



Chief Victims Advisor to Government

The Victims Code:

**An exploration of how it is being used
and options for the future**

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Me whakarongo te reo o te iwi. The people's voices must be heard.

Ngā mihi nui

Dr Kim McGregor

Chief Victims Advisor to Government

Note from the author

Use of the term 'victim'

Some people who have experienced crime dislike being referred to as 'victims' and prefer to be referred to as 'survivors'. Others say the term 'victim' accurately conveys their experience of harm. Still others, including many Māori, want no label at all.

This report uses the term 'victim' for the following reasons:

- to maintain consistency with current Aotearoa New Zealand legislation (for example, the Victims' Rights Act 2002)
- most criminal justice system workers and stakeholders recognise the term.

It may be that through future consultation with those who have been victimised, we can find a better way to recognise all people who have been harmed by crime.

Executive summary

Purpose and method

This report aimed to explore the current use of the Victims Code within Aotearoa New Zealand's government and non-government agencies and stakeholders, and the effects on victims participating in our criminal justice system.

A series of questions provided the framework for an exploration of the Victims Code to find out whether the Victims Code has achieved its aims, what other similar models are available in Aotearoa New Zealand, how we compare in the global setting, where gaps are in supporting victims within our justice system and how we can address those gaps.

In addition to the above, 28² government and non-government agency workers volunteered to be interviewed about their use of, and views on, the Victims Code, following a call-out to those agencies providing support services to victims. Their responses helped to inform the findings and recommendations for this report.

Key findings

Key findings from this report are as follows:

- Only 19 out of 28 agency representatives interviewed (67.8%) had heard of the Victims Code. Given that all participants worked with victims, this suggests the Code isn't being well promoted to agencies, and it remains unknown whether victims themselves are aware of the Victims Code.
- Respondents emphasised the importance of increasing the visibility of the Victims Code to both victims and all agencies who work with victims.
- It appears there was no clear implementation plan for the Victims Code and it wasn't promoted and socialised in the way intended by the development team. While communication material was provided, actual promotion was left up to individual agencies.
- A Cabinet Paper from the Ministry of Justice to the then Minister (Hon. Amy Adams) states that, "promotion of the Code will include a range of publications visible and accessible to victims at whichever point they interact with the criminal or youth justice systems".³ In 2012 when the Victims Code was being developed, public consultation was carried out and collated. Respondents commented that visibility, accessibility and educational initiatives were key factors to consider when launching the Victims Code.
- Governments throughout the world have gone a long way to protect the rights of crime victims in their domestic legislation and practices, yet many countries' victims' rights or codes also remain non-enforceable with no penalties for non-compliance. Similarly, the principles of

² While 31 government and NGO personnel were interviewed for this report, when assessing knowledge of the Victims Code the three Ministry of Justice interviewees who were involved in the development of the Code were excluded from the total.

³ Ministry of Justice Cabinet Social Policy Committee (Date Unknown).

treatment and rights for victims in the Victims' Rights Act (2002) and Victims Code in Aotearoa New Zealand are effectively non-enforceable, and there are no sanctions for failure to comply.

- The United Kingdom and several Australian states have appointed Victims' Commissioners, which suggests that these countries have taken greater steps towards elevating victims' rights. However, it's also worth noting that these countries continue to provide only 'guiding principles' for treatment of victims that aren't legally enforceable.
- Agencies didn't appear to be monitored against the Victims' Rights Act 2002. Agencies that actively embedded the principles of the Victims Code in their work often lacked formal processes for monitoring against performance indicators to ensure they were upholding victims' rights and principles under the Code.
- Although the field has made great strides in working more collaboratively on behalf of crime victims, services are often fragmented. Often victims are not aware of their rights or know how to find the services and resources available to them, and how to access them. Sometimes service providers are not fully aware of the range of other available services and resources that could assist victims.
- Respondents spoke of complaint reporting procedures lacking robustness and transparency. Some told us that complaints were only recorded in agencies' annual reports if the relevant agency assessed them as 'legitimate' and specifically related to the Victims' Rights Act (2002). This suggests that the full picture of victims' concerns isn't currently visible within Aotearoa New Zealand's criminal justice system.
- Three additional Codes/Acts in Aotearoa New Zealand that include more robust monitoring and complaints processes are the Code of Health and Disability Services Consumers' Rights 1996, the Code of Accident Compensation Corporation Claimants' Rights 2002 and the Oranga Tamariki Act 1989.
- Kaupapa Māori frameworks for the Victims' Code were developed by a Māori Advisory Group in 2011-2012. However, this work wasn't included in the Victims Code that is being used today.

Recommendations

This report makes the following recommendations to increase the fairness, transparency and accountability of victims' rights across Aotearoa New Zealand's criminal justice system:

- Embed the Victims Code, and accountability to its principles, into the everyday practice of government and non-government agencies working to support victims of crime.
- Conduct a survey with victims of crime to establish their awareness of the Victims Code and their rights within it and implement any necessary actions to raise that awareness.
- Develop and launch a comprehensive plan to improve visibility and understanding of the Victims Code, both for victims and the agencies supporting them.
- Re-consult with Māori such as Kaupapa Māori specialist NGOs who work with victims of crime to ensure Māori conceptualisations of victim rights are expressed and protected under the

Victims Code. Kaupapa Māori frameworks for the Victims Code were developed by a Māori Advisory Group in 2011-2012, but their work was not included in the development of the final Victims Code.

- Implement mandatory Victims Code training and education in all government and non-government agencies, particularly those who have direct victim interactions.
- Develop an integrated system to monitor service providers and government agencies and evaluate their compliance with the Victims Code. This could take the form of an independent statutory body that could uphold victims' rights and allow victims to have their complaints heard and addressed.

Table of Contents

ACKNOWLEDGEMENTS	3
NOTE FROM THE AUTHOR	4
USE OF THE TERM ‘VICTIM’	4
EXECUTIVE SUMMARY	5
PURPOSE AND METHOD	5
KEY FINDINGS.....	5
RECOMMENDATIONS	6
1. INTRODUCTION	10
1.1 THE VICTIMS CODE AND ITS CURRENT PLACE WITHIN OUR JUSTICE SYSTEM	10
1.2 PURPOSE AND SCOPE OF THIS REPORT	10
1.3 APPROACH	12
Table 1: Number of participant interviews by agency	12
2. VICTIMS’ RIGHTS IN AOTEAROA NEW ZEALAND	13
2.1 THE VICTIMS CODE	14
2.2 HOW THE VICTIMS CODE WAS DEVELOPED	16
2.3 THE VICTIMS CODE – CURRENT POLICY AND PRACTICE IN AOTEAROA NEW ZEALAND	17
2.4 AGENCY ATTITUDES TOWARDS COMPLAINTS PROCESSES FOR VICTIMS	19
Figure 1: Percentage of participants who believed victims were aware of complaints process under the Victims Code	20
Table 2: Number of participants who believed victims were aware of complaints process under the Victims Code	20
Table 3: Government agencies annual complaints report 2015-2017	22
3. OTHER MODELS OF MONITORING VICTIMS’ RIGHTS IN AOTEAROA NEW ZEALAND	25
3.1 THE CHILDREN, YOUNG PERSONS AND THEIR FAMILIES ACT 1989 (RENAMED THE ORANGA TAMARIKI ACT) ...	25
3.2 THE CODE OF HEALTH AND DISABILITY SERVICES CONSUMERS’ RIGHTS 1996	25
3.3 THE CODE OF ACCIDENT COMPENSATION CORPORATION CLAIMANTS’ RIGHTS 2002 (THE ‘ACC CODE’)	26
4. HOW DO WE COMPARE INTERNATIONALLY?	27
4.1 THE RIGHT TO ACCESS ALL COURT MATERIAL AND COPY TRIAL RECORDS	27
4.2 THE RIGHT TO EDUCATE THE JUDICIARY	27
Table 4: International Victims Codes and Commissioners.....	29
4.3 THE RIGHT TO BE APPOINTED A COUNSEL FOR THE INJURED PARTY	29
4.4 THE RIGHT TO CONSULT WITH A PROSECUTING ATTORNEY AND THE RIGHT TO BE REASONABLY PROTECTED FROM THE ACCUSED	29
Table 5: Differences between adversarial and inquisitorial justice systems.	310
FOR VICTIMS, THE KEY ELEMENTS OF EACH SYSTEM ARE AS FOLLOWS:.....	31
ADVERSARIAL.....	31

INQUISITORIAL	31
5. KEY FINDINGS.....	32
THE VICTIMS CODE WAS LAUNCHED WITHOUT A CLEAR IMPLEMENTATION PLAN	32
STATUTORY RIGHTS FOR VICTIMS WRITTEN INTO LEGISLATION ARE NOT WIDESPREAD INTERNATIONALLY.....	33
AWARENESS OF THE VICTIMS CODE WAS LOWER THAN ANTICIPATED.....	34
ASSESSING THE TRUE EXTENT TO WHICH AGENCIES ARE FOLLOWING THE VICTIMS CODE IS PROBLEMATIC	35
IMPLEMENTATION OF THE VICTIMS CODE IS NOT EXPLICITLY MONITORED, MEASURED OR ENFORCED	35
THERE IS NO CENTRALISED COMPLAINTS BODY OR WORKING GROUP THAT ADDRESSES VICTIMS CODE COMPLAINTS ...	36
6. RECOMMENDATIONS	39
REFERENCES	41

1. Introduction

1.1 The Victims Code and its current place within our justice system

“I see the Victims Code being like the Road Code. The Road Code puts the Land Transport Act into plain English so you can get your driver’s licence. The Victims Code puts the Victims’ Rights Act into plain English too. Those that deal with victims should read the Victims Code so you can understand the principles of treatment and victims’ rights. If you want to find out the whys and wherefores behind the principles and rights in the Victims Code, then the Victims’ Rights Act is there.” (Ministry of Justice employee).

The Victims’ Rights Act 2002 sets out the principles of treatment expected for victims in the criminal justice system. The Act also provides legislative rights for victims and establishes obligations on agencies to uphold these rights. Victims are entitled to receive certain services and to be provided with information on their rights when entering the criminal justice system.⁴ It is therefore important that agencies and victims are aware of these.

The Victims Code is a simplified version of the Victims Rights Act 2002 (the Act). In 2009, the Ministry of Justice carried out a review of victims’ rights. The review sought feedback on enhancing victims’ rights in the criminal justice process and improving access to support services. The review found that victims of crime were confused by criminal justice processes and found it difficult to access information about the criminal justice system. Victims were also generally unaware of their rights and how to access support services. As a result, amendments were made to the Act in 2014 that included the requirement that the Secretary of Justice develop and implement a Victims Code. The Victims Code was launched in 2015.

The Victims Code provides a summary of the rights of victims of crime and a set of principles to guide how victims are treated. It also summarises how victims can complain should their rights not be upheld, or their treatment not be in line with the principles of the Code. It is intended that the Code be used to give victims easily understandable information about these rights. It is therefore important that we assess how agencies understand and use the Victims Code to communicate these rights to victims. This report explores a small snapshot of the use of the Victims Code by some government agency and non-government agency personnel.

1.2 Purpose and scope of this report

This report provides what we understand is the first assessment of agencies’ awareness, understanding and implementation of the Victims Code, and the way the Victims Code is reflected in the policies and practices of Aotearoa New Zealand government agencies and non-government organisations (NGOs).

⁴ Ministry of Justice (2013), *Current State Report*, unpublished.

It provides a brief overview of the history and current state of victims' rights legislation in Aotearoa New Zealand, and a short literature review of both domestic and international victims' rights.

We wanted to gain some insight and understanding about how the Victims Code is reflected in the policies and practices of Aotearoa New Zealand government and NGOs, and how victims' rights are interpreted. We also wanted to explore agency attitudes to compliance, performance measurement and enforceability of victims' rights, and whether other sources of victims' rights⁵ influence agencies' policies and practices.

This report aimed to:

- **summarise** why the Victims Code was implemented and its purpose
- **assess** how the Victims Code is reflected in current policies and practice within Aotearoa New Zealand government agencies and NGOs
- **recommend** ways to more deeply embed the Code within our justice system to improve the experience of victims within it.

It set out to answer the following questions:

- What rights do victims have in New Zealand?
- What can we learn from other models of monitoring victims' rights in Aotearoa New Zealand?
- How do we compare internationally?
- Where are the gaps when it comes to supporting victims within our justice system?
- Where to from here – how do we bridge those gaps?

This report was commissioned by the Chief Victims Advisor as part of her role to provide independent advice to the Minister of Justice. It complements other work by the Chief Victims Advisor under the Hāpaitia te Oranga Tangata Safe and Effective Justice reform programme: that highlight significant gaps when it comes to supporting victims of crime participating in our criminal justice system:

- *Strengthening the Criminal Justice System for Victims Survey*
- *Strengthening the Criminal Justice System for Victims Workshop Playback*
- *Te Tangi o te Manawanui: Recommendations for Reform*

⁵ For example, internal agency protocols.

Collectively, these reports highlighted significant gaps when it comes to supporting victims of crime participating in our criminal justice system.⁶

Note: This report does not purport to be a comprehensive study. It was produced with a short timeframe for conducting investigations and interviews, and with budget constraints that limited the availability of face-to-face interviews.

1.3 Approach

As part of this report, we interviewed 31 individuals from 10 government and non-government agencies who have regular victim contact, as well as key individuals involved in the development of the Victims Code.

Agency	Number of participants
Ministry of Justice	8
New Zealand Police	4
Department of Corrections	2
Crown Law	3
Accident Compensation Corporation	3
Oranga Tamariki – Ministry for Children	3
Ministry of Health	2
Victim Support	2
Wellington Rape Crisis	2
Wellington Community Law	2
Total interviewees	31

Table 1: Number of participant interviews by agency

Consent was obtained for each interview. Interviewees were informed about the nature and purpose of the research and how the information they provided would be used. Interviews were audio recorded and then each one listened to, but not fully transcribed.

The views expressed were those of individuals, not the agencies they represented, although they were naturally informed by the agency and sector they worked in. Consequently, interviewees are, where relevant, identified as coming from either a government agency or a non-government organisation (NGO). At times in this report we may mention their specific agency, but no statement should be inferred as an agency view.

⁶ To gauge a full picture of victim’s rights implementation, this report should be read in conjunction with two other recent reports *Victims’ Rights Act 2002: How was the Act implemented and how is compliance with the Act monitored?* and *Independent bodies and complaint mechanisms for victims of crime* from the Chief Victims Advisor office. Together these three reports and the Hāpaitia te Oranga Tangata reform programme highlight the lack of progress in the implementation of victim rights since the Victims Rights Act (2002) and point to the need for an independent victim-focused body to achieve progress for victim’s rights

2. Victims' rights in Aotearoa New Zealand

Victims' rights and support services have evolved over time as the criminal justice sector has increasingly recognised the needs of victims. Aotearoa New Zealand's history of victims' rights began in the early 1960s, giving victims of crime access to financial compensation following a crime.⁷ Principles of treatment of victims were not introduced until 1985 when our country signed the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, calling for consideration of the victim's perspective and increased access to information about the criminal justice system.

Since then, Aotearoa New Zealand legislation has included various victim-related provisions. The development of victims' rights at the United Nations level has supported the advancement of victims' rights and principles worldwide. Through a process of ratification, many countries have enacted the United Nations' declarations and conventions, either partially or completely, in local law and policies for the security and protection of specific victims, or for the enactment of a fair process to be afforded to victims.⁸ Since the 1990s, Aotearoa New Zealand has enacted various pieces of victim-related provisions in legislation.

In 2009, the Ministry of Justice carried out a review of victims' rights. The review sought feedback on enhancing victims' rights in the criminal justice process and access to support services. The review found that victims of crime were confused by criminal justice processes and found it difficult to access information about the criminal justice system. Victims were also generally unaware of their rights and how to access support services. In response to the review, an amendment to the Victims' Rights Act (2002) (the Act) was enacted in 2014.

The purpose of the 2014 amendment was to strengthen the existing legislation to better provide for victims, widen the rights of victims of serious offences, provide more opportunities for victims to be involved in criminal justice processes and ensure victims are better informed of their rights. In addition, the amendment was supposed to improve the responsiveness and accountability of agencies towards victims of crime.

It's important to note that the Act sets up an expectation that victims have the right to complain to individual agencies, the Ombudsman, the Privacy Commissioner and the Independent Police Conduct Authority about breaches of principles and entitlements. However, the eight key principles and ten rights for victims set out in the Act are effectively unenforceable.⁹ While Section 49 of the Act does specify a complaints process for victims, it only allows for a complaint to the relevant agency, and a possible review by the Ombudsman, Privacy Commissioner or Independent Police Conduct Authority. Section 50 specifically disallows for any compensation or damages to be paid for any breach of the Act alone.

Wolhuter and colleagues argue that although international criminal justice policy (and also Aotearoa New Zealand) has purported to put victims at the 'heart of the criminal justice system', in reality,

⁷ We acknowledge that this exploration has a Western lens focus and does not include the significant battle for justice rights by Tangata Whenua in Aotearoa New Zealand.

⁸ Kirchengast, T. (2017). *Victimology and Victim Rights: International Comparative Perspectives*. New York: Routledge.

⁹ Section 10, Victims' Rights Act (2002).

victims are mere consumers of services, rather than holders of rights.¹⁰ So while the role of the victim has developed across the years in Aotearoa New Zealand, and while in theory rights and service provision for victims of crime have improved, recent public surveys suggest there is a long way to go for victims to have an improved trust and confidence in the criminal justice system¹¹.

2.1 The Victims Code

The legislative amendments to the Act in 2014 required the Secretary of Justice to develop a Code for victims of crime. The Ministry of Justice developed and published the Victims Code in 2015, setting out the rights and principles of treatment that victims of crime can expect from government agencies and service providers.

The purpose of the Victims Code is to outline:

- the rights of victims of crime
- the services available to victims from government agencies and other organisations
- the duties and responsibilities of government agencies when dealing with victims
- how victims can make complaints if they believe their rights have been breached.

The Victims Code has three parts:

- Part one lists eight key principles of treatment that are expected to be followed by any person, organisation or government agency that provides services to victims (a ‘provider’). The principles give guidance to providers about what victims can expect but are not legal rights and cannot be enforced.¹²
- Part two sets out ten victims’ rights in the criminal justice system and the youth justice system, applicable when victims are involved in court processes. While the eight principles apply to all victims, these rights only apply to victims of crime that has been reported to the police or is before the courts. This is because these victims have interests in criminal justice processes that victims who have not reported do not (for example, bail, sentencing and parole outcomes).
- Part three explains how victims can make a complaint to the relevant service provider or agency if they feel they haven’t been treated in accordance with the principles and rights in the Victims Code.¹³

Initial reading of the Victims Code gives the impression that one is reading a legal document with enforceable legal rights. It is entirely possible that victims and members of the public not used to

¹⁰ Wolhuter, L., Olley, N., & Denham, D. (2009). *Victimology: Victimisation and Victims’ Rights*. Oxon: Routledge Cavendish.

¹¹ Ministry of Justice, (2014 & 2016), *Public Perceptions of Crime – survey report*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/public-perceptions-of-crime-survey-201412.pdf> & <https://www.justice.govt.nz/assets/Documents/Publications/20161130-Final-PPS-report.pdf>

¹² Section 10, Victims’ Rights Act (2002).

¹³ Section 49, Victims’ Rights Act (2002).

reading legal documents could be unaware that their rights can't be legally unforced under the Code. This realisation may only come if they decide to exercise such rights with an expectation that any infringement will be reviewed and remedied by a court of law.

Under the Victims Code, the following principles apply to all victims:

- **Safety** – services should be provided in a way that minimises potential harm and puts safety first
- **Respect** – Providers should treat the victim with courtesy, compassion and respect cultural beliefs
- **Dignity and Privacy** – Providers should treat the victim with dignity and protect privacy
- **Fair Treatment** – Providers should respond appropriately and provide services in a timely way
- **Informed Choice** – Providers should work together so the victim and their family receive quality/ culturally appropriate services
- **Communication** – Providers should give information in a way that is easy to understand and is effective
- **Feedback** – Providers should let the victim know how to give feedback or make a complaint.

The Victims Code affords the following rights to victims when a crime has been reported to the police or is before the courts:

- To be given information about programmes, remedies and services
- To be given information about investigation and criminal proceedings
- To make a victim impact statement
- To express their views on name suppression
- To speak official languages in court, for example, Te reo Māori and New Zealand Sign Language
- To retrieve property held by the State.

Victims of serious crimes also have the following rights under the Victims Code:

- To be informed about bail and to express their views
- To receive information and notifications after sentencing
- To have a representative receive notifications

- To make a submission relating to parole or extended supervision orders.

2.2 How the Victims Code was developed

For this report, we were fortunate to be able to interview a former Ministry of Justice employee involved in the early development work for the Victims Code in 2011-2012.

“What we were trying to do was have a code that gave people a sense of self-determination. There weren’t many people in the office who’d really thought about the victims’ experience and because the Victims Code of rights is for the victim, I wanted to make sure it was strongly informed by victim experience, but also have people involved in the development of the Code who were having robust conversations already with the government about what they thought was important. So, it was about trying to bring those voices together. What we were saying is that the Victims Code is for people who never even get to the justice sector, if they only had contact with the NGOs then they would know how they should be treated. If they had a good experience of that, then that might help them have the courage to go through the justice process if that was right for them.” (Former Ministry of Justice employee)

They also commented that consultation with the Health and Disability Commission occurred during the development phase about potential models and intentions for what the Victims Code could be.

“There was targeted engagement with the disability sector. It’d be interesting to go and talk to the Health and Disability Commission about this now, because they’ve got their own codes and how does it compare with what you’ve got with the Victims Code? And why should victims experience anything any less than what people with health and disability issues have? They’ve got a whole system and people trained to deal with it that’s been running for some time now.” (Former Ministry of Justice employee)

During the development of the Victims Code, regular interagency engagement occurred on a fortnightly or monthly frequency with NGOs, and draft versions were sent out for public consultation and feedback during 2012. The direction changed however, towards the end of 2012 after significant work had been completed on the Victims Code. The same interviewee reflected:

“The then Minister decided that she wasn’t going to implement the Victims Code that year, in 2012. She was going to wait until the election year, 2014. So, we were left with, ‘what do we do now?’ It’s not like we can just slow the work down, cause we’d got to the point where we were ready to go out for public consultation. There were three workstreams, the Māori Advisory Group, a Victims Reference Group, the interagency group, the communication with all the NGOs who’d provided input into this, champions from all over New Zealand – everything just stopped, all at the same time. There was a huge amount of engagement and all these people were really committed to putting effort and time into this experience so it was very difficult to communicate why the work stopped to everyone because of the Minister’s decision and rationale.” (Former Ministry of Justice employee)

The Victims Code was eventually launched, but not in the way the development team had intended. Many of those groups originally involved, such as the Māori Advisory Group, Interagency Group and Victims Reference Group had been disbanded and so they were not able to be consulted during implementation. Key officials who had developed the Code had left the Ministry of Justice.

“Why is the Code the way it is? It’d be good to get some baseline research about victims’ experience that gives us a sense about whether the code is meaningful. It could’ve been completely the other way around and we could’ve already had a baseline and a sense of what the implementation plan looked like so we could say, ‘has the code been implemented as intended?’ Well there’s no implementation plan for the code so it’s just a thing, it’s just there. All we can say is “are you aware of that?” Not, “are you aware and has it made a difference to your life? And what has made a difference about the way it was implemented that has made an impact on you?” (Former Ministry of Justice employee)

2.3 The Victims Code – current policy and practice in Aotearoa New Zealand

“Victims told us that the criminal justice system is not victim-centric. It does not provide justice to Māori. It fails to keep victims safe. It fails to listen to victims’ views, concerns and needs.” (Chief Victims Advisor to Government, (2019), Strengthening the Criminal Justice System for Victims Survey Report.)

The Victims Code contains eight principles of treatment of victims that are relevant for all government agencies and service providers who have contact with victims. The Code also contains ten specific rights that are only relevant to the agencies who have the obligation to uphold that right. For example, Police hold the responsibility to keep victims informed about the progress of the investigation. This is not a right that is relevant to Oranga Tamariki or ACC. People interviewed talked about how important the principles of treatment were for victims.

Interviewees talked about how they apply the Victims Code principles in their work with victim/survivors. Interviewees from NGOs said:

“There’s a moral thing to this, the principles are not out of the ballpark things to expect. It’s common courtesy and respect, it’s basic things. It’s a shame the Victims Code even had to be written because people should be doing this stuff anyway I think.” (Victim Support employee)

“Absolutely these principles underpin our engagement. It’s just the way we are, how we think and act, and everything we do covers that stuff.” (Wellington Rape Crisis employee)

Similar responses came from government agency employees:

“The Victims Code is values based rather than action based regarding the principles. It’s more of a mindset rather than a task or a job.” (ACC employee)

“I treat people how I’d like to be treated and it comes down to that. The principles aren’t that hard to follow!” (NZ Police employee)

"It's what you should be doing, they're umbrella principles and they all cross over with each other." (NZ Police employee)

"I'd hope the principles would be just what you do! We don't have any kind of checklist for these things." (Crown Prosecutor)

"I would've thought victim agencies would say 'we're already doing this?'" (Court Victims Advisor)

Many interviewees highlighted the importance of making the Victims Code more visible:

"We need more posters and things to come out. In our waiting room, we don't have the Victims Code displayed, only our client code of rights. I'll recommend that now actually. It needs to be displayed in offices everywhere really, in public, for anyone that deals with victims! And it needs to be a common sight cause that's where victims are – they're everywhere." (Wellington Rape Crisis employee)

"I reckon it'd be cool if we had pamphlets and posters to display here at the station, so it explains to victims all the relevant information. It's about marketing the Victims Code really." (NZ Police employee)

"If the Victims Code was more visible it'd hold agencies accountable and that's a good thing; the transparency would be clearer and we'd all be held responsible. It's up to us to instil that, there'd be a cohesive message from everyone. It's like when you're on a plane and you hear the safety message, we've all heard it before, but what if the Victims Code was like that? Everyone would be singing the same song and it'd be iterated to victims everywhere, a reference." (ACC employee)

"If they knew about the Victims Code that might help them know. The public could then put their trust back into agencies and it'd give victims a sense of independence, empowerment, and control to speak up and ask questions and not feel guilty or ashamed about doing that." (ACC employee)

Some interviewees suggested the Victims Code be included in their information packs sent out to victims:

"We could add the Victims Code to our info pack that goes out to victims as another avenue to consider in how they'd be treated. I look at the Victims Code and I wonder why aren't we giving copies of this to the victim ourselves? A lot of questions I field are addressed easily in the Victims Code, certainly around their rights regarding high-end offences. Victims might not have questions there at the time or the right language to ask questions, but the Victims Code might resolve or prompt those. It's another way of delivering the message which is useful." (NZ Police employee)

"The Victims Code needs to be with police upfront – are police handing these out?" (Oranga Tamariki employee)

"Frontline services need to be giving out this information, that's a big one across all areas and it needs to be available at every entry point by each

agency so they all have the same info. Why not have the Victims Code posters and pamphlets up everywhere where victims will present? Like the 'It's Not OK' campaign, where people will frequent – GP clinics, government agencies and such.” (ACC employee)

Others stated that effective implementation should be about the action taken and working with victims in a way that enacts the principles and rights, rather than simply sending out the Victims Code to agencies and expecting them to communicate it, or handing victims a pamphlet:

“What we were thinking about was implementation, the Code itself is words on a piece of paper. Words aren't going to deliver for people. It's only other people who're going to deliver for other people. How do you make sure there's a sense of ownership by communities so people would think, 'I want to make sure that people understand what their rights are and I'm going to treat them in a way that you would want to be treated yourself.’” (Former Ministry of Justice employee)

Another interviewee involved in the development and rollout of the Victims Code between 2014 and 2016 told us that:

“The intention was that those agencies involved in the multiagency working group would act as champions for the Victims Code in terms of linking to the information and disseminating it out there in their own agencies. Communication packs were made up and sent to all relevant government and NGO agencies and we'd push the information to them, but they'd have to order the Victims Code packs themselves from the Ministry. I can confirm information went out to those relevant agencies, but it'd be a question for them specifically around what their internal comms strategy was. At the working group, we talked about each agency taking responsibility for promoting the Victims Code and getting it out there. The Ministry of Justice's Publications unit maintained records of how many packs were ordered and by whom. We started to plan seminars and public information sessions when the Victims Code was launched but I don't know if they ever happened.” (Former Ministry of Justice employee)

2.4 Agency attitudes towards complaints processes for victims

Most interviewee responses highlighted uncertainty about whether victims were aware of the complaints reporting procedures as set out under the Victims Code. All interviewees were asked whether they thought victims were aware of complaints processes and if they felt their principles and/or rights had been breached. Figure 1 below breaks down this answer into the categories 'yes', 'no' and 'unsure'.

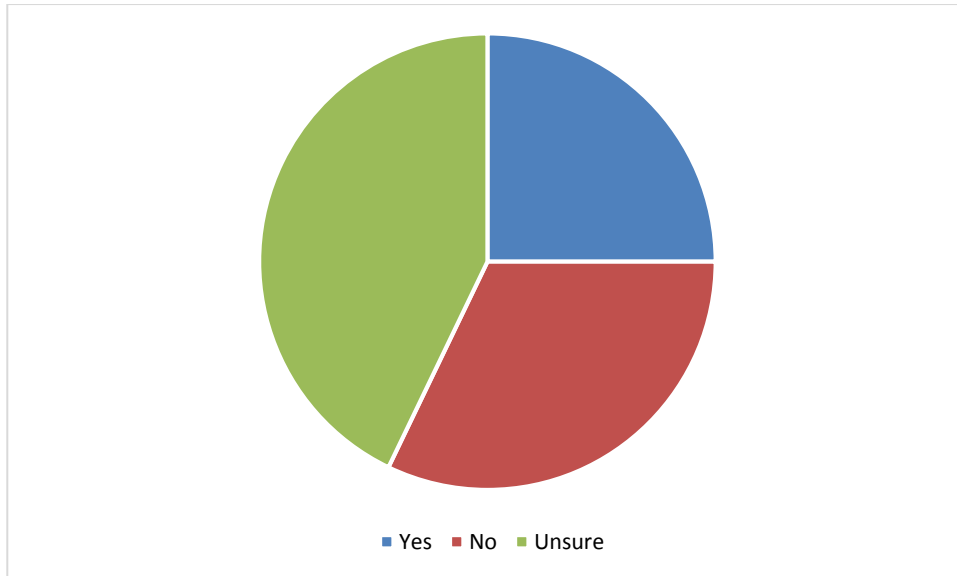


Figure 1: Percentage of participants who believed victims were aware of complaints process under the Victims Code

	Number of responses
Yes	7
No	9
Unsure	12
Total	28

*NB three interviewees were omitted as they were involved in the development of the Victims Code.

Table 2: Number of participants who believed victims were aware of complaints process under the Victims Code

One interviewee involved in the development of the Victims Code told us that a dedicated complaints body was initially discussed, but the idea was never developed:

“At the time, we were thinking the key compliance and monitoring mechanism was the complaints provisions as there was a list of specified agencies that were mandated to report on complaints in line with the Victims’ Rights Act. So, seeing whether or not those numbers increased or decreased, or trying to get a sense of the nature of those complaints would help some analysis around how wide the message was getting out there. At working group level, we discussed developing a centralised complaints register and looked at what other countries were doing. I thought there’d be value in having a dedicated inter-agency victims complaints unit but as there weren’t any obvious mechanisms for doing that, it was just something we tried to do through the victims’ information website to enable a front door

to complaints and then things could be fielded off to police or whoever. I think an evaluation would've been a good thing to have built in as complaints were the tool we used to monitor and measure.” (Former Ministry of Justice employee)

Table 3 on page 22 outlines relevant government agencies that have obligations under section 50 of the Victims' Rights Act (2002) to report on the number and type of complaints received from victims, and how those complaints were dealt with. Table 3 has data from agencies' annual reports for 2015-2017. All these agencies were interviewed as part of producing this report.

The most salient example regarding complaints transparency came from a participant who worked on the development of the Victims Code. This interviewee explained that complaints are beneficial to help agencies improve on their services:

“Let's have a learning conversation about complaints. They're actually gold – complaints – because you learn from complaints about what you can do better, but if you hide your complaints then you're not learning. The 'Rolls Royce' model is to have a centralised complaints system and a Victims' Commissioner.” (Former Ministry of Justice employee)

Government agencies annual reports	Number of complaints	Type of complaints	Outcome
Crown Law 2017	0		
Crown Solicitor Network 2017	2	One was against prosecutorial conduct and the other was unknown	The first one was investigated by the Law Society Standards Committee (LSSC) but was not upheld. The second was upheld by the LSSC which issued a formal decision and decided to take no further action
Crown Solicitor Network 2016	7	Three complaints: Delays in, or failures to, inform victims of reasons for not filing or withdrawing charges. Two complaints: Failure to provide information about the victim's role as a witness in a prosecution. One complaint: Failure to be told of court dates. One complaint: Lack of sufficient communication with victim regarding their Victim Impact Statement	Two of the seven complaints were not upheld with respect to insufficient communication by the prosecutor with the victim. Apologies were offered to the victims by the Deputy Solicitor-General and a Crown Solicitor. A third complaint was not upheld; however, a meeting was organised by the Crown Solicitor with a victim assistance organisation to discuss improving future processes. The remaining four complaints have not been upheld. All complainants have been notified by Crown Law or the Crown Solicitors
Department of Corrections 2015/2016	2	One was incorrect information being provided and the other was a potential breach of the Victims' Rights Act (2002)	Both complaints were investigated and upheld
Ministry of Justice 2016/2017	6	Breach of rights under the Victims' Rights Act (2002)	Five of the six complaints were upheld and the complainants received an apology
New Zealand Police 2016/2017	15	Four complaints: Inadequate victim management concerning Victim Impact Statements. Four complaints: Inadequate bail management concerning ascertaining victim's views on bail, register/notify of bail. Three complaints: Failure to notify/inform victim about information and services, proceedings and to inform of charges filed or withdrawal of charges. Two complaints: Failure to return property and causing damage to property. One complaint: A breach of victim privacy/confidentiality. One complaint: Victim's details disclosed in court.	Outcomes of complaints unknown

Table 3: Government agencies annual complaints report 2015-2017

Some interviewees said that they thought victims were unsure of complaints procedures:

*"I don't think victims are aware of the complaints process and whether they can do something. Or maybe they're so p***ed off and they can't be bothered complaining. They might not be aware of the Victims Code complaints process either."* (Victim Support employee)

"Victims have a right to complain, but I don't know if victims know about the complaints process or to complain under the Victims' Rights Act or the Victims Code. Wouldn't they just complain to the relevant agency?" (NZ Police employee)

"Victims aren't aware of how they can complain to other agencies, government or otherwise. Victims' concerns and complaints aren't taken seriously." (Wellington Community Law employee)

Some also suggested that victims may be too traumatised and overwhelmed to consider making a complaint:

"Victims know about themselves, they know about their story, and if the person dealing with me is treating me badly I'd tell them. I welcome the spotlight on things, but victims aren't wired that way – they're too emotionally charged to be thinking about complaining. We're dealing with people and of course we're going to make mistakes, but we need to own up to those." (NZ Police employee)

"Victims are overwhelmed and perhaps scared of agencies at the time of trauma, maybe they're afraid to ask about the complaints process." (ACC employee)

"It's hard for victims to navigate complaints processes and difficult to find out how you do it. Then you need to ensure people in those agencies have a strong understanding of the Victims' Rights Act and can work out what's eligible and what's not." (Court Victims Advisor)

Two NGO interviewees indicated that complaints they received were dealt with at a lower level before they escalated:

"People go straight to the source if they want to complain and we try to resolve things at the lowest point, so it doesn't escalate." (Victim Support employee)

"Some victims do, and others don't. For us, it appears when there's a breach we try to give victims an easy way to fix. It's trying to work out what's needed." (Community Law employee)

An interviewee from one government agency echoed this, as well as welcoming the opportunity to be open and transparent about victim complaints.

"It would be helpful to inform victims about the complaints process and it would hold agencies to account in a good way if the Victims Code was promoted by us. Victims know where we work, they can complain if they

want to. There's nothing wrong with constructive criticism and transparency.” (Oranga Tamariki employee)

In addition, we were advised by Crown Law that their guidance¹⁴ requires prosecutors to ensure victims are also aware of complaints procedures.

One NGO interviewee summarised that the establishment of a Victims Code complaints system would be beneficial moving forward.

*“When something's happened already, and the breach has been done, I'd like to think there's a professional body in place, so people are held to account.”
(Victim Support employee)*

¹⁴ See: <http://www.crownlaw.govt.nz/assets/Uploads/Prosecution-Guidelines/victims-guidance-2014.pdf>

3. Other models of monitoring victims' rights in Aotearoa New Zealand

When comparing other bodies and complaint processes available as models for monitoring victims' rights in Aotearoa New Zealand, we found they each had different strengths. We reviewed the monitoring processes of the Children, Young Persons and Their Families Act (1989), the Code of Health and Disability Services Consumers' Rights (1996) and the Code of Accident Compensation Corporation Claimants' Rights 2002.

3.1 The Children, Young Persons and Their Families Act 1989 (renamed the Oranga Tamariki Act)

The position of Children's Commissioner was established in 1989 under the Children, Young Persons and Their Families Act (1989) (now the Oranga Tamariki Act 1989), as a separate body from the executive and administrative arms of government. The Office of the Children's Commissioner gained independence when it was given its own statute, the Children's Commissioner Act (2003), and the status of an independent Crown entity. The Office of the Children's Commissioner has three key functions under the Act¹⁵:

- Responsibility for monitoring services provided under the Oranga Tamariki Act (1989) which includes reviewing the strategies, policies and practices of agencies operating under the Act.
- The Children's Commissioner Act (2003) provides the Commissioner with a primary role to advocate for all children in Aotearoa New Zealand under the age of 18 years by providing child-centred policy advice. The office makes submissions to formal inquiries and hearings (for example, select committees) and deals directly with Ministers on these matters.
- Raising awareness of and advancing the United Nations Convention on the Rights of the Child (the Children's Convention). Aotearoa New Zealand is required to report to the United Nations every five years on how it is implementing the Children's Convention. The United Nations Committee examines Aotearoa New Zealand's evidence and reports back on areas of improvement needed to ensure all children's rights are being met.

3.2 The Code of Health and Disability Services Consumers' Rights 1996

The Code of Health and Disability Services Consumers' Rights became law in 1996. It grants 10 rights¹⁶ to all consumers of health and disability services in Aotearoa New Zealand, and places corresponding obligations on providers of those services. The Code applies to health and disability service providers who are providing health and disability services to consumers, regardless of whether those services are paid for.

¹⁵ See: <http://www.occ.org.nz/about-us/our-role-and-purpose/>

¹⁶ See: <https://www.hdc.org.nz/your-rights/about-the-code/code-of-health-and-disability-services-consumers-rights/>

The Code is a regulation under the Health and Disability Commissioner Act (1994) which established the Health and Disability Commissioner and a national network of independent advocates. The Commissioner's role is to promote and protect the rights of health and disability services consumers, and facilitate the fair, simple, speedy, and efficient resolution of complaints. Consumers can contact the Commissioner directly to complain about services, and there is a robust complaint reporting procedure that closely monitors providers throughout the process to make sure they are fulfilling their obligations. The procedure is as follows:

- Complaints resolution staff assess the complaint.
- A Complaints Assessor is assigned to the complaint.
- The complainant will receive correspondence from the Commissioner and/or one of the Deputy Commissioners.
- An independent expert reviews the complainant's care and advises the Commissioner about clinical aspects of the services received.

The Commissioner also completes a full review of the Code of Health and Disability Services Consumers Rights (1996) at three-yearly intervals and makes recommendations to the Minister of Health on what changes (if any) the Commissioner considers should be made.

3.3 The Code of Accident Compensation Corporation Claimants' Rights 2002 (the 'ACC Code')

The ACC Code was established in 2002 and sets out eight rights of claimants and imposes obligations on ACC in relation to how they should deal with claimants. It is a regulation under the Accident Compensation Corporation Act 2001.¹⁷ There is no Commissioner that monitors the ACC Code, but complaints are lodged with a specific complaints service that is part of ACC. The complaints service deals with and makes decisions on complaints that are then communicated to the claimant. The claimant also has the right to review decisions made by the complaints service. In this instance, ACC has the duty to secure an independent reviewer (not associated with the Corporation in any way) to address the decisions of the claim by way of a hearing. These reviews are conducted outside of the District Court or Ombudsman.

There is currently no system in Aotearoa New Zealand where victims have the option of consulting with a Victims' Commissioner or Victims Commission. The complaints services described above provide a range of mechanisms that could be incorporated into a potential Victims' Commission body.¹⁸

¹⁷ *Accident Compensation Act 2001*, Public Law No. 49 (New Zealand).

¹⁸ Please note upcoming Chief Victims Advisor Evidence Brief *Independent bodies and complaint mechanisms for victims of crime* – due May/June 2020.

4. How do we compare internationally?

This exploration included a literature review of both domestic and international victims' rights¹⁹.

Victims' rights are similar in most countries. Most developed countries have established statutory rights for victims through legislation and are increasingly moving to articulate these further through non-statutory codes or charters. Some countries have further outlined expectations for all agencies within the criminal justice system and developed associated service standards for dealing with victims. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power developed by the United Nations General Assembly in 1985 paved the way for victims' rights internationally. The international community responded with the adoption of the Declaration, which contains non-binding minimum standards for the treatment of victims of crime within domestic criminal justice systems. Recent United Nations documents have emphasised the rights of victims to participate more in criminal justice processes, and to receive restorative justice outcomes.

Table 4 on pages 28-29 outlines the key similarities and differences between Aotearoa New Zealand and other international jurisdictions regarding victims' rights.

Internationally, there has been considerable strategic and policy movements to embed victim rights into codes of practice in policy settings and service delivery. They are victim-centred in approach,²⁰ yet many countries' victims' rights or codes are non-enforceable, and there are no sanctions for failure to comply. Some provisions from Victims Codes/charters outside Aotearoa New Zealand that are more expansive than the Victims Code are described below.

4.1 The right to access all court material and copy trial records

Victims in Norway and Sweden have the right to be acquainted with case documents during the main court hearing.

4.2 The right to educate the judiciary

The Swedish Crime Victim Compensation and Support Authority looks after the rights of all crime victims. It has been commissioned by the government to educate the judiciary in the treatment of victims of sexual offences and children who have witnessed violence.

¹⁹ The second research objective is: Compare Aotearoa New Zealand's statutory response to victims' rights with other relevant international jurisdictions.

²⁰ Ministry of Justice (2013), *Current State Report*, Unpublished.

Country	Victims Code or Charter implemented?	Do they have enforceable rights?	Do they have a Victims Commissioner or equivalent?
Australia	Yes, all states and territories except Tasmania have a declaration or charter of victims' rights	Yes, all except the Northern Territory have enshrined their declaration in law, yet no jurisdiction has provided penalties for non-compliance with victims' rights legislation	Yes, three states (Australian Capital Territory, South Australia and Victoria) have Victims Commissioners who have statutory independence from the Crown or any Minister. New South Wales has a Commissioner of Victims Rights that is a public servant and therefore not independent and Western Australia has a Commissioner for Victims of Crime with no statutory basis.
United Kingdom – England, Scotland, Wales and Northern Ireland. <i>Ireland is covered under the European Union</i>	Yes, the Code of Practice for Victims (2006). No penalties for agencies if they fail to comply with the Code	No, the code provides guiding principles rather than legally enforceable rights. No enforcement mechanisms	Yes, there is a Victims Commissioner for England and Wales. There is also a Victim's Commission for London and a Domestic Abuse Commissioner.
Canada	Yes, the Canadian Victims Bill of Rights (2015)	No, the code provides guiding principles rather than legally enforceable rights. No enforcement mechanisms	Yes, there is an Office of the Federal Ombudsman for Victims of Crime.
South Africa	Yes, the Service Charter for Victims of Crime 1996	Yes, agencies must uphold victims' rights and are held accountable if they do not	No, but there is a Truth and Reconciliation Commission for victims of gross human rights violations under apartheid.
Norway	No	No, provisions giving victims certain rights have been incorporated into more general laws, such as the Criminal Procedures Act, the Injury Compensation Act, and the Legal Aid Act	No
Sweden	No	Yes, the Swedish Crime Victim Compensation and Support Authority that looks after the rights of crime victims	No

European Union (EU)	No	No, the Victims' Rights Directive lays down a set of binding rights for victims and clear obligations on EU Member States to ensure these rights in practice	No
United States of America	Yes, the Crime Victims' rights act 2004. This Act enables a strictly enforceable charter of rights for victims in federal cases. Since 2007, all 50 states have statutes protecting victims' rights, and 33 states have amended their constitution to enhance and protect victims' rights.	The Act creates several enforcement mechanisms for victims of crime and is one of the few victims' rights instruments to provide for any form of legal recourse for breaches. Either the crime victim or the Government may assert the victim's rights in federal district court.	Yes, there is an Office of the Victims' Rights Ombudsman

Table 4: *International Victims Codes and Commissioners*

4.3 The right to be appointed a counsel for the injured party

In Sweden, victims of crime of a sexual nature and those involved in intimate partner violence can be appointed a counsel for the injured party by the court as soon as the preliminary investigation has been initiated.

In Ireland, legislation²¹ allows sexual assault victims to access state-funded legal representation to oppose a defendant's application to introduce a victim's sexual history evidence in court.

4.4 The right to consult with a prosecuting attorney and the right to be reasonably protected from the accused

The United States of America has the right to consult with a prosecuting attorney and the right to be reasonably protected from the accused for crime victims written into their legislation. These rights are enforceable under the Crime Victims' Rights Act 2004. The Crime Victims' Rights Movement has aggressively aimed to create an independent participatory role for crime victims in criminal justice proceedings, attempted by amendments to state legislatures and the federal Congress. In the federal system, Congress passed the first of several pieces of crime victims' rights legislation in 1982, and subsequently passed a series of laws giving greater legislative recognition to the rights of crime victims. In addition to legislative efforts, the judiciary has recognised aspects of the move toward participatory status for crime victims in criminal proceedings. The office of the Victims' Rights Ombudsman was established by the Department of Justice to receive and investigate complaints filed by victims of federal crimes against its employees.

Table 5 gives a brief overview of the adversarial and inquisitorial criminal justice systems.

²¹ Section 34 of the *Sex Offenders Act 2001* (IRE) inserted a new section (4A) into the *Criminal Law (Rape) Act 1981*

Mirroring the difference between Common Law and Civil Law systems is the difference between adversarial (also known as accusatorial) and inquisitorial (investigatory) trial systems. Most Common Law countries (derived from the United Kingdom Westminster system) have an adversarial justice system. Civil Law countries (for example, France, Germany, Belgium, Italy and the Netherlands) have an inquisitorial system. However, it doesn't always follow that if there is a common law tradition there is also an adversarial trial system, or that if there is a Civil Law system there is also an investigatory system (University of Portsmouth 2012).

Table 5: Adversarial and Inquisitorial Criminal Justice Systems

Adversarial system
Prosecution proves defendant guilty before neutral judge or jury
Witnesses called before judge and jury
Judge can ask questions to clarify not investigate
Truth is likely to be found when judge or jury decide if defendant is guilty (beyond reasonable doubt) or not guilty
Inquisitorial system
Police conduct initial investigation, often under guidance of prosecutor ²²
Judge in charge of inquiry (rather than neutral arbiter) and can direct avenues of inquiry and take further witness statements of necessary
Investigating judge, magistrate or prosecutor directs investigation
Written document prepared using evidence collected
Document presented to court (with different judge) ²³

²² For example, in Germany and Austria the prosecutor (who has quasi-judicial authority) theoretically controls the police investigation, but in practice police often work independently and present a report at the end of the investigation. In the Netherlands, Police conduct independent investigations though they may receive guidance from the prosecutor. In Denmark, most cases are investigated independently by police. In very serious cases such as homicide, prosecutors will be more actively involved in the investigation. In Sweden, police conduct the investigation until there is a suspect, then prosecutors take over. See McDonald, E., & Tinsley, Y., (eds.), (2011), *Real Rape to Real Justice: Prosecuting Rape in New Zealand*, Victoria University Press, Wellington.

²³ McDonald & Tinsley, (2011).

In an adversarial system, the parties, acting independently and in a partisan fashion, are responsible for uncovering and presenting evidence before a passive and neutral trial judge or jury. In an inquisitorial system, the ultimate responsibility for finding the truth lies with an official body that acts with judicial authority and gathers evidence both for and against the accused. While the actors in an adversarial system are equal and opposing parties, in an inquisitorial system the accused is not a party to proceedings to the same extent.²⁴ Victims have a stronger role in inquisitorial proceedings. They can appeal against decisions to lay charges, act as a subsidiary prosecutor, and participate directly and ask questions of witnesses. These rights differ across the various European jurisdictions.²⁵

For victims, the key elements of each system are as follows:

Adversarial

- The adversarial system is offender-centric and victims are considered witnesses and not central to proceedings.
- The victims' rights movement has argued that excluding victims as parties to criminal proceedings is unjust because victims have a unique interest in the outcome of criminal cases.
- Victims and witnesses can be re-victimised by undergoing cross-examination and having to face the accused in court.

Inquisitorial

- Victims can play a more active role in civil law jurisdictions.
- Victims can appear as civil claimants (for damages) in criminal cases and their claim for compensation can be heard at the same time as the criminal case.
- Victims can also have recourse to the investigating magistrate and can demand that a criminal investigation be undertaken in cases where there is a refusal to prosecute.²⁶

²⁴ Van Caenegem, (1999).

²⁵ McDonald & Tinsley, (2011).

²⁶ Van Caenegem, (1999).

5. Key findings

This investigation wanted to find out how government and non-government agencies have understood, responded to and implemented the Code since its launch in 2015.

First, we documented the principles and rights under the Victims Code and other legislative sources related to monitoring and upholding victims' rights. We discovered that the Victims Code was launched without the implementation that the development team intended and without consultation with all those originally involved, such as the Māori Advisory Group, interagency group and Victims Reference Group.

We then looked overseas to see how we compared internationally and found that statutory rights for victims written into legislation are not widespread, but many have additional supports not available to victims in Aotearoa New Zealand.

We found that while the Victims Code 'principles' was known by the majority of those working with victims, but its visibility was lower than expected. It's also not known what level of awareness the Code has among victims.

Importantly, it is difficult to assess the true extent to which agencies are following the Victims Code. Implementation of the Victims Code is not explicitly monitored, measured or enforced.

Finally, there is no centralised, independent complaints body or working group that addresses Victims Code complaints as they arise.

We present these key findings in more detail below.

The Victims Code was launched without a clear implementation plan

It appears there was no clear implementation plan for the Victims Code and it wasn't promoted and socialised in the way intended by the development team. While communication material was provided, actual promotion was left up to individual agencies.

A Cabinet Paper from the Ministry of Justice to the then Minister (Hon. Amy Adams) states that, "promotion of the Code will include a range of publications visible and accessible to victims at whichever point they interact with the criminal or youth justice systems".²⁷

In 2012 when the Victims Code was being developed, public consultation was carried out and collated. Respondents commented that visibility, accessibility and educational initiatives were key factors to consider when launching the Victims Code.

²⁷ Ministry of Justice Cabinet Social Policy Committee (Date Unknown).

Statutory rights for victims written into legislation are not widespread internationally

There's considerable evidence that governments throughout the world have made great moves forward in protecting the rights of victims of crime in their domestic legislation and practices.²⁸ However, many countries' victims' rights are non-enforceable and there are no sanctions for failure to comply. This is also the case in Aotearoa New Zealand – the ten rights set out in section 10 of the Victims' Rights Act (2002) are effectively unenforceable. The only obligation on agencies is to report annually on the number of complaints received.

In Australia, one review²⁹ highlighted several issues with making victims' rights enforceable:

- The absence of procedures for enforcement and remedies for non-compliance has been described as rendering victims' rights 'illusory' and unlikely to lead to change.
- Actors in the criminal justice system would be more likely to give legitimacy to victims' rights and interests if these rights were enforced within the justice system.
- Victims' rights relate to an individual's private interest in the criminal proceedings, which can directly challenge the public interest underpinnings of the adversarial criminal justice process.
- Related to this, the two-party contest between the state prosecutor, representing the harmed society, and the accused, does not easily create space for a third party.
- Attempts to enforce rights through legal proceedings may disrupt and delay criminal proceedings.
- If new legal causes of action are created for victims whose rights are violated, legal aid funding may be needed to ensure equity in the realisation of victims' rights.
- Different rights might apply at different stages of proceedings, requiring varied approaches to enforcement.

Internationally, statutory rights for victims written into legislation are often framed as 'service obligations' on criminal justice system agencies, which, if breached, entitles victims only to complain. Obligations are not rights and, relying on system improvement from complaints can leave the processes ad hoc and fragmented, especially when no clear and robust complaints process is available.

The appointment of Victims' Commissioners in the United Kingdom and in five Australian states indicate these jurisdictions are taking steps towards elevating victims' rights in the pursuit of justice.

²⁸ Human Rights Watch. (2008). *Mixed Results: US Policy and International Standards on the Rights and Interests of Victims of Crime* (pp. 1–43). New York.

²⁹ Victorian Law Reform Commission, (2015). *The Role of Victims of Crime in the Criminal Trial Process*. (pp. 1–182). Melbourne, Australia: Victorian Law Reform Commission.

These jurisdictions, however, still only provide ‘guiding principles’ of victim treatment and are not enforceable by agencies.³⁰

The United States of America does have statutes protecting victims’ rights at a federal level and an Office of the Victims’ Rights Ombudsman.

Scandinavian countries like Norway and Sweden have extra rights that Aotearoa New Zealand does not have, such as the right to be acquainted with case documents during the main court hearing. More work is needed to understand whether, and how, victims would benefit from having such additional rights built into legislation.

Legislation and associated victim rights have made some progress internationally. Agency responses, however, may merely ‘add in’ victim processes as an attachment, rather than placing priority on meeting the needs of victims across all areas of the criminal justice system.

Awareness of the Victims Code was lower than anticipated

Approximately two thirds of the people we spoke to had heard of the Victims Code. We interviewed a small group of 31 people, but all were working in areas with day-to-day interaction with victims. It should raise concern that some of this group had not heard about the Code because it has not been well circulated or supported with training. This leads us to wonder how many victims have heard of the Victims Code.

While a lack of awareness of the Victims Code should not be taken as a complete lack of awareness of the rights and principles of treatment contained in the Victims’ Rights Act (2002), ongoing reports of victims not receiving sufficient information and not having enough support through the criminal justice system,³¹ do suggest that victims’ rights are not being upheld. Visibility, training measurements of the implementation of victims’ rights and a clear and robust complaints procedure would improve this situation.

Despite measures to improve victims’ rights and services over several decades, crime victim services remain fragmented. Victims often report being unaware of their rights, or that they don’t know how to find and access the services and resources available to them. Sometimes even service providers aren’t aware of those services and resources.

Victims have a legislative entitlement under the Victims’ Rights Act to receive certain services and to be provided with information on their rights when entering the criminal justice system.³² It is critical that agencies and victims are aware of, and, implement these so that victims of crime can receive fair access to justice and be appropriately supported in the process.

³¹ Ministry of Justice, (2014 & 2016), *Public Perceptions of Crime – survey report*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/public-perceptions-of-crime-survey-201412.pdf> & <https://www.justice.govt.nz/assets/Documents/Publications/20161130-Final-PPS-report.pdf> and *Te Tangi o te Manawanui*

As one interviewee reflected about the future of the Victims Code:

“What we need is a properly funded evaluation and implementation of the Victims Code, and a review of the model that we have – this is without a Victims’ Commissioner and no central repository to investigate complaints. Is it reaching Māori? Is it cognisant around the issue of victims, offenders, and that relationship? Is it broader than the government criminal justice sector? Is it inclusive of victims’ experiences in terms of other support systems that are available? And do people even know about the Code? Without that full review, you’re just tinkering on the edges. I don’t think there’s been anything done apart from the Code being sent out.” (Former Ministry of Justice employee)

Assessing the true extent to which agencies are following the Victims Code is problematic

Most people interviewed as part of this exploration saw the principles of the Victims Code as clear, obvious and part of their day-to-day operations. Twenty interviewees stated the Victims Code principles underpinned their work with victims, even if the agency had their own code they primarily followed. Many interviewees highlighted the importance of making the Victims Code more visible.

In 2015, a Victims Code Justice Sector Leadership Board paper³³ outlined what ‘embedding the Victims Code in practice’ meant:

- Ensure government agencies and providers actively uphold the rights of victims.
- Make it easy for victims to participate in the criminal justice system.
- Deliver services according to the principles outlined in the Victims Code.
- Ensure victims can easily make complaints if they feel their rights have not been upheld.

Implementation of the Victims Code is not explicitly monitored, measured or enforced

Interviewees told us that agencies were not being monitored against the Victims Code or any other guidelines for treatment of victims.³⁴ Agencies that did know about and actively used the Victims Code didn’t have any kind of principle checklist they adhered to, nor were they instructed to monitor any kind of performance indicators to whether they were upholding victims’ rights and principles.

The Victims Code Justice Sector Leadership Board paper³⁵ outlined certain requirements to be included in ‘monitoring practice’. It states that the final stage of implementation of the Victims Code would focus on:

³³ Ministry of Justice (2015b).

³⁴ See also the Chief Victims Advisor issues paper *The Victims’ rights act 2002: How was the Act implemented and how is compliance with the Act monitored?* (2020)

³⁵ Ministry of Justice (2015b).

- monitoring providers and government agencies on compliance with the Victims Code
- reporting on the number, type and disposition of victim complaints
- other mechanisms for monitoring outcomes.

The Leadership Board paper³⁶ further highlighted that “members of the interagency working group are sharing categorisations of complaints and are working together to consider compatible frameworks that will enable comparable reporting across agencies”. Interviews indicated, however, that comparable reporting across agencies resulted in each agency deciding to publish victim complaints in their annual reports rather than creating any kind of cross-government working group.

Minutes from a meeting of the interagency group on the Victims of Crime Reform Bill and the Victims Code noted that, *“more substantive work would be required to set some performance indicators and measure aspects of services for victims.”*³⁷

The practicality of measuring and enforcing the eight principles of treatment would prove difficult, being subjective and open to interpretation. The ten rights afforded to victims of crime in part two of the Victims Code would be easier to measure (than the eight principles of treatment), as victims are entitled to these as part of the criminal justice process. However, there was concern from many interviewees regarding whether making the Victims Code enforceable would result in positive consequences for victims.

While some interviewees confused the Victims’ Rights Act with the Victims Code when discussing enforceability, most agreed that victims’ rights should be complied with.

An historical review of legislation for victims’ rights shows that to date, no government has supported the lifting of the statutory bar to allow victims of crime to sue agencies for their lack of victims’ rights’ implementation.

Some interviewees commented that good monitoring and performance measurement didn’t need enforceability. Most preferred that agencies provide quality, consistent and cohesive services to victims.

There is no centralised complaints body or working group that addresses Victims Code complaints

Currently, complaints for the Ministry of Justice come through the Victims Information email (administered by the Victims Centre at the Ministry of Justice) and then a written response is sent to the victim. It appears that while complaints, queries and feedback are collected, they are not categorised or analysed in any way.

It seems that victims rarely reference the Victims Code or the Victims’ Rights Act (2002) when they complain; more often, the Ministry of Justice provides that information to them. For example, they

³⁶ Victims Code Implementation Plan. Ministry of Justice, (2015c).

³⁷ Ministry of Justice (2015a).

may say to the complainant, “That’s a breach under Principle X of the Victims Code”. The gap in victims mentioning the Victims Code suggests that victims are unaware of the Code and their entitlements.

If the complaint is unrelated to the Ministry of Justice, it is sent to the relevant agency for it to resolve directly with the victim.³⁸ Victims can also call an 0800-number contracted out to Victim Support. Informal feedback from the call centre suggests that the most common reason victims call is to be put in contact with their Court Victims Advisor or to seek other information about the justice system, not to make complaints.³⁹

If victims are unhappy after making an initial complaint to the relevant agency, they can escalate their complaint to the Ombudsman, Privacy Commissioner or the Independent Police Conduct Authority (IPCA).⁴⁰ It is unknown how many victims are aware of these rights.

There are limitations with this complaints process for victims. Agencies have an obligation under the Victims’ Rights Act (2002) to report on the number of complaints in their annual reports, but it appears many are not captured due to not meeting specific criteria, for example, if the complainant fails to mention according to right ‘x’ under the Victims’ Rights Act (2002) or under principle ‘x’ of the Victims Code, it is not recorded. Therefore, complaints are only recorded providing they are assessed as ‘legitimate’ by the relevant agency and specifically relate to the Victims’ Rights Act (2002). This suggests the full picture of victims’ concerns is not currently visible within Aotearoa New Zealand’s criminal justice system.

The previous United Kingdom’s Victims’ Commissioner, Helen Newlove, conducted research on how victim complaints were dealt with by agencies. The report focused on:

- awareness by victims and agencies of victims’ rights to make a complaint as set out in the Victims Code
- the ease and accessibility of agencies’ complaints processes
- how satisfactorily the complaint was handled
- whether criminal justice agencies were learning from the complaints they received to improve victims’ services.⁴¹

The report found:

- a gap between the handling of complaints as described by criminal justice system agencies and how victims feel they are treated
- most victims said they had not been made aware of the Victims Code or of their entitlements under it

³⁸ Consultation with Ministry of Justice Victims Centre.

³⁹ Ibid.

⁴⁰ While complaints about police activity are frequently made to the IPCA, consultation with the office of the Ombudsman and the Privacy Commissioner indicate that few complaints are escalated from victims to these bodies.

⁴¹ Office of the Victims’ Commissioner, (2015), *A Review of Complaints and Resolution for Victims of Crime*.

- despite a commitment by agencies to support victims who wanted to complain, victims did not know what they could ask for or who to go to if they had concerns. Those victims who had complained or raised concerns described feeling confused, ignored or dismissed
- criminal justice system agencies and service providers who were members of a ‘cross-government complaints group’ found their membership to be helpful to the way in which they handled complaints
- victims wanted agencies and service providers to show how complaints have led to visible changes and improvements.⁴²

Newlove’s report is relevant to the Aotearoa New Zealand context. The development of a system to monitor and evaluate victim complaints managed by an independent body is worthy of future investigation. This report was not able to refer to any independent evaluation evidence about agencies in Aotearoa New Zealand actively upholding victims’ rights or making it easier for victims to participate in the criminal justice system.

In addition, complaints resolution processes have emerged as the more common pathway given to victims. Robust complaints processes, especially where a mechanism for independent review exists, have the potential to provide victims with fairness, transparency and accountability.⁴³ Considering this, a question remains whether there should be a legislatively-prescribed process for investigating and resolving complaints about breaches of victims’ rights, and if so, what this process would look like.

⁴² Ibid.

⁴³ Victorian Law Reform Commission, (2015). *The Role of Victims of Crime in the Criminal Trial Process*. (pp. 1–182). Melbourne, Australia: Victorian Law Reform Commission.

6. Recommendations

This report reveals and presents opportunities for improvements regarding the promotion and use of the Victims Code in Aotearoa New Zealand. Based on the interview data gathered, participants largely agreed that greater visibility and accessibility of the Victims Code for both agencies and victims would be beneficial. To achieve this, appropriate implementation and educational initiatives are needed.

Government agencies and service providers need to embed the Victims Code into practice through actively upholding the rights of victims, making it easier for victims to participate in the criminal justice system, delivering services according to the principles outlined in the Victims Code, and ensuring victims can easily make complaints if they feel their rights have not been upheld.

Accordingly, this report makes the following recommendations to Government:

Conduct a survey of victims to explore their awareness of the Code and their rights under it. This is critical to ensure any proposed reforms are based on, and address, the needs of victims themselves.

Re-consult Māori on the Victims Code. Kaupapa Māori frameworks for the Victims Code were developed by a Māori Advisory Group in 2011-2012, but their work was not included in the development of the final Victims Code. Since the Hāpaitia te Oranga Tangata reform programme began, Māori have developed an ongoing working group of advocates, lawyers and those with lived experience who are currently working with government on a range of criminal justice issues. It will be important to consult this group and others in Kaupapa Māori specialist NGOs who work with victims of crime on how a Victims Code may be useful to Māori and to ensure Māori conceptualisations of victim rights are expressed within it.

Relaunch or better promote the Victims Code across the criminal justice sector, government agencies, NGOs and into the public domain. This report highlights the need for the Victims Code to reach all victims of crime (Māori and non-Māori) and their supporters. To improve visibility and awareness, a comprehensive plan is needed to ensure the Victims Code is visible in a wide range of public areas, available in Te Reo Māori and other languages, and appropriate for those with reading disabilities, as well as for children and young people.

Integrate mandatory training and education to all government and NGO staff, especially those who have direct interactions with victims. Relaunching the Victims Code would require comprehensive ongoing staff training on victims' rights and principles and how these should be implemented when government and NGO agency staff interact with victims.⁴⁴ Cross-sector training at all levels, especially at management levels, and promotion of the Victims Code that demonstrates the 'end-to-end' journey victims take through the criminal justice system is needed to improve understanding within government, and between government and NGOs, of their respective roles and responsibilities.

⁴⁴ For example, a Thrive module on victims' rights could be developed at the Ministry of Justice and made compulsory for all employees to complete.

Develop an integrated system to monitor service providers and government agencies and evaluate their compliance with the Victims Code. An independent two-whare⁴⁵ victim-friendly body, developed in consultation with Kaupapa Māori specialists who work with victims, could provide a role of monitoring the criminal justice system for compliance of victims' rights, and encourage the continuous improvement of victims' rights by evaluating feedback from victim experiences

Develop a centralised complaints system. An independent victim-friendly body would also provide a centralised complaints resolution process with the potential to provide victims with fairness, transparency and accountability.⁴⁶ This would require amendments to the Victims' Rights Act 2002.

⁴⁵ 'Two whare' refers to a Te Tiriti-based model similar to the Te Ohaakii a Hine National Network Ending Sexual Violence Together model referred to in *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes*, Law Commission, 2015

⁴⁶ Victorian Law Reform Commission, (2015). *The Role of Victims of Crime in the Criminal Trial Process*. (pp. 1–182). Melbourne, Australia: Victorian Law Reform Commission.

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