

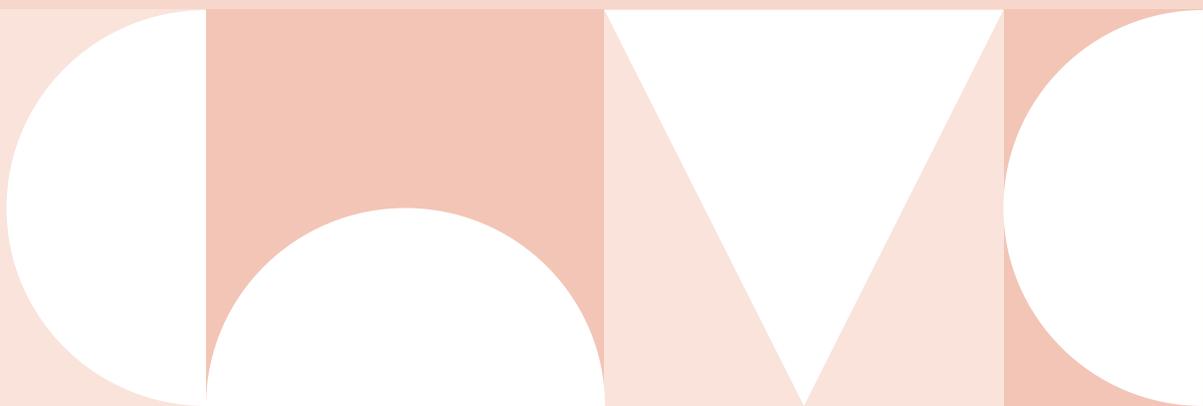
Part 2:

Are victims participating?

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

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

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



Overview of Chapter 4: Do victims feel like participants?

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

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

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

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

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

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

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

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

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

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

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



Introduction

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

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

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

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

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

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

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

Victims' experiences of participation

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

Were you treated like a participant in the justice system?

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

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

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

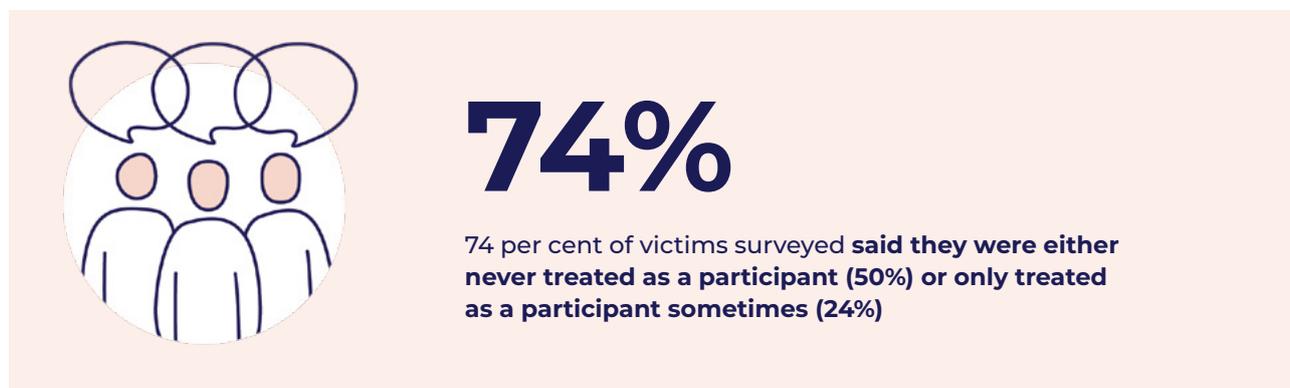
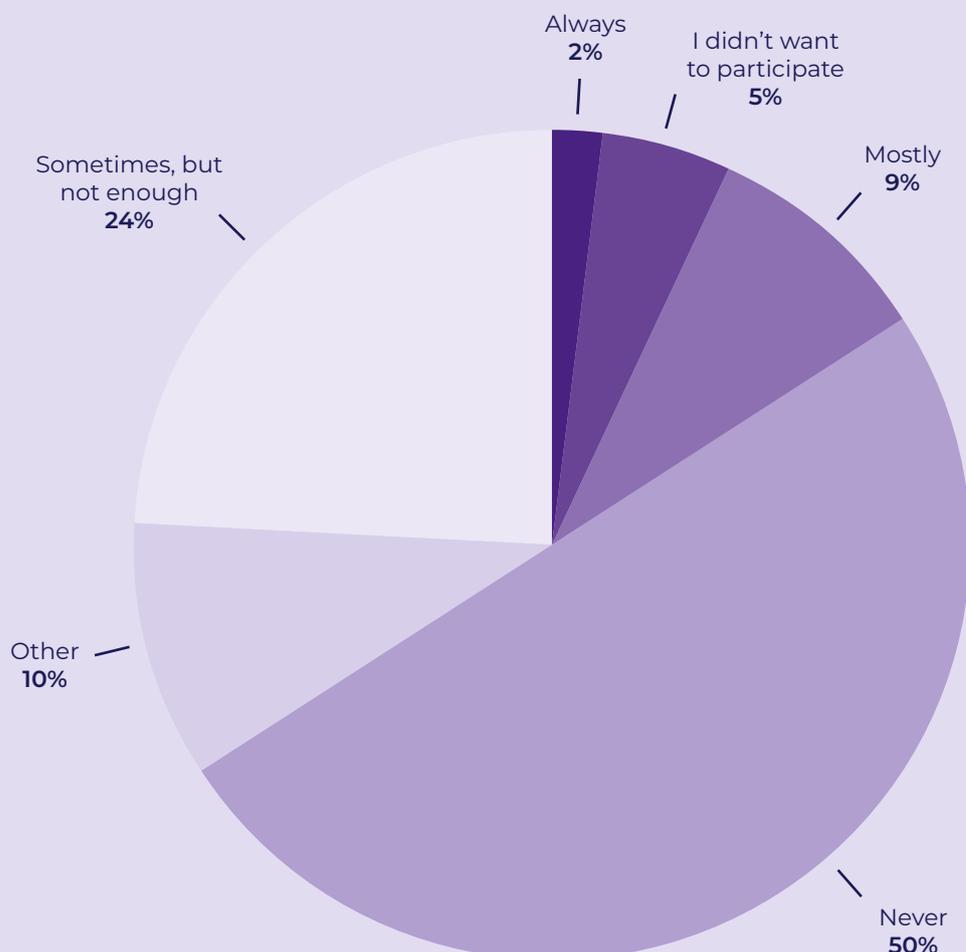


Figure 2: VOCC Victims' Survey: Were you treated like a participant in the justice system?



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



'I've not had any participation.'

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

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

- Victims' Survey respondents

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

¹ Interview 10 – Victim of family violence.

² Interview 13 – Victim of sibling family violence.

What lack of participation looks and feels like

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

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

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



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

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

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



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

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

Feeling excluded from processes

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

³ Consultation Meeting 11 – Victim Survivors' Advisory Council.

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

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

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

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



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

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

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

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

'I felt excluded...'

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

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

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

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

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

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

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

– Victims' Survey respondents and victim interviewees

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



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

⁷ Interview 1 – Victim of crime.

⁸ Interview 7 – Caterina Politi.

⁹ Interview 17 – Victim of crime.

¹⁰ Interview 12 – Victim of crime.

¹¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

Similarly, another victim survivor said:

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

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

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

– Victims' Survey respondent

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

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

Not being part of decision making

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

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

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

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

– Victims' Survey respondents and victim interviewees

¹² Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹³ Interview 14 – Victim of crime.

¹⁴ Interview 7 – Caterina Politi.

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

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

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

– Victims' Survey respondents

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

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

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

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

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

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

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

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

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

– Victims' Survey respondents and victim interviewees

¹⁵ Interview 8 – Victim of crime.

¹⁶ Interview 5 – Victim of crime.

¹⁷ Consultation Meeting 11 – Victim Survivors' Advisory Council.

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

Inadequate information

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



I was told nothing!

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

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

- Victims' Survey respondents

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



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

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



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

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

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

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

- Victims' Survey respondents and victim interviewees

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



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

- Victims' Survey respondent

¹⁹ Interview 13 – Victim of sibling family violence.

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

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

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

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

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

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

– Victims' Survey respondents

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

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

– Victims' Survey respondent

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

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

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

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

²¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

²² Interview 6 – Victim of crime.

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

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

Not having a role during court proceedings

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

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

– Victims' Survey respondent and victim interviewee

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

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

– Victims' Survey respondents

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

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

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

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

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

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

²⁶ Interview 5 – Victim of crime.

²⁷ Interview 8 – Victim of crime.

Losing choice and personal agency

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

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

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

Willingness to participate in the justice system again

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

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

Responses centred on the following key themes:

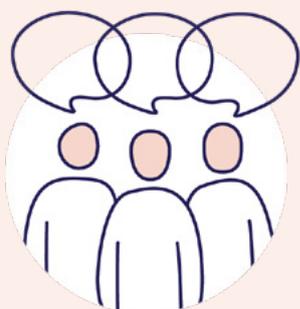
- the system causes further trauma
- they lacked confidence in the justice system
- they did not feel safe to participate in the justice system.

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

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

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

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



45%

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

²⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

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

System causes further trauma

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

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



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

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

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

'No too traumatising waste of time'

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

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

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

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

– Victims' Survey respondents

Lack of confidence in the justice system

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

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



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

'No its unjust and useless'

'No it's a waste of time'

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

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

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

'NEVER EVER because:

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

– Victims' Survey respondents

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



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

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

– Victims' Survey respondents

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



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

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

'No. There is no justice.'

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

– Victims' Survey respondents

Not feeling safe to participate in the justice system again

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



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

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

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

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

– Victims' Survey respondents

Participation is an opportunity to be heard

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



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

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

'yes, bigger voice for families of victims'

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

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

'Yes to show that you can be strong'

– Victims' Survey respondents

Holding the perpetrator accountable

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



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

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

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

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

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

– Victims' Survey respondents

Need for system reforms

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

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

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

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

– Victims' Survey respondent

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

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

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

– Victims' Survey respondent

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

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

– Victims' Survey respondent

What does meaningful participation look like?

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

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

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

– Victims' Survey respondents

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

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

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

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

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

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

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

– Victims' Survey respondents

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

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

– Victims' Survey respondent

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

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

– Victims' Survey respondent

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

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

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

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

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

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

31 Consultation Meeting 11 – Victim Survivors' Advisory Council.

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

33 Consultation Meeting 11 – Victim Survivors' Advisory Council.

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

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

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

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

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

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

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

Stakeholder views on victim participation

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

Has there been cultural change?

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

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

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

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

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

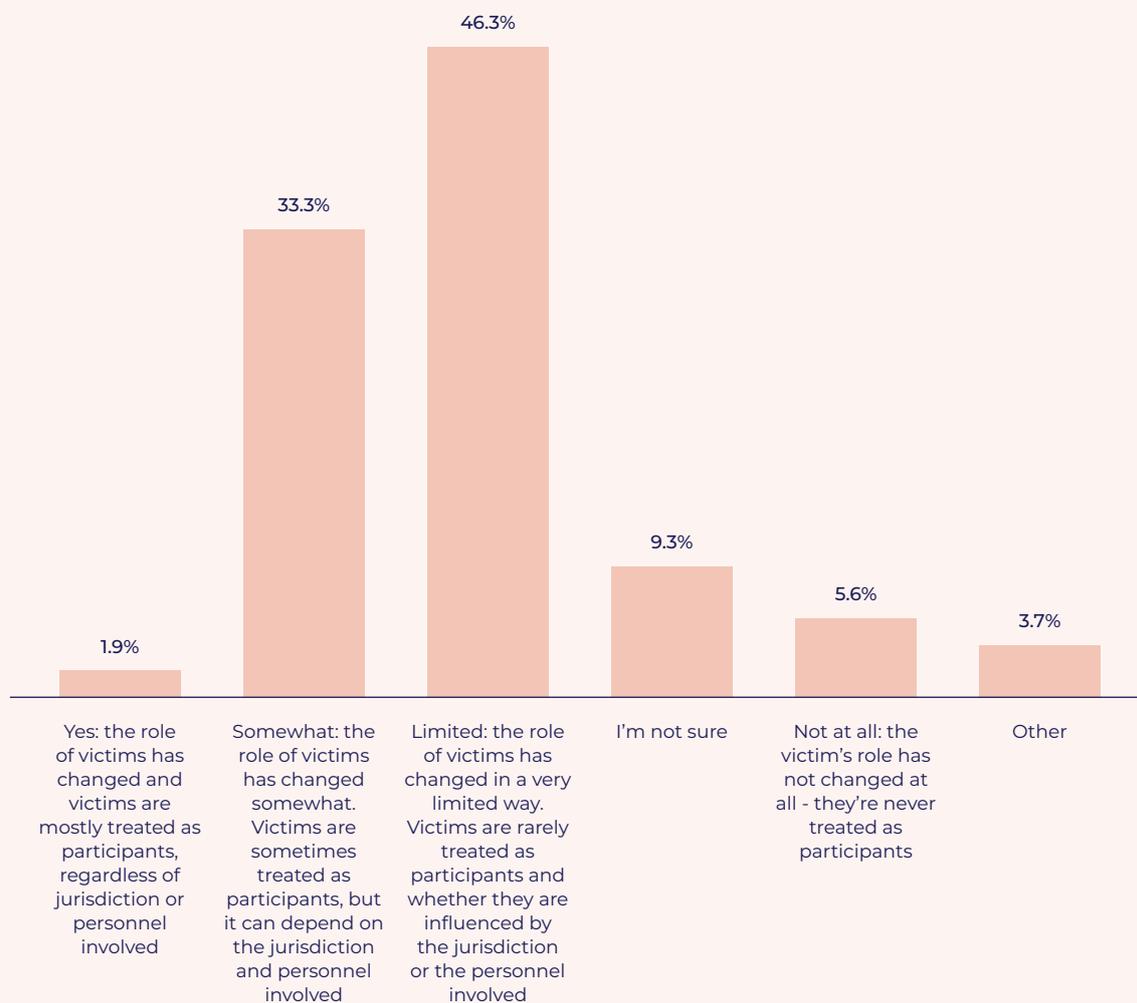
³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

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

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



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

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



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

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

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

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

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

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

Key themes on cultural change are discussed further below.

Victims' treatment and status

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

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

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

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

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

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

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

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

One victims' professional surveyed by the VOCC advised of a number of concerning issues they indicated they experienced 'weekly', including:

- victims not being responded to by police
- victims being ridiculed or dismissed when trying to report
- police failing to arrange interpreters or safe options for victims to report
- police not informing victims of their rights under the Victims' Charter
- police not informing victims of court dates and outcomes or their right to attend
- police not making referrals to support services such as Victims Assistance Programs [VAPs]/specialist Family Violence services
- perpetrators being released on bail and victims not being notified
- VISs not being provided to the court by prosecution prior to sentencing
- victims being told they cannot read their VIS
- victims missing court hearings despite being on WebEx⁴⁰ waiting to be linked in.

Some Victoria Police members felt that further cultural change was required to see victims placed on equal footing with accused people: 'The real key would be getting victims to be given the same status within the courts and within the prosecution as the offender. It's heavily weighted towards the offender.'⁴¹

A Victims Services staff member suggested cultural change has occurred, but that the system was only at the beginning of a 'continuum of cultural change':

Yes, there have been lots of positive changes and good reform, particularly in the past 5-10 years, however, we still have quite a long way to go in terms of cultural change. We still hear horror stories about police officers who treated victims in a particular way or say something inappropriate. We still have a lot more to do at a systemic level in regard to cultural change. We have heard this repeatedly from victim services. There is certainly more awareness about victims' rights, whether that has translated into actual cultural change is another question altogether. We are somewhere at the beginning of the continuum of cultural change.⁴²

⁴⁰ WebEx is the video conferencing software used by Victorian courts.

⁴¹ Consultation Meeting 19 – Victoria Police – Session 3.

⁴² Consultation Meeting 14 – Victims Services staff.

Lack of investment in reforms concerning victims' was also highlighted as a barrier to improved participation for victims of crime:

We have had various VLRC reports, a parliamentary inquiry, reviews. We tend to know what is not happening we just need the resources to fix it. There's been years of reform but there's only so much you can do without investment. Yes, the investment needs to be targeted and spent well, but we talk about the things we already know that aren't going well, but we are not able to implement the changes because of a lack of resources.⁴³

Another Victims Services staff member said despite significant reforms, there was still a long way to go for victims to be treated as participants:

There have been significant reforms over the past four years, but there is a long way to go. In the trial process victims are not treated as a participant, particularly regarding scheduling and information. Victims do not have a place at the table. Victims still have not realised full participation.⁴⁴

Another Victims Services staff member suggested that while things have improved, it may just reflect how few entitlements victims had 10 years ago:

there have been improvements and a shift to becoming more victim-centric. When compared to 10 years ago, the difference is huge, but perhaps that shows just how far we were behind before.⁴⁵

A Community Legal Centre (CLC) representative, when asked if there had been a cultural shift for victims since the 2018 Victims' Charter amendments, said:

No, unfortunately, not. We haven't seen much of a change since the Charter amendments included naming victims as a participant. Victims are still feeling unheard. These cultural changes have not happened.⁴⁶

Another CLC representative concurred, stating that 'we haven't seen much of a change since the Charter amendments acknowledged victims as a participant in proceedings.'⁴⁷ Another CLC representative was emphatic: 'I can say, with some authority, that there has been no change associated with the 2018 Charter amendments. None at all. This is my 35th year of dealing with crime, and there has been no change.'⁴⁸ This representative said the Victims' Charter made 'no difference whatsoever' because the system simply cannot deal with the workload required to truly enable victim participation:

One, the Victims' Charter makes no difference whatsoever. Two, how can it be expected to given the workload that the police have and that they don't want to take on further responsibility? Three, the same for the courts their lists are full every day and they don't have time to read all of the paperwork. We have a broken system.⁴⁹

Another CLC representative suggested victims are not even aware of the Victims' Charter, let alone their entitlement to be treated as a participant: 'I have never had a single person refer to the Victim's Charter; they've never been provided with information on the Charter by a police officer.'⁵⁰ This was confirmed by another CLC representative who said: 'I have never had a client that was aware of the Victims' Charter, of their own accord. Victims don't know about the Victims' Charter and they don't know their rights.'⁵¹

The Principal Commissioner for Children and Young People suggested there has not 'been a substantial change in the way children experience the criminal justice system, or in the way they're treated in the criminal justice system.' The Commissioner further stated:

Agencies have been doing work to implement the words in the Charter but the reality is you are talking about such a long standing culture of not seeing victims as genuine participants with interests and rights in the first place. Combine that with children who don't have agency or rights or status in the criminal justice system and then double the impact on children. You have to imagine the situation for child victims is pretty dire and shifting that culture and practice and making the recognition of child victims real is going to take, as the VLRC recognised back in 2016, significant efforts.⁵²

One Court Network volunteer, who had been a volunteer for 10 years, agreed that there had been 'no cultural change since the Victims' Charter was amended to recognise victims as participants'.⁵³

'...there has been no change associated with the 2018 Charter amendments. None at all. This is my 35th year of dealing with crime, and there has been no change'

CLC representative

43 Ibid.

44 Ibid.

45 Ibid.

46 Consultation Meeting 22 – Community Legal Centres – Session 1.

47 Ibid.

48 Ibid.

49 Consultation Meeting 22 – Community Legal Centres – Session 1.

50 Consultation Meeting 23 – Community Legal Centres – Session 2.

51 Ibid.

52 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

53 Consultation Meeting 12 – Court Network.

On the other hand, the Office of Public Prosecutions (OPP) suggested there had been a cultural change in the way victims of crime are treated, particularly within the OPP:

We have observed a cultural change in the way that victims of crime are treated. The introduction of multidisciplinary teams and the ROVE [Record of Victim Engagement] have resulted in a shift away from treating the victim as only a witness to the crime and towards treating the victim as a participant in the court process. More broadly we have observed an increased willingness of the courts to incorporate the need for consultation with victims into new court initiatives.⁵⁴

The Victims and Witness Assistance Service (VWAS) told the VOCC a significant change has been observed within the OPP, with the OPP creating a culture where there 'is a clear expectation that victims are to be treated in the manner that is expected and reflected in the Victims' Charter'.⁵⁵

Nonetheless, the OPP also acknowledged that 'barriers to participation are still present'⁵⁶ and include:

- misunderstandings of the law and heightened expectations of potential outcomes
- a lack of information and understanding of the criminal justice system and the victim's role and rights as a participant
- courts not allowing sufficient time for a victim to complete a VIS
- vigorous cross-examination styles employed by defence counsel and tolerated by some judicial officers
- limited time for consultation with victims in relation to plea resolutions, constraining their participation in the resolution process.⁵⁷

Court Services Victoria suggested there had 'not been a seismic shift but an incremental shift with a recognition that the role of courts has changed. There has been a particular development in how to support victims as participants and in how victims are heard and their experience is both witnessed and acknowledged'.⁵⁸

Impact of legislative entitlements to be treated as a participant

Some respondents to the VOCC's Victims' Professionals Survey suggested the concept of victim 'participation' may mean very little to victims, suggesting victim participation was a theoretical or legislative concept that had no practical outcomes for victims. Victims' professionals described these changes as meaning 'little' or 'nothing' to victims:

it means nothing really as they are just the victims that have limited to no say in what happens in the justice system

I think it means little to them. Victims often feel frustrated and let down as they see themselves as a victim of a crime not a participant or party.

I don't think many know the word participate is used aside from in literature. The exception would be completing vis and sharing their experience with the court which I think is explained well and they understand it is their opportunity, and often the only one, to address the court.

Respondents to the VOCC's Victims' Professionals Survey also suggested participation for victims is different to what is provided for by legislation:

[Victims] usually commence with a belief that they are 'making charges' 'taking perpetrators to court etc. They often then feel disappointed that they are only a witness in the process.

For most their understanding/expectation of 'participation' is somewhat different to how they experience it. Most people have an expectation that that they will be far [more] involved and privileged to information about the alleged perpetrator and any criminal justice proceedings.

To participate tends to be based on what the system defines as participation, with the system's needs coming before the victim of crime, not necessarily empowering the client.

Another victims' professional told the VOCC that being a 'participant' does make some victims feel like they have a role, 'however by not being a party it doesn't truly give them a voice and continues to embed their feelings of low self-worth.'

⁵⁴ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

⁵⁵ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 9.

⁵⁶ Ibid, 2.

⁵⁷ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 9.

⁵⁸ Consultation Meeting 31 – Court Services Victoria.

A CLC representative told the VOCC there is no real enforceability within the Victims' Charter, with agencies considering it a 'checklist and not a mandatory requirement'.⁵⁹ Other CLC's suggested the Victims' Charter is a 'toothless tiger':

The Victims' Charter is similar to the Charter of Human Rights and Responsibilities, in that it is often ignored unless you directly point out the organisation's responsibilities under it, even then you might not always get a response. I have had matters where I have pointed out the obligations on the prosecution under the Victims' Charter, that they make victims aware of certain things and I've had pushback, even when I quoted the Act. The Victims' Charter is a toothless tiger.⁶⁰

The Victims' Charter isn't being used in the way it's intended. It's something of a toothless tiger. It's very hard to enforce it but you're still pushing for it.⁶¹

Similarly, the Principal Commissioner for Children and Young People said that:

The challenge with the shift in the Charter recognition of victims as participants is compounded because it hasn't been accompanied by a fully resourced independent regulator or enforcer, nor has it been accompanied by any child focused advocacy function or service, so there is very little to make the words in the Charter real.⁶²

Victims being heard

Some respondents to the VOCC's Victims' Professionals Survey highlighted a lack of regard for victims' views, particularly when key decisions are being made, with victims' views ignored or considered 'after the fact' or given 'lip service':

Decisions are nearly always made regarding the progress of a case/sentencing etc without the victim being involved until after the fact. They believe they have no say in the process or outcome and have yet another sense of 'being done to' rather than feeling involved in.

Although victims are sometimes asked about views about key decisions, generally they report they feel their opinions are not considered even when they are asked and it is lip service.

The OPP advised the VOCC about the practical challenges of ensuring victims are updated and heard in relation to key prosecution decisions, noting the fast-paced nature of the court process does not always allow this:

...occasionally there will be rapid developments in the court proceedings such as last-minute adjournment requests and unanticipated applications for bail which prevent the victim being updated until after the fact. Where last minute plea offers are made prior to a court hearing with insufficient time to consult the victim, where possible the OPP will seek an adjournment to allow for consultation to take place. Adjournments on this basis may not always be granted, resulting in decisions being made without consultation in rare instances.⁶³

Furthermore, the OPP described the tension inherent in the plea negotiation process, a key point at which victims' voices should be heard and considered but where such views may conflict with the OPP's obligations:

The challenge inherent in ensuring victims feel like participants in the plea process is the potential for the views of the victim to conflict with the responsibility of the OPP to only proceed with prosecutions where there is a reasonable prospect of a conviction, and it is in the public interest (the prosecution test). Under the Director's Policy, a resolution will only occur if it is in the public interest. The view of the victim on any proposed resolution is one of the factors that determines if the resolution is in the public interest. Although the views of the victim are regularly determinative of whether plea offers are accepted, there may be other cases where the other factors in support of resolution mean that the victim's views are not determinative. In cases where the victim's views are sought but the ultimate outcome is not in line with those views, the victim may feel like an observer rather than a participant.⁶⁴

The OPP noted that while victims generally do feel consulted, they can also feel disheartened and that consultation is tokenistic at times, particularly if the DPP makes a decision that does not support their views, and in these cases, victims may still feel let down.⁶⁵

Participation in different jurisdictions

Some respondents to the VOCC's Victims' Professionals Survey felt that victims in summary proceedings (heard in the Magistrates' Court) have fewer opportunities than victims in the higher courts to participate. This included victims not being advised in a timely way about an upcoming court hearing or the outcome of a hearing:

The victim is often not informed of an outcome from a Magistrates court hearing until a few days later and that is only if the informant is notified. Victims have often told me that they would like the courts or the prosecutors to notify them of outcomes so that they are aware of the next step or to even know that their matter has been resolved so they can move on from the event. This is more important if it involves remand or bail hearings. Participants want to be considered for any updates and be advised.

⁵⁹ Consultation Meeting 22 – Community Legal Centres – Session 1.

⁶⁰ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁶¹ Ibid.

⁶² Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁶³ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 3.

⁶⁴ Ibid 3–4.

⁶⁵ Ibid, 12.

More victim awareness for matters heard in the Magistrates court by Vic Pol members such as advising court dates, charges, whereabouts of the offender and the opportunity to complete a victim impact statement. This would enable the victims to feel more like a participant. [sic]

Respondents to the Victims' Professionals Survey also highlighted significant issues with Victim Impact Statements in the Magistrates' Court. This is discussed in detail in **Chapters 9 and 18**.

Victoria Police members also highlighted concerns about victim participation in the Children's Court, given that the focus of that court is on minimising young offender's contact with the criminal justice system:⁶⁶

In the summary stream, at the Children's Court there are some impediments to victim engagement because of the way the jurisdiction works, and because of the focus of the legislation – the Children's Youth and Families Act – and the legislation's purpose...Another issue is that some matters might resolve by way of Diversion, which doesn't allow for victim engagement. We do have a Diversion matrix, which requires that a prosecutor take into account the impact of the crime on victim, however, there's no direct requirement for engagement with the victim in terms of ascertaining their thoughts around whether a Diversion is appropriate. The victim is a silent participant in those circumstances.⁶⁷

Getting information to participate

Respondents to the VOCC's Victims' Professionals Survey highlighted that victims often do not have access to basic information updates about the investigation or the progress of the prosecution, leaving them unable to participate meaningfully in the justice system:

I find, most often, victims are let down by a lack of communication from professionals within the system who are supposed to, as part of their job, maintain communication. This is often the single most common complaint I have from victims.

Victims repeatedly tell me that they are sick of chasing things up. Police often forget to provide updates or call when they have said, meaning the victim has to chase it up.

The lack of information from courts and police is significant. The victims I speak with feel they have no part in the process even though the violence was perpetrated towards them

A lot more work is required to ensure victims are spoken to in relation to ALL updates in a timely manner. It seems to be a common theme that professionals supporting victims often know about outcomes well before the victim has been informed.

A lot of victims I support feel that there is little communication and the police don't care about what happened to them as if it's not significant enough a crime.

It has been my experience that victims are often feeling like they are unsure of exactly what is happening leading up to significant court hearings

Victims of Crime often find it very difficult even impossible to get clear information and responses from police informants about upcoming hearings, charges, victims requirements at court etc.

I don't believe that victims generally receive enough information about what their role is and what the role of police and prosecution are. The adversarial system is inherently difficult for victims even with changes made since 2018.

CLC representatives also highlighted lack of information for victims as a concern and how it is a key barrier to victim participation:

Information is a barrier to victim participation. Victims who don't understand where the matter is at, what case conferencing is. A lot of trauma and time would be saved if there was more information about the process and how it works.⁶⁸

The Principal Commissioner for Children and Young People similarly highlighted concerns with information provision to children and young people (and their parents/guardians):

...we hear from plenty of parents that their [children's] matter goes into a black hole and they don't know what decisions are based on, why the matter ultimately does not proceed to prosecution or other decisions made. Those provisions in the Charter around information provision to victims' parents and carers appear to be at best inconsistent in practice.⁶⁹

Victoria Police members agreed that many victims may not be given the level of information they may need to feel like participants in the process. This included police being unable to provide victims updates about a case due to resourcing challenges:

Police time, resources and volume of cases are the greatest barriers. Engaging and supporting victims isn't difficult for police as we do that intuitively, but time and resources are the challenge. More time, more resources, less volume are what's needed. With 300 000 cases a year, more than 200 000 of which have victims, and there are 12 000 of us, it's not physically possible to deliver statutory rights for all victims. It's just not physically possible. So, we have to prioritise.⁷⁰

⁶⁶ Section 356C of the *Children, Youth and Families Act 2005* (Vic) sets out the purposes of diversion in the criminal jurisdiction of the Children's Court, which include diverting a child from the criminal justice system where possible and reducing a child's contact with the criminal justice system.

⁶⁷ Consultation Meeting 18 – Victoria Police – Session 2.

⁶⁸ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁶⁹ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁷⁰ Consultation Meeting 18 – Victoria Police – Session 2.

Some Victoria Police members note, however, that there can sometimes be a tension between the information a victim wants and the need for police not to jeopardise an investigation: 'Sometimes the investigations are protracted and we're in a position where we don't want to jeopardize an investigation so we're withholding quite a bit of information at various times.'⁷¹

Getting appropriate support to participate

Respondents to the VOCC's Victims' Professionals Survey highlighted that a lack of access to appropriate support for victims also affects victim participation, including not being able to access legal advice or appropriate court or victim support:

Having a good lawyer who supports the client is the best way to ensure the client is supported somewhat. I feel victims are not looked at as 'victims' throughout this process, it is extremely challenging and disappointing. The system is a complete let down for victim survivors.

We often find victims wanting support in court and seldom able to access it via e.g. court social work. We end up using volunteer based services.

Funding cuts have made it difficult to support clients the way we should, eg. we aren't supposed to do full days of court support anymore.

Other victims' professionals indicated victim support was hampered by a lack of referrals or lack of referral pathways:

For a victim to participate, they must be aware there is a pathway for them to do so. I find there is still a significant number of victims that are never referred to VAP for assistance in the first instance, so how can they make a choice as to whether they was [want] support to 'participate'

Some victims need more assistance to participate than others. When victims are not referred at an early stage in the investigation that participation can be very limited.

The Commissioner for Children and Young People suggested the victims' services system was not child-friendly, with few opportunities for children and young people to engage without it being mediated through a parent or carer:

There is a frustration that there is no service where they can reach out and seek their own advice and support. There is no way to really extricate themselves from the parent or carer. From a policy and capacity and infrastructure perspective we need to develop specialisation to support children and young people...⁷²

CLC representatives highlighted key gaps in legal support and advocacy for victims, with victims left to navigate complex civil and criminal matters without legal advice, assistance or advocacy.⁷³

The OPP, while not supportive of broad-based independent legal representation for victims of crime, also felt there was a lack of appropriate legal support for victims in relation to applications to subpoena confidential communications of the victim. The OPP noted that they are unable to provide legal advice to victims in relation to such subpoenas and a 'victim who is unable to access their own legal representative is left having to navigate this process without independent advice.'⁷⁴

What does participation mean to victims?

The VOCC sought to understand what broader stakeholders felt participation means to victims of crime. Respondents to the Victims' Professionals Survey primarily articulated 'participation' as victims being:

- informed/receiving information
- involved/included/part of the process
- heard/having a voice or say/being consulted
- advised of their role/knowing their rights
- having choice
- given appropriate support.

These insights very closely aligned with victims' views of participation, which included concepts of inclusion, procedural fairness, understanding their role and entitlements, being given information and the opportunity to express feelings/have a voice. As articulated by one Victims Services staff member:

Victim participation is about being included, heard and truly consulted. Victims tell us that they need to feel that their input makes a difference. Participation is about meeting people where they're at, recognising their unique needs and accommodating their needs, whether that is around age or disability.⁷⁵

⁷¹ Consultation Meeting 19 – Victoria Police – Session 3.

⁷² Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁷³ Consultation Meeting 22 – Community Legal Centres – Session 1; Consultation Meeting 23 – Community Legal Centres – Session 2.

⁷⁴ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

⁷⁵ Consultation Meeting 14 – Victims Services staff.

Being informed

Many respondents to the Victims' Professionals Survey felt that basic information provision – being kept up to date on the progress of a matter – was the key to victim participation:

Participation – provided with timely information

Participating in the criminal justice process, having access to briefs of evidence and updated regularly by police on the current investigation

In my experience, [participation] means being regularly informed of process and where things are up to. It also means being given the information they need to be able to make informed decisions.

Being informed, being involved and finding out information from authorities, not by the media for example

Being fully informed of the criminal justice process in a timely manner

Being kept informed eg of court dates and outcomes

Being updated of the entire journey of the investigation at regular and consistent intervals

Being kept updated with each step of the proceedings, including any decisions related to the charges, dates for court hearings, and the outcomes of court hearings.

The fact that so many victim support professionals identified information provision as crucial to participation underlines the extent to which many victims struggle to access basic information about their matter.

This was also highlighted by a Victims Services staff member who said 'Information is so important in trying to address systemic barriers. The legal process is an extremely complex system that many people find inaccessible.'⁷⁶

The Australian Capital Territory Victims of Crime Commissioner also highlighted lack of information provision:

We often hear experiences from victims of crime who feel side-lined by the criminal justice system. I think this often arises where people are not getting the information they need, so they don't know what's happening.⁷⁷

Feeling involved, included and part of process

Unsurprisingly, respondents to the Victims' Professionals Survey highlighted the importance of victims feeling involved, included and part of the process for them to feel like a participant. For these victims' professionals, participation was about 'active involvement':

Participation would mean that victims were part of the process and not a bystander with decisions being made without their input, it would give them ownership of their experience.

that theoretically they're participating in a process of seeking justice for the crimes committed against them that have deeply harmed them

Being actively involved – given regular updates/information, sought feedback from police or courts as to processes and outcomes.

Having a voice, being heard and having choice

For some respondents to the Victims' Professionals Survey, participation meant having a voice and being heard:

Participation would mean being listened to, treated fairly and with respect.

Victims feel they are participating if they are being heard and their views are acknowledged.

Being able to have their voice heard and believed.

Having their views heard and respected by the criminal justice system. Actively participating in the criminal justice system process by having members of the system, including police, lawyers and magistrates, listen to their experiences and the impact the crime has had on them. Having their views heard in regards to what a fair result should be in terms of the system outcome.

Being invited to speak about their experience, to have access to those making decisions about their lives and to feel heard.

⁷⁶ Consultation Meeting 14 – Victims Services staff.

⁷⁷ Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

Active participation – via consultation or ‘a say’ on key decisions – was also highlighted by a number of victims’ professionals as key to victim participation:

Being asked their views on police decisions and ‘plea bargains’

Offered opportunity to consult on decisions that are going to affect them, plus ensure completion of victim impact statements are supported.

Participation means to be consulted and be actively considered as victims and the impact the crime has had on them during the process.

Participation – provided with timely information, having a strong say in how matters proceed.

Having in say in charges laid by police, Real consultation regarding plea bargaining, A voice in the court process, be that, plea bargaining, sentencing, responding to ‘offender excuses’ when making plea and a sense of their story being heard/told as opposed to prosecution according to the laws of the state.

A Victims Services staff member highlighted the importance of choice in victim participation:

Participation is about providing victims with opportunities. In the context of the Victims Register that means providing opportunities for victims go on the Register, opportunities to provide submissions, to provide information to the Parole Board, the Post Sentence Authority and the courts...The feedback we constantly receive is that that choice to participate is key for victims of crime.⁷⁸

Participation can be complex and varied

Respondents to the Victims’ Professionals Survey described the complex nature of victim participation which can mean different things to different people, and encompasses many and varied components:

Involvement in, and understanding of, the criminal justice process, involvement and decision making during the referral process, making decisions about their own recovery and what that looks like, deciding what level of engagement they want with services.

extremely variable but many victims are very much guided by the professionals involved in the CJ process regarding opportunities to participate in the CJ process. Some think participation is having police/other professionals keep them updated regarding the CJ process, attending all court matters, some think it is having a say in the court outcomes, including consultation with OPP throughout CJ process.

means being consulted about their wishes and needs, being informed regularly of the process, steps in that process and various people involved, updates about progress communicated regularly in the preferred method of the victim. participation can mean they feel heard and included, and can lead to a positive experience even if the outcome wasn’t exactly what they wanted to happen.

Similarly, the OPP stated that participation ‘may mean different things to different victims’ but it generally means being given updates in relation to case progress, information to understand the prosecution process and their role, and the opportunity to have their views ‘heard and taken into account in significant decisions made by the OPP’.⁷⁹ The OPP also suggested that a victim’s view of participation may go beyond what is practicable within the current system: ‘participation for them will often mean having greater decision-making power over the prosecutorial outcomes than they may actually have’.⁸⁰

However, overall, concepts of ‘control’ or ‘decision-making’ being a part of participation for victims did not feature heavily among the stakeholders consulted, although some victims’ professionals spoke of a victim’s need for autonomy in and control over their journey. For example, respondents to the Victims’ Professionals Survey said:

Being in control of their journey: the ability to make decisions around their recovery (e.g. choice of counsellor and solicitor) and the justice process (having their voice heard by the OPP and the judge).

to have the autonomy to make the decisions on their terms.

For academic Kerstin Braun, participation for victims means involvement, but not necessarily having the responsibility to make final decisions, noting ‘victims want to be involved. They want to have their voices heard, but they don’t necessarily want to be responsible for the final decision.’⁸¹

A Victims Services staff member noted that ‘participation’ for children and young people may be different to ‘participation’ for adults:

Acknowledging the victim’s role as participant, and not a party, in proceedings can be challenging for young people. Young people generally see themselves as a party to the proceedings as they were the victim of crime. They have ownership and feel that the process is also about them, and this impacts their expectations for involvement and rights.⁸²

78 Consultation Meeting 14 – Victims Services staff.

79 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

80 Ibid 8.

81 Consultation Meeting 1 – Associate Professor Kerstin Braun.

82 Consultation Meeting 14 – Victims Services staff.

Another Victims Services staff member said that being a 'valued participant' includes:

- having access to information
- being able to influence the process
- being able to understand the range of options available
- being able to express ideas, preferences and views.⁸³

What works well to facilitate victim participation?

Respondents to the Victims' Professionals Survey were asked what was currently working well to facilitate victim participation. The main areas victims' professionals described as working well to facilitate victim participation were:

- Victim impact statements
- Victim and witness support services including:
 - strong referral processes
 - collaboration between services
 - co-location of services and police
 - continuity in personnel involved.
- Accessible court facilities and supports including:
 - remote witness facilities
 - access to remote (online) hearings
 - access to interpreters, an intermediaries program and applicant/respondent workers.

Some victims' professionals also highlighted specialist police responses as working well to facilitate victim participation, along with the OPP meeting with and consulting with victims.

There was also strong support for Victim Impact Statements, although a number of victims' professionals felt victims sometimes need more time or support to participate meaningfully in the VIS process.

On the other hand, some victims' professionals responding to the Victims' Professionals Survey felt that few aspects of the current system work well to facilitate victim participation:

Minimal. The system is not set up to support victim survivors.

I believe all aspects work on a base level only.

Victims need more than a limited participation.

Not much in my experience

I find the overall experience of victims in the system to be limited and it does largely come down to who is involved in their case and that persons ability to communicate with the victim.

Other victims' professionals responding to the Victims' Professionals Survey felt that certain aspects worked well, but that it was variable or dependent on personnel or crime type:

No one aspect – it is more a case that in some situations things work well and in others they don't. There is no area which always works well.

It really depends on the type of crime. The criminal justice system seems tailored to those crimes committed between people that are not known to one another. When there is some familiarity between victims and offenders, this seems to severely limit the justice system response, especially with neighbourhood disputes (PSOs) or family violence cases for example.

I do think this very much depends though on the personnel involved and how much they include victims (especially police).

It depends on the people involved, as to what works well. Sometimes it works and others it doesn't.

I do believe that the supreme court and the County court manage it a bit better than the magistrate courts. But not always.

I think victim participation is better when the crimes are indictable and involve the OPP rather than police prosecutors. Sexual assault victims report better communication with SOCIT members and OPP.

Some victims' professionals surveyed spoke about the potential for things to go well, often where an early referral to supports is made:

when we all work together i.e police refer at point of crime, VAP support is put in place, clear and timely information is provided to all stakeholders by the OPP, court process runs efficiently, client has the opportunity to participate in the court process via attendance and VIS – we have amazing results and client recovery is good. When one area falls down, it impacts on every other aspect of process and subsequent recovery. I believe there are great processes and supports that can be put in place, we just need to all make a commitment to utilise them.

If VAP receive the referral of a victim in a timely manner, they are able to provide many more options for the victim to participate than if they receive the referral when a Victim Impact Statement is due next week. Early referrals to appropriate services is critical for victims to be made aware of their rights to participation.

VAP could also be on call to provide support during police visits to clients to facilitate referrals and engagement.

The process remains extremely difficult for Victims of Crime. Better information at the commencement of processes allows for better information and potentially, more positive outcomes for victims of crime.

The importance of early referrals to support as being key to victims' participation was also highlighted by Victims Services staff.⁸⁴

Two victims' professionals surveyed by the VOCC discussed efforts made by victim support services and prosecutors to inform and consult, noting, however, that this often falls short:

Attempts by victim and witness support services seek to smooth the process and encourage an understanding but this isn't participation e.g. OPP meeting with families to explain process yet decisions on plea bargains will be made regardless and victims role limited.

Prosecutors often do their best to explain the system and prepare the victim, but they are time poor, therefore it is inadequate.

Court Network spoke about how having the right support to victims can help create meaningful participation, even when participation or validation for victims is not built into the justice system:

Bearing witness, being alongside people, validating the importance of what they did or their being there; this all plays a role in creating meaningful participation. People can walk away feeling like they have had meaningful participation, even if the system itself cannot enable that to occur.⁸⁵

The Centre for Innovative Justice spoke about programs and initiatives that have improved victims' participation, including the Child Witness Service, Intermediaries Program and the Victims and Witness Assistance Service (VWAS) within the OPP but the Centre also said that these services or initiatives are not as widely available as they need to be.⁸⁶ For example, the intermediaries program is narrow in scope and the VWAS is only available for indictable matters prosecuted by the OPP. Victoria Police members were similarly supportive of the intermediaries program, VWAS and Child Witness Service.⁸⁷ CLC representatives spoke about the importance of 'multidisciplinary' approaches and 'wrap around' models as vital to victim support and participation.⁸⁸

Victims Services staff suggested Youth Justice Group Conferencing, when facilitated by early and appropriate referrals, can be a successful aspect of victims' participation in the justice system.⁸⁹

The OPP highlighted the importance of reforms to the VIS process as key to improved participation by victims, including reforms that have enabled:

- victims to read their VIS to the court
- victims to use alternative arrangements to read their VIS aloud
- a VIS with inadmissible material to be provided in its entirety to the judge (without redaction).⁹⁰

What additional help do victims need to participate?

Respondents to the Victims' Professionals Survey suggested victims need:

- access to more dedicated in-court support
- help with other legal issues (e.g. family law, intervention orders)
- culturally safe support and advocacy options
- more practical assistance.

⁸⁴ Consultation Meeting 14 – Victims Services staff.

⁸⁵ Consultation Meeting 12 – Court Network.

⁸⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁸⁷ Consultation Meeting 24 – Victoria Police – Session 4.

⁸⁸ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁸⁹ Consultation Meeting 14 – Victims Services staff.

⁹⁰ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 8.

Building an overall picture of victims' participation

As outlined above, the vast majority of victims surveyed by the VOCC (74 per cent) feel as though they were never or only sometimes treated as a participant.

Victims expressed a profound lack of confidence in the justice system, with victims articulating feelings of hopelessness, unjustness, disappointment, and general distrust of the system. Many victims indicated that they would not be willing to participate in the justice system again because of the trauma and harm caused by participating – that is, secondary victimisation.

However, by assessing how victims articulated both a lack of participation – and conversely, positive aspects of their participation – the VOCC was also able to identify what meaningful participation looks like for victims.



Summary of engagement findings – victim participation

Meaningful participation for victims includes:

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

Overview of Chapter 5: Structural and systemic barriers

The *Victims' Charter Act 2006* (Vic) (Victims' Charter) aims to address some structural and systemic barriers for particular victims of crime by requiring agencies and services to be responsive to the particular needs of persons adversely affected by crime. However, a range of structural and systemic barriers to participation were identified by victims, illustrating that participation in the justice system cannot be taken 'as a given' for some victims of crime.

For some victims, barriers to participation exist before any formal interaction with police, prosecution, courts or victims' services.

Consistent with previous research, the Victims of Crime Commissioner (VOCC) heard that the justice system is not always safe or accessible for:

- Aboriginal and Torres Strait Islander peoples, with ongoing issues around safety, reporting and achieving justice and equality
- children and young people, with children feeling invisible and unsafe
- culturally and linguistically diverse populations, including difficulties navigating the justice system due to language barriers and barriers to culturally safe participation
- people with disability and chronic illness, with intersecting factors of systemic discrimination and disadvantage
- older victims of crime, with the justice system not recognising the unique dynamics of elder abuse
- LGBTIQ+ communities, with LGBTIQ+ victims of crime feeling marginalised, minoritised or even criminalised by the criminal justice system.

Also consistent with previous research, the VOCC heard that:

- the justice system continues to cause secondary victimisation
- the complexity of the justice system continues to be a barrier to victim participation
- trauma can make it difficult for victims to participate
- court delay – sometimes up to five years – impacts on individual victims' participation and recovery.

5

Chapter 5:
**Structural and systemic
barriers**



Introduction

This chapter considers the structural and systemic barriers that victims identified as affecting their overall participation in the justice system. It draws on the views of victims consulted, as well as those of other key stakeholders where that provides additional context.

The chapter does not cover all structural and systemic barriers experienced by all victims. It focuses on the key themes arising from consultation and engagement with victims of crime for this inquiry. The Victims of Crime Commissioner (VOCC) acknowledges that there are many and varied ways in which the justice and victims' services system may impose structural and systemic barriers to participation, some of which may not have arisen as key themes during consultation and engagement.

It is also evident that people can experience overlapping and interdependent systems of discrimination or disadvantage consistent with understandings of intersectionality.¹ It is therefore important to adopt an intersectional lens and acknowledge that while issues may be discussed separately, many of the systems and structures of the justice system can interact on multiple levels to create barriers to participation by victims which may be complex and interconnected.²

Lack of safety and accessibility for all victims

The *Victims' Charter Act 2006* (Vic) (Victims' Charter) aims to address some structural and systemic barriers for particular victims of crime by requiring investigatory agencies, prosecuting agencies and victims' services agencies to take into account, and be responsive to, the particular needs of individuals adversely affected by crime. Charter Principle 6(2) requires agencies to address particular needs relating to differences such as:

- race or indigenous background
- sex or gender identity
- cultural or linguistic diversity
- sexual orientation
- disability
- religion
- age.

Many of the structures and processes of the justice and victims' services system presume a victim of crime will feel safe to enter the justice system or approach a support service.

However, it is evident that many of the structures and processes of the justice and victims' services system presume a victim of crime will feel safe to enter the justice system or approach a support service, and that these processes or organisations will be accessible to all victims.

A range of structural and systemic barriers to participation were identified by victims and lived-experience consultants, illustrating that participation in the justice system cannot be taken 'as a given' for some victims of crime. For some victims, barriers to participation exist before they have any formal interaction with police, prosecution, courts or victims' services. In fact, some victims of crime identified barriers to *any* kind of safe interaction with the justice system. For these victims, notions of 'participation' are particularly complex and nuanced.

This section explores some of the safety and accessibility barriers raised directly with the VOCC by victims of crime during consultation and engagement activities.

Victims' experiences

Participation for Aboriginal and Torres Strait Islander peoples

The VOCC heard that the justice system is not always safe or accessible for Aboriginal and Torres Strait Islander victims of crime to participate.³ This is consistent with previous research.⁴

¹ Victorian Government, *Everybody Matters: Inclusion and Equity Statement* (Web Page, 28 June 2021) <<https://www.vic.gov.au/everybody-matters-inclusion-and-equity-statement#inclusion-equity-and-intersectionality>>.

² Ibid.

³ The Victims of Crime Commissioner notes the Victorian Government is developing a dedicated Aboriginal victims of crime strategy: Victorian Government, *Reforms we will deliver to support victims of crime* (Web Page, 15 June 2022) <<https://www.vic.gov.au/victim-support-update/reforms-we-will-deliver-support-victims-crime#a-dedicated-strategy-for-aboriginal-victims-of-crime>>.

⁴ See, eg, Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 314, 336–39 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

Close to 80 per cent (78 per cent) of respondents to the VOCC's Victims' Survey who identified as Aboriginal or Torres Strait Islander said that they 'never' felt like a participant in the justice system.⁵

When specifically asked, 'Could your participation in the justice system have been better?', Aboriginal or Torres Strait Islander respondents to the VOCC's Victims' Survey outlined barriers to participation which included exclusion, systems abuse, inappropriate police behaviour, being disbelieved and lack of access to support for victims:



'There was no inclusion.'

'It is time for victims to have more rights than the perpetrator. The system systematically abuses the victim.'

'I wish I had been offered some support options when I sought help from a psychologist as an adult.'

'The first lot of detectives that looked into the case, dismissed it because one of the witnesses was an alcoholic and they didn't think that he would be believed. I did not find that out till 10 years or more later when I reopened the case, seeking justice.'

'I was bullied by both the female and male officers and they didn't believe me. The female officer threatened me insofar as she said if I didn't take it through to a hearing she would come looking for me.'

– Victims' Survey respondents

When Victims' Survey respondents who identified as Aboriginal and Torres Strait Islander were asked to consider what parts of the justice process worked well for them, most indicated there were no aspects that worked well, with respondents stating 'none', 'none – no one cares' 'truly none', 'all terrible' and 'I didn't report.'

For one Victims' Survey respondent, who tried for 20 years to have a perpetrator charged, finally finding a 'police officer that believed me' was a positive example of the system working well.

A victim representative of the Victims of Crime Consultative Committee also echoed concerns about police responses to crime impacting on participation by victims, stating:



*'In our Aboriginal community, victims aren't always treated seriously. Also, in some cases the victim has been a perpetrator themselves in the past. There can be a reluctance to engage with the process and police. I think Aboriginal victims of crime are treated differently, not taken as seriously, and not treated with respect.'*⁶

This same victim representative told the VOCC that not all people want a justice system response, particularly in family violence matters, and this too may affect participation by victims:



*'There is still a reluctance of people in the Aboriginal community to report family violence. The police are still reluctant to respond to sexual assault. The way some police view family violence is changing, but it still comes down to the individual responders. People in the Aboriginal community don't want their partners locked up, they want the violence to stop. They want to not be split up, not for the person to be charged and locked up, they just want it to stop.'*⁷

⁵ This was 28 points higher than respondents who did not identify as Aboriginal or Torres Strait Islander. Even though there were only nine respondents who identified as Aboriginal or Torres Strait Islander, the discrepancy between the cohorts is significant.

⁶ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁷ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

The VOCC's Victims' Survey also asked respondents, 'Based on your experience of giving evidence at court, would you do it again?' Of the seven Aboriginal and Torres Strait Islander respondents who answered this question, five selected 'Not sure', a much higher rate of uncertainty (71.4 per cent) than the response rates in the VOCC's Victims' Survey more broadly.

Individual responses to the survey question around challenges in the justice system provided more detailed information about the difficulties associated with giving evidence in court for Aboriginal and Torres Strait Islander victims. For example, one Victims' Survey respondent indicated that trauma and fear of the system influenced their decision not to proceed:



'I could have reported the crime as an adult but I felt too much time had passed, and I was fearful of reliving the experience and what the reaction would be by police, particularly as my memories might not have been accurate enough.'

– Victims' Survey respondent

Another Victims' Survey respondent echoed this same fear of the court experience:



'The system is not designed for victims – often cases will not get to court – trauma of the event and remembering. times and dates can be a challenge alongside fear. without the clear details and the perpetrator having all the rights there is no room for victims. As we know women have been beaten and murdered for years as the perpetrator has all the rights and its time for the system to have a complete overhaul.'

– Victims' Survey respondent.

Issues regarding accessibility and awareness of victims' services also emerged. Victims' Survey respondents were asked their reasons for not using a victims' service. When looking at the five respondents who answered this question and identified as Aboriginal or Torres Strait Islander, four selected 'I didn't know how to find victim services or what ones to use' and the fifth stated: 'Hadn't heard of a service like that.'

A member of the Victim Survivors' Advisory Council advised VOCC about barriers to receiving support and assistance from some Aboriginal organisations, including if you're a victim-survivor of family violence with a criminal record or where there might be a conflict of interest for the organisation in representing both the victim-survivor and/or perpetrator.⁸

Participation for children and young people

Respondents to the Victims' Survey illustrated several key issues relating to participation of children and young people as victims of crime. In responses to the Victims' Survey, the VOCC was told about children and young people who:

- had to navigate complex trauma following a crime, impacting their health, wellbeing and stability
- were too young to understand the justice system
- felt like they would not be taken seriously if they reported crime
- felt invisible within the justice system
- were not afforded the same status, rights and protection as adult victims
- felt unsafe and unprotected
- were particularly susceptible to secondary victimisation, including while giving evidence.

The devastating impacts of victimisation for children and young people are evidenced by this response to the VOCC's Victims' Survey:

'I had one child that tried to suicide twice and ended up in in hospital for over a month. These are the things justice agencies don't know about. These are things that are happening in my life when I'm trying to navigate a huge system.'

– Victims' Survey respondents

One victim interviewed by the VOCC spoke about the impact of crime on the young children she was now guardian for following a violent crime:

*'[I'm] dealing with ... traumatized children, trying to get them to school. They are upset at school, having to go to one of the schools, sometimes three times a day. Tears, counsellors, doctors, psychologists. Not an easy thing to manage. Each child has a different way of dealing with trauma.'*⁹

Respondents to the Victims' Survey indicated that for children and young people, not being able to access the justice system safely, and not being aware of options, were barriers to participation. For example, one Victims' Survey respondent said they were too young to understand they could even use the justice system while another said, 'I was a child and didn't know that what was happening was against the law.' Another Victims' Survey respondent spoke about being young and embarrassed: 'I was young. It was an embarrassment, and I was not even prepared to tell my parents.'

Another Victims' Survey respondent stated that their youth prevented them from feeling that they would be taken seriously if they reported a crime: 'I didn't report the crime because I didn't think police would take me seriously. I was 17 and couldn't afford a lawyer so I felt I would be dismissed and humiliated if I tried.'

One Victims' Survey respondent spoke about police inaction leading them to remain with their parents and experiencing ongoing childhood abuse.

A Berry Street Y-Change Lived Experience Consultant observed that fundamental change is required to how the system approaches child victims, noting that 'reporting a crime looks very different for a child as opposed to an adult. Being a victim of crime will feel different for a child to an adult.'¹⁰ For the Y-Change Lived Experience Consultant, 'law enforcement need a separate set of guidelines, training, policies and practices for supporting any and all children regardless of if they are a victim or not.'¹¹

A key theme in relation to barriers for children and young people was children's sense of 'invisibility', lack of agency and lack of opportunity for meaningful participation, as noted by this Y-Change Lived Experience Consultant:

*'The main thing is to be asked and included in conversations. To hear both sides of the story, especially in family violence situations. I would run away from my Dad's place because I didn't feel safe. He would call the police and put out a missing person's report...They probably thought they were doing the right thing bringing me back to my Dad but for me it was the wrong thing. They didn't ask me "why did you leave his place?"... Even after I got an IVO because of physical violence from my dad, I still wasn't asked about my experiences.'*¹²

A member of the Victim Survivors' Advisory Council said that '[c]hildren should be acknowledged within the justice system as well and recognised in their own right.'¹³

⁹ Interview 15 – Victim of crime.

¹⁰ Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

¹¹ Ibid.

¹² Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹³ Consultation Meeting 11 – Victim Survivors' Advisory Council.

When asked what part of the justice process worked well, one Victims' Survey respondent said: 'I was a child and had no voice.' Echoing this lack of agency and voice, another Victims' Survey respondent said young victims of family violence:



'are completely invisible to the system and in court even when they are named victims of offending as ours were'

– Victims' Survey respondent

Again, echoing the feeling of being invisible, another respondent to the Victims' Survey said that it was extremely sad for their child to be overlooked by the justice system, leaving them feeling unsafe and unprotected.

This sense of invisibility was similarly observed by a Y-Change Lived Experience Consultant who noted, during consultation, that with family violence cases, children are not seen or heard:

The child always has to be connected to an adult. In terms of listening and reporting and being taken seriously, then the voice of the young person should be taken seriously and placed front and centre. We need to take the young person's perspective seriously. Have policies in place to enforce confidentiality of the child with reporting procedures to match. Have independent and anonymous feedback, complaint and reporting mechanisms available to all ages, all abilities and all backgrounds; widen the net, fill the holes and strengthen it so that the smallest and quietest voice can be held and heard.¹⁴

According to the Y-Change Lived Experience Consultant, one way to address the invisibility of children and overcome their barriers to accessing the justice system is for representatives of young people to work with police 'to bridge the gap':¹⁵

That support person can ask the young person "how are you feeling, what can we do?" As an adult it can feel like the antitheses of what being a victim of crime is about. You can give a young person a pamphlet in easy English but you don't have a baseline of where the young person is at and their understanding of what is a sexual assault or what is ok for a parent to do or what body part is appropriate to touch. Two young people will see things different. It needs to be more than one size fits all approach.¹⁶

Alongside issues of invisibility, Victims' Survey respondents also highlighted the extent to which adult processes were imposed on children and young people, impacting on safe and meaningful participation:



'I was a terrified child who was stood over and intimidated by multiple men. I don't ever recall feeling safe or believed.'

'As a small child I was forced to stand in a full court room and have grown educated men yell questions at me.'

'The Detective in charge...requested a statement for court from my 6 year [old] daughter, and there seemed to be no understanding of the difficulties involved in this.'

– Victims' Survey respondents

A Y-Change Lived Experience Consultant described having to turn up at court in the morning and wait around as 'punishment in itself. Not knowing if or when you are going to be called and then you wait around all day.'¹⁷

These responses highlight the extent to which children and young people as victims of crime may be even more susceptible to secondary victimisation when participating in the justice process.

¹⁴ Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

A Y-Change Lived Experience Consultant recalled police visiting their house while they had a friend visiting. This consultant observed how the police had little regard to their preferences for when and how they might want to speak about the crime:

*'...they started to ask me all these questions and I didn't want to talk to the police in front of my friend. Also it was expected that with the friends I hang around with that you don't talk with the police. My experience of sexual assault had only just happened and it was all those things at once and I didn't want to talk to them.'*¹⁸

The VOCC was also told that some children and young people may have already had negative interactions with police and for them, police may not always represent safety: 'Children and young people have a lot of negative experiences with police and it makes an impact on feeling like you can trust them. They all look the same in the same uniform.'¹⁹

The VOCC was also told about aspects of the court and trial process that can be particularly traumatic for children and young people. One Victims' Survey respondent spoke about the accused being granted a 12-month delay to the start of the trial. This respondent said:

'I was in court with my children when that judge just accepted those pathetic excuses by Defence and with [a] flick of the pen put the trial back over 12 months. My children just broke down in silence. What am I supposed to tell them when this type of things happens?'

– Victims' Survey respondent

Children and young people may also struggle to get the support they need to navigate the justice system. The VOCC was told that:

- young people should have information given directly to them, not just their parents or guardians
- children and young people need multiple options for support, including online and via text message
- information needs to be accessible for young people.²⁰

The VOCC heard from the families of child victims who had encountered positive experiences with victim support for children at various stages of the criminal justice process. One victim interviewed by the VOCC noted that the 'support leading into the committal proceeding was exceptional all the way through, even with a 14-month delay'.²¹

On the other hand, other child victims struggled to get support, with this Victims' Survey respondent stating:

'The system is broken re victim services - they were good but they can't explain anything above the system and they don't help kids at all. Child DFV victims are completely invisible to the system and in court even when they are named victims of offending as ours were.'

– Victims' Survey respondent

This same Victims' Survey respondent elaborated: 'My kids still have not been provided with the outcome of proceedings by police. We received very little support or assistance from anyone.'

¹⁸ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Interview 16 – Victim of crime.

For other child victims, the parents had to take a proactive approach, pushing and advocating for appropriate support for their children:

'I contacted Victims of Crime. I listened, I learned, and I followed up and found a counselling company for myself and my children that deals in trauma. Nothing was handed to me on a platter when it should have been. I felt like I was in a war nobody could see. Why couldn't they see what had happened was so wrong?'

– Victims' Survey respondent

When asked if they would want to participate in the justice process again, one Victims' Survey respondent answered:

'No, as a young person under 18, I would prefer to tell my story again to a safe person and then have them provide advocacy and do this process on my behalf. I was not in any state of mind after being abused constantly to be further traumatised by adult justice processes. I had suffered enough trauma and needed safety and protection and advocacy.'

– Victims' Survey respondent

Participation for culturally and linguistically diverse populations

Consistent with previous research,²² Victims' Survey responses from those who identified as being from a culturally and linguistically diverse population illustrated several structural and systemic issues relating to participation in the justice system.

Key issues identified by culturally and linguistically diverse populations included difficulty navigating the justice system due to language barriers and barriers to culturally safe participation, particularly where there are intersecting barriers. For example, one Victims' Survey respondent spoke about how her culture as well as her identity as a woman meant dealing with police and courts was particularly challenging:

'Being a newly arrived migrant woman with limited English at the time, I found it very difficult to understand the process and the legal system. I felt intimidated dealing with the police and the court system as in my culture they are the authority and mainly male figures.'

– Victims' Survey respondent

Another Victims' Survey respondent stated that: 'Police are not safe ppl who understand cultural and religious issues.'

Survey respondents also highlighted basic issues of accessibility, such as not having resources in languages other than English and not being able to access interpreters.

'It would be great to have resources available in language other than English, someone to walk you through the process and also more female officers and judges?'

'There was also a need to communicate with his family over proceedings. This was handled very badly and interpreters were not used [when they] should have been.'

– Victims' Survey respondents

²² See, eg, Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 339–43 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/inquiry_into_Victorias_Justice_System_Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf>.

Another Victims' Survey respondent stated the system lacked culturally diverse resources, personnel and facilities:



'Family and domestic violence is a complex social issue, the justice system plays an important role in eradicating this horrendous crime (mainly against women and children) but the system is not perfect. For example, the lack of culturally and linguistically appropriate resources, personnel and facilities.'

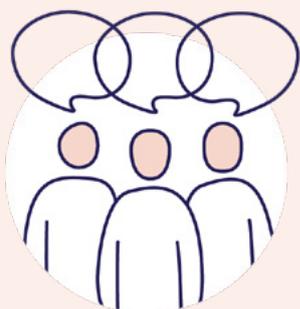
– Victims' Survey respondent

Participation for people with disability

A number of significant reviews and inquiries have highlighted the structural and systemic barriers to participation for people with disability.²³ Consistent with this research, issues with participation for people with disability were identified across interactions with police, courts and victims' services.

One victim interviewed by the VOCC said they felt 'treated as subhuman' and felt excluded by the police and from the court and the justice system because of their disabilities.²⁴ A member of the Women with Disabilities Victoria (WWDV) Experts by Experience Advocacy Team told the VOCC that people with disabilities are misheard, misunderstood and not believed.²⁵

In the VOCC's Victims' Survey, when specifically focusing on respondents who identified as having a disability, 63 per cent said they never felt like a participant in the justice system. When looking at respondents who did not identify as having a disability, 42 per cent said they 'never' felt like a participant in the justice system.



63%

63 per cent of survey respondents **who identified as having a disability said that they 'never' felt like a participant in the justice system.**

Responses to the VOCC's Victims' Survey also demonstrated intersecting factors of systemic discrimination and disadvantage for people with disability. When asked about factors that negatively shaped their justice system experience, a high proportion of respondents to the Victims' Survey who identified as having a disability also selected these factors:

- low income (74 per cent)
- experience of homelessness (46 per cent)
- age (43 per cent).

A major concern raised with the VOCC related to how the structure and processes of the justice system work to exclude people with disability or chronic health issues from being able to participate:

²³ Joint Family and Community Development Committee, Parliament of Victoria, *Inquiry into Abuse in Disability Services* (Final Report, 2016) 77; Victorian Equal Opportunity and Human Rights Commission, *Beyond Doubt: The Experiences of People with Disabilities Reporting Crime* (Summary Report, July 2014) 5; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 165.

²⁴ Interview 1 – Victim of crime

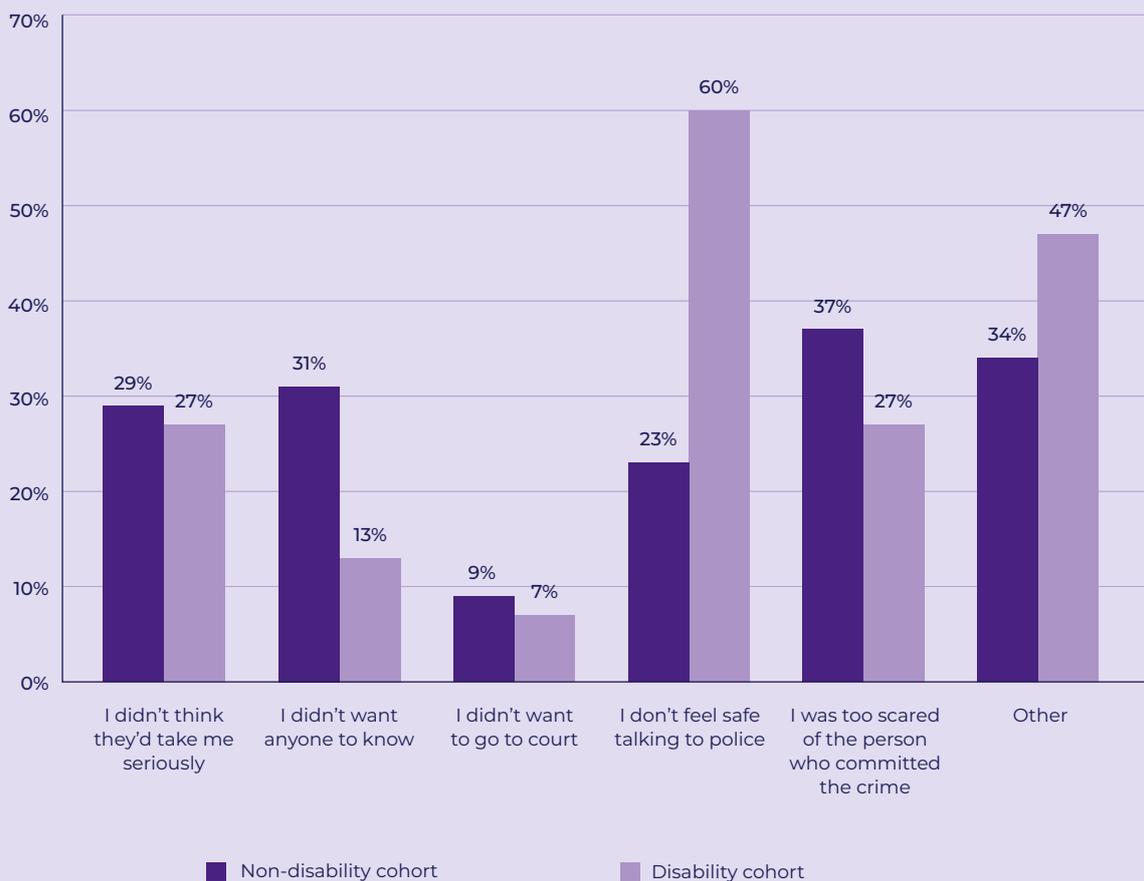
²⁵ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.



*'I'm too sick to engage with the justice system because of where my health is at, but the courts expect you to show up, be organized enough to get a medical certificate to ask for an adjournment and follow their process...They need to be more flexible with people not knowing the processes and understanding that people with disabilities may not show up to court and may not be organized enough to get a medical certificate. I've had court cases thrown out of courts because I didn't show up, even when I provided a medical certificate. They just throw it out and expect you to go through the whole reapplication process all over again...There needs to be a cultural shift. They need to show more respect for disabled people.'*²⁶

Not feeling safe and able to report to police was also highlighted as a structural and systemic barrier to participation for people with disability. In the VOCC Victims' Survey, respondents were asked why they did not report to police. Sixty per cent of survey respondents who identified as having a disability advised the VOCC that they did not report the relevant crime because they did not feel safe talking to police, compared to only 23 per cent of people who did not identify as having a disability (see **Figure 5** below).

Figure 5: VOCC Victims' Survey: Why didn't you report to police?



For people with disability, safety and accessibility are interconnected, with accessibility issues making some victims feel both excluded and unsafe. For example, a member of the WWDV Experts by Experience Advocacy Team told the VOCC that because her disability is invisible, she struggled to report to police in a safe way, experiencing the process of trying to get an intervention order as complex and overwhelming

²⁶ Interview 1 – Victim of crime.

due to the sensory challenges of being in a police station: ‘Although I presented as “held together” because my communications and body language didn’t indicate distress, I didn’t get very far in the process and I felt really unsafe.’²⁷

Another member of the WWDV Experts by Experience Advocacy Team told the VOCC that her very poor experiences with police have led her ‘to not feel safe to report anything today to police. E.g., not being believed. Facing ableism and judgement.’²⁸

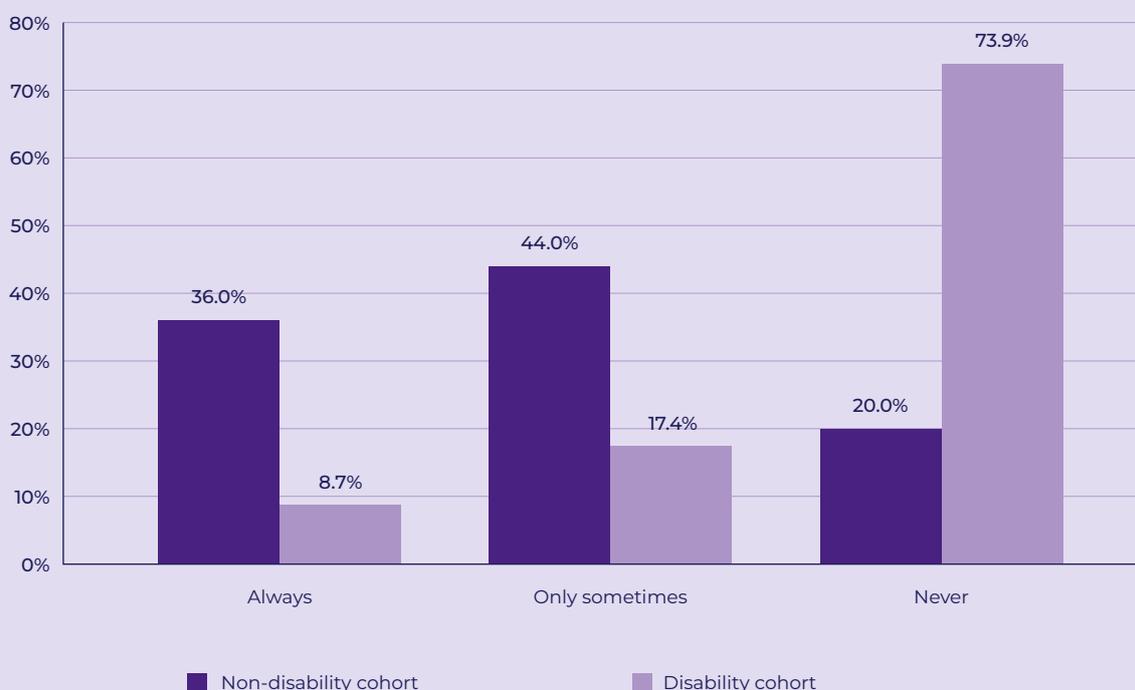
A victim-survivor from the Victim Survivors’ Advisory Council spoke about exclusion because of lack of safety modifications and reasonable adjustments in courts. This victim-survivor stated that:

‘...the justice system is very confronting and overwhelming for disabled people. They won’t let you have enough safety modifications or reasonable adjustments to participate in the process.’²⁹

This victim-survivor had tried unsuccessfully to get reasonable adjustments to attend court but said ‘the courts don’t help you with reasonable adjustments so that you can participate. There are big barriers to accessing justice because you can’t even get through the court.’³⁰

Safety in court was clearly a concern for respondents to the Victims’ Survey, with 74 per cent per cent of respondents who identified as having a disability stating they ‘never’ felt safe in court, compared to 20 per cent of respondents who did not identify as having a disability (see **Figure 6** below).

Figure 6: VOCC Victims’ Survey: Did you feel safe at the court?



²⁷ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

²⁸ Ibid.

²⁹ Consultation Meeting 11 – Victim Survivors’ Advisory Council.

³⁰ Ibid.

Lack of safety and lack of accessibility in the courts was also raised by a member of the WWDV Experts by Experience Advocacy Team:

*'I was a victim. I was put in court with the perpetrator next to me. Because my wheelchair didn't fit in the safety room in court, I couldn't go in there. Unless you know safety rooms exist, you don't know to ask for it. The safety rooms aren't big enough for wheelchairs.'*³¹

This WWDV Experts by Experience Advocacy Team member spoke about how basic safety and infrastructure needs are fundamental to participation:

*'Safety in court needs to be addressed so that we can feel more comfortable, so we can get our cases heard. We need to make sure people feel comfortable in these spaces and as much as people want to participate, they need to have choice about that participation. Court buildings are not disability accessible.'*³²

One member of the WWDV Experts by Experience Advocacy Team told the VOCC that they had had an 'awful ableist experience' attending court and this experience was so traumatic that they 'don't expect to ever willingly be able to go back to court ever again.'³³

Members of the WWDV Experts by Experience Advocacy Team also told the VOCC that they have not felt comfortable disclosing their disability to justice agencies in the past because they were not sure a disclosure would lead to appropriate support being provided, as well as fearing such a disclosure would negatively affect their interaction with the justice agency. For example, one member stated that disclosing their disability or explaining their access needs to police '...was going to make me more disbelieved. That I would be considered an unreliable witness.'³⁴ Another member of the WWDV Experts by Experience Advocacy Team said one of the biggest barriers to victim participation is unconscious bias, including encountering attitudes of 'what would they know?'³⁵ This view was supported by another member of the Experts by Experience Team who agreed that they '...encounter that idea of "what would they know" all the time' in relation to non-verbal clients they work with.³⁶

Issues around capacity and credibility were also raised by other lived-experience advocates. For example, a member of the Victim Survivors' Advisory Council said people with disability are:

*'...told we are too disabled or mentally ill to make reports. My disability advocate told me to get a letter from my GP and psychiatrist to say I have the level of ability to be a credible sound witness to give evidence about crimes against me and others.'*³⁷

Provision of appropriate information was also highlighted as an issue for victims with disability. Of the Victims' Survey respondents who identified as having a disability and had pursued a justice response, 46 per cent said they never got any useful information from police about participating in the process.³⁸

Unsurprisingly, of respondents to the Victims' Survey who identified as having a disability, 40 per cent said they would not report the crime to police again, compared to 14 per cent of respondents who did not identify as having a disability.

³¹ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³² Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

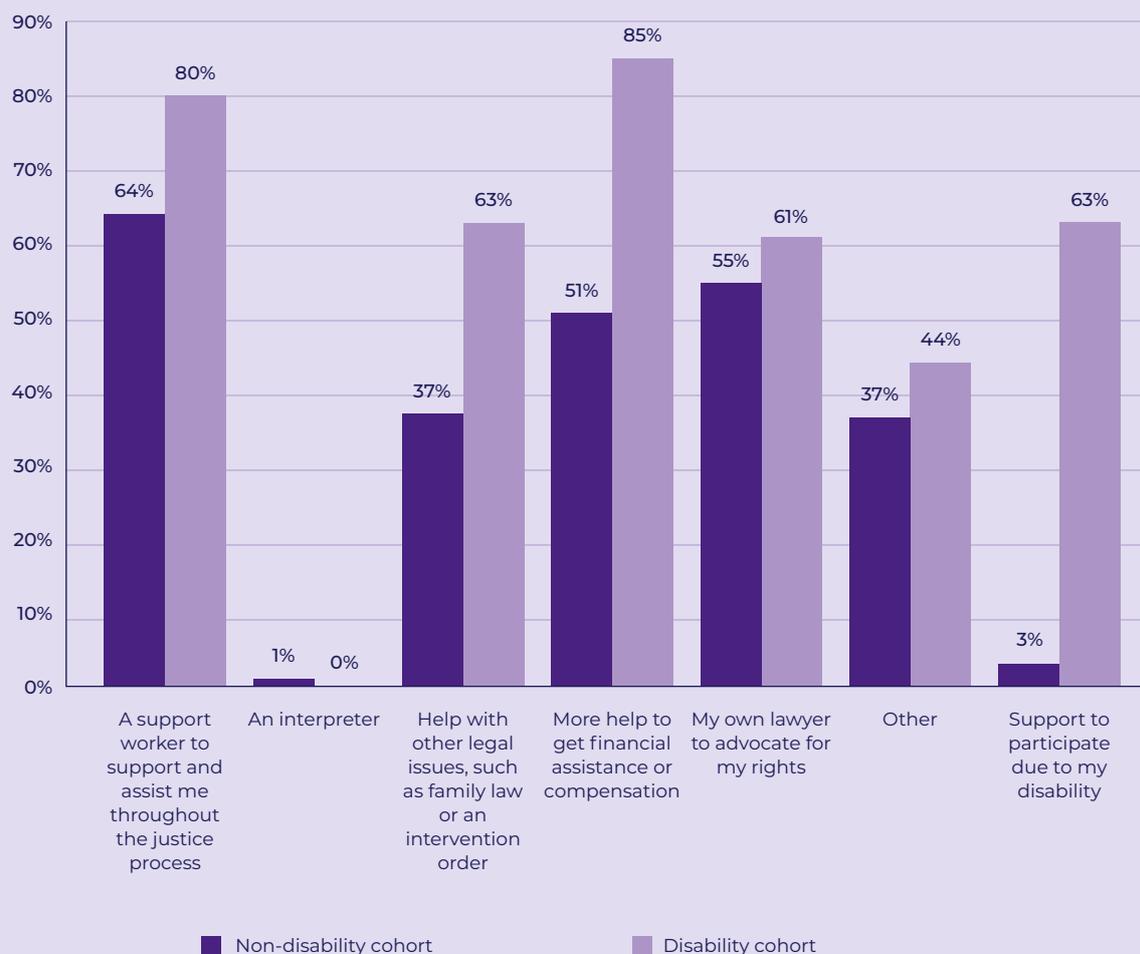
³⁶ Ibid.

³⁷ Consultation Meeting 11 – Victim Survivors' Advisory Council.

³⁸ This was in contrast to only 21 per cent of respondents who did not identify as having a disability responding with 'never'.

Victims' Survey responses also indicated respondents who identified as having a disability wanted more support and assistance to participate in the justice system across a number of domains, including getting more help with other legal issues and help accessing financial assistance (see **Figure 7** below).

Figure 7: VOCC Victims' Survey: What extra help would have made the justice system easier to participate in? (disability cohort)



Participation for victims who are criminalised and misidentified

The VOCC was told that the complexity of victimisation could be compounded by a victim's involvement with the criminal justice system as an offender or a misidentified perpetrator,³⁹ highlighting criminalisation as a key barrier to participation.

A member of the Victim Survivors' Advisory Council told the VOCC:

*'I don't think there's any justice in the injustice system as a criminalised woman. As someone who had a relationship with drugs it was very difficult for me because my character was discredited. There were lots of judgement of my character and I was discriminated against... The justice system sits alongside the carceral system with power and control. We have experienced different forms of power and control and the justice system replicates the power and control. People who use violence and exhibit behaviours of power and control use the justice system to continue to weaponise and to place power and control over victims.'*⁴⁰

The VOCC was told that for a lot of criminalised women who have already experienced harms via the justice system, to reach out to the 'very same system for help can be traumatising'.⁴¹

Misidentification in family violence contexts was raised by respondents to the VOCC's Victims' Survey, with one respondent stating: 'I have been deliberately misidentified as the perpetrator in retaliation for a complaint against VICPOL.' Another Victims' Survey respondent said 'police threatened to charge me for splashing water on my abuser while I was being attacked'.

Participation for LGBTIQ+ people

For LGBTIQ+ people, including for young LGBTIQ+ people, structural barriers can prevent reporting. A Lived Experience Consultant with Y-Change Berry Street explained that for a trans person and a victim of family violence and sexual assault, reporting crime 'is not an option' and is 'not safe'.⁴² They queried the safety of reporting to police, noting that reporting options are very limited and can result in victims feeling alienated from police:

You only have two options – call 000 or a non-emergency number or go to the police station yourself. I am aware that there are LGBTIQ+ liaison officers (LLOs). As a queer person reporting a crime you don't often have someone who is automatically in the community to support you. Inclusion and training around diversity for police still needs to go a long way. You need to question why a system built to protect people is feared by so many of them.⁴³

Stakeholder views

The issues raised by stakeholders were consistent with those raised by victims. Stakeholders told the VOCC about lack of accessibility and barriers to safe participation for:

- Aboriginal and Torres Strait Islander people⁴⁴
- culturally and linguistically diverse populations⁴⁵
- victims with disability and mental ill-health⁴⁶
- younger⁴⁷ and older victims of crime⁴⁸
- LGBTIQ+ communities⁴⁹
- victims of certain types of crime (e.g. sexual assault and family violence)⁵⁰
- victims who have been misidentified as the perpetrator in family violence matters⁵¹ or have previously offended⁵²

39 'Misidentification' in the context of family violence describes circumstances where the primary aggressor is misidentified as the victim, and the victim is misidentified as the primary aggressor.

40 Consultation Meeting 11 – Victim Survivors' Advisory Council.

41 Ibid.

42 Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

43 Ibid.

44 Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1); Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

45 Consultation Meeting 22 – Community Legal Centres – Session 1.

46 Consultation Meeting 23 – Community Legal Centres – Session 2.

47 Consultation Meeting 9 – Alannah and Madeline Foundation.

48 Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

49 Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities; Consultation Meeting 23 – Community Legal Centres – Session 2.

50 Responses to Victims' Professionals Survey.

51 Consultation Meeting 22 – Community Legal Centres – Session 1.

52 Consultation Meeting 23 – Community Legal Centres – Session 2

- victims living in regional Victoria⁵³
- victims who, for a range of reasons, may not fit the stereotype of the ‘perfect victim’.⁵⁴

Additionally, the VOCC was also advised of socioeconomic barriers to participation for victims who have unstable housing or are experiencing homelessness, those who lack access to technology, transport and other social supports such as childcare, as well as lack of education or literacy issues.⁵⁵

The Centre for Innovative Justice (CIJ) told the VOCC that services developed for victims were based on an assumption that someone is a ‘white, middle class, educated person who experiences crime perpetrated by a stranger’.⁵⁶

Aboriginal and Torres Strait Islander communities

The Aboriginal Justice Caucus (AJC) told the VOCC that Aboriginal people mistrust the system as a result of racism and lack of action, stating that there ‘is an ongoing issue of safety in reporting and ability to achieve equality and justice’.⁵⁷ The AJC told the VOCC that it is important to build trust based on tangible, positive outcomes for Aboriginal people:

You need outcomes to sell as testimony to the community to trust a particular system or agency. Once one person knows there is a positive outcome, from reporting a crime for example, then the community will trust the service. People talk within community and that is the best promotion for a service.⁵⁸

The Commissioner for Aboriginal Children and Young People told the VOCC that ‘Aboriginal children and young women – they are not seen as viable victims that the police are really interested in.’⁵⁹ The AJC also advised that barriers to reporting to police include racism and both conscious and unconscious bias:

Police see the Aboriginal person first as the problem but they must instead see the act or crime against the Aboriginal person as the problem. If the Aboriginal person has been in trouble before, the police will display unconscious bias in terms of “you’ve done something similar so why are you here now reporting that it’s happening to you?”⁶⁰

The AJC told the VOCC that a lot of Aboriginal women fear they will not be believed by police and that reports of crime have not always been actioned in the past.⁶¹

The CIJ told the VOCC that many Aboriginal victims of crime do not feel safe reporting a crime to police because of over-policing of Aboriginal communities and violence perpetrated on them by the system, meaning many Aboriginal victims of crime have had negative interactions with police.⁶²

The CIJ also told the VOCC that services for victims of crime are often delivered through large faith-based organisations – the same entities that perpetrated significant institutional abuse, creating a systemic barrier to victims seeking support.⁶³ This means victims do not feel safe reaching out to these organisations for assistance.

The AJC also highlighted that both data collection issues and funding have an impact on knowledge of Aboriginal victims’ needs. The AJC told the VOCC that improved data collection in relation to Aboriginal victims of crime is needed.⁶⁴

Older victims of crime

The Commissioner for Senior Victorians observed that older people are often not recognised as a priority group, nor is there recognition that older people have other intersecting barriers, such as cultural diversity, and that this creates systemic bias and leads to a lack of participation.

The Commissioner for Senior Victorians also noted a lack of integrated responses to crimes such as elder abuse, that require a more holistic response addressing housing, health, mental health and care arrangements:

...often elder abuse means the supports required are not only about victims of crime services, they’re also likely to be things that go to their health and wellbeing that were vulnerabilities that provided opportunity for the abuse to occur. You need to go back down stream and address those initial drivers that made them vulnerable – and they are typically a whole a combination of health, housing, mental health and wellbeing measures.⁶⁵

⁵³ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1); Consultation Meeting 18 – Victoria Police – Session 2; Consultation Meeting 23 – Community Legal Centres – Session 2.

⁵⁴ Consultation Meeting 23 – Community Legal Centres – Session 2; Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁵⁵ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁵⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁵⁷ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1), Consultation Meeting 30 – Aboriginal Justice Caucus (AJC Meeting 2).

⁵⁸ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

⁵⁹ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁶⁰ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

⁶¹ Ibid.

⁶² Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁶³ Ibid.

⁶⁴ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

⁶⁵ Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

From a structural perspective, the Commissioner for Senior Victorians queried the extent to which courts can address the complexity of elder abuse.⁶⁶

The Commissioner for Senior Victorians also suggested systemic barriers to participation may account for the low rates of conviction in elder abuse matters:

Very few matters of elder abuse ultimately proceed to the court. It is important for us to better understand what sits behind this. To what degree is it the reluctance of older people to take action, and to what degree are there systemic issues at play?⁶⁷

The Commissioner for Senior Victorians also noted that the justice system can make assumptions about a person's ability to participate that may be based on myths or misconceptions, noting a person may have declining memory while maintaining capacity for speaking truthfully and for decision making:

Some of the internalised and unintentional systemic bias are things like someone having a perception, "Oh, it's only an older person living in aged care, most likely they're going to have dementia" and "Are they going to be a reliable witnesses?"⁶⁸

Children and young people

Echoing victims' views, stakeholders spoke about children and young people not being visible and acknowledged as victims in their own right.⁶⁹

The Principal Commissioner for Children and Young People suggested there had not been a substantial change in the way children experience the criminal justice system, or in the way they are treated in the criminal justice system since changes were made to victims' status as participants under the Victims' Charter.⁷⁰

The Alannah and Madeline Foundation advised about the structural barriers to children and young people participating in the justice system, referring to children being invisible and not seen as victims in their own right:⁷¹

there are issues with the definition of victim which fails to recognise that children are deeply impacted when they witness or are exposed to violent crime – unless they themselves have been physically injured. We have children that are sitting inside these crimes as unseen victims.⁷²

The Principal Commissioner for Children and Young People provided a case example of a young victim of family violence who 'felt absolutely disregarded by the police who were engaging with him and by the whole criminal justice process', stating further that:

He talks about being referred to as "the complainant's child", not even the complainant despite that fact he also suffered physical violence. He describes every part of that process in which he felt unseen as a victim in his own right. Now, some aspects of that experience are specific to family violence and children's experience of family violence, but there's many aspects that I think go across the board.⁷³

The Alannah and Madeline Foundation told the VOCC that children and young people's Victim Impact Statements often go unacknowledged in court:

it's absolutely demoralizing for a child or young person if they take the time to either tell somebody or write something down in a victim impact statement and then have it taken no notice of in the courtroom. That happens again and again...Children think: why did they ask me to do a victim impact statement, if they weren't going to do anything with it?⁷⁴

The VOCC was told that there are still issues of implicit bias, with assumptions made that a child's evidence will be less reliable than an adult's:

Sometimes this conclusion around the reliability of evidence is explicit, sometimes it is stated as part of the rationale of the finding and sometimes it is subtle. Sometimes it is clear the only way the organisation can have reached the finding is through an inherent assumption that children fabricate allegations and that children's evidence carries less weight.⁷⁵

The Commissioner for Aboriginal Children and Young People told the VOCC that police need to be better trained to be responsive to trauma and to age and developmental stage.⁷⁶ The VOCC was also told that incidents of police violence against children and young people point to the need for deeper training and awareness among police of trauma responses.⁷⁷

66 Ibid.

67 Ibid.

68 Ibid.

69 Consultation Meeting 9 – Alannah and Madeline Foundation; Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

70 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

71 Consultation Meeting 9 – Alannah and Madeline Foundation.

72 Ibid.

73 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

74 Consultation Meeting 9 – Alannah and Madeline Foundation.

75 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

76 Ibid.

77 Ibid.

The Principal Commissioner for Children and Young People spoke about the challenges encountered when reporting to police, such as not receiving an empathetic response or not being believed. The Commissioner for Aboriginal Children and Young People noted that this can be compounded for some children and young people whose interactions with police may already be negative:

Police hold this dichotomous role of being the bad guy when young people have done something wrong, but they are also supposed to see them as someone to go to when something goes wrong. That's really quite difficult for children who are in out of home care and where the police might be called by residential workers, to deal with a child whose behaviour is supposedly uncontrollable.⁷⁸

Further, the VOCC was told that there are specific barriers for some young people to report violence or abuse because '[t]hey know that if they call the police, child protection will be called in and that is a barrier to seeking help from anybody, not just from the police'.⁷⁹

The Alannah and Madeline Foundation also spoke about the added stress and harms caused by participation in the justice process for some young people from culturally and linguistically diverse backgrounds:

For children in that context, they frequently play the role of translating for parents. So with police or with the parts of the justice system to referral agencies when the referrals being made for support, they frequently play the role of translator and interpreter within their own families. And so they then have repeated exposure to the events and in some instances reliving the traumatic story.⁸⁰

Stakeholders did point to positive initiatives assisting victims to participate in the justice system, like the Child Witness Service and the intermediaries program.⁸¹ However, the VOCC was also advised that there has to be capacity for children to engage with support services separately to their parents or to elect to have the engagement not mediated through their parent/carer.⁸²

Culturally and linguistically diverse communities

Respondents to the VOCC's Survey of Victim Support Professionals highlighted particular barriers for culturally and linguistically diverse victims. Victims' professionals frequently mentioned the lack of accessible interpreters and also spoke about the need for more systemic change to address barriers for culturally diverse victims:

Language and cultural barriers – harder to get that informal support at court when you can't make conversation/small talk in your own language. A lot of this support is just being there for someone and chatting to help them relax while they wait. This would be addressed by recruiting VWAS and VAP workers from more language groups.

More support and resources to ensure services are culturally safe for a range of marginalised cohorts

many police officers I've spoken to have made explicitly racist statements about CALD communities and individuals, which is particularly shocking considering I'm speaking to them for the first time and over the phone. If they are comfortable speaking to me like that, I can't imagine what they are saying or how they are treating either alleged victims or perpetrators.

Community Legal Centres (CLCs) told the VOCC that '[t]wo of the main issues CALD [culturally and linguistically diverse] victims experience are laziness and racism. Victims frequently can't get beyond the front desk of a police station to report their injury or report evidence of a crime'.⁸³

The VOCC was also told about structural barriers to participation in the justice system for victims who may be on temporary visas where the visa process makes any interaction with the justice system particularly precarious.⁸⁴

LGBTIQ+ community

The Commissioner for LGBTIQ+ Communities told the VOCC that LGBTIQ+ victims of crime can feel marginalised, minoritised or even criminalised by the criminal justice system, whether this is through misgendering, judging, victim blaming or shaming of such victims: 'There are LGBTIQ+ victims who have had really rough experiences over the years with the justice system'.⁸⁵

78 Ibid.

79 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

80 Consultation Meeting 9 – Alannah and Madeline Foundation.

81 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

82 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

83 Consultation Meeting 22 – Community Legal Centres – Session 1.

84 Consultation Meeting 23 – Community Legal Centres – Session 2.

85 Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities.

The Commissioner for LGBTIQ+ Communities told the VOCC that courts do not always affirm gender and LGBTIQ+ identity and that courts can 'over or under elevate' the status of a person as a queer person which affects how a person is treated:

For example, if a judge is thinking of person as an Aboriginal person, this can hetero normalise that individual. Not considering intersectionality omits the queer aspect of that person. Intersectionality and the layering of identity is complex and has ramifications for how the justice process responds to people. At times, race or culture can overshadow LGBTIQ+ identity. We need to consider people in relation to all aspects of their identities.⁸⁶

The VOCC was told that some trans men or women who are victims of crime may not wish to identify as trans to the court system for a variety of reasons, such as a fear of bias or discrimination, while some trans women and men do want to be affirmed in the justice system, but that affirmation causes further harm.⁸⁷

The VOCC was also told that victims who are LGBTIQ+ are not necessarily aware of their rights as victims of crime and are often left alone to seek support and assistance: 'Victim services are not necessarily welcoming of LGBTIQ+ persons. That is the experience.' The VOCC was also told that:

LGBTIQ+ people have to exercise caution when seeking assistance or support, especially where there is intersectionality. Providing a culturally safe service to, for example, a refugee does not necessarily mean LGBTIQ+ cultural safety. There are implications when you don't consider a person's intersectionality.⁸⁸

Victims Services staff advised the VOCC that enhancing accessibility and participation for LGBTIQ+ communities was a key focus for them:

We have put a lot of effort in in last 12 months to enhance participation with some of our key stakeholders...the work we have been doing around Rainbow Tick and LGBTIA+ communities and making sure they can access services in an inclusive and safe way. We have made changes in the technology space, made demographic changes to our systems so that participation is enhanced by understanding who victims are, and who is coming/not coming to us.⁸⁹

Participation can cause secondary victimisation

One of the objects of the Victims' Charter is to reduce the likelihood of secondary victimisation by the criminal justice system.⁹⁰

Secondary victimisation can be categorised as a 'further violation', usually in the form of psychological harm, as a result of participating in the justice system.⁹¹ In this context, it is common for victims to state that the justice process was worse than the original victimisation experience.⁹²

Research confirms that the criminal justice system often causes secondary victimisation.⁹³ Crucially, secondary victimisation is not caused solely by justice 'outcomes' (such as whether an alleged offender is found guilty or the type of sentence imposed) but is characterised by a victims' sense of procedural justice.⁹⁴

Victims' experiences

Consistent with research outlined above, the VOCC heard from many victims who attested to how the criminal justice system and its processes had re-traumatised them or caused further harm.

Some victims acknowledged points within their journey where they had experienced empathetic individuals, helpful support services or positive aspects of participation. However, many victims told the VOCC they had frequently had traumatic experiences spanning all aspects of the process, including with police, prosecution, court, corrections and victims' services. As stated by a member of the Victim Survivors' Advisory Council, 'when we acknowledge the traumatic broken process of service provision from authorities toward victim survivors, we need to acknowledge the high risk of further trauma'.⁹⁵

The VOCC heard from many victims who attested to how the criminal justice system and its processes had re-traumatised them or caused further harm.

86 Ibid.

87 Ibid.

88 Ibid.

89 Consultation Meeting 14 – Victims Services staff.

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

91 See, e.g., Uli Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings' [2002] 15(4) *Social Justice Research* 313, 314. Orth describes other possible harms caused by secondary victimisation, such as impacts on the victim's self-esteem, faith in the future, trust in the legal system and faith in a just world.

92 Uli Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings' [2002] 15(4) *Social Justice Research* 313, 321.

93 Ibid.

94 Ibid 322.

95 Consultation Meeting 11 – Victim Survivors' Advisory Council.

Many victims recounted not just one bad experience within the justice system, but layers of negative experiences that, when combined, caused significant re-traumatisation and harm. Aspects of the criminal justice process that victims frequently raised as areas where further harm occurred usually included experiences where the victim was not:

- believed, taken seriously or kept safe
- heard, respected or informed
- provided with adequate information or advice
- adequately supported through difficult or complex processes
- treated with empathy and a trauma-informed approach.

Respondents to the VOCC's Victims' Survey offered harrowing insights into the deep trauma caused by secondary victimisation:



'[t]he justice system has continually failed me up until this day'

'the whole process has added to the incident'

'I was telling the truth and the impact of not being believed has had a long and lasting affect on my life'

'The police failed me – the courts retraumatised me'

'The system is beyond broken. It is traumatising and views things through one lens only. It is not trauma informed at all. Their understanding of family violence is limited and the actions taken are performative at best, dangerous at worst.'

'In all honesty I am not convinced reporting my cases have been worth the personal cost to me but I feel like I am this far in now with a trial to commence in 6 weeks time at this stage that I need to follow through even though statistically the odds are stacked against me. We are implored to come forward and report but the system re-traumatizes again and again.'

– Victims' Survey respondents

As stated by Ingrid Irwin, '[t]he system is meant to validate your truth, but its invalidating⁹⁶ and there 'is nothing in it for the survivor when they report. If people knew how deadly this was, they wouldn't encourage people to report.'⁹⁷

A member of the Victim Survivors' Advisory Council told the VOCC that they were 'yet to hear any victim who is not exhausted by their interactions with the justice system. From my experience it was physically and mentally exhausting to interact and a harsh environment for victims.'⁹⁸

⁹⁶ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

⁹⁷ Ibid.

⁹⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

When asked what aspects of the justice system had worked *well* for them, the majority of victims (over half of respondents) still answered in the negative. In fact, 48 responses (36 per cent) answered in variations of: 'nothing', 'nil', 'none' or 'none of it'. Select survey responses below illustrate the extent to which many victims felt let down and traumatised by the justice system:



'None of it ended up working for me.'

'The justice system has failed us in every way.'

'None of it. There is no justice system.'

'Nothing'

'The justice process did not work for me.'

'None'

'none – no one cares'

'Nil'

'unfortunately none'

'none'

'I have NOT had any justice.'

'None, police not interested.'

'none of it'

'NOT. ONE..STEP'

'zero'

'none of it'

'None to be Honest if anything the whole process has added to the incident'

'The justice system has continually failed me up until this day.'

'truly none'

'I feel the system absolutely did not work in anyway for me.'

'no one cares'

'I am powerless in a system that's supposed to help me.'

– Victims' Survey respondents

Many victims expressed disillusionment with the justice system, detailing the ways in which the system had lacked a trauma-informed approach and how they had been further harmed by the system itself. Trauma caused by the trial process was frequently raised. Victims' Survey responses included:

'Zero support during the court phase, no real understanding of what to expect. Very little compassion from the [O]PP.'

'The perpetrator had a lawyer and I broke down in Court and could not continue as I was made to feel like I had no rights and the perpetrator was the victim.'

'Being called a witness and not a victim, makes it seem like you have a very minor role in something that was done to you.'

'For 18 months there were legal arguments for the Defense seeking my psychologist full file. I thought there was legislation to protect them in sexual assault cases but turns out anything can have exemptions applied for. It is wrong and hugely distressing.'

'I understand that there has to be a process to find the truth. However the trial process is just so flawed in my opinion. How can you have an Accused please Not Guilty and at no stage during the trial does his Defence have to prove he did not do it. It is broken.'

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

– Victims' Survey respondents

The justice system was frequently described as a site of further harm and trauma. For example, a member of the Victim Survivors' Advisory Council spoke about the further harm caused by systems abuse, exacerbated by a justice system seemingly unable to detect or prevent it:

'I had gone into the legal system hoping to have an independent umpire to blow the whistle on what is going on – for the judge to issue a penalty and say stop ... [but] the system was being used to further the abuse ... Perpetrators can use the justice system as a weapon to interfere with your present and future.'⁹⁹

This member of the Victim Survivors' Advisory Council further stated:

'When I went to court I wasn't hoping for more than I should get, but when you witness the court colluding with a perpetrator you enter a new level of fear because not only are you being abused by the perpetrator, the system itself is against you. That is a terrifying place to be. When I returned to court subsequently it was with a new level of fear I hadn't previously experienced. I still have that same level of fear whenever I think about entering into the justice system'¹⁰⁰

Another victim representative also spoke about the justice system being weaponised to further control victims:

'We have experienced different forms of power and control and the justice system replicates the power and control ... People who use violence and exhibit behaviours of power and control use the justice system to continue to weaponise and to place power and control over victims.'¹⁰¹

⁹⁹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁰⁰ Ibid.

¹⁰¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

While it is acknowledged that some parts of the justice system will always have the potential to cause distress, the VOCC was also told about incidents that may have been avoided had a trauma-informed approach had been adopted. For example, a victim representative of the Victims of Crime Consultative Committee spoke about attending court without a support worker and being:

*'unexpectedly read a list of my deceased mother's injuries in court, followed immediately by having to present my Victim Impact Statement. It still shakes me to my core. If our WAS worker had been there, we would have known that was going to happen, but the prosecutors didn't meet with us to explain that.'*¹⁰²

A representative of the Victims of Crime Consultative Committee also spoke about the distress caused by feeling like victims of serious driving offences¹⁰³ are not treated the same as other victims of crime:

*'There's a sentiment in the community that driving crime isn't a crime. So, when my mother was killed by a driver, there is a narrative that pops up a lot both with the general public and legal practitioners. In my case, it felt like it was treated as an accident, not a crime. I felt that other victims were prioritised over us in terms of court support. There were times we really needed that support, but we couldn't access it. For example, our WAS worker had to make decisions about whether to attend court with us versus a victim of sexual violence who was giving evidence. They are prioritised above us. There were times that I really need that support, but to be told you're not a priority is not great.'*¹⁰⁴

Another victim representative spoke about not feeling believed by the police:

*'An officer did not believe me when I said that I did not know the home invader. They said "no one comes to your house for no reason. You obviously know who did this."'*¹⁰⁵

Victims also described being advised of the likely distress and trauma caused by participating in the justice system and this then deterred victims from choosing to participate, as evident in these responses to the Victims' Survey:

'I didn't lay criminal charges against the perpetrator as I was literally told by the police that it would be a traumatic and harrowing experience for me when being cross-examined...'

'One of the police constables actually advised me against progressing criminal charges due to the nature of the process and the impact of being cross-examined in court.'

– Victims' Survey respondents

¹⁰² Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

¹⁰³ Serious driving offences involve death or serious injury caused by the culpable or dangerous driving of a motor vehicle. See, eg, County Court of Victoria, *Serious driving offences* (Web Page, 12 August 2022) <<https://www.countycourt.vic.gov.au/court-decisions/criminal-offences/serious-driving-offences>>.

¹⁰⁴ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

¹⁰⁵ Ibid.

Stakeholder views

Respondents to the VOCC's Survey of Victims' Professionals spoke about the adversarial system being 'horrendous', retraumatising, victimising and clinical:

The adversarial system is an horrendous experience where victims feel they are on trial not the defendant.

Victims can often feel retraumatised by the justice system/court process, especially through cross examination.

Victims are victimised over and over by the system. Its heartbreaking to witness.

I am still seeing too many clients being retraumatised by the justice system.

There are many examples of victims feeling disempowered, not believed, undermined and targeted directly by professionals, the offender and offender's support network while going through the criminal justice system.

On the whole, most [victims] experience the system as re-traumatizing and unjust.

It is very clinical. The humanity is taken out of it for the victim's. They have already been treated as less than human by the perpetrator, and when they are only seen as a case number that can be disempowering.

A number of victims' professionals surveyed by the VOCC indicated that the cultural change needed to improve victims' treatment and status was not occurring.

Connected to the broader theme of re-traumatisation, victims' professionals also highlighted that victims have limited opportunities to have a say and be heard, suggesting:

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

Victoria Police members also told the VOCC that 'the perception from a lot of victims is the justice system in particular is tiered towards the accused' and described a number of aspects of the system that cause secondary victimisation, including:

- courts being focused on offenders, with constant adjournments without regard to victims and witnesses
- lack of appropriate court support (e.g. no single point of contact) and unsafe court environments
- Victim Impact Statements not being acknowledged by judicial officers.¹⁰⁶

Victoria Police members told the VOCC:

There is a frustration in relation to everything during the court stage being heavily focused on the offender. These victims are terrified of the accused. Victim Impact Statements (VISs) aren't taken into account by the judge. A lot of the victim's pain and suffering is in relation to the years of court processes which is not taken into account. The harm this has caused victims is irrelevant to the court because it's irrelevant to the primary offending.¹⁰⁷

System complex and confusing

Research consistently demonstrates that victims experience difficulties in negotiating a complex justice system which, for many individuals, is their first involvement with the multifaceted web of agencies, processes and law that is the justice 'system'.¹⁰⁸ Many justice processes are not only complicated, but often protracted.¹⁰⁹ It is for this reason that many Victims' Charter principles relate to a victim's right to information, referral and support to help them navigate that complexity.¹¹⁰

¹⁰⁶ Consultation Meeting 19 – Victoria Police – Session 3.

¹⁰⁷ Ibid.

¹⁰⁸ Tamar Dinisman and Ania Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support, United Kingdom, 2017) 11.

¹⁰⁹ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 141.

¹¹⁰ *Victims' Charter Act 2006* (Vic) ss 7, 8, 9, 9A, 10, 11, 17.

Victims' experiences

Victims described the innate complexities of the criminal justice system as being a barrier to participation. Many victims advised the VOCC that they had found the criminal justice system complex, confusing and unapproachable. One Victims' Survey respondent stated:

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

– Victims' Survey respondent

A member of the Victim Survivors' Advisory Council described the justice system as a 'foreign land – you don't speak the language, you've got no control over anything that happens there'.¹¹¹

Victims expressed that they often felt unable to ask questions and they described feeling overwhelmed by unfamiliar legal terminology and processes. A victim interviewed by the VOCC explained that '[i]n the very early stages, a victim's brain has to take on an enormous amount of information. When you're a victim, it's like you have to learn how everything works.'¹¹²

One Victims' Survey respondent feared asking 'dumb' questions and felt overwhelmed by the legal jargon:

'There were assumptions made that I knew more about the law than I did – and my fear of asking what might be perceived "a dumb question" meant that I refrained from asking some questions, rather I would look to other sources for a response. When I first began my journey – I was overwhelmed by terms such as committals, directions hearings, mentions, Voir dire, verdins etc - terms that were used with such fluency but only added to my never-ending searches on google.'

– Victims' Survey respondent

Another Victims' Survey respondent observed that legal practitioners forget that lay-persons often possess a limited knowledge about the justice system and the law in general:

'Practitioners sometimes forget that while the Law may have been their chosen pathway, for many victims the first time they intersect with the law is after a significant and traumatic event. Assumptions about what one does or does not know must be part of the initial conversations.'

– Victims' Survey respondent

Another Victims' Survey respondent advised the VOCC that they found the criminal justice system difficult to navigate, despite their own legal knowledge and experience:

'I am a lawyer and wouldn't have been able to navigate applying for compensation with VOCAT or take action under sentencing act to receive compensation. Even as a lawyer I found it difficult to access resources and information on the latter particularly.'

– Victims' Survey respondent

¹¹¹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹¹² Interview 8 – Victim of crime.

Stakeholder views

Many stakeholders spoke about the level of confusion experienced by victims entering the justice process.¹¹³ As noted by a respondent to the Victims' Professionals Survey, 'Victims frequently feel confused and overwhelmed by fear in the justice system.'

Victims' professionals described the justice system as complex, overwhelming, confusing and intimidating and that this in itself is a barrier to victim participation:

Being a victim is a barrier. It is such a complex issue for so many. On top of the trauma already associated with the crime, you then have the added complexity of mental health/intellectual disability/cultural issues/language barriers etc. I often remind the victims I support that the system is not about them, it is about the offender being held to account. I find this helps balance unrealistic expectations of a system that more often than not, victims find overwhelming and then disappointing as they do not get the outcomes they were seeking.

Lack of understanding in relation to the justice system in general. It can be very intimidating. There's also a lack of knowledge surrounding services that can support as well as how they can be supported.

Awareness of services, confusion understanding legal jargon, misconceptions of the justice system.

Court Network told the VOCC that victims are frequently confused and feel as though they have not been given basic information to participate:

we frequently get asked 'when is this going to happen', 'who's going to help me', 'what's happening next'. Individuals are often so confused because either nothing has been communicated, or it was communicated in the early stages when they were too overwhelmed to take it in.¹¹⁴

CLC representatives agreed that victims are often confused, mostly because crucial information is not forthcoming:

There is such a lack of information for victims upon reporting crime. Victims often have no idea what stage their matter is at, whether a report has been made or a statement has been taken, whether the matter is being investigated.¹¹⁵

Another CLC representative highlighted that non-compliance with the Victims' Charter exacerbated victims' confusion:

This goes to the issue of information and the lack of information that victims receive. It's about police not providing victims with information, not complying with the Victims' Charter and, because victims don't necessarily know what their rights are, they don't even know what to ask or that they can ask. More capacity is needed by CLCs to do this background work for victims.¹¹⁶

Victims Services staff confirmed that many victims who make contact with victims' services are confused, particularly 'by all of the services that start with "victim" and because the criminal justice process can be so confusing'.¹¹⁷ The South Australian Commissioner for Victims' Rights spoke of victims always 'playing catch-up' and having to quickly learn about their rights.¹¹⁸

Court Network told the VOCC that victims' sense of confusion compounds feelings of insecurity, with victims 'continually looking over their shoulder, wondering "is this person still in jail", "have any charges been laid against them" or "what's happened to them"'.¹¹⁹

Trauma and participation

While the harms of secondary victimisation are real and significant, it is important to acknowledge that the effects of victimisation alone can cause many victims to struggle in the short and longer term across a number of domains – physical and mental health, relationships, housing, employment, finances, community and social connection.¹²⁰

Victims of crime experience various short- and long-term effects following a crime which may include shock, loss of trust, guilt at becoming a victim of crime, a sense of uncertainty, feeling disempowered and more vulnerable, and symptoms of fear, anxiety, depression, confusion, sadness, anger and stress.¹²¹ Understandably, many of these affect victims' ability to participate in the justice system, particularly where they may struggle with normal daily activities.

113 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 14 – Victims Services staff; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 19 – Victoria Police – Session 3; Consultation Meeting 23 – Community Legal Centres – Session 2.

114 Consultation Meeting 12 – Court Network.

115 Consultation Meeting 23 – Community Legal Centres – Session 2.

116 Consultation Meeting 23 – Community Legal Centres – Session 2.

117 Consultation Meeting 14 – Victims Services staff.

118 Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

119 Consultation Meeting 12 – Court Network.

120 Tamar Dinisman and Ania Moroz, *Understanding Victims of Crime: The Impact of the Crime and Support Needs* (Victim Support, United Kingdom, 2017) 4–11.

121 Ibid 4.

Victims' experiences

Many victims of crime told the VOCC about the extent to which trauma is a barrier to participation because it affects psychological wellbeing, cognition, relationships, finances and housing security. The VOCC was told that the criminal justice system is not set up to recognise and manage the trauma of victims. The challenges of dealing with trauma alone mean concepts of participation are illusory for some victims of crime.

The VOCC was told that the criminal justice system is not set up to recognise and manage the trauma of victims.

Victims discussed the impact that the crime had on their lives, and how difficult it is to manage the trauma on a day-to-day basis:

*'Being a victim of crime is a terrifying experience. Trauma affects us in many different ways. Our decision making is not what it was because we are dealing with so many things you don't understand – legal issues, financial issues, personal issues. Dealing with ... traumatized children, trying to get them to school.'*¹²²

*'I hadn't realized you know I used to do a crossword puzzle every morning, and all of the sudden I couldn't do them anymore and I couldn't work out why I couldn't do it when I could do it before hand. You know, I thought I was going mad. I didn't really connect that to the trauma. I couldn't sleep any more than 2 hours a night I would get up and check if I had locked the doors many times every night. I would lay there worrying about pains in my chest. If I went out during the day I would cry at the idea of just going home. I couldn't see an end to this misery.'*¹²³

A victim interviewed by the VOCC spoke of the struggle that often remains invisible to justice system personnel as families navigate trauma and the criminal justice system simultaneously:

*'You have to deal with horrific grief and trauma, and I have ... children. I had one child that tried to suicide twice ... ended up in in hospital for over a month. These are the things justice agencies don't know about. These are things that are happening in my life when I'm trying to navigate a huge system.'*¹²⁴

Another victim interviewed by the VOCC reflected on how trauma manifests differently to grief and for this victim is a lifelong experience:

*'I wanted to specifically highlight the difference between grief and trauma. They're two separate issues. I lost my brother when he was 30 years old to brain cancer, so I understand grief. Trauma is totally different. Trauma stays with you forever. Grief subsides because if you lived grief over and over, we wouldn't survive. But the trauma – well, for me it caused anxiety, depression, sleeplessness. The health issues have gone, they're under control now, but your body does things that you can't control.'*¹²⁵

122 Interview 15 – Victim of crime.

123 Interview 5 – Victim of crime.

124 Interview 8 – Victim of crime.

125 Ibid.

Victims frequently told the VOCC how trauma and grief can negatively impact on their ability to understand and retain information. As one respondent to the Victims' Survey noted:

'I need to acknowledge that it was an extremely emotional and devastating process during a deep grieving stage. Trying to cope with 'brain fog/mush' in the early stages of the process was exhausting.'

– Victims' Survey respondent

Respondents to the Victims' Survey told the VOCC about how trauma affected their information and support needs, noting victims need information in a range of different formats, and at different times:

'More written information to assist in processing the information, even after the event – it is difficult to process information when in a heightened state of distress, consistently in "flight, fight or freeze" responses as a result of the traumatic experiences and ongoing abuse, even throughout the court process.'

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

'Understanding the processes, changes to the charges were not fully explained and access to information after sentencing – it as a highly stressful time and a bit of a blur, I could benefit from a written process flow to reflect on, I still have not processed or completely understood what happened. It has caused long term recovery and relationship challenges.'

– Victims' Survey respondents

Another Victims' Survey respondent noted that after the stress and trauma of the court proceedings has passed, victim recovery would be aided by providing victims with an opportunity to ask questions and access information:

'[T]here has been little support post proceedings to process and understand what occurred, and to ask questions, with reduced stress/emotional distress that was present at the time of going through the court process. I believe there should be an opportunity to reflect and have access to information when feeling emotionally safer and well supported – this could aid in recovery. Instead I think, but am not sure, I might have to apply to FOI for information to find out/understand what happened and process the impact (which did not stop when perpetrator was sentenced). I do not know where to start to get support to figure this out.'

– Victims' Survey respondent

Another respondent to the Victims' Survey spoke about how trauma affected their ability to voice their opinions and adequately participate during the criminal justice process: 'I could of spoken up more but felt I didn't have the capacity after being conditioned with childhood trauma and isolation.'

Stakeholder views

Victims' professionals surveyed told the VOCC that victims are often 'too traumatised to advocate for themselves in a broken system', pointing to the need for more training on the impact of trauma and how to interact with people experiencing trauma.

Associate Professor Asher Flynn spoke about trauma impacting victims' ability to perform even the simplest tasks, noting that any system, including complaints systems, that rely on victims to self-advocate are not accessible for most victims:

For some of the [victims] we spoke with ... they would reflect on the fact that during that time they couldn't ... even go to the shop to buy milk or butter. They would leave the house and stand there and not know what they were doing. The thought of having to do something like make a complaint was too much for them in that state.¹²⁶

The Alannah and Madeline Foundation noted the broad-ranging needs of children and young people who have experienced trauma.¹²⁷

Justice system delay

Justice system delay is widely recognised and understood as a significant issue for an accused person. Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter of Human Rights) states that a person charged with a criminal offence is entitled to be tried without unreasonable delay but there is no equivalent right afforded victims under the Charter of Human Rights, such as the right to give evidence at trial without unreasonable delay.¹²⁸ Similarly, the Victims' Charter is silent on matters of delay for victims of crime. However, as noted by the Australian Institute of Criminology, delay 'affects everyone', including 'the victims and their family who have been aggrieved by the offences against them, and the community who demand justice, safety and protection'.¹²⁹

Victims' experiences

The VOCC heard from victims who had experienced varying lengths of delay within the court system, some up to five years. Victims frequently described how the court process was slow and traumatic and that waiting for some kind of finalisation was difficult.

Victims described delay occurring in all courts within the criminal jurisdiction, and across a variety of offences. Victims told the VOCC that they had experienced delay for differing reasons, that they often felt that such delays were unnecessary and, as one Victims' Survey respondent commented, meant cases often 'dragged out for years'.

Victims frequently described how the court process was slow and traumatic and that the waiting for some kind of finalisation was difficult.

Delay is a source of secondary victimisation

The VOCC repeatedly heard from victims who had been further traumatised because of court delay, as evidenced by this respondent to the Victims' Survey:

'As a victim I was re traumatised making detailed statements, the childhood sexual abuse I experienced was magnified, analysed remembering and explaining minute by minute replays of horrific events. I was prepared for and accepted the need for this process, but I needed to stay in that traumatic space for almost 2 years with both cases running concurrently in preparation for cross examination.'

– Victims' Survey respondent

¹²⁶ Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

¹²⁷ Consultation Meeting 9 – Alannah and Madeline Foundation.

¹²⁸ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 25(2)(c).

¹²⁹ Jason Payne, 'Criminal Trial Delays in Australia: Trial Listing Outcomes' (Research and Public Policy Series No. 74, Australian Institute of Criminology, 2007) 2.

Another respondent to the Victims' Survey suggested delays render women and children's lives 'worthless':

'Victoria wonders why every week one women & potentially her children are murdered due to domestic violence. If this is not an example then what is? Waiting roughly 2 years for a criminal case of domestic violence to be heard in the Magistrates Court involving recidivism says it all. Why should we need to wait for the perpetrator who has repeatedly committed a serious crime to have the privilege of being allowed to wait this long for justice to occur and accountability. Until this is treated with the urgency & seriousness it demands, women & children's lives remain worthless.'

– Victims' Survey respondent

A member of the Victim Survivors' Advisory Council told the VOCC that victim-survivors are told to 'move on' and 'heal' but this can be virtually impossible with delays in court finalisation of up to six years: 'There's a huge contradiction between allowing victims to move on but needing them to be present and continually tap into their trauma.'¹³⁰ Similarly, a Victims' Survey respondent stated:

'Plus – it took a very, very long time to finally have a court hearing date. This meant staying in my PTSD quite a long time without being able to put it behind me with some "closure".'

– Victims' Survey respondent

One respondent to the Victims' Survey advised that delay in the criminal justice system had had devastating effects:

'Unfortunately, due to [the perpetrator] having no legal counsel the judge adjourned the hearing again. My sister and I were devastated, exhausted, in despair. Three weeks later my sister was dead, she [had taken her own life]. This is the consequence of a delayed, drawn out justice system'

– Victims' Survey respondent

Another Victims' Survey respondent described years of distress:

'it has been four years of constant distress, being told one thing only to have something else happen and these kind people making errors that end up causing a great deal of distress but nothing I can do because I am only a witness in the eyes of the law.'

– Victims' Survey respondent

Unsurprisingly, physical health can also be impacted, as noted by this respondent to the Victims' Survey:

'After an exhausting, horrendous Committal hearing ... [and] many delays and adjournments, my health suffered. I experienced hypertension, exhaustion and insomnia waiting for the trial'

– Victims' Survey respondent

The VOCC heard from victims for whom lengthy delays had meant changes of personnel in relevant justice and victims' services agencies, requiring victims to revisit traumatic events or details with new people, as noted by this respondent to the Victims' Survey:

'With the lengthy delay from arrest to appeal (5 years), I sometimes wasn't sure who to contact if I had a question with personnel changes – [the] Investigator changed Units a number of times, 3 different OPP Legal Advocates, WAS changed twice and once not available at a critical point when meeting the Prosecutor before trial.'

– Victims' Survey respondent

As outlined in **Chapter 4**, many victims advised that they would be reluctant to participate in the criminal justice process again. This Victims' Survey respondent indicated that court delays were a factor in this choice:

'I'm also unwilling to put my life on hold for years whilst a court process is underway. It is also too traumatising to pursue a complaint through the entire trial process (especially for sexual offences). I know that I am not alone in this assessment of the criminal process, which I think is a shameful reflection of how our current legal system is supporting (or rather, not supporting) victims of crime. If the majority of victims do not bother reporting, or pursuing crime in court, then how is our legal system achieving its aims?'

– Victims' Survey respondent

Too many court hearings and adjournments

Some victims felt that it took too long to obtain a hearing date while others expressed concern that the court process was littered with unnecessary court appearances and adjournments. One Victims' Survey respondent summarised it as follows:

'What didn't work so well for me was the length of time in a very drawn out process and the negative impact that has on victims. So many minor hearings, adjournments and delays. I believe this protracted system favours the perpetrator and puts the victim at a considerable disadvantage.'

The reasons for adjournments included instances where the accused appeared at court without legal representation or where the accused had not appeared at all. The VOCC heard from victims who advised of perpetrators using delay as a tactic to manipulate the court process and cause harm to the victim, as noted by this respondent to the Victims' Survey:

'The Accused was granted a 12 month delay to start the trial after another successful attempt by the [a]ccused to play the system. I was in court with my children when that judge just accepted those pathetic excuses by Defence and with flick of the pen put the trial back over 12 months. My children just broke down in silence. What am I supposed to tell them when this type of things happens?'

One victim interviewed by the VOCC felt that the delays were attributed to counsel for the defence:

*'It's not about the victims, it's about the accused always. So they've got all the rights and we have none. His solicitors are always busy so they stall the case ... Even when the judge said 'get the children's evidence sorted by Christmas', it wasn't sorted until the following June. I know they're busy people, but we're stressed people. And they are paid good money to deal with us. We're not paid anything. The minute we get off the phone they have forgotten who we are and the minute the case is over they won't remember who we are.'*¹³¹

Some respondents to the Victims' Survey described how delay affected their ability to participate meaningfully in the court process and give their best evidence:

'After an exhausting, horrendous Committal hearing... [and] many delays and adjournments, my health suffered d... I was not actually in a fit state to perform my best.'

'A physically exhausted victim, weighed down by time delays, lacks the focus, the clarity and earlier determination to give their best evidence under further gruelling cross examination so essential to a successful prosecution.'

Victims felt particularly frustrated in instances where the delay was caused by the perpetrator pleading not guilty but then, much later changing their plea to guilty: 'Then also the fact that [the accused and co-accused] dragged out the process ... numerous court hearings not guilty, not guilty, not guilty and the morning of the court trial, he pleads guilty now.'¹³²

Further, the VOCC also heard from victims who had to wait a substantial period between the perpetrator pleading guilty and being sentenced in the court:

*'That was in the Magistrates' Court. He pled guilty. There was about a 9-month delay between the plea hearing and the sentencing hearing.'*¹³³

Committals add to delay and distress

Many victims surveyed expressed their frustrations with the committal process and felt this was a major cause of delay. As one victim observed, '[a]ll the committal did was waste seven months of our life.'¹³⁴ Another commented:

*'The timeline was just horrific. It was July of the following year that we had the committal, which of course was cancelled a couple of times. The trial was in November of the next year... And that went on for a couple of weeks as well, even though he pled guilty.'*¹³⁵

¹³¹ Interview 15 – Victim of crime.

¹³² Interview 7 – Caterina Politi.

¹³³ Interview 9 – Survivor advocate.

¹³⁴ Interview 16 – Victim of crime.

¹³⁵ Interview 12 – Victim of crime.

In particular, victims felt that the committal process prolonged their stress, delayed the administration of justice and prevented victim recovery, as noted by this respondent to the Victims' Survey:

'All the Committal Proceedings did in our case was enable the [a]ccused to play the system with an empty promise of negotiating a Guilty Plea, get granted a 3 month delay which caused over 9 months of delays once the Committal Proceedings were scheduled. This causes a great deal of stress to families'

COVID-19 has caused additional delays

Victims who were surveyed by the VOCC were asked if the pandemic had affected the way they participated in the justice system, or any support they may have received from victim services. Thirty-nine per cent of victims surveyed advised that they had experienced court delay due to COVID-19, which was the second most frequent answer. Victims interviewed by the VOCC also advised that COVID-19 had exacerbated delays, with trials being cancelled and relisted on multiple occasions:¹³⁶

*'The trial was to start February 2020 and then slated for May 2021. Come the end of 2020, because of COVID and delays in the County Court, I contacted the OPP and asked what is the likelihood of this trial starting in 2021 and they said "not good".'*¹³⁷

One respondent to the Victims' Survey stated: 'I accept that the COVID pandemic has had a massive impact [on] court attendance but the lengthy delays drove me to some very dark places that I almost did not get out of.'

Another Victims' Survey respondent felt that the COVID-19 delays not only delayed the criminal justice process, but also affected their ability to provide evidence to the court:

'Time, everything took a very long time, especially when covid delayed trials. My case ended up with 3 different juries, only the first seeing me in person. I believe this impacted the other 2 juries.'

Stakeholder views

Victoria Police members and the OPP both advised the VOCC that delay causes attrition, impacting on victim participation.¹³⁸ Victoria Police members told the VOCC that:

The longer the delay, the less likely [victims] are to seek a prosecution. There's probably around a 50 per cent attrition rate. The relationship with police sours. Victims engage at the initial attending, at the crisis point, but by the time we get criminal matters to court the victim just wants to move on and their life has changed by the time the court appearance arrives. They have received support and have a safe space. The judicial process only retraumatizes them or elevates their risk. If they continue with the charges, it may elevate their risk.¹³⁹

One Victoria Police member spoke of a matter that had been delayed since 2019, experiencing six trial delays: 'The accused has been on remand the whole time and the family goes through significant trauma every time it's adjourned.'¹⁴⁰

Victoria Police members also told the VOCC that trial delays are often the point where complainants 'want to give up':

Police will tell you about the frustrations of having a trial date, with witnesses subpoenaed, and then the trial is delayed and this is frequently happening. A lot of complainants want to give up at that point. This is not recognised enough. It's less about people feeling safe and more about the delay with courts. You can't blame COVID for everything as these delays pre-date COVID and continue now.¹⁴¹

¹³⁶ Interview 15 – Victim of crime.

¹³⁷ Interview 16 – Victim of crime.

¹³⁸ Consultation Meeting 24 – Victoria Police – Session 4; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 13.

¹³⁹ Consultation Meeting 24 – Victoria Police – Session 4.

¹⁴⁰ Consultation Meeting 19 – Victoria Police – Session 3.

¹⁴¹ Consultation Meeting 17 – Victoria Police – Session 1.

The OPP also advised the VOCC that delay can affect victim participation:

Having a court matter still in progress for a protracted period of time can impact adversely on victims and their willingness to participate. Some victims feel that they can no longer tolerate the uncertainty of not knowing when the court matter will be resolved and therefore prefer to take some control and not continue with it.¹⁴²

Victoria Police advised the VOCC that public perceptions around delay in the justice system also affect victims' willingness to participate:

Victims hear that it takes 3–5 years to get to court and they don't want to subject themselves to delay, reliving this over so many years and then be cross-examined. It's not an issue around lack of confidence in police or other agencies.¹⁴³

Court Network told the VOCC that undue delay prolongs victims' trauma and can prevent their healing: 'Another key issue relates to delays in the justice system, with the victim having to sit and hold their story for long periods of time while they are awaiting going to court.'¹⁴⁴

The VOCC was told that constantly changing court dates can have considerable ramifications for victims who have to deal with impacts on work schedules, childcare arrangements, annual leave and finances on top of the 'emotional impact of the unpredictable timeframes'.¹⁴⁵

Victims Services staff suggested victim participation was particularly important at stages of the process that are subject to delay, particularly where this involves children and young people who are required as a witness at trial:

People often want more input around delay and adjournments, especially when that delay is caused by the accused person as quite often the victim can feel disrespected if those decisions are being made without due consideration of the young person's feelings.¹⁴⁶

Victoria Police members also advised that Victoria Police goes to 'great lengths to keep complainants in a good place' but that waiting three or four years for a trial is too long for people to have that burden in their life.¹⁴⁷ Police advised that adjournments are difficult to secure if applied for by the prosecution but suggested there are clear examples where the courts are too lenient towards the defence and do not consider the impact on victims and witnesses.¹⁴⁸

¹⁴² Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 13.

¹⁴³ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁴⁴ Consultation Meeting 12 – Court Network.

¹⁴⁵ Consultation Meeting 14 – Victims Services staff.

¹⁴⁶ Consultation Meeting 14 – Victims Services staff.

¹⁴⁷ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁴⁸ Consultation Meeting 17 – Victoria Police – Session 1.

Overview of Chapter 6: Support and entitlements

Access to timely and appropriate victim support is key to victim participation in the justice system. One of the objectives of the Victims' Charter is that victims should be offered information that will enable them to access appropriate services to help with the recovery process.

The Victims of Crime Commissioner (VOCC) heard that victims who were able to access sufficient and appropriate victim support discussed positive experiences. However, the VOCC heard that:

- victims cannot always get the support they need
- without access to legal advice from an independent, trusted source (separate to the prosecution), participation can be difficult.

The VOCC also heard that victims and witnesses in Victoria are treated differently. This is a result of different entitlements under the Victims' Charter, but also because eligibility for different services and supports can be based on type of crime, the jurisdiction in which a crime is heard, a victim's geographic location and a victim's characteristics (including age or disability).

The VOCC also heard from a number of victims who were not aware of the Victims' Charter or their entitlements under the Victims' Charter.

6

Chapter 6:
**Support and
entitlements**



Introduction

This chapter outlines victims' experiences of accessing support. One of the objectives of the *Victims' Charter Act 2006* (Vic) (Victims' Charter) is that victims 'should be offered information to enable them to access appropriate services to help with the recovery process'.¹ Victims are also entitled to be provided with 'clear, timely and consistent information about relevant support services' and justice agencies and victims' services are, 'if appropriate', to 'refer persons adversely affected by crime to relevant support services'.²

Access to timely and appropriate victim support is key to victim participation in the justice system. Although this inquiry is not focused on victim support specifically, access to support affects a victim's ability to participate meaningfully in the justice system and key themes about victim support have therefore arisen during consultation and engagement.

This chapter also considers victims' entitlements, including those under the Victims' Charter, and victims' awareness of their entitlements.

Victims struggle to access support

In a functional victim support system, victim support workers act as navigators for victims of crime, steering victims through the justice process seamlessly and bringing in other supports and expertise as necessary.

Victims' experiences

Victim support enhances participation

Although many victims told the Victims of Crime Commissioner (VOCC) about the difficulties they had experienced in accessing victim support, those who did access sufficient and appropriate victim support talked about positive experiences. It was clear that some victims had received a level of support that had significantly assisted them to participate in the justice process, as evidenced by these respondents to the Victims' Survey:



'Once Witness Assistance got in touch, I felt like I had someone to ask all the "stupid" questions of. Nothing was too much trouble, and they addressed all my fears, mostly around giving evidence and being in close proximity to the offender. WAS organised visiting court beforehand, provided emotional support, kept me up-to-date, supported before, during and after giving evidence remotely... I wouldn't have coped without everyone's amazing knowledge, experience and support.'

'What worked well for me was my victim support worker... she was absolutely amazing she done all the hard yards and explained everything I needed to know very thankful for her help and support.'

'I received invaluable support from social workers through the Witness Assistance Program with face to face meetings explaining proceedings, always answering my questions, offering kindness and encouragement and accompanying me to court hearings.'

'I am supported by a VAP worker who has kept me up to date regarding court. Matter still before the court & not finalised 2 years later ... in this 2 years I have had ONE phone call from the police informant who called me after my VAP worker to let me know something the VAP worker had already told me ... making me think that the VAP worker prompted this call.'

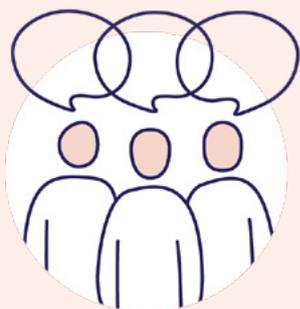
- Victims' Survey respondents

Difficulty accessing support services

Not all victims surveyed by the VOCC had used a victims' service. Victims surveyed who had not engaged with a victim service were asked why. As shown in **Figure 8** below, 33 per cent of victims advised the VOCC that they did not know how to access victims' services or which ones to use.

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

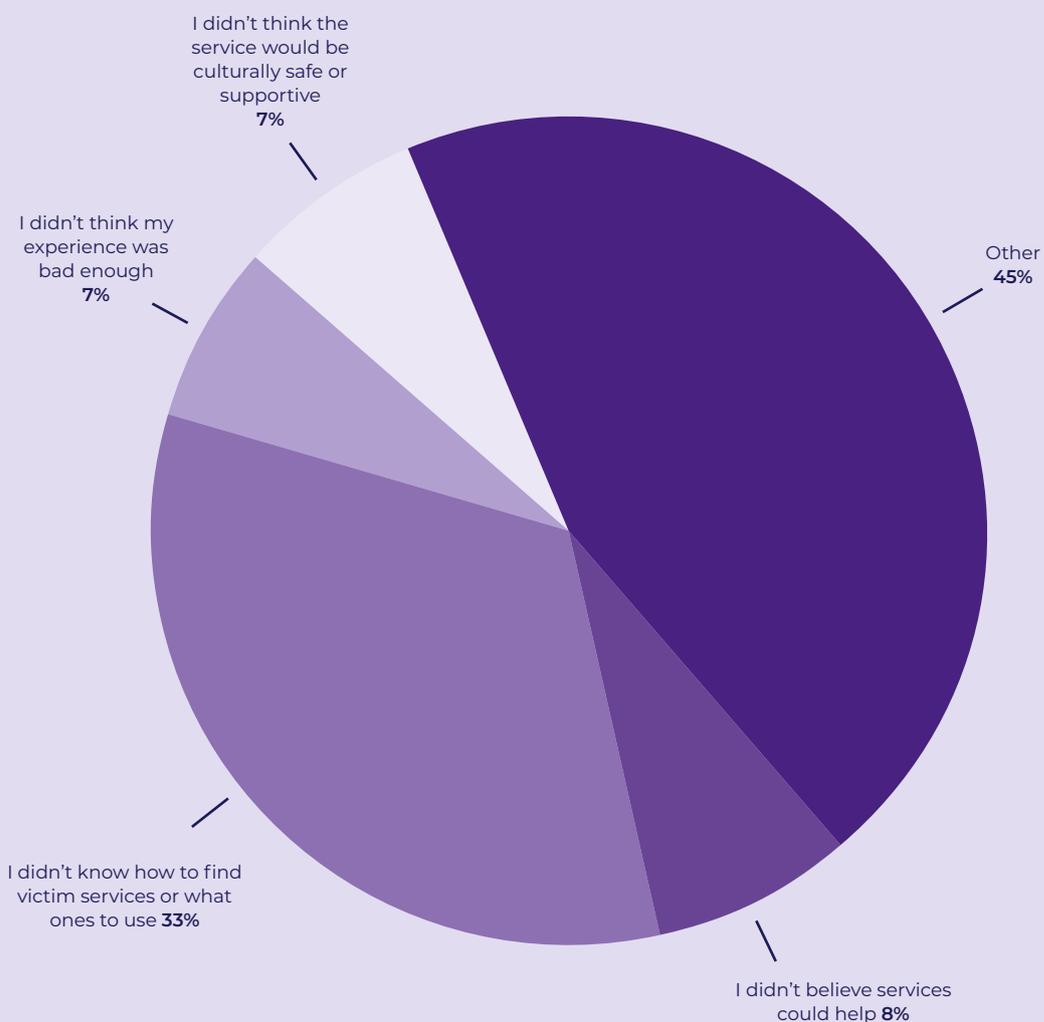
² *Ibid* 7(a)-(b).



33%

A third of victims surveyed (33%) **didn't know how to access victims' services or what services to use.**

Figure 8: VOCC Victims' Survey: Why didn't you use a victims' service?



Forty-five per cent of respondents selected 'other' as their answer to the question of why they had not used a support service. Common themes among these respondents related to not knowing that victim services existed, previous negative experiences and frustration with the relevant processes for receiving such a service, such as timeframes.

Many victims told the VOCC that they had found it difficult to find appropriate victim support, with one respondent to the Victims' Survey describing it as 'a lottery':

'Of course I acknowledge that trauma, grief and loss is different for everyone and not one fix fits all. However, it seems that getting the 'right' person/people to support in the 'right' way can be likened to a lottery.'

- Victims' Survey respondent

Victims frequently described either being unaware of support options available, referrals not being made when then could have been, or being ineligible for support, with select Victims' Survey responses as follows:

'Didn't know they existed until now.'
'Because we weren't advised of it by the police or anyone else.'
'I attempted to, but got no help because case was too old.'

- Victims' Survey respondents

Victims often reported that they were referred 'in circles' or from one agency to the next. One respondent to the Victims' Survey explained that '[t]here are tons of services but using them does not lead anywhere. They are set up in a big circle of referral without help.' Another victim surveyed stated that they had 'barely been able to get effective legal support' and listed over 50 agencies or individuals they had contacted in order to get help.

Victims frequently reflected on the lack of support that they had throughout the criminal justice process, as evidenced by these Victims' Survey respondents:

'needed more support throughout the process. Needed to have someone on my side. Needed to know what was happening and when'
'More sup[p]ort, being kept up to date on what was going on, honest, accurate information'
'A lot more support and working with less judgemental better trained individuals'
'I would have found it beneficial to have had someone assist me in navigating the court process to ensure I was adequately prepared for all scenarios.'

- Victims' Survey respondent

Victims surveyed explained the implications of not having appropriate referrals made to support services. One Victims' Survey respondent told the VOCC about a particularly negative court attendance:

'[T]he police forgot to assign a support person to sit with me in court. i didnt know my rights so I wasn't expecting one... me crying during court... while the whole court room stared at me as every 50 or so charge was read out.'

- Victims' Survey respondent

Some victims of sexual assault were also disappointed by the failure of police to advise them of victim support programs. For other victims, referrals were made but the victim advised that they received no follow-up contact from the relevant agency.

Victims regularly spoke to the fact that the onus to find support was often placed on them, as noted by this Victims' Survey respondent:

'While there is no doubt I have seen the fruits of the hard work of so many that has taken place over many years – change has been painfully slow, and gaps still exist. Gaps in terms of what I call the “hallway”. This is particularly relevant in the context of the onus still being on me to “source” information from various Agencies.'

- Victims' Survey respondent

Victims talked about how re-traumatising it was to repeatedly discuss the crime with various police members, support services, prosecutors and during the court process itself. As one Victims' Survey respondent noted:

'Trust is a basic problem. Legal process and opening up to yet more strangers who want all the details for their records – like having one's victimhood reinforced.'

- Victims' Survey respondent

Victim support was insufficient

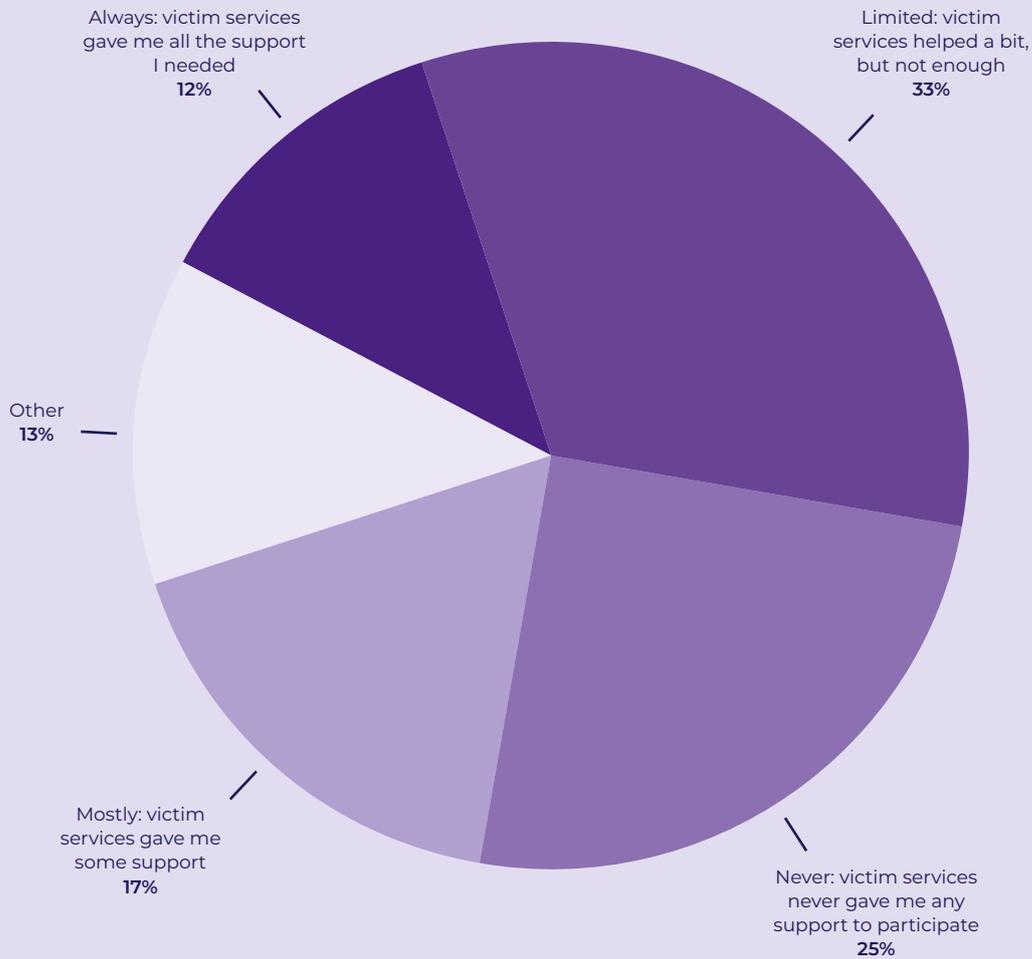
For those victims who had used a victims' service, the Victims' Survey asked victims whether that service had helped them to participate in the justice process.

As shown in **Figure 9** below, only 12 per cent said that victim services always gave them all the support they needed to participate in the justice system.



Twenty-five per cent of respondents advised that victim services never gave them any support to participate and 33 per cent advised that they had received only limited support – that is, victim services helped a bit, but not enough.

Figure 9: VOCC Victims' Survey: Did victims' services help you to participate in the justice system?



Victims told the VOCC that certain services were merely referral agencies and that they often felt like they were not provided with meaningful assistance. One respondent to the Victims' Survey advised the VOCC:



'Victims services were slap dash. They were a referral agency at best. They linked me to a psychologist, a lawyer for VOCAT and some material aid (taxi vouchers) and some funding for damage to the property where the offence occurred. That was it. I had to look for support services elsewhere online. They had NO idea what they were doing days after the murder of my mother.'

- Victims' Survey respondent

Another respondent to the Victims' Survey similarly commented:



'Victim Services did not work well. It was very disjointed in regards to being directed to the help we needed and not having one person we could go to who could give us the right information.'

- Victims' Survey respondent

The VOCC was advised that there was a lack of appropriate support relating to either the crime or victims' particular circumstances, as noted by these respondents to the Victims' Survey:



'No suitable services for victims of homicide, specialised services in the state. No recognition of this cohort of victims. There is plenty around victims of DV, but nothing for the victims of the murdered victims remaining.'

'No understanding of the needs related to road trauma'

- Victims' Survey respondents

Victims who were unable to find the support they required were consequently re-traumatised by having to re-tell their story to different professionals or having professionals unable to assist at all, as noted by these respondents to the Victims' Survey:



'Victims assistance program. No assistance whatsoever ... Had to re-tell my story 4 times in 5 sessions. No follow up treatment. Did not even refer me to other appropriate services. [Support service] only suggested I do a self referral to Secasa. I was not sexually abused!'

'Getting organisations who profess to have the knowledge, yet cannot help me at all'

- Victims' Survey respondents

One victim interviewed by the VOCC relied on a General Practitioner to refer them to services, resulting in them being referred to generalised psychological services which did not provide 'any practical advice'.³

Victims often voiced their frustration that there wasn't a consistent support worker allocated to victims. Victims discussed the need for a case management approach where victims receive a dedicated support worker and would not be required to 'rehash over and over again' their story and trauma.⁴ One respondent to the Victims' Survey referred to such a worker as being a:



"single source of truth" a person I can ask the "dumb question" of, without feeling that I am encroaching on the valuable time of our "team", would ease a weight, provide me with more control, and streamline what at times is just a need for basic information – information that I might have already been told – but I need repeated.'

- Victims' Survey respondent

The VOCC was also told that finding support that addresses victimisation appropriately by adopting an intersectional lens can be challenging. For example, a member of the Women with Disabilities Victoria (WWDV) Experts by Experience Advocacy Team said that when they tried to find appropriate counselling services, the counsellor they found was unable to address the impact of ableism on a person's experience of victimisation. This same Experts by Experience Advocacy Team member has noticed a dramatic difference with their recovery since shifting to a therapist who understands the impact of ableism, gender, disability and violence.⁵

³ Interview 13 – Victim of sibling family violence.

⁴ Interview 12 – Victim of crime.

⁵ Consultation Meeting 15 – Experts by Experience Advocacy Team - Women with Disabilities Victoria.

Another member of the WWDV Experts by Experience Advocacy Team similarly experienced challenges accessing support services that understand the complexity of ableism and victimisation: 'Whenever I have tried to talk about the ableism I have experienced to counsellors, even psychologists, I am either dismissed or spend all the sessions educating them about ableism. It has been distressing.'⁶

Another victim interviewed by the VOCC spoke of the need for victims' services to understand disability and chronic illness better:

*'There needs to be more education for staff about disability and chronic illness. They need to understand that there are disabled people and people with chronic illness who don't want to be coming into the services face to face. For all the services – police, courts – they need to have more flexibility for things to be done online.'*⁷

Victims frequently identified that after the criminal matter reached its conclusion they would often lack support and advice. For some victims it was at this point in the process that they finally had the mental and emotional headspace to process what had occurred. Victims often felt that at this point additional support would have been helpful to process the outcome. One respondent to the Victims' Survey noted that 'there was no follow up to see if I ... needed anything'. Another respondent to the Victims' Survey elaborated:

'I am eternally grateful for the support I received at the time; overall I felt supported, however, there has been little support post proceedings to process and understand what occurred, and to ask questions, with reduced stress/emotional distress that was present at the time of going through the court process. I believe there should be an opportunity to reflect and have access to information when feeling emotionally safer and well supported – this could aid in recovery.'

- Victims' Survey respondent

One Victims' Survey respondent told the VOCC that they had received poor crime scene cleaning services:

'...[T]rauma cleaning service was appalling. They did not clean the crime scene adequately. There was human tissue, hair and bone remaining on scene post their clean. When they returned to go over it again, they further traumatised myself and siblings by telling us "it was the worst crime scene they had seen since Bourke Street".'

- Victims' Survey respondent

This victim also described how the forensic cleaners had expressed unsolicited opinions as to how their mother might have been killed.

⁶ Consultation Meeting 15 – Experts by Experience Advocacy Team - Women with Disabilities Victoria.

⁷ Interview 1 – Victim of crime.

One victim surveyed felt that different parts of the system provided support and advice, but that it was not always correct or consistent:

'It became obvious at different points of the process that although everyone knew their own area of expertise really well, they didn't necessarily know much about elsewhere. For example, the Investigator said I could give evidence from another facility and the Counsellor said I would have to find a quiet spot within the courthouse until I was called. Once connected with WAS though I found out neither advice was correct, and I would be giving evidence remotely from within the courthouse. With the lengthy delay from arrest to appeal (5 years), I sometimes wasn't sure who to contact if I had a question with personnel changes – Investigator changed Units a number of times, 3 different OPP Legal Advocates, WAS changed twice and once not available at a critical point when meeting the Prosecutor before trial.'

- Victims' Survey respondent

This lack of victim support frequently impacted on the victim's ability to participate in the process, with victims missing out on key moments of the criminal justice system. One victim surveyed by the VOCC reflected:

'Zero support during the court phase, no real understanding of what to expect. Very little compassion from the [O]PP. Was not given the opportunity to be present for the verdict or sentencing and not given any information regarding what the jury thought or what the judge said... Minimal victim and immediate family support during and after court proceedings and was never notified when he was released from prison.'

- Victims' Survey respondent

Support dealing with the media in high-profile matters was also raised as a possible gap in support available to victims, as noted by this respondent to the Victims' Survey:

'For high profile crimes - media intrusion can be daunting and you don't want to become the center of a Media Circus where you can be caught off guard or say something in the early stages of grief that you might regret later on. Access to help to navigate the media would also provide a necessary buffer from unwanted media intrusion – you are at your most vulnerable when you are on the steps of the Supreme Court.'

- Victims' Survey respondent

Support can be delayed or rushed

Some victims surveyed advised the VOCC of very lengthy waiting periods for services and of feeling like they were being rushed through the system when they finally did receive support. Victims identified that this was due to a lack of resources and an overwhelmed or strained victim support system. When asked by the VOCC why they had not taken up victim support, victims surveyed by the VOCC frequently cited waiting lists:

'Orange Door/Quantum as brilliant as they are, they are under supported which means victims are rushed through the system and out the other side in the blink of an eye to make room for the next woman to support.'

'CASA Counselling was an 18 month wait on the list to then have to be rushed through to clear a space for another person waiting on the list.'

- Victims' Survey respondents

Victims who were interviewed by the VOCC also discussed lengthy waiting periods. One victim recalled that they were given a CASA pamphlet but there was a six-month waiting list.⁸

Court support is a service gap

Victims told the VOCC that lack of support at court had made for particularly distressing experiences that often resulted in secondary victimisation. Victims discussed traumatising court attendances where they were unsupported and unprepared. For example, this respondent to the Victims' Survey stated:

'The wait was really hard. The court attendance was awful. I had the choice between sitting near the family of the defendant or sitting near the estranged family of my deceased partner. There was no court support.'

- Victims' Survey respondent

Victims without support were often unaware of court processes and etiquette, with one respondent to the Victims' Survey commenting: 'At one point, I wanted to ask the judge a question and I raised my hand but the judge looked at me but did not ask what I wanted.'

Another respondent to the Victims' Survey described how they had attended court and been found, by chance, by a court support worker: '[I] praise so highly the court support worker who found me alone and crying in the waiting room.'

A member of the Victim Survivors' Advisory Council spoke about the distress of having to attend court for a Family Violence Intervention Order without support and being unaware of support available:

*'I was so confronted by the experience of getting an FVIO – just walking in the door was confronting. And a fight broke out in the court and I basically just fled the court because I was so fragile to violence – I couldn't be in the same room as something like that. Then I found out I could have accessed some support from Court Network – it was too late I was already heading out the door. She could have sat with me.'*⁹

⁸ Interview 14 – Victim of crime.

⁹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

A victim representative of the Victims of Crime Consultative Committee also told the VOCC:



*'I felt that other victims were prioritised over us in terms of court support. There were times we really needed that support, but we couldn't access it. For example, our WAS worker had to make decisions about whether to attend court with us versus a victim of sexual violence who was giving evidence. They are prioritised above us. There were times that I really need that support, but to be told you're not a priority is not great.'*¹⁰

Stakeholder views

Associate Professor Asher Flynn and Professor Arie Freiberg spoke about victims lacking consistent, independent support and advice throughout the process. They told the VOCC that in research they conducted with victims, victims had expressed a need for someone to be 'there for them but didn't feel like it was someone for the state or for the accused' and that they wanted this support 'for the whole process, from police right through to sentencing and beyond (e.g. appeals)'¹¹ Associate Professor Flynn and Professor Freiberg also spoke about victims being 'handed from one person to the next' and having to re-tell their story multiple times.¹²

Victims Services staff told the VOCC that it is essential that victims are referred from police via the VPeR¹³ process at the earliest opportunity, but that this was inconsistent. Victims Services staff suggested that the fact that VPeR referrals are consent-based acts as a barrier to timely victim support:

One of the barriers in relation to VPeR referrals is that they are consent based. So even if the conversation happens initially, the victim may be in shock, be feeling over-whelmed or not able to take the information in. Therefore, it needs to be revisited further along in the process with the victim in cases where they do not take up the offer initially.¹⁴

Windermere Victims Assistance Program (VAP) described the e-referral system as 'clunky' and lacking role clarity.¹⁵ Windermere VAP also said that victim support workers are carrying very high caseloads that are becoming increasingly complex.¹⁶

Victoria Legal Aid (VLA) told the VOCC that the victim support system is a 'complex web of services' and that there needed to be seamless integration so victims do not carry the burden of navigating the services themselves.¹⁷ VLA also told the VOCC that existing non-legal support services should be expanded.¹⁸

Some stakeholders noted the lack of specific and tailored support for certain victims.¹⁹ For example, Alannah and Madeline Foundation told the VOCC that even when children are recognised as victims, system constraints mean accessing appropriate support services is difficult: 'Even when a child is seen clearly as a victim, they can still find it hard to access the kind of supports that an organisation like ours provides.'²⁰ The Alannah and Madeline Foundation suggested victim support services for children are not holistic and comprehensive enough.²¹

The Aboriginal Justice Caucus told the VOCC that there are not enough culturally safe avenues for support, particularly in regional Victoria: 'The more remote the area, the further you are from Aboriginal workers.'²²

Court Network told the VOCC that victims who are not witnesses often miss out on support and are 'picked up' by Court Network only on the day of court. Court Network also told the VOCC that some victim and witness support services, like the OPP's VWAS, do not have the capacity to assist all victims in need, including family members and loved ones impacted by crime.²³

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

11 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

12 Ibid.

13 VPeR is the Victoria Police e-referral system: Victoria Police, *Future Directions for Victim-Centric Policing* (Web Page, August 2015) <https://www.police.vic.gov.au/sites/default/files/2019-01/Victim-Centric-Policing-Booklet_web_0.pdf>.

14 Consultation Meeting 14 – Victims Services staff.

15 Consultation Meeting 21 – Windermere Victims Assistance Program.

16 Ibid.

17 Consultation Meeting 16 – Victoria Legal Aid.

18 Ibid.

19 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

20 Consultation Meeting 9 – Alannah and Madeline Foundation.

21 Consultation Meeting 9 – Alannah and Madeline Foundation.

22 Consultation Meeting 30 – Aboriginal Justice Caucus (AJC Meeting 2).

23 Consultation Meeting 12 – Court Network.

Court Network told the VOCC that appropriate court support is an integral component of enhancing victim participation, particularly where the outcomes of criminal processes may not always validate victims' experiences:

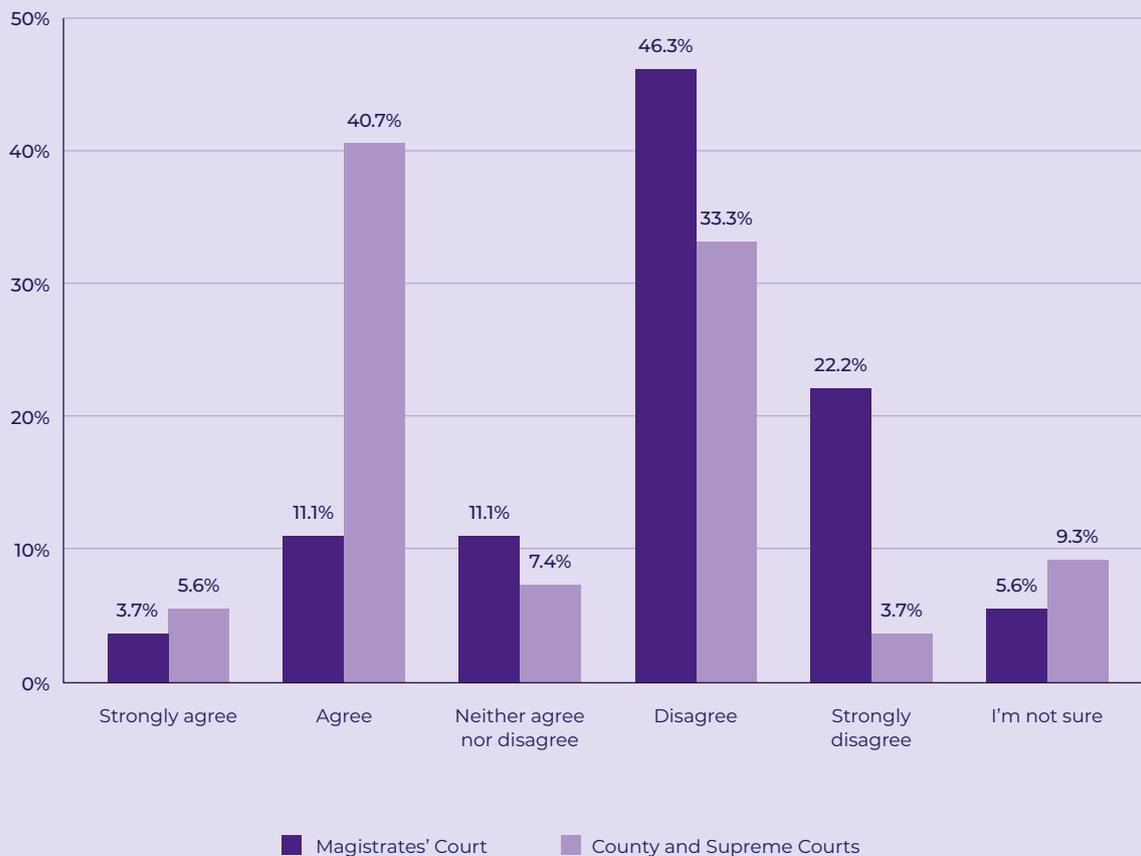
Bearing witness, being alongside people, validating the importance of what they did or their being there; this all plays a role in creating meaningful participation. People can walk away feeling like they have had meaningful participation, even if the system itself cannot enable that to occur.²⁴

Court Network, also told the VOCC that victims are not getting the necessary debriefing or post-court care that they need.²⁵ This is consistent with what the VOCC heard from victims.

In addition, victims' professionals and Victoria Police members highlighted a gap in appropriate court support for victims in the Magistrates' Court.

Victims' professionals surveyed by the VOCC told the VOCC that victims in the Magistrates' Court are not getting the in-person court support required to help them participate in the process. As shown in **Figure 10** below, only 11 per cent of victims' professionals surveyed by the VOCC agreed that victims have enough in-person court support to help them participate in the process in the Magistrates' Court. In comparison, 41 per cent of respondents agreed that victims have enough in-person court support to help them participate in the process in the higher courts.

Figure 10: VOCC Victims' Professionals Survey: Do victims have enough access to in-person court support to help them participate in the court process? (Magistrates' Court compared to County and Supreme Courts)



²⁴ Ibid.
²⁵ Ibid.

Victoria Police prosecutors agreed that there was insufficient court support for victims in the Magistrates' Court, noting they have had very distressed victim-witnesses in the Magistrates' Court, particularly in sexual assault cases, who are not eligible for any witness support because they are not children, do not have a cognitive impairment and their matters are not being heard in the indictable stream.²⁶ Victoria Police members also told VOCC that the OPP's VWAS model works very well in the County Court and that it should be replicated in the Magistrates' Court.²⁷

Additionally, Victoria Police members raised concerns that government-funded assistance and referrals for victims of crime are only for crimes against the person:

If someone is a victim of a serious crime, unless it's a crime against the person, they don't qualify. There's a gap there. There are significant effects from property crime. It doesn't need to be a crime of assault or a robbery for someone to be seriously affected. So there's a definite gap.²⁸

Participation difficult without legal assistance

Research has found that victims of crime have a broad range of unmet legal needs.²⁹ Victims' need for specialised legal advice and assistance has been consistently raised in Victoria in a range of reviews and inquiries over the past five years.³⁰

The Victims' Charter includes provisions stating that victims should be given information about 'legal assistance'³¹ but there is no state-funded specialist legal service that assists all victims who have broad-based legal needs.³²

Victims' experiences

For many victims consulted by the VOCC, enhanced participation in the justice system is directly linked to what they view as a need for independent legal advice and assistance for victims of crime.

Some victims find it difficult to reconcile that the accused automatically receives legal representation and advice, but victims are not afforded this same right. This leaves many victims feeling alone, unsupported and without voice. A member of the Victim Survivors' Advisory Council expressed dismay at the lack of legal representation for victims:

Victims view participation in the justice system as directly linked to the need for independent legal advice.

*'When there are criminal charges involved the perpetrator has their own legal representative but nobody represents victims. This is so problematic because this experience for victims can impact on their entire life. Nobody is standing in that space and representing victims and answering for victims. Without legal representation, victims become a passenger in somebody's journey with no say over the destination.'*³³

Ingrid Irwin told the VOCC that having legal representation would provide victims 'with an equal voice and say in what happens'.³⁴

26 Consultation Meeting 18 – Victoria Police – Session 2. The Child Witness Service assists children and young people, regardless of jurisdiction. The Intermediaries Program applies to relevant criminal proceedings at a participating venue of a court if the witness is a person under the age of 18 years or a person with a cognitive impairment: Supreme Court of Victoria, *Multi-Jurisdictional Court Guide for the Intermediary Program: Intermediaries and Ground Rules Hearing* (Web Page, February 2022) <<https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/multi-jurisdictional-court-guide-for-the-intermediary-program>>. The OPP's Victims and Witness Assistance Service only assists victims/witnesses in matters prosecuted by the DPP.

27 Consultation Meeting 24 – Victoria Police – Session 4.

28 Consultation Meeting 19 – Victoria Police – Session 3.

29 See, eg, Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 148.

30 See, eg, Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final report, November 2020) 148; Sentencing Advisory Council, *Restitution and Compensation Orders* (Report, October 2018) xiv; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) xviii.

31 *Victims' Charter Act 2006* (Vic) ss 7(a), 16.

32 Victoria Legal Aid and Community Legal Centres provide some legal assistance, although it can be limited due to funding constraints and program guidelines. The 'Victims Legal Service' assists victims with applications for state-funded financial assistance, compensation and restitution. See Victorian Government, *Reforms we will deliver to support victims of crime* (Web Page, 15 June 2022) <<https://www.vic.gov.au/victim-support-update/reforms-we-will-deliver-support-victims-crime#delivering-a-new-victims-legal-service>>.

33 Consultation Meeting 11 – Victim Survivors' Advisory Council.

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

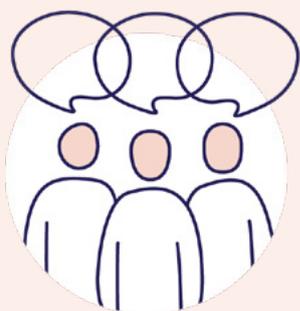
One Victims' Survey respondent spoke about having to represent themselves in a Magistrates' Court Personal Safety Intervention Order (PSIO), and feeling acutely the inequity with the perpetrator, who was legally represented:

'When the matter went to hearing at the Magistrates Court I represented myself. The hearing was listed as a mention whereby the PSIOs were to be agreed upon. I was shocked to see that the respondent had legal representation, denied the allegations...and commented to the Magistrate how his client has suffered greatly from the ordeal. As the victim, I found this incredibly upsetting and unexpected.'

– Victims' Survey respondent

One Victims' Survey respondent remarked that 'the accused/criminal gets better than the victim', while another respondent indicated that their experience of the justice system could have been improved 'with proper legal advice and a lawyer like he had'.

Another Victims' Survey respondent shared their frustration that a scheme providing victims with legal advice and assistance has still not been implemented in Victoria, despite previous reviews and inquiries recommending it: 'The one thing I needed was the legal advocate, and I know it's been recommended so many years ago and it still hasn't happened.'



60%

Nearly 60 per cent of victims surveyed by the VOCC **said they wanted their own lawyer to advocate for their rights.**

Victims spoke about the need to be able to access legal information from an independent, trusted source, separate from the prosecution, with that independent advice available from the initial reporting stage.

When asked in the VOCC's Victims' Survey 'What extra help would have made the justice system easier for them to participate in?', 58 per cent of survey respondents selected 'my own lawyer to advocate for my rights'. As articulated by this victim interviewed by the VOCC, victims want someone independent, acting only in the victim's best interests:

'It is absolutely necessary to appoint a legal advocate independent of the OPP, and for victims to be able to request one if required. It needs to be a legal person that understands this system, as some solicitors won't deal with this sort of thing. Victims are usually traumatized. We need to be able to go to somebody we can trust, that can give us legal advice and who we know will act in our best interest. The OPP are a law unto themselves and from a victims point of view there needs to be a few more checks and balances.'³⁵

Victims consulted by the VOCC also noted the logical disconnect between victims having entitlements under Victorian legislation, while lacking access to independent legal advice to tell them about their entitlements and enforce them when they are breached. Victims told the VOCC that finding out about legal rights is impossible despite it being stated 'quite clearly in the Victims' Charter that we are entitled to legal assistance'.³⁶

³⁵ Interview 15 – Victim of crime.

³⁶ Interview 15 – Victim of crime.

Engagement with victims indicated clear support for access to state-funded legal advice and representation across all stages of the criminal process as well as for processes adjacent to it like intervention order applications, family law proceedings, compensation and coronial proceedings. Victims surveyed told the VOCC that a lawyer for victims was crucial to their participation:



'All survivors must have a lawyer in court.'

'and they say "you don't understand the law" and I don't. But if I had someone that could explain it to me, I might.'

'My top priority is the need for independent legal support for victims of crime as children and as adults.'

'I should have been assigned a lawyer to assist me in the preparation of the victims of crime statement and to inform me that I would be asked by the court what I sought from sentencing and what these options actually meant in practice.'

– Victims' Survey respondents

Ingrid Irwin highlighted the range of legal representatives in child protection matters, all paid for by the state:



'In child protection matters, children have an independent children's lawyer. Everyone who has a separate legal interest in a case has a lawyer. In child protection, do you know how many lawyers are at the bar table in those matters – sometime 10? One for the child at risk of harm, a lawyer for the department, then we have a separate lawyer for the sibling of the child, and then the lawyer for mum and dad, and so on. And the State pays for that. And we still have the State saying that a victim can't have the right to a lawyer.'³⁷

Ingrid Irwin also stated that funding for legal advice should be prioritised over witness support programs:



'The argument is always that the State doesn't have the budget. At the OPP they have the witness assistance person, the hand holder. Abandon that. You don't need witness assistance; you need legal assistance. We can then use this money for victim lawyers, for those who can't afford it and for those who can afford get their own lawyer.'³⁸

Some Victims' Survey respondents said their future participation in the justice system would be contingent on the availability of legal representation:



'If i had to i would never be left alone and i would want a legal representative with me at all times when dealing with police.'

'I would demand the right to a lawyer.'

'Yes, by having my own lawyer in the criminal matter. Yes, by being a recognised party (not just a participant) in the criminal matter.'

'...yes, with proper legal advice and a lawyer like he had.'

– Victims' Survey respondents

³⁷ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

³⁸ Ibid.

One Victims' Survey respondent highlighted the difference legal representation had made in their case:



'We seriously would have likely died had it not been for a pilot program in which a community legal service was given funding to help alleged victims prepare for court.'

– Victims' Survey respondent

The VOCC also heard about victims paying for independent legal advice, incurring significant out-of-pocket expenses. As one respondent to the Victims' Survey noted:



'It then took 4 years for an inquest, which we only ended up getting because we engaged a legal team and spent \$70,000 total. NO family should have to find that sort of money. there is no way a person with a disadvantaged background, lack of english or financial resources would EVER be able to manage a system such as this if they even wanted to. I was fortunate enough to have resources and the education to be able to persist.'

– Victims' Survey respondent

For those victims who did access lawyers, some were dissatisfied that the lawyers did not provide appropriate advice and were not specialised.³⁹ Having legal representation in itself may not be the answer to participating in the criminal trial process unless the lawyers are specifically trained in a trauma-informed approach, as evidenced by the experience of this respondent to the Victims' Survey:



'I was told if I wanted legal advice I would have to seek that independently...I eventually found a firm and had a brief conversation with a very dismissive woman who had no interest in assisting me so it left me feeling defeated and alone.'

– Victims' Survey respondent

One victim interviewed by the VOCC proposed that a network of solicitors be established, dedicated to understanding the Victims' Charter and the lived experience of victims, observing that: 'It's more than just having a credential. Its knowing that certain processes impact on victims and that you'll be kept informed.'⁴⁰

Stakeholder views

A number of stakeholders advised the VOCC that victims feel confused and dismayed when they realise they do not actually have their own lawyer.⁴¹ Dr Mary Iliadis said: 'Victims often question where their lawyer is and have often referred to police or prosecutors as their lawyer and are quite confused when that person doesn't fundamentally uphold their rights and interests.'⁴²

The Centre for Innovative Justice, which completed a large review of victims' services in Victoria in 2020,⁴³ told the VOCC that although exploring access to independent legal advice and assistance was not a part of their research methodology, most victims had identified this as a significant unmet need:

It was our number one recommendation, with the strength coming from the fact we didn't ask victims about it – it was spontaneous and emerging in each of those 37 interviews we conducted. Unmet needs for legal issues arising from the impact of the crime were being compounded over and over again.'⁴⁴

39 Interview 13 – Victim of sibling family violence; Interview 14 – Victim of crime.

40 Interview 13 – Victim of sibling family violence.

41 Consultation Meeting 5 – Dr Mary Iliadis; Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

42 Consultation Meeting 5 – Dr Mary Iliadis.

43 Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020).

44 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

VLA also emphasised the unmet need in relation to a comprehensive, dedicated, trauma-informed legal service:

It's been a gap for a long time and creates significant barriers to victims participating in the process. It's something that has been raised many times along the way by a number of different reviews and inquiries. Victims have rights on paper, but they also need to know how to realise them in practice. The recently commenced Victims Legal Service delivered jointly by Victoria Legal Aid, Victorian Aboriginal Legal Service and Community Legal Centres provides a victim-centred, trauma-informed and collaborative model that could be expanded to services beyond assistance with financial compensation.⁴⁵

Community Legal Centre (CLC) representatives told the VOCC that victims often have multiple, compounding legal issues and lack timely, holistic advice:

victims often don't have one legal issue, there's a pile of issues and there isn't the funding to deal with that. Sometimes victims get legal advice from someone who tells them 'don't worry about the custody matter', then the IVO ends and the dad knocks on the door and takes the child. If these clients had holistic advice from the start, then they would be a true participant in the system.⁴⁶

A range of stakeholders told the VOCC about legal issues that required independent legal advice or representation, including:

- defence access to confidential communications⁴⁷
- subpoenas⁴⁸
- withdrawing or amending witness statements⁴⁹
- immunities⁵⁰
- Victim Impact Statements (VIS)⁵¹
- ground rules hearings.⁵²

Dr Mary Iliadis suggested access to independent legal representation should be available in relation to any sort of communication that can be subpoenaed or used by defence counsel to discredit a victim-survivor's character, such as phone or medical records, as well as in relation to counsel introducing evidence of prior sexual history.⁵³

The VOCC was also told that legal advice and assistance are key to victims understanding their participatory entitlements:

If community legal centres were able to be fully funded, they could provide much more comprehensive services and wrap around support for victims, and they could make sure that victims understood touch points where they can participate in the justice system. There is already some access to support workers to provide that kind of information, but there really is a key role for lawyers there too, but no one is really funded to do that work. There is a huge gap.⁵⁴

Associate Professor Kerstin Braun queried the rationale of affording victims certain rights without allowing them legal representation to enforce the rights.⁵⁵ The ACT Victims of Crime Commissioner concurred, stating that 'legal advice and legal representation is very important. You can have rights, but if people don't know about them or you don't have anyone to help them access those rights, they won't be utilised.'⁵⁶

A CLC representative told the VOCC that independent legal representation is crucial to meaningful victim participation:

If victims are to be participants in the justice process, they need their own lawyer from the beginning, not just for VOCAT matters, but from the beginning. They need someone to explain the system to them and walk alongside them throughout the whole process, from beginning to end. They need a lawyer to explain the criminal justice system, what their rights are, and how they can participate, to advise what the charges are, what a diversion is. [Victims Legal Service] doesn't cover this gap. Obviously these practitioners would need to be highly trained to deliver this specialised service, in a trauma-informed way.⁵⁷

45 Consultation Meeting 16 – Victoria Legal Aid.

46 Consultation Meeting 22 – Community Legal Centres – Session 1.

47 Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 23 – Community Legal Centres – Session 2; Consultation Meeting 5 – Dr Mary Iliadis.

48 Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 5 – Dr Mary Iliadis.

49 Consultation Meeting 16 – Victoria Legal Aid.

50 Ibid.

51 Consultation Meeting 16 – Victoria Legal Aid.

52 Consultation Meeting 23 – Community Legal Centres – Session 2.

53 Consultation Meeting 5 – Dr Mary Iliadis.

54 Consultation Meeting 22 – Community Legal Centres – Session 1.

55 Consultation Meeting 1 – Associate Professor Kerstin Braun.

56 Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

57 Consultation Meeting 22 – Community Legal Centres – Session 1.

The South Australian Commissioner for Victims' Rights uses powers under the *Victims of Crime Act 2007* (SA) and discretionary funding to engage independent lawyers for victims. The South Australian Commissioner spoke of the benefits of engaging lawyers on behalf of victims:

For example, a rape victim might have all her diaries to be presented to the court and the prosecutor will say, well, we've got to give them over because of disclosure. But we'll hire a lawyer to protect their rights around what they can actually get to in court.⁵⁸

The South Australian Commissioner also spoke about the benefits of this lawyer being independent of the prosecution process:

because often victims don't trust that the prosecution authorities are acting in their best interest, so having that sort of independent person, what they perceived to be a more objective person telling them the same thing often just helps them understand and accept a decision.⁵⁹

Some stakeholders were not supportive of independent legal representation. For example, Victoria Police members queried the advantage of adding another person to the process and the expense.⁶⁰ The Office of Public Prosecutions (OPP) was not supportive of a broad-based independent legal representation scheme but suggested there are particular points during the court process that independent legal advice and representation could be of significant benefit, including in relation to applications to subpoena confidential communications of the victim.⁶¹

Some judicial representatives of the Magistrates', County and Supreme Courts raised concerns about broad-based state-funded legal advice and representation for victims, querying the purpose and role.⁶² Some judicial representatives saw a role for state-funded independent legal advice and representation at certain points of the process, including:

- at the sentencing stage
- where there are applications to subpoena confidential communications or any personal information pertaining to the victim
- at committal or under the special provisions for pre-trial cross-examination of children or vulnerable witnesses
- where self-represented accused can cross-examine victims (e.g. in stalking matters relating to Personal Safety Intervention Orders).⁶³

One judicial representative said there is a sound rationale for legal advice and perhaps separate representation at the pre-trial stage where victim-witnesses:

are being asked questions ... that are fishing, that are designed to get information as to whether they have had counselling and from whom in order to provide a springboard for the third party subpoenas. That's an area where there is a proper basis for thinking that complainants or victims should be given independent legal advice before answering such questions, and about whether to object, because their interests may be different from the interests of the prosecution. The knowledge of the victim about their rights in respect of confidentiality of counselling records or about where a line of questioning is leading may also be different from the knowledge that the prosecution has about it.⁶⁴

Different levels of participation

Victims and witnesses in Victoria are not all treated equally. Victims and witnesses may be treated differently in terms of legislative entitlements and eligibility for services and support based on:

- the jurisdiction in which a crime will be heard (e.g. summary or indictable)
- geographic location (e.g. areas with specialist courts or pilot programs)
- type of crime (e.g. family violence versus homicide)
- a victim's characteristics, including age, disability or cultural diversity
- the age of the offender (e.g. whether they are a young offender).

Victims and witnesses may be treated differently in terms of legislative entitlements and eligibility for services.

⁵⁸ Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

⁵⁹ Ibid.

⁶⁰ Consultation 17 – Victoria Police – Session 1, Consultation 19 – Victoria Police – Session 3.

⁶¹ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

⁶² Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁶³ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁶⁴ Ibid.

Under the Victims' Charter, victims in the indictable stream (prosecuted by the Director of Public Prosecutions) are entitled to more specific information and consultation than victims in the summary stream (prosecuted by Victoria Police).⁶⁵

Eligibility for witness support and at-court support services can depend on a victim's age (such as the Child Witness Service) or whether their matter is being heard in the Magistrates' Court or in the higher courts (where victims become eligible for the OPP's Victims and Witness Assistance Service).

While there can be benefits in having entitlements and service delivery that target specific cohorts, particularly in the context of creating cultural safety, providing age-appropriate support and accommodating the gendered impact of certain crimes, some victims may also experience different levels of participation simply because they are not eligible for certain entitlements or supports.

Victims' experiences

The VOCC was told that victims can be treated differently depending on the type of crime, whether the matter is heard in the summary or indictable stream and whether they are required as a witness or not. For example, a victim representative of the Victims of Crime Consultative Committee told the VOCC:

*'I have also heard from other victims who were harmed as a result of summary offences and who feel like the court system has completely ignored them altogether. These people wanted a chance to give a Victim Impact Statement but were told they weren't able to do so for that type of offending. They therefore felt that their suffering was ignored and not taken into account.'*⁶⁶

A victim representative of the Victims of Crime Consultative Committee also told the VOCC:

*'There's a sentiment in the community that driving crime isn't a crime. So, when my mother was killed by a driver, there is a narrative that pops up a lot both with the general public and legal practitioners. In my case, it felt like it was treated as an accident, not a crime. I felt that other victims were prioritised over us in terms of court support.'*⁶⁷

A member of the Victim Survivors' Advisory Council (VSAC) also told the VOCC that there is still an implied hierarchy of victims which places physical injuries above psychological ones in terms of seriousness:

*'We are still dealing with hierarchies of victims. We don't really understand a psychological injury and the seriousness of it. While it's great that we understand coercive control in relation to the Family Violence Protection Act, we're still only recognising it in relation to the breach of an order. It's the breach of an order that's the criminal act. That's problematic.'*⁶⁸

Stakeholder views

Court Network told the VOCC that victims who are witnesses in the court process are often treated differently from victims who are not witnesses:

There is a line in the sand there. If you're a witness, then you're required as part of the court process and you would usually be communicated with. However, if you're a victim who is not a witness then you're just a member of the public who doesn't have much to do with the court system.⁶⁹

⁶⁵ For example, the Director of Public Prosecutions must seek a victim's views before making a decision to modify charges, discontinue the prosecution, accept a guilty plea to a lesser charge, appeal a sentence or an acquittal. These requirements do not apply in the summary jurisdiction where Victoria Police prosecutes: *Victims' Charter Act* (Vic) s 9B(1).

⁶⁶ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁶⁷ Ibid.

⁶⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

⁶⁹ Consultation Meeting 12 – Court Network.

Court Network told the VOCC that 'those that are not part of the proceedings are not treated as part of the system and are locked out of the update process' and that opportunities to participate and to receive support need to extend beyond victims who are witnesses.⁷⁰

A range of stakeholders were concerned about victims' participation in the Magistrates' Court, including victims' professionals, Victoria Police members and academics.

A number of victims' professionals surveyed by the VOCC were concerned about the treatment of victims in the summary jurisdiction (Magistrates' Court) where VOCC was advised that participation by victims is particularly low:

In the magistrates court I find Victims are not made part of proceedings and rarely know what to do when attending court

More victim awareness for matters heard in the Magistrates court by Vic Pol members such as advising court dates, charges, whereabouts of the offender and the opportunity to complete a victim impact statement. This would enable the victims to feel more like a participant.

The victim is often not informed of an outcome from a Magistrates court hearing until a few days later and that is only if the informant is notified. Victims have often told me that they would like the courts or the prosecutors to notify them of outcomes so that they are aware of the next step...Participants want to be considered for any updates and be advised.

As detailed further in **Chapter 9**, victims' professionals surveyed by the VOCC also drew attention to victims' relative lack of participation in the Victim Impact Statement process in the Magistrates' Court:

Victims should be given every opportunity to participate and have their say. Magistrates Courts tend to be a bit more dismissive and 'nonchalant' about Victim Impact Statements and will at times move a matter through the court to its conclusion without consideration for the victim

I've had police tell me that Victims aren't able to do a Victim Impact Statement for summary offences.

Victims often do not get an opportunity to provide a victim impact statement to attach to a brief for a Magistrates hearing and this can be a concern if the accused pleads guilty and the matter is resolved at the first mention. Police are not always explaining these impact statements and the participants feel left out of the process of having their voice heard.

Associate Professor Flynn and Professor Freiberg spoke about the challenges for victims in the Magistrates' Court, where police and court resourcing limits the extent to which Victims' Charter entitlements may be upheld, including appropriate liaison with victims during the plea process:

In the lower courts, you are dealing with thousands of cases and victims are maybe peripheral ... I mean, these people are dealing with huge caseloads and then the Magistrates' Court is dealing with huge caseloads as well. So there is that conveyor belt system of getting what you can rather than getting what's perfect. If you have to go back to a victim every time with a minor change...Because that's the dynamic and they are the ones on the front line.⁷¹

Victoria Police prosecutors told the VOCC that the logistics of managing victim liaison and consultation in the Magistrates' Court are 'simply impossible':

Prosecutors manage victims quite well, but if you have a matter that is going to proceed as a plea of guilty in a mention list, and you have a victim who would like to be part of that process, it is simply not reasonable to expect that the prosecutor is going to be able to facilitate that process. The logistics of it are simply impossible. And in those circumstances, the informant is generally not an active participant in those matters either.⁷²

Victoria Police members told the VOCC that informants (the police officer who files charges against the accused in the Magistrates' Court) may not always be aware that a matter is appearing in court until they get a notification that there's been a conviction or charges are dropped – too late in the process to update a victim, or to provide victims with a way to participate, such as by preparing a Victim Impact Statement.⁷³

Victoria Police prosecutors also raised concerns about the increased use of sentence indications, and the adverse impact on victim participation in the summary jurisdiction:

A common option at the moment to resolve matters is a sentence indication. Sentence indications are often sprung on prosecutors, and when this happens, we've really lost our opportunity to get a Victim Impact Statement. Even if we did come back another day with a Victim Impact Statement, it's not going to be factored into sentence, because the indication has already been made. This is despite the recent amendments to the Charter that prioritises the prosecution's role in seeking victims' opinions.⁷⁴

⁷⁰ Ibid.

⁷¹ Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

⁷² Consultation Meeting 18 – Victoria Police – Session 2.

⁷³ Consultation Meeting 17 – Victoria Police – Session 1.

⁷⁴ Consultation Meeting 18 – Victoria Police – Session 2.

Victoria Police prosecutors also raised concerns about victim participation in the Children's Court when the offender is a young person.⁷⁵ The VOCC was told that there are some impediments to victim engagement because the *Children, Youth and Families Act 2005* (Vic) is focused on the best interests of the young accused:

The focus of the Children's Court is about diverting out of the court system, there's a push for early intervention, cautions and not having a young person in the courtroom, which then takes away from legislative framework about the victim. One of the things we say to a victim is "no matter what happens, we believe you. Victoria Police believes you". However, without a court process it doesn't allow for that formal validation process to happen.⁷⁶

In relation to diversion, the VOCC was told there is no direct requirement for engagement with the victim to ascertain their thoughts about whether a diversion of the offender is appropriate: 'The victim is a silent participant in those circumstances.'⁷⁷

Awareness of entitlements

Under the Victims' Charter, investigatory agencies, prosecuting agencies and victims' services agencies are required to provide clear, timely and consistent information about relevant support services, possible entitlements and legal assistance available to victims and, if appropriate, to refer victims to relevant support services and to entities that may provide access to entitlements and legal assistance.⁷⁸

Parallel to concerns regarding lack of access to independent legal advice and assistance, the VOCC heard from a number of victims who were not aware of the Victims' Charter or their entitlements.

Victims' experiences

Victims surveyed by the VOCC were asked if they had been told about the Victims' Charter and if so, by whom.



As shown in **Figure 11** below, an overwhelming majority (75 per cent) of survey respondents advised that they had not been told about the Victims' Charter. Only 15 per cent of respondents indicated that they had been told about the Victims' Charter by police, a victims' service or a prosecutor. Only one respondent surveyed indicated that they had been informed about the Victims' Charter by all three.

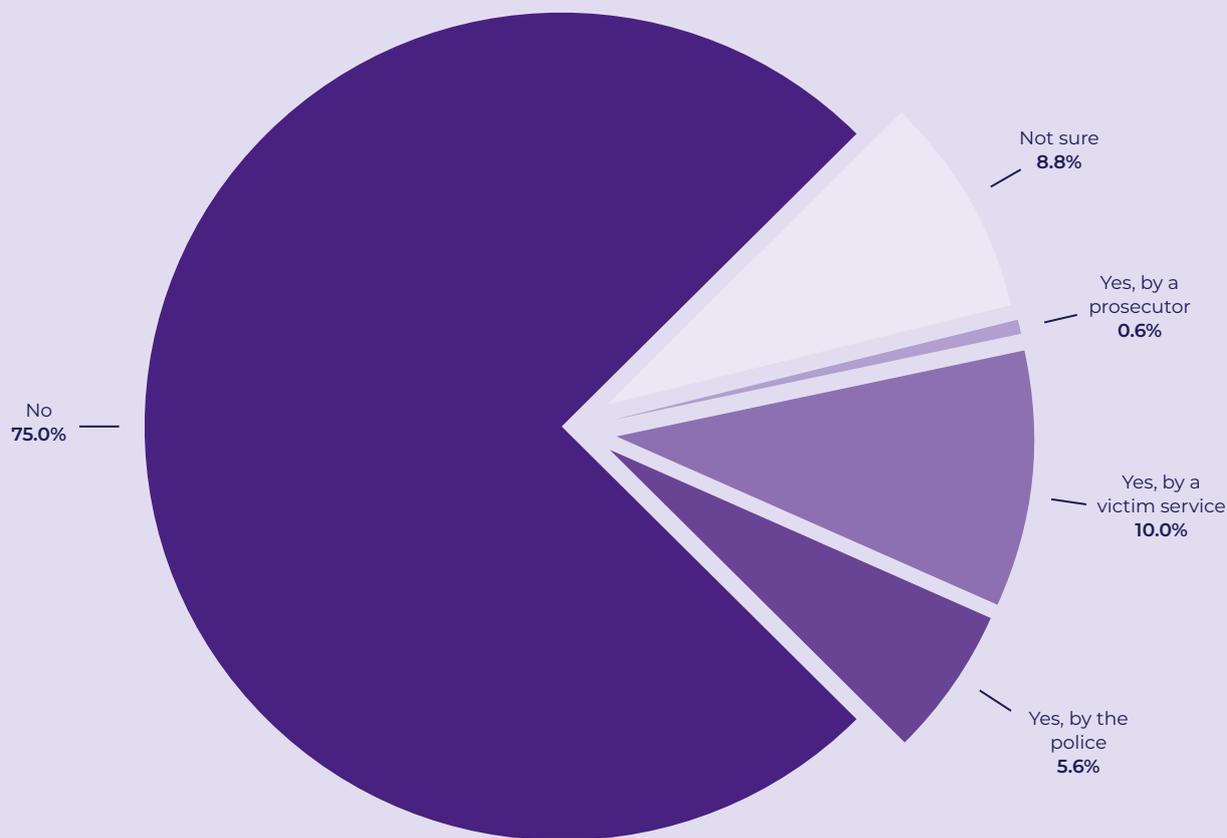
⁷⁵ Ibid.

⁷⁶ Consultation Meeting 18 – Victoria Police – Session 2.

⁷⁷ Ibid.

⁷⁸ *Victims' Charter Act 2006* (Vic) s 7.

Figure 11: VOCC Victims' Survey: Were you told about the Victims' Charter?



The Victims' Survey respondents who did talk about the Victims' Charter in further detail largely mentioned their lack of awareness of it. One Victims' Survey respondent stated: 'I was never told about the Charter and I would have felt I had some rights instead of feeling helpless within the system.'

Victims told the VOCC about their difficulty in finding out information about their legal rights, with one victim interviewed describing it as 'impossible'.⁷⁹ One Victims' Survey respondent commented:



'[M]y challenge was seeking out information I wanted a court case to help me heal and that was far from my experience. I was given no information about my rights as a victim and I struggled to not feel discarded by the system.'

– Victims' Survey respondent

⁷⁹ Interview 15 – Victim of crime.

Very few victims interviewed by the VOCC indicated that they had any awareness or detailed knowledge of the Victims' Charter, with one victim stating: 'I had no idea that I have rights like that enshrined in statute.'⁸⁰ Another victim interviewed by the VOCC said that they only became aware of the Victims' Charter after reading a media article where the VOCC referred to it.⁸¹

Victims surveyed by the VOCC advised that they were not provided with information about the Victims' Charter or their entitlements as victims when reporting crime:



'On one occasion that I reported a crime to the police, I was told by a police officer that "the offender is well known to us, and is notorious for doing that kind of thing [assaulting strangers], so unfortunately there is nothing we can do"... I was also not given any information on my rights as a victim of crime during this occasion, and felt extremely unsupported by Victoria Police.'

– Victims' Survey respondent

Some victims on the other hand thought they may have been advised about the Victims' Charter, but at that point in their interaction with the justice system they were overwhelmed and could not retain information, as reported by this Victims' Survey respondent:



*'they hand you all this information. You can't read it. I still struggle to read things. I've got booklets there that were handed to me. You're not in any fit state to be reading something, you need someone to sit there and just talking through things.'*⁸²

One victim interviewed by the VOCC expressed dismay at learning about the Victims' Charter:



*'my first reaction was being embarrassed that I didn't know, and then my second reaction was wait a minute. What the hell? How come I did not know it existed? Why didn't my solicitor tell me?'*⁸³

Although victims advised that they were largely not advised about entitlements, some victims had researched and found the information themselves. This Victims' Survey respondent said they 'found the Victims Charter [VC] on the newer OPP Victims & Witness website. Used the VC successfully at the appeals stage to request the Grounds for Appealing Conviction.'

'There is so much that is well-meaning around the Victims Charter but the accountability is slim to none'

Member of the Victim Survivors' Advisory Council.

Some victims were concerned, however, that even when victims are aware of their rights, there is a lack of enforceability and accountability:



*'When we know about our rights – that's great but that only goes so far. The lack of accountability from authorities causes many victim survivors end up feeling disempowered in the long run ... There is so much that is well-meaning around the Victims Charter but the accountability is slim to none. When I hear the word 'participant' it is a happy feeling ... but the more I am in the process, I realise it is only an illusion... We need to tackle the gaps here so that our victims' rights can become reality and not just a mere illusion.'*⁸⁴

⁸⁰ Interview 13 – Victim of sibling family violence; Interview 6 – Victim of crime.

⁸¹ Interview 13 – Victim of sibling family violence.

⁸² Interview 5 – Victim of crime.

⁸³ Interview 13 – Victim of sibling family violence.

⁸⁴ Consultation Meeting 11 – Victim Survivors' Advisory Council.

Stakeholder views

A number of stakeholders agreed that victims are rarely aware of their entitlements.⁸⁵ Court Network told the VOCC that victims are not aware of the Victims' Charter or their rights and it is hard to know whether victims are told anything:

It is hard to know if victims are advised of the Victims' Charter. Is it handed to them on a piece of paper? Do they get information in a 40 page booklet or 4 pages of information? It is not clear what victims get, but it doesn't seem to be working. What we are seeing is the people that come to us aren't aware of their rights.⁸⁶

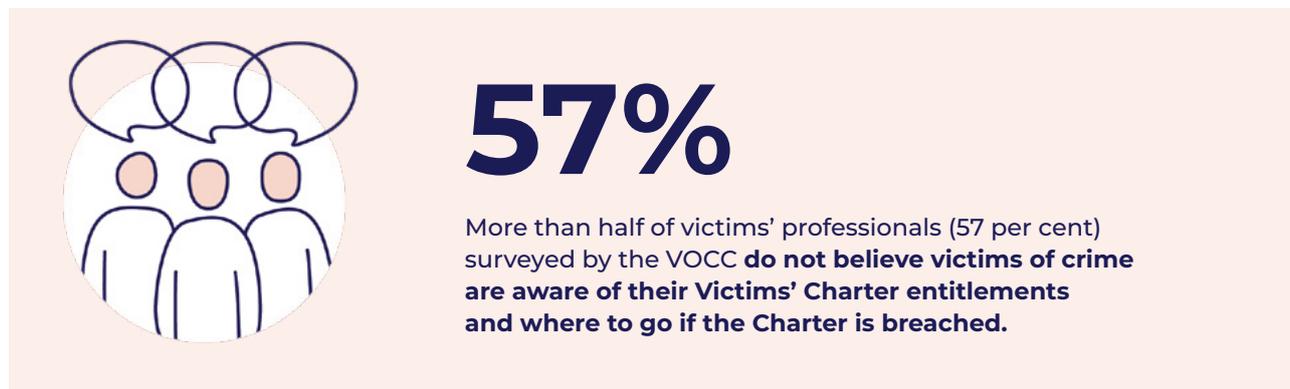
A CLC representative suggested victims are not even aware of the Victims' Charter, let alone their entitlement to be treated as a participant: 'I have never had a single person refer to the Victim's Charter; they've never been provided with information on the Charter by a police officer.'⁸⁷ This was confirmed by another CLC representative, who said: 'I have never had a client that was aware of the Victims' Charter, of their own accord. Victims don't know about the Victims' Charter and they don't know their rights.'⁸⁸

Another CLC representative felt that victims' lack of knowledge of the Victims' Charter was part of the overall lack of information provided to victims about the process:

This goes to the issue of information and the lack of information that victims receive. It's about police not providing victims with information, not complying with the Victims' Charter and, because victims don't necessarily know what their rights are, they don't even know what to ask or that they can ask. More capacity is needed by CLCs to do this background work for victims.⁸⁹

The Commissioner for LGBTIQ+ Communities noted that he was aware of a victim of assault who had no awareness of their rights as a victim of crime and was only able to seek assistance via social media and asking his community for help:

Victims who are LGBTIQ+ are not necessarily aware of their rights as a victim of crime. There is the example of a queer man, living with a disability, who was the victim of an assault. This victim could not navigate the complex system or locate the assistance and support he required. In the end the victim could only find the right assistance by taking to social media and asking his community. We need something more formal than this. This isn't fair or just.⁹⁰



As shown in **Figure 12** below, a majority of respondents to the VOCC's Victims' Professionals Survey did not believe victims of crime were aware of their entitlements under the Victims' Charter and where to go if the Victim's Charter was breached.

85 Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 12 – Court Network; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 22 – Community Legal Centres – Session 1; Consultation Meeting 23 – Community Legal Centres – Session 2.

86 Consultation Meeting 12 – Court Network.

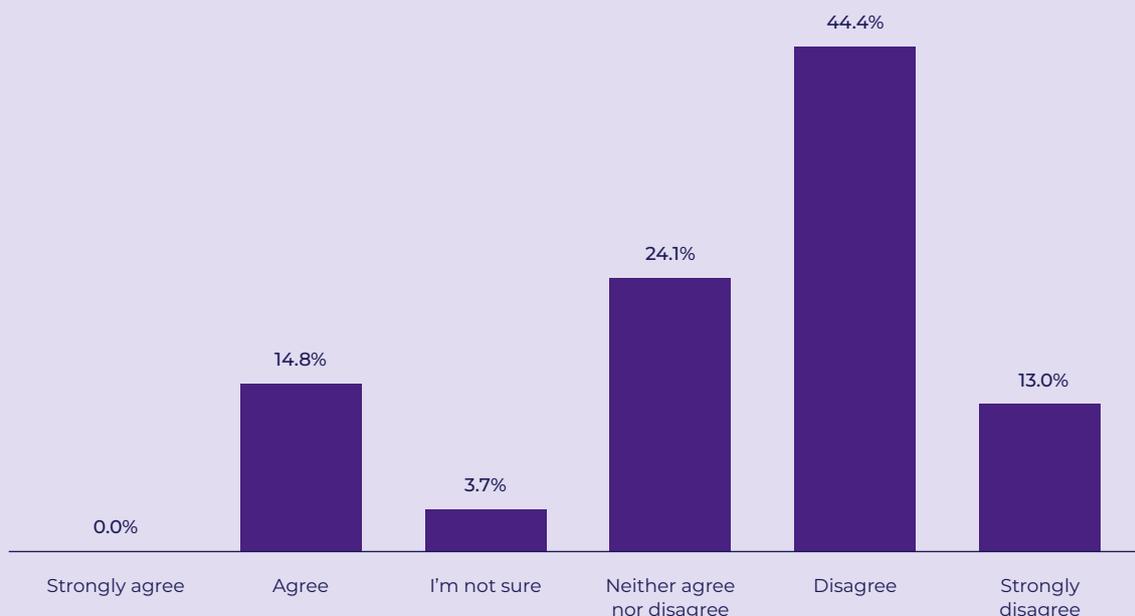
87 Consultation Meeting 23 – Community Legal Centres – Session 2.

88 Ibid.

89 Ibid.

90 Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities.

Figure 12: VOCC Victims' Professionals Survey: Are victims of crime aware of their entitlements under the Victims' Charter and where to go if the Victims' Charter is breached?



Victims' professionals surveyed by the VOCC were concerned about both victims and personnel in the broader justice system lacking knowledge of the Victims' Charter, and also about the Charter's effectiveness as a result:

[I] don't believe many victims are aware of the charter, nor are police.

Even our program doesn't automatically inform Victims of the charter.

It is great that there is a victims charter however if police, officers of the court and victims don't know about it, how can it be of any use?

I doubt most victims have heard of it, or most police members.

I don't think the Victims Charter is well known by support services, police or victims. A large part of my role is using the charter to hold police to account, with many police not acknowledging it's existence.

it only works if the victim is informed. it doesn't work for everyone

We provide the victims charter to every consumer but I don't think the average victim would be aware of it.

Other victims' professionals surveyed by the VOCC felt that the Victims' Charter 'lacks teeth' and that remedies for victims are ineffective, including the VOCC's complaints powers:

Effective how? If Police don't update on proceedings, victims can't make a complaint until the end of the process. The Charter doesn't actually do anything to correct victims individual experiences. The charter is not respected at all, victims who make contact with Charter staff to complain, say all they hear is what the Commissioner can't do and get told to go away and put the complaint in writing. Enforcing the Charter will mean getting your hands dirty and actually helping people.

I don't think it's well known or that effective to be honest.

The charter should be an effective process for victims however so far it isn't being used effectively in the area where I work.

I am unsure if this one bit of paper really effects outcomes of victims of crime. I think its overplayed and used as a tick box to be honest.

I also don't see many complaints change outcomes for victims.

Feels more like a broad statement and lacks any teeth if not followed

The Victims Charter is a wonderful document on paper, but I question if it is effectively put into practice, particularly with police processes.

It is great to have one, but the system needs to back it up.

If there was some kind of penalty for failing to inform victims of things all the way through a case

I would like to see it expanded to include the courts/court staff etc as i am finding this is where a lot of distress is coming from at this point in time.

Associate Professor Kerstin Braun reflected that without independent legal representation, victims have little chance of knowing their entitlements and having them enforced:

There are an abundance of provisions and different Acts and then we have the victims charters. Theoretically victims have a many rights but they don't always know where they are. There are so many different Acts and it's not just a one stop shop. A legal representative could say "look we can make a victim impact statement, but you can't include XYZ yet because then they will edit it or you can't include that because they might cross examine you. So be aware of that or you must be informed about this. I'm going to ring up and follow up on this for you."⁹¹

CLCs also suggested that victims' lack of awareness of their entitlements could be remedied by access to independent legal advice and assistance:

I assume that victims are also unaware that they can make a complaint under the Charter to the Commissioner. There may be a role that lawyers can play there, under a wrap-around service, where they can identify that a Charter principal hasn't been complied with and could help make a complaint, and follow up with the Commissioner.⁹²

Dr Robyn Holder also reflected on the lack of awareness of victims' rights within the broader community and victims' advocacy sector, pointing to a gap in training for non-legal advocates. Advocates might otherwise be able to advise victims of their rights and advocate on their behalf.⁹³

CLCs also suggested that even if victims were aware of their entitlements, there 'currently is no real enforceability within the Victims' Charter'.⁹⁴ This view was shared by Associate Professor Tyrone Kirchengast, who reflected that regardless of victims' awareness of rights or entitlements, they simply do not have the enforceability of offenders' rights:

...everyone is left confused by this ambiguous standing of victim rights that don't fit with conventional rights discourse. Where if you look at offender rights, they're always presented in the context of being substantive and enforceable. There aren't any rights for offenders that can't be enforced. They might be levels of enforcement, but they're all real and substantive rights. But victims have not shared in that history of rights development.⁹⁵

91 Consultation Meeting 1 – Associate Professor Kerstin Braun.

92 Consultation Meeting 22 – Community Legal Centres – Session 1.

93 Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

94 Consultation Meeting 22 – Community Legal Centres – Session 1.

95 Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

Overview of Chapter 7: Reporting and investigation

For many victims, reporting to police marks the beginning of their participation in the criminal justice system and the initial response of police can influence their willingness to participate.

The *Victims' Charter Act 2006* (Vic) (Victims' Charter) includes rights that span the reporting and investigation process, such as the right to be treated with courtesy, respect and dignity. Under the Victims' Charter, victims also have a right to be provided information at key points of the investigation.

Reporting

Victims told the Victims of Crime Commissioner (VOCC) they chose not to report to police for a variety of reasons, including because they did not feel safe talking to police, or they did not think they would be taken seriously.

Despite some victims having a positive experience of reporting a crime, the VOCC also heard from victims who had experienced a reporting process that lacked a sensitive or trauma-informed approach. Some victims were dismissed, dissuaded or prevented from reporting. Some victims told the VOCC that they did not feel believed by police members when reporting a crime and in some cases, police refused to take a statement.

Investigation

For those victims whose matter did proceed to investigation, many told the VOCC that they did not receive any, or enough, information to participate in the justice process, including information they are entitled to under the Victims' Charter.

Victims told the VOCC about:

- not receiving any contact at all after the initial report, continually calling Victoria Police and leaving messages, with calls left unreturned
- having to continually chase up actions, such as whether an intervention order had been served
- police failing to provide victims with key information like court dates
- not being given information about, or referrals to, relevant support services.

The VOCC heard that lack of information affected victims' opportunity to participate, including causing them to miss court dates.

Delays in investigations, compounded by a lack of communication and information, were a frequent source of frustration and distress for victims, affecting their ability to participate.

Victoria Police members told the VOCC about overwhelming workloads and being unable to meet Victims' Charter requirements due to resource constraints.

Stakeholders highlighted the need for police to have more resources, and better systems, to help victims participate during the investigation process.

Bail

The VOCC also heard that the bail process and decisions need to better acknowledge victim safety.



Chapter 7:
**Reporting and
investigation**



Introduction

This chapter outlines victims' experiences of participation during the police report and investigation stages.

Police are often victims' first contact with the justice system, and research suggests that how police treat victims is more important for victims' sense of procedural justice than how they are treated by other justice agencies or individuals.¹ As one victim interviewed by the Victims of Crime Commissioner (VOCC) said, police 'are the gatekeepers to justice'.²

For many victims, reporting to police marks the start of their participation in the criminal justice system and the initial response of police can influence their willingness to participate.³ In the case of crimes that may be cumulative, such as stalking and family violence, a positive reporting experience is also crucial to a victim's ongoing safety.

Participation at the police report and investigation stage includes victims' entitlements under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to:

- be advised of the progress of an investigation at reasonable intervals⁴
- be told the outcome of bail and any bail conditions that are intended to protect victims.⁵

Reporting to police

During the police reporting and investigatory stages, the Victims' Charter requires victims 'to be treated with courtesy, respect and dignity'.⁶ Further, Victoria Police is required to take into account, and be responsive to, the particular needs' of victims of crime.⁷ This includes needs relating to:

- race or indigenous background
- sex or gender identity
- cultural or linguistic diversity
- sexual orientation
- disability
- religion
- age.⁸

Victims' experiences

Victims who chose not to report

It is important to recognise that there are still barriers to victims participating at all in the justice system, with many victims choosing not to report crime. As outlined in **Chapter 5**, there are still a range of structural and systemic barriers to participation which impact on victims' willingness to report to police.

While the VOCC did not measure the percentage of victims who did or did not report to police, the VOCC did ask why victims had not reported to police where this was relevant to them.⁹ As shown in **Figure 13** below, respondents to the VOCC's Victims' Survey chose not to report to police for a variety of reasons. Close to 40 per cent (38 per cent of respondents) who did not report to police said they did not feel safe talking to police, or they thought they would not be taken seriously.

1 Jo-Anne Wemmers, 'Victims' Experiences in the Criminal Justice System and their Recovery from Crime' (2013) 19(3) *International Review of Victimology* 229.

2 Interview 9 – Survivor advocate.

3 See, eg, *Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report: Executive Summary and Parts I to II*. (Report, 2017) 194 <<https://nla.gov.au/nla.obj-2821501433>>

4 Information that would jeopardise an investigation can be withheld from victims: *Victims' Charter Act 2006* (Vic) s 8(1).

5 *Victims' Charter Act 2006* (Vic) s 10(1). A bail decision maker must consider any known view or likely view of an alleged victim of the offending on the grant of bail, the amount of bail or the conditions of bail: *Bail Act 1977* (Vic) s 3AAA(1)(j). Police generally represent the victims' concerns at the bail stage, although there is no legislative requirement for police to seek victims' views and present these to the bail decision maker.

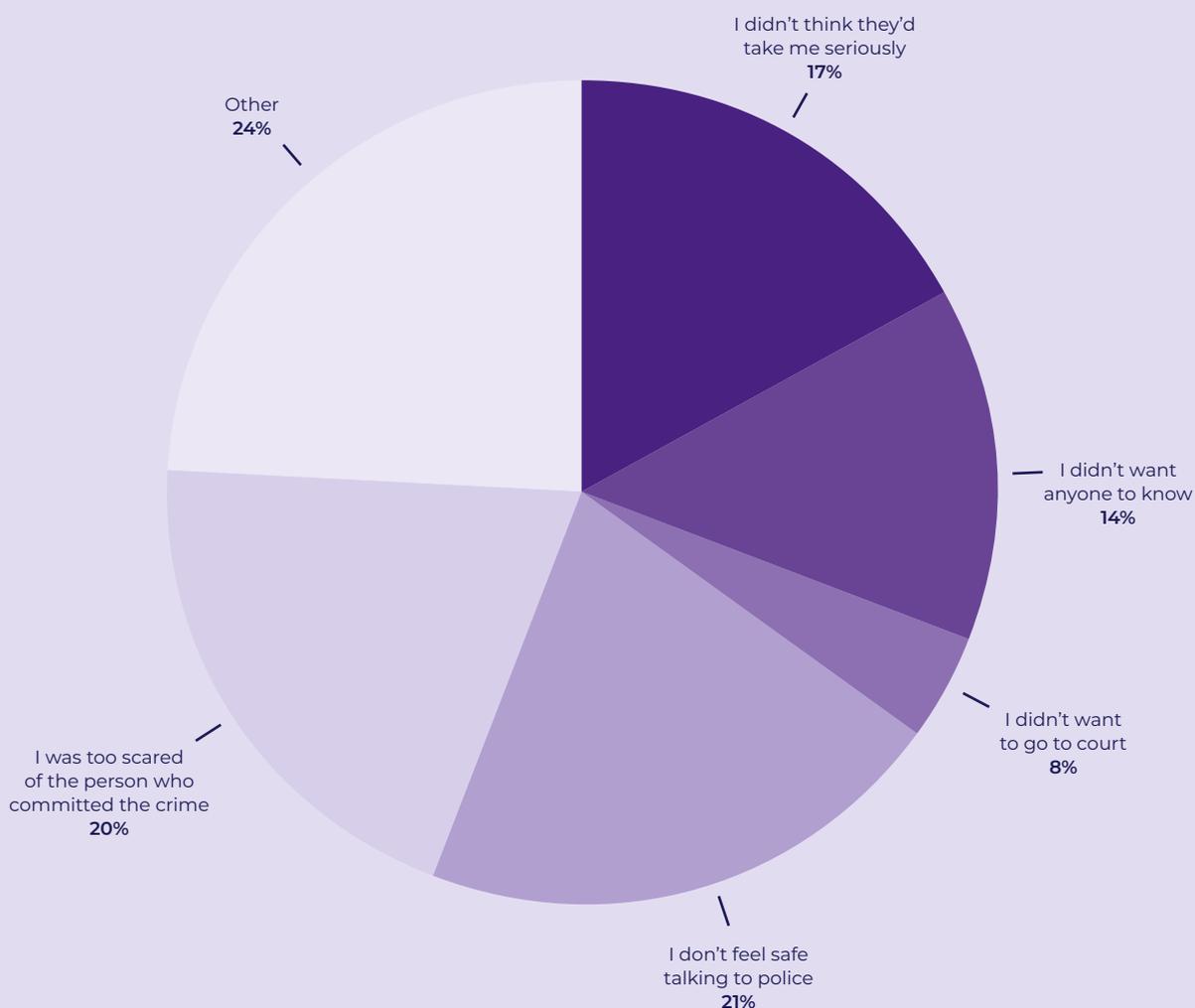
6 *Victims' Charter Act 2006* (Vic) s 6(1).

7 *Ibid* s 6(2).

8 *Victims' Charter Act 2006* (Vic) s 6(2)(g).

9 Sixty-eight out of 156 respondents to the VOCC's Victims' Survey answered the question: 'If you didn't tell the police, please tell us why.' Some victims who have been victims of more than once may have reported to police one or more times, as well as choosing not to report at other times.

Figure 13: VOCC Victims' Survey: If you didn't tell the police, please tell us why?



For those respondents who selected 'other', the main theme emerging was negative feelings towards the police and poor past experiences:



'Country towns Police repeatedly dismissed us'

'I did and I was made fun of, then gaslighted and sent home.'

'I tried to report but was dismissed despite ample evidence.'

'Police refused to take my statement.'

'Previous experiences that were unhelpful.'

'I didn't report further breaches as the police system is too time consuming, invalidating & retraumatising.'

– Victims' Survey respondents

One respondent to the Victims' Survey said that '[w]ith such a low rate of convictions for rapists, it seems the justice system supports the perpetrator not the victim/survivor'.

Another theme was to do with childhood victimisation, with victims embarrassed, unsure, unaware, and scared to report:



'I was a child.'

'I was young. It was an embarrassment, and I was not even prepared to tell my parents.'

'I was a child and didn't know that what was happening was against the law.'

'It should be noted that it took nearly 40 years to muster up the courage to report it to anyone.'

– Victims' Survey respondents

Positive experiences

Some victims described positive experiences of reporting to police, including being treated with empathy, care and professionalism.¹⁰

One victim recalled that after their loved one had died, 'the informant came and sat with us. I thought we was good. He was terrific really. I don't know how they go on and on. You know, listening to people that are dropped into this dark hole of grief and turmoil.'¹¹

Some victims described positive experiences of reporting to police, including being treated with empathy, care and professionalism.

Some respondents to the VOCC's Victims' Survey said that feeling heard, being believed and being treated respectfully resulted in positive reporting experiences:



'Reporting worked for me as I was believed & taken seriously. In hindsight I believe this was helped though because I reported as soon as I could, was attacked by strangers & had physical injuries. The investigation went no where initially but was re-opened at a later stage when new evidence was found. Both detectives (initial & recent) were respectful, and I believe tried to minimise trauma....'

– Victims' Survey respondent

A number of victims praised responses by specialist police such as the Sexual Offences and Child Abuse Investigation Team (SOCIT). Victims of sexual offences felt particularly safe when they felt believed and that the crime was not minimised, as noted by this respondent to the Victims' Survey: 'The staff at SOCIT treated me well. They didn't make me feel like it was my fault or that it was no big deal.'

Another victim interviewed by the VOCC described SOCIT as caring and engaged: '[SOCIT] were just really caring on the phone and interested. Not like when you go to a police station where they're just dealing with your car break-ins and they just want to 'tick and flick'. So, the initial part was good.'¹² Explaining further, this victim reflected on the empathetic response by SOCIT members:



'It was empathy and the other thing was they were across everything. Like they knew everything. They were good people and age appropriate and you know, not crusty, not browbeaten, not jaded. And you could actually give them a hug. They were human beings'¹³

¹⁰ Interview 16 – Victim of crime; Interview 5 – Victim of crime; Interview 6 – Victim of crime.

¹¹ Interview 5 – Victim of crime.

¹² Interview 6 – Victim of crime.

¹³ Ibid.

Another victim interviewed by the VOCC spoke about their positive dealings with the police informant in a child sexual abuse case: 'My girls would not have got through the investigation without [the police informant]. My girls were immediately at ease with his empathy and professionalism.'¹⁴

Reporting process was not trauma-informed

While some victims had a positive reporting experience, the VOCC also heard from victims for whom the reporting process was not trauma-informed or sensitive.

For some victims, the physical environment in which they reported the crime was not conducive to a victim-centred response. For example, a Berry Street Y-Change Lived Experience Consultant recounted police trying to interview them about a sexual assault at their home while they had a friend visiting:

'It was hard when the police came to my house and I had a friend over and they started to ask me all these questions and I didn't want to talk to the police in front of my friend. Also it was expected that with the friends I hang around with that you don't talk with the police. My experience of sexual assault had only just happened and it was all those things at once and I didn't want to talk to them'.¹⁵

One Victims' Survey respondent described having to initially disclose in the reception area of a police station and how this had caused them further harm and made them reluctant to report future crime:

'I had also been required to "state my case" in front of multiple officers at the reception of the police station (a mere hour after being assaulted) before they even agreed to take my statement. Such negative experiences would prevent me from even bothering to report a crime in future.'

– Victims' Survey respondent

Another Victims' Survey respondent noted that the physical environment in which they reported their crime was unsuitable:

'Both my cases were historic reportings. Reporting them was the first time I had been into a police station aside from a school excursion as a child. My initial statement was taken in an interview room that criminals are interviewed in. It was dingy, no windows and an awful place.'

– Victims' Survey respondent

Some victims told the VOCC about being rushed through the reporting process without adequate support or empathy:

'I was very, very traumatized. And the police said [on the phone] "OK, So what did he do?" ... and then "Oh, you need to come in and make a statement." And I'm aware of that but they didn't offer any supports or ease you into or no trauma informed approach. I absolutely went into meltdown and started having suicidal thoughts again. It was dreadful. So I basically got re traumatized. It's like my lips are moving but nothing would come out. I always feel like I'm choking when I'm put on the spot like that. I feel like I can't speak.'¹⁶

¹⁴ Interview 16 – Victim of crime.

¹⁵ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹⁶ Interview 10 – Victim of family violence.

Similarly, a respondent to the Victims' Survey stated they felt rushed through the process, and were unprepared for the 'callous' language used in the police statement:

'Awkwardness being rushed through making my statement about things that i'd never told anybody. being shocked at how collous the official police language was in the statement.'

– Victims' Survey respondent

One victim interviewed by the VOCC emphasised that it is important for police to have the right qualities to work with victims: 'the role is investigation, but the role is also about people ... If informants cannot work with people, if they don't have the interpersonal skills, then they shouldn't do it.'¹⁷

Other respondents to the Victims' Survey spoke about receiving police responses that were belittling, condescending, dismissive and unsupportive:

'I had an appointment with a policewoman, to talk about my options as a victim of sexual assault. I turned up at the station for the appointment and was told that the policewoman was out on a job so I had to wait to see a young male constable who I found was belittling, condescending and not at all helpful with providing me with information on how to get a PSIO and the process.'

'The Uniformed police and my local police station. I find them to be very dismissive, condescending, unsupportive....'

– Victims' Survey respondents

The VOCC heard about victims who had been subjected to inappropriate comments from police members when reporting crime. One respondent to the Victims' Survey stated that when reporting to police, 'the first question they asked was if I was drunk'. Another Victims' Survey respondent who had been raped said the police office responded with 'what do you expect if you go on a dating service'.

For some respondents to the Victims' Survey, they found the format and approach for making a report arduous:

'What also did not work for me was the arduous process of making my statements to the police. Victims need to sit through lengthy interviews waiting for police to type your narrative, checking grammar and spelling, interrupting the flow of the victim's commentary. I believe a clinical typed statement does not have the same impact as a video and audio recording. Non verbal communication apparent in a video recording would be a powerful piece of evidence.'

– Victims' Survey respondent

Another Victims' Survey respondent noted that they had to provide their statement over two different sessions which involved a 30-minute drive from their home to the station in a heightened state of anxiety, exacerbating their distress and anxiety.

Notably, several victims found that alternative reporting options were helpful. For example, one respondent to the Victims' Survey advised:



'Anonymously reporting via the now-defunded SARA reporting tool (previously overseen by SECASA) was positive. This helped give me the confidence and support (via a counsellor who checked up on me after my anonymous report) to eventually report officially to the police. It also gave me some comfort that it was officially recorded what the perpetrator had done and what his characteristics were (age, gender, locality etc)...'

– Victims' Survey respondent

Reporting to police is not accessible for all victims

As outlined in detail in **Chapter 5**, the justice system is not safe or accessible for all victims to participate in. In relation to reporting to police, the VOCC heard from victims of crime with disability who discussed additional barriers and challenges to reporting crime or attending police stations. For example, some victims noted that not all people can physically attend police stations, whether due to disability or the nature of their victimisation:



*'Even police statements and police reports, you have to go into the station and there are many people who can't go, who are disabled or are being stalked and are too scared to go in.'*¹⁸

The VOCC heard from victims of crime who had experienced discrimination by police because of their disability, including when attempting to make a police report. As one Victim Survivors' Advisory Council member noted:



*'We are discriminated by the police and told we are too disabled or mentally ill to make reports. My disability advocate told me to get a letter from my GP and psychiatrist to say I have the level of ability to be a credible sound witness to give evidence about crimes against me and others.'*¹⁹

Victims living with disability discussed how negative past experiences involving police, both in the context of reporting crime and in general, have led to them feeling unable to report crime. One member of the Women with Disabilities Victoria (WWDV) Experts by Experience Advocacy Team advised the VOCC that after they acquired a brain injury, they 'would regularly be stopped by police' and asked what they were doing.²⁰ This, along with negative experiences of reporting crime, contributed to their loss of confidence in police:



*'My past very poor experiences, have led me to not feel safe to report anything today to police. E.g., not being believed. Facing ableism and judgement. From my work with other disabled people, especially women, I find this to be a common situation.'*²¹

¹⁸ Interview 1 – Victim of crime.

¹⁹ Consultation Meeting 11 – Victim Survivors' Advisory Council.

²⁰ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

²¹ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

Unfortunately, this member of the WWDV Experts by Experience Advocacy Team faced further barriers as a victim of crime when a perpetrator breached their intervention order:

*'After the IVO was served, my perpetrator broke into my rented house/property on 3 separate occasions to steal and damage my belongings. The first time, I tried to report this, but ended up withdrawing because I felt that the police were not listening. I chose not to report the other 2 times.'*²²

Another member of the WWDV Experts by Experience Advocacy Team spoke about their experience of reporting crime as someone living with an invisible disability:

*'I have an invisible disability. I have autism. While I've had limited interaction with the justice system, I have tried to take out an intervention order and found this experience complex, slow, overwhelming and felt unsupported. There were too many steps involved. Although I presented as 'held together' because my communications and body language didn't indicate distress, I didn't get very far in the process and I felt really unsafe.'*²³

This same member discussed the unsuitability of the police station for those with sensory challenges:

*'The sensory challenges of being in that environment – a police station – all combined. I couldn't navigate it. All these things impact on ability to report and start a process. I probably didn't "look" like a victim of crime because of my body language and communications.'*²⁴

Another member of the WWDV Experts by Experience Advocacy Team told the VOCC that because disability can be invisible, it is important that police ask what someone's needs might be:

*'It's not always obvious that someone has a disability. It needs to be a question asked rather than an assumption made as there are less visible components to disability. It's important to know that we will be supported during the process to improve the access.'*²⁵

Being dismissed, dissuaded or prevented from reporting

Several respondents to the VOCC's Victims' Survey felt that police were dismissive of their experiences or that they were discouraged from reporting crime, with one respondent to the Victims' Survey stating the process of reporting the crime was 'a waste of time and energy'. Survey respondents advised the VOCC that:

'Police dismissive, no appropriate action taken'
'Vic Pol – inadequate on so many levels. Dismissive, slow'
'the attitude of the police and the lack of support by the police'
'The police were very dismissive of us. Beyond writing a basic report, no other help or assistance was provided'

– Victims' Survey respondents

22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.

A number of respondents to the Victims' Survey stated that they did not feel believed by police members when reporting crime:

'The Sexual Offences Squad made it clear that they didn't believe me.'
'Not being believed, having my trauma turned around on to me'
'Was not believed, was treated poorly from police, on the night'
'Police - disgusting behaviour, siding with the perpetrator'
'Being taken seriously would be a great start. to have officers dismiss you as though you are insane gets tiring.'
'Police. They didn't believe me. Did not attend twice after calling 000. Did not investigate serious crimes. Belittled me. Disrespected me. Did not follow up at all.'

– Victims' Survey respondents

One Victims' Survey respondent advised that police told them '[m]aybe you imagined it' and refused to investigate the matter further.

One victim interviewed by the VOCC stated: 'I can't tell you how often I have been turned away, dismissed, ignored, ridiculed, embarrassed in my dealings with police over the years. I've been laughed at, even by a group of police.'²⁶

Di McDonald, a victim of stalking, told the VOCC that she had experienced barriers reporting to police because she 'never said the words that police look for' and that while she would be upset when reporting, the perpetrator would 'go in cool, calm and collected and his lies are believable'.²⁷

One Victims' Survey respondent who was a victim of a sexual offences said they felt that the police officer 'was cynical and dismissive' of their experiences. Another Victims' Survey respondent felt dismissed when they were advised that police were unable to assist in an assault matter, despite the offender being known to police:

'I was told by a police officer that "the offender is well known to us, and is notorious for doing that kind of thing (assaulting strangers), so unfortunately there is nothing we can do." I remain incredulous at this response, as I would have presumed that recidivist, violent offenders would attract greater attention amongst law enforcement. I... felt extremely unsupported by Victoria Police.'

– Victims' Survey respondent

Another Victims' Survey respondent felt they had been persuaded not to report because the crime was historical and was told there would be a low prospect of prosecution:

'I was able to speak to a police officer who informed me that I need a witness and remember every detail of the sexual abuse that happened more than 10 years ago... And even then I would have a very low chance of having my abuser actually prosecuted.'

– Victims' Survey respondent

²⁶ Interview 10 – Victim of family violence.

²⁷ Interview 2 – Di McDonald – victim of stalking.

The VOCC was told by some Victims' Survey respondents of police refusing to take statements or dissuading victims to pursue a complaint:



'discouraged from reporting because our perpetrator was a cop'

'After Police had refused to take my statement about the perpetrator I applied for a PSIO for protection of myself and four of my grand-daughters... This whole process has totally devastated my mental and physical health due to Police not taking my statement...'

'The first thing the police officer at...SOCLIT said to me when I walked in the room to make a statement was "we can't do anything". So, she had already decided, before I even made my statement, that police were unable to help. After she said this, I felt that by proceeding with making the statement, I must be wasting everyone's time. Police shouldn't have said to me "we can't do anything" before I had even made my statement.'²⁸

– Victims' Survey respondents and victim interviewee

One Victims' Survey respondent recalled police attending the home in response to a triple zero call 'but not conducting a proper investigation into what was happening. Just coming and asking if everyone's ok and leaving.'

One victim interviewed by the VOCC recalled disclosing sexual abuse to police but police not following up this disclosure:



'While the police were at the residence, I disclosed to them ... I specifically said to the female police officer "I have been the victim of sexual abuse". I clearly remember that the response of the officer was "I know how hard it is". In hindsight, this was a condescending and unhelpful response. This police officer did not offer to help me make a statement about what I disclosed to her, nor did she tell me anything about how the police could help me.'²⁹

Police lack training and diversity

The VOCC heard from victims who, due to their negative experiences of reporting crime to Victoria Police, felt that further training is required, particularly in relation to sexual offences, family violence and stalking:



'The key area to focus on would be adequate training, support and recruitment of specialised police and detectives to respond to sexual assault and DV/Family violence offences.'

'[p]olice...no training or understanding in family violence and narcissistic behavior'

'There is an urgent need for greater trauma informed training across police.'

– Victims' Survey respondents

²⁸ Interview 14 – Victim of crime.

²⁹ Ibid.

Similarly, a victim who was interviewed by the VOCC noted that appropriate trauma-informed training is essential for informants who engage with victims.³⁰

A member of the WWDV Experts by Experience Advocacy Team advised that further training is needed in relation to disability:

But even if I said I was autistic, I'm not sure police or a court would know what to do. I think we need more training, specialist support officers, advocates to help unpack this and consider people's needs.³¹

A number of victims consulted by the VOCC had acted as consultants to police to assist with police training. These victims felt that having those with lived-experience involved in police training was an important step in enhancing trauma-informed police responses. For example, a member of the Victim Survivors' Advisory Council, who had been asked by Victoria Police to provide training, told the VOCC that it 'facilitates true participation in the long run.'³² However, it was suggested such initiatives were not always sustained:

I was involved in a program at the police academy training police about disability but because of COVID, it was shut down. I was going to visit once a month – telling people what it's like to live with a disability. I was making them aware of disability issues. Education like, "you don't need to yell at me, I can hear" and teaching people not to touch guide dogs while they're working.³³

Another member of the WWDV Experts by Experience Advocacy Team advised that better diversity and representation of people with disabilities within the police force would help victims with disabilities to feel confident to report: 'If I knew there was a police officer with a disability, that would have made me feel safe to report. Why not have a police officer with autism? With ADHD?'³⁴

Reluctance to report future crime

Respondents to the VOCC's Victims' Survey were asked whether they would report to police if they were a victim of crime again. As seen in **Figure 14** below, more than half of the respondents said they would not (25 per cent) or that were unsure if they would report again (27 per cent), and only 39 per cent said that they would.

³⁰ Interview 10 – Victim of family violence.

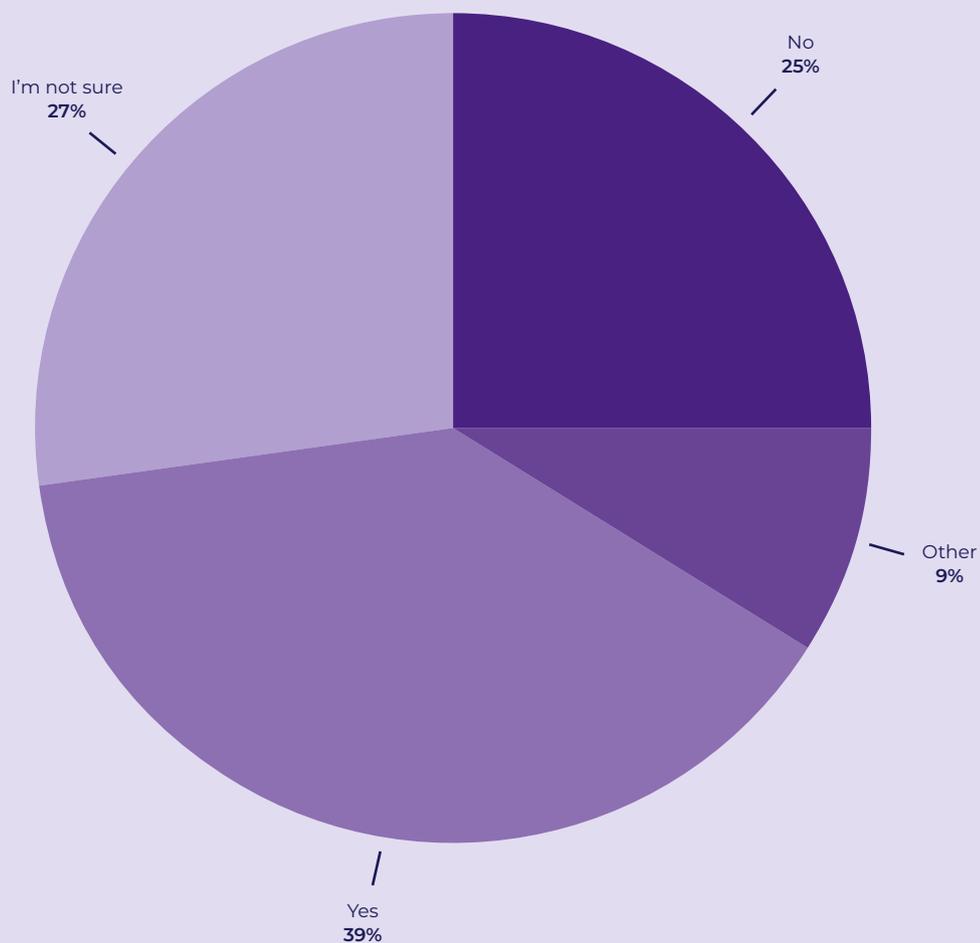
³¹ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³² Consultation Meeting 11 – Victim Survivors' Advisory Council.

³³ Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

³⁴ Ibid.

Figure 14: VOCC Victims' Survey: If you were a victim of crime again, would you report it to police?



Respondents who identified as having a culturally or linguistically diverse background or a disability were the cohorts with the highest 'No' response rate – almost 40 per cent each.

Stakeholder views

Stakeholders told the VOCC about the critical role that victims play in reporting crime:

It should be acknowledged that if victims of crime did not come forward to give evidence, which for many victims is basically an act of public service, then there would be no criminal justice system. So I believe victims of crime are essential and central to the justice system. They are an integral part of that system.³⁵

³⁵ Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

However, many of the structural and systemic barriers to participation discussed in detail in **Chapter 5** were raised by stakeholders as also being barriers to victims reporting crime. For example, the VOCC was told that over-policing of Aboriginal communities impacts on crime reporting:

For Aboriginal victims of crime, most don't feel safe reporting a crime to police because of over-policing of Aboriginal communities and violence perpetrated on them by the system. Many Aboriginal victims of crime have had really negative interactions with police in the context of their own offending. This means that they may not see themselves as 'worthy' victims or as eligible for support.³⁶

The Aboriginal Justice Caucus (AJC) told the VOCC that Aboriginal people experience a mistrust of the system, remain reluctant to report crime and that 'Racism will be the first barrier for Aboriginal people who report a crime.'³⁷ The AJC also said that 'We need to educate our mob to use their voices' but that this is an 'an arduous and traumatising process with little outcome' and that ultimately agencies 'need to work harder at responding to Aboriginal people'.³⁸ The AJC suggested culturally safe approaches for reporting crime might address some of the existing barriers to reporting:

Alternative reporting is also not currently available through an Aboriginal Community-Controlled Organisation (ACCO). It could be helpful to have ACCO as a site to report and then for the ACCO to liaise with Victoria Police and have a plain clothed police member attend the ACCO and speak with the victim, allowing them to report a crime in a safe space.³⁹

Community Legal Centre (CLC) representatives told the VOCC that victims 'frequently can't get beyond the front desk of a police station to report their injury or report evidence of a crime'⁴⁰ and that some victims are dismissed by police because they are not viewed as 'credible':

Mental health and drug addiction are barriers. Often the client is met with scepticism. We've had clients who have actually been laughed at by police, and police member who have suggested they're not credible because there were drugs involved, or it's been suggested that they had taken something – 'You've imagined it'. This is particularly the case in sexual assault matters. Often in sexual assault matters there's more scepticism than in other suggested offences, particularly when the victim may have mental health concerns or if drugs are involved.⁴¹

Echoing what victims told the VOCC about being dismissed or dissuaded from reporting, CLC representatives told the VOCC that:

Victims are experiencing barriers from the beginning with police where women who have experienced family violence are being buffered away from the system from making their complaint. Similarly, women who have experienced breaches of an IVO are also being buffered away by police...⁴²

The Victorian Commissioner for LGBTIQ+ Communities discussed the legacy of LGBTIQ+ treatment by police and its current impact on reporting:

There was a spate of crimes late last year which targeted gay men. These victims could not report the crime to the police because of shame around where the crime occurred, such as whilst holding a sex party or engaging sex workers. What communities have been seeking for a long time is an acknowledgement that as a system 'we messed up'. We need to address that legacy and make a change in how we proceed.⁴³

The VOCC was advised of barriers to reporting for both older and younger Victorians. The Commission for Children and Young People told the VOCC that police can be unsympathetic to young people and that children have experienced not being believed by police.⁴⁴ The VOCC was also told that:

In the specific context of children in out of home care or youth justice, it is so intimidating when police present in full uniform when they come to take a statement. They look the same as when they are responding to children as offenders. So plain clothing is simple and important when you take a children's statement.⁴⁵

The Commissioner for Senior Victorians told the VOCC that there is 'a reluctance of older people to buy into the justice system', identifying the following barriers to older people reporting crime:⁴⁶

- police not taking reports seriously
- preconceptions about the justice system
- the nature of victimisation, which is that crime is often perpetrated by someone known to the older person
- traditional views in relation to gender roles
- systemic bias alongside other intersectional barriers, such as being a member of a culturally and linguistically diverse community, affecting access to the justice system.

³⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

³⁷ Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Consultation Meeting 22 – Community Legal Centres – Session 1.

⁴¹ Consultation Meeting 23 – Community Legal Centres – Session 2.

⁴² Consultation Meeting 22 – Community Legal Centres – Session 1.

⁴³ Consultation Meeting 13 – Commissioner for LGBTIQ+ Communities.

⁴⁴ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

⁴⁵ Ibid.

⁴⁶ Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

Victims' professionals surveyed by the VOCC were asked 'In your experience assisting victims of crime, what do you think is the most frequent reason why some victims do not report to police?' The response that attracted the greatest response rate was 'other' (40 per cent), followed by 'they don't think their report will be taken seriously' (24 per cent). An analysis of 'other' responses suggests the following are disincentives for victims reporting crime:

- delays in the criminal justice system having an impact on trauma recovery
- low likelihood of conviction and lack of trust in the justice system
- perceived leniency in sentencing
- fear the charges will be withdrawn after months of working with police
- the process causes secondary victimisation.

Victims' professionals surveyed by the VOCC highlighted a lack of trauma-informed and culturally sensitive practice, including victims feeling dismissed by police or feeling judged for past interactions with police (whether as an accused or a victim of crime), as noted by these respondents:

Victims can feel scared to report to police based on negative experiences with police in the past, particularly when there has been a history of mistreatment and distrust in police for Aboriginal and Torres Strait Islander people.

Victims can feel like it's not worth reporting to police and feel unsafe due to not being believed, being doubted, experiencing victim blaming or not having their report progress past investigation/prosecution stage which then places them at greater risk.

Victims can feel hesitant to report to police due to the requirements for evidence – not having the physical evidence to "prove" what the person is reporting

Victims sometimes call to report, tell a bit about their story, are told they will get a call back, only to not get a call back. When they call back, they are told that they can't find any notes of their initial complaint and ask the victim to "tell me a bit about your story" all over again.

My client's overwhelmingly report feeling dismissed by police. Many do not wish to make formal complaints because in their word "I still need police for protection", they are worried a complaint will make it harder for them to receive help next time. This issue is compounded in rural and regional communities where police all know each other and the community.

Victims can feel unsafe reporting to police if they have been misidentified as the predominant aggressor in a family violence matter.

Our clients (victims of sexual assault) report highly variable experiences with SOCIT – some very good, but not uncommonly feel unsafe, trivialised, treated with skepticism.

Victoria Police members told the VOCC that 'the way we manage victims when they come in to report is part of the participation process'⁴⁷ and noted positive reforms and improvements to reporting options for victims, including:

- purpose-built facilities for SOCITs
- use of intermediaries and Independent Third Persons
- alternative reporting options for sexual offences (e.g. through Centres Against Sexual Assault)
- online liaison with victims to build rapport
- engaging victims with relevant supports (e.g. housing) to encourage reporting.⁴⁸

As a result, the VOCC was told by police that hesitancy to report is 'more around being in a safe place where they are ready to report rather than a delay because of lack of confidence in police'.⁴⁹

Victoria Police members also spoke about trying to improve the confidence of certain priority groups to report to police:

Unbeknown to us, sometimes our policies and procedures may be discriminatory towards some priority groups, or there an incident occurs in a particular area which reduces the trust and confidence in police and that's where we use our portfolio reference groups, where we have key stakeholders from various priority communities where we discuss higher level issues that may occur ... We undertake stakeholder engagement to break down barriers and assist people to come forward and report.⁵⁰

47 Consultation Meeting 17 – Victoria Police – Session 1.

48 Consultation Meeting 17 – Victoria Police – Session 1.

49 Ibid.

50 Ibid.

Some Victoria Police members were sceptical about the benefits of expanding alternative reporting mechanisms, such as online reporting, identifying concerns around:

- delays in reports coming to the attention of police if submitted online
- police not being able to provide immediate support
- evidence being lost in the aftermath of sexual assault.

Investigation

The need for victims to be provided with information about the criminal justice system, including information about the progress of an investigation, has been long established.⁵¹ Victims' participation is reliant on receiving the right information at the right time and research has consistently found that 'one of the greatest needs for victims throughout their justice system experience is to be provided with timely, accessible and accurate information'.⁵²

Under the Victims' Charter, victims are entitled to be advised by police of the progress of an investigation at reasonable intervals.⁵³

Victims' experiences

Positive experiences of participation

Some victims told the VOCC about positive experiences of participation during the investigation process. One victim interviewed by the VOCC spoke about the police informant being available 'any time'⁵⁴ A similar response was provided by this respondent to the Victims' Survey:



'What worked well was having the one police officer from the cold case division as a contact person. This officer was caring, knowledgeable and available and was my support and resource person throughout the process.'

– Victims' Survey respondent

Another victim interviewed by the VOCC referred to the police informant as an 'angel on earth', stating 'We had a great police officer, but I've come to see that we were lucky. It is very, very rare.'⁵⁵

One victim, who had previously had unresponsive and uncommunicative officers spoke about the positive changes that occurred once their case was transferred:



*'But then two wonderful coppers came to my rescue. That's the only way to describe it. One came in and essentially said "You've been treated really badly I intend to set this straight I will look after you now" and she is true to her word. Her and another cop who was just wonderful ... He was just the most empathetic man because what you're looking for is fucking empathy. He was absolutely there until the files were passed to OPP. Just the continuity of it was sublime. Always looked after.'*⁵⁶

51 Rhiannon Davies and Lorana Bartels, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia' (2020) 9(4) *Laws* 1, 2.

52 Rhiannon Davies and Lorana Bartels, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia' (2020) 9(4) *Laws* 2. See also Haley Clark, 'What Is the Justice System Willing to Offer?' *Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs* (2010) 85 *Family Matters* 28, 31.

53 Information that would jeopardise an investigation can be withheld from victims: *Victims' Charter Act 2006* (Vic) s 8(1).

54 Interview 5 – Victim of crime.

55 Interview 12 – Victim of crime.

56 Interview 6 – Victim of crime.

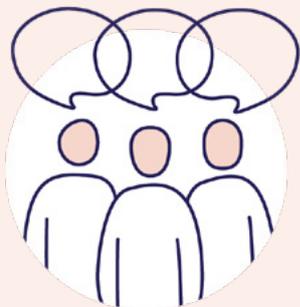
From that point on, this victim felt they were updated appropriately but they did reflect that more frequent updates would have been appreciated:



'My informants were great at bringing me up to speed – I mean they don't tell you who they're interviewing – but you know they would come back to you on occasion with little follow up questions and context stuff. That was always really good. There are long periods of just radio silence, yes. And you do wonder what's going on? Have I been forgotten? Are people pursuing this? So maybe yes, more updates might be useful to people. Not like to call me every week, but to call me every few months'⁵⁷

Not getting sufficient information

While some victims recounted positive experiences, most victims who responded to the VOCC's Victims' Survey said they did not receive any, or enough, information to participate in the justice process. Close to 70 per cent of victims (68%) surveyed stated they either did not get any useful information (33 per cent), or not enough information (35 per cent), from police to participate.

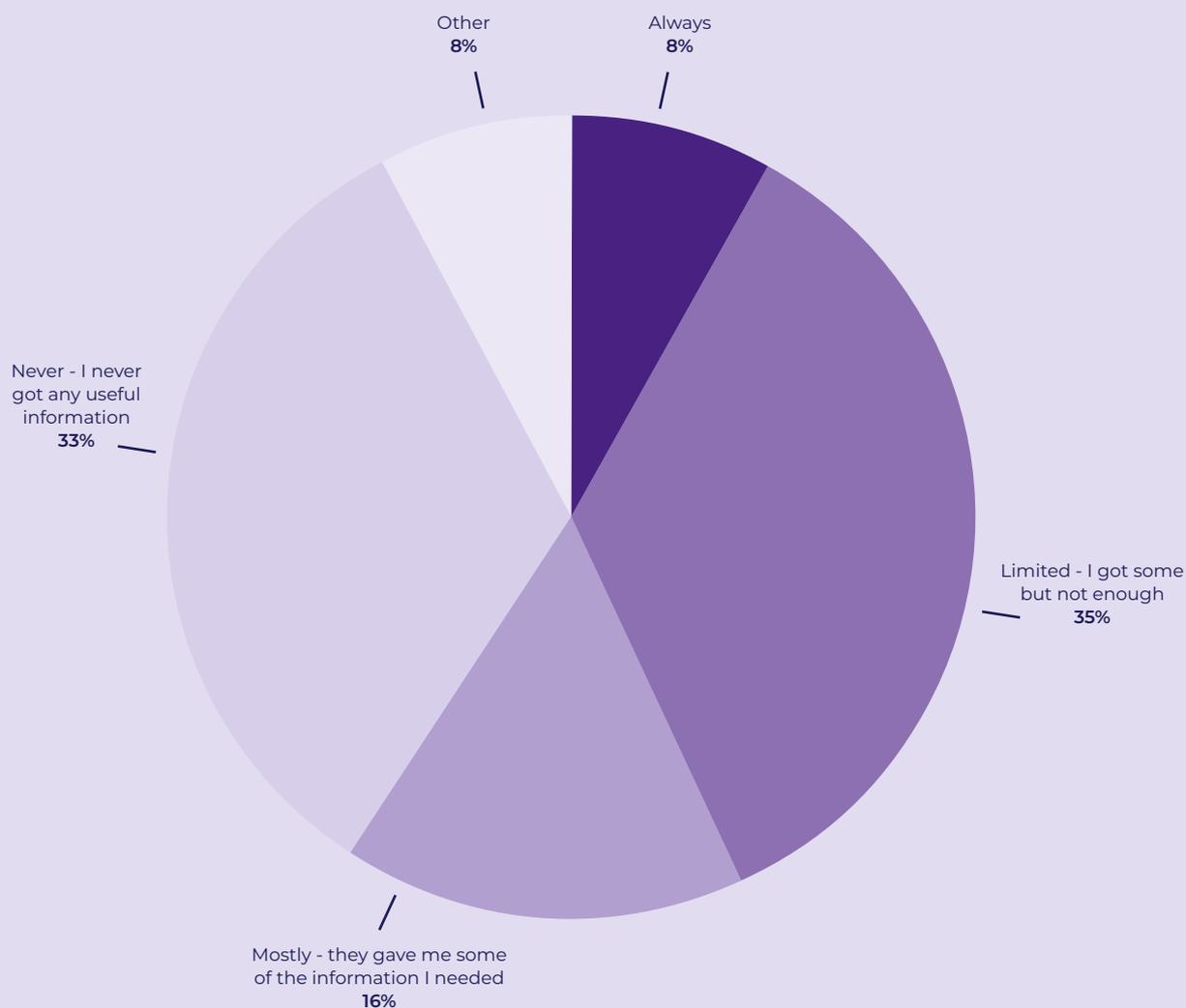


68%

Close to 70 per cent (68%) of victims surveyed **stated that they either did not get any useful information (33 per cent), or not enough information (35 per cent), from police to participate.**

⁵⁷ Ibid.

Figure 15: VOCC Victims' Survey: If you went to the police, did they give you enough information to participate in the process?



Respondents to the Victims' Survey highlighted several key issues with their participation at the police investigation stage, including:

- not receiving any contact at all after the initial report
- continually calling Victoria Police and leaving messages, with calls left unreturned
- having to continually chase up actions, such as whether an intervention order had been served
- police failing to provide victims with key information such as court dates
- lack of contact from police without prompting by the victim or their support worker.

Some respondents to the Victims' Survey told the VOCC about receiving no follow-up from police after making a report:

'They could of [kept] us up to date about what was happing with the case but once we made the report we heard nothing.'

'There was no follow up by police at all. The only way was to call every six weeks and they had no one assigned to the case. There was no offer of anything from the Police as stated no checking in with the victim ... The police after the initial statement interview were never heard from again.'

'My son was severely assaulted in the city...and he has not had contact nor was given any follow up call.'

– Victims' Survey respondents

Another Victims' Survey respondent spoke about calling police for a year to get updates, to no avail:

'There was no response at all. I was calling the Police every six weeks for 12 months and was always told the CI was away and would return the call. This never eventuated after the police officer who changed stations left. The information I did have about the crime was not taken on board and was very disturbing to think this is what the officers are being paid for. The real sad part was this affected me & I gave them vital information and I do know this was pushed aside due to no response.'

– Victims' Survey respondent

One Victims' Survey respondent advised the VOCC that over a two-year period, they only received one communication from the appointed police officer:

'I am supported by a VAP worker who has kept me up to date regarding court. Matter still before the court & not finalised 2 years later... in this 2 years I have had ONE phone call from the police informant who called me after my VAP worker to let me know something the VAP worker had already told me ... making me think that the VAP worker prompted this call.'

– Victims' Survey respondent

Another Victims' Survey respondent explained that the police officer appeared to alternate between contacting her and the deceased's family members, from whom she was estranged:

'The Detective in charge sometimes communicated with me, (the partner of the homicide victim) and sometimes with the step sister and family. As we were [e]stranged, this was very difficult.'

– Victims' Survey respondent

Victims interviewed by the VOCC also spoke about communication failures, such as police not returning phone calls. For example, one victim wanted to provide further information after giving their statement, but police were unresponsive:

*'as you go away, you remember other things and you think "well, if that's useful..." so I rang [the police]. And I never got a reply ... Essentially it would have been just a 5 minute phone call.'*⁵⁸

Ingrid Irwin told the VOCC that victims should get monthly updates 'as opposed to chasing the police, which currently happens now. This should be part of police's KPIs to keep victims up to date.'⁵⁹

A victim representative of the Victims of Crime Consultative Committee told the VOCC the investigation process felt 'tick and flick' and they didn't feel like a participant because they were having to continually chase police:

*'It was a tick and flick process. I never felt like a participant...I wanted to be informed. We made the initial approach to the police, then we were continually following police up to lay a charge. Once charges were laid no one told us what was going on. Police informants would advise us not to attend court, stating nothing would happen, and then something would happen, and we would miss it. Being kept up to date, an opportunity to say how we felt about certain things, these are all really important ways to show that people are participants in that sphere.'*⁶⁰

A member of the Victim Survivors' Advisory Council (VSAC) told the VOCC that whether a victim is updated or not throughout the investigation process is extremely variable:

*'I feel like it depends on who you get and whether or not the officer is having a good day. I have experienced getting a good officer who is supportive, caring and conscientious, but my neighbours who approached the same officer about the same matter have gotten the silent treatment'*⁶¹

This VSAC member told the VOCC that not being updated about the progress of a case not is not only a breach of the Victims' Charter, but 'reaffirms how we cannot rely on police. The purpose of the Victims' Charter – the very basic requirement of keeping a victim updated – is not being fulfilled'.⁶² This same VSAC member stated:

*'At a bare minimum, police need to prioritise victim-survivors by updating them. If that means smaller caseloads for officers, or more support, or a different process – they need to figure it out so that we can deliver the entitlements under the Victims' Charter.'*⁶³

58 Interview 6 – Victim of crime.

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

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

61 Consultation 11 – Victim Survivors' Advisory Council.

62 Ibid.

63 Ibid.

Victims told the VOCC they had to contact police repeatedly to try to obtain updates. One Victims' Survey respondent told the VOCC that after receiving no information, they had to attend the station in person:

'Between the first assault ... and the second assault the police didn't keep in contact to let me know what was happening. I kept contacting them to make sure this person was being charged & held accountable for his behaviour. After many calls by me to police I went to speak with them in person and I was angry and frustrated that they had not done anything.'

– Victims' Survey respondent

A failure to provide information about, or referrals to, relevant support services was also raised by victims. For example, one victim interviewed by the VOCC shared that 'after reporting to police, police did not give me any information about how to get help after reporting childhood assault.'⁶⁴

Lack of participation impacting wellbeing and safety

For many victims, lack of participation during the police investigation process resulted in additional stress, anxiety and mental health implications, as reported by this Victims' Survey respondent:

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

– Victims' Survey respondent

For victims who had experienced breaches of intervention orders, lack of contact by police often had implications for their safety, as noted by this respondent to the Victims' Survey:

'I had to keep chasing up the police to find out if the Personal Safety Intervention Order had been served. It took several weeks. One of the police constables actually advised me against progressing criminal charges due to the nature of the process and the impact of being cross-examined in court.'

– Victims' Survey respondent

For others, a lack of police communication had other ramifications. For example, one VSAC member described how gaps in police communication resulted in serious safety issues and a re-traumatising encounter for the victim's children:

*'In relation to my daughter's experience of family violence and non-fatal strangulation, her perpetrator was arrested charged and sentenced but I have seen enormous gaps in communication by police. The perpetrator was placed in jail overnight. The following morning, the police rang in the morning to advise they were bringing the perpetrator to the home to collect his clothing and asked the victim to vacate the house. The teenage children remained in the house as [it] was assumed the police would escort the perpetrator onto the premises. However, the perpetrator was not escorted by police and went into the house and spoke to the children who had just seen their mother strangled. There are real gaps in miscommunication from police to the victim about what was going to happen.'*⁶⁵

64 Interview 14 – Victim of crime.

65 Consultation 11 – Victim Survivors' Advisory Council.

Another VSAC member advised the VOCC that victims simply want updates to protect themselves:

*'Ultimately victims are not getting updated. I have heard many victim survivors who just want to know what is happening so we can better protect ourselves. We don't care if police can't support us – we just want to know what is happening so we can protect ourselves.'*⁶⁶

Missing court dates

When a victim is not kept up to date with the progress of a matter, this often has ramifications for other aspects of their participation. For example, a victim who is not advised of an upcoming court date may miss out on the opportunity to make a Victim Impact Statement. Victims told the VOCC about missing court dates because of not being contacted by police.⁶⁷

Victims told the VOCC about missing court dates because of lack of contact by police.

One victim interviewed by the VOCC stated:

*'They didn't notify us when it was going to court. They didn't give us the results afterwards and we just presumed he would have got prosecuted, charged and perhaps got off with a good behaviour bond. I applied to find out what happened. I got the paperwork through to say he had pleaded guilty, but all charges were dismissed.'*⁶⁸

A member of the Victim Survivor's Advisory Council told the VOCC that they have missed important court dates because of lack of contact by police:

*'I seem to have lost [the police informant's] commitment to supporting my case and have not received any updates since – court dates for the respondent have come and gone and I have reached out in writing and over the phone to no avail.'*⁶⁹

One Victims' Survey respondent noted that 'the police forgot to tell [them about] the final court date'.

Perceptions of a lack of rigour

Lack of participation for victims meant victims frequently expressed concerns that police had not investigated their reports properly and that there had been a lack of rigour in the investigation process.

Respondents to the VOCC's Victims' Survey told the VOCC they were not given any information about why matters had not progressed. Victims often also felt confused as to why cases had been 'dropped' or 'dismissed', as these Victims' Survey responses show:

⁶⁶ Consultation 11 – Victim Survivors' Advisory Council.

⁶⁷ Consultation 11 – Victim Survivors' Advisory Council; Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁶⁸ Interview 15 – Victim of crime.

⁶⁹ Consultation 11 – Victim Survivors' Advisory Council.



'I was very disappointed and frustrated with the police as they did not handle this well, I was not given any information as to why the person did the crime, and do not believe it was a random act. The person was not charged due to being a minor and was not given any form of punishment or reprimand when he was caught, he received a caution.'

'Police dropped [the case] without question...Regardless of the medical evidence of the exam[ination].'

'The police investigation was horrible, non [existent], corrupt (proven) and inexcusable in every way.'

– Victims' Survey respondents

Some victims described feeling let down by police after the reporting stage, and expressed concerns that all the attention shifts to the perpetrator. One Victims' Survey respondent noted:



'Once I had reported and given my statement I then felt discounted, it was no longer about me, it was all about the male that assaulted me. It seemed [that] he had a set path then and I felt left in limbo.'

– Victims' Survey respondent

Another Victims' Survey respondent noted:



'the two police officers ignored the visible signs of damage and psychotic behaviour by the perpetrator and were more focused on placating the perpetrator rather than helping me.'

– Victims' Survey respondent

Delays impacting participation

VOCC was advised that investigation delays, compounded by lack of communication and failure to provide information, were a frequent source of frustration and distress for victims, affecting their ability to participate. Respondents to the Victims' Survey described delays in the investigation of matters as distressing and for some, like 'torture':



'The waiting. I just wanted to get it over with but it was months from my initial report to a formal statement. They needed to do another session and I waited another 5 weeks for that. The anticipation was really distressing.'

'Having to wait 7 months after being told I had to attend the [venue] where I was sexually assaulted, with police protection. This felt like torture, i had to think and worry about that for 7 months.'

– Victims' Survey respondent

The VOCC was told of frequent changes in personnel, affecting continuity for victims of crime:

'it took forever for the police to do the investigation, the detective assigned went on 4 months leave two weeks after our first meeting and said it was better to wait until he returned so I less people handling the case. It took nine months from first contact to the first interview with the offender.'

'The Detective in charge went on holidays before the first court mention. When he returned he went on stress leave and couldn't be contacted and nobody represented me in the following court mentions due to staff shortages at SOCIT.'

'I've had 5 Investigators and he still hasn't been questioned. The rape was reported Feb 2020.'

– Victims' Survey respondents

When the perpetrator is a police officer

Victims who experienced a crime perpetrated by a Victoria Police member encountered specific barriers to reporting to police and participating in the justice process.

For one respondent to the VOCC's Victims' Survey, it was difficult to convince Victoria Police to investigate:

'Initially Victoria Police did NOT investigate, but lied to me and told me they did. The perpetrator remained working as a police officer by this time he had moved...department[s]. At this time they told me "there's a loophole in the legislation and there are no criminal charges".'

– Victims' Survey respondent

Another victim surveyed by the VOCC spoke of privacy breaches, impacting their safety:

'Police breached my privacy and safety multiple times and the leaked information to the perpetrator...to help him navigate his way to avoid any consequences for his crime. Police perpetrator's are protected by Victoria Police and they game the system.'

– Victims' Survey respondent

Another surveyed victim experienced difficulties with reporting and then convincing police to prosecute:

'Police did not investigate and had to be nagged to investigate one of their own; we were discouraged from reporting because our perpetrator was a cop; witnesses were calling the informant saying they wanted to make statements and hearing nothing back; nothing happened until we went to the police minister; our perpetrator kept breaching and was never remanded so we were on the run for 18 months, missing school and work while the brief was compiled at glacial speed and the informant took holidays. Victoria Police cannot investigate its own for DFV.'

– Victims' Survey respondent

One victim interviewed by the VOCC spoke of the need for independent, specialist legal advice where the perpetrator is a police officer because of the added complexity:



*'In the early days, the family home sold and I've been financially destroyed by lawyers who have no idea how to manage a case like this. When it involves a perpetrator who is a member of the police force, there needs to be specialist services, management and advice. People don't know what the hell they're doing. I've been given really bad advice along the way.'*⁷⁰

Stakeholder views

Stakeholders acknowledged the significant shift and cultural change that has taken place in Victoria Police to improve victim participation but many stakeholders told the VOCC that negative experiences still occur and that further cultural change is required, as noted by Victims Services staff:

We still hear horror stories about police officers who treated victims in a particular way or say something inappropriate. We still have a lot more to do at a systemic level in regard to cultural change. We have heard this repeatedly from victim services.⁷¹

Inadequate communication

Consultation with victims' professionals echoed the issues raised by victims about lack of proactive communication and victims missing out on opportunities to participate because of information not being provided.⁷²

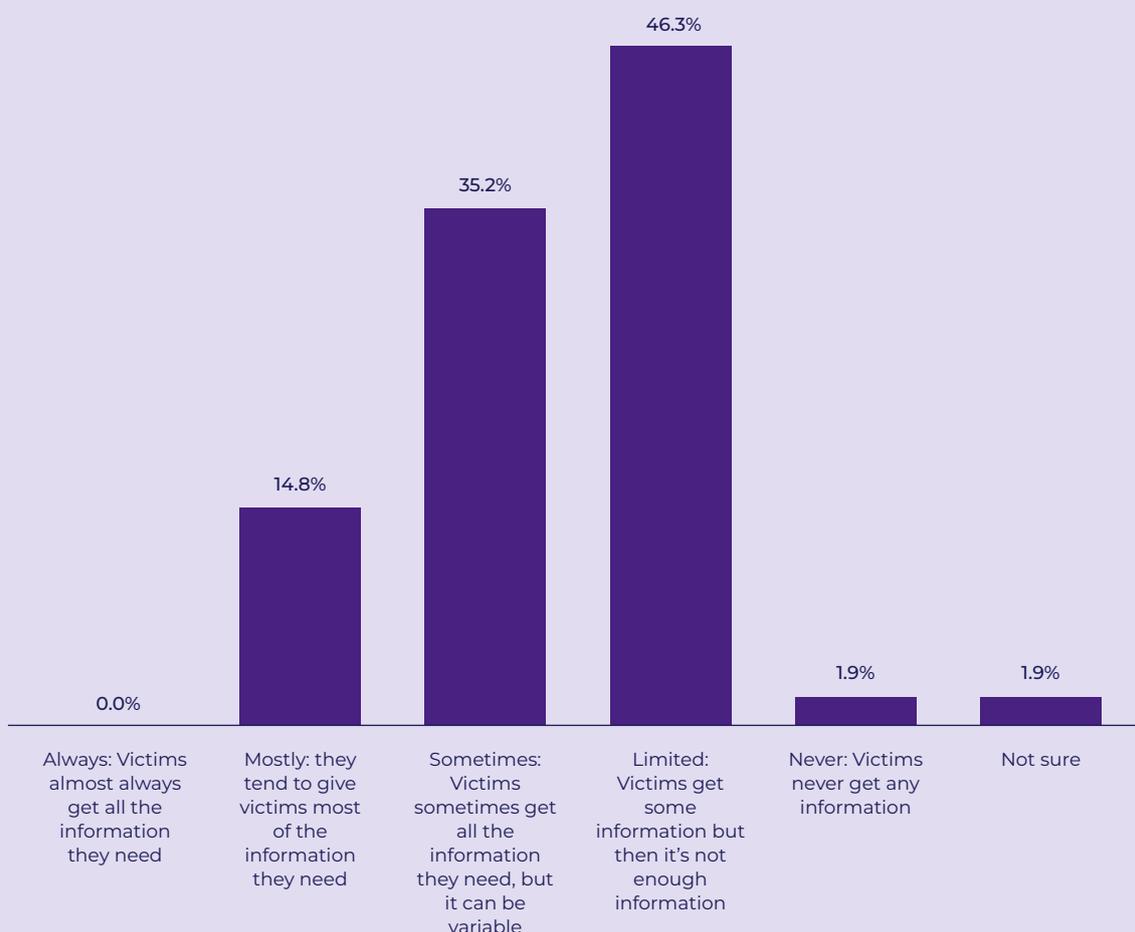
Victims' professionals surveyed by the VOCC were asked whether police provide victims with enough information to participate in the justice process. The dominant response was 'Limited' (46 per cent), followed by 'Sometimes' (35 per cent) as shown in **Figure 16** below.

⁷⁰ Interview 9 – Survivor advocate.

⁷¹ Consultation Meeting 14 – Victims Services staff.

⁷² Consultation Meeting 12 – Court Network.

Figure 16: VOCC Victims' Professionals Survey: Do you think police provide victims with enough information to participate in the justice process?



Echoing victims' experiences, victims' professionals surveyed by the VOCC said that police communication was poor or non-existent:

Victims have reported that police have not kept them updated or communicated with them regarding their matter as it has progressed

Police need to communicate with the victims at all stages of the process much better, especially with IVO hearing outcomes, and/or outcomes heard in the Magistrates Court. This communication is very very poor.

Little response from uniform members to telephone follow up enquires after a statement has been provided.

Often victims will say that they have not heard anything from Police and this seems to trigger trauma for victims.

It is very common for victims that I work with to say that they have not been contacted or updated during the investigation or court processes.

Victims find it hard to get information from police

Windermere Victims Assistance Program advised the VOCC that the 'average informant can't be relied upon to provide information to the victim, especially when it's summary matters.'⁷³ Similarly, Court Network advised the VOCC that:

the proactivity of the police with keeping victims updated has not changed at all. Often people say that they tried to ring the Informant a month ago, that they left a message as the Informant was on leave, that they called again and left a message, and they were on night shift etc.⁷⁴

'[The] average informant can't be relied upon to provide information to the victim'

Windermere Victims Assistance Program

Echoing victims' experiences, victims' professionals surveyed by the VOCC said that victims were often dismayed by the lack of communication about a matter not proceeding:

Perhaps if they could explain to the victim why it is not proceeding any further that would help. Often victims feel defeated because they have taken the brave step in reporting, but charges are not laid or it doesn't make it to court. Explaining the reason why this has occurred would be helpful.

I've had so many upset and confused victims of sexual assault that only blame themselves more when their cases are not prosecuted or no charges are laid.

A Community Legal Centre (CLC) representative also shared concerns about the lack of communication when matters do not proceed. This CLC representative told the VOCC that they often encounter victims 'who have been left in the dark through the whole process of the investigation'. They noted that this can be because the police do not want to compromise the investigation, 'but then the victim finds out suddenly that there's going to be no prosecution, and it's a big shock to them. It can be devastating.'⁷⁵

The Centre for Innovative Justice (CIJ) noted victim participation during the police reporting and investigation process is variable and comes down to individual police:

Good practice may come down to individuals. For example, one woman we spoke to for our victims' services research lived in a regional area with a wonderful police informant who communicated regularly, but she had a very different experience to everyone else we spoke to.⁷⁶

This was confirmed by victims' professionals surveyed by the VOCC who suggested that victim-centred responses were dependent on the individual police officer.

Progress in improving victim participation during investigations

During consultations with Victoria Police members, it was evident that there are many dedicated police members who are victim-centred and wish to prioritise victims' needs and their participation in the justice process, where such participation does not jeopardise investigations.

Police members spoke about tailoring communication to individual victims, allowing victims to 'take it at their own pace' and 'the Victims' Charter driv[ing] everything we are doing including milestone events to identify how and how often victims want to be informed'.⁷⁷

The VOCC was also told that police consider language needs and police members also spoke about positive communication initiatives such as SOCIT introducing a document outlining the victim's preference for how they wish to be communicated with.⁷⁸

However, the VOCC was also told by police members they cannot provide the same level of service to all victims of crime, and that it is impossible under current resources to meet their obligations under the Victims' Charter for all victims of crime.⁷⁹

⁷³ Consultation Meeting 21 – Windermere Victims Assistance Program.

⁷⁴ Consultation Meeting 12 – Court Network.

⁷⁵ Consultation Meeting 22 – Community Legal Centres – Session 1.

⁷⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁷⁷ Consultation Meeting 17 – Victoria Police – Session 1.

⁷⁸ Ibid.

⁷⁹ Consultation Meeting 17 – Victoria Police – Session 1; Consultation Meeting 18 – Victoria Police – Session 2.

Unable to meet obligations under the Victims' Charter

Victoria Police members told the VOCC about overwhelming workloads and being unable to meet Victims' Charter requirements in relation to informing victims about the progress of investigations in the vast majority of cases:

With 300 000 cases a year, more than 200 000 of which have victims, and there are 12 000 of us, it's not physically possible to deliver statutory rights for all victims. It's just not physically possible. So, we have to prioritise. We don't have this as a formal policy, we just have to do it. We have a systemic triage process, where we intuitively make a decision.⁸⁰

We don't have physical barriers to be able to make phone calls or attend a home but it is just lack of time and the volume of the workload. In the [one region] at the moment we have 220 active investigations and 160 active court cases. So you can imagine just the sheer volume of cases.⁸¹

'it's not physically possible to deliver statutory rights for all victims. It's just not physically possible. So, we have to prioritise.'

Victoria Police member

The VOCC was told that '[i]t is a large challenge for Victoria Police with staff timetabling to keep victims continually informed' and that '[f]rom a general duties perspective the workload is huge'.⁸²

In addition to the general time and resource constraints that police members face on a daily basis within their jobs, there are challenges around staff movements and timetables, which can also affect the ability of the relevant police officer to give victims information and keep them updated :

It is a large challenge for Victoria Police with staff timetabling to keep victims continually informed. A staff member might do shift work and then be absent on a roster for some weeks. That's why it is so important to also train support agency staff, such as Orange Door with family violence matters to upskill them as to what process looks like so they can keep victims informed.⁸³

Need for more resources and better systems

Some stakeholders, including Victoria Police members, highlighted the need for police to have more resources, and better systems, to help victims participate during the investigation process.

For example, Court Network said the fact many victims were struggling to get the information they need to participate suggests there is a need for 'a specific victim liaison team within Victoria Police if informants are unable to liaise with the victim'.⁸⁴

Victims' professionals surveyed by the VOCC also felt that police needed additional resourcing to improve victim liaison:

The most important improvement begins at the police station. Having additional staff and space that spends more times with victims can completely change a victims experience. Police do not have the time to do this specialist work, more staff is desperately required so that the beginning of this journey starts the right way for victims of crime.

The SOCIT units appear to be really busy and possibly under resourced.

Some police members similarly stated that ideally they could be resourced to have victim liaison officers keeping victims informed via a case management system,⁸⁵ noting 'VicPol does not have a user-friendly format where victim notifications could become – not necessarily automated – but less demanding'.⁸⁶ IT solutions were proposed, including an 'end-to-end' victim's portal with each agency updating information 'as required, from police through to corrections, through to parole'.⁸⁷

Some police felt that beyond resourcing challenges, victim liaison takes a personal toll on police members:

There's a lot of investigators who are loathe to contact their victims because they know the emotional strain that's going to be put on them from the victim, especially with sex matters, where they're high needs victims. It can be quite traumatic for the investigator as well to have to have that contact with the victim, particularly in SOCIT where you're dealing with so many victims, it can really affect the mental health of the investigator as well.⁸⁸

Further, it is acknowledged the deeply stressful and traumatic work that police officers face within their roles:

It is also important to acknowledge that frontline police can become desensitised to a crime. When we attend a crime we might think it is minor but for that particular person it might be the worst thing that has ever happened to them. So Victoria Police needs to keep focusing on the effects of the crime and not the actual seriousness of the crime itself.⁸⁹

80 Consultation Meeting 18 – Victoria Police – Session 2.

81 Consultation Meeting 17 – Victoria Police – Session 1.

82 Ibid.

83 Ibid.

84 Consultation Meeting 12 – Court Network.

85 Consultation Meeting 18 – Victoria Police – Session 2.

86 Consultation Meeting 19 – Victoria Police – Session 3.

87 Consultation Meeting 18 – Victoria Police – Session 2.

88 Consultation Meeting 19 – Victoria Police – Session 3.

89 Consultation Meeting 17 – Victoria Police – Session 1.

Not jeopardising investigations

Victoria Police members told the VOCC they cannot always provide victims with the information they want to fully participate in the investigation process because of the need to safeguard the investigation process:

From a homicide perspective, typically we have victims and families of the deceased desperate to know the detail about what has happened. Sometimes the investigations are protracted and we're in a position where we don't want to jeopardize an investigation so we're withholding quite a bit of information at various times...Withholding information causes some issues with victims who are really desperate to participate and know everything that's happening.⁹⁰

Lack of trauma informed and culturally sensitive practice

Victims' professionals surveyed by the VOCC highlighted the need for police sensitivity and trauma-informed practice, and that this is key to whether a victim will participate in the investigation process:

Police can be incredibly empathetic and understanding of victims needs. Given the sensitivity and trauma, police ability to demonstrate this can be imperative. When police aren't able to demonstrate sufficient empathy and understanding, it can be detrimental to the clients experience and likelihood of continuing with the investigation process.

Another victims' professional surveyed by the VOCC spoke of inappropriate responses to family violence complaints, including minimising breaches of intervention orders and victim-blaming comments:

Police moan and groan when victims repeatedly report breaches of IVO, which make victims reluctant to do so. They make clear that it is an "effort" to record them, or minimise the seriousness of the breach. This is a cultural issue at all stations I work with. Police repeatedly make victim blaming comments whilst taking down statements (although this has reduced over the years, but still is often.)

I have repeatedly heard different officers around victims make the statement "if we had to do family violence with your lot all day, we wouldn't have any time to do 'real' police work." I don't know how this culture will change.

Victims' professionals highlighted the need for police training around trauma and specific crimes like sexual assault and family violence.

Police need more education around trauma and impact on memory to better understand why a victims narrative may vary rather than accusing victim of lying or being a "poor witness". This embeds mistrust in the system.

Better training for Police performing general duties regarding sexual assault and family violence.

more training as a large percentage of their workload is FV/ SA related crimes

More training in the impact of trauma and how to talk clearly to traumatised people would be very helpful.

Some victims' professionals surveyed by the VOCC felt variability in how police facilitated victims' participation during the investigation process occurred regardless of police specialisation:

Depending which police informant is allocated the case will depend on whether the client is treated with respect, empathy and understanding. I have had horrific responses from SOCIT at times, however others are wonderful to work with.

It's so hit and miss depending on the police officer, some are great and some are very dismissive or minimising.

The police who do this do it very well, but some can't be bothered, or only support victims they like/feel sorry for. Some police are very proactive in getting support for victims and some aren't.

Police are individuals, some are great with giving victims information, some aren't. Make it mandatory! If police thought their promotion was at risk, they'd make sure victims were informed and updated.

Victims have a different experience, depending on what police station they attend.

There needs to be more consistency with the service delivery from Vic Pol members to victims and better communication with victims.

It is really variable. Many have poor experiences particularly with general duties police but this can also happen in other areas such as SOCIT. Many are given incorrect information and not taken seriously. Some clients have a very good experience and I think that comes down to an individual police officer who understands the needs of victims and prioritises this.

The CIJ told the VOCC: 'We need to build capacity in police to interact with victims of crime and ensure they understand their rights along the way.'⁹¹

90 Consultation Meeting 19 – Victoria Police – Session 3.

91 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

Referrals to support services

Victims' professionals surveyed by the VOCC highlight issues with police referrals to support services, noting significant inconsistency with making e-referrals:

It should be compulsory for police to offer a VPeR referral to VAP [Victims Assistance Program] for each victim. Police should be held accountable if they do not do this.

E-Referrals need to be done. There is a lot of inconsistency with making e-referrals...

I feel there are many opportunities that VPER referrals are missed in the early stages and victims would benefit greatly from VAP early intervention.

Mandatory referrals of crimes against the person cases, and med-high range crimes (assault, attempted murder, culpable driving, false imprisonment, etc.) may be helpful. And the mandatory provision of victim support information to Victims of Crime may also be an effective way to engage. Since people don't know what they don't get told. And organisations can then funnel out cases that are deemed irrelevant.

Bail

An undertaking of bail is a promise to appear at court on a certain date to answer charges. Bail can be granted with special conditions or no conditions.⁹² Under the *Bail Act 1977* (Vic) a bail decision maker must consider any known view or likely view of an alleged victim on the grant of bail, the amount of bail or the conditions of bail.⁹³ Police generally present the victims' concerns at the bail stage, although there is no legislative requirement for police to seek victims' views and present these to the bail decision maker.

Under the Victims' Charter, a prosecuting agency (usually Victoria Police or, in the most serious crimes, the Director of Public Prosecutions), on request by a victim, is to ensure that the victim is informed of:

- the outcome of any application for bail by the person accused of the criminal offence
- if bail is granted, any conditions imposed on the accused person by the court that are intended to protect the victim or family members of the victim.

Victims' experiences

Bail did not emerge as a major theme in engagement and consultation with victims of crime and lived experienced consultants. However, one victim interviewed by the VOCC was concerned about the apparent lack of medical and risk assessment during the bail process:

*'He was granted bail with no medical assessment, no assessment of danger. Why is that man walking the streets? Why was he not remanded? Why was he only assessed with paedophilic tendencies after he was convicted?'*⁹⁴

This same victim was also concerned that victims are not consulted about bail:

*'I was not consulted about bail. We heard he was grooming children in his area. I had parents ringing me. Society expects the system to protect them. I am all for the system saying you need to be proven guilty. But to just be granted bail without any medical assessment done or thought that this man lives in an area where young kids live in the streets. He can still groom young kids in the street and access child pornography. We were just very very jaded that the system would let us down time and time again.'*⁹⁵

⁹² Magistrates' Court of Victoria, *Bail and custody* (Web Page, 12 December 2018) <<https://www.mcv.vic.gov.au/criminal-matters/bail-and-custody>>.

⁹³ *Bail Act 1977* (Vic) s 3AAA(1)(j).

⁹⁴ Interview 16 – Victim of crime.

⁹⁵ *Ibid.*

This same victim told the VOCC that the accused had breached bail conditions by contacting him, but police did not act on these bail breaches:

*'One of the disappointing things is while my father was out on bail, he rang me. He was told not to contact witnesses but he did. When I reported that to the police they did nothing. What's to stop him driving to my girls' school and intimidating them? It was just another example of how protection is afforded to him and not us. Why wasn't that a breach of his bail conditions? If you breach your bail then you should go straight into remand. The whole bail process was just ludicrous.'*⁹⁶

This victim suggested that allowing a Victim Impact Statement to be prepared for a bail hearing could assist a judicial officer to understand the potential trauma that releasing an accused on bail might cause a victim:

*'I would have liked something like a Victim Impact Statement or some assessment of what trauma is going to cause if bail is granted. For the judge to hear from the girls' counsellors about the trauma caused to them if he was out on bail.'*⁹⁷

Another victim interviewed by the VOCC was disturbed by not knowing where the accused was while on bail and the relative 'freedom' enjoyed by the accused:

*'We don't know where this guy is on bail. He's allowed to go anywhere he likes in Australia because he's a truck driver. He still has all his Christmases, all his birthdays, his family, he's living the life, except that he's got a few bills.'*⁹⁸

Stakeholder views

During stakeholder consultations, some police advised the VOCC that victim participation at the bail stage was necessarily limited, stating victim participation in the context of bail is 'too broad a word for victims because the victim can't participate in the bail hearing itself as we don't want them cross-examined.'⁹⁹

However, police also spoke to their commitment to obtaining the best possible outcome for victims at the bail stage:

From a SOCIT perspective, we want to see a great outcome for victims and that means getting justice and seeing perpetrators held to account. If the perpetrator is out then our victim lives in a lot of fear ... Victoria Police members are very invested in bail proceedings and engaging with our victims in that process because it is an opportunity for the complainant to be heard and for us to convey to the court what the victim wants to say if they don't get up themselves.¹⁰⁰

Another police member noted that '[i]f someone is charged for a penetrative sexual offence, we will oppose bail at every opportunity. We will always oppose bail and our complainants are advised of that.'¹⁰¹

Police also noted that at the bail stage, they can sometimes provide the court with more information about the victim that may be inadmissible in other forums:

We can advise the court of threats received from the offender or comments made by the offender or from others – there is more liberty to say things in a bail hearing that might be inadmissible in other forums.¹⁰²

96 Ibid.

97 Interview 16 – Victim of crime.

98 Interview 15 – Victim of crime.

99 Consultation Meeting 17 – Victoria Police – Session 1.

100 Ibid.

101 Ibid.

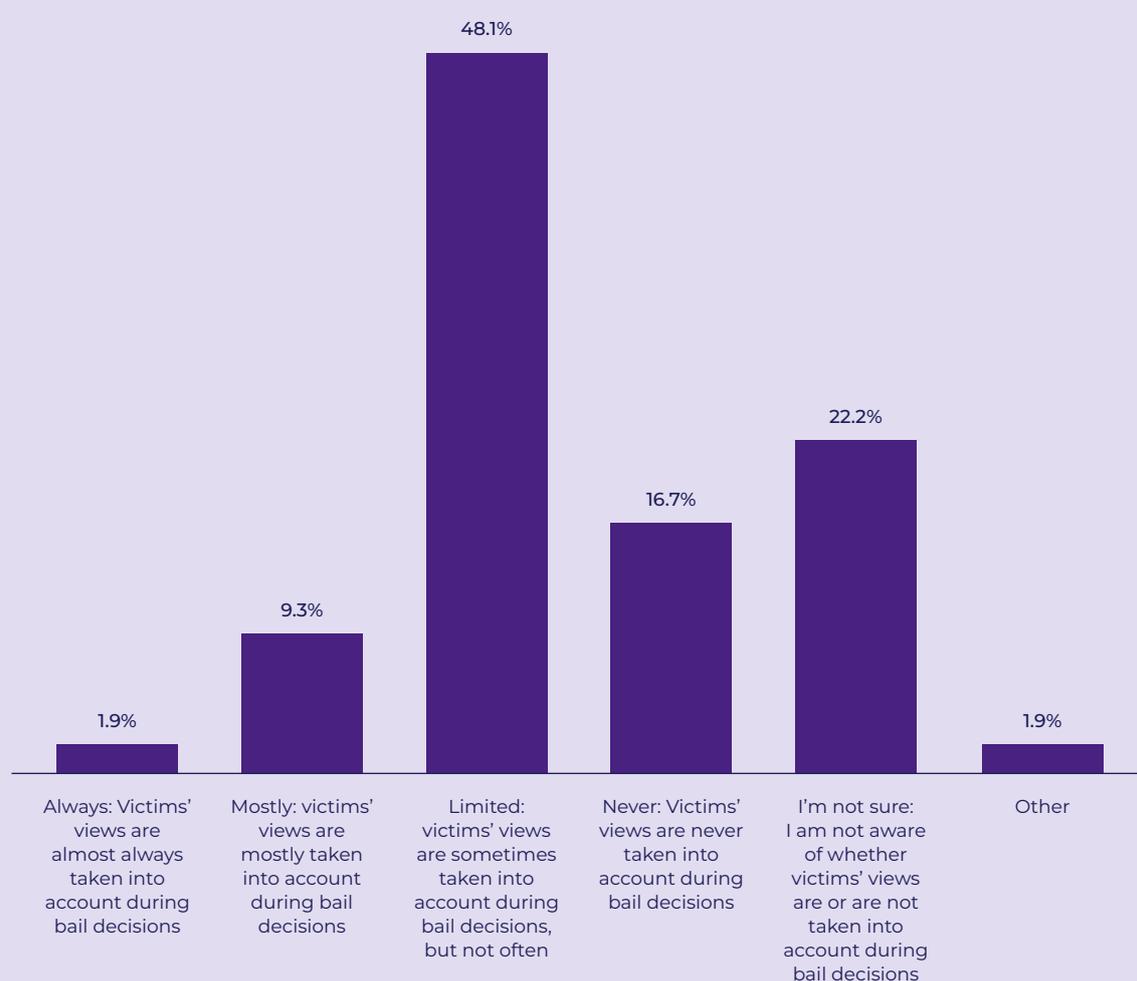
102 Ibid.

Police discussed, however, that despite their best efforts and commitment, decisions on bail are not within Victoria Police's control: 'An investigator may put everything to the court in regards what the victim is thinking or feeling but the decision making is beyond our control.'¹⁰³

Lack of victim participation during bail

Victims' professionals surveyed by the VOCC were asked whether the views of victims are adequately taken into account by the bail decision maker. As shown in **Figure 17** below, the majority of respondents (48 per cent) said victims' views are sometimes taken into account in decisions on bail, but not often.

Figure 17: VOCC Victims' Professionals Survey: Are victims' views adequately considered during bail decisions?



¹⁰³ Ibid.

The VOCC heard from many respondents to the Victims' Professionals Survey who said that victims are never consulted about their views in relation to bail:

no one takes the victim [into] account during bail or during the majority of the negotiation stages

I have never heard of a bail decision made with the views of the victim in mind. Victims often express their distress over the alleged perpetrator being granted bail because the victim believes they still pose a serious threat to their safety.

I've never known police to ask a victim what they want or even let them know it's a thing.

over my 6 years with the program, not one of my clients have been asked their opinions on bail. Many are not even aware whether the offender is on bail or in remand.

Another victims' professional advised that victims being asked for their views during the bail application process is the 'exception', rather than usual practice:

Im not sure that I have ever had a victim who advised me their views regarding bail had ever been asked by the police before a bail application hearing. I would think this was the exception and not the norm and would only likely be done if the victims views strongly supported the police argument to oppose bail.

Lack of information on decisions and conditions

Victims' professionals surveyed by the VOCC also said that victims are frequently not informed when an application for bail has been made or granted:

Very often, victims are not told if an offender receives bail. Some find out walking down the street.

Often victims don't even get told when there's a bail application and hearing, let alone when the offender is bailed.

For victims of domestic/family violence – they are lucky to even be told if the offender is released. If the police informant is away on the day of court no one makes an effort to inform the victim of the outcome of court.

Victims are rarely told about bail, some are just told the person has been bailed and nothing else.

Poor communication with victims about what the bail conditions are is also an issue.

It is often not clear what bail conditions are, also what happens if bail is breached (i've had many victims knowing offenders have breached bail, but feel police aren't breaching them).

A CLC representative told the VOCC that although prosecutors have a duty to ensure victims are notified about bail, they 'often see clients who have not been notified'.¹⁰⁴ This same CLC representative noted this lack of communication is 'problematic from a safety perspective. If a victim isn't informed as to whether the perpetrator is bailed or what the status is, that's hugely problematic.'¹⁰⁵ Issues relating to safety from lack of notification was also noted by this respondent to the Victims' Professionals Survey:

Police should be communicating the conditions of bail better, often they'll just say "they're on bail", if a victim doesn't know what those conditions are and one of them may relate to the offenders interaction with them, how can they know to report something that might be a breach of bail.

Another victims' professional surveyed by the VOCC emphasised that unless bail conditions are communicated to the victim, it is difficult for breaches to be reported.

Better communication would improve victim safety and participation

Victims' professionals surveyed by the VOCC highlighted concerns for victims' safety stemming from the lack of consultation with victims during the bail application process, and the general lack of communication with victims about bail decisions and conditions.

Victims' professionals communicated that a victim's sense of safety isn't given enough weight in bail decisions and many felt that if victims received better information and had the ability to participate in the process, this would lead to victims feeling safer: 'Victims getting more information or being involved in some capacity with bail decisions would help with victims general feeling of safety.'

Victims' professionals surveyed by the VOCC articulated that victims should be immediately notified when bail is granted in all matters, not just those matters relating to incidents of family violence:

when an offender gets bail the victim needs to be notified immediately, and not just in FV matters

It's crucial victims are told immediately – this is often missed and can cause issues re victim's safety (not just family violence).

Similarly, another victims' professional surveyed by the VOCC thought that victims need to be notified immediately when bail is granted and that they should be advised about any conditions imposed:

Victims to be notified immediately by the court or out of hours hearings to keep them informed as to the outcome. This is often a serious concern by victims who are not notified of a release of an offender. Victims need to know what the conditions are that are placed upon the bailed person or whether they have been incarcerated or remanded.

¹⁰⁴ Consultation Meeting 23 – Community Legal Centres – Session 2.

¹⁰⁵ Ibid.

Victims' professionals overwhelmingly felt that communication and participation for victims must be improved, that greater consideration should be given to the victim's views and opinions, and that victims' participation should be enhanced during the bail process.

Bail decisions need to better address safety

Respondents to the Victims' Professionals Survey advised the VOCC that too often bail decisions and/or relevant conditions fail to adequately consider and protect the victim's safety. Victims' professionals said that the bail process often fails to adequately consider the history of the perpetrator:

The offender's pattern and history of offending needs to be taken into account, as well as the circumstances of the current crime which is being investigated, and the safety of all (victim and wider community) needs accurate assessment. Bail justice likely need assessment assistants at the time of making these decisions, particularly for after hours bail justices.

One victims' professional noted the significant risk that victims of current or past family violence are exposed to when a partner is bailed to the family home, including for a different offence:

Too often persons are bailed to their partners home when there is a history of FDV if the current charges aren't DFV related. Women have reported to me repeatedly that they experience the worst FDV by their partner when they are bailed to their address and when he is going through a criminal justice process for other offending.

Victims' professionals also advised of the implications for victims in rural areas when the perpetrator is granted bail. The VOCC heard that this particular cohort of victims was vulnerable to harm, in particular, harassment by the perpetrator's friends and family:

The bail conditions, regarding contacting of the victim, should also apply to the perpetrators friends and family, because what can happen, especially in a small town, is that once the person is out on bail, the victim is harassed by associates.

One victims' professional discussed how victims are often too overwhelmed or fearful to communicate their views to police at bail hearings, and that the process could benefit from victims' professionals being permitted to voice the victim's concerns on the victim's behalf:

Often at bail hearings victims are too fearful to speak with police to report how fearful they are but will speak with other services/supports re fear levels and this needs to be taken into account if other professionals are assessing fear and risk.

One victims' professional spoke about the flow-on effects of perpetrators getting bail for serious crimes and their perceptions of the justice system:

When victims know that perpetrators repeatedly and easily get bail for serious crimes, it discourages them to make a complaint, because they are fearful of what the perpetrator will do to them after they are bailed. This is just my opinion, however if someone has been charged with repeatedly breaching IVO or a serious assault (like breaking a victims jaw) I think they should be remanded. Victims don't see the point of reporting a breach of IVO if the perpetrator is not held accountable for their actions.

Overview of Chapter 8: Prosecution and trial process

Under the *Victims' Charter Act 2006* (Vic) (Victims' Charter), all prosecuting agencies have a duty to provide victims with information regarding a prosecution. While some victims described positive experiences of participation during the prosecution process, victims also told the Victims of Crime Commissioner (VOCC) about:

- being confused about their role during the prosecution process, affecting their ability to participate
- not always being treated with dignity and respect during the prosecution process
- communication styles that were not trauma-informed.

The VOCC was also told victims are not receiving sufficient information during the prosecution process to facilitate participation, particularly in the Magistrates' Court.

Plea negotiations

Specifically in relation to the plea negotiation process, the VOCC heard that :

- there is a lack of consultation with victims about plea decisions despite entitlements under the Victims' Charter
- victims can be confused during the consultation process and may not understand information told to them, limiting the extent to which they can meaningfully participate
- consultation with victims is not always meaningful or is seen as 'ticking the box'
- plea negotiations may not reflect victims' perceptions of the seriousness of crime, impacting victims' ability to make a frank, detailed Victim Impact Statement
- victims' experience a sense of loss at not being able to pursue the case to trial
- the court process (including the pace of proceedings) does not enable victims to participate fully in the plea negotiation process, particularly in the summary jurisdiction.

Participation at court

Many victims told the VOCC that they did not get enough information about their role as a witness to help them participate in the court process.

Stakeholders praised initiatives like the intermediaries scheme and the Child Witness Service, but the VOCC also heard that victim-witnesses could benefit from improved support, advocacy and legal advice when giving evidence and that some victim-witnesses should have independent legal representation.

Victims also described the trauma of giving evidence, including some victims feeling as if they were on trial. Victims also described the trauma caused by defence counsel seeking to access their confidential communications and other personal information.

Victims also advised the VOCC that they felt particularly harmed by the committal process.

Court safety

Lack of safety during the court process emerged as a significant issue for victim participation. Inability to participate fully or safely at court was raised by victims both in relation to physical safety in the court precinct, and as psychological and emotional safety during proceedings.

Due to courts having too few safe spaces for victims, victims frequently encountered the accused or felt targeted by the accused or their supporters.

Stakeholders told the VOCC some courts were 'past their use by date' and simply unsafe.

The VOCC was also told that while the legislative provisions regarding alternative arrangements for victims of sexual assault are comprehensive, lack of appropriate court infrastructure and lack of support services means sometimes 'special arrangements' are inadequate.

8

Chapter 8:
**Prosecution and
trial process**



Introduction

This chapter outlines victim participation during the progress of a prosecution, including the plea negotiation process, the court process and giving evidence.

Victims' participation in the prosecution and court process is important as it assists victims to feel included, rather than merely a witness or bystander.

As outlined in Part 1 of this report, victims are now recognised as participants in the justice system and as such, are entitled under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to receive information about the progress of a prosecution¹ and, for some victims in some circumstances, to be consulted during certain prosecutorial decision-making processes.²

For victims, participation at the prosecution and court stage of a criminal trial includes:

- being informed by a Victoria Police member, the Office of Public Prosecutions (OPP) solicitor or Victims and Witness Assistance Service (VWAS) about upcoming hearings or court processes
- being informed about plea discussions or a sentence indication involving the accused
- being assisted by Victoria Police member, the OPP solicitor or VWAS support staff to understand the role of a witness in a criminal proceeding.

In Victoria, prosecutions are primarily managed by either Victoria Police or by the OPP representing the Director of Public Prosecutions (DPP).³

Police prosecutors are responsible for prosecuting less serious crimes (summary crimes) which are usually heard in the Magistrates' Court. The OPP is responsible for prosecuting more serious crimes (indictable crimes) in the higher courts (County and Supreme). Prosecutors act independently – they represent the interests of the state, not individual victims or the government of the day.

While facilitating victim participation in the justice system is not solely the responsibility of prosecutors, research has found that prosecutors are the most authoritative source of information about the criminal trial process for victims and so are crucial to victims' experiences of participation.⁴

To facilitate victims' participation, the OPP has a Victims and Witness Assistance Service (VWAS) which provides information and assistance to witnesses, victims of crime and their families to ensure they are supported throughout the criminal justice process.⁵ Victoria Police does not have an equivalent victim/witness assistance service for summary crimes, but victims may also be supported by:

- the Child Witness Service
- Victims Assistance Programs (VAPs)
- victims' services.

Prosecution

Prosecuting agencies must facilitate victim participation

Under the Victims' Charter, all prosecuting agencies have a duty to provide victims with information regarding a prosecution. This information includes:

- the offences charged against the accused
- reasons why no offence has been charged
- that charges are being substantially modified, discontinued or that an accused is accepting a plea of guilty to a lesser charge.⁶

Victoria Police must give victims details about how to find the date, time and place of the hearing, the outcome of the criminal proceeding (including any sentence imposed) and, if an appeal is instituted, any

¹ *Victims' Charter Act 2006* (Vic) s 9.

² *Ibid* s 9B.

³ Other agencies, such as local councils, government departments and statutory authorities also have prosecuting powers for a limited range of specific offences. See e.g., Department of Justice and Community Safety (Victoria), *Improving Victims' Experience of Summary Criminal Proceedings* (Final Report, November 2021) 20.

⁴ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 106.

⁵ Office of Public Prosecutions Victoria, *Annual Report 2020/2021* (2021) 4.

⁶ *Ibid* s 9.

information about that appeal, including the result.⁷

For crimes heard in the higher courts, prosecuted by the DPP, the OPP has more onerous notification requirements and must provide victims with additional information, including taking 'all reasonable steps' to advise a victim of:

- the date, time and location of any contested committal hearing, trial, plea hearing, sentencing hearing and appeal hearing⁸
- the progress of a prosecution, including the outcome of any committal mention, contested committal hearing, initial directions hearing, trial, plea hearing, sentencing hearing or appeal hearing, or guilty plea.⁹

The DPP also has further obligations to seek a victim's views on certain prosecutorial matters¹⁰ and to provide victims with reasons for certain prosecutorial decisions.¹¹ The DPP is not required to seek the views of a victim or inform victims of a prosecutorial decision if the victim cannot be contacted after all reasonable attempts, or if it is not practical to contact the victim given the speed or nature of the proceeding.¹²

The DPP is also required to give a victim the reasons, in writing or orally, for any decision to substantially modify a charge, discontinue the prosecution of a charge or accept a plea of guilty to a lesser charge.¹³ However, the DPP may decline to provide reasons if disclosing their reasons could jeopardise any investigation of a criminal offence or prejudice any other proceeding.¹⁴

The DPP's obligations towards victims are also outlined in the *Policy of the Director of Public Prosecutions for Victoria* (Director's Policy).¹⁵ The Director's Policy sets the tone for how prosecutors and solicitors are to engage with victims. It includes that they should:

- treat victims with courtesy, respect, dignity and sensitivity
- establish an early relationship with the victim
- address the individual priorities of a victim and not make assumptions about what is in the victim's interests
- proactively explain the prosecution and resolution process to the victim in accordance with the Victims' Charter.¹⁶

Victims' experiences

While there were examples of positive experiences of participation during the prosecution process, the Victims of Crime Commissioner's (VOCC) engagement with victims demonstrated that victims' dissatisfaction with the prosecution process centred on prosecutors failing to keep victims informed, victims experiencing confusion about their role, and victims not always being treated with dignity and respect during the prosecution process.

⁷ Ibid s 9.

⁸ Ibid s 9A(a).

⁹ *Victims' Charter Act 2006* (Vic) s 9A(b).

¹⁰ Ibid s 9B(1).

¹¹ Ibid s 9B(2).

¹² Ibid s 9B(3).

¹³ Ibid s 9C(1)(2).

¹⁴ Ibid s 9C(3).

¹⁵ Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 12–13 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

¹⁶ Ibid.

Positive experiences

Some victims of crime described positive experiences of participation during the prosecution process. One Victims' Survey respondent observed 'marked changes' in how the criminal justice system responds to victims of crime since first being exposed to the justice system 20 years ago. This respondent to the Victims' Survey stated that they 'experienced levels of support, understanding, dignity and respect that at times were absent' when they first entered the system. This Victims' Survey respondent appeared to have a clear understanding of their entitlements and the parameters of a victims' role during the trial process:

'I know that I can seek information and expect to be provided with information in a meaningful way, be guided through what I can and can't influence, and told what will be expected of me as a victim of crime, and how I might contribute to the process. I have also appreciated the courageous but necessary conversations from our "Team" both Police and Prosecutors about why they are approaching our case in a certain way and I am so grateful that there is a Charter for Victims that recognises the principles that govern the way Agencies respond to Victims of Crime.'

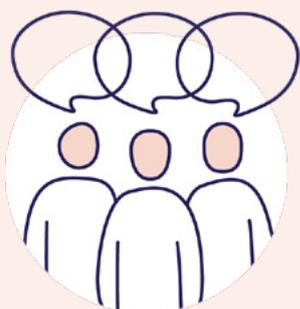
– Victims' Survey respondent

Another Victims' Survey respondent praised the VWAS, who had provided them with a 'walk through' of the court prior to proceedings, while another Victims' Survey respondent acknowledged an 'incredibly supportive Police Prosecutor working in a Multi Disciplinary Centre'.

Not receiving enough information to participate

The vast majority of respondents to the VOCC's Victims' Survey indicated they did not get any, or enough, information from prosecutors to participate in the justice process.¹⁷

As shown in **Figure 18** below, almost half of the survey respondents (49 per cent) were given no information by prosecutors to participate in the justice process. A further 23 per cent were given some information, but not enough. Overall, 72 per cent of victims got no information, or not enough information, to help them participate in the justice process.

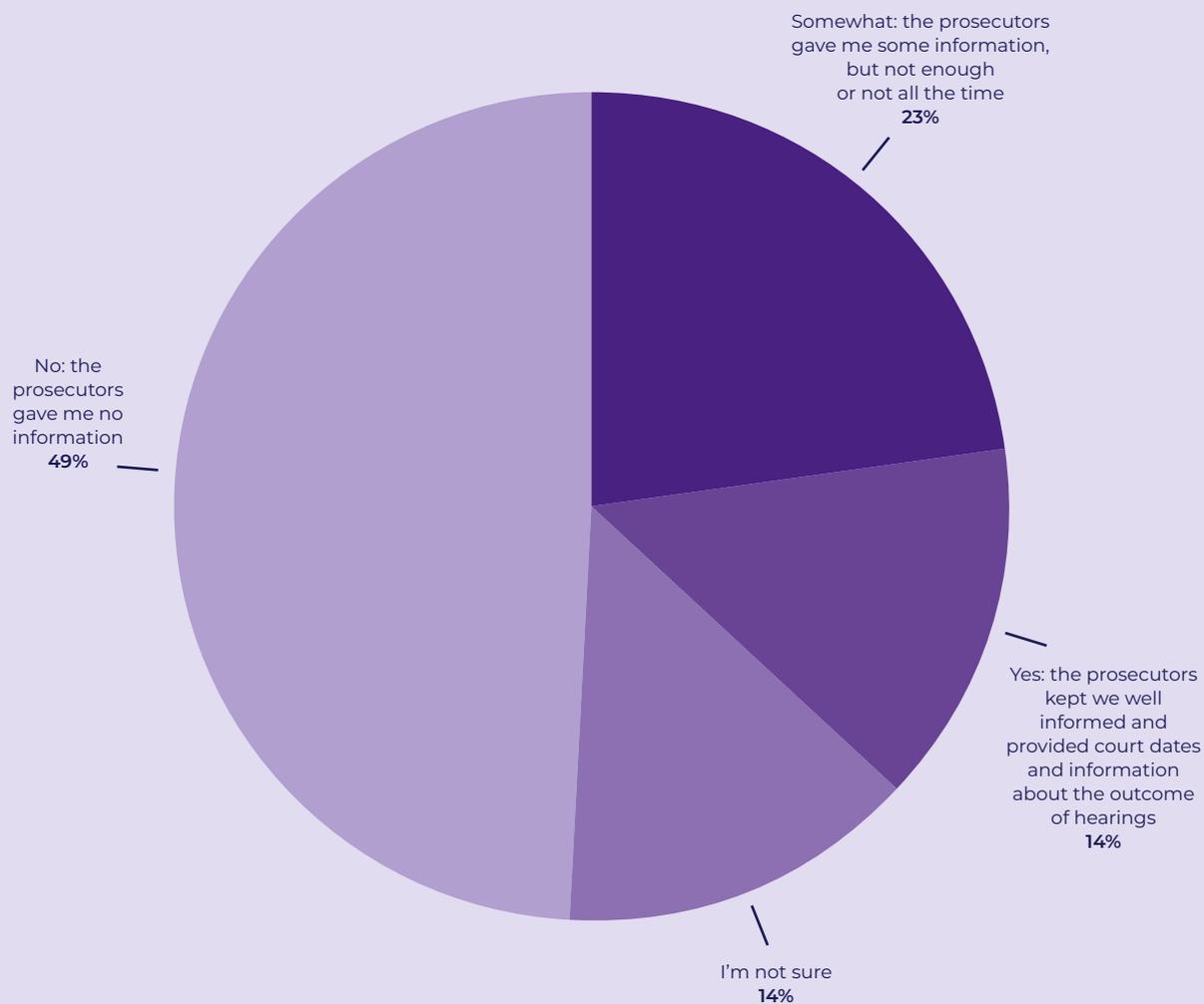


72%

72 per cent of victims **either got no information (49 per cent), or not enough information (23 per cent)**, from the prosecution to help them participate in the justice process.

¹⁷ The VOCC's survey design does not enable us to differentiate between victims whose matters were prosecuted by police prosecutions or by the Director of Public Prosecutions.

Figure 18: VOCC Victims' Survey: Did prosecutors give you enough information about the case so you could participate?



Respondents to the VOCC's Victims' Survey provided examples of where prosecutors had failed to keep them informed:

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

'I wasn't involved in the court process, I wasn't told it was going to court.'

'Crown prosecutor lawyers could have dealt with us separately. I was excluded, and yet I was left to deal with all aspects of the victim's death.'

'Very little info given, very little prep. Had to continue to go back to the detectives to get any insight into what was happening.'

– Victims' Survey respondents

A member of the Victim Survivors' Advisory Council told the VOCC that they had experienced court dates 'come and go' without any communication by police prosecutions, causing great stress and anxiety.¹⁸

As well as reporting a lack of information about the progress of the prosecution, victim interviews revealed confusion about whether the prosecutor is the victim's lawyer and whether they represent the victim's interests.¹⁹ One victim interviewed by the VOCC said: 'I was shocked when I found out that the barrister doesn't work for us.'²⁰

More generally, victims expressed confusion about how to access legal advice to enable them to participate more in the legal process. One victim interviewed by the VOCC said they could not get any advice about their rights, stating: 'It is just so overwhelming to people such as myself which I am sure there are many.'²¹

Victims not always treated with dignity and respect

The VOCC was told by victims that they did not always feel respected during the prosecution process. One victim interviewed by the VOCC recalled being told by the prosecutor while at the court: 'No crying, no sighing and no rolling your eyes. And no huffing and puffing and if you can't do that, sit over there in the corner or stay outside.'²²

One respondent to the VOCC's Victims' Survey described feeling 'dishonoured' and 'victimised' by the prosecution process:

'[all the victims] experienced the feeling of being dishonoured, victimised [and] not held in the dignity [and] honour in which we deserved to be when we had not only survived rape and abuse we were in the court system willing to be put under extreme emotional [and] physical pressure. We deserved to be honoured for the strength we had, that we were sensitive and powerful women that we are and not be treated as we were victims and treated as such as per the OPP sets us up to be'

– Victims' Survey respondent

Another victim surveyed by the VOCC described the OPP's communication style as 'arrogance and no compassion understanding or openness to explain the system in a humanly way ... you are just a pawn to get the outcome'.

¹⁸ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁹ Interview 5 – Victim of crime.

²⁰ Ibid.

²¹ Interview 15 – Victim of crime.

²² Interview 5 – Victim of crime.

Victims also felt that prosecutors did not always appreciate that victims may lack knowledge of the justice system and may be traumatised, as noted by this respondent to the Victims' Survey:

'Practitioners sometimes forget that while the Law may have been their chosen pathway, for many victims the first time they intersect with the law is after a significant and traumatic event. Assumptions about what one does or does not know must be part of the initial conversations.'

– Victims' Survey respondent

Victims' experiences of prosecution conduct extend beyond individual interactions. For example, one victim interviewed by the VOCC recalled their shock at observing the defence and prosecution barristers engaging socially during breaks in the trial:

*'Not appropriate in that setting. Perhaps if you're waiting outside but not in that court and we're listening to this. It should never be inside the court and it was like OK, it's another day for you. In the court it's another job for you. It's another case. But this is our blood here that you're playing with and you're almost diminishing the severity of it.'*²³

Another victim interviewed by the VOCC spoke about the insensitive way in which they were offered a restorative justice process by the prosecutor just moments after being advised that charges were to be downgraded.²⁴

Ingrid Irwin pointed to the disbanding of the OPP's specialist sexual offences unit:

*'That's how much the government care about prosecuting sex assault. They are now making it just generalized prosecutors, so that no prosecutor specialises in sexual assault prosecutions. I thought wanted specialized prosecutors. Our prosecutions in sexual offences are dropping. It has been disbanded over money. The government is not steered by victim outcomes, they are steered by money.'*²⁵

Stakeholder views

Not receiving enough information to participate

Stakeholders raised concerns about the extent to which victims are receiving sufficient information during the prosecution process to facilitate participation.

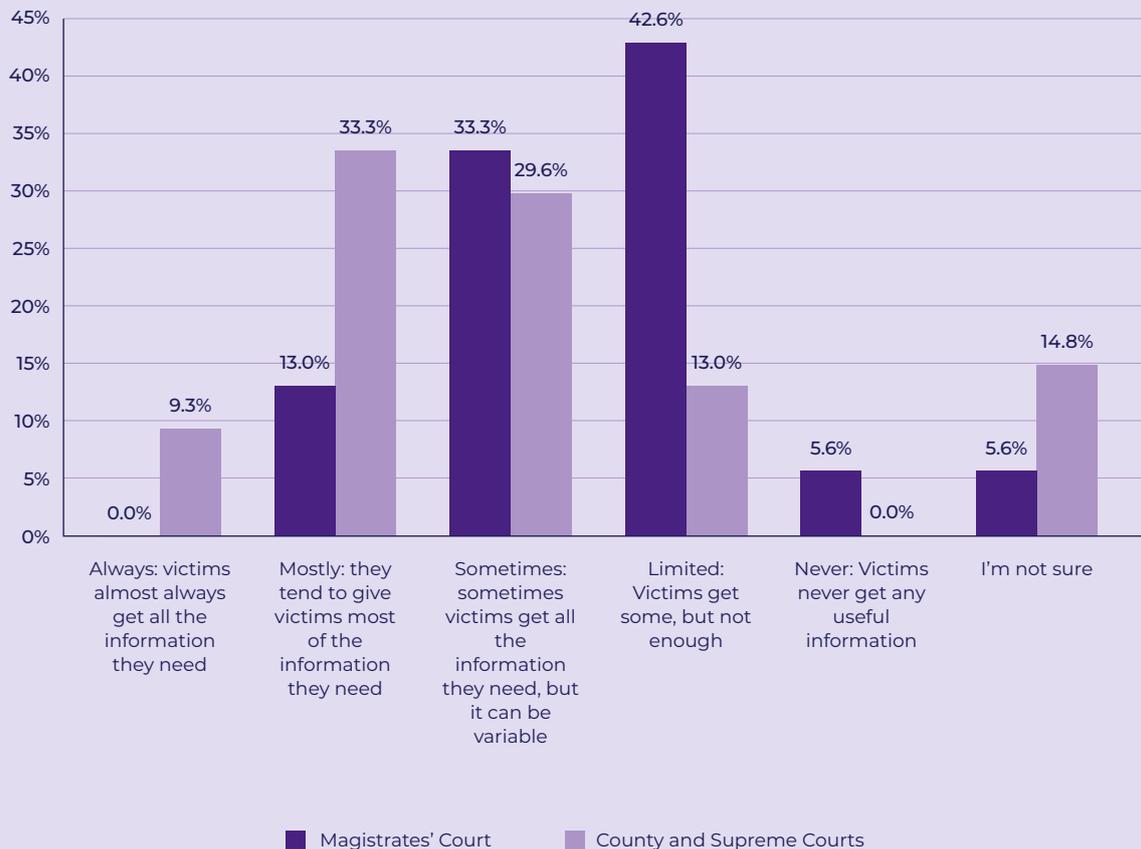
Victims' professionals surveyed by the VOCC were asked whether victims are given enough information by prosecutors to participate effectively in the court process. As shown in **Figure 19** below, victims' professionals saw a stark disparity between the information given to victims in the Magistrates' Court versus the County and Supreme Courts. Almost half of the survey respondents (43 per cent) stated victims in the Magistrates' Court get 'limited' information to participate, while a third of respondents (33 per cent) said victims in the higher courts 'mostly' get the information they need to participate.

²³ Interview 7 – Caterina Politi.

²⁴ Interview 12 – Victim of crime.

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

Figure 19: VOCC Victims' Professionals Survey: Are victims given enough information by prosecutors to participate effectively in the court process?



A number of victims' professionals surveyed by the VOCC raised concerns about a lack of information from police, OPP and the courts, with consequences for victims' participation, as outlined in these responses:

Information provided to victims with matters heard in the in the Magistrates court is greatly lacking and they often miss out on the opportunity to attend court and provide a victim impact statement.

Simple as keeping a victim up to date on proceedings from investigation through to sentencing/release doesn't happen unless a victim fights to be heard but all too often they are too traumatized to advocate for themselves in a broken system and are intimidated by a predominantly male judicial system.

The victim is often not informed of an outcome from a Magistrates court hearing until a few days later and that is only if the informant is notified. Victims have often told me that they would like the courts or the prosecutors to notify them of outcomes so that they are aware of the next step or to even know that their matter has been resolved so they can move on from the event. This is more important if it involves remand or bail hearings. Participants want to be considered for any updates and be advised.

I find, most often, victims are let down by a lack of communication from professionals within the system who are supposed to, as part of their job, maintain communication.

Victims' professionals surveyed by the VOCC highlighted the importance of victims being provided with immediate notifications after court hearings so they are aware of outcomes and the reasons behind decisions:

Immediate notification by the court or the Prosecutors to the victims of the final outcomes and what it all means.

every victim should receive formal notification of an outcome at court. Whether they attend/participate or not.

Victims need to feel heard and acknowledged, and also communicated with by the prosecution especially in regards to court outcomes and the rationale behind the decision made.

One victims' professional surveyed by the VOCC noted that victims need to be at 'the centre of the prosecution process. Even if decisions are made against the victim's wishes or without consultation, it must be explained to them.'

The Centre for Innovative Justice (CIJ) told the VOCC that victim participation during the prosecution process is still dependent on individuals and that the extent to which prosecutors involve victims may depend on the approach and experience of the individual prosecutor:

It is tricky for those inexperienced prosecutors who will err on the side of caution. You can't provide information to a person who you might call as a witness, so you limit the information because you have obligations not to tamper with evidence by giving information to someone who you might call as witness...The way prosecutors manage their duties and obligations to victims is very dependent on the experience and confidence of the individual lawyer and their interest in going that further mile.²⁶

Similarly, during consultation with the VOCC, Dr Mary Iliadis observed gaps in how prosecutors approach participation by victims:

there are significant issues, and prosecutors often cite workload pressures and other reasons as to why they might not be as invested as or as engaged with victims in all circumstances. That's certainly not to suggest that all prosecutors are not sufficiently upholding their duties, or...adhering to their statutory obligations. But we are still seeing gaps in their approaches. The research is telling us that there are significant problems with how this translates into practice, which does suggest the need for perhaps more innovative ways of attending to and providing to victims.²⁷

For Dr Iliadis, information provision and meaningful consultation throughout the prosecution process is directly correlated to victims feeling like true participants in the justice system. Dr Iliadis posited that if victims were consistently informed and genuinely consulted, they may feel like 'integral players rather than mere bystanders in that process'.²⁸

Court Network told the VOCC that victims frequently ask 'what's happening next' and are 'often so confused because either nothing has been communicated, or it was communicated in the early stages when they were too overwhelmed to take it in'.²⁹ Similarly, Windermere Victims Assistance Program (VAP) told the VOCC that they are often trying to chase up information about the progress of a prosecution on behalf of a victim because victims 'don't know when they're meant to go to court, what to expect at court. And so it can be quite traumatising for them'.³⁰ Windermere VAP told the VOCC they often struggle to get information from police on behalf of victims about the progress of a prosecution.³¹

Community Legal Centre (CLC) representatives advised the VOCC that prosecutors often fail to uphold their Victims' Charter obligations around victims receiving information:

I have had matters where I have pointed out the obligations on the prosecution under the Victims' Charter, that they make victims aware of certain things and I've had pushback, even when I quoted the Act. The Victims' Charter is a toothless tiger.³²

Victims' professionals surveyed by the VOCC talked about efforts made by the OPP's prosecutors and VWAS staff to inform and consult with victims, but they suggested this often falls short and does not amount to 'participation' by victims:

Attempts by victim and witness support services seek to smooth the process and encourage an understanding but this isn't participation e.g. OPP meeting with families to explain process yet decisions on plea bargains will be made regardless and victims role limited.

Prosecutors often do their best to explain the system and prepare the victim, but they are time poor, therefore it is inadequate.

As one victims' professional surveyed by the VOCC observed, it is very common for victims to not be contacted or updated about the progress of a prosecution:

If they have received information, it's often just an impersonal email from the police informant outlining the next hearing date...they will often say that they have tried numerous times to contact the police informant who hasn't returned their calls or emails. Having [VWAS] really helps, however being understaffed and underfunded, this support can often only be given to the most complex of cases.

Victoria Police members spoke about the challenges of keeping victims informed and included in the prosecution process in the summary jurisdiction, noting such participation generally relies on the police informant liaising with victims and updating them on behalf of prosecutors. The VOCC was told there is no efficient way for informants to stay abreast of the progress of a prosecution themselves and that 'the informant might forget about the matter being at court until they get notification that there's been a

²⁶ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

²⁷ Consultation Meeting 5 – Dr Mary Iliadis.

²⁸ Ibid.

²⁹ Consultation Meeting 12 – Court Network.

³⁰ Consultation Meeting 21 – Windermere Victims Assistance Program.

³¹ Consultation Meeting 21 – Windermere Victims Assistance Program.

³² Consultation Meeting 23 – Community Legal Centres – Session 2.

conviction or that charges are dropped'.³³ The VOCC was also told that if prosecutors ask an informant to follow up information for a brief, this will trigger an informant to be aware a prosecution was proceeding, but 'if the brief is sufficient then an informant may only be updated when the proceeding is finalised'.³⁴

The OPP advised the VOCC that the main challenges for the OPP in maintaining communication with victims arise from the timing and pace of court proceedings and developments in the prosecution:

Where an extended period of time elapses between court hearings, victim contact details may change, or there may be a change in solicitor or social worker which results in the need to re-establish rapport with the victim. Conversely, occasionally there will be rapid developments in the court proceedings such as last-minute adjournment requests and unanticipated applications for bail which prevent the victim being updated until after the fact.³⁵

The OPP also advised the VOCC that the VWAS is 'instrumental in the communication process' and that OPP solicitors and VWAS workers will update victims according to victims' level of need and preferences.³⁶

Not all victims are treated equally

Court Network told the VOCC that even victims who are required to give evidence are not always being provided with the necessary information about the progress of a prosecution but that victims who are not required to give evidence are locked out of the update process entirely.³⁷ Court Network further observed that the distinction between categories of 'witness'/'victim' still occurs across all jurisdictions and that opportunities for victims to participate need to extend beyond victims who are witnesses.³⁸

Victims' professionals surveyed by the VOCC made similar observations about inconsistent treatment depending on whether a victim is a witness or not: 'Victims as witnesses are treated differently, because the prosecution rely on them giving evidence. All victims should get that level of support/respect.'

Pressure to expedite matters in the summary jurisdiction

Victoria Police articulated the challenges of facilitating victims' participation in the prosecution process in the summary jurisdiction where there is constant pressure to expedite and resolve cases:

It is a dynamic environment in the court, things can change quickly and quite often the victim isn't there. Decisions get made quickly and that's not to say we don't consider the victim, but it's a very dynamic environment. If we need to get a matter adjourned then we need to get it adjourned to have those discussions. There's a whole heap of matters backed up with COVID so there's pressure to keep things moving along. Quite often we're told to go outside and reconsider, so there's pressure to resolve.³⁹

The VOCC was told that the nature and speed of prosecutions in the summary jurisdiction make it impossible to facilitate victim participation:

if you have a matter that is going to proceed as a plea of guilty in a mention list, and you have a victim who would like to be part of that process, it is simply not reasonable to expect that the prosecutor is going to be able to facilitate that process. The logistics of it are simply impossible. And in those circumstances, the informant is generally not an active participant in those matters either... For prosecutors, the realities of the way the court rooms run, liaising with a victim is not possible.⁴⁰

The VOCC was told that the nature and speed of prosecutions in the summary jurisdiction make it impossible to facilitate victim participation.

Plea negotiations

The vast majority of cases in Australia are resolved through pleas of guilty, with estimates of the number of guilty pleas varying from 70 to 95 per cent.⁴¹ Research suggests that one of the main factors influencing the high rate of guilty pleas is the use of plea negotiations.

³³ Consultation Meeting 17 – Victoria Police – Session 1.

³⁴ Ibid.

³⁵ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2–3.

³⁶ Ibid 3.

³⁷ Consultation Meeting 12 – Court Network.

³⁸ Ibid.

³⁹ Consultation Meeting 18 – Victoria Police – Session 2.

⁴⁰ Consultation Meeting 18 – Victoria Police – Session 2.

⁴¹ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 4 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

Plea negotiation is a process whereby an accused person pleads guilty in exchange for agreed concessions from the prosecution.⁴² The negotiation can often be based on consolidating or reducing the number of charges against an accused. The commonly understood benefits of plea resolutions include:

- witnesses/victims being spared the trauma of having to give evidence and being cross-examined at a trial
- alleviation of court backlogs and delays (and associated cost savings)
- the certainty of a conviction being secured (there is a risk that the accused may be acquitted of all charges if the matter proceeds to a trial, but reaching a plea resolution ensures a guilty finding on at least some of the charges).⁴³

According to guidelines in the *Policy of the Director of Public Prosecutions for Victoria*, such a resolution may only occur if it is in the public interest. In determining whether a proposed resolution is in the public interest, regard must be had to:

- whether there is a reasonable prospect of a conviction of each offence charged
- the strength of the evidence on each charge
- any defences
- the likelihood of an acquittal on any of the charges
- whether the charge or charges to which the accused will plead guilty:
 - adequately reflect the accused's criminality
 - allow for the imposition of an appropriate sentence
 - allow for the making of all appropriate ancillary orders
- the views of the victims and the informant about the proposed resolution.⁴⁴

Under the Victims' Charter, all prosecuting agencies have a duty to provide victims with information if charges are substantially modified, discontinued or an accused accepts a plea of guilty to a lesser charge.⁴⁵

However, victims in the indictable stream (prosecuted by the DPP) are entitled to more specific information and consultation than victims in the summary stream (prosecuted by Victoria Police members). Specifically, in relation to plea negotiations, the DPP has further obligations to seek a victim's view on certain prosecutorial matters and to provide victims with reasons for certain prosecutorial decisions. These further obligations required of the DPP include:

- to seek the views of a victim before making a decision to substantially modify charges, discontinue charges, accept a plea of guilty to a lesser charge, oppose a sentence indication, appeal a sentence or appeal an acquittal⁴⁶
- to give a victim, as soon as reasonably practicable, the reasons for any decision if charges are substantially modified, a prosecution is discontinued or a plea of guilty is accepted to a lesser charge. The reasons can be given orally or in writing but may not be given if disclosing may jeopardise any investigation of a criminal offence or prejudice any other proceeding.⁴⁷

The *Policy of the Director of Public Prosecutions for Victoria* states that the OPP must proactively explain the prosecution and resolution process to the victim and that victims must be given reasons for decisions in accordance with the Victims' Charter.⁴⁸

Victims' experiences

One victim surveyed by the VOCC described their participation during the plea negotiation process positively: 'Throughout the Pre trial hearings, the plea and sentencing hearings I felt at all times the Crown Prosecutor engaged with me, listened to my needs, explained all aspects of the negotiations taking place.'

42 Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations: Overlooked and Unimpressed* (Springer International Publishing, 2021) 5 <<http://link.springer.com/10.1007/978-3-030-61383-9>>.

43 Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 32.

44 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 14 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>. Victoria Police does not appear to publish a decision-making framework for prosecutions equivalent to the DPP's.

45 *Victims' Charter Act 2006* (Vic) s 9.

46 *Ibid* s 9B(1).

47 *Ibid* s 9C.

48 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 12 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

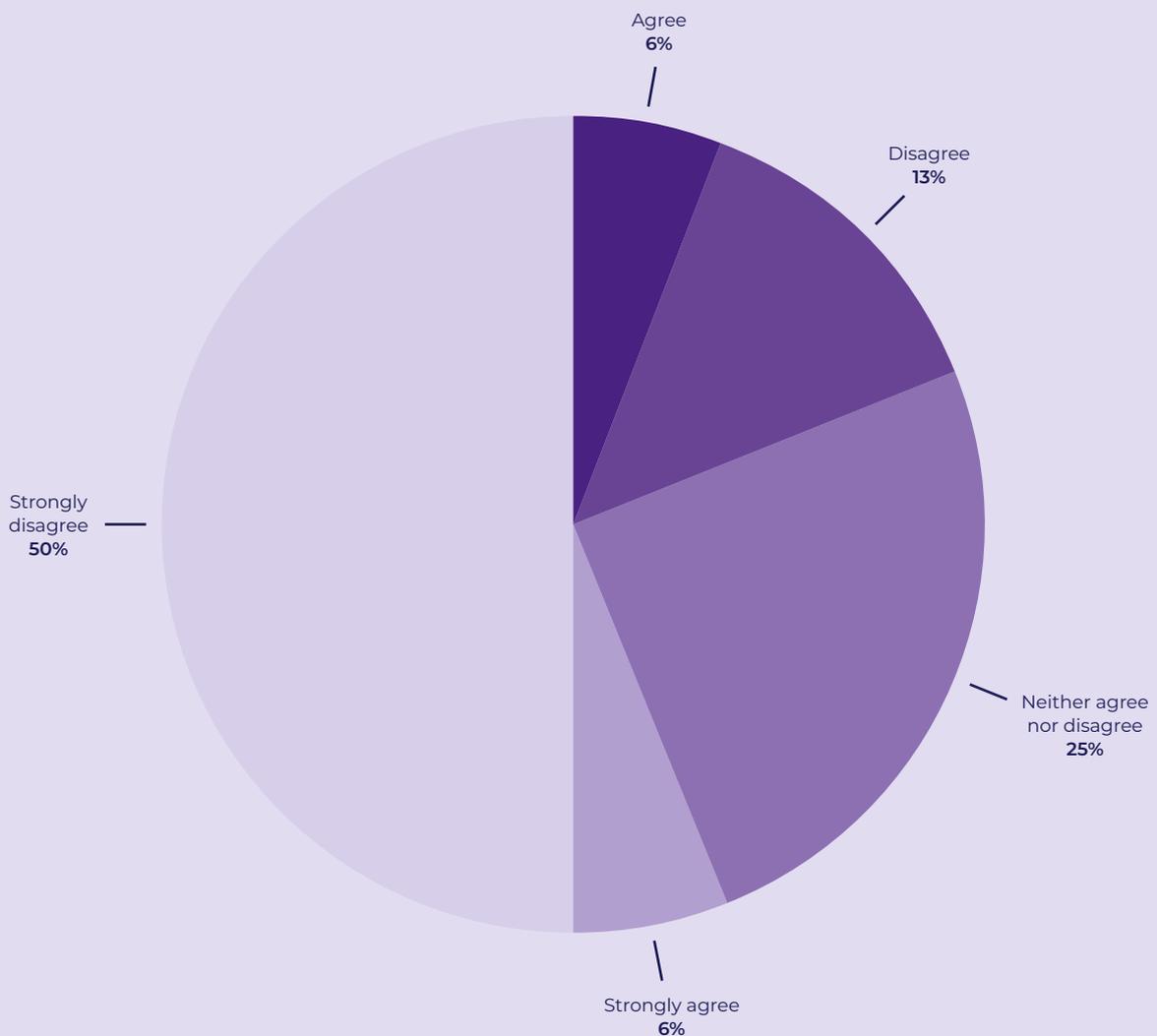
However, the VOCC’s engagement with victims of crime illustrated several key issues relating to plea negotiations, including:

- lack of consultation with victims despite their entitlements under the Victims’ Charter
- victims’ articulating a sense of loss at not being able to pursue the case to trial due to plea negotiations
- plea negotiations not reflecting victims’ perceptions of the seriousness of the crime.

Lack of consultation with victims

As shown in **Figure 20** below, the majority of victims surveyed by the VOCC (63 per cent) felt that they were not consulted about decisions to stop a prosecution or accept a guilty plea to a lesser charge. Only five per cent of victims agreed that they had been consulted about such decisions.

Figure 20: VOCC Victims’ Survey: Were you consulted about the decision to stop a prosecution or to accept a guilty plea to a lesser charge?



The VOCC's survey did not require victims to identify whether they were a victim of a summary or indictable crime, so it is difficult to determine whether those victims who felt that they were not consulted were victims in the indictable stream who are entitled to more specific information and consultation under the Victims' Charter. However, it was clear that regardless of jurisdiction, many victims felt they did not participate in these significant prosecution decisions.

When asked how their participation in the justice system could have been improved, victims surveyed by the VOCC commonly raised their experience of the plea negotiation process as an area for improvement:



'Yes – included more in the process (plea bargaining etc).'

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

– Victims' Survey respondents

Victims surveyed by the VOCC also spoke of wanting more input and consultation during the plea negotiation process to enhance their participation:



'Yes I would have liked to participate more in the process. I would have liked to have been asked about the plea deal before it was offered to the offender. My main motive for agreeing to testify and supporting the process was to protect the public and putting a violent person in jail. The offer of a community correctional order went against my reasons for pursuing the prosecution.'

'I found the Resolution process to be hideous, obscene, it felt like horse trading to me. I was aware in the months prior the OPP had made attempts to resolve which I really detested. ... I didn't appreciate other making that choice on my behalf ... I felt let down when the charges were minimised and the trial did not eventuate. I feel I should have been asked if I wanted the case resolved at that last minute.'

– Victims' Survey respondents

One Victims' Survey respondent acknowledged that the crime is against the state but said 'it is the victim that is hurt and significantly affected and they need to be given a greater voice in the process'.

Another Victims' Survey respondent described being advised of a plea deal after the fact, and only after pushing for an in-person meeting:



'I had very little time with the legal team and they offered a plea deal without consultation. I met them twice, prior to scheduled trial at County Court and the second meeting I invited myself as they were going to call me and I wanted to attend in person. At this meeting they discussed a plea deal they had already been offered that was a bundling of the charges and a correctional order as an acceptable sentence. I was told that if I insisted on the offer being withdrawn, if it went to trial and the verdict was guilty, the sentence would likely be a correctional order anyway as the plea offer would be discussed and it would be looked on unfavorably that I had asked for the plea to be withdrawn. Although I was the victim of the crime I felt I had not power in the process.'

– Victims' Survey respondent

Victim representatives from the Victims of Crime Consultative Committee reflected on a lack of trauma-informed approaches from the prosecution that left victims feeling as though they are not participants:

*'You're not a participant in the system. The prosecutors didn't care to meet with us or explain anything. It goes back to secrecy to protect the perpetrator, and that secrecy lends itself to victims not feeling like they know what happened. An early plea was taken to a lesser charge, but I only got a presentation as to what was agreed. I still don't really know what happened that day, just what was agreed to in the end.'*⁴⁹

Victims told the VOCC about being unprepared for charges to be changed and dropped on the day of trial: 'The morning the trial was going to start, the informant came up to me and said "oh he's pleading guilty, and we've dropped the charge of common affray and they're just making it an affray charge"'⁵⁰

Victims also told the VOCC they were dismayed by discussions occurring without their input:

*'to know that discussions had gone on without our input or inclusion was very demeaning and very challenging. It reinforced to us that the perpetrator had more opportunities for support and excuses than anything we had. It came through very clearly.'*⁵¹

Victims interviewed by the VOCC said prosecutors should facilitate a more participatory and inclusive role for victims during the plea negotiation process. Caterina Politi articulated her vision of participation during the plea negotiation process as follows:

*'speak to the victims before [they] make a deal and allow them to participate in that conversation' and that where victims are merely informed about a plea negotiation, it feels too late: 'the deals are already done. You know, behind the doors, and then they come and tell you that the deals are done.'*⁵²

Lost opportunity to pursue case

While victims may often be told that plea negotiations can spare them the trauma of going to court, research has shown that some victims do not appreciate assumptions being made about whether a trial is a positive or negative outcome for them.⁵³ For example, one respondent to the VOCC's Victims' Survey described the perpetrator pleading guilty as a positive part of the justice process because they didn't have to go to court. On the other hand, Caterina Politi said court 'would have been hard, but it's no harder than burying my son'.⁵⁴ In fact, for some victims the court experience may be a therapeutic process and opportunity to pursue a 'better justice'.⁵⁵

For some victims the court experience may be a therapeutic process and opportunity to pursue a 'better justice.'

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

50 Interview 7– Caterina Politi.

51 Interview 12 – Victim of crime.

52 Interview 7– Caterina Politi.

53 Some victims can have a strong desire for a matter to go to trial: see, e.g., Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (Report to the Office of Public Prosecutions, Victoria, April 2019) 23.

54 Interview 7– Caterina Politi.

55 Ibid.

One victim surveyed by the VOCC explained the emotional impact of losing the opportunity to pursue a case to trial:

'I was informed that the case was not going ahead due to the perpetrator suffering from dementia and a medical condition that made him unfit to stand trial. I was told that the prosecutor believed his dementia claim and that they were not prepared to 'fund' the case continuing...I was a complete wreck at this dismissal and subsequent discarding of my case.'

– Victims' Survey respondent

Pleas not reflecting the crime

'Overcharging' – the process of filing more charges than are ultimately pursued – has been identified as a source of trauma for victims because it makes it more likely that charges will be discontinued or dropped, creating a perception that the accused is being 'let off', or that they are not being held accountable for the full extent of the harm caused.⁵⁶

Some victims are distressed by the final negotiated charges because they feel they do not reflect the gravity and impact of the crime. For example, one victim interviewed by the VOCC did not want stalking-related charges to be withdrawn or downgraded because it meant a lot to them that the perpetrator be held accountable for this specific behaviour:

*'For me, the most important charge was stalking. All he's ever done is stalking. The man's got a lifetime history of stalking previous partners. But they weren't included in anything ... They negotiate away, the stalking charge. I said no, the most important charge to me is stalking because that's all he's ever done. They just said you actually don't get a say in this.'*⁵⁷

One Victims' Survey respondent told the VOCC that the plea was 'most unsatisfactory' because this victim did not feel that it held the perpetrator to account:

'he was not held to account for what he actually did to me. The resolution was reached due to his reluctance to plead guilty to [a different charge], to expedite the matter due to his advanced age and poor health and to save me the victim of the trauma of a trial. I didn't appreciate others making that choice on my behalf...I felt let down when the charges were minimised and the trial did not eventuate. I feel I should have been asked if I wanted the case resolved at that last minute.'

– Victims' Survey respondent

Stakeholder views

Prosecutor's duty

The OPP advised the VOCC that there remains an inherent challenge in both ensuring victims feel like participants and performing its duty as a prosecutor, stating that the:

challenge inherent in ensuring victims feel like participants in the plea process is the potential for the views of the victim to conflict with the responsibility of the OPP to only proceed with prosecutions where there is a reasonable prospect of a conviction, and it is in the public interest (the prosecution test).⁵⁸

The OPP noted that in cases where the victim's views in relation to pleas are sought but the outcome is not in line with those views, 'the victim may feel like an observer rather than a participant'.⁵⁹

⁵⁶ Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 83-5.

⁵⁷ Interview 9 – Survivor advocate.

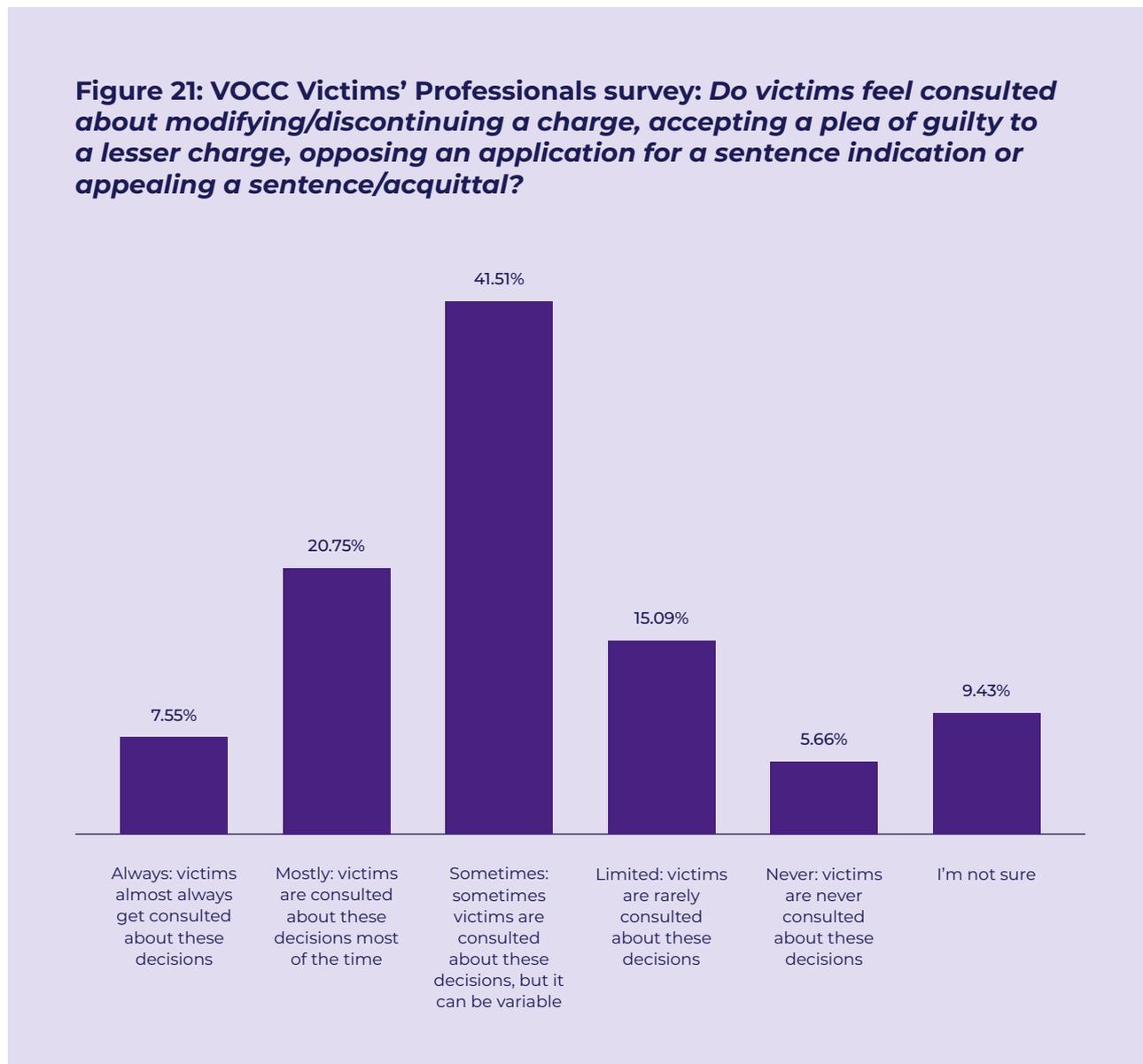
⁵⁸ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 3.

⁵⁹ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 4.

Victims are given limited opportunities to participate

Respondents to the VOCC’s Victims’ Professionals Survey were asked whether victims tended to feel consulted about decisions to modify or discontinue a charge, accept a plea of guilty to a lesser charge, oppose an application for a sentence indication or appeal a sentence or acquittal.

As shown in **Figure 21** below, the majority of victims’ professionals surveyed suggested such consultation was ‘variable’.



Some victims’ professionals told the VOCC about positive experiences for victims during the OPP consultation process:

The OPP is generally consistent with consultation with victims once the matter is listed at court.

Positive. The OPP and WAS are usually communicative and proficient – however, like all Services, some things slip & there is room for improvement occasionally.

OPP do a great job scheduling conferences pre and post court to communicate possible avenues through the court and outcomes.

Victims feel ok generally when consulting with the OPP. Their communication seems to be far better than police or lower level court staff communication.

In my experience the OPP social worker is communicative and accessible for the victim.

It would appear most appreciate the calls prior, during and after the matter is heard.

However, many victims' professionals raised concerns that consultation with victims is limited, not meaningful and that victims do not feel truly consulted or heard. Victims' professionals surveyed by the VOCC also said that victims are confused during the consultation process and are unable to understand information being told to them, limiting the extent to which they can meaningfully participate.

Many victims' professionals raised concerns that consultation with victims is limited, not meaningful and that victims do not feel truly consulted or heard.

Victims' professionals surveyed by the VOCC felt that 'consultation' sometimes did not occur and when it did, was not meaningful:

I had a client who was definitely not consulted or even informed in the process of negotiation related to charges and pleas. The negotiation resulted in the sexual offence charge being dropped. She was never clear why.

It is very rare that victims are properly consulted by the office of public prosecutions when they are modifying a charge/ or accepting a plea of guilty to a lesser charge. It seems to be the luck of the employee. Some employees seem to be good at it, others never consult the victim.

Some victims' professionals described victims feeling undue pressure to agree with prosecutors:

They can often feel pressured to agree with OPP recommendations.

Bullied & coerced into accepting what the OPP has already decided/accepted. Told better to accept something lesser rather than risk them getting off altogether.

Some victims' professionals described consultation with victims as 'tokenistic':

They feel like the consultation process is tokenistic. They get called and told OPP need to meet with them ASAP, only to take time off work to be told "we have to consult you, but we're probably going to just do what's most logical/cost effective".

Appreciate being consulted, however for some it feels more like a 'tick box' than their opinion being genuinely considered – for example if their view is different to OPP.

Most victims are not even aware that this is meant to happen.

They are asked their opinion however generally don't feel heard. They feel their opinion has no sway with the final decision and often question why they were asked.

Victims expect that if they are asked how they feel then this holds some weight, and when it proves not to, I have seen victims get very angry and disappointed.

One victims' professional surveyed by the VOCC felt that decisions are simply made by prosecutors and communicated to victims and because of this, it 'would be fairer on the victim if the word consultation was taken out of this process'. Similarly, another victims' professional said that victims 'shouldn't be asked if their thoughts and feelings are then disregarded'.

Victims are confused during the consultation process

Victims' professionals surveyed by the VOCC emphasised that consultation cannot be meaningful unless victims understand the information being provided to them. Victims' professionals said that 'these consultations are very jargon heavy' and many victims 'come away confused about what they are told and need it explained again in plain language'. Difficulties with comprehending the consultation process are typified by these respondents to the Victims' Professionals Survey:

Victims often tell me that they do not understand the complex language used by the legal staff. They are confused by legal jargon and often feel stupid if they have to ask them to explain it again. Some victims feel left out because of this. Public Prosecutors need to understand that most people are not used to court processes or the legal understanding of processes and often do not speak their mind or put forward their thoughts.

on many occasions, victims have reported is all felt 'very last minute' and rushed. In a general sense, many victims return to VAP [the Victims Assistance Program] to ask further questions about a meeting that may have occurred and found they don't understand the 'jargon' that is spoken by legal representatives. This is a very common issue, both with police and OPP.

I believe that victims are consulted but rarely explained in a way that the victim can fully understand, in order to make a real decision. Often they are told, not asked.

Some victims' professionals also highlighted the variable nature of victims' interaction with the OPP during the consultation process, indicating some victims may have positive experiences and encounter empathetic and patient prosecution staff, while others do not:

Mixed. Some get confused, and at times, coerced into providing agreement. Others find the process informative and helpful.

The majority of the time the victims feel they are included in this process, the OPP are more communicative with the victim, but again, this is only really when the matter is nearing court.

Again many variables including ability of OPP to communicate and explain complexities of a case. Unsure they receive any training in this.

Generally victims feel okay about it until decisions are made they don't agree with. They have no right then and are often told post decision.

Victoria Police members also highlighted the challenges for victims in understanding the plea negotiation process. Victoria Police members told the VOCC that information about pleas can be communicated to victims by barristers who are not trauma-informed:

Barristers don't have the skills set. They're good at what they do but they're not good at that personal engagement with victims and they don't quite understand the complexities of that victim who has made a report of a specific crime and suddenly we have a plea to something else⁶⁰

Victoria Police members suggested barristers need to get better at explaining things more effectively:

Quite often the OPP will handball the contact with the families but these pleas are often really complex – forensic analysis, strength of witness testimony etc – it is very hard for victim to come in and have understanding of that. It should come down to barristers and lawyers to explain things effectively.⁶¹

Court operates too quickly to allow participation

During stakeholder consultations, the VOCC repeatedly heard that the court system does not enable victims to fully participate in the plea negotiation process, particularly in the summary jurisdiction but also in the indictable stream in some circumstances. Professor Arie Freiberg described pressures on the criminal justice system to expedite matters: 'It [is] institutional pressures, time pressures, financial pressures, seeking to get outcomes as quickly and not always as appropriately as possible. Victims are probably an impediment [to expediency].'⁶²

Professor Freiberg noted that in the Magistrates' Court, the system is dealing with thousands of cases and victims are peripheral to this because 'there is that conveyor belt system of getting what you can rather than getting what's perfect'.⁶³ Professor Freiberg also pointed to the impracticality of consulting with a victim every time there is a change in charges, such as reducing a charge of 'intentionally' to a charge of 'recklessly'.

Victoria Police members told the VOCC that the time pressures are 'primarily driven by the courts' and 'the court's number one issue is their time'. Victoria Police members advised the VOCC that there is pressure on prosecutors and defence to progress matters and that to properly redress participation for victims around plea negotiations 'would require a level of engagement that is entirely at odds with the pressure coming from the courts'.⁶⁴

Legal complexities of plea negotiations

The legal framework and reasoning behind a change in charges can be complex and includes considerations relating to whether there is a reasonable prospect of conviction.⁶⁵ Both police prosecutions and the OPP described how these decisions, which must be made having regard to the best interest of the state, can conflict with victims' views and their needs for justice.

Victoria Police members told the VOCC that the question of how to change plea negotiations with a view to improving victims' participation is difficult because resolving a matter involves intricate legal decisions, which can be difficult to communicate to victims: 'We try to keep victims apprised of where we are at and explain the legal issues, but that can be really difficult as victims might not necessarily understand the legal issues we face.'⁶⁶

60 Consultation Meeting 19 – Victoria Police – Session 3.

61 Ibid.

62 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

63 Ibid.

64 Consultation Meeting 18 – Victoria Police – Session 2.

65 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 3 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

66 Consultation Meeting 18 – Victoria Police – Session 2.

One Victoria Police member discussed the desire to get an outcome (as opposed to no outcome), and how this can lead to pleas that may not meet victims' expectations and may also be difficult to explain.⁶⁷

Professor Freiberg similarly observed that pleas can be 'bewildering to victims' particularly where it comes down to matters of proof.⁶⁸ Associate Professor Asher Flynn further observed that for many victims of crime, the outcome of plea negotiations can be more complex when they involve defence counsel and a prosecutor agreeing to a different version of the facts which can 'be completely at odds with how [the victim] feel[s] that the crime occurred'.⁶⁹

The OPP advised the VOCC of the complexities and challenges of operating within a legal framework where the views of the victim on any proposed resolution is only one of the factors that determines whether the resolution is in the public interest.⁷⁰ The OPP told the VOCC that victims' expectations can be raised where an accused has been committed for trial on all charges but the OPP will nonetheless make an assessment that there are not reasonable prospects of conviction in respect of some or all of the charges.⁷¹ The OPP told the VOCC that:

victims generally do feel consulted, but they also feel disheartened and as though the consultation is tokenistic at times; in particular when they have a strong view about a proposed resolution but the DPP makes a decision that does not support their views. Despite best efforts to explain that there are multiple considerations for the DPP, victims may still feel let down.⁷²

The OPP told the VOCC that improved participation in plea negotiations can be achieved by 'ensuring victims are informed of their rights in the process and the responsibilities of the prosecution'.⁷³ The OPP further recognises that 'while we cannot avoid the need to advise victims of difficult decisions, we can improve how those decisions are communicated and the level of rapport and trust that has been established prior to having deliver such news'.⁷⁴

In this context, VWAS provides support to prosecutors to ensure that prior to conferences with victims, there is an agreed plan on how to deliver difficult news in a way where the victim will be supported.⁷⁵

Victims need more support to fully participate

As noted above, plea negotiations occur within a complex legal framework where legal professionals assess a range of evidentiary matters such as the admissibility, reliability and credibility of the evidence.⁷⁶

In this context, some stakeholders advised the VOCC of the need for victims to have independent advice and advocacy to ensure they can participate fully and meaningfully. Stakeholders differed on whether such advice should be provided by a non-legal advocate or an independent lawyer. For example, Associate Professor Flynn and Professor Freiberg suggested an advocate or support person, as opposed to a lawyer.⁷⁷ Associate Professor Kirchengast and Dr Holder also suggest there is a place for non-legal victim advocates.⁷⁸

Stakeholders advised the VOCC of the need for victims to have independent advice and advocacy to ensure they can participate fully and meaningfully.

Conversely, the South Australian Commissioner for Victims' Rights explained how their office hires lawyers to provide victims with independent legal advice and help explain the decision-making process around plea negotiations or where cases are discontinued:

Sometimes we just hire a lawyer to actually explain decisions, so their case might not go ahead and we might hire a lawyer to explain why it wouldn't go ahead and what the intricacies of it are.⁷⁹

The South Australian Commissioner advised that hiring a lawyer who is independent of the prosecution is helpful because 'often victims don't trust that the DPP are acting in their best interest, so having that sort of independent person ... telling them the same thing often just helps them accept a decision'.⁸⁰

67 Ibid.

68 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

69 Ibid.

70 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 3–4.

71 Ibid.

72 Ibid 12.

73 Ibid 4.

74 Ibid.

75 Ibid 12.

76 Office of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria* (13 June 2023) 3–4 <<https://www.opp.vic.gov.au/wp-content/uploads/2023/06/DPP-Policy-13-June-2023.pdf>>.

77 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

78 Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

79 Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

80 Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

Victoria Police members do not support a role for legal representation for victims during plea negotiations:

I don't think more lawyers in the equation is what we need. That's the last thing we need. Too many voices at court. The issue with plea negotiations is the explanation – giving victims the thought process and the reason a decision has been made, rather than getting a lawyer in representing a victim. Someone needs to take responsibility with having that discussion with the family about the reason for the decision.⁸¹

Judicial review of plea negotiation process

Professor Freiberg suggested victims might benefit from the introduction of a process of judicial review of plea negotiations. According to Freiberg, under this proposal:

The Judge might be an independent operator if you like that in every case, to say, well, I think that's fair and I would have thought a victim would say if an independent third party say it's OK then it must be OK. I don't trust my friend. I don't trust the prosecution. I don't trust my lawyer. I don't trust anybody, but if the judge says fair enough, that is the best we could do then I can accept that.⁸²

Freiberg recognises that such an approach would result in a 'huge workload on judges but in theory I would like a more active role for judges, as happens in a lot of the therapeutic justice areas'.⁸³ During consultation with judicial representatives of the Supreme, County and Magistrates' Courts, judicial representatives did not support such an approach.⁸⁴

Committals

Committal proceedings are heard in the lower courts before the accused has been ordered ('committed') to stand trial in a higher court.⁸⁵ A 'committal' is the decision by a magistrate to commit an accused for trial or sentence in a higher court.⁸⁶ During committal hearings, the court may hear evidence and determine whether there is evidence of sufficient weight to support a conviction and to determine how the accused proposes to plead to the charge.⁸⁷

Research has found that the committal process can be particularly distressing and traumatising for victims, particularly pre-trial cross-examination⁸⁸ and undue delay.⁸⁹

Victims' experiences

Lack of understanding about the process

Because the committal process is often the first time a victim attends court, victims told the VOCC that victims need to be better informed about the committal process and what to expect at court. One victim told the VOCC that 'after the charges were laid – this is where education needs to come into it about transparency because you don't know what the process is. Nobody knows what a committal is.'⁹⁰

This sense of confusion was supported by another victim commenting that attending the committal hearing was 'like a dog's breakfast. There were people in the foyer everywhere and we had no idea what to expect because no one prepared us for that situation.'⁹¹

Committal hearings causing secondary trauma

As a victim's first experience of the criminal trial process, the committal process can leave some victims feeling 'jaded' before the substantial trial begins and that the 'the system is set up to protect' the accused and not the victim.⁹²

Some victims felt that the committal process was an unnecessary step in the criminal trial process involving many delays, with one victim observing, 'all the committal did was waste seven months of our life'.⁹³ Similarly, a respondent to the Victims' Survey stated that such delays caused significant stress:

81 Consultation Meeting 19 – Victoria Police – Session 3.

82 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

83 Ibid.

84 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

85 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 6.

86 Ibid.

87 Judicial College of Victoria, *Victorian Criminal Proceedings Manual* (May 2022) Chapter 4 – Committal Hearings <<https://www.judicialcollege.vic.edu.au/eManuals/VCPM/index.htm#27435.htm>>.

88 Victorian Law Reform Commission, *Committals* (Report No 41, March 2020) 123.

89 Ibid 58.

90 Interview 16 – Victim of crime.

91 Interview 12 – Victim of crime.

92 Interview 16 – Victim of crime.

93 Ibid.



'All the Committal Proceedings did in our case was enable the accused to play the system with an empty promise of negotiating a Guilty Plea, get granted a 3 month delay which caused over 9 months of delays once the Committal Proceedings were scheduled. This causes a great deal of stress to Families.'

– Victims' Survey respondent

Victims advised the VOCC that they felt particularly harmed by the committal process, that it contributed to significant re-traumatisation and that it was not trauma-informed for victims. One victim surveyed by the VOCC reflected that the 'the Committal hearing nearly broke me'. Another respondent to the Victims' Survey similarly commented:



'After an exhausting, horrendous Committal hearing...many delays and adjournments, my health suffered. I experienced hypertension, exhaustion and insomnia waiting for the trial and felt I was not actually in a fit state to perform my best... I believe the Committal process needs to be removed, it is not a balanced system favouring the perpetrator who does not need to face cross examination.'

– Victims' Survey respondent

Where victims attend the committal hearing with appropriate guidance and support, this seemed to enhance outcomes. For example, one victim interviewed by the VOCC recalled that the OPP's VWAS social worker provided excellent preparation for the experience of the committal hearing:



'They call you in before committal hearing to brief you, let you know what to expect and to ask questions...They said, "just remember that you're just having a conversation in a room, it's a big fancy room, but all you're doing is telling your story. It's a conversation between two people – you and his barrister". And then they said "you know it's not personal. They will ask tough questions, but they're not having a go at you. They're just doing their job." But to hear that so succinctly, it took away the power of that room and that building and the moment and the event.'⁹⁴

Committals are 'unnecessary'

Some victims felt strongly that committal hearings should be abolished. One victim described committals as a 'luxury that should be skipped'.⁹⁵

One victim interviewed by the VOCC commented that when the evidence is clear, the matter should just go to trial: 'Why would you give someone the right to have a committal, it should have just gone straight to trial. Again putting untold extra stress on the victims.'⁹⁶

⁹⁴ Interview 6 – Victim of crime.

⁹⁵ Interview 7– Caterina Politi.

⁹⁶ Ibid.

Another Victims' Survey respondent told the VOCC:

'if the police and OPP deem the evidence strong enough after investigation to lay charges for indictable offences, why then does a magistrate need to further test the evidence by cross examining the victims at committal? Why can't the case go straight to trial giving the jury responsibility for judgement? Surely by cutting out so many intermediary steps in the court process the government will save on costs and more matters could be tried in an expeditious manner for the benefit of victims and perpetrators alike.'

- Victims' Survey respondent

Ingrid Irwin told the VOCC that committal hearings should be abolished because it gives the defence an opportunity to seize on 'any slight variation from the victim'.⁹⁷ One survey respondent stated that committals should be reformed as they have been in New South Wales:⁹⁸

'If that was in NSW then the evidence would have gone straight to trial. My daughter, myself and my ex-[wife] were cross examined. The magistrate said straight away this is going to trial. We need to abolish committal proceedings and bring Victoria in line with NSW.'

- Victims' Survey respondent

Another victim interviewed by the VOCC also spoke favourably about the NSW reforms and stated that reforming committal proceedings:

*'hasn't caused wrongful convictions in NSW, all it has done is speed up the process. You could save a lot of time and stress and anxiety for families if they knew that if a brief of evidence has been followed then you can get your trial in a few months.'*⁹⁹

Stakeholder views

Giving evidence multiple times

Victoria Police members expressed concern about the number of times a victim may be required to give evidence, which may be exacerbated by committal hearings, and the negative impact these experiences can have on victims:

A victim can give evidence on two, even three occasions. And that's not even counting appeals. If they spend a day or two in the box giving evidence at a committal and then we get another adjournment, it's hard trying to explain to a victim, "you're going to have to go through this whole process again". It's a lot for them to take in and if there is any sort of jury that's knocked out, or there's another legal argument, we have to start the trial again and they're going to do it all again.¹⁰⁰

Victoria Police members suggested expanding the use of Visual and Audio Recording of Evidence (VARE) to all victims of serious crime, 'so that victims of crime don't have to tell their story over and over again'.¹⁰¹ A Victoria Police member explained that:

Using the VARE for all victims of crime. They'll still be cross-examined, but it takes away having to give evidence in chief. Other states use it for more crimes than we do. We just limit it to sex offences for children and people with a cognitive impairment. It should be all victims. It's a lot quicker and a lot easier for members. And it's a lot easier for victims. The evidence is fresher – as opposed to them telling it in detail years later in a court room. It's actually a more accurate telling of the evidence.¹⁰²

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

98 Committal procedures were changed in New South Wales in 2018 to reduce delays in indictable cases being finalised in the District Court: New South Wales, *Parliamentary Debates, Legislative Assembly*, 11 October 2017, 277 (Mark Speakman, Attorney General). It is now the role and function of the DPP to determine whether a person should be tried upon indictment in New South Wales: *Criminal Procedure Act 1986* (NSW) s 66(2). A Magistrate no longer assesses the evidence to determine whether an accused should be committed to stand trial. A Magistrate may still direct that a witness attend court to give evidence: *Criminal Procedure Act 1986* (NSW) s 82.

99 Interview 16 – Victim of crime.

100 Consultation Meeting 19 – Victoria Police – Session 3.

101 Ibid.

102 Consultation Meeting 19 – Victoria Police – Session 3.

Victim-witnesses

Not every victim who experiences a criminal trial will be required to give evidence in court. For those victims who are also witnesses there is a significant risk of re-traumatisation as a result of giving evidence.¹⁰³ Giving evidence and being cross-examined can be one of the most challenging parts of the criminal trial process.¹⁰⁴

Victims' Charter entitlements

Under the Victims' Charter, if a victim is to appear as a witness for the prosecution, the prosecuting agency is to ensure that the victim is informed:

- about the process of the trial or hearing (as the case requires)
- about the victim's role as a witness for the prosecution
- that after the victim has given evidence, the victim may remain in the courtroom unless the court otherwise orders
- about any special protections or alternative arrangements for giving evidence.¹⁰⁵

The prosecuting agency is also required to ensure the court is informed about the victim's preferences for the use of any special protections or alternative arrangements for giving evidence.¹⁰⁶

Legislative protections for victim-witnesses

There are a range of legislative protections for victim-witnesses.¹⁰⁷

Broadly, legislative protections include:

- protections against improper questioning during cross-examination¹⁰⁸
- protections relating to the defence accessing a complainant's personal information¹⁰⁹
- protections relating to introducing evidence of a complainant's sexual history¹¹⁰
- alternative arrangements for giving evidence, including the use of remote witness facilities and the use of screens to remove the accused from the direct line of vision of the complainant¹¹¹
- additional considerations when the court determines whether to allow the pre-trial cross-examination of a witness.¹¹²

Ground rules hearings are also used in some criminal trials.¹¹³ Ground rules hearings are a pre-trial process addressing the communication needs of particular vulnerable witnesses. A court may hold a ground rules hearing at any venue, provided the case involves a qualifying offence.¹¹⁴

Support available to witnesses

Witness support

There are two dedicated witness support services in Victoria:

- the Victims and Witness Assistance Service (VWAS) which is part of the OPP
- the Child Witness Service (CWS) which is part of the Department of Justice and Community Safety.

These services are staffed by specialist social workers who assist victim-witnesses through the justice process, including the process of giving evidence.

VWAS is only available for victims/witnesses in the indictable stream (heard in the County and Supreme Courts). The Child Witness Service is not limited by jurisdiction, but is only available for children and young people.

¹⁰³ Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) 328 <https://parliament.vic.gov.au/images/stories/committees/CLSI/Inquiry_into_Victorias_Justice_System_Report/LCLSI_C 59-10_Vic_criminal_justice_system.pdf>.

¹⁰⁴ See generally Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 93.

¹⁰⁵ *Victims' Charter Act 2006* (Vic) s 11(2)(a).

¹⁰⁶ *Ibid* s 11(2)(b).

¹⁰⁷ These protections are contained in the *Evidence Act 2008* (Vic) and *Criminal Procedure Act 2009* (Vic).

¹⁰⁸ *Evidence Act 2008* (Vic) s 41(3).

¹⁰⁹ *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32CD, inserted by *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* s 85, which commenced on 7 September 2022.

¹¹⁰ *Criminal Procedure Act 2009* (Vic) s 342.

¹¹¹ *Ibid* ss 359–365.

¹¹² Victoria, *Parliamentary Debates*, Legislative Assembly, 4 August 2022, 2906–07 (Sonya Kilkeny, Minister for Victim Support).

¹¹³ *Criminal Procedure Act 2009* (Vic) s 389A.

¹¹⁴ See *Criminal Procedure Act 2009* (Vic) s 389A for qualifying circumstances.

Intermediary scheme

While not a 'support' service for witnesses,¹¹⁵ the intermediary scheme helps some victim-witnesses to give evidence.¹¹⁶

The intermediaries scheme is available to a witness (including a complainant) who is under 18 years when the proceeding commences or has a cognitive impairment and the criminal proceeding takes place in a participating court.¹¹⁷

Intermediaries are skilled communication specialists who are neutral officers of the court and whose role is to facilitate effective communication with the witness.¹¹⁸ Intermediaries' main purpose is to enable witnesses to give their best evidence, not to provide emotional support or case management.¹¹⁹ The general function of an intermediary is to:

- assess the witness's communication style and what specific communication assistance they need
- describe the witness's communication needs
- facilitate communication between the witness and other parties to prevent or overcome a communication breakdown
- write court reports on the witness's communication needs and provide practical strategies for managing those needs.¹²⁰

Victims' experiences

Positive experiences giving evidence

Victims interviewed by the VOCC described the following aspects of giving evidence as positive:

- the OPP taking the time before the trial to prepare the witness for what to expect¹²¹
- being able to use remote witness facilities¹²²
- the use of intermediaries¹²³
- pro-active judges who managed the courtroom, intervening when defence counsel asked inappropriate questions.¹²⁴

One respondent to the Victims' Survey praised the support of VWAS in providing all the necessary information and support to enable them to give evidence remotely:



'Once Witness Assistance got in touch, I felt like I had someone to ask all the 'stupid' questions of. Nothing was too much trouble, and they addressed all my fears, mostly around giving evidence and being in close proximity to the offender. WAS organised visiting court beforehand, provided emotional support, kept me up-to-date, supported before, during and after giving evidence remotely at the contested committal, adjourned trial, interlocutory appeal, trial at the County Court and Appeal against conviction. I wouldn't have coped without everyone's amazing knowledge, experience and support.'

– Victims' Survey respondent

Not receiving enough information about being a witness

Despite some positive experiences as outlined above, 63 per cent of victims surveyed by the VOCC felt they did not get enough information about their role as a witness to help them participate in the process. As shown in **Figure 22** below, only 18 per cent of Victims' Survey respondents agreed they were given enough information about their role as a witness to help them participate in the process.

¹¹⁵ Intermediaries are skilled communication specialists who are neutral officers of the court.

¹¹⁶ The intermediary scheme was introduced by legislation in Victoria in 2018 as a pilot program. The legislative scheme relating to intermediaries and ground rules hearings is set out in Part 8.2A of the *Criminal Procedure Act 2009* (Vic) which commenced on 28 February 2018.

¹¹⁷ *Criminal Procedure Act 2009* (Vic) s 389F. Participating courts can be gazetted: *Criminal Procedure Act 2009* (Vic) s 389G.

¹¹⁸ Victoria, *Parliamentary Debates*, Legislative Assembly, 13 December 2017, 4359 (Martin Pakula, Attorney-General).

¹¹⁹ *Ibid.*

¹²⁰ Department of Justice and Community Safety (Victoria), *Victorian Intermediaries Pilot Program* (Web Page) <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/victorian-intermediaries-pilot-program>>.

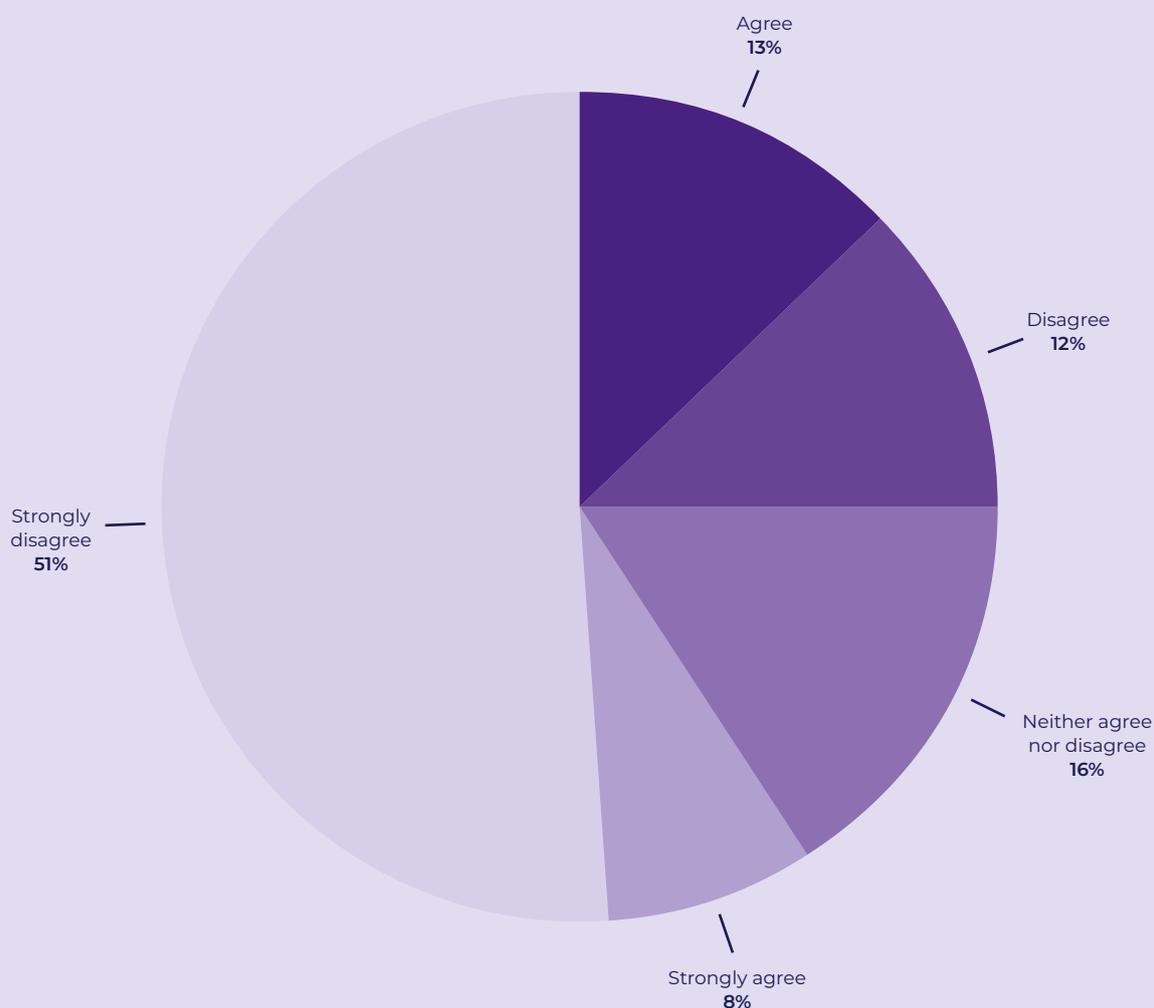
¹²¹ Interview 6 – Victim of crime.

¹²² Interview 16 – Victim of crime.

¹²³ Interview 16 – Victim of crime.

¹²⁴ *Ibid.*

Figure 22: VOCC Victims' Survey: Were you given enough information about your role as a witness to help you participate in the court process?



One Victims' Survey respondent recalled different professionals telling them different things about giving evidence:

'It became obvious at different points of the process that although everyone knew their own area of expertise really well, they didn't necessarily know much about elsewhere. For example, the Investigator said I could give evidence from another facility and the Counsellor said I would have to find a quiet spot within the courthouse until I was called. Once connected with WAS though I found out neither advice was correct, and I would be giving evidence remotely from within the courthouse.'

– Victims' Survey respondent

Another victim interviewed by the VOCC was upset that they were not informed by the OPP that when they were giving evidence remotely, the accused would be listening.¹²⁵

Trauma caused by giving evidence

One respondent to the Victims' Survey told the VOCC about the trauma caused by having to be cross-examined, exacerbated by the fact the accused has a right to silence: 'The rapist was never cross examined. Only I, the victim, was put through ridicule, cross examination 3 times.'

Another respondent to the Victims' Survey said they prepared for (and accepted) the need for the prosecution and court processes, but noted that this significantly impacted on their ability to recover, particularly in the context of preparing for cross-examination: 'I needed to stay in that traumatic space for almost 2 years with both cases running concurrently in preparation for cross examination.'

Victims described feeling as if they were on trial, as shown by this Victims' Survey respondent:

'For nearly a month the trial went on and at no stage in my opinion was HE ever on trial. We were. AT no stage did Defence ever have to prove he didn't do it. The Jury never heard him speak. The Beyond Reasonable Doubt high watermark in these types of historical Child Sexual Abuse Cases needs to be changed. All Defence was trying to do was ask enough questions enough times to create some shred of doubt in the Jury's minds. This is so fundamentally flawed and in no way protects the young victims.

...the rapist was never cross examined.'

– Victims' Survey respondent

One victim interviewed by the VOCC was dismayed that they could not have a support person of their choice accompany them to court:

*'I wasn't allowed to have a support person in court. So I'm allowed the social worker – she's allowed in because she's allocated to me. It just struck me as really strange as to why a complete stranger could accompany me to court but not someone who I knew and trusted and who wasn't involved in the events...I just think it's important that someone who you love is able to bear witness. It seems really clinical and unfair.'*¹²⁶

The VOCC heard from lived-experience consultants about their experiences of giving evidence:

*'When I was talking to a lawyer I didn't feel comfortable. It's a scary experience for anyone but especially children and young people. You know something happened but then my dad said "no that didn't happen." It's very hard for a young person to be sure of themselves. You can know every exact detail but it's difficult to be strong in yourself and say "yes this is what happened to me" especially when you are on your own.'*¹²⁷

Other respondents to the Victims' Survey had actively chosen not to seek a criminal justice response because of the perceived trauma that would be caused by the adversarial trial process:

¹²⁵ Interview 16 – Victim of crime.

¹²⁶ Interview 6 – Victim of crime.

¹²⁷ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.



'the prospect of the adversarial processes, with contemptuous questions and challenges about details was a fearful prospect. Also averse is the prospect of one's life, relationship and medical history being poured over by hostile opponents and possibly being discussed with a perpetrator triggered fear and anxiety reminiscent of exposure without escape or control – powerlessness.'

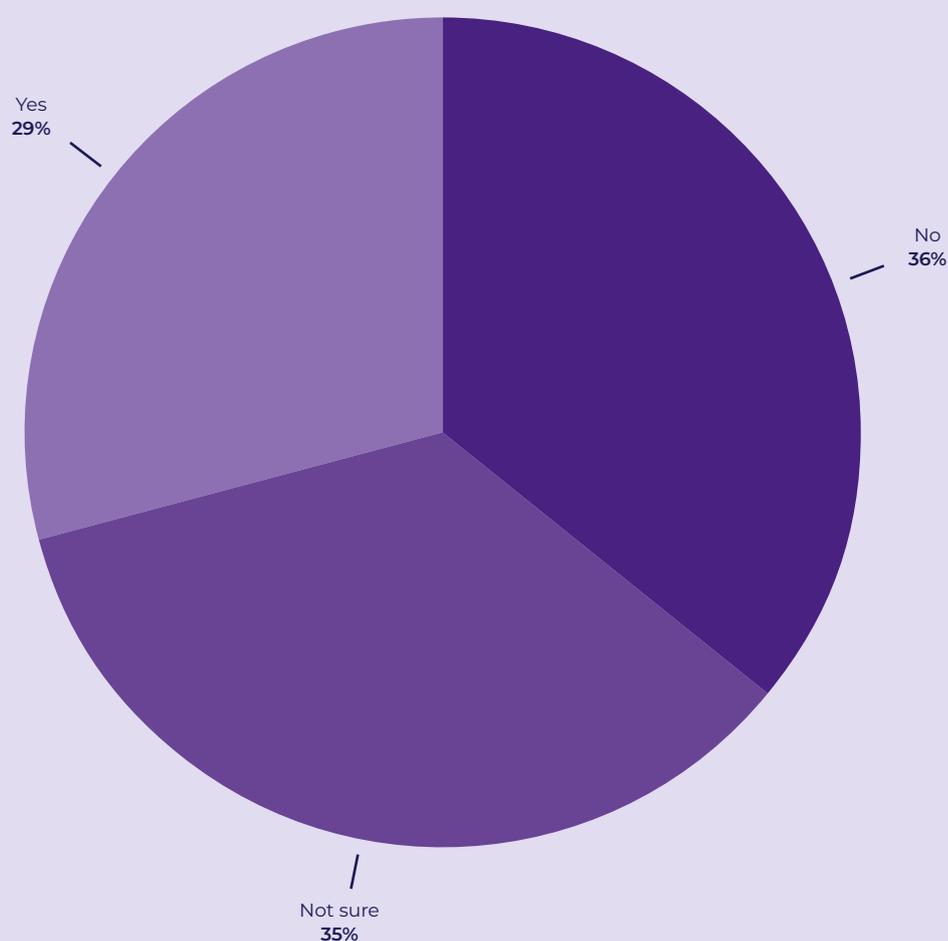
'I also chose not to go to court, despite being the victim of very serious crimes, because I felt that the overall adversarial process would be extremely detrimental to my health (being reduced to a mere "witness" in a case being controlled by the ODPP; being harshly cross-examined; having to face the perpetrator in court; and the constant fear of "payback" from the offender etc). The current legal system does not appear to be centred on recognising the rights and needs of victims of crime. We are pushed aside whilst the offender retains various legal protections and supports.'

– Victims' Survey respondents

Willingness to give evidence again

Of those respondents who gave evidence at court, just under a third would be willing to be a witness again. Around two-thirds were either unsure (35 per cent) or would not (36 per cent) as shown in **Figure 23** below. Respondents with a disability were the cohort with the highest 'No' response, which is consistent with the systemic barriers to participation discussed in **Chapter 5**.

Figure 23: VOCC Victims' Survey: Would you give evidence again?



Access to confidential communications causing trauma

A Victims' Survey respondent shared their experience of a protracted pre-trial attempt by defence to access their confidential communications, with very detrimental effects on the victim's wellbeing:

'For 18 months there were legal arguments for the Defense seeking my psychologist full file. I thought there was legislation to protect them in sexual assault cases but turns out anything can have exemptions applied for. It is wrong and hugely distressing. There have been multiple times throughout this legal process where I have considered taking my own life and I mean seriously considered and planned.'

– Victims' Survey respondent

Another Victims' Survey respondent shared their experience of having their records subpoenaed and feeling unsupported during the process, which they concluded ultimately had no relevance to the trial:

'I was subpoenaed at an earlier time for my personal emails and texts. I was told if I wanted legal advice I would have to seek that independently and I was not given any contacts etc to seek said advice. I have never intersected with the justice system until reporting these cases so I had no idea. I eventually found a firm and had a brief conversation with a very dismissive woman who had no interest in assisting me so it left me feeling defeated and alone. I attended the hearings relevant to the subpoena and the defense gained them. It was purely a fishing expedition to attempt to discredit me and none of the information was relevant to the assaults themselves.'

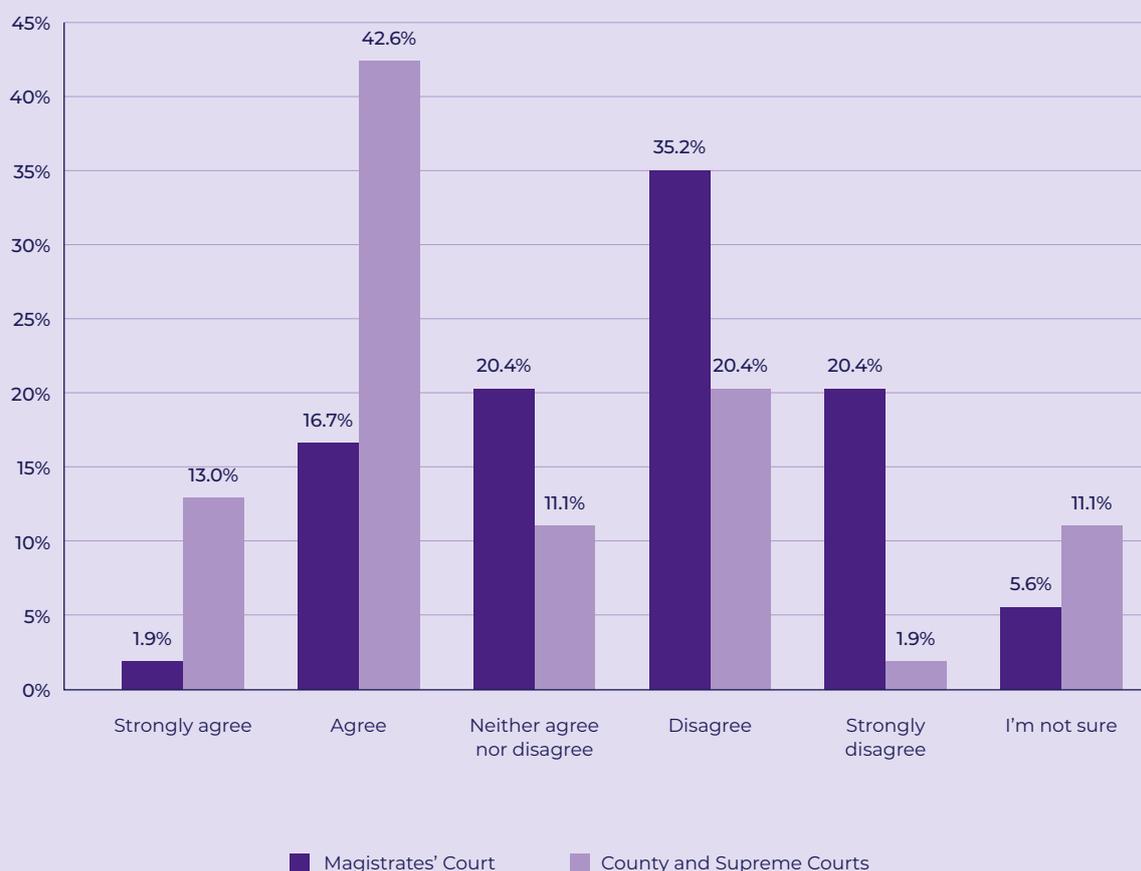
– Victims' Survey respondent

Stakeholder views

Not receiving information about being a witness

Victims' professionals surveyed by the VOCC were asked whether victims were given enough support and information about their role as a witness to help them participate in the court process. As shown in **Figure 24** below, respondents indicated that victims are not given as much information and support at the Magistrates' Court as at the County and Supreme Courts.

Figure 24: VOCC Victims' Professionals survey: Victims are given enough support and information about their role as a witness to help them participate in the court process.



Importance of witness support

A number of stakeholders indicated during consultations with VOCC that the intermediary scheme has been a positive introduction for witnesses who might not otherwise have sufficient support or accommodations made to navigate giving evidence.¹²⁸

Similarly, during consultation with VOCC, Victoria Police members praised the intermediaries program as 'fantastic'¹²⁹ and 'the most magnificent improvement in the system ... in a long time.'¹³⁰ However, Victoria Police members also observed that the eventual application at the trial of the decisions about communication made at a ground rules hearing can be variable and dependent upon individual judges:

In a couple of different ground rules hearings and trials, or special hearings, where complainants are being cross examined, there seems to be a very big difference in how judges apply rules in ground rules hearing and how stringent or strict those restrictions are. There seems to be a big disparity between what's decided and what's applied during the hearing. Some judges say the witness will not be examined for any more than 2-3 hours or will intervene where there are repeated questions. But then there are other judges who will not intervene if there are repeated questions or cross-examination goes over a number of days. Some older judges may not subscribe to these new rules or think they are too unfair on the accused. There's a big difference in how ground rules hearings are applied, depending on who the judge is.¹³¹

¹²⁸ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

¹²⁹ Consultation Meeting 24 – Victoria Police – Session 4.

¹³⁰ Consultation Meeting 18 – Victoria Police – Session 2.

¹³¹ Consultation Meeting 24 - Victoria Police – Session 4.

Some CLC representatives told the VOCC that the intermediary scheme might be more effective if victims had independent legal representation to advocate for their interests.

The CWS was also praised by the stakeholders as a positive reform in Victoria. Victoria Police members explained that the CWS provides 'extremely invaluable support' to young witnesses by taking the pressure off police prosecutors and explaining basic court information like 'who will be sitting where in court, the evidence, the way you might get asked questions'.¹³²

Similarly, the CIJ remarked on the success of the CWS, observing that when introduced, it was initially considered contentious because 'of the idea that anyone supporting or assisting a witness would impact on the prosecution process'.¹³³ The CIJ commented on the link between better support for child witnesses provided by the CWS and increased convictions, particularly around sexual offences against children:

But it's now accepted as an integral part of the process and people recognise it as contributing to a higher quality criminal justice process and particularly in an area (child sex offending) which is notoriously difficult to get a prosecution because you are completely reliant on the victim of the offence. With the CWS, you're more likely to get victims giving evidence and therefore you're more likely to get a conviction. This has been seen as a big improvement and is now kind of part of the system's DNA.¹³⁴

A judicial representative also noted that the 'child witness service plays an extraordinary part for children in summary contests in indictable sexual offences – they are sophisticated and highly trained and really help children and young people to give evidence'.¹³⁵

Need for independent legal representation

Some stakeholders told the VOCC that victim-witnesses could benefit from improved support, advocacy and legal advice when giving evidence and that some victim-witnesses should have independent legal representation.

Associate Professor Kerstin Braun sees a role for independent legal representation for victim-witnesses during cross-examination because, 'nobody is there to act exclusively on behalf of the victim who will enforce their rights'.¹³⁶ Professor Braun identifies cross-examination as the crucial point of risk of secondary victimisation, and the point at which independent legal representation for victims would be of most benefit:

I always think victims should be able to have legal representation at trial because out of all the reports that you hear and anecdotal evidence that is really the stage where most victims feel re-traumatized by the questions that are being asked. Some of the questions do not comply with all the regulations and the Evidence Act, so things are being asked that shouldn't be asked. People should be intervening, but they don't always for various reasons such as an effort to make it a fair trial and allow the defence to introduce those things. Oftentimes the situation which is the worst for the victim is at trial, especially during cross examination.¹³⁷

A number of stakeholders discussed legal representation for victims as being vital when the defence is seeking access to a victim's confidential communications. These stakeholders perceived legal representation for victims in this context as an important step in both victims' participation and the protection of their rights.¹³⁸

Dr Iliadis told the VOCC that she and her colleagues (Professor Jonathan Doak and Dr Olivia Smith) suggest providing victims with legal representation would protect a broad range of sensitive third-party evidence, including but not limited to prior sexual history, medical and counselling notes, digital communications (such as phone records containing private data), school records, 'as well any sort of communication that can be subpoenaed or used by defence counsel to adversely discredit a victim survivor's character in testimony'.¹³⁹

Similarly, CLC representatives advised the VOCC that there are gaps in the provision of legal assistance for victims within criminal proceedings, including in relation to confidential communications and where victims are called to give evidence against their wishes:

At this stage, there is no legal representation available to victims of sexual assault to assist them to participate in proceedings to object to the disclosure of confidential information (e.g., sensitive health information). For example, in matters where there is a subpoena for confidential communications to be disclosed or where victims are called to give evidence who don't want to give evidence, particularly in family violence situations, the lack of legal representation can be a huge problem. This can have serious consequences for victims.¹⁴⁰

¹³² Consultation Meeting 18 – Victoria Police – Session 2.

¹³³ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

¹³⁴ Ibid.

¹³⁵ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

¹³⁶ Consultation Meeting 1 – Associate Professor Kerstin Braun.

¹³⁷ Ibid.

¹³⁸ Consultation Meeting 5 – Dr Mary Iliadis; Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 10 – Centre for Innovative Justice, RMIT University; Consultation Meeting 16 – Victoria Legal Aid; Consultation Meeting 23 – Community Legal Centres – Session 2; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022.

¹³⁹ Consultation Meeting 5 – Dr Mary Iliadis.

¹⁴⁰ Consultation Meeting 23 – Community Legal Centres – Session 2.

CLCs highlighted to VOCC how difficult it might be for victims to represent themselves adequately and to prepare pre-trial materials to oppose a subpoena for their confidential communications. CLC representatives told the VOCC there would be an advantage to having independent legal representation for victims of sexual offences and family violence in particular.¹⁴¹ Furthermore, they suggested with the increased use of ground rules hearings, victims could benefit from legal representation to ensure cross-examination and the structure of proceedings is trauma-informed and appropriate.¹⁴²

The CIJ told the VOCC that representation for victims in relation to confidential communications was ‘ad hoc’:

Because there is no dedicated mechanism for an independent legal representative for confidential communications matters, our understanding is that the OPP need to ask barristers to step in to represent victims on a very ad hoc basis if they are at court on the day for other matters.¹⁴³

Victoria Legal Aid (VLA) told the VOCC that they support the creation of a dedicated service for victims in relation to confidential communications, based on similar services within legal aid organisations in Queensland and New South Wales.¹⁴⁴ VLA also told the VOCC that they support ‘getting a better understanding about why victims are choosing not to participate in these kinds of applications [to subpoena confidential communications], and how to reduce the barriers to participation’.¹⁴⁵

The OPP also advised the VOCC that it would support independent legal representation for victims in applications to subpoena confidential communications.¹⁴⁶ In these circumstances, the OPP suggests that the provision of independent legal representation could assist the court in ascertaining and relaying the views of the victim.¹⁴⁷ The OPP cautioned that it anticipates an increase in instances of victims being the subject of subpoenas to produce documents and records and that this is a huge gap because the OPP is unable to provide legal advice to victims, leaving victims having to navigate this process without independent advice.¹⁴⁸

Similarly, during consultation with the VOCC, a judicial representative expressed support for legal representation when victims’ personal information is being sought by subpoena.¹⁴⁹ A judicial representative also indicated that separate legal representation, independent of the OPP, could be available to victims during a committal or for pre-trial cross-examination of children or vulnerable witnesses, particularly in the following circumstances:

if they are being asked questions of those pretrial examinations that are fishing, that are designed to get information as to whether they have had counselling and from whom in order to provide a springboard for the third-party subpoenas. That’s an area where there is a proper basis for thinking that complainants or victims should be given independent legal advice before answering such questions, and about whether to object, because their interests may be different from the interests of the prosecution.¹⁵⁰

The Commissioner for Children and Young People felt that young people could benefit from having a dedicated children’s advocate when giving evidence given that the prosecution’s interests will not always align with the child’s:

in terms of the child’s interests being recognised, there is no advocate prior to or in court taking into account the implications for the child complainant. Sometimes the prosecution’s interests will align with the child’s but not always. There is a place for a child’s lawyer but how does one decide which cases are deemed worthy? In both the 2016 *Victims of Crime in the Criminal Trial Process* and 2021 *Improving the Response of the Justice System to Sexual Offences* references the VLRC recommended a place for legal advocacy for victims and I think there is a place for that to be a part of the court process.¹⁵¹

Alternative arrangements for giving evidence are not always effective or available

Legislative provisions regarding alternative arrangements for victims of sexual assault and offences involving family violence require the court to direct that alternative arrangements for giving evidence be made available unless the victim does not wish these arrangements to be used. These include the use of remote witness facilities and the use of screens.¹⁵²

141 Consultation Meeting 23 – Community Legal Centres – Session 2

142 Ibid.

143 Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

144 Consultation Meeting 16 – Victoria Legal Aid.

145 Ibid.

146 The OPP expressed concern about victims accessing independent legal representation more broadly.

147 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

148 Ibid.

149 Consultation Meeting 28 – Judicial Representatives – Magistrates’ Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

150 Consultation Meeting 28 – Judicial Representatives – Magistrates’ Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

151 Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

152 *Criminal Procedure Act 2009* (Vic) ss 359–365.

Stakeholders raised concerns about how such protections work in practice. Court Network told the VOCC that lack of appropriate court infrastructure and lack of support services means sometimes 'special arrangements' are inadequate:

Sometimes the special arrangements are actually a portable whiteboard at the side of the court. Often, we're not meeting special arrangements at all. There is this 'whiteboard solution' employed across a range of metro and regional courts due to a lack of remote hearing rooms or, no support person to assist in a remote hearing room.¹⁵³

Respondents to the Victims' Professionals Survey told the VOCC that there are not enough remote witness rooms at regional courts and that VAPs are often relied upon to enable victims/witnesses to give evidence from another location.

The OPP raised concerns that the legislative provisions relating to alternative arrangements and special protections for giving evidence were not broad enough and that while discretionary applications for them for victims of other types of offending (other than sexual and family violence) 'are generally acceded to', these discretionary applications are more likely to be granted at the committal stage, rather than at trial.¹⁵⁴

The Alannah and Madeline Foundation told the VOCC that despite the progress made with alternative arrangements, children's needs in this regard remain neglected and that more needs to be done to acknowledge the invisibility of children's needs during trials and the potentially traumatic impact on children of the court process.¹⁵⁵ The Foundation suggests that:

While alternative arrangements for giving evidence are a great shift, we still lose sight of the children who are swept up in these proceedings. They really do require, much the same way we have our Cubby House program at Melbourne and Broadmeadows Children's Court, an adult that can actually scaffold them through those proceedings and be there for some support. Someone who can support the children's regulation, can look after their health and wellbeing while they're there and attend to their needs – and that you're not asking that of parents or adults who are already very stressed.¹⁵⁶

The CWS similarly noted that more regard must be had to alternative/remote arrangements, particularly as they relate to child victims/witnesses:

technology doesn't replace that one-on-one relationship that we build with young people to support them through the process. Technology cannot replace the face-to-face experience. Safety is also an issue as it is not appropriate for everything to be online (eg court evidence from home), and for some young people the offending against them has been online.¹⁵⁷

The CWS suggested that technology be offered as an 'option' but does not replace the support that the CWS provides:

Technology has been particularly helpful for some regional families and working parents. The range of options we have for contact, preparation and support we can provide has expanded. We can send staff out to regional areas for face to face support where courts may be closed, and we are able to use the neutral locations or other organisations, such as CASAs and VAPs. We can also send out equipment to families to assist their linking with us, and court hearings (pleas/sentences), but of course that doesn't provide support, it just provides the technology so that they have access.¹⁵⁸

Technology assists participation

Despite the above limitations, the VOCC consistently heard from a range of stakeholders that increased use of technology in criminal trials has assisted victims to access, and participate in, the justice system.

Victoria Police members support the continued use of technology-assisted remote witness options for victims when giving evidence. Particularly in family violence-related cases, Victoria Police members indicated that being able to give evidence remotely is the preferred option not only to mitigate risk but to spare victims from the uncomfortable experience of attending a court and waiting.¹⁵⁹ Victoria Police members reiterated the benefits of victim-witnesses giving evidence offsite, particularly in higher profile or organised crime matters, where victims may be followed to and from court:

These issues come down to safety in the courtroom itself. Victims are scared. They're going to run into these people going into the foyer of the court, sitting in court. They're intimidated by them. These people should be able to give evidence from offsite.¹⁶⁰

¹⁵³ Consultation Meeting 12 – Court Network.

¹⁵⁴ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 5.

¹⁵⁵ Consultation Meeting 9 – Alannah and Madeline Foundation.

¹⁵⁶ *Ibid.*

¹⁵⁷ Consultation Meeting 14 – Victims Services staff.

¹⁵⁸ *Ibid.*

¹⁵⁹ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁶⁰ Consultation Meeting 19 – Victoria Police – Session 3.

Victoria Police members also suggested witnesses giving evidence remotely results in better quality evidence:

We have really adopted remote evidence but the only problem is the network dropping out or not being clear enough. The courts and OPP want it and the victim feels more comfortable seeing the familiar face of the investigator or support service, rather than an unfamiliar environment and you usually get better evidence as a result.¹⁶¹

The VWAS at the OPP said that some victims have found it beneficial to give their evidence from home or another location, for the following reasons:

- not needing to travel into the city and deal with parking/public transport when you are already experiencing stress and anxiety of providing evidence
- not being at risk of accidental unwanted contact with the accused, either on public transport or in the court building and court precinct
- allowing large groups of family members to attend one location and observe a plea or sentence and support each other with a degree of privacy. This is particularly relevant in matters involving a death.¹⁶²

A judicial representative told the VOCC that offering remote facilities to victims is 'helpful for some victims and secondary victims' as it allows them to avoid having to 'confront media and the accused's family and associates'.¹⁶³ Regarding the use of remote facilities, a judicial representative said that 'having the option now and in the future is beneficial', acknowledging that for 'other people, the fact of live streaming including the accused not coming into court is something they are not happy about'.¹⁶⁴

Another judicial representative also observed that 'livestreaming and having technology involved is a significant advantage' because court 'environments are very stressful and we haven't been able to architect something less stressful'.¹⁶⁵ A judicial representative gave the example of where a victim participated in an online capacity but would have been less likely to do so if required to provide evidence in person:

We need to use the technology. Judges and Magistrates should be encouraged to allow people to come online. A quick example of ... the victim of two independent sexual assaults on one night was able to participate online because I didn't see it happening with her standing up in court and engaging. It was polite and respectful and she had a Victim Impact Statement. It allows for a less formal setting that can be managed – it won't become disorderly.¹⁶⁶

Another judicial representative observed that an increasing number of victims are appearing online in family violence proceedings and having the capacity to do so is 'important'.¹⁶⁷

Court safety

Attending court, whether as a victim or a victim-witness, can be daunting, stressful and, for some victims, unsafe. Previous research in Victoria has highlighted victims' concerns over court safety.¹⁶⁸

Under the Victims' Charter, so far as is reasonably practicable, during a court proceeding and within court settings, prosecuting agencies and the courts should:¹⁶⁹

- minimise a victim's exposure to unnecessary contact with the person accused of the criminal offence, defence witnesses and family members and supporters of the accused person
- protect a victim from intimidation by the accused person, defence witnesses and family members and supporters of the accused person.

¹⁶¹ Consultation Meeting 17 – Victoria Police – Session 1.

¹⁶² Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12–13.

¹⁶³ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

¹⁶⁴ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

¹⁶⁸ See, e.g., Victims Support Agency, *Information and support needs of victims and witnesses in the Magistrates Court of Victoria* (Report, January 2013) 5; Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 128; Elena Campbell et al, *More than Just a Piece of Paper: Getting Protection Orders Made in a Safe and Supported Way* (Research Report, Centre for Innovative Justice, February 2021) 98.

¹⁶⁹ *Victims' Charter Act 2006* (Vic) s 12.

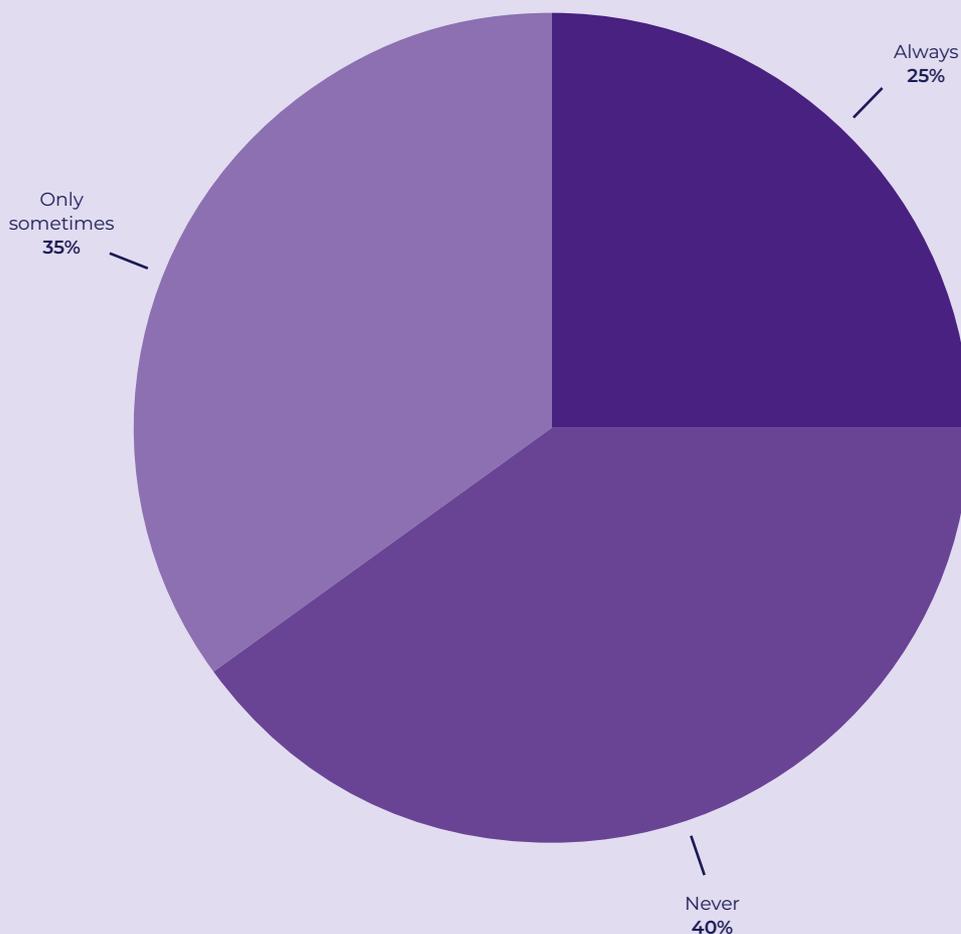
Victims' experiences

Lack of safety during the court process emerged as a significant issue for victims' participation.

Victims were asked in the VOCC's Victims' Survey about how safe they felt attending court. As shown below in **Figure 25**,¹⁷⁰ 40 per cent of respondents who attended court indicated that they never felt safe in court and 35 per cent indicated that they only felt safe sometimes. Taken together, 75 per cent of respondents were concerned about their safety while attending court.



Figure 25: VOCC Victims' Survey: Did you feel safe at court?



¹⁷⁰ The "I didn't go to court" option was filtered out of results shown in Figure 25.

Results of the VOCC's Victims' Survey show that some victims may feel more unsafe in court than others. Of the respondents who identified as Aboriginal or Torres Strait Islander, 67 per cent indicated that they never felt safe and 33 per cent said that they felt safe only sometimes.

Of the respondents who identified as having a disability, over 90 per cent indicated that they had not felt safe at court, and almost 74 per cent recorded that they never felt safe at court. Significantly, the proportion of respondents with a disability who never felt safe in court increased to 80 per cent when restricted to female respondents.

Lack of safety in court

Victims raised concerns with the lack of safe and separate seating options in the common areas of courts such as entrance ways, hallways and foyers.

One Victims' Survey respondent, who required further counselling after encountering the perpetrator in court, described the impact on them as highly distressing: 'Attending court to have to sit and wait for court hearing with the rapist perpetrator walking around near me in plain view for up to 7 hours is highly distressing.'

One victim interviewed by the VOCC, whose son had been killed, described a particularly upsetting encounter when they had unintentionally sat next to the offender in the foyer:

*'It turned out that I was sitting next to the offender. Everyone's out in the foyer and I only realised because his lawyer or barrister was chirping on about "You'll still be able to do your study. We won't worry about that" and they were laughing and talking about his future. And then they said something else and it triggered me to the fact that it was him. I got up to move away from them. The lawyer realized then who I was, and then made a fuss about me sitting next to him. We were told we had rattled him and upset him so he was taken to a private room until the hearing started.'*¹⁷¹

This victim was distressed that not only were there no safe or private areas for victims, but that the focus was placed on the perpetrator's safety and wellbeing:

*'I just could not believe that victims were just left in this environment with no guidance, no privacy, no safe zone. You think going to court you'd have some sort of safe zone. And then they took the offender into a private room for his own safety.'*¹⁷²

Another victim interviewed by the VOCC had encountered the accused's mother in the foyer of the court:

*'Another time we arrived and [the accused's mother] was sitting with this barrister and he was all sort of, you know, keeping her calm, which I can understand, however I don't think this was acceptable for us to be confronted with when we walked in the main foyer of the court. I didn't like the idea of having to pass them... Just left being in this area with someone that had just caused so much pain I suppose.'*¹⁷³

As noted by a victim representative of the Victims of Crime Consultative Committee, even 'simple things like going to or leaving court or walking past the perpetrator in the hallway at court. This can all trigger a traumatic event.'¹⁷⁴

The lack of safe, separate spaces meant some victims felt targeted by offenders or their supporters and that this provided the perpetrator with the power to cause additional distress:

'At the Magistrates Court it was the very first time we went into court. The perpetrator came

¹⁷¹ Interview 12 – Victim of crime.

¹⁷² Ibid.

¹⁷³ Interview 5 – Victim of crime.

¹⁷⁴ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

out and then yawned. Stretched, and you know looked around as if “oh you know, back here again”. He sat down, and he continued to just watch and smirk at us. It was like it amused him watching us fall apart.¹⁷⁵

Some victims were directly exposed to threats and intimidation:

‘I had to wait in the fucking foyer for my name to be called to go into court, and they’re all sitting around on chairs looking at me. All those awful shitty people saying things under their breath and wandering past and muttering threats. Why is there not even a broom cupboard set aside for me to wait in – or even the bloody judges chambers? It’s such a big building! That was really, really fucked.’¹⁷⁶

Another victim interviewed by the VOCC described their distress at encountering the accused’s family member in the toilet:

‘The other thing I remember going to the toilet. I’m at the Supreme Court. And his mother was in the other cubical, and I didn’t realize that anyone was in there until I heard it flush and you know, I knew it was her because I left my kids outside and we were the only ones in there. I stayed in that toilet because I couldn’t bear to stand next to her at the washbasin. I just didn’t know how I would have reacted or how she would have so it was just easier to stay in the toilet rather than go out.’¹⁷⁷

For other victims, the general experience of being in a court foyer with large numbers of accused persons, where they experienced fighting and incidents of aggression, was a confronting experience:

‘We were waiting outside the area in the Magistrates Court where they issue apprehended violence orders. There were people fighting and then there was police to keep the parties apart. And I’m thinking again, why would you organise a meeting in an area like this where there is violence going on all the time and we had to experience that again?’¹⁷⁸

‘I was so confronted by the experience of getting an FVIO – just walking in the door was confronting. And a fight broke out in the court and I basically just fled the court because I was so fragile to violence – I couldn’t be in the same room as something like that.’¹⁷⁹

One victim interviewed by the VOCC discussed their fears and concerns about being able to make their way in and out of the court building safely. As a result, this victim felt unable to go to court and obtain an intervention order:

‘When applying for family violence intervention orders (FVIOs) – and personal safety intervention orders (PSIOs) ... I put in writing requests for reasonable adjustments. I wanted reasonable adjustments because the perpetrators would stalk me coming and going from court. Because of my disabilities, I’m highly visible ... When going to court, I didn’t want to be stopped at security when coming and going from court. I also didn’t want the perpetrators to know which court I was in so that I could access the court and justice system safely. I’d also asked to be in a court where there was a back door that was disability accessible, and they said it didn’t exist ... Because the court wouldn’t put in place any reasonable adjustment, I could never take anything further in the courts – I couldn’t get a FVIO or a PSIO – because they couldn’t implement any of the reasonable adjustments that I requested.’¹⁸⁰

The VOCC was told by a victim that courts should have dedicated areas for victims: ‘With the court room you should be able to just walk in and feel like you’re sitting in a special space. It’s yours, you know, while you’re in there, that’s where your family sit.’¹⁸¹

175 Interview 5 – Victim of crime.

176 Interview 6 – Victim of crime.

177 Interview 5 – Victim of crime.

178 Interview 7 – Caterina Politi.

179 Consultation Meeting 11 – Victim Survivors’ Advisory Council.

180 Interview 1 – Victim of crime.

181 Interview 5 – Victim of crime.

Lack of safe areas and arrangements

Many victims discussed the lack of safe seating options within the courtroom itself. Victims often had no option but to sit near the perpetrator or the perpetrator's family and friends. Caterina Politi described the distress of being so close to the accused in court and seeing the accused (who was on bail at the time) 'mingling' in the waiting area and being 'an arm's length away'.

Victims often had no option but to sit near the perpetrator or the perpetrator's family and friends.

Victims were frequently unprepared and unaware that they would be seated so closely to the perpetrator or their supporters. One victim surveyed by the VOCC said: 'I had no idea I would be seated so closely to the perpetrators.' Another victim surveyed by the VOCC said they were 'forced to sit near the family of the defendant and found this really intimidating and disturbing'.

Difficult family dynamics, often exacerbated by the crime, add further complexities for victims attending court, as noted by this respondent to the Victims' Survey: 'The court attendance was awful. I had the choice between sitting near the family of the defendant or sitting near the estranged family of my deceased partner. There was no court support.'

One victim who was surveyed by the VOCC advised that the perpetrator had smirked at them throughout proceedings and then was denied alternative arrangements for reading their Victim Impact Statement (VIS) aloud, with dire consequences for their mental health:



'Our perp smirked throughout proceedings at me. I asked her a screen to give my VIS [Victim Impact Statement] and was denied it and told the judge could deny me the chance to give my VIS and would if I wanted a screen. So I had to give it facing my perp and could not get through it. Court was absolutely horrific and I attempted suicide afterwards.'

– Victims' Survey respondent

Children and young people

Berry Street Y-Change Lived Experience Consultants told the VOCC that waiting for long periods in court is very difficult for children and young people.¹⁸² One lived-experience consultant suggested the following improvements:

- receiving a text to advise that your matter is ready
- not being in the same building as the perpetrator
- having a trusted support person to accompany you to court
- having different rooms and something to do while waiting.¹⁸³

The VOCC was also told that court waiting rooms should not resemble 'interrogation rooms'.¹⁸⁴

Attending court remotely/online

Some victims appreciated being able to attend court remotely or online, as noted by this respondent to the Victims' Survey: 'The hearings before the Magistrates' Court were both online so I didn't have to see the accused in person which was good.'

¹⁸² Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1; Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

¹⁸³ Consultation Meeting 26 – Berry Street Y-Change Lived Experience Consultant – Session 1.

¹⁸⁴ Ibid.

However, for some victims, remote/online hearings did not necessarily avoid safety issues, as noted by this respondent to the Victims' Survey:

'just yesterday I attended a virtual hearing for my case, one of many in the past year and I was not warmed that my perpetrator could be on it (he had not been on any previous hearings) It was immediately distressing to see him there live on video. I had no follow up call from my OPP solicitor or detective to check in on me and only that I had a self organized appointment with my return to work psychologist was I able to get through the day.'

– Victims' Survey respondents

Similarly, this Victims' Survey respondent raised concerns about being cross-examined online in her home:

'The stress of trying to have my IVO against him extended with him contesting. In the end I was to be cross examined, in my home via video link with my children in their rooms due to covid.'

– Victims' Survey respondent

Stakeholder views

The inherent harm caused by the adversarial system and its impact on victim safety was noted by stakeholders.¹⁸⁵ Victims' professionals surveyed by the VOCC considered that the adversarial system, and the courts by extension, are very traumatising for victims, as noted by this respondent to the Victims' Professionals Survey:

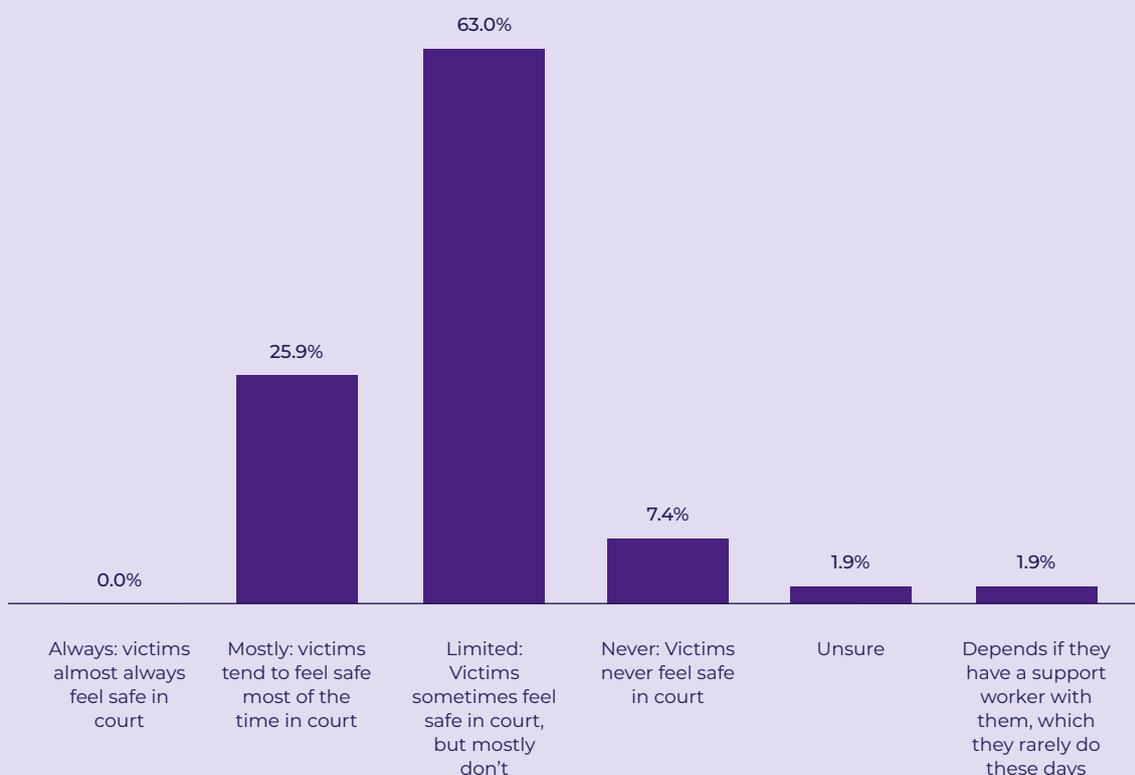
court processes in the adversarial system are harrowing and inaccessible for some clients, particularly clients who are significantly traumatised and have mental illness, or disability the adversarial system does not generally work for v/s of sexual assault/family violence. A traumatised person is very easily triggered, and the adversarial system and the way judges, lawyer and others present, the way the Court is set out, is very triggering, very intimidating...i.e. the Court needs to be less intimidating, a more calming environment, some Magistrates Courts don't even have a proper room the victim/survivor can sit in away from the perpetrator.

Lack of appropriate court infrastructure

Victims' professionals surveyed by the VOCC were asked how safe victims felt attending court. As shown in **Figure 26** below, a majority of respondents (63 per cent) indicated that victims mostly do not feel safe. Victims' professionals also said that a further seven per cent 'never' felt safe.

¹⁸⁵ Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 12 – Court Network.

Figure 26: VOCC Victims' Professionals survey: How physically safe do victims feel when attending court?



Lack of appropriate and safe court infrastructure was noted by a number of stakeholders.¹⁸⁶

Victoria Police members expressed concerns about the physical infrastructure of some courts in Victoria, describing some as 'physically past their use by date. They are unsafe.'¹⁸⁷ Victoria Police members shared concerns about the safety of Werribee Magistrates' Court, which has:

one single entrance with a court upstairs and one downstairs. On family violence listing day they might have up to about 50 or 60 cases listed. The physical security is poor and the legal services are compromised with how they can engage with parties – sitting in a foyer with a client or having two minutes in a conference room before the next person walks through. It's unconscionable.¹⁸⁸

Victoria Police members also outlined the difficulties that victims can face when trying to avoid unwanted media attention at court:

There's usually just one way in, one way out. The Supreme Court has a couple of different entrances but if the media wants to find them, they'll find them. ... The facilities at court are not ideal as there's no way of not going through the front door. Media will approach victims whenever they can.¹⁸⁹

¹⁸⁶ Consultation Meeting 9 – Alannah and Madeline Foundation; Consultation Meeting 12 – Court Network; Consultation Meeting 14 – Victims Services staff; Consultation Meeting 17 – Victoria Police – Session 1; Consultation Meeting 19 – Victoria Police – Session 3; Consultation Meeting 21 – Windermere Victims Assistance Program; Consultation Meeting 24 – Victoria Police – Session 4; Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 2.

¹⁸⁷ Consultation Meeting 24 – Victoria Police – Session 4.

¹⁸⁸ Ibid.

¹⁸⁹ Consultation Meeting 19 – Victoria Police – Session 3.

Victoria Police members told the VOCC that the facilities at court are inadequate to deal with the numbers of people supporting victims and the accused, resulting in:

basically a standoff. There's this tense environment in court, and you've got victims who are going through this day after day after day. Quite often you have these momentary adjournments and people are in the foyer together. It's far from ideal. Improvements could be made at court in those areas.¹⁹⁰

Victoria Police members told the VOCC that they have measures to support victims but it is logistically challenging and that issues largely 'come down to safety in the courtroom itself. Victims are scared. They're going to run into these people going into the foyer of the court, sitting in court. They're intimidated.'¹⁹¹

The OPP supported Victoria Police members' concerns about courts with one entry, agreeing that a single entry and exit point for all court users remains an ongoing problem and creates situations where victims 'run the risk of unwanted contact with the [a]ccused either entering or exiting the building'.¹⁹²

Court Network and victims' services staff told the VOCC that victim-friendly and safe court environments were extremely variable across Victoria. While some courts have been redesigned and upgraded, others are 'a disaster', with unsafe entries/exits and waiting spaces requiring Court Network staff to 'find nooks and crannies and ways to make sure the two parties don't come together', otherwise risking victims 'experiencing "walk-bys" by the other side'.¹⁹³ Court Network told the VOCC that safety rooms were not often provided beyond family violence situations:

Overall, the geography of the design at court is not good for safety. We need more spaces where people can be safe. Often safety rooms focus only on family violence, but it's not necessarily available for other victims who are fearful where there has not been family violence.¹⁹⁴

Victims' professionals surveyed by the VOCC also shared the concerns of Court Network, VWAS and Victoria Police members:

In old courts, sometimes a victim has to wait with the offender. This poses a significant risk to the mental wellbeing of victims and potentially poses a physical risk too if the offender/victim are aggressive to one another.

Regional and rural courts do not have the facilities or support to provide a safe environment for victims. Many victims have to wait in the same area as the offenders, there are limited facilities such as toilets in some rural courts requiring parties to walk over to the public park. There is not court support in some regional courts operating at present.

The whole process can be terrifying for victims. The police and lawyers etc forget that most victims are very unfamiliar with this environment, even going through the front doors can be scary. Victims are often so anxious they feel ill. The waiting is also terrible, even if they are in a secure room. It's very rare for a victim to have a 'good experience' of court.

I've worked across a few different regional Victorian areas and none of the courts provided safe spaces for victims and because of this the process is further traumatising for victims. It is also concerning that Victorian Magistrate Courts are not able to schedule time blocks for cases so that victims don't have to be at court all day and cope with all the challenges that come from that – time off work, childcare, seeing people you know, not being able to leave in case your case is called.

This observation by one respondent to the Victims' Professionals Survey encapsulates many of the current challenges faced by victims when attending court:

Many of our clients do not feel safe in court, often due to the isolation they experience as a result of their sexual assault (often the alleged offender is a family member and the family is split in its support). Witness assistance are often unavailable due to the number of cases they manage, leaving clients alone. There again, given they are unknown to our clients prior to arrival at court they are often not viewed as 'safe' or trusted, thus limiting the support they are allowed to provide.

Some courts have been purpose-built with safety embedded in their design, while others have been retrofitted or are still waiting for safety improvements, with Melbourne, Werribee, Frankston and Sunshine Magistrates' Courts all identified as requiring improvements to create more safe spaces for victims. The VOCC was told that because some courts have been updated, redesigned or rebuilt, it 'creates greater disparity in terms of victim experience'.¹⁹⁵ Victims' services staff told the VOCC there is:

such disparity between courts. There are courts where there is one door in, one waiting area, or where all courtrooms are off one central area, or where everyone lines up together. Glass walls provide no privacy, people outside on the street can be present without being present.¹⁹⁶

The OPP also advised the VOCC that court safety and infrastructure remains an ongoing problem:

One entry and exit point for all court users remains an ongoing problem. Victims then run the risk of unwanted contact with the Accused either entering or exiting the building. There have also been occasions in the County Court hearings have been listed in courtrooms next to the remote witness facility where a victim who is entitled to give evidence in remote room has lost the utility of this entitlement. This is very stressful for the victim and very difficult to manage the comings and goings of parties whilst a victim is giving their evidence.¹⁹⁷

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12.

¹⁹³ Consultation Meeting 12 – Court Network.

¹⁹⁴ Ibid.

¹⁹⁵ Consultation Meeting 14 – Victims Services staff.

¹⁹⁶ Ibid.

¹⁹⁷ Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 12.

Court Services Victoria noted the limitations of ageing buildings, such as the Supreme Court of Victoria, during consultation with the VOCC:

Judges and court staff do all they can to make court spaces safe. The Supreme Court built in 1884 has multiple entrances and terrible circulation pathways that are not designed to separate victims and the accused's supporters or family. There are limited amenities with often a volunteer through Court Network needing to ensure that the toilet is not occupied by the 'opposing' side and 'stand guard' so that in a murder trial, the victim's family can use the bathroom without an altercation with the accused's family. This approach is sub-optimal and relies on human vigilance and puts people at risk.¹⁹⁸

Children and young people

During consultations, stakeholders told the VOCC that children can often be overlooked or are even invisible in the justice process. In particular, the Aboriginal Justice Caucus highlighted that children's needs, and those of Elders, must be at the forefront because children and Elders are often invisible.¹⁹⁹ Children can have a variety of experiences as direct victims of crime or related to family members who have experienced crime, particularly in family violence situations. During consultations, the Berry Street Y-Change Lived Experience Consultant observed that when it comes to family violence and court situations, 'young people have no input at all and family violence was not talked about or looked at. Decisions are made for young people and opportunities are missed.'²⁰⁰ As the Alannah and Madeline Foundation observed during consultations:

it is really scary to hear how they may be sitting for some time in the same room as another family member who's trying to force them to change their story. Or they may be sitting in the same room as the perpetrator.²⁰¹

The Alannah and Madeline Foundation noted that the general layout of a court 'can often make it a really unsafe time for children and young people. It's really, really important that somebody takes the time to walk through the court space from the eyes of a child or young person.'²⁰² The Alannah and Madeline Foundation also noted the lack of safe spaces for children and young people to participate in the court process, noting the success of the Foundation's Cubby House program.²⁰³

According to the Alannah and Madeline Foundation, the Children's Court has also made significant progress in addressing children's needs when designing court infrastructure, including modifications such as lowering the bench to enable magistrates to promote communication that makes children feel less frightened.²⁰⁴

Attending court remotely

Staff from victims' services noted that while access to online proceedings has been welcomed by many victims of crime, and can be managed well with support, there are now additional safety issues that have to be managed. These include victims unexpectedly seeing an accused on screen, victims unintentionally logging in with their video on and victims who have experienced online harms having to attend court online.²⁰⁵

The OPP similarly observed that although online participation is beneficial for some victims, it is not appropriate for highly vulnerable victims.²⁰⁶

Court Network told the VOCC that 'we need to start thinking about local community courts having rooms or a space where someone can go to attend an online room so they do not have to attend from their living room'.²⁰⁷

Court workforce and victim safety

Victims' services staff suggested that it is important to look beyond court infrastructure when considering safety and to address how well court staff are supported to provide safety to victims entering court spaces. This kind of investment in workforce capacity will require training:

Investment is required in physical court security and safety, but it is also required in terms of workforce capability, to allow staff to appropriately identify when someone is at risk in that space. We need both happening at the same time to be able to provide an optimal sense of security and safety for victims at court. Training is going to be important in that space.²⁰⁸

198 Consultation Meeting 31 – Court Services Victoria.

199 Consultation Meeting 29 – Aboriginal Justice Caucus (AJC Meeting 1).

200 Consultation Meeting 27 – Berry Street Y-Change Lived Experience Consultant – Session 2.

201 Consultation Meeting 9 – Alannah and Madeline Foundation.

202 Ibid.

203 Ibid. The Cubby House program operates from the Broadmeadows and Melbourne Children's Courts. Cubby House provides a space which helps reduce trauma. It plays a critical role in promoting wellbeing as well as providing a positive environment for both children and Department of Families, Fairness and Housing staff. Alannah & Madeline Foundation, *Cubby House* (Web Page) <<https://www.alannahandmadeline.org.au/what-we-do/care-programs/cubby-house>>.

204 Consultation Meeting 9 – Alannah and Madeline Foundation.

205 Consultation Meeting 14 – Victims Services staff.

206 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 13.

207 Consultation Meeting 12 – Court Network.

208 Consultation Meeting 14 – Victims Services staff.

Respondents to the Victims' Professionals Survey observed that the Court Network, a service reliant on volunteers, do a 'great job' but are not paid for their work and there is not always sufficient coverage. Victims' professionals surveyed highlighted that there is limited access to court support across Victoria, particularly in regional areas:

Victims in outlying regional areas have less options for court support.

I work in the Gippsland Region and Court support is not available to victims in our three courts, being Morwell, Sale and Bairnsdale. The OPP often ask the VAP teams to provide court support at very late notice due to the complexities of the circuit but the VAP's are not always able to provide the support needed. More support staff at the courts during the circuits is needed.

Without the VAP in Mildura victims would NOT get enough support. The VAP in Mildura provides court support at Magistrates court, childrens court and County court. Very rarely does VWAS attend this regional area. Acknowledgement for the additional work VAP does at court in outer regional areas needs to be made.

WAS could leave the CBD for the circuit court and support victims in regional areas.

Overview of Chapter 9: Sentencing

Victims' participation at sentencing is important because it is a key point of the justice process where victims can participate by having a voice.

Victims have participatory entitlements under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to make a Victim Impact Statement (VIS) that the court must consider in determining the sentence of the offender, and to apply for compensation from the offender.

Compensation

The VOCC heard that many victims of crime were unaware that compensation existed and missed out as a result. Others described the legal requirements associated with obtaining compensation as onerous. In this context, the VOCC heard that providing victims with legal representation would be beneficial.

Victim Impact Statements

Victims emphasised that preparing a VIS was often an important stage of the justice process for them and a vital opportunity for participation. However, the VOCC also heard concerns about:

- victims not receiving enough assistance to make a VIS, including lack of independent legal advice and assistance
- lack of time to prepare a VIS
- victims feeling unsafe while reading out their VIS
- dissatisfaction that the perpetrator did not have to respond to, or indeed acknowledge, the VIS
- judges denying requests for a VIS to be read aloud in court
- admissibility of VISs, including where plea negotiations may affect which crimes are being sentenced.

Consistent with previous research, the VOCC heard that victims in the Magistrates' Court are not able to participate in the VIS process as provided for in the *Victims' Charter* and *Sentencing Act 1991* (Vic), with victims affected by the fast-pace of these proceedings.

The VOCC also heard about the ways in which the sentence indication process is impeding victims' participation in sentencing.



Chapter 9:
Sentencing



Introduction

This chapter outlines victims' experiences of participation during the sentencing stage.

Victims' participation at sentencing is important because it is a key point of the justice process where victims are able to participate by having a voice.

Victims have participatory entitlements under the *Victims' Charter Act 2006* (Vic) (Victims' Charter) to:

- make a Victim Impact Statement (VIS) and for that VIS to be considered by the court in determining the sentence of the offender¹
- apply for compensation from the offender.²

To assist their participation, victims are also entitled to information under the Victims' Charter:

- to be informed by the prosecuting agency³ of their possible entitlements under the *Sentencing Act 1991* (Vic) (Sentencing Act) in relation to compensation and restitution, and to be referred to legal assistance⁴
- if the Director of Public Prosecutions (DPP) is prosecuting the case, being advised of the date, time and location of the sentencing hearing and the outcome of a sentencing hearing.⁵

Sentencing in Victoria is governed by the Sentencing Act which sets out the purposes and principles of sentencing and the framework for how sentencing decisions must be made.

The Sentencing Act requires the court to have regard to a number of victim-related factors, including:⁶

- whether the offence was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated
- the impact of the offence on any victim of the offence
- the personal circumstances of any victim of the offence.

Compensation and restitution

One of the purposes of the Sentencing Act is to ensure that victims of crime receive adequate compensation and restitution.⁷

Under the Sentencing Act, the court may make an order for the return of goods or payment of money by an offender to a victim to restore stolen property.⁸

On application by a victim, the court may also order the offender to pay compensation of an amount the court thinks fit for:

- pain and suffering experienced by the victim as a direct result of the offence
- some or all of any expenses actually incurred, or reasonably likely to be incurred, by the victim for reasonable counselling services as a direct result of the offence
- some or all of any medical expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence
- some or all of any other expenses actually and reasonably incurred, or reasonably likely to be incurred, by the victim as a direct result of the offence, not including any expense arising from loss of or damage to property⁹

An application must be made within 12 months¹⁰ after conviction by the victim (or a victim's representative) or the DPP, police prosecutor or police informant.¹¹ The DPP, police prosecutor or police informant are not *required* to make an application.

1 *Victims' Charter Act 2006* (Vic) s 13.

2 *Ibid* s 16.

3 This is regardless of which agency is prosecuting the crime.

4 *Victims' Charter Act 2006* (Vic) s 16.

5 *Ibid* s 9A.

6 *Sentencing Act 1991* (Vic) s 5 (2AC)(daaa)-(da).

7 *Ibid* s 1(f).

8 *Ibid* s 84.

9 *Ibid* s 85B.

10 An extension of time may be granted under certain circumstances: *Sentencing Act 1991* (Vic) s 85D.

11 *Sentencing Act 1991* (Vic) s 85C.

Victims' experiences

Respondents to the Victims of Crime Commissioner's (VOCC) Victims' Survey revealed overwhelmingly negative experiences in relation to compensation. Many surveyed victims revealed that they were not aware that compensation existed and as a result 'missed out':



'Was not given clear information on claiming compensation and as a result missed out.

'Asked help for compensation and to take a further step with my case, which I am still left in the dark with.'

'Received no information of how to claim compensation from my case.'

– Victims' Survey respondents

The difficulty with accessing compensation under the Sentencing Act also extended to victims with legal training, who observed:



'I am a lawyer and wouldn't have been able to navigate applying for compensation with VOCAT or take action under sentencing act to receive compensation. Even as a lawyer I found it difficult to access resources and information on the latter particularly.'

'I studied law because I wanted to effect social change and access to justice. However, I would never put myself through the time and utter depletion pursuing compensation through the justice system caused.'

– Victims' Survey respondents

For another respondent to the Victims' Survey, the legal requirements associated with obtaining compensation were onerous and contributed to re-traumatisation. This particular victim describes the psychological distress associated with the cross-examination process required by the court:



'I was involved in a ... s85B hearing under the Sentencing Act 1991. This was the process ... I had to pursue for compensation ... I found this system hideous. I ask the following question 'When the court has found a perpetrator guilty of offences, when the court has sentenced said perpetrator, when the court has witnessed me totally humiliate myself reading my victim statement at the Bar, why then do victims need to go to trial to prove our psychological injury in order to be compensated for pain and suffering? Why did... I need to relive all that detail and memory of our experiences starting at the beginning again with a court appointed psychiatrist. This experience brought me to the brink, the flashbacks still remain magnified of this experience, I cannot escape memories of this time even though ... years have passed. It is beyond my comprehension that we would need to prepare ourselves for cross examination about the impact of sexual abuse.'

– Victims' Survey respondent

Stakeholder views

Some stakeholders said that providing victims with legal representation for compensation claims could be beneficial.¹² Victoria Police members suggested that 'there may be advantages [to legal representation] when it comes to compensation orders and freezing of assets'.¹³

¹² Consultation Meeting 17 – Victoria Police: Session 1; Consultation Meeting 22 – Community Legal Centres: Session 1; Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People. The VOCC notes that in March 2023 the Victorian Government launched a Victims Legal Service which helps victims to access state-funded financial assistance, compensation and restitution. See Victorian Government, *Reforms we will deliver to support victims of crime* (Web Page, 15 June 2022) <<https://www.vic.gov.au/victim-support-update/reforms-we-will-deliver-support-victims-crime#delivering-a-new-victims-legal-service>>.

¹³ Consultation Meeting 17 – Victoria Police: Session 1.

Community Legal Centre (CLCs) observed that many victims remain unaware of the possible avenues for seeking compensation including ‘the Prisoner Compensation Quarantine Fund, restitution and compensations orders’.¹⁴

The Commissioner for Aboriginal Children and Young People observed that children could also benefit from having a legal representative appointed for compensation claims. The Commissioner told the VOCC that there is a specific stage after sentencing when orders for compensation for injury must be applied for but queried how children would know about this option and that in this context, ‘specialist legal advice is useful for children’.¹⁵

Victim Impact Statements (VISs)

The court must have regard to a number of factors outlined in the Sentencing Act to arrive at an appropriate sentence, including the impact of the crime on victims. The court must consider:

- the impact of the offence on any victim of the offence
- the personal circumstances of any victim of the offence
- any injury, loss or damage resulting directly from the offence.¹⁶

One way a court can determine the impact of a crime on a victim is through a VIS. Under the Sentencing Act, a victim may make a VIS for the purpose of assisting the court in determining sentence.¹⁷ A VIS outlines for the court the impact the crime had on the victim. The VIS scheme has been in operation in Victoria for nearly three decades and provides victims with the opportunity to participate in a sentencing hearing when an offender is sentenced.¹⁸

The Sentencing Act states that a VIS:

- contains particulars of the impact of the offence on the victim and of any injury, loss or damage suffered by the victim as a direct result of the offence¹⁹
- allows the victim to tell the court about the impact of the offence on the victim.²⁰

All or part of the VIS may be read or presented to the court at sentencing. It may include photographs, drawings, poems and other material relating to the impact of the offence on the victim.²¹ VISs are presented to the judge or magistrate during plea hearings. During plea hearings, the offender’s defence counsel will also present personal matters and factors that are relevant to the accused for the judge to consider when arriving at a sentence. In the course of sentencing, the offender, or at any other time in the course of the sentencing hearing, the judge or magistrate, may read aloud any admissible part of a VIS.

A VIS is often regarded as the primary opportunity for victims to have a voice in the justice process and VISs are often referred to as a key mechanism for enhancing victims’ participation in the criminal justice system.²²

Victims’ experiences

Victims surveyed by the VOCC were asked whether they had provided a VIS to the court. Thirty-one per cent of survey respondents indicated that they had made a VIS, while over half (53 per cent) said they had not.²³ While around six per cent of survey respondents were unsure if they had made a VIS, respondents who selected ‘other’ as their response included victims who were not eligible to make a VIS (for example, no charges had been laid or the case had been withdrawn) or their cases had not yet progressed to court.

Overall, victims surveyed and interviewed by the VOCC described varying experiences of the VIS process. Responses to the VOCC’s Victims’ Survey indicated that where victims did not have a positive (or even neutral) VIS experience, they often experienced re-traumatisation or secondary harm.

¹⁴ Consultation Meeting 22 – Community Legal Centres: Session 1.

¹⁵ Consultation Meeting 25 – Principal Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People.

¹⁶ Sentencing Advisory Council, *Victims and Sentencing* (Web Page) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/victims-and-sentencing>>.

¹⁷ *Sentencing Act 1991* (Vic) s 8K. A victim may make a Victim Impact Statement (VIS) to the court and the court is to consider the VIS when determining the sentence for a person found guilty of an offence: *Victims’ Charter Act 2006* (Vic) s 13 (1).

¹⁸ VISs were introduced in 1994. Victims were given the right to submit a VIS to the court at sentencing hearings and the court was required to have regard to the victim’s personal circumstances in sentencing the offender: *Sentencing (Victim Impact Statement) Act 1994* (Vic) (now repealed).

¹⁹ *Sentencing Act 1991* (Vic) s 8L(1).

²⁰ *Sentencing Act 1991* (Vic) s 8L(4)(a).

²¹ Sentencing Advisory Council, *Victims and Sentencing* (Web Page) <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/victims-and-sentencing>>.

²² See, for example, Department of Justice Victoria, *Victim Impact Statement Reforms in Victoria: Interim Implementation Report* (Report, 2014) 8.

²³ These figures only represent the percentage of victims completing the VOCC’s survey who had participated in the VIS process. The VOCC was unable to independently verify victims’ eligibility for making a victim impact statement (VIS).

VISs can facilitate victim participation

Victims highlighted that preparing a VIS was often an important stage of the justice process for them and a vital opportunity for participation. For example, one victim interviewed by the VOCC stated:

*'I had around two years before I got to court, so I had time to think about what I was going to say in my victim impact statement and I'm proud of what I wrote. I'm proud that I stood up in court and spoke to the courtroom directly. I don't look back and say to myself "I could have done better with that."'*²⁴

Another victim surveyed by the VOCC stated that the 'opportunity to provide a victim impact statement and to read it out in open court was a life changing day for me'.

Some victims clearly viewed the VIS as a communicative and expressive tool to be heard. Di McDonald told the VOCC that because she knew that the perpetrator would be given a copy of the VIS, that she 'did not hold back'.²⁵ A member of the Victim Survivor's Advisory Council told the VOCC about a VIS being a way to be heard and recognised:

*'Opportunity to give a VIS was meaningful. Not because it influenced sentencing but because it was the first time I used my voice and stood up to my perpetrator. And being and being recognised as a victim of crime was really meaningful for me. It felt profound to be legally acknowledged as a victim of crime.'*²⁶

Some victims felt that it was helpful for judicial officers to refer to the VIS in their sentencing remarks.²⁷ For example, one victim interviewed by the VOCC spoke about the importance of the judge addressing them personally by referring to their VIS in the sentence hearing.²⁸ Another victim told the VOCC that having the judge note their VIS during sentencing made the victim feel like the judge 'had heard me'.²⁹

Other victims felt that VISs could be used in other ways to enhance victim participation, such as used during bail hearings.³⁰

Assistance needed to make a VIS

Victims surveyed by the VOCC were asked whether they received help to understand the process of making a VIS, such as help from the police, a support worker, or the prosecution. The vast majority of respondents (66%) indicated that they did not get help to understand the process of making a VIS, as shown in **Figure 27** below.

²⁴ Interview 8 – Victim of crime.

²⁵ Interview 2 – Di McDonald – victim of stalking.

²⁶ Consultation Meeting 11 – Victim Survivors' Advisory Council.

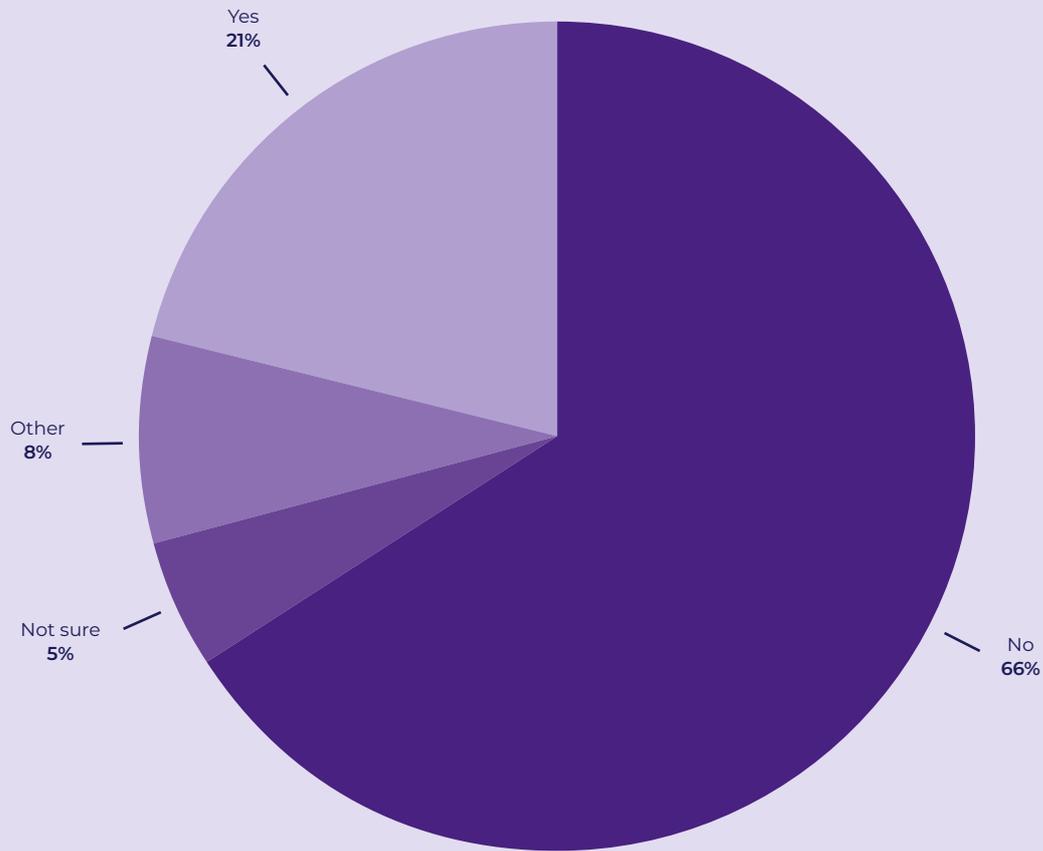
²⁷ Interview 5 – Victim of crime.

²⁸ Interview 8 – Victim of crime.

²⁹ Interview 5 – Victim of crime.

³⁰ Interview 16 – Victim of crime.

Figure 27: VOCC Victims' Survey: Did you get help to understand the process of making a Victim Impact Statement?



When looking at particular cohorts, respondents who identified as Aboriginal and Torres Strait Islander and those coming from a multicultural or migrant background both had slightly higher 'No' response rates at 70 per cent. Respondents who identified as having a disability had the highest 'No' response rate at 74 per cent.

One respondent to the VOCC's Victims' Survey indicated that independent legal representation to assist with the preparation of their VIS would have been beneficial, as would better advice surrounding the VIS and court processes:



'I should have been assigned a lawyer to assist me in the preparation of the [VIS] and to inform me that I would be asked by the court what I sought from sentencing and what these options actually meant in practice. The prosecutor asking me what I wanted 10 [minutes] before the hearing was inappropriate, I was SO traumatised from being in the same building as the stalker I could barely think or speak.'

– Victims' Survey respondent

Negative experiences making a VIS

Despite the positive experiences of some victims, a number of issues were raised by respondents to the VOCC's Victims' Survey in relation to VISs, including:

- lack of autonomy and choice surrounding the provision of the VIS to the court
- lack of independent legal advice and assistance for victims when drafting their VIS
- lack of advice/guidance provided to victims
- victims feeling unsafe while reading out their VIS
- dissatisfaction that the perpetrator did not have to respond to or acknowledge the VIS
- practical issues, such as an overseas victim being precluded from providing a VIS.

The Victims' Survey elicited diverse responses from victims about providing VISs, with some victims experiencing the opportunity as 'life changing,' whereas others felt 'totally humiliate[d]' by the experience.

Similarly, victims who were interviewed by the VOCC detailed a variety of issues relating to the VIS process, including:

- a lack of time to prepare the VIS³¹
- frustration that large sections of the VIS were objected to by defence counsel, leading to their VIS being edited or censored³²
- frustration with the limitations of the VIS, including one victim being told they could not talk about the impact of the crime on family and friends³³
- the requirement that the VIS be provided to the offender.³⁴

Although the purpose of a VIS is to assist the court in determining sentence,³⁵ many victims felt that the VIS had no impact on the sentence and that providing victims with the opportunity to make a VIS is simply a 'formality':

*'I read it out aloud in court in the hope – and this is where the naivete comes in – that it would make a difference to the sentence. It doesn't. In my belief, the sentence is decided before you even step into the County Court. The outcome is already decided. Going through the court system is just a formality.'*³⁶

Another victim described feeling like the VIS process was another 'checkbox' but was not their version of 'justice':

*'The victim impact statement is dressed up as being that's your justice. You get to stand there and say what you think and feel. But you don't because they get your statement and cross out things they don't want you to say... That's not my justice. I don't see that as justice. I read it out. I was nervous and I was trembling, but I read it out. In hindsight I wouldn't do it again because he got pleasure from hearing the distress he's caused... The whole process. It was dressed up as being really important. This tool which you know the judge will hear you. But it's part of the checkbox process to make the victim feel heard but it's superfluous.'*³⁷

Another victim surveyed by the VOCC spoke about the difficulty of participating in the VIS process, particularly for children, as well as experiencing a lack of acknowledgment by the court: 'The judge did not read any part of my or my daughters victim statement, but read from every other one submitted.'

³¹ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

³² Interview 2 – Di McDonald – victim of stalking.

³³ Interview 16 – victim of crime.

³⁴ Interview 2 – Di McDonald – victim of stalking.

³⁵ Sentencing Act 1991 (Vic) s 8K (1).

³⁶ Interview 8 – Victim of crime.

³⁷ Interview 9 – Survivor advocate.

Lack of time to prepare a VIS

The Victims of Crime Consultative Committee told the VOCC that the VIS process does not provide victims with adequate notice and support to prepare a VIS:

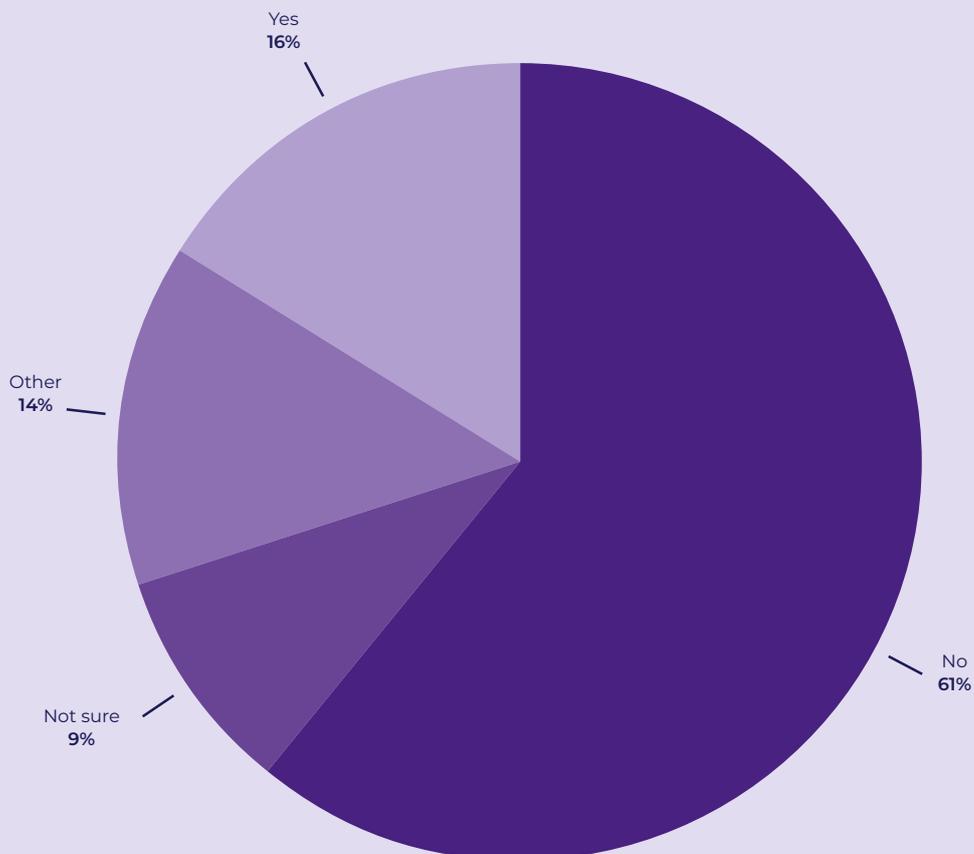
*'A really good example is going to court and being told that you have to do your Victim Impact Statement tomorrow, then being told that your court supporter can't be there but not to worry as it will be ok, then being unexpectedly read a list of my deceased mother's injuries in court, followed immediately by having to present my Victim Impact Statement. It still shakes me to my core. If our WAS worker had been there, we would have known that was going to happen, but the prosecutors didn't meet with us to explain that. You're not a participant in the system. The prosecutors didn't care to meet with us or explain anything.'*³⁸

*'Half the time Victim Impact Statements don't get read by the court. Trying to write a Victim Impact Statement the night before court, it can be one of the most triggering things of your life.'*³⁹

Reading a VIS aloud in court

The right to make a VIS was enhanced in 2011 when victims were granted the right to read it out in court or have a nominated representative do so on their behalf.⁴⁰ Victims who were surveyed by the VOCC were asked if they had been able to read out their VIS in court. Of the victims who answered this question, 61 per cent indicated that they had not, as shown in **Figure 28** below.

Figure 28: VOCC Victims' Survey: Did you get the chance to read your Victim Impact Statement out in court or have someone else read it out?



³⁸ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

³⁹ Ibid.

⁴⁰ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 19; *Sentencing Act 1991* (Vic) ss 8Q, 8R.

Of the 18 respondents who selected 'Other', the majority indicated that they either had not progressed to court or did not write one. Only one respondent indicated that they had been given the opportunity but had declined, preferring the judge to read out their statement instead.

Victims who read their VIS aloud had varying experiences, ranging from empowering to 'horrific'. One victim surveyed by the VOCC said they had experienced a particularly traumatising court experience while reading their VIS, exposing them to significant harm:



'Our perp smirked throughout proceedings at me. I asked [the judge for] a screen to give my VIS and was denied it and told [that] the judge could deny me the chance to give my VIS and would if I wanted a screen. So I had to give it facing my perp and could not get through it.'

– Victims' Survey respondent

Another victim had read their VIS out aloud but reflected that they would not do that again because the accused 'got pleasure from hearing the distress he's caused'.⁴¹

One victim was not given the opportunity to read their VIS aloud in person due to COVID-19 but told the VOCC they would have delivered the statement in person if allowed.⁴²

Use of VISs in the Magistrates' Court

A victim representative from the Victims of Crime Consultative Committee told the VOCC that victims in the Magistrates' Court are not being given the same opportunities to make VISs as victims in the higher courts:



*'I have also heard from other victims who were harmed as a result of summary offences and who feel like the court system has completely ignored them altogether. These people wanted a chance to give a Victim Impact Statement but were told they weren't able to do so for that type of offending. They therefore felt that their suffering was ignored and not taken into account.'*⁴³

Stakeholder views

VISs facilitate victims' participation

A number of stakeholders felt that VISs facilitate victim participation in the justice process. Respondents to the VOCC's Survey of Victim Support Professionals shared the following observations of the significance of VISs for victims and their positive facilitation of victim participation:

Victim impact statements are really important and assist the client to feel they have participated in the court process in addition to providing them with the opportunity to feel heard.

Victim impact statements are highly significant and where people are not given this opportunity they experience less sense of resolution in relation to the process.

VIS should always be read out in court regardless as despite outcome of proceedings it's an opportunity for the victim to finally have their voice heard within the criminal justice system.

Victims are often surprised and distressed when they realise they have little to no voice other than at the end when they can make a VIS. Many victims find providing the VIS as daunting but important to them.

Reading a VIS aloud

Some respondents to the Victims' Professionals Survey told the VOCC that despite legislative protections to ensure that victims can read the admissible sections of their VIS aloud,⁴⁴ some victims continue to be denied this opportunity:

There have been incidences where a judge has denied a request for a VIS to be read aloud in court, taking away that victim's only opportunity to have their voice heard in the court process.

I think it is important because it rarely (but does sometimes) make the magistrate or judge understand the horror the victim has gone through. Once we had a judge who wanted the sentencing quote "wrapped up by Christmas" therefore did not allow the victim to read aloud their victim impact statement. He read it in about a minute to himself. They did not return after Christmas to allow the client to read the statement or have it read aloud.

⁴¹ Interview 9 – Survivor advocate.

⁴² Interview 16 – Victim of crime.

⁴³ Consultation Meeting 20 – Victim Representatives – Victims of Crime Consultative Committee.

⁴⁴ Sentencing Act 1991 (Vic) ss 8Q, BR.

Lack of time and assistance to prepare VISs

Some stakeholders raised concerns that victims are not given sufficient time and assistance to prepare a VIS.

Stakeholders felt that assistance from a specialist victim support service is crucial to the VIS process.⁴⁵ Victoria Police members stated that with enough time and proper assistance, the VIS is 'better quality, the victim is supported, and the whole process is explained to them. But it takes time and that might take a week to facilitate.'⁴⁶

Some stakeholders raised concerns that victims are not given enough time and assistance to prepare a Victim Impact Statement.

The OPP told the VOCC that in some cases, victims are only afforded a limited time to prepare their VIS and this can create additional complications because it reduces the time available to discuss what can and cannot be included and for victims to discuss issues with support workers.⁴⁷ Importantly, the OPP also said time pressures reduce the amount of time available to discuss the need to exclude parts of the VIS that will be inadmissible: 'It is unfortunate when that discussion [about admissibility] takes place on the same day of the plea hearing, which is often already a difficult day for victims.'⁴⁸

The OPP has acknowledged that 'victim participation can be improved in instances where victims are not given sufficient time to process and understand plea resolutions, or to make Victim Impact Statements'.⁴⁹ The OPP also suggested that these time pressures can be worse in regional areas as part of the circuit trial process.⁵⁰

Victoria Police members advised the VOCC that their practice, particularly where specialised officers are involved, is to inform victims in advance that they may need to prepare a VIS quickly. Nonetheless, Victoria Police members noted that only having a short time to prepare a VIS can be very traumatic:

It can be extremely confronting for them, or traumatic for them to have to summarise what may have been the worst experience they've ever lived through with a 24 hour turn around and then have to get that witnessed by an authorized witness which is often going to your local police station and speaking to a uniform officer at the front desk who's got no knowledge of it. So I think in some senses there are practical implications in terms of getting the victim impact statement done on the hop, so to speak.⁵¹

Victims' Professionals surveyed by the VOCC similarly observed that victims often do not having enough time to properly prepare a VIS:

VAP workers are asked to get a VIS done the day before it's needed at court some victims require a longer time to express their thoughts and feelings and not seemed rushed.

It's highly important clients are given as much notice as possible when they have the opportunity to complete a victim impact statement to allow them ample time to complete this.

We often get referrals from police or the OPP to assist clients with VISs in a very limited time. This needs to be thought of long beforehand because sometimes it's already too late to submit it to the court.

Community Legal Centre (CLC) representatives suggested victims' VIS experiences varied in terms of the support and encouragement received from Victoria Police. In this context, CLC representatives suggested cultural changes from the Victims' Charter amendments are not flowing through to greater information provision for victims in relation to VISs:

We haven't seen much of a change since the Charter amendments included naming victims as a participant. Victims are still feeling unheard. These cultural changes have not happened. Sometimes we have great informants who are proactive and keep victims up to date, and explain Victim Impact Statements, but more often than not, we're not seeing victims in this position.⁵²

The VIS remains an area where some stakeholders suggest victim participation could be improved with the availability of an independent legal representative to inform a victim about what can and cannot be included in a VIS.⁵³ Victim support workers, who are generally not legally trained, assist victims with their VISs but according to Associate Professor Kerstin Braun, leaving questions of admissibility to victim support workers places them in a difficult or 'risky' position.⁵⁴

45 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria; Consultation Meeting 18 – Victoria Police – Session 2.

46 Consultation Meeting 18 – Victoria Police – Session 2.

47 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 7.

48 Ibid.

49 Ibid 13

50 Ibid.

51 Consultation Meeting 18 – Victoria Police – Session 2.

52 Consultation Meeting 22 – Community Legal Centres – Session 1.

53 Consultation Meeting 1 – Associate Professor Kerstin Braun; Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast; Consultation Meeting 16 – Victoria Legal Aid.

54 Consultation Meeting 1 – Associate Professor Kerstin Braun.

Braun also argues that an independent legal representative for victims could also be of assistance if a victim is cross-examined on aspects of a VIS.⁵⁵ Although cross-examination may not occur very often on a VIS, it would be a very traumatising experience for a victim – ‘perhaps equally as bad as the cross examination during the trial. Perhaps even worse, because it’s all about how someone felt or how impacted they were.’⁵⁶ Again, as Braun suggests, in these circumstances ‘legal representation would be a very good thing or perhaps even to avoid getting to this point if they were given some legal assistance before they submit the VIS.’⁵⁷

VISs not fully utilised in the Magistrates’ Court

Consistent with previous research,⁵⁸ stakeholder consultations suggested victims in the Magistrates’ Court are not able to participate in the VIS process as set out in the Victims’ Charter and the Sentencing Act.

Victims who wish to make a VIS in summary proceedings frequently have a very short time in which to do so. This is due to the fast pace of summary proceedings and the legislated timing requirements for making a VIS. Victims are advised to provide a VIS after an offender is found guilty, but it also needs to be provided a reasonable time before the offender is sentenced. However, in summary proceedings it is common for an offender to plead guilty and be sentenced on the same day. As indicated in the Department of Justice and Community Safety’s 2021 report *Improving Victims’ Experience of Summary Criminal Proceedings*, victims may not have an opportunity to make a VIS, or the opportunity may arise before they feel ready to make one.⁵⁹

Court Network told the VOCC that in their experience, VISs are almost non-existent in the Magistrates’ Court. One very experienced Court Network representative could not recall a single instance of a VIS being mentioned in the Magistrates’ Court or a magistrate referring to it in over 10 years of work.⁶⁰

Windermere Victims Assistance Program (VAP) observed that during and after the COVID pandemic, the opportunity for victims to provide a VIS in the summary jurisdiction was very limited:

Unfortunately with COVID, with the backlog of cases, particularly in the summary jurisdiction, we are having experience where the courts are finalising matters far more frequently at mention hearings. There’s absolutely no opportunity for victims to submit a victim impact statement. They don’t even know that it’s been finalised. They often don’t find out for a number of weeks. So as you can appreciate, it’s really traumatic in a system where the victim is not heard until their victim impact statement is submitted to the court. So again, it just contributes further to their trauma.⁶¹

Victoria Police members also told the VOCC that magistrates rarely adjourn matters to allow a VIS to be prepared.⁶² Furthermore, Victoria Police members told the VOCC that in their experience, VISs are not universally respected by judicial officers:

not all magistrates are interested in Victim Impact Statements. Recently, one Magistrate was heard online saying “you’ve seen one Victim Impact Statement, you’ve seen them all”. The victim heard this comment and was devastated by it.⁶³

Responses to the VOCC’s Victims’ Professionals Survey also suggest that victims do not have the same opportunity to provide a VIS in the Magistrates’ Court as in the higher courts. When surveyed about whether victims in the Magistrates’ Court are given the same opportunity to make a VIS as victims in the higher courts, there is a clear discrepancy between jurisdictions, as evident in **Figure 29** below.

⁵⁵ At the request of the offender, or the prosecutor, a victim who has made a VIS may be called to give evidence. This also applies to a person who has made a VIS on behalf of a victim, or a medical expert who made a medical report attached to a VIS and who is a witness in support of any matter contained in a VIS. A victim (or other person) who is called to give evidence in relation to the content of a VIS, may be cross-examined and re-examined: *Sentencing Act 1991 (Vic)* ss 80, 8P.

⁵⁶ Consultation Meeting 1 – Associate Professor Kerstin Braun.

⁵⁷ Ibid.

⁵⁸ Department of Justice Victoria, *Victim Impact Statement Reforms in Victoria: Interim Implementation Report* (2014) 25; Victims Support Agency (Victoria), *A Victim’s Voice: Victim Impact Statements in Victoria* (Report, October 2009) 43.

⁵⁹ Department of Justice and Community Safety (Victoria), *Improving Victims’ Experience of Summary Criminal Proceedings* (Final Report, November 2021) 31.

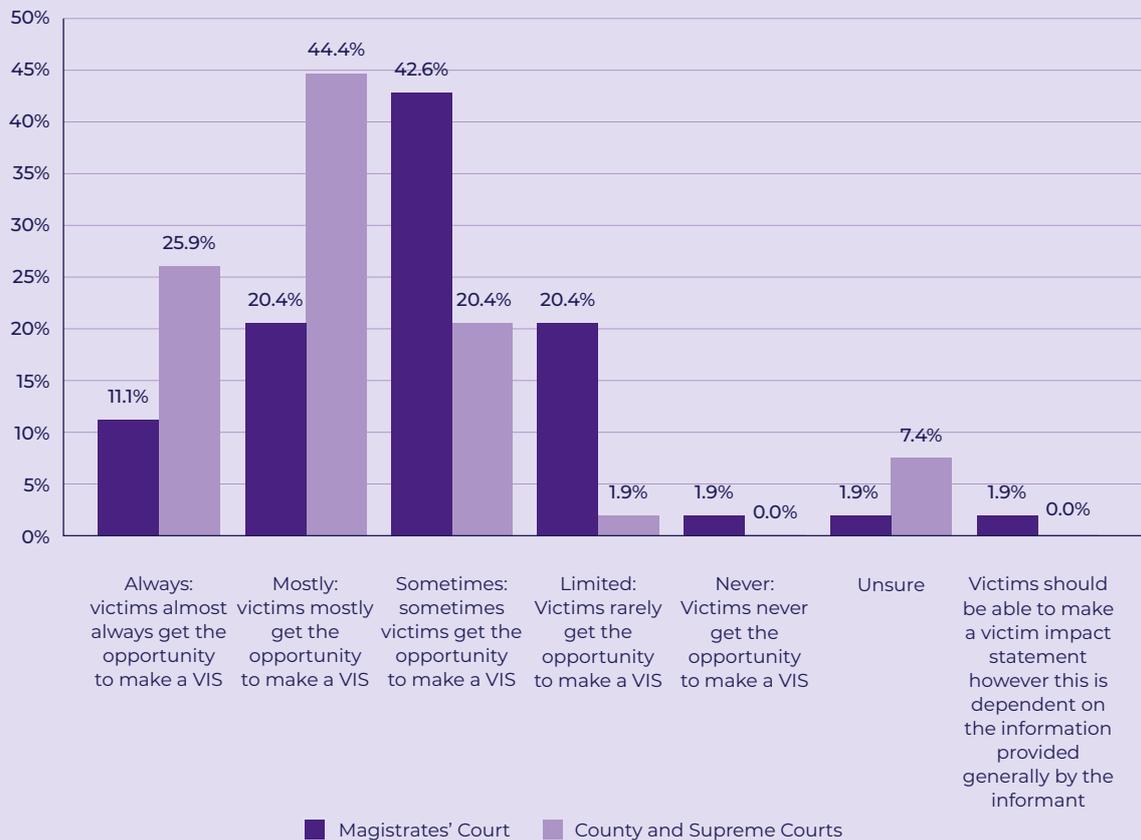
⁶⁰ Consultation Meeting 12 – Court Network.

⁶¹ Consultation Meeting 21 – Windermere Victims Assistance Program.

⁶² Consultation Meeting 17 – Victoria Police – Session 1.

⁶³ Consultation Meeting 18 – Victoria Police – Session 2.

Figure 29: VOCC Victims’ Professionals Survey: Victims are provided with the opportunity to make a Victim Impact Statement (including reading it aloud) where this is their wish (Magistrates’ Court versus higher courts).



As shown in **Figure 29** above, 43 per cent of respondents to the Victims’ Professionals Survey indicated that victims sometimes get the opportunity to make a VIS in the Magistrates’ Court, but it can be variable. When asked the same question relating to the County and Supreme Courts, responses clearly favoured “Mostly” (44 per cent) and “Always” (26 per cent) – totalling 70 per cent combined.

Victims’ professionals surveyed by the VOCC stated that the uncertainty and high turnover of cases in the summary jurisdiction make it very difficult to prepare timely VISs, with some victims even missing out on the opportunity entirely. They provided the following observations about the difficulties with supporting victims to prepare a VIS in the Magistrates’ Court:

Unfortunately now that things are moving through the courts rapidly to catch up on the backlog after COVID there have been things that have moved from Plea to Sentencing without the opportunity to submit Victim Impact Statements and this leaves the Victim feeling unheard and questioning what the point of them is if they aren’t even considered in the process.

Its hard to support a client to complete and submit a VIS in a timely fashion in the magistrate’s court where the hearing and sentencing may occur in one sitting...

VIS in Summary jurisdiction - can be tricky to navigate as it is rarely certain when the matter will be finalised and therefore if a VIS is completed it is often before there is a guilty plea/finding...

[We’re told] not to hand them up too early as should be used when person found guilty but this doesn’t sit well with the magistrates court as someone can plead guilty at a mention and the matter can be finished.

The timing of the VIS is also difficult. if a victim completes it to early and submits it, it is then required to be shared with defence. However at the moment, courts - particularly the Magistrates’ Court is not giving victims ANY opportunity to complete a VIS when a matter resolves. I have a number of examples of Victims not being given time to submit a VIS...

Why are courts excluded from having to comply with the Victims Charter?

Victims should be given every opportunity to participate and have their say. Magistrates Courts tend to be a bit more dismissive and 'nonchalant' about Victim Impact Statements and will at times move a matter through the court to its conclusion without consideration for the victim...

I've had police tell me that Victims aren't able to do a Victim Impact Statement for summary offences. Some police officers are better than others when it comes to keeping the victim in the loop, particularly with summary offences.

Victims often do not get an opportunity to provide a victim impact statement to attach to a brief for a Magistrates hearing and this can be a concern if the accused pleads guilty and the matter is resolved at the first mention.

Adjourning proceedings to facilitate VISs

Victoria Police members advised the VOCC that they support the use of adjournments to enable victims to prepare a VIS, observing that a 'right of adjournment for Victim Impact Statements in the summary jurisdiction' does not exist in Victoria.⁶⁴ Victoria Police members advise that it can be a high bar to overcome to obtain an adjournment in the summary jurisdiction:

We need a persuasive argument to press for an adjournment for a Victim Impact Statement for a matter that's not a sex crime. If it was a property crime, forget it. If it was a moderately serious offence against the person, it would be completely unsurprising to get knocked back to get an adjournment for a Victim Impact Statement. The message coming from the bench is that it's just not possible. The magistrate might be less likely to completely disregard the request for adjournment if it's an offence against the person.⁶⁵

Judicial representatives advised the VOCC that they are now increasingly adjourning matters to allow victims to prepare and deliver a VIS:

In the last couple of weeks I was asked to adjourn matters because victims wanted to turn up and read their statements and I haven't seen that in a long time. One victim reneged but still participated online and the prosecutor read her Victim Impact Statement. Another victim who was quite distraught participated and was told that she could take the time she needed or stand or sit where it suited and she got through it.⁶⁶

However, adjournments alone will not necessarily improve victim participation because victims still need to be allowed sufficient time and assistance to prepare their VIS, even if an adjournment is secured. Victoria Police members provided the following case example illustrating this point:

In one case, a judge adjourned overnight and told the victim to prepare a Victim Impact Statement overnight but this left the victim feeling off guard and rang the local police station in tears asking for help. Victoria Police members helped the victim as best they could but the victim has now withdrawn the Victim Impact Statement because they did not have enough time and felt unprepared and under too much pressure. This victim will never feel heard and that's just not fair. It's not fair for the victims.⁶⁷

Early preparation of VISs

If a VIS is prepared, the prosecutor is required to provide a copy to the court and the offender (or their legal practitioner).⁶⁸ It is also possible that a victim may be cross-examined on the contents of the VIS.⁶⁹

Victoria Police members told the VOCC that while VIS use is increasing, there remains 'an issue around when do we prepare them?' Victoria Police members also explained why early VIS preparation is not encouraged:

As a general rule, Victim Impact Statements are not taken from victims before the matter has been finalised, as the Victim Impact Statement, which has been made in good faith by the victim, can end up as part of the material being used in cross-examination in a contested hearing. That is incredibly unfair and offensive for victims. We don't want to facilitate that happening.⁷⁰

Victoria Police members told the VOCC that preparing a VIS before a finding of guilt 'can leave a legal loophole', but they also indicated that without early preparation, 'a Magistrate will rarely grant an adjournment to allow a victim time to prepare one'.⁷¹

One judicial representative suggested, however, that the process of not preparing a VIS early was 'artificial' and antithetical to a victim's recovery:

If this is to be trauma informed then the Victim Impact Statement can't be weaponised at a later point or become discoverable before the trial has started. It should be that victims can write what they are feeling when they are feeling it not when we let the flag down and say 'go'. They are entitled to say to social workers and counsellors what they feel. It is artificial to not have a Victim Impact Statement when the victim wants to write it and to effectively bar that the prosecution has to say 'don't write it don't write anything' because it can be weaponized through the adversarial system.⁷²

⁶⁴ Consultation Meeting 18 – Victoria Police – Session 2.

⁶⁵ Consultation Meeting 18 – Victoria Police – Session 2.

⁶⁶ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

⁶⁷ Consultation Meeting 17 – Victoria Police – Session 1.

⁶⁸ *Sentencing Act 1991* (Vic) s 8N.

⁶⁹ With certain alternative arrangements available for victims including giving evidence remotely, screens, a support person, limiting numbers in court, no robes and legal practitioners seated: *Sentencing Act 1991* (Vic) s 8S.

⁷⁰ Consultation Meeting 18 – Victoria Police – Session 2.

⁷¹ *Ibid.*

⁷² Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

Victims' professionals are also aware of the issues associated with the early preparation of a VIS, with one respondent to the Victims' Professionals Survey noting that 'the early preparation of a VIS can be harmful to victims. It is my understanding that if a VIS is submitted too early defence can get hold of it and potentially use it against the victim.' Respondents to the Victims' Professionals Survey expressed concern about the defence being able to receive the VIS prior to the plea and to cross-examine a victim on their VIS.

The issue of defence access to a VIS is not restricted to Victoria. The ACT Victims of Crime Commissioner's Office told the VOCC that it:

ha[s] also had clients who have poured their heart out in their victim impact statement but didn't realise that they could be cross examined on it, and that the offender would get a copy. When clients are informed of this, they may not want to provide the statement because of concerns that the offender will get some sort of form of gratuitous satisfaction from reading it. Whereas if the process had been explained and spoken about early with the client, they could have made an informed decision early on about whether to give a VIS, and what to say in it.⁷³

CLCs advised that victims need more comprehensive advice on the defence's access to VISs.⁷⁴

Children and VISs

The Alannah and Madeline Foundation (the Foundation) raised the important issue of children having their own separate right to prepare a VIS for court proceedings. The Foundation advised that children can often be overlooked in the VIS process, even when they have prepared their own VIS (separately from a parent or guardian).⁷⁵ The impact on children can be profound if they have taken the time to write down their experiences of a crime and have it go unnoticed or unrecognised by the court:

it's absolutely demoralizing for a child or young person if they take the time to either tell somebody or write something down in a victim impact statement and then have it taken no notice of in the courtroom. That happens again and again. This is what VAPs [Victims Assistance Programs] tell us happens – and that's still quite recent. Children think: why did they ask me to do a victim impact statement, if they weren't going to do anything with it?⁷⁶

As the Foundation also highlights, these child victims may have told their stories multiple times throughout the justice process and 'that in itself is traumatic, and for children, that's additionally difficult'.⁷⁷

The Foundation observed that many children have lost trust and faith in the justice process and more is needed to promote and support them to make a VIS:

We also need to recognise those children and young people who've been through the child protection system, particularly older ones, who have no trust in institutions and have been asked many times what they wanted and didn't get it. And who are pretty mistrustful of most adults but in particular those who are representing the kind of the systems that make decisions about them. So simply saying, "Oh well, there's a victim impact statement – you can do it if you want to or not do it" is not enough. There needs to be a fair bit more support for that to be a meaningful and trusted process for them.⁷⁸

Admissibility of VISs

The Sentencing Act provides that the court may receive the whole of a VIS, even if it contains inadmissible material.⁷⁹ However, when the victim (or a nominee) or the prosecutor reads a VIS aloud in court, the court may direct that certain parts of the VIS are inadmissible and cannot be read aloud.⁸⁰ This process leaves some victims feeling censored.

The Centre for Innovative Justice (CIJ) told the VOCC that issues of admissibility can have profound impacts on a victim:

In relation to VISs, if you said to anyone on the street "if you experience a crime you get to tell the court the impact it's had but the court is potentially going to take out bits of it and the court determines what bits get through", then imagine what that does to people.⁸¹

Acknowledging the legitimate procedural reasons for why some parts of a VIS may be deemed inadmissible, the CIJ recommended that more can be done to explain this process to victims. Without such support for victims, 'it is another example of disempowerment and lack of control and validation'.⁸²

Some judicial representatives felt that over time there had been an improvement in limiting the content of VISs to admissible materials, which 'results in much less distress' for victims over arguments about the content of VISs at the plea hearing.⁸³ One judicial representative observed that 'the quality of the Victim Impact Statement has changed – they are more detailed and accurate in that they only address matters

⁷³ Consultation Meeting 6 – Victims of Crime Commissioner – Australian Capital Territory.

⁷⁴ Consultation Meeting 22 – Community Legal Centres – Session 1.

⁷⁵ Consultation Meeting 9 – Alannah and Madeline Foundation.

⁷⁶ Consultation Meeting 9 – Alannah and Madeline Foundation.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ *Sentencing Act 1991* (Vic) s 8L(5)(6).

⁸⁰ Ibid sub-ss 8Q(1), (2), (3).

⁸¹ Consultation Meeting 10 – Centre for Innovative Justice, RMIT University.

⁸² Ibid.

⁸³ Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

prompted to answer'.⁸⁴ Another judicial representative also commented that 'the quality of the Victim Impact Statement has certainly improved' resulting in fewer disputes about admissibility.⁸⁵

Impact of plea negotiations on VISs

When a plea negotiation occurs, one or more charges may be removed from the list of charges laid by Victoria Police against an accused. This has consequences in relation to VISs, as Associate Professor Asher Flynn and Professor Arie Freiberg explain:

From a victim perspective, and also from the perspective of the general public, to think that defence counsel and a prosecutor can get together and come up with a new version of facts to describe what occurred, which can mean that the victim doesn't, therefore, get part of their victim impact statement taken into account, or it might be completely at odds with how they feel that the crime occurred e.g. what happened, how it impacted on them?⁸⁶

Windermere VAP similarly observe the impact on victims when charges of crimes against the person are withdrawn as part of a plea negotiation process:

One of the other things that really impacts is victims experience charges being amended at court, particularly again in the summary jurisdiction. There can be cases where there's property offences and then there's also crimes against the person offences or charges. Those crimes against the person are actually withdrawn on the date leaving just the property offences to proceed, which completely invalidates that person's victim impact statement and a lot of work goes into these victim impact statements. They're not easy to do. And again, it's something that can be really distressing for victims to experience.⁸⁷

Victims' participation, VISs and mitigating factors

During a plea, mitigating factors may be submitted by the defence with the aim of reducing the severity of a sentence.⁸⁸ Mitigating factors may include details about a person's background (e.g. age, socioeconomic disadvantage, good character etc).⁸⁹

Victoria Police members and victims' professionals told the VOCC that victims are often dismayed that defence counsel is able to offer numerous mitigating factors 'unchallenged' while victims can experience their VISs being challenged, leaving them feeling that there is a clear imbalance at this stage of the court process. Victoria Police members observed:

Someone should be explaining to victims [the plea] process in more detail. They get frustrated – it's all about the accused in court. The barrister will be at the court rolling off mitigation with no evidence given. There needs to be some evidentiary basis for this rather than just rattling on about personal circumstances never verified. This is one of the most common complaints from victims.⁹⁰

Quite often in closing arguments the defence will explain the offender's challenging background. You might often hear the defence saying things like "he was in a home when he was young and he was sexually abused and he had this hard life". The court will generally accept such statements as truthful but who knows if they are or not? I have an example when a Victim Impact Statement strayed a little from the offence and the judge cut the victim off, but the defence can enter evidence about the accused's childhood which appears later in the judge's summary. There seems to be a lack of balance.⁹¹

Victoria Police members' concern about the imbalance between the evidentiary treatment of mitigating circumstances for the accused and the victim's VIS was also shared by victims' professionals surveyed by VOCC. Respondents to the Victims' Professionals Survey expressed concerns about the defence submitting materials about the accused during the plea that were incorrect, causing significant distress to victims.

84 Ibid.

85 Ibid.

86 Consultation Meeting 2 – Associate Professor Asher Flynn and Emeritus Professor Arie Freiberg.

87 Consultation Meeting 21 – Windermere Victims Assistance Program.

88 County Court of Victoria, *Sentencing* (Web Page, 25 July 2022) <<https://www.countycourt.vic.gov.au/learn-about-court/sentencing>>.

89 Ibid.

90 Consultation Meeting 19 – Victoria Police – Session 3.

91 Consultation Meeting 17 – Victoria Police – Session 1.

Victims' participation during sentence indications

A sentence indication is where a court indicates the sentence likely to be imposed⁹² if the accused pleads guilty prior to a trial commencing.⁹³

The court can refuse to give a sentence indication if it considers there is insufficient information before it of the impact of the offence on any victim of the offence to make a sentence indication.⁹⁴

There are obligations on the DPP when an accused applies for a sentence indication. The Victims' Charter requires the prosecution to obtain the views of a victim before the DPP makes a decision to oppose an application for a sentence indication.⁹⁵ The DPP is also to give a victim information about the matters taken into account by the DPP in making a decision to oppose an application for a sentence indication.⁹⁶

The Victims' Charter does not require the DPP to obtain the views of a victim if the OPP is *not* opposing a sentence indication. Research presented by the Sentencing Advisory Council in their 2010 report on the pilot sentencing indication scheme suggests the prosecution rarely opposes a sentence indication, meaning the views of victims on a sentence indication may be rarely sought.⁹⁷

While victims did not mention sentence indications during engagement with the VOCC,⁹⁸ stakeholders told the VOCC about the ways in which the sentence indication process obstructs a victim's entitlement to make a VIS and have the VIS taken into account at sentencing. Victoria Police members told the VOCC that sentence indications can result in victims losing the opportunity to make a VIS:

Sentence indications are often sprung on prosecutors, and when this happens, we've really lost our opportunity to get a Victim Impact Statement. Even if we did come back another day with a Victim Impact Statement, it's not going to be factored into sentence, because the indication has already been made. This is despite the recent amendments to the Charter that prioritises the prosecution's role in seeking victims' opinions.⁹⁹

Similarly, the OPP noted the inherent challenge of accommodating sentencing indications – which have been expanded from the Magistrates' Courts to the higher courts – with VISs. The OPP told the VOCC that sentence indications 'assist in the timely resolution of matters, however they do not sit neatly with the right of victims to provide a VIS'.¹⁰⁰ The OPP advised that it seeks to ensure the impact on a victim is still taken into account in this process by consulting with victims ahead of any sentence indication hearing, including ascertaining whether their VIS would include any reference to ongoing physical or psychological impact.¹⁰¹

Judicial representatives told the VOCC that there is an inherent tension in the sentence indication process in that a sentence indication is a tool to bring about an early resolution, but the impact of the crime on a victim may not be known at that early stage and it may not be practical to delay matters for the purposes of seeking information about impact on the victim.¹⁰²

One judicial representative noted that a sentence indication can be refused if not enough information is provided about the impact of the crime on the victim but noted this poses a challenge to the court to comply with legislative provisions that aim to 'bring about a resolution but if you don't know about what the [victim] impact is then you're really not informed enough to give the proper indication'.¹⁰³

Judicial representatives told the VOCC that there is an inherent tension in the sentence indication process whereby a sentence indication is a tool to bring about an early resolution, but victim impact may not be known at that early stage.

92 The sentence type or sentence or maximum total effective sentence: *Criminal Procedure Act 2009* (Vic) s 207.

93 *Criminal Procedure Act 2009* (Vic) s 207.

94 *Ibid* s 208.

95 *Victims' Charter Act 2006* (Vic) s 9B(1)(ca).

96 *Ibid* s 9B(2)(c).

97 Sentencing Advisory Council, *Sentence Indication: A Report on the Pilot Scheme* (February 2010) [51] - https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Sentence_Indication_A_Report_on_the_Pilot_Scheme.pdf. This is an area with little research or evidence, particularly since the *Criminal Procedure Act 2009* (Vic) was amended in 2022 to expand sentence indications to the higher courts: Part 5.6 of the *Criminal Procedure Act 2009* (Vic).

98 David Estcourt, 'Top Prosecutor Backs Law Change to Protect Victims after Joffa Case', *The Age* (28 February 2023); David Estcourt, 'Survivor Urges Prosecutors to Appeal Sentence after Joffa Avoids Prison', *The Age* (27 February 2023).

99 Consultation Meeting 18 – Victoria Police – Session 2.

100 Correspondence from Office of Public Prosecutions to Victims of Crime Commissioner, 15 September 2022, 8.

101 *Ibid*.

102 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

103 Consultation Meeting 28 – Judicial Representatives – Magistrates' Court of Victoria, County Court of Victoria, Supreme Court of Victoria.

Diversion programs

In Victoria there are a range of court-based diversionary programs which provide the Magistrates' Court and the Children's Court with alternatives to trial and sentencing.¹⁰⁴ For example, the diversion stream in the Children's Court enables some young offenders to participate in diversionary programs as an alternative to a custodial sentence¹⁰⁵ and the Criminal Justice Diversion Program operates in the Magistrates' Court with the aim of enabling individuals to avoid a criminal record and to access rehabilitation or treatment.¹⁰⁶

An accused is eligible for the Criminal Justice Diversion Program in the Magistrates' Court if:

- the offence is triable summarily and not subject to a mandatory or fixed sentence or penalty (except demerit points)
- the defendant acknowledges responsibility for the offence
- there is sufficient evidence to gain a conviction.¹⁰⁷

Where a charge involves a victim, the court seeks the victim's views including:

- whether the victim agrees with the course of action
- the amount of compensation sought for damage to property
- how the crime has affected the victim.

Victims are not obliged to respond to the court's contact.¹⁰⁸

Although there is no plea of guilty (and no sentencing at this stage), for many victims diversion is closely aligned with sentencing because the accused acknowledges responsibility for the offence and the court seeks the views of victims (similar to the victim impact statement process). A diversion hearing is conducted in open court before a magistrate and the magistrate may require the offender/accused to apologise to or compensate the victim.¹⁰⁹

Despite the legislative requirement that the court must consider the impact on the victim before ordering a diversion order,¹¹⁰ the VOCC heard that not all victims felt like participants in the diversion process.

Victims' experiences

A number of respondents to the Victims' Survey indicated that when diversion was facilitated by the court, this removed their opportunity to tell the court about the impact of the crime:



'i was phoned by a police officer and asked to agree to a diversion program. I just wanted to hear that he was sorry for what he did to me and i was unrealistic as that was never going to happen.'

'i should have been able to speak about how i felt --also the police pro[se]cutor inform me or the police --the police and the pro[se]cutor should have dicussed with me his sentence and diversion...no one could tell me whos job it was i was also given the ring around by the arresting officers ... i was ignored and bullied also the court would not give me the name of the pro[se]cutor so i could ask him why [the accused] got off so lighthly assulting me leaving me with a brain injury.'

– Victims' Survey respondents

¹⁰⁴ *Criminal Procedure Act 2009* (Vic) s 59.

¹⁰⁵ *Children, Youth and Families Act 2005* (Vic) pt 5.2 div 3A.

¹⁰⁶ The Magistrates' Court also states other benefits to be restitution to the victim, reducing the likelihood of offending, and assisting community projects through voluntary work/donations: Magistrates' Court of Victoria, *Criminal Justice Diversion Program* (Web Page, 16 March 2020) -<https://www.mcvc.gov.au/sites/default/files/2018-10/Criminal%20Justice%20Diversion%20Program%20brochure.pdf>.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* It is noted that there is no mention of victims in section 59 of the *Criminal Procedure Act 2009* (Vic).

¹⁰⁹ Although an individual must acknowledge responsibility for the offence, they have not been found guilty.

¹¹⁰ *Children, Youth and Families Act 2005* (Vic) s 356D(4). While the *Criminal Procedure Act 2009* (Vic) does not require this explicitly, the Magistrates' Court of Victoria has indicated that its practice is to seek victims' views. This is consistent with section 59(2)(b) of the Act which states that the Magistrates' Court may inform itself in any way it considers appropriate in determining whether the accused should participate in a diversion process.

A number of respondents to the VOCC's Victims' Survey also expressed concerns about diversion being available for serious offences:



'police dropped the prosecution after the part-heard committal because the OPP decided to accept the defendant's offer of diversion for 3 counts of rape (unheard of!!) despite having a confessions and despite the Magistrate saying the matter should go to trial and that it must be resolved by way of a conviction.'

'I have seen this perpetrator get off 3 breaches, a death threat was not investigated by the Police (which I was not notified), I found out from the police. The perpetrator was granted a diversion order for sending a child sexual image and porn to a family member.'

– Victims' Survey respondents

Stakeholder views

Victims' professionals also raised issues relating to diversion programs, with one respondent to the Victims' Professionals Survey noting that:

Victims know that perpetrators will be given no punishment by the magistrate or judge, therefore they see no point in going through the trauma and effort of reporting to police. They are shown time after time that Magistrates will give their perpetrators diversion orders for fracturing their eye socket, or breaking their back, or one month in prison for shooting the leg of a child. These are real examples I have seen. They also fear the case being dropped by the prosecution after months of working with the police on statements, particularly for sexual assault.

Victoria Police members acknowledged that in the Children's Court jurisdiction, there are impediments to victim engagement because the *Children, Youth and Families Act 2005* (Vic) is primarily aimed at rehabilitating young people and minimising the harms to them of criminal intervention.¹¹¹

Prosecutors who work in the Children's Court jurisdiction advised the VOCC that there are three main impediments to victims' participation when diversion is an option:¹¹²

- **Lack of publicly available information about the case.** In Children's Court matters there is no public record or listing for a matter, so the victim has no way to check track the progress of a case – the victim is reliant on the informant who may themselves lose track of the progress of a case.
- **Diversion process does not require victim participation.** Victoria Police members advised the VOCC that they do have a diversion matrix which requires a prosecutor to take the impact of the crime on the victim into account, but there is no direct requirement for engagement with the victim and so the 'victim is a silent participant in those circumstances'. Victoria Police members also told the VOCC that 'there are issues with victims being party to the diversion process that doesn't legislatively require them to be involved'.
- **Online hearings.** During COVID-19 restrictions, Victoria Police members told the VOCC that Children's Court matters were heard online and that practice did not allow for the informant to be contacted and be informed, so the victim would not be advised.

Sentencing decisions

Although victims can have a voice in sentencing through VISs, victims do not have a role in determining sentence.

Nonetheless, victims told the VOCC about how the impacts of sentencing decisions can significantly affect not only their perceptions of participation, but of justice overall.

¹¹¹ See, e.g., *Children, Youth and Families Act 2005* (Vic) ch 5 (Children and the criminal law) div 3A (Diversion).

¹¹² Consultation Meeting 18 – Victoria Police – Session 2.

Victims' experiences

While it is a well-established pillar of the adversarial process that sentencing decisions are made by an impartial and objective decision maker,¹¹³ many victims told the VOCC that they felt betrayed by lenient sentences which did not reflect the offending. For example, one victim interviewed by the VOCC struggled to reconcile: 'trying to live with something like a Community Corrections Order for 100 hours when this person killed your child because of their reckless driving. Of course, it's not right.'¹¹⁴

Victims surveyed by the VOCC spoke about their feelings that sentence were inadequate:



'Minimal sentences inadequate for the crimes'

'he got off with a good behaviour bond. the judge said my approx 1000 cases of rape were not too bad because luckily it was by a family member.'

'The court system not sentencing and always releasing.'

'by manifestly inadequate sentencing result in us being placed in more fear for our safety.'

'Our perp had all his CCO hours written off due to covid so in practice he received no sentence at all.'

– Victims' Survey respondents

Interviews with victims of crime revealed that it can also be difficult for victims to accept reductions in sentence for offenders who plead guilty. This is exacerbated when offenders plead not guilty, delay proceedings, have a committal hearing and then plead guilty only to receive a discount.

Victims also expressed concerns that there was undue emphasis on the offender's rehabilitation as opposed to punishment, with Caterina Politi stating: 'there are the factors of sentencing. Punishment and deterrence and denunciation, and yes, rehabilitation. But do the punishment first. Then you can rehabilitate, but they're not doing that.'¹¹⁵ One respondent to the VOCC's Victims' Survey stated: 'There needs to be increased accountability for perpetrators and sentencing to represent the heinous nature of the crime'.

¹¹³ Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 151.

¹¹⁴ Interview 12 – Victim of crime.

¹¹⁵ Interview 7_ Caterina Politi.

Overview of Chapter 10: Post-sentencing

Victims Register and parole

The Victims Register enables some victims to be placed on a register and receive certain information about an imprisoned offender. The *Victims' Charter Act 2006* (Vic) (Victims' Charter) outlines victim entitlements with respect to the Victims Register.

Despite the Victims' Charter entitlements, the VOCC heard there may be limited awareness of the Victims Register. This is consistent with previous research.

Some victims feel the Victims Register is too limited and does not give them enough information. The VOCC also heard that some victims on the Victims Register did not get the information they needed to feel safe.

Custodial management and parole

Some victims spoke about challenges with the Victims Register and the parole process which had impacted on their participation.

10

Chapter 10:
Post-sentencing



Introduction

This chapter explores victims' participation after the trial or court process, specifically victims' participation while an offender is under the supervision of Corrections Victoria (whether in prison or under community-based supervision) and when a prisoner is eligible for parole.

When offenders are sentenced and enter the corrections system, whether through a custodial or non-custodial sentence, participation for victims of crime can be challenging as there is a limited role for victims, but participation during this time is important for victims' sense of safety, voice and procedural fairness.

For some victims, participation at this point in the justice system, may include:

- being on the Victims Register and being kept informed about the offender while the offender is in custody
- making a submission to the Adult Parole Board when the offender is considered eligible to be released from custody.

As outlined in detail below, the *Victims' Charter Act 2006* (Vic) (Victims' Charter) provides victims with entitlements with respect to the Victims Register.

Victims Register

The Victims Register is governed by the *Corrections Act 1986* (Vic) which provides that victims may be entitled to be told:

- details about the length of the prisoner's sentence and of any other sentences of imprisonment that the prisoner is liable to serve¹
- the date on which, and the circumstances in which, the prisoner was, is to be or is likely to be released for any reason (including release on bail, custodial community permit or parole)²
- when a prisoner escapes during their sentence.³

The Victims Register is only available to victims of certain offences, including violent crimes such as assault, sexual offences or armed robbery.⁴

Victims are not provided with information about:

- which prison the offender is in
- where the offender will live when they are released
- details of any program the offender attends or completes
- details of any assessments about the offender
- details of any appeal hearings related to the case
- details of court hearings for any other crimes the offender may have committed.⁵

The Victims Register also facilitates the participation of victims of crime in decision-making processes about parole and post-sentence supervision, discussed further below.

Section 17 of the Victims' Charter also outlines victims' entitlements with respect to the Victims Register. In particular, the Victims' Charter sets out the following information for victims:

- a victim of a criminal act of violence⁶ may apply to be included on the Victims Register⁷
- a person on the Victims Register may be given information about the offender including the length of sentence, the likely date of release and the making of an extended supervision order, a supervision order or a detention order⁸

¹ *Corrections Act 1986* (Vic) s 30A(2)(a).

² *Ibid* s 30A(2)(b).

³ *Ibid* s 30A(2)(c).

⁴ Eligibility for the Victims Register includes being affected by crime such as: assault; armed robbery; stalking; kidnapping; family violence; threats to kill; sexual offences; culpable driving; manslaughter and murder: Victims of Crime, *Victorian Victims Register – Offender Information* (Web Page, 9 May 2023) <<https://www.victimsofcrime.vic.gov.au/after-court/victorian-victims-register-offender-information>>.

⁵ Victims of Crime, *Victorian Victims Register – Offender Information* (Web Page, 9 May 2023) <<https://www.victimsofcrime.vic.gov.au/after-court/victorian-victims-register-offender-information>>.

⁶ Within the meaning of the *Corrections Act 1986* (Vic) s 30A.

⁷ *Victims' Charter Act 2006* (Vic) s 17(1).

⁸ *Ibid* s 17(2).

- if the Adult Parole Board is considering ordering the release on parole of an imprisoned offender who has committed a criminal act of violence, a person on the Victims Register may make a submission to the Board about the effect of the offender's potential release and the Board is to consider any submission received⁹
- a person on the Victims Register may make a submission to the Post Sentence Authority for consideration regarding an offender who is subject to an extended supervision order, a supervision order, detention order or an emergency detention order.¹⁰

Victims' experiences

Victims unaware of the Victims Register

Previous research has highlighted that only a small proportion of victims use the Victims Register.¹¹ One respondent to the Victims' Survey referred to their lack of awareness of the Victims Register:

'I am also unaware of what a Victims Register is, despite being a victim of crime on multiple occasions, so would recommend that the existence of the Register be disseminated more widely amongst the public.'

– Victims' Survey respondent

Victims Register too limited

Caterina Politi was frustrated about the limitations of the Victims Register, stating:

*'Well we could have been told that he's applied for sports day leave, but we weren't. And I don't think that is part of the victims register. The victims register is only when they apply for parole. I would like to see more rights included on the victims register so you know they're going to be released.'*¹²

Caterina Politi suggested the rights accorded to victims on the Victims Register were too limited, and would like to see them expanded to include a requirement to notify victims when offenders are granted day release for work or sporting purposes.¹³

Caterina Politi also raised practical issues relating to the registration process for the Victims Register, noting that the even completing the form was a major barrier:

*'It took me over 12 months to complete that form to be on the victims register. I couldn't write [the offender's] name down on that form ... I thought no, I've got to do it. I've got to do it for [my loved one], so I did it. But you know, people think it's just a name. But I just couldn't write his name down.'*¹⁴

Another victim interviewed by the VOCC raised concerns about the fact that victims whose matters proceed via the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) are not eligible for the Victims Register: 'because we're not victims, you must understand we can't even go on the victims register'.¹⁵

⁹ Ibid s17(3).

¹⁰ Ibid s17(4).

¹¹ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 204.

¹² Interview 7– Caterina Politi.

¹³ Interview 7– Caterina Politi. The Victorian Government's Victims of Crime website states: 'If an offender is being considered for a permit to participate in a community team sport program, Corrections Victoria will liaise with the Victims Register to establish if there are any victims on the Victims Register that need to be considered in relation to a decision about whether to grant approval for a permit.' Notifications from the Victims Register relating to Community Team Sport Program Permits started from 1 January 2020: Victims of Crime, *Victim Notifications for Custodial Community Team Sport Program Permits* (Web Page) <<https://www.victimsofcrime.vic.gov.au/after-court/victims-register-offender-information/victim-notifications-for-custodial-community-0>>.

¹⁴ Interview 7 – Caterina Politi.

¹⁵ Interview 5 – Victim of crime.

Not receiving information from Victims Register

The VOCC was told by some victims about issues with receiving information from the Victims Register. One victim interviewed told the VOCC that the offender was released without their knowledge:

*'In the end, he was actually released two weeks before his given date, so he was out and about for two weeks. Then we weren't aware of the fact he knew our address because we're not allowed to know anything. That's what I was told – that he knew where we lived.. Just absolutely no level of concern for health, safety or our deepest thoughts and worries about him now being out. We weren't prepared in any way, shape or form to know what should happen if he crosses over into our workspace or if he's on the train or whatever. What are we supposed to do?'*¹⁶

A Victim Survivors' Advisory Council member told the VOCC about their experience with the Victims Register and their fears for their personal safety after not getting the notification they expected about the offender's release.¹⁷

Stakeholder views

Victims Register enhances participation

Victims Services staff told the VOCC that key to participation for victims is choice and opportunity:

Participation is about providing victims with opportunities. In the context of the Victims Register that means providing opportunities for victims to go on the Register, opportunities to provide submissions, to provide information to the Parole Board, the Post Sentence Authority and the courts. We need to also consider what weight the participation has to ensure that the participation is being meaningfully provided and that it holds merit ... The feedback we constantly receive is that that choice to participate is key for victims of crime.¹⁸

Victims Services staff also told the VOCC that participation must be 'meaningful' as the Victims Register is a 'registered service where submissions must be considered, so that forms a lot of the dialogue with victims in that context. It is about ensuring that value and validity is added to a victim's participation.'¹⁹

Victims Services staff also made a distinction between victims who wish to be informed and victims who wish to actively participate, noting both positions need to be approached through a trauma-informed lens:

Lots of people use the register to gain information rather than for participation. Not all victims are interested in participation, some victims hold more value in relation to the information they receive from us and being kept informed.²⁰

The VOCC was told about planning managed by Victims Register staff to facilitate victim participation. For example, if a victim is attending a court hearing online or in person, a range of safety measures are discussed and facilitated prior to that hearing:

This might be making sure that we have discussed with the victim beforehand that they should login with their camera off. In the post sentencing space, the offender would be the last person brought into the court, so when the judge's associate acknowledges everyone in attendance in court, the victim could turn their video on briefly, then turn it off, and then offender comes into court/logs in via video link. This has worked really well – making sure that those processes are in place with the courts and corrections. Equally with victim participation in court itself has been very similar. The victim arrives to court prior to the offender, making sure that the victim and offender are far away from each other within court, providing the option not to be in the courtroom at all.²¹

The VOCC was also told about technological improvements to the Victims Register that have enhanced victim participation, including online application forms, email and SMS communications and participation in court hearings via video link.²²

The Victims of Crime Commissioner's (VOCC) Survey of Victim Support Professionals also suggested many victims have positive experiences with the Victims Register:

The staff at the VR [Victims Register] are amazing and all clients report of feeling supported when having contact with this team.

No, it's good and important to have. I haven't really received any negative information about the Victims Register yet from clients.

¹⁶ Interview 12 – Victim of crime.

¹⁷ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁸ Consultation Meeting 14 – Victims Services staff.

¹⁹ Ibid.

²⁰ Consultation Meeting 14 – Victims Services staff.

²¹ Ibid.

²² Ibid.

The Victims Register team do a great job managing this with phone calls and subsequent emails...

The Victims Register is great at communicating sentencing. Most victims really appreciate being able to write submissions to the Adult Parole Board.

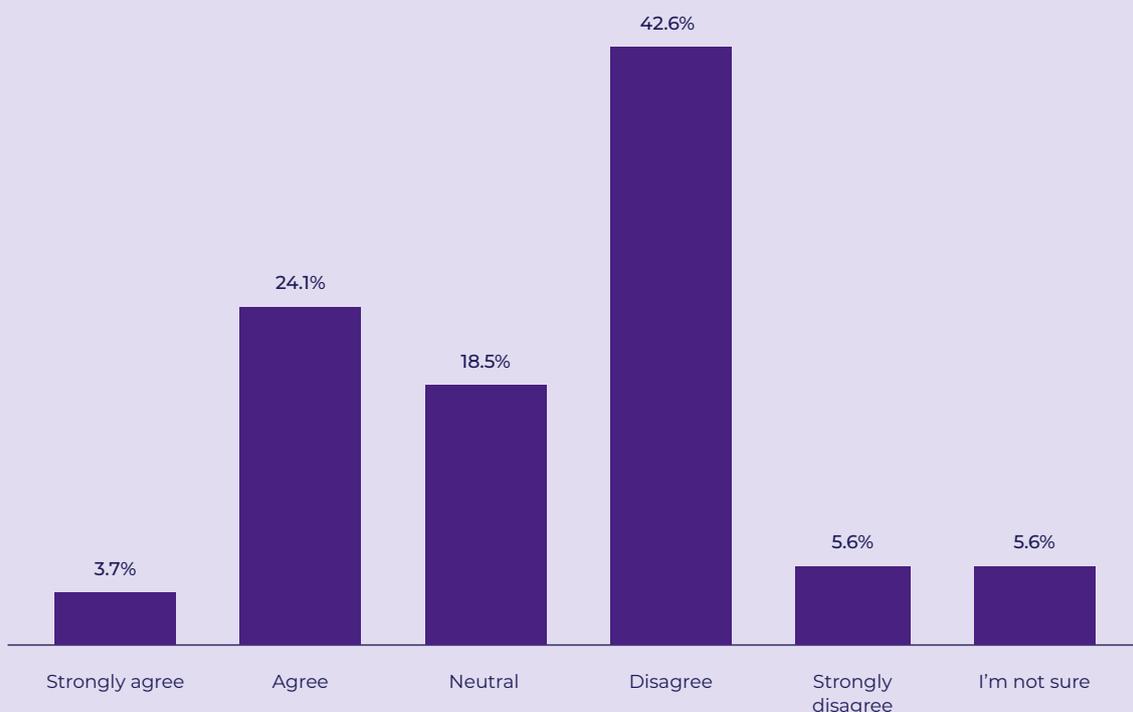
Lack of awareness of the Victims Register

The VOCC’s Victims’ Professionals Survey suggested most victims’ professionals felt there was a low awareness among victims of the existence of the Victims Register.

As shown by **Figure 30** below, many survey respondents (48 per cent) did not believe that victims were aware of the Victims Register and the information it could provide.

Most victims’ professionals felt there was a low awareness among victims of the existence of the Victims Register.

Figure 30: VOCC’s Victims’ Professionals Survey: Victims of crime are aware of the Victims Register and the information it can provide?



Victims’ professionals surveyed by the VOCC shared the following observations about the lack of knowledge and awareness among victims about the Victims Register:

This process is only known to the victims “lucky” enough to have a VAP [Victims Assistance Program] worker to assist with the forms.

Most victims I speak to do not know about the Victims Register.

I don’t think most victims are made aware of Victims register or by the time it is processed the offender may be released. Seems to work with with more serious crimes.

Victims in our region are rarely told about the Victims register by police or Prosecutors.

To overcome issues of awareness, some stakeholders discussed the possibility of registration for the Victims Register being automatic rather than ‘opt-in’ for eligible victims. The South Australian Commissioner for Victims’ Rights suggested opt-in systems place ‘the onus of responsibility on the victim, not the agency’

and that it is better for victims to be provided with information so they can choose to opt-out.²³

Community Legal Centre (CLC) representatives suggested enhancing legal advice and assistance for victims could assist victims with a range of legal issues, including 'understanding how to be on the Victims Register'.²⁴

Eligibility for the Victims Register

The Victims Register is available to victims of certain offences, including crimes such as assault, armed robbery, stalking, kidnapping, family violence, threats to kill, sexual offences and culpable driving, manslaughter and murder.²⁵ Victims' professionals surveyed by the VOCC were asked whether they felt eligibility criteria for the Victims Register were meeting victims' needs. Forty per cent of victims' professionals surveyed by the VOCC indicated that the eligibility criteria for the Victims Register are 'satisfactory'. However, a number of victims' professionals also raised concerns or had suggestions about eligibility for and scope of the Victims Register, as noted in these responses to the survey:

I think any interested party should be able to get on the victim's register, including ex partners of an offender, family members of a victim, and family members of offenders.

Victims should be able to register on the VR when the offender has been charged & is on remand.

I would like to see it extended for CCOs. Some very serious offenders have been given lengthy CCOs with stringent reporting, but there is no way the victim knows if this is being adhered to. Can leave them feeling unsafe.

It would be good to consider victims be notified of a breach where a community based order is in place.

there continues to be a lack of access for victims who's offender is sentence to a CCO with a short period of imprisonment imposed. The lack of timely feedback as to the outcome, from the prosecutors means that the opportunity to assist a victim to register with the victims register is missed.

Missing out on crucial information

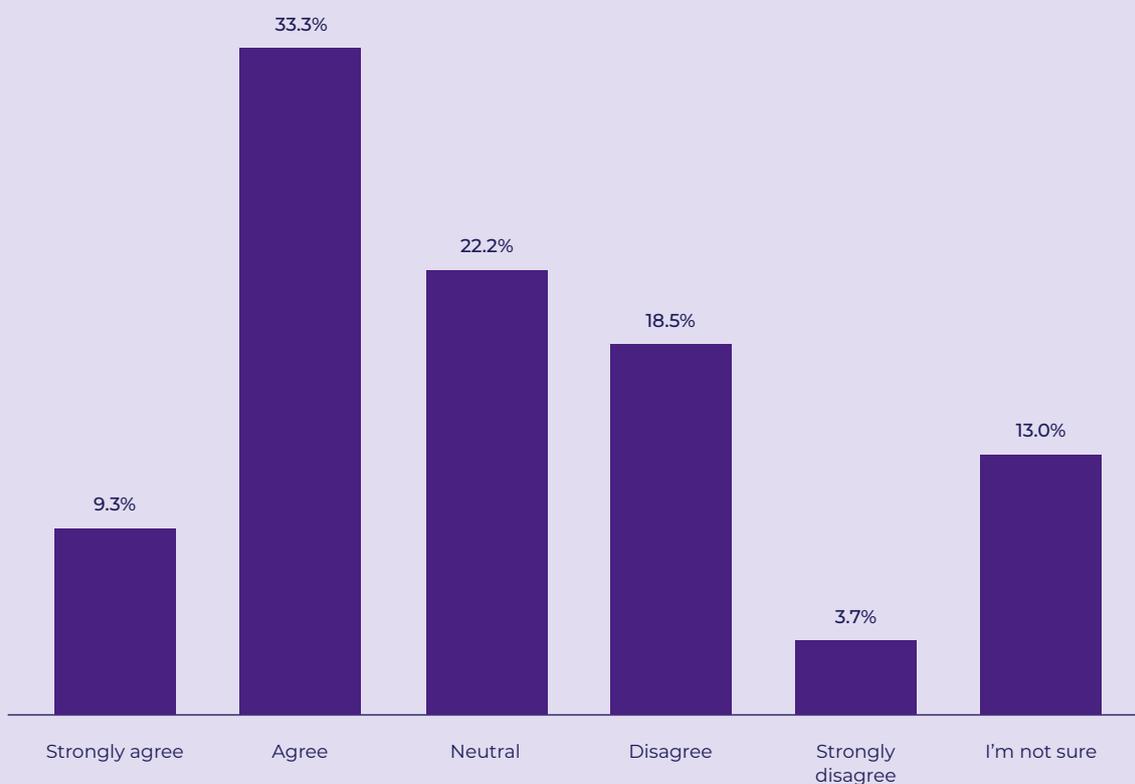
Forty-three per cent of respondents to the VOCC's Victims' Professionals Survey agreed that victims on the Victims Register receive information in a timely and sensitive way, as shown in **Figure 31** below.

²³ Consultation Meeting 4 – South Australian Commissioner for Victims' Rights.

²⁴ Consultation Meeting 22 – Community Legal Centres – Session 1.

²⁵ Information about an offender can be obtained if you or a family member has been affected by a crime such as: assault; armed robbery; stalking; kidnapping; family violence; threats to kill; sexual offences; culpable driving; manslaughter and murder: Victims of Crime, *Victorian Victims Register – Offender Information* (Web Page, 9 May 2023) <<https://www.victimsofcrime.vic.gov.au/after-court/victorian-victims-register-offender-information>>.

Figure 31: VOCC's Victims' Professionals Survey: Victims of crime on the Victims Register get the information they need in a timely and sensitive way.



However, some victims' professionals surveyed by the VOCC shared the following observations about victims not being informed and provided with important information once registered:

Often the victim is not informed when they should be.

I don't know a lot about it but I do know that I have worked with victims of FV where the perpetrator got out of jail and no one notified the victim. This seems to happen regularly.

Information isn't always updated in a timely manner.

Although it would be time consuming, advising victims prior to the release of the offender in the week/s leading up to that release would be beneficial, some victims have reported being provided with a release date via email when they go on the register, then hearing nothing further about the release.

Corrections – management of offenders

As noted above, when offenders are sentenced and enter the corrections system, whether through a custodial or non-custodial sentence, participation for victims of crime can be challenging as there is a limited role for victims. Some victims would like to receive information about the location of the offender or matters relating to an offender's day-to-day management, including any day leave provided to the offender.

Parole is also a key point where many victims wish to be considered. Parole allows a prisoner to serve part of their sentence of imprisonment in the community. Parole provides prisoners with a structured, supported and supervised transition so that they can adjust from prison back into life in the community,

rather than returning straight to the community at the end of their sentence.²⁶ While on parole, a prisoner will be subject to parole conditions and under supervision.

To be considered for parole, eligible prisoners must apply to the Adult Parole Board. A prisoner is eligible to apply for parole if they are undergoing a sentence with a non-parole period of imprisonment.²⁷

Both the Victims' Charter and the Corrections Act provide that victims can make submissions to the Adult Parole Board when offenders are being considered for parole.²⁸ When an offender applies for parole, victims on the Victims Register associated to the offender are invited to make a submission about the effect on them of the offender's potential release.²⁹

If the Adult Parole Board decides to release a prisoner on parole, a Corrections Victoria parole officer will supervise the prisoner. The Board can also cancel parole and issue a warrant for Victoria Police to arrest the parolee and return them to prison.³⁰

Victims' experiences

Victims Register and parole

Some victims spoke about challenges with the Victims Register and the parole process. One victim interviewed by the VOCC suggested the parole and Victims Register process was 'dysfunctional':

*'We were on the Victims Register. At the time it was very dysfunctional. We were informed that he was up for parole and we could put in our submission and we did work very hard on putting it together.'*³¹

In this case, the victim was informed that their submission addressing specific safety protections was not accepted by the Adult Parole Board: 'I was always told the reason that it wasn't accepted was because I didn't put in a grid [map] of the area which was just rubbish and if I'd been told I would have done it, so that was just a cop out.'³²

Emergency Management Days

A prisoner can apply for Emergency Management days (EMDs), when they have been of good behaviour and they have suffered disruption or deprivation in custody.³³ During the COVID-19 pandemic, prison visits were suspended to prevent the spread of the disease and EMDs were used by prison authorities as a tool to maintain order and safety inside prisons.³⁴ However, some victims were distressed to learn that some prisoners were granted EMDs, which reduce overall time served.³⁵

One victim interviewed by the VOCC shared their feelings of distress and outrage that EMDs were being granted to an offender while the victim was experiencing a pandemic lockdown and curfew:

*'I couldn't go anywhere. We had curfew. I could only go out for an hour a day. Could only shop within 5 kilometres and couldn't leave the house after nine. Yet he was earning credits off his sentence...I was fuming.'*³⁶

When asked 'What parts of the justice process didn't work well for you?', one victim surveyed by the VOCC listed 'Corrections Victoria authorising significant EMD's to prisoners sentence'.

²⁶ Corrections Victoria, *Parole* (Web Page) <<https://www.corrections.vic.gov.au/parole>>.

²⁷ Ibid.

²⁸ *Victims' Charter Act 2006* (Vic) s 17(3); *Corrections Act 1986* (Vic) ss 74A, 74B, 104ZY.

²⁹ Ibid.

³⁰ Corrections Victoria, *Parole* (Web Page) <<https://www.corrections.vic.gov.au/parole>>.

³¹ Interview 12 – Victim of crime.

³² Ibid.

³³ *Corrections Act 1986* (Vic) s 58E(1).

³⁴ 'Coronavirus Restrictions See Prisoners Get Reduced Sentences', *ABC News* (online, 30 January 2021) <<https://www.abc.net.au/news/2021-01-31/get-out-of-jail-free-cards-for-victorian-prisoners-locked-down-/13106620>>.

³⁵ The principles relevant to the granting of EMDs are set out in section 58E(1) of the *Corrections Act 1986* (Vic) and regulation 100 of the *Corrections Regulations 2019* (Vic).

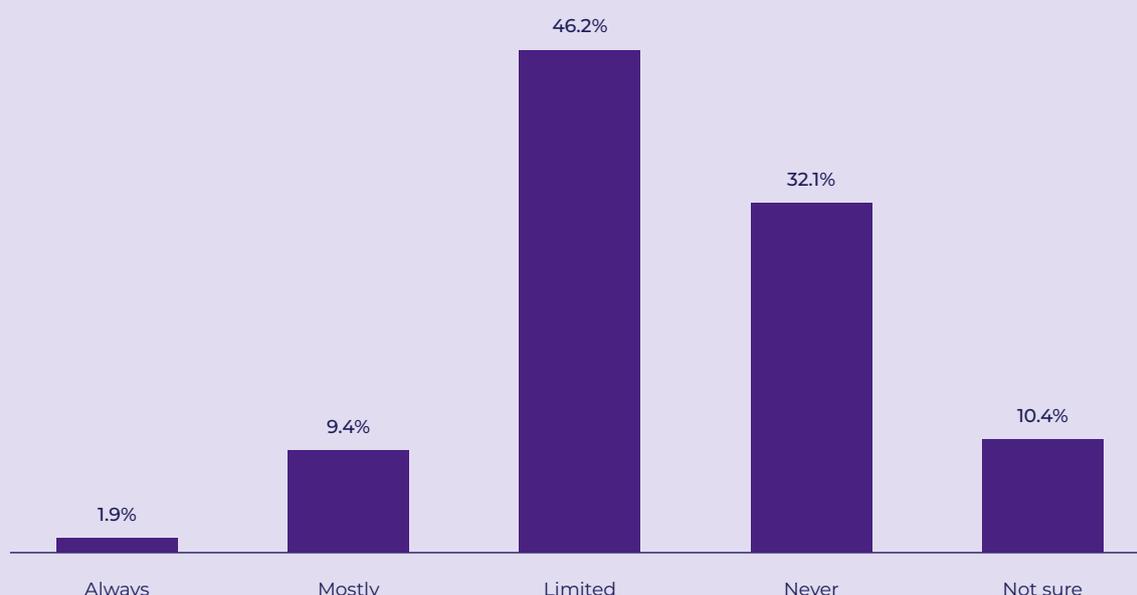
³⁶ Interview 2 – Di McDonald – victim of stalking.

Stakeholder views

Limited opportunities for victims to participate

When asked 'Do you think victims are treated as participants in the justice system while the offender is in prison/or under corrections oversight?', the majority of victims' professionals surveyed by the VOCC indicated victims were never treated as participants (46 per cent), or only treated as participants in a limited way (32 per cent), as shown in **Figure 32** below.

Figure 32: VOCC's Victims' Professionals Survey: Do you think victims are treated as participants in the justice system while the offender is in prison and/or under corrections oversight?



When asked in the Victims' Professional Survey 'What aspects of the justice system currently work well to facilitate victim participation?', one victims' professional responded that 'Most victims really appreciate being able to write submissions to the Adult Parole Board.' In contrast, another respondent to the survey said: 'I've had victims tell me it's no point having a say because the courts/parole won't take any notice.'

Independent legal representation

During consultation, the VOCC heard from various stakeholders that at specific points in the criminal justice process, the appointment of independent legal representation could be beneficial for victims. Associate Professor Tyrone Kirchengast argued specifically that there is a place for victim legal representation at the parole stage.³⁷

³⁷ Consultation Meeting 3 – Dr Robyn Holder and Associate Professor Tyrone Kirchengast.

Overview of Chapter 11: Non-trial justice processes

The justice system is broader than the criminal trial process and victims identified that participation in these processes is equally important. However, these areas of participation are not always governed by the *Victims' Charter Act 2006* (Vic) (Victims' Charter).

Civil intervention orders

Many victims experienced issues participating in the civil intervention order process, including:

- lack of participation during the intervention order process
- lack of response to breaches of intervention orders
- challenges in getting or keeping intervention orders
- misidentification and cross-applications
- delays and lack of information provision.

Alternative or restorative justice

Few victims whom the Victims of Crime Commissioner (VOCC) engaged with had participated in restorative or alternative justice opportunities. Some victims identified alternative or restorative justice pathways as their preferred participatory method while others were unsure about its applicability to them individually, and more broadly in some cases.

Coronial process

Victims described varying experiences of the coronial process, ranging from being very supported, to not being contacted or supported throughout a confronting and difficult process. Some victims indicated that their experience with the coronial process would have been improved if they had had legal representation to assist and support them.

Mental impairment

Very few victims of crime experience justice processes where an accused says that they are, or is found by a court to be, not guilty because of a mental impairment. However engagement with victims of crime who do experience proceedings involving these issues indicates that these proceedings have the potential to cause significant secondary victimisation. The main issues raised by victims are:

- lack of access to information
- lack of participation during decision-making processes
- lack of consideration of victims' safety.

State-funded financial assistance

The current system of state-funded financial assistance has been extensively reviewed over the past five years.

Accordingly, the VOCC did not focus extensively on issues relating to the Victims of Crime Assistance Tribunal (VOCAT) during engagement with victims or consultation with stakeholders, but issues relating to state-funded financial assistance continue to be raised by victims and stakeholders.

The majority of victims interviewed and surveyed by the VOCC experienced a level of dissatisfaction with VOCAT, citing issues relating to:

- accessibility and information provision
- delays in receiving awards
- certain scheme requirements that are not trauma-informed.

11

Chapter 11:
**Non-trial justice
processes**



Introduction

This chapter outlines victims' experiences of participation outside the criminal trial process.

There are many reasons why a crime may never result in a trial. When this does happen, there are different ways that victims may still participate in the justice system. This chapter considers some of these different ways to participate, such as:

- civil intervention orders
- restorative or alternative justice options
- coronial processes
- mental impairment matters governed by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic)
- state-funded financial assistance.

The justice system is broader than the criminal trial process and victims identified that participation in these other processes is just as important as participating in the criminal trial process, although not all of these areas of participation are underpinned by rights in the Victims' Charter.

Civil intervention orders

Some victims seek safety through intervention orders. Intervention orders are civil orders¹ that impose conditions on contact between parties. Intervention orders may be put in place parallel to criminal proceedings or may be the only justice intervention.

There are two types of intervention order in Victoria:

- Family Violence Intervention Orders (FVIOs)
- Personal Safety Intervention Orders (PSIOs).

FVIOs apply in relation to any family relationships.² PSIOs apply between non-family members. FVIOs are frequently used in family violence matters, whether or not criminal matters are relevant or pursued. PSIOs are the most common response by the justice system to non-family violence stalking.³ This chapter will mainly refer to 'intervention orders' more generally as it is not always possible to differentiate between FVIOs and PSIOs when victims recount their experiences of intervention orders.

Victims' experiences

Some respondents to the Victims of Crime Commissioner's (VOCC) Victims' Survey described positive experiences of intervention orders. In response to the question 'What parts of the justice process worked well for you?', some respondents highlighted the intervention order process:



'Court for intervention orders was not too bad.'

'Contact with the Intervention Order Registry at Magistrates Court Victoria.'

'Police DV unit and Police Protection Order'

'One of the police who assisted me to retrieve my belongings was very kind. The magistrate who granted me the IVO appeared to be very understanding as well.'

– Victims' Survey respondents

1 A breach of an intervention order is a criminal offence: *Family Violence Protection Act 2008* (Vic) s 37.

2 Under section 8 of the *Family Violence Protection Act 2008* (Vic), this includes a current or former spouse, domestic partners, intimate personal relationships, relatives or people who may be regarded as 'like a family member'.

3 Victorian Law Reform Commission, *Stalking* (Report No 45, June 2022) 96.

One respondent to the Victims' Survey described how obtaining a PSIO had been a positive experience for them in contrast to the prospect of pursuing a traumatising criminal justice process:

'I didn't lay criminal charges against the perpetrator as I was literally told by the police that it would be a traumatic and harrowing experience for me when being cross-examined. I did go for a personal safety intervention order, which was successful and I am happy about that.'

– Victims' Survey respondent

However, many victims whom the VOCC engaged with experienced issues with the intervention order process.

Lack of participation

Some victims told the VOCC that they did not feel like active participants during the intervention order process. For example, these respondents to the VOCC's Victims' Survey felt ignored and unheard in proceedings crucial to their safety, leading to them feeling disempowered:

'None of it worked. I had no input in the IVO, they did it without even telling me that it was being done, leaving me to feel completely disempowered.'

'Never being heard or given chance to have a voice especially when ordered by court to provide evidence why need further extension of IVO yet Magistrate could not be bothered to read what I was order to submit yet he is making judgements & determinations regarding our safety...Defies comprehension, & victims just tossed to side with no voice, nor Magistrate making time to read what they are presiding over is mind blowing disregard for the plight of the victim & a travesty of justice in simply that aspect.'

'The judge was attempting to remove the intervention order and give this man access...This man had abused this child and me and had previously pled guilty to the criminal offense of breach of an intervention order...She didn't bother to look at his criminal record, the child protection records, she didn't even bother to look at the reason why the intervention order was obtained...She did not bother to read any of the court documentation history, the victim statements...As a victim, I was not invited to attend the request of leave hearing.'

– Victims' Survey respondents

One victim interviewed by the VOCC felt that the intervention order process was not accessible for people with disability:

'The police won't let me take out an intervention order for my family member with disability even though they don't have the cognitive or decision-making capacity to do it themselves. They're also too scared to take them out for themselves. For example, one of my family members has dementia and I'm one of the few people she communicates honestly with.'⁴

This same victim said that they still encounter barriers to accessing intervention orders for themselves:

'I still can't apply for intervention orders because the courts won't make reasonable adjustments for my disabilities. I sought legal advice about it and the legal advice I got was that the courts are exempt from providing reasonable adjustments because they're exempt from the Disability Discrimination Act.'⁵

⁴ Interview 1 – Victim of crime.

⁵ Ibid.

A member of the Women with Disabilities Victoria Experts by Experience Advocacy Team encountered different challenges when seeking an intervention order.

*'I have tried to take out an intervention order and found this experience complex, slow, overwhelming and felt unsupported. There were too many steps involved. Although I presented as 'held together' because my communications and body language didn't indicate distress, I didn't get very far in the process and I felt really unsafe. The sensory challenges of being in that environment – a police station – all combined. I couldn't navigate it. All these things impact on ability to report and start a process.'*⁶

One respondent to the VOCC's Victims' Survey felt that the lack of publicly funded lawyers for intervention order matters had hampered their participation in justice system:

'my experience since 2018 with the Justice system has taken away all the healing and any respect I had previously. The Justice system does not provide Legal Aid lawyers for Intervention Order matters.'

– Victims' Survey respondent

Di McDonald described her shock when being told she could not access a lawyer to assist with the intervention order process:

*'The clerk told me to go upstairs and wait for a duty lawyer...And eventually, the duty lawyer comes out and she says, sorry, but we can't help you today. We're actually helping the respondent. So what do I do ? ... She said go down to legal aid. They may be able to help you...I am there for hours and hours and hours and all the time I'm worried that my hearing is going to be called and I still don't know what I'm doing ... No clue whatsoever ... so I eventually go into Legal Aid and he's looked at my paperwork. He said you're the applicant and we only help the respondent ... Who helps me then, who helps me? I went back upstairs. We were in courtroom three and I was very, very nervous and paranoid.'*⁷

Ingrid Irwin also advocated for lawyers to assist victims with intervention orders:

*'Like an intervention order, you should have a lawyer there that can help go through it. And say "Your honour, this condition isn't relevant and this is" or whatever the case may be.'*⁸

Breaches not actioned

Consistent with previous Victorian research,⁹ some victims, including many respondents to the VOCC's Victims' Survey, felt that breaches of intervention orders were not being taken seriously:

6 Consultation Meeting 15 – Experts by Experience Advocacy Team – Women with Disabilities Victoria.

7 Interview 2 – Di McDonald – victim of stalking.

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

9 See, e.g., Family Violence Reform Implementation Monitor, *Report of the Family Violence Reform Implementation Monitor* (Report, November 2020) 70.

'With regard to the stalking, when the perpetrator breached the intervention order, the police ... said 'What do you want me to do?' I replied 'Arrest him.' The policeman responded: 'Rip that up (referring to the intervention order) and throw it in the bin on your way out the door'

'when he breached the order 11 times, the police still wouldn't charge him with the breaches.'

'The police investigation was horrible, non existant, corrupt (proven) and inexcusable in every way. Police support when intervention orders were breached was very poor.'

'The fact of them dropping the perpetrator back to my home after breaching him of going against family violence orders which always in return placed me at a greater risk.'

'Perpetrator breached Intervention order 3 times and was not charged, as not enough evidence. Even though camera footage from the court was provided and phone text messages supplied.'

'I have tried numerous DV breaches with no success.'

'major delays in arrest for indictable crime of persistent breach of IVO'

'I had to take out my own Intervention Order and then the same person/RESP assaulted me again and the police didn't respond for an hour after I called them.'

'I was victim blamed, police do not take breaches of intervention orders seriously. Magistrates & the entire court system is out of touch & has zero idea of what I needed.'

'no faith in police or court system after dvo refused to uphold and enforce breeches'

'During the previous 4 year IVO perpetrator repeatedly breached the IVO, yet continues to live without consequences for committing indictable offences & receiving a mere \$1000 fine. It is disgusting for us as victims who have been subjected to historical & cumulative DV & reported to Vic Police, yet because he has a lot of money hires top barristers to get case adjourned every time.'

– Victims' Survey respondents

One respondent to the Victims' Survey told the VOCC that intervention order breaches in their matter did not result in a penalty commensurate with the harm caused:

'Magistrates Court finding perpetrator guilty of persistent breach of IVO which was recidivism yet fined him \$1000. Found guilty. Perpetrator on 6 figure income. Endorsed the crime, & by manifestly inadequate sentencing result in us being placed in more fear for our safety. As a result of Magistrates decision we needed to be urgently relocated for our safety, & due to zero deterrent for indictable crime has reoffended again and before the courts now.'

– Victims' Survey respondent

One victim interviewed by the VOCC described how the perpetrator had completed a Mens' Behavioural Change Program while breaching the intervention order multiple times:

'I'd called triple zero three times while he was participating in that program. Nobody told the judge about the breaches of the IVO and the Good Behaviour Bond he was under, that were happening while he was participating. He was provided this certificate. It's a tick box process.'¹⁰

Challenges accessing intervention orders

Some victims surveyed by the VOCC highlighted issues getting or keeping intervention orders in place, such as this respondent to the VOCC's Victims' Survey:

'I've been subjected to stalking, harassment and threats for over 3 years now. Again, I've received very little support. I've applied for another AVO, on a more than one occasion, just for it to be refused, as I have relocated to NSW and "removed myself from the situation.'

– Victims' Survey respondent

One victim surveyed by the VOCC expressed concerns about the magistrate not reading material relevant to the extension of an intervention order due to caseloads:

'with regards to having to extend our IVO, I was required to provide the court with full & better particulars supporting evidence as to why we needed further extension of our IVO. Despite his criminal history. I provide over 40 pages of evidence documenting in detail the evidence & demonstrating why we needed further protection. It was headed towards a further contested hearing. I inquired with the Magistrate if the perpetrator was allowed to contest another IVO, given the first one he contested...he lost the contest & myself & daughter were granted a full 4 year IVO. During that 4 year IVO he repeatedly breached the IVO including persistent breach as mentioned previously. At the hearing for extension of our IVO, the Magistrate categorically informed me that he had in fact "not read my supporting documentation due to caseloads". So the Magistrate making judgements on the further protection & safety required for myself & my daughter due to historical violence & previous guilty persistent breach sentence, could not find enough time to read the documentation I was ordered to provide the court supporting why we needed the further extension of the current IVO.'

– Victims' Survey respondent

Misidentification and cross-applications

Consistent with previous research,¹¹ some respondents to the Victims' Survey also highlighted concerns about being misidentified as the primary aggressor and the system being used to perpetrate further harm:

'I am a VICTIM of FOUR perpetrators of violence, and the Protected Person in four intervention orders. Yet have been DELIBERATELY misidentified as the Perpetrator, by Victoria Police, who are protecting my violent ex partner.'

'FVIO are too easy to get. The perpetrator of domestic violence in my case took one out on me as retribution for commencing litigation against him in the family courts. He misused the power of an intervention order and weaponised the police against me, had me arrested and charged not once but 4 times at an extraordinary cost to me financially and emotionally as further coercive control.'

– Victims' Survey respondent

¹¹ See, eg, Family Violence Reform Implementation Monitor, *Report of the Family Violence Reform Implementation Monitor* (Report, November 2020) 83.

Victims interviewed by the VOCC were also subject to systems abuse via intervention orders.¹² One victim interviewed by the VOCC referred to this as ‘revenge intervention orders’:

‘Do you need to have evidence to go to court to get an intervention order on someone? You can’t just use hearsay? I could have made up anything at all about [the perpetrator] as well, but you know, I was going in with police statements and evidence and he was going in with hearsay of a conversation that never happened...Magistrates have to look at it a little bit more in depth and not just take their word that that the evidence they are supplying is actually factual.’¹³

Delays and lack of information

Some victims also reported delays and lack of information provision, as noted by these respondents to the VOCC’s Victims’ Survey:

‘I had to keep chasing up the police to find out if the Personal Safety Intervention Order had been served. It took several weeks.’

‘We reported further IVO breaches, in early 2020, & these criminal matters have been adjourned repeatedly still before the Magistrates Court on February 2022. We have waited far too long for this repeated criminal violent perpetrator to face justice for his violence towards myself & my daughter.’

– Victims’ Survey respondents

Stakeholder views

Although a number of victims raised concerns with intervention orders in survey responses and during interviews with the VOCC, intervention orders were not the main focus of the VOCC’s engagement with stakeholders. Accordingly, very few stakeholders spoke about intervention orders specifically.

Community Legal Centre (CLC) representatives explained that they play an important role in representing victims who have been misidentified as the perpetrator of family violence and in pushing for breaches to be actioned by police:

We advocate to police on behalf of victims of crime who have been misidentified as the perpetrator of family violence. We’ve also been doing a lot of work through our community partnerships, with police, to just get them to apply for an intervention order in the first instance and, where there is an intervention order that has been breached, really pushing the issue of charging the perpetrator with breaches and enforcing the IVO. That’s a really big issue and it can sometimes feel like you’re pushing up hill.’¹⁴

Victoria Police members mentioned challenges in the civil intervention order space where intervention orders provide a power of arrest if breached, but can’t necessarily prevent harms occurring:

We can have intervention orders – they give us the power of arrest – but it doesn’t stop a person going to an address and causing harm, which we know happens.’¹⁵

¹² Interview 2 – Di McDonald – victim of stalking; Interview 9 – Survivor advocate; Interview 10 – Victim of family violence; Interview 14 – Victim of crime.

¹³ Interview 2 – Di McDonald – victim of stalking.

¹⁴ Consultation Meeting 23 – Community Legal Centres – Session 2.

¹⁵ Consultation Meeting 19 – Victoria Police – Session 3.

Restorative or alternative justice

There is now a consistent body of work suggesting that some victims perceive restorative justice as fairer, more satisfying, more respectful, and more legitimate than what is offered by the traditional criminal justice system.¹⁶

Restorative justice can provide victims with enhanced participatory opportunities, including providing victims with an opportunity to tell their story on their own terms.¹⁷

There are several existing restorative justice pathways in Victoria, including:

- the Department of Justice and Community Safety's Victim-Centred Restorative Justice Program¹⁸
- the Restorative Engagement and Redress Scheme for former and current Victoria Police employees who have experienced workplace sex discrimination or sexual harassment¹⁹
- Youth Justice Group Conferencing²⁰
- RMIT's Open Circle.²¹

Victims' experiences

Few victims whom the VOCC engaged with had participated in restorative or alternative justice.

One respondent to the VOCC's Victims' Survey, when asked what parts of the justice process did not work well for them, stated 'Restorative Justice', going on to explain that a family member had manipulated the facilitator of the Restorative Justice program 'to protect the abusers reputation'. Another victim interviewed by the VOCC spoke about the insensitive way in which they were offered a restorative justice process by the prosecutor just moments after being advised that charges were to be downgraded.²²

For some victims, not having the option of a restorative justice pathway highlighted their lack of participation, as noted by this respondent to the Victims' Survey: 'I'd have wanted my perp participating in restorative justice with me to be a condition of his CCO. I feel like I have no justice and no closure because I couldn't participate.' Another respondent to the VOCC's Victims' Survey indicated they had sought a restorative justice process through a Centre Against Sexual Assault but the offender refused to meet with them.

Some Victims' Survey responses suggested some victims might have found a victim-centred restorative justice process useful. Some respondents specifically referred to restorative justice, while others expressed a wish to talk to the offender, ask questions or require the offender to respond:



'I would have liked to be able to talk to the offender and ask questions about the offence. I would have liked to have been recognized by the judge and been able to ask a question.'

'I'd have liked the chance to explain the impact of the offending on me to my perpetrator and for him to be required to respond.'

'I wish I'd been offered a fine and restorative justice options and sought criminal compensation from him.'

– Victims' Survey respondents

¹⁶ Meredith Rossner 'Restorative Justice and Victims of Crime: Directions and Developments' in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Routledge, 2017) 229, 238.

¹⁷ Kelly Richards, Jodi Death and Carol Ronken, 'What Do Victim/Survivors of Sexual Violence Think About Circles of Support and Accountability' (2021) 16(6) *Victims and Offenders* 1, 893–911.

¹⁸ This program facilitates restorative justice processes for victims of crime on the Victims Register whose adult offender is serving a sentence of imprisonment or has a parole order: Department of Justice and Community Safety (Victoria), *Restorative justice for victims of crime on the Victims Register* (Web Page, 5 December 2022) <<https://www.justice.vic.gov.au/vcri/restorative-justice-for-victims-of-crime-on-the-victims-register>>.

¹⁹ Victorian Government, *Restorative Engagement and Redress Scheme* (Web Page, 8 December 2021) <<https://www.vic.gov.au/redress-police-employees>>.

²⁰ Department of Justice and Community Safety (Victoria), *Youth Justice Group Conferencing* (Web Page, 27 September 2022) <<https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-group-conferencing>>.

²¹ Centre for Innovative Justice, *Open Circle* (Web Page) <<https://cij.org.au/opencircle/>>.

²² Interview 12 – Victim of crime.

None of the victims interviewed by the VOCC had experienced restorative justice. Some victims when asked about this option were unsure about its applicability to them individually, and more broadly in some cases. For example, Ingrid Irwin was sceptical about restorative justice for sexual offences:



*'Oh yes, restorative justice. OK, that is not an answer. Restorative justice requires the perpetrator to admit what they've done. So sorry. Which perpetrators are going to do that? This is no way to push people out but the criminal justice system. Last time I checked, sexual assault is a crime and so it should be processed as a crime in the courts and in the criminal justice system.'*²³

Another victim, who was unsure whether they would use restorative justice, did note the 'the power of apology' and that such a process might lead to finding 'the pathway to forgiveness' for them and other victims more generally.²⁴

Stakeholder views

Some stakeholders viewed restorative justice as way to increase victim participation and enhance their safety, protection and wellbeing in a way that avoids systemic barriers they might otherwise face in the formal justice system. For example, the Commissioner for Senior Victorians told the VOCC that older people are often seeking alternate dispute resolution models outside the criminal justice system so that they can maintain relationships with the perpetrator, on whom they may rely for housing and caring.²⁵ In this regard, the Commissioner for Senior Victorians has urged the Victorian Government to consider older people as one of the priority cohorts for restorative justice.²⁶

Victoria Police members told the VOCC that the cohorts of victims most interested in restorative processes include parents whose children are using violence in the home, migrant and refugee communities, and Aboriginal and Torres Strait Islander people.²⁷ Victoria Police members also told the VOCC that alternative forms of participation, such as 'validation hearings', are important:

The system desperately needs what the Law Reform Commission set out, which is a Validation Hearing. There's so many cases where the matter is discontinued, you don't get a finding of guilt, or there's no consequential opportunity for a Victim Impact Statement. How do you provide a soft landing for the victim so that they don't regret coming forward to report the crime? We need some other process, some ceremony, some opportunity for the victim to speak and feel heard. It just falls to the informant to do this, to validate, and they do a great job, but this is what the courts exist for.²⁸

Victoria Legal Aid (VLA) told the VOCC that '[r]estorative justice is a really critical element of the criminal justice process, for suitable cases' and that '[r]estorative pathways facilitate accountability for people who have caused harm, and healing for the person who has been harmed'.²⁹ VLA told the VOCC that challenges in successfully prosecuting crime 'reiterate the need for restorative justice processes, especially where the main thing the victim wants is an acknowledgement that it happened and doesn't necessarily want a punitive response'.³⁰

CLC representatives told the VOCC that '[t]here is a big gap around restorative justice. There needs to be better referral pathways, because there's not much of a big service there currently'.³¹

²³ Interview 4 – Ingrid Irwin, Lawyer, Child Sexual Abuse Survivor and Advocate.

²⁴ Interview 6 – Victim of crime.

²⁵ Consultation Meeting 8 – (Former) Commissioner for Senior Victorians (Commissioner Mansour retired 17 May 2023).

²⁶ Ibid.

²⁷ Consultation Meeting 24 – Victoria Police – Session 4.

²⁸ Consultation Meeting 18 – Victoria Police – Session 2.

²⁹ Consultation Meeting 16 – Victoria Legal Aid.

³⁰ Ibid.

³¹ Consultation Meeting 22 – Community Legal Centres – Session 1.

Coronial processes

The Coroners Court of Victoria (Coroners Court) has three main roles:³²

- investigating deaths and fires
- contributing to reducing preventable deaths
- promoting public health and safety and the administration of justice.

There are around 7000 reportable deaths each year.³³ A reportable death is one that is either unexpected or unexplained. There are times when the deceased is, or is presumed to be, a victim of crime. Family members navigating the Coroners Court can therefore also be victims of crime.

The Coroners Court is an inquisitorial jurisdiction where coroners actively investigate cases. The majority of matters do not proceed to a hearing in a courtroom, with most findings made 'in chambers'.³⁴ Only a small proportion of investigations require an inquest, which is a public hearing.³⁵

At the end of their investigation, a coroner will hand down a finding. Findings can be made with or without an inquest.³⁶ A coroner investigating a reportable death must find, if possible:³⁷

- the identity of the person who died
- the cause of death
- the circumstances of the death.

The coroner's findings cannot include a criminal finding of guilt against a person.

Family Liaison Officers within the Coroners Court guide families through the coronial process. They may also make referrals to external counselling and support agencies. Support may also be provided during inquest proceedings through Court Network. Aboriginal families are supported in a culturally respectful and sensitive way by the Coroners Koori Engagement Unit.³⁸

Victims can apply for leave to appear as interested parties in a coronial proceeding.³⁹

Victims' experiences

For some victims, their first experience of the coronial process is a loved one being transported to the coronial services building.⁴⁰ Coroners Court staff will talk the senior next-of-kin through key decisions, identification requirements or any medical examinations requested by the coroner.⁴¹

For some victims, this is the start of their victim 'journey' – a distressing and overwhelming time. One victim interviewed by the VOCC told the VOCC that all people working with victims of crime should walk 'in a victim's shoes' and see what that process is like:

'That's something all of you who work in the department need to see – just even to walk down the path and think to yourself, "OK so when somebody is killed this is what a victim has to do. This is the path they walked down. OK, I can see this path. I know what it looks like. I know what the Coroners Court looks like, I know how the lounge is set up" ... You're walking in a victim's shoes and you're understanding what they're having to take in ... You need to see what we look at when we go in and view, in my case, my partner. We look at pain. We look at suffering and we can't do anything. We're looking at horrendous injuries that we cannot fix. I can't fix anything, it's done.'

– Victims' Survey respondent

³² Coroners Court of Victoria, *About Us* (Web Page) <<https://www.coronerscourt.vic.gov.au/about-us>>.

³³ For an overview of deaths reported each year, see Coroners Court of Victoria, *Annual Report 2020–21* (2021) 20.

³⁴ Coroners Court of Victoria, *Annual Report 2020–21* (2021) 13.

³⁵ *Ibid.* 21.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.* 15.

³⁹ *Coroners Act 2008* (Vic) ss 56, 66, 76A, 83, 115.

⁴⁰ Coroners Court of Victoria, *What happens first?* (Web Page) <<https://www.coronerscourt.vic.gov.au/families/first-48-hours-families/what-happens-first>>.

⁴¹ *Ibid.*

This victim also told the VOCC: 'You can't unsee what you have seen. When I talk about the Coroners Court and viewing my partner's body, I can never unsee that. I can tell you every little detail.'⁴²

One victim interviewed by the VOCC spoke about staff at the Coroners Court being 'wonderful', providing information and guidance, including a pathologist who took the time to explain, in person, their report on the death of a victim.⁴³

One victim interviewed by the VOCC spoke of the toll of having to lobby for a coronial investigation.⁴⁴

Another victim told the VOCC that victims should have the right to legal representation for the coronial process:

*'the state should supply a lawyer for victims of crime so that when they're coming through [the system], they've got somebody there just for them. And that particular person can act on their behalf from the very beginning to the very end ... So if you've got somebody that the state can supply for a victim of crime right from the beginning ... even to prepare them for the coroners process. I think that would be amazing.'*⁴⁵

One respondent to the Victims' Survey highlighted a lack of contact and information from the Coroners Court and suggested that victims of homicide receive little support, particularly during the coronial process:

'There is plenty around victims of DV, but nothing for the victims of the murdered victims remaining. Court process was impossible. The Coroners Court was HOP[E]LESS. My family had to chase them, make all the contact regarding next steps, release of body etc. after a traumatic homicide. no information was forthcoming. my family had to fight tooth and nail to get information out of them.'

– Victims' Survey respondent

This same survey respondent felt that their matter was not taken seriously, and that action in relation to the case relied on their advocacy, pressure and financial resources:

'My families case was not taken seriously. There were systemic issues to be addressed, yet, we had to try and fight to have an inquest hearing. The court was reluctant to engage with us, to either assist in aiding our recovery by way of giving us access to information and actually listen to what we were saying. We had to lay out the whole thing to them, due to an inadequate police investigation. It then took 4 years for an inquest, which we only ended up getting because we engaged a legal team and spent \$70,000 total. NO family should have to find that sort of money. there is no way a person with a disadvantaged background, lack of english or financial resources would EVER be able to manage a system such as this if they even wanted to. I was fortunate enough to have resources and the education to be able to persist.'

– Victims' Survey respondent

⁴² Interview 8 – Victim of crime.

⁴³ Interview 5 – Victim of crime.

⁴⁴ Ibid.

⁴⁵ Interview 8 – Victim of crime.

Crimes mental impairment matters

Mental impairment matters are governed by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) (CMIA). The CMIA applies when an accused is found to have been mentally impaired at the time they committed the crime or if an accused is unfit to stand trial.⁴⁶ An accused may be unfit to stand trial because their current mental state is so severely disordered that they cannot:

- understand what they have been charged with
- plead guilty or not guilty
- understand the trial process or what is happening in court
- understand the evidence
- instruct their lawyer.³

A person who is unfit to stand trial or is not guilty by reason of mental impairment cannot be held criminally responsible for their actions.⁴

CMIA cases are relatively infrequent, representing approximately one per cent of all cases.⁵ Although rare, the impact on victims can be profound because the complex nature of CMIA proceedings can make it difficult for victims to engage and participate meaningfully in proceedings.⁶

Supervision orders

When a person is unfit to stand trial or is found not guilty because of their mental impairment, the person will generally be placed on a Supervision Order.⁷ Supervision orders can be custodial, where the person is detained in a forensic psychiatric hospital, or non-custodial, where the person is supervised while living in the community.⁸

A custodial supervision order commits a person to an appropriate place – usually a designated mental health service, a residential treatment facility, a residential institution or a prison (where there is no practical alternative).

A supervision order is for an indefinite term. Supervision Orders are subject to variation applications (by application of the Supervised Person) as well as periodic reviews. Victims must be given notice (by the Director of Public Prosecutions) of any hearings for review/variation of an order or for an application for extended leave 'if the granting of the application would significantly reduce the degree of supervision to which the person is subject'.⁹

The court cannot order a person to be released unconditionally or otherwise release a person from custody, or significantly reduce the degree of supervision to which a person is subject, unless it has considered any report of the family members or victims. Under the CMIA, victims and family members of the person subject to a supervision order can make reports to the court for the purpose of:

- assisting counselling and treatment processes for all people affected by an offence
- assisting the court in determining any conditions it may impose on an order or in determining whether or not to grant a person extended leave.¹⁰

Reports by victims and family members contain their views on the conduct of the person and the impact of that conduct on them. Victims are advised by the Office of Public Prosecutions (OPP) that 'Victim or Family Member Reports provide you with an opportunity to express your views about what the Supervised Person has done and the impact of the crime on you'.¹¹

⁴⁶ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s1.

³ *Ibid* s 6.

⁴ Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 265.

⁵ *Ibid* 15.

⁶ Duncan Chappell, 'Victimisation and the Insanity Defence: Coping with Confusion, Conflict and Conciliation' (2010) 17(1) *Psychiatry, Psychology and Law* 39–51; Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) xxxi.

⁷ Forensicare, *Mental illness and the criminal law* (Web Page) <<https://www.forensicare.vic.gov.au/about-us/mental-illness-and-the-criminal-law/>>.

⁸ *Ibid*.

⁹ *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 38C.

¹⁰ *Ibid* s 42.

¹¹ Office of Public Prosecutions Victoria, *Prosecuting Mental Impairment Matters* (Guide, 2022) <<https://www.opp.vic.gov.au/wp-content/uploads/2022/06/Prosecuting-mental-impairment-matters.pdf>>.

Forensic Leave Panel and leave

While undergoing treatment on a Custodial Supervision Order, periods of leave can be granted to assist with rehabilitation.¹²

The CMIA established an independent body – the Forensic Leave Panel – to be the main body making decisions about leave. The Panel may grant:

- special leave of absence
- on-ground leave
- limited off-ground leave.

Decisions regarding extended leave are made by the court that made the original Supervision Order.

The Forensic Leave Panel may grant an application for on-ground leave or limited off-ground leave if satisfied on the evidence available that the proposed leave will contribute to the person's rehabilitation and the safety of the person or members of the public will not be seriously endangered as a result of the person being allowed leave.

Unlike the process for making variations to Supervision Orders (which are made by the court), victims are not invited to make a submission/report to the Forensic Leave Panel with respect to leave. There is no express requirement that the Panel consider the views of victims or families when considering an application for leave of absence, and members of the community (including victims) are unable to be given details about a patient's community leave.¹³

Victims' experiences

While very few victims of crime experience the CMIA process, engagement with victims of crime demonstrates the CMIA process has the potential to cause significant secondary victimisation.

When hearing that the offender was to be tried in accordance with CMIA, one victim told the VOCC 'this was the first indication that our freedom was to be taken from us'.¹⁴ The main issues raised by victims with respect to the CMIA are:

- lack of access to information
- lack of participation during decision making processes
- lack of consideration of victims' safety
- CMIA terminology invalidates victims' experiences.

While very few victims of crime experience the CMIA process, engagement with victims of crime demonstrates the CMIA process has the potential to cause significant secondary victimisation.

Lack of access to information

The VOCC was told about lack of access to information both at the court stage and the Supervision Order stage. For example, one victim told the VOCC about asking for a lawyer during the court stage of the CMIA process so that they could better understand the process:



*'We asked for our own lawyer because there was so much evidence that was being disregarded and the doctors were not getting the full story. We asked for a QC but were knocked back.'*¹

¹² Forensicare, *Mental illness and the criminal law* (Web Page) <<https://www.forensicare.vic.gov.au/about-us/mental-illness-and-the-criminal-law/>>.

¹³ Forensicare, *Community Leave* (Web Page) <<https://www.forensicare.vic.gov.au/our-services/thomas-embling/community-leave/>>.

¹⁴ Interview 17 – Victim of crime.

¹ Interview 17 – Victim of crime.

After a person has been found unfit to stand trial or are found not guilty because of their mental impairment, they become patients under the CMIA and fall under a medical treatment model rather than a corrections model. This means victims cannot access confidential patient information although, from a victim's perspective, such information may be fundamental to their sense of safety, such as knowing what treatment a patient is receiving to address offending behaviour. One victim told the VOCC:

*'he has access to read our Victim Impact Statement. That's fine. But we've got no rights to know his diagnosis, his treatment, his progression in his treatment. He can know everything about us but we can't know anything about him. We just want to have distance from him and be safe. But there is nothing.'*²

As noted in **Chapter 10**, some victims told the VOCC that the Victims Register should be amended to include patients who fall under the CMIA regime: 'because we're not victims, you must understand that we can't even go in the Victims Register. I would really like to see that changed.'³

Lack of participation

One victim interviewed by the VOCC indicated that the patient is under a Supervision Order and has an upcoming hearing to discuss whether they can be released into the community to work. This victim told the VOCC of the devastating impacts on their family, stating that if the patient is granted community leave, they will have to:

*'uproot our family and disappear. This has disrupted our lives, our kids' lives and even our kids' kids' lives. We have to disappear and change our names. He is getting therapy and medication and they have confidence in that but it's gambling with [our lives]. The consequences for our family have been quite long term.'*⁴

When a court hearing takes place to consider an application to vary or revoke a Supervision Order, or to grant or revoke a grant of extended leave, a legal representative of the Attorney-General is entitled to be present to ensure the community's interests are considered.⁵ A victim interviewed by the VOCC was dismayed at their lack of participatory entitlements during this process:

*'if the AG office it to represent the public safety, then wouldn't it be logical for them to speak to the first hand victims as basis to conduct their concerns. As victims are the public we were advised that this was not a part of the process however a request will be made. This request was not granted due to the fact I can submit a victim impact statement. This is all fine, however this is a clear indication of a victim having no speech, no representation and perhaps gagged.'*⁶

Lack of consideration of victims' safety

Victims consulted by the VOCC spoke about relocating because of safety fears relating to a forensic patient's likely day release into the community:

*'we are obviously packing up and moving. I've raised the question to the DPP and police that if he is likely to be working and if he doesn't return to [the forensic mental health facility] after the shift, when are victims notified is it 24 or 48 hours later? We are not privy to that information, not even the police are.'*⁷

2 Ibid.

3 Interview 5 – Victim of crime.

4 Interview 17 – Victim of crime.

5 *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) s 37(1)(a).

6 Interview 17 – Victim of crime.

7 Ibid.

Victims described wanting to have some say over possible safety mechanisms, such as location or distance restrictions, but instead having to seek protection via separate intervention order processes:

*'Even a postcode or distance restriction would be helpful. We were granted a restraining order on someone in [a forensic mental health facility]. That sounds ridiculous but the judges even know it's necessary because the reality is that if he goes to work but comes to our front door then legally there is not much we could do if there wasn't a restraining order because he is not a criminal.'*⁸

Legislative terminology

Victims also expressed concern that when an offender enters the forensic health and treatment model they are not found 'guilty' of an offence in the same way that occurs in criminal law. In its 2014 report, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, the Victorian Law Reform Commission (VLRC) recognised that it is important to victims for the accused 'regardless of responsibility, to be held to account'. It is also important for victims to understand that an accused is not 'getting off' under the CMIA and that the person will be provided with treatment or supervision if necessary.⁹

While many victims support patients receiving treatment under the forensic healthcare model, they would like to also see a change to CMIA terminology – for example, findings being articulated as 'guilty with mental impairment'.¹⁰

State-funded financial assistance

The Victims of Crime Assistance Tribunal (VOCAT) is established under the *Victims of Crime Assistance Act 1996* (Vic) (VoCA Act) to:

- assist victims of crime to recover from the crime by paying them financial assistance for expenses incurred, or reasonably likely to be incurred, by them as a direct result of the crime
- pay certain victims of crime financial assistance (including special financial assistance) as a symbolic expression by the state of the community's sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime.¹¹

In 2018, the VLRC concluded in its review of the VoCA Act that the current approach to state-funded financial assistance for victims was 'not victim-centred or beneficial in its approach'.¹² The VLRC made 100 recommendations, including removing financial assistance for victims from Victoria's court system and establishing a new administrative model focused on assisting victims in their recovery. A new Financial Assistance Scheme (FAS) is replacing VOCAT in 2024.¹³

Issues with the current system of state-funded financial assistance have been well covered over the past five years, including through the VLRC's 2018 review of the VoCA Act and more recently, the parliamentary inquiry into Victoria's criminal justice system which, among other things, recommended that interim improvements be made to VOCAT pending implementation of the new FAS.¹⁴

Accordingly, the VOCC did not focus extensively on issues relating to VOCAT during its engagement with victims or consultation with stakeholders. However, issues relating to state-funded financial assistance continue to be raised by victims and stakeholders.

⁸ Ibid.

⁹ Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Report No 28, June 2014) 264.

¹⁰ Interview 5 – Victim of crime.

¹¹ *Victims of Crime Assistance Act 1996* (Vic) s 1(2).

¹² Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 38, July 2018) xxi.

¹³ Victorian Government, *Victims of Crime Financial Assistance Scheme* (Web Page, 5 July 2023) <<https://www.vic.gov.au/victims-crime-financial-assistance-scheme>>.

¹⁴ See Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Final Report, 2022) recommendation 32 <https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSI_C 59-10_Vic_criminal_justice_system.pdf>.

Victims' experiences

Some victims who were surveyed reported satisfactory encounters with VOCAT:

'I have also received invaluable support from VOCAT to this day still receiving counselling from my psychologist. Without the weekly counselling sessions throughout 2 1/2 years of court proceedings I do not believe I could have endured the drawn out process ... I also received invaluable support from my VOCAT lawyer who made application for financial assistance on my behalf.'

'i received VOCAT compensation which at least recognized me as victim of crime.'

'VOCAT people were great and very sympathetic.'

– Victims' Survey respondents

A member of the Victim Survivors' Advisory Council also reflected on a positive experience with VOCAT:

*'the VOCAT application experience was positive. I had the most positive experience out of all the court proceedings because my case had been put in the public eye and police were forced to take action. I was heavily supported by [a specialist family violence service] who put me in touch with a lawyer who I didn't have to pay for. The lawyers did all the paperwork for VOCAT.'*¹⁵

This same member reflected that this positive experience was in direct contrast to their other experiences of the justice system:

*'There was a huge element of desperation. Someone could have given me a hot meal and I would have been grateful. In those moments of crisis, because I was given something, I experienced this as a 'great' experience – I got a little bit of something from the justice system which was never my experience before.'*¹⁶

This same member also reflected on the importance of *not* actively participating in the VOCAT process:

*'In terms of being a participant, the freedom of choice and safety is most important. I really valued not having to be a participant in the VOCAT application. I wasn't as involved with the victim of crime application – I could take a back seat and let someone else help because I was absolutely exhausted.'*¹⁷

However, the majority of victims interviewed and surveyed by the VOCC experienced a level of dissatisfaction with VOCAT, citing issues relating to:

- accessibility and information provision
- delays in receiving awards
- certain scheme requirements that are not trauma-informed.

One victim interviewed by the VOCC said VOCAT was:

¹⁵ Consultation Meeting 11 – Victim Survivors' Advisory Council.

¹⁶ Ibid.

¹⁷ Ibid.



*urgently in need of some reconstruction so as to be capable of delivering some level of service for victims. I find this department is a disgrace and again, the Victims' Charter not being enforced. I was under the impression they were there to help. Not at all.*¹⁸

Accessibility and information provision

One victim surveyed by the VOCC said that even 'as a lawyer I found it difficult to access resources and information'.

Another victim surveyed said they were not told they could have a lawyer represent them at VOCAT, while another was discouraged from applying to VOCAT without a lawyer:



'I completed the VOCAT application myself and tried to submit it myself. I tried to submit this but was discouraged because I was told if I had a lawyer I might be entitled to more and things that I needed – that having a lawyer would mean I got the best possible outcome. I didn't and all it did was give the lawyer money – more than I received as a victim.'

– Victims' Survey respondent

During COVID-19 lockdowns, VOCAT was unavailable to victims over the phone, causing victims distress and frustration. As one victim explained in late 2021:



*'my experience in general is just so awful. I have tried to contact VOCAT but you just can't call them. They never answer the phone. But shouldn't they have more staff? There are no stage 4 [COVID-19] restrictions anymore so why is that still their phone message? I have contacted them to ask them that, but they don't get back to me.'*¹⁹

Another victim told the VOCC that VOCAT's lack of accessibility via the phone was discriminatory.²⁰

Numerous victims said that it would have been beneficial if VOCAT had made follow-up contact to enquire about their general wellbeing: 'This was very lonely. I wish VOCAT had just once reached out to me and said how are you going, are you finding the psychologist helpful?'²¹

Delays with awarding financial assistance

Some victims have experienced delays in VOCAT reimbursing payment for counselling services, with these delays taking up to two years, despite victims requiring current and ongoing counselling services:



ç'VOCAT was ok but it is so hard to get invoices paid that all providers require me to pay first and then seek reimbursement which takes months and is something I cannot afford, so I'm not using my VOCAT funding as a result and gave not got the help I need.'

– Victims' Survey respondent and victim interview

18 Interview 15 – Victim of crime.

19 Interview 14 – Victim of crime.

20 Interview 15 – Victim of crime.

21 Interview 14 – Victim of crime.

In answer to 'Could your participation in the justice system have been better?', a number of respondents to the VOCC's Victims' Survey highlighted issues with VOCAT's service delivery:

'Yes – firstly to know more about VOCAT and accessing legal services to assist with VOCAT and sentencing act actions. I appreciate for VOCAT lawyers can be paid via the legislation but my experience is that a person doesn't know this initially and also incurs a lot of out of pocket costs before they might be reimbursed. I was out of pocket counselling costs and whilst they were reimbursed – it took quite a while. This meant I couldn't afford counselling whilst waiting for an award.'

'Applying for VOC payment was easy however getting the money they allocated required way too much work and still has ongoing problems.'

– Victims' Survey respondents

Scheme can cause further harm

Concerns about perpetrators being given notice of upcoming VOCAT hearings and attending hearings have been partially addressed by recent amendments prohibiting perpetrators from appearing in certain matters.²² However, this practice of involving perpetrators in VOCAT hearings has left a devastating impact on many victims, as revealed by this respondent to the VOCC's Victims' Survey:

'The VOCAT system, applied for Victims of Crime in January 2018 and the process is still ongoing to the point they are allowing my abuser more input and further traumatising towards myself.'

– Victims' Survey respondent

A victim interviewed by the VOCC spoke about how notification of the perpetrator had affected them: 'I didn't feel like a participant because both of the men that I made statements about were invited to attend the court date. One of these men said replied that they would attend.'²³

Victims also expressed concerns with the 'character' requirement, which rendered them ineligible for assistance, as noted by this survey respondent:

'I asked for grief counselling for my son's murder and was told I'm not eligible as he had a criminal history and I'm not the victim. The victim is dead. Then the OPP asked to get me grief counselling and got the same answer. Apparently the budget doesn't cover "people like me".'²⁴

Lack of focus on victims' needs

Some victims were critical that the VOCAT awards only provide up to a capped set amount to assist with recovery following the experience of a crime. These victims indicated that they would have benefited from practical assistance, rather than a capped dollar amount, such as support to find housing. One victim interviewed by the VOCC explained that 'there is an overreliance on psychologists. VOCAT's mentality is that sessions with a psychologist is some sort of magic cure. However, I needed practical assistance to rebuild my life.'²⁵

The VOCC was also told that some victims' claims were denied on multiple occasions with no reasons provided.²⁶ As one survey respondent experienced:

²² Workplace Safety Legislation and Other Matters Amendment Act 2022 (Vic) Part 9.

²³ Interview 14 – Victim of crime.

²⁴ The Victorian Law Reform Commission's 2018 review of the *Victims of Crime Assistance Act 1996* (Vic) comprehensively outlined issues with the Act's requirement to consider an applicant's general character and behaviour. The VLRC determined it was no longer appropriate, or consistent with the purpose and objectives of state-funded financial assistance, to have regard to the broad character and behaviour of the applicant 'at any time'. Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report No 38, July 2018) 409.

²⁵ Interview 14 – Victim of crime.

²⁶ Interview 2 – Di McDonald – victim of stalking; Interview 7 – Caterina Politi.

'I had to fight so hard to be assisted by VOCAT. I had to fight to be recognised as a victim of crime with VOCAT 'because VOCAT didn't exist when crimes against me were committed. I had to plead and beg to even have any further counselling after this total disaster. The VOCAT episode is still going on. It is much more torturous for victims than even the criminal system. It is completely insane that magistrates are making orders and decisions around people's mental, emotional and physical healing essential after being abused in every system of life.'

– Victims' Survey respondent

For other victims of crime, the evidentiary requirements at VOCAT are onerous and magistrates could be better informed about the background of each case so as to reduce or remove the need for victims to re-tell their story:

'we had to stand before a judge and he was asking why do you think we should be paying your rent. I understand but why do I have to explain that there is someone who killed someone and tried to kill me. I still had to explain myself and I felt silly.'²⁷

'didn't pursue the victims of crime for compensation as I was told it was unlikely I would be successful in this claim.'

– Victims' Survey respondent and victim interview

Application time limits may deny some victims access to compensation, as explained by this Victims' Survey respondent:

'I received compensation through a tribunal at [the time of the offence], I could not apply to VOCAT for funding for counselling. The time period for a variation to an award is 6 years which does not cater for victims of historical crimes... I felt the existence of a 6 year variation to an award was an oversight... Victims of historical crimes need support as in many ways they experience the crime twice...'

– Victims' Survey respondent

Another respondent to the Victims' Survey indicated that the failure of doctors and lawyers to provide supporting documents resulted in them missing out on much needed financial assistance:

'I tell every woman I know not to trust the police, not to trust the courts and certainly not to trust VOCAT. I had a matter before the Tribunal...and was not advised by the Victims of crime counselling service appointed lawyer that the case had been dismissed...because of the lawyer's failure and my gp's failure to provide timely and pertinent reports requested by the tribunal...I am still carrying \$20k of expenses accrued as a result of the stalking and now have totally lost faith.'

– Victims' Survey respondent

Stakeholder views

Few stakeholders specifically spoke about VOCAT, most likely because of the government's intention to replace VOCAT with a new financial assistance scheme and because the VOCC did not focus on VOCAT in its consultation activities.

However, CLC representatives advised the VOCC of extensive VOCAT delays, including a matter that is still ongoing with the tribunal after six years.²⁸ CLC representatives also told the VOCC that the section 54 (character and behaviour) provisions affect victim participation 'and is really offensive for a lot of victims' and that notifying offenders about hearings can be very off-putting for a lot of people.²⁹

²⁸ Consultation Meeting 23 – Community Legal Centres – Session 2.

²⁹ Consultation Meeting 23 – Community Legal Centres – Session 2.

