

# **Victims' Charter Review**

Consultation Paper

November 2024

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# This Consultation Paper

This Consultation Paper sets out key issues for consideration as part of the Victims of Crime Commissioner's (VOCC's) review of the *Victims' Charter Act 2006* (Vic) (Victims' Charter Review).

The VOCC wants to know whether the Victims' Charter is operating to benefit victims and, if not, whether changes are required.

This Paper considers five key areas outlined below. You can navigate to areas of interest by clicking on the hyperlinks below:

- [Has the Victims' Charter resulted in cultural change?](#)
- [The 17 Charter principles](#)
- [Scope of the Victims' Charter](#)
- [Upholding Victims' Charter principles](#)
- [Legally enforceable rights](#)

You are not required to respond to every question in the paper. A list of questions can be found at **Attachment 1**.

The VOCC also welcomes feedback about any aspect of the operation of the Victims' Charter and its benefit of victims, even if not raised in this Consultation Paper.

## How to make a written submission

**The deadline for written submissions is Friday 17 January 2025**

**Written submissions should be emailed to: [policy@vocc.vic.gov.au](mailto:policy@vocc.vic.gov.au)**

When making a submission, please identify how you would like your submission to be treated:

- **Public:** we may refer to or quote your submission in VOCC publications and name you / your organisation as the source of the submission in VOCC publications
- **Anonymous:** we may refer to or quote your submission in publications but will not identify you / your organisation as the source of the submission

- **Confidential:** we may use the submission to inform us generally in our deliberations. We will not refer to the submission.

The VOCC will not publish written submissions on the VOCC website but it may be subject to Freedom of Information (FOI) requests. **Attachment 2** details how your submissions will be used.

The VOCC's Victims' Charter Review report will be tabled in Victorian Parliament so will be made public.

## Who do we want to hear from?

The VOCC wants to hear from victims of crime, justice agencies and victims' services. In addition to inviting written submissions, the VOCC will also:

- survey victims of crime about their experiences of the Victims' Charter – a link to the survey [can be found here](#)
- meet with lived experience groups and victims of crime
- consult with stakeholders.



If you are a victim of crime and would like to be involved in the Victims' Charter Review, please contact [engagement@vocc.vic.gov.au](mailto:engagement@vocc.vic.gov.au) to discuss how you can be involved.

The VOCC will also use information already gathered from the VOCC's systemic inquiry [Silenced and Sidelined: Systemic Inquiry into victim participation in the justice system](#) (*Silenced and Sidelined*) which looked at whether recognising victims as participants in the Victims' Charter<sup>1</sup> had improved victims' experiences of the justice system.

## Next steps

The VOCC is required to report to the Attorney-General by 7 September 2025.

The VOCC will use written submissions received to inform her final report which will be tabled in Parliament.

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<sup>1</sup> Victims are recognised as participants under sections 4(1)(ba) and 7A(a) of the *Victims' Charter Act 2006* (Vic).

# What is the Victims' Charter?

The Victims' Charter is a law in Victoria setting out 17 principles for how justice agencies and victims' services should treat victims. You can read the full Victims' Charter Act [here](#).

## Summary of the 17 Victims' Charter principles



**Treat victims with courtesy, dignity and respect and be responsive to victims' particular needs**



**Communicate with victims in a way that recognises their preferences and needs**



**Help victims participate in some justice process including:**

- Making a Victim Impact Statement
- Being heard during the parole process
- Being consulted before some prosecution decisions are made



**Provide victims with information relating to:**

- the progress of investigations and prosecutions
- the court process
- the outcomes of bail
- in some cases, the reason for prosecution decisions



**Provide information about services, entitlements and assistance**



**Help victims stay safe in court**



**Protect victims' personal information and property**



**Respond to complaints from victims who believe an agency has breached the Victims' Charter.**

# This review of the Victims' Charter

Under section 29A of the VOCC Act, the VOCC is required to:

- review the operation of the Victims' Charter (Victims' Charter Review) and its benefits for victims
- produce a report for the Attorney-General by 7 September 2025.

The legislative requirement to review the Victims' Charter came from a recommendation of the Victorian Law Reform Commission (VLRC) in its report, *The role of victims of crime in the criminal trial process* (VLRC's 2016 report).

You can read the VLRC's report [here](#).

## Scope of Victims' Charter Review

The Victims' Charter Review will consider the operation of the Victims' Charter and its benefit for victims. The VOCC will look at:

- victims' awareness and understanding of the Victims' Charter
- victims' views on the effectiveness of the Victims' Charter
- the effectiveness of the Victims' Charter in ensuring justice and victim service agencies respect victims' entitlements
- the effectiveness of any reforms made to the Victims' Charter since it was first introduced in 2006
- whether further reform to the Victims' Charter for the benefit of victims is necessary, including:
  - whether victims should have new or different entitlements
  - what should happen if an agency breaches a principle or entitlement

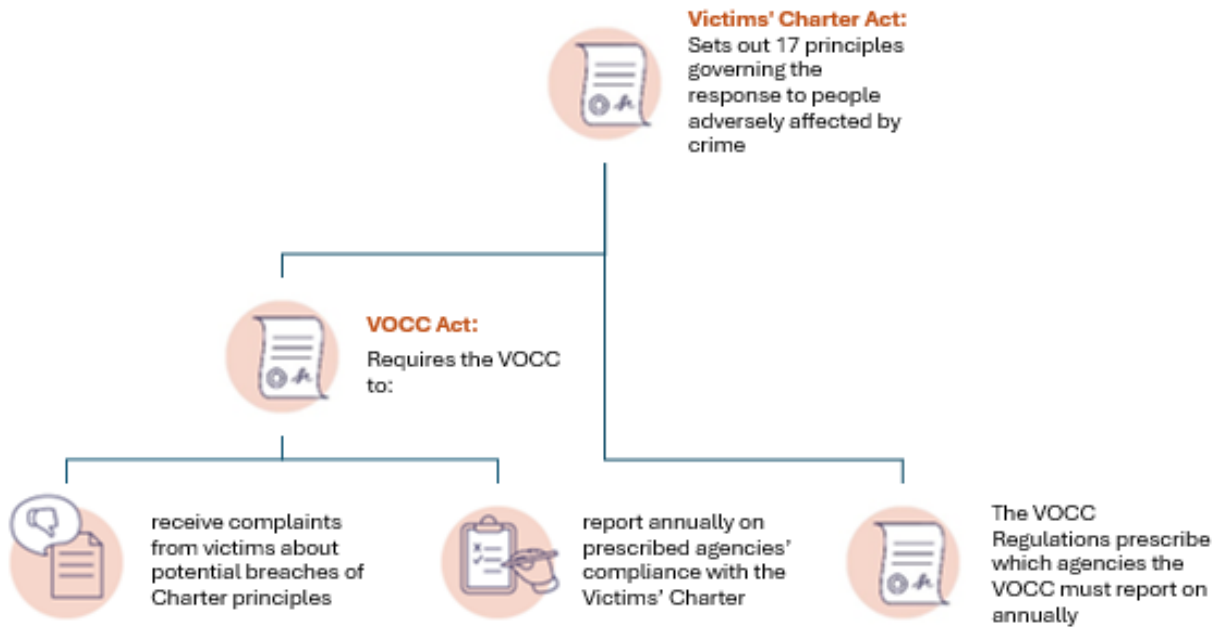
The full Terms of Reference for the Victims' Charter Review can be found at **Attachment 3**.

## The legislative framework

The Victims' Charter, the *Victims of Crime Commissioner Act 2015* (Vic) (VOCC Act) and *Victims of Crime Commissioner Regulations 2020* (Vic) (VOCC Regulations)

work in tandem and together provide the legal framework for victims' treatment by justice agencies and victims' services (see **Figure 1** below).

**Figure 1: legal framework for victims' treatment by justice agencies and victims' services**



# Has the Victims' Charter resulted in cultural change?

## Awareness of the Victims' Charter

The VOCC has heard from victims that there is low awareness of the Victims' Charter.<sup>2</sup> The VOCC has also heard from victim support professionals that victims are often not aware of their entitlements under the Victims' Charter.<sup>3</sup> As identified in *Silenced and Sidelined*, this lack of awareness makes identifying breaches of the Victims' Charter principles difficult.<sup>4</sup>

In its Annual Report 2022-23, the VOCC reported on the Victims' Charter training programs in place in prescribed agencies.<sup>5</sup> Just over a third of agencies (36%) had specific training on the Victims' Charter as part of their induction program.<sup>6</sup>

In the United Kingdom, agencies have a specific role in raising awareness of the UK's Victims Code<sup>7</sup> and in the Australian Capital Territory, a specific function of the Victims of Crime Commissioner is to develop educational and other programs to promote awareness of the interests of victims.<sup>8</sup> These provisions are not in Victoria's Victims' Charter. Under Victoria's Victims' Charter, the Secretary of the Department of Justice and Community Safety has responsibility for promoting Victims' Charter principles.<sup>9</sup>

The VOCC is seeking views on victim awareness of the Victims' Charter and ways to improve awareness, including whether changes should be made to the Victims' Charter or the VOCC Act to improve awareness.

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<sup>2</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 169.

<sup>3</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 172.

<sup>4</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 315.

<sup>5</sup> Prescribed agencies are agencies the VOCC is required to report on annually in relation to their compliance with the Victims' Charter: see section 28 (1A)(b) *Victims of Crime Commissioner Act 2015* (Vic). Agencies are prescribed under Victims of Crime Regulations 2020 (Vic).

<sup>6</sup> Victims of Crime Commissioner, *Annual Report 2022-23* (2023) 28.

<sup>7</sup> Section 6 Code Awareness and Reviewing Compliance: Criminal Justice Bodies: [Victims and Prisoners Act 2024](https://legislation.gov.uk) ([legislation.gov.uk](https://legislation.gov.uk)).

<sup>8</sup> *Victims of Crime Act 1994* (ACT) s11 (1)(i).

<sup>9</sup> *Victims' Charter Act 2006* (Vic) s 20(a).



## Questions:

- 1. How can awareness of the Victims' Charter be improved amongst victims and agencies? What role should justice agencies, victims' services, the Department of Justice and Community Safety and the Victims of Crime Commissioner play in raising awareness?**

## Cultural change in the justice system

When the Victims' Charter was introduced in 2006, the Victorian Government noted that: 'giving effect to victims' rights can be a gradual and evolutionary process. It often requires a major cultural shift by justice agencies and this does not happen overnight'.<sup>10</sup> The then-Attorney-General envisaged the Victims' Charter would 'facilitate ongoing cultural change'.<sup>11</sup>

In its 2016 report, the VLRC found there had been insufficient cultural change to elevate victims' status and treatment in the justice system. The VLRC suggested that clearly articulating the victims' role as a 'participant' (but not a party) in the Victims' Charter would help facilitate this cultural change.

Following the VLRC's 2016 report, changes were also made in 2019 to give the VOCC power to:

- receive complaints from victims who felt principles under the Victims' Charter had not been upheld<sup>12</sup>
- report on prescribed agencies' compliance with the Victims' Charter.<sup>13</sup>

These changes were intended to 'improve compliance with victim-oriented law and policy by strengthening complaint processes and accountability mechanisms'.<sup>14</sup>

In 2023, *Silenced and Sidelined* found little evidence of significant cultural change in victims' treatment, despite victims being recognised in the Victims' Charter as participants. Victims overwhelmingly felt there had been little change to their treatment.<sup>15</sup> Many stakeholders concurred.<sup>16</sup>

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<sup>10</sup> Victoria, Parliamentary Debates, Legislative Assembly, 14 June 2006, 2047 (Rob Hulls, Attorney-General).

<sup>11</sup> Victoria, Parliamentary Debates, Legislative Assembly, 14 June 2006, 2047 (Rob Hulls, Attorney-General).

<sup>12</sup> *Victims of Crime Commissioner Act 2015* (Vic) s 25A.

<sup>13</sup> *Victims of Crime Commissioner Act 2015* (Vic) s 28(1A)(a).

<sup>14</sup> Victorian Law Reform Commission, *The role of victims of crime in the criminal trial process* (Report, 2016) xvi.

<sup>15</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 17.

<sup>16</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 100 – 104.

The VOCC also found compliance with the Victims' Charter was variable. For example:

- Some agencies indicated they were unable to meet Victims' Charter requirements for all victims.<sup>17</sup>
- Despite victims being entitled to information and consultation, many victims reported this didn't happen.<sup>18</sup>
- Despite victims being entitled to be referred to services for assistance, many victims reported that this did not happen.<sup>19</sup>

The VOCC would like to know whether you think the Victims' Charter has resulted in changes to culture and practice that have had a positive impact on victims' experiences of the justice system.

### Questions:

- 2. Has the Victims' Charter been effective in delivering positive outcomes for victims such as changes in attitudes or changes to specific practices? If so, can you provide practical examples of this?**
- 3. What change/s do you think could be made to the Victims' Charter to drive cultural change?**

## Accessibility of Act

The Victims' Charter is legislation. Legislation has sometimes been written in ways that laypeople are not able to easily understand. Some aspects of the Victims' Charter may limit its usefulness as a tool for victims. For example, many members of the public would not:

- be familiar with the term 'Charter', particularly compared to 'rights' which is a more commonly used term

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<sup>17</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 346.

<sup>18</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 223, 345.

<sup>19</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 352.

- understand what is meant by ‘principles governing response to victims and persons adversely affected by crime’—which is the part of the Victims’ Charter which sets out victims’ entitlements.

In the Victims’ Charter, victim entitlements comprise 10 pages of legislation incorporating many headings, sections, subsections and legislative notes. This makes it difficult to quickly identify what victims’ rights and entitlements are.

In contrast, the Canadian Victims Bill of Rights has a short (two-page) dedicated ‘Rights’ section which clearly sets out victims’ rights under clear headings of:

- information
- protection
- participation
- restitution.<sup>20</sup>

The VOCC wants to know whether there are ways to make the Victims’ Charter more user-friendly. For example, would the Victims’ Charter benefit from:

- having a shorter, more accessible statement of key rights for victims
- simple and more inclusive language.

## Questions:

- 4. How could the Victims’ Charter be made more accessible and clearer for victims?**

## Purpose and objects of the Victims’ Charter

The legislative purpose of the Victims’ Charter is to:

- recognise principles that govern the response to persons adversely affected by crime by investigatory agencies, prosecuting agencies and victims’ services agencies

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<sup>20</sup> See, for example, the Canadian Resource Centre for Victims of Crime which states that the ‘*Canadian Victims Bill of Rights* provides 4 principal rights to victims: Information, Protection, Participation and Restitution’: [Know Your Rights - CRCVC](#)

- establish requirements for the monitoring and review of the principles set out in the Act.<sup>21</sup>

The legislative objectives or 'objects' of the Victims' Charter are to:

- recognise the impact of crime on the victims of that crime, including the impact on members of victims' families, witnesses to the crime and in some cases, the broader community
- recognise that all persons adversely affected by crime, regardless of whether they report the offence, should be treated with respect by all investigatory agencies, prosecuting agencies and victims' services agencies and should be offered information to enable them to access appropriate services to help with the recovery process
- recognise that a victim of crime has an inherent interest in the response by the criminal justice system to that crime, giving rise to the rights and entitlements set out in this Act, and to acknowledge the victim's role as a participant, but not a party, in proceedings for criminal offences
- help reduce the likelihood of secondary victimisation by the criminal justice system.<sup>22</sup>

The VOCC wants to know whether the purpose and objects of the Victims' Charter are operating to benefit victims of crime. In particular, are there ways to better reflect contemporary understandings of trauma, victimisation, intersectionality and cultural safety?

## Questions

5. **Do the Victims' Charter purpose and objects meet contemporary expectations regarding trauma, intersectionality, diversity and the need for cultural safety?**

# The 17 Charter principles

The Victims' Charter sets out 17 principles. The Victims' Charter calls these: 'principles governing response to victims and persons adversely affected by crime'.

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<sup>21</sup> *Victims' Charter Act 2006* (Vic) s 1.

<sup>22</sup> *Victims' Charter Act 2006* (Vic) s 4.

## Four broad categories of principles

There are four broad categories of principles:

- Principles that relate to respectful and special treatment
- Principles that relate to information and / or referral to services
- Principles that relate to protection / privacy
- Principles that relate to participation.

### Respectful and special treatment principles

The principles in the Victims' Charter that relate to respectful and special treatment provide guidance to agencies about:

- the need to treat people adversely affected by crime with courtesy, respect and dignity<sup>23</sup>
- considering differences between victims such as: race or indigenous background; sex or gender identity; cultural or linguistic diversity; sexual orientation; disability; religion; age<sup>24</sup>; rural and regional victims<sup>25</sup>
- respecting victims as participants in criminal proceedings<sup>26</sup>
- considering victims' communication preferences.<sup>27</sup>

Broadly, the respectful and special treatment principles address concerns about how victims are treated throughout their contact with agencies and services, including the way in which victims are communicated with and how agencies consider victims' needs and preferences. These principles apply to all investigatory and prosecuting agencies, and victims' services.

The VOCC is aware that despite Victims' Charter principles requiring respectful and special treatment that many victims continue to experience issues with their treatment by justice agencies and victims' services.<sup>28</sup>

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<sup>23</sup> *Victims Charter Act 2006* (Vic) s 6(1).

<sup>24</sup> *Victims Charter Act 2006* (Vic) s 6(2).

<sup>25</sup> *Victims Charter Act 2006* (Vic) s 7A(b).

<sup>26</sup> *Victims Charter Act 2006* (Vic) s 7A.

<sup>27</sup> *Victims Charter Act 2006* (Vic) s 7B.

<sup>28</sup> For example, despite the principles related to being responsive to particular and diverse needs of victims (e.g. sections 6(2), s7A(b)), the VOCC has found that significant barriers to participation in the justice system continue to persist for diverse communities: Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 128.

The VOCC wants to know whether the principles relating to respectful and special treatment need amendment.

## Questions

### 6. Do the principles relating to respectful and special treatment in the Victims' Charter need amendment?

## Information and referral principles

The principles that relate to information and referral aim to ensure victims receive sufficient information to access appropriate support services and entitlements<sup>29</sup> and to understand:

- the progress of an investigation<sup>30</sup>
- the progress of a prosecution and outcomes of bail<sup>31</sup>
- their role as a witness<sup>32</sup>
- their entitlements relating to Victim Impact Statements and compensation<sup>33</sup>
- their entitlement to information regarding the Victims Register and parole<sup>34</sup>
- their entitlements under the Victims' Charter and complaints avenues.<sup>35</sup>

These principles apply variably to different agencies and represent the largest category of Victims' Charter principles.

Information is essential for victims. Many victims will encounter an unfamiliar justice system at a time of great stress. Information principles do not just relate to receiving information for the purposes of procedural fairness. Some information principles impact victims' safety, such as those relating to victims' entitlement to information about bail and parole.

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<sup>29</sup> *Victims' Charter Act 2006 (Vic)* s 7.

<sup>30</sup> *Victims' Charter Act 2006 (Vic)* s 8(1).

<sup>31</sup> *Victims' Charter Act 2006 (Vic)* s 9A(a) and (b) regarding the prosecution and s 10(1) regarding bail.

<sup>32</sup> *Victims' Charter Act 2006 (Vic)* s 11(2)(a)(ii).

<sup>33</sup> *Victims' Charter Act 2006 (Vic)* s 13 (1A) regarding Victim Impact Statements and s 16(3) regarding compensation.

<sup>34</sup> *Victims' Charter Act 2006 (Vic)* s 17(1) and (3).

<sup>35</sup> *Victims' Charter Act 2006 (Vic)* s 18(3).

Research has found that not receiving sufficient information about the investigation, prosecution and court process remains a significant concern for victims despite Victims' Charter entitlements.<sup>36</sup>

The VOCC wants to know whether the principles in the Victims' Charter that relate to information and referral are operating to benefit victims.

## Questions

### 7. Do the principles relating to information and referral in the Victims' Charter need amendment?

## Protection principles

The protection principles aim to:

- enhance the implementation of special protections and alternative arrangements for giving evidence if a victim is to appear as a witness<sup>37</sup>
- enhance victims' physical safety in court environments<sup>38</sup>
- protect a victim's personal information or data<sup>39</sup>
- protect a victim's property.<sup>40</sup>

These principles apply variably to different agencies.

Research by the VOCC has found that despite legislative protections for victim-witnesses, including some protections in the Victims' Charter, there are concerns about how these protections are working in practice.<sup>41</sup> For example, three-quarters of victims surveyed for *Silenced and Sidelined* raised concerns about their safety while attending court.<sup>42</sup>

The VOCC wants to know whether the principles in the Victims' Charter that relate to protection are operating to benefit victims.

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<sup>36</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 60.

<sup>37</sup> *Victims' Charter Act 2006* (Vic) s 11(2)(a)(iv).

<sup>38</sup> *Victims' Charter Act 2006* (Vic) s 12.

<sup>39</sup> *Victims' Charter Act 2006* (Vic) s 14.

<sup>40</sup> *Victims' Charter Act 2006* (Vic) s 15.

<sup>41</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 242.

<sup>42</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 399.

## Questions

### 8. Do the principles relating to victim protection in the Victims' Charter need amendment?

## Participation principles

In summary, the participation principles aim to ensure:

- victims are consulted about significant prosecution decisions in the higher courts<sup>43</sup>
- victims are aware of their entitlement to participate during sentencing in the form of Victim Impact Statements<sup>44</sup>
- victims are aware of entitlements to compensation from the offender and state-funded financial assistance<sup>45</sup>
- victims are aware of their entitlements to participate in parole or post sentence decisions<sup>46</sup>
- victims are aware of their entitlement to make a complaint if they believe an agency has not complied with Charter principles.<sup>47</sup>

These principles apply variably to different agencies. Some of these principles do not relate to any specific agency.

In the VOCC's systemic inquiry report *Silenced and Sidelined*, the VOCC found that despite the Victims' Charter principles that pertain to participation, victims reported that they:

- did not feel consulted about prosecution decisions<sup>48</sup>
- were still missing out on making victim impact statements, particularly in the summary jurisdiction (Magistrates' Court)<sup>49</sup>

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<sup>43</sup> *Victims' Charter Act 2006* (Vic) s 9B.

<sup>44</sup> *Victims' Charter Act 2006* (Vic) s 13(1A).

<sup>45</sup> *Victims' Charter Act 2006* (Vic) s 16(3).

<sup>46</sup> *Victims' Charter Act 2006* (Vic) s 17.

<sup>47</sup> *Victims' Charter Act 2006* (Vic) s 19.

<sup>48</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 319.

<sup>49</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 168 and 265.



- were unaware of avenues for compensation and state-funded financial assistance<sup>50</sup>
- did not have sufficient opportunity to participate in parole or post sentence decisions.<sup>51</sup>

The VOCC wants to hear views on whether the participatory entitlements in the Victims' Charter require amendment.

## Questions

### 9. Do the principles relating to victim participation in the Victims' Charter need amendment?

## Are fewer, more or different principles needed?

Over the past five years, a number of reviews and inquiries have suggested the Victims' Charter be amended to include more or different principles, including amending the Victims' Charter to:

- extend information and consultation entitlements to all victims, rather than just victims in the indictable stream<sup>52</sup>
- provide victims with more information and participation entitlements relating to sentence indications<sup>53</sup>
- incorporate restorative justice practices<sup>54</sup>
- incorporate matters falling under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic)<sup>55</sup>

<sup>50</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 257.

<sup>51</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 457.

<sup>52</sup> Recommendation 30: Parliament of Victoria, Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system* (Report, March 2022) 281; Recommendation 1: Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 26.

<sup>53</sup> Recommendations 36 and 37: Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 32-33.

<sup>54</sup> Recommendation 46: Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 35; Recommendation 9: Victorian Law Reform Commission, *Improving the justice system responses to sexual offences* (Report, September 2021) p xxxi.

<sup>55</sup> Recommendation 49: Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 35.

- enhance victims' rights in relation to the Victims Register<sup>56</sup>
- provide victims with the right to review decisions of police or prosecutions in some circumstances (for example, regarding a decision to discontinue a prosecution)<sup>57</sup>
- enhance the right to referral to supports to include referrals to specialist support services<sup>58</sup>
- strengthen its practical application and use, including possible amendment of section 22 which states that victims' entitlements under the Charter are not legally enforceable<sup>59</sup>
- provide for specific entitlements for victims of sexual offences.<sup>60</sup>

The Victims' Charter is currently primarily focused on the investigation, prosecution and court process but the VOCC knows that victims participate in non-court processes and that having rights during those processes is also important.<sup>61</sup>

Other legislation across Australia includes different rights or entitlements such as specific provisions regarding child victims,<sup>62</sup> forensic proceedings<sup>63</sup> and restorative justice.<sup>64</sup> In NSW, victims have a right to access supports, whereas in Victoria, the entitlement is to be provided information about relevant supports.<sup>65</sup>

It is also possible that 17 principles may be too many – and that a Victims' Charter may be more effective with fewer, more substantial (and clearer) rights.

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<sup>56</sup> Recommendation 50: Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 35.

<sup>57</sup> Recommendation 9e: Victorian Law Reform Commission, *Improving the justice system responses to sexual offences* (Report, September 2021) xxxi; Recommendation 45: Parliament of Victoria, Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system* (Report, March 2022) 396.

<sup>58</sup> Recommendation 9a: Victorian Law Reform Commission, *Improving the justice system responses to sexual offences* (Report, September 2021) xxxi.

<sup>59</sup> Recommendation 29: Parliament of Victoria, Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system* (Report, March 2022) 275.

<sup>60</sup> Recommendation 9: Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, 2021) xxxi.

<sup>61</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 285.

<sup>62</sup> *Victims of Crime Act 1994* (ACT) 14D (Respectful engagement with child victims); *Victims of Crime Act 1994* (ACT) 15B.

<sup>63</sup> *Victims Rights and Support Act 2013* (NSW) s 6A Division 2.

<sup>64</sup> Both the *Victims of Crime Act 1994* (WA)<sup>64</sup> and the *Charter of Victims' Rights 2019* (NT) clarify that victims can participate in restorative justice options, where available.

<sup>65</sup> *Victims Rights and Support Act 2013* (NSW) s 6.3.

## Should the Victims' Charter include all victim entitlements?

The Victims' Charter was initially envisaged as a consolidated representation of victims' entitlements but victims' entitlements now sit across many pieces of legislation.<sup>66</sup> Some significant participatory entitlements for victims are not reflected in the Victims' Charter.<sup>67</sup> The VLRC raised this same issue in its 2016 report. At the time, the VLRC said 'the Victims' Charter Act should be revised to restore its relevance as a coherent framework of victims' rights and entitlements'.<sup>68</sup>

The VOCC wants to know whether there would be benefits for victims if the Victims' Charter provided a central and complete reference point for all victim entitlements as originally envisaged.

The VOCC also wants to know whether there are ways to ensure the Victims' Charter remains useful and up to date, while not becoming unwieldy. The VOCC also wants to know whether there is a need for less, more or different principles, entitlements or rights in the Victims' Charter.

### Questions

- 10. Does the Victims' Charter need fewer, more or different principles?**
- 11. Do you have any suggestions on how the Victims' Charter could remain relevant and reflective of victims' entitlements but easy to navigate?**

## Scope of the Victims' Charter

### Definitions in the Victims' Charter

The definition section of the Victims' Charter defines what it means to be:

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<sup>66</sup> See Table 3: Victims' participatory interests and entitlements, Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 74 – 76.

<sup>67</sup> For example, the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) governs access to a victim's confidential medical records. Victims have rights to be notified about an application to access their records and may appear at a hearing concerning the records and may make submissions and file a statement concerning the effects likely to be caused to them if the communications are disclosed.

<sup>68</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 83.

- an ‘investigatory agency’, ‘prosecuting agency’ or a ‘victims’ services agency’
- a ‘victim’ or ‘person adversely affected by crime’
- ‘injured’ by a crime (and therefore whether someone falls within the definition of ‘victim’).

During consultation on the VOCC’s regulatory approach, and in the process of the VOCC’s annual reporting information requests, some agencies have questioned whether they do, or should, fall within the definition of ‘agency’ covered by the Victims’ Charter. It is also possible that there are some agencies that do not meet the current definition of ‘victims’ services agency’ but are in fact providing services to victims of crime.

The definition of ‘victim’ and ‘injury’ in the Victims’ Charter is broad. It accounts for circumstances where the criminal offence is perpetrated by a young offender or someone with a mental impairment. It also accounts for loss or damage to property. However, it is possible that the definition of ‘victim’ or ‘injury’ is resulting in exclusion for some individuals. The VOCC notes that there are many different definitions of ‘victim’ across Victorian legislation.<sup>69</sup> This might also be causing confusion or uncertainty.

The VOCC is seeking feedback on whether the definitions in the Victims’ Charter remain relevant and appropriate. This may relate to the current definitions of agency, victims, injury or other definitions set out in the Victims’ Charter.

## Questions

### **12. Are the definitions in the Victims’ Charter still relevant and appropriate?**

## Applicability to all victims

The Victims’ Charter currently provides that victims may be treated differently based on which agency is prosecuting the matter.<sup>70</sup> In practical terms, this means that victims whose matter is heard in the Magistrates’ Court will have different entitlements than victims whose matter is heard in the County or Supreme Courts.

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<sup>69</sup> An overview is provided at page 56 of Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023).

<sup>70</sup> 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).

Previous reviews and inquiries have recommended that the Victims' Charter be amended to extend entitlements to all victims of crime.<sup>71</sup> However, a recent review by the Department of Justice and Community Safety did not recommend this due to concerns it would cause case delays in the Magistrates' Court.<sup>72</sup>

The VOCC wants to know whether victims should have the same entitlements under the Victims' Charter, regardless of the nature of the crime. For example, in NSW, all victims have the same entitlement to information about the progress of a prosecution, regardless of prosecuting agency.<sup>73</sup>

## Questions

- 13. Should all principles in the Victims' Charter apply equally to all victims regardless of crime type? How might this impact on the administration of justice (positively or negatively?)**

## Should all Charter principles have a responsible agency?

Some principles in the Victims' Charter do not have a corresponding responsible agency. The lack of a clearly articulated responsible agency limits a victim's ability to know how to:

- pursue compliance with those principles
- make a complaint where the principles have not been complied with.

The Commissioner would like to know whether the Victims' Charter principles should be drafted in a way that makes it clear which agency is responsible for upholding particular entitlements.

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<sup>71</sup> Recommendation 1: Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 26.

<sup>72</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 312.

<sup>73</sup> *Victims Rights and Support Act 2013* (NSW) s 6.5.

## Questions

- 14. Should all principles in the Victims' Charter have a responsible agency? How might this impact victims and / or agencies?**

## Courts are not a prescribed agency

Courts, or Courts Services Victoria, are not a prescribed agency—that is, they are not classified as an 'agency' that the VOCC is required to report on annually in relation to compliance with the Victims' Charter.

However, some Victims' Charter principles relate to courts. The VOCC heard during consultation with stakeholders on the development of the Victims' Charter Guidelines that there should be a requirement for courts to be prescribed agencies under the Victims' Charter and for the Charter to apply to all court staff and judicial officers.<sup>74</sup>

## Questions

- 15. Should the Victims' Charter be amended to clarify its applicability to non-judicial court staff and judicial officers? How might this impact on the administration of justice (positively or negatively?)**

## Upholding Charter principles

In 2016, the VLRC found that there was a significant disparity between the victim's role as conveyed in legislation and the victim's experience in practice.<sup>75</sup>

In 2018, changes made to the role of the VOCC aimed to enhance the operation of the Victims' Charter in practice by providing an avenue for complaints about Victims' Charter breaches and requiring the VOCC to report annually on agency compliance with the Victims' Charter.

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<sup>74</sup> Throughout 2022 and 2023, the VOCC Office consulted with a range of stakeholders in the development of the Victims' Charter Guidelines: [vocc-victims-charter-guidelines.pdf](#) ([victimsofcrimecommissioner.vic.gov.au](#)).

<sup>75</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xiii.

## Victims' Charter complaints

Sections 19, 19A and 19B of the Victims' Charter relate to complaints. In summary, these sections require agencies to institute complaints processes.

Under the VOCC Act, a person may make a complaint to the VOCC in relation to an agency's compliance with the Charter principles if they have first made a complaint to the agency and are not satisfied with the agency's response.<sup>76</sup>

Concerns have been raised that the Victims' Charter complaints pathway is not meeting victims' needs. For example, the VOCC has identified that some victims do not want to engage in the complaint review process due to the limited outcomes that can be recommended under the VOCC Act.<sup>77</sup>

In *Silenced and Sidelined*, the VOCC found that a complaints pathway may not meet victims' practical needs.<sup>78</sup> This is because:

- the VOCC cannot investigate a complaint where it might prejudice an ongoing criminal investigation, hearing or trial<sup>79</sup>
- the VOCC cannot set aside decisions or refer decisions back to the original decision maker for review.<sup>80</sup>

The VOCC often cannot intervene to restore a victims' entitlements. This limits the extent to which the VOCC can intervene in a substantial and practical 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.

The VOCC has a discretionary power, after investigating a complaint, to recommend that the subject agency take specific actions. However, the recommendations cannot be directions or requirements and cannot be binding on the subject agency.<sup>81</sup>

A victim of crime can only make a complaint to the VOCC if they have first made a complaint to the agency and are 'dissatisfied with the agency's response to that complaint'.<sup>82</sup> This requirement may be a barrier for victims of crime who may be fearful of making a complaint directly or may not trust that the agency will handle their complaint appropriately.

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<sup>76</sup> *Victims of Crime Commissioner Act 2015* (Vic) s 25A.

<sup>77</sup> *Victims of Crime Commissioner, Annual Report 2021-22*, (Report, 2022) 20.

<sup>78</sup> *Victims of Crime Commissioner, Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 315.

<sup>79</sup> *Victims of Crime Commissioner Act 2015* s 25I(3)(b).

<sup>80</sup> 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).

<sup>81</sup> *Victims of Crime Commissioner Act 2015* (Vic) s 25J(2).

<sup>82</sup> *Victims of Crime Commissioner Act 2015* (Vic) s 25A(b).

## Questions

### 16. Should the Victims' Charter or the VOCC Act be amended to improve the Victims' Charter complaints process? If so, how?

## Other resolution options

In the Australian Capital Territory (ACT), the Victims of Crime Commissioner can talk to the justice agency involved on a victim's behalf and ask them to provide documents or information to help resolve a concern, 'insofar as exercising a 'victims' rights concern'.<sup>83</sup> Victims of crime can also complain to the ACT Human Rights Commission<sup>84</sup> and this pathway might result in a conciliation process. Conciliation processes may lead to a resolution such as improved communication pathways and reinstatement of services (or a change in how a service is provided).<sup>85</sup> The VOCC in Victoria does not undertake conciliation and there is no specific provision to refer to the Victorian Equal Opportunity and Human Rights Commission.<sup>86</sup>

It is possible that a victim may wish to embark on a restorative justice option in relation to their treatment by a justice or victims' services agency. The harm in this case is the secondary victimisation caused by a breach of the Victims' Charter.

The Victims' Charter does not explicitly provide for restorative justice processes relating to a breach of the Victims' Charter, although the VOCC Act does reference a 'facilitated meeting'. Section 25J(1)(a) of the VOCC Act provides that the Commissioner may recommend that the agency apologises or takes part in a facilitated meeting. There is no definition of a facilitated meeting and the VOCC does not have a legislated role in relation to overseeing facilitated meetings.

There are several existing restorative justice pathways in Victoria although many of them are restricted to specific victim cohorts.<sup>87</sup> It is possible that one or more of these existing programs could facilitate restorative justice processes for Victims' Charter breaches after appropriate development of bespoke processes.

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<sup>83</sup> ACT Victims' Rights Guidelines, *Charter of Rights for Victims of Crime*, 3.

<sup>84</sup> [Services for Victims of Crime Complaints - HRC \(act.gov.au\)](https://act.gov.au)

<sup>85</sup> [Conciliation - HRC \(act.gov.au\)](https://act.gov.au)

<sup>86</sup> Although the VOCC has a general power to refer to other bodies: section 25H *Victims of Crime Commissioner Act 2015* (Vic).

<sup>87</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 292.



## Questions:

**17. Should the Victims' Charter and the VOCC Act be amended to provide for:**

- **more informal resolutions mechanisms**
- **other mechanisms like conciliation or restorative justice pathways?**

## VOCC's regulatory approach

A key component of the VOCC's role is to report on the compliance of justice agencies and victims' services with the Victims' Charter.

Under the VOCC Act, the VOCC is empowered to report annually on compliance with the Victims' Charter. The Victim of Crime Commissioner Regulations 2020 (VOCC Regulations) set out prescribed agencies. These are agencies the VOCC is required to report annually on in relation to their compliance with the Victims' Charter.

In 2023, the VOCC released *Victims' Charter Guidelines* to support justice agencies and victims' services to comply with their obligations.<sup>88</sup> The VOCC's *Regulatory Approach* sets out a risk-based approach to regulation, prioritising effort to where it can make most significance difference.<sup>89</sup> In that document, the VOCC stated that she 'expects agencies to build ownership and understanding about good practice in implementing the Victims' Charter consistent with its objectives, and in doing so proactively identify and manage risks.'<sup>90</sup>

## Monitoring the Victims' Charter

Under the Victims' Charter, the Secretary of the Department of Justice and Community Safety (the Secretary) is given the function of 'monitoring operation of Act' under Part 3 of the Victims' Charter.

These provisions appear to reflect the fact there was no Victims of Crime Commissioner role when the Victims' Charter was enacted and may now appear at odds with the VOCC's role, which includes reporting on prescribed agencies'

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<sup>88</sup> Victims of Crime Commissioner, *Victims' Charter Guidelines: A guide to assist agencies to comply with the Victims' Charter* (Version 1, May 2023) 4.

<sup>89</sup> Victims of Crime Commissioner, *Regulatory Approach* (May 2024) 8.

<sup>90</sup> Victims of Crime Commissioner, *Regulatory Approach* (May 2024) 15.

compliance with the Victims' Charter,<sup>91</sup> including programs directly provided by the Department of Justice and Community Safety, like the Victims of Crime Helpline and the new Financial Assistance Scheme.<sup>92</sup>

## The Victims' Charter does not articulate the VOCC's role

The VOCC is seeking views on whether the Victims' Charter should articulate the role of the VOCC to provide clarity to victims and agencies that agency compliance with the Victims' Charter is overseen by the VOCC.

The Commissioner wants to know whether:

- the VOCC should be given a more explicit and specific role in the Victims' Charter Act, for example, a role in developing policies and plans to promote the Victims' Charter<sup>93</sup>
- the Victims' Charter should be amended to:
  - remove the requirement for the Secretary to develop policies and plans to promote the Charter principles and to monitor, evaluate and review the operation of the Charter<sup>94</sup>
  - remove the requirement for the Attorney-General to report on the operation of the Victims' Charter annually.<sup>95</sup>

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<sup>91</sup> *Victims of Crime Commissioner Act 2015* (Vic) s 28(1A)(a).

<sup>92</sup> The new Financial Assistance Scheme will commence in November 2024: [New Financial Scheme To Make It Easier For Victims Of Crime | Premier](#)

<sup>93</sup> Under the Victims' Charter, the Secretary of the Department of Justice and Community Safety is currently required to develop policies and plans to promote the Charter principle: section 20 (a) *Victims' Charter Act 2006* (Vic).

<sup>94</sup> *Victims' Charter Act 2006* (Vic) s 20.

<sup>95</sup> *Victims' Charter Act 2006* (Vic) s 21.

## Questions:

18. **Should the Victims' Charter set out the role of the VOCC to make it clear the Victims' Charter is monitored by the VOCC? Why / why not?**
19. **Should the Victims' Charter be amended to remove the requirement for the Secretary of the Department of Justice to monitor, evaluate and review the operation of the Charter and to require the Attorney-General to report on the operation of the Victims' Charter annually? Why / why not?**

## Regulatory powers

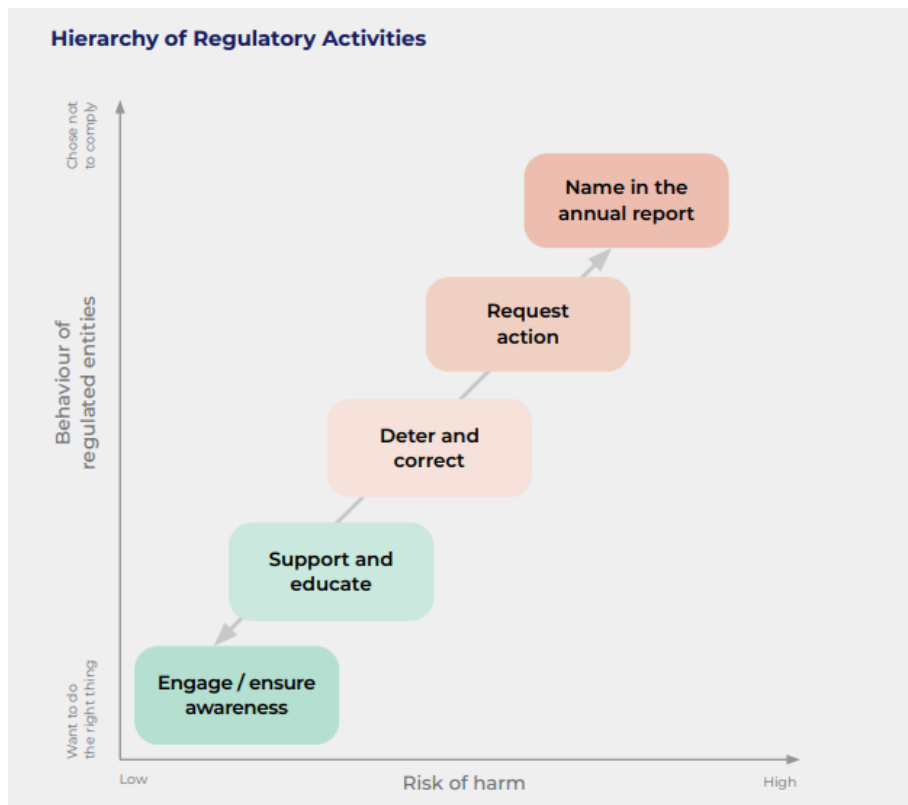
The Commissioner does not have access to a full suite of compliance and enforcement tools.

In the VOCC's *Regulatory Approach* guidance document, the VOCC notes that because of her lack of enforcement powers, 'rather than seeking to enforce compliance, the VOCC's purpose is to strengthen understanding of what victims need in their journey through the criminal justice process and to work towards cultural change in the system.'<sup>96</sup>

The VOCC's regulatory compliance toolset is outlined in **Figure 3** below.

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<sup>96</sup> Victims of Crime Commissioner, *Regulatory Approach* (May 2024) 13.

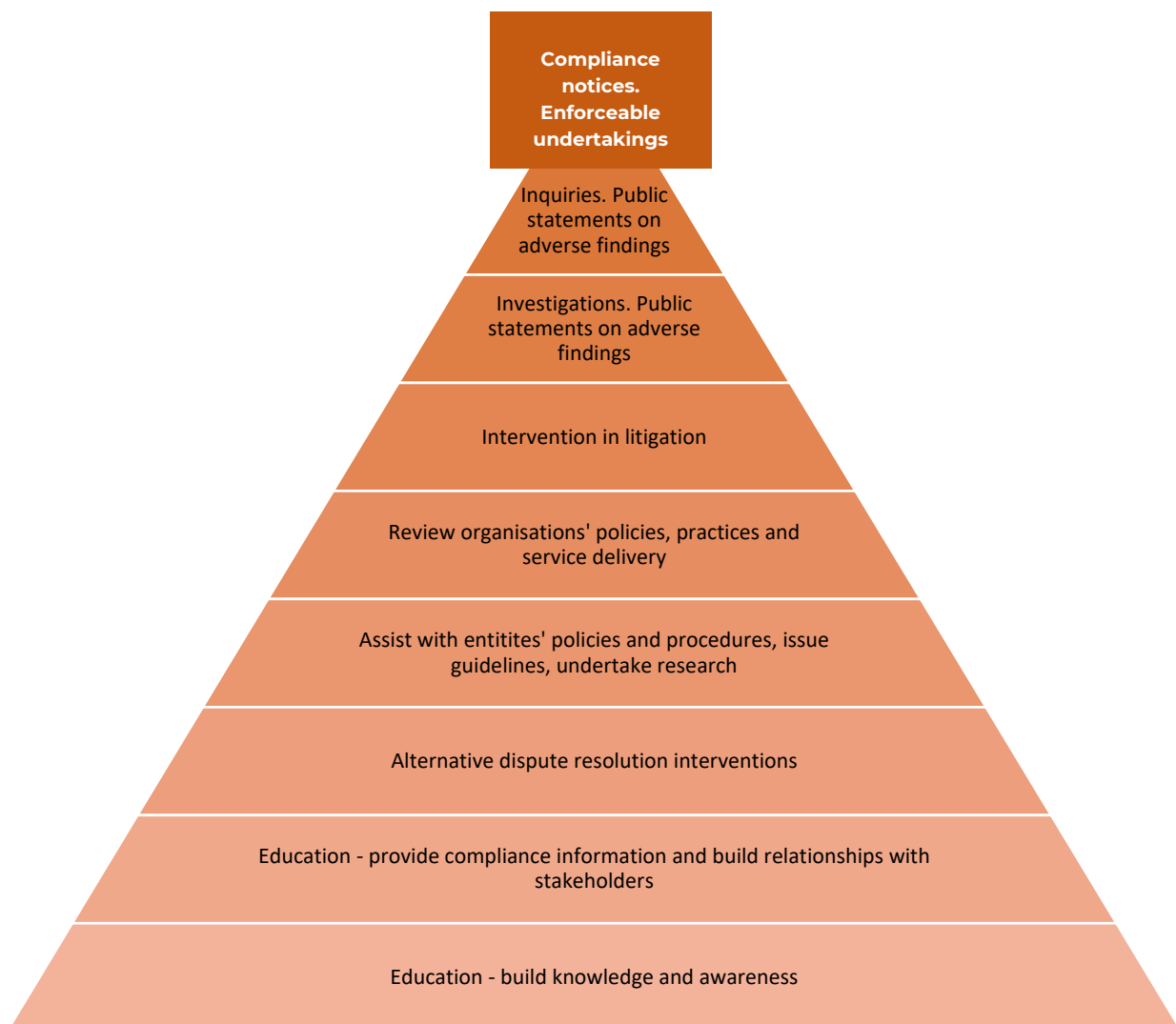
**Figure 3: VOCC’s regulatory compliance toolset**

During consultation for the VOCC’s systemic inquiry *Silenced and Sidelined*, enforcement of the Charter was raised as a concern. People stated that the Charter is not always complied with, but this is not addressed sufficiently. This was attributed to insufficient powers of the VOCC and lack of means to enforce compliance.<sup>97</sup>

Academics Holder and Kirchengast have articulated a victims’ rights compliance pyramid that provides for ‘graduated levels of activity to implement victims’ rights charters’ (see **Figure 4 below**).<sup>98</sup> It includes the ability for victims’ commissions to issue compliance notices and enforceable undertakings. It is similar to the graduated compliance toolset outlined in the VOCC’s *Regulatory Approach* but includes more enforcement powers such as compliance notices and enforceable undertakings.

<sup>97</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 315.

<sup>98</sup> Robyn Holder and Tyrone Kirchengast, ‘Crime victims’ rights commissioners: public interest entities in a regulatory regime’ (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 67, 81.

**Figure 4: Holder and Kirchengast's victims' rights compliance pyramid<sup>99</sup>**

Holder and Kirchengast note that an 'effective regulator requires the right functions, specification of compliance processes, a range of enforcement powers, and the resources to do the job'.<sup>100</sup>

Holder and Kirchengast note that victims' commissioners in Australia are mostly using education tools at the bottom of the pyramid and that victims' rights regulators have 'patchy or limited regulatory powers'.<sup>101</sup>

<sup>99</sup> Robyn Holder and Tyrone Kirchengast, 'Crime victims' rights commissioners: public interest entities in a regulatory regime' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 67, 81.

<sup>100</sup> Robyn Holder and Tyrone Kirchengast, 'Crime victims' rights commissioners: public interest entities in a regulatory regime' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 67, 82.

<sup>101</sup> Robyn Holder and Tyrone Kirchengast, 'Crime victims' rights commissioners: public interest entities in a regulatory regime' (2021) 45(1) *International Journal of Comparative and Applied Criminal Justice* 67, 81.

In 2016, the VLRC highlighted the importance of consequences for failing to implement Victims' Charter principles:

unless there are consequences for failing to implement the principles, the cultural change that the Victims' Charter Act was intended to bring about will not occur. In practice, whether a victim is treated in accordance with the Charter principles will depend on chance.<sup>102</sup>

Different regulators in other fields such as health or environmental protection have different monitoring and oversight powers. For example, some regulators might have powers to:

- issue a warning notice suggesting a certain course of action
- issue a notice requiring a certain course of action
- serve an infringement notice in respect of a prescribed offence
- require an agency to enter into an enforceable undertaking
- bring a prosecution for offences created by legislation.

The VOCC is seeking views on whether the Victims' Charter should be strengthened to incorporate legal consequences or stronger regulatory powers for non-compliance.

### Questions:

#### 20. What regulatory powers are appropriate for Victims' Charter compliance?

## Other approaches to enforcing compliance with the Victims' Charter

### Providing victims with a statement of rights

The Victims' Charter does not include a right or entitlement for victims to be provided with a clear statement of their entitlements under the Victims' Charter. Under section 7, victims are to be provided information about 'relevant' support services and 'possible entitlements' and 'if appropriate' to be referred to 'relevant' support services.

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<sup>102</sup> Victorian Law Reform Commissioner, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 64.

The framing of these provisions provides much opportunity for subjective interpretation of whether providing the information or referral was appropriate or relevant in the circumstances.

Under the *Mental Health and Wellbeing Act 2022* (Vic), individuals must be provided with a Statement of Rights which sets out the rights of a person under the *Mental Health and Wellbeing Act 2022* (Vic).<sup>103</sup> Medical practitioners and health services must 'take all reasonable steps' to ensure individuals are given a Statement of Rights and that they understand their rights.<sup>104</sup>

### Questions:

- 21. Should the Victims' Charter be amended to include a specific right to be told about the Victims' Charter and the rights or entitlements within? How might this impact on victims and agencies (positively or negatively?)**

## A role for courts in ensuring agency compliance

In *Silenced and Sidelined*, the VOCC noted that when a case is heard in court, judicial officers are well placed to prevent breaches of victims' rights and entitlements. Judicial officers have the ability and authority to check whether the prosecution has met its statutory obligations towards the victim.

For example, judicial officers could, at relevant times, ask the prosecution whether victims have been provided information, consulted about decisions or notified about certain applications or legal steps.

The VOCC would like to know whether amending the Victims' Charter, and any other relevant legislation, to require courts to make enquiries about Victims' Charter compliance, would be an appropriate way to improve compliance with the Victims' Charter.

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<sup>103</sup> *Mental Health and Wellbeing Act 2022* (Vic) s 36 - 37.

<sup>104</sup> *Mental Health and Wellbeing Act 2022* (Vic) s 39.

## Questions:

- 22. Should courts have a role to play in upholding Victims' Charter principles? If so, how? How might this impact on the administration of justice (positively or negatively?)**

## Accountability and transparency in decision making

In *Silenced and Sidelined*, the VOCC found that while many victims do not want 'veto' or ultimate decision-making power, they are often dismayed by the finality of certain police and prosecution decisions.<sup>105</sup>

A number of reviews have recommended that the Victorian Government establish an independent review mechanism enabling victims to seek a review of certain police and prosecution decisions once internal review mechanisms have been exhausted.<sup>106</sup> For example, the Legal and Social Issues Committee's *Inquiry into Victoria's criminal justice system* in 2022 noted that 'the legal entitlements for victims of crime should be expanded so that the criminal justice system is more accountable in meeting the needs of victims' and recommended that the Victorian Government introduce a right to review scheme under the Victims' Charter.<sup>107</sup>

The VOCC wants to hear about whether the Victims' Charter should be amended to provide victims with a right to have certain police and prosecution decisions reviewed after internal avenues are exhausted.

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<sup>105</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 318.

<sup>106</sup> Victims of Crime Commissioner, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (Report, November 2023) 322. See also Recommendation 9e: Victorian Law Reform Commission, *Improving the justice system responses to sexual offences* (Report, September 2021) xxxi; Recommendation 45: Parliament of Victoria, Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system* (Report, March 2022) 396.

<sup>107</sup> Recommendation 45: Parliament of Victoria, Legal and Social Issues Committee, *Inquiry into Victoria's criminal justice system* (Report, March 2022) 374, 395.



## Questions:

- 23. Should the Victims' Charter include a right for victims to have certain police and prosecution decisions reviewed after internal avenues are exhausted? How might this impact on the administration of justice (positively or negatively?)**

## Having regard to Charter principles in development of law

Section 18 of the Victims' Charter requires a person or body responsible for the development of criminal law policy, victims' services policy or the administration of criminal justice or victims' services to have regard to the Charter principles.

There are no mechanisms for tracking whether people or bodies have had regard to the Victims' Charter principles. Conversely, the Human Rights Charter requires new Bills to be accompanied with a Statement of Compatibility setting out how a Bill is compatible with human rights.<sup>108</sup>

The VOCC wants to hear whether new justice legislation bills should be required to introduce a Statement of Compatibility with the Victims' Charter setting out how the Bill is or is not compatible with the Victims' Charter.

## Questions:

- 24. Should any new justice legislation be required to have an accompanying Statement of Compatibility with the Victims' Charter? How might this impact on the policy development and legislative reform processes (positively or negatively?)**

## Increased availability of lawyers for victims

Victoria now has a dedicated Victims Legal Service. This service is currently limited to assistance related to VOCAT, compensation, confidential medical records and for Aboriginal or Torres Strait Islander people who wish to report sexual violence to police.<sup>109</sup> The Victims Legal Service is not able to assist with all victim-related legal matters.<sup>110</sup>

Many reviews and inquiries have already found that victims have a range of unmet legal needs, including understanding their entitlements under the Victims' Charter.

<sup>108</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 28(3).

<sup>109</sup> [Victims Legal Service | victimslegal.vic.gov.au](http://victimslegal.vic.gov.au)

<sup>110</sup> [Victims Legal Service | victimslegal.vic.gov.au](http://victimslegal.vic.gov.au)

One potential way of improving overall compliance with the Victims' Charter and encouraging cultural change would be to enhance victims' ability to enforce their entitlements via independent lawyers in some cases. The VOCC wants to hear whether increased access to independent legal assistance is another way of encouraging Victims' Charter compliance.

### Questions:

**25. Should victims of crime have greater access to independent legal assistance to help victims be aware of their Victims' Charter entitlements and help enforce entitlements in real time? How might this impact on the administration of justice (positively or negatively?)**

## Legally enforceable rights

For something to be a 'right', there must be a legal remedy.<sup>111</sup>

Under the Victims' Charter, parliament did not envisage that there would be a mechanism for Victims' Charter principles to be enforced in courts. Section 22(1) of the Victims' Charter expressly states that parliament did not intend that the Charter would:

- create any legal rights, or give rise to any civil actions, and
- provide any 'grounds for review, of any judicial or administrative act or omission'.<sup>112</sup>

The VLRC's 2016 report discussed whether s 22(1) of the Victims' Charter should be amended.<sup>113</sup> A number of justice agency stakeholders expressed concern about introducing a form of legal enforceability.<sup>114</sup>

At the same time, the VLRC noted that there was 'general consensus' but 'not unanimity' that victims should have rights that are enforceable.<sup>115</sup> But there were divergent views about what 'enforcement' would mean in practice. Ideas included

<sup>111</sup> Robyn Holder, Tyrone Kirchengast & Paul Cassell (2021) 'Transforming crime victims' rights: from myth to reality', *International Journal of Comparative and Applied Criminal Justice*, 45:1, 1 - 134

<sup>112</sup> *Victims' Charter Act 2006* (Vic) s 22(1)(a) and (c).

<sup>113</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 59 - 61.

<sup>114</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 60.

<sup>115</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 59.

‘a compliance watchdog’, remedies through legal action and review of prosecutorial decisions.<sup>116</sup>

Ultimately, the VLRC did not recommend legally enforceable rights for victims. The VLRC said that the proposal to enable victims to take legal action to enforce their rights ‘**may need to be revisited**’ as the role of the victim continues to evolve and victim-oriented law develops—including by amending the Victims’ Charter Act as recommended in this report’ (emphasis added).<sup>117</sup>

In 2016, the VLRC noted that the common theme from stakeholder consultation was that victims and the community need to be able to hold criminal justice agencies to account.<sup>118</sup>

Lack of enforceability is not unique to Victoria.<sup>119</sup> Within Victoria, similar concerns have also been raised in the human rights context. In Victoria, the 2015 ‘Young’ review of Victoria’s Human Rights Charter found that its limited remedies were undermining its effectiveness and sending ‘mixed messages’:

Providing for human rights without corresponding remedies sends mixed messages to the public sector and to the community about the importance of those rights. Further, the Charter is based on a flawed regulatory model that does not include an ability to enforce the standards that it sets, as a last resort ...<sup>120</sup>

In the human rights context, Young considered that VCAT provided an appropriate jurisdiction to consider Charter of Human Rights disputes. This is because VCAT already reviews decisions made by public authorities, is already bound to act in accordance with the Charter of Human Rights, has a dispute resolution service, and is subject to review by the Supreme Court.<sup>121</sup> Young identified a range of potential legal remedies for a matter heard at VCAT:

- setting aside a decision and making a new decision that properly considers human rights
- granting an injunction to stop a public authority from continuing to act in a way that is incompatible with a human right
- excluding evidence from a trial that was obtained in breach of a human right

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<sup>116</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 59.

<sup>117</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 59.

<sup>118</sup> Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report, August 2016) 59.

<sup>119</sup> Office of the Federal Ombudsman for Victims of Crime, *Progress Report: The Canadian Victims Bill of Rights* (Report, November 2020) 2.

<sup>120</sup> Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities* (Report, September 2015) 127.

<sup>121</sup> Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities* (Report, September 2015) 128 – 129.

- ordering a public authority to take positive steps to remedy a breach or to prevent a similar breach from happening again.<sup>122</sup>

Young suggested VCAT could provide a timely and cost-effective review process.<sup>123</sup>

Other legislative instruments relating to entitlements or rights in Victoria provide an avenue of administrative review via VCAT.<sup>124</sup>

The VOCC wants to know whether victims should have rights to seek legal remedies outside the existing complaints process set out in the Victims' Charter and the VOCC Act.

## Questions:

- 26. Should victims have rights to seek legal remedies outside the complaints process? Would the Commissioner, VCAT or another body have a role to play? How might this impact on the administration of justice (positively or negatively?)**

## 'Principles' versus 'rights'

As noted above, principles are not 'rights'.

Further complicating the legal status and practical application of the principles are the fact that some principles:

- contain insufficient detail to enable a victim to meaningfully advocate for the entitlement to be met<sup>125</sup>

<sup>122</sup> Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities* (Report, September 2015) 130.

<sup>123</sup> Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework* (Report, May 2024) 200.

<sup>124</sup> Under the *Equal Opportunity Act 2010* (Vic), a person may apply to VCAT if they allege that another person has breached their rights under parts 4, 6 or 7 of the Act. Under the *Racial and Religious Tolerance Act 2001* (Vic), a person may also apply to VCAT in relation to a claim that another person has racially or religiously vilified them. Under the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic), VEOHRC may issue a compliance notice to a person who is wholly or partly responsible for the change or suppression practice in order to get them to stop change or suppression practices. If a person fails to comply with an enforceable undertaking or a compliance notice, VEOHRC may apply to VCAT for an order requiring the person to comply with the undertaking or order.

<sup>125</sup> See, for example, *Victims' Charter Act 2006* (Vic) s 8(1) requiring an investigating agency to inform a victim, at reasonable intervals, about progress of an investigation. A victim would be required to assess what is a 'reasonable interval' and then argue that the communication has not been at reasonable intervals. What is reasonable may also depend on the type of matter and where the matter is being heard.

- contain exceptions meaning the principle does not need to be adhered to if it is 'not practical' or 'relevant'<sup>126</sup> but there is no guidance on what circumstances might give rise to these exceptions, nor how a victim might advocate for their entitlements where there is a dispute about the practicalities or relevance
- do not have a relevant agency responsible, meaning their practical application is limited because there is no agency to complain or advocate to.<sup>127</sup>

The VOCC has heard that victims' status in the justice system could be improved if victims' entitlements were articulated as rights rather than vague service standards or aspirational principles.

One of the key issues with enforcing compliance with the Victims' Charter is that some principles operate more like guidance, while others require agencies to complete certain activities or steps.

The VOCC wants to know whether some current Victims' Charter principles might be better articulated as guiding principles and others could be articulated as 'rights'.<sup>128</sup>

Guiding principles might provide agencies with a framework or 'guardrails' for treating victims. 'Rights' might be limited to substantive participatory entitlements or actions needing to be taken by agencies that can be objectively measured. This would assist with appropriate oversight, whether through complaints or regulatory oversight.

## Questions

### **27. Are some Victims' Charter principles more suited to being articulated as guiding principles and others more suited to becoming 'rights' (using mandatory language)?**

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<sup>126</sup> *Victims' Charter Act 2006 (Vic)* s 7A 'so far as reasonably practical' and s 9A 'take all reasonable steps'. Section 9B(3) negates the prior sections entirely if 'it is not practical to contact the victim given the speed or nature of the proceeding'.

<sup>127</sup> See, for example, *Victims' Charter Act 2006 (Vic)* s 13. While a victim may make a Victim Impact Statement to the court, it does not state who is responsible for ensuring that if a victim wishes to make a VIS, that this is facilitated and accommodated through the court process.

<sup>128</sup> Other Australian jurisdictions do refer to victims' 'rights' even where there is a similar caveat to section 22 of the Victims' Charter.

# ATTACHMENT 1 – List of consultation questions

1. How can awareness of the Victims' Charter be improved amongst victims and agencies? What role should justice agencies, victims' services, the Department of Justice and Community Safety and the Victims of Crime Commissioner play in raising awareness?
2. Has the Victims' Charter been effective in delivering positive outcomes for victims such as changes in attitudes or changes to specific practices? If so, can you provide practical examples of this?
3. What change/s do you think could be made to the Victims' Charter to drive cultural change?
4. How could the Victims' Charter be made more accessible and clearer for victims?
5. Do the Victims' Charter purpose and objects meet contemporary expectations regarding trauma, intersectionality, diversity and the need for cultural safety?
6. Do the principles relating to respectful and special treatment in the Victims' Charter need amendment?
7. Do the principles relating to information and referral in the Victims' Charter need amendment?
8. Do the principles relating to victim protection in the Victims' Charter need amendment?
9. Do the principles relating to victim participation in the Victims' Charter need amendment?
10. Does the Victims' Charter need fewer, more or different principles?
11. Do you have any suggestions on how the Victims' Charter could remain relevant and reflective of victims' entitlements but easy to navigate?
12. Are the definitions in the Victims' Charter still relevant and appropriate?
13. Should all principles in the Victims' Charter apply equally to all victims regardless of crime type? How might this impact on the administration of justice (positively or negatively?)

14. Should all principles in the Victims' Charter have a responsible agency? How might this impact victims and / or agencies?
15. Should the Victims' Charter be amended to clarify its applicability to non-judicial court staff and judicial officers? How might this impact on the administration of justice (positively or negatively?)
16. Should the Victims' Charter or the VOCC Act be amended to improve the Victims' Charter complaints process? If so, how?
17. Should the Victims' Charter and the VOCC Act be amended to provide for:
  - more informal resolutions mechanisms
  - other mechanisms like conciliation or restorative justice pathways?
18. Should the Victims' Charter set out the role of the VOCC to make it clear the Victims' Charter is monitored by the VOCC? Why / why not?
19. Should the Victims' Charter be amended to remove the requirement for the Secretary of the Department of Justice to monitor, evaluate and review the operation of the Charter and to require the Attorney-General to report on the operation of the Victims' Charter annually? Why / why not?
20. What regulatory powers are appropriate for Victims' Charter compliance?
21. Should the Victims' Charter be amended to include a specific right to be told about the Victims' Charter and the rights or entitlements within? How might this impact on victims and agencies (positively or negatively?)
22. Should courts have a role to play in upholding Victims' Charter principles? If so, how? How might this impact on the administration of justice (positively or negatively?)
23. Should the Victims' Charter include a right for victims to have certain police and prosecution decisions reviewed after internal avenues are exhausted? How might this impact on the administration of justice (positively or negatively?)
24. Should any new justice legislation be required to have an accompanying Statement of Compatibility with the Victims' Charter? How might this impact on the policy development and legislative reform processes (positively or negatively?)
25. Should victims of crime have greater access to independent legal assistance to help victims be aware of their Victims' Charter entitlements and help enforce entitlements in real time? How might this impact on the administration of justice (positively or negatively?)

26. Should victims have rights to seek legal remedies outside the complaints process? Would the Commissioner, VCAT or another body have a role to play? How might this impact on the administration of justice (positively or negatively?)
27. Are some Victims' Charter principles more suited to being articulated as guiding principles and others more suited to becoming 'rights' (using mandatory language)?



## ATTACHMENT 2 – How will my submission be used?

Written submissions may be quoted from and referred to by the VOCC in her final report (unless there is a specific request for confidentiality/anonymity).

The VOCC may list the names of organisations or individuals who provided written submissions unless someone requests confidentiality and / or anonymity.

The VOCC will write a report to government which will be tabled in Parliament and made public.

If someone requests anonymity, the VOCC may still refer to themes or issues arising in that consultation but will not list the consultee's name in the report or publish identifying details. If someone requests anonymity *and* confidentiality, the VOCC may still consider the information provided but will not refer directly to any details of that consultation and will not list the consultee's name in the report.

### Who has access to files?

Consultation files are only accessed by VOCC Office staff involved in the project. They will be securely stored in accordance with the requirements in the [Privacy and Data Protection Act 2014](#) and the [Public Records Act 1973](#). All records will be kept in secure folders on SharePoint/Microsoft Teams, with access restricted to the project team or any other relevant staff within VOCC as appropriate. The VOCC and her staff will not share consultation records such as written submissions or meeting notes with any other individuals, services or government departments but the VOCC may be required to provide access to some or all consultation materials if a member of the public makes a request under Freedom of Information (FOI) legislation and the VOCC is lawfully required to provide information. FOI requests will be determined in accordance with the [Freedom of Information Act 1982](#), which has provisions designed to protect personal information and information given in confidence.

If you have any concerns or questions, you can contact VOCC at [policy@vocc.vic.gov.au](mailto:policy@vocc.vic.gov.au).

# ATTACHMENT 3 – Victims’ Charter Review Terms of Reference

## Background

The *Victims’ Charter Act 2006* (Victims’ Charter) sets out minimum standards and entitlements that apply to justice and victims’ services agencies when interacting with victims of crime.

## The legislative requirement to conduct a review

The Victims of Crime Commissioner (the Commissioner) must review the operation of Victims’ Charter and its benefits for victims and report to the Attorney-General by 7 September 2025 (Victims’ Charter Review).<sup>129</sup>

The Victims’ Charter Review was recommended by the Victorian Law Reform Commission (VLRC) in their report *The Role of Victims of Crime in the Criminal Trial Process* (2016). The legislation which introduced the requirement for the VOCC to conduct the Victims’ Charter Review requires the review to be ‘comprehensive’ but did not require the Victims’ Charter Review to consider any specific issues. Therefore, these terms of reference set out what the Commissioner will consider as part of the Victims’ Charter Review.

## Terms of reference

The Commissioner will review the operation of the Victims’ Charter and its benefits for victims by considering:

1. victims’ awareness and understanding of the Victims’ Charter
2. victims’ views on the effectiveness of the Victims’ Charter in upholding their entitlements
3. the effectiveness of the Victims’ Charter in ensuring justice and victim service agencies respect the entitlements of, and obligations owed to, victims, including for diverse victims
4. the effectiveness of reforms made to the Victims’ Charter since the VLRC’s 2016 report, including the extent to which the Victims’ Charter is resulting in cultural change for the benefit of victims

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<sup>129</sup> This review is required under section 29A of the *Victims of Crime Commissioner Act 2015* (Vic).

5. whether further reform to the Victims' Charter for the benefit of victims is necessary, including consideration of:
  - a. current Victims' Charter principles and entitlements
  - b. current mechanisms for upholding entitlements or addressing breaches of the Victims' Charter
  - c. the overall structure and language of the Victims' Charter and whether this meets contemporary expectations
6. any other matters relevant to the operation of the Victims' Charter and its benefits for victims, including whether there are issues requiring further inquiry (whether by the Commissioner or another body).

In conducting the review, the Commissioner will also consider relevant findings from other reviews or inquiries, including findings of the former Commissioner's first systemic inquiry: *Silenced and Sidelined: Systemic Inquiry into Victim Participation*.<sup>130</sup>

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<sup>130</sup> This report is available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined-systemic-inquiry-into-victim-participation.pdf) ([victimsofcrimecommissioner.vic.gov.au](https://www.victimsofcrimecommissioner.vic.gov.au))



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