation to enhanced referrals should partially address this lack of awareness. However, not enough members of the community know about victims' services.

Anyone can become a victim of crime. It is imperative that there is a basic level of knowledge, awareness and brand recognition of victims' services among the general community. This awareness should enable victims to recall branding or names of key agencies or organisations more readily when they need to.

As noted in the CIJ's review of the victim support system, the Victorian Government must increase community knowledge and awareness of the victim support system by 'creating brand recognition that is identifiable by victims of crime'.⁴²

The VOCC has also been told about the confusion experienced by victims because of the number of organisations, agencies and programs that have 'victim' in the title. It can be difficult to understand the difference, for example, between the Victims of Crime Commissioner, the Victims of Crime Helpline and the Victims of Crime Assistance Tribunal.

During consultations, the VOCC was told that:

Many victims feel confused by all of the services that start with 'victim' and the criminal justice process can be confusing, so it is really important that information being provided to victims gets conveyed in the simplest and most meaningful way.⁴³

The VOCC recommends that the Victorian Government develop a comprehensive branding and community awareness campaign for the victim support system. As part of this work, the government should review the language used in communications products and the appropriateness of agency and program names, having regard to the likelihood of confusion for victims when first engaging with the victim support system.

⁴² Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 55.

⁴³ Consultation Meeting 14 – Victim Services staff.

**RECOMMENDATION 20**

The Victorian Government should develop a comprehensive branding and community awareness campaign for the victim support system.

A comprehensive community awareness campaign should present unifying branding to enhance the awareness of government-funded programs, including the Victims of Crime Helpline, the Victims Assistance Program (VAP), Victims Register, Restorative Justice programs and the Victims Legal Service.

The government should review the language used in communications products and the appropriateness of agency and program names, having regard to the likelihood of confusion for victims when they first engage with the victim support system.

Overview of Chapter 15: Legal assistance

For many victims consulted by the Victims of Crime Commissioner (VOCC), enhanced participation in the justice system is directly linked to a need for independent legal advice and assistance.

Victims highlighted the logical disconnect between having legislative entitlements to participation under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) while lacking access to independent legal advice about these entitlements.

A comprehensive state-funded legal service

In March 2023, the Victorian Government established the Victims Legal Service. This initiative is welcome. However, victims have a wide range of legal rights, interests and needs. Given the narrow scope of legal assistance given to victims in Victoria, most of victims' legal needs remain unmet. Legal assistance is an important component of the comprehensive support that victims need in order to participate effectively in the justice system.

The VOCC recommends that the Victorian Government expand the Victims Legal Service to provide specialist state-funded legal assistance to meet the comprehensive range of legal issues that victims face as a result of crime.

Legal representation for sexual offence matters

Addressing the gaps in legal advice and assistance should address many of the legal challenges faced by victims of crime. However, a comprehensive Victims Legal Service alone will not resolve all issues for victims of sexual offences in the adversarial criminal trial process. Victims in sexual offence trials often face significant, varied, and difficult challenges during the criminal trial process which require a targeted and dedicated legal response.

The VOCC recommends that the Victorian Government establish a sexual offences legal representation scheme. Independent legal representation should be available to protect and represent victims' legal interests in certain applications and hearings such as applications concerning confidential communications, sexual history evidence, ground rules hearings, cross-examination at a committal hearing and subpoenas for information containing private information about the victim.

The scheme would also include limited independent legal representation at hearings involving sexual offences (including committal hearings, summary hearings and trials) when the victim is giving evidence to ensure compliance with the court's rulings and to protect witnesses from improper questions or questioning.

15

Chapter 15:
Legal assistance



Introduction

For many victims consulted by the Victims of Crime Commissioner (VOCC), enhanced participation in the justice system is directly linked to a need for independent legal advice and assistance.¹

Victims' rights and entitlements often span many pieces of legislation and may also be contained in organisational policies.² Victims have highlighted the logical disconnect between having legislative entitlements (for example, to participation under the *Victims' Charter Act 2006* (Vic) (Victims' Charter)), while lacking access to independent legal advice about these entitlements and to enforce them when they are breached. One Victims' Survey respondent told the VOCC: '[t]he one thing I needed was the legal advocate, and I know it's been recommended so many years ago and it still hasn't happened.'

This chapter discusses the need for major reforms in relation to state-funded legal assistance for victims to improve their participation in the justice system.

This chapter outlines the need for a state-funded:

- comprehensive legal service for victims of crime – expanding the existing provision of legal support through the government's 'Victims Legal Service'
- sexual offences legal representation scheme.

As discussed further below, while complementary, these two initiatives are distinct, and would each require dedicated funding, resources and implementation plans.

While this chapter focuses on providing legal assistance to victims, legal assistance should be viewed as part of the overall support that victims need to participate in the criminal justice system and to assist them in recovering from the effects of crime. Enhanced legal assistance would complement enhanced victim support, as discussed in **Chapter 14**. Together, these measures would enhance victims' ability to participate in the justice system.

Current approach to legal assistance

A number of different bodies and organisations provide specialist legal services to victims of crime in Victoria. For example:

- knowmore provides a free service to survivors of institutional child sexual abuse³
- Women's Legal Service Victoria operates the Legal Advice Line for Victim-Survivors of Sexual Assault⁴
- Djirra's Aboriginal Family Violence Legal Service supports Aboriginal people who are experiencing family violence.⁵

Victims may obtain legal advice and assistance from Community Legal Centres (CLCs) and Victoria Legal Aid (VLA). However, the ability of CLCs to assist victims will depend on the resources and capacity of individual CLCs (which differ from area to area). VLA adopts both means and merit tests which would exclude many victims from receiving legal advice.⁶

Victims may also engage their own lawyer privately. However, identifying firms that specialise in victim-related legal services may be difficult and expensive.⁷

In March 2023, the Victorian Government established a Victims Legal Service with a limited service offering. The Victims Legal Service is delivered by a partnership between VLA, CLCs and Aboriginal legal services across the state.⁸ It is the first dedicated legal service for victims in Victoria. The Victims Legal Service provides legal information or advice on how to make an application for financial assistance with the Victims of Crime Assistance Tribunal⁹ or to make an application for restitution and compensation from

1 Under the Victims' Charter, investigatory agencies, prosecuting agencies and victims' services agencies are to provide clear, timely and consistent information about relevant support services, possible entitlements and legal assistance available to persons adversely affected by crime: *Victims' Charter Act 2006* (Vic) s 7(a).

2 Including *Sentencing Act 1991* (Vic), and relevant protections afforded victims under the *Criminal Procedure Act 2009* (Vic), *Evidence (Miscellaneous Provisions) Act 1958* (Vic), *Evidence Act 2008* (Vic), *Public Prosecutions Act 1994* (Vic), *Judicial Proceedings Reports Act 1958* (Vic), and *Open Courts Act 2013* (Vic). See also Kerri Judd KC, Director of Public Prosecutions (Victoria), *Discontinuance Review Framework* <<https://www.opp.vic.gov.au/Home/Resources/Discontinuance-Review-Framework>>.

3 knowmore, *What is the National Redress Scheme* (Web Page) <https://knowmore.org.au/for-survivors/redress-scheme/>.

4 Women's Legal Service Victoria, *Legal Advice Line for Victim-Survivors of Sexual Assault* (Web Page) <womenslegal.org.au>.

5 Djirra, *Aboriginal Family Violence Legal Service* (Web Page, 2020) <<https://djirra.org.au/what-we-do/legal-services/#afvls>>.

6 Victoria Legal Aid notes the following on its website: 'We use eligibility tools to ensure that resources are targeted to those most in need of legal assistance. Financial eligibility, measured by the means test, is the first hurdle of eligibility for a grant of legal assistance.'; Victoria Legal Aid, *Means Test Review* (Web Page, 31 August 2021) <<https://www.legalaid.vic.gov.au/about-us/our-organisation/how-we-are-improving-our-services/means-test-review>>.

7 The Law Institute of Victoria has a 'Find a Lawyer Referral Service'. Using the search term 'victim' does not identify any law firms specialising in victim-related issues although a number of law firms are listed under 'VOCAT – Crimes Compensation' or 'Civil – Crimes Compensation'.

8 Victoria Legal Aid, *Victims Legal Service* (Web Page, 14 March 2023) <<https://www.legalaid.vic.gov.au/victims-legal-service>>.

9 Applications will be made to the new Financial Assistance Scheme when it is operational in 2023.

the person who committed the crime.¹⁰ The Victims Legal Service is not able to assist victims with any other victim-related legal matters.

Apart from these limited options for victims to seek legal assistance, there is no specialised, central pathway to legal advice or assistance for victims of crime. This means victims may:

- struggle to find appropriate legal advice or assistance
- be ineligible for VLA's services
- be unable to access CLCs' limited services
- encounter costly private legal fees.

There is no specialised, central pathway to legal advice or assistance for victims of crime.

Beyond issues of access and cost, where legal service providers do not specialise in victims' services, victims may be re-traumatised by legal advice and assistance that is not delivered in a trauma-informed or holistic way.

Victims' unmet legal needs

Findings of previous reports and inquiries

Findings relating to victims' unmet legal needs are not new.

The Centre for Innovative Justice (CIJ), which completed a large review of victims' services in Victoria in 2020,¹¹ told the VOCC that although exploring access to independent legal advice and assistance was not a part of its research methodology, most victims identified this as a significant unmet need. CIJ told the VOCC that this was the 'number one recommendation', with its strength 'coming from the fact we didn't ask victims about it – it was spontaneous and emerging in each of those 37 interviews...[u]nmet needs for legal issues arising from the impact of the crime were being compounded over and over again.'¹²

Since 2016, seven Victorian reports and inquiries have recommended a model of legal advice and assistance for victims of crime. While the scope of the proposed models differs across these reports, often reflecting the specific focus of each inquiry and its terms of reference, all advocated for enhanced access to state-funded legal advice and assistance for victims. Their recommendations are summarised in **Table 4** below.

Since 2016, seven Victorian reports and inquiries have recommended a model of legal advice and assistance for victims of crime.

Table 4: Victims' legal needs: findings of previous reviews and inquiries

Year	Report	Findings/recommendations
2022	The Legislative Council Legal and Social Issues Committee of the Parliament of Victoria's <i>Inquiry into Victoria's Criminal Justice System</i>	Recommended that the Victorian Government's Victims Legal Service include legal support to victims of crime on procedural matters such as: <ul style="list-style-type: none"> • the role of victims in criminal proceedings, including giving evidence and any entitlements for alternative arrangements or special protections • making Victim Impact Statements • a victim of crime's right to be consulted during criminal proceedings.¹

¹⁰ Victoria Legal Aid, *Victims Legal Service* (Web Page, 14 March 2023) <<https://www.legalaid.vic.gov.au/victims-legal-service>>.

¹¹ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020).

¹² Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

¹ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) recommendation 44 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

2022	Victorian Law Reform Commission – <i>Stalking</i>	Recommended that legal advice be provided for victims in relation to personal safety intervention orders. ²
2021	Victorian Law Reform Commission – <i>Improving the Justice System Response to Sexual Offences</i>	Recommended extending the Victims Legal Service (recommended in its 2016 report <i>The Role of Victims of Crime in the Criminal Trial Process</i>) to include legal advice and representation for victims of sexual assault to protect their rights to privacy. ³
2020	Centre for Innovative Justice – <i>Strengthening Victoria’s Victim Support System: Victim Services Review</i>	Recommended establishing a dedicated victims legal advice service for victims with specialist knowledge of victims’ legal issues. It argued that access to specialist, tailored legal advice for victims would provide for early intervention by way of legal ‘issues spotting’. ⁴
2018	Sentencing Advisory Council – <i>Restitution and Compensation Orders</i>	Recommended that the Victorian Government consider establishing a specialist victims legal service to provide advice to victims about seeking restitution and compensation orders. ⁵
2017	Coronial Council Appeals Review	The review concluded that a centralised approach to coronial legal advice should be developed (within Victoria Legal Aid) to provide legal services to victims’ families before, during and after a coronial investigation. ⁶
2016	Victorian Law Reform Commission – <i>The Role of Victims of Crime in the Criminal Trial Process</i>	Identified the need for a dedicated, specialist victims legal service, recommending that Victoria Legal Aid be funded to establish a legal advice and assistance service for victims of violent indictable crimes. ⁷

What the VOCC was told

When asked in the VOCC’s Victims’ Survey what extra help would have made it easier for them to participate in the justice system, 58 per cent of survey respondents selected ‘my own lawyer to advocate for my rights.’ As articulated by this victim interviewed by the VOCC, victims want someone independent, acting only in the victim’s best interests:

² Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022), recommendations 23 and 24.

³ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021), recommendation 46.

⁴ Centre for Innovative Justice, *Strengthening Victoria’s Victim Support System: Victim Services Review* (Final Report, November 2020) 149.

⁵ Sentencing Advisory Council, *Restitution and Compensation Orders: Report* (October 2018) 99, recommendation 8.

⁶ Coronial Council of Victoria, *Coronial Council of Victoria – Reference 4 – November 2017: Coronial Council Appeals Review* (November 2017), recommendation 6.

⁷ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) recommendation 23.



*'It is absolutely necessary to appoint a legal advocate independent of the OPP, and for victims to be able to request one if required. It needs to be a legal person that understands this system, as some solicitors won't deal with this sort of thing. Victims are usually traumatized. We need to be able to go to somebody we can trust, that can give us legal advice and who we know will act in our best interest. The OPP are a law unto themselves and from a victims point of view there needs to be a few more checks and balances.'*⁸

Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate highlighted the range of legal representatives who can be involved in child protection matters, all paid for by the state, as an example of how state-funded legal assistance can be operationalised:



*'In child protection matters, children have an independent children's lawyer. Everyone who has a separate legal interest in a case has a lawyer. In child protection, do you know how many lawyers are at the bar table in those matters – sometime 10? One for the child at risk of harm, a lawyer for the department, then we have a separate lawyer for the sibling of the child, and then the lawyer for mum and dad, and so on. And the State pays for that. And we still have the State saying that a victim can't have the right to a lawyer.'*⁹

Respondents to the VOCC's Victims' Survey said that a lawyer for victims was crucial to their participation:



'My top priority is the need for independent legal support for victims of crime as children and as adults.'

'I should have been assigned a lawyer to assist me in the preparation of the victims of crime statement and to inform me that I would be asked by the court what I sought from sentencing and what these options actually meant in practice.'

– Victims' Survey respondents

Some Victims' Survey respondents said their future participation in the justice system would be contingent on the availability of legal representation:



'If i had to i would never be left alone and i would want a legal representative with me at all times when dealing with police.'

'I would demand the right to a lawyer.'

'Yes, by having my own lawyer in the criminal matter. Yes, by being a recognised party (not just a participant) in the criminal matter.'

'Yes I would demand the right to a lawyer.'

'yes, with proper legal advice and a lawyer like he had.'

– Victims' Survey respondents

A number of stakeholders advised of victims' sense of confusion and dismay when realising they don't actually have their own lawyer.¹⁰ Dr Mary Iliadis said: 'Victims often question where their lawyer is and have often referred to police or prosecutors as their lawyer and are quite confused when that person doesn't

8 Interview 15 – Victim of crime.

9 Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

10 Consultation Meeting 5 – Dr Mary Iliadis; Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

fundamentally uphold their rights and interests.¹¹ Associate Professor Kerstin Braun queried the rationale of affording victims certain rights, but not allowing legal representation to enforce the rights.¹²

The VOCC heard that without access to legal advice from an independent, trusted source (separate to the prosecution), participation in the justice system can be difficult. Further, trauma can impact on a victim's ability to voice their opinions and adequately participate during the criminal justice process without an independent lawyer. The VOCC heard from victims and stakeholders about victims' many unmet legal needs, summarised below.



Summary of victims' unmet legal needs

The VOCC heard from victims and stakeholders that victims need independent legal advice:

- when making a report to police, having an 'options talk' with police and making a statement to police
- when police do/do not file charges, including assistance to understand decisions not to charge or to withdraw charges
- to provide informed views to the Director of Public Prosecutions (DPP) before the DPP makes certain decisions, such as modifying charges, discontinuing the prosecution or accepting a plea of guilty to a lesser charge
- to ensure that if bail is granted, conditions are imposed to protect victims and victims are informed of the outcome of any application
- to understand their rights and entitlements, including entitlements under the Victims' Charter and how to make a complaint if the Victims' Charter is breached
- in relation to subpoenas for their personal or medical records
- to seek leave to appear and make submissions in response to applications to access confidential medical or counselling records ('confidential communications')
- to better understand their role, responsibility, and rights as a witness
- to withdraw or amend their witness statement(s)
- whether they need immunity for evidence they will give
- to advocate to the prosecutor and court for safe spaces while attending court and to access special protections/arrangements while giving evidence
- to understand ground rules hearings
- to assist children with their legal rights separately from a parent/guardian
- when making a Victim Impact Statement (VIS) and/or reading it aloud in court, including advice on admissibility and arrangements for reading a VIS aloud
- to ensure that victims understand their participatory rights when diversion is recommended for an offender
- to be included on the Victims Register and make submissions to the Adult Parole Board
- to have court orders and records corrected where a victim is misidentified as the offender in family violence cases
- in relation to applying for leave to appear as an interested party in a coronial proceeding.

It is important to recognise that most victims do not have just one unmet legal need. Victims often have a constellation of related legal issues that flow directly from victimisation. Many of these legal issues or processes require interaction with a range of legal entities, including different courts and tribunals, sometimes at both the state and federal level, as well as different government agencies.

¹¹ Consultation Meeting 5 – DrMary Iliadis.

¹² Consultation Meeting 1 – Associate Professor Kerstin Braun.

CLC representatives told the VOCC that victims often have multiple, compounding legal issues and lack timely, holistic advice:

victims often don't have one legal issue, there's a pile of issues and there isn't the funding to deal with that. Sometimes victims get legal advice from someone who tells them 'don't worry about the custody matter', then the IVO ends and the dad knocks on the door and takes the child. If these clients had holistic advice from the start, then they would be a true participant in the system.¹³

Victoria Legal Aid also emphasised the need for a comprehensive, dedicated, trauma-informed legal service:

It's been a gap for a long time and creates significant barriers to victims participating in the process. It's something that has been raised many times along the way by a number of different reviews and inquiries. Victims have rights on paper, but they also need to know how to realise them in practice. The recently commenced Victims Legal Service delivered jointly by Victoria Legal Aid, Victorian Aboriginal Legal Service and Community Legal Centres provides a victim-centred, trauma-informed and collaborative model that could be expanded to services beyond assistance with financial compensation.¹⁴

A comprehensive state-funded legal service

Over a number of years, the VOCC has advocated for enhanced legal advice and assistance for victims of crime.¹⁵ Victims' views, consultations with experts and stakeholders, and the overwhelming evidence from previous reviews and inquiries, support the VOCC's conclusion that enhanced legal advice and assistance is fundamental to victim participation in the justice system.

Engagement with victims and stakeholders has indicated clear support for access to state-funded legal advice and representation across all stages of the criminal process as well as processes adjacent to it such as intervention orders, family law proceedings, compensation and coronial proceedings.

While the recent establishment of the first dedicated Victims Legal Service by the Victorian Government is a welcome and crucial first step in Victoria, a more comprehensive Victims Legal Service, which expands upon the current limited service, is required to assist victims with the full range of complex legal issues that arise as a result of victimisation.

Victims' views, consultations with experts and stakeholders, and the overwhelming evidence from previous reviews and inquiries, support the VOCC's conclusion that enhanced legal advice and assistance is fundamental to victim participation in the justice system.

The Victorian Government should fund a comprehensive specialist state-funded legal service for victims. It should expand the Victims Legal Service to provide victims with specialist, state-funded legal assistance in relation to a comprehensive range of matters relevant to crime victimisation spanning the relevant legislative provisions across criminal, administrative, and civil law.¹⁶ The legal service should provide standardised and structured referrals to existing victims' services like the Victims of Crime Helpline, Victims Assistance Program and other community-based and specialist services.

As a centralised service, victims and other professionals should be able to identify the Victims Legal Service as the single pathway to specialist legal advice for victims.

A Victims Legal Service could provide advice to victims about a wide range of matters. Below is a non-exhaustive list of matters a comprehensive Victims Legal Service could assist victims with.

Victims' Charter rights and entitlements

ensuring victims receive information about an investigation and prosecution from relevant agencies, along with appropriate referrals to support consistent with their rights and entitlements under the Victims' Charter

ensuring agencies consult with victims and seek their views at key parts of the process consistent with their rights and entitlements under the Victims' Charter

¹³ Consultation Meeting 22 – Community Legal Centres – Session 1.

¹⁴ Consultation Meeting 16 – Victoria Legal Aid.

¹⁵ See, e.g., Victims of Crime Commissioner, Submission No 99 to Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System* (1 September 2021) 36–8; 41–4; Victims of Crime Commissioner, Submission No 45 to Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (May 2022) 34–41.

¹⁶ Including the Sentencing Act 1991 (Vic), Victims of Crime Assistance Act 1996 (Vic), Victims' Charter and relevant protections afforded victims under the Criminal Procedure Act 2009 (Vic), Evidence (Miscellaneous Provisions) Act 1958 (Vic), Evidence Act 2008 (Vic), Public Prosecutions Act 1994 (Vic), Judicial Proceedings Reports Act 1958 (Vic), Open Courts Act 2013 (Vic), and Victims of Crime (Financial Assistance Scheme) Act 2022 (Vic).

<p>Reporting a crime, understanding charges, withdrawing or amending witness statements</p>	<ul style="list-style-type: none"> • providing independent advice regarding making a statement to police • providing independent advice and liaising with police/prosecution to understand why charges are not filed or are withdrawn by police/prosecution and advising on any internal or external review processes¹⁷
<p>Advocating for bail conditions that prioritise victim safety</p>	<ul style="list-style-type: none"> • providing legal assistance to ensure that a prosecuting agency is aware of a victim's views about bail • if bail is granted, providing legal advice on bail conditions that are imposed to protect victims
<p>Subpoenas and immunities</p>	<ul style="list-style-type: none"> • advocating for pre-trial applications, including reviewing application material and engaging legal representation¹⁸ to ensure victims' privacy and legal rights are respected in court
<p>Giving evidence and alternative arrangements</p>	<ul style="list-style-type: none"> • advocating for alternative ways of giving evidence and ensuring these are provided by the court where relevant
<p>Children as victim- witnesses</p>	<ul style="list-style-type: none"> • assisting children with their legal and Victims' Charter rights (as separate and distinct to those of a parent/guardian)
<p>Suppression Orders and the media</p>	<ul style="list-style-type: none"> • advising a victim-survivor of sexual abuse or as a bereaved family member wishing to seek a Victim Privacy Notice • providing victims with legal advice relating to media intrusion or media engagement and any legal implications
<p>Plea negotiations</p>	<ul style="list-style-type: none"> • legal assistance to ensure the prosecution seeks the victim's views during certain prosecutorial decision-making processes • providing independent advice and liaising with the prosecution to understand plea decisions and advising on any internal or external review processes¹⁹
<p>Sentence indications</p>	<ul style="list-style-type: none"> • assistance with ensuring the impact on a victim is considered at the sentence indication stage, including liaison with prosecution as necessary
<p>Diversion</p>	<ul style="list-style-type: none"> • legal assistance to ensure that victims understand their participatory rights when diversion is recommended for an offender
<p>Victim Impact Statements</p>	<ul style="list-style-type: none"> • providing advice on the admissibility of a VIS • legal assistance where the defence applies to question a victim on the contents of their VIS

¹⁷ In Chapter 12 of this report, the VOCC recommends the establishment of a new external review mechanism for certain police decisions.

¹⁸ Access to legal representation is discussed in detail below.

¹⁹ In Chapter 12 of this report, the VOCC recommends the establishment of a new external review mechanism for these kinds of prosecutorial decisions.

Cases of perpetrator misidentification/systems abuse	<ul style="list-style-type: none"> • legal assistance where a victim is incorrectly identified as the offender/respondent, particularly in family violence or stalking matters
Coronial matters	<ul style="list-style-type: none"> • applying for leave to appear as an interested party in a coronial proceeding and preparing submissions
Victim Right to Review scheme	<ul style="list-style-type: none"> • if implemented (see Recommendation 4) advising a victim about and applying to the Right to Review scheme
Mental impairment decisions, parole and other post-sentencing decisions	<ul style="list-style-type: none"> • being heard in relation to certain treatment matters where a person has been found not guilty or unfit to stand trial due to mental impairment under the <i>Crimes (Mental Impairment and Unfitness to be Tried Act 1997</i> (Vic) • understanding rights and entitlements relating to the Victims Register, and legal assistance with making submissions to the Adult Parole Board²⁰ • understanding rights and entitlements relating to post-sentencing decisions, and legal assistance with making submissions to the Post Sentence Authority.²¹
Restorative justice	<ul style="list-style-type: none"> • advising victims about entitlements to seek a restorative justice process • providing legal advice to victims about any legal ramifications of participation in a restorative justice process.

²⁰ *Corrections Act 1986* (Vic) ss 30A, 30B, 30, 47DA, 74AABA, 74A, 74B, 104ZY; *Victims' Charter Act 2006* (Vic) s 17.

²¹ In Victoria, serious sex offenders and serious violent offenders who present an unacceptable risk to the community can be made subject to ongoing supervision or detention after they have served their prison sentence. See Post Sentence Authority, *Post sentence scheme* (Web Page, 31 February 2022) <<https://www.postsentenceauthorityvic.gov.au/post-sentence-scheme>>.



RECOMMENDATION 21

The Victorian Government should expand the Victims Legal Service to provide victims with specialist, state-funded legal assistance in relation to the comprehensive range of legal issues that victims face.

Key areas of legal assistance would include:

- Victims' Charter rights and entitlements
- reporting a crime, understanding charges, withdrawing or amending witness statements
- advocating for bail conditions that prioritise victim safety
- subpoenas and immunities
- giving evidence and alternative arrangements
- children as victim-witnesses
- suppression orders and the media
- plea negotiations
- sentence indications
- diversion
- Victim Impact Statements
- cases of perpetrator misidentification/systems abuse
- coronial matters
- parole and other post-sentencing decisions (including leave decisions under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic))
- restorative justice.

The service should be sufficiently resourced and identifiable so that victims and professionals can identify the service as the pathway to specialist legal advice.

The legal service should provide standardised and structured referrals to existing victims' services such as the Victims of Crime Helpline, Victims Assistance Program and other community-based and specialist services.

Legal representation for sexual offence matters

Addressing the gaps in legal advice and assistance outlined above should address many of the legal challenges faced by victims of crime. However, a comprehensive Victims Legal Service alone will not resolve all issues for victims of sexual offences in the adversarial criminal trial process.

Victims in sexual offence trials often face significant, varied, and difficult challenges during the criminal trial process which require a targeted and dedicated legal response.

The impacts of not having access to independent legal representation are particularly pronounced in sexual assault cases. Victims in sexual offence cases are subject to some of the most invasive and traumatising aspects of our adversarial trial process.

Given the current challenges experienced by victims of sexual assault during the criminal trial process, this inquiry has focused on the merits of independent legal representation for sexual assault victims because of the specific barriers to accessing justice for this cohort. However, if independent legal representation is introduced for sexual assault victims, the VOCC notes that this will provide an opportunity to pilot the approach and consider its broader merits and application in the future.

Sexual offence victims face significant challenges

Victim advocates have pointed to the challenges faced by victims who do not have independent legal representation:

It is not defence lawyers who create the legal havoc for victim survivors, it's the fact that there is no lawyer for the victim that makes them legal fodder...[p]olice and OPP lawyers are not your legal reps, nor can they be.²²

'All survivors must have a lawyer in court.'

VOCC Victims' Survey respondent

Academic Fiona E Raitt has described victims' disadvantage during sexual offence trials:

Complainants have only a limited voice: they can give evidence but as they cannot canvass their rights, they depend upon another to do so. As neither prosecutors nor judges are equipped to represent these interests, complainants must look elsewhere.²³

As complainants, victims in sexual offence cases are subject to some of the most invasive and traumatising aspects of our adversarial trial process. This includes rigorous cross-examination, applications to access private or confidential records (including medical and counselling records) and applications to introduce sexual history evidence. The lack of independent legal support leaves many victims feeling alone, unsupported and without a voice, resulting in secondary trauma. This is illustrated by this powerful observation by a member of the Victim Survivors' Advisory Council:

Victims in sexual offence cases are subject to some of the most invasive and traumatising aspects of our adversarial trial process.

*'nobody represents victims. This is so problematic because this experience for victims can impact on their entire life. Nobody is standing in that space and representing victims and answering for victims. Without legal representation, victims become a passenger in somebody's journey with no say over the destination.'*²⁴

Many victims mistakenly assume prosecutors are 'their lawyers' and can prioritise their rights and needs.²⁵ Victims can be shocked to then learn that although a state's case would not proceed without their evidence, they are not afforded the same access to independent legal representation as an accused.

In the absence of direct victim legal representation, the victim is powerless to assert their rights and interests. Leaving 'protection of victims' rights up to the parties or the judge means allowing third parties, and not the victim, to determine the scope of victim protection in light of their own agenda'.²⁶

For this reason, some academics and legal experts have said that effective participation in the criminal justice system for sexual offence complainants may never be achieved without some degree of independent legal representation.²⁷

Prosecution and victim interests are not always the same

The prosecution is often seen to be aligned with the victim and their interests can often overlap. The prosecution may provide information to victims and in some circumstances, consult with them about important decisions. However, the prosecution's interests do not necessarily align with victims' interests. The prosecution cannot act for the victim or solely in the victim's best interests. The prosecution must act in accordance with its public duty. In a criminal trial, the prosecution is unable to assist victims in asserting substantive entitlements if doing so conflicts with its duty to act impartially and independently.

22 Ingrid Irwin, Submission No 68 to the Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 387. <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

23 Fiona E Raitt, *Independent Legal Representation for Complainers in Sexual Offence Trials* (Research Report, 2010) 729–49, 739.

24 Consultation Meeting 11 – Victim Survivors' Advisory Council.

25 Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 35.

26 Kerstin Braun, *Victim Participation Rights: Variation Across Criminal Justice Systems* (Palgrave MacMillan, 2019) 252.

27 Fiona Raitt, 'Independent Legal Representation in Rape Cases: Meeting the Justice Deficit in Adversarial Proceedings' (2013) 9 *Criminal Law Review*, 729–49, 749; Sir John Gillen, *Gillen Review: Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland* (May 2019) 173 <<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>>; Hildur Fjola Antonsdottir, 'A Witness in My Own Case': Victim-Survivors' Views on the Criminal Justice Process in Iceland' (2018) 26 *Feminist Legal Studies*, 326.

In addition to its duties, a prosecutor may make their own assessment of the weight to give the victim's interests resulting in the victim's interests not being canvassed in court. For example, a prosecutor might not object to questioning about sexual history evidence because they are unaware of the distress that certain questions may cause the victim and such questioning does not impact their prosecutorial strategy.

Regardless of their reasons for not intervening to protect a victim's rights and interests, the prosecution's decision can significantly shape a trial and the victim's experience of the process. For example, in a recent County Court trial highlighted in the media, neither the judge nor the prosecutor intervened when defence counsel asked the victim about the clothes she was wearing or about her kissing someone earlier in the evening of the alleged rapes. On retrial in 2019, a new judge considered the evidence again and ruled that these questions were inadmissible because the questions were improper and involved sexual history evidence and leave had not been granted to admit the evidence.²⁸

Judicial oversight is not sufficient

As discussed in **Chapter 12**, one way of improving recognition of victims' interests and rights is for judicial officers to check whether the prosecution has upheld a victims' participatory entitlements under the Victims' Charter and other legislation during a relevant criminal procedure.

However, leaving protection of victims' rights up to the parties or the judicial officer means allowing third parties, and not the victim, to determine the scope of victim protections.²⁹

If victims of sexual offences do not have their own legal representation, they are reliant on prosecutors and judges enforcing legislative protections, such as ensuring improper questions from defence counsel are stopped.

Academics Robyn Holder, Tyrone Kirchengast and Paul Cassell have said that for victims, '*rights matter precisely because legal authorities recognise and respond only to those who possess them*'.³⁰ However, it is not just having a right that matters, there must be a mechanism for enforcing rights, or having rights considered and respected.

Legal representation would facilitate victim participation

Laws must strike an appropriate balance between ensuring a fair trial for the accused and facilitating victim participation in the criminal justice system.

While there are concerns that introducing a right for victims to participate via legal representation would disrupt the current adversarial system, the VOCC contends that a targeted approach to legal representation for sexual offence victims based on specific participatory rights is consistent with fair trial principles.

There are ways to introduce a sexual offences legal representation scheme that would provide an effective avenue for upholding the interests and entitlements of victims without impinging on the rights of the accused.

The recommendations in this chapter would extend when a victim may be legally represented. However, it is not proposed that victims become a party to proceedings. Instead, victims of sexual offences would have standing to appear and be entitled to state-funded legal representation at specific stages of proceedings to meaningfully participate where they have standing.

Victims would have standing to appear and be entitled to state-funded legal representation at specific stages of proceedings to meaningfully participate.

Sometimes legal representation for victims has been objected to on the grounds that victims may use this new ability improperly, for example the hearing could become 'a substitute for private vengeance not an expression of it'.³¹ However, this misconstrues the role of legal representation for victims. Legal representation is intended to protect victims' rights. The victim would not play any role in prosecuting the accused. That responsibility would remain squarely, and exclusively, with the prosecution. Improving the victim's role and level of participation in the justice system would not come at the expense of the accused's interests.³²

28 Elise Kinsella, 'In the Witness Box', *ABC News* (online, 8 September 2021) <<https://www.abc.net.au/news/2021-07-18/how-a-court-case-put-the-spotlight-on-sexual-assault-trials/100281894>>.

29 Kerstin Braun, *Victim Participation Rights: Variation Across Criminal Justice Systems* (Palgrave MacMillan, 2019) 252.

30 Robyn Holder, Tyrone Kirchengast and Paul Cassell, 'Transforming Crime Victims' Rights: From Myth to Reality' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1, 3.

31 Lord Justice Auld, *A Review of the Criminal Courts of England and Wales* (September 2001) [11.74] <<https://www.criminal-courts-review.org.uk/auldconts.htm>>.

32 Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 110–13 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

Many victims support a form of independent legal representation. Some stakeholders consulted by the VOCC support the introduction of a *form* of legal representation although opinions differ regarding the scope and approach of independent legal representation. There are also other stakeholders who may oppose the introduction of a form of legal representation for victims. For example, in previous inquiries, the Criminal Bar Association of Victoria and the Law Institute of Victoria have not supported separate legal advice or representation for victims.³³ The Office of Public Prosecutions (OPP) told the VOCC that ‘appropriate measures are already in place’ and introducing legal representation would:

pose a challenge to the legal system more broadly. As outlined above, there is a risk that the intervention of an independent legal representative compromising the prosecution case or leading to a miscarriage of justice.³⁴

At the same time, the OPP considered ‘that there are particular points during the court process that independent legal advice and representation could be of significant benefit’, specifically applications to subpoena confidential communications of the victim.

The VOCC accepts that introduction of legal representation for victims challenges traditional conceptions of a fair trial. Ensuring that there is an ‘equality of arms’ between the state and the accused is often central to ensuring a fair trial. However, this is not the only requirement of a fair trial. This kind of binary conception of a fair trial has been superseded by conceiving of a fair trial as involving a ‘triangulation of interests’.³⁵ This triangulation involves the state and the accused but recognises that victims’ rights and interests also play a role in determining whether a trial is fair.

The proposals in this chapter do not undermine the equality of arms. They do not involve the victim’s legal representative operating as a prosecutor. The purpose of legal representation for victims would be to protect victims’ rights and interests. Without a legal representation scheme, victims of sexual offences will continue to struggle to participate meaningfully, even where they have substantive participatory rights. For this reason, the VOCC recommends that the Victorian Government establish a sexual offences legal representation scheme.

The introduction of a sexual offences legal representation scheme, like other initiatives before it, may be objected to by some. However, the VOCC notes similar concerns have been held in the past when changes have been introduced that assist victims, for example, in relation to the introduction of intermediaries and VISs.³⁶ These changes are now well accepted. In New South Wales, the Office of the Director of Public Prosecutions ‘described the ability to refer victims to a specialised legal service [for confidential communications] as positive’.³⁷ Further, the recommended form of victim legal representation is consistent with fair trial principles. The VOCC considers that as with other past initiatives, once a sexual offences legal representation scheme is established in Victoria, its role will be accepted.

The purpose of legal representation for victims of sexual offences would be to protect victims’ rights and interests. It would not involve the victim’s legal representative operating as a prosecutor.

As discussed in **Chapter 12**, the VOCC recommends that the *Charter of Human Rights and Responsibilities Act 2006* (Vic) be amended to provide victims with victim-specific rights (or minimum guarantees), including for victims to be:

- acknowledged as a participant (but not a party) with an interest in the proceedings
- treated with dignity and respect
- protected from unnecessary trauma, intimidation and distress when giving evidence and throughout criminal proceedings.

Independent legal representation would help uphold these minimum guarantees.

³³ In its submission to the VLRC’s Consultation Paper for its inquiry into *the role of victims of crime in the criminal trial process*, the Criminal Bar Association of Victoria stated that victims should not be entitled to separate legal advice or representation during consultations with the prosecution. They argued that the cost of legally aiding indigent victims would be high. The Criminal Bar Association also opposed the suggestion that victims be allowed to be represented by their own lawyer during the plea or sentencing hearing. The Law Institute Victoria stated that victims should not be given legal representation by the state. The Law Institute of Victoria argued that to provide for such a role would have the capacity to distort the fundamental nature of the criminal process, resulting in potential injustice and wrongful convictions: Victorian Bar and Criminal Bar Association, Submission No 29 to the Victorian Law Reform Commission Inquiry, *The Role of Victims of Crime in the Criminal Trial Process* (14 October 2015) 3, 4; Law Institute Victoria, Submission No 25 to the Victorian Law Reform Commission Inquiry, *The Role of Victims of Crime in the Criminal Trial Process* (9 October 2015) 10.

³⁴ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

³⁵ *R v A* (No 2) [2002] 1 AC 45, 65 [38] (Lord Steyn).

³⁶ Natalia Antolak-Saper and Hannah MacPherson, ‘Vulnerable Witnesses and Victoria’s Intermediary Pilot Program’ (2019) 43(5) *Criminal Law Journal* 325, 334–5.

³⁷ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 125.

Scope of a sexual offences legal representation scheme

Legal representation where there is no jury

This section discusses providing victims, often described as ‘complainants’ in sexual offence proceedings, with independent legal representation for applications made in the absence of the jury.³⁸ Victims already have standing to appear at applications to produce/adduce information about a victim’s confidential communications. **Chapter 17** recommends providing standing to victims to appear in other types of applications, such as sexual history evidence applications.

These applications usually occur before the trial commences. Legal representation schemes in some jurisdictions are specifically limited to pre-trial applications.³⁹ However, sometimes applications are made after the trial has commenced. For example, an application may be made to question the victim/complainant about their sexual history. The fact that an application is made after the trial has commenced should not disadvantage a victim. Further, because no jury is present for such applications, providing victims with legal representation in this situation would not change the dynamics of the trial. Therefore, the absence of the jury, rather than ‘pre-trial’, better limits when legal representation should be available for applications.

Providing victims with legal representation could help to empower and inform victims and help to identify and resolve any issues relating to disclosure and admissibility of their sensitive personal information. It would also ensure that the court has all relevant information and arguments regarding the victims’ privacy rights, that applications for confidential information are appropriately scrutinised, and that these difficult, sensitive decisions are appropriately informed by the victim’s experience.⁴⁰

Confidential communications

In sexual offence cases, victims can seek leave to appear and make submissions in response to applications to access their confidential communications, including medical or counselling records.⁴¹

This is one of the few times during a criminal proceeding where a victim has standing to appear and make submissions to the court. However, research has found that not all victims in sexual offence cases are being advised of their right to seek leave to appear in court in response to an application.⁴² Few victims engage their own lawyers to participate in these applications⁴³ and evidence indicates that victims’ ‘entitlements to protection of confidential communications and their sexual history are still not being fulfilled’.⁴⁴

The VOCC heard directly from victims about traumatic and protracted experiences in dealing with subpoenas from defence counsel to access confidential information.



‘For 18 months there were legal arguments for the Defence seeking my psychologist full file. I thought there was legislation to protect [victims in] sexual assault cases but turns out anything can have exemptions applied for. It is wrong and hugely distressing. There have been multiple times throughout this legal process where I have considered taking my own life and I mean seriously considered and planned.’

– Victims’ Survey respondent

Another Victims’ Survey respondent shared their experience of having their records subpoenaed, which they concluded ultimately had no relevance to the trial, and feeling unsupported during the process:

38 A ‘sexual offence’ is defined in the *Criminal Procedure Act 2009* (Vic) s 4.

39 See, e.g., Sir John Gillen, *Gillen Review: Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland* (May 2019) 714, 173–4 <<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>>.

40 Law Commission United Kingdom, *Evidence in Sexual Offences Prosecutions: Summary of Consultation Paper* (2023) 37.

41 Under section 32C(5) of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) the victim (called the ‘protected confider’) may with the leave of the court, appear in the proceeding and make submissions.

42 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 109.

43 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 143; *Evidence Miscellaneous Provisions Act 1958* (Vic) s 32C(4).

44 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 264.



'I was subpoenaed at an earlier time for my personal emails and texts. I was told if I wanted legal advice I would have to seek that independently and I was not given any contacts etc to seek said advice. I have never intersected with the justice system until reporting these cases so I had no idea. I eventually found a firm and had a brief conversation with a very dismissive woman who had no interest in assisting me so it left me feeling defeated and alone. I attended the hearings relevant to the subpoena and the defence gained them. It was purely a fishing expedition to attempt to discredit me and none of the information was relevant to the assaults themselves.'

– Victims' Survey respondent

The VOCC heard from a range of stakeholders in support of legal representation in relation to confidential communications.⁴⁵ Stakeholders perceived legal representation for victims whose confidential material is sought by defence as an important step in both the participation of victims and protection of their rights.⁴⁶

In 2022, legislative provisions were introduced to provide additional protections for victims regarding disclosure of their confidential communications.⁴⁷ These include:

- requiring the prosecuting party to ensure victims are notified about applications to access their information, and that they have a right to appear and may wish to consider obtaining legal advice⁴⁸
- providing victims with a clear right to appear in applications, and permitting them to provide a confidential statement describing the harm they are likely to suffer if the application is granted⁴⁹
- expanding protections to include 'health information' (such as personal information about a victim of a sexual offence that is collected as part of provision of a health service).⁵⁰

Victims already have a right to legal representation and to seek leave to appear in relation to confidential communications applications. However, without the implementation of a sexual offences legal representation scheme, these protective provisions will continue to be ineffective. This risks creating a 'two-class' system where only those victims with sufficient financial means will be able to exercise, or protect, their rights.⁵¹ Victims should not be required to pay to protect their rights and to avoid or minimise the harm caused to them by performing their public duty to attend court and give evidence.⁵²

Victims of sexual offences need access to a dedicated and specialised legal representation scheme that can represent their best interests when there are applications to access confidential communications. This scheme should be state-funded and specialised, as in other Australian jurisdictions.⁵³ State-funded legal services were introduced in New South Wales in 2011 and in Queensland in 2017.

45 Consultation Meeting 5 – Dr Mary Iliadis; Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 23 – Community Legal Centres – Session 2; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022.

46 Consultation Meeting 5 – Dr Mary Iliadis; Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 23 – Community Legal Centres – Session 2; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022.

47 These legislative amendments put into effect recommendations from the Victoria Law Reform Commission's report *Improving the Justice System Response to Sexual Offences* (2021) and its report on *The Role of Victims in the Criminal Trial Process* (2016).

48 Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32CD inserted by Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022 (Vic) s 85, which commenced on 7 September 2022.

49 Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32CE inserted by Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022 (Vic) s 85, which commenced on 7 September 2022.

50 Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32BA inserted by Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022 (Vic) s 83, which commenced on 7 September 2022.

51 Kerstin Braun, *Victim Participation Rights: Variation Across Criminal Justice Systems* (Palgrave MacMillan, 2019) 257.

52 Eamon PH Keane and Tony Convery, *Proposal for Independent Legal Representation in Scotland for Complainers Where an Application Is Made to Lead Evidence of Their Sexual History or Character* (2020) 34 <<https://www.law.ed.ac.uk/sites/default/files/2020-09/ILR%20Report%20Final%20Version%20June%200%20-%20Acc.pdf>>; see also Dame Vera Baird QC quoted in Sir John Gillen, *Gillen Review: Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland* (May 2019) 181 <<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>>.

53 See, e.g., Women's Legal Service New South Wales and Legal Aid New South Wales, *Subpoena Survival Guide* (2016) <<https://publications.legalaid.nsw.gov.au/PublicationsResourcesService/PublicationImprints/Files/753.pdf>>; Legal Aid Queensland, *Protecting Sexual Assault Counselling Records* (2020) <<https://www.legalaid.qld.gov.au/Find-legal-information/Factsheets-and-guides/Factsheets/Counselling-Notes-Protect-Service>>.

The VOCC envisages that under a sexual offences legal representation scheme, an independent legal representative could:

- ensure complainants understand their legal rights to protect their privacy and reputation
- assist complainants to prepare a confidential statement describing the harm they are likely to suffer if an application to access confidential information is granted
- help complainants to claim the communications privilege when their confidential records are subpoenaed
- take instructions from the complainant in a completely confidential manner (without having the disclosure obligations that the prosecution has)
- help protect the complainant's privacy and reputation by representing their interests as the complainant in court proceedings to access counselling notes and other confidential therapeutic records about the complainant.

Sexual history evidence

In the past, sexual history evidence was commonly relied on to attack the victim's credibility based on rape myths. These myths were that sexual history evidence supported 'the inference that the complainant was more likely to have consented to the sexual activity or that they were less worthy of belief'.⁵⁴

This led to the development of what are often called 'rape shield' laws. A person's sexual history is not usually relevant to the facts in the case and laws now require the accused to apply to the court to cross-examine the victim about the victim's sexual history.⁵⁵ This application is generally heard prior to the trial commencing.

Victims do not currently have standing to appear and be legally represented in applications to question victims about their own sexual history. **Chapter 17** recommends that victims be provided with these participatory rights.

The VOCC envisages that under a sexual offences legal representation scheme, an independent legal representative could:

- advise the complainant about their legal rights in relation to the application
- take instructions from the complainant in a completely confidential manner (without having the disclosure obligations that the prosecution has)
- help protect complainants' privacy, dignity, and reputation by representing the interests of the complainant in court proceedings
- inform the court about the harm likely to be caused if the defence is granted leave to cross-examine the complainant about the complainant's sexual history.

Ground rules hearings

Ground rules hearings address the comprehension capacity and communication needs of particular vulnerable witnesses and assist parties to plan their questions, including the manner and content of cross-examination. Victims do not have standing to appear or to have independent legal representation during ground rules hearings.⁵⁶ Following the passing of the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022*, ground rules hearings are now mandatory in all sexual offence cases where the vulnerable witness is a complainant (this includes summary hearings, trials, appeals and rehearings).

During consultation, the VOCC was told that complainants could benefit from independent legal representation during ground rules hearings.⁵⁷

The VOCC agrees that complainants in sexual offence trials could benefit from having legal representation during ground rules hearings to advocate for their interests, separately from the prosecution.

The VOCC envisages that under a sexual offences legal representation scheme an independent legal representative could:

- represent a complainant's best interests in relation to ground rules hearings

⁵⁴ Tyrone Kirchengast, 'Victim Legal Representation and the Adversarial Criminal Trial: A Critical Analysis of Proposals for Third-Party Counsel for Complainants of Serious Sexual Violence' (2021) 25(1) *The International Journal of Evidence & Proof* 53, 62.

⁵⁵ *Criminal Procedure Act 1986* (Vic) s 342.

⁵⁶ Ground rules hearings are now mandatory in all sexual offence cases under the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic).

⁵⁷ Consultation Meeting 23 – Community Legal Centres – Session 2.

- assist the court in determining the manner and content of questioning
- ensure cross-examination and the structure of questioning will not cause undue trauma
- assist a complainant to better prepare for giving evidence and understand the type of questioning.

Application to cross-examine a complainant at a committal hearing

In Victoria, a complainant may only be cross-examined at a committal hearing in a sexual offence case with the leave of the court. However, if the complainant is a child or person with a cognitive impairment, they cannot be cross-examined at a committal hearing.⁵⁸

In its examination of committal proceedings in 2020, the Victorian Law Reform Commission (VLRC) noted that cross-examination at a committal hearing can be much more difficult for victims than at a trial. This is because counsel is not constrained by the presence of a jury⁵⁹ and because cross-examination is likely to be less targeted than at trial because counsel may explore different case scenarios from the one that counsel uses at trial.⁶⁰

Recent amendments to the *Criminal Procedure Act 2009* (Vic) provide additional protections to complainants during committal hearings. The court must provide reasons outlining why it is granting leave to cross-examine a complainant in a case involving a sexual offence.⁶¹ The Magistrates' Court must have regard to a number of factors before granting leave to cross-examine,⁶² including:

- the need to minimise the trauma that might be experienced by the complainant in giving evidence
- relevant conditions or characteristics of the complainant, including age, culture, personality, education and level of understanding
- any mental, intellectual or physical disability 'to which the witness [complainant] is or appears to be subject and of which the court is aware'.

These factors are matters which a complainant and/or their legal representative are best placed to inform the court about. However, a complainant does not have standing to appear and to be legally represented at these applications to cross-examine.

If provided with standing to appear and to be legally represented, a complainant's legal representative could assist:

- the court in weighing up factors for consideration under the *Criminal Procedure Act 2009* (Vic) in relation to granting leave to cross-examine
- the court in determining special protections required when the complainant gives evidence
- complainants to understand the reasons provided by the court as to why it has granted leave to cross-examine
- a complainant to better prepare for giving evidence.

Legal representation at committals, trials and summary hearings

There are other situations where victims' legal needs and interests could be better protected by providing victims in sexual offence cases with legal representation.

During consultation, some judicial representatives told the VOCC they saw a role for independent legal representation at the committal hearing, because victim-witnesses:

are being asked questions ... that are fishing, that are designed to get information as to whether they have had counselling and from whom in order to provide a springboard for the third party subpoenas. That's an area where there is a proper basis for thinking that complainants or victims should be given independent legal advice before answering such questions, and about whether to object, because their interests may be different from the interests of the prosecution. The knowledge of the victim about their rights in respect of confidentiality of counselling records or about where a line of questioning is leading may also be different from the knowledge that the prosecution has about it.⁶³

A victim's legal representative could intervene to prevent inappropriate cross-examination of a victim at a committal hearing. While this rationale is tied to preventing 'fishing' that might lead to applications (e.g. to access confidential communications), victim legal representation should not be limited to that purpose.

⁵⁸ See section 123(1) of the *Criminal Procedure Act 2009* (Vic) which provides that the Magistrates' Court cannot grant leave to cross-examine any witness in a proceeding that relates (wholly or partly) to a charge for a sexual offence if, when the criminal proceeding commenced, a complainant in relation to a charge for a sexual offence was a child or a person with a cognitive impairment. This clarifies that cross-examination of a witness under this section cannot occur if the complainant is 18 years or older when the case reaches the committal stage, provided they were a child when the proceeding commenced.

⁵⁹ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 123.

⁶⁰ *Ibid* 124.

⁶¹ *Criminal Procedure Act 2009* (Vic) s 124(5A) which came into force on 30 July 2023.

⁶² *Ibid* s 124(5).

⁶³ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

In any criminal proceeding in Victoria, courts must disallow an ‘improper’ question, being a question that:

- is misleading or confusing
- is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive
- is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate
- has no basis other than a stereotype (for example, a stereotype based on the witness's sex, race, culture, ethnicity, age or mental, intellectual or physical disability).⁶⁴

However, as victims of sexual offences do not have their own legal representation, they depend on prosecutors or judicial officers enforcing legislative protections against improper questions by defence counsel. Evidence suggests not all prosecutors and judicial officers object or stop inappropriate questions asked during the cross-examination of a complainant.

In 2010, the Australian Law Reform Commission found that in criminal trials, judges were reluctant to intervene to protect witnesses.⁶⁵ In 2021, the VLRC said that there has been a ‘positive shift’ in this regard but that good practice is not consistent.⁶⁶ The VLRC found that despite reforms, victims continue to experience ‘brutal’ cross-examination.⁶⁷ As discussed above, in a recent County Court trial highlighted in the media, neither the judge nor the prosecutor intervened when defence counsel asked inappropriate and inadmissible questions. On a retrial in 2019, a new judge considered the evidence and ruled these questions inadmissible because the questions were improper and because leave had not been granted to admit prior sexual history evidence.⁶⁸

In some circumstances, it may be difficult for judges to identify all improper questioning while considering other matters, particularly if the prosecution has decided for strategic reasons not to object to cross-examination. A judge may also be reluctant to intervene too much in case they appear to a jury to be biased against the accused and counsel is generally given some leeway concerning how they choose to conduct their defence.⁶⁹

Associate Professor Kerstin Braun advised the VOCC that victims should have representation at trial ‘because out of all the reports that you hear and anecdotal evidence, that is really the stage where most victims feel re-traumatised by the questions that are being asked’.⁷⁰ Assoc. Professor Braun noted that questions asked during cross-examination may not comply with evidentiary protections and prosecutors and judicial officers may not intervene. Assoc. Professor Braun told the VOCC that ‘[t]o have a legal representative there makes sense as the rules are already there. The evidence already contains those rules, it’s just that nobody is there to act exclusively on behalf of the victim who will enforce their rights.’⁷¹

The VOCC agrees with this observation. For this reason, the VOCC recommends a model where a legal representative can assert the victim’s interests in sexual offence cases by:

- assisting the court in ensuring compliance with evidentiary protections during cross-examination (i.e. that the victim is not asked improper questions)
- ensuring that questioning complies with the court’s directions made at a ground rules hearings
- ensuring that sexual history evidence laws are complied with
- in a committal hearing, ensuring that questioning concerns a matter on which the court has granted leave to cross-examine at a committal hearing.

The victim’s legal representative would essentially have a protective role, asserting the victim’s rights and court rulings by way of submissions to the court. Protections – legislative and procedural (such as Practice Directions) – would prescribe the ways in which a legal representative could assist the court and intervene where victims’ rights are not being upheld, and in such a way that the adversarial nature of the trial would not be prejudiced.

The victim’s legal representative would not detract from the accused’s right to ask relevant and proper questions and test the prosecution case. The victim would remain a participant and not a party to the proceedings. The victim’s legal representative would not be able to call evidence or witnesses and would only be present when the witness gives evidence.

⁶⁴ Evidence Act 2008 (Vic) s41(3).

⁶⁵ Australian Law Reform Commission, *Family Violence – A National Legal Response* (Report No 114, November 2010) 1336.

⁶⁶ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 389.

⁶⁷ The Victorian Law Reform Commission found in 2021 that despite reforms, victims continue to experience ‘brutal’ cross-examination: Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 455.

⁶⁸ Elise Kinsella, ‘In the Witness Box’, *ABC News* (online, 8 September 2021) <<https://www.abc.net.au/news/2021-07-18/how-a-court-case-put-the-spotlight-on-sexual-assault-trials/100281894>>.

⁶⁹ Sir John Gillen, *Gillen Review: Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland* (May 2019) 177 <<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>>.

⁷⁰ Consultation Meeting 1 – Associate Professor Kerstin Braun.

⁷¹ Ibid.

It is important that there do not appear to be two prosecutors in the trial. The role of the victim's legal representative should not change the role of the prosecutor. Consideration would need to be given to how a victim's legal representative could be accommodated in court (e.g. where the victim's legal representative would sit in court), the manner in which they can assist the court or intervene, and how their presence is explained to the jury.



RECOMMENDATION 22

The Victorian Government should fund a sexual offences legal representation scheme and introduce necessary legislative amendments to provide sexual offence victims with standing to appear and be entitled to state-funded legal representation at specific stages of proceedings.

A sexual offences legal representation scheme should provide independent legal representation for sexual offence complainants in relation to applications, involving:

- confidential communications
- sexual history evidence
- subpoenas for information that contains private information about the victim
- cross-examination at a committal hearing.

A sexual offences legal representation scheme should provide independent legal representation at ground rules hearings and when the victim is giving evidence at a committal hearing, summary hearing, trial or appeal, to ensure compliance with the court's rulings and to protect witnesses from improper questions or questioning.

Overview of Chapter 16: Court support and safety

In order to meet the *Victims' Charter Act 2006* (Vic) (Victims' Charter) objective of incorporating victims as participants, supporting victims at court is critical. Court support underpins victim participation. It enables those victims who are required to give evidence to give their best evidence and it can reduce the likelihood of victim-witnesses experiencing secondary victimisation.

Closing the gaps in witness support

Access to witness support has been identified as a critical need for victim-witnesses during the justice process. Victoria has two witness support schemes, and these services provide valuable support for victims. However, neither service is able to meet demands on it and there are many victims who are not eligible for these services.

The VOCC recommends that the Victorian Government close the gaps in witness support by providing sufficient funding for existing witness support services to meet demand, including enabling services to provide a comprehensive level of service for high-needs victim-witnesses (including support during the entire court phase) and across regional Victoria.

The VOCC also recommends that the Victorian Government establish a witness support scheme for adult victims of crimes against the person in the summary jurisdiction.

Expanding the Intermediary Program

The Intermediary Program is widely praised by stakeholders as enhancing participation for witnesses who might otherwise not have sufficient support or accommodations to give evidence. The VOCC recommends expanding the Intermediary Program so that it is not limited by jurisdiction or court location.

Closing the gaps in victim support at court

Research confirms the need for victims to have support before, during and after court. Unlike witness support, victim support is not focused on the facilitation of giving evidence. Many victims will want to attend court – and participate in proceedings where relevant – without being a witness.

Victims told the VOCC that lack of support at court had made for particularly distressing experiences that often resulted in secondary victimisation.

The VOCC recommends that the Victorian Government establish a dedicated and specialised victim liaison service in each court to ensure victims are supported before, during and after attending court.

Court safety and accessibility

Attending court is often critical to a victim being able to participate in the justice system. Lack of safety during the court process emerged as a significant issue for victim participation. Victims raised concerns with the lack of safe and separate seating options in court common areas such as entrance ways, hallways and foyers.

Many court venues do not meet best practice for all court users, including victims of crime. The VOCC recommends that the Victorian Government establish minimum standards for safety and accessibility in Victorian courts and develop a multi-year plan to upgrade facilities to meet minimum safety and accessibility standards.

16

Chapter 16:
**Court support
and safety**



Introduction

In order to fulfil the *Victims' Charter Act 2006* (Vic) (Victims' Charter) objective of including victims as participants, supporting victims at court is critical.

The VOCC conceptualises court support broadly. Court support can be provided by a range of services or agencies¹ and may include:

- witness support services which, as discussed below, are a specialised type of support that help victims prepare to give evidence
- victim liaison based in or around the court system (e.g. providing a point of contact in a court so that victims can access certain spaces or special protections)
- one-on-one support, such as providing victims with practical and emotional support to attend court hearings (whether or not a victim needs to give evidence).

Appropriate court support enables those victims who are required to give evidence to give their best evidence and can reduce the likelihood of victim-witnesses experiencing secondary victimisation. Supporting victims at court also enables victims who are not witnesses to participate in a safe way, such as being able to observe proceedings safely and also participate at critical stages of the justice process, such as by making a Victim Impact Statement (VIS).

This chapter makes recommendations in relation to:

- closing the gaps in witness support so that more witnesses in Victoria are eligible for, and can receive, appropriate witness support
- expanding the availability of the Intermediary Program
- enhancing victim liaison in courts so that victims are not left unsupported in the court environment
- ensuring courts meet minimum safety and accessibility standards so that victims can participate equally and safely.

Witness support

Witness support services assist victim-witnesses through the justice process, including the process of participation in the trial when a victim is required to give evidence.

Access to witness support has been identified as a critical need for victim-witnesses during the justice process.² Researchers Nicole Bluett-Boyd et al describe the introduction and expansion of witness assistance programs 'as the most integral reform in enhancing victim/survivors' experiences of the court process'.³

There are two dedicated witness support services in Victoria:

- the Victims and Witness Assistance Service (VWAS) which is part of the Office of Public Prosecutions (OPP)
- the Child Witness Service (CWS) which is part of the Department of Justice and Community Safety.

The role of each service is outlined below.

¹ As discussed in this chapter, there are already some, albeit limited, programs and services that assist victims and witnesses at court.

² Nicole Bluett-Boyd, Bianca Fileborn and Australian Institute of Family Studies, *Victim/Survivor-Focused Justice Responses and Reforms to Criminal Court Practice: Implementation, Current Practice and Future Directions* (Research Report No 27, April 2014) 27.

³ Ibid 33.



Victorian Office of Public Prosecutions – Victims and Witness Assistance Service

VWAS social workers and OPP solicitors work together to provide information and support to adult victims and witnesses during the court process.⁴

VWAS social workers can provide:

- information about the prosecution process
- information about rights and entitlements
- information about the progress of the case
- support during meetings with lawyers about the case
- support to go to court (for example, helping with arrangements for giving evidence and being in court).

Department of Justice and Community Safety – Child Witness Service

The CWS's team of qualified social workers, psychologists and practitioners can:⁵

- support child witnesses and their families throughout the criminal proceedings
- familiarise child witnesses with the court processes, remote witness rooms and court personnel
- liaise with police and the prosecution teams, attend meetings and provide case updates
- prepare children and young people for the role of being a witness and support them when they give evidence
- provide debriefing and make referrals to community agencies
- help children, young people and their families to complete Victim Impact Statements and attend plea or sentence hearings.

VWAS is only available for victims and witnesses in the indictable stream (heard in the County and Supreme Courts). The Child Witness Service is not limited by jurisdiction but is only available for children and young people.

Witness support assists victims' participation

Engagement with victims showed that for those victims who received witness assistance, this support significantly assisted their participation in the justice system, as noted by these respondents to the VOCC's Victims' Survey:



'Once Witness Assistance got in touch, I felt like I had someone to ask all the 'stupid' questions of. Nothing was too much trouble, and they addressed all my fears, mostly around giving evidence and being in close proximity to the offender. WAS organised visiting court beforehand, provided emotional support, kept me up-to-date, supported before, during and after giving evidence remotely ... I wouldn't have coped without everyone's amazing knowledge, experience and support.'

'I received invaluable support from social workers through the Witness Assistance Program with face to face meetings explaining proceedings, always answering my questions, offering kindness and encouragement and accompanying me to court hearings.'

– Victims' Survey respondents

⁴ Office of Public Prosecutions, *Victims and Witness Assistance Service (VWAS)*, (Web Page) <<https://www.oppvic.gov.au/victims-witnesses/how-we-can-support-you/#:~:text=The%20Victims%20and%20Witness%20Assistance%20Service%20%28VWAS%29%20is,adult%20victims%20and%20witnesses%20during%20the%20court%20process>>.

⁵ Victims of Crime, *Child Witness Service* (Web Page) <<https://www.victimsofcrime.vic.gov.au/going-to-court/child-witness-service>>.

The OPP told the Victims of Crime Commissioner (VOCC) that ‘VWAS support lowers the barriers to participation’ and also supports ‘victims to provide their evidence in court’.⁶

Judicial representatives also praised the work of the CWS, with one representative stating that the CWS ‘plays an extraordinary part for children in summary contests in indictable sexual offences – they are sophisticated and highly trained and really help children and young people to give evidence’.⁷

Issues with witness support

While both the VWAS and the CWS are frequently praised by victims and stakeholders,⁸ both services are limited by cohort or jurisdiction. The demand for these services also outstrips their resourcing.

Sixty-three per cent of victims surveyed by the VOCC felt they did not get enough information about their role as a witness to help them participate in the process.

This suggests more victim-witnesses need access to witness support.



Gaps in witness support

During stakeholder engagement, the VOCC was told that there is unequal access to services.⁹ Support for adult witnesses in the Magistrates’ Court of Victoria was highlighted as a particular gap.¹⁰

Respondents to the Victims’ Professionals Survey suggested victims need access to more dedicated in-court support.

Victoria Police members told the VOCC there was insufficient witness support for summary matters heard in the Magistrates’ Court. Police described some witnesses missing out on support because they fall through the gaps of the existing witness support system – that is, those witnesses who are not children, do not have a cognitive impairment and whose matters are not being heard in the indictable stream.¹¹

Similarly, the Centre for Innovative Justice (CIJ) noted gaps for witnesses who are not eligible for VWAS or the CWS:

There are gaps for certain types of victims because of the eligibility criteria. For example, VWAS is available for indictable matters prosecuted by the OPP. But an increasing number of matters are classified as indictable, triable summarily, but there isn’t an equivalent service for the summary jurisdiction. This means that if you are 18 years and 3 days with an indictable offence triable summarily, you fall through the gaps as you’re not eligible for the CWS or VWAS. This includes a lot of family violence offences that can be incredibly serious.¹²

A recent case example highlighted in the media illustrates the precarious nature of supporting victim-witnesses without dedicated witness support services in the Magistrates’ Court where some sexual offences are heard. The article outlining the case describes a magistrate granting an accused diversion ‘after prosecutors abandoned a sexual assault charge ... moments before a contested hearing was about to begin’. The article states that police prosecutors had told the court that ‘the victim had become “overwhelmed with the thought of having to give evidence”’.¹³ While it is not known what support the victim had been given, if they were an adult victim of crime, they would not be eligible for witness support

6 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 12 September 2022, 9–10.

7 Consultation Meeting 28 – Judicial Representatives – Magistrates’ Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

8 Consultation Meeting 18 – Victoria Police – Session 2; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

9 Consultation Meeting 14 – Victims Services staff; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

10 Consultation Meeting 18 – Victoria Police – Session 2.

11 Consultation Meeting 18 – Victoria Police – Session 2. The Child Witness Service assists children and young people, regardless of jurisdiction. The Intermediaries Program applies to relevant criminal proceedings at a participating venue of a court if the witness is a person under the age of 18 years or a person with a cognitive impairment: Supreme Court of Victoria, *Multi-Jurisdictional Court Guide for the Intermediary Program: Intermediaries and Ground Rules Hearing* (Web Page, February 2022) <<https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/multi-jurisdictional-court-guide-for-the-intermediary-program>>. The OPP’s Victims and Witness Assistance Service only assists victims/witnesses in matters prosecuted by the DPP.

12 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

13 Genevieve Alison, ‘Musician Admits to Assault’, *Herald Sun* (online, 2 October 2021) 2.

and would unlikely have been provided specialised witness support such as:

- familiarisation with court processes, remote witness rooms and court personnel
- assistance to prepare for the role of being a witness
- support on the day to give evidence
- advice on alternative arrangements for giving evidence.

Victoria Police members told the VOCC that the OPP's VWAS model works very well and should be replicated in the Magistrates' Court.¹⁴ Similarly, CIJ advocated for all vulnerable witnesses to be supported by a witness assistance service, suggesting an expansion of existing services that are already proven to work.¹⁵

Stretched resources

Concerns were also raised that existing witness support services could not meet demand under current eligibility criteria. One victim representative of the Victims of Crime Consultative Committee told the VOCC about the negative consequences of the lack of support services:



*'I felt that other victims were prioritised over us in terms of court support. There were times we really needed that support, but we couldn't access it. For example, our WAS worker had to make decisions about whether to attend court with us versus a victim of sexual violence who was giving evidence. They are prioritised above us. There were times that I really need that support, but to be told you're not a priority is not great.'*¹⁶

Respondents to the VOCC's Victims' Professionals Survey told the VOCC that existing witness support services are 'often unavailable due to the number of cases they manage, leaving clients alone'.

Regional victims' professionals in particular raised concerns about witness support availability in regional areas. One survey respondent stated that witness support services 'often ask the VAP teams to provide court support at very late notice due to the complexities of the circuit but the VAPs are not always able to provide the support needed'. Another Victims' Professionals Survey respondent said that VWAS very rarely attend their region.

The OPP told VOCC that VWAS resources are 'finite' and that certain types of crime are typically prioritised but that all identified victims receive some level of service:

As OPP VWAS resources are finite, those matters that are identified as not requiring a high degree of involvement and support from OPP VWAS would be referred to other community services operating in this area, such as the Victim Assistance Program ... Matters where a person is a victim of sexual assault or family violence and those matters where a death has occurred are typically prioritised.¹⁷

The OPP also told the VOCC that even within the priority cohorts of sexual assault, family violence and death, VWAS 'simply cannot invest the time and resources that [they] would like to for each and every victim in this higher-needs group'.¹⁸

VWAS told the VOCC that high caseloads and insufficient resources mean that less support may be provided during evidence or critical hearings in matters involving deceased victims because 'there is insufficient capacity in VWAS to be physically present at each hearing for every victim'.¹⁹

The OPP also advised that the 'extent of unmet need is greater in regional areas, such as Mildura'.²⁰ The OPP told the VOCC that VWAS will attend regional areas for court circuits to provide support to the most vulnerable victims and witnesses, but those other victims identified as lower-needs will be referred to local agencies delivering the Victims Assistance Program (VAP) for support.²¹

Closing the gaps in witness support

Witness support is crucial to victim participation. The VOCC is concerned about gaps in eligibility for witness support services, as well as the resource-stretched environment in which existing services are operating.

¹⁴ Consultation Meeting 24 – Victoria Police – Session 4.

¹⁵ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

¹⁶ Consultation Meeting 20 - Victim Representatives – Victims of Crime Consultative Committee.

¹⁷ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 12 September 2022, 10.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid 11.

Of critical concern is the fact that there are some high-needs victim-witnesses who are not eligible for witness support at all – namely victim-witnesses in the summary jurisdiction who are not young or cognitively impaired. This places an increased onus on police prosecutors to attempt to manage support for vulnerable witnesses, including in serious sexual assault cases where they may not have the skills or resources to properly support high-needs witnesses.

The VOCC is also concerned that existing witness support services cannot meet demand. The OPP has indicated that it cannot provide a service to all eligible witnesses, nor provide sufficient support to priority (high-needs) victim-witness cohorts. Witness support in regional areas is even more limited.

While some gaps in witness support can be (and are) filled by VAPs or Court Network volunteers, neither VAPs nor Court Network can provide the level of service provided by a specialised witness support service. Witness support services are tailored around the needs of a witness required to give evidence. Witness support is different to victim support.

The VOCC recommends that the Victorian Government close the gaps in witness support by:

- providing sufficient funding for existing witness support services to meet demand
- establishing a witness support scheme for adult victims of crimes against the person in the summary jurisdiction.

Funding for existing witness support services should enable:

- service provision to all eligible victim-witnesses
- a comprehensive level of service provision for high-needs victim-witnesses, including support during the entire court phase and at all key hearings
- existing witness support services to service regional areas.

A witness support scheme for adult victims of crimes against the person in the summary jurisdiction should be modelled on the existing services in Victoria and include specialist advice and assistance, including:

- support and information about the role of being a witness
- support to go to court (including assisting with special arrangements for giving evidence and safely attending court) including pre-court familiarisation processes (e.g. 'walk throughs')
- debriefing following court hearings
- referrals to victim support services for longer-term case management or to other services (e.g. trauma or bereavement counselling, lawyers for assistance with state-funded financial assistance).

The VOCC considers that the most appropriate 'host' agency, department or organisation for a witness support scheme for adult victims of crimes against the person in the summary jurisdiction is a matter for government. In considering the best location for such a service, regard should be had to factors such as whether a model of victim and witness support is best integrated with prosecutions, as per the VWAS model, or whether a stand-alone witness support service, as per the CWS, provides better outcomes for witnesses. Consideration should also be given to which model would lead to better integration with existing services – including existing witness, court and victims' support services and any enhancements made to the victim support system as recommended in **Chapter 14** of this report. Opportunities to expand or extend existing approaches may be preferable over the establishment of new stand-alone services where this creates more seamless support for victims of crime.



RECOMMENDATION 23

The Victorian Government should close the gaps in witness support by:

- providing sufficient funding for existing witness support services to meet demand
- establishing a witness support scheme for adult victims of crimes against the person in the summary jurisdiction.

Funding for existing witness support services should enable:

- service provision to all eligible victim-witnesses
- a comprehensive level of service provision for high-needs victim-witnesses, including support during the entire court phase at all key hearings
- existing witness support services to service regional areas.

A witness support scheme for adult victims of crimes against the person in the summary jurisdiction should provide:

- support and information about the role of being a witness
- support to go to court (including assisting with special arrangements for giving evidence and safely attending court) including pre-court familiarisation processes
- debriefing following court hearings
- referrals to victim support services for longer-term case management or to other services (e.g. trauma or bereavement counselling, lawyers for assistance with state-funded financial assistance).

Intermediary Program

The intermediary scheme was introduced in 2018 as a pilot program.²² Intermediaries are skilled communication specialists who assist vulnerable witnesses to give their best evidence.²³ Intermediaries are neutral officers of the court and as such are not victim ‘support workers’ but assist in ensuring victims can provide their best evidence safely.

The intermediaries scheme is available to a witness or complainant who is under 18 years of age when the proceeding commences, or has a cognitive impairment, and where the criminal proceeding takes place in a participating court.²⁴

Participating courts at present are the Magistrates’ and Children’s Courts and the County and Supreme Courts in Melbourne, Geelong, Bendigo, Warrnambool and Wodonga.

The *Multi-jurisdictional Court Guide for the Intermediary Program* states that the Intermediary Pilot Program for the use of intermediaries has operated more narrowly than the scheme set out in the *Criminal Procedure Act 2009* (Vic), and currently applies only to:

- complainants in sexual offences matters who are vulnerable witnesses
- vulnerable witnesses, apart from the accused, in homicide matters
- vulnerable witnesses in all court jurisdictions, but in limited geographic locations
- police sexual offence and child abuse investigative team (‘SOCIT’) sites in Bendigo, Box Hill, Fawkner, Frankston, Geelong, Knox, Melbourne and Warrnambool, or as nominated by the Intermediary Pilot Program from time to time.²⁵

Intermediaries are only available in limited circumstances, so victim experiences of the Intermediary Program were unable to be covered in detail during VOCC’s engagement with victims. However, the VOCC notes that the Intermediaries Program was widely supported by stakeholders and highly praised by one victim the VOCC spoke with.

²² The legislative scheme relating to intermediaries and ground rules hearings is set out in Part 8.2A of the *Criminal Procedure Act 2009* (Vic) which commenced on 28 February 2018.

²³ Department of Justice and Community Safety, *Victorian Intermediaries Pilot Program* (Web Page) <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/victorian-intermediaries-pilot-program>>.

²⁴ *Criminal Procedure Act 2009* (Vic) s 389F. Participating courts can be gazetted: *Criminal Procedure Act 2009* (Vic) s 389G.

²⁵ Supreme Court of Victoria, *Multi-Jurisdictional Court Guide for the Intermediary Program: Intermediaries and Ground Rules Hearing* (Web Page, February 2022) <<https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/multi-jurisdictional-court-guide-for-the-intermediary-program>>.

A number of stakeholders indicated during consultations with VOCC that the intermediary scheme has been a positive reform for witnesses who might otherwise not have sufficient support or accommodations to navigate giving evidence.²⁶ Victoria Police members praised the Intermediaries Program as ‘fantastic’²⁷ and ‘the most magnificent improvement in the system ... in a long time’.²⁸

Community Legal Centre representatives were also supportive of the Intermediaries Program, although the VOCC was told it might be more effective if victims had independent legal representation to advocate for their interests during the process.²⁹

Expanding the Intermediary Program

Research has heralded the intermediary program as ‘a significant milestone in Victoria’s efforts to ensure that the criminal justice system accommodates and protects those with limited comprehension and communication skills’.³⁰

The Victorian Law Reform Commission (VLRC) found in 2021 that the intermediary program:

- increases access to justice and drives positive change in the practice and attitudes of police, lawyers and judges
- results in more cases making it to court
- is mostly supported by police, lawyers and judicial officers.³¹

However, as noted above, the Intermediary Pilot Program for the use of intermediaries has operated more narrowly than the scheme set out in the *Criminal Procedure Act 2009* (Vic) and only operates in certain court locations.

Having regard to the positive outcomes for victim participation, the VOCC recommends that more victim-witnesses have access to the Intermediaries Program, including by expanding its availability to all victim-witnesses with communication difficulties and to all courts in Victoria.

The VOCC’s recommendation is similar to the VLRC’s recommendation in its 2021 report, *Improving the Justice System Response to Sexual Offences*. The VLRC also recommended amending the Criminal Procedure Act to ensure that all witnesses with communication difficulties in sexual offence matters have access to the intermediary scheme.

The VLRC noted that the Magistrates’ Court of Victoria supported ‘embedding the intermediary scheme permanently in all court venues as a high priority’.

The VOCC agrees with the Magistrates’ Court of Victoria and sees no reason why the intermediaries program should not be a statewide service available across all court locations for victim-witnesses. All victim-witnesses should be given the same opportunity to participate equally in the justice process, regardless of where they live, and regardless of the offence the accused has been charged with committing.

All victim-witnesses should be given the same opportunity to participate equally in the justice process, regardless of where they live, and regardless of the offence the accused has been charged with committing.

As with many other recommendations in this report, implementing recommendation 24 would require appropriate investment by the Victorian Government. While the need to test approaches by way of pilots is a well-established path in law reform and service innovation in Victoria, when successful initiatives are not properly rolled-out across the state, too often victims and witnesses experience ‘postcode justice’.

²⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 31 – Court Services Victoria.

²⁷ Consultation Meeting 24 – Victoria Police – Session 4.

²⁸ Consultation Meeting 18 – Victoria Police – Session 2.

²⁹ It is noted that ground rules hearings can be conducted with or without an intermediary: *Criminal Procedure Act 2009* (Vic) div 1.

³⁰ Natalia Antolak-Saper and Hannah MacPherson, ‘Vulnerable Witnesses and Victoria’s Intermediary Pilot Program’ (2019) 43(5) *Criminal Law Journal* 325, 338.

³¹ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report No 42, September 2021) 322.

**RECOMMENDATION 24**

The Victorian Government should ensure equity in the availability of the intermediary scheme by expanding its availability across all Victorian courts.

All victim-witnesses should be given the same opportunity to participate in the justice process equally, regardless of where they live, and regardless of the offence the accused has been charged with committing.

More victim-witnesses should have access to the Intermediaries Program through the extension of its availability to all victim-witnesses with cognitive impairment or disability that results in communication difficulties, and to all courts in Victoria.

Enhanced victim support in courts

Research confirms the need for victims to have support before, during and after court.³² Unlike witness support, discussed above, court support is not focused on the facilitation of giving evidence. Many victims will want to attend court – and participate in proceedings where relevant – without being a witness.

Victim support at court is provided in a range of ways in Victoria, although there is no single, statewide and cross-jurisdictional service available to all victims of crime. At-court support is provided by a patchwork of services, many of whom deliver good services to those victims who can access them. They include:

- VWAS – where the OPP is prosecuting the matter – where resourcing/demand enables support to be provided
- Victims Assistance Program (VAP) workers – where funding and resourcing levels enable them to provide at-court services
- Court Network volunteers – where volunteers are available across court areas and where demand enables support to be provided.

Court Network told the VOCC that appropriate court support is an integral component of enhancing victim participation, particularly where the outcomes of criminal processes may not always validate victims' experiences:

Bearing witness, being alongside people, validating the importance of what they did or their being there; this all plays a role in creating meaningful participation. People can walk away feeling like they have had meaningful participation, even if the system itself cannot enable that to occur.³³

Gaps in court support

Victims told the VOCC that lack of support at court had made for particularly distressing experiences that often resulted in secondary victimisation. Victims discussed traumatising court attendances where they were unsupported and unprepared. For example, this respondent to the Victims' Survey stated:



'The court attendance was awful. I had the choice between sitting near the family of the defendant or sitting near the estranged family of my deceased partner. There was no court support.'

– Victims' Survey respondent

One respondent to the Victims' Survey stated that they received 'zero support during the court phase' while another described how they had attended court and been found, by chance, by a court support worker: '[I] praise so highly the court support worker who found me alone and crying in the waiting room.'

³² Tamar Dinisman and Ania Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support, United Kingdom, 2017) 26.

³³ Consultation Meeting 12 – Court Network.

Victims with disability highlighted that lack of court support was also a barrier to them being able to access arrangements that would facilitate their access and safe participation, such as safe waiting rooms.³⁴

Victims without support described being unaware of court processes and etiquette, with one respondent to the Victims' Survey commenting: 'At one point, I wanted to ask the judge a question and I raised my hand but the judge looked at me but did not ask what I wanted.' A victim-survivor of sexual assault told the ABC in 2021 that they 'would have liked access to a liaison officer at the court who could have been a point-of-contact and a person who could answer questions about the court processes and what to expect'.³⁵

Only 11 per cent of victims' professionals surveyed by the VOCC agreed that victims have enough in-person court support to help them participate in the process in the Magistrates' Court. In comparison, 41 per cent of respondents agreed that victims have enough in-person court support to help them participate in the process in the higher courts, where there is a dedicated Victims and Witness Support service run by the OPP.

Victims' professionals surveyed by the VOCC raised concerns about the level and availability of at-court support which can be provided within the current victim support system particularly in regional areas:

We often find victims wanting support in court and seldom able to access it via e.g. court social work. We end up using volunteer based services.

Funding cuts have made it difficult to support clients the way we should, eg. we aren't supposed to do full days of court support anymore.

Disenfranchised victims like the family members of victims who aren't required to be in court don't get funded to come and don't necessarily have workers to support them – more funding is needed for this.

Victims in outlying regional areas have less options for court support.

There is not court support in some regional courts operating at present.

The VOCC was also told that victims are not getting the necessary debriefing or post-court care that they need.³⁶

Court Services Victoria (CSV) told the VOCC that:

We need to look at trauma informed approaches and ask 'how do you support the whole person?' In mainstream courts how do we support someone who is experiencing levels of trauma but they don't fit certain categories for therapeutic courts? How do we get the best outcome for someone in that highly stressful environment where many things are outside of their control and assist them to advocate for themselves and exercise choice?³⁷

Closing the gaps in victim support

As outlined above, research confirms the need for victims to have support before, during and after court.³⁸ Many victims will want to attend court – and participate in proceedings where relevant – but will not be eligible for a witness assistance service. As noted by Court Network, appropriate court support is an integral component of enhancing victim participation.³⁹

While a number of different services and programs can, and do, provide at-court support, there is a need for a consistent service response across Victoria. Existing services do not have sufficient resourcing or eligibility criteria to provide much needed at-court support.

In 2021, the parliamentary inquiry into Victoria's criminal justice system recommended that the Victorian Government undertake a trial use in the Magistrates' Court of Victoria of Victim Peer Support Workers to assist victims of crime attending court proceedings.⁴⁰

The VOCC advocates for the establishment of a dedicated and specialised victim liaison service in courts, with sufficient resources to provide support to victims in each court location across Victoria. The use of victim peer support workers should be considered as part of such a service.

The liaison service should provide support before, during and after victims attend court, providing a central contact point for:

- information about accessibility in the court space, including for people with disability, children and young people and making arrangements to ensure relevant supports are in place, including safe spaces, accessibility aides, interpreters etc.

34 Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

35 Elise Kinsella, Tabitha and Michelle Spent Years Seeking Justice, Now They Want the Legal System to Change how it Treats Sexual Assault Survivors', ABC News (online, 20 April 2021) <<https://www.abc.net.au/news/2021-04-21/sexual-assault-complainants-look-change-to-justice-system/13296644>>.

36 Consultation Meeting 12 – Court Network.

37 Consultation Meeting 31 – Court Services Victoria.

38 Tamar Dinisman and Ania Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support, United Kingdom, 2017) 26.

39 Consultation Meeting 12 – Court Network.

40 Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

- information about safety in the court space, including safe entries, exits, waiting areas and making safety plans prior to a victim attending court
- information about the set-up of courtrooms and basic information about courtroom etiquette and procedures
- referrals to onsite and offsite support services such as specialist victims' services or culturally safe programs or services
- information about how to find updates about hearing dates and times.

The liaison service should have skills and expertise to help a range of victims, including victims with disability, children and victims from culturally diverse populations.

Victims should be able to easily identify the liaison service so that those victims who are not supported by a witness support service or a victim support service (like a VAP) can identify the liaison service easily. There should be an online presence so that victims can begin to engage with the service early, such as ask questions about safety, court facilities and court proceedings/etiquette.

As with expanding the availability of witness support services, the VOCC considers that the most appropriate 'host' agency, department or organisation for a victim liaison service across Victorian courts is a matter for government. Regard should be had to factors such as:

- the existing programs and services already providing a form of victim liaison or support in courts
- how victims can be holistically managed throughout the justice journey and not made to continually re-tell their story to receive different services
- what approach would enable best integration with existing services, including existing witness, court and victim support services.

Opportunities to expand, extend or integrate existing approaches may be preferable over the establishment of new stand-alone services where this enhances the support able to be provided to victims of crime.



RECOMMENDATION 25

The Victorian Government should establish a dedicated and specialised victim liaison service in each court location across Victoria to ensure victims are supported before, during and after attending court.

Specialised victim liaison in courts should include providing:

- information about accessibility in the court space, including for people with disability, children and young people, and making arrangements to ensure suitable supports are in place, including safe spaces, accessibility aides, interpreters etc.
- information about safety in the court space, including safe entries, exits, waiting areas and making safety plans prior to a victim attending court
- information about the set-up of courtrooms and basic information about courtroom etiquette and procedures
- referrals to onsite and offsite support services such as specialist victims' services or culturally safe programs or services
- information about how to find updates about hearing dates and times.

Court safety and accessibility

Under the Victims' Charter, so far as is reasonably practicable, a prosecuting agency and the courts should, during the course of a court proceeding and within a court building:⁴¹

- minimise a victim's exposure to unnecessary contact with the person accused of the criminal offence, defence witnesses and family members and supporters of the accused person
- protect a victim from intimidation by the accused person, defence witnesses and family members and supporters of the accused person.

Findings of previous reviews and inquiries

Court safety has been described as a 'perennial issue'.⁴² As noted by the then-Department of Justice in 2013, 'creating a safe [court] environment can take time as it often requires physical changes to the built environment and significant resources.'⁴³ It is unsurprising that so many victims of crime and stakeholders raised concerns about court safety during this inquiry.

A 2021 report into the administration of Victorian courts found that many courts across Victoria are not fit for purpose and do not meet the needs of all court users.⁴⁴ This echoes findings in previous reports and inquiries.



Court safety issues raised in previous reports and inquiries

Beyond Doubt: The Experiences of People with a Disability in Reporting Crime (2014) report recommended that Court Services Victoria:

- prioritise disability accessibility and drive implementation consistently across jurisdictions
- provide for hearing loops and space for mobility aides in courtrooms across jurisdictions.

The Role of Victims of Crime in the Criminal Trial Process (2016) report recommended that Court Services Victoria, in consultation with investigatory, prosecuting and victims' services agencies, implement measures to protect victims attending court proceedings on indictable criminal matters by:

- ensuring that victims can enter and leave courthouses safely, including, where possible, allowing them to use a separate entrance and exit
- making separate rooms available for victims to wait in at court and ensuring victims know where they are
- establishing remote witness facilities that are offsite or accessed via a separate entry to that used by other court users
- using more appropriate means to screen victims from the accused when giving evidence in the courtroom.

Inquiry into Victoria's Criminal Justice System (2021) recommended:

- that the Victorian Government fund Victorian courts to update their facilities to improve standards in victim safety and wellbeing.

Improving the Justice System Response to Sexual Offences (2021) report recommended that the Victorian Government fund the courts to strengthen measures to protect complainants in sexual offence cases by:

- ensuring victims can enter and leave courthouses safely, including, where possible, allowing them to use a separate entrance and exit
- using appropriate means to screen complainants from the accused when they are giving evidence in the courtroom
- ensuring technology is reliable to support complainants to present their best evidence.

41 Victims' Charter Act 2006 (Vic) s 12.

42 Victims Support Agency (Victoria), *Information and Support Needs of Victims and Witnesses in the Magistrates' Court of Victoria* (Report, January 2013) 18.

43 Ibid.

44 Victorian Auditor-General's Office, *Administration of Victorian Courts* (Report, October 2021) 58.

Courts not meeting standards

Lack of safety during the court process emerged as a significant issue for victims' participation. Inability to participate at court fully or safely was raised by victims in relation to both their physical safety in the court precinct, and their psychological and emotional safety during court proceedings.

Forty per cent of respondents to the VOCC's Victims' Survey who attended court indicated that they never felt safe in court and 35 per cent indicated that they only felt safe sometimes. Taken together, 75 per cent of respondents were concerned about their safety while attending court.

Lack of safety during the court process emerged as a significant issue for victims' participation.

Forty per cent of respondents to the VOCC's Victims' Survey who attended court indicated that they never felt safe in court.

Victims raised concerns with the lack of safe and separate seating options in court common areas such as entrance ways, hallways and foyers. Due to there being too few safe spaces for victims at court, victims frequently encountered the accused and/or their supporters in the general waiting areas. One Victims' Survey respondent, who required further counselling after encountering the perpetrator in court, described the impact on them as highly distressing. One victim expressed their view to the VOCC that victims 'should be able to just walk in and feel like you're sitting in a special space. It's yours, you know, while you're in there, that's where your family sit.'⁴⁵ Lack of appropriate and safe court infrastructure was noted by a number of stakeholders.⁴⁶ Victoria Police expressed concerns about the physical infrastructure of some courts in Victoria, describing some as 'physically past their use by date. They are unsafe.'⁴⁷

The VWAS at the OPP supported Victoria Police members' concerns about single-entry courts, stating that '[o]ne entry and exit point for all court users remains an ongoing problem'.⁴⁸ VWAS also identified that single-entry courts create situations in which 'victims then run the risk of unwanted contact with the Accused either entering or exiting the building'.⁴⁹

Court Network and Victims Services staff told the VOCC that whether court environments across Victoria are victim-friendly and safe is extremely variable. Court Network noted that while some courts have been redesigned and upgraded, others are 'a disaster' with unsafe entries/exits and waiting spaces. The VOCC was told the lack of safe spaces in court creates challenges for Court Network staff, who 'have to find nooks and crannies and ways to make sure the two parties don't come together', otherwise risk victims 'experiencing "walk-bys" by the other side checking them out'.⁵⁰

CSV told the VOCC that the:

development of the Bendigo court has created some pressure in terms of stakeholders in different regions asking 'what about us' in terms of similar developments. Bendigo court has an adaptable layout. It asks: what would Victoria look like if we had six or seven of these similar facilities?⁵¹

Minimum standards for safety and accessibility

Transparency in standards

The VOCC was told that because some courts have been updated, redesigned or rebuilt, it 'creates greater disparity in terms of victim experience'.⁵²

The disparity across court locations in Victoria is not fair or equitable. Although refurbishment of courts and upgrading of technology is commendable, victims, witnesses – and all other court users – should have access to similar standards of safety, comfort and amenity when attending court.

Victims, witnesses – and all other court users – should have access to similar standards of safety, comfort and amenity when attending court.

⁴⁵ Interview 5 – Victim of crime.

⁴⁶ Consultation Meeting 9 – Alannah and Madeline Foundation; Consultation Meeting 12 – Court Network; Consultation Meeting 14 – Victims Services staff; Consultation Meeting 17 – Victoria Police – Session 1; Consultation Meeting 19 – Victoria Police – Session 3; Consultation Meeting 21 – Windermere Victims Assistance Program; Consultation Meeting 24 – Victoria Police – Session 4; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

⁴⁷ Consultation Meeting 24 – Victoria Police – Session 4.

⁴⁸ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12.

⁴⁹ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12.

⁵⁰ Consultation Meeting 12 – Court Network.

⁵¹ Consultation Meeting 31 – Court Services Victoria.

⁵² Consultation Meeting 14 – Victims Services staff.

It is clear that many court venues do not meet best practice for all court users, including victims of crime.

However, it is difficult for courts in Victoria to be measured against an acceptable or minimum standard for safety and accessibility as there are no minimum standards available.

The Victorian Government should establish minimum standards for safety and accessibility in Victorian courts. CSV should develop minimum standards in consultation with victims and other key stakeholders but should, as a minimum, set standards relating to:

- safe court entrances and exits, including for victims with a range of accessibility needs
- safe waiting spaces and interview rooms, including child-friendly spaces, sensory spaces and culturally safe spaces, ensuring victims with a range of accessibility needs can also access these spaces
- availability of remote witness facilities to meet demand
- infrastructure for alternative arrangements (such as protective screens shielding victims from the accused)
- sufficient assets and infrastructure to implement special arrangements at the request of victims, including screens in court.

After establishing minimum standards for safety and accessibility in Victorian courts, Victoria’s court infrastructure should be independently audited against these minimum standards and each court should be provided a ‘scorecard’ of compliance. This scorecard should be published annually.

A commitment to upgrading courts over time

Infrastructure upgrades take time and are costly. With around 70 courthouses across Victoria, it is clear that not all courts will meet minimum standards in the short term. Some newer courts have been purpose-built with safety embedded in their design, while others have been retrofitted or are still waiting for safety improvements, with Melbourne, Werribee, Frankston and Sunshine Magistrates’ Courts all identified by stakeholders as requiring substantial improvements to provide more, safe ways for victims to participate at court.

There should be a commitment to courts being progressively upgraded via a medium- to long-term infrastructure plan. The Victorian Government should develop a multi-year plan to upgrade facilities to meet minimum safety and accessibility standards.

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RECOMMENDATION 26

<p>The Victorian Government should establish minimum standards for safety and accessibility in Victorian courts. These standards should be publicly available and all courts should be independently audited against these minimum standards.</p> <p>The Victorian Government should develop a multi-year infrastructure plan to upgrade facilities to meet minimum safety and accessibility standards.</p>	<p>Minimum standards for safety and accessibility in courts should, at a minimum, provide:</p> <ul style="list-style-type: none"> • safe court entrances and exits, including for victims with a range of accessibility needs • safe waiting spaces and interview rooms, including child-friendly spaces, sensory spaces and culturally safe spaces, ensuring victims with a range of accessibility needs can also access these spaces • availability of remote witness facilities to meet demand • infrastructure for alternative arrangements (such as protective screens shielding victims from the accused). <p>All courts should be independently audited against minimum standards and given a compliance ‘scorecard’, which should be updated and published annually.</p>
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Overview of Chapter 17: Protections for victim-witnesses

One of the objects of the *Victims' Charter Act 2006* (Vic) (Victims' Charter) is to reduce the likelihood of secondary victimisation. Reducing secondary victimisation is key to victim participation – it helps victims to participate safely and helps them participate in a way that meets their justice needs.

Part 2 of this report provides compelling victim voices which suggest the criminal trial process is still causing many victims secondary victimisation.

This chapter aims to address specific areas of the criminal trial process for victim-witnesses where changes could be made to help reduce the likelihood of secondary victimisation.

The Victims of Crime Commissioner (VOCC) recommends reforms to:

- limit, or abolish, committal hearings in certain circumstances
- expand the 'protected witness' category in the *Criminal Procedure Act 2009* (Vic) to prevent personal cross-examination by an accused where a witness is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.
- expand the availability of alternative arrangements to a broader class of witnesses
- more closely manage cross-examination by counsel for co-accused to avoid repetitive questioning
- introduce additional legislative protections in relation to confidential communications, sexual history evidence and access to third-party information.

The VOCC recommends amending interlocutory appeals processes to provide victims with a substantive remedy to correct legal errors in relation to some decisions made that affect a victim's privacy.

17

Chapter 17:
**Protections for
victim-witnesses**



Introduction

One of the objects of the *Victims' Charter Act 2006* (Vic) (Victims' Charter) is to reduce the likelihood of secondary victimisation. Reducing secondary victimisation is key to victim participation – it helps victims to participate safely and helps them participate in a way that meets their justice needs.

Part 2 of this report provides compelling victim voices which suggest the criminal trial process is still causing many victims secondary victimisation. This chapter aims to address specific areas of the criminal trial process where changes could be made to help reduce the likelihood of secondary victimisation.

Many of the recommendations in this chapter, if implemented, would help give practical effect to the Victims' Charter objective of acknowledging the victim's role as a participant, but not a party, in proceedings for criminal offences.¹ They would also give effect to the rights the Victims of Crime Commissioner (VOCC) has recommended be included in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (discussed in **Chapter 12**), including rights for a victim of a criminal offence to be:

- acknowledged as a participant (but not a party) with an interest in the proceedings
- treated with dignity and respect
- protected from unnecessary trauma, intimidation and distress when giving evidence and throughout criminal proceedings.

This chapter makes recommendations in relation to:

- limiting when a victim may be cross-examined more than once
- protecting victims when the accused seeks to personally cross-examine
- alternative arrangements for giving evidence
- protections where there are multiple accused
- protections relating to access to a victim's personal information.

Cross-examination more than once

Cross-examination can be highly distressing to victims of crime. Research has found cross-examination to be humiliating, distressing, brutal, traumatising, offensive, aggressive, insensitive and confusing.²

Because of the risk of re-traumatising victims when they are required to give evidence, it is essential to limit the situations in which a victim may have to give evidence more than once.

Both committal proceedings and 'de novo' appeals are processes which can result in victims giving evidence twice. This section discusses ways to limit cross-examination at committal and for de novo appeals.

Cross-examination at committal

Before a trial is conducted for an indictable offence, the Magistrates' Court will usually conduct a committal proceeding.³

The defence may apply to cross-examine witnesses at a committal proceeding. In 2017–18, leave to cross-examine at least one witness was granted in 46 per cent of cases in Victorian courts.⁴ This is much higher than in any other Australian jurisdiction. For example, in New South Wales, courts granted leave to cross-examine witnesses in fewer than 6 per cent of cases.⁵

It is difficult to conduct committal proceedings in a manner that protects victims from unnecessary trauma, intimidation and distress because:

- committals involve a victim-witness giving evidence on more than one occasion (i.e. in addition to a trial)
- cross-examination at a committal hearing can be 'worse than at the trial' because defence counsel is 'not constrained by the presence of a jury' and so cross-examination may be 'more oppressive or intimidating'⁶

¹ *Victims' Charter Act 2006* (Vic) s 4(1)(ba).

² Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 93.

³ Committal proceedings are heard in the lower courts before the accused has been ordered ('committed') to stand trial in a higher court. A 'committal' is the decision by a magistrate to commit an accused for trial or sentence in a higher court: Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 6.

⁴ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 122.

⁵ New South Wales Law Reform Commission, *Encouraging Appropriate Early Guilty Pleas* (Report No 141, December 2014) 208.

⁶ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 123.

- cross-examination is likely to be less targeted because counsel may explore different case scenarios from the one that counsel uses at trial.⁷

As outlined in **Chapter 8**, many victims who spoke with the VOCC were dissatisfied with the committal process. Victoria Police members also expressed concern to the VOCC about the number of times a victim may be required to give evidence and the negative impact these experiences can have on victims:

A victim can give evidence on two, even three occasions. And that's not even counting appeals. If they spend a day or two in the box giving evidence at a committal and then we get another adjournment, it's hard trying to explain to a victim, "you're going to have to go through this whole process again". It's a lot for them to take in and if there is any sort of jury that's knocked out, or there's another legal argument, we have to start the trial again and they're going to do it all again.⁸

As stated in the Victorian Law Reform Commission's (VLRC) 2020 report *Committals*, 'it is accepted that in most cases witnesses find it stressful and distressing to be cross-examined more than once during criminal proceedings.⁹ During the VLRC's review of committals, victims and stakeholders described being cross-examined as 're-traumatising and offensive' and 'as bad as the ... abuse they suffered'.¹⁰ The Office of Public Prosecutions (OPP) told the VLRC that cross-examination at committal should be avoided wherever possible.¹¹

In a 2023 *ABC News* article, victim-survivor Alex Case described the committal process, including cross-examination, as 'severely traumatic'.¹²

New laws have been introduced to limit cross-examination

Recent laws have been introduced to address cross-examination at the committal stage. The *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic) now means:¹³

- **The court must have regard to additional considerations when determining whether to allow the pre-trial cross-examination of certain witnesses.** These additional considerations apply to a child, a witness who has a cognitive impairment, or is a complainant in a proceeding that relates to a charge for a sexual or family violence offence. The court must consider the need to minimise the trauma that might be experienced by the witness in giving evidence and conduct a more detailed assessment of the importance of the witness's evidence in the case and the characteristics of the witness (e.g. age, culture, level of understanding).¹⁴
- **Magistrates must provide reasons for granting leave to cross-examine a witness and identify each issue on which the witness may be cross-examined.** This reform requires a magistrate to consider the test for granting leave and explain why leave is justified if granted. This is intended to address concerns that some magistrates were granting leave almost automatically and without applying the statutory test for leave.

These reforms only commenced on 30 July 2023. They should be monitored to ensure they are achieving their objectives. As part of this monitoring process, consideration should be given to whether the categories of witnesses protected under these reforms should be expanded to include victims of other offences against the person.

In addition, and as recommended in **Chapter 15**, the VOCC considers that for victims of sexual offences, a sexual offences legal representation scheme should be available to:

- assist the court in weighing up factors for consideration under the *Criminal Procedure Act 2009* (Vic) (Criminal Procedure Act) in relation to granting leave to cross-examine at committal
- assist the court in determining special protections required when giving evidence at committal
- assist victims to understand the reasons provided by the court as to why a leave to cross-examine at committal is granted
- assist a complainant to better prepare for giving evidence at committal.

⁷ Ibid 124.

⁸ Consultation Meeting 19 – Victoria Police – Session 3.

⁹ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) vii.

¹⁰ Ibid 123.

¹¹ Ibid 124.

¹² Elise Kinsella, 'Life Sentence', *ABC News* (online, 27 February 2023) <<https://www.abc.net.au/news/2023-02-27/alex-case-child-sexual-abuse-jeffrey-joffa-corfe-court/101991600>>.

¹³ *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic) s 63 inserts a new s 124A in the *Criminal Procedure Act 2009* (Vic) effective as of 30 July 2023.

¹⁴ Before the 2022 amendments, a magistrate only considered these additional factors if the witness was a child under 18 years of age.

Abolish committal hearings for certain cohorts

Currently, if a sexual offence case involves a complainant who is a child or a person with a cognitive impairment, there is no committal hearing. In its 2020 review of committals, the VLRC recommended that this limited category of sexual offence cases be expanded to include family violence cases in which the victim is a child or person with a cognitive impairment.¹⁵

However, the VOCC considers there are other victim-witnesses who may be traumatised by having to be cross-examined at both committal and trial.

Abolishing committal hearings for certain cohorts should not be limited to sexual offence or family violence cases involving a complainant who is a child or a person with a cognitive impairment. For example, given the many problems identified in sexual offence cases in this inquiry and in others,¹⁶ consideration should be given to committal hearings in all sexual offence cases being abolished.

In 2021, the Director of Public Prosecutions (DPP) called for committal hearings to be abolished entirely in sexual offence cases to prevent victims having to be cross-examined twice.¹⁷ Research has also suggested this as a way of improving victims' experiences of the justice system in sexual offence cases.¹⁸

The VOCC agrees that committal hearings should be abolished for certain cohorts, commencing with sexual offence and family victims as a priority.

The VOCC recommends that the Victorian Government should:

- monitor reforms introduced in July 2023 to control cross-examination more tightly at committal to ensure they are achieving their objectives. As part of this monitoring process, consideration should be given to whether the categories of witnesses protected under these reforms should be expanded to include victims of other crimes against the person.
- abolish committal hearings for certain cohorts, commencing with sexual offence and family violence cases as a priority. Expanding abolition of committal hearings to other categories should be considered following a review of implementation in sexual offence and family violence cases. In expanding to other categories, regard should be had to reducing unnecessary trauma, intimidation or distress for victim-witnesses.

Reforms to committals remains an area requiring targeted and sustained attention. The VLRC's comprehensive 2020 *Committals* report contains many recommendations that will improve committal proceedings. The Victorian Government has implemented some, but not all the recommendations.

In circumstances where committals remain, the Victorian Government should continue to improve committal processes based on the recommendations made by the VLRC in its 2020 *Committals* report, including:

- changing case-management practices
- involving experienced practitioners for the prosecution and defence at an earlier stage
- improving police charging practices, with the DPP conducting an early review of charges
- addressing delay with forensic reports.

¹⁵ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) recommendation 42.

¹⁶ See, e.g., Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021).

¹⁷ Tammy Mills, 'Top Prosecutor Calls for Jail Discounts for Guilty Pleas to Slash Massive Court Backlog', *The Age* (online, 28 February 2021) <<https://www.theage.com.au/national/victoria/top-prosecutor-calls-for-jail-discounts-for-guilty-pleas-to-slash-massive-court-backlog-20210226-p5760r.html>>.

¹⁸ Nicole Bluett-Boyd and Bianca Fileborn, *Victim/Survivor-focused Justice Responses and Reforms to Criminal Court Practice: Implementation, Current Practice and Future Directions* (Research Report No 27, Australian Institute of Family Studies, April 2014). 61



RECOMMENDATION 27

The Victorian Government should:

- review reforms introduced in July 2023 to control cross-examination more tightly at committal hearings to ensure they are achieving their objectives
- continue to improve committal proceedings based on recommendations made by the Victorian Law Reform Commission in its 2020 *Committals* report
- abolish committal hearings for certain cohorts, commencing with sexual offence and family violence cases as a priority.

The Department of Justice and Community Safety should be required to review the operation of the government's recent changes to limit the cross-examination of victims at committal hearings within three years of the reforms commencing, to ensure they are achieving their objectives.

Committal hearings should be progressively abolished, commencing with sexual offence and family violence cases as a priority.

In circumstances where committals remain, the Victorian Government should continue to improve committal processes based on the recommendations made by the Victorian Law Reform Commission in its 2020 *Committals* report including:

- changing case-management practices
- involving experienced practitioners for the prosecution and defence at an earlier stage
- improving police charging practices with the Director of Public Prosecutions conducting an early review of charges
- addressing delay with forensic reports.

Cross-examination for de novo appeals

The most common form of appeal in criminal cases decided in Victoria's summary jurisdiction – being the Magistrates' Court and the Children's Court – is a 'de novo' appeal. This means the appeal court re-hears all the evidence and decides the case afresh. This involves witnesses giving their evidence and being cross-examined again.

Although the victims who spoke to the VOCC did not discuss de novo appeals, an appeals system that involves victims giving evidence twice bears similarities to witnesses having to give evidence at a committal hearing and then at a trial. Each time a victim is required to give evidence, there is a risk that victims will be re-traumatised.

To avoid witnesses giving evidence twice (unless there are special reasons to do so), the Victorian Government introduced legislation to abolish de novo appeals and replace them with a more modern system of appeals in 2019.¹⁹ Instead of a fresh hearing, appeals will be decided using a transcript of the evidence given by witnesses from the original hearing in the Magistrates' or Children's Courts.

The County Court will only require a witness (including a victim) to give evidence a second time if the court considers this to be in the interests of justice.²⁰ As a result, under the new appeals system, victims will normally only need to give evidence once in summary cases. As the then-Attorney-General said when introducing these reforms:

De novo appeals of summary matters have a significant impact on victims and witnesses, as they must give evidence twice: first at the original hearing and then again, on appeal. This may re-traumatise the person, or the case may not proceed if they are not willing, or able, to give their evidence again. Sometimes, appeals are used to harass the victim. These outcomes are inconsistent with the objectives of a modern criminal justice system.²¹

¹⁹ Justice Legislation Amendment (Criminal Appeals) Act 2019 (Vic).

²⁰ Justice Legislation Amendment (Criminal Appeals) Act 2019 (Vic) s 24; see ss 265A, 265E to be inserted in the *Criminal Procedure Act 2009* (Vic). Further restrictions apply where the evidence is protected, that is, the evidence is given by a complainant and the charge involves certain offences.

²¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 17 October 2019, 3687 (Jill Hennessy, Attorney-General).

These appeal reforms were meant to commence no later than 3 July 2021 but the government has delayed their commencement twice. The modernised appeals regime is now due to commence no later than 5 July 2025, four years later than the original commencement date.

The government initially delayed commencement of the Act to allow courts and the legal profession more time to prepare. In February 2022, the government stated that the reforms needed to be delayed until July 2025 because of ‘the ongoing effects of COVID-19 on the court system and the significant time and resources required to implement the reforms’. The government stated that the delay would ensure that efforts can remain focused on managing the impacts of COVID-19 and addressing the backlog of cases in the court system.²²

These reforms will help to protect victim-witnesses from the possibility of re-traumatisation from court processes. Delaying the commencement of the new appeals system means that victims will continue to be re-traumatised by the current de novo appeals system. It is essential that there be no further delay to the commencement of the de novo appeals reforms.



RECOMMENDATION 28

The Victorian Government should bring forward its de novo appeals reforms contained in the *Justice Legislation Amendment (Criminal Appeals) Act 2019 (Vic)* to commence as soon as possible to reduce the number of times a victim has to give evidence.

Commencement of the new appeals regime has been delayed until 2025. This delayed commencement should be brought forward to commence as soon as possible.

Giving evidence

In its 2016 report, *The Role of Victims of Crime in the Criminal Trial Process*, the VLRC considered victims that might benefit from further protections while giving evidence.

The VLRC concluded that the guiding principle for expanding protections for witnesses should be to protect victims from unnecessary trauma, intimidation and distress, and ensure they are able to give their best evidence.²³

The protections discussed in this section concern:

- protecting victims where the accused seeks to personally cross-examine the victim
- providing special arrangements for victims when giving evidence
- limiting cross-examination where there are co-accused.

Accused personally cross-examining

In most cases, an accused will be represented by a lawyer who asks questions on their behalf. However, in some cases, an accused will not have a lawyer – they will be self-represented. When an accused is self-represented and personally cross-examines a victim of crime, this increases the risk of re-traumatising victims.

The Criminal Procedure Act provides that an accused cannot personally cross-examine a ‘protected witness’.²⁴ A ‘protected witness’ is a complainant, family member of a complainant or family member of an accused in a sexual offence or family violence case.²⁵ The court may then take steps to arrange for a legal representative to cross-examine the protected witness.²⁶

²² Victoria, *Parliamentary Debates*, Legislative Assembly, 23 February 2022, 397 (Natalie Hutchins, Minister for Victim Support).

²³ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 203.

²⁴ *Criminal Procedure Act 2009* (Vic) s 356.

²⁵ *Ibid* ss 353,354.

²⁶ *Ibid* s 357.

The 'protected witness' category helps to protect a victim from unnecessary trauma and intimidation and limits the risk that an accused may use legal processes to perpetuate the abuse.²⁷

Expanded protected witness category

The protected witness scheme in the Criminal Procedure Act is limited to sexual offence or family violence cases. However, there are other offences and circumstances where victim-witnesses need protection. When consulting for its 2022 *Stalking* report, the VLRC heard that being able to cross-examine the victim gives the perpetrator what they are seeking in controlling or making the victim fearful.²⁸

Judicial representatives told the VOCC that the need to ensure self-represented people do not personally cross-examine victims is urgent, particularly with stalking cases. This is because a self-represented accused can use proceedings to further abuse a victim through cross-examining them and there is very little courts can do in such circumstances.²⁹

The VOCC considers the 'protected witness' category in the Criminal Procedure Act should not be limited to certain crimes but should be based on whether a victim-witness is likely to experience unnecessary trauma, intimidation or distress as a result of being cross-examined by the accused.

An accused should be prohibited from personally cross-examining a victim-witness who is likely to experience unnecessary trauma, intimidation or distress as a result of being cross-examined by the accused.

The 'protected witness' category in the Criminal Procedure Act should not be limited to certain crimes but should be based on whether a victim-witness is likely to experience unnecessary trauma, intimidation or distress.



RECOMMENDATION 29

The Victorian Government should introduce amendments to the *Criminal Procedure Act 2009* (Vic) to prevent personal cross-examination by an accused where a victim-witness is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.

The definition of a 'protected witness' in the *Criminal Procedure Act 2009* (Vic) should be amended to expand the circumstances in which a court can prevent personal cross-examination by an accused to any time where a victim-witness is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.

Alternative arrangements for giving evidence

The Criminal Procedure Act provides that a court may direct that 'alternative arrangements' be made for giving evidence. The alternative arrangements include the use of remote witness facilities (giving evidence via closed-circuit television), using screens to remove the accused from the witness's line of vision, allowing a person to sit with a witness for the purpose of giving emotional support, and specifying who may be in the court when a witness gives evidence.³⁰

Alternative arrangements help to reduce unnecessary trauma, intimidation or distress that a witness may experience as a result of giving evidence.

²⁷ Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 114.

²⁸ Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 114.

²⁹ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

³⁰ *Criminal Procedure Act 2009* (Vic) s 360.

However, a court may only make alternative arrangements orders in sexual offence and family violence cases and summary offences involving obscene behaviour or 'sexual exposure'.³¹ This raises the same kinds of problems as discussed in the previous section concerning 'protected witnesses'. Alternative arrangements for giving evidence help to protect a victim from unnecessary trauma and intimidation when giving evidence.³² Sexual offences, family violence cases, and the two summary offences outlined above are not the only offences or circumstances where victim-witnesses need, or would benefit from, alternative arrangements for giving evidence.

The VOCC has also been advised of instances where the courts do not have the infrastructure to put alternative arrangements in place. For example, the VOCC has been told about screens being unavailable, and courts instead using whiteboards to screen victims from the accused.³³ This is confirmed by recent VLRC research in sexual offence cases.³⁴ A recent media article also reported that a bereaved family member was told a screen would be made available when they gave evidence but it was not provided on the day.³⁵

Expanding access to alternative arrangements

Alternative arrangements should be available for a broader class of victim-witnesses, regardless of offence. The purpose of ordering alternative arrangements to be used should be to prevent unnecessary trauma, intimidation or distress to a victim-witness as a result of giving evidence.

Alternative arrangements should be available for a broader class of victim-witnesses, regardless of offence.

The Criminal Procedure Act also sets out circumstances in which the court *must* direct that a witness give evidence using a remote witness facility unless certain circumstance apply (e.g. in a sexual offence case where the complainant is able and wishes to give evidence from the courtroom). These provisions should remain. However, the Victorian Government should amend the Criminal Procedure Act to provide for alternative arrangements for any victim-witness who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.

Ensuring alternative arrangements are available

Alternative arrangements, particularly those involving remote witness facilities, need to be available where courts order their use.

In **Chapter 16** we recommend that the Victorian Government should establish minimum standards for safety and accessibility in Victorian courts and that all courts should, at a minimum, have sufficient:

- remote witness facilities to meet demand
- assets and infrastructure to implement special arrangements at the request of victims, including screens in court.

The Victorian Government should provide additional funding to support this recommendation.

³¹ Ibid s 359.

³² Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 114.

³³ Consultation Meeting 12 – Court Network.

³⁴ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 465.

³⁵ Adam Cooper, 'Plea Deals and Sitting Next to the Killer's Family: Victims Say Courts Must Change', *The Age* (online) (9 September 2021) <<https://www.theage.com.au/national/victoria/you-don-t-have-power-crime-victims-traumatised-by-court-process-20210830-p58n4h.html>>.



RECOMMENDATION 30

The Victorian Government should amend the *Criminal Procedure Act 2009 (Vic)* to provide for alternative arrangements for any victim-witness who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.

All Victorian courts should have sufficient:

- remote witness facilities to meet demand
- assets and infrastructure to implement special arrangements at the request of victims, including screens in court.

The *Criminal Procedure Act 2009 (Vic)* should:

- continue to set out circumstances in which the court *must* direct that a witness give evidence using a remote witness facility unless certain circumstance apply (e.g. where the complainant is able and wishes to give evidence from the courtroom)
- extend the circumstances in which a court can require alternative arrangements to be used for any victim-witness who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.

As recommended in Chapter 16, the Victorian Government should establish minimum standards for safety and accessibility in Victorian courts and all courts should, at a minimum, have:

- sufficient remote witness facilities to meet demand
- sufficient assets and infrastructure to implement special arrangements at the request of victims, including screens in court.

Multiple co-accused

Another situation in which victims need better protection to minimise the trauma, intimidation, or distress as a result of giving evidence is where there are co-accused, and counsel for each accused cross-examines a victim. In this circumstance, a victim could be cross-examined twice and must endure cross-examination by two counsel, possibly with vastly different approaches and style about the same matters.

While technically victims are only giving evidence 'once', repeated cross-examination and cross-examination by two counsel may present additional challenges for victims.

An example of this occurred in a recent Victorian rape trial. The victim in this case spoke publicly about the trauma caused by the trial process. In this case, the victim was cross-examined twice (by counsel for each of the two accused) about the same matters.³⁶ Both counsel cross-examined the victim about what she was wearing and about kissing someone earlier on the night of the alleged rapes.³⁷ Understandably, the victim found the questioning very upsetting and distressing.

Cross-examination with multiple co-accused

At a ground rules hearing in Victoria, a court may give 'a direction about the allocation among the accused of the topics about which a witness may be asked'.³⁸ This enables a court to prevent repeat cross-examination by counsel of co-accused for the 'fair and efficient' conduct of the proceeding.³⁹ The court's power to do this is limited to where there is a ground rules hearing. Following the commencement of the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022*, ground rules hearings are now mandatory in all sexual offence cases.

³⁶ Elise Kinsella, 'In the Witness Box', *ABC News* (online, 8 September 2021) <<https://www.abc.net.au/news/2021-07-18/how-a-court-case-put-the-spotlight-on-sexual-assault-trials/100281894>>.

³⁷ At a subsequent trial, the ABC reported that Judge Sexton ruled both of these lines of questioning inadmissible because they were based on, respectively, a stereotype that what a woman wears means she is more likely to consent and sexual history; Elise Kinsella, 'In the Witness Box', *ABC News* (online, 8 September 2021) <<https://www.abc.net.au/news/2021-07-18/how-a-court-case-put-the-spotlight-on-sexual-assault-trials/100281894>>.

³⁸ *Criminal Procedure Act 2009 (Vic)* s 389E(2).

³⁹ See, County Court, *Multi-jurisdictional Court Guide for the Intermediary Pilot Program: Intermediaries and Ground Rules Hearings* (June 2018) <<https://www.countycourt.vic.gov.au/files/documents/2018-08/multi-jurisdictional-court-guide-intermediary-pilot-program-2806180.pdf>>.

While the justification for controlling cross-examination is strong in sexual offence cases, there are many cases where cross-examination by more than one counsel about the same matters risks re-traumatising victims. For example, victim-witnesses in armed robbery or murder trials may find repetitive questioning by counsel for co-accused to be traumatising, intimidating and/or distressing.

For the 'fair and efficient' conduct of the proceeding, the court should have a general power to allocate topics of cross-examination between counsel for co-accused to avoid repetitive questioning. This power would enable a court to prevent repeat cross-examination by different counsel for each co-accused.

This power should not be limited to where the court conducts a ground rules hearing. A court should be able to exercise this power in any case where it may prevent (or reduce) re-traumatisation of a witness as a result of giving evidence.



RECOMMENDATION 31

The Victorian Government should introduce amendments to the *Criminal Procedure Act 2009 (Vic)* to provide courts with a general power to allocate topics of cross-examination between counsel for co-accused to avoid repetitive questioning to protect victims from unnecessary trauma, intimidation and distress when giving evidence.

For the 'fair and efficient' conduct of a proceeding, the court should have a general power to allocate topics of cross-examination between counsel for co-accused to avoid repetitive questioning.

This power would enable a court to prevent repeat cross-examination by different counsel for each co-accused.

This power should not be limited to where the court conducts a ground rules hearing. A court should be able to exercise this power in any case where it may prevent (or reduce) re-traumatisation of a witness as a result of giving evidence.

Victims' personal information

The accused is generally entitled to access any material that is relevant to their case to enable them to make a full defence.⁴⁰ However, the accused's rights are not absolute, and they must be balanced against other rights and interests. Victoria's *Charter of Human Rights and Responsibilities* provides that all people have a right to their privacy and reputation:

A person has the right –

- (a) not to have that person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have that person's reputation unlawfully attacked.⁴¹

The law also recognises that there are important public interests in, for example, preserving the confidentiality of communications between a victim and a health professional, and in restricting access to these communications to encourage (or not discourage) victims both to seek health assistance, and to report sexual offences.⁴²

There is also a public interest in victims performing a public duty in giving evidence. When performing this public duty, a victim's right to privacy should be respected.

This section examines when the accused should be able to access (by subpoena), and ask questions about, a victim's personal information. This issue arises in relation to:

- confidential communications
- sexual history evidence
- any kind of personal information held by a third party (e.g. records held by a government department or a financial institution).

⁴⁰ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 471.

⁴¹ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 13.

⁴² Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 20.

Confidential communications

Confidential communications are communications made in confidence by a victim to a medical practitioner or counsellor, either before or after the alleged sexual offending occurred.⁴³

The accused may seek to produce records of a victim's confidential communications with a doctor or counsellor and then adduce evidence from the records in order to cross-examine the victim about its content (e.g. where the records show that a victim has described the offence in a different way from their evidence in court or a police statement). The records may be extensive. In the case of historic sexual abuse matters, a victim may have medical and counselling records that go back many years.⁴⁴

In 2021, the VLRC's report *Improving the Response of the Justice System to Sexual Offences* found that victims' 'entitlements to protection of confidential communications and their sexual history are still not being fulfilled'.⁴⁵ For example, the Gatehouse Centre (a counselling service that works with children) informed the VLRC that even though it regularly challenged applications to produce counselling records, it was 'concerned that vulnerable families and less well-resourced support agencies submit to such applications because they lack the knowledge and wherewithal to assert their rights'.⁴⁶ The VLRC made a number of recommendations to improve laws governing confidential communications.

The Victorian Government introduced the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* to implement most of the changes recommended by the VLRC. The amendments expand the coverage of the scheme by broadening the definition of the records that it applies to. The amendments also provide that the victim may appear, give a statement and make submissions concerning whether the court should grant leave to produce or adduce evidence of their confidential communications.⁴⁷ The victim may provide a confidential statement (an affidavit) describing 'the harm that is likely to be caused to the protected person if the application is granted'.⁴⁸ Further, the victim may be legally represented to make submissions to the court concerning the application. However, as discussed in **Chapter 15**, unlike in other jurisdictions, there is currently no state-funded legal representation scheme in Victoria for victims.

Strengthening judicial oversight

The 2022 amendments also require the prosecution to inform the victim when an application to access their confidential communications is made.⁴⁹

The VOCC considers this provision could be strengthened by requiring the court to ensure the prosecution has met this obligation by confirming:

- the prosecution has given written notice of the application to the protected person
- that a protected person is aware that they may appear in the proceeding, make submissions on the application and give a confidential statement
- whether the protected person has obtained legal advice in relation to the application.

Ensuring legal representation

In response to an application to access confidential communications, a protected person (victim) may obtain legal advice, appear in the proceeding, make submissions and give a confidential statement. The 2022 amendments providing these entitlements are not supported by a scheme that provides state-funded legal assistance and representation to victims to assert these rights. Governments in New South Wales⁵⁰ and Queensland⁵¹ have recognised the need for free legal representation in relation to confidential communications and have funded their legal aid services specifically to provide this service.

As discussed in **Chapter 15**, without implementation of a sexual offences legal representation scheme, these protective provisions will continue to be ineffective.

⁴³ *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32B. This is known in other states by other names, such as 'protected confidences' in New South Wales, 'sexual assault counselling privilege' in Queensland, and 'protected communications' in South Australia and Western Australia. See also Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 471.

⁴⁴ For example, in an Australian institutional setting, complaints to police by 45% of male children and 25% of female children occurred more than 20 years after the alleged sexual abuse occurred: Judith Cashmore et al, *The Impact of Delayed Reporting on the Prosecution and Outcomes of Child Sexual Abuse Cases* (Royal Commission into Institutional Responses to Child Sexual Abuse, August 2016) 32.

⁴⁵ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 264.

⁴⁶ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 473; Gatehouse Centre, Royal Children's Hospital, Submission No 14 to Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021).

⁴⁷ *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32CE(1).

⁴⁸ *Ibid* s 32CE(2).

⁴⁹ *Ibid* s 32CD.

⁵⁰ The NSW Sexual Assault Communications Privilege Service (SACPS) providing free legal representation was established in 2011 and sits within Legal Aid New South Wales: Legal Aid New South Wales, *Sexual Assault Communications Privilege* (Web Page) <<https://www.legalaid.nsw.gov.au/my-problem-is-about/victims-rights/victims-support-scheme/sexual-assault-communications-privilege-service>>.

⁵¹ Queensland established a free legal service for victims in relation to counselling records in 2017: Legal Aid Queensland, *Protecting Sexual Assault Counselling Records* (Web Page, 2020) <<https://www.legalaid.qld.gov.au/Find-legal-information/Factsheets-and-guides/Factsheets/Counselling-Notes-Protect-Service>>.

Under a sexual offences legal representation scheme, an independent legal representative could help protect the privacy of victims' counselling notes and other confidential therapeutic records by representing the interests of the complainant, in contrast to the role of a prosecutor who must represent the interests of the state. A sexual offences legal representation scheme could:

- ensure victims are notified about applications to access their information and that they understand their legal rights in relation to appearing
- assist victims to claim the communications privilege when their confidential records are subpoenaed
- assist victims to prepare a confidential statement describing the harm they are likely to suffer if the application is granted.

Legal representation for victims is also essential for courts to be able to properly consider the test they must apply. A court must consider whether the public interest in 'preserving the confidentiality' of the communication and protecting the person who made the communication from harm, is substantially outweighed by the public interest in allowing the records into evidence because of their 'substantial probative value'.⁵² This balancing test requires the court to consider six matters, three of which are matters that a victim has special knowledge about that could assist the court:

- the likelihood, and the nature and extent of harm that would be caused to the victim, if the records were produced or adduced in court
- whether the victim objects to the disclosure of the records
- the nature and extent of the reasonable expectation of confidentiality and the potential prejudice to the privacy of any person.⁵³

The court must also have regard to:

- the need to encourage victims of sexual offences to seek counselling and the extent to which victims may be discouraged from doing so if the records are produced/adduced
- whether the party seeking the records is doing so on the basis of a discriminatory belief or bias.⁵⁴

While the prosecution should be able to adequately address these last two issues, a dedicated legal representative could better assist the court with the three matters that a victim has special knowledge about.

⁵² *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32D(1)*. Harm includes actual physical bodily harm, financial loss, stress, shock, damage to reputation and emotional or psychological harm (such as shame, humiliation or fear): s 32B(1).

⁵³ *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32D(2)*.

⁵⁴ *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32D(2)*.



RECOMMENDATION 32

The Victorian Government should introduce additional legislative protections in relation to confidential communications by requiring courts to ensure the prosecution has met its obligations under the *Evidence (Miscellaneous Provisions) Act 1958* to notify victims of their rights.

Courts need better information about a victim's privacy and other rights and interests when determining confidential communications applications. The specialised, state-funded legal representative for victims should provide that information (see Recommendation 22).

Courts should ensure the prosecution has met its obligations under the *Evidence (Miscellaneous Provisions) Act 1958* in relation to confidential communications by confirming that:

- the prosecution has given written notice of the application to the protected person
- a protected person is aware that they may appear in the proceeding, make submissions on the application and give a confidential statement
- the protected person has obtained legal advice in relation to the application.

As recommended in Chapter 15, reforms concerning confidential communications should be underpinned by the establishment of a sexual offence legal representation scheme providing specialised, state-funded legal representation for victims in sexual assault cases, including in relation to confidential communications.

Sexual history

In the past, sexual history evidence was commonly relied on to attack the victim's credibility based on rape myths. These myths were that evidence of a victim's sexual history supported 'the inference that the complainant was more likely to have consented to the sexual activity or that they were less worthy of belief'.⁵⁵ Laws developed to restrict the use of sexual history evidence – these laws are often called 'rape shield' laws.

Evidence of a person's sexual history involves a victim's privacy and reputation, is not usually relevant to the alleged offence, and can be misused to support rape myths. Further, cross-examining a victim about their sexual history can be demeaning. Therefore, the law requires the accused to apply to the court for permission to cross-examine a victim about the victim's sexual history.

A number of stakeholders told the VLRC in its 2021 report *Improving the Justice System Response to Sexual Offences* that there were problems with the way in which sexual history was being used. For example, Sexual Assault Services Victoria said that their client's 'sexual history is still being used to diminish their experience, discredit them or cast doubt on their statements and on what has happened'.⁵⁶

The VLRC recommended changes to sexual history evidence laws that would align sexual history procedures with those applying to confidential communications by changing the law to:

- require the prosecution (or informant in summary proceedings) to inform the victim, when an application is made, of their right to appear and the availability of legal assistance in relation to the sexual history evidence application
- provide victims with standing to appear before the court in relation to sexual history evidence applications
- require the court to be satisfied that a victim whose sexual history is the subject of an application for access and use is aware of the relevant provisions and has had an opportunity to obtain legal advice in relation to it

⁵⁵ Tyrone Kirchengast, 'Victim Legal Representation and the Adversarial Criminal Trial: A Critical Analysis of Proposals for Third-Party Counsel for Complainants of Serious Sexual Violence' (2021) 25(1) *The International Journal of Evidence & Proof* 53, 62.

⁵⁶ Sexual Assault Services Victoria, Submission 17 to Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 476.

- prohibit judges from waiving the notice requirements, except where the victim cannot be located after reasonable attempts, or the victim has provided informed consent to the waiver
- permit victims to provide a confidential sworn or affirmed statement to the court specifying the harm the victim is likely to suffer if the application is granted
- provide that a victim has access to free legal advice and representation in relation to a sexual history evidence application.⁵⁷

The VOCC supports the implementation of these recommendations and has also identified further opportunities to improve the law governing sexual history evidence.

Improving the test applied by courts

In deciding whether to grant an application to question a victim about their sexual history, section 349 of the Criminal Procedure Act provides that the court must not grant leave unless the court is satisfied that ‘the evidence has *substantial relevance* to a fact in issue and that it is in the interests of justice to allow the cross-examination or to admit the evidence’ (emphasis added).

The VOCC considers this test could be strengthened.

First, the words ‘substantial relevance’ should be replaced to focus on what the evidence is capable of proving. The court should be satisfied that the evidence has ‘substantial probative value’ before granting leave to admit sexual history evidence.

Secondly, as part of the ‘interests of justice test’, the court must consider the need to respect the ‘complainant’s personal dignity and privacy’ and the accused’s right ‘to fully answer and defend the charge’. The court should also be required to consider an additional public interest in assessing whether it is in the interests of justice to grant an application, namely: whether granting the application may discourage victims from reporting sexual offences and giving evidence.

Considering public interests of this nature is similar to the requirement in confidential communications to consider whether disclosure of the communications will discourage victims from seeking counselling if records are produced.

Thirdly, the test for granting leave⁵⁸ requires the court to consider the ‘distress, humiliation and embarrassment’ that a complainant may experience if their sexual history evidence is admitted. Further, the court must consider the complainant’s ‘personal dignity and privacy’ before deciding whether to grant leave.

In **Chapter 12**, the VOCC proposes that the Charter of Human Rights and Responsibilities be amended to provide that victims have a right to be protected from unnecessary trauma, intimidation and distress when giving evidence. Incorporating this right into the test for granting leave would further buttress the importance of considering the victim’s perspective and interests when a court is deciding whether to grant leave to admit sexual history evidence.

Ensuring legal representation

As with confidential communications, without implementing a sexual offence legal representation scheme, sexual history evidence laws and protections will continue to be ineffective.

Legal representation for victims provides the best means of ensuring that a court is properly informed about a victim’s interests and concerns about disclosure of their sexual history.

Under a sexual offence legal representation scheme, an independent legal representative could:

- ensure victims are notified about applications in relation to sexual history evidence
- help protect victims’ privacy and dignity by representing the interests of the complainant, in contrast to the role of a prosecutor who must represent the interests of the state
- help inform the court about the harm likely to be caused if the defence is granted leave to cross-examine the victim about the victim’s sexual history.

⁵⁷ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 478, recommendation 85. These recommendations are presented here in a different order to that used in the VLRC report.

⁵⁸ *Criminal Procedure Act 2009* (Vic) s 349.



RECOMMENDATION 33

The Victorian Government should implement recommendations of the Victorian Law Reform Commission's 2021 report *Improving the Justice System Response to Sexual Offences* in relation to sexual history evidence and strengthen the test courts apply under the *Criminal Procedure Act 2009* (Vic) when considering whether to grant an application relating to sexual history evidence.

The Victorian Government should ensure state-funded legal representation for sexual offence victims to ensure the court is properly informed about a victim's interests and concerns about disclosure of their sexual history.

The *Criminal Procedure Act 2009* (Vic) should be amended to improve provisions governing the admissibility of sexual history evidence.

The amendments should:

- provide victims with standing to appear before the court in relation to sexual history evidence applications
- provide that a victim has access to state-funded legal representation in relation to a sexual history evidence application
- require the prosecution to inform the victim, when an application is made, of their right to appear at the court hearing
- require the court to check with the prosecution whether the victim has been informed about the application and their right to appear and make submissions at the hearing
- prohibit courts from waiving the notice requirements completely, except where the victim cannot be located after reasonable attempts, or the victim has provided informed consent to the waiver
- provide that any waiver or reduction in the amount of notice provided to the victim must still allow the victim sufficient time to obtain legal advice and representation unless the victim provides informed consent to the waiver
- provide that victims be permitted to provide a confidential sworn or affirmed statement to the court specifying the harm the victim is likely to suffer if the application is granted
- require that, when deciding whether to grant leave in relation to sexual history evidence, the court be satisfied that the evidence has 'substantial probative value'
- require that, when deciding whether it is in the interests of justice to grant an application, the court consider whether granting the application may discourage victims from reporting sexual offences and giving evidence
- incorporate the proposed victim's human right to be protected from unnecessary trauma, intimidation and distress when giving evidence.

Subpoena of third-party information

Victims' privacy interests also arise when access (usually by the accused) is sought to personal information that is held by a third party. The third party may be a government department, a person or an organisation (such as bank or other financial body). If a third party holds relevant records about a victim, an accused may be able to subpoena the records and use them in evidence.⁵⁹ Sometimes the personal data in question is held by the victim (e.g. on their mobile phone).

⁵⁹ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 472; see also Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 222.

An accused may subpoena information that includes information in which a victim has identifiable privacy interests (e.g. concerning their health, employment or finances). If a subpoena is issued, the third party must produce the information to the court. Some third parties may object to producing the information. However, unlike with confidential communications and sexual history evidence, there is:

- no process requiring notice to be given to the victim that a subpoena has been issued to a third party that may concern personal information about them
- no process enabling a victim to object to the disclosure of the personal information.

Judicial representatives were concerned about the use of third-party information and the lack of rights that complainants have in relation to this information:

A complainant's views must be sought before confidential counselling records are considered for release but that is not so in respect of any other personal information – eg health, banking and employment records. If those records have been sought from a third party there is no obligation to even advise the complainant let alone give them advice or an opportunity to be heard.

That is an area where there should be an automatic notification to a complainant or a victim whose personal information is being sought from a third party. They should then be given the right to be represented if they wish to object.⁶⁰

Victims have a clear privacy interest in information about themselves. This is recognised by section 13 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Human Rights Charter).

There is a public interest in victims performing a public duty in giving evidence. When performing this public duty, a victim's right to privacy should be respected.

A third-party participation scheme

To protect a victim's right to privacy, the VOCC considers that a scheme based on the confidential communications scheme should be developed to address subpoenas for information about a victim that is held by a third party. The new scheme should provide that:

- the accused should notify the prosecution about any subpoena issued to a third party that seeks to obtain personal information about the victim
- the prosecution must inform the victim of the subpoena and the victim's right to appear and make submissions about accessing the information
- the court should check whether the prosecution has informed the victim about the application and their right to appear and make submissions concerning access to the information
- the victim should have the right to object to the production of that material
- the victim should be able to appear and make submissions concerning the application
- the victim should be able to give the court a statement (affidavit) describing the harm that is likely to be caused to them if the information is disclosed and they are questioned about it.

As with confidential communications and sexual history evidence, victims should have access to state-funded legal assistance to uphold participatory rights in relation to third-party information.



RECOMMENDATION 34

To protect a victim's right to privacy, the Victorian Government should reform the process around third-party subpoena applications to provide a comprehensive victim notification and participation scheme. Victims should have access to state-funded legal assistance to uphold participatory rights in relation to third-party information.

The law should be amended to enhance victims' participation regarding third-party subpoena applications including that:

- the accused must notify the prosecution if a subpoena seeks personal information about the victim
- the prosecution must notify the victim about a subpoena issued to a third party to obtain personal information about them
- the court must check with the prosecution whether the prosecution has informed the victim about the application and their right to appear and make submissions at the hearing
- in deciding whether to allow access to the information and to balance the victim's privacy interests, a scheme like that applying to confidential communications should be adapted to set out the decision-making criteria for courts.

As with confidential communications and sexual history evidence, victims should have access to state-funded legal assistance to uphold participatory rights in relation to third-party information.

Rights to appeal decisions about a victim's personal information

There may be significant consequences for victims if a court grants an application to:

- produce/adduce confidential communications
- allow questioning about a victim's sexual history
- allow access to information about a victim that is held by a third party.

In each case, it is the victim's privacy and reputation that are in issue. Victims are the ones who may be harmed by the disclosure of information or by being required to give evidence. The outcome of the court's decision may significantly impact the complainant's experience and willingness to engage with the proceedings as well as the public confidence in and legitimacy of the prosecution of offences.⁶¹ The legal issues can also be complicated.⁶²

In Victoria, victims do not have a right to appeal against these kinds of decisions affecting a victim's privacy and reputation. Although the prosecution could bring an appeal on the complainant's behalf, the prosecution and the complainant's interests do not always align, and there are no tailored appeal processes for this situation. Normally, appeal processes are only available once a matter has been completed. However, by that time, the victim will have already been required to comply with the court's order – documents will have been produced and/or the victim will have given evidence – and it will not be possible to protect a victim's rights in any meaningful way by correcting an erroneous order.

In New South Wales, both the victim and the record holder may appeal against a decision to grant leave to produce/adduce the documents.⁶³ The victim and the record holder may appeal even if the parties to the proceeding do not appeal, provided that the Court of Appeal grants leave to appeal, or the judge or magistrate certifies that the matter is appropriate for determination as an interlocutory appeal.⁶⁴ This process enables a court to correct an erroneous order before a victim is required to comply with it, thereby protecting a victim's rights and interests. As Associate Professor Kerstin Braun advised the VOCC: 'this is a very limited right and it only relates to sexual assault victims, but at least that means there is a right.'⁶⁵

⁶¹ United Kingdom Law Commission, *Evidence in Sexual Offences Prosecutions – Summary* (2023) 45.

⁶² See, e.g., Tom O'Malley, *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* (Report, July 2020) 69.

⁶³ *Criminal Appeal Act 1912* (NSW) s 3F(3AA).

⁶⁴ An interlocutory appeal allows a party to appeal against a court's ruling before a trial (or hearing) is completed.

⁶⁵ Consultation Meeting 1 – Associate Professor Kerstin Braun.

The main concern with pre-trial appeals is that they may delay or fragment criminal proceedings.⁶⁶ However, Victoria has had an interlocutory appeals regime since 2010 that permits appeals against pre-trial rulings in limited circumstances.⁶⁷ As in New South Wales, it would be possible to ensure that appeals in such circumstances are appropriately limited. Victoria's interlocutory appeals regime applies to proceedings in the County Court and Supreme Court.

As there is no equivalent interlocutory appeals regime for decisions made in the Magistrates' or Children's Courts, consideration should be given to modifying this regime or modifying judicial review procedures (including by providing standing to the victim to bring judicial review), to ensure that a victim's rights are appropriately protected.

The VOCC recommends that victims should have appeal rights (through the interlocutory appeals regime or similar) against decisions affecting their privacy rights in relation to confidential communications, sexual history evidence, and information sought from third parties.



RECOMMENDATION 35

Victims should be provided with limited appeal rights regarding decisions around applications for confidential communications, sexual history evidence, and information sought from third parties. Victims should have access to state-funded legal assistance to uphold these appeal rights.

Victims should be provided with limited appeal rights in relation to decisions affecting their privacy rights regarding confidential communications, sexual history evidence, and information subpoenaed from third parties.

Victoria's interlocutory appeals regime could be modified to provide this right of appeal.

⁶⁶ Chris Corns, Susan Borg and Adrian Castle, *Criminal Appeals and Reviews in Victoria* (Thomson Reuters, 2016) 46.

⁶⁷ *Criminal Procedure Act 2009* (Vic) pt 6.3 div 4.

Overview of Chapter 18: Sentencing

Victims' participation at sentencing is important. It is one of the few times during a victim's justice journey that they have the right to be heard in court – in their own voice – through a Victim Impact Statement (VIS). The *Victims' Charter Act 2006* (Vic) (Victims' Charter) enshrines this right to participate at sentencing through VISs.

Sentence indications

The purpose of a sentence indication is to inform the accused of the sentence the court is likely to impose if they plead guilty. Like many processes in the justice system, the sentence indication scheme is not centred on victims' participatory needs.

To address concerns about lack of consultation with victims regarding sentence indications, the Victims of Crime Commissioner (VOCC) recommends that the *Criminal Procedure Act 2009* (Vic) be amended to require the Director of Public Prosecutions to seek the views of victims regarding a sentence indication.

The VOCC also recommends that prosecutors be required to:

- advise the court whether there is sufficient, or insufficient, information about the impact on a victim to make a sentence indication
- obtain information about impact on a victim to put before the court at sentence indication stage. The form or format of victim impact information should not be prescribed and should not be required in the format of a formal VIS.

Victim Impact Statements (VISs)

The VOCC considers more must be done to fulfil the participatory objectives of VISs and protect victims from secondary victimisation. The VOCC recommends that victims be able to prepare a VIS before a plea or finding of guilt and to have their VIS 'quarantined' until required by the court. The feasibility study into the development of an interactive Victims' Portal (see **Chapter 14**) should consider how a Victims' Portal could help victims to prepare VISs and submit them securely until they are required by the court.

The Sentencing Act should also be amended to require the court, prior to sentencing, to make enquiries with the prosecution about a victim's wishes in relation to making a VIS. The court should adjourn proceedings to permit the victim to prepare a VIS or to permit the prosecutor to make further enquiries unless it is not in the interests of justice to do so.

The VOCC also recommends that a new test be introduced to restrict questioning a victim about their VIS. A court should only permit the questioning of a victim about their VIS where the court is satisfied that the questioning is about a matter that has substantial probative value.

To further protect victims at the VIS stage, the *Sentencing Act 1991* (Vic) (Sentencing Act) should be amended to provide that:

- the offender cannot personally cross-examine the victim about their VIS
- if the application to examine a victim is granted, the victim may be legally represented when the victim is examined in court.

18

Chapter 18:
Sentencing



Introduction

Victims' participation at sentencing is important. It is one of the few times during a victim's justice journey that they have the right to be heard in court – in their own voice – through a Victim Impact Statement (VIS). The *Victims' Charter Act 2006* (Vic) (Victims' Charter) enshrines this right to participate at sentencing through VISs.¹

A VIS serves two important purposes. It serves an instrumental purpose in ensuring that the court fully understands the impact the crime committed has had on the victim. It also serves an expressive function by giving victims a voice to talk about the impact that a crime has had on them.

Victims also have an inherent interest in other parts of the sentencing process, including the sentence indication process.²

Ensuring that victims participate at the sentencing stage of proceedings is vital to victims' sense of procedural fairness and their overall confidence in the justice system.³

This chapter makes recommendations designed to improve outcomes for victims during the sentencing process by enhancing victims' rights:

- at sentence indications
- in relation to VISs.

The recommendations in this chapter aim to:

- encourage prosecutors to consult more with victims about the impact of the crime at an earlier stage, particularly having regard to the increased use of sentence indications or where there is an early plea of guilty and a victim does not have time to prepare a VIS
- enable victims (who want to) to prepare a VIS earlier and put safeguards around the use of the VIS for purposes other than informing the court about the crime's impact on the victim.

Sentence indications

A sentence indication is where a court indicates the sentence that the court is likely to impose if the accused pleads guilty, prior to a hearing or trial commencing. By giving an accused better information about the likely sentence, sentence indications encourage early guilty pleas. The earlier in the proceedings the offender pleads guilty, the greater the reduction they will receive in their sentence.⁴

If the accused pleads guilty at the first available opportunity after receiving a sentence indication, a court must not impose a sentence that is more severe than the sentence or type of sentence specified in the sentence indication.

A court may give a sentence indication:

- at any time in cases in the Magistrates' Court – no application is necessary.⁵ The court may indicate whether it is likely to impose a sentence of imprisonment to be served immediately, or whether it would be likely to impose a sentence of a specified type (e.g. a fine, or a Community Corrections Order).
- following an application made by the accused in the higher courts (the County and Supreme Courts).⁶ The court may indicate whether it is likely to impose a sentence of a specified type (e.g. a fine, or a Community Corrections Order) or a specified maximum total effective sentence of imprisonment.

Prior to 2022, the higher courts could only indicate whether a sentence of imprisonment would or would not be given. This information was of little use to an accused person's decision making in cases where it was obvious that the court would impose a sentence of imprisonment. The amendments introduced in 2022 broadened the nature of the sentence indication that a higher court may provide concerning the maximum sentence. The amendments also removed the requirement that the prosecution must consent to the accused making a sentence indication application in the higher courts.⁷

1 *Victims' Charter Act 2006* (Vic) s 13(1).

2 A sentence indication is where a court indicates the sentence that the court is likely to impose if the accused pleads guilty prior to a hearing or trial commencing. The sentence indication process is governed by the *Criminal Procedure Act 2006* (Vic).

3 Tracey Booth, 'Victim Impact Statements, Sentencing and Contemporary Standards of Fairness in the Courtroom' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 162.

4 Sentencing Advisory Council, *Guilty Pleas and Sentencing* (Web Page) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/guilty-pleas-and-sentencing>>.

5 *Criminal Procedure Act 2009* (Vic) s 60.

6 *Ibid* s 207.

7 Amendments were made to the sentence indication scheme under the *Criminal Procedure Act 2009* (Vic) by the *Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022* (Vic).

Therefore, the 2022 amendments should lead to more sentence indications in the higher courts, although data is not currently available in relation to sentence indications.⁸

Courts do not have the same amount of information at a sentence indication hearing as they do at a sentencing hearing. Courts will have some information, but they will not have heard sentencing submissions from the accused, and they may not have heard how the offence has impacted the victim. If a court considers that it does not have sufficient information to provide an indication, it may refuse to give a sentence indication.⁹ There is no publicly available data in relation to how often this is occurring.

Victims' interests at sentence indications

When introducing the 2022 reforms to the sentence indication scheme, the Attorney-General the Hon Jaclyn Symes MP said that expanding the scheme was designed to:

support the continued effective and efficient functioning of the justice system and its recovery from COVID-19, including helping courts to manage and reduce a significant backlog of cases ... while also providing benefits to victims in providing an outcome and removing the trauma of giving evidence at trial.¹⁰

Despite these intentions, like many processes in the justice system, the sentence indication scheme is not centred on victims' needs or participatory entitlements. The potential for sentence indications to erode victims' participatory rights was highlighted over 10 years ago. In 2010, Flynn stated that the sentence indication scheme 'creates some concerns in terms of victim consideration, and compatibility with the rights afforded to victims by the ... *Victims' Charter Act 2006* (Vic)'.¹¹

During consultations for this inquiry, Victoria Police members raised concerns about the increased use of sentence indications and the adverse impact on victims' participation in the summary jurisdiction:

A common option at the moment to resolve matters is a sentence indication. Sentence indications are often sprung on prosecutors, and when this happens, we've really lost our opportunity to get a Victim Impact Statement. Even if we did come back another day with a Victim Impact Statement, it's not going to be factored into sentence, because the indication has already been made. This is despite the recent amendments to the Charter that prioritises the prosecution's role in seeking victims' opinions.¹²

There are two main issues with the sentence indication scheme:

- lack of consultation with victims regarding sentence indications
- insufficient safeguards to ensure a court considers the impact on a victim when giving a sentence indication.

Lack of consultation with victims

Neither the *Criminal Procedure Act 2009* (Vic) (Criminal Procedure Act) nor the Victims' Charter require prosecutors to obtain the views of a victim about a sentence indication.

Prosecution consent to a sentence indication was originally included in Victoria's sentence indication scheme so that a sentence indication would only proceed if the prosecution considered that there was sufficient information about the impact on a victim before the court.¹³ Prosecution consent was removed by amendments made to the Criminal Procedure Act in 2022 which broadened the sentence indication scheme.¹⁴

Research conducted in 2008–09 suggests that prosecutors generally consented to sentence indications being given, refusing to consent in only 4 of 31 cases examined.¹⁵

In the higher courts, the DPP is required to seek the views of the victim only if the DPP is *opposing* a sentence indication.¹⁶ Because the DPP does not often oppose sentence indications, the DPP is rarely required to seek the views of the victim in relation to a sentence indication.

Further, there is no legislative requirement for the prosecution to put information about impact on a victim to the court at a sentence indication hearing. The court may, however, refuse to give a sentence indication if it has insufficient information to give an indication, and this includes victim impact information.

⁸ The Attorney-General must review the operation of the amendments to the sentence indication scheme, made to the *Criminal Procedure Act 2009* (Vic) by the *Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022* (Vic), by 1 October 2024.

⁹ *Criminal Procedure Act 2009* (Vic) ss 60(2), 208(4), 208(5).

¹⁰ Victoria, *Parliamentary Debates*, Legislative Council, 19 November 2021, 4657 (Jaclyn Symes, Attorney-General).

¹¹ Asher Flynn, 'An Indication of Injustice: An Analysis of the Problems Inherent to Maintaining the Sentence Indication Scheme in Victoria's Higher Courts' (2010) 12(4) *Flinders Law Journal* 68.

¹² Consultation Meeting 18 – Victoria Police – Session 2.

¹³ Sentencing Advisory Council, *Sentence Indication: A Report on the Pilot Scheme* (Report, February 2010) 44 <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentence_Indication_A_Report_on_the_Pilot_Scheme.pdf>

¹⁴ *Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022* (Vic).

¹⁵ Sentencing Advisory Council, *Sentence Indication: A Report on the Pilot Scheme* (Report, February 2010) 71 <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentence_Indication_A_Report_on_the_Pilot_Scheme.pdf>

¹⁶ *Victims' Charter Act 2006* (Vic) s 9B(1)(ca).

Insufficient safeguards for impact on victims

Having information about the impact on a victim is important at the sentence indication stage because after giving an indication, the court must not impose a more severe sentence than the sentence type¹⁷ or maximum total effective sentence indicated.¹⁸

Considering victim impact at the sentencing stage is challenging for the courts because:

- VISs are generally not available prior to a plea of guilty¹⁹
- a sentence indication process can occur quickly, particularly in the Magistrates' Court, where it may occur without a victim even being aware of a hearing taking place.

While a court can refuse to give a sentence indication if it considers it has too little information about the impact of the offence on any victim,²⁰ judicial representatives told the VOCC that there is an inherent tension in the sentence indication process. This is because although a sentence indication is a tool to bring about an early resolution, impact on a victim may not be known at that early stage of proceedings, and it may not be practical to delay or adjourn matters for the purposes of seeking victim impact information.²¹

As one judicial representative told the VOCC, the sentence indication process is designed to 'bring about a resolution but if you don't know about what the [victim] impact is then you're really not informed enough to give the proper indication.'²²

Victim impact information need not be formalised in a VIS. Courts have introduced practice directions/ notes to assist the prosecution in providing information about the impact on a victim prior to a court making a sentence indication:

- The Supreme Court's practice note requires the prosecution to file and serve on the defence the views of any victim of the offence (if known) and whether the prosecution is of the view there will be sufficient information before the Court regarding the impact of the offence on any victim.²³
- The County Court requires the prosecution to file and serve on the defence information about whether there will be sufficient information before the Court of the impact of the offence on any victim of the offence.²⁴

Despite these initiatives, the VOCC considers there are insufficient legislative safeguards to ensure impact on the victim is considered at the sentence indication stage.

The sentence indication process is designed to 'bring about a resolution but if you don't know about what the [victim] impact is then you're really not informed enough to give the proper indication.'

Judicial representative

Ensuring victims are consulted

The VOCC is not opposed to sentence indications. There are benefits in securing early guilty pleas in some circumstances, particularly where victims do not wish to endure a trial or give evidence. However, the sentence indication scheme must better incorporate participation by victims and ensure that the prosecution consults with victims before courts give a sentence indication.

As with plea negotiations, victims often do not understand the sentence indication process. Further, sentence indications can occur in the context of 'overcharging' – where the charges filed may include more charges, or more serious offences, than what will be settled on.²⁵ In its 2020 report *Committals*, the VLRC concluded that the challenges arising from

The sentence indication scheme must better incorporate victim participation and ensure that the prosecution consults with victims before courts give a sentence indication.

¹⁷ In summary jurisdiction: *Criminal Procedure Act 2009* (Vic) s 61.

¹⁸ In indictable jurisdiction: *Criminal Procedure Act 2009* (Vic) s 209.

¹⁹ The reasons for this are discussed in detail in the section of this chapter on victim impact statements.

²⁰ *Criminal Procedure Act 2009* (Vic) ss 60(2), s 208(5).

²¹ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

²² *Ibid.*

²³ Supreme Court of Victoria, *Practice Note SC CR 11: Applications for Sentence Indications Pursuant to Part 5.6 of the Criminal Procedure Act 2009* (28 March 2022) <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/sc-cr-11-applications-for-sentence-indications>>.

²⁴ County Court of Victoria, *Criminal Division Practice Note Sentence Indications* (16 February 2022) <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjiuNr5jRD_AhW4b2wGHOC4ANwQFnoECAsQAO&url=https%3A%2F%2Fwww.countycourt.vic.gov.au%2Ffiles%2Fdocuments%2F2022-02%2FCriminal-division-practice-note-sentence-indications.docx&usq=AOvVaw0uiqTExnxYTzq8RCtnLg->>.

²⁵ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 83.

police ‘overcharging’ and then withdrawing many charges as part of a plea negotiation, can be very distressing and traumatic for victims.²⁶

The legislative scheme for sentence indications fails to adequately recognise the role of a victim as a participant in the criminal justice system. Therefore, the VOCC recommends amendments, also enshrined in the Victims’ Charter, that would safeguard victims’ participatory rights in relation to sentence indications.

The VOCC is mindful of the challenges faced in the summary jurisdiction and considers enhanced entitlements should focus initially on higher courts, subject to further monitoring of the impacts of sentence indications on victims’ participation in the summary jurisdiction as part of a legislative review into the sentence indication scheme. A legislative review of the sentence indication scheme is discussed in detail below.

The VOCC recommends that to better incorporate victims’ participation in the sentence indication process in the indictable stream, the Criminal Procedure Act should be amended so that the DPP should be required to:

- seek the views of victims regarding a sentence indication
- confirm with the court that the views of victims have been sought
- put information about the crime’s impact on a victim to the court (if the victim wishes to do so).

The court should be required to confirm that the DPP has consulted with the victim prior to the court making a sentence indication and to request information about impact on the victim before a sentence indication is given to the accused. This requirement should also be enshrined in the Victims’ Charter.



RECOMMENDATION 36

The Victorian Government should amend the *Criminal Procedure Act 2009 (Vic)* and the *Victims’ Charter Act 2006 (Vic)* to ensure victims are consulted in relation to sentence indications in the higher courts (the County Court and the Supreme Court).

The VOCC recommends that the Director of Public Prosecutions (DPP) be required to:

- seek the views of victims in relation to sentence indications
- confirm with the court that the views of victims have been sought
- put information about the crime’s impact on the victim to the court if the victim wishes the DPP to do so.

The court should be required to confirm that the DPP has consulted with the victim prior to the court making a sentence indication and to request information about victim impact before a sentence indication is given.

Ensuring impact on victims is considered

Gathering information about impact early

There are many reasons why a victim may not prepare a VIS prior to a sentence indication. Strengthening safeguards in relation to VISs, particularly VISs prepared early (such as at the sentence indication stage), are discussed in further detail in the section on VISs below.

However, irrespective of the status or availability of a VIS at the sentence indication stage, the VOCC considers that there should be an onus on the prosecution to gather information on the crime’s impact on the victim in anticipation of a sentence indication occurring.

Sentence indications can be given at any time in the summary jurisdiction, and at any time before the trial commences in indictable crimes.²⁷ It is important that prosecutors anticipate the possibility of a sentence indication process and liaise with victims early.

²⁶ Ibid 85.

²⁷ *Criminal Procedure Act 2009 (Vic)* ss 60(1), 207.

The OPP advised the VOCC that it seeks to ensure that information about the impact of a crime on the victim is available at a sentence indication hearing by consulting with a victim early, before an application is made, and ascertaining whether a victim is likely to make a VIS, and if so, whether that VIS would refer to 'ongoing physical or psychological impact'.²⁸

Victoria Police members have advised the VOCC that sentence indications 'are often sprung on prosecutors'.²⁹

With the increasing use of sentence indications, prosecutors must adapt their processes and prepare for the possibility of a sentence indication being sought or given. This is consistent with the courts' expectations as reflected in their Practice Notes. Prosecutors should be consulting with victims early and seeking information from them about the crime's impact and their views on sentence indications. This early information about the impact on the victim would not need to be in the format of a formal VIS. Rather, information about impact should be gathered after consultation with victims and provided to the court either orally or in writing.

Prosecutors should be consulting with victims early and seeking information about victim impact and their views on sentence indications.



RECOMMENDATION 37

The Victorian Government should amend the *Victims' Charter Act 2006 (Vic)* to ensure that:

- **victims are informed about sentence indication applications or the possibility that a sentence indication may be given**
- **victims have the opportunity to provide earlier victim impact information to the prosecution so that it can be provided to the court at a sentence indication hearing.**

All prosecution agencies should introduce procedures to enable victims to exercise their role as participants in sentence indication proceedings consistent with amended entitlements under the *Victims' Charter*.

The form or format of early information about impact on the victim should not be prescribed and should not be required in the format of a formal Victim Impact Statement.

²⁸ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022.

²⁹ Consultation Meeting 18 – Victoria Police – Session 2.

Where there is insufficient information about impact on a victim

Courts have introduced Practice Directions/Notes to assist them to receive information about impacts on victims prior to making sentence indications. However, the VOCC considers there should be a legislative requirement under the Criminal Procedure Act for prosecutors to advise the court whether there is sufficient, or insufficient, information available about a crime's impact on a victim to make a sentence indication.

Prosecution consent was originally included in Victoria's sentence indication scheme to enable the prosecution to refuse to consent to a sentence indication where there was insufficient information about impact on a victim to conduct a sentence indication.³⁰ Prosecution consent was removed by amendments made to the Criminal Procedure Act in 2022 to broaden the sentence indication scheme.³¹

Introducing a legislative requirement for the prosecution to advise the court about impact on a victim would increase the accountability of the prosecution to inform and engage with the victim about sentence indications. Requiring the prosecution to consider the impact on victims would make it more likely that it will obtain information from victims and therefore enhance victims' participation at the sentence indication stage.



RECOMMENDATION 38

The Victorian Government should amend the *Criminal Procedure Act 2009 (Vic)* to require prosecuting agencies to advise the court whether there is sufficient, or insufficient, victim impact information available to make a sentence indication.

In advising the court whether there is sufficient, or insufficient, information available about the impact on a victim to make a sentence indication, prosecutors should consider and make known to the court:

- the reasons why comprehensive information about the impact on a victim may not be known or available (e.g. having regard to the seriousness of the offence and the victim's circumstances, such as their current health or wellbeing)
- whether the victim has indicated an intention to make a Victim Impact Statement if there is a plea or finding of guilt.

Accounting for lack of information on impact on a victim

A recent high-profile case – discussed below – highlighted key issues relating to sentence indications, particularly issues that arise when more detailed information about the impact on a victim comes to light after a sentence indication has been given.³²

Where the court gives a sentence indication, the court must not impose a more severe sentence than the sentence type³³ or maximum total effective sentence indicated.³⁴

The DPP has suggested that the sentence indication scheme in the higher courts should allow courts to give a sentence indication relating to a range of available sentences, rather than just an indication about a maximum sentence, or sentence type. The DPP stated that this would:

ensure that, if any relevant information arose between the sentence indication hearing and the plea hearing – for example, more information about the impact of the offending on a victim – the Court would have greater flexibility in respect of the sentence based on all relevant information.³⁵

Improving processes for the early collection of victim impact information and requiring the prosecution to advise the court if there is insufficient information to conduct a sentence indication will help to ameliorate challenges with providing an accurate sentence indication. However, these changes may not be sufficient on their own.

³⁰ Research conducted in 2008–09 suggests that prosecutors generally consented to sentence indications being given, refusing to consent in only 4 of 31 cases examined: Sentencing Advisory Council, *Sentence Indication: A Report on the Pilot Scheme* (Report, February 2010) 71 <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentence_Indication_A_Report_on_the_Pilot_Scheme.pdf>.

³¹ *Criminal Procedure Act 2009 (Vic)* was amended by the *Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022 (Vic)*.

³² David Estcourt, 'Top Prosecutor Backs Law Change to Protect Victims after Joffa Case', *The Age* (online, 28 February 2023).

³³ In summary jurisdiction: *Criminal Procedure Act 2009 (Vic)* s 61.

³⁴ In indictable jurisdiction: *Criminal Procedure Act 2009 (Vic)* s 209.

³⁵ David Estcourt, 'Top Prosecutor backs Law Change to Protect Victims after Joffa Case', *The Age* (online, 28 February 2023).

The VOCC considers it important that the sentence indication scheme does not limit the ability of a judge to properly consider the impact of a crime on a victim when sentencing after a sentence indication.

If the sentence indication scheme is 'locking' a judicial officer into a lower penalty at the sentence indication stage because they do not have detailed or complete information about the impact on a victim, this is a significant erosion of victims' rights and prevents just outcomes.

Providing judges with more discretion to give an indication of a range of available sentences, rather than just an indication about a maximum sentence or sentence type, may address this issue. However, it is also possible that providing a broader range of sentences in a sentence indication would erode the purpose of a sentence indication scheme because there may be less incentive to seek an indication and to plead guilty if the likely outcome is less clear. These are factors that must be carefully balanced.

The VOCC considers this is an important matter that should be part of the required statutory review of the sentence indication scheme discussed further below.

A review of sentence indication reforms

Section 209A of the Criminal Procedure Act requires the Attorney-General to review the operation of amendments made to the sentence indication scheme introduced in 2022.³⁶

The VOCC remains concerned that in the case of sentence indications, procedural expediency may be unduly prioritised over victims' participation.

There has been little research to date that has considered the effect of sentence indications on victims of crime. The Sentencing Advisory Council's 2010 report on Victoria's pilot sentence indication scheme found no adverse effects on victims.³⁷ However, the sample size was too small to draw conclusions and there were no consultations directly with victims of crime.

The scheme has since been expanded and there are different legislative requirements depending on the jurisdiction in which a sentence indication is heard.

The Attorney-General's Second Reading Speech in 2021 stated that:

The effectiveness of the reforms will be reviewed in two years to ensure it brings promised benefits, victims impact is adequately taken into account at a sentence indication hearing, and that any operational issues are addressed. The review will specifically consider the impact on victims of the amendments to the Victims Charter Act and the availability of information of victim impact at the time of the sentence indication hearing. This is in recognition of the importance of striking the right balance between the reduction of court backlog and victim participation and involvement in the criminal justice process.³⁸

The VOCC agrees that the review should ensure the right balance has been achieved in sentence indication processes. Given the issues raised in relation to sentence indications, it is vital that the review:

- include targeted consultation with victims whose matter has been subject to a sentence indication process. Previous reviews did not include victims' views or experiences, meaning a complete review of the sentence indication scheme has not occurred in Victoria.
- examine the extent to which prosecutors are putting victims' views to the court at a sentence indication hearing, including comparing processes across the summary and indictable jurisdictions
- provide data on:
 - rates of sentence indications over time (year-by-year analysis, broken down by jurisdiction)
 - number of times a court has refused to make a sentence indication, broken down by jurisdiction
 - rates of conversion of sentence indications to guilty pleas
 - data on prosecution opposition to sentence indications
- comprehensively examine the impacts of sentence indications on victims' participation in the summary jurisdiction
- consider judicial views on the impacts of sentence indications on the sentencing task, including concerns about whether courts are receiving sufficient information about impact on victims at sentence indication hearings

³⁶ Criminal Procedure Act 2009 (Vic) was amended by the Justice Legislation Amendment (Criminal Procedure Disclosure and Other Matters) Act 2022 (Vic).

³⁷ Sentencing Advisory Council, *Sentence Indication: A Report on the Pilot Scheme* (Report, February 2010) 71 <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentence_Indication_A_Report_on_the_Pilot_Scheme.pdf>.

³⁸ Victoria, *Parliamentary Debates*, Legislative Council, 19 November 2021, 4657 (Jaclyn Symes, Attorney-General).

- consider the DPP's proposal to amend the Criminal Procedure Act to provide judicial officers with discretion to give an indication of a range of available sentences and the extent to which that would better enable impact on victims to be considered at sentencing following a sentence indication.



RECOMMENDATION 39

The legislative review of sentence indications under the *Criminal Procedure Act 2009 (Vic)* should be independently undertaken by the Sentencing Advisory Council.

The review of sentence indications should:

- include targeted consultation with victims whose matter has been subject to a sentence indication process
- examine the extent to which prosecutors are putting victims' views to the court at sentence indication hearings, including comparing processes across the summary and indictable jurisdictions
- provide data on:
 - rates of sentence indications over time (year-by-year analysis, broken down by jurisdiction)
 - number of times a court has refused to make a sentence indication, broken down by jurisdiction
 - rates of conversion of sentence indications to guilty pleas
 - rates of prosecution opposition to sentence indications
- comprehensively examine the impacts of sentence indications on victims' participation in the summary jurisdiction
- consider judicial views on the impacts of sentence indications on the sentencing task, including whether courts are receiving sufficient information about the impact on victims at sentence indication hearings
- consider the Director of Public Prosecution's proposal to amend the *Criminal Procedure Act 2009 (Vic)* to provide judicial officers with discretion to give an indication of a range of available sentences (and the extent to which that would better enable victim impact to be considered at sentencing following a sentence indication).

Victim Impact Statements

As discussed in detail in **Chapter 9**, under the *Sentencing Act 1991 (Vic)* (Sentencing Act) a victim may make a VIS for the purpose of assisting the court in determining sentence.³⁹ Section 13 of the Victims' Charter provides that victims have an entitlement to participate in the sentencing hearing by making a VIS.

VISs are an important part of victims' participation, providing victims with a voice at the critical stage of sentencing. VISs serve two principal purposes. First, they provide information to the court about the impact of a crime on the victim. This is something that the court may have regard to for sentencing purposes.⁴⁰ Secondly, they can have a communicative and therapeutic purpose for a victim:

The role of VIS is said to be expressive or communicative. Through VIS victims can recount their experiences and express their feelings about the crime to the court, the offender and the wider community.⁴¹

³⁹ *Sentencing Act 1991 (Vic)* s 8K. Section 13 of the Victims' Charter also provides that a victim may make a Victim Impact Statement (VIS) to the court and that a VIS is to be considered by the court when determining the sentence where a person has been found guilty of an offence: *Victims' Charter Act 2006 (Vic)* s 13 (1).

⁴⁰ *Sentencing Act 1991 (Vic)* s 5(2)(daa).

⁴¹ Tracey Booth, 'Victim Impact Statements, Sentencing and Contemporary Standards of Fairness in the Courtroom' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 162.

In **Chapter 9**, the VOCC heard from both victims and stakeholders about the importance of VISs, and the positive aspects for victims' participation when the process works well. For example, one victim surveyed by the VOCC stated that the 'opportunity to provide a victim impact statement and to read it out in open court was a life changing day for me'.

However, despite the positive ways in which VISs can advance victims' participation, there are practical concerns with the operation of the VIS scheme. Overall, victims surveyed and interviewed by the VOCC described varying experiences of the VIS process. Stakeholders also raised many issues with the operation of the current VIS scheme, as outlined in detail in **Chapter 9**.

Despite the positive ways in which VISs can advance victims' participation, there are practical concerns with the operation of the VIS scheme.

Key issues relating to the VIS scheme include:

- victims wanting (or in practical terms needing) to prepare a VIS 'early',⁴² leaving them vulnerable to their VIS being used by the defence
- insufficient time to prepare a VIS after a plea or finding of guilt, particularly in the Magistrates' Court
- the potential for victims to be cross-examined on the contents of their VIS
- VISs being 'edited'⁴³
- lack of assistance preparing a VIS.

Key issues with the timing of VISs

Preparing a VIS 'early'

A victim may prepare a VIS at any time. The only statutory requirement is that a victim must provide a copy to the prosecutor a 'reasonable time' before sentencing.⁴⁴

Once the prosecutor receives a VIS from a victim, the prosecutor must file the VIS with the court and provide a copy to the defence.⁴⁵ It is also possible that a victim will be cross-examined on the contents of their VIS.⁴⁶

The statutory requirements relating to VIS submission present challenges for victims. If a victim prepares their VIS 'early' (e.g. before a finding of guilt), they may be at risk of being cross-examined about its contents by defence counsel. If they wait for a plea of guilty or a guilty verdict, they may then be rushed to prepare their VIS or may not be given the opportunity to prepare a VIS at all, particularly in the summary jurisdiction. These challenges have been raised in Victorian Government reports for nearly fifteen years, without remedy.⁴⁷

The increased use of sentence indications, as discussed in detail above, only exacerbates issues relating to the timing of VIS preparation. This was evident in a recent case highlighted in the media.

In *DPP v Corfe*, the judge referred to the victim making 'a version of his victim impact statement at the sentencing indication hearing'⁴⁸ which assisted the judge in making the sentence indication. However, the victim Alex Case told *The Age* that he had not fully described the impact of the abuse on him in a VIS prepared for the sentence indication hearing because he was worried that he would be subjected to aggressive cross-examination on its contents.⁴⁹

Alex Case told journalists that the reason he had not fully described the impact of the abuse on him in the VIS prepared for the sentence indication hearing was because, if Corfe had not accepted the sentence indication, defence counsel would have been able to cross-examine him about the contents of his VIS.⁵⁰

In sexual offence cases in particular, defence counsel focus on inconsistencies in cross-examination because they might indicate that a witness is not telling the truth. A recent analysis of sexual offence

42 Preparing a VIS 'early' means preparing a VIS before a plea or finding of guilt.

43 When the victim (or a nominee) or the prosecutor reads a VIS aloud in court, the court may direct that certain parts of the VIS are inadmissible and cannot be read aloud: *Sentencing Act 1991* (Vic) sub-ss 8Q(1), (2), (3). Many victims refer to this as their VIS being edited.

44 *Sentencing Act 1991* (Vic) s 8N(1).

45 *Ibid* s 8N.

46 With certain alternative arrangements available for victims including giving evidence remotely, screens, a support person, limiting numbers in court, no robes and legal practitioners seated: *Sentencing Act 1991* (Vic) s 8S.

47 Victims Support Agency (Victoria), *A Victim's Voice: Victim Impact Statements in Victoria* (Report, October 2009) 62.

48 *DPP v Jeffrey Corfe* [2023] VCC 253, 11.

49 David Estcourt, 'Top Prosecutor Backs Law Change to Protect Victims after Joffa Case', *The Age* (online, 28 February 2023).

50 *Ibid*.

trials in Victoria found that in 24 of the 25 trials examined, the complainant was cross-examined about inconsistencies.⁵¹ The inconsistencies were 'not only in relation to central facts in issue, but also peripheral details, and even matters of no obvious relevance'.⁵² Similarly, a report to the Royal Commission into Institutional Responses to Child Sexual Abuse found that defence counsel asked questions about inconsistencies in the complainant's evidence in more than 90 per cent of cases.⁵³

Insufficient time to prepare a VIS

Because of issues relating to disclosure of a VIS to defence, as outlined above, many victims are advised not to prepare their VIS 'early' (i.e. before a plea or finding of guilt).

Victoria Police members told the VOCC that while VIS use is increasing, there remains 'an issue around when do we prepare them?'⁵⁴ Respondents to the VOCC's Victims' Professionals Survey also expressed concern about the defence being able to receive the VIS prior to the plea and to cross-examine a victim on their VIS.

Victims will generally be advised not to prepare their VIS before a plea or finding of guilt because:

- it is not yet clear what charges will or will not proceed
- the VIS may contain highly personal information and victims may be cross-examined about their VIS
- the prosecution must disclose a VIS to the accused once they receive it.

Victoria Police members explained to the VOCC why early VIS preparation is not encouraged:

As a general rule, Victim Impact Statements are not taken from victims before the matter has been finalised, as the Victim Impact Statement, which has been made in good faith by the victim, can end up as part of the material being used in cross-examination in a contested hearing. That is incredibly unfair and offensive for victims. We don't want to facilitate that happening.⁵⁵

However, advising victims not to prepare a VIS before a plea or finding of guilt is problematic. If a victim only prepares their VIS after the accused pleads guilty or is found guilty, there is a limited window of opportunity before sentencing that may not be enough for a victim to prepare their VIS. In the Magistrates' Court, this window of opportunity may be virtually non-existent as the accused may plead guilty and be sentenced on the same day.

Moreover, requiring a victim to prepare their VIS in a short time (to meet the court's timetable), may be very difficult for victims and does not reflect a victim-centred or trauma-informed process.

Consistent with previous research,⁵⁶ the VOCC also heard that victims in the Magistrates' Court are not able to participate in the VIS process as set out in the Victims' Charter and Sentencing Act because of these timing issues. This is significant, given the Magistrates' Court deals with 90 per cent of all crimes against the person in Victoria.⁵⁷

Court Network told the VOCC that in their experience, VISs are almost non-existent in the Magistrates' Court.⁵⁸ Victoria Police members also told the VOCC that magistrates rarely adjourn matters to allow a VIS to be prepared.⁵⁹ This respondent to the VOCC's Victims' Professionals survey stated:

The timing of the VIS is also difficult. If a victim completes it to early and submits it, it is then required to be shared with defence. However at the moment, courts – particularly the Magistrates' Court is not giving victims ANY opportunity to complete a VIS when a matter resolves. I have a number of examples of Victims not being given time to submit a VIS... Why are courts excluded from having to comply with the Victims Charter?

Protecting 'early' VISs

The Victorian Court of Appeal has said that when victims make a VIS, they are performing 'an admirable service to our legal system' and that 'any activities that may inhibit the free flow of information from victim to court are to be deprecated'.⁶⁰

In this context, the VOCC considers that reforms are needed to help victims make a VIS at an earlier stage of proceedings without unduly inhibiting 'the free flow of information from victim to court'.⁶¹

⁵¹ Julia Quilter and Luke McNamara, *Qualitative Analysis of County Court of Victoria Rape Trial Transcripts: Report to the Victorian Law Reform Commission* (August 2021) 92.

⁵² *Ibid* 93.

⁵³ Martine Powell et al, *An Evaluation of How Evidence Is Elicited from Complainants of Child Sexual Abuse* (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, August 2016) 219.

⁵⁴ Consultation Meeting 18 – Victoria Police – Session 2.

⁵⁵ *Ibid*.

⁵⁶ Department of Justice Victoria, *Victim Impact Statement Reforms in Victoria: Interim Implementation Report* (2014) 25; Victims Support Agency (Victoria), *A Victim's Voice: Victim Impact Statements in Victoria* (Report, October 2009) 43.

⁵⁷ Magistrates' Court of Victoria, *Annual Report 2021–22* (February 2023) 6.

⁵⁸ Consultation Meeting 12 – Court Network.

⁵⁹ Consultation Meeting 17 – Victoria Police – Session 1.

⁶⁰ *Charles v The Queen* [2022] VSCA 166 [78].

⁶¹ *Ibid*.

As outlined above, the challenges relating to 'early' preparation of VISs put victims at a disadvantage. They are fearful of preparing a VIS 'early' (in case defence counsel use it to cross-examine them on inconsistencies) but if they do not prepare a VIS 'early', they may miss their opportunity to have a voice at sentencing.

It is essential for victims that the VIS process provides as much protection as possible to give victims confidence that the process will be safe and not re-traumatising.

However, although it is not likely to arise often, the possibility that a VIS may contain information that is critical to whether an accused receives a fair trial remains.⁶² The VOCC notes that strengthening victim protections around VISs being used for any purpose other than a sentencing hearing must be balanced with the need to ensure a fair trial.

Quarantining the VIS

Some judicial representatives consulted by the VOCC supported a mechanism by which VISs could be 'quarantined' so that it could be prepared 'early' but not disclosed to defence prior to a plea or finding of guilt. One judicial representative said that it is 'artificial' not to enable victims to prepare VISs early and that '[t]he only way around that is to quarantine it'.⁶³ Another judicial representative queried whether there could:

be a form of legislatively mandated quarantining of the victim impact statement, so it can't be produced until either the sentence indication hearing or the plea has been entered and it can only be used for portrayal of the victim's position but not to be used then destructively at a later stage if the matter doesn't resolve.⁶⁴

This same judicial representative stated that a 'trauma informed solution might be to give victims the opportunity to prepare the Victim Impact Statement but protect them in a victim centric approach from use for any purpose other than that'.⁶⁵

Another judicial representative observed that quarantining the VIS would 'require legislative change – [so] that the Victim Impact Statement could be treated like a confidential communication, which would require a significant reason to be established to permit its release'.⁶⁶

Other judicial officers raised concerns about the feasibility of this approach. For example, one judicial representative noted it would be potentially problematic to quarantine the VIS if it 'contained material that was found after conviction to be false and not disclosed'.⁶⁷ Another judicial officer said: 'If the Victim Impact Statement contained material with any version of events that the Crown would feel obliged to hand it over'.⁶⁸

While the VOCC notes that there are occasions where a VIS may contain information that is critical to the defence, more must be done to fulfil VISs participatory objectives and protect victims from secondary victimisation. The VOCC agrees with judicial representatives who favour a quarantining approach for VISs.

Victims should be able to prepare a VIS before a plea or finding of guilt and this VIS should be protected.

While further work would be required with key stakeholders to define the parameters of this and to operationalise it, the VOCC envisages reforms enabling victims to prepare a VIS at any stage and provide this to Victoria Police or the Office of Public Prosecutions (OPP). Victoria Police or the OPP would then be required to either seal or electronically protect the VIS until there is a plea or finding of guilt. The VIS should be treated as a personal document belonging to the victim until a triggering event occurs (e.g. the accused pleads or is found guilty) and the prosecution has permission to access the document. The accused should not be permitted to subpoena a VIS.

More must be done to fulfil VISs participatory objectives and protect victims from secondary victimisation.

Once the prosecution is permitted to access the VIS, the existing requirements would still apply and the prosecutor would need to provide a copy of the VIS to the court and the offender.⁶⁹

62 For example, in *R v Lewis-Hamilton* the Victorian Court of Appeal held that a VIS should have been disclosed by the prosecution to the accused before trial. The court concluded that the VIS contained material that could have materially affected the complainant's credibility: *R v Lewis-Hamilton* [1998] 1 VR 630.

63 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.

68 Ibid.

69 *Sentencing Act 1991* (Vic) s 8N(2).

Victims' Portal

As discussed in **Chapter 14**, the VOCC has recommended that the Victorian Government undertake an independent feasibility study to explore the viability of an interactive Victims' Portal.

The Department of Justice and Community Safety (DJCS) has previously discussed incorporating functionality that would allow victims to submit their VIS through a Victims' Portal.⁷⁰

A functional Victims' Portal would help operationalise the quarantining of a VIS in practical terms. A Victims' Portal would enable a victim to submit their VIS online and have it available when required by the prosecution. This would be particularly useful in summary jurisdictions where a case listed for mention might turn into a plea of guilty, or a sentence indication and plea on the one day. It would also allow a victim to prepare and complete their VIS according to their own timetable rather than the court's or prosecution's timetable.

If a VIS sits on the Victim's Portal, the Portal could be structured in a way that the VIS is 'quarantined' and only accessible to the prosecution once certain events occur, for example, when the accused pleads guilty, or the court conducts a sentence indication. If a victim lodges a VIS on the Victims' Portal, the VIS will remain quarantined and may only be accessed:

- once the conditions of its release have been met (e.g. the accused pleads or is found guilty)
- with the victim's consent.

It should also be an offence for anyone to copy, disseminate, or publish a VIS without authorisation.

Once the prosecution is permitted to access the VIS, the existing requirements would still apply and the prosecutor would need to provide a copy of the VIS to the court and the offender.⁷¹ However, as discussed in this chapter below, the VOCC also considers limits should be placed on the cross-examination of VISs.



RECOMMENDATION 40

The Victorian Government should introduce amendments to enable victims to prepare a Victim Impact Statement (VIS) before a plea or finding of guilt and have their VIS 'quarantined' until required by the court.

The independent feasibility study of an interactive Victims' Portal (see Recommendation 18) should consider how a Victims' Portal could assist victims to prepare a VIS and securely submit and store the VIS until it is required by the court.

Reforms should enable victims to prepare a VIS at any stage and provide this to Victoria Police or the Office of Public Prosecutions who would be required to protect the VIS until there is a plea or finding of guilt. The VIS should be treated as a personal document belonging to the victim until a triggering event occurs (e.g. the accused pleads or is found guilty) and the prosecution has permission to access the document. The accused should not be permitted to subpoena a VIS.

Once the prosecution is permitted to access the VIS, the existing requirements would still apply and the prosecutor would need to provide a copy of the VIS to the court and the offender.

The independent feasibility study of an interactive Victims' Portal (Recommendation 18) should consider how a Victims' Portal could assist victims to prepare VISs and securely submit and store VISs. For example, if a victim lodges a VIS on the Victims' Portal, the VIS will remain quarantined and may only be accessed once the conditions of its release have been met.

⁷⁰ Department of Justice and Community Safety, *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 28.

⁷¹ *Sentencing Act 1991* (Vic) s 8N(2).

Giving victims more time to prepare a VIS

In summary proceedings, in particular, the pace of the process often denies victims the opportunity to make a VIS.

While judicial representatives informed the VOCC that they are now increasingly adjourning matters to allow victims to prepare and deliver a VIS,⁷² Victoria Police and victim support professionals advised the VOCC that magistrates in particular rarely adjourn matters to allow a VIS to be prepared.⁷³

Section 13 of the Victims' Charter provides that victims are entitled to participate in the sentencing hearing by making a VIS. While the VOCC welcomes the fact that courts are increasingly adjourning matters to allow victims to prepare and deliver a VIS,⁷⁴ victims' participation requires formalised recognition and protection.

Other jurisdictions recognise the importance of victims' participation through VISs by legislatively enshrining rights to adjourn proceedings to enable VISs to be prepared. For example, in the Australian Capital Territory (ACT) in cases involving an offence punishable by more than five years imprisonment, the prosecution may request an adjournment to allow a victim time to prepare a VIS.⁷⁵ The court must grant an adjournment unless there are special reasons for not doing so.

In Canada, under its Criminal Code, on application of the prosecutor or a victim, or on its own motion, the court may adjourn the proceedings to permit the victim to prepare a VIS if the court is satisfied that the adjournment would not interfere with the proper administration of justice.⁷⁶

In Victoria in 2014, the then-Department of Justice suggested further work was needed to increase the number of VISs submitted in the Magistrates' Court. It was noted that a significant amount of flexibility had been incorporated into Magistrates' Court proceedings to implement a range of specialised programs and diversions for offenders. It was observed that in this context, it was common for judicial officers to adjourn a plea of guilty part heard 'for a range of reasons, such as to obtain psychological or other reports, or to enable an offender to commence rehabilitation and demonstrate their commitment to change'.⁷⁷

The then-Department of Justice went on to note that, given there is such flexibility for adjournments to enable consideration of sentencing dispositions appropriate to the offender's prospects of rehabilitation, there is potential for a similar level of flexibility to incorporate the provision of a VIS in serious cases where the impact on the victim is likely to be significant.

A right of adjournment

The VOCC recommends that the Sentencing Act be amended to require the court, prior to sentencing, to ask the prosecutor whether the prosecution has advised the victim of their right to make a VIS, whether the victim has expressed a wish to make a VIS or whether the victim requires more time to make a VIS.

As discussed in the first section of this chapter, the prosecution should be liaising with victims early in proceedings, particularly in anticipation of a sentence indication occurring. It would be no more onerous on prosecutors to enquire at this stage about a victim's wishes to make a VIS.

If the prosecution advises the court that a victim wishes to make a VIS, the court should adjourn the proceedings to permit the victim to prepare a VIS unless it is not in the interests of justice to do so. If the prosecution is unable to advise the court about these matters, the court should adjourn the proceedings to permit the prosecutor to make further enquiries unless it is not in the interests of justice to do so.

If the court does not adjourn a matter for preparation of a VIS, the prosecution should also be able to apply for an adjournment, as is the case in the ACT and in Canada.

⁷² Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁷³ Consultation Meeting 17 – Victoria Police – Session 1.

⁷⁴ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁷⁵ *Crimes (Sentencing) Act 1999* (ACT) s 51A.

⁷⁶ *Criminal Code*, RSC 1985, c C-46, s 722 <<https://laws-lois.justice.gc.ca/eng/acts/C-46/page-114.html?txhl=statement+victim's+victim+impact+s-722>>.

⁷⁷ Department of Justice (Victoria), *Victim Impact Statement Reforms in Victoria: Interim Implementation Report* (2014) 55. The Department of Justice was quoting Pauline Spencer, 'To Dream the Impossible Dream? Therapeutic Jurisprudence in Mainstream Courts' (2012) 22 *Journal of Judicial Administration* 9.



RECOMMENDATION 41

The *Sentencing Act 1991* (Vic) should be amended to require the court, prior to sentencing, to ask the prosecution whether the victim wishes to make a VIS.

If the prosecution advises the court that a victim wishes to make a VIS, or the prosecution cannot provide sufficient information to the court about victims' wishes, the court should adjourn the proceedings to permit the victim to prepare a VIS or to permit the prosecutor to make further enquiries unless it is not in the interests of justice to do so.

If the court does not adjourn a matter for preparation of a VIS, the prosecution should also be able to apply for an adjournment.

The court should be required to ask the prosecutor whether:

- the prosecution has advised the victim of their right to make a VIS
- the victim has expressed a wish to make a VIS
- whether the victim requires more time to make a VIS.

Protecting victims from cross-examination

While a VIS informs the court about the impact that a crime has had on the victim, there may be matters in a VIS that the offender disputes. The court may, on the request of either the offender or the prosecutor, call a victim who has made a VIS to give evidence.⁷⁸ The *Sentencing Act* does not provide any test for the court to apply in determining whether it is appropriate to allow a victim to be questioned.

Research suggests there are very few instances of victims being cross-examined on their VIS, and that this is because courts are 'generally not favourable towards cross-examination of a victim on their VIS'.⁷⁹

However, victims may be deterred from making a VIS simply because of the possibility that they will be cross-examined about its contents.

Judicial officers may use their discretion and refuse to allow cross-examination of a victim about their VIS. For example, in *Davies v The Queen*, the Court of Appeal said that it was 'understandable' that a judge refused the accused's request to cross-examine the victims about their VISs because it would be 'unduly extensive and may well be directed to issues which are not relevant to the sentencing process'.⁸⁰

In *Charles v The Queen*,⁸¹ the Court of Appeal suggested amending the *Evidence Act 2008* (Vic) to prohibit 'cross-examination derived from the contents of a victim impact statement without the leave of the court'.⁸²

⁷⁸ *Sentencing Act 1991* (Vic) s 80.

⁷⁹ Department of Justice (Victoria), *Victim Impact Statement Reforms in Victoria: Interim Implementation Report*, (2014) 65.

⁸⁰ *Davies v The Queen* [2017] VSCA 66 [726].

⁸¹ *Charles v The Queen* [2022] VSCA 166.

⁸² *Ibid* [78].

There are many considerations relevant to limiting cross-examination of a victim on the contents of their VIS. For example, as observed in *Charles v The Queen*:⁸³

- victims may be very emotional and may express intimate feelings with less restraint in a VIS than when giving evidence in a formal trial setting
- VISs are a victim's only chance of communicating the impact of the crime to the court
- victims perform an admirable service to our legal system by providing such statements
- it is important not to inhibit the free flow of information from victim to court.

Having regard to these policy considerations and the Court of Appeal's observations in *Charles v The Queen*, the VOCC recommends that a court should only permit the questioning of a victim about their VIS in certain circumstances as outlined below.

Limiting cross-examination of a VIS

Victims should not be cross-examined on the contents of a VIS without leave of the court. This restriction should apply regardless of the stage of a matter (e.g. trial or sentencing stage). This would mean, for example, that if a victim prepares a VIS and it is used for a sentence indication hearing, and the accused does not plead guilty, the VIS could not be used to cross-examine a victim without leave of the court.

A new test should be introduced to restrict questioning about VISs. This would provide the court with additional control over whether a victim may be questioned about the content of their VIS. It would also assist the court to transparently balance competing policy considerations when determining whether to grant leave for a victim to be questioned about the contents of their VIS.

The VOCC recommends that a court should only permit the questioning of a victim where there is a clearly demonstrated need for it. That is, the court must be satisfied that the VIS has substantial probative value to a matter in dispute.⁸⁴

Further, a court should only permit questioning of a victim about their VIS if the court is satisfied that the substantial probative value of the evidence outweighs the public interest in:

- victims making VISs and sharing information that is very personal about distressing or traumatising events
- protecting victims from unnecessary trauma, intimidation, and distress through court processes, given the risk of re-traumatisation from giving evidence
- treating victims with respect and respecting their privacy and reputation.⁸⁵

This test should not restrict the prosecution from calling a victim to give evidence at a sentencing hearing. A victim may consent to being questioned about their VIS and giving evidence at a sentencing hearing.

This new test should improve victims' confidence in making a VIS because the chance of it being weaponised against them is substantially reduced. It should also enable more victims to tender complete VISs at the sentence indication stage because victims will be assured that the court would only permit questioning where there is substantial probative value and strong justifications for doing so.

⁸³ Ibid.

⁸⁴ If there is other evidence that already addresses an issue, then the VIS should not become part of questioning. For example, in *Charles v The Queen*, the VIS referred to the victim having spent time in a psychiatric hospital as a result of the offending. That evidence was already known to the accused and the jury, so the VIS did not significantly add to that evidence: *Charles v The Queen* [2022] VSCA 166 [76].

⁸⁵ This consideration is based on the VOCC's recommendation in Ch 12 to recognise victim's rights in the Charter of Human Rights and Responsibilities.

**RECOMMENDATION 42**

A new test should be introduced to restrict questioning of a victim about their Victim Impact Statement (VIS). A court should only permit the questioning of a victim about their VIS where the court is satisfied that there is a clear and strong justification for doing so.

A court should only permit the questioning of a victim about their VIS where the court is satisfied that questioning the victim about a matter has substantial probative value and outweighs the public interest in:

- victims making VISs and sharing information that is very personal about distressing or traumatising events
- protecting victims from unnecessary trauma, intimidation, and distress through court processes, given the risk of re-traumatisation from giving evidence
- treating victims with respect and respecting their privacy and reputation.

Prohibiting the offender from personally cross-examining

As discussed in **Chapter 16**, there are circumstances in which a court may declare a victim to be a 'protected witness'. An accused is not permitted to personally cross-examine a 'protected witness'⁸⁶ and a court may direct that 'alternative arrangements' be made for when a protected witness gives evidence (e.g. permitting the witness to give evidence via CCTV).

The Sentencing Act already provides that a court may direct alternative arrangements to be made for any victim giving evidence in relation to a VIS.⁸⁷ The court's power under the Sentencing Act applies to any victim and is not limited to a protected victim.

If a court permits questioning of a victim about their VIS at a sentencing hearing, the VOCC recommends that the court also direct that the accused cannot personally cross-examine the victim. Given that victims are not often cross-examined about their VIS, it should be even less likely that an unrepresented offender will seek to cross-examine a victim about their VIS. However, it is possible, and courts should be empowered to protect victims should this situation arise.

If the court makes an order permitting cross-examination of the victim but prohibits the offender from personally cross-examining the victim, the cross-examination will need to be conducted by a legal representative. This could occur based on the model already used under the Criminal Procedure Act where an accused seeks to cross-examine a protected witness. The Victorian Government should provide additional funding to Victoria Legal Aid to support this recommendation.

**RECOMMENDATION 43**

The Victorian Government should amend the *Sentencing Act 1991* (Vic) to provide that the offender cannot personally cross-examine a victim about their Victim Impact Statement (VIS).

A court may order that a victim may be cross-examined about their VIS at a sentencing hearing. To prevent re-traumatising a victim, an offender should be prohibited from personally cross-examining the victim about their VIS.

The Victorian Government should provide additional funding to Victoria Legal Aid to support this recommendation.

Legal representation for cross-examination

The VOCC heard from Associate Professor Kerstin Braun that an independent legal representative for victims could also be of assistance if a victim is cross-examined on aspects of a VIS.⁸⁸ Although Assoc.

⁸⁶ *Criminal Procedure Act 2009* (Vic) s 357.

⁸⁷ *Sentencing Act 1991* (Vic) s 85.

⁸⁸ Consultation Meeting 1 – Associate Professor Kerstin Braun.

Professor Braun acknowledged that cross-examination may not occur very often on a VIS, it would be a very traumatising experience for a victim – ‘perhaps equally as bad as the cross examination during the trial. Perhaps even worse, because it’s all about how someone felt or how impacted they were.’⁸⁹

Providing victims with legal representation during a sentencing hearing which is independent of the prosecution affords victims procedural fairness. During a decision-making process, such as a sentencing hearing, procedural fairness to victims can be:

assessed according to both the quality of the decision-making procedure and the quality of the interpersonal treatment during that procedure. A fair decision-making procedure involves the use of objective information; consistent, neutral decision making; and provision for those involved to present their case – that is, to have a voice in the hearing.⁹⁰

A VIS will often contain personal information that raises significant privacy issues for victims. Victims’ human rights in relation to their privacy interests, and protecting victims from re-traumatisation from court processes, should be better protected in relation to VISs.

Legal representation would enable a victim to better protect their own interests.

Where a victim is cross-examined on the contents of their VIS, it is important that the victim receive the protection of legal counsel to ensure that the questions asked of the victim are appropriate.

Victims should have standing to appear and be legally represented at applications to cross-examine them at a sentencing hearing.

However, the role of a victim’s legal representative should be limited in the following ways:

- The victim would be a participant, but not a party, to the sentencing hearing.
- The victim’s legal representative would not act as a second prosecutor.
- The victim’s legal representative would not be able to make any submissions about sentencing orders.
- The victim’s legal representative would not be able to cross-examine other witnesses, including the offender.

The role of a victim’s legal representative would be to protect the victim’s interests, for example, by objecting to questions that affect a victim’s privacy or reputation. The victim’s legal representative should be able to call evidence if it is in support of their VIS (as is currently permitted).⁹¹



RECOMMENDATION 44

The Victorian Government should amend the Sentencing Act 1991 (Vic) to provide that:

- **a victim has standing to appear at an application to examine a victim**
- **a victim may be legally represented at that application**
- **if the application is granted, the victim may be legally represented when the victim is examined in court.**

To prevent re-traumatising a victim, and in recognition of a victim’s rights to privacy, a victim should have standing to appear at an application to examine the victim at a sentencing hearing.

A victim may be legally represented at an application to examine the victim at a sentencing hearing.

If the application is granted, a victim may be legally represented when the victim is examined in court, or to call evidence in support of the victim’s VIS.

If legally represented, a victim’s legal representative must act consistently with the role of the victim as a participant rather than as a party to the proceeding.

⁸⁹ Ibid.

⁹⁰ Tracey Booth, ‘Victim Impact Statements, Sentencing and Contemporary Standards of Fairness in the Courtroom’ in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 167.

⁹¹ *Sentencing Act 1991* (Vic) s 8P.

Editing of VISs

Under the Victims' Charter, the prosecuting agency must inform the victim, as soon as reasonably practicable of the victim's entitlement to make a VIS.⁹² If a victim wishes to make a VIS, the relevant prosecuting agency is required to refer the victim to a victims' services agency for support with the preparation of their VIS. The prosecution is not obliged to advise victims on the admissibility of the VIS, but is required to provide the victim with general information on material that may be deemed inadmissible by the court, as well as what this means for the relevant VIS.⁹³

The Sentencing Act provides that the court may receive the whole of a VIS, even if it contains inadmissible material.⁹⁴ However, when the victim (or a nominee) or the prosecutor reads a VIS aloud in court, the court may direct that certain parts of the VIS are inadmissible and cannot be read aloud.⁹⁵

Stakeholders felt that assistance from a specialist victim support service is crucial to the VIS process.⁹⁶ However, the vast majority of respondents to the VOCC's Victims' Survey (66 per cent) indicated that they did not get help to understand the process of making a VIS.

Victims have described having offenders or their counsel involved in this editing of their VIS as very distressing.⁹⁷ For example, Di McDonald shared her frustration that by the time her VIS reached the courtroom, large sections had been objected to by defence counsel, leading to large sections being removed.⁹⁸

Acknowledging the legitimate procedural reasons for why some parts of a VIS may be deemed inadmissible, more can be done to protect victims' interests and participation during this process.

First, victims need better information and support about what can and cannot be included in a VIS. Managing the expectations of victims is important. If victims believe that they can include certain information in their VIS and then spend considerable time and effort drafting their VIS – which can be emotionally draining and distressing – having their VIS edited in a manner in which they lose control is particularly difficult for victims. In **Chapter 14**, we recommend an enhanced victims' support system which would provide more support to victims making a VIS.

Secondly, a Victims Legal Service as recommended in **Chapter 15** may be able to provide advice to victims about the content of their VIS. Providing advice in a trauma-informed manner in this way is much better than through disempowering editing processes at court.

Thirdly, in a very small number of cases, it might be appropriate for a victim to be legally represented at a court hearing at which the court is considering editing a victim's VIS. Providing victims with legal representation for this purpose would reflect the victim's role as a participant and ensure that their rights and interests are protected and respected at the hearing.

⁹² *Victims' Charter Act 2006* (Vic) s 13 (1A).

⁹³ *Victims' Charter Act 2006* (Vic) ss 13(2), 13(3).

⁹⁴ *Sentencing Act 1991* (Vic) s 8L(5)(6).

⁹⁵ *Ibid* sub-ss 8Q(1), (2), (3).

⁹⁶ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria; Consultation Meeting 18 – Victoria Police – Session 2.

⁹⁷ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 382 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

⁹⁸ Interview 2 – Di McDonald – victim of stalking.

Overview of Chapter 19: Non-trial justice processes

The justice system is broader than the criminal trial process and in Part 2 of this report, victims identified that participation in these processes is equally important to those relating to the criminal trial process.

Not all of these areas of participation are underpinned by rights in the *Victims' Charter Act 2006* (Vic) (Victims' Charter).

Bail

Currently, victims' rights relating to bail are 'passive' information rights. This does not reflect the victim's role as a participant in criminal proceedings. The Victims of Crime Commissioner (VOCC) recommends that the Victorian Government introduce amendments to the Victims' Charter and the *Bail Act 1977* (Vic) to enhance victims' rights in relation to bail.

Restorative justice

With the expansion of various alternative justice options in Victoria, the VOCC recommends that the Victorian Government develop an overarching framework for 'alternative' or 'parallel' justice options and amend the Victims' Charter to enhance protections for victims in relation to restorative justice programs. The VOCC also recommends that the Victorian Government introducing consistent statewide standards alongside a robust training and accreditation framework. The VOCC also recommends that the Victorian Government make public any previous evaluations of restorative justice programs and commit to an evaluation of its existing restorative justice programs.

Diversion

The VOCC heard that not all victims felt like participants in the diversion process. Consideration of victims – and their opportunity to participate – varies across diversion programs. The VOCC recommends amendments to the *Children, Youth and Families Act 2005* (Vic), *Criminal Procedure Act 2009* (Vic) and the Victims' Charter to provide for enhanced rights and entitlements for victims during diversion processes in the Children's and Magistrates' Courts.

The VOCC also recommends that Victoria Police update its policies, practices and training to create a clear and transparent best-practice model for consulting with victims in relation to diversion.

Mental impairment matters

Mental impairment matters are governed by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIA).

Although these cases are rare, the impact on victims can be profound because the complex nature of CMIA proceedings can make it difficult for victims to meaningfully engage and participate in proceedings.

The VOCC advocates for a strengthened victim notification and participation framework embedded within both the CMIA and the Victims' Charter. This legislative framework should ensure decisions are made with more consideration and acknowledgement of the harm caused to victims of crime and their ongoing fears for their safety.

To supplement improved victim notification and participatory rights under the CMIA and the Victims' Charter, the VOCC also advocates for a dedicated and specialised victim support stream for victims dealing with mental impairment matters.

Parole and post-sentence decisions

The VOCC considers there should be enhanced rights in the Victims' Charter in relation to the Victims Register, including the right for victims to be given tailored information about the Victims Register and referred by a prosecuting agency to the Victims Register. The VOCC considers that more robust information and referral entitlements would address the low awareness of the Victims Register.

There is a lack of publicly available data relating to the Victims Register, including victims' engagement with it and their overall experiences of it. The VOCC recommends that the Victorian Government fund an independent review of the operation and effectiveness of the Victims Register and victims' participation in post-sentencing decisions, with that review being made publicly available.

Civil intervention orders

Concerns raised by victims about their participation during the intervention order process centred on lack of participation, breaches of intervention orders not being taken seriously, misidentification and cross applications. Many of these matters have been addressed in comprehensive reviews and inquiries, such as Victoria's Royal Commission into Family Violence and ongoing whole-of-system monitoring processes.

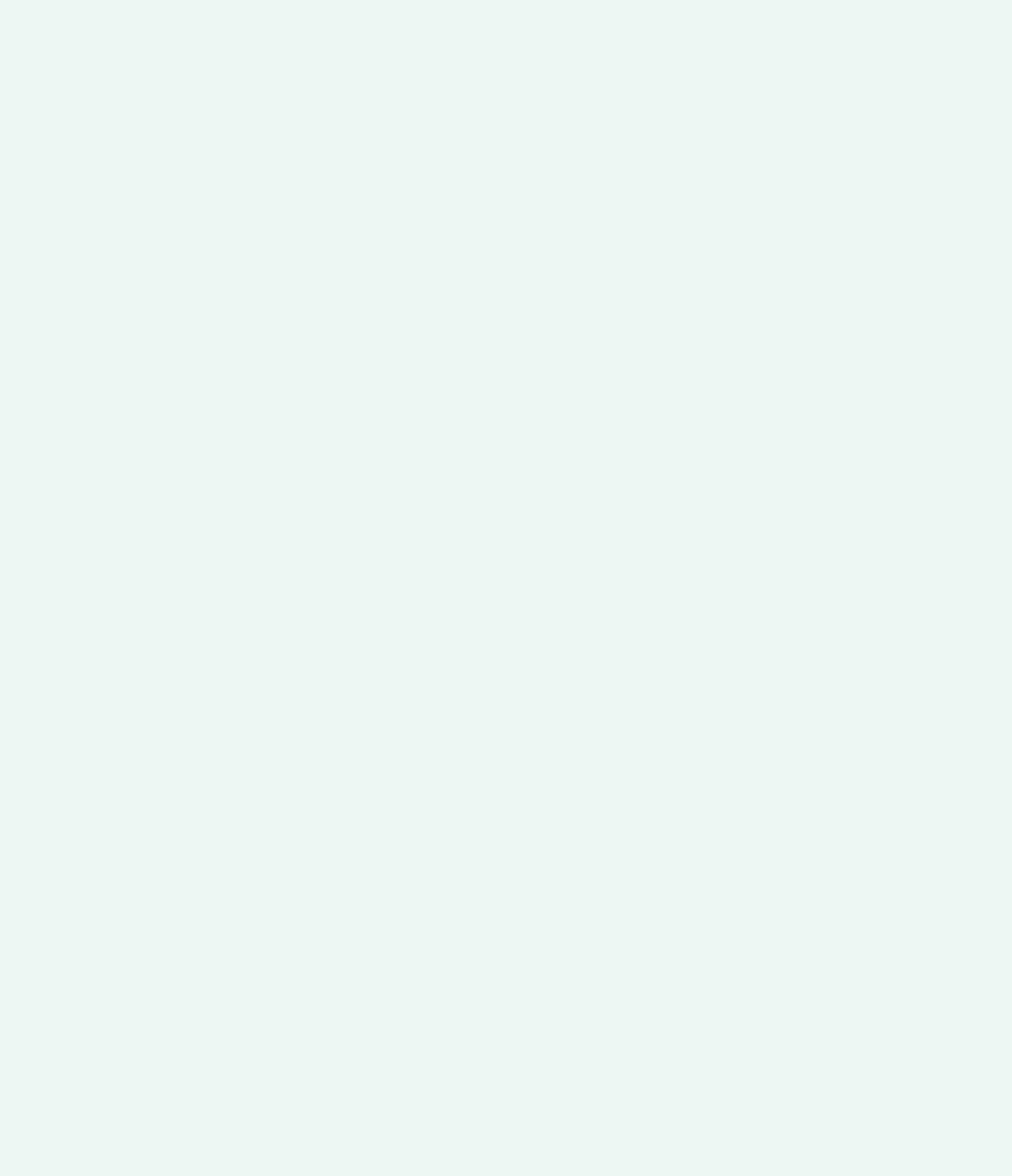
While the VOCC does not make specific recommendations in this area, the VOCC notes support for actions identified by other agencies and organisations to address these persistent issues.

State-funded financial assistance

Issues with the current system of state-funded financial assistance are well known following the Victorian Law Reform Commission's 2018 review of the *Victims of Crime Assistance Act 1996* (Vic). The VOCC did not focus extensively on issues relating to the Victims of Crime Tribunal (VOCAT) in its consultation, but issues relating to state-funded financial assistance continue to be raised by victims and stakeholders. Given a new Financial Assistance Scheme (FAS) will replace VOCAT in 2024, the VOCC does not make any recommendations in relation to financial assistance.

Coronial matters

The VOCC heard from some victims that they had found the coronial process to be particularly difficult and distressing. In June 2023, the *Review into improving the experience of bereaved families with the coronial process* report was published. The review provides options on changes that could be made to improve the experience of families in the future. The VOCC does not make any further recommendations in relation to coronial matters, noting the previous reviews highlighting the need for enhanced services for victims of crime. The VOCC supports these recommendations.



19

Chapter 19:
**Non-trial justice
processes**



Introduction

The justice system is broader than the criminal trial process and in Part 2 of this report victims identified that participation in non-trial justice processes is as important as participation in the criminal trial process, although not all of these areas for participation are underpinned by rights in the *Victims' Charter Act 2006* (Vic) (Victims' Charter).

This chapter makes recommendations in relation to:

- enhancing victims' rights in relation to bail, diversion and the mental impairment process under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIA)
- making restorative justice a safe process for victims
- ensuring victims' rights in relation to parole are working effectively.

This chapter also considers issues raised by victims in relation to civil intervention orders, the Victims of Crime Assistance Tribunal (VOCAT) and the Coroners Court.

Bail

As discussed in **Chapter 7**, this report has found that:

- victims are not adequately informed or consulted about bail hearings
- bail decisions are being made without adequately considering victims and their safety
- police do not always advise victims about bail decisions or conditions, making it more difficult for victims to manage their own safety and to advise police if the accused has breached their bail conditions.

These are the key issues relating to victims' rights and bail:

- The *Bail Act 1977* (Vic) (Bail Act) does not require the prosecution to seek the views of the victim about bail, bail conditions or whether the victim has any safety concerns.¹
- The Victims' Charter does not require the prosecuting agency to inform a victim about the outcome of a bail application or about any bail conditions that are intended to protect the victim or family members of the victim unless the victim requests to be informed.
- The Bail Act does not require the bail decision maker to make any enquiries of the prosecution about the victim's views about bail, bail conditions, or whether the victim has any safety concerns.

Incorporating victims' views

Currently, victims' rights concerning bail under the Victims' Charter are 'passive' rights. Victims are only entitled to be told about bail 'after the fact' and only where they have specifically requested to be told the outcomes of a bail application. This does not reflect the victim's role as a participant in criminal proceedings.

Currently, victims' rights concerning bail under the Victims' Charter are 'passive' rights. This does not reflect the victim's role as a participant in criminal proceedings.

The VOCC recommends that the Victims' Charter be amended to require the prosecuting agency to inform a victim:

- about any bail application that the accused makes
- that if the victim wishes to participate, the prosecution can inform the bail decision maker of the victim's views about:
 - their safety (or a family member's safety)
 - whether bail should be granted
 - conditions that should be imposed if bail is granted.

¹ Under section 3AAA of the *Bail Act 1977* (Vic), a bail decision maker must consider 'any known view or likely view' of a victim about granting bail or any conditions of bail but there is no requirement for this information to be put to the bail decision maker.

Information about bail

Section 10 of the Victims' Charter provides that a prosecuting agency's obligations to inform the victim about the outcome of a bail application only apply if a victim requests this information.

All victims should have the right to be advised of the outcome of a bail application and, if granted, any conditions imposed that are intended to protect the victim or family members of the victim.

Victims are generally not familiar with the criminal justice system. Therefore, victims should be notified about bail matters without them having to request this information. Accordingly, the Victims' Charter should be amended by removing the words 'on request by a victim' from section 10(1).

Some victims may not want to be contacted about bail applications, or to express views about bail being granted, or to know the outcomes of bail applications. There should be no obligation on prosecuting agencies to inform victims who have indicated that they do not wish to be informed.

Oversight of victim consultation

While the obligation to inform victims and to seek their views about bail belongs to the prosecution, bail decision makers/courts can perform an important role in ensuring that prosecuting agencies are meeting their obligations towards victims.

Bail decision makers should be required to:

- ask prosecutors whether a victim has been informed about a bail application
- whether the victim has expressed any views about their safety, whether bail should be granted or whether there should be any conditions imposed if bail is granted for the purposes of protecting the victim or a family member.

Prosecutors should be required to provide bail decision makers with victims' views. Reforms should include ways for this information to be provided having regard to victims' safety. For example, victims' views should not be read out publicly.



RECOMMENDATION 45

The Victorian Government should introduce amendments to the *Victims' Charter Act 2006 (Vic)* and the *Bail Act 1977 (Vic)* to enhance victims' rights in relation to bail to ensure victims are respected as participants in the bail process.

The Victims' Charter should be amended to require a prosecuting agency to:

- inform a victim about any bail application
- seek the victim's views about
 - their safety or a family member's safety
 - whether bail should be granted, or any bail conditions imposed
- inform a victim about the outcome of a bail application (without the victim having to request this information).

A victim may indicate to the prosecuting agency that they do not wish to be informed about bail applications or bail outcomes.

The Bail Act should be amended to require the bail decision maker to ask the prosecuting agency whether a victim has been informed about a bail application and whether the victim has expressed any views about:

- their safety or a family member's safety
- whether bail should be granted
- any bail conditions that should be imposed.

Restorative, parallel or alternative justice

There is now a consistent body of research suggesting that some victims perceive restorative justice as fairer, more satisfying, more respectful, and more legitimate than what is offered by the traditional criminal justice system.²

Restorative justice³ can provide victims with enhanced participatory opportunities, including giving victims an opportunity to tell their story on their own terms.⁴

There are several existing restorative justice pathways in Victoria, including:

- the Department of Justice and Community Safety's Victim-Centred Restorative Justice Program⁵
- Family Violence Restorative Justice Service⁶
- the Restorative Engagement and Redress Scheme for former and current Victoria Police employees who have experienced workplace sex discrimination or sexual harassment⁷
- Youth Justice Group Conferencing⁸
- RMIT's Open Circle.⁹

Some victims consulted by the VOCC raised concerns about restorative justice. For example, one victim felt they had been referred to a restorative justice program at a deeply distressing time. Another victim who participated in a restorative justice process felt it was used to perpetrate further abuse.

Other victims consulted by the VOCC expressed support for restorative, alternative or parallel justice options.

Making restorative justice safe

It is clear that the conventional criminal justice system, with its single pathway of prosecution through the courts, cannot meet the needs of all victims. However, concerns raised by victims about restorative justice indicate more needs to be done to ensure restorative justice is a safe option for victims.

With the expansion of various alternative justice options in Victoria, such as redress, apology, restorative and reparative justice, it is imperative that there is clarity and transparency for victims (and the community) about the purpose and objectives of such programs and processes, including the question of whose needs are centred and prioritised.

Concerns raised by victims about restorative justice indicate more needs to be done to ensure restorative justice is a safe option for victims.

While innovation in justice system responses is welcomed, and many victims will benefit from expanded justice options, the development of restorative or alternative justice options should be appropriately structured and formalised. These options should be transparent and clear for victims and the community.

A framework for alternative justice options

The VOCC recommends the development of a publicly accessible framework for 'alternative' or 'parallel' justice options, providing clear and transparent principles underpinning the various alternative or parallel justice options, as well as outlining the victims' role, entitlements and the service standards expected.

A more coherent and consistent conceptualisation of alternative or parallel justice options will provide a whole-of-system framework and facilitate the establishment of robust approaches to accountability and governance.

2 Meredith Rossner, 'Restorative Justice and Victims of Crime: Directions and Developments' in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Taylor & Francis Group, 2017) 238.

3 The term 'restorative justice' is predominantly used in this report due to the common use of this word by victims, stakeholders and in the literature. Some programs/processes/services may better be described as 'alternative' or 'parallel justice' rather than 'restorative justice'.

4 Kelly Richards, Jodi Death and Carol Ronken, 'What Do Victim/survivors of Sexual Violence Think about Circles of Support and Accountability?' (2021) 16(6) *Victims and Offenders* 1, 3.

5 This program facilitates restorative justice processes for victims of crime on the Victims Register whose adult offender is serving a sentence of imprisonment or a parole order: Department of Justice and Community Safety (Victoria) *Restorative justice for victims of crime on the Victims Register* (Web Page) <<https://www.justice.vic.gov.au/vcri/restorative-justice-for-victims-of-crime-on-the-victims-register>>.

6 Department of Justice and Community Safety (Victoria) *Restorative justice for victims of crime on the Victims Register* (Web Page) <<https://www.justice.vic.gov.au/vcri/restorative-justice-for-victims-of-crime-on-the-victims-register>>.

7 Victorian Government, *Restorative Engagement and Redress Scheme* (Web Page, 8 December 2021) <<https://www.vic.gov.au/redress-police-employees>>.

8 Department of Justice and Community Safety (Victoria), *Youth Justice Group Conferencing* (Web Page, 27 September 2022) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-group-conferencing>>.

9 Centre for Innovative Justice, *Open Circle* (Web Page) <<https://cij.org.au/opencircle/>>.

In the Victorian Law Reform Commission's (VLRC) report *Improving the Response of the Justice System to Sexual Offences*, the VLRC recommended government pass legislation that creates a clear and comprehensive framework for delivering restorative justice, incorporating guiding principles of:

- voluntary participation
- accountability
- prioritising the needs of the person harmed
- safety and respect
- confidentiality
- transparency
- the process is part of an 'integrated justice response'
- clear governance.¹⁰

In addition to the VLRC's guiding principles, the VOCC considers the following as key aspects of a framework:

- **Victims' lived experience should be central to the design and evaluation.** Victims' voices and experiences should be centred, not only in the development of new models, programs or services, but also in the independent evaluation of existing programs or services. Independent evaluation of existing restorative justice programs must be made publicly available. Without this, it is difficult to determine victims' satisfaction with the existing pathways.
- **Improved information provision and safe referral pathways for victims.** Victims need clear and consistent pathways to relevant programs or services. Referral processes also need to be streamlined and carefully designed to ensure victims are only referred at appropriate and safe points of the process, and by people with appropriate, trauma-informed training.
- **Models, services and programs should have clear and consistent terminology.** There needs to be clarity and transparency for victims (and the community) about the purpose and objectives of services or programs, including whose needs are prioritised so that victims are aware of what type of service or model is being provided, including the trauma-informed principles underpinning it.
- **Government should lead capability and capacity building in the sector.** This should be done by introducing consistent statewide standards alongside a robust training and accreditation framework. This will ensure all current and future programs meet best practice to minimise the risk of further trauma and harm to victims. Government should also lead in development of the sector to ensure there is a workforce in place that is mature and capable when these programs or processes are offered to victims.

Improving victims' knowledge and awareness

The restorative justice service system is already fragmented and confusing. There is a range of restorative justice programs delivered by various providers across Victoria. Some are government-funded and operated, others are not. There is no single gateway to these various offerings. A simple internet search exploring options for restorative justice in Victoria does not lead victims to a central information point setting out options and supports to engage with alternative justice options.

Victims need to be provided with a clearer sense of pathways to various restorative justice programs. This should be 'future-proofed', noting that new and diverse programs continue to emerge, with different mechanisms and agencies overseeing various programs.

Victims' Charter rights should be enhanced

The VOCC also considers it vital for the Victims' Charter to be amended to ensure that:

- the Victims' Charter applies to all restorative justice programs conducted in Victoria
- victims have the right to be provided with information about available options at a safe time for them
- victims are referred to appropriate support services to engage with restorative justice options.

¹⁰ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 211.



RECOMMENDATION 46

The Victorian Government should develop an overarching framework for 'alternative' or 'parallel' justice options and amend the *Victims' Charter Act 2006* (Vic) to enhance protections for victims in relation to restorative justice programs.

The restorative justice framework should set out clear and transparent principles underpinning the various alternative or parallel justice options, as well outlining the victims' role, entitlements and the service standards expected.

Key principles to underpin a framework include:

- victims' lived experience being centred in design and evaluation
- improved information provision and safe referral pathways for victims
- models, services and programs having clear and consistent terminology
- government leading capability and capacity building in the sector.

The Victims' Charter should be amended to ensure that:

- the Victims' Charter applies to all restorative justice programs conducted in Victoria
- victims have the right to be provided with information about available options at a safe time for them, supported by a statewide entry point
- victims are referred to appropriate support services to engage with restorative justice options.

Independent evaluation of restorative justice

Evaluations of existing restorative justice programs, in particular examination of the outcomes for victims of crime, must be made publicly available. Without this, it is difficult to determine victims' satisfaction with the existing pathways prior to expanding the range and type of options available.

The government should also commit to an evaluation of its existing restorative justice programs:

- Department of Justice and Community Safety's Victim-Centred Restorative Justice Program¹¹
- Family Violence Restorative Justice Service.¹²

These evaluations should be independently conducted, with reports publicly released, and should prioritise both shorter-term and longitudinal studies of victims' satisfaction with restorative justice.¹³

¹¹ This program facilitates restorative justice processes for victims of crime on the Victims Register whose adult offender is serving a sentence of imprisonment or a parole order: Department of Justice and Community Safety (Victoria), *Restorative justice for victims of crime on the Victims Register* (Web Page, 5 December 2022) <<https://www.justice.vic.gov.au/vcrj/restorative-justice-for-victims-of-crime-on-the-victims-register>>.

¹² Department of Justice and Community Safety (Victoria), *Restorative justice for victim survivors of family violence* (Web Page) <<https://www.justice.vic.gov.au/fvrjservice>>.

¹³ There may be gaps in existing research with respect to measuring victims' long-term satisfaction with restorative justice, particularly where an offender fails to complete the agreed undertakings (which may occur months or years after victims provide feedback on the restorative justice process): Jacqueline Larsen, *Restorative Justice in the Australian Criminal Justice System* (Australian Institute of Criminology, Research and Public Policy Series 127, 2014) 27.

**RECOMMENDATION 47****The Victorian Government should:**

- **make public any previous evaluations of restorative justice programs**
- **commit to an evaluation of its existing restorative justice programs.**

The Victorian Government should:

- publicly release existing evaluations of restorative justice programs
- ensure that future evaluations are conducted independently
- prioritise both shorter-term and longitudinal studies of victims' satisfaction with restorative justice.

Diversion

In Victoria there are court-based diversionary programs which offer courts alternatives to trial and sentencing.¹⁴

The diversion stream in the Children's Court enables some young offenders to participate in diversionary programs as an alternative to a custodial sentence.¹⁵

In the Magistrates' Court, an accused will be eligible for the Criminal Justice Diversion Program if:

- the offence is triable summarily and not subject to a mandatory or fixed sentence or penalty
- the defendant acknowledges responsibility for the offence
- there is sufficient evidence to gain a conviction.¹⁶

The aim of the program is to enable individuals to avoid a criminal record and to access rehabilitation or treatment.¹⁷

Diversion can limit participation

During consultation, the VOCC heard that not all victims felt like participants in the diversion process.

All victims, whether or not the accused is subject to a diversion process, should be respected as participants in line with the Victims' Charter, and be entitled to information and support under the Victims' Charter.

A number of respondents to the VOCC's Victims' Survey indicated that when diversion occurred, this removed their opportunity to tell the court about the impact of the crime. A number of respondents to the VOCC's Victims' Survey also expressed concerns about the availability of diversion for more serious offences.

¹⁴ *Criminal Procedure Act 2009* (Vic) s 59; *Children, Youth and Families Act 2005* (Vic) pt 5.2 div 3A. Court-based diversion occurs after an accused person is charged, so is different to police issuing a caution or not charging someone (e.g. due to their age). These diversion programs are different to restorative justice programs. For example, Youth Justice Group Conferencing is a program based on restorative justice principles: Department of Justice and Community Safety, *Youth Justice Group Conferencing* (Web Page, 27 September 2022) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-group-conferencing>>.

¹⁵ *Children, Youth and Families Act 2005* (Vic) pt 5.2 div 3A.

¹⁶ Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (Information Pamphlet, 16 March 2020) <<https://www.mcvvic.gov.au/sites/default/files/2018-10/Criminal%20Justice%20Diversion%20Program%20brochure.pdf>>.

¹⁷ Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (Information Pamphlet, 16 March 2020) <<https://www.mcvvic.gov.au/sites/default/files/2018-10/Criminal%20Justice%20Diversion%20Program%20brochure.pdf>>.

Victims' participation in diversion varies

As can be seen in **Table 5** below, consideration of victims – and their opportunity to participate – varies across the Children's and Magistrates' Courts.

Table 5: Victims' participation in court-based diversion

	Consideration of victim	Participation of victim
Children's Court Diversion	The <i>Children, Youth and Families Act 2005</i> (Vic) must consider the seriousness of an offence and the impact on the victim in determining whether to grant an adjournment for diversion. ¹⁸	There is no formal mechanism for victims' participation.
Criminal Justice Diversion Program – Magistrates' Court	<p>The <i>Criminal Procedure Act 2009</i> (Vic) does not explicitly require consideration of victims.</p> <p>The Magistrates' Court of Victoria states that its practice is to seek victims' views (consistent with s 59(2)(b) of the <i>Criminal Procedure Act 2009</i> (Vic) which states that the Magistrates' Court may inform itself in any way it considers appropriate in determining whether the accused should participate in a diversion process).</p> <p>Research indicates a letter of apology to a victim is a common condition of diversion.¹⁹</p>	<p>While not legislated, where a charge involves a victim, the court indicates that it seeks the victim's views including:</p> <ul style="list-style-type: none"> • whether the victim agrees with the course of action • the amount of compensation sought for damage to property • how the crime has affected the victim. <p>Victims are not obliged to respond to the court's contact.²⁰</p> <p>A diversion hearing is conducted in open court before a magistrate and the magistrate may require the offender/accused to apologise to or compensate the victim.²¹</p>

While the *Children, Youth and Families Act 2005* (Vic) requires the court to consider the seriousness of an offence and the impact on the victim in determining whether to grant an adjournment for diversion,²² Victoria Police members told the VOCC during consultation that in the Children's Court jurisdiction, there are impediments to victims' engagement relating to diversion because the Children, Youth and Families Act is primarily focused on rehabilitation and minimising the harms to young people of criminal intervention.²³

Victoria Police members advised the VOCC that they have a diversion matrix which requires a prosecutor to take into account the impact of the crime on the victim.²⁴ However, there is no direct requirement in their matrix for police to engage with the victim and so police consulted by the VOCC described the victim as 'a silent participant'. Victoria Police members also told the VOCC that 'there are issues with victims being party to the diversion process that doesn't legislatively require them to be involved'.²⁵

¹⁸ *Children, Youth and Families Act 2005* (Vic) s356D(4).

¹⁹ Sentencing Advisory Council, *The Criminal Justice Diversion Program in Victoria* (Report, October 2008) <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Criminal_Justice_Diversion_Program_in_Victoria_Statistical_Profile.pdf>.

²⁰ Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (Information Pamphlet, 16 March 2020) <<https://www.mcv.vic.gov.au/sites/default/files/2018-10/Criminal%20Justice%20Diversion%20Program%20brochure.pdf>>. It is noted that there is no mention of victims in the *Criminal Procedure Act 2009* (Vic) s 59.

²¹ Although an individual must acknowledge responsibility for the offence, they have not been found guilty of the offence.

²² *Children, Youth and Families Act 2005* (Vic) s 356D(4).

²³ *Ibid* s 356C.

²⁴ Section 356F of the *Children, Youth and Families Act 2005* (Vic) requires the prosecutor to consider the impact on the victim in determining whether to consent to a diversion.

²⁵ Consultation Meeting 18 – Victoria Police – Session 2.

Strengthening consultation with victims

The VOCC considers that both the diversion stream in the Children's Court and the Criminal Justice Diversion Program in the Magistrates' Court should be strengthened to provide victims with greater participatory rights.

The VOCC considers that legislation governing the diversion streams in both courts should provide for:

- consideration of the seriousness of an offence and the impact on the victim in determining whether to grant an adjournment for diversion
- requiring the prosecution to seek victim's views including:
 - whether the victim agrees with the course of action
 - the amount of compensation sought for damage to property
 - how the crime has affected the victim.

The court should check whether the prosecution has engaged with the victim and sought their views, to ensure that the prosecution enables victims to participate.

Victoria Police should also update its policies, practices and training to create a clear and transparent best-practice model for consulting with victims in relation to diversion, whether diversion occurs in the Children's or the Magistrates' Courts.

The Victims' Charter should be amended to reflect victims' enhanced rights in relation to diversion.

The Sentencing Advisory Council is currently examining the Magistrates' Court's Criminal Justice Diversion Program and conducting a literature review about the effectiveness of criminal justice diversion programs.²⁶ The Sentencing Advisory Council should consider the issues raised about diversion in this inquiry for its current projects relating to diversion.



RECOMMENDATION 48

The Victorian Government should amend the *Children, Youth and Families Act 2005 (Vic)*, the *Criminal Procedure Act 2009 (Vic)* and the *Victims' Charter Act 2006 (Vic)* to provide for enhanced rights and entitlements for victims during diversion processes in the Children's and Magistrates' Courts.

Victoria Police should also update its policies, practices and training to create a clear and transparent best-practice model for consulting with victims in relation to diversion in the Children's and Magistrates' Courts.

Legislation governing the diversion streams in both courts should provide that:

- the prosecution must seek the victim's views about diversion including:
 - whether the victim agrees with the course of action
 - the amount of compensation sought for damage to property
 - how the crime has affected the victim
- the court checks whether the prosecution has met its obligations towards victims
- the court must consider the seriousness of an offence and the impact on the victim in determining whether to grant an adjournment for diversion.

The Victims' Charter should be updated to reflect victims' enhanced rights in relation to diversion.

The Sentencing Advisory Council should consider the issues raised in this inquiry in relation to diversion for its current projects relating to diversion.

²⁶ Sentencing Advisory Council, *Projects in Progress* (Web Page, 17 February 2023) <<https://www.sentencingcouncil.vic.gov.au/current-projects/projects-progress>>.

Crimes mental impairment matters

Mental impairment matters are governed by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIA). The CMIA deals with a small but significant number of cases involving people whose capacity or behaviour are so significantly affected by their mental condition that they require a specialised response from the law.²⁷ The CMIA applies when an accused is found to have been mentally impaired at the time they committed the crime or when an accused is unfit to stand trial.²⁸ A person who is unfit to stand trial or who is not guilty by reason of mental impairment cannot be held criminally responsible for their actions.²⁹

When a person is unfit to stand trial or is found not guilty because of their mental impairment, the person will generally be placed on a Supervision Order.³⁰ Supervision Orders can be custodial, where the person is detained in a forensic psychiatric hospital, or non-custodial, where the person is supervised while living in the community.³¹

Challenges for victims

Approximately one per cent of all cases are CMIA cases.³² Although these cases are rare, the impact on victims can be profound because the complex nature of CMIA proceedings can make it difficult for victims to engage and participate meaningfully in proceedings.³³ Cases involving mental impairment can be very distressing for victims of crime. They can be confusing, procedurally complex and subject to significant delays.

Cases involving mental impairment can be very distressing for victims of crime. They can be confusing, procedurally complex and subject to significant delays.

The lack of engagement and participation can lead to many victims feeling a sense of injustice. Victims have described the CMIA process as causing significant anger,³⁴ 'great distress'³⁵ and as a 'major injustice'.³⁶

In 2014, a Victorian Law Reform Commission (VLRC) review of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIA) acknowledged that cases that proceed under the CMIA are complex.

The VLRC raised concerns about the way in which victims were experiencing matters dealt with under the CMIA. The VLRC's report raised issues relating to:

- victims not receiving sufficient information about CMIA processes
- victims needing better support throughout the CMIA process, particularly from those with expertise in the CMIA
- the need for the CMIA process to provide for some acknowledgment that the accused's actions have had a significant effect on a victim's life.

Insufficient regard for victims

While an accused's mental impairment means that they are not guilty of a criminal offence, the victim is still a victim of a crime.

While very few victims of crime have to encounter the CMIA process, VOCC's engagement with victims of crime demonstrates that the process with mental impairment cases has the potential to cause significant secondary victimisation. Victims of crime dealing with mental impairment matters told the VOCC that they are not adequately informed or consulted and that there is little transparency in decision making.

27 Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 265.

28 *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s1. An accused may be unfit to stand trial because their current mental state is so severely disordered that they cannot understand what they have been charged with, plead guilty or not guilty, understand the trial process or what is happening in court, understand the evidence or instruct their lawyer: *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 6.

29 30 Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 265.

30 Forensicare, *Mental illness and the criminal law* (Web Page) <<https://www.forensicare.vic.gov.au/about-us/mental-illness-and-the-criminal-law/>>.

31 Ibid.

32 Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 15.

33 Duncan Chappell, 'Victimisation and the Insanity Defence: Coping with Confusion, Conflict and Conciliation' (2010) 17(1) *Psychiatry, Psychology and Law* 39; Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) xii.

34 A Current Affair staff, 'Loved One Furious After Woman Who Stabbed Neighbour 19 Times Over Parking Dispute Avoids Murder Trial', *Nine News* (online, 21 August 2017) <<https://www.9news.com.au/national/loved-ones-furious-after-woman-who-stabbed-neighbour-over-parking-dispute-avoids-murder-trial/55752e05-6095-492b-b956-77d0a92d7038>>.

35 Mr Konduraci's documented post-traumatic stress disorder, for the purposes of the mental impairment hearing, was found to be relevant at sentencing and reduced his jail term; Laura Turner, 'The Outcry Over The 'Mental Impairment' Defence', *Nine News* (online, 10 January 2018) <<https://www.9news.com.au/national/mental-impairment-defence-attacked-by-former-premier/f8e161c9-fc99-4e22-989c-729666cac224>>.

36 Emily Porrello, 'Explainer: The Mental Impairment Defence In Homicide Cases', *ABC News* (online, 20 June 2016) <<https://www.abc.net.au/news/2016-06-20/the-mental-impairment-defence-explainer/7524324>>.

The main issues raised by victims with respect to mental impairment are:

- gaps in information provision throughout the criminal justice and offender treatment processes
- a perceived lack of consideration for victim's safety and wellbeing in treatment decisions, and limited avenues for victims' voices to be heard or considered
- a perceived lack of rigour and independence regarding assessment processes for mental impairment matters.

Victims consulted by the VOCC spoke about relocating because of fears for their safety relating to the likelihood of a forensic patient being granted leave and released into the community. Victims described wanting to have some say over possible safety mechanisms, such as location or distance restrictions, but instead having to seek protection via separate intervention order processes.

The VOCC notes that the issues outlined below primarily relate to the legislative framework and that agencies involved in the mental impairment process (including the Office of Public Prosecutions and Forensicare) are bound by the legislation governing information provision or notification (or lack thereof) for victims.

Improving victims' participation

Under the CMIA, an accused is not found guilty or sentenced for an offence. However, the court may make a Supervision Order in relation to the (accused) person. Instead of a Victim Impact Statement, a victim may make a report to the court about their views 'on the conduct of the person and the impact of that conduct' on the victim.³⁷

While a patient is undergoing treatment on a Custodial Supervision Order, periods of leave can be granted to assist with their rehabilitation.³⁸ The CMIA established an independent body – the Forensic Leave Panel – to be the main decision-making body regarding leave.³⁹ The Panel may grant:

- special leave of absence
- on-ground leave
- limited off-ground leave.

There is no requirement that the Panel consider the views of victims or families when considering an application for 'special leave of absence'.

There is currently no avenue for victims' voices, including their views on safety, to be considered during the forensic leave process. Victims of crime feel that they are not adequately informed and consulted, and that there is little transparency in decision making.

Strengthened requirements to inform and notify victims, specifically prior to the granting or varying of any leave, should be available to victims in the CMIA scheme. Victims should also be able to make submissions to the Panel in relation to the granting or varying of leave, and decision makers should be required to have regard to the views contained in victims' submissions when granting or varying leave.

The CMIA should be amended to include a positive obligation on the Panel to seek a victim's views before making leave decisions.

The VOCC also advocates for a strengthened victim notification and participation framework to be embedded within both the CMIA and the Victims' Charter. This legislative framework should ensure decisions are made with more consideration and acknowledgement of the harm caused to victims of crime and their ongoing fears for their safety.

The VOCC advocates for a strengthened victim notification and participation framework to be embedded within the CMIA so that victims not only have a right to put forward their views on leave, but that they are made aware of this right and can participate where this is their wish.

Specialised assistance

To supplement improved victim notification and participatory rights under the CMIA and the Victims' Charter, the Victorian Government should also establish a dedicated, specialised victim support stream for victims dealing with mental impairment matters.

³⁷ Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) s 42.

³⁸ Forensicare, *Mental illness and the criminal law* (Web Page) <<https://www.forensicare.vic.gov.au/about-us/mental-illness-and-the-criminal-law/>>.

³⁹ Decisions regarding extended leave are made by the court that made the original Supervision Order.

In 2014, the VLRC highlighted the need for specialised support through the mental impairment processes for victims, in particular from those with experience of the complexities of CMIA matters.⁴⁰

Victim Services, Support and Reform (VSSR), a business unit within the Department of Justice and Community Safety, delivers a range of support services for victims of crime, including the Victims of Crime Helpline, Victims Register, Child Witness Service, and Intermediary Program.⁴¹ VSSR also oversees the Victims Assistance Program (VAP) which is contracted to a range of community-based organisations. A specialised stream of victim support should be developed having regard to how such a stream could best support victims through the CMIA court and leave process – which can be ongoing. This will require consideration of long-term case-management requirements, and relevant notification and information schemes, should this be implemented.

A specialised stream of assistance for CMIA victims would ensure victims are adequately supported throughout the CMIA and leave processes, including having enough specialised support to participate meaningfully in the forensic leave decision-making process.



RECOMMENDATION 49

The Victorian Government should amend the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* and the *Victims' Charter Act 2006 (Vic)* to enhance victims' participatory rights in cases where mental impairment issues are raised.

A specialised stream of assistance should be integrated into the existing victim support system to ensure victims receive targeted, specialised support in relation to mental impairment cases.

The Victorian Government should amend the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* (CMIA) and the victim support system to enhance victims' participatory rights through:

- embedding strengthened requirements to inform and notify victims, specifically prior to the granting or varying of leave by the forensic leave panel, to address victims' safety concerns
- enabling victims to make submissions in relation to the granting or varying of major leave
- requiring all decision makers to have regard to victims' views when granting or varying leave
- enshrining victims' entitlements to information, notification and consultation in the Victims' Charter
- creating a specialised CMIA stream of assistance as part of the victim support system.

Parole and post-sentence decisions

Improving information provision post-sentencing

The Victims Register enables some victims to be placed on a register and receive certain information about a prisoner relevant to their matter.⁴²

The Victims Register also facilitates the participation of victims of crime in parole⁴³ and post-sentence supervision⁴⁴ decision-making processes.

⁴⁰ Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 267.

⁴¹ Department of Justice and Community Safety Victims of Crime Victoria, *Victim Services, Support and Reform* (Web Page) - <https://www.victimsofcrime.vic.gov.au/victim-services-support-and-reform>.

⁴² *Corrections Act 1986 (Vic)* s 30A. Section 17 of the Victims' Charter also outlines victims' entitlements with respect to the Victims Register.

⁴³ A person on the Victims Register can make a submission to the Parole Board: *Corrections Act 1986 (Vic)* s 74A.

⁴⁴ Under section 153 of the *Serious Offenders Act 2018 (Vic)*, a victim may make a submission to the Post Sentence Authority for consideration by the Authority in determining any direction it may give to an offender under the conditions of a supervision order or interim supervision order.

Improving awareness of rights

While the VOCC was told by some stakeholders that the Victims Register facilitates victim participation, and that many victims have positive experiences, the VOCC is concerned that few people are aware of their rights in relation to the Victims Register. This is consistent with previous research.⁴⁵

The VOCC is concerned that few people are aware of their rights in relation to the Victims Register.

Awareness of the Victims Register and eligibility for inclusion on the Victims Register is significant because registration on the Victims Register facilitates the participation of victims of crime in decision-making processes about parole and post-sentence supervision. In this context, the VOCC is concerned that victims' participation in parole and post-sentencing decision making is reliant on their inclusion in the Victims Register.

The VOCC considers there should be enhanced rights in the Victims' Charter in relation to the Victims Register, including the right for victims to be provided with tailored information specifically about the Victims Register by a prosecuting agency⁴⁶ and referred by a prosecuting agency to the Victims Register at sentencing.⁴⁷

More robust information and referral entitlements would address the low awareness of the Victims Register.

Consistent with recommendations in **Chapter 15**, the VOCC also considers the parole process to be another important aspect of victims' participation that could be enhanced by access to independent legal assistance. Victims should have access to state-funded legal assistance to assist them with preparing submissions to the Parole Board.

Below, the VOCC also recommends there be an evaluation of the Victims Register. As part of that evaluation, the VOCC considers it appropriate to review whether access to the Victims Register should be based on an initial automatic referral. As noted by academic Stuart Ross, the 'opt-in' nature of victims' registers 'means that notification about release dates or parole conditions is likely to be uneven in its effectiveness'.⁴⁸ Issues regarding victim awareness of the Victims Register were raised in recent media.⁴⁹



RECOMMENDATION 50

The Victorian Government should enhance victims' rights in the *Victims' Charter Act 2006 (Vic)* in relation to the Victims Register.

Under the Victims' Charter, eligible victims should be:

- provided with tailored information about their eligibility for the Victims Register
- be referred by a prosecuting agency to the Victims Register at sentencing.

Victims should have access to state-funded legal assistance to assist them with preparing submissions to the Parole Board.

Reviewing outcomes for victims

There is a lack of publicly available data relating to the Victims Register, including victims' engagement with it and their overall experiences of it.

As noted by academics Dean Wilson and Stuart Ross, consistent with many victim rights or entitlements, 'it is unclear how often and how effectively these parole notification and submission provisions work'.⁵⁰

45 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 204; Victorian Auditor-General, *Effectiveness of Victims of Crime Programs* (2011).

46 Under the *Victims' Charter Act 2006 (Vic)*, there is a general requirement for investigatory agencies, prosecuting agencies and victims' services agencies to provide information about possible entitlements and refer victims to relevant services but there is no specific right to information or a referral with respect to the Victims Register.

47 Where a victim meets eligibility criteria.

48 Stuart Ross, 'Victims in the Australian Criminal Justice System: Principles, Policy and (Distr)action' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 226.

49 Aneeka Simonis and Mitch Clark 'We owe it to this family', *Herald Sun* (online, 23 August 2023).

50 Stuart Ross, 'Victims in the Australian Criminal Justice System: Principles, Policy and (Distr)action' in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015) 226.

Wilson and Ross have suggested the ‘impact of victim submissions is also debatable, with judges and parole boards generally viewing victim submissions as relevant to only the conditions imposed on parolees’.⁵¹

Overall, it is not clear how many victims:

- are eligible for the Victims Register or are on the Victims Register (either in total or as a percentage of eligible victims)
- make submissions about parole or post-sentencing decisions as a percentage of registered victims.

Combined, this data would assist us to understand victims’ awareness of, and engagement with, the Victims Register and understand how many eligible victims make a submission.

Improved data, combined with an evaluation of victims’ experiences, would provide an enhanced understanding of victims’ engagement and participation. Providing public and transparent data would better indicate whether low participation rates relate to victims not being aware of their right to participate, or whether victims generally do not want to participate in the process.

It is also not clear what victims’ experiences are when they provide submissions.

There needs to be more transparent and publicly available evaluation of victims’ experiences, incorporating feedback from individuals with lived experience of the submission process, including:

- any barriers to participation
- positive aspects of participation
- what aspects of the process could improve victims’ participation.

This review should include engagement with victims who have made submissions and should include questions about their experiences such as:

- Did you understand the process and your role in the process?
- Did you feel safe to participate in the process?
- Did you have sufficient information to participate in the process?
- Did you have sufficient support to participate in the process?
- Did you feel that your views were adequately considered?

A previous review of the parole system in Victoria found that victims ‘felt that the Parole Board did not take sufficient account of their concerns’.⁵² The review stated that ‘something does need to be done to ensure that victims’ voices are heard and taken into account’.⁵³ Concerns were also raised about victims not getting notice (either at all, or in a timely way) about the release of an offender on parole.⁵⁴ In 2023, concerns were raised in the media that the Victims Register is not working to keep victims safe.⁵⁵

The VOCC’s engagement with victims and stakeholders suggests that while there are many positives to the Victims Register process, enhancements could still be made.

In 2023, media reports indicated the Victorian Government would consider automatic notification for victims and whether there are ‘practical changes [they] can make’ to the Victims Register.⁵⁶

The Victorian Government should fund an independent review of the operation and effectiveness of the Victims Register and victim participation in post-sentencing decisions, with that review being made publicly available.

51 Ibid.

52 Ian Callinan, *Review of the Parole System in Victoria* (Report, July 2013) 81 <<https://files.corrections.vic.gov.au/2021-06/ReviewAdultParoleBoard%20v1.pdf>>.

53 Ibid.

54 Ibid.

55 Aneeka Simonis and Mitch Clark ‘We owe it to this family’, *Herald Sun* (online, 23 August 2023).

56 Aneeka Simonis and Mitch Clark ‘We owe it to this family’, *Herald Sun* (online, 23 August 2023).



RECOMMENDATION 51

The Victorian Government should fund an independent review of the operation and effectiveness of the Victims Register and victim participation in post-sentencing decisions, with that review being made publicly available.

The review should include:

- comprehensive engagement with victims of crime
- consideration of models in other jurisdictions
- consideration of whether the Victims Register should be based on an initial automatic referral and the benefits of 'opt-in' versus 'opt out' models
- comprehensive data on the percentage of eligible victims who are registered on the Victims Register
- whether victims are satisfied with information provided and consultation facilitated by the Victims Register
- whether the current scope of offences/sentences is sufficient
- whether Victims' Charter entitlements need to be strengthened.

Civil intervention orders

As discussed in **Chapter 11**, victims who sought safety through intervention orders raised concerns about their participation during the intervention order process.⁵⁷

Victims primarily raised concerns regarding:

- **Lack of participation during the intervention order process:** Some victims advised the VOCC that they did not feel like active participants during the intervention order process. For example, some respondents to the VOCC's Victims' Survey felt ignored and unheard in proceedings crucial to their safety, and as a result felt disempowered. Victims with disability identified ableist barriers to obtaining intervention orders. A number of victims felt they needed a state-funded lawyer to assist them with intervention orders. Some victims surveyed by the VOCC highlighted issues getting or keeping intervention orders in place. Some victims also reported issues of delay and not being given information provision.
- **Breaches of intervention orders not being taken seriously:** Consistent with previous Victorian research,⁵⁸ and as demonstrated by many respondents to the VOCC's Victims' Survey, a high number of victims raised concerns about breaches of intervention orders not being taken seriously.
- **Misidentification and cross applications:** Consistent with previous research,⁵⁹ some respondents to the Victims' Survey also highlighted concerns about being misidentified as the primary aggressor and the system being used to perpetrate further harm.

Many of these matters have been addressed in comprehensive reviews and inquiries, such as Victoria's Royal Commission into Family Violence and ongoing whole-of-system monitoring processes. For example, in 2021, the Family Violence Reform Implementation Monitor stated that misidentification 'occurs far too often' and 'requires urgent attention'.⁶⁰

These issues are persistent and require targeted and whole-of-government responses. Addressing these issues are beyond the scope of this inquiry.

⁵⁷ Intervention orders are civil orders that impose conditions on contact between parties. Intervention orders may be put in place parallel to criminal proceedings or may be the only justice intervention. Family Violence Intervention Orders apply in relation to any family relationships. Under the *Family Violence Protection Act 2008* (Vic) s 8, this includes a current or former spouse, domestic partners, intimate personal relationships, relatives or people who may be regarded as 'like a family member'. Personal Safety Intervention Orders are the most common response by the justice system to non-family violence stalking: Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 96.

⁵⁸ See, e.g., Family Violence Reform Implementation Monitor, *Report of the Family Violence Reform Implementation Monitor* (Report, November 2020) 70 <https://content.vic.gov.au/sites/default/files/2021-05/Report%20of%20the%20Family%20Violence%20Reform%20Implementation%20Monitor%20-%20as%20at%201%20November%202020_1.pdf>.

⁵⁹ *Ibid* 83.

⁶⁰ *Ibid* i.

While the VOCC does not make specific recommendations in this area, the VOCC notes that the Family Violence Reform Implementation Monitor provided a blueprint for addressing systemic misidentification in its 2021 report.⁶¹ The report proposes actions for Victoria Police, Courts and Legal Services, Child Protection and across the family violence sector. In 2021, a parliamentary inquiry into the criminal justice system found female victim-survivors of family violence are regularly misidentified by Victoria Police as the primary aggressor/respondent in family violence proceedings. That review recommended that Victoria Police, in collaboration with legal and community stakeholders, implement a review mechanism for family violence matters that could identify instances where a victim-survivor may have been misidentified as the primary aggressor in an incident, and provide information about a process for the withdrawal of criminal charges.⁶² The VOCC supports these reforms.

In 2022, the VLRC made a number of recommendations to improve victims' participation in civil intervention matters in relation to stalking. The VOCC also supports these recommendations. In accordance with the recommendations in **Chapter 20**, the government should provide transparent information about its intention to implement these (and other) recommendations.

State-funded financial assistance

In 2018, the VLRC concluded in its review of the *Victims of Crime Assistance Act 1996* (VOCA Act) that the current approach to state-funded financial assistance for victims was 'not victim-centred or beneficial in its approach'.⁶³ The VLRC made 100 recommendations, including removing financial assistance for victims from Victoria's court system and establishing a new administrative model focused on assisting victims in their recovery. A new Financial Assistance Scheme (FAS) is replacing the Victims of Crime Assistance Tribunal (VOCAT) in 2024.⁶⁴

Issues with the current system of state-funded financial assistance are well known following the VLRC's 2018 review of the VOCA Act and more recently, the parliamentary inquiry into Victoria's criminal justice system which, among other things, recommended that interim improvements be made to VOCAT pending introduction of the new FAS.⁶⁵

Accordingly, the VOCC did not focus extensively on issues relating to VOCAT during engagement with victims or consultation with stakeholders in this inquiry. However, issues relating to state-funded financial assistance continued to be raised by victims and stakeholders. Many victims interviewed and surveyed by the VOCC experienced a level of dissatisfaction with VOCAT, citing issues relating to:

- accessibility and information provision
- delays in receiving awards
- certain scheme requirements that are not trauma-informed.

Given the new FAS will replace VOCAT in 2024,⁶⁶ the VOCC does not make any recommendations in relation to financial assistance. The VOCC will regulate the scheme once established, by monitoring the scheme's compliance with the Victims' Charter and receiving complaints from victims about breaches of the Charter.

Coronial matters

In **Chapter 11**, the VOCC heard from some victims that they had found the coronial process to be particularly difficult and distressing. While they were a small number, some victims had encountered what they described as insensitive and invalidating practices.

In June 2023, the *Review into improving the experience of bereaved families with the coronial process* (Coronial Review) report was published. The Coronial Review provides options on changes that could be made to improve the experience of families in the future.

61 Family Violence Reform Implementation Monitor, *Monitoring Victoria's Family Violence Reforms: Accurate Identification of the Predominant Aggressor* (Report, December 2021) 6 <https://content.vic.gov.au/sites/default/files/2021-12/FVRIM%20Predominant%20Aggressor%20December%202021_0.pdf>.

62 Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) recommendation 27 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

63 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 38, July 2018) xxi.

64 Victorian Government, *Victims of Crime Financial Assistance Scheme* (Web Page, 5 July 2023) <<https://www.vic.gov.au/victims-crime-financial-assistance-scheme>>.

65 Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) recommendation 32 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

66 Victorian Government, *Victims of Crime Financial Assistance Scheme* (Web Page, 5 July 2023) <<https://www.vic.gov.au/victims-crime-financial-assistance-scheme>>.

The Coronial Review recommended that the Coroners Court of Victoria bolster and strengthen existing services by establishing 'a stepped-care model to provide appropriate levels of support to bereaved families'.⁶⁷

This Coronial Review also notes the intersection of its findings with the 2020 review of victims' services conducted for the Victorian Government by the Centre for Innovative Justice:

The Victorian Government is considering the recommendations from the 2020 CIJ Review of Victim Services, and has acknowledged that the reforms are complex and will require investment over time. Any related recommendations made as part of the current Coronial Council 2021 review will need to consider the Department's commitment to improving services for families bereaved by violent crime across the entire system, and how this can work in a complementary way with the establishment of the proposed Coronial Service for bereaved families regardless of the cause of death.⁶⁸

The VOCC does not make any further recommendations in relation to coronial matters, noting the previous reviews highlighting the need for enhanced services for victims of crime. The VOCC supports these recommendations.

In **Chapter 15**, the VOCC also recommends that victims have access to state-funded legal representation to assist victims dealing with coronial matters.

⁶⁷ Coronial Council of Victoria, *Review into Improving the Experience of Bereaved Families with the Coronial Process* (Report, 2022) 10 <<https://files.justice.vic.gov.au/2023-06/Final%20Coronial%20Council%20Bereaved%20Families%20Report%20-%20Full%20Copy%20%40%207%20June%202023.pdf>>.

⁶⁸ Coronial Council of Victoria, *Review into Improving the Experience of Bereaved Families with the Coronial Process* (Report, 2022) 34 <<https://files.justice.vic.gov.au/2023-06/Final%20Coronial%20Council%20Bereaved%20Families%20Report%20-%20Full%20Copy%20%40%207%20June%202023.pdf>>.

Overview of Chapter 20: Creating and measuring change

This inquiry has identified that cultural change in the justice system is still needed to properly recognise and incorporate victims as participants.

Recognising the victim's role as participant – and making changes to accommodate this – requires all justice system agencies, organisations and individuals to reassess how they treat and interact with victims.

Systemic barriers

In Chapters 12 to 19, the Victims of Crime Commissioner (VOCC) has made recommendations that, if effectively implemented, will address many of the systemic barriers identified in this report. Some recommendations from these previous chapters will address multiple systemic barriers. This chapter summarises how implementing these recommendations will address systemic barriers.

Enhancing transparency and accountability

Some victims and other stakeholders the VOCC consulted were frustrated about the lack of action taken to address concerns that have been raised countless times in previous reports and inquiries.

In conducting this inquiry, the VOCC found that it is often difficult to identify whether a recommendation from a previous report or inquiry is supported, under review or not supported by government. Lack of transparency and accountability with respect to review and inquiry recommendations creates uncertainty for subsequent reviews. Subsequent inquiries often recommend the government to implement the recommendations of previous reviews and inquiries.

Victims who participate in reviews are often motivated by the desire to improve the system for other victims. However, such selfless acts involve revisiting and reliving what may have been one of the most traumatic experiences of their lives. The lack of certainty relating to the status of recommendations from previous reports and inquiries risks re-traumatising victims. It replicates issues with the victims' services system whereby victims are required to tell and then re-tell their story multiple times.

The VOCC recommends that the Victorian Government publicly report on the implementation of recommendations from all major Victorian and Commonwealth reports and inquiries in relation to victims from the past 10 years in the form of a victims' reforms progress report.

In recognition of the importance of transparency and accountability for all victims of crime in Victoria, the Victorian Government should be required to provide a victims' reforms progress report annually.

Cultural change through training

Because change for victims is incremental and is often resisted, a continued focus on cultural change is essential. A key barrier to victims' participation is that lawyers have been socialised in a legal culture and structure that, until very recently, has not recognised victims as legitimate participants in criminal proceedings.

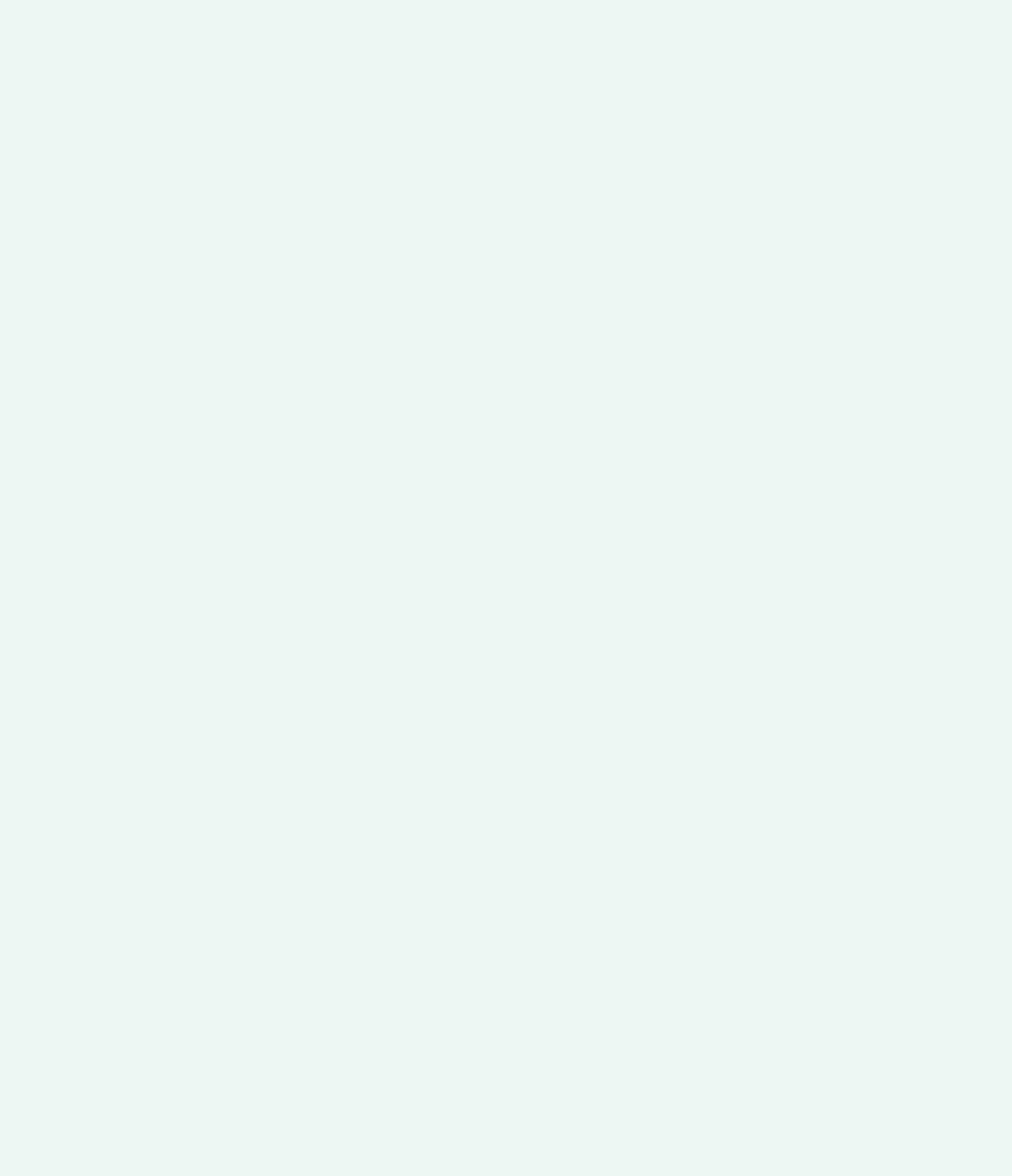
It is therefore essential to focus on the challenge of cultural change. If this is not done, there is likely to be an 'implementation gap' between reforms and what happens for victims in a practical sense. The VOCC makes a number of recommendations aimed at improving cultural change, including that:

- the Judicial College of Victoria develop a training and education framework on victims' rights and entitlements underpinned by trauma-informed principles
- heads of jurisdiction direct all judicial officers to participate in specified victims' training, professional development or continuing education before sitting on criminal cases and appeals
- the Victorian Legal Services Board and Commissioner, Office of Public Prosecutions and Victoria Legal Aid examine ways of improving training and education for all lawyers (prosecution and defence) in relation to victims' rights and entitlements and victim-centred legal practice, with a view to developing a training and education framework for all lawyers (prosecution and defence) in relation to victims' rights and entitlements and victim-centred legal practice.

The cost of crime

One of the most consistent challenges identified in reviews and by stakeholders is the need for additional resourcing to uphold victims' rights and entitlements and provide victims with the services and responses they victims need.

Many recommendations from reports and inquiries require new or additional funding. While there are strong justifications for funding for victims given the harm they have experienced, a detailed socioeconomic analysis would provide more comprehensive insight into the true cost of crime to victims, employers, the community, and health systems. It would also provide a stronger platform for determining what investments government should make to support changes concerning the rights of victims of crime and to help victims to recover from the effects of crime. The VOCC recommends that the Victorian Government fund an independent socioeconomic analysis of the costs of crime to victims and the broader community.



20

Chapter 20:
**Creating and
measuring change**



Introduction

In Chapters 4 to 11, victims described many examples where they were not treated as participants by justice agencies and the victims' services system.

In Chapters 12 to 19, the Victims of Crime Commissioner (VOCC) has outlined recommendations aimed at improving outcomes for victims and increasing their participation in the justice system, consistent with their participatory entitlements under the *Victims' Charter Act 2006* (Vic) (Victims' Charter). Many of these recommendations include proposed legislative change. However, law reform alone is 'not equipped to address the multitude of challenges that are posed by long ingrained structures, institutions and cultures'.¹

Recognising the needs and interests of victims is comparatively new in the justice system, especially when compared with traditional responsibilities such as ensuring a fair hearing/trial (for judicial officers), charging an accused (police), acting in the public interest (for prosecutors) and acting in a client's interests (for defence counsel).

This inquiry has identified that cultural change in the justice system is still needed to properly recognise and incorporate victims as participants. Recognising the victim's role as a participant – and making changes to accommodate this – requires all justice system agencies, organisations and individuals to reassess how they treat and interact with victims.

This chapter:

- summarises how recommendations in this report aim to address systemic barriers to participation
- makes recommendations to improve the accountability of government and responsible departments and agencies in responding to reviews and inquiries relating to victims
- makes recommendations aimed at improving cultural change through education and training for lawyers and judicial officers
- makes recommendations relating to the need to ground investment in victims' initiatives through a deeper understanding of the costs of crime to victims and the community.

Systemic barriers

As outlined in detail in Part 2 of this report, the VOCC identified a number of structural and systemic barriers to victims' participation.

Exploring a broad concept such as 'participation' has necessarily resulted in the identification of many and varied issues relating to victims' experiences of the justice and victims' service systems.

The VOCC notes that many of these issues have been raised in previous reports and inquiries and have been the subject of many recommendations over the past decade. In some cases, the same recommendations have been made in report after report, such as recommendations relating to:

- victims' need for more specialised, targeted and holistic support
- victims' need for independent legal advice and assistance
- the need for police, lawyers and judges to be better trained in trauma-informed practice
- the need for justice agencies and victims' services to increase their sophistication in addressing barriers and meeting the diverse needs of victims, whether arising from their age, gender, sexuality, culture, ethnicity or disability.

Systemic barriers addressed in this report

In Chapters 12 to 19, the VOCC has made recommendations that, if effectively implemented, would address many of the systemic barriers identified in this report. Some recommendations from these earlier chapters would address multiple systemic barriers. For example, a comprehensive state-funded victims' legal service, if implemented correctly, would provide victims with practical legal advice and assistance, and by doing so, would be likely to also reduce secondary victimisation and minimise the confusion and complexity of the legal process which has been highlighted as a key barrier to participation.

¹ Edna Erez, Julie L Globokar and Peter R Ibarra, 'Outsiders Inside: Victim Management in an Era of Participatory Reforms' (2014) 20(1) *International Review of Victimology* 169, 185.

Table 6 below provides a snapshot of some recommendations from Chapters 12 to 19 and the anticipated benefits of implementing specific recommendations in addressing systemic barriers. Because this is a snapshot only, rather than an exhaustive list, the VOCC notes that other recommendations will also address these systemic barriers to victims' participation.

Table 6: Recommendations addressing systemic barriers

Barrier	Recommendations addressing	Anticipated benefits
<p>The justice system is not safe or accessible for all victims to participate in.</p>	<p>Recommendation 4 – the Victorian Government should establish an independent review mechanism enabling victims to seek a review of certain police and prosecution decisions</p>	<p>Victims experiencing systemic barriers will have access to independent review mechanisms. An independent review model may identify bias or misconceptions held by certain decision makers.</p>
	<p>Recommendation 8 – Victoria Police should conduct a review of Victoria Police programs, policies and initiatives, with the aim of engaging with the community and building its confidence to report crime, with a particular focus on priority groups.</p>	<p>Victims encountering systemic barriers to reporting crime would be considered as part of a community-based approach to building confidence to report crime. Training and education opportunities across a police member's career would address myths, misconceptions, bias or prejudice relating to particular groups in the community.</p>
	<p>Recommendation 10 – the Victorian Government should expand the existing work being undertaken to create an online reporting option for sexual assault to different crime types and victims who face systemic barriers in reporting to police.</p>	<p>Alternative reporting mechanisms would assist victims who face additional systemic barriers in reporting crime to police.</p>
	<p>Recommendation 11 – the Victorian Government should ensure the Aboriginal Victims of Crime Strategy includes alternative, culturally safe ways to report crimes and should establish an Aboriginal Social Justice Commissioner to address systemic barriers to participation for Aboriginal and Torres Strait Islander peoples.</p>	<p>Alternative reporting mechanisms and an independent Aboriginal Social Justice Commissioner would address mistrust of the justice system and reluctance to report crime, and provide a culturally safer way for Aboriginal peoples to participate in the justice system.</p>
	<p>Recommendation 15 – the Victorian Government should ensure the Independent Third Person Program is properly used for eligible victims when reporting to police</p>	<p>More consistent use of the Independent Third Person Program would ensure people with a cognitive or mental impairment are properly supported when reporting to police, reducing secondary victimisation and increasing overall participation in the justice system.</p>

Barrier	Recommendations addressing	Anticipated benefits
<p>Participation in the justice system can cause secondary victimisation.</p>	<p>Recommendation 9 – Victoria Police should ensure it has appropriate, accessible, private areas where a victim of crime to safely disclose a crime.</p>	<p>Access to appropriate, accessible, private areas for victims of crime to safely disclose crimes will reduce secondary victimisation and address concerns about case attrition as a result of secondary victimisation.</p>
	<p>Recommendation 12 – Victoria Police should review its capability and capacity in relation to meeting victims’ statutory entitlements to information, in line with obligations under the Victims’ Charter.</p>	<p>Increased capacity in Victoria Police to meet its statutory entitlements to information, in line with obligations under the Victims’ Charter, would minimise the secondary victimisation caused by failures to communicate adequately to victims of crime.</p>
	<p>Recommendation 16 – the Victorian Government should introduce an Independent Victim Support Person program to provide immediate place-based support and assistance to victims reporting crime.</p>	<p>Provision of immediate support – and linkages to the victim support system – at the time of reporting a crime will reduce secondary victimisation by providing victims with practical support and a pathway into long-term case management and support.</p>
	<p>Recommendation 17 – the Victorian Government should implement and properly fund an enhanced victim support system in Victoria.</p>	<p>Access to an enhanced victim support system will increase victims’ participation and reduce secondary victimisation by providing victims with tailored and appropriate support when and how they need it.</p>
<p>The system can be too complex and confusing for some victims to participate in.</p>	<p>Recommendation 1 – the Victorian Government should amend the Victims’ Charter to extend and enhance existing information and consultation requirements.</p>	<p>Ensuring all victims have equal access to information, and are consulted about key decisions, will ensure victims are kept up to date along the justice continuum and better understand their rights and entitlements along the way.</p>
	<p>Recommendation 21 – the Victorian Government should expand its Victims Legal Service to provide funded specialist legal assistance across the range of legal issues faced by victims.</p>	<p>State-funded legal assistance will help demystify confusing legal processes and ensure victims are supported to participate in processes that would otherwise be too legalistic for them to understand, such as plea negotiations, Victim Impact Statements and parole.</p>
	<p>Recommendation 22 – the Victorian Government should fund a sexual offence legal representation scheme and introduce legislative amendments to facilitate legal representation at specific stages of sexual offences proceedings.</p>	<p>A state-funded sexual offence legal representation scheme would ensure victims are adequately informed and protected during complex legal proceedings that arise in sexual offence cases, such as applications for confidential communications or sexual history evidence, and to cross-examine a victim (where an application is required).</p>

Barrier	Recommendations addressing	Anticipated benefits
Dealing with trauma sometimes makes it difficult to participate.	Recommendation 17 – the Victorian Government should implement and properly fund an enhanced victim support system in Victoria.	Access to an enhanced victim support system will increase victims' participation by providing victims with support that is trauma-informed, noting that trauma means victims need different things at different times and that support must be tailored to victims' needs and account for trauma.
Justice system delay impacts the ability or willingness to participate.	Recommendation 6 – the Victorian Government should introduce amendments to the <i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i> to provide victims with a right to be protected from unreasonable trial delay.	Enshrining a victim's right to be protected from unreasonable trial delay formally recognises the victim's status as a participant with a legitimate interest in the resolution of court proceedings.

Enhancing transparency and accountability

Some victims and other stakeholders the VOCC consulted with were frustrated about the lack of action to address concerns that have been raised countless times in previous reports and inquiries. Victims and stakeholders told the VOCC of the consultation fatigue they experience when yet another inquiry examines barriers experienced by victims of crime, while previous reviews and inquiries are left unacknowledged and unacted by the government.

Over the last decade, there have been many reports and inquiries relevant to victims of crime. As outlined in **Table 7** below, together these reports contain hundreds of recommendations.

Table 7: Recommendations made in Victorian reviews since 2014

Year	Title of Report	Number of recommendations
2014	<i>Beyond Doubt: The Experiences of People with Disabilities Reporting Crime</i> (VEOHRC)	16
2014	<i>Victim Impact Statement Reforms in Victoria: Interim Implementation Report</i> (Department of Justice)	9
2016	<i>Inquiry into Abuse in Disability Services</i> (Parliament of Victoria, Family and Community Development Committee)	49
2016	<i>Victorian Royal Commission into Family Violence</i>	227
2016	<i>The Role of Victims of Crime in the Criminal Trial Process</i> (VLRC)	51
2018	<i>Review of the Victims of Crime Assistance Act</i> (VLRC)	100
2018	<i>Restitution and Compensation Orders</i> (Sentencing Advisory Council)	8
2019	<i>Communicating with Victims about Resolution Decisions</i> (CIJ)	5

Year	Title of Report	Number of recommendations
2020	<i>Victims Services Review</i>	(Proposals only)
2021	<i>Review of Victims' Experiences in the Summary Jurisdiction (DJCS)</i>	12
2022	<i>Improving the Response of the Justice System to Sexual Offences (VLRC)</i>	92
2022	<i>Inquiry into Victoria's Criminal Justice System (Legislative Council Legal and Social Issues Committee)</i>	100
2022	<i>Stalking (VLRC)</i>	45

Commonwealth reports have also contained recommendations where at least some of the recommendations are relevant to Victoria, including:

- *Royal Commission into Institutional Responses to Child Sexual Abuse* (2016) (85 recommendations in the Criminal Justice Report)
- *Commonwealth Inquiry into Family, Domestic and Sexual Violence* (2020) (88 recommendations)

It is often difficult to identify the Victorian Government's (or relevant organisation's) response to a recommendation from a report or inquiry. Established processes for Victorian Government responses involve indicating whether a recommendation is:

- **supported in full** – all elements of the recommendation are supported
- **supported in part** – some elements of the recommendation are supported
- **supported in principle** – the Victorian Government generally supports the intent or merit of the policy underlying the recommendation, but does not necessarily support the method for achieving the policy
- **under review** – further analysis is required for the Victorian Government to determine its position
- **not supported** – the Victorian Government does not support the recommendation.²

Sometimes, there is a government response,³ and in some cases, ongoing tracking and accountability,⁴ but this is not universal. Reports by some bodies, such as the Victorian Law Reform Commission (VLRC), Victorian Equal Opportunity and Human Rights Commission or the Sentencing Advisory Council do not require the government to respond to a report or for the government or agencies to report on the implementation status of recommendations.⁵

Lack of transparency and accountability with respect to review and inquiry recommendations creates uncertainty for subsequent reviews. For example, in its 2021 report *Improving the Response of the Justice System to Sexual Offences*, the VLRC endorsed, and sometimes expanded upon, recommendations from its 2016 report *The Role of Victims of Crime in the Criminal Trial Process* but it is not always clear what the government's intentions are in relation to the original recommendations.

² These categories are taken from the Victorian Government's guidelines for staff preparing a response to an inquiry: Victorian Government, *Guidelines for submissions and responses to inquiries* (Web Page, 2019) <<https://www.vic.gov.au/guidelines-written-submissions-and-responses-inquiries>>.

³ Reports by Victorian Parliamentary Committees are tabled in parliament and the government must table a response to the Parliamentary Committee's report within six months: *Parliamentary Committees Act 2003* (Vic) s 36. However, there are sometimes delays in Government responses: Victorian Parliament (Department of the Legislative Council), *President's Report on Overdue Government Responses to Standing Committee Reports, as at 28 February 2023* (7 March 2023) <<https://www.parliament.vic.gov.au/assembly/tailed-documents/search-tabled-documents-database/details/3/12006>>.

⁴ For example, the Victorian Government has produced an annual report relating to family violence reforms: Victorian Government, *Ending Family Violence: Annual Report (2021)* (Report, April 2022) <<https://www.vic.gov.au/ending-family-violence-annual-report-2021>>. The Victorian Government also provides an annual report on its actions following the Royal Commission into Institutional Child Sexual Abuse, which is tabled in parliament: Victorian Government, *Victorian Government Annual Report 2022: Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, 2023) <https://www.parliament.vic.gov.au/file_uploads/Attachment_B_to_Brief_-_Published_report_-_Victorian_Government_Child_Abuse_Royal_Commission_Annual_Report_2022_xRHPk0Zj.pdf>.

⁵ The Victorian Law Reform Commission does provide some tracking of its report's implementation but this appears limited to legislative reforms (noting many inquiries make broader systems recommendations): Victorian Law Reform Commission, *Implementation* <<https://www.lawreform.vic.gov.au/all-projects/implementation/>>.

Subsequent inquiries often recommend that the government implement the recommendations of previous reviews and inquiries. For example, the VLRC recently recommended in its *Stalking* final report that the Victorian Government implement multiple recommendations from two separate reports:

The Victorian Government should implement the victim support recommendations in the Centre for Innovative Justice *Strengthening Victoria's Victim Support System: Victim Services Review report* and recommendations in the Legislative Council Legal and Social Issues Committee *Inquiry into Victoria's Criminal Justice System*, especially recommendations 36, 37, 40, 42, 49 and 50.⁶

Respecting victims' participation in reviews

Most inquiries and reviews involve consultation with victims. Victims' direct experiences form an essential part of determining whether improvements are required to better support victims and uphold their rights and entitlements.

Victims who participate in reviews are often motivated by the desire to improve the system for other victims. However, such selfless acts involve a victim revisiting and reliving what may have been one of the most traumatic experiences of their life.

The lack of certainty relating to the status of recommendations from previous reports and inquiries risks re-traumatising victims. It replicates issues with the victims' services system whereby victims are required to tell and then re-tell their story multiple times.

Recognising and responding to inquiries and their recommendations shows respect for the victims who have selflessly advocated for improvements to the criminal justice system. Many victims only share their stories – sometimes reliving their trauma by doing so – in the hope their voices will be heard and changes made.

In the justice system, procedural fairness for victims includes providing victims with a voice to tell their story and acknowledging their voice. Drawing on these requirements, procedural fairness in relation to a review or inquiry focused on or involving victims requires that:

- serious and genuine consideration will be given to recommendations for change
- victims will be told how their input has been used
- government and criminal justice system agencies will indicate whether they do or do not accept recommendations from a review.

Having a system that tracks progress on reforms may help to reduce the risk that victims will feel that their contribution was not valued. Increasing the accountability of government and agencies in relation to a review's recommendations should form part of the government's overall commitment to respecting victims and their contribution.

Tracking implementation of recommendations

There have been many valuable reports over the last decade and many of the recommendations remain current and valuable. Some have been superseded by more recent recommendations. Knowing the status of recommendations will provide clarity and reflect the need for procedural fairness to victims.

The VOCC recommends that the Victorian Government publicly report on the implementation of recommendations from all major Victorian and Commonwealth reports and inquiries in relation to victims from the past 10 years in the form of a victims' reforms progress report. This report should be published six months after the publication of this inquiry. This report should include an acquittal against all recommendations in the reports listed in **Table 7** above and should indicate whether a recommendation is supported (in full, part of principle), under review or not supported.⁷

⁶ Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 88.

⁷ These categories are taken from the Victorian Government's guidelines for staff preparing a response to an inquiry: Victorian Government, *Guidelines for submissions and responses to inquiries* (Web Page, 2019) - <https://www.vic.gov.au/guidelines-written-submissions-and-responses-inquiries>.

The VOCC notes that the Victorian Government has produced an annual report on family violence reforms⁸ and its actions following the Royal Commission into Institutional Child Sexual Abuse which is tabled in Parliament.⁹

In recognition of the importance of transparency and accountability for all victims of crime in Victoria, the Victorian Government should be required to provide a victims' reforms progress report annually. This annual report would include:

- an overview of any parliamentary or government-initiated (or government-funded) reviews and inquiries relevant to victims of crime
- an overview of recommendations relevant to victims' rights or entitlements contained in these review and inquiry reports
- the status of implementation activities.

This report should be required to be tabled in Parliament. This requirement should be enshrined in the Victims' Charter.



RECOMMENDATION 52

The Victorian Government should publicly report on the implementation of recommendations from all major Victorian and Commonwealth reports and inquiries (where relevant) in relation to victims from the past 10 years in the form of a victims' reforms progress report.

Thereafter, the Victorian Government should provide a victims' reforms progress report annually. The requirement to table this report in Parliament should be enshrined in the *Victims' Charter Act 2006* (Vic).

The first victims' reforms progress report should include an acquittal against all relevant recommendations and should indicate whether a recommendation is supported or not.

An annual victims' reforms progress report should include:

- an overview of any parliamentary or government-initiated (or government-funded) reviews and inquiries relevant to victims of crime
- an overview of recommendations relevant to victims' rights or entitlements contained in these review and inquiry reports, and the status of implementation activities.

⁸ Victorian Government, *Ending family violence: annual report (2021)* (April 2022) <<https://www.vic.gov.au/ending-family-violence-annual-report-2021>>

⁹ Victorian Government, *Victorian Government Annual Report 2022: Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, 2023) <https://www.parliament.vic.gov.au/file_uploads/Attachment_B_to_Brief_-_Published_report_-_Victorian_Government_Child_Abuse_Royal_Commission_Annual_Report_2022_xRHPk0Z3.pdf>

Cultural change through training

In 1993, Australia adopted the United Nations' Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power.¹⁰ Implementing these basic principles has proved challenging. This is because

While the principle of treating victims with respect may appear to be straightforward, experience in other jurisdictions has shown it often requires a major cultural shift by criminal justice agencies.¹¹

In 2016, the VLRC described changes to the criminal justice system for victims as transformational but observed that progress had been slow and limited. The VLRC identified three key components to driving cultural change:

1. **Develop a more coherent legislative and policy framework.** The VLRC indicated that a shared vision of the victim's role – as a participant – was essential for everyone in the criminal justice system. The VLRC said that defining the victim as a participant and recognising victims in the Victims' Charter should further assist in developing this shared vision.¹²
2. **Improve compliance with the Victims' Charter.** By creating a complaints process and regulatory oversight, breaches of the Victims' Charter would be identified.¹³
3. **Cultural change through improving education and training about victims.** The VLRC said that training and education about victims should be directed towards 'everyone within the criminal justice system, in particular judicial officers, defence and prosecution lawyers, police and victim support workers'.¹⁴

In relation to improving education and training about victims, the VLRC said that 'almost all of the comments made to the [VLRC] about the need for cultural change through education and training were directed at lawyers, judges and magistrates'.¹⁵

Because change for victims is incremental and is likely to be resisted, a continued focus on cultural change is essential. A key barrier to victims' participation is that lawyers have been socialised in a legal culture and structure that, until very recently, has not recognised victims as legitimate participants in criminal proceedings.¹⁶ It is therefore essential to focus on the challenge of cultural change. If this is not done, there is likely to be 'an "implementation gap" between the reforms as they are written and what happens in practice'.¹⁷

A key barrier to victim participation is that lawyers have been socialised in a legal culture and structure that, until very recently, has not recognised victims as legitimate participants in criminal proceedings.

In its 2004 report on sexual offences, the VLRC identified that cultural change, including training and education for lawyers and judicial officers, was critical to bringing about meaningful change for victims.¹⁸ The VLRC again recognised the need for cultural change in the legal profession and judiciary in relation to victims of crime more generally in its 2016 report *The Role of Victims of Crime in the Criminal Trial Process*. Only five years later, the VLRC noted that efforts since its 2016 report were 'waning'.¹⁹ Therefore, in 2021 the VLRC recommended further changes to entrench education and training for lawyers and judicial officers in relation to sexual violence.²⁰

Training and education to drive cultural change should not be something that only occurs in response to a review, it should be embedded in standard training and education practices. As the VLRC said, '[c]hanging culture is an ongoing process, and we should persist'.²¹

While the roadmap for achieving cultural change was set out in the VLRC's 2016 report, and some progress has been made, further and ongoing work is required.

10 Adopted by the United Nations General Assembly 29 November 1985. See also Victims Support Agency, Department of Justice Victoria, *Victims' Charter: Community Consultation Paper* (Paper, 2005) 11.

11 Victims Support Agency, Department of Justice Victoria, *Victims' Charter: Community Consultation Paper*. (Paper, 2005) 12.

12 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 48.

13 Marie Manikis, 'Expanding Participation: Victims as Agents of Accountability in the Criminal Justice Process' (2017) 1 *Public Law* 63, 67.

14 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 48.

15 *Ibid* 49.

16 Paul G Cassell, 'Barbarians at the Gates? A Reply to the Critics of the Victims' Rights Amendment' (1999) 2 *Utah Law Review* 479, 512. See also Robyn Holder, Tyrone Kirchengast and Paul Cassell, 'Transforming Crime Victims' Rights: From Myth to Reality' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 1, 2.

17 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 395.

18 Victorian Law Reform Commission, *Sexual Offences* (Final Report, July 2004) recommendations 35–41.

19 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 402.

20 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) recommendations 69–74. The VLRC made six further recommendations to entrench training and education in sexual offence cases specifically.

21 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 389.

Training and education should not be a one-off event in a legal career. As research continues and as the law changes, professional development of trauma-informed and victim-centred skills requires refreshing and updating. From an organisational perspective, there are always new judges and lawyers who will need training and education.

Judicial training and education

The need for judicial education and training is now well established in Australia.²² This includes education and training both on appointment and during a judge's tenure. National standards for Australian judges provide that judges should undertake at least five days of training and education each year.²³ Judicial education and training can include understanding social context, cultural sensitivities, understanding bias, and managing juries and other participants in court proceedings.²⁴

Judicial education and training are fundamental to understanding trauma and the systemic barriers and challenges faced by victims of crime,²⁵ in addition to training about substantive laws concerning victims' rights.

A number of recent reviews and inquiries have emphasised the need for judicial officers to have more targeted training and education in relation to victims of crime.

During the Legislative Council's Legal and Social Issues Committee's Inquiry into Victoria's Justice System in 2021, a concern raised by many victims of crime was the need for greater trauma-informed practice in court proceedings.²⁶ Hope, a victim-survivor who gave evidence to the inquiry, stated: 'If judges, Crown prosecutors and in fact all court staff are given trauma-informed training, this would be a huge step in having a legal system that is slightly fairer to the victim'.²⁷

The inquiry found that while they are highly skilled professionals with significant knowledge and expertise, judicial officers could benefit from improved education and training in relation to:

- trauma-informed practice
- cultural competency, in particular in relation to Aboriginal Victorians and culturally and linguistically diverse communities
- awareness of particular issues experienced by the LGBTIQ+ community
- the experiences of persons with a disability.²⁸

In its report on *Improving the Justice System Response to Sexual Offences*, the VLRC recommended that training be required for judicial officers 'to bring about cultural change in courtroom practices and to ensure a respectful and safe environment for complainants'.²⁹ Consistent with the terms of reference of their inquiry, much of the recommended training concerned sexual offences. However, the VLRC also identified the need for judicial training and education more broadly concerning:

- the effects of trauma and how to reduce the risk of further trauma
- effective communication with and questioning of victim survivors, including children
- limits on improper questioning and judicial intervention
- alternative arrangements for giving evidence, and special hearings for children and people with a cognitive impairment.³⁰

The VLRC made further recommendations about the importance of judicial education and training in its 2022 *Stalking* report. The VLRC indicated that training should include a range of matters such as barriers to accessing the justice system and responding to diverse experiences of stalking, the nature and dynamics of stalking, the effects of trauma from being stalked and how to respond in a trauma-informed way.³¹

The Judicial College of Victoria (JCV) is responsible for judicial education and provides resources for judicial

22 Gabrielle Appleby et al, 'Judicial Education in Australia: A Contemporary Overview' (2022) 31(4) *Journal of Judicial Administration* 187, 187-9.

23 National Judicial College of Australia, *National Standards for Professional Development for Australian Judicial Officers* (2006).

24 Gabrielle Appleby et al, 'Judicial Education in Australia: A Contemporary Overview' (2022) 31(4) *Journal of Judicial Administration* 187, 194.

25 Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2021) 771 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_Report/LCSLIC_59-10_Vic_criminal_justice_system.pdf>.

26 *Ibid* 770.

27 *Ibid* 771.

28 *Ibid*.

29 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 409.

30 *Ibid* 409, 410 (recommendation 69). This recommendation was not limited to judicial officers; it also applies to police and lawyers. The recommendation also included specific competencies only in relation to sexual assault, such as understanding the nature and prevalence of sexual violence in the community, barriers to disclosure and reporting sexual violence, identifying and countering misconceptions about sexual violence and how to respond to diverse experiences and contexts of sexual violence.

31 Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) xxii.

officers. The JCV's website includes a suite of resources for judicial officers in relation to victims and witnesses. The website states that:

Understanding the diverse experiences, characteristics and needs of victims and witnesses, and reconciling these with legal and professional requirements, will assist in working with victims and witnesses in your courtroom.³²

However, it is not clear what, if any, training or ongoing education is mandated for judicial officers hearing criminal cases.

Comprehensive trauma-informed training for judicial officers is essential to achieving cultural change and improving recognition of victims in the justice process.

Trauma-informed training may lead not only to enhanced sensitivity towards victims and their needs, but to practical outcomes that improve participation. For example, the Centre for Innovative Justice's report on how the prosecution communicates with victims about resolution decisions found that time pressures imposed by courts may compromise the consultation process.³³ During its consultations, the VOCC was told there is pressure on prosecutors and defence to progress matters and that to redress participation for victims around plea negotiations 'would require a level of engagement that is entirely at odds with the pressure coming from the courts'.³⁴

Respecting a victim's role as a participant requires consideration of how certain practices impact not just on the prosecution and defence but on the victim as a participant in their own right.

While some progress has been made, particularly in the availability of training resources via the JCV, a more structured education and professional development framework in relation to victims' rights and entitlements underpinned by trauma-informed principles is required. Requiring judicial officers to complete victim-centred education and training before hearing criminal cases and appeals would demonstrate the importance of victims' interests and participation in the justice system.

The JCV should develop a training and education framework on victims' rights and entitlements underpinned by trauma-informed principles.

Heads of jurisdiction are responsible for directing the professional development and continuing education of judicial officers and may direct all judicial officers to participate in a specified professional development or continuing education program.³⁵

Heads of jurisdiction should direct all judicial officers to participate in specified training, professional development or continuing education concerning victims before hearing criminal cases and appeals. As the legal system continues to change for victims, heads of jurisdiction should require all judicial officers to undertake refresher training on a regular basis.

To entrench best practices and drive cultural change, the JCV and courts should publish data on victim-related training and education in their annual reports.

³² Judicial College of Victoria, *Victims of Crime in the Courtroom: A Guide for Judicial Officers* (Guide, 2019) <<https://www.judicialcollege.vic.edu.au/resources/victims-crime-courtroom-guide-judicial-officers>>.

³³ Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 14.

³⁴ Consultation Meeting 18 – Victoria Police – Session 2.

³⁵ Dr Helen Szoke, *Review of Sexual Harassment in Victorian Courts and VCAT – Report and Recommendations – Appendix 3. Judicial Independence, Accountability and the Role of the Heads of Jurisdictions* (Court Services Victoria, March 2021) 12.



RECOMMENDATION 53

The Judicial College of Victoria should develop a training and education framework on victims' rights and entitlements underpinned by trauma-informed principles.

Heads of jurisdiction should:

- **direct all judicial officers to participate in specified training, professional development or continuing education concerning victims before hearing criminal cases and appeals**
- **require all judicial officers to undertake refresher training on a regular basis**
- **publish data on completion of training and education in their annual reports.**

A training and education framework on victims' rights and entitlements, underpinned by trauma-informed principles, should feature:

- diverse victims' voices and their lived experience of the criminal justice system
- the views and experiences of victim support workers and advocates, specifically in relation to barriers frequently experienced by victims
- trauma-informed ways to acknowledge victims and facilitate their participation in the courtroom
- in-depth guidance in relation to legislative provisions designed to protect victims, specifically protections relating to giving evidence and the duty of the court to minimise a victim's contact with the accused and their supporters
- examination of defence counsel questioning, including where such questioning is improper or inappropriate
- trauma-informed ways to acknowledge victims during sentencing and to incorporate Victim Impact Statement processes into the sentencing task
- competencies in relation to specific areas of victimisation, including sexual assault, family violence and stalking.

Education and training for lawyers

Research indicates that victims' satisfaction with the justice process depends significantly on how the process is conducted – that is, procedural fairness. The extent to which victims feel they are treated with dignity and respect will inform their assessment of the quality of their interactions with authorities.³⁶

Lawyers play an important role in enabling victims to participate in the justice process. However, some victims told the VOCC they were dismayed by the way lawyers treated them. For example, one victim interviewed by the VOCC recalled being told by the prosecutor while at the court: 'No crying, no sighing and no rolling your eyes. And no huffing and puffing and if you can't do that, sit over there in the corner or stay outside.'³⁷

Another victim surveyed by the VOCC described the OPP's communication style as 'arrogance and no compassion understanding or openness to explain the system in a humanly way ... you are just a pawn to get the outcome'.

Some victims also felt that prosecutors did not always have an appreciation of victims' trauma and lack of knowledge of the justice system. For example, one victim interviewed by the VOCC spoke about the insensitive way in which they were offered a restorative justice process by the prosecutor just moments after being advised that charges were to be downgraded.³⁸

Training for lawyers has continued to be a key theme in inquiries and reviews relating to improving the justice system for victims.

³⁶ Jo-Anne Wemmers, 'Victims' Experiences in the Criminal Justice System and Their Recovery from Crime' (2013) 19(3) *International Review of Victimology* 221, 223.

³⁷ Interview 5 – Victim of crime.

³⁸ Interview 12 – Victim of crime.

The Centre for Innovative Justice's 2019 review into how the prosecution communicates with victims about plea resolutions recommended that the Office of Public Prosecutions (OPP) identify opportunities to support lawyers (and the Victims and Witness Assistance Service staff) to develop their capabilities to deliver a best-practice approach to communicating with victims and consulting with them about resolution decisions.³⁹

In its 2016 report *The Role of Victims of Crime in the Criminal Trial Process*, the VLRC recommended that:⁴⁰

- the Legal Services Board take a lead role in encouraging barristers practising in criminal law to receive victim-related professional development training within their first three years of practice (recommendation 4)
- Victoria Legal Aid and the Office of Public Prosecutions lead the development and delivery of a training program to foster cultural change in how victims are perceived and treated during the criminal trial process (recommendation 6).

Recent reports from the VLRC on *Improving the Response of the Justice System to Sexual Offences* (2021) and *Stalking* (2022) also recommended further training and education for lawyers.⁴¹

Despite awareness of the need for improvement, inquiries and reviews continue to recommend improved training and education for lawyers in relation to victims of crime. To progress beyond recommendations limited to specific reviews, an ongoing training and education framework is needed that embeds professional development in relation to victims' rights and entitlement.

Practising lawyers – both barristers and solicitors – are required to undertake compulsory professional development each year.⁴² Although there are different ways of earning their (compulsory) '10 points', for many lawyers this means 10 hours of classes involving a traditional lecture-style format. Seven points are likely to be in an area of their existing subject matter expertise (which may include laws relevant to victims). Lawyers must spend a minimum of one hour on the remaining three streams, namely ethics, professional development and practice management. As a result, lawyers often only spend one hour developing professional skills of the kind that would help them to build trauma-informed and victim-centred skills and practices for their interactions with victims.⁴³

Education and training for lawyers is not only about understanding relevant laws, such as those on victims' rights. Victim-centred legal practices require skill development in communicating with victims and interacting with victims in a trauma-informed manner. It is clear from victims that lawyers require further training in developing these skills.

An ongoing training and education framework is needed for all lawyers (prosecution and defence) in relation to victims' rights and entitlements and victim-centred legal practice. The Victorian Legal Services Board and Commissioner together with the Office of Public Prosecutions and Victoria Legal Aid should examine ways of improving training and education for all lawyers (prosecution and defence) in relation to victims' rights and entitlements and victim-centred legal practice.

39 Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 15.

40 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 402.

41 See, e.g., Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 410, recommendation 69; Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022), recommendation 5 a-c.

42 *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015* (NSW) r 8; *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015* (WA) r 6.

43 Chris Humphreys, *Getting the Point? Review of Continuing Professional Development for Victorian Lawyers* (Report, November 2020) 4-5 <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>.

**RECOMMENDATION 54**

The Victorian Legal Services Board and Commissioner, Office of Public Prosecutions and Victoria Legal Aid should examine ways of improving training and education for all lawyers (prosecution and defence) in relation to victims' rights and entitlements and victim-centred legal practice with a view to developing a training and education framework for all lawyers.

A training and education framework on victims' rights and entitlements and victim-centred legal practice should include:

- trauma-informed legal practice including skills in communicating with victims and interacting with victims in a trauma-informed manner
- diverse victims' voices and their lived experience of the criminal justice system
- the views and experiences of victim support workers and advocates, specifically in relation to barriers frequently experienced by victims
- in-depth guidance in relation to legislative provisions designed to protect victims, specifically protections relating to giving evidence
- how to question a victim in a respectful manner and avoid questioning that is improper or inappropriate
- competencies in relation to specific areas of victimisation, including sexual assault, family violence and stalking.

Education and training for law students

In 2016, the VLRC observed that 'there is scope for the study of victim-orientated laws to be incorporated into evidence and criminal law subjects'.⁴⁴ A law degree includes eleven compulsory subjects (called the 'Priestley 11') and some optional subjects. Compulsory subjects such as Criminal Law and Evidence may include some discussion of victims, but the focus is primarily on understanding the law. Some optional subjects may examine victims' legal issues in more detail.

Increasing law students' familiarity with victims' rights and how the law works in relation to victims further recognises the importance of victims. It reflects that victims are integral to, and participants in, the criminal justice system. Victims are not irrelevant or simply something to be added as an afterthought to criminal practice.

Including the study of victims' rights and interests in law courses would better reflect that a fair trial no longer only involves a binary perspective (of the prosecution and the accused) but reflects a triangulation of interests which include those of the victim.

Accordingly, the VLRC further recommended that:⁴⁵

The Victorian Legal Admissions Board, ... should advocate for the education and training requirements for admission to the legal profession to include the study of law and procedures relevant to victims, and the causes and effects of victimisation (recommendation 3).

The Victorian Legal Admissions Board advised the VOCC that the Board drew this recommendation to the attention of the Law Admissions Consultative Committee (LACC). However, the LACC deferred adoption of any recommendations because the Australian Council of Law Deans was conducting a 'comprehensive review of legal education and regulation in Australia'.⁴⁶

The VOCC is of the view that education and training requirements for admission to the legal profession should include the study of law and procedures relevant to victims, and the causes and effects of victimisation. The VOCC supports the Victorian Legal Admissions Board's continued efforts in advocating for the education and training requirements for admission to the legal profession to include the study of law and procedures relevant to victims, and the causes and effects of victimisation.

⁴⁴ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 50.

⁴⁵ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 50.

⁴⁶ Correspondence from Victorian Legal Admissions Board to Fiona McCormack, Victims of Crime Commissioner, 7 March 2023.

Measuring the cost of crime

Funding and resourcing

One of the most consistent challenges identified in reviews and by stakeholders is the need for additional resourcing to uphold victims' rights and entitlements and provide victims with the services and responses they need.

For example, the VLRC's 2021 report *Improving the Response of the Justice System to Sexual Offences*, raised concerns about the resourcing of the OPP's Victims and Witness Assistance Service.⁴⁷ The VLRC recommended that the Victorian Government should, as a priority, address the lack of resources for agencies responding to sexual violence, including specialist sexual assault services, police, and the prosecution.⁴⁸

In 2021, the Department of Justice and Community Safety found that if the prosecution (often Victoria Police) were required to consult with victims in summary proceedings, as the OPP is required to do under the Victims' Charter, there would be significant resourcing implications and introducing such a change without a 'substantial increase in resourcing, [would] risk system failure'.⁴⁹

In 2021, the Legislative Council Legal and Social Issues Committee of the Parliament of Victoria heard in its inquiry into the criminal justice system that resourcing was a problem. For example, Kathleen Maltzahn, Chief Executive Officer of Sexual Assault Services Victoria, said that 'services offered by the organisation all operate on waitlists, with staff frequently needing to decide who they will not be able to service'.⁵⁰ The Committee also heard evidence of problems with a lack of victims' services and resources to support people in rural and regional Victoria.⁵¹

In 2020, the Centre for Innovative Justice (CIJ) identified significant limitations in the capacity of Victims Services, Support and Reform in the Department of Justice and Community Safety to meet the diverse needs of victims of crime who were in contact with a victims' service agency.⁵² The CIJ's Victim Services Review found that the current victims' services system is not adequately structured or resourced to provide the level of support required by bereaved families.⁵³

A number of reviews have also made recommendations for new services to be provided to victims. For example, the CIJ's Victim Services Review articulates a vision for a fully integrated victim support model which includes:

- an enhanced phone-based Victim Support Centre (VSC) that provides a core response to victims of crime including case coordination and proactive, phone-based outreach and integrates the Victims Register
- a more intensive, case-management model to be delivered through a network of community-based agencies across the state (an enhanced VAP model)
- a highly specialised service to support families bereaved by homicide, recognising that these families have unique needs and interactions with criminal justice and coronial processes that will typically require the most intensive support
- a new, dedicated legal service for victims of crime providing specialised information, advice and referrals to victims of crime.⁵⁴

Multiple reviews have identified the need for funding to support victim's diverse needs, including:

- legal representation for victims in relation to applications to access their confidential communications in sexual offence cases⁵⁵
- providing legal advice to bereaved families engaged in the coronial process⁵⁶
- complex legal needs triggered by crime, for example, child protection issues, restraining orders, employment issues because a victim may be away from work for a significant period(s), and migration issues.⁵⁷

This inquiry has identified many matters that require additional funding.

47 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) 247.

48 Ibid.

49 Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 25.

50 Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 309 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

51 Ibid 310.

52 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 41-6.

53 Ibid 139.

54 Ibid 56.

55 Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences* (Report No 42, September 2021) recommendation 87a.

56 Coronial Council of Victoria, *Coronial Council of Victoria – Reference 4 – November 2017: Coronial Council Appeals Review* (November 2017) 49-54.

57 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 18.

Socioeconomic analysis

Many recommendations from reports and inquiries require new or additional funding. While there are strong justifications for the provision of funding for victims given the harm they have experienced, a detailed socioeconomic analysis would provide a much clearer insight into the true cost of crime to victims, employers, the community, and health systems. It would also provide a stronger platform for determining what investments government should make to support changes concerning the rights of victims of crime and help them to recover from the effects of crime.

Recommendations for additional funding for services of the kind discussed above usually focus on the need to fund a specific service. The justifications for funding are often based on addressing problems experienced by victims with existing systems and services. Funding is justified based on important policy considerations like providing better support for victims, removing barriers that prevent victims from accessing services, addressing specific legal needs that victims may have, increasing victim participation and reducing secondary victimisation.

In most cases, it is then a matter for the Victorian Government to determine what funding it will provide. However, funding is determined based on an assessment of the individual program or recommendation rather than upon a deeper understanding of the socioeconomic impact of providing support and services to victims.

Further, while reviews have been detailed from a policy perspective and recommending improvements/expansion of services, they rarely examine the details of resourcing issues. For example, when recommending the replacement of the victims of crime assistance scheme, the VLRC recommended that the body administering the new administrative scheme 'should be provided with the staffing and funding necessary to properly perform their functions'.⁵⁸ The VLRC's recommendation reflects that assessing funding needs generally falls outside the expertise and terms of reference of the reviewing bodies.

In conducting its 2020 review of victims' services, the CIJ indicated that it was not within the scope of its review to undertake detailed costing of the impacts of crime on victims. Nonetheless, the CIJ found:

an unequivocal case for investment in victim support – not only from the crucial perspective of victims' rights and recovery, but from the perspective of fiscal responsibility. This is because evidence suggests that the delivery of appropriate and effective support to victims of crime can support the functioning of the criminal justice system; mitigate the socioeconomic impacts of victimisation; and disrupt cycles of disadvantage and harm. Importantly, in the context of rising prison numbers, this harm includes a significant risk of potential future offending.⁵⁹

Taking a holistic approach to the needs of victims of crime challenges conceptions of victims as people who experience crime as a one-off event and who can be quickly restored to the life that they enjoyed before the criminal act. Further, while not conducting a socioeconomic analysis, the CIJ identified that in relation to victims of crime generally, the individual, families, the community, and government bear the costs of crime in different ways including:

- reduced economic participation and productivity, including due to withdrawal from employment or withdrawal from education (with subsequent impacts on lifetime earning capacity)
- costs associated with physical and mental ill-health, including use of acute health services and longer-term service use
- costs arising from the impacts on victims' children, including disengagement from school, mental ill-health and trauma, and in some instances, child protection involvement
- costs associated with informal caring
- costs associated with future victimisation and offending.⁶⁰

To the extent that there have been reviews and additional investment for victims, they have generally been in relation to victims of family violence and/or sexual offences rather than victims of crime more generally.

⁵⁸ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 38, July 2018) recommendation 8.

⁵⁹ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 41.

⁶⁰ *Ibid* 49. The costs associated with future victimisation and offending refers to research that reveals that victims of crime may 'be vulnerable to further crime victimisation ... [and] may also engage in offending behaviour': at 49. For example, a failure to address mental health issues, drug and alcohol use, and homelessness in victims of crime is linked with offending.

In other areas, conducting this kind of socioeconomic research has led to a deeper understanding of the true cost of crime and the value of investing in supporting victims. This understanding has led to significant increases in government funding for services. For example:

- The Victorian Government commissioned KPMG to measure the cost of family violence to government, the community, and individuals. In 2015–16, an estimated 160,000 people experienced family violence in Victoria. KPMG estimated the total cost of family violence was \$5.3 billion in 2015–16, comprised of:
 - \$1.8 billion for the government provision of services
 - \$2.6 billion for costs borne by individuals and their families, and
 - \$918 million for costs borne by the Victorian community and broader economy.⁶¹
- Anglicare commissioned Deloitte to conduct a socioeconomic cost-benefit analysis of the potential cost savings of extending the age of support for children and young people in out-of-home care. Deloitte's study identified significant potential benefits to individuals and the community that could flow from extending out-of-home care from the age of 18 to 21.⁶²

Similarly, a recent cost-benefit analysis of the economic benefit flowing from legal aid services funded by the Australian Government demonstrated that

for every dollar spent by the federal Australian government on legal assistance, Legal Aid Commissions deliver \$2.25 in quantitative benefits. The report found these benefits relate to avoided costs to the justice and other systems, to individuals, and to wider government and societal outcomes that may arise, for example, from early intervention.⁶³

A socioeconomic analysis of the cost of crime (to victims, victims' families, employers, the community, and to government) and the potential benefits that would flow from greater investment in responding to victims' needs (to assist them to recover from crime and participate more effectively in the criminal justice system) would be invaluable.

This kind of analysis is critical in considering recommendations for increasing investment to reduce the long-term impacts of crime on victims and to enable victims to exercise their rights to participate in the criminal justice system. The analysis would also make clear to the Victorian Government what benefits flow from their economic investment, and the consequences of not providing support for victims. This analysis could also assess the benefits of funding the entrenchment of education and training for the judiciary and lawyers in conducting trauma-informed legal proceedings and victim-centred legal practice.

Socioeconomic analysis should build a consistent method for estimating the costs of crime and would provide an important part of the evidence base for the Victorian Government's investment in reforms over the short, medium, and long term.



RECOMMENDATION 55

The Victorian Government should fund an independent socioeconomic analysis of the costs of crime to victims and the broader community.

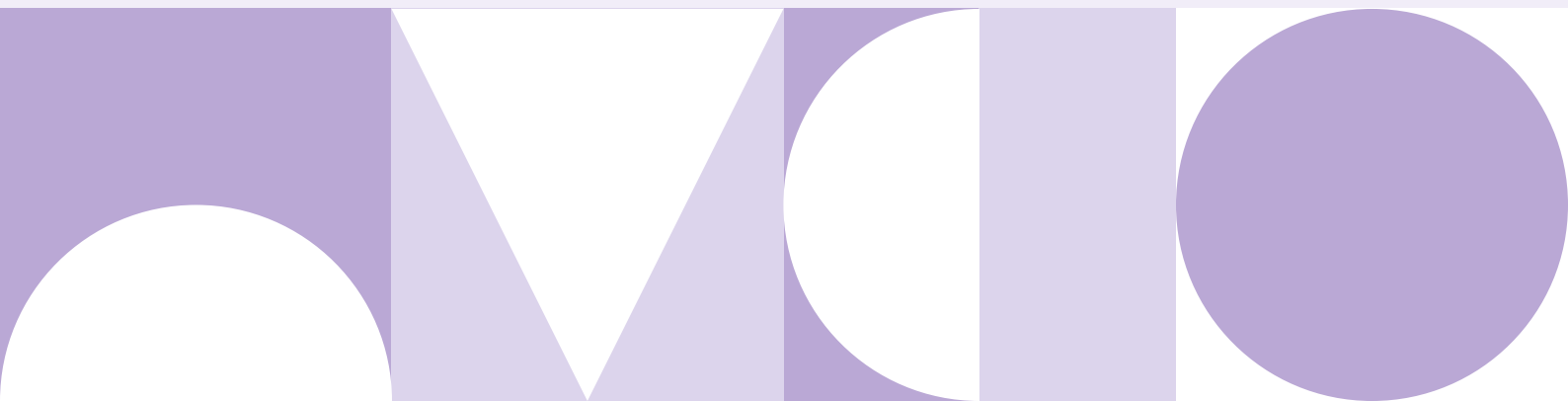
The socioeconomic analysis should be modelled on the report *The Cost of Family Violence in Victoria* (2017). The report should include consideration of:

- reduced economic participation and productivity as a result of crime victimisation
- costs associated with physical and mental ill-health, including use of acute health services
- costs associated with informal caring as a result of victimisation
- costs associated with future victimisation and offending, having regard to the known links between victimisation and offending.

61 KPMG, *The Cost of Family Violence in Victoria* (Summary Report, May 2017) 2 <<https://www.vic.gov.au/sites/default/files/2019-05/Cost-of-family-violence-in-Victoria.pdf>>.

62 Deloitte Access Economics, *Raising Our Children: Guiding Young Victorians in Care into Adulthood* (Report, April 2016) ii-iii <<https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-guiding-young-victorians-in-care-into-adulthood-anglicare-220816.pdf>>.

63 Louise Glanville and Martha Arkalis, 'What is the Cost of not Funding Legal Assistance' (Speech, International Legal Aid Group, Harvard, 21–23 June 2023) 1 <<https://www.legalaidvic.gov.au/benefits-funding-legal-assistance>>. Louise Glanville is the Chairperson of National Legal Aid and the Chief Executive Officer of Victoria Legal Aid.



Appendix 1:
**Overview of surveys for
systemic inquiry**



Victims of Crime Commissioner's Victims' Survey

In line with the Victims of Crime Commissioner's (VOCC's) terms of reference, the VOCC sought to ascertain victims' views on:

- what 'participation' means to them at key stages of the justice process, including whether the current scope of participatory rights meets their justice needs
- how the current (legislated) participatory rights translate to meaningful participation at key stages of the justice system, including any barriers experienced
- whether further reforms are required to enable meaningful participation by victims of crime, whether involving legislative reform, cultural change, procedural or service system delivery.

To ascertain victims' views, the VOCC undertook an anonymous online survey asking people who have been a victim of crime about their experiences of participation in the justice and victims' services system.

Methodology

Distribution

The survey was available via a website link on the VOCC's website from 22 October 2021 until 1 March 2022.

To promote the survey, 12 tweets were directed at various groups on the Commissioner's Twitter page, receiving 35,564 impressions and 673 engagements, including likes, comments and around 100 retweets. Following this targeted campaign, a range of victim advocates and organisations shared information on the survey and the systemic inquiry, including the Victorian Law Reform Commission, the Sentencing Advisory Council, the Youth Affairs Council and the Commissioner for Children and Young People.

Media releases were sent out in June 2021 announcing the inquiry and in October 2021 promoting the Victims' Survey. The Commissioner was interviewed by various media outlets about the systemic inquiry and the Victims' Survey, including *The Age*, SBS Radio, 3AW, 3KND Kool N Deadly and Joy FM. Visits to the Commissioner's website spiked directly after each of these interviews.

The Commissioner sent newsletters to victims' services and justice agencies in July 2021 informing them of the inquiry and again in November 2021, encouraging them to share the survey with clients and community members.

Eligibility

To complete the survey, people had to be 16 years or over, and identify as one of the following:

- a victim of crime
- a witness to a crime that injured them
- the parent, guardian, or carer of a child who was a victim
- the close family member of a victim of crime who has died.

The crime must also have happened in Victoria, but it was not requirement that a person had gone to the police or have used a victim support service.

Survey design

The survey consisted of 33 questions and focused on five keys areas:

- overall experience and participation with the justice system
- experience with police
- experience with victim services
- court experience
- the Victims' Charter.

Additionally, a number of demographic questions were asked in order to better understand the experiences of different cohorts.

All questions were optional.

Accessibility

The Victims' Survey was written in Plain English and available online. The survey was also translated into and available in the following community languages – Arabic, Dari, Simplified Chinese, Vietnamese – so as to promote access and inclusion of people from refugee or migrant backgrounds.

A tailored survey was developed for Aboriginal and Torres Strait Islander peoples and informed by feedback from specialist Aboriginal services consulted during the design phase.

Victims were also invited to contact the VOCC office if they wished to talk about their experience in another way.

The survey was tested with victims of crime from diverse backgrounds. The Aboriginal and Torres Strait Islander survey was also tested with Aboriginal people who have experienced crime. This process ensured that the survey and the language used was accessible, inclusive and easy to understand for a range of people of diverse backgrounds and experiences. The process also ensured that language that could re-traumatise victims was removed or amended, and additional ideas that victims identified as trauma-informed and culturally safe were incorporated.

Survey responses

The VOCC received 156 responses to the survey, with a breakdown as follows:

Plain English	150
Easy English	0
Aboriginal and Torres Strait Islander	6 (+4*)
Arabic, Dari, Simplified Chinese, Vietnamese	0
Total	156

**Four respondents completed the Plain English version of the survey but identified as Aboriginal and Torres Strait Islander, taking the total number of responses to 10.*

Limitations of survey data

It is acknowledged that the relatively small number of responses (156 responses) cannot be considered a representative sample of all victims of crime in Victoria. Any trends, points of interest or indicators detailed in the systemic inquiry relate only to the 156 respondents who took part in the survey and cannot be assumed to be the experience of all victims.

Significantly, the VOCC Office did not receive any survey responses in the community languages of Arabic, Dari, Simplified Chinese, Vietnamese.

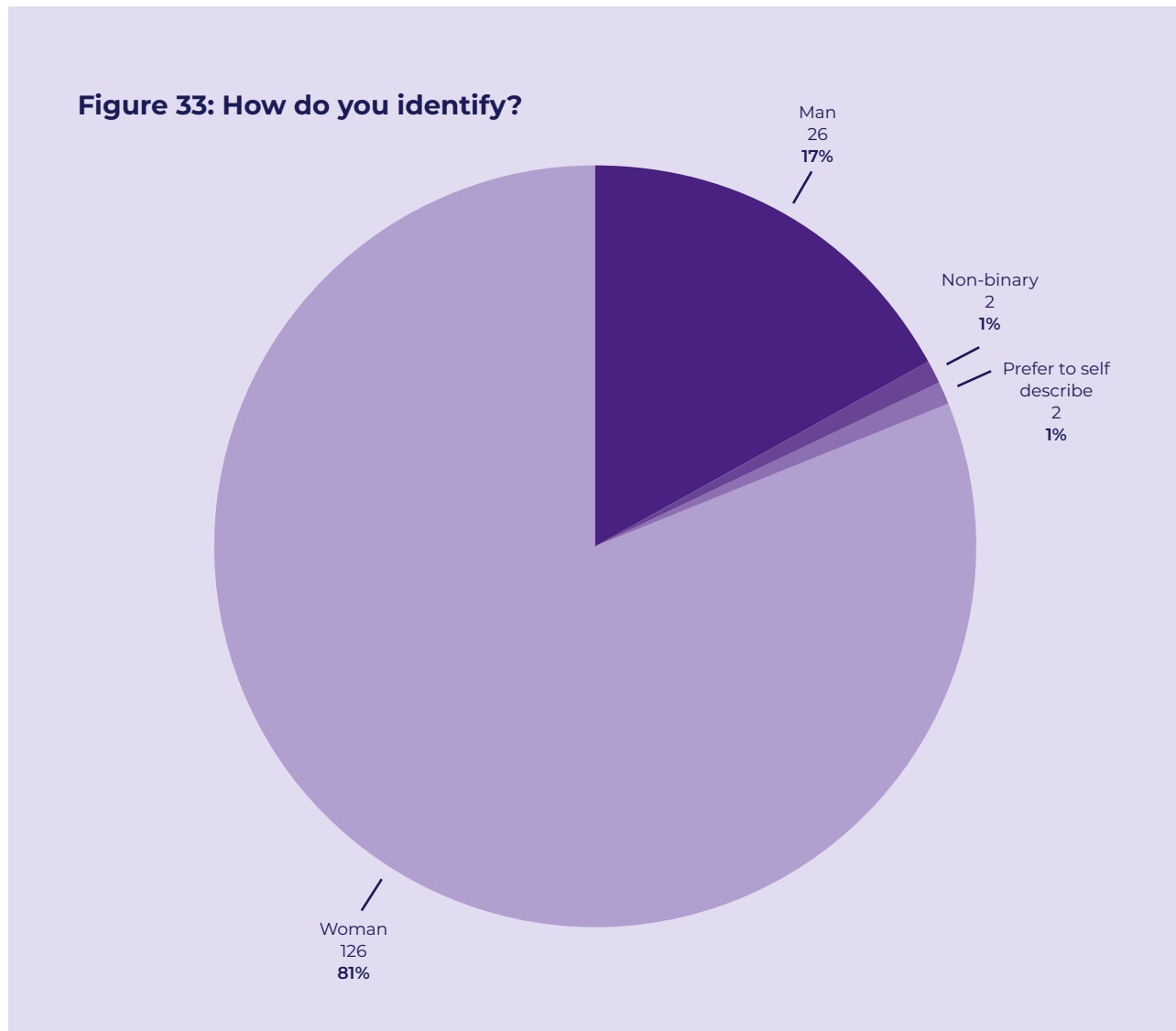
It should also be noted that there was no instruction or requirement for respondents to focus on any single victimisation experience. It is assumed, but not able to be verified, that respondents focused on their most relevant (or significant) experience of victimisation when considering their responses. While getting respondents to focus on a single victimisation experience may have made data analysis simpler and easier, the VOCC wanted to give victims the greatest, and most flexible, opportunity to have their voices heard and has also aimed to account for the complexity of crime victimisation whereby victims often do not have a single victimisation experience.

Because of this flexibility for victims, the survey was also not designed to require victims to specify when the crime occurred or when they engaged with the justice or victims' service system. The complexity of victims' experiences of the justice system means this would not have been able to be done in a trauma-informed way.

The survey was not designed to distinguish between crimes heard in the summary or indictable jurisdictions and therefore which prosecuting agency had prosecuted the matter, although some victims (in free text answers) did provide more specific information about which prosecuting agency their case had been managed by.

Key demographic information of respondents

There were 156 respondents to the survey. The vast majority of responses, 126 (81 per cent) were from women, as shown in **Figure 33** below.



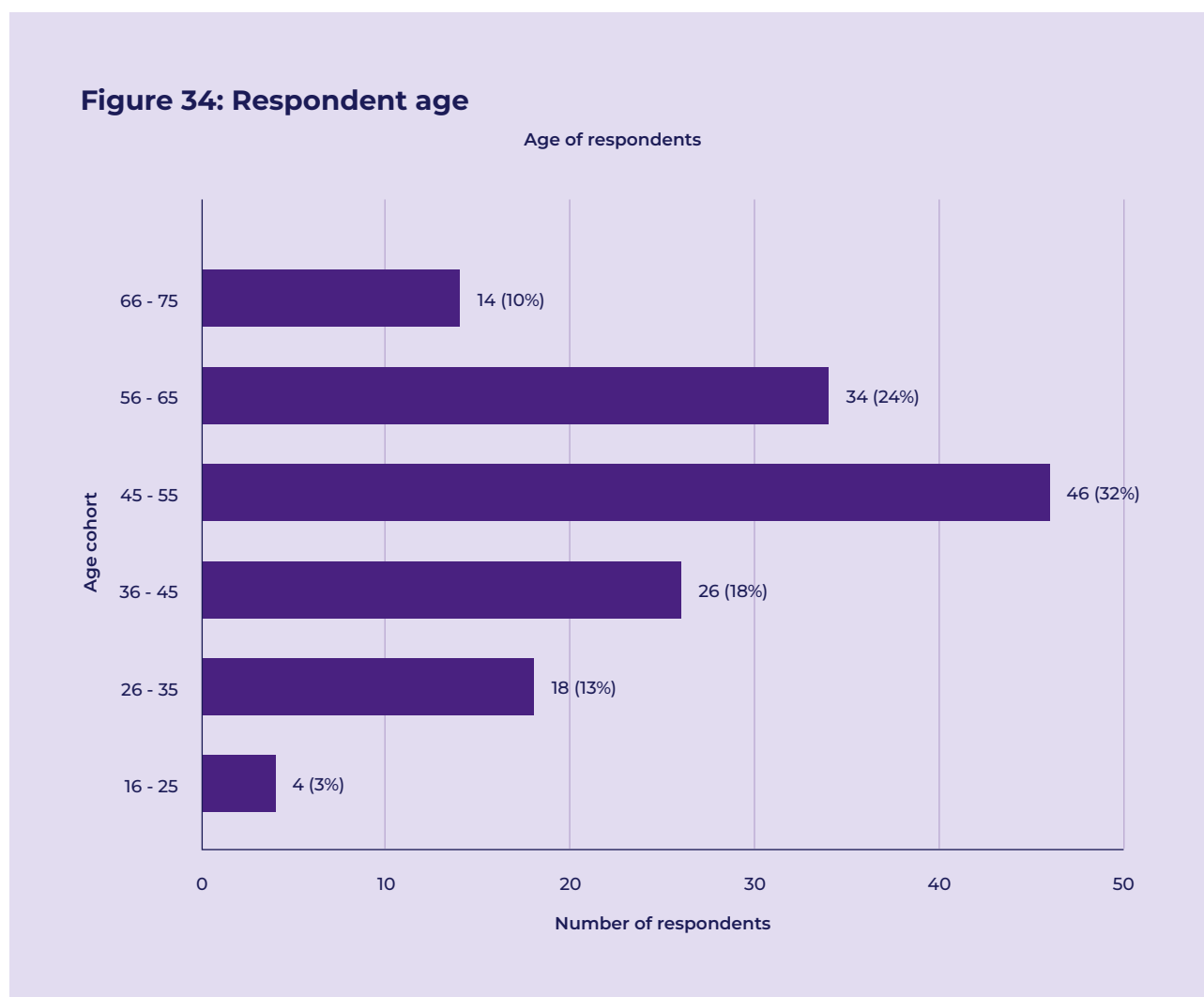
From a gender perspective, this highlights an under representation of male victims in the survey. Victorian Crime Statistics Agency (CSA) data from 2012 to 2021 has consistently shown that when looking at ‘Crimes against the person’ – approximately 45 per cent of victim reports are from male victims and approximately 55 per cent are from female victims¹. Of note also is the fact that ‘Non-binary’ and ‘Prefer to self-describe’ are not recorded options in the CSA data.

Respondents were also asked their age and were able to select from the following ranges:

- 16–25
- 26–35
- 36–45
- 46–55
- 56–65
- 66–75
- 76 or above

¹ Crime Statistics Agency Victoria, ‘Crime Statistics/Download Data’ (Web Data, 2023) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/download-data>>.

It should be noted that 14 respondents chose not to answer this question.



Age brackets 46–55 and 56–65 had the most respondents, 46 and 34 respectively. Only 4 respondents were aged between 16 and 25 and no respondents were aged 76 or above. In comparison, CSA data demonstrates that the 25–34 and 35–44 age cohorts are consistently larger than any other cohort.²

With respect to the other demographic questions asked in the VOCC survey:

- 41 respondents (26 per cent) indicated that they had a disability (according to Victorian government data, 18.4 per cent of Victorians have some form of disability)³
- Ten respondents (6 per cent) identified as Aboriginal or Torres Strait Islander (data from the ABS 2016 census states that Aboriginal and Torres Strait Islander people make up 0.8 per cent of the Victorian population)⁴
- 18 respondents (12 per cent) identified as coming from a migrant or multicultural community (based on the ABS 2016 census, 28.4 per cent of the Victorian population were born overseas and 26 per cent spoke a language other than English at home).

² Crime Statistics Agency Victoria, 'Crime Statistics/Download Data' (Web Data, 2023) <<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/download-data>>.

³ Department of Families, Fairness and Housing (Victoria), *People with a Disability in Victoria* (Web Page) <<https://providers.dffh.vic.gov.au/people-disability-victoria>>.

⁴ Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Population – Victoria* <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0-2016-Main%20Features-Aboriginal%20and%20Torres%20Strait%20Islander%20Population%20-%20Victoria-10002>>.

Respondents were also asked if any of the following attributes negatively influenced their experience of the justice system:

- Having a diverse gender identity
- Being LGBTIQ+
- Difficulties with reading English
- A disability
- Low income
- Low education level
- Age
- Ethnicity
- Race
- Religion
- Living in rural or regional Victoria
- A criminal record
- Being in Australia on a temporary visa
- Being in Australia on a refugee or protection visa
- Experience of homelessness
- Having been in jail
- Family member(s) who have been in jail
- Having lived in foster, kinship, or residential care
- A history of being trafficked for sex or sexually exploited
- Being a sex worker
- Experience with child protection services

Respondents were able to tick as many of the options as they felt appropriate.

102 respondents answered the question. Of those:

- 41 selected one attribute only
- 18 selected two attributes
- 16 selected three attributes
- 27 selected four or more attributes.

A majority of respondents, 61 (60 per cent), believe they have had multiple factors that have negatively influenced their experience with the justice system.

Table 8 below details the responses selected by respondents:

Table 8: Did any of these negatively influence your justice system experience?

Attribute	Number of respondents who selected the attribute	% of respondents who selected the attribute	% of all attributes selected
Low income	54	53%	20.15%
Other	38	37%	14.18%
Experience of homelessness	27	26%	10.07%
Age	27	26%	10.07%
A disability	26	25%	9.70%
Living in rural or regional Victoria	20	20%	7.46%
Experience with child protection services	13	13%	4.85%
A history of being trafficked for sex or sexually exploited	11	11%	4.10%
Low education level	7	7%	2.61%
Religion	7	7%	2.61%
Being LGBTIQ+	5	5%	1.87%
Ethnicity	5	5%	1.87%
Family member(s) who have been in jail	5	5%	1.87%
Difficulties with reading English	4	4%	1.49%
Having a diverse gender identity	4	4%	1.49%
Having been in jail	4	4%	1.49%
A criminal record	4	4%	1.49%
Race	3	3%	1.12%
Having lived in foster, kinship, or residential care	3	3%	1.12%
Being in Australia on a temporary visa	1	1%	0.37%

Low income was the most frequently selected attribute checked by respondents, with 54 of the 102 respondents selecting it as a factor that negatively impacted their experience with the justice system. Given this, it was not surprising to see that across age, gender, migrant and Aboriginal or Torres Strait Islander status, it was either the highest or second highest (second only to “Other”) attribute selected across all of these cohorts.

Twenty-six of the 41 respondents (63 per cent) who identified as having a disability selected Low Income. Only 24 of the 41 respondents (58 per cent) who identified as having a disability selected disability as a factor.

Seven of the 18 respondents (39 per cent) who identified as coming from a migrant background selected low income.

Four of the 10 respondents (40 per cent) who identified as Aboriginal or Torres Strait Islander selected low income.

“Other” was the second most selected attribute, with 38 of respondents entering in a free text response. Seventeen of these respondents did not select any other attribute (with eight entering either “none”, “N/A” or “none of the above”).

There were no clear themes in the free text responses. Entries included:

- inadequate police investigation
- medical/psychological impact of assault
- Aboriginality
- gender bias
- the nature of the crimes being by a spouse
- previous violent relationship.

Experience of homelessness (27 selections), age (27 selections), disability (26 selections) and living in rural or regional Victoria (20 selections) were the next four most frequently selected attributes.

Victims of Crime Commissioner’s Victims’ Professionals Survey

In accordance with the VOCC’s terms of reference, the VOCC sought justice sector and victims’ services views on:

- victims’ participation in the justice process, including their views on any barriers to victims’ participation and associated impacts on the justice system and scope of their role or operations
- whether further reforms are required to enable meaningful participation by victims of crime, whether involving legislative reform, cultural change, procedural or service system delivery.

Given victims’ professionals expertise in supporting and guiding victims through the justice process, the VOCC prioritised surveying victims’ professionals, particularly those professionals who work directly with victims (e.g. case managers, counsellors etc).

The VOCC conducted an anonymous online survey asking victims’ professionals about their views on victims’ participation in the justice and victims’ services system.

Methodology

Eligibility and distribution

The Victims’ Professionals Survey was directed towards victim support professionals who worked directly with victims of crime, primarily workers in Victims Assistance Programs (VAPs), specialist family violence services and specialist sexual assault services.

The survey was distributed by email to these agencies and the survey link in the email was active from 16 June 2022 to 31 July 2022.

Targeted and tailored engagement activities were undertaken by the VOCC’s Engagement team with individual agencies and practitioners encouraged to take part in the survey. The survey was also distributed to the peak organisations for family violence and sexual assault services: Safe and Equal and Sexual Assault Services Victoria.

Survey design

The Victims' Professionals Survey consisted of 43 questions across twelve sections:

- About your work
- Participation under the Victims' Charter
- Police
- Bail
- Prosecution
- Victims as witnesses
- Victims attending court
- Victim Impact Statements
- Victims Register
- Restorative justice
- Victims' Charter
- Additional help

The 43 questions included:

- 15 free text questions
- 25 single-select multiple choice questions
- 1 multi-select multiple choice question
- 2 questions using a five-point Likert scale

The first two questions relating to primary area of work and job title were mandatory, all other questions were optional.

Accessibility

The survey was written in Plain English and available online.

Victims' professionals were also invited to contact the VOCC office if they wished to provide feedback in another way.

The survey was tested with a number of victims' professionals prior to release and amendments made to address feedback.

Survey responses

A total of 55 responses were received from professionals working across four primary areas of work:

- Victim Assistance Program
- Specialist sexual assault service
- Specialist family violence service
- Lawyer working in a health-justice partnership

Limitations of survey data

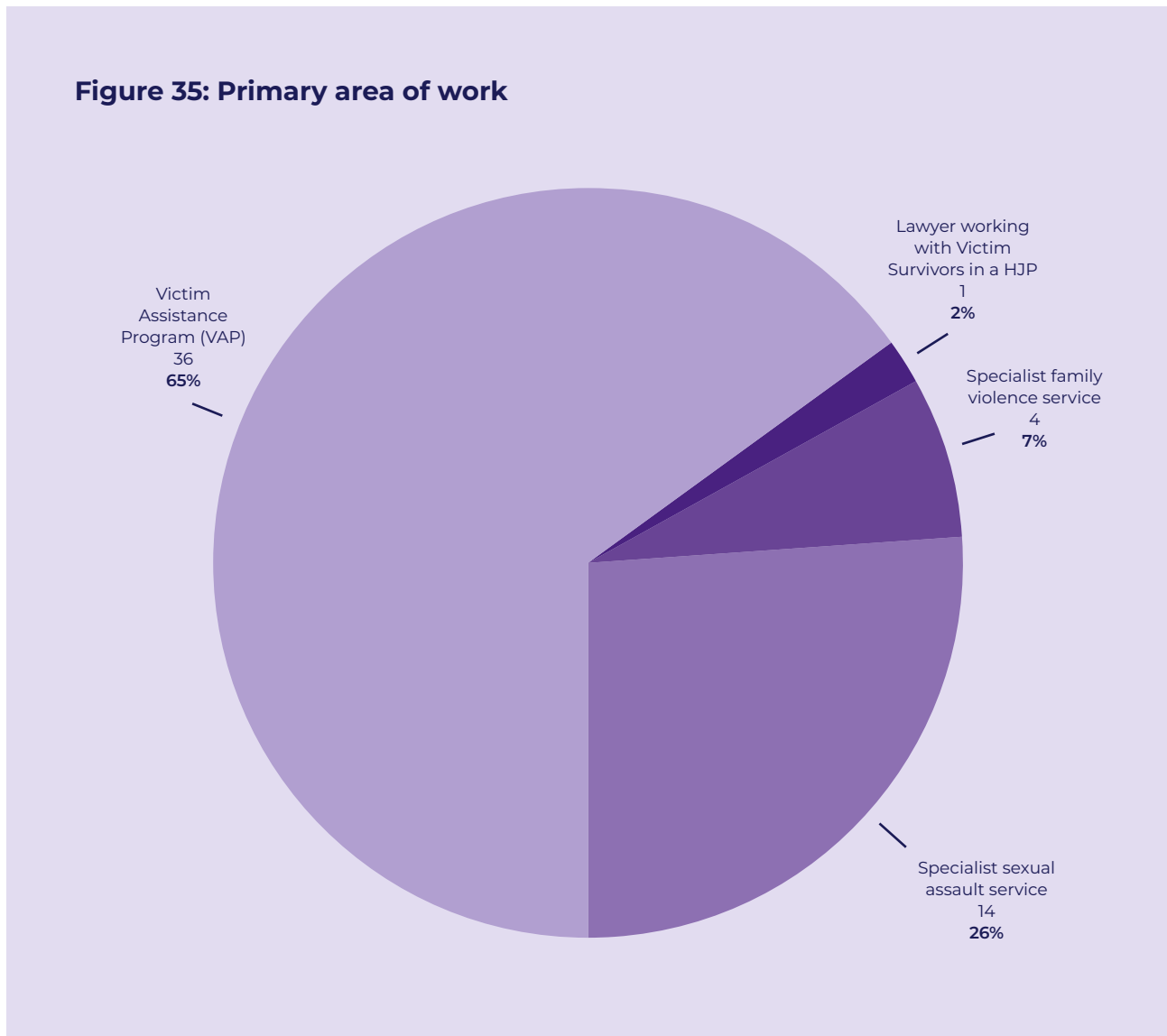
It is acknowledged that the relatively small number of responses cannot be considered a representative sample of all victims' professionals in Victoria. Any trends, points of interest or indicators detailed in the systemic inquiry relate only to the 55 respondents who took part in the survey and cannot be assumed to represent the experience or views of all victims' professionals.

Key demographics of respondents

Primary area of work

Respondents were asked to identify their primary area of work. Options were:

- Victims Assistance Program (VAP)
- Specialist family violence service
- Specialist sexual assault service
- I'd prefer not to identify
- Other



As can be seen, the majority of responses were received from VAP workers (65 per cent). The single use of the 'Other' option was from a lawyer working within a Health Justice Partnership (HJP).

Victims' professionals' roles

Respondents were asked to identify the title that best described their role. Options were:

- Case Manager
- Support Worker
- Intensive Case Manager
- Program Manager
- Social Worker
- Counsellor
- Team Leader
- Koori Engagement Worker
- Aboriginal Liaison Case Worker
- I'd prefer not to identify
- Other

Table 9: Professional roles

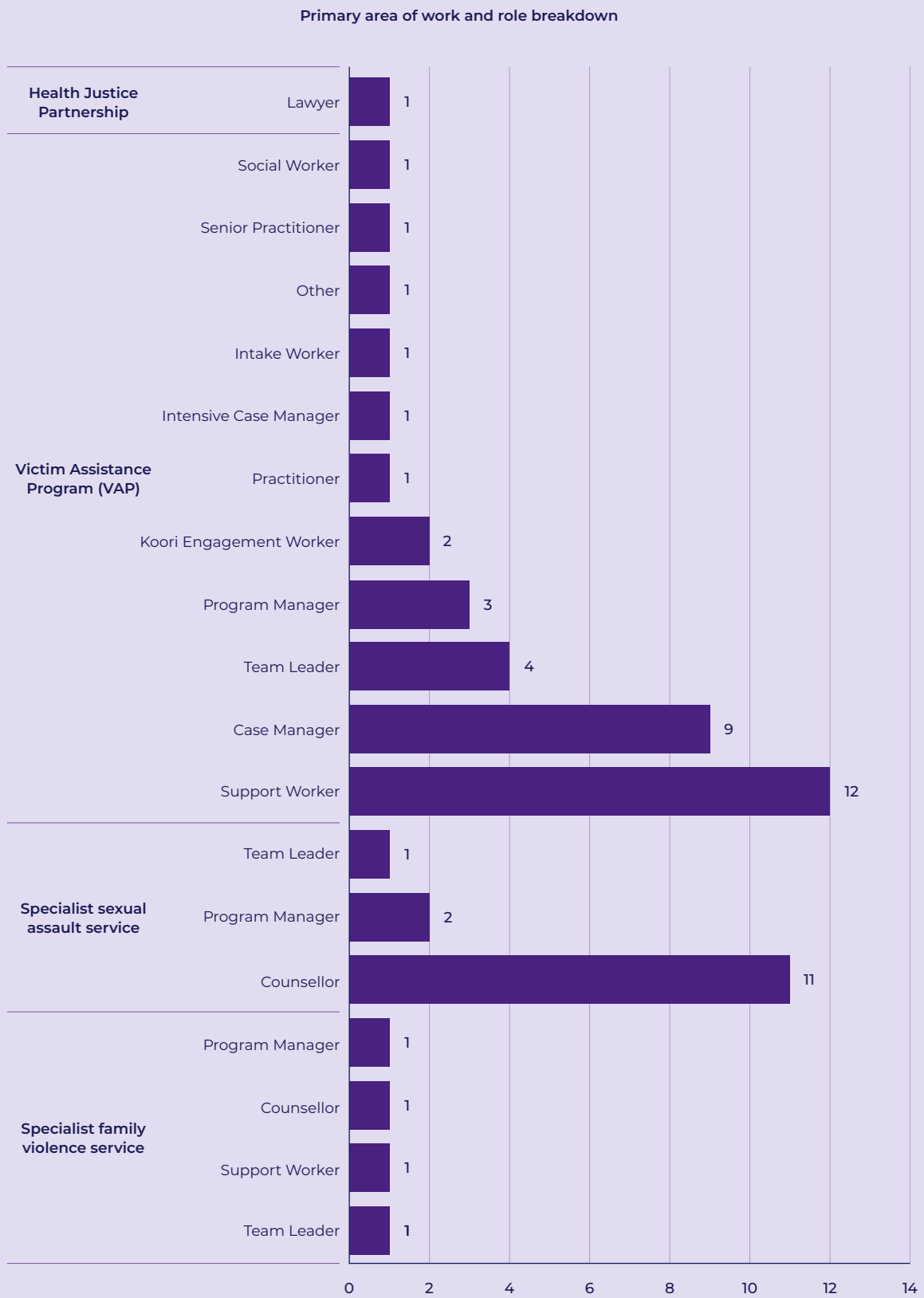
Role	Count	%
Support Worker	13	23.64%
Counsellor	12	21.82%
Case Manager	9	16.36%
Program Manager	6	10.91%
Team Leader	6	10.91%
Koori Engagement Worker	2	3.64%
Senior Practitioner	1	1.82%
Social Worker	1	1.82%
Practitioner	1	1.82%
Intake Worker	1	1.82%
Intensive Case Manager	1	1.82%
Lawyer	1	1.82%
Other	1	1.82%
Grand Total	55	100.00%

Given the diverse nature of the victim support workforce, it is unsurprising to see a wide variety of roles selected across the 55 respondents. As can be seen, the largest role categories were support workers (13 or 23 per cent), counsellors (12, or 22 per cent) and case managers (9 or 16 per cent).

When looking at responses to questions 1 and 2 in combination as depicted in **Figure 36**, there are three clear cohorts:

- VAP support workers (12 or 22 per cent)
- VAP case managers (11 or 20 per cent)
- Specialist sexual assault service counsellors (9 or 16 per cent)

Figure 36: Cohort identification





Appendix 2:
**Overview of engagement
and consultation
activities for systemic
inquiry**



Engagement with individual victims of crime

The Victims of Crime Commissioner (VOCC) heard from 156 victims via an online survey (see **Appendix 1** for methodology).

The VOCC met with 17 individual victims of crime. Individual interviews with victims of crime are quoted throughout this report and victims have been anonymised or identified according to their preferences.

Consultation with individuals, groups, agencies and organisations

1. Associate Professor Kerstin Braun
2. Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg
3. Dr Robyn Holder and Associate Professor Tyrone Kirchengast
4. South Australian Commissioner for Victims' Rights
5. Dr Mary Iliadis
6. Victims of Crime Commissioner – Australian Capital Territory
7. Professor Meg Garvin, Executive Director, National Crime Victim Law Institute (USA)
8. (Former) Commissioner for Senior Victorians (Commissioner Mansour retired on 17 May 2023)
9. Alannah and Madeline Foundation
10. Centre for Innovative Justice, RMIT University.
11. Victim Survivors' Advisory Council
12. Court Network
13. Commissioner for LGBTIQ+ Communities
14. Victims Services staff
15. Experts by Experience Advocacy Team – Women with Disabilities Victoria
16. Victoria Legal Aid
17. Victoria Police – Session 1
 - General duties
 - Investigations
 - Sexual Offence & Child Abuse Investigation Teams
 - Priority and Safer Communities Division
18. Victoria Police – Session 2
 - Prosecutions
 - Priority and Safer Communities Division
19. Victoria Police – Session 3
 - Cybercrime Division
 - Economic Crime Division
 - Organised Crime Division
 - Serious Crime Division (includes homicide, arson, missing person and sexual crime units and State Anti-Gangs Division)
 - Priority and Safer Communities Division
20. Victim Representatives – Victims of Crime Consultative Committee
21. Windermere Victims Assistance Program (consultation occurred in conjunction with the Victims of Crime Commissioner's Victims' Charter Guidelines Advisory group)

22. Community Legal Centres – Session 1
 - South-East Monash Legal Service
 - Women’s Legal Service Victoria
 - Whittlesea Community Legal Service
23. Community Legal Centres – Session 2
 - Mallee Family Care Community Legal Centre
 - Fitzroy Legal Service
 - First Step Legal
 - Ballarat & Grampians Community Legal Service
 - Federation of Community Legal Centres
 - Southside Justice
24. Victoria Police – Session 4:
 - Family violence
25. Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.
26. Berry Street Y-Change Lived Experience Consultant – Session 1
27. Berry Street Y-Change Lived Experience Consultant – Session 2
28. Judicial Representatives – Magistrates’ Court of Victoria, County Court of Victoria, Supreme Court of Victoria
29. Aboriginal Justice Caucus (Meeting 1)
30. Aboriginal Justice Caucus (Meeting 2)
31. Court Services Victoria
32. Office of Public Prosecutions

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