

A guide to assist agencies to comply with the Victims' Charter

VERSION 1, MAY 2023



# **Contents**

	Message from the Victims of Crime Commissioner				
	Acknowledgements 6				
	Glossary and acronyms7				
	A w	A word on terminology 9			
CHAPTER	1.	Introduction			
	1.1.	About the guidelines			
	1.2.	The Victims' Charter			
	1.3.	Victim entitlements under the Victims' Charter			
	1.4.	Supporting victims through the justice system – why it matters18			
	1.5.	Pillars to inform good practice			
CHAPTER					
	2.	Victims' Charter principles that apply to all agencies 27			
	2.2.	Information, referral and communication34			
	2.3.	Protecting victims' privacy38			
	2.4.	Complaints handling			
CHAPTER	3.	Agency specific principles			
03	<b>3.</b> 1.	Investigatory agencies			
11.5	3.1.	Prosecuting agencies			
	3.3.	Courts and prosecuting agencies			
CHAPTER	4.	Good practice systems, policies and governance 65			
	4.1.	Policies and Procedures66			
	4.2.	Leadership and commitment			
	4.3.	Training and capability68			
	App	pendix 1: Description of Diagram 171			
	Bibliography				

# Message from the Victims of Crime Commissioner



We have developed these guidelines to support justice agencies and victims' services responding to victims of crime to best comply with your obligations under the *Victims' Charter Act 2006.* 

People do not choose to be a victim of crime, and crime leaves many victims violated and traumatised. Its consequences can be severe and long lasting, resulting in damage to the health and welfare of individual victims and their families and friends.

It is well known that the criminal justice process can add to the trauma that victims have already experienced and can be a source of secondary victimisation. This can impact on a victim's recovery from trauma and can also affect their trust in the criminal justice system.

As agencies, through proactively meeting your obligation to comply with the Victims' Charter, you can minimise the harms of secondary victimisation that many victims experience in the justice and victims' services systems.

The Victims' Charter aims to reduce secondary victimisation and increase victim participation in the justice system through the principles set out for investigatory, prosecuting and victims' services agencies in engaging with victims of crime. These principles require you to ensure victims:

- are treated with dignity, respect and courtesy
- have a say in the way they are communicated with, and have the information they need to engage with the justice system
- receive what they are entitled to during investigation, prosecution and court processes.

The Victims' Charter principles are a mix of high-level statements and detailed obligations. If your agency does not comply with the principles in the Victims' Charter and people adversely affected by crime are not satisfied with how your agency responds to their concerns, victims can request I carry out a complaint review. I also report annually on how your agency complies with the Victims' Charter.

These guidelines are intended to assist with understanding how to interpret the Victims' Charter and achieve good practice in responding to victims of crime.

People with lived experience as victims of crime, justice agencies, victims' services and people who support victims have told me they want more information and guidance about the obligations in the Victims' Charter and how the principles should be applied. They have also told me they want to understand more clearly the expectations on agencies such as yours under the Victims' Charter.

These guidelines do not set compliance standards or reporting requirements. They are intended to help you interpret the meaning of each of the Victims' Charter principles when you develop and implement internal policies, and to assist you to report on compliance.

The guidelines cover:

- the high-level principles that apply to all agencies, such as how they treat people adversely affected by crime and communicate with them and provide information
- the more detailed and agency-specific principles that apply to investigatory and prosecuting agencies, such as Victoria Police, the Office of Public Prosecutions and WorkSafe, in the criminal justice process.

They also provide guidance on the governance, practices and processes that you should have in place to meet your obligations under the Victims' Charter and to minimise victims' secondary victimisation in the justice system.

I am aware that many agencies already put priority on protecting victims and want to improve how they engage and respond to victims' needs. I also recognise that the agencies subject to the Victims' Charter are very diverse—they range in size, resource capacity, and the stages of implementing trauma-informed, victim centred policies. I acknowledge that it may take time and focused leadership to reach good practice but expect all agencies to consider how you can improve your practices and be proactive in identifying and implementing these improvements.

This is the first edition of the Victims' Charter Guidelines. They will be updated and adapted over time as I gather more information on the specific challenges agencies face when implementing the Victims' Charter. Under the Victims of Crime Commissioner Act 2015, the Commissioner is also obligated to review the Victims' Charter from late 2024. Ongoing consultation to understand the challenges in implementing the requirements of the Victims' Charter will both inform future editions of the guidelines and reforms to the Victims' Charter itself.

I have valued the contributions of all people who participated in consultations during the development of the guidelines, particularly people with lived experience as victims of crime. Their generosity in sharing their expertise will hopefully support greater consistency and effort in delivering victims of crime the entitlements they are due.

## Fiona McCormack

Victims of Crime Commissioner

Victims of Crime Commissioner

Victims' Charter Guidelines - VERSION 1

## **Acknowledgements**

The Victims of Crime Commissioner (the Commissioner) and the Victims of Crime Commissioner's Office acknowledge Victoria's Aboriginal communities and pays 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. In these guidelines, 'Aboriginal' refers to both Aboriginal and Torres Strait Islander peoples.

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 LGBTQI+ communities, immigrants, refugees and other displaced people living in our community. We recognise the strength, resilience and resourcefulness of victims and survivors of trauma. We welcome the expertise that people with lived experience bring in helping shape better systems and a better future. We also thank those people with lived experience who participated in consultations during the development of the guidelines. Their expertise and insights are essential to improving responses by justice agencies and victims' services as intended by the Victims' Charter.

## **Glossary and acronyms**

Victims' Charter	Victims' Charter Act (2006)		
Commissioner	Victims of Crime Commissioner		
Culturally safe	Cultural safety is an environment that is safe for Aboriginal peoples, where there is no assault, challenge or denial of their identity and experience.		
DPP	Director of Public Prosecutions		
Investigatory agency	Section 3(1) of the Victims' Charter defines an investigatory agency as:		
	(a) a police officer; or		
	(b) a person authorised by an enactment to investigate a criminal offence.		
n.d.	No date		
OPP	Office of Public Prosecutions		
OVIC	Office of the Victorian Information Commissioner		
Person adversely affected by crime	Section 3(1) of the Victims' Charter defines a person adversely affected by crime as:		
	(a) a natural person who has suffered injury as a direct result of a criminal offence, whether or not that injury was reasonably foreseeable by the offender; or		
	(b) a family member of a person referred to in paragraph (a); or		
	(c) a witness to a criminal offence.		
Prosecuting agency	Section 3(1) of the Victims' Charter defines a prosecuting agency as the DPP, or a police officer, or a person authorised to bring proceedings for a criminal offence against an enactment.		
Trauma-informed	'Trauma can be defined as the experience and effects of overwhelming stress. Trauma overwhelms a person's ability to cope when faced with a threat'. Trauma-informed responses are informed by a deep understanding of the impact of trauma and victimisation and work to reduce and prevent retraumatisation.		
	See Chapter 1 for more information		

Kezelman, C. and Stavropoulos, P, *Talking about trauma*: guide to conversations and screening for health and other service providers, Blue Knot Foundation (2018).

TRS	Telecommunications Relay Services		
VAP	Victims Assistance Program		
Victim of crime	Section 3(1) of the Victims' Charter defines a victim as:		
	(a) a natural person who has suffered injury as a direct result of a criminal offence, whether or not that injury was reasonably foreseeable by the offender; or		
	(b) if a person has died as a direct result of a criminal offence committed against that person, a family member of that person; or		
	(c) if the person referred to in paragraph (a) is under 18 years of age or is incapable of managing his or her own affairs because of mental impairment, a family member of that person; or		
	(d) in the case of an offence against section 49M of the <i>Crimes Act 1958</i> (grooming for sexual conduct with a child under the age of 16), the child and a family member of that child.		
Victim centred	The UN defines a victim centred approach as:		
	"a way of engaging with victims that prioritizes listening, avoids re- traumatization, and systematically focuses on their safety, rights, well- being, expressed needs and choices." See Chapter 1 for more information.		
Victims' services agency	Section 3(1) of the Victims' Charter defines a victims' service agency as:		
	(a) an entity established under an enactment that is responsible for the provision of services to persons adversely affected by crime; or		
	(b) a public official within the meaning of the Public Administration Act 2004 who is responsible for the provision of services to persons adversely affected by crime; or		
	(c) an entity that is publicly funded to provide services to persons adversely affected by crime.		
VOCC Act	Victims of Crime Commissioner Act 2015		

## A word on terminology

The Commissioner recognises that there are many terms that are used to describe those who have experienced crime and are dealing with its impact. These include affected family member, survivor, victim-survivor, complainant and witness. Some people identify with one of these terms more than others, and some people do not identify with any of these terms.

For example, there are complexities in language used by Aboriginal communities in the context of referring to family violence and family members. Some terms used are "affected family member and user of violence" and in other contexts, the phrases used are "people who use violence" and "people who experience violence" in relation to family violence.<sup>2</sup>

As the guidelines apply to victims of all types of crime and each victim's experience is different, it is not possible to find a simple phrase that encapsulates the experiences of everyone.

These guidelines talk about 'victims', 'victims of crime' and 'people adversely affected by crime' because these are the terms currently used in

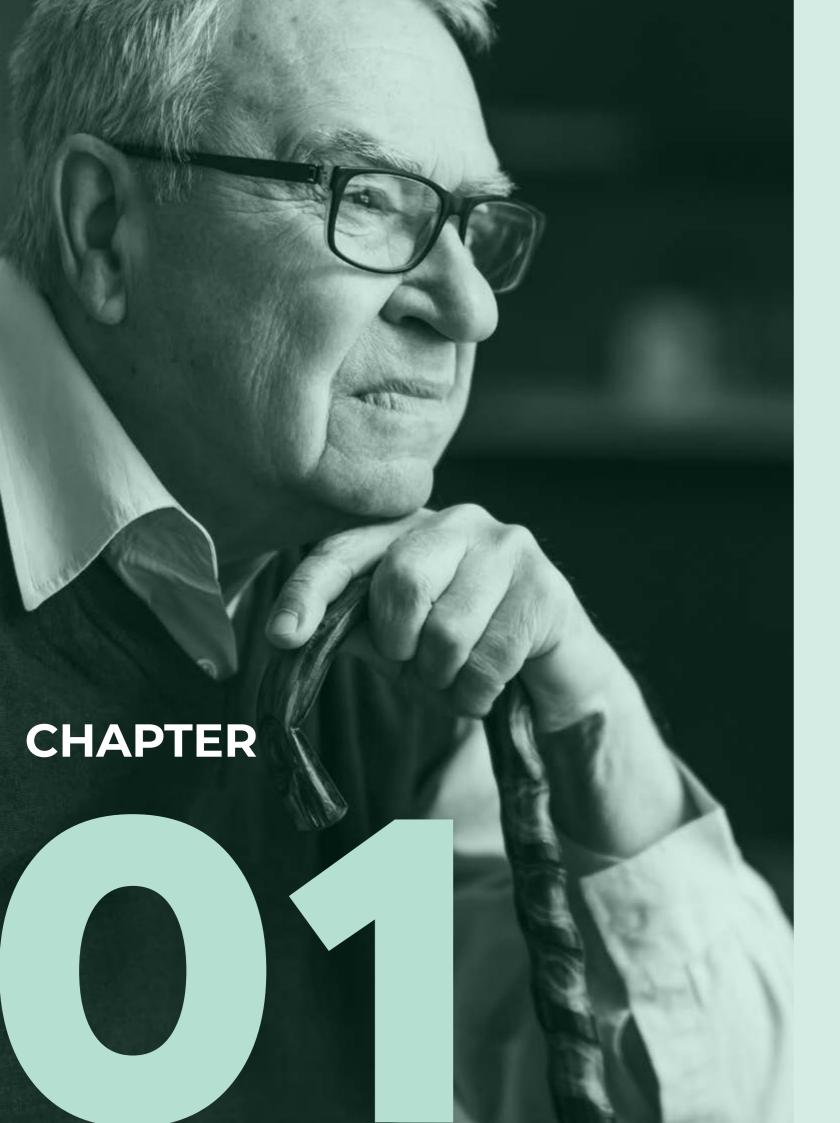
the Victims' Charter Act 2006 (Victims' Charter), the Victims of Crime Commissioner Act 2015 (VOCC Act), and the Victims of Crime (Financial Assistance Scheme) Act 2022, and because these terms specifically refer to people's experience of crime.

The Victims' Charter covers both people adversely affected by crime and victims.<sup>3</sup> The phrase 'people adversely affected by crime' includes victims, victims' family members and people who have witnessed a crime.

- People adversely affected by crime have entitlements that relate to treating them with courtesy, respect and dignity, recognising diversity, and the provision of information.
- Victims' entitlements are more specific they cover principles that relate to investigation, prosecution and court processes, victims in rural and regional locations, more detailed requirements on how information is provided, and recognising victims' preferences.

<sup>2</sup> Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) Practice Guide, Victorian Government 2021, p.13

The full definitions of these terms are in the Glossary at the end of the guidelines.



## 1. Introduction

These guidelines aim to support justice agencies and victims' services organisations to implement practices to provide **safe, inclusive and trauma-informed responses** to all victims of crime as required under the Victims' Charter.

The Victims' Charter sets cultural and behavioural obligations for justice agencies and victims' services when they interact with victims of crime. It sets out principles that govern the responses of these agencies to victims of crime. Through the Victims' Charter, victims are afforded special treatment by these agencies and are allowed to participate in certain parts of the justice process.

The Victims' Charter also gives victims of crime the right to make a complaint to the Commissioner about an agency's compliance with the Victims' Charter principles. The Commissioner reports annually on compliance with the Victims' Charter.

The Commissioner recognises that people with lived experience as victims of crime, agencies in the justice and victims' services systems, and people who support victims are seeking more information and guidance about the obligations in the Victims' Charter and the Commissioner's regulatory role. While the principles are set out in the Victims' Charter, people want more clarity about how they should be applied.

These guidelines seek to provide this clarity.

They have been informed by the contributions of many people consulted during their development. The views and insights of all those who participated were constructive and informative and had a material impact on the content of the guidelines. This includes people with lived experience of crime, members of an advisory group, agencies who provided submissions and attended workshops, and particularly Safe and Equal and the Federation of Community Legal Centres who organised specific consultations with their members and consultative groups.

In her role, the Commissioner engages with people affected by crime and hears from victims of crime when they contact her office to make enquires. Some of their anonymous quotes appear throughout the guidelines.

The Commissioner's view is that it is critical that the application of the Charter principles is considered through the lens of intersectionality and an understanding of the additional barriers and discrimination some people frequently experience, such as Aboriginal peoples, people with disability, LGBTIQ+ people, people from culturally diverse backgrounds, children and older people. These are people more likely to be targeted as victims, less likely to report and whose experience of victimisation will more likely compound existing disadvantage.

Given the length of these Guidelines, there are links throughout to information on good practice in engaging with people who face additional and complex barriers, rather than including the full detail of these resources in the body of the document.

## I.1. About the guidelines

The guidelines aim to assist agencies with obligations under the Victims' Charter to:

- assess how well their activities align with the Victims' Charter principles
- implement the Victims' Charter in a way
  that improves the experience of all victims,
  particularly those at the greatest risk of not
  being treated with courtesy, respect and
  dignity, getting information in an accessible
  format, or receiving the support they need.

## **Purpose of the guidelines**

The guidelines are not compliance standards, but a framework to encourage agencies to meet the expectation to improve their practices in responding to victims of crime in line with the Victims' Charter.

While each Victims' Charter principle is a separate statement, these guidelines recognise the benefit of a holistic approach to a victim's need throughout the criminal justice process.

The guidelines aim to:

- build ownership and understanding among all agencies about good practice in implementing the Victims' Charter, consistent with its objectives<sup>4</sup>
- assist agencies in understanding those issues that are particularly important when engaging with people adversely affected by crime
- create a more approachable and effective complaints process within agencies, to meet the expectations of people adversely affected by crime
- clarify what compliance with the Victims' Charter means.

## The needs of different agencies

The guidelines recognise the diversity of agencies subject to the Victims' Charter:

- some work solely with victims of crime, others have a broader client base
- some have internal resources available to implement the Victims' Charter to support people affected by crime, others are highly resource constrained.

Many agencies already have detailed practice guidance available that will be relevant in implementing the Victims' Charter. Links to some of these documents are provided in the guidelines. It is important that agencies develop their internal practice documents in a way that is consistent with these guidelines. The Commissioner will consult further with agencies about developing more specific guidance where this is needed.

Various groups have already developed good practice principles that recognise these general principles in the Victims' Charter. And many agencies have significant practical experience in dealing with these complexities.

## **Complementary regulatory schemes**

Some victims' services agencies operate under other regulatory schemes that complement the Victims' Charter. Many agencies already implement the Victims' Charter principles through good practice, compliance with complementary legislation, or industry accreditation or standards.

Others are required to operate within frameworks such as the Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework, which have detailed practice guides and some principles similar to those in the Victims' Charter.

Many of these voluntary and mandatory processes and standards are well established, and others are being developed. For example, the Human Services Regulator in the Department of Families, Fairness and Housing is establishing new Social Service Standards that will apply to services in:

- · family violence
- homelessness
- supported residential services
- · disability services
- · children, youth and family services.

The Social Service Standards are intended to be phased in from July 2024 and requirements under these standards will apply to some victims' services agencies.

Many agencies are also required to comply with the Child Safe Standards if they work with children who are victims. The Standards are created under legislation and the Commission for Children and Young People publishes a guide to support agencies to implement child safe practices. Some Standards have similar or complementary principles to those in the Victims' Charter

Community legal centres can be accredited through the National Accreditation Scheme which is an industry-based certification process that supports and recognises good practice in the delivery of community legal services. The Scheme is a quality assurance process that requires members to operate according to good practice and industry standards.

The Commissioner will work with these existing and emerging regulatory schemes to avoid duplication and to recognise where agencies are already subject to complementary obligations or reporting requirements.

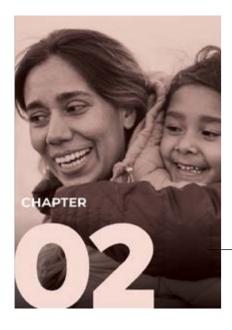
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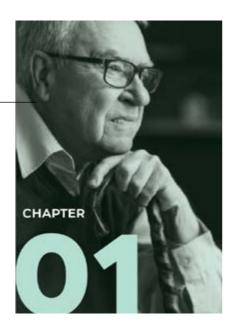
Victims' Charter Guidelines - VERSION 1

<sup>4</sup> The objectives (section 4 of the *Victims' Charter Act 2006*) recognise the impact of crime on victims and their families, the importance of treating people affected by crime with respect, and giving them the information they need to seek help. They also recognise that all victims have an inherent interest in and right to participate in criminal justice proceedings, and the need to reduce secondary victimisation caused by the justice system. The objectives of the Victims' Charter are listed in detail in section 1.2 of these guidelines.

## How to use the guidelines

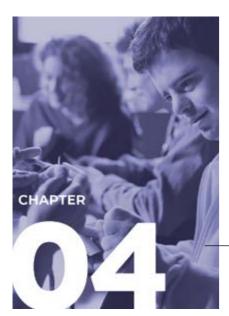
**Chapter 1** provides an overview of the background and context to the Victims' Charter and the Commissioner's role in overseeing agency compliance. Use this to understand the Victims' Charter, the needs of victims and the impacts of the criminal justice system on those affected by crime.

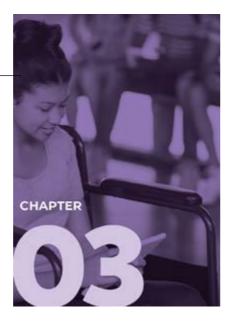




**Chapter 2** gives good practice indicators on the overarching obligations that apply to all agencies. Use this to understand how best to treat people adversely affected by crime, communicate in ways they need, and provide them with the information they need

**Chapter 3** sets out good practice indicators on more detailed and agency-specific obligations that apply to investigatory and prosecuting agencies (such as Victoria Police, the Office of Public Prosecutions and WorkSafe) in the criminal justice process. Use this to understand the ways that investigatory and prosecuting agencies can support victims and minimise further trauma through the criminal justice process.





**Chapter 4** provides guidance on optimal governance, practices and processes for organisations to achieve good practice and meet their obligations under the Victims' Charter and to minimise victims' secondary victimisation in the justice system.

## 1.2. The Victims' Charter

The objectives 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 the Victims' Charter, 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

## **The Victims of Crime Commissioner**

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

Since late 2019, under the *Victims of Crime Commissioner Act 2015* (VOCC Act), the Commissioner is empowered to:

- investigate complaints made by victims about potential breaches of the Victims' Charter by justice agencies and victims' services<sup>5</sup>
- report annually on justice agencies' and victims' services' compliance with the Victims' Charter.<sup>6</sup>

The Commissioner also has broader advocacy functions to influence improvements in the justice and victims' services systems by:

- conducting inquiries into systemic issues that affect victims of crime<sup>7</sup>
- representing the concerns of victims to government and providing 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.<sup>8</sup>

The Commissioner is committed to ensuring that victims of crime are heard and respected by justice agencies and victims' services, and that these agencies and services understand their obligations to provide safe, inclusive and traumainformed responses to all victims of crime.

Victims of Crime Commissioner Act 2015 (Vic) s25A.

Victims of Crime Commissioner Act 2015 (Vic) s28(1A) lists the agencies which the Commissioner is obliged to report on.

Victims of Crime Commissioner Act 2015 (Vic) s13(1)(b-c), 23(1).

<sup>8</sup> Victims of Crime Commissioner Act 2015 (Vic) s13(1)(a);(d).

Page 16 Page 17

## Who does the Victims' Charter apply to?

The Victims' Charter sets out principles that apply to all investigatory, prosecuting and victims' services agencies in Victoria. It defines these types of agencies broadly.

A person or body responsible for developing criminal law policy, victims' services policy, the administration of criminal justice or the administration of victims' services must, where relevant, have regard to the Victims' Charter principles.

Agencies that provide victims' services in courts have obligations to comply with specific Victims' Charter principles, but the Victims' Charter does not explicitly apply to judicial officers or defence lawyers operating in the courtroom. The Victims' Charter does not specifically mention forensic service agencies such as the Victorian Institute of Forensic Medicine, or the Coroners Court of Victoria and its officers.

Examples of agencies subject to the Victims' Charter					
Victims' services agencies	Investigatory agencies	Prosecuting agencies			
Community legal services	Victoria Police	Office of Public Prosecutions			
Specialist victims of crime services	WorkSafe	Victoria Police			
Family violence services		WorkSafe			
Department of Justice and Community Safety					
Orange Door Services					
Victoria Legal Aid					
Sexual assault services					
Family Safety Victoria					

# 1.3. Victim entitlements under the Victims' Charter

Very broadly, the Victims' Charter requires agencies to:

- treat victims with courtesy, respect and dignity
- have regard to victims who experience specific barriers to the justice system
- provide 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.

Prosecuting and investigatory agencies have additional obligations to provide information and consult with victims.

The Victims' Charter contains 17 principles. In addition, it requires agencies to have a complaints system so people affected by crime can raise concerns if the principles have not been met. (See Diagram 1, or appendix 1 for an accessible description of the information in the diagram).

Agencies are expected to ensure the Victims' Charter principles are reflected in their policies and processes and ensure that their staff are aware of the Victims' Charter and have training to enable them to comply with the Victims' Charter obligations.

These guidelines set out good practice in relation to policies, processes, staff training and competence-building to properly discharge their obligations to victims and those adversely affected by crime. The good practice indicators are a starting point.

Agencies are also expected to be proactive in identifying a person as a victim or someone adversely affected by crime. Section 18(1) of the Victims' Charter states:

"If an investigatory agency, a prosecuting agency or a victims' services agency is aware, or should reasonably be aware, that a person is a victim, the agency must have regard to the Charter principles when dealing with the person."

We recognise that certain agencies have broad client bases, and it can be difficult to identify whether a person accessing the service is a person adversely affected by crime. For such agencies, it is important that they treat all people who they engage with in ways that meets community expectations. The good practice indicators contained in these guidelines will help such agencies treat victims in accordance with the Victims' Charter, even if they are not specifically identified as a person adversely affected by crime.

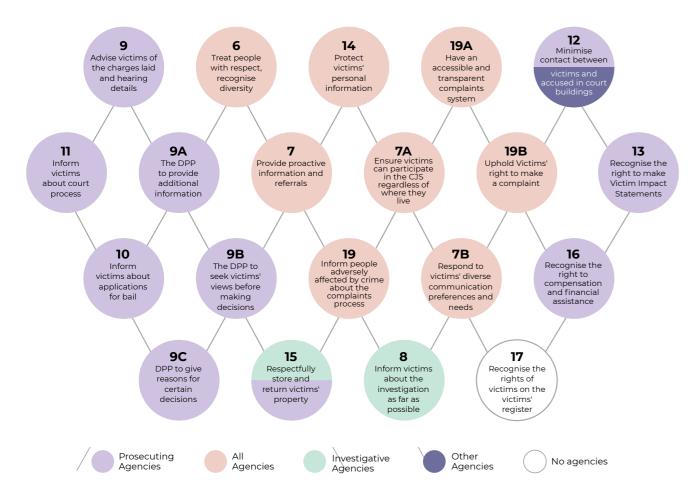


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Victims' Charter Guidelines - VERSION 1

## Diagram 1: Victims' Charter principles and complaints handling

The figure below shows the Charter Principles and which agency is associated with that principle. The numbers indicate the section of the Victim's Charter that relates to that principle.



# 1.4. Supporting victims through the justice system – why it matters

Many people adversely affected by crime are unfamiliar with the justice system. It is therefore important that agencies clearly explain their role and manage expectations about how the justice system operates. Agencies are expected to tell people about their rights and entitlements under the Victims' Charter.

If the Victims' Charter principles were implemented as intended, people adversely affected by crime from all backgrounds would be:

 given the information they need in a form they can access and use, and be provided with regular updates in ways that meets their needs

- supported to participate in the criminal justice process in a way that reduces their trauma and helps support their healing
- treated as an individual and empowered to make the choices that best suit their circumstances.

If agencies met their Victims' Charter obligations, victims from all backgrounds would be treated with courtesy, respect and dignity and would be supported in all their dealings with the criminal justice process. Responses to victims would recognise that trauma victims' experience and support their healing.

All people involved in the justice system would be flexible and responsive in the way they interact with victims. They would listen to what victims want and accommodate their wishes where possible. They would try to give victims greater choice and respond to them in a way that helps them feel empowered.

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

#### Victim of Crime

The justice and victims' services system would also recognise that everyone is an individual and that the way each person experiences and reacts to being a victim of crime is different. All agencies would respond in ways that recognise the importance of self-determination and cultural safety for Aboriginal peoples, avoids ageism, ableism<sup>9</sup>, racism and all other forms of bias and discrimination.

In addition, if the Victims' Charter principles were implemented as intended, responses to victims would also recognise the importance of appropriate and timely responses for children adversely affected by crime. This recognises children's vulnerability, the negative impacts of trauma, and the short and long-term consequences of not supporting their recovery from trauma.

## **Benefits of supporting victims**

Supporting people adversely affected by crime and creating a more victim centred, trauma-informed and culturally safe<sup>10</sup> environment is important to reduce trauma, to assist with recovery and healing, and enable victims to participate in the justice system.

People affected by crime seek to be supported in a way that meets their individual needs. Frequently, engaging with the justice system can be retraumatising. However, when victims' experiences in the justice system are positive, it can contribute to their recovery from trauma.

It is well recognised that victims' participation and cooperation are essential for the criminal justice system to work well. This engagement builds trust in the justice system, benefiting the whole community. When they report a crime and act as a witness for the prosecution, victims play an integral role in the effective functioning of the criminal justice system. Victims are critical stakeholders in the criminal justice system and the perception that it fails to meet their needs has the potential to significantly erode public confidence.

"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."

#### Victim of crime

Further, there are economic benefits from reducing further harm and trauma to people adversely affected by crime. Trauma can affect people's health and work performance and has flow-on effects to health and welfare services. Faster recovery is likely to translate to a reduced need to rely on social services.

Supporting victims with proactive, intensive and holistic services may divert people adversely affected by crime from trajectories of harm, repeat victimisation and offending.<sup>13</sup> In fact, the Centre for Innovative Justice has argued that the link between victimisation and offending is one of the strongest empirical associations in criminological literature.

<sup>9</sup> Ableism is discrimination or prejudice towards people with disability. It can be described as the systemic and interpersonal exclusion and oppression of people with disability www.vic.gov.au/state-disability-plan/our-language/ableism

NSW Sentencing Council. See section 1.5. for further discussion of victim centred, trauma-informed and culturally safe practice.

<sup>11</sup> Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process Report August 2016 p.xiv

<sup>12</sup> New South Wales Sentencing Council, Public confidence in the NSW Criminal Justice System 2009, p.12

<sup>13</sup> Centre for Innovative Justice, Strengthening Victoria's Victim Support System: Victim Services Review, Final Report, RMIT University 2020, p.41, 51.

## 1.5. Pillars to inform good practice

Under the Victims' Charter, one of the primary objectives is to reduce the harms of secondary victimisation. These guidelines propose four pillars to inform how agencies interact with people adversely affected by crime to reduce secondary victimisation.

These pillars are:

- being trauma-informed
- being victim centred
- · recognising intersectionality
- recognising self-determination and cultural safety for Aboriginal communities.

## Diagram 2 - Pillars of good practice



## The pillars and the Victims' Charter

All agencies are required to understand their obligations under the Victims' Charter and be able to effectively communicate these to people adversely affected by crime.

The Victims' Charter does not require agencies to comply with the pillars outlined in this section. However, as outlined below, contemporary practice in working with victims of crime does emphasise the importance of these pillars of good practice to reduce harm to victims. Feedback from victims of crime and agencies that support victims also considered it important for agencies to be informed by the pillars outlined in this section.

Many victims' service agencies embed these concepts in their operational codes and cultures. They require an ongoing process of identifying and implementing improvements and cultural change.



## Pillar 1 - Trauma-informed practice

Trauma-informed practice supports the wellbeing of everyone. This is regardless of whether they are currently, or have previously, experienced trauma. Trauma-informed practices are designed and delivered in ways that intend to cause no further harm or distress. They promote healing and recovery. Trauma-informed practices reflect values that foster safety and wellbeing.

Trauma-informed practice is an approach that is holistic, empowering, strengths-focused, collaborative and reflective. It promotes physical, emotional, spiritual and cultural safety.

It is also a whole-of-system approach. If people using services (and people working in services) are to have truly helpful and healing experiences from justice and victims' services systems, all elements will ideally work together in a trauma-informed way.

Trauma-informed practice should:

- realise the impact and recognise the signs of trauma
- actively seek to reduce retraumatisation
- emphasise physical, psychological, cultural and emotional safety for victims
- provide victims with voice and choice, including different ways to engage to minimise harm
- create opportunities for victims to rebuild a sense of empowerment
- recognise that trauma may impact victims' engagement with the process
- be responsive to victims' diversity
- promote trust and transparency in process and decision making.<sup>14</sup>

## Pillar 2 - Victim centred approach

The Victims' Charter acknowledges that victims have an inherent interest in the justice system and a victim's role as a participant (but not a party) in criminal justice processes.

Where possible, it is preferable for justice agencies and victims' services to take a victim centred approach. The United Nations (UN) defines a victim centred approach as 'a way of engaging with victims that prioritizes listening, avoids retraumatization, and systematically focuses on their safety, rights, wellbeing, expressed needs and choices'.<sup>15</sup>

UN Women provides further detail on what a victim centred approach can look like in practice:

- placing victim needs (as expressed by them) at the centre of a response and any interventions
- foundational principles that enhance safety and minimise harm
- training that ensures service providers know how to translate these principles into their routine practices—includes understanding the many ways victims may be blamed or held responsible for their experiences of violence, and working to ensure this does not happen
- prioritising confidentiality and seeking consent when sharing information
- ensuring information about support services, legal and human rights is widely available and accessible to victims
- gathering feedback from victims on the responses of agencies
- enabling victims to participate in the development of responses and/or provide feedback on how it works.<sup>16</sup>

<sup>14</sup> Adapted from VOCC, Submission to the Legislative Council Legal and Social Issues Committee's Inquiry into Victoria's Justice System 2021a. p.14-15

<sup>15</sup> Adapted from UN Refugee Agency, 'A Victim-Centred Approach', UNHCR The UN Refugee Agency (n.d.), accessed 20 September 2022

<sup>16</sup> Adapted from UN Women, 'Victim/survivor-centred approach', UN Women Virtual Knowledge Centre to End Violence against Women and Girls, 14 January 2019, accessed 18 February 2023.

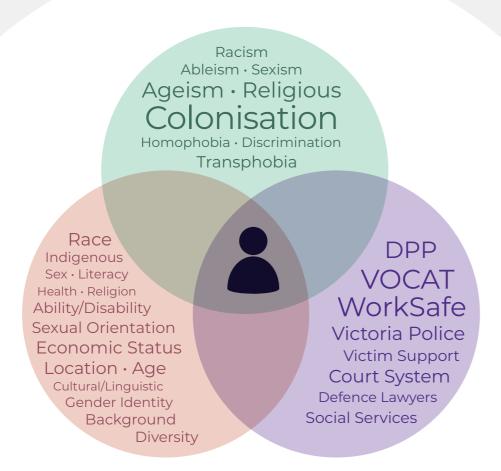
## Pillar 3 - Intersectionality

Intersectionality describes how systems and structures interact on multiple levels to oppress, create barriers and overlapping forms of structural discrimination, stigma and power imbalances based on characteristics such as Aboriginality, gender, sex, sexual orientation, gender identity, ethnicity, colour, nationality, refugee or asylum seeker background, migration or visa status, language, religion, ability, age, mental health, socioeconomic status, housing status, geographic location, medical record or criminal record. For a more detailed explanation, refer to the Victorian Government's webpage on Understanding Intersectionality.

In Diagram 3 the coral segment depicts some of the factors that can come together to create a person's identity and sense of self. We often describe this as diversity. The purple shows some of the criminal justice structures and systems that impact people adversely affected by crime. The green shows just some of the forms of discrimination that can impact people adversely affected by crime.

When agencies adopt an intersectional approach with people adversely affected by crime they recognise and consider all the aspects that make up a person's identity. How factors like social structures and inequalities, combined with discrimination and bias will influence trauma, reactions, treatment, safety, and even whether people seek help.

## **Diagram 3 – Intersectionality**



## Pillar 4 - Cultural safety

Cultural safety is a fundamental human right and is:

"... the positive recognition and celebration of cultures. It is more than just the absence of racism or discrimination and more than 'cultural awareness' and 'cultural sensitivity'. It empowers people and enables them to contribute and feel safe to be themselves."

A culturally safe environment is free from racism and discrimination and where a person's cultural needs are met. A culturally safe environment is one where staff attitudes and behaviours have changed to better interact with victims of crime. If applied effectively, culturally safe approaches can benefit people who have specific cultural needs, whichever community they belong to.

It also refers to 'an environment that is safe for Aboriginal people and Torres Strait Islanders, where there is no assault, challenge or denial of their identity and experience.'<sup>18</sup>

The Victorian Government Aboriginal and Torres Strait Islander – Cultural Safety Framework guidelines states that cultural safety is about:

- Shared respect, shared meaning and shared knowledge.
- The experience of learning together with dignity and truly listening.
- Strategic and institutional reform to remove barriers to optimal health, wellbeing and safety outcomes for Aboriginal people.
   This includes addressing unconscious bias, racism and discrimination, and the ability to support Aboriginal self-determination.

- Individuals, organisations and systems taking responsibility for ensuring their own cultural values do not negatively impact on Aboriginal peoples, including a responsibility to address their potential for unconscious bias, racism and discrimination.
- Individuals, organisations and systems taking responsibility to support self-determination for Aboriginal peoples – this includes sharing power (decision making and governance) and resources with Aboriginal communities, and is especially relevant for the design, delivery and evaluation of services for Aboriginal peoples.<sup>19</sup>

The Cultural Safety Framework also includes a reflective tool for individuals and organisations to create culturally safe environments.<sup>20</sup> Training on cultural safety is provided by organisations such as the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) and the Victorian Aboriginal Child Care Agency (VACCA).



<sup>17</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Keeping Our Kids Safe: Cultural Safety and the National Principles for Child Safe Organisations*, p.7.

Williams R 2008, 'Cultural safety: what does it mean for our work practice?' *Australian and New Zealand Journal of Public Health*, vol. 23, no. 2, pp. 213–214.

<sup>19</sup> Department of Health and Human Services, Part 1: Aboriginal and Torres Strait Islander cultural safety framework, For the Victorian health, human and community services sector, Victorian Government, p.7

<sup>20</sup> Victorian Government, Aboriginal and Torres Strait Islander - Cultural Safety Framework, accessed 18 February 2023.

Page 24 Page 25

## **Self-determination**

The Victorian Aboriginal Affairs Framework 2018–2023<sup>21</sup> recognises self-determination as a human right enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, article 3:

"Indigenous peoples have the right of selfdetermination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The Aboriginal Justice Caucus in Victoria has been clear in stating that Aboriginal self-determination is a matter for Aboriginal people. Therefore, the process of furthering self-determination in justice must be led by Aboriginal people in Victoria.

Embedding Aboriginal self-determination is a strong foundation for the future effectiveness of service delivery to close the gap between Aboriginal and non-Aboriginal justice outcomes:

- Aboriginal people understand the issues of concern and priority in their local areas.
- involvement of Aboriginal people ensures community buy-in and culturally appropriate solutions.
- inclusion of Aboriginal people builds community and social capital.
- involvement of Aboriginal people increases potential for creation of culturally sensitive spaces and improved cultural competency of non-Aboriginal staff.
- Aboriginal people are able to use their networks to engage people in programs and services who may not otherwise participate.
- Aboriginal people can use their community networks to work across agencies in communities.

Self-determination empowers Aboriginal peoples to make decisions on matters that affect their lives and communities.<sup>22</sup>

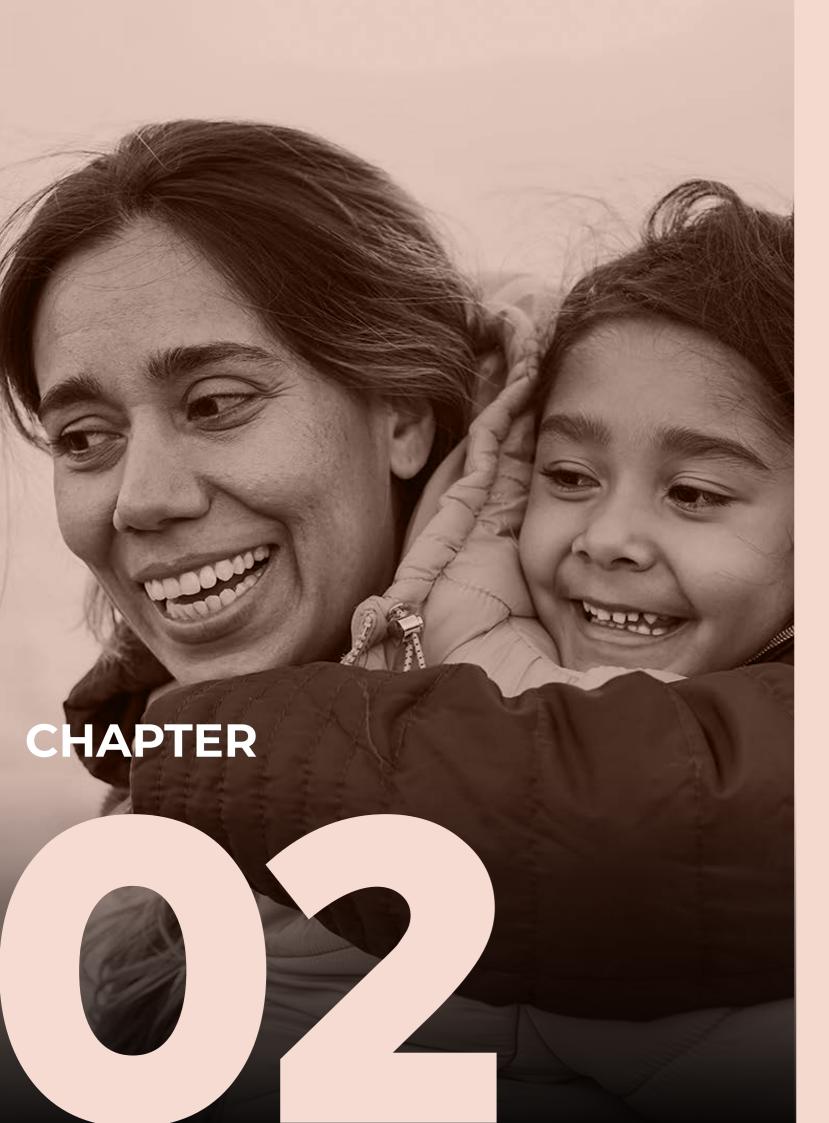


<sup>21</sup> Victorian Aboriginal Affairs Framework, 2018-23, accessed on 18 February 2023.

Victims of Crime Commissioner

Victims' Charter Guidelines - VERSION 1

<sup>22</sup> Aboriginal Justice Caucus, 'Self-determination in justice' 27 June 2022, accessed on 18 February 2023.



# 2. Victims' Charter principles that apply to all agencies

All agencies are obliged to abide by certain principles in the Victims' Charter, such as treating victims with courtesy, respect and dignity.

Here, we describe what these principles mean in everyday terms, why they are important and give guidance on good practice. "It may not be safe to report domestic violence and reporting is traumatic. Victims should be supported, not blamed, if they do not report."

Victim of crime

## **Charter principles**

#### 6 Treatment of persons adversely affected by crime

- (1) All persons adversely affected by crime are to be treated with courtesy, respect and dignity by investigatory agencies, prosecuting agencies and victims' services agencies.
- (2) Investigatory agencies, prosecuting agencies and victims' services agencies are to take into account, and be responsive to, the particular needs of persons adversely affected by crime, particularly needs relating to differences such as—
  - (a) race or indigenous background;
  - (b) sex or gender identity;
  - (c) cultural or linguistic diversity;
  - (d) sexual orientation;
  - (e) disability;
  - (f) religion;
  - (g) age.

#### 7A Special treatment of victims

Investigatory agencies, prosecuting agencies and victims' services agencies are to-

- (a) respect the rights and entitlements of victims as participants in proceedings for criminal offences; and
- (b) so far as is reasonably practicable, take into account, and be responsive to, the particular needs of victims living in rural and regional locations.

## 2.1. Treatment of people adversely affected by crime

The principles outlined in sections 6 and 7A of the Victims' Charter relate to treating people adversely affected by crime with courtesy, respect and dignity, and also recognising the individual needs and differences of victims.

## What does this mean?

Agencies need to take care so that people adversely affected by crime feel that they have been treated with courtesy and respect in a non-discriminatory and compassionate manner.

This includes agencies respecting individual values, beliefs and life experiences. A person adversely affected by crime should receive the same quality of service regardless of their race, culture, ethnicity, sexual orientation, disability, religion and age.

Many factors can affect how people adversely affected by crime experience the justice system, for example, their health, where they live, economic circumstances, cultural background and literacy.

"Children and young people should be treated as separate individuals and recognised as victims in their own right. They should be allowed to make their own choices, separately access services and asked directly about what they need."

#### Victim of crime

Agencies need to recognise the rights of people adversely affected by crime to make informed and independent choices—their voice should be central in the decision-making process about the support they need.

Agencies are responsible for informing and managing victims' expectations about their ability to participate in criminal proceedings. They must not discourage them from reporting or seeking further information.

It is important to recognise that victims in rural and regional Victoria face unique and additional barriers to accessing the justice system and victims' services.

To reflect the Victims' Charter, agencies are required to treat each victim or person adversely affected by crime as an individual. This means treating a person with respect and approaching them without preconceived ideas. It means not having a blanket approach or putting a person in a pigeonhole.

Agencies must be aware that conscious and unconscious bias may influence the way that professionals treat people.

Agencies can use the pillars described in section 1.5. to better understand and implement practices that help see people as individuals, and also understand their cultural context, whether that be race, age, gender, disability or religious community.

Family violence services are expected to deliver services in accordance with the *Everybody Matters Inclusion and Equity Statement*, which is a long-term vision for the creation of a family violence system that is more inclusive, responsive and accessible to all Victorians. It states that government and family violence services have a responsibility to deliver services

that are culturally safe, culturally responsive and free of racism. It is imperative that services are provided in a manner that is respectful of a person's cultural identity and beliefs, and that supports are free from discrimination or prejudice.<sup>23</sup>

Some agencies do not only deal with people adversely affected by crime. These agencies should make their staff aware that when they engage with people adversely affected by crime, they should apply a trauma-informed, victim centred approach. They should also recognise the importance of cultural safety and self-determination when engaging with Aboriginal and Torres Strait Islander peoples.

Applying these principles across all clients (not just those adversely affected by crime), where possible, can ensure that agencies comply with the Victims' Charter.

## Why does this matter?

How agencies respond to someone adversely affected by crime can affect that person's recovery and experience of retraumatisation.

People adversely affected by crime have different expectations, experiences and needs that require different or nuanced responses from the justice system. Failing to recognise these differences disempowers people and can hinder their recovery.

"Treating victims with respect is closely connected to the victim's role as a participant and is about meeting victims' other expectations. Victims feel respected when they are provided with information and support, have the option of participating in decision making, are protected from unnecessary trauma, intimidation and unjustified interference with their privacy, and are given a means to claim compensation or restitution from the offender. Respectful treatment also requires criminal justice system authorities to respond to the diverse needs of all victims." <sup>24</sup>

Trauma can affect people differently. Each person's response is personal and unique and can be affected by other factors such as if they have a disability or previous involvement in the criminal justice system. For children adversely affected by crime, a lack of timely and professional intervention can result in long term impacts from trauma.

The response a person adversely affected by crime expects may differ between agencies and at different times. Providing equal access and treating everyone the same will not ensure that everyone is treated fairly. It is recognised in Australia, and internationally, that some people require extra assistance to participate equally in the criminal justice system.<sup>25</sup>

# Recognising individuality, structural discrimination and diversity

Each person reacts and responds differently to trauma and past discrimination. Agencies must take an intersectional approach and respond in a victim centred way that is culturally safe. They should recognise that for some people, engaging with formal systems such as the justice system is innately difficult because of a history and lived experience of institutional mistreatment and discrimination. This means that many victims choose not to report or engage with agencies. Agencies should facilitate access for all victims, including those with disability, to ensure they are heard and can exercise choice. Some people adversely affected by crime have specific needs that affect what agencies must do to provide them with the support they need.

It is important to talk to people from diverse backgrounds to incorporate their voices into the agency's processes and procedures. It can be good practice to work with other agencies with specialist skills to provide the best support for people adversely affected by crime.

Visual aids (posters and stickers) and outreach activities can also help build an inclusive response. By engaging with communities through outreach, agencies can build trust and understanding; so that more people feel welcome and confident to contact them if they experience crime and need their assistance. Some agencies can gain accreditation as a way of improving and demonstrating their ability to provide good practice.

An intersectional understanding of diversity recognises the multiple layers of oppression some communities and individuals have faced in their interaction with both the justice and the human services systems in Victoria. Individuals may be subject to compounded oppression or discrimination as a member of multiple diverse groups or as a result of their personal history. Examples of possible intersecting identities that expose individuals to layered discrimination and oppression are outlined in the boxes below.

## Aboriginal peoples

Aboriginal peoples face a history and lived experience of discrimination and bias in their treatment in the criminal justice system and with social service agencies, which remains an ongoing issue for many Aboriginal peoples.

Agencies should recognise that this affects whether Aboriginal peoples are willing to report crime to police, seek help or engage with victims' services. For example, experiences of colonisation, oppression and discrimination can deny or disconnect people affected by crime from their family, community and culture. This combined with a history of child removal and the overrepresentation of Aboriginal children in the child protection system can discourage Aboriginal people from seeking help.

Good practice includes a holistic, traumainformed approach. For example, the work of The Healing Foundation, and the frameworks of Dhelk Dja and Nargneit Birrang builds on the strength of Aboriginal families and communities and encompass Aboriginal concepts of social, emotional, cultural and spiritual wellbeing.

Where possible, Aboriginal people should be offered the choice to engage with Aboriginal services. Of course, if they prefer, Aboriginal people should also have the choice of accessing a culturally safe mainstream service.

<sup>23</sup> Victorian Government, Everybody Matters inclusion and equity statement 2018.

Department of Justice and Community Safety, Victim Support Update, Victorian Government (2021), p.26; Brown, K.J. and Gordon, F., 'Older victims of crime: Vulnerability, resilience and access to procedural justice' International Review of Victimology, Volume 25, Issue 2, (2019), p.203, Camilleri, M., 'Disabled in rural Victoria: Exploring the intersection of victimisation, disability and rurality on access to justice' International Journal of Rural Criminology, Volume 5, Issue 1, (2019), p.96-100, Camilleri, M. and Pedersen, C., Hear Us: The experience of persons with Complex Communication Needs in accessing justice, School of Arts Federation University Australia (2019), p.iv

<sup>25</sup> Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process Report August 2016, p.xvi

## People who face discrimination and bias due to racial, ethnic and cultural identity

As a result of historical policies in Australia, people still face discrimination due to their racial, ethnic and cultural identity. Stereotypes and assumptions should be avoided, and negative attitudes should not be tolerated and should be addressed by services appropriately.

Efforts should be made to respond to the cultural and communication needs of victims of crime and a person's needs should be considered in service responses, rather than a focus on a person's identity. It is also important to consider how a person's membership of an ethnic or linguistic group may intersect with gender, sexual orientation, socioeconomic status and other factors that may increase their likelihood of structural discrimination.

There are some specific considerations regarding people from smaller communities, who may not report for fear of their private business becoming known within their community. Obtaining accredited, safe, independent interpreters outside of their local community can be important, as well as working with community leaders who can encourage their communities to report crime and seek support services.

Additionally, for first generation migrants, experiences with the police or the justice system in their country of origin may also prevent them from reporting, as can previous experiences of racism and discrimination both in their country of origin and in Australia.

## Children and young people

Children and young people are affected by crime in many ways.

They may be a victim of crime, or have witnessed crime, for example family violence, or may be living with a parent or guardian who is trying to manage the impact crime has had on them.

The justice process, justice agencies and victims' services often fail to recognise children or young people as victims in their own right. Services often make assumptions about what young people need. They do not always ask a child directly what they need or talk to them about their options.

It is important to view children as individuals and seek to engage directly with them about their needs.

Always requiring a parent to be present can be dangerous and can result in a young person not feeling safe to communicate what they really feel or have experienced.

It is important to recognise that young people who use violence are still children and are often also victims of abuse or violence.

## People with disability

People living with disability<sup>26</sup> may face bias and barriers which mean they are not believed or taken seriously when they report crime, or face challenges engaging with the justice system due to ableist perspectives and accessibility restrictions.

- they may require adjustments to access physical spaces and processes
- some victims with disability may have a history of interaction with institutions that exercise control over them

- some may need communication partners or assistive technology to communicate, receive and understand information, and participate in the justice process
- they may need time to communicate and may need to be treated with patience to ensure that they are given an adequate opportunity to be heard and understood
- agencies need to be alert to power dynamics and potential imbalances, for example between a person with disability and their carer.

In some instances, victims may decide to bring a support person with them to meet with an agency. While some victims may want or require to be accompanied by a friend, partner, relative or support worker, in some instances their support person may also be a perpetrator of abuse towards them.

A person may require their support person participate in some but not all of the appointment (for example, a discussion of private details).

When arranging meetings, it is important to ask if the person would like to bring someone with them. If the person does bring someone with them, it is important to meet with the person privately and ask them whether they want the support person with them during the appointment. This is a safety precaution as the victim may not be able to honestly communicate their preference in the presence of the support person. If the victim chooses to have a support person with them, ensure the conversation is directed to the person who is the victim of crime.

Good practice includes:

- checking communication assistance and any other access needs when arranging meetings
- not making assumptions that the person attending the interview with the victim is there because the victim wants them to be there attending interviews and doctor's appointment with a person (with or without disability) without their consent can be a form of coercive control.

- ensuring victims can communicate their preferences privately and safely
- letting victims know that they can bring a support person with them, and also that the victim is in control over the extent to which the person can be in the room when the victims is meeting with you—the victim may prefer the support person be available after the interview/meeting has finished.
- checking if the person has visited the service before—if the victim has attended the service previously, there may be notes about how they prefer to be contacted.
- asking the victim (on their own) if they feel safe at home, if the person accompanying them to the meeting/interview is also their carer/partner.

It is important not to make assumptions about someone's capacity based on appearance. Ask victims if they have any access requirements for their work with you (including talking, information and the meeting space). This helps agencies to meet their obligations to the Disability Discrimination Act. This will also assist when referring someone to another agency, so they have a smooth service transition.

It helps to ask these questions prior to an appointment so that agencies can be prepared to make the best use of appointment time. Aim to offer people a break and have opportunities to ask questions.

It is good practice to clarify that the victim of crime has understood what is being said—ask if they can explain to you in their own words what has happened during the meeting. Make sure the victim is asked what format they would like any follow up communication to take (eg. emails with large print, text messages).

26 These guidelines recognise the Victorian Government's definition of disability as "including those who have long-term physical, mental, intellectual or sensory impairments that, in interaction with various attitudinal and environmental barriers, may hinder their full and effective participation in society on an equal basis with others."



# Treatment of people adversely affected by crime

# Agencies engage with each person as an individual

- Early in their interaction, agencies ask people adversely affected by crime open questions to determine their needs (including accessibility).
   An open question is one that invites a full answer, rather than just 'yes' or 'no'. It is a question that doesn't make any assumptions about the person or how they might answer.
- Agencies recognise each person's individual needs and accommodate those needs wherever possible, rather than applying a one size fits all approach.
- Agencies try to offer each person support that is tailored to their needs, and to remove barriers, allowing all people adversely affected by crime to access services and engage with the justice system.

## Agencies recognise and respond to diversity

- Agencies recognise that systemic barriers, including discrimination and marginalisation, can impact a person's response to crime, including their willingness to seek support, report the crime and their recovery process.
- Agencies recognise that every person's response to crime and their recovery process will be unique.
- Agencies respond to people adversely affected by crime in a way that is culturally safe, and their processes support self-determination for Aboriginal people.
- Agencies draw on specialist support when needed, or if they are not able to meet the needs of people adversely affected by crime.
- Agencies recognise that a person's responses and needs will be impacted by the type of crime, their life experiences, available supports, stressors and vulnerabilities.

 Early in their engagement with people, agencies enquire about a person's identity, and about what the victim wants. Then, listen to their response and act on their response.

# Agencies recognise the entitlements of people adversely affected by crime

- Agencies recognise that people adversely affected by crime are entitled to make informed and independent choices—their voice should be central in the decision-making process about the support they need.
- Agencies make people feel welcome and, wherever possible, support them to engage when and in the way they choose and feel most comfortable.

#### Agencies are free from bias and discrimination

- Agencies take steps to recruit a diverse workforce.
   Agencies foster a culture of zero tolerance to racism and discrimination of all forms. This culture is supported by gender, diversity and disability inclusion plans and staff training.
- Staff are aware of the potential for bias and discrimination and the history of bias and discrimination that affects marginalised groups and people experiencing disadvantage, including Aboriginal peoples, people who identify as LGBTIQ+, children and young people, older people and people who are discriminated against because of their race, ethnicity or culture.

#### Agencies are empathetic and non-judgemental

- Agencies' staff understand the impact of trauma on people adversely affected by crime and recognise that trauma affects each person differently.
- Agencies listen and make it clear that they do not blame individuals for the way they respond to trauma or the impact of crime.
- Agencies are open and honest with victims unless legal or operational restrictions make this impossible.

#### Agencies are transparent

- Early in their interaction with victims, agencies explain their role and responsibilities.
- Agencies manage expectations and provide honest and timely responses. They are open and honest with victims where possible, and they provide people adversely affected by crime with unwelcome news in a direct and compassionate way. Agencies try their best to keep any promises or undertakings made to people adversely affected by crime, and if they cannot, communicate openly and clearly about why.



## **Useful links and resources**

Resources collated and provided by Safe and Equal, Victoria's peak body for specialist family violence services on its website have guides for Aboriginal peoples, children and young people, people with disability, LGBTIQ+ people, migrant and refugee, older people, criminalised women – available on its webpage Providing tailored and inclusive support)

Victorian Legal Aid has plans and strategies available on its website, including:

- Disability Action Plan
- Reconciliation Action Plan
- Client-First Strategy
- Client Priority and Capability Policy
- Gender Equality Action Plan
- Cultural Diversity and Inclusion Strategy

The Centre for Innovative Justice released Improving support for victims of crime - key practice insights in 2020

The Australian Human Rights Commission produces Disability Action Plans: A Guide for Rusiness

Youth Disability and Advocacy Service provides action and inclusion planning

The Victorian Ombudsman has an Accessibility Action Plan that provides an example of a disability action plan The Victorian Commission for Children and Young People has published Child Safe Standards that organisations are required to comply with. The link has detailed actions that organisations must take to comply with each standard.

There is also the short guide to the Child Safe Standards that includes the actions require

The Victorian Commission for Children and Young People has published Empowerment and participation A guide for organisations working with children and young people

The Victorian Commission for Children and Young People has also produced a Tip Sheet, Cultural Safety for Aboriginal Children

The Victorian Aboriginal Child Care Agency (VACCA) has communication tools and information:

Tools for hearing children's voice in a Child's Voice – our children have the right to be heard

a video/resource tool on Keeping Aboriginal children safe in a mainstream organisation

a guide on Keeping Our Kids Safe: Cultural Safety and the National Principles for Child Safe organisations

The Nargneit Birrang Aboriginal Holistic Healing Framework for Family Violence,

QLife, has a number of short guides including – LGBTI+ People with Disability and Young People Tips for Engaging LGBT Youth

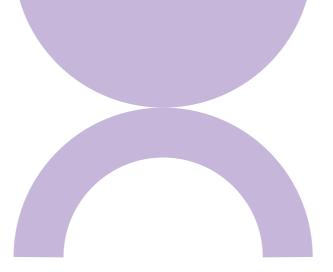
Centre for Multicultural Youth Issues has produced Inclusive organisations: A guide to good practice strategies for engaging young people from migrant and refugee backgrounds in services and programs

MARAM Practice Guides as part of the MARAM framework for working with victims of family violence

National Association of Services Against Sexual Violence (NASASV) has National Standards of Practice and an accompanying Manual for Services

## 2.2. Information, referral and communication

The principles outlined in sections 7 and 7B of the Victims' Charter relate to information that should be given to people adversely affected by crime, how and when agencies should make referrals, and how they should communicate with victims.



## **Charter principles**

### 7 Information to be given to persons adversely affected by crime

Investigatory agencies, prosecuting agencies and victims' services agencies—

- (a) are to provide clear, timely and consistent information about relevant support services, possible entitlements and legal assistance available to persons adversely affected by crime; and
- (b) if appropriate, are to refer persons adversely affected by crime to relevant support services and to entities that may provide access to entitlements and legal assistance.

#### **7B Communication with victims**

Investigatory agencies, prosecuting agencies and victims' services agencies are to take into account, and be responsive to, the following matters when communicating with a victim—

- (a) whether the victim wishes to be contacted;
- (b) the victim's preferred method of contact (which may vary at different stages throughout the proceeding for a criminal offence and according to the topic of communication);
- (c) issues that affect the victim's ability to understand the information being communicated, including, but not limited to-
  - (i) the victim's understanding of English; and
  - (ii) whether the victim has a disability; and<sup>27</sup>
  - (iii) whether the victim is a child.

## What does this mean?

People adversely affected by crime need accessible, easy to understand and accurate information. This includes information about, and referrals to, support services, possible entitlements, and legal assistance.

"If you give me a piece of paper, I would lose it in the back seat of my car. If you sent a link to my phone, I could come back to it later. My mum would not know what to do with the link and would lose the paper, she would . benefit from a follow up phone call".

Victim of crime

Agencies should take care to give information in a way that recognises a person's distress and trauma. Information and referrals should be available when needed, regardless of whether the crime is reported, recognising that people adversely affected by crime:

- may not be able to absorb or respond to complex information at times of crisis.
- may not know what help they need or be ready for assistance.

27 The Commissioner has noted that the wording of principle 7(B)ii implies that all victims with disabilities may have issues understanding information. This issue is relevant to any future reviews of the Charter.

The information required and the person adversely affected by crime's preferred manner of communication may change from day to day as they deal with the impact of crime, or from one stage of the criminal justice process to another.

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

## Victim of crime

Communication is a two-way exchange and a person adversely affected by crime should be able to access information from the agency, but also have their view listened to and understood.

Good practice means that there should be a 'no wrong door' approach. That is, regardless of which door a person enters through the system, they are supported to access an appropriate service that meets their needs.

Within the constraints of the justice system, where victims may be a witness or a participant (but not a party), they should be able to tell their story in a manner that is most comfortable for them.

Information and contact should occur in the manner and mode of communication preferred by the person affected by crime and respect their wishes if they do not want to be contacted. Information should be available in a format that meets the person's individual needs. The need for information may go beyond that related to the court or justice process.

For some sectors, legislation directs how some agencies share information and make referrals. such as the Family Violence Information Sharing Scheme and the Child Information Sharing Scheme. Where possible referrals should be 'warm'. A warm referral enables the agency, with the victim of crime's consent, to provide appropriate and allowable details of the victim's case to another agency. This prevents a victim (including children) having to repeat their story. Where possible, an agency can also coordinate booking an appointment.

"It is important to follow up with victims a couple of weeks after they report a crime. You could say 'now you have reported and had time to think about it, what other help do you need?'."

#### Victim of crime

With the permission of the person adversely affected by crime, agencies may share relevant information that would inform the support provided to the victim, for example family dynamics or conflict points. This reduces the risks of further victimisation and harm.

It is important to ensure that referrals are culturally appropriate and to recognise the benefits for Aboriginal peoples to have access to services that are holistic and culturally safe.

## Why does this matter?

## **Effective Access to Justice**

People adversely affected by crime may be unfamiliar with the justice system and feel overwhelmed after experiencing criminal victimisation. This event may be their first interaction with police and courts. Providing information to people adversely affected by crime is a key element of victim centred service delivery and empowers them to make informed decisions about the support they want and need.

It matters what information they receive, who gives it to them, and under what circumstances. Their experience is affected by their capacity to process and respond to this information.<sup>28</sup>

## Early referral

Early referral of victims to services is a critical part of the community's response to crime.<sup>29</sup>

People adversely affected by crime may not be able to reach out for help in a time of crisis. Early referrals to appropriate services, and subsequently following up, takes the onus off the person affected by the crime to find help. Agencies' communication, referrals and information need to be appropriate to their needs, delivered when they need it and, where possible, by a person they trust or are comfortable with.

Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process Report August 2016 p. 104. 29 Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process Report August 2016 p. 127

## **Accessibility of Information**

Information should be able to be accessed by everyone, including children. Information that is only available online or in written form may disadvantage people with low literacy levels, those without computer literacy and or access to a computer, such as some older people, people with some types of disability, people with limited English, those without stable accommodation, or those in financial hardship.

#### **Good communication**

If a person is not supported to communicate their story or understand the information provided, they may not have confidence to report and be subject to ongoing victimisation. Good communication with people adversely affected by crime improves their ability to access support services, reduces the levels of trauma experienced during the criminal justice process, and improves the quality of evidence and therefore the potential for conviction.



# Information and communication

# Agencies provide information and referrals that meet individual needs and circumstances

- Agencies' staff understand how trauma affects peoples' ability to retain and act on information.
   Agencies recognise that people may have difficulty absorbing information at a time of stress and trauma.
- Agencies tailor their information provision and communication to suit the stage in the justice process that people are navigating, recognising that first responses require different information and communication from stages that require ongoing communication.

- Agencies engage with people adversely affected by crime to ensure the way they provide information meets their needs, including how and when they want to be communicated with.
- Agencies provide information flexibly, at multiple times in digestible pieces and follow up to ensure it is understood.
- Information provided is relevant, appropriate and respectful of people's individuality such as race or indigenous background, sex or gender identity, cultural or linguistic diversity, disability, religion or age.
- When supporting Aboriginal people, information and referrals are provided in a way that is culturally safe and supports culturally appropriate approaches to healing.
- Agencies provide information and referrals regardless of whether a victim of crime wishes to report the crime to police.

# Agencies ensure information is accessible, accurate and understood

- Agencies provide options and are flexible.
   They provide information in multiple accessible communication formats and forms that reflect the stage and situation in the justice system of people adversely affected by crime. These include face-to-face, video conferencing, phone, translation services, email and TRS.<sup>30</sup>
- Agencies represent diversity in the imagery and information available within the agency and on the agency website.
- Agencies provide access to interpreters, assistive technology or communication partners if the person wants this support.

## Where possible agencies use warm referrals

 Agencies minimise the number of times people adversely affected by crime must repeat their story when referred or transferred to another agency or service. With the permission of the person adversely affected by crime, and consistent with other legal obligations, they use warm referrals where possible.

- Agencies consider the following practice tips:
- 1. be flexible and adapt the approach to the client
- communicate in a way that supports needs and preferences
- 3. acknowledge concerns
- 4. follow up and provide a timeline to align expectations
- 5. commit—be clear what is going to be done by whom
- 6. demonstrate integrity by doing what is promised.
- Where appropriate, agencies consider integrated case coordination to reduce the potential for retraumatising people adversely impacted by crime by making them tell their story repeatedly.

#### Agencies share information responsibly

Responsible and transparent informationsharing systems across different organisations can help victims. This also enables a person adversely affected by crime to access effective multidisciplinary services, given the complex needs of victims.



## **Useful links and resources**

The resources collated and provided by Safe and Equal, Victoria's peak body for specialist family violence services on their website – Providing tailored and inclusive support

Victorian Legal Aid has plans and strategies available on its website, including:

Disability Action Plan

Client-first Strategy

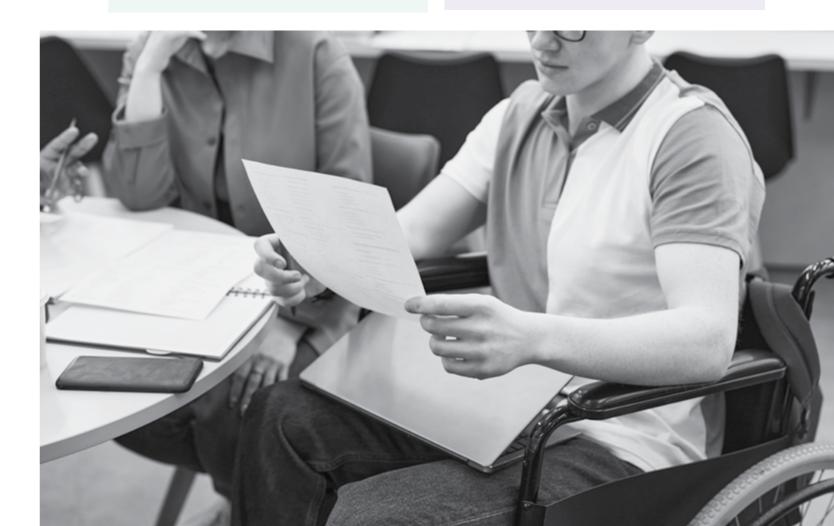
Client Priority and Capability Policy

Gender Equality Action Plan

Reconciliation Action Plan

MARAM Practice Guides are available as part of the MARAM framework for working with victims of family violence

National Association of Services Against Sexual Violence (NASASV) has National Standards of Practice and an accompanying Manual for Services



<sup>30</sup> Telecommunications Relay Services that allow people with hearing or speech disabilities to communicate via telephone.

## 2.3. Protecting victims' privacy

The principle outlined in section 14 of the Victims' Charter requires agencies to protect the privacy of victims' personal information.

## **Charter principle**

## 14 Victims' privacy

A victim's personal information, including his or her<sup>31</sup> address and telephone number, is not to be disclosed by any person except in accordance with the *Privacy and Data Protection Act* 2014.

**Note** Section 10 of the *Privacy and Data Protection Act 2014* provides that the Act does not apply in respect of the collection, holding, management, use, disclosure or transfer of personal information by a court, tribunal, judge, magistrate or registry staff in relation to their judicial or quasi-judicial functions.

## What does this mean?

Under the *Privacy and Data Protection Act 2014* an organisation is to use personal information only for the "primary purpose of collection" except in specific circumstances (detailed in Schedule 1 – Principle 2). They must treat all personal information in a way that is consistent with 10 Information Privacy Principles.

The Office of the Victorian Information Commission (OVIC) outlines the rules and principles around data privacy, data collection, data storage, data destruction and data sharing.

## Why does this matter?

Agencies that engage with victims have access to personal and sensitive information, the sharing of that information could cause trauma and expose victims to danger, particularly if a perpetrator gains access to victim support or contact details.

There is a close connection between showing respect to the victim and protecting their privacy. In particular, ensuring that victims have some control over the use and disclosure of their personal information helps them retain their dignity. Some aspects of the criminal trial process expose victims' private lives to scrutiny, and the extent to which this occurs should be limited to what is justified.<sup>32</sup>



<sup>31</sup> The Commissioner has noted that the wording in principle 14 does not use gender neutral terms or pronouns. This issue is relevant to any further review of the Charter.

# Protecting privacy

According to the Office of the Victorian Information Commissioner, protecting privacy is vital to ensuring human dignity, safety and self-determination. It allows an individual to freely develop their own personality.

Interferences with an individual's privacy can result in many different types of harm such as:

- · reputational damage
- · embarrassment or humiliation
- · emotional distress
- identity theft or fraud
- financial loss
- physical harm
- intimidation
- · disruption of government services
- discrimination
- · feelings of disempowerment

Failing to respect the right to privacy can also have wider societal impacts. It can lead to the erosion of public trust and a lack of willingness to engage with government. For government organisations, this can mean failures of programs, projects and operations, and a failure to achieve the public outcomes they seek.



## Protecting victims' privacy

## Agencies ensure victims' information is secure

Check how victims would like to be contacted and respect their wishes to avoid breaching their privacy.

Maintain policies to safeguard privacy that comply with the *Privacy and Data Protection Act 2014* and other relevant legislation.

Respect people's privacy but still facilitate sharing information when the victim has given consent or when a victims' safety is at risk.

# Agencies have policies on managing personal information

Document its policies on management of personal information and make the document available to anyone who asks for it.

# Agencies are transparent about sharing information

To ensure victims' feeling of safety, agencies are consistent in how they share victims' information and who they share it with.

Agencies advise victims of the reasons for data sharing, including:

- · why and what information they collect
- how it is collected
- how it is used within the agency
- how it is shared, or disclosed with another agency and why
- the security measures in place to prevent unauthorised access
- how victims can access their personal information, and
- how and to whom victims can complain about a privacy breach.

<sup>32</sup> Victorian Law Reform Commission The Role of Victims of Crime in the Criminal Trial Process Report August 2016 p. 88





## **Useful links and resources**

The Office of the Victorian Information Commissioner has the following resources:

Privacy Management Framework with a self-assessment checklist

Privacy Policies Guide

Guidance for sharing personal information

Department of Families, Fairness and Housing Victoria has a privacy policies webpage which includes links to tools, such as the Privacy and Information Security Guideline for Funded Agency Staff

Australian Government Office of the Australian Information Commissioner has information for designing good privacy practice.

Family Violence Information Sharing Scheme

Child Information Sharing Scheme

Yoorrook Justice Commission has a webpage with key documents including Yoorrook's approach to Indigenous Data Sovereignty and Data Governance

## 2.4. Complaints handling

Sections 19, 19A and 19B of the Victims' Charter outline the obligations of agencies to ensure that victims are provided information about their:

- entitlement to complain about an agency if the victim considers it has not upheld the Victims' Charter principles.
- right to have that complaint reviewed by the Commissioner if they are dissatisfied with the agency's response to their complaint.

These sections also require agencies to inform a victim of their system to receive and resolve complaints relating to the Victims' Charter principles.

## **Charter sections**

## 19 Information regarding complaints process for persons adversely affected by crime

If a person adversely affected by crime informs an investigatory agency, a prosecuting agency or a victims' services agency that he or she believes<sup>33</sup> that the agency has not upheld the Charter principles, the agency should inform the person about the processes available for making a complaint.

## 19A Complaints system for victims

- (1) Each investigatory agency, prosecuting agency and victims' services agency must institute and operate a system to receive and resolve complaints from victims in respect of the agency's compliance with the Charter principles, including complaints made under section 19B.
- (2) A complaints system referred to in subsection (1) must—
  - (a) be accessible and transparent; and
  - (b) offer fair and reasonable remedies.

**Note** Fair and reasonable remedies may include an apology, an acknowledgment that an error occurred, or an explanation as to why an error occurred and the steps being taken by the agency to prevent the error reoccurring.

- (3) An investigatory agency, a prosecuting agency or a victims' services agency that is dealing with a victim must inform the victim, as soon as is reasonably practicable after commencing to deal with that victim, of—
  - (a) the agency's complaints system referred to in subsection (1); and
  - (b) the victim's right to have a complaint reviewed under the *Victims of Crime Commissioner Act 2015* if dissatisfied with the agency's response to the complaint.

## 19B Victim may complain to agency

A victim may complain to an investigatory agency, a prosecuting agency or a victims' services agency if the victim believes that the agency has not complied with the Charter principles.

**Note** A victim may seek a review of the agency's response to the complaint under the *Victims of Crime Commissioner Act 2015*.

<sup>33</sup> The Commissioner has noted that the wording in section 19 does not use gender neutral terms or pronouns. This issue is relevant to any further review of the Charter.

Page 42 Page 43

#### What does this mean?

Ideally, agencies will uphold the principles in the Victims' Charter and people adversely affected by crime will not need to make complaints about agencies.

Good complaints handling mechanisms are still important. Complaints and feedback provide agencies with important information about what good practice looks like and help them to address concerns if problems arise.

There are two distinctly different references to complaints in the Victims' Charter:

- complaints to agencies by people adversely affected by crime.
- if a victim is dissatisfied, the subsequent review of an agency's responses to complaints by the Commissioner.

These guidelines are concerned solely with complaints made to agencies and their complaint handling process.34

Complaints to agencies under the Victims' Charter can be made if a person adversely affected by crime believes that the agency has failed to uphold a Victims' Charter principle, for example, they have not been treated respectfully, they have not been given specific information, or they were not referred to a victims' service agency. If a person adversely affected by crime expresses dissatisfaction with their experience of an agency's compliance with the Victims' Charter principles, agencies are required to tell them about how they can make a complaint and provide details of their complaints process.

In addition, the Victims' Charter requires agencies to have a system in place to receive and resolve complaints from victims. It does not prescribe a particular complaint handling process but requires agencies to:

- inform victims of their complaints policy and processes as soon as is reasonably practicable
- · have an accessible and transparent system
- offer fair and reasonable remedies
- inform victims of their right to have their complaint reviewed by the Commissioner if they are not satisfied with the agency's response to their complaint.

Many people adversely affected by crime are not aware of the Victims' Charter.

Victims do not need to specify explicitly that a complaint relates to the Victims' Charter before it is treated as a Victims' Charter complaint. An expression of dissatisfaction should be treated as a complaint.

Any complaints that are relevant to the Victims' Charter principles should be treated as a Victims' Charter complaint.

If a person adversely affected by crime informs any staff member in an agency that they believe the Victims' Charter principles have not been upheld, the agency should inform that person about their rights and entitlements to complain.

The following good practice indicators incorporate a trauma-informed approach, address the Victims' Charter principles and are informed by feedback from consultations.

They are also informed by guiding principles for complaints handling processes established by the Ombudsman in Victoria and New South Wales.

These principles recognise that agencies can reduce the risk of increased trauma by improving the quality of their complaints processes. By incorporating the Victims' Charter principles, agencies' complaints processes demonstrate courtesy, respect and dignity. A good victims of crime complaints policy:

- embeds trauma-informed principles of safety, trustworthiness, choice, collaboration and empowerment
- is attuned to diversity
- is inclusive
- is informed by awareness of the prevalence and impacts of complex trauma including

A complaints policy for people adversely affected by crime should also:

- the challenges certain groups experience in making complaints about institutions and government agencies (described in section 2.1)
- minimise the number of times a victim is
- provide closure for the victim in a reasonable timeframe and explain the outcomes of the complaints process.

## Why does this matter?

Complaints and feedback processes allow agencies to respond to people adversely affected by crime when the service they provided, or their treatment of a victim does not meet people's expectations. Complaints and feedback also help agencies to understand their clients and identify where they need to improve. Agencies can encourage a culture that welcomes feedback and complaints from victims. When victims are empowered to provide feedback and raise concerns, this helps to both resolve individual issues and provides useful insights so agencies can reflect on their practices and improve their services and responses to all victims. This builds accountability and supports continuous improvement.

A good complaints process may stop minor issues escalating and can also prevent further trauma to victims. The process of making a complaint, and the subsequent investigation, can be a traumatic experience if handled badly.

The most common reason for complaints to the Commissioner include:

- being poorly treated by an agency
- lack of communication with victims.
- lack of information provided by the agency in relation to the investigation of the crime.<sup>36</sup>

Do not assume that a lack of complaints is an indicator of good service. Confusing or complex policies, policies that lack transparency, independence or fairness, or poorly handled complaints can make it hard or impossible for a person to make a complaint. Such policies act to erode the trust of people adversely affected by crime and the community. They can damage the agency's reputation and people's faith in its integrity.

People adversely affected by crime may not complain if they are afraid of retribution or negative consequences. This fear can be greater for people who are vulnerable, have experienced discrimination or bias, or feel that making a complaint could compromise their safety.

- upholds human rights for all parties
- around relationships.35

reflect an understanding of diversity and

- required to retell their story

<sup>35 &#</sup>x27;Blue Knot Complaints Policy and Process', Blue Knot, https://blueknot.org.au/about-us/our-documents/our-policies/blue-knotcomplaints-policy/, last updated (2021)

<sup>36</sup> Victims of Crime Commissioner (VOCC), Annual Report 2020-21 p.22



## Complaints handling

## Agencies' complaints policy embeds traumainformed principles

 agencies' complaints and feedback policies embed trauma-informed principles of safety, trustworthiness, choice, collaboration and empowerment.

#### Agencies demonstrate commitment

- it is easy to make a complaint
- people adversely affected by crime are informed about their right to complain so they know they can complain and understand how to complain
- victims do not need to specify explicitly that a complaint relates to the Victims' Charter before it is treated as a Victims' Charter complaint - an expression of dissatisfaction should be treated as a complaint
- complaints are resolved in a trauma-informed manner
- complaints and feedback are valued as they improve service delivery and are part of good business practices that serve communities
- there is no detriment or repercussions to people who complain.

# Agencies demonstrate courtesy, respect and dignity

- people's complaints are listened to and responded to
- people are treated with courtesy and respect at all stages of the complaint process.

# Agencies demonstrate accessible services, premises and information

- people of various ages and with a range of needs can easily complain and staff actively assist them to navigate the complaint process
- all reasonable efforts are made to ensure equal access, including to people who use interpreters, assistance animals or disability aids such as mobility devices and communication devices

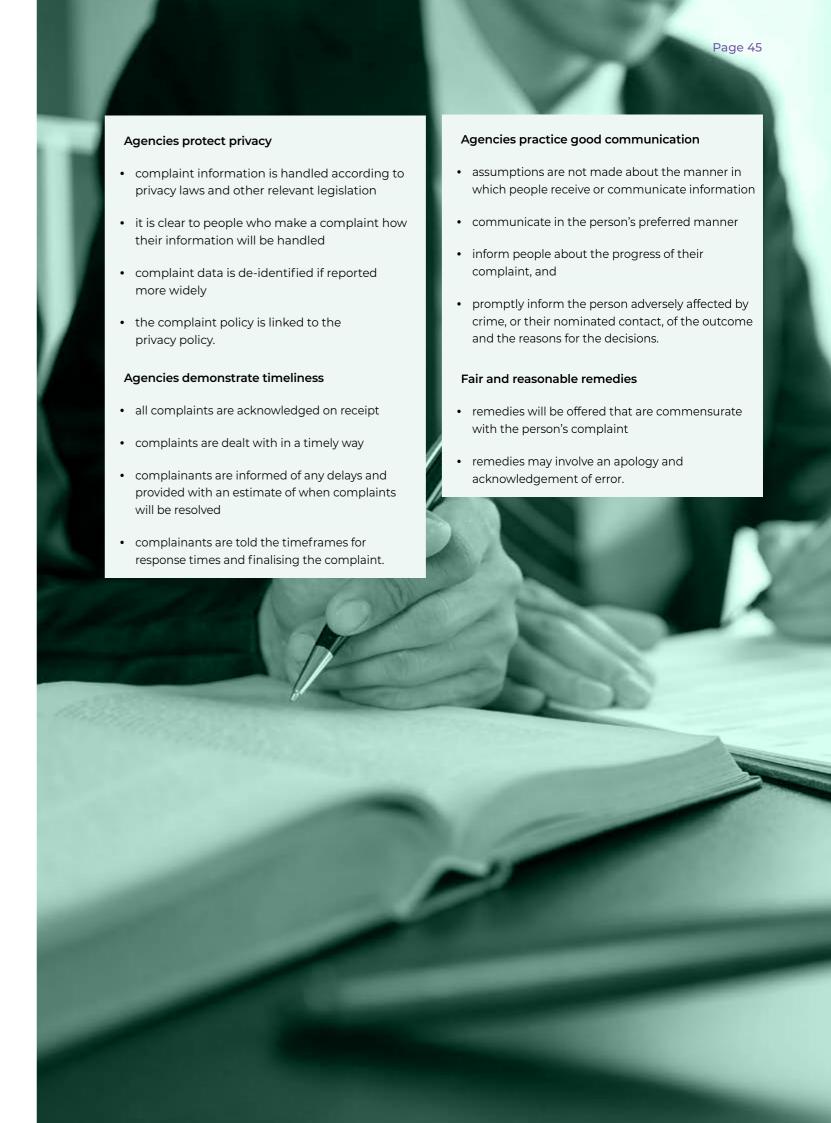
- the agency seeks to identify, understand and minimise barriers to complaints, including those faced by people in rural or remote locations
- staff will deal with an authorised guardian, friend, advocate or other person authorised to act on behalf of the person affected by crime, or someone who can act as a conduit or intermediary to assist them receive and provide information
- it is recognised that accessible communication might require longer communication times.

# Agencies demonstrate transparency and accountability

- keep it simple and make it clear how to complain, where to complain and the steps in the complaint process
- be accountable, internally and externally for decision making and complaint handling performance
- explain what action was taken and the reasons for decisions, and ensure that decisions are subject to appropriate review processes
- inform victims about their rights to seek a review
- record and analyse complaint information to improve services
- record the steps taken to respond to a complaint and ensure they stand up to scrutiny.

# Agencies demonstrate objectivity, safety and fairness

- complaints are dealt with impartially and are assessed on merit
- avoid or minimise conflicts of interest
- assess complaints for severity and complainant safety and act appropriately



Page 46 Page 47

# Examples of good practice for complaints systems involving people adversely affected by crime

#### Commitment

Clearly displaying the complaint policy in the office area.

With the person's consent, use a warm referral when they are transferred to a complaint officer so they do not need to retell their story while recognising there may be sensitivities if the person conveying the information is the person they are complaining about.

Making sure people adversely affected by crime have a point of contact to speak to about the complaint.

Having a centralised function in the agency that facilitates data gathering, continuous improvement initiatives and communication of clear, organisational requirements that is culturally safe and appropriate to provide feedback.

## Accessibility

Ensuring online information is easy to find, avoids using only image-based formats, and is provided in word and html format to enable the use of screen readers. Where possible, providing information in multiple formats: for example orally (by staff), through the use of TTY,<sup>37</sup> written (including basic English and large font), in poster form, via email, websites and online chat. Include text descriptions when images are used.

Having systems in place that allow young people affected by crime to make a complaint and have that complaint considered separately and independently from their parent or quardian.

Accepting complaints verbally, by email, online, by post, via call back or from a designated third party. When needed, providing free access to an interpreter.

#### **Good communication**

As part of developing complaint handling and other policies consider what expertise is available in-house to assist people with diverse communication needs.

If a broad range of communication supports are not available internally (for example interpreters or communication supports for people with disability) consider establishing relationships with other agencies so assistance is available if and when needed.

## **Courtesy, respect and dignity**

Identifying what is important to the person making the complaint and the resolution they are seeking. Where possible advising them whether this is achievable.

Accepting anonymous complaints.

## Transparency and accountability

Maintaining a secure complaint record keeping system, and monitoring complaint processes to ensure they are being followed and timeframes are being met.

Seeking feedback from complainants about how the complaints process can be improved.

Even in a small organisation, allocating someone responsibility to oversee the complaints process.

Providing victims with information on where to go to review a decision if they are unhappy with the outcome of a complaint. This includes that if the complaint relates to a failure to uphold a victim's rights and entitlements under the Victims' Charter, a victim may refer the complaint to the Commissioner for review.

## Privacy

Informing the person adversely affected by crime if the complaint triggers external reporting obligations (unless this is contrary to the objectives of the external processes).

Outlining these types of complaints in the complaint handling policy.

## **Timeliness**

Publishing timelines for considering complaints, and consulting with the person adversely affected by crime if those timeframes cannot be met.

## **Objectivity, safety and fairness**

If a staff member who would normally handle the complaint has a relationship with any of the parties to the complaint, declaring the conflict and allocating the complaint to another staff member.



## **Useful links and resources**

The Victorian Ombudsman, Complaints Handling Guide

Commonwealth Ombudsman, Better Practice Complaint Handling Guide

The New South Wales Ombudsman, Effective complaint handling guidelines

National Office for Child Safety, Complaint Handling Guide

Blue Knot, Complaint Policy

Department of Families, Fairness and Housing (DFFH), Complaints Policy for Funded Organisations

Women with Disabilities Australia Complaints Policy

Victims of Crime Commissioner

Victims' Charter Guidelines - VERSION 1

<sup>37</sup> A TTY or Teletypewriter is a telephone-like device that incorporates a screen and a keyboard that allows written messages to be sent and received over the telephone network. This service can assist people who are deaf, hearing impaired, or speech impaired.



## 3. Agency specific principles

Some of the principles in the Victims' Charter only apply to specific agencies or specific types of agencies. These agencies are responsible for investigating and prosecuting crimes. They have a significant impact on how victims experience the justice system.

In many cases, these agencies are large and will have their own policies and procedures for interacting with those adversely affected by crime. The Commissioner does not prescribe what these processes should look like, but these guidelines outline some good practice indicators.

## 3.1. Investigatory agencies

Investigatory agencies under the Victims' Charter include Victoria Police and other agencies that investigate crime, such as WorkSafe. They are required to comply with additional principles under the Victims' Charter, including providing information to victims about investigations, and how they store and return a victim's property.

"Police and front-line responders in hospitals need to be constantly reminded about referrals and to provide information."

Victim of crime

## **Charter principles**

## 8 Information to be given to victim about investigation

- (1) An investigatory agency is to inform a victim, at reasonable intervals, about the progress of an investigation into a criminal offence unless the disclosure may jeopardise any investigation of a criminal offence.
- (2) If the disclosure of information under subsection (1) may jeopardise any investigation, an investigatory agency is to inform the victim about the progress of the investigation of the criminal offence relevant to the victim, to the extent possible without jeopardising any investigation.
- (3) If the disclosure of information under subsection (1) would jeopardise an investigation, an investigatory agency is to inform the victim that no information can be provided at that stage due to the ongoing nature of the investigation.

## 15 Storage and return of property held by the State

If property of a victim is in the possession of an investigatory agency or a prosecuting agency for the purpose of the investigation or prosecution of a criminal offence—

- (a) the agency is to handle and store the property in a lawful, respectful and secure manner; and
- (b) if possible and in consultation with the victim, the property is to be returned to the victim as soon as reasonably practicable.

### What does this mean?

The Charter requires agencies that investigate crime to keep victims informed throughout the investigation, unless this would compromise their ability to conduct the investigation, in which case they should give the victim as much information as possible.

Information should be provided on the progress of the investigation at key points. For example:

- when the offender is identified, charged or summonsed
- if the charges are substantially modified or there is a decision not to proceed with charges
- it is decided to accept a guilty plea to a lesser charge
- if the offender applies for bail or bail is granted
- the outcomes of any court proceedings, including if an appeal is lodged and the grounds for the appeal, particularly if there has been a change in circumstances or the investigation has been delayed.

Agencies that investigate a crime may take and hold a victim's property because it is relevant to their investigation. This property should be stored securely and treated respectfully. If the victim wants their property back it should be returned as soon as possible.

Chapter 2 explains the need to treat people adversely affected by crime with courtesy, respect and dignity and to provide information and referrals in a manner that recognised their individual needs. In providing information during the investigation phase, these principles are equally as important.

## Why does this matter?

'After initial reporting of the crime I had little contact from police, and no information on the investigation process or my rights in relation to the crime

Victim of crime

For many victims who choose to report a crime, Victoria Police will be their first contact with the justice system. WorkSafe Victoria is often in contact with victims at a time of crisis.

Being treated with courtesy, respect and dignity, having their individual needs acknowledged, and being recognised and treated as important in the investigatory response will help minimise the trauma of the investigation for victims.

Reporting a crime is difficult, and the way the investigation is managed, and the outcome, is outside of the victim's control. If there are delays in the investigation or difficulty gathering evidence, this can affect victims by increasing feelings of loss of control. Keeping victims informed about the progress of the investigation helps to manage victim expectations and assist them to feel empowered. Good information helps to make the justice system less opaque and less traumatic.

Victims often find that having their property taken, held and then returned as part of an investigation is particularly traumatic. They can feel that their privacy is violated when investigators have access to all the personal data on their phone, and having property returned after a crime can reawaken past trauma. In addition, as noted by the Victorian Auditory-General's Office, poorly handling victims' property can compromise court outcomes and damage the reputation of the agency charged with protecting that property.<sup>38</sup>



## Investigatory agencies

- Investigatory agencies treat victims with respect, recognise diversity, and provide information victims need in accordance with the Victims' Charter.
- Investigatory agencies can demonstrate how they have considered good practice and embedded it in their policies and practices.

# Investigatory agencies have well-implemented policies on how information is provided and followed up

- Investigatory agencies' policies and procedures clearly identify the key points in the investigation process when information is provided to victims.
   Their systems ensure that information provided is consistent with these policies.
- Investigatory agencies have policies and procedures that clearly explain what information staff can provide to the victim, share with a person nominated by the victim, or share with another service agency.
- Investigatory agencies have robust systems that identify and rectify cases where information or referrals have not been provided.

# Investigatory agencies implement information policies in a flexible and trauma-informed way

- To the extent possible, investigatory agencies give victims the time and support they need to tell their story in full, in the way they feel most comfortable.
- Investigatory agencies have simple processes for asking victims how they would like to be kept informed and for victims to change their preferred method of communication. They give victims a contact point for enquiries.

- Investigatory agencies provide staff with details on how to refer victims to relevant support services and staff are encouraged to seek advice from specialist units when they would benefit from their expertise.
- Investigatory agencies are flexible in how they communicate with victims. Victims' individual needs and preferences are recognised and respected, where possible, and interpreters and other communication supports are available to those who want to use them.
- After information is provided, investigatory agencies follow up to check if the victim has additional questions or requires further explanation or access to support.

## Investigatory agencies are transparent

- Investigatory agencies explain their role and responsibilities early in their interaction with victims.
- Investigatory agencies manage expectations and provide honest, open and timely responses. They provide people adversely affected by crime with unwelcome news in a direct and compassionate way, and keep any promises or undertakings made to them.
- Investigatory agencies keep victims informed even when there are long delays in an investigation.
   They continue to check in with victims when there are delays.

# Investigatory agencies respectfully store and return victims property

 Investigatory agencies publish and implement accessible policies for storing and returning victim's property. These policies inform victims about the processes for holding and returning their property, and how they will be consulted about property being returned.

Victims of Crime Commissioner

Victims' Charter Guidelines - VERSION 1

<sup>38</sup> Victorian Auditor-General's Office, Police Management of Property and Exhibits, Victorian Government (2018) p. 28

## 3.2. Prosecuting agencies

Prosecuting agencies under the Charter include the Director of Public Prosecutions (DPP), Victoria Police (for example police prosecutors operating in the Magistrates Court) and WorkSafe. Prosecuting agencies have specific requirements to provide information including details about the prosecution and the court process. There are multiple principles that apply to prosecuting agencies and some that apply specifically to the DPP, such as seeking the view of a victim and providing reasons for its decisions. The Office of Public Prosecutions (OPP) prepares and conducts serious criminal matters on behalf of the DPP.

Issues relevant to victim impact statements are discussed in section 3.3. Good practice approaches to taking and holding victims' property are discussed in section 3.1 and apply equally to prosecuting agencies.

"The process is not victim friendly ie. legal language can be difficult to understand, a lack of opportunity to debrief, ask questions, know what is ahead to prepare for emotionally."

Victim of crime



## **Charter principles**

## 9 Information regarding prosecution

The prosecuting agency is to give a victim, as soon as reasonably practicable, the following information—

- (a) the offences charged against the person accused of the criminal offence;
- (b) if no offence is charged against any person, the reason why no offence was charged;
- (c) if offences are charged, any decision—
  - (i) to substantially modify those charges; or
  - (ii) to discontinue the prosecution of those charges; or
  - (iii) to accept a plea of guilty to a lesser charge;
- (d) in the case of a prosecuting agency that is not the DPP, details about how to find out the date, time and place of the hearing of the charges against the accused person;
- (e) in the case of a prosecuting agency that is not the DPP, the outcome of the criminal proceeding against the accused person, including any sentence imposed;
- (f) if an appeal is instituted, the fact of the appeal, the grounds of the appeal and the result of the appeal.

## 9A Additional information regarding prosecution to be provided by DPP

The DPP is to take all reasonable steps to advise a victim of—

- (a) the date, time and location of any contested committal hearing, trial, plea hearing, sentencing hearing and appeal hearing; and
- (b) 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.

#### 9B Views of victim to be sought by DPP

- (1) The DPP is to seek the views of a victim before the DPP makes a decision to—
  - (a) substantially modify the charges; or
  - (b) discontinue the prosecution of the charges; or
  - (c) accept a plea of guilty to a lesser charge; or
  - (ca) oppose an application for a sentence indication; or
  - (d) appeal a sentence; or
  - (e) appeal an acquittal.
- (2) The DPP is to give a victim information about the matters taken into account by the DPP in making a decision to—
  - (a) agree to or oppose an application to cross-examine the victim at a committal hearing; or
  - (b) apply for, agree to or oppose an application for summary jurisdiction; or
  - (c) oppose an application for a sentence indication.
- (3) The DPP is not required to seek the views of a victim under subsection (1) or inform a victim under subsection (2) if—
  - (a) the victim cannot be contacted after all reasonable attempts; or
  - (b) it is not practical to contact the victim given the speed or nature of the proceeding.

## **Charter principles**

#### 9C DPP to give reasons for certain decisions

- (1) The DPP is to give a victim, as soon as reasonably practicable, the reasons for any decision referred to in section 9(c).
- (2) The reasons referred to in subsection (1) may be given either orally or in writing.
- (3) Despite subsection (1), the DPP may decline to provide the reasons if the disclosure may jeopardise any investigation of a criminal offence or prejudice any other proceeding

## 10 Applications for bail

- (1) A prosecuting agency, on request by a victim, is to ensure that the victim is informed of—
  - (a) the outcome of any application for bail by the person accused of the criminal offence; and
  - (b) 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.

## 11 Information about court process

- (1) A prosecuting agency is to ensure that a victim is informed about the court process and the victim's entitlement to attend any relevant court proceedings, unless the court otherwise orders.
- (2) If a victim is to appear as a witness for the prosecution, the prosecuting agency is to ensure that—
  - (a) the victim is informed—
    - (i) about the process of the trial or hearing (as the case requires); and
    - (ii) about the victim's role as a witness for the prosecution; and
    - (iii) that after the victim has given evidence, the victim may remain in the courtroom unless the court otherwise orders; and
    - (iv) if relevant, about any special protections or alternative arrangements for giving evidence; and
  - (b) if relevant, the court is informed about the victim's preferences for the use of any special protections or alternative arrangements for giving evidence.

**Note** The *Criminal Procedure Act 2009* contains a number of special protections and alternative arrangements for giving evidence.

## 15 Storage and return of property held by the State

If property of a victim is in the possession of an investigatory agency or a prosecuting agency for the purpose of the investigation or prosecution of a criminal offence—

- (a) the agency is to handle and store the property in a lawful, respectful and secure manner; and
- (b) if possible and in consultation with the victim, the property is to be returned to the victim as soon as reasonably practicable.

## What does this mean?

All prosecuting agencies are required to give victims information about the charges laid, including decisions to change or discontinue the charges, accept a guilty plea for a lesser charge, or not lay charges. Prosecuting agencies must also give victims information about their entitlement to make a victim impact statement, and that they may be entitled to compensation or restoration payments.

"Like many survivors of early trauma the shame, self-doubt makes the prospect of re-experiencing contemptuous questioning, being denigrated and having intimate details of one's life laid bare in a public court a very scary prospect."

## Victim of crime

Prosecuting agencies must also ensure that the victim is informed about the court process, their rights to attend and what to expect if they are a witness. Victims must be given information if special protections or alternative arrangements for giving evidence are available, and the prosecution must inform the court if the victim would prefer to use these special arrangements.

Prosecuting agencies must inform victims about:

- how to get information on relevant hearings, including the date, time and place of the hearing
- the outcome of the proceeding including any sentence imposed
- any appeals including the grounds for appeal and the results of the appeal.

The Director of Public Prosecutions has more extensive obligations and must also make a reasonable effort to inform victims about the time and location of any hearings, trials or appeals, and the progress of all the relevant court processes.

Unless it is impractical or not possible, the DPP must seek victims' views before making a decision to substantially modify or discontinue the charges, accept a guilty plea for lesser charges or oppose an application for a sentence indication<sup>39</sup> and provide the victims with their reasons for that decision. They must also seek the victim's view if they are considering lodging an appeal.

Unless it is not possible or is impractical, the DPP must inform the victim about the reasons for their position on whether the victim should be cross-examined in a committal hearing, or whether the case should be heard in a summary jurisdiction,<sup>40</sup> and whether to oppose an application for a sentence indication.

The victim can also request prosecuting agencies inform them about any application for bail or bail conditions intended to protect them.

Also, if an agency that is prosecuting a crime needs to take and hold a victim's property, this property should be stored securely, treated respectfully and returned as soon as practicable, if the victim wants their property returned.

Victims of Crime Commissioner

Victims' Charter Guidelines - VERSION 1

<sup>39</sup> This is an application to the court requesting an indication of whether the court would be likely to impose a custodial sentence if the defendant pleads guilty.

<sup>40</sup> A hearing in summary jurisdiction means that the case is heard in the Magistrate's Court rather than the County Court or Supreme Court.

## Why does it matter?

The court and trial process are innately complex and often traumatic for victims. Research has reported that many victims feel disempowered, silenced, manipulated and degraded. Language is complicated and unfamiliar, and victims can find the processes difficult to understand, reinforcing a feeling of lack of control. When a case is heard summarily, the speed of the process has advantages and disadvantages for victims. It can affect whether the victim can provide a victims' impact statement, have a voice in court or receive timely information.

"When I first began my journey – I was overwhelmed by terms such as committals, directions hearings, mentions, Voir dires, verdins – terms that were used with such fluency."

Victim of crime

The prosecutor is a primary source of information for the victim, and victims rely on them for guidance and support. But some victims may mistakenly assume the prosecutor represents them rather than acting for the State in the public interest. This can create tension when victims' perceptions do not align with the realities of the criminal prosecution process, and the role of the prosecutor.

This makes good communication essential. Being consulted helps to reinforce a feeling of being valued, listened to, and having influence over the outcomes of the process. Australian research has identified that information from the prosecution about the case and its progress is important to victim wellbeing.<sup>41</sup>

The general principles discussed in section 2.2 on providing information to people adversely affected by crime are also relevant to prosecuting agencies. However, when prosecuting agencies apply these principles, they should consider explicitly those parts of the court process that:

- are particularly upsetting for victims, such as giving evidence, sentencing and bail hearings
- move quickly, such as some plea hearings, where victims may need additional support to keep pace with what is happening
- result in charges being downgraded or dropped, such as a plea negotiation where the accused agrees to plead guilty – victims may need different levels of support depending on whether they welcome the guilty plea or not.

The importance of treating property respectfully and keeping victims informed about when and how their property is returned is discussed in section 3.1.



## Prosecuting agencies

- Prosecuting agencies treat victims with respect, recognise their diversity, and provide information and referrals in accordance with the principles of the Victims' Charter.
- Prosecuting agencies can demonstrate how they have considered good practice principles and reflect these in policies and practices.

# Prosecuting agencies have well implemented policies on how information is provided and followed up

 Prosecuting agencies recognise that they are an important conduit to prepare, inform and support victims in the criminal trial process.
 Their policies and procedures clearly identify the key points in the prosecution process when information is provided to victims and their systems ensure that information is provided consistently with the policy.  Prosecuting agencies have systems for referring victims to support services and work proactively with other agencies so that victims get the support they need.

# Prosecuting agencies implement information policies in a flexible and trauma-informed way

- They communicate the possible outcomes in a clear, trauma-informed way. They help victims to have voice in the process, but also develop realistic expectations.
- Prosecuting agencies inform victims about the court process (and relevant terminology), the court building and how to access safe areas. This information is provided before the court day to allow victims time to consider and get additional advice or ask further questions if necessary.
- Prosecuting agencies work proactively with victims to help them understand and be prepared for court processes that are known to be complex or traumatic for victims, for example plea bargaining or giving evidence. Where possible, they take action to ensure the victim's entitlements are upheld in the court.
- Prosecuting agencies are flexible in how they communicate with victims. Victims' individual needs and preferences are recognised and respected, where possible, and interpreters and other communication supports are available to those who want to use them.

# Prosecuting agencies are transparent and manage expectations

- Prosecuting agencies work with victims to understand what they expect from the prosecution process. They:
- 1. are responsive to individual needs and circumstances
- 2. manage expectations and acknowledge the harm experienced by the victim
- 3. explain their role and duties so it is clear that they do not represent the victim
- 4. provide information before the court day in ways that meet the victim's needs

- 5. are transparent and provide information and communicate at key points in the criminal justice process
- ensure that victims understand the court process, the legal terminology that is relevant to them, and the implications proceedings and outcomes will have for them
- 7. prepare victims for the potential that the court process will focus heavily on the accused
- 8. explain that there will be times of uncertainty through the court process
- recognise those parts of the criminal justice process that are complex and potentially traumatic for victims, and include strategies to reduce the potential impact on victims
- 10. explain the meaning and likelihood of accepting a plea and the withdrawal of charges or agreement to accept lesser charges
- 11. refer to support services when appropriate and necessary, including the Victims of Crime Assistance Tribunal / Financial Assistance Scheme
- 12. involve the Victims and Witness Assistance Service, the Child Witness Service and the informant along with other support services, when necessary, to support victims and make them feel comfortable
- 13. take action where possible to ensure the victim's rights are upheld in the court.

# Prosecuting agencies respectfully store and return victims property

 Prosecuting agencies have publicly available, accessible policies for storing and returning victim's property. These policies inform victims about the processes for holding and returning their property, and how they will be consulted about property being returned.

Victims of Crime Commissioner

Victims' Charter Guidelines - VERSION 1

<sup>41</sup> Cook, B., David, F. and Grant, A., *Victims' Needs, Victims' Rights: Policies and Programs for Victims of Crime in Australia*, Australian Institute of Criminology Research and Public Police Series No. 19, (1999) p. 55-56

## 3.3. Courts and prosecuting agencies

Prosecuting agencies also have joint responsibility with court officers to minimise contact between the victim and the accused in the court building. If the victim indicates that they want to make a victim impact statement in court, the prosecuting agency is required to refer them to services that can assist and provide general guidance on how the court uses victim impact statements.

"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 seven hours was highly distressing."

Victim of crime



## **Charter principles**

#### 12 Contact between victim and accused in court building to be minimised

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—

- (a) 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; and
- (b) protect a victim from intimidation by the accused person, defence witnesses and family members and supporters of the accused person.

#### 13 Victim impact statements

(1) A victim of a criminal offence may make a victim impact statement to the court sentencing the person found guilty of the offence, and unless the court orders otherwise, that statement may be considered by the court in determining the sentence of the offender.

Note See Division 1C of Part 3 of the Sentencing Act 1991 in relation to victim impact statements.

(1A) The prosecuting agency must inform the victim, as soon as reasonably practicable after commencing to deal with that victim, of the victim's entitlement under subsection (1) to make a victim impact statement.

## 16 Compensation and financial assistance for victims

(1) A victim may apply to a court for an order that the person convicted of or found guilty of the criminal offence that gave rise to the injury suffered by the victim pay compensation to the victim.

**Note** See Division 2 of Part 4 of the *Sentencing Act 1991* in relation to applications for compensation for victims of crime.

- (2) In accordance with the *Victims of Crime Assistance Act 1996* a person eligible under that Act may apply to the State for compensation and financial assistance.
- (3) A prosecuting agency that is dealing with a victim must inform the victim of the victim's possible entitlements under Division 1 and 2 of Part 4 of the *Sentencing Act 1991* and refer the victim to any legal assistance available to them.

## 17 Information about offender

(1) A victim of a criminal act of violence within the meaning of section 30A of the *Corrections Act 1986* may apply to be included on the victims register established under that Act.

Note See sections 30A to 30I of the Corrections Act 1986 in relation to the victims register.

- (2) The Secretary may give to a person included on the victims register certain information concerning the offender such as the length of sentence, the likely date of release and the making of an extended supervision order, a supervision order or a detention order.
- (3) 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) a person included on the victims register may make a submission to the Board about the effect of the offender's potential release on the victim; and
  - (b) the Board is to consider any submission received.

**Note** See sections 74A and 74B of the *Corrections Act 1986* in relation to victim submissions to the Adult Parole Board.

(4) A person included on the victims register may make a submission to the Post Sentence Authority for consideration in determining any instruction or direction it may give to an offender subject to an extended supervision order, a supervision order, detention order or an emergency detention order

**Note** See sections 16A and 16B of the *Serious Sex Offenders Monitoring Act 2005* or sections 153 and 154 of the *Serious Offenders Act 2018* in relation to victim submissions.

#### What does this mean?

The Charter requires courts, in conjunction with a prosecuting agency, to protect victims in the court building from intimidation and unnecessary contact with the accused, defence witnesses or supporters of the accused person.

The Charter also includes principles that give specific entitlements to victims in the criminal justice process. These entitlements include:

- Being informed by a prosecuting agency that they may make a victim impact statement during the court sentencing a person found guilty of an offence.
- Applying to the court for compensation for injury if the person who inflicted the injury is convicted or found guilty of a criminal offence.
- Applying to be on the Victims Register
  to receive information on the offender's
  sentence and parole. Victims on the Victims
  Register can also make a submission to
  the Adult Parole Board if it is considering
  releasing the offender on parole, and
  victims can make a submission for the Post
  Sentencing Authority to consider in setting
  conditions on the offender's release.

The entitlement to provide a victim impact statement, apply for compensation and obtain information about the offender's sentence and bail are important but difficult to enforce. While the Victims' Charter identifies the agencies that can help victims – the Adult Parole Board and the Post Sentencing Authority – these agencies are not required to ensure that victims are able to exercise these entitlements. Furthermore, in the case of the courts, they are not classified as an agency required to report to the Commissioner on their obligations under the Victims' Charter principles.

Good practice, therefore, requires agencies to ensure that victims are not only aware of their entitlements, but are also given the information and support they need to exercise these entitlements safely and properly. This requires coordination between agencies. Minimising a victim's contact with the accused involves planning and good communication, particularly in older court buildings that are not well designed for victim safety. Good practice requires effective communication between prosecuting agencies and the court.

## **Victim Impact Statement**

Victoria Police, the OPP or WorkSafe generally have a relationship with the victim of crime through the investigation and prosecuting stages. Prosecuting agencies have an obligation to ensure that victims know about their entitlement to prepare a victim impact statement. Victims need support to prepare their victim impact statement at the right time, so they have sufficient time to write the statement, but are protected against the risk of it being used in evidence against them. For this reason, agencies need to inform victims about their entitlement to make a victim impact statement and also:

- explain when a victim impact statement can be heard
- refer the victim to support services to help them prepare their statement
- when proceedings are moving quickly, if possible try to ensure, perhaps by requesting adjournment, that a victim has the opportunity to make a victim impact statement.

"The judge did not read any part of my, or my daughter's victim statement, but read from every other one submitted."

Victim of crime

# Compensation, financial assistance and the Victims Register

As noted above, prosecuting agencies have an obligation to inform victims that they may be entitled to compensation or restitution payments.

Since 1997, victims have also had access to financial assistance through the Victims of Crime Assistance Tribunal (VOCAT), which is not covered by the Victims' Charter. In 2022, legislation was passed to change the financial assistance scheme to an administrative scheme operated by the Department of Justice and Community Safety (DJCS). The new Financial Assistance Scheme is expected to commence in the second half of 2023. It is intended to be easier for victims, less legalistic, more flexible and give victims more time to seek financial assistance. The Commissioner has a role in reporting on the Scheme each year and receiving and investigating complaints.

A victim is also entitled to apply to be on the Victims Register. Once on the register, the Adult Parole Board and the Post Sentencing Authority are obliged to consider a victim's submissions.

However, no agency has direct responsibility to inform victims about the Victims Register, how to register and how to exercise their entitlements once they are registered. The Secretary of DJCS has discretion about what information is given to victims and no agency has explicit responsibility to inform victims about their entitlements to provide statements to the Adult Parole Board and the Post Sentencing Authority.

## Why does it matter?

Victims should feel safe when they go to court to give evidence or observe a hearing. Poor processes or poor building design can mean that victims lack privacy or are vulnerable to harassment or intimidation. Some rural and regional courts in Victoria have been criticised for not offering victims adequate protection or privacy.<sup>42</sup> Access to safe rooms may have to be requested from the front desk, bringing the victim into contact with the accused.

Victims' entitlements to provide a victim impact statement, apply for compensation, or obtain information on the offenders' sentence or parole are well established. Each contributes in varying ways to a victim's ability to have their voice heard, be given the support they need to recover from crime, be protected, and feel safe and in control. Recent amendments to the Victims' Charter Act 2006 have clarified that prosecutors are responsible for ensuring that victims are aware of their entitlement to make a victim impact statement and that they may be entitled to compensation or restoration payments.

While these entitlements are important, they can also be complex to deliver, and it is difficult to guarantee they will be effectively implemented. For example, if a victim wants to make a victim impact statement, no agency is clearly responsible for ensuring they have this opportunity. This can be a significant issue in summary proceedings, or when things move quickly, as sentencing may occur before the victim has a chance to complete and make their statement.

The timing of the statement is also important. If a victim impact statement is completed too soon it may have serious legal ramifications and be used in evidence by the defence. In addition, if a victim impact statement is completed before conviction this can mislead a victim into believing their voice will be heard, although it will not be used in the case of an acquittal.

<sup>42</sup> George, A. and Harris, B., Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria, Deakin University School of Law's Centre for Rural Regional Law and Justice, (2014) p.74-89



Agencies take responsibility and coordinate with each other to ensure victims are aware of their Victims' Charter rights and get the information and support they need to exercise those rights safely and properly.

## Court attendance

Prosecuting agencies, court staff and victims' services work together to ensure that victims attending court are protected from intimidation and unnecessary contact with the accused, defence witnesses or supporters of the accused person.

Agencies ensure victims are familiar with the courtroom and court building before their court day. There should be separate areas for victims to engage with court staff and wait outside the courtroom (including separate bathrooms) and safe and appropriate places for children who attend the court.

## Victim impact statement

Agencies inform victims of their right to make a victim impact statement and explain when it can be prepared and when it can be heard. Victims are referred to support services to help them prepare their statement.

Where possible, agencies ensure that a victim can make a victim impact statement, even when proceedings are moving quickly.

## Compensation and victim register

Agencies inform victims of their rights to compensation and inclusion on the victims register and help them exercise these rights.





## 4. Good practice systems, policies and governance

Good systems, policies and governance are essential to effectively implement the Victims' Charter principles. The principles put obligations on the behaviour of all staff in agencies and require a holistic approach to considering and responding to the needs of victims. Agencies must provide their staff with support, guidance, and a clear understanding about how to meet their obligations under the Victims' Charter.

To implement good practice, all agencies need policies and procedures that reflect their responsibilities. Just as important, those who lead agencies need to inspire and create a culture that supports and empowers people adversely affected by crime. Finally, agencies need to train staff and build capability so they can work with those adversely affected by crime in a way that gives effect to the Victims' Charter.

Many agencies already have policies and procedures in place, and a range of standards and regulations already exist. However, it is critical that these are implemented, reviewed and supported in practice.<sup>43</sup>

Good practice includes effective cooperation across agencies. People adversely affected by crime need a holistic response and often do not know who they should contact or what agency is providing them with a particular service. Responsibilities change and the responsible agency can alter as a person progresses through the justice system—for example, moving from a Victoria Police investigation to prosecution by the DPP. Protocols that support coordination and good working relationships between agencies are critical. For example:

- cooperation between legal and non-legal support can help reduce barriers to victims of crime participating in legal processes
- a trauma-informed response can be supported by agencies working collaboratively with other services such as specialist counsellors.

The Royal Commission into Institutional Responses to Child Sexual Abuse highlighted that policies and procedures are necessary but not sufficient to guarantee outcomes on the ground. Standard 10 in the Royal Commission's recommended Child Safe Standards, not only requires that policies and procedures be in place, but also that the organisation supports their implementation and regularly reviews and improves implementation. The Royal Commission also highlighted the importance of culture and practices within institutions and establishing clear expectations that are supported by strong leadership. Several of the current Child Safe Standards complement the principles in the Victims' Charter. Royal Commission into Institutional Responses to Child Sex Abuse (Child Abuse Royal Commission), Final Report Making Institutions Child Safe, Volume 6, Commonwealth of Australia, (2017) p.27

## 4.1. Policies and Procedures

## The types of policies and procedures

The policies and procedures each agency should have in place will depend on their role, legal responsibilities and governance structure.

Ideally, all policies should be trauma-informed, victim centred, and recognise the individual needs and diversity of people adversely affected by crime, including understanding the impact of structural discrimination and of intersectionality. They should consider how to support cultural safety and self-determination for Aboriginal peoples.

These ideas are explored extensively in earlier chapters.

Where agencies have obligations to develop policies and procedures under other regulations or standards that overlap with the Victims' Charter principles, they can use these policies for both purposes. Separate policies are not needed to cover the Victims' Charter, but relevant policies must refer specifically to the Victims' Charter.

Policies should respond to the Victims' Charter principles relevant to that agency and may include:

- policies for information provision and referrals that recognise the individual needs and reflect an intersectional understanding of diversity and barriers for people adversely affected by crime (see section 2.1).
- policies on privacy and confidentiality so that victims feel safe to disclose personal and sensitive information and are protected from the risk of retribution or further victimisation (see section 2.3).
- policies that accommodate appropriate information sharing with consent to facilitate warm referrals, no wrong door approaches, cooperation across agencies, and advocates accessing information on behalf of their clients.

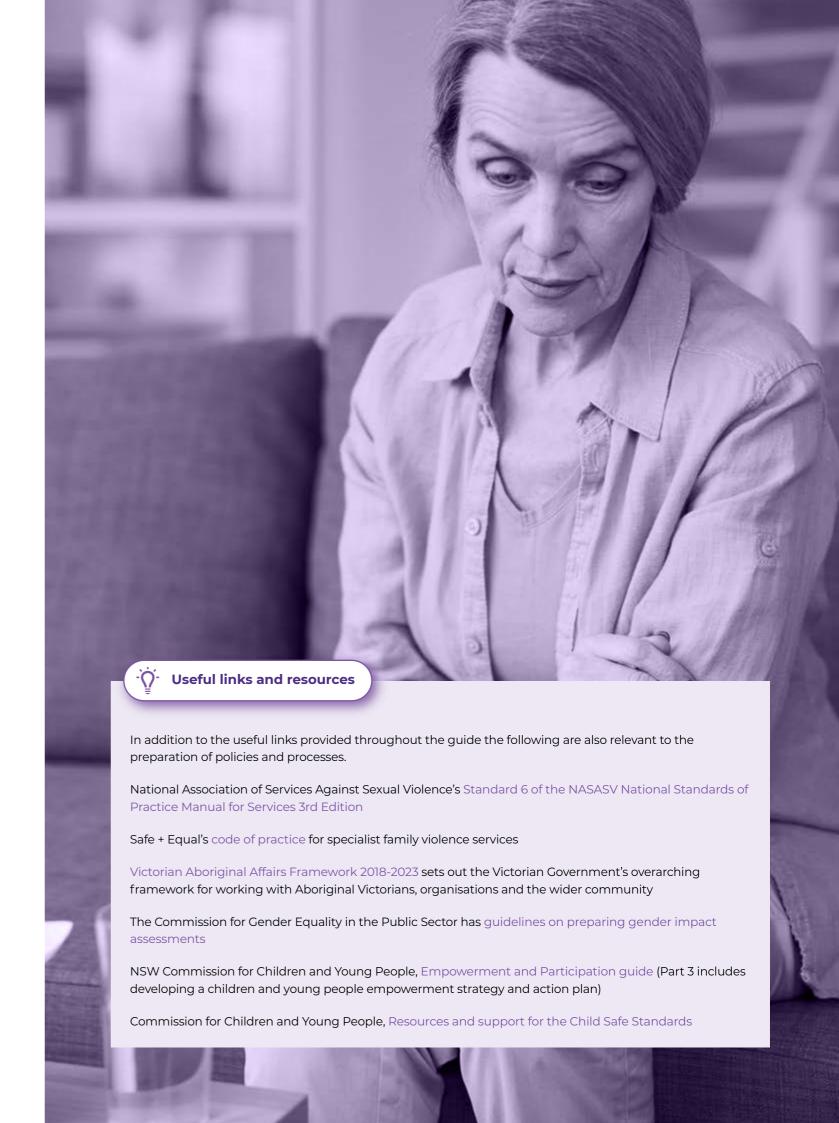
- policies for responding to complaints that are trauma-informed and victim centred (see section 2.4).
- gender, diversity and inclusion plans
  that foster a zero tolerance to racism and
  discrimination of all forms, and explicitly
  consider how the agency can accommodate
  the cultural safety and the specific needs of
  clients, for example Aboriginal people and
  people with disability.
- policies that facilitate cooperation and coordination across agencies so the response to victims is holistic and consistent across the justice system.
- recruitment policies that encourage workforce diversity and suitable expertise within agencies subject to the Victims' Charter.

# Developing, reviewing and improving policies

Agencies need to review their policies and procedures regularly. Where possible, they will be publicly available. As discussed extensively in these guidelines, policies must reflect the objectives of the Victims' Charter and reflect and respect the diversity of people adversely affected by crime.

An example of good practice involves agencies including the voice of people adversely affected by crime in its policies. This might include engaging with people with lived experience as victims when policies are being developed, drawing on the experience of staff with lived experience, and/or codesigning policies and procedures with people with relevant lived experience.

Policies and procedures can also be improved based on the information received through complaints, as described above.



# 4.2. Leadership and commitment

## **Governance and leadership**

It is vital that people at all levels of an agency commit to behaviours that support and empower people adversely affected by crime and comply with Victims' Charter principles. Some agencies will need a process of cultural change to embed these behaviours.

Governance frameworks should be in place that identify how management provides leadership and is accountable for ensuring that the Victims' Charter principles are embedded into the way their agency operates. This requires commitment at all levels.

## **Data and information collection**

Data and information collection are an important part of good management.

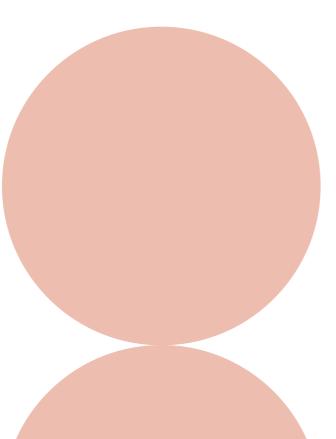
Agencies collect data and information about people adversely affected by crime. Good practice entails:

- Monitoring to ensure that people adversely affected by crime are being treated consistently with the Victims' Charter.
- Collecting information and managing records and data, so they understand how they are delivering services and whether they are complying with the Victims' Charter
- Measuring and tracking outcomes for people adversely affected by crime.
- Effectively collecting and using information gained through service provision, complaints and feedback from people adversely affected by crime. This can help agencies to identify areas where their policies and procedures are not delivering the outcomes intended and where improvement is possible.

A common concern in the context of the Victims' Charter is how agencies with broad client bases can identify people adversely affected by crime. While this information can be useful in supporting a trauma-informed approach, it may not be possible in all agencies to collect this information. For those agencies that cannot easily distinguish or identify victims or people adversely affected by crime, it is important that information, data, and policies are designed in ways that meets community expectations. The good practice indicators contained in these guidelines will help such agencies treat victims in accordance with the Victims' Charter, even if they are not specifically identified as a person adversely affected by crime.

## 4.3. Training and capability

The type and level of training and capability building will depend on the agency's role, its resource capacity and the capabilities of its staff. For example, many agencies already have significant expertise in trauma-informed approaches to service delivery. Others have more general roles and therefore may have less access to specialist staff. Large agencies may have the capacity to employ trained specialists while smaller agencies may benefit from relationships with other agencies so they can access skills.



## Staff training and information

At a minimum, all agencies should provide information, training and other initiatives that support their staff to build and maintain awareness of:

- the Victims' Charter and the agency's obligations under it
- the impact of trauma on people adversely affected by crime and how trauma can affect their reactions and ability to engage in the justice system
- the importance of recognising diversity and the impact of structural discrimination and intersectionality, including how to provide for cultural safety and self-determination, avoid ableist attitudes and responses, overcome structural barriers to participation and eliminate all forms of bias and discrimination
- the agency's policies and procedures to support people adversely affected by crime
- the availability of internal and external support and referral processes and pathways, including warm referrals, to minimise retraumatisation
- how to respond to misunderstanding and disagreements, so that people adversely affected by crime can raise concerns and lodge complaints in a transparent, supportive and trauma-informed environment.

All staff require information and the confidence to ask people how they want to be supported, including how they need information presented to them and whether communication assistance is required, how they want to communicate their views, and how they want to be contacted and how frequently. Teaching good communication skills is an important part of ensuring that those adversely affected by crime are treated with courtesy, respect and dignity.

Training and capability strengthening are particularly important in agencies where employees are under stress, experiencing high workloads, or have teams with minimal experience.

Training should accommodate new staff as they are recruited, and agencies need to provide refresher training for ongoing staff.

## Accessing specialist skills

Access to specialist expertise is an important part of ensuring that employees can respond to the diverse needs of all people adversely affected by crime. Some staff will already have specialist training, others will be able to access specialists in their agency, and in other cases agencies will draw on specialists from outside their agency.

It is important that agencies have policies and procedures in place so employees can identify how to seek specialist advice, whether within or outside the agency. It is important to supply staff with information on how they might access specialist services to help those adversely affected by crime.

Examples of expertise which may be outside an agency's core expertise include:

- how to refer people adversely affected by crime to specialist victims' services
- how to design and deliver their services in a way that support self-determination and cultural safety for Aboriginal peoples, including young people and children
- specialist services to support children that have been adversely affected by crime
- specialist services to assist people with a disability whose preferred method of communication requires specialist equipment or supports
- access to an interpreter service
- secondary consultation for expertise on family violence and sexual assault support.



## Appendix 1: Description of Diagram 1

The dignity, courtesy and respect diagram in section 1.3 visualises the governing principles and complaints handling obligations in the *Victims' Charter Act 2006* for prosecuting, investigatory and victim services agencies.

The graphic describes the principles and separates them into categories based on the agencies required to comply with that principle. It identifies the overarching obligation for any agencies to treat all people adversely affected by crime with courtesy, respect and dignity.

All agencies are required to:

- treat people with respect and recognise diversity
- provide proactive information and referrals
- ensure victims can participate in the criminal justice system regardless of where they live
- respond to victims' diverse communication preferences and needs
- protect victims' personal information
- inform people adversely affected by crime about the complaints process
- have an accessible and transparent complaints system
- · uphold victims' right to make a complaint.

Investigatory agencies are required to:

- inform victims of progress of an investigation
- advise victims when an investigation would be jeopardised by providing information

Prosecuting agencies are required to:

- inform victims of the charges laid and hearing details
- inform victims about applications for bail
- inform victims about court processes
- minimise contact between victims and accused in court buildings
- recognise a victim's entitlement to make a victim impact statement
- recognise the right to compensation and financial assistance

As a prosecuting agency the DPP is to:

- advise victim of hearings, pleas and trials
- seek victims' views before making decisions
- give reasons for certain decisions.

Other victims' agencies are responsible for the respectful storage and return of victims' property and informing victims about the investigation as far as possible.

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