

**Submission on the Victorian Government's
Consultation Paper: *Systemic review of police
oversight***

February 2022

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Message from the Victims of Crime Commissioner

I welcome the opportunity to provide a submission on the Victorian Government's *Consultation paper: Systemic review of police oversight*.

Police are central to the criminal justice system—as first responders to a crime, investigating the incident, and determining whether there is evidence to charge and prosecute an alleged offender.

For many victims of crime, police are their first contact with the criminal justice system. They rely on police to recognise the impact of the crime on victims, to treat them with respect, and to reduce the chance of secondary victimisation through their involvement in the criminal justice system.

I hear from too many victims that feel victimised twice—by the crime itself, and then by the justice system that fails to adequately listen to, respect and respond to their concerns.

Victims of crime have a unique role in the justice system, and they are entitled to special treatment by Victoria Police based on the obligations set out in the *Victims' Charter Act 2006*.

Since November 2019, the Victims of Crime Commissioner has an oversight function relating to Victoria Police compliance with the Victims' Charter and failure to comply means that I can investigate certain complaints from victims of crime. I also monitor and report to Parliament on Victoria Police compliance.

The Victims' Charter is intended to work towards cultural change in the way victims of crime are treated and recognised by agencies in the justice system, and Victoria Police has an opportunity to provide leadership in its engagement with victims.

I welcome the Systemic Review of the police oversight system and the commitment to improving the system and its processes. The frequent message I hear from victims is that the current system is overly complex, confusing for victims, and lacks transparency and independence.

Police legitimacy and community trust is diminished when the oversight system and its complaints processes cannot be relied upon. In turn, this affects the willingness of victims to participate in and engage with the justice system.

Victims of Crime Commissioner

Given the unique role of victims in the justice system, I support a victim-led and victim-centred approach to reforming the police oversight system. It is in the interests of not only victims, but also our society, that victims' rights are adequately safeguarded, including their right to appropriate complaints pathways.

The Systemic Review presents an opportunity to develop and promote a system that recognises the special status that victims of crime have, and the rights and entitlements afforded them under the Victims' Charter which aims to reduce the risks of re-traumatisation and secondary victimisation.

Reducing the risk of harm caused to victims by engaging with the justice system is everyone's responsibility including police, courts, prosecutors, and victim support services. It is the reason the Victims' Charter was introduced, and it guides the work I do advocating for greater recognition and respect for victims.

Fiona McCormack
Victims of Crime Commissioner

1. Introduction

It is important to consider the police oversight role of the Victims of Crime Commissioner (VOCC) in the context of the issues outlined in the *Consultation Paper: Systemic Review of Police Oversight* (Consultation Paper), specifically consideration of:

- how to improve the system of complaints about police misconduct to meet the needs of all Victorians
- how to assess complaints to reflect the nature and seriousness of the complaint.

The Independent Broad-based Anti-corruption Commission (IBAC) Committee's report—*Inquiry into the external oversight of police corruption and misconduct in Victoria* (IBAC Committee Report)—was tabled in the Parliament of Victoria in 2108.

The IBAC Committee inquiry took place prior to the VOCC's oversight functions coming into effect in November 2019.

Since that time, the VOCC has been empowered to review complaints about possible breaches of the *Victims' Charter Act 2006* (Victims' Charter) by justice and victims' agencies when a victim of crime is not satisfied with an agency's response to a complaint. Victoria Police is one of the agencies that the VOCC has oversight of and holds to account in the context of the Victims' Charter.

The Commissioner is empowered to investigate Victoria Police's compliance with the Charter and its complaints system, and to review individual complaints received from victims of crime.

This submission has a victims of crime focus on the issues outlined in the Consultation Paper, including the extent to which police oversight intersects with the treatment of victims of crime in the justice system.

It also provides information about the powers and functions of the VOCC and the operation of the Victims' Charter in the context of Victoria Police.

1.1. Victims of crime and police

For many victims of crime, Victoria Police is their first contact with the criminal justice system. They rely on police to recognise the impact of the crime on victims, to treat them with respect, and to reduce the chance of secondary victimisation through their involvement in the criminal justice system.

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Many victims who experience a crime are victimised twice—by the crime itself, and then by the justice system when it fails to adequately listen to, respect and respond to their concerns.

Victims of crime have a unique role in the justice system, and they are entitled to special treatment by Victoria Police based on the obligations set out in the Victims' Charter.

Police are central to the criminal justice system—as first responders to a crime, investigating the incident, and determining whether there is evidence to charge and prosecute an alleged offender.

1.2. Recognising victims' unique status as complainants

It is important to recognise victims of crime (as defined under the Victims' Charter) and acknowledge their special status as afforded by the Victims' Charter. The Consultation Paper has not considered the VOCC role or the status of victims.

Although the Consultation Paper rightly addresses the need to ensure complaints processes meet the needs of 'all Victorians', given the specific obligations that the Victims' Charter places on Victoria Police, it is also important to recognise victims' special status when interacting with Victoria Police.

The VOCC recommends that there be express recognition and consideration of victims of crime (as defined under the Victims' Charter) in the design of the new police oversight function, including recognising victims of crime as a specific cohort of complainants, with specific needs and entitlements aligning with the Victims' Charter.

1.3. The VOCC and victim complaints about Victoria Police

Until late 2019, victims of crime had no recourse to a review process if Victoria Police did not comply with the Victims' Charter and did not resolve their complaint satisfactorily.

Changes to the *Victims of Crime Commissioner Act 2015* (VOCC Act) created new police oversight responsibilities for the VOCC that are connected to rights and entitlements for victims of crime in the Victims' Charter and its principles. While breaches of some principles would not fall into the category of police misconduct, non-compliance with the Victims' Charter could potentially represent:

- conduct that could bring Victoria Police into disrepute or diminish public confidence (within the current definition of police misconduct)

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- a pattern of officer misconduct carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of Victoria Police (proposed definition of serious police misconduct).

1.4. The VOCC and the police oversight system

The police oversight system is complex, with a range of legislative, structural, policy and procedural intersections and implications. The VOCC is part of this oversight system.

The VOCC does not directly respond to serious police misconduct matters and has a focus on cultural change in the treatment of victims by police.

Despite this, the VOCC has a key role in understanding the intersections across police conduct and treatment of victims that are important to consider in the system of police oversight.

The VOCC oversees complaints about police from victims of crime in the context of the Victims' Charter. These complaints are broad ranging and to date, many complaints about Victoria Police would fall into categories of misconduct or 'customer service'.

Like many other entities, the VOCC is required to refer matters to IBAC that would reasonably be considered corrupt conduct. The VOCC can also refer other matters or complaints that it considers relevant to IBAC's functions. The VOCC is expected to consult with IBAC to ensure the VOCC functions and powers are exercised in a way that does not prejudice IBAC investigations.

The VOCC has an explicit role in improving the complaints systems for victims of crime. Given the VOCC'S role in overseeing justice agencies, and the powers to hear and manage complaints (including referring matters to Victoria Police and IBAC), it is important that the Systemic Review considers and recognises the role of VOCC and the Victims' Charter in the broader context of the oversight framework, and that this is incorporated into the design of the future police oversight system.

2. Victims of Crime Commissioner and Victims' Charter

2.1. Role of the Victims of Crime Commissioner

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

One of the central ways the VOCC advocates for victims is to hold justice and victims' services agencies, including Victoria Police, to account for their treatment of victims of crime.

Under the *Victims of Crime Commissioner Act 2015 (Vic)* (VOCC Act), the VOCC is empowered to investigate complaints made by individual victims about their treatment by Victoria Police. The VOCC also monitors Victoria Police compliance with the Victims' Charter and reports annually on its compliance to the Parliament of Victoria.¹

In addition, the VOCC has powers to conduct inquiries into systemic issues that affect victims of crime.² The VOCC also represents the concerns of victims to government and provides 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.³

2.2. The Victims' Charter and Victoria Police

The Victims' Charter sets cultural and behavioural expectations and outlines specific obligations through principles that are applicable to a diverse range of justice and victims' services agencies when they interact with victims of crime.

In addition, the Victims' Charter:

- gives victims an express statutory right to make a complaint to an investigatory, prosecuting or victims' service agency about that agency's failure to comply with the Victims' Charter

¹ *Victims of Crime Commissioner Act 2015 (Vic)* s28(1A).

² *Victims of Crime Commissioner Act 2015 (Vic)* s13(1)(b-c), 23(1).

³ *Victims of Crime Commissioner Act 2015 (Vic)* s13(1)(a),(d).

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- requires these agencies to maintain an accessible and transparent complaint handling system and offer fair and reasonable remedies.

Alongside Victoria Police, the Victims' Charter applies to the Office of Public Prosecutions, WorkSafe, community legal centres and government-provided and government-funded victims' support services, including victims' assistance programs, sexual assault and family violence services.⁴

Under the Victims' Charter, victims are afforded special treatment by Victoria Police, with entitlements to information and to participation in certain parts of the justice process.

Specifically, Victoria Police is required 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.

2.2.1. Victims' Charter principles applicable to Victoria Police

Owing to its status as both a prosecuting and investigatory agency, Victoria Police is subject to a range of specific principles under the Victims' Charter. The Victims' Charter principles that Victoria Police is obligated to fulfil are outlined in **Table 1 below**.

These Victims' Charter obligations are relevant to any discussion about the future of the police oversight system given victims of crime have the right to complain to either Victoria Police or the VOCC when these obligations are not met.

⁴ These agencies are prescribed under the *Victims of Crime Commissioner Regulations 2020* (Vic) and may also be referred to as 'prescribed agencies'.

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Table 1: Victoria Police's obligations under the Victims' Charter

Victims' Charter principles	Applicability to Victoria Police
<p>Provisions that set standards for the culture and behaviour of the agencies and their staff:</p> <ul style="list-style-type: none"> • All people affected by crime are to be treated with courtesy, respect and dignity and are to have their particular needs or differences taken into account⁵ • Agencies are to respect the rights and entitlements of victims as participants in proceedings for criminal offences and consider the needs of those living in rural and regional areas⁶ • Agencies are to be responsive to how victims prefer to be communicated with.⁷ <p>Provisions relating to information to be given to victims:</p> <ul style="list-style-type: none"> • Agencies are to provide clear, timely and consistent information about relevant support services, possible entitlements and legal assistance available to victims of crime⁸ • Victims' personal information should not be disclosed.⁹ 	<p>Applies to all prescribed agencies under the Victims' Charter</p>
<p>Investigatory agencies are required to provide the following information or have processes in place to facilitate the following:</p> <ul style="list-style-type: none"> • Investigatory agencies are to inform victims about the progress of an investigation into a criminal offence unless this may jeopardise the investigation.¹⁰ • Investigatory agencies that have a victim's property in their possession should handle and store the property respectfully, lawfully and securely.¹¹ 	<p>Applies to Victoria Police as a prescribed investigatory agency</p>
<p>Prosecuting agencies are required to provide the following information or have processes in place to facilitate the following:</p> <ul style="list-style-type: none"> • Prosecuting agencies are to provide information to victims about the offences charged against the accused person, including any decision to substantially modify the charges, discontinue the charges or accept a plea of guilty to a lesser charge.¹² • Prosecuting agencies other than the Director of Public Prosecutions are to ensure the victim knows where to find the details of the hearing time and location, as well as details on the outcome of the criminal proceeding and any appeal.¹³ • Victims can request that prosecuting agencies inform them of the outcomes of bail applications and any bail conditions intended to protect them.¹⁴ • Prosecuting agencies are to provide information to victims about the court process, being a witness, the availability of any special 	<p>Applies to Victoria Police as a prescribed prosecuting agency</p>

⁵ *Victims' Charter Act 2006* (Vic) s6.

⁶ *Victims' Charter Act 2006* (Vic) s7A.

⁷ *Victims' Charter Act 2006* (Vic) s7B.

⁸ *Victims' Charter Act 2006* (Vic) s7.

⁹ *Victims' Charter Act 2006* (Vic) s14.

¹⁰ *Victims' Charter Act 2006* (Vic) s8.

¹¹ *Victims' Charter Act 2006* (Vic) s15.

¹² *Victims' Charter Act 2006* (Vic) s9.

¹³ *Victims' Charter Act 2006* (Vic) s9.

¹⁴ *Victims' Charter Act 2006* (Vic) s10.

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Victims' Charter principles	Applicability to Victoria Police
<p>protections or alternative arrangements for giving evidence, and the right to attend court proceedings, unless the court orders otherwise.¹⁵</p> <ul style="list-style-type: none">• Prosecuting agencies should minimise contact between a victim and the person accused of the crime.¹⁶• When a victim chooses to make a victim impact statement, the prosecuting agency should refer the victim to a victims' services agency for support.¹⁷• Prosecuting agencies that have a victim's property in their possession should handle and store the property respectfully, lawfully and securely.¹⁸	

2.2.2. Victims' Charter—Victoria Police obligated to have a complaints system

Under the Victims' Charter, Victoria Police is required to have a complaints system and is obliged to inform victims of the processes available for making complaints.¹⁹

Complaints systems for victims must be accessible, transparent and must offer fair and reasonable remedies.²⁰ Such remedies may include:

- an apology
- an acknowledgement that an error occurred
- an explanation as to why an error occurred
- steps being taken to prevent the error from reoccurring.²¹

As soon as reasonably practicable after Victoria Police has engaged with a victim of crime, it is required to inform them of its complaints system and the victim's right to have a complaint reviewed under the VOCC Act if they are dissatisfied with the police response to their complaint.²²

A victim may complain to Victoria Police if they believe it has not complied with the Victims' Charter and may seek a review of Victoria Police's response to the complaint by the VOCC under the VOCC Act.²³

¹⁵ *Victims' Charter Act 2006* (Vic) s11.

¹⁶ *Victims' Charter Act 2006* (Vic) s12.

¹⁷ *Victims' Charter Act 2006* (Vic) s13.

¹⁸ *Victims' Charter Act 2006* (Vic) s15.

¹⁹ *Victims' Charter Act 2006* (Vic) Part 3 s19.

²⁰ *Victims' Charter Act 2006* (Vic) Part 3 s19A.

²¹ *Victims' Charter Act 2006* (Vic) Part 3 s19A(2).

²² *Victims' Charter Act 2006* (Vic) Part 3 s19A(3).

²³ *Victims' Charter Act 2006* (Vic) s19(B).

2.3. The VOCC's complaints powers

A victim of crime may make a complaint to the VOCC in relation to Victoria Police compliance with the Victims Charter where they have first made a complaint to the agency yet remain dissatisfied with its response.²⁴

The VOCC has the power to conduct a review of Victoria Police's response. In investigating complaints, the VOCC has the power to:

- request information relating to the complaint from Victoria Police and specify a response time²⁵
- review the findings, recommendations, determinations, or other decisions of Victoria Police regarding the complaint²⁶
- consider Victoria Police's response to the complaint, its complaints processes and its compliance with the Victims' Charter and Charter principles²⁷
- recommend that Victoria Police should:
 - apologise
 - offer an explanation or facilitated meeting
 - conduct additional training
 - undertake a change in policy
 - provide information.²⁸

The Victims' Charter and VOCC's oversight of compliance by justice and victims' services agencies is intended to bring about cultural change in the justice system. Over time, improved compliance with the Victims' Charter by agencies such as Victoria Police is expected to have positive impacts not only for individual victims, but also on the effective operation of the justice system.

For this reason, the VOCC is intended to influence cultural change in the justice system through reviewing the outcomes of complaints from victims regarding a criminal justice agency's implementation of the Victims' Charter principles where a victim is dissatisfied with the agency's response to their initial complaint.

The types of recommendations the VOCC can make are intended to improve systems and processes through changing policies and providing education and

²⁴ *Victims' Charter Act 2006* (Vic) s25A.

²⁵ *Victims of Crime Commissioner Act 2015* (Vic) s25E.

²⁶ *Victims of Crime Commissioner Act 2015* (Vic) s25(2)(a).

²⁷ *Victims of Crime Commissioner Act 2015* (Vic) s25(2)(b).

²⁸ *Victims of Crime Commissioner Act 2015* (Vic) s25J.

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training. They also provide a means for victims to seek amends from an agency through an apology, explanation, or a facilitated discussion.

The VOCC may decline to consider a complaint, including where she is satisfied it would be more appropriately dealt with by that other organisation. This may include IBAC or the Chief Commissioner of Police.

2.4. The VOCC's referral powers

The VOCC may refer a complaint or part of a complaint to another body, organisation, agency or entity if the complaint raises issues that she is satisfied would be more appropriately dealt with by that other body, organisation, agency or entity.²⁹

The VOCC is also conferred with referral powers under the VOCC Act, including the power to refer matters to IBAC, the Director of Public Prosecutions (DPP) and the Chief Commissioner of Police.³⁰

Under section 26 of the VOCC Act, the VOCC *must* refer to IBAC a matter that the VOCC reasonably believes is corrupt conduct.

3. Victims of crime and the complaint experience

The Consultation Paper is seeking to understand:

- what could help all complainants to feel safe and be supported to participate in complaints processes about police?
- are tailored approaches required for some groups of complainants?
- what changes to law or procedures could make conciliation and restorative justice processes practical tools in police oversight?

It is essential to consider victims of crime in the context of complaints processes relating to police and the need for trauma-informed engagement.

²⁹ *Victims' Charter Act 2006* (Vic) s25H.

³⁰ *Victims of Crime Commissioner Act 2015* (Vic) ss26 and 27.

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Following the often-traumatic experience of becoming the victim of a crime, a negative experience with the police can exacerbate the initial trauma experienced by a victim.

Victims who contact the VOCC often have reservations about Victoria Police investigating their complaints. Some victims are concerned that Professional Standards Command is not separate enough from the regions/stations to assess their complaint impartially. Other victims express concern that Victoria Police is not interested in their complaint, that nothing will change, and their complaint will have no impact on their matter.

3.1. Consultative and victim-led police oversight reform

Many of the victims that the VOCC has heard from would face difficulties participating in the Systemic Review consultation process as it is currently designed, including the online survey on Engage.³¹ This is particularly the case for those facing additional barriers to accessing justice and support services such as young people, people from culturally and linguistically diverse communities and those with low levels of literacy or disability. For example, the Engage survey does not appear to be translated for members of culturally and linguistically diverse communities, nor does there appear to be an Easy English version of the survey for persons with low literacy or cognitive impairment.

Engaging in meaningful consultation with victims of crime, particularly persons facing additional barriers (such as those discussed on page 6 of the Consultation Paper), provides an opportunity to gain insight into what measures may assist complainants to feel safe and supported, as well as other tailored approaches that may not have been previously considered.

The Government should facilitate targeted and appropriate engagement with Aboriginal and Torres Strait Islander organisations, peak multicultural, migrant and refugee community organisations, along with other groups who have historically faced barriers to accessing appropriate resolution of complaints including youth organisations, LGBTIQ+ organisations and disability organisations.

3.2. Tailored approaches required for complainants—trauma-informed responses for victims of crime

When introducing the Victims' Charter, the Attorney-General at the time clearly stated that:

³¹ [Systemic review of police oversight | Engage Victoria](#)

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The criminal justice process itself can exacerbate the trauma that victims have already experienced and can, in fact, become a source of secondary victimisation. This not only hinders victims recovery, but can impact on their future willingness to report crime and participate in the prosecution process. If this happens, the efficacy of the criminal justice system as a whole is undermined.³²

Victims of crime require a trauma-informed response from Victoria Police.

The primacy of victim recovery from crime requires that all interactions with, and responses to, victims of crime should aim to minimise secondary victimisation, including complaint processes.

The VOCC's experience of victims attempting to navigate the Victoria Police complaints process demonstrates that the independent oversight agency must have a trauma-informed and victim-centred approach. Its processes must be simple and transparent so that they are easy for victims to navigate and do not cause additional trauma.

It is vital victims are aware of the complaints and escalation pathways, including when they should approach Victoria Police or an independent oversight agency, including the VOCC.

An independent oversight agency must have sufficient resources and training to adequately support victims through a complaints process, particularly where complainants may have experienced trauma and victimisation and are at risk of secondary victimisation.

Appropriate support should be put in place to guide victims through a complaints process, including sufficient resourcing to assist victims with paperwork and other processes. Strong links should be established with independent support services, such as Victims Assistance Program (VAP) case managers who should be trained to provide assistance to victims who need to navigate a complaints process.

3.3. Is conciliation and restorative engagement appropriate?

The VOCC recognises the benefits of restorative practices in appropriate circumstances. It is vital that conciliation / restorative engagement practices are victim-centred—that is, place victims' needs at the centre of the process, rather than prioritising procedural or agency efficiencies.

The VOCC supports restorative engagement where:

- they are victim-centred

³² Hulls, Second Reading Speech, 14 June 2006, p.2045

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- determinations about their appropriateness are victim-led
- they are facilitated by an appropriately trained, and trauma-informed expert.

In developing the police oversight framework, it should be explicitly acknowledged that conciliation and / or restorative engagement will not be appropriate in all circumstances, and determinations about its appropriateness should only be made by appropriately trained and trauma-informed experts. Important considerations include matters of victim consent, safety, power imbalances and the likely outcomes available via such mechanisms, including the extent to which these outcomes will address victims' primary concerns.

4. Classifying complaints

The Systemic Review is seeking to understand:

- which types of police wrongdoing do you think should generally be investigated by an independent oversight agency, rather than Victoria Police?
- how could legislative definitions best provide for a range of behaviour from 'low-level' conduct to serious misconduct and corruption?

Police wrongdoing that relates to serious police misconduct needs to be overseen by an agency that is independent of Victoria Police, such as IBAC.

Given their special status with Victoria Police, where victims of crime are dissatisfied with Victoria Police's management of a complaint relating to a breach of the Victims' Charter, they have the right to request the VOCC reviews their complaint.

4.1. Definitions and complaint classifications

Adequate access to justice requires that legislation, policies and processes must be transparent and easy for victims to navigate and understand. This helps to reduce the risks of secondary victimisation and re-traumatisation.

The current definitions and complaint classifications are complex and confusing.

The IBAC Committee recommended consolidating and clarifying definitions, suggesting complaints should be categorised into three types of police wrongdoing:

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- customer service (and similar matters)—generally dealt with by police
- misconduct—to be dealt with by IBAC or police
- serious police misconduct—generally dealt with by IBAC.

Categorising complaints into three types of police wrongdoing may assist in reducing the complexities associated with the current system. However, the proposed definitions may not adequately reflect the spectrum of complaints applicable to Victoria Police.

Victim concerns about substantive decision-making need avenues of appropriate escalation and resolution points within Victoria Police so that they are not inappropriately classified as ‘customer service’ complaints (see section 4.2).

The definition proposed for ‘serious police misconduct’ may be overly restrictive. There are certain types of conduct that may not fall within this definition, that should be considered as serious misconduct, particularly when occurring against victims facing additional barriers. For example, the summary offences of assault, aggravated assault, observation of the genital or anal region and distribution / threats to distribute intimate images.

It will be important that complaint definitions and classifications are legislatively defined and subject to rigorous consultation as complaint ‘streams’ / referral pathways will depend on how a complaint is classified.

4.2. Appropriately classifying breaches of the Victims’ Charter

The Systemic Review should recognise that victims of crime who complain to either Victoria Police or another complaints / oversight body, may not simply be alleging poor ‘customer service’, but may in fact be attempting to assert their rights under the Victims’ Charter, and Victoria Police may have in fact breached their duty under the Victims’ Charter.

The VOCC considers a breach of the Victims’ Charter as a breach of duty which goes beyond an issue of ‘customer service’ but may not (in all cases) amount to ‘misconduct’.

As noted above, it is important that complaint definitions and classifications are carefully and legislatively defined, including what amounts to ‘customer service’, so that breaches of duty (e.g. breaches of the Victims’ Charter) are appropriately categorised, recorded and actioned.

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It is vital the categorisations and definitions enable appropriate classification and management, as well as appropriate outcomes—whether an apology, disciplinary action or review of actions / decision made.

4.3. Who should deal with serious complaints?

As outlined above, the VOCC supports a model of centralised and independent oversight. Without independent and centralised oversight, Victoria Police may continue to misclassify serious misconduct as minor misconduct or as a customer service matter, as found by the IBAC Committee.³³

It may be appropriate that ‘customer service’ matters are dealt with by Victoria Police. Serious complaints should receive thorough, independent investigation, with clear and transparent outcomes.

As noted previously, the oversight approach must also enable the ability to assess and report on potential breaches of the Victims’ Charter to ensure the VOCC’s regulatory function is not hindered.

4.4. Police breaches of the Victims’ Charter

In considering the question posed in the Consultation Paper regarding the types of police wrongdoing that should generally be investigated by an independent oversight agency, rather than Victoria Police, it is important to take into account the experiences of victims of crime and the role of the VOCC, and the nature of Victoria Police obligations under the Victims’ Charter.

Under the VOCC Act, the VOCC can investigate all complaints relating to police behaviour and conduct in the context of Victims’ Charter breaches with the exception of conduct that the VOCC reasonably believes involves corrupt conduct (which would be referred to IBAC).

Currently, the VOCC is not required to consider the classification of police personnel conduct when making referrals to IBAC or other relevant agencies.

Prior to requesting the VOCC investigate a potential breach of the Victims’ Charter by police, a victim of crime must have first made a complaint to Victoria Police.

³³ Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 334.

4.5. Complaints made to the VOCC

Individuals who identify as victims of crime have raised concerns with the VOCC about police conduct that ranges from insensitive or disrespectful conduct, to alleged breaches of obligations under the Victims' Charter, to serious complaints of misconduct and corruption that do not fall within the VOCC's jurisdiction under the Victims' Charter.

Between 1 July 2020 and 30 June 2021, the VOCC received 151 'enquiries'³⁴ from members of the public. Of the enquiries relevant to agencies within the Commissioner's jurisdiction, the agency most mentioned was Victoria Police (44 per cent).³⁵

Victims' experiences, as conveyed to the VOCC, mirror the findings of the IBAC Committee which found that Victoria Police's complaint investigations often lack impartiality, effectiveness, complainant involvement and timeliness.³⁶

Many enquirers who have contacted the VOCC with an issue about police conduct or decision making have expressed a clear reluctance to make a complaint directly to police due to a perceived lack of fairness, transparency and accountability in Victoria Police's complaints handling process. Enquirers also questioned Victoria Police's willingness to take their enquiry or complaint seriously.

Individuals who identified as victims of crime have expressed the following concerns to the VOCC in relation to the Victoria Police complaints process:

- that they're scared of police
- that they're receiving pressure from Victoria Police not to complain
- that they don't want to "rock the boat"
- that Victoria Police just "police themselves"
- that the Professional Standards Command is not separate enough from the regions/stations to assess complaints impartially.

Many victims told the VOCC that they believe Victoria Police is not interested in their complaint, that nothing will change and complaining will have little effect.

³⁴ The Victims of Crime Commissioner's Office refers to matters raised by members of the public via the Commissioner's complaints and enquiries phoneline and email as 'enquiries', as many issues raised by individuals and victims of crime fall outside the Commissioner's complaints jurisdiction under the VOCC Act.

³⁵ Victims of Crime Commissioner, *Annual Report 2020-21* (Annual Report, October 2021) 24.

³⁶ Department of Justice and Community Safety, 'Systemic review of police oversight' (Consultation Paper, 25 November 2021) 11.

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Enquirer's have also expressed concerns that the Police Conduct Unit and IBAC are not 'functionally' separate to Victoria Police and many enquiries did not trust Victoria Police to review the matter.

Many victims expressed frustration that there was no avenue to have police decisions independently reviewed and viewed this as inherently unfair and biased. A number stated they felt as if their experiences in relation to this issue did not matter, and that this is leading to exacerbation of the trauma they experienced as a victim of crime, especially for those victims who experienced crimes against the person.

The VOCC's observation is that victims of crime trying to navigate the police oversight system often feel angry, helpless, disrespected, and reluctant to participate.

5. Complaint pathways and outcomes

The Systemic Review is seeking to understand specific considerations about police wrongdoing, referral mechanisms, the role of Professional Standards Command and the police discipline system.

It is important to understand the experience of victims of crime in the context of the current oversight system and how complaint pathways are used.

The sorts of considerations when deciding where a complaint should be referred include:

- seriousness of the complaint
- type of harm suffered by a victim
- risk of harm to any member of Victoria Police or a member of the public during the investigation
- existence of a conflict of interest in any of the agencies to whom the complaint may be referred
- processes for managing such conflicts of interest
- capacity of the agency to conduct the investigation of the complaint

The oversight of the progress of the investigation of complaints may also enhance compliance with the Victims' Charter. Factors such as:

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- time taken to investigate matters
- updating complainants on the investigation of their complaint
- ensuring that Victoria Police appropriately manage challenges that people might face when making a complaint such as challenges related to their personal safety; communication difficulties such as those faced by people with a disability or from culturally and linguistically diverse backgrounds; or trauma related to their experience of criminal victimisation
- ensuring complainants are provided with information about the outcome of the investigation of their complaint and the reasons for this outcome

The above are important to Victoria Police providing an accessible and transparent complaint handling system.

5.1. Victim experiences of the current oversight system

Many of the issues identified in the IBAC Committee report in relation to police oversight mirror the issues raised with the VOCC. It found that there had been a loss of confidence in the police complaints and disclosures system:

Victorians are not always confident enough to make, or persist with, a complaint about police, thinking that it might not be treated seriously or investigated impartially, or that they might suffer some sort of retaliation. This was particularly applicable to a range of vulnerable and marginalised Victorians.³⁷

The IBAC Committee found that the oversight of Victoria Police was perceived as not sufficiently independent and that police investigations can lack rigour and be affected by impartiality and conflicts of interest. The IBAC Committee also found that complainants are not kept informed and supported during the process and investigations can lack timeliness.³⁸

Further, the IBAC Committee heard that decisions by victims not to make or persist with making a complaint or allegation of police misconduct are due to fears surrounding police reprisals, harassment (such as over-policing), malicious prosecution, as well as a fear that they will not be provided with police assistance in the future if they need it (under-policing).³⁹

³⁷ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) xxxvii.

³⁸ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 144.

³⁹ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 150.

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The IBAC Committee found that IBAC does not investigate enough complaints about Victoria Police (including those involving serious misconduct), referring too many complaints back to Victoria Police for investigation.

The IBAC Committee also noted that police misconduct is under-reported, that there are significant deterrents for victims against making a complaint and that such deterrents are magnified for marginalised people.⁴⁰

5.1.1. Individuals facing additional barriers

There are further barriers—and hesitancy in coming forward to complain—that are experienced by people who are fearful of discriminatory treatment. The IBAC Committee received significant evidence regarding the experiences of people facing additional barriers. It concluded that there are ‘serious systemic barriers’ facing such complainants.⁴¹

For example, the IBAC Committee received evidence that Aboriginal and Torres Strait Islander women are often reluctant to make complaints or report police misconduct due to:

- fears of being wrongly blamed as the aggressor
- racist or sexist abuse
- minimisation of harm experienced
- additional scrutiny that may result from a report of family violence
- fearing the removal of their child (noting that family violence is the leading contributor to child protection intervention and removal).⁴²

The IBAC Committee heard that serious complaints, such as assault, by Aboriginal and Torres Strait Islander women, are often incorrectly classified as ‘minor or management matters’.⁴³

The IBAC Committee also heard that women living with disability and experiencing family violence, who complain about Victoria Police’s response to their family violence matter, are sometimes:

- threatened with / charged themselves

⁴⁰ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 148.

⁴¹ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 155.

⁴² Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 154.

⁴³ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 154.

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- regarded as nuisances.⁴⁴

This is of particular concern given that in 2016, 48 per cent of complainants were reportedly persons living with a disability.⁴⁵

The IBAC committee received evidence that victims of family violence:

- feel reluctant to / are dissuaded from making complaints due to fear of repercussions and knowledge that police will be likely to self-investigate
- fear the implications of complaining about police
- report facing a punitive, reduced or change in response to crisis calls and / or Intervention Order breaches, as a result of having made a complaint about Victoria Police
- do not seek further police assistance when needed due to the response / handling of a complaint.⁴⁶

Barriers experienced by victims of family violence are exacerbated when the perpetrator is a member of Victoria Police and the victim wishes to make a complaint or report misconduct. Recent media reports have highlighted such concerns⁴⁷ which has prompted Victoria Police to establish an independent unit to investigate such matters.⁴⁸ Although this is commendable, it also demonstrates issues to date in addressing matters involving misconduct and conflicts of interest within Victoria Police.

Victoria Police needs to undertake targeted engagement and communications activities that address potential complaints' fears in relation to discriminatory treatment by Victoria Police, explicitly referring to these experiences and fears and proactively encouraging individuals to come forward.

⁴⁴ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 155.

⁴⁵ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 156.

⁴⁶ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 154.

⁴⁷ Hayley Gleeson, 'Abusers in the Ranks', *ABC News* (Text, 19 October 2020) <<https://www.abc.net.au/news/2020-10-19/police-in-australia-are-failing-to-take-action-against-domestic/12757914>>; Hayley Gleeson, 'Victoria Police Officer Convicted of Family Violence Back on the Frontline as "strikingly" Few Cops Charged in 2020', *ABC News* (online, 16 December 2021) <<https://www.abc.net.au/news/2021-12-17/victoria-police-strikingly-low-charged-officers-family-violence/100701502>>; Hayley Gleeson, 'Victoria's "staggering" Record: 82 Cops Charged with Family Violence in Five Years, but Only One Found Guilty', *ABC News* (online, 20 October 2020) <<https://www.abc.net.au/news/2020-10-21/dozens-of-victoria-police-officers-charged-with-family-violence/12757988>>.

⁴⁸ See, for example, Victoria Police, *Options Guide for Victim Survivors of Victoria Police Perpetrated Family Violence or Sexual Offences* (21 December 2021) <<https://www.police.vic.gov.au/options-guide-victim-survivors-victoria-police-perpetrated-family-violence-or-sexual-offences>>.

6. Governance models for police oversight

The Systemic Review is seeking to understand:

- which model of police oversight do you think best meets the best-practice principles and why?
- other consideration that the Systemic Review should consider regarding governance models for police oversight?

6.1. A model enabling comprehensive oversight of all complaints

The VOCC considers other organisations are best placed to comment on the specifics of the proposed police oversight model and approach, in particular, the nature of the independent investigatory body and extent of their powers.

The VOCC supports a model enabling a central agency to have 'comprehensive oversight of the entire complaints system' as previously recommended in the IBAC Committee report.⁴⁹

The VOCC also considers it critical that the future model adheres to best practice principles previously outlined by the IBAC Committee, specifically:⁵⁰

- **Independence:** there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence
- **Adequacy:** the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible
- **Promptness:** the investigation should be conducted promptly and in an expeditious manner to maintain confidence in the rule of law
- **Public scrutiny:** procedures and decision-making should be open and transparent to ensure accountability

⁴⁹ Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 335.

⁵⁰ Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) xxii.

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- **Victim / complainant involvement:** the complainant should be involved in the complaints process to safeguard their legitimate interests.

In addition to the best practice principles outlined above, the VOCC reiterates the importance of the oversight agency being accessible, transparent and skilled in methods of complaints resolution, particularly methods that incorporate trauma-informed practice.

6.2. All misconduct to be independently investigated

The IBAC Committee Report found that IBAC currently investigates a small percentage of complaints, specifically that:

- IBAC only investigated 0.6 per cent of allegations it received in 2016-17⁵¹
- IBAC refers those allegations it does not investigate back to Professional Standards Command (PSC) in Victoria Police
- PSC investigates approximately 10 per cent of complaints it receives
- PSC triages the rest of the complaints (approximately 90 per cent) and sends them back to a region, department or command for investigation.⁵²

It is concerning that under the current approach, the majority of complaints involving serious police misconduct are being investigated by Victoria Police, especially given the IBAC Committee findings that such investigations often lack impartiality, effectiveness, timeliness, and that conflicts of interest are not consistently being identified and/or managed.⁵³

The VOCC supports a model of centralised and independent oversight. Without such oversight, Victoria Police may continue to misclassify serious misconduct as less serious,⁵⁴ and investigations may continue to be affected by impartiality and bias.

To ensure a robust oversight system, all complaints involving misconduct and serious misconduct must be investigated by the independent oversight body, not by Victoria Police.

⁵¹ Which is consistent with previous years, apart from 2015/2016, when it only investigated 0.2% of allegations.

⁵² Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 126.

⁵³ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 300.

⁵⁴ Independent Broad-Based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 209, 225 and 334.

6.3. A diverse and representative oversight body

It is important that the independent police oversight body is representative, neutral and transparent, to assist with rebuilding victim confidence in the system.

An oversight body that is representative of the community of which it serves, increases public participation and confidence in not just that body, but in the justice system overall. In this case, diversity is key to facilitating a more representative, fair and sensitive approach in the future by an oversight body.

Given that *esprit de corps* has been identified within Victoria Police, and that there is evidence of conflicts of interest in investigations, independence of the oversight body may be compromised if it is staffed by ex-Victoria Police employees.

7. Police oversight framework and the Victims' Charter

The VOCC supports the IBAC Committee's determination that an independent oversight agency needs to have oversight of all complaints about serious police misconduct, to ensure that the system is operating effectively and that complaints are not inappropriately classified.

It is also essential that the police oversight framework does not hinder the VOCC's regulatory oversight function, which aims to track agency compliance with the Victims' Charter and, over time, improve victims' experience of the justice system.

The VOCC has responsibilities that are shared by other entities with police oversight functions. The VOCC needs to deliver on these responsibilities to ensure that victims of crime can access their entitlements under the Victims' Charter.

Any new approaches to the police oversight system needs to ensure that there is alignment across collective responsibilities, appropriate communication and adequate information sharing and referral capabilities.

The VOCC supports a police oversight and reporting framework that enables identification of potential breaches of the Victims' Charter and enables the VOCC to fulfil the oversight function that relates to Victoria Police.

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7.1. Publicly available data

As noted by the IBAC Committee, publicly available data will not only improve community trust in the police oversight system, it will be a useful mechanism to track trends over time and improve outcomes:

Robust police complaint statistics that are easily accessible by the public will increase transparency in the police complaints system by providing meaningful data on how the system is operating. It will also allow for the monitoring of trend data, provide opportunities to improve systems and inform public policy⁵⁵

Centralised and independent oversight, including the ability to monitor Victoria Police's compliance with the Victims' Charter, would provide for broader monitoring of complaints trends and issues to identify systemic issues and is integral to improved service delivery and longer-term cultural change in the treatment of victims of crime.

Regardless of which agency is tasked with independent oversight of police complaints, it is vital that Victoria Police are legislatively required to report all complaints and notifications for assessment, monitoring and review. This reporting requirement should include mandatory flagging or reporting of complaints that also amount to potential breaches of the Victims' Charter. The publicly available data should provide breakdowns in relation to Victims' Charter compliance.

It should be easy for members of the public to access a centralised data point for all complaints to improve community trust in oversight mechanisms.

7.2. Ability to refer to the VOCC

There may be circumstances where a matter has been referred to IBAC (or an alternative oversight agency, depending on the model decided) and it does not meet its investigation threshold, yet may well be a relevant matter for the VOCC to investigate under the VOCC Act.

The IBAC Act enables IBAC to refer to other similar regulatory bodies (such as the Judicial Commission Victoria) however, it does not enable it to refer matters to the VOCC where there might be non-compliance with the Victims' Charter.

The centralised oversight body should be legislatively enabled to make referrals to the VOCC where it does not undertake an investigation but there is a reasonable belief a Victims' Charter principle has been breached.

⁵⁵ Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria* (2018) 109.

8. Complementary and parallel reforms

There are broader reforms that relate to victims of crime that the VOCC believes would complement a reformed police oversight system. Such parallel reforms have the potential to reduce (or divert) complaints from the police oversight system by improving other avenues and mechanisms for issues resolution.

8.1. Reforming the Victims' Charter complaints mechanism

A victim of crime can only make a complaint to the VOCC if they have first made a complaint to the agency and 'is dissatisfied with the agency's response to that complaint'.⁵⁶

The VOCC considers this may be a barrier for victims of crime who may be fearful of making a complaint directly.

While beyond the scope of the Systemic Review, except insofar as it relates to Victoria Police, the VOCC recommends that the Victims' Charter be amended to provide for exceptions in relation to the requirement for victims to first report to the relevant agency. These exceptions could apply where the Commissioner reasonably believes:

- a complainant faces specific barriers to reporting the matter to the agency
- it would not be safe (including physically, psychologically or culturally) for the complainant to report the matter directly to the agency.

8.2. A Victims' Right to Review Scheme

In the VOCC's experience, some victims of crime may wish to make a complaint about Victoria Police's substantive decision-making. Currently, such 'complaints' may be progressed via various complaints streams (whether via Victoria Police, IBAC or the VOCC), but ultimately leave victims with very little sense of procedural justice. This includes cases where Victoria Police have determined there is insufficient evidence to proceed with investigating or prosecuting a matter.

⁵⁶ *Victims' Charter Act 2006 (Vic) s25A.*

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Recently, the Victorian Law Reform Commission (VLRC) observed in relation to both police and prosecution decision making in sexual assault matters that they:⁵⁷

...continue to be concerned that victim survivors do not feel confident in the validity, transparency and accountability of the decision-making process. Too many [victim survivors] are left without a good enough explanation or understanding of why the case did not proceed.

It was within this context that the VLRC recommended Victoria introduce a model of independent review of police and prosecution decisions. The model proposed by the VLRC would enable review of the quality of decision making and could make recommendations to police and prosecution to continue with charges (although leaving the final decision to the police and prosecution).⁵⁸

The VLRC suggested that such a review mechanism could:

*...provide a way to identify how to improve the procedures for involving [victim] complainants in the decision-making process or their treatment. Even if prosecutions are discontinued, there may be ways to improve processes so that complainants feel a sense of procedural justice.*⁵⁹

The VLRC also highlighted the importance of the right for victims to request a review being included within the Victims' Charter to ensure that the operation of such a review mechanism can be monitored by the VOCC.⁶⁰

The VOCC considers a victims' right to review scheme as essential to the broader oversight of Victoria Police decision making. A right to review scheme would not form part of a complaints function but would be an effective referral pathway for 'complaints' that relate to substantive decision-making police that may require independent and transparent review, as envisaged by the VLRC in the context of sexual assault.

The VOCC has previously recommended to the Victorian Parliament that an independent victim right to review scheme should be introduced in Victoria to provide victims with an avenue to seek independent (external) review of both police and prosecution decisions after proper internal review processes have been exhausted.

⁵⁷ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 381.

⁵⁸ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 382.

⁵⁹ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 382.

⁶⁰ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 384.

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In the context of this review, the VOCC reiterates this recommendation, noting a robust right to review scheme should divert a number of matters from the police oversight or 'complaints' system into a more appropriate stream.

An independent⁶¹ right to review scheme should be introduced in Victoria underpinned by new rights in the Victims' Charter.

8.3. Addressing systemic misidentification of victim-survivors as predominant aggressors in family violence matters

The recent report of the Family Violence Implementation Monitor *Monitoring Victoria's family violence reforms: Accurate identification of the predominant aggressor* found that 'misidentification continues to occur, and rectification is extremely challenging'.⁶² Stakeholders also advised the Family Violence Implementation Monitor about the lack of appropriate escalation and resolution points within Victoria Police for misidentification matters.⁶³

As with victim concerns about substantive decision-making outlined above in the context of a victim right to review scheme, it is vital that issues of misidentification have appropriate escalation and resolution points within Victoria Police so that they are not inappropriately classified as, for example, 'customer service complaints'.

⁶¹ Academics point to the importance of independent review schemes operating separately from the original decision-making body. See, for example, Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 163; Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 71.

⁶² Family Violence Reform Implementation Monitor, *Monitoring Victoria's family violence reforms: Accurate identification of the predominant aggressor* (Report, December 2021) 5.

⁶³ Family Violence Reform Implementation Monitor, *Monitoring Victoria's family violence reforms: Accurate identification of the predominant aggressor* (Report, December 2021) 27.



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