

**Independent bodies and complaint
mechanisms for victims of crime**

Submitted to

**Office of the
Chief Victims Advisor to Government**

by

Elaine Mossman

29 May 2020

Contents

Summary.....	i
1 Introduction	1
2 Background.....	1
2.1 Development of victims' rights in Aotearoa New Zealand.....	2
2.2 Why is it important to uphold victims' rights?	3
2.3 Victim entitlements in Aotearoa New Zealand	3
2.4 Current status and problem of poor compliance	5
3 Realising victims' rights	8
3.1 Victim-focused independent bodies	8
3.2 Enforcement, monitoring compliance and complaints.....	17
4 International examples.....	25
4.1 England and Wales	27
4.2 South Australia	31
4.3 Victoria.....	34
4.4 Australian Capital Territory (ACT)	37
4.5 Canada	40
4.6 United States	43
5 Conclusion	48
References.....	52
Appendices	55
Appendix 1: TOAH-NNEST governance, structure and Te Tiriti Relationship Agreement	56
Appendix 2: Complexity of navigating victims' rights in under the Victims' Rights Act 2002.....	60
Appendix 3: Standards for Complaints Handling (Victims' Commissioner for England and Wales).....	62
Appendix 4: Principles for Good Complaint Handling (Parliamentary and Health Service Ombudsman - England and Wales)	64

Tables

Table (i). Table presenting key characteristics of independent bodies across seven common law jurisdictions	vii
Table 1. Victims' rights within the criminal justice system	5
Table 2. Table presenting key characteristics of independent bodies across seven common law jurisdictions	26

The use of the term 'victim'

It is widely acknowledged that the term 'victim' is problematic. Some people who have experienced crime dislike being referred to as a 'victim'; some feel the term accurately conveys their experience of harm; some prefer to be referred to as 'survivors'; and some, including many Māori, wish for no label at all.

Within this report, while not wishing to offend anyone, the term 'victim' has been used. This is mainly for consistency with the legislation (for example the 'Victim's Rights Act 2002') and because it is the term most commonly used in other jurisdictions in relation to independent bodies and complaints mechanisms. It may be that through future consultation with those who have been victimised a better solution can be found to recognise and respect the views of all people who have been harmed by crime.

Summary

Because Aotearoa New Zealand does not have an independent victims' rights body, this report, commissioned by the Chief Victims Advisor (CVA), investigates independent victims' rights bodies, complaints and monitoring mechanisms, in use elsewhere in the world, that could act as possible models for adaptation to the Aotearoa New Zealand context.

Context

The last few decades have seen significant progress for victims' rights, with many jurisdictions introducing victims' rights legislation to guide the treatment of crime victims. However, despite this progress, there is growing recognition that the objectives of the reforms are not being realised. Victims here in Aotearoa New Zealand and elsewhere around the globe are still feeling frustrated with their treatment within the criminal justice system and continue to feel that 'the system is failing them'.¹

Further reforms utilising a range of approaches appear vital to achieve the necessary change across the criminal justice system that will instil greater respect for victims and wider recognition of their rights and entitlements. Possible approaches might include: system-wide monitoring and review, with improved complaints handling and oversight; developing a more coherent legislative and policy framework; along with sector-wide education and training.

Realising victims' rights

Recognition of the harmful impact of crime on victims has informed legislation on victims' rights in Aotearoa New Zealand and overseas. Most victims' rights legislation aim for victims of crime to have confidence in the criminal justice system and to be able to access justice without risk of suffering further harm. In various pieces of legislation there are guidelines that aim to ensure that victims have access to high-quality support services to assist them in their healing and recovery.

If agencies adhere to victims' rights legislation, important wellbeing, safety and justice outcomes are possible not only for the victims, but also the wider society. However, if there is a lack of compliance among criminal justice agencies and/or victims are not aware of and therefore unable to access the right services, these important aims are not met. Unfortunately, findings from various sources in Aotearoa New Zealand point to the latter scenario.

For example:

- a recent victims of crime survey carried out by the CVA (2019) found the majority of the 620 participants felt that the criminal justice system "doesn't keep them safe" (83%), "doesn't provide enough support or information" (79%), and "does not listen to their views, concerns or needs" (77%);²

¹ <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/8dhfd3-Criminal-Justice-Victims-Survey-report.pdf>

² Ibid.

- an earlier 2016 Colmar Brunton Public Perceptions Survey found only a quarter (25%) of respondents agreed that criminal court processes treat victims with respect; around 41% of respondents reported they did not have confidence in the criminal justice system;³ and
- the latest New Zealand Crime and Victims Survey found only a quarter (25%) of crimes experienced in the last 12 months were reported to Police, supporting a likely lack of confidence amongst victims in criminal justice processes.⁴

Collectively these findings point to a conclusion that criminal justice agencies have not adequately implemented victims' rights legislation. There appears to be a growing consensus that the fundamental problem is a lack of compliance with victims' rights as provided for in legislation. As summarised by one academic "making law is easy: making it work can be extremely difficult" (Groenhuijsen, 2014, p.33).

Poor compliance has been linked to a lack of monitoring of breaches, and the absence of sanctioning mechanisms for occasions when victims' rights are not respected. As was suggested by one American law professor (among others), the absence of procedures for enforcement and remedies for non-compliance renders victims' rights as "illusory" and unlikely to generate the outcomes that are legislatively intended for victims (Beloof, 2005; Hall, 2009; VLRC, 2016).

Victim-focused independent bodies and complaints mechanisms

A victim-focused independent body can play a critical role in promoting and upholding rights of crime victims. A recent analysis of the role of Victims' Commissioners in Australia positioned such agencies as 'administrators' or 'regulators' of victims-rights legislation, providing a means of addressing identified victims' rights issues in a way that supports the participatory needs of victims, while maintaining the independence and integrity of criminal justice processes, and protecting due process for the accused.

The primary vehicle for protecting victims' rights is through resolving complaints about breaches of entitlements, whilst a robust system of monitoring enables identification of systemic issues requiring attention. The proper resolution of complaints not only holds agencies to account but also encourages improved practice, as each complaint can become an opportunity to learn, and further improve processes for victims.

The need for an independent body and/or a dedicated victim-centred agency to oversee and support crime victims to realise their rights, has been recognised in Aotearoa New Zealand for several decades. Whilst the Ministry of Justice Victim Information Service and, more recently, the appointment of a Chief Victims Advisor represents real progress, there is still no statutorily independent victim-focused body. Neither is there an independent body available to assist victims to navigate the current complaint system, or one with responsibility for system-wide collection, monitoring and oversight of data.

³ <https://www.justice.govt.nz/assets/Documents/Publications/20161130-Final-PPS-report.pdf>

⁴ <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-Y2-core-report-for-release.pdf>

Aotearoa New Zealand complaints bodies

A number of independent public bodies currently in operation in Aotearoa New Zealand (without a specific victim-focus) provide examples of effective approaches to complaint resolution. These include:

- **dedicated system with local outreach** – the Health and Disability Commission (HDC) provides a good example of an independent dedicated complaints mechanism, but with a nationwide community outreach advocacy service, which has resulted in good public awareness and accessibility;
- **high public profile** – the high public profile of the current Children’s Commissioner also appears useful in facilitating public awareness and uptake of support for children, youth, families and whānau with concerns;
- **a focus on informal resolution** – the Human Rights Commission (HRC) offers a good example of how the provision of a free, confidential complaints resolution service, can informally resolve all but a very small proportion of complaints, largely through mediation. This approach significantly reduces the stress and resources required for the more formal processing of complaints through the Human Rights Review Tribunal. Interestingly in Australia the Australian Capital Territory (ACT)’s Victims of Crime Commissioner is located within their HRC;
- **single-point-of-contact** – the HRC also provides an example of where an independent body acting as the single-point-of-contact for all enquiries and concerns is able to monitor trends and issues and bring about required systemic change; and
- **more than one commissioner** – the HDC and HRC are also exemplars of Commissions operating with a structure that accommodates more than one Commissioner. Such models could be adapted to provide a bi-cultural model that included a commissioner whose role is focused specifically on meeting the needs of Māori victims of crime. This is the direction the Children’s Commissioner is currently intending to head, with the appointment of a Māori Assistant Children’s Commissioner.

International victim-focused models

A review of international models operating in six common law jurisdictions found the most common approach identified was the establishment of a statutorily independent victims of crime commissioner (established in four out of the six jurisdictions). All six independent bodies shared an overall common interest of promoting and advocating for the interests of victims and upholding their rights. However, there was also considerable variability in various features and areas of focus. For example:

- **legal support and advocacy** – there was one example of a Commissioner taking more of a legal focus with the ability to make submissions relevant to victims’ rights in criminal proceedings (e.g. South Australia);
- **quality service delivery** – another centred their efforts on the delivery of efficient and effective victim support services (e.g. ACT);
- **making system changes** – others are mandated to focus specifically on identifying and remedying systemic victim issues (e.g. Victoria, England and Wales); and

- **specialist complaint handling** – the sole purpose of the Victims' Rights Ombudsman in the United States is receiving and reviewing complaints against federal employees.

Table (i) at the end of this section presents the key features of the independent bodies across these jurisdictions. It details their statutory basis and mandated priorities, including varying roles in relation to handling complaints from victims of crime.

Approaches to complaints – All jurisdictions (other than the United States) had a broadly similar approach to complaint handling as the one used here in Aotearoa New Zealand. This is where the primary means for victims to seek resolution for a breach of their rights is through the various criminal justice agencies' internal complaints; typically there is the option to escalate the matter if an individual was not satisfied with how their complaint was handled.

Whilst it could be argued that the various individual agencies are best placed to understand their business and able to resolve a concern, for a victim, the system can be challenging to access and, once inside, complex to navigate. For example:

- **fragmented and inconsistent** – there can be multiple agencies involved in a case, each with their own processes and systems, and where some cases involve breaches by more than one agency;
- **complex** – a victim must not only work out what right has been breached, but which agency is most appropriate for them to submit their complaint to, and there is no single point of contact to offer support; and
- **not independent** – the internal complaints process remains for some time within the remit of the agency alleged to have made the breach and therefore does not provide outside scrutiny by an impartial observer. Additionally, having to complain directly to the very people who are perceived to have wronged them in the first place can be difficult.

A key difference in other jurisdictions was the varying support available through a victim-focused independent body to help victims navigate through this complex system and make complaints. This type of support appears essential if there is to be continued reliance on agencies' internal complaints processes.

Conclusion – positive features of models reviewed

It is difficult to draw conclusions with the comparative merits of one model over another, with the limited evidenced-based analysis available. However, it is possible to highlight some of the positive features that emerged.

Features identified as strengths of independent bodies included:

- **statutory independent position** – having the authority and capacity to communicate its work openly to the wider public, to government, and to other bodies; and through its independence, enabling victims to feel sufficiently confident and trusting to access support, and share their concerns;
- **ensuring necessary statutory powers to fulfil its functions** – including powers to investigate complaints, and compel agencies to provide information, and assist in

resolving complaints; what the Victims' Commissioner for England and Wales described as having the "statutory clout to call others to account";⁵

- **responsibility for review of operation of victims' rights legislation** – assigning responsibility and giving mandate to propose amendments. This responsibility supports an overall aim of upholding victims' rights and monitoring compliance (e.g. England and Wales, Victoria);
- **resources and mandate to conduct research and reviews** – providing the opportunity for victims' views to be heard and be central in the independent advice to government. Research and review are also the primary means to identify areas for improvement and to promote best practice (see work of the Victims' Commissioner of England and Wales);
- **access to a victims' advisory board** – where established, these groups provide a forum for victims to have a voice in the development of victim-related policy. In some jurisdictions groups of this type are established by Victims' Commissioners to provide independent advice (e.g. England and Wales, South Australia) while in other cases advisory groups are established through legislation (e.g. ACT, Victoria);
- **mandated role in complaint handling** – the ability to support victims to navigate and make complaints (e.g. ACT, South Australia, Canada; and the NZ-HDC and NZ-HRC); and a role in reviewing complaints where victims are not satisfied with the outcome (e.g. Victoria, South Australia, Canada);
- **responsibility for system-wide monitoring of compliance** with rights and principles included in victims-focused legislation (i.e. "what gets counted, gets done"), including:
 - mandate to establish arrangements for collection of system-wide data on compliance (e.g. Victoria);
 - identification of systemic issues and trends that need addressing (e.g. Canada)
 - mandate to publish overall results in annual report on number of complaints made and processed, and outcomes of the complaints, to ensure transparency (e.g. Victoria).
- **bi-cultural model** – in Aotearoa New Zealand a bi-cultural or two-whare model would assist in meeting responsibilities under Te Tiriti o Waitangi, and be key to effectively advocate for, and address the special needs of Māori who represent the highest risk group for being a victim of crime. One working example of a bi-cultural model in Aotearoa New Zealand is the two whare governance structure utilised successfully by TOAH-NNEST (see Appendix 1).

Positive features of complaints mechanisms, identified through this review, are as follows (see also Appendix 3, the standards for complaint handling published by the Victims' Commissioner for England and Wales).

⁵ See Victims' Commissioner for England and Wales, 2019, p.21)

- **supporting role of victim-focused independent body**
 - as a “gateway” or “single-point-of-contact” for victims to negotiate with; reducing barriers associated with having to complain directly to the agency which the concerns relates to (e.g. ACT, South Australia and NZ-HDC and NZ-HRC)
 - able to provide mediation and/or liaison roles to help resolve concerns quickly and fairly and, where possible, to avoid unnecessary escalation of complaints (e.g. ACT, NZ-HRC);
 - review of complaints when victims are not satisfied with the outcome (e.g. Canada, Victoria, South Australia), ensuring this is carried out by a victim-focused body, best placed to understand victims’ issues, and subsequently able to monitor and address emerging patterns and trends.
- **provide and enforce good practice complaint guidelines on agencies** including (see Appendix 4 - England and Wales, and also Victoria for guidelines on good complaint handling):
 - opportunity for dialogue with a victim to discuss concerns;
 - processes that differentiate between “concerns” (e.g. victims who want to voice a concern, or request clarification or further information) compared to those wanting to formally complain (e.g. ACT, NZ-HRC); and
 - build in continuous improvement practices to ensure agencies change their practice in response to recurrent forms of complaint; and provide feedback to victims when changes are implemented.
- **more prescriptive legislation** – provide detailed and specific information on the complaint processes and required features in relevant legislation. For example, in Aotearoa New Zealand this could include timeframes for a response; requirements of agencies to be proactive in disseminating information on their complaints process; requiring agencies to include more specific details of complaints received in their annual report, for example including reference to the particular section of the Act that has been breached in each instance;
- **establishment of a cross-sector victim complaints forum** – opportunity for representatives from agencies to meet and discuss their respective victim-specific complaint handling processes, publish and share resources, and develop training to improve practices (see England and Wales).

Table (i). Table presenting key characteristics of independent bodies across seven common law jurisdictions

Jurisdiction - title - year established	Statutory basis	Staff	Legally enforceable rights	Role in relation to complaints		Statutory responsibilities / functions							Other roles/features
				Can receive complaints	Authority to investigate / review complaints	Monitor compliance	Review operation of Act	Promote /advocate interests of victims	Promote best practice	Advice to govt	Conduct reviews/ research	Admin of financial assistance	
Aotearoa New Zealand - Chief Victims Advisor - 2015		CVA (0.7FTE); 2 FTE	x	x	x	x	x	✓	✓	✓	✓	x	
England & Wales - Victims' Commissioner - 2010	✓	VC; plus 3 FTE, and 4 P/T	x	x	x	Not currently	✓	✓	✓	✓	✓	x	No provisions to support individual victims
Canada - Federal Ombudsman for Victims of Crime - 2007	✓	OVC; plus 9 FTE	x	✓	Yes (review outcomes only)	✓	x	✓	✓	✓	✓	x	Can work independently with victims and collectively on behalf of victims; Required to facilitate access to services
United States – Victims' Rights Ombudsman (Federal) - 2005	✓	Unknown	✓	Yes (against employees)	Yes (against employees)	x	x	x	x	x	x	x	Role limited to investigating complaints against federal agencies
ACT - Victims of Crime Commissioner - 2011	✓	28 FTE	x	Yes (for referral)	No (but authority to resolve 'concerns')	✓	x	✓	✓	✓	x	✓	Wide range of functions including direct support to victims; located in within Human Rights Commission
Victoria - Victims of Crime Commissioner - 2015	✓	VOC; plus 3 FTE	In limited cases	Only for review	Yes (review outcomes only)	✓	✓	✓	To improve systems	✓	Reviews of systemic issues	x	Authority to inquire into systemic issues
South Australia - Commissioner for Victims' Rights - 2008	✓	CoVR; plus; 3 FTE,	x	✓	Yes (if not under investigation and outcomes)	✓	Broadly	Through policy reviews	✓	✓	✓	Discretion-ary payments	Ability to provide legal assistance; advises Attorney-General on use of government resources

1 Introduction

In July 2018 Justice Minister Andrew Little announced a Criminal Justice Summit and an Advisory Group to lead conversations on reforming the criminal justice system. At the summit, held in August 2018, Minister Little reaffirmed his commitment to ensuring that the needs of victims are at the heart of any reform of the criminal justice system. As a result, the Chief Victims Advisor held the Strengthening the Criminal Justice System for Victims Workshop on 4-5 March 2019 in Wellington. The workshop was designed to relay specific information back to the Minister and to inform recommendations prepared by the Chief Victims Advisor for improving the system for victims. Recommendations were also shaped by findings from an online Victims Survey⁶ and through direct feedback to the Chief Victim Advisor from victims she spoke with and heard from, from around the country.

The Chief Victim Advisor's recommendations for reform were made to the Minister in the second half of 2019 and released publicly in December 2019.⁷ These recommendations are to be further developed following reviews of relevant national and international evidence. This report is one such review, and contributes to information related to two of the four high-level recommendations made by the Chief Victim Advisor:

- to improve procedural justice for victims, with a specific recommendation for government agencies to assess their compliance with the current Victims' Rights Act 2002 (Recommendation 1); and
- establishment of an independent mechanism that could function as a central point for monitoring compliance and carry out further work to uphold victims' rights (Recommendation 4).

The terms of reference for this current report were to investigate independent victims' rights, complaints and monitoring mechanisms, in use elsewhere in the world, that could act as appropriate models for the Aotearoa New Zealand context. This could include, for example: Victims Commissions, Victims Commissioners, victim advisory bodies; and the processes used overseas for the investigation and monitoring of victims' complaints. In scope also is consideration of approaches to complaint handling used by other independent bodies currently operating within Aotearoa New Zealand (those without a victim focus).

2 Background

Before presenting information from this review, it is useful to consider who is considered a victim of crime, and their rights as victims that may give rise to complaints if breached. This provides context for the later evaluation of various complaint handling processes and how well they contribute to victims experiencing safer, fairer justice.

⁶ The Strengthening the Criminal Justice System for Victims Survey collected feedback from 620 respondents in February 2019 on what works and what does not work about the criminal justice system, and how it can be improved. See: <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/8dhfd3-Criminal-Justice-Victims-Survey-report.pdf>

⁷ The Chief Victim Advisor's recommendations were publicly released by the Minister on 10 December 2019. Te Tangi o te Manawanui: Recommendations for Reform (Chief Victims Advisor to Government, 2019). See: <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/Te-Tangi-Final-PDF.pdf>

2.1 Development of victims' rights in Aotearoa New Zealand

Definition of a victim of crime in Aotearoa New Zealand is set out in the Victims' Rights Act 2002.⁸ It includes anyone who has had a crime committed against them, or has suffered physical injury, emotional harm or property loss as the result of an illegal act. If this person is a child or young person, victim status extends to parents or legal guardians. Immediate family members can also be considered victims in cases where a family member has been killed or permanently disabled.

In Aotearoa New Zealand, around a third (30%) of adults experience some form of criminal victimisation in a year (Ministry of Justice, 2020). The impact of crime victimisation can be wide-ranging, and variable. Some individuals are minimally affected, while others experience very severe and long-lasting impacts on their lives. These impacts can include physical injury, psychological trauma, negative mental health outcomes, adverse effects on quality of life, and financial losses. Subsequent involvement in the criminal justice system can produce positive effects (e.g. restitution, reparation and cathartic effects from the public acknowledgement and validation of a victim's experience, and being able to hold the offender to account) but has potential for negative impacts also (i.e. secondary victimisation; see Mossman, 2012).

Recognition of the harmful impact of crime has informed legislation on victims' rights, both here and overseas. While Aotearoa New Zealand pioneered the first state-funded scheme to compensate crime victims for personal injury (Criminal Injuries Compensation Act 1963), more significant law reform for victims did not occur until the 1980s following the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration).⁹ The UN Declaration is often described as the "Magna Carta of victim rights" (Groenhuisen, 2014), providing the basis for the majority of victims' right legislation around the world. This Declaration was the response to growing pressure from victims' movements around the globe to improve support, voice and reparation for victims of crime, and recognition that key human rights legislation of the time were largely silent on the rights of victims. As a Declaration, it was a non-binding document, providing a statement of objectives that governments were encouraged to pursue.

Aotearoa New Zealand was a co-sponsor of the UN Declaration and signed up to the basic principles specified in 1985. This move was followed shortly after by Aotearoa New Zealand's first victim focused legislation, the Victims of Offences Act, 1987. This ground-breaking legislation gave Aotearoa New Zealand victims of crime rights to health, welfare and legal assistance, to be treated with respect and courtesy, to receive certain information and the right to provide a Victim Impact Statement to courts. The more recent Victims' Rights Act 2002 built on and strengthened the provisions of this early Act. There are also a number of other Acts which include provisions aimed at improving victims' experience and treatment within the criminal justice system - for example, the Privacy Act 1993, the Bill of Rights Act 1990, the Sentencing Act 2002, the Bail Act 2002 and the Children, Young Persons, and their Families Act 1989.

Since its enactment, the Victims' Rights Act has been amended three times: in 2008, 2011 and 2014. The 2014 amendments were the most substantial and, for the first time, included a requirement that justice sector agencies publish information on the number, type and disposition

⁸ <http://www.legislation.govt.nz/act/public/2002/0039/latest/DLM157813.html>

⁹ Also influential in Europe have been the 1985 Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure, followed by the 2001 European Union Framework Decision on the Standing of Victims in Criminal Proceedings, which became the Victims' Rights Directive in 2012.

of complaints made by victims of crime (Chief Victims Advisor, 2020a). This appears to be the first step towards attaining government agency compliance to victims' rights provisions. However, rights included remain discretionary, with no provisions for sanctions for agency non-compliance.

The 2014 amendments also included the requirement that the Secretary for Justice prepare a Victims Code as soon as possible. This occurred in September 2015 with the publishing of the Victims Code (2015) which largely mirrors the rights contained in the Victims' Rights but in more easily understood phrasing and wording.¹⁰ The Code provides guidelines on how agencies and providers *should* treat victims but, like the Victims' Rights Act 2002, is not legally enforceable.

2.2 Why is it important to uphold victims' rights?

Specifying, but also delivering, appropriate victims' rights has important wellbeing, safety and justice outcomes not only for the victim, but also the wider society. The last major review of Victims' Rights in Aotearoa New Zealand was in 2009, the Enhancing Victims' Rights Review. In conducting the review, the Ministry of Justice outlined two key intended benefits of delivering a more responsive justice system to victims of crime (Ministry of Justice, 2009). A responsive justice system that respected and protected victims' rights would:

- **Reduce the negative impact of crime on individuals and society** – The way victims are treated after experiencing crime can help them in their recovery and ability to “move on” from what happened. If victims recover quickly from their experience of any criminal offending committed against them, the outcome for victims and all concerned with the victim will be more positive; and
- **Enhance the effectiveness of, and public confidence in, the criminal justice system** – For those that seek justice through the criminal justice system, ensuring that that they are listened to, valued, made to feel safe and have their needs met, will result in victims that have confidence in the system. In contrast, poor treatment, that minimises, or fails to recognise, the harm crime imposes on victims may cause victims to become disillusioned and withdraw their cooperation from the formal justice system. This cooperation is essential to the effectiveness of the criminal justice system, to ensure victims report crimes and cooperate with processes leading to the conviction of the offender.

The provisions in Aotearoa New Zealand's victims' rights legislation lay out the minimum standards for criminal justice agencies with the aim that victims have confidence in the justice system and can access justice without risk of suffering further harm as a consequence. Guidelines also aim to ensure victims have access to high-quality support services to assist them in their healing and recovery. However, if criminal justice agencies do not adhere to these standards, and/or victims are not aware of, and able to access them, these important aims will not be met.

2.3 Victim entitlements in Aotearoa New Zealand

As noted above, the specific rights or entitlements for victims of crime in Aotearoa New Zealand are laid out in the Victims' Rights Act 2002 and summarised in a more easily understood manner in the Code (the Code tending to be the more commonly referred to instrument). Reflective of the

¹⁰ Two additional rights were included in the Victims Code that are not in the Victims' Rights Act, namely, victims of offences have the right to speak Māori or sign language in court and victims of offences committed by young people have the right to attend family group conferences arranged by Oranga Tamariki.

early influence of the UN Declaration, rights include respectful treatment, access to information and support, adequate notification of case progression and, at certain points, the opportunity to be heard in criminal proceedings. Key details of their entitlements based on details in the Code and the Victims' Right 2002 are presented below.

Part 1 of the Code lists eight key principles that are expected to be followed by a person, organisation or government agency that provides services to victims (a provider). These are:

- **safety** – services provided to minimise risk of harm, and puts victim's safety first;
- **respect** – providers should treat victims with courtesy and compassion;
- **dignity and privacy** – providers should treat victims with dignity and protect their privacy;
- **fairness** – treatment that meets victim's needs, delivered in timely and straightforward way;
- **informed choice** – providers should explain options and answer questions honestly and accurately so victims can make informed choices;
- **access to quality services** – including those that meet needs of victim, whānau or family, delivered in a culturally appropriate way;
- **communication** – providers should deliver information in an open, honest, accessible way; and
- **feedback** – providers should inform victims how they can give feedback and make a complaint.

The final principle in the list is further expanded on in Part 3 of the Code which details how a victim can make a complaint if they think their rights have been breached, and how they should do this. This also relates to section 49 of the Victims' Rights Act 2002, which is discussed in more detail later.

Most of these eight principles have an element of subjectivity, making clear identification of breaches challenging (and therefore more challenging to enforce through a complaints mechanism).

Part 2 of the Code sets out victims' rights within the criminal justice system that extend to a degree of participation in the process (e.g. being informed, being heard). These are entitlements which apply only to those victims who reported their crime to Police and/or where their case is before the courts. Some of these rights relate to all victims of crime, while others are restricted to victims of specified serious offences (e.g. sexual assaults, serious assaults, an offence that has resulted in serious injury or death of a person, or an offence that has led to a victim having ongoing fears for their safety; or offences committed by a child or young person). These rights are summarised below and categorised by type of right. The specific group of victims each right relates to is in brackets at the end (either all victims, just victims of specified/serious offences, or victims of offending by a young person).

Table 1. Victims' rights within the criminal justice system

Type of right	Description
To be informed (or for serious offences for a representative of the victim to receive information)	To be given information about: <ul style="list-style-type: none"> • programmes, remedies and service (all) • the investigation and criminal proceedings (all) • a defendant's bail (specified offences) • significant events involving the offender after sentencing (specified offences)
To be heard / participate	To have views ascertained about applications: <ul style="list-style-type: none"> • by offender for bail (specified offences) • by offender for name suppression (all) • by offenders for parole (specified offences); and • on the impact of offending via victim impact statement (all)
Other participation rights	<ul style="list-style-type: none"> • to request a restorative justice conference (all) • to speak in Māori or sign language in court (all) • to attend an FGC (offences committed by young person)
Other	To have property returned that is held by the state (all)

Several of these rights are more 'procedural' in nature, these are rights that typically provide more of an active participatory role in the decision-making process (Manikis, 2019). For example, the right to make a Victim Impact Statement and have views ascertained at certain points such as when an offender applies for bail. Compared to the earlier principles these tend to be more easily identified, and therefore breaches more easily detected, monitored and addressed through a complaints system.

2.4 Current status and problem of poor compliance

Despite significant progress over the last two decades towards the identification and legislation of victims' rights, there is growing recognition that the objectives of the reforms, conveyed in the various legislation and official policies appear, in the majority of cases, are not being realised. This conclusion has been observed both here, and in other jurisdictions (Groenhuijsen, 2014; Manikis, 2014; VLRC, 2016; Wedlock & Tapley, 2016). In Aotearoa New Zealand, despite over three decades since the first victim-focused legislation, after reviewing the results of the victims of crime survey conducted in August 2019 the Chief Victim Advisor recently concluded, that "victims still feel like the system is failing them". The majority of the 620 respondents reported that

the criminal justice system “doesn’t keep them safe” (83%), “doesn’t provide enough support or information” (79%), and “does not listen to their views, concerns or needs” (77%).¹¹

These negative findings are in line with those from an earlier 2016 Colmar Brunton Public Perceptions Survey. Those survey findings, based on a representative sample of over 2000 New Zealanders, indicated that:

- only a quarter (25%) agreed that criminal court processes treat victims with respect;
- only 12% agreed that bail decisions take appropriate account of public safety; and
- only 17% agreed reparation is usually collected and paid to victims of crime.

Overall, around 41% of respondents reported they did not have confidence in the criminal justice system, and this lack of confidence became more prominent for those who were victims and/or had direct experience of the system. Compared to the 41% of respondents overall that lacked confidence, this rose to:

- 50% for those who had been a victim and reported it to Police;
- 48% for those who knew someone who had been a victim; and
- 46% for those who had attended court as a witness or support person.

This apparent lack of confidence is further reflected in low rates of victims reporting crime. The latest New Zealand Crime and Victims Survey found only a quarter (25%) of crimes experienced in the last 12 months were reported to Police (Ministry of Justice, 2020).

Collectively these findings suggest victims’ rights legislation are not delivering on their intended aims, and the majority of those committing crime are not being fully held to account. Therefore, why the criminal justice system continues to fall short for victims remains an important concern.

Gap between “law on the books” and law in practice

An observation amongst some of those reviewing victims’ rights in other jurisdictions was the wide gap between law “on the books” and the law in practice (FRA, 2019; Holder & Kirchengast, 2020; VLRC, 2016). The European Union Agency for Fundamental Rights (FRA) conducted a comprehensive review of victims’ rights within seven European Union Member States (FRA, 2019).¹² They found many victims still felt marginalised. Interestingly, this was often more evident in countries with laws that accorded victims more extensive rights. This underscored that delivery of justice requires more than introducing focused legislation.

In an earlier review of international policy in relation to victims of crime, it was noted that “making law is easy: making it work can be extremely difficult” (Groenhuijsen, 2014, p.33). Whilst acknowledging there are a number of challenges to making law work, Groenhuijsen and others conclude that the fundamental problem is one of lack of compliance with victims’ rights as provided for in legislation, rather than the content of rights specified (Groenhuijsen, 2014). This conclusion is supported by others (Chief Victims Advisor, 2020, Ross, 2015; VLRC, 2016; Victims’ Commissioner for England and Wales, 2015; Waxman, 2019). For example, in her review of

¹¹ <https://chiefvictimsadvisor.justice.govt.nz/resources/survey-shows-criminal-justice-system-is-failing-victims/>. This majority (91%) of the 620 respondents were victims of crime, another 9% were victim advocates and people who work in the criminal justice system.

¹² Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom.

compliance to the Code of Practice for Victims, Clare Waxman (Victims' Commissioner for London) concluded that "it is absolutely clear from this review that, 13 years since the Code's creation, compliance is the exception and not the rule." (Waxman, 2019, p.4).

More specifically, poor compliance has been linked to the lack of monitoring of breaches and a lack of sanctions in place for occasions when victims' rights are not respected. As Beloof (2005) and others have suggested, the absence of procedures for enforcement and remedies for non-compliance renders victims' rights as "illusory" and unlikely to generate the outcomes that are legislatively intended for victims (Hall, 2009; VLRC, 2016).

The challenge for policy makers here in Aotearoa New Zealand and elsewhere is how to strengthen enforcement of victims' rights, make sure victims receive the services they are entitled to, and to hold justice agencies to account if they don't (HM Government, 2018). The aim of this review therefore is to consider the mechanisms and procedures used elsewhere and assess their potential to inform the development of improved mechanisms here for: the enforcement of victims' rights; the effective investigation of breaches; and overall monitoring of compliance. It also explores the potential value of an independent body, to have oversight of all such concerns.

3 Realising victims' rights

Assisting victims to have their rights met - to receive respectful and effective treatment, and better recognition of their entitlements - requires interventions on multiple levels. The Victorian Law Review Commission recently completed a comprehensive review that considered a number of proposals that could support the level of change necessary to achieve progress towards this end (VLRC, 2016). Proposals included delivery of sector-wide education and training; developing a more coherent legislative and policy framework; system-wide monitoring and review; and improved complaints handling and oversight. This report focuses on two of these strategies: having an independent body with a focus on agency compliance with existing legislation, and improved complaints monitoring and handling.

A victim-focused independent body can play a critical role in promoting and upholding rights of crime victims. A recent analyses of the role of Victims' Commissioners in Australia, positioned them as 'administrators' or 'regulators' of victims-right legislation, providing a means of addressing identified victims' rights issues in a way that supports the participatory needs of victims, while maintaining the independence and integrity of criminal justice processes that provide due process to the accused (Holder & Kirchengast, 2020; Kirchengast et al, 2019).

The primary vehicle for protecting victims' rights is through resolving complaints about breaches of entitlements, whilst a good system of monitoring enables identification of systematic issues requiring attention. The proper resolution of complaints not only holds agencies to account but also encourages improved practice, as each complaint is an opportunity to learn.

3.1 Victim-focused independent bodies

The need for an independent body and/or a dedicated victim-centred agency to oversee and support New Zealand crime victims to realise their rights, has been recognised for many years. It was a recommendation of the first Victims' Task Force in 1993 and then again 15 years later by Justice and Electoral Committee (2007) following the last inquiry into victim rights.¹³ For example, the first of six key recommendations called for by this committee was (Justice and Electoral Committee, 2007, p.5):

- ...the establishment of an agency to oversee all matters related to victims' issues, including coordinating and monitoring agencies that victims may be required to deal with.

Later in their report it was further specified that (Justice and Electoral Committee, 2007, p.21):

- ...a service be resourced to act as a first point of contact for victims' issues, receive complaints, mediate between victims and the agencies they must deal with, and as a policy advocate for the status and rights of victims in Aotearoa New Zealand.

Ministry of Justice Victim Information Service – These early recommendations focused on the value of a centralised specialist victims' agency (though not necessarily independent). Consequently, in 2008 a Victims Information Line, a Victims Centre within the Ministry of Justice and a Victims Information website were established.¹⁴ Each of these government victim services

¹³ <https://www.parliament.nz/resource/en-NZ/00PlibCIP101/5eb7fa381ef68d22d4df44240ed03abf0b4caed5>

¹⁴ Nancy Swarbrick, 'Victims of crime', Te Ara - the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/victims-of-crime/print> (accessed 5 December 2019)

remain in operation today. According to the Ministry of Justice 2018/19 annual report, the Victim Information Line is outsourced to Victim Support and received 31,540 calls in 2018/19. The Victims Centre, though a small unit consisting of just two Ministry of Justice advisors,¹⁵ acts, according to the website, as the government's central point of coordination for victim issues and leads stakeholder engagement to improve the design and delivery of services for victims. The centre is also responsible for publishing the main victim information website,¹⁶ which importantly outlines the complaints process for victims of crime. Victims can also submit complaints to the website, where concerns unrelated to the Ministry of Justice are forwarded to the relevant agency.

It is difficult to find information on the extent to which these services are effective in protecting and promoting victims' rights, but there are likely to be limitations of what two FTEs are able to achieve. One useful activity, but for which the Victims Centre or any other body does not have responsibility, is monitoring whether other justice sector agencies - New Zealand Police, the Ministry of Justice, Crown Law, Crown Solicitors, and the Department of Corrections - are complying with the Victims' Rights Act. Similarly, nobody has responsibility for acting on identified failures in compliance.

Lack of independence – Another key omission from the above arrangements is the lack of independence. The case for an independent public body for victims was outlined by the New Zealand Law Commission in their 2015 following an extensive review on how to improve the criminal justice response for victims of sexual violence. While their report focused specifically on the needs of victims of sexual offences, their arguments for why an independent public body was needed were equally applicable to victims of crime in general. These included that an independent public body:

- would be better able to promote and manage cross-agency coordination and collaboration, thereby reducing the silos across the sector;
- being a publicly funded body, it would have sufficient resources to fulfil the role and mandate; and
- being an independent body, it would be better positioned to access both community and government service providers (including Police and the courts) and, for instance, traverse the current divide whereby Ministry of Justice Court Victim Advisors operate primarily within the domain of the courts.

The Law Commission also noted if such a body was established by statute, it would have the necessary powers to fulfil its functions and would not be affected by political changes. Also, that such a body would be well placed to sustain continued oversight of the criminal justice system, independent of any restructuring or rationalising that may occur with future changes of government, or departmental reorganisation.

Other key advantages of an independent statutory position are: having the authority to speak publicly without ministerial oversight on topics relevant to crime victims and their treatment by criminal justice agencies (Holder & Kirchengast, 2020); being able to provide collaborative leadership; not being controlled or seen to be captured by one agency or government ministry (Backbone Collective, 2018). Finally, in relation to complaints-handling specifically, as highlighted by the Victims' Commissioner of England and Wales, it is widely accepted that victims find it

¹⁵ Personal communication, Ministry of Justice, 23 December 2019.

¹⁶ The Centre also publishes a Sexual Violence Victims Information website.

easier to make complaints via an independent body, rather than directly to the agency they have an issue with.

Statutorily independent bodies –The importance of such a body being statutorily independent has been highlighted by Holder and Kirchengast (2020) in their review of Victims’ Commissioners, and was also the Law Commission’s recommended model for the independent public body (i.e. a statutorily independent Commission, established through law (Law Commission, 2015). To this end, they recommended:

- the independent public body be modelled under the Crown Entities Act 2004 – enabling it to operate at “arm’s length” from the government and thereby promote public confidence; and
- that the principal enabling statute should set out:
 - core functions, constitution and appointment as well as the powers and duties of the role;
 - review and reporting requirements; and
 - include delegated legislation in the form of regulations and codes required in order to implement policies and reforms.

Chief Victims Advisor to government – In November 2015 the role of Chief Victims Advisor (CVA) to Government was created, which represented some progress towards an independent body. Dr Kim McGregor, the appointee to the role, was tasked to act as an independent ministerial advisor, albeit one appointed by, and accountable to, the Minister of Justice.¹⁷ The role is part time and is supported by two full-time officials in the Ministry of Justice. At present, the focus of the role is on identifying themes and areas for improvement for victims in the justice sector, and thereby to promote system improvements. The role does not involve provision of direct support or assistance to victims.

While the role was created with the primary intention of providing independent advice to government, it is not the statutorily independent position recommended by the Law Commission (2015). The lack of statutory status sets the CVA role apart from other similar Victims’ Commissioner type roles elsewhere (e.g. England and Wales, and Australia) and means there potentially is less “permanence” to the role. It also means that the CVA must complete her work without the benefit of statutory powers of the type that exist elsewhere (e.g. powers to compel agencies to assist with inquiries into systemic issues).

Bi-cultural independent body

An independent body for victims in Aotearoa New Zealand will need to attend closely to how it can advocate effectively for Māori. It is well recognised that Māori are disproportionately represented amongst victims of crime. The latest New Zealand Crime and Victims Survey once again confirmed that Māori were more likely to be victims of crime compared to the average New Zealander (38% vs 30% respectively).

These figures reaffirm concerns raised at the Hui Māori held in April 2019, held in response to the Governments Hāpaitia te Oranga Tāngata, Safe and Effective Justice work programme. The Ināia

¹⁷ In December 2019, Dr Kim McGregor was reappointed to this role for a further two years, with her hours per week increased to 0.7FTE

Tonu Nei report that came out of the Hui, highlighted the failings of the current criminal justice system for all Māori including those seen as victims of crime. One of the group's core recommendations was to work in partnership with Māori to reform the justice system to be more responsive to Māori, and also to be in line with rights afforded under Te Tiriti o Waitangi (Hui Māori, 2019).¹⁸ This partnership approach would also assist with the government's more general responsibilities under Te Tiriti o Waitangi.

These obligations and imperatives were recognised by the Law Commission (2015) in considering reforms to address the needs of victims of sexual violence. As such, they recommended that the development of any independent body would need to follow proper consultation with Māori. However, two potential options were put forward for consideration by the Law Commission (2015):

- a model similar to that currently in operation by TOAH-NNEST (the national network of those providing specialist services for sexual violence prevention and intervention);¹⁹ the governance structure of this model reflects the Te Tiriti o Waitangi-based partnership of the two whare or houses, Ngā Kaitiaki Mauri and Tauwiwi Caucus. Each govern their own specific affairs in keeping with their own worldviews and priorities. The overall governance body of the national network is the Paetakawaenga, which has representatives from each whare (see Appendix 1 for more details on governance, structure and Te Tiriti Relationship Agreement integral to the successful operation of the model);²⁰ or
- to appoint a commissioner whose role is focused specifically on meeting the needs of Māori victims of crime.

The latter option followed consultation with the Law Commission's Māori Liaison Committee. The advice of this Committee was that it would not be appropriate to have a single commissioner to fulfil all necessary functions. This was based on the view that one person cannot represent the full diversity of victims, including Māori, ethnic minorities, disabled victims, elderly victims, and children. With a single commissioner model, there is a risk of alienating certain people or groups of people. The Committee expressed the view that any new public body needs to reflect the faces of the community, and thus a "commission" or a number of commissioners was preferable.

A model that has more than one commissioner would, therefore, provide the opportunity to respond to the needs of Māori along with other specific victim groups.

In Aotearoa New Zealand there are a number of examples of Commissions operating with a structure that accommodates more than one Commissioner (e.g. the Human Rights Commission and the Health and Disabilities Commissioner who sits above but works alongside the Mental Health Commissioner, see below for more details). However, neither of these two currently include a commissioner focused specifically on meeting the needs of Māori (although previously the Human Rights Commission had an Indigenous Rights Commissioner). In contrast, the Children's Commissioner has announced his intention to appoint a Māori Assistant Children's Commissioner. Establishing an independent public body for victims of crime could be an opportunity to go one step further and model a Te Tiriti based equal partnership approach, similar to that of TOAH-NNEST model.

¹⁸ See also Cram, F., Pihama, L., & Karehana, M. (1999). Meeting the needs of Māori victims of crime. Wellington: Te Puni Kokiri and Ministry of Justice

¹⁹ TOAH-NNEST stands for Te Ohaakii a Hine – National Network Ending Sexual Violence Together

²⁰ <https://toah-nnest.org.nz/about-us/governance>

Other examples of Aotearoa New Zealand independent statutory bodies

In Aotearoa New Zealand a number of commissions and commissioners exist, each of which could inform the blueprint for how a Commission for Victims could operate, three are considered below: the Children's Commissioner, the Health and Disability Commission and the Human Rights Commission. The roles and powers of each of these commissioners are laid out in legislation, however, their specific focus and approaches to complaint-handling vary. Having a Commissioner with a high public profile can facilitate public awareness and uptake of support, information and assistance by the target group. The Children's Commissioner provides an example of how a well-known public figure in an independent position can be effective at advocating and raising awareness of issues that affect children and young people. While the Health and Disability Commissioner (HDC) model provides a good example of an independent dedicated complaints mechanism with a community outreach advocacy service, which has resulted in good public awareness and accessibility. The Human Rights Commission provides an example of a two-level approach to responding to complaints, with resolution through the courts only carried out after attempts to resolve issues informally have been exhausted. Finally, as mentioned above, the HDC and Human Rights Commission are models that incorporate more than one Commissioner to ensure specific groups have equal access to Commissioner services.

The Children's Commissioner – The current Children's Commissioner is Judge Andrew Becroft. The role was first established in 1989 under the Children, Young Persons and Their Families Act 1989 (now the Oranga Tamariki Act 1989, Children's and Young People's Well-being Act 1989), and became an independent crown entity following the enactment of the Children's Commissioner Act (2003). This Commissioner has a wide set of statutory roles and responsibilities determined by a number of Acts and international conventions and is very active in conducting and publishing research and reviews. There are three main functions under Children's Commissioner Act:

- monitoring, assessing and reporting services provided to children in care;
- advocating on issues that affect children and young people; and
- raising awareness and advancing children's rights.

Pertinent to this report, the Children's Commissioner has the mandate to investigate concerns by or about children on a case-by-case basis or to investigate and review the outcome of complaints made to Oranga Tamariki. They provide a good example of how a Commissioner can provide a continuum of information and support for individuals with concerns. They are able to support the individual with the concern, can help them make a formal complaint, and subsequently monitor progress of the investigation, thereby offering an independent single point of contact for individuals.

In addition to the Commissioner the office is well resourced to carry out its functions and employs 30 staff (24.4 FTE).²¹ A Young People's Reference Group (YPRG), comprising young people aged between 12 and 18, assists the Commissioner and other government agencies in strategic planning and wider consultation with children and youth.

In the 2018/19 Annual Report the Children's Commissioner announced a commitment to appoint an Assistant Māori Commissioner for Children in the upcoming year. In the Commissioner's view

²¹ <https://www.occ.org.nz/assets/Uploads/AnnualReport-FINAL-web.pdf>

this appointment is necessary to provide authentic Māori leadership that is able to: present a clear Māori voice; be able to advocate and support the needs of tamariki and rangatahi Māori; and support the work of the Children’s Commissioner to encourage Oranga Tamariki to discharge their duty, to advocate for and prioritise whānau, hapū and iwi (p.3, Office of the Children’s Commissioner, 2019).

The Health and Disability Commissioner (HDC) – The HDC is a Crown entity established under the Health and Disability Commissioner Act 1994. The statutory purpose of the HDC is to promote and protect the rights of health consumers and disability services consumers, and facilitate the fair, simple, speedy, and efficient resolution of complaints. They describe complaints resolution as their central function, but they also publish research and resources for consumers, and deliver education and training to health providers to improve knowledge of their responsibilities under the Code.²²

The office of the HDC has an executive leadership team of 10 which includes two Commissioners; one for Health and Disability and another for Mental Health and six Deputy/Associate Commissioners including dedicated roles for investigation and complaints resolution. The two other members of the team are the Director of Proceeding and Corporate Services Manager. The Commission employs a team of 88 staff (76 FTE). Also, operated independently from the HDC, is the national independent advocacy service with 36 advocates based in 23 community-based offices around Aotearoa New Zealand. There is also a Consumer Advisory Group (CAG) that currently includes 11 members representing consumers from aged care, youth, disability, Māori (three Iwi representatives), Pasifika, Asian and the health sector (including mental health).

The HDC receives around 2,400 complaints each year. There are a couple of features of the complaints process that set it apart from others. First, while consumers are encouraged to speak first with the service provider that has led to the concern, this is not a necessary step before the HDC will take on the complaint. However, after reviewing the complaint the HDC can refer the complaint to the independent advocacy service or to the provider for direct resolution between parties (or other more appropriate authority).²³

The provision of the localised independent advocacy service is the other feature that sets the HDC apart. The advocacy service responds to around 12,000 enquires annually, of which around 2,600 are described as complaints (these are additional to those received by the HDC).²⁴ The aim of the service is to provide early resolution between parties: on their website their service is described as “an alternative resolution” process.

For HDC complaints where it is determined a breach occurred, a range of actions can occur including requirements for a written apology, the health provider required to undertake specific training, to undergo further review by another authority or, in a small number of cases, formal disciplinary action. The HDC does not have any power to award financial compensation, although consumers may have entitlements to Accident Compensation Corporation (ACC) compensation through the latter agency’s standard processes.

²² Consumer rights are laid out in the Code of Health and Disability Services Consumers’ Rights

²³ In some instances, HDC will refer complaints to a regulatory authority, such as the Medical Council. HDC may also refer complaints to other agencies, such as the Office of the Ombudsman or the Office of the Privacy Commissioner, when those agencies are better placed to consider the concerns raised in the complaint.

²⁴ <https://www.hdc.org.nz/media/5392/hdc-2019-annual-report.pdf>

As a dedicated body for complaints, the HDC is able to monitor the volume and nature of complaints which are published in the annual report. This offers insights into any concerning trends that may need addressing at a systemic level.

The Human Rights Commission (HRC) – The HRC was set up in 1977 under the Human Rights Act 1993. The Act's intention is to help ensure that all people in Aotearoa New Zealand are treated fairly and equally. It provides a good example of a model operating with more than one commissioner, but also one where the majority of complaints can be efficiently processed by offering an informal dispute resolution service.

There are four Commissioners and a Director of Proceeding who sit within the HRC. The current Commissioners include:

- Chief Commissioner;
- Disability Rights Commissioner;
- Race Relations Commissioner; and
- Equal Employment Opportunities Commissioner.

There is also a Director of Human Rights Proceedings that heads up an independent office within the Commission, the Office of Human Rights Proceedings, Te Tari Whakatau Take Tika Tangata. The Director independently provides legal representation under the Human Rights Act 1993 and brings proceedings under the Privacy Act 1993.

The statutory functions of the HRC are set out in section 5 of the Human Rights Act 1993, with the primary functions summarised on their website as being to:²⁵

- advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society;
- encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society;
- to promote racial equality and cultural diversity;
- to promote equal employment opportunities (including pay equity); and
- to promote and protect the full and equal enjoyment of human rights by persons with disabilities.

The Office of Human Rights Proceedings is part of the HRC. The Director of Human Rights Proceedings independently provides legal representation under the Human Rights Act 1993 and brings proceedings under the Privacy Act 1993.

The Human Rights Act makes it unlawful to discriminate on a wide range of grounds and specific personal characteristics and mandates the HRC to resolve complaints (under section 76 and 77).²⁶ The HRC is the sole independent body for receiving complaints in relation to unlawful

²⁵ <https://www.hrc.co.nz/about/>

²⁶ In addition, there are other types of unlawful discrimination such as sexual harassment, racial harassment, victimisation, and if an employer treats an employee adversely because they are affected by family violence or because their employer thinks they might be (4 The Domestic Violence Victims' Protection Act 2018 amended the Human Rights Act with the insertion of section 62A.)

discrimination and racial and sexual harassment issues. This means they are well placed to monitor emerging trends and issues. In their 2018/19 annual report they cited 36 case of systemic outcomes achieved as a result of this process (e.g. policies reviewed and/or amended, procedures changes).²⁷

There are two options for resolving complaints:

- **Dispute resolution service (informally)** – In the first instance, complaints are dealt with informally through the HRC's free and confidential dispute resolution service.
- **Human Rights Review Tribunal (legal action)** – In the few cases where resolution has not been possible, there is the option of legal action, with complaints being referred to be heard before the Human Rights Review Tribunal. In these later cases, it is possible to apply for free legal representation through the Director of Proceedings.

In 2018/19 the HRC received 5,666 new enquiries or complaints, of which 4,387 were requests to intervene in relation to a human rights issue (Human Rights Commission, 2019). The focus is on mediation between parties. Overall, just 2% or 120 of all enquiries or complaints were not able to be resolved informally. There were 115 cases referred to be heard through the Human Rights Review Tribunal.

The HRC (including the Office of Human Rights Proceedings) are supported by around 60 staff in Auckland, Wellington and Christchurch. In addition to the Commissioners, there is a senior leadership team of ten responsible for operations. This includes implementation of Commission policies and all aspects of service delivery.

One of the HRC's functions under the Human Rights Act is to promote - through research, education and discussion - a better understanding of the human rights dimensions of the Treaty of Waitangi and their relationship with domestic and international human rights law. It is not entirely clear from the website and/or annual report, which Commissioner currently has responsibility for this area of work. It appears there had previously been a part-time Commissioner of Indigenous Rights (Karen Johansen appointed in 2008), however, the current status of this role is unclear. In the 2018/19 annual report, it appears the Chief Commissioner led race relations including 'human rights of indigenous peoples', pending the appointment of a new Race Relations Commission in June 2019. In the 2018/19 annual report there is also mention of a brief mention of an 'indigenous rights team' in the annual report, but with no further details.

Potential roles for a Victims' Commissioner

The review of independent bodies in other jurisdictions reveals considerable variability in roles or functions, the scope of relevant legislation, and the particular focus of individual offices. While promoting and upholding victims' rights is common to all, the extent of involvement in complaint-handling varies. In broad terms, the roles of independent bodies can include an eclectic mix of the following (Table 2 at the beginning of section 4 gives a breakdown of which roles are carried out by Victims' Commissioners across various jurisdictions):

- **promoting interests of victims** – public awareness, advocacy on behalf of victims and victim-centred advice to policy makers

²⁷ https://www.hrc.co.nz/files/6315/7655/2929/HRC_Annual_Report_2019_ONLINE.pdf

- **support services** – reviewing quality of services, coordinating provision of service delivery and (sometimes) involvement in delivery of support services to achieve therapeutic goals for victims, including financial assistance
- **promoting best practice** – developing and informing best-practice resources, policy and law reform relevant to victims of crime
- **education and training** – developing, coordinating and/or overseeing training and certification for those working with victims
- **legal support** – legal advocacy, advice or representation – in relation to victims' rights
- **research** – conducting primary research and (in some cases) managing a clearing house for the dissemination of research related to victims of crime rights
- **complaints resolution** – operating or overseeing a complaints resolution process for victims who feel that their rights have been breached.
- **monitoring compliance** – oversight of system-wide collection of data and the monitoring and reporting on agency compliance with victims' rights legislation and victim-focused policies and guidelines
- **legislation review** – responsibility for review of operation of victims' rights legislation.

Ensuring opportunity for a victim voice is a critical feature for a victim-focused independent body, to ensure effective promotion of victim interests, and the mandate to advocate on their behalf. Giving voice can however also occur via research with victims and/or victims' advisory groups.

Advisory groups specifically for crime victims, in various forms and compositions are common in other jurisdictions (although currently not Aotearoa New Zealand). In some cases, groups are established through victim-focused legislation (e.g. Victoria, South Australia, ACT), in other cases they are established by victim commissioners (e.g. London) or are a ministerial initiative (England and Wales). Membership of groups can vary in regard to the proportions of victims of crime themselves, in addition to representatives from criminal justice agencies, service providers, and academia.

Roles and powers in relation to complaint handling – A Commissioner's role in relation to complaints can vary from no involvement, providing a single point of contact for information and referral of complaints, through to a statutory mandate to investigate and/or review outcomes of complaints processes conducted by other agencies (again see section 4 for specific examples). While the next section considers complaint handling in more detail, the extent of possible involvement of a Victims Commissioner can include:

- **gateway role** – providing a single point of contact to receive complaints, provide information and then refer formal complaints to appropriate authority;
- **support role** – providing assistance to resolve concerns or complaints, for example mediating and/or liaison with agencies to assist victims in resolving disputes;
- **investigatory role** - statutory mandate to investigate and resolve:
 - concerns (e.g. victims who want to voice a concern, or request clarification or further information, but do not want to make a formal complaint);
 - formal complaints;

- review investigate outcomes of formal complaints;
- conduct enquiries into victim systemic issues.

3.2 Enforcement, monitoring compliance and complaints

In the context of victims of crime Wemmer (2012) refers to rights as “entitlements”, something that “a victim may do”. However, she notes that, in addition to having the ability to act, rights obligate actors within the system to respect those rights, and as such they need to be enforceable. As noted earlier, the absence of procedures for enforcement, and remedies for non-compliance, renders victims’ rights as “illusory” (Beloof, 2005).

Overseas reviews on victims’ rights have identified essentially three options to improve compliance (Ross, 2015; VLRC, 2016):

- **legal action** - establishing a right for victims to take legal action against a criminal justice agency for non-compliance
- **robust complaints process** - strengthening and enhancing the processes for victims to make a complaint against a criminal justice agency for non-compliance
- **monitoring compliance** - improving system-wide monitoring and review of the operation of victims’ rights legislation.

The first option, making victim rights legally enforceable, is perhaps the most extensively debated. A legal right is one that, when violated, the state has an obligation to provide a remedy for, and the means to restore that right (O’Connell, 2011). This legal recourse relates specifically to a breach of a victims’ right and is quite different from victims being given the legal status as “party” to criminal proceedings against an accused, which is a further contentious debate (see Kirchengast et al., 2019; Wemmers, 2012; VLRC, 2016 for discussion on victim participation through being a party to proceedings).²⁸

The only common law jurisdiction where victims’ rights are legally enforceable is the United States, and there it is limited to federal criminal proceedings. In Aotearoa New Zealand,²⁹ Canada, United Kingdom and many of the Australian states and territories, victims’ rights legislation contain sections that stipulate that a breach of a victims’ right or principle does not establish a legal right or provide grounds for a cause of action. These jurisdictions have opted for victims’ rights legislation with provisions intended to “encourage rather than bind.” (Ross, 2015).

Arguments in favour of legal enforcement highlight the reality that threat of legal action is a powerful motivator for criminal justice agencies not to violate victims’ rights in the first place, thereby creating a culture of compliance (Waxman, 2019; Wemmers, 2012). However, others have cautioned that legal escalation may not necessarily bring about desired results (Groenhuijsen, 2014; Human Rights Watch, 2007; Manikis, 2014) with costs of legal representation creating an accessibility barrier, and limitations on the type of breaches that can be remedied through a court (for further details see review of United States in section 4.6).

²⁸ In Common Law countries like New Zealand, a crime is considered an offence against the state, (as opposed to a crime against the victim), and as such is not considered a party to proceeding. In contrast in Civil law systems more common in Europe, a victim can participate as an auxiliary prosecutor in their case and has access to legal representation.

²⁹ See sections 10 and 50 in the Victims’ Rights Act (2002).

There continue to be mixed views on creating legally enforceable rights, with debates around such reforms becoming increasingly politicised (Ross, 2015). Momentum towards recognising victims' rights within human rights legislation is also occurring, which could see victims afforded protection through the courts (Chief Victims Advisor, 2020a; Hinchey, 2017; VLRC, 2016). It is not within the scope of this report to fully review all these debates, however, following a detailed review by the Victoria Law Review Commission in 2016 that weighed up the advantages and disadvantages, they concluded:

“The Commission is not persuaded that the Victims' Charter principles should be enforceable legal rights. Victims have expressed greater interest in robust and accessible complaint-handling processes, and in achieving some acknowledgment and an apology, than in taking legal action to compel criminal justice agencies to implement the principles. Legal action is expensive, emotionally taxing and not an efficient or effective way of achieving outcomes of this type.” (VLRC, 2016, p.60).

Complaints mechanisms

By providing victims with a complaints procedure the government recognises that victims' rights should be respected. This is the means, most common law countries have adopted to achieve compliance, and typically outline requirements of their complaints process in Victims' Rights legislation.

As described by Manikis (2019), a good complaints mechanism provides the opportunity for a timely and impartial process that recognises accountability and provides remedies in cases where rights are breached. Complaints also provide an opportunity of improved service delivery. They are a valuable source of feedback; they provide an audit trail and can be an early warning of failures in service delivery. When handled well, complaints provide an opportunity for bodies to improve their service and reputation (Parliamentary and Health Service Ombudsman, 2009).

Aotearoa New Zealand's complaints mechanism

The complaints process for victims of crime in Aotearoa New Zealand who believe their rights have been breached is laid out in section 49 of the Victims' Rights Act 2002 (the Act), with a more user-friendly step-by-step process described in the Victims Code.

The process is substantially similar to that operating in most common law jurisdictions (with the exception of any additional roles carried by a victims' independent body). The primary means of resolution is through an agency's internal complaints process, whereby the victim must first complain to the agency they have been dealing with and whom they perceive to have violated their rights. The individual agency is regarded as best placed to understand their business and to be able resolve the matter. Section 11 of the Act requires agencies to give victims information on remedies (i.e. how to make / resolve a complaint), while section 49(3) requires the person who received the complaint to deal with it “promptly and fairly”.

If victims are not satisfied with how their complaint has been investigated or resolved, they have the option to escalate the matter for review through to one of the following as most appropriate (dependent on nature of complaint and jurisdiction of each authority):

- Office of the Ombudsman
- Independent Police Conduct Authority
- Privacy Commissioner.

The Code helpfully explains that the complaints process for the courts and judges and the New Zealand Parole Board is different. Their role means they must remain independent and free to operate without interference from executive government, and have their own processes for dealing with complaints. Complaints about a judge's conduct are dealt with by the Judicial Conduct Commissioner, while complaints about any service or information provided by the New Zealand Parole Board are handled by the Manager of the New Zealand Parole Board.

There is no victim-focused independent body available to assist victims navigate this process, although a phone-based Victim Information Line can provide information on rights and advice on how to make a complaint.

Enforcement/remedies – Section 10 of the Victims' Rights Act (2002) makes it explicit that the key principles of treatment for victims set out in sections 7 to 9 are not legally enforceable. Further, Section 50 specifically disallows compensation or damages to be paid for any breach of the Act (other than those available through other legislation, such as the Privacy Act).

Limitations of Aotearoa New Zealand's approach

The Justice and Electoral Committee highlighted a number of challenges related to the Aotearoa New Zealand complaints system back in 2007 (Justice and Electoral Committee, 2007, p.36-37):

'In New Zealand, the system is fragmented between the agencies. Each individual agency is responsible for determining its own processes and systems—including complaints systems—and victims are often required to deal with all of these. Victims may receive no support in dealing with various organisational processes except through such support systems as they can access themselves. We consider that the lack of general oversight of victims' issues is a gap in New Zealand's current system.'

More recently, a small survey of Aotearoa New Zealand NGO and government agency representatives found that, of those interviewed, less than a third (7 of 28) felt victims were "likely to be aware of the complaints processes that existed", should they feel that their rights had been breached (Chief Victims Advisor, 2020b).

There have been no specific reviews of Aotearoa New Zealand's existing complaints mechanism. Its processes are similar to most other common law jurisdictions, and therefore it shares similar challenges (VLRC, 2016; Victims of Crime Commissioner of England and Wales, 2015; OFOVC, 2018). Overseas research and analysis (predominantly from England and Wales) has been drawn on below to highlight issues that are equally applicable to the Aotearoa New Zealand situation.

Complex and difficult to navigate – The main problem identified is that this set-up for complaints handling is complex and difficult for victims to navigate (OFOVC, 2018; VLRC, 2016; Victims' Commissioner of England and Wales, 2015; Waxman, 2019).

The table in Appendix 2 presents the range of agencies with responsibilities in relation to one of ten victims' rights afforded to victims under the Victims' Rights Act 2002 (as they progress through the criminal justice system). The table highlights the likely challenges for victims in Aotearoa New Zealand in navigating this system. For seven out of the ten rights, there is more than one agency listed, further there are even more staff from each agency likely to be involved in the current

operational processes to uphold the right. A victim must not only work out what right has been breached, but which agency is most appropriate for them to submit their complaint to.³⁰

Consistent with recent review work conducting here in Aotearoa New Zealand (Chief Victim Advisor, 2019ab), a review of the complaints system in England and Wales by the Victims' Commissioner found victims didn't know who to complain to, how to make a complaint, or how to secure help when they needed it (with many more not even aware of what their rights were). The problems this created was summed up in this quote from a victim participating in the England and Wales review:

"It's a maze. You either can't find the information or everyone tells you something different."
(Victims' Commissioner for England and Wales, 2015, p.23)

In that review, the Victims' Commissioner identified particular confusion and a general lack of awareness of how to escalate a concern (which is the same process as in Aotearoa New Zealand). The Commissioner found many victims were not aware of the Ombudsman, what their role was, and how a complaint could be referred to them.

This lack of awareness of victims of the process for escalating complaints appears to be consistent to the situation in Aotearoa New Zealand. Recent comments made to the CVA by both the Privacy Commissioner and Ombudsman suggest they get virtually no complaints that could be classified as from victims of crime complaints. While they do get justice complaints, they are more offender based. In contrast, apparently the police do escalate victim complaints to their Independent Police Complaints Authority.³¹

Manikis (2014) identified other aspects that contributed to the complexity of an approach (like Aotearoa New Zealand's) that in the first instance is reliant on agencies internal complaints processes:

- up to 10 criminal justice agencies can be involved with a single case, but it is up to the victim to work out which one has let them down;
- some cases may involve breaches by more than one agency. However, unlike a legal claim in which many agencies can be listed when it is not clear which particular one breached its duty, the complaint mechanism for victims of crime requires from the very beginning of the process the specific identification of the agency at fault;
- internal processes across agencies vary. For example, some agencies have multiple steps that must be followed within the agency before a complaint can be escalated. In England the Crown Prosecution Service has three steps, first the local office, then the Chief Crown Prosecutor of the Area, then the local MP.

Not independent – The internal complaints process remains for some time within the remit of the agency alleged to have made the breach and therefore does not provide outside scrutiny by an impartial observer. This lack of independence has also been noted as a potential barrier to making complaints (VLRC, 2016). In the review by the Victims' Commissioner of England and Wales (2015), in some cases a victim was required to complain to the actual official whom the victim

³⁰ See also Appendix C of Mossman (2012) for details of the full range of responsibilities and services provided to victims by ten Aotearoa New Zealand government agencies. These details further highlight the complexity and difficulty of navigating the current complaints process.

³¹ Personal communication with Chief Victim Advisor following meetings with the Privacy Commissioner and Ombudsman in November 2018.

perceived had wronged them in the first place, a requirement that arguably undermines any confidence in making a complaint.

Creates delays – The initial investigation by the relevant agency can be lengthy and is usually started after criminal proceedings have ended (so as to avoid interfering with court proceedings). As noted by Manikis (2014), a victim who has to submit a complaint, sometimes to various sub-departments within an agency, may be under the impression that this lengthy process lacks independence, as a result of which they are likely to decide to discontinue the complaint.

No victim-focused options for review – In cases where a victim is not satisfied with the handling of their complaint, the options for escalation in Aotearoa New Zealand are limited to non-specialised bodies (e.g. Office of the Ombudsman, Independent Police Conduct Authority, Privacy Commissioner). In jurisdictions where there is a victim specialist body available for this role (e.g. Federal Ombudsman for Victims of Crime in Canada, United States’ Victims’ Rights Ombudsman, and Victims’ Commissioners in Victoria and South Australia), not only are they well-placed to review victims’ complaints, but in this role they are then able to have a system-wide oversight of emerging victims’ issues that need addressing. This was one of the key reasons for Victoria expanding their Commission’s powers to take on this reviewer role (VLRC, 2016).

Enhancement of complaints mechanisms

Recognition of these potential limitations has spurred interest in how systems can be improved. The main options for increasing efficiency are:

- providing a victim-focused centralised body to support victims to navigate the process;
- to improve the effectiveness of the internal agencies complaints processes; and
- to have a victims-focused independent “watchdog” to monitor complaints and better hold agencies account.

Examples below, again draw on overseas research and reviews.

Support to navigate – Establishing an agency to provide guidance to victims was a recommendation of the Justice and Electoral Committee in 2007 who, at the time, advocated for a body similar to Victoria’s Victims Support Agency (VSA). This led to the establishment of the current Ministry of Justice’s Victims Centre. However, more recent changes in Victoria have seen the role of overseeing complaints has been diverted from the VSA to an independent body (Office of the Victims of Crime Commissioner), who is now responsible for review of complaints outcomes. Victims Commissioners in South Australia and ACT can provide information and assist with referrals. They have powers to enable them to assist victims to resolve complaints, through mediation and/or liaison on victims’ behalf. The South Australian Commissioner, if appropriate, can investigate formal complaints providing they are not already under investigation.

In the Victorian Law Review Commission’s recent review, they considered but decided against giving the Commissioner’s office a “gateway role”, a centralised, single point of access that would operate for all concerns (VLRC, 2016). They argued that such an approach would likely add another layer of administration and may not produce better outcomes for victims. Instead, they favoured expanding the Victims’ Commissioner’s role to provide a “review” function. However, the Victims’ Commissioner of England and Wales currently is advocating for a single point of contact for processing all initial victim complaints, believing this would streamline the process for victims, and also enable more effective monitoring (Victims’ Commissioner of England and Wales, 2019).

Improve processes for complaint handling – The review by the Victims’ Commissioner of England and Wales (2015) is one of the few sources of information identified where there is an attempt to identify aspects of effective complaints mechanisms. Positive features identified and/or recommended by the Commissioner included (see also Appendix 3 for Complaints Standards published by the Victims’ Commissioner for England and Wales):

- enabling dialogue with the victim to discuss concerns – this was found more likely to result in an early resolution, and as such is preferable to complaints being received in writing only. The details of who to complain to on the Ministry of Justice Victims Website suggests a mixture of 0800 numbers, online complaint forms and postal addresses;
- helping victims to distinguish between a “concern” and a more “formal complaint”;³² agencies that did this were generally able to provide a swifter resolution (see also the Victims of Crime Commissioner in ACT, and the independent advocate service provided through the HDC in Aotearoa New Zealand);
- ensure agency complaints processes are well publicised and accessible (in different format – leaflets, posters, on websites, information available in different languages including braille and availability of translators). Related to the point above, the availability of someone to explain the process was also critical;
- a process for monitoring and updating the victim on the progress of the investigation of the complaint made;
- agencies to build continuous improvement strategies into their complaints process, to ensure agencies can be guided to change their practices in response to complaints. The Commissioner highlighted a positive example of this, where two agencies had found that certain ways of responding to victims were effective in addressing victims’ concerns, and this reduced the rate of escalation amongst complaints. This knowledge was shared with other agencies and subsequently became part of the formal complaints handling process for the wider agency (Victims’ Commissioner, 2015, p.19);
- providing feedback to victims on any changes an agency has made. This responds to the primary motivation of many victims to make complaints, which is to improve the experiences for other victims;
- having a Multi-Agency Complaint Forum (MACF) was identified by agencies as helpful.³³ The MACF in England and Wales provides the opportunity for representatives from agencies to meet and discuss complaint handling processes, publish and share resources, and deliver training
- where agencies and service providers used real-life anonymised examples of complaints to inform staff training and development, staff were more aware of the impact of their actions on victims’ experiences;

³² The Commissioner for England and Wales found that some victims did not necessarily want to make a formal complaint, but wanted an opportunity to voice a concern, or request clarification or further information. Agencies that did not make this distinction, pressed victims into putting their concern in writing so a formal response could be made.

³³ The Government has established the Cross-Government Complaints Forum (CGCF) as a means through which Departments can bring together best practice and establish complaint handling standards – House of Commons Public Administration Committee Report - *More Complaints Please!* (Appendix 1 of Government Response) (2014) - <https://publications.parliament.uk/pa/cm201415/cmselect/cmpublicadm/618/61804.htm>

- involving victims in the creation of complaints processes improved agencies and service providers' understanding of victims' needs; and
- availability of guidelines for good complaint handling. The PHSO in England publishes guidelines on "good complaint handling" (see Appendix 4 for a summary),³⁴ as does also the Victorian Ombudsman.³⁵

Firmer legislative function – The VLRC (2016) considered how a firmer legislative foundation could assist in the complaints process. Whilst largely symbolic, the Commission felt it could underscore the significance of the victim within the criminal justice system. In Victoria, the Charter only provides that agencies need to inform victims about the processes available for making a complaint. The Commission recommends their Act be strengthened to empower the victim to complain and also require the agency to investigate and respond. In Aotearoa New Zealand agencies are compelled to respond promptly and fairly (Victims' Rights Act (2002) s49(3)), but unlike England and Wales, there are no timeframes placed around this.

Victims-focused watchdog – The final means of encouraging agencies to improve the way they interact with victims and respond to complaints is through an independent victim "watch-dog". Since 2014, agencies in Aotearoa New Zealand have been required to publish, in their respective annual reports, a summary of services for victims, and information on complaints made under the Victims' Rights Act (s50A). However, there no specific body or mechanism responsible for monitoring and/or reporting on these complaints or to review the overall system from a victim's perspective. All the independent Commissioners in Australia (Victoria, ACT, South Australia) have some degree of responsibility for monitoring compliance, as does the Canadian Federal Ombudsman for Victims (see below for more discussion of this issue).

Monitoring compliance

Being able to track compliance accurately is a first step in ensuring that victims' rights are honoured, as highlighted by Davis (2012), p.68, who cited the well-known mantra "what gets counted, is what gets done". When the number and nature of victims' rights complaints system-wide are monitored, it is possible to identify patterns and trends from the complaints received. Which as highlighted by the Victorian Law Review Commission enables reliable data to then be used to (VLRC, 2016):

- assess whether law reforms are being properly implemented;
- to conduct research;
- inform the development of education and training programs; and
- allocate funding.

In Aotearoa New Zealand there is no system-wide collection or monitoring of data, and no oversight. Consequently, current data collection methods will require considerable improvement to support adequate monitoring. A recent review of victims' rights in Aotearoa New Zealand (Chief Victims Advisor, 2020a) concluded that it is currently not possible to determine accurately the proportion of victims who have their rights breached or upheld, due to inadequacies of current data collection and reporting. The problem, highlighted by another of the Chief Victims Advisor's

³⁴ <https://www.ombudsman.org.uk/about-us/our-principles/principles-good-complaint-handling>

³⁵ <https://www.ombudsman.vic.gov.au/learn-from-us/practice-guides/a-good-practice-guide-to-handling-complaints/>

report s(2020b), is that agencies do not provide sufficient detail on the nature of the breach, i.e. which specific right or principle has been breached, according to which section of the Victims' Rights Act (2002).³⁶ This means it is not possible to collate the nature of complaints to get a full picture of compliance. For example, it is seldom clear whether the issue relates to lack of information, being treated disrespectfully, or not having one's views considered appropriately.

To address similar concerns in Victoria, the VLRC (2016) recommended the Victims' Commissioner take on responsibility for arrangements to obtain the necessary data to assist with enquiries into systemic victim issues. Also, that the Commissioner should be made responsible for reporting to Parliament, through the Attorney-General, on the implementation of the Victims' Charter Act. The report to Parliament should include information about the number of complaints made and processed about compliance with the Charter principles, and their outcomes.

³⁶ The main exception to this is New Zealand Police that do now provide a breakdown of complaints against the relevant section of the Act.

4 International examples

This section provides details of independent bodies for victims of crime, and complaints and monitoring mechanisms from six different jurisdictions. Where applicable distinguishing features are highlighted.

Details of each jurisdiction focus on the following attributes, although, as noted by Holder and Kirchengast (2020), language used in relevant victim-focused legislation can be “oblique”, making direct comparison and analysis challenging:

- enforcement of victims’ rights/complaints mechanism including:
 - role of any independent body;
 - remedies for non-compliance; and
 - monitoring of compliance.
- details of independent bodies, including:
 - year established;
 - statutory basis; and
 - key functions and powers.

Table 2 below presents the key features across these jurisdictions, based on available sources accessed 1 March 2020.

Table 2. Table presenting key characteristics of independent bodies across seven common law jurisdictions

Jurisdiction - title - year established	Statutory basis	Staff	Legally enforceable rights	Role in relation to complaints		Statutory responsibilities / functions							Other roles/features
				Can receive complaints	Authority to investigate / review complaints	Monitor compliance	Review operation of Act	Promote /advocate interests of victims	Promote best practice	Advice to govt	Conduct reviews/ research	Admin of financial assistance	
Aotearoa New Zealand - Chief Victims Advisor - 2015		CVA (0.7FTE); 2 FTE	x	x	x	x	x	✓	✓	✓	✓	x	
England & Wales - Victims' Commissioner - 2010	✓	VC; plus 3 FTE, and 4 P/T	x	x	x	Not currently	✓	✓	✓	✓	✓	x	No provisions to support individual victims
Canada - Federal Ombudsman for Victims of Crime - 2007	✓	OVC; plus 9 FTE	x	✓	Yes (review outcomes only)	✓	x	✓	✓	✓	✓	x	Can work independently with victims and collectively on behalf of victims; Required to facilitate access to services
United States – Victims' Rights Ombudsman (Federal) - 2005	✓	Unknown	✓	Yes (against employees)	Yes (against employees)	x	x	x	x	x	x	x	Role limited to investigating complaints against federal agencies
ACT - Victims of Crime Commissioner - 2011	✓	28 FTE	x	Yes (for referral)	No (but authority to resolve 'concerns')	✓	x	✓	✓	✓	x	✓	Wide range of functions including direct support to victims; located in within Human Rights Commission
Victoria - Victims of Crime Commissioner - 2015	✓	VOC; plus 3 FTE	In limited cases	Only for review	Yes (review outcomes only)	✓	✓	✓	To improve systems	✓	Reviews of systemic issues	x	Authority to inquire into systemic issues
South Australia - Commissioner for Victims' Rights - 2008	✓	CoVR; plus; 3 FTE,	x	✓	Yes (if not under investigation and outcomes)	✓	Broadly	Through policy reviews	✓	✓	✓	Discretion-ary payments	Ability to provide legal assistance; advises Attorney-General on use of government resources

4.1 England and Wales

Victim complaint mechanisms in England and Wales are substantially the same as those in Aotearoa New Zealand, with the primary mechanism being the internal complaints process of relevant criminal justice agencies. Key differences include an “MP filter” (see following page for explanation) in the complaints process prior to any escalation, and the regionalised responsibility for monitoring compliance with the Code of Practice for Victims of Crime. The main independent body for victims is the Victims’ Commissioner of England and Wales which, unlike Aotearoa New Zealand’s Chief Victims Advisor, is a statutory position.

Complaints mechanism

Victims’ rights in England and Wales, and the complaints process for breaches, are outlined in their Code of Practice for Victims of Crime (COP).³⁷ As in Aotearoa New Zealand it is explicitly specified that breaches of the COP do not create legal rights. However, a recent cross-government Victims Strategy (published 10 September 2018) outlines a commitment to strengthening the enforcement of the COP, which including further consideration of a Victims Law that, if introduced, would put key entitlements into primary law (HM Government, 2018).³⁸

Currently the primary means for responding to breaches of rights is the same as in Aotearoa New Zealand, whereby if a victim feels a criminal justice agency has breached their rights, the first step is for victims to make a formal complaint to this criminal justice agency (e.g. Police, Ministry of Justice). The complaint is dealt with through this agency’s internal complaints process. Unlike Aotearoa New Zealand, there are timeframes placed around the complaints process including that a victim should get acknowledgement or a full response from the relevant agency in 10 working days, and where this is an acknowledgement, it must also include the timeframe for when they can expect to receive a full response.

If a victim is unhappy with the outcome of this process, as in Aotearoa New Zealand, complaints can then be escalated. However, in England and Wales there is an extra step in the process, whereby a victim must file the complaint with their local Member of Parliament (MP), who is required to review and refer on the Parliamentary and Health Service Ombudsman (PHSO). In her review, Manikis (2014) argued this extra “MP filter” step is inefficient, creating delays and accessibility issues.

Remedies – In terms of final remedies, if the PHSO upholds the complaint, they will consider what the impact has been on the victim and can make recommendations to the agency or organisation on what should be done. Recommendations can include that the organisation acknowledge the mistake, make an apology, compensate the victim monetarily, and/or take actions to prevent the error happening again.

³⁷ The Victims’ Code came into effect in 2006 as part of the Domestic Violence, Crime and Victims Act 2004. It built on the support for victims within the Victims’ Charter which was introduced in 1990 and which set out for the first time the levels of service victims of crime should expect. The Code was updated in 2013 and again in 2015

³⁸ A call for a new Victims’ Law was first made by Victim Support in 2015, shortly after the Victims’ Commissioner’s review of complaints and resolution for victims of crime, highlighting the need for victims’ rights reform. In the run up to the 2015 General Election, the Conservative, Labour and Liberal Democrat manifestos all promised legislation to improve victims’ rights, with support also mentioned in the Queen’s 2015 speech. Despite various governmental commitments, and on-going calls, its status appears to remain as ‘under consideration’.

As outlined in section 3.2 above, reviews suggest this complaints mechanism is confusing for victims to navigate and does not appear to be effective at holding agencies account for compliance with the COP (Manikis, 2014; Victims' Commissioner for England and Wales, 2015; Waxman, 2019).

Cross-Government Complaints Forum – This group is made up of criminal justice agencies and provides the opportunity to meet up, and discuss complaint handling processes, publish and share resources, and deliver best practice training.³⁹ A review found criminal justice agencies and service providers who were members of this Cross-Government Complaints Forum found their membership to be helpful in improving their practice and response to victims, and in particular improved the way in which they handled complaints (Victims' Commissioner of England and Wales, 2015).

Monitoring compliance – Another key difference to Aotearoa New Zealand are the provisions for monitoring compliance with the COP. In the last decade there has been a move to increase accountability of police authorities to the communities they serve, seeing the introduction of 42 regional Police and Crime Commissioners (PCCs). Their responsibilities include the local commissioning of victims' services, and in April 2019, were given greater responsibility around the monitoring of compliance with victims' entitlements in the COP through local Criminal Justice Partnerships. However, like Aotearoa New Zealand, there are no penalties for non-compliance.

However, like Aotearoa New Zealand there appears to be no national collation and assessment of levels of compliance. Whilst the Victims' Commissioner has statutory responsibility to "keep under review the operation of the code of practice" (s49, Domestic Violence, Crime and Victims Act 2004), there are currently no means for the national collation or analysis of relevant data, or reporting to Parliament. The Cross-Sector Victims Strategy makes a commitment to improving this situation. The Victims' Commissioner is reportedly keen to take on this role so that, like an inspection, it can be undertaken independently from government (Victims' Commissioner for England and Wales, 2019).

Independent bodies

The Victims' Commissioner – The Victims' Commissioner is the main independent body for victims in England and Wales. The latest Commissioner is Dame Vera Baird who was appointed in 2019, taking over from Baroness Newlove. Unlike Aotearoa New Zealand's Chief Advisor for Victims, the Commissioner role is a statutory position with roles and responsibilities outlined in legislation (the Domestic Violence, Crimes and Victims Act 2004 (the DVC&V Act). Whilst appointed by Ministers, the role is independent of government and the Commissioner is free to advise, challenge and offer her own views.

Section 49 of the DVC&V Act, sets out in broad wording the role of the Commissioner. This includes:

- promoting the interests of victims and witnesses of crime;
- taking appropriate steps to encourage good practice in their treatment; and

³⁹ The Government established the Cross-Government Complaints Forum (CGCF) as a means through which Departments can bring together best practice and establish complaint handling standards – House of Commons Public Administration Committee Report - *More Complaints Please!* (Appendix 1 of Government Response) (2014) - <https://publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/618/61804.htm>

- regularly reviewing the operation of the COP for Victims.

There are no specific details on how the COP should be reviewed, but one apparent means has been through the Commissioner conducting insightful research and reviews on victims' services. Research based on the views of victims of crime, is an important means of understanding and promoting the victims' voice. This report has drawn heavily on these reviews.

The Commissioner is required to publish annual reports that provide information on the office, and the activities it carries out.

Limits of the role – The Commissioner cannot champion individual cases or challenge criminal justice agencies to make different decisions. Consequently, there is no role to assist any individual to make a complaint or to review outcomes of individual victims' complaints. However, according to the Commissioner's website, victims are welcome to provide feedback and to share their experiences. Visitors to the website are advised "We're here to listen if you're willing to tell us what went wrong. Your experience can help us campaign for better services for victims".

Staffing – According to the 2018/19 Victim Commissioner's Annual Report, in addition to the Commissioner, there are three full-time staff working in the Commissioner's office (the CEO and two managers) and four part-time staff. Work is broadly divided into two areas (1) policy and stakeholders; and (2) reviews and analysis.

In addition to these staff, a Victims' Commissioner Advisory Group was launched in October 2019 to provide independent advice to the Commissioner. This group meets four times a year and is made up of individuals from a range of backgrounds. Members are required to have experience of the functioning of the criminal justice system and the way in which it interacts with victims of crime, and/or an understanding of the issues affecting victims of crime. They include representatives from across the criminal justice system, academics, and those with in-depth knowledge of the needs of victims and witnesses. Currently there are 14 members, two of whom appear to be victims.⁴⁰

Future directions – There has been cross-government recognition that the Commissioner needs more statutory powers in order to hold government to account (HM Government, 2018). Proposed mechanisms for this include agencies having a statutory duty to cooperate with the Commissioner and respond to the Commissioner's recommendations in a timely way.

"We have now had a Victims' Commissioner for 10 years. It is time to review how future commissioners can best champion the victim cause. I believe my successors need more than just a voice – they need statutory clout to call others to account" (Victims' Commissioner for England and Wales, 2019, p.21)

Other relevant independent bodies/groups

Victims' Commissioner of London – As noted above, there has been a move in the last few years towards devolving responsibility for victims of crime to the regions. In response to this, in London, the Mayor's Office for Policing and Crime (MOPAC) identified the need for a local Victims' Commissioner, and in 2017 appointed Clare Waxman, as London's first such Commissioner.

⁴⁰ <https://victimscommissioner.org.uk/make-a-complaint/>

Clare has conducted research reviews including a useful Review of Compliance with the Victims' Code of Practice, consults with victims, and established a London's Victims' Reference Group that includes victims of crime.

Domestic Abuse Commissioner – In September 2019, Nicole Jacobs was appointed to the new role as designate Domestic Abuse Commissioner to champion the needs of victims of domestic abuse and drive an improvement in the response to these victims. Ms Jacobs was appointed as a designate, pending the passing of the Domestic Abuse Bill, which will then provide a statutory basis for the role. The agency is known as the Independent Office of Domestic Abuse Commissioner. It appears the role will have greater statutory powers than the Victims' Commissioner, with the outgoing Victims' Commissioner Baroness Newlove, calling for the Victims' Commissioner of England and Wales to be given similar statutory powers so that "victims of all crime are given an equally robust voice" (Victims' Commissioner for England and Wales, 2019, p.45)

The Independent Office of Domestic Abuse Commissioner will publish reports aimed at holding statutory agencies and the government to account. The Office will also be tasked with:⁴¹

- encouraging good practice in preventing domestic abuse;
- identifying both those at risk of abuse as well as those at risk of perpetrating it; and
- improving the protection and provision of support to those affected by domestic abuse.

Victims' Panel – The Ministry of Justice established a Victims' Panel in 2017. The Victims' Panel is an expert panel made up of victims of crime and experts in victim support.⁴² It exists to provide a forum for victims to have a voice in the development of government victim and witness policy. It is unclear what proportion of the Panel are victims as opposed to experts in victim support. Terms of reference for the Panel suggest it should be chaired by the current Victims' Minister, but that the Victims' Commissioner should be a member of the Panel.⁴³

⁴¹ <https://www.gov.uk/government/news/uks-first-domestic-abuse-commissioner-announced-as-government-pledges-to-tackle-crime>

⁴² This is different to the Victims' Advisory Panel that was established in s55 of the Domestic Violence, Crime and Victims Act 2004, but then abolished in 2013.

⁴³ <https://www.gov.uk/government/groups/victims-panel>

Australia

Being our closest commonwealth neighbour, Aotearoa New Zealand often looks to Australia when considering options for criminal justice reform. Australia is comprised of nine jurisdictions: the federal jurisdiction, and eight states and territories. The picture across Australia as a whole is quite complex, with the status of victims' rights and means of redress determined by the legislation of each of the various states and territories. All jurisdictions in Australia have a victims' charter or a set of principles for the treatment of victims, with most incorporating principles from the UN Declaration.⁴⁴ Five of these jurisdictions have appointment of Victims' Commissioners, along with a Victim Services Coordinator in a sixth. Despite a work programme starting in 2013 to develop a National Framework, only very limited national coordination is evident.⁴⁵

In terms of complaints mechanisms, all jurisdictions in Australia have adopted a similar approach to Aotearoa New Zealand, whereby victims wanting to make a complaint are encouraged to deal directly with the relevant agency in the first instance. However, there are also some key differences across states as to the legislative basis of the complaints processes and prescribed roles for Commissioners. No jurisdiction has legally enforceable rights although, quite uniquely, the South Australian Commissioner has the right to make submissions related to victims' rights in certain criminal proceedings.

Whilst there have been victims of crime "coordinator" roles since the mid-1990s, the first Victims of Crime Commissioner was not appointed until 2008, in South Australia. Of the current six states or territories with such a role, there is considerable variability in their statutory basis, degree of independence, powers and functions. One appears to have no statutory basis (Western Australia's Commissioner),⁴⁶ and two are employed as public servants and therefore are not independent (New South Wales Commissioner and Queensland Coordinator).⁴⁷ Despite their lack of independence both still play active roles, for example the New South Wales Commissioner having a statutory responsibility to receive and "use best endeavours" to resolve complaints. The remaining three statutory bodies are properly independent: the Commissioners of ACT, South Australia and Victoria. Each were initially established as rights-promoting entities, but over time other types of service roles have been added (Holder & Kirchengast, 2020). Arrangements in these three states and territories are reviewed in more detail below.

4.2 South Australia

South Australia was the first Australian state to appoint a Commissioner for Victims' Rights, and only one of two (along with NSW) with specific reference to "Victims' Rights" in the title. The Commissioner role replaced the previous Victims of Crime Coordinator. South Australia stands

⁴⁴ Western Australia and the Australian Capital Territory were the first to introduce victims' rights charters in 1994, followed by New South Wales in 1996, South Australia in 2001, Tasmania in 2001, Northern Territories in 2002, Victoria in 2006 and Queensland in 2009. At a federal level, the Commonwealth of Australia adopted an administrative victims' charter in 1996. Tasmania and the Northern Territory both have victims' charters, but neither is prescribed as statutory provisions.

⁴⁵ A National Framework for the Rights and Services for Victim of Crime (2013-2016) was developed and published by the Standing Council on Law and Justice with the aim of achieving more consistent victims' rights policy and practice, with a set of minimum standards applicable to all victims of crime across Australia. However, this document appears to have had little impact to date.

⁴⁶ See footnote 19 in Holder and Kirchengast, 2020.

⁴⁷ An independent statutory appointment is not subject to the direction of the Crown, Government Minister or head of department, and importantly has the authority to speak publicly without prior government approval.

apart from the other two independent Commissioners through being the only Commissioner able to provide direct legal assistance to victims and with the mandate to make submissions relevant to victims' rights in criminal proceedings (see sections 16(3)e and 32A(3)b of the Victims of Crime Act 2001).

Complaint mechanism

The underlying complaints mechanism for victims of crime in South Australia is similar to Aotearoa New Zealand, with initial reliance on agencies' internal complaints process. If victims are not satisfied after following those processes, they are able to escalate their concern to another entity (e.g. state Ombudsman). However, a significant difference to Aotearoa New Zealand is that material assistance is available from the Commissioner to resolve complaints (see below).

In the Victims of Crime Act 2001 (the VOC Act), there is limited reference to the complaints process, other than that, on request, public officials are obliged to give victims information about making a complaint about a breach of their rights (Section 8 (4)). As in Aotearoa New Zealand, navigating the complaint process appears to be quite complex. On the Commission's website (under "Feedback"), nine possible complaint options are outlined.⁴⁸

Role of the Commissioner – The VOC Act provides specific details on the powers and remedies available through the Commissioner. Essentially the Commissioner can receive and hear a victim's "grievance" about their treatment in the justice system (the legislation uses the word grievance as opposed to complaint). Following receipt of such a grievance, the Commissioner may contact the public official or public agency, who is then compelled to "consult" with the Commissioner in relation to the issue or dispute.

Enforcement and remedies – If the Commissioner concludes that a public official or agency has violated the declaration governing treatment of victims, or is otherwise unsatisfied with their response, they have the power to recommend that the offending official or agency make a written apology to the aggrieved victim (VOC Act, 16A.)

Provisions in the VOC Act makes it explicit that breaches of the principles outlined in the VOC Act (Division 2 Declaration of principles governing treatment of victims) are not enforceable in criminal or civil proceedings, and that breaches of the principles cannot give rise to damages (section 5 (3)).

However, Kirchengast et al. (2019) note that other provisions in the VOC Act unique to the South Australian Commissioner, enable the Commissioner to make a submission in a proceeding which arguably have "made victims' rights in South Australia both actionable and enforceable" (Kirchengast et al., 2019, p.7).⁴⁹ O'Connell (2011), the previous Commissioner, provides examples where as Commissioner he used his authority to resolve individual and group complaints (e.g. following a number of similar complaints received against incomplete or unsatisfactory preliminary investigations by Police, a submission at a Coronial Inquest led to recommendations by the Coroner for improved police investigation procedures and practice).

Monitoring compliance – One of the statutory functions of the Commissioner is to "monitor and review the effect of the law and of court practices and procedures on victims" (VOC Act, s16(3)c).

⁴⁸ <http://voc.sa.gov.au/feedback>

⁴⁹ Under section 16(3)e that the Commissioner is given authority to make a submission in a proceeding and under section 32A(3)b may act as a victim representative in exercising rights to information, compensation or a sentence submission.

In practice, and similar to other jurisdictions, this means annual reporting of details of complaints received by the Commissioner, and actions taken to resolve them. There does not appear to be any state-wide collation of data on complaints made directly to agencies by victims.

Independent bodies

The Commissioner for Victims' Rights – The Office of the Commissioner for Victims' Rights is the primary independent body and was established through section 16 of the VOC Act, and the independence of the role is explicitly detailed in section 16E.⁵⁰ The current Commissioner is Bronwyn Killmier, who recently took over from longstanding Commissioner Michael O'Connell.

The South Australian Commissioner is unique in Australia for being the only Commissioner with authority (and funds) to provide legal representation for victims in order to assert a particular right (see above). O'Connell (2011) provides multiple examples of a range of legal interventions used to assist victims, including through direct legal representation for individual victims in criminal and civil proceedings and coronial inquests as well as the initiation of legal matters that affect victims in general (see also Kirchengast et al., 2019).

Key functions of the Commissioner are broadly outlined in section 16 of VOC Act:

- to marshal available government resources so they can be applied for the benefit of victims in the most efficient and effective way (i.e. to provide advice the Attorney-General on how best to use available government resources to effectively and efficiently help victims);
- to assist victims in their dealings with prosecution authorities and other government agencies;
- to monitor and review the effect of the law and of court practices and procedures on victims;
- to carry out other functions related to the objects of this Act assigned by the Attorney-General;
- if another Act authorises or requires the Commissioner to make submissions in any proceedings—to make such submissions (either personally or through counsel); and
- to carry out any other functions assigned under other Acts.

The Commissioner is required to publish annual reports that provide information on operations of the Commissioner.⁵¹

Limits of the role – Compared to the Victims' Commissioner of England and Wales, there appear few limitations on the role of the South Australian Victims' Rights Commissioner. The Commissioner can provide information, advice and support to individual victims or crime and their families and friends.

Staffing – in addition to the Commissioner the office has two FTE positions (an Assistant Commissioner and a Corporate Project Support Officer) and two 0.5 FTE Project Support Officers.

⁵⁰ The position of Victims of Crime Coordinator was appointed in 2001, the statutory position of Commission for Victims' Rights was formally established through amendments to the VOC Act and became operation in 2008.

⁵¹ <http://voc.sa.gov.au/sites/default/files/CVR-2018-19-Annual-Report.pdf>

Other relevant independent bodies/groups

Consultative Committee – In the Commissioner’s most recent annual report the establishment of a committee on victims’ rights was announced, with input from “stakeholders and victims”, to provide improved consultation and advice for the Commissioner. The Committee was established in February 2019, and meetings are held every 6 weeks.⁵²

4.3 Victoria

Victoria was the Australian state to most recently establish a Victims of Crime Commissioner, and the only state to do so through an Act dedicated to the role (Victims of Crime Commissioner Act, 2015 (the VOCC Act). Provisions in the VOCC Act explicitly focus the Commissioner role on responding to systemic victim issues; there is no provision for direct support to individual victims (other than information and referrals, and more recently review of outcomes of complaints). The Victims of Crime Charter 2006 (the Charter) outlines the rights crime victims can expect, including their rights to complain.

The role of victims in the criminal justice system was the focus of a recent extensive review carried out the Victoria Law Review Commission (VLRC) published in 2016. The Commission made a number of recommendations, several of which have since been actioned through the passing of the Victims and Other Legislation Amendment Act 2018. Amendments included a further five principles added to the Charter, and for the powers and functions of the Commissioner to be expanded. These latter changes have made a significant change to the role of the Commissioner, who is now responsible for reviewing the outcomes of complaints and monitoring agencies compliance with Charter principles. These amendments were due to come into effect on 4 November 2019.

Complaints mechanism

Essentially the complaints process in Victoria is the same as Aotearoa New Zealand: rights are not legally enforceable, and victims’ complaints must be dealt with in the first instance by the concerned agency’s internal complaints process. A key difference, however, is the new statutory role of the Commissioner in reviewing outcomes of complaints. Under the new legislation, if victims are dissatisfied with the outcome of a formal complaint made to a relevant agency, they can request the Commissioner to review and investigate the complaint. However, if a victim’s complaint was in relation to the Commissioner and/or the handling of their complaint, victims would be directed to the Victorian Ombudsman. The recently amended VOCC Act now has a detailed section of 11 pages outlining this process (sections 25A to 25K of the VOCC Act).

The responsibilities of agencies in relation to complaints have also been strengthened. Previously through the Charter, agencies were only required to inform victims of options for making a complaint. New amendments now compel agencies to have a complaints system to receive and resolve complaints related to breaches of the Charter principles.

Enforcement/remedies – Section 22 of the Victims’ Charter 2006 makes it explicit that the Charter does not create legal rights for victims, although it does allow for possible disciplinary proceedings against a relevant official.

⁵² This is different to the Victims of Crime Advisory Committee provided for under section 15 of the which appears to be currently inactive (see 20160808 Operational Records Disposal Schedule No. 201509 Final V1).

Recent amendments to the Charter have also increased obligations on agencies in relation to remedies. The complaint system operated by agencies “must offer fair and reasonable remedies”. “Fair and reasonable” remedies are further detailed and may include an apology, an acknowledgment that an error occurred, or an explanation as to why an error occurred and the steps being taken by the agency to prevent the error reoccurring (Victims and Other Legislation Amendment Act 2018, s13).

Remedies now available through the Commissioners after reviewing a complaint are limited to non-binding recommendations. These recommendations may include that the agency that is the subject of the complaint take any of the following actions:

- a) an apology, explanation or facilitated meeting;
- b) additional training;
- c) a change of policy; and
- d) the provision of information.

Future directions – Another recommendation of the VLRC (2016) was that the Victorian Human Rights Charter should be amended to include recognition of crime victims (currently there are 20 human rights specified, but none refer specifically to victims of crime). If adopted, this could enable victims’ rights to be legally enforceable. This is because the Human Rights Charter, unlike the Victims’ Charter Act, creates obligations for courts as well as for criminal justice agencies.

Monitoring – In response to recommendations from the VLRC, the Commissioners responsibilities were expanded to include monitoring and reporting to Parliament on agencies’ compliance with their obligations under the Charter. This annual report should include information about the number of complaints made and processed about compliance with the Charter principles, and their outcomes. The VLRC note this new responsibility would support the Commissioner’s existing functions and powers (i.e. the power to inquire into “any systemic victim of crime matter”) (VLRC, 2016).

Relatedly, amendments also make the Commissioner responsible for a review of the Charter no later than November 2024.

Independent bodies

Victims of Crime Commissioner – The Commissioner is an independent statutory officer appointed by the Governor-in-Council and reports to and advises the Attorney-General about systemic victims of crime matters. The VOCC Act - established the position, appointment, functions and power of the Victims of Crime Commissioner (and formally establishes the Victims of Crime Consultative Committee). The current Commissioner is Ms Fiona McCormack, appointed in July 2019.

Under section 13 (1) of the VOCC Act the functions of the Commissioners are:

- advocating for the recognition, inclusion, participation and respect of victims of crime by government departments, bodies responsible for conducting public prosecutions and Victoria Police;
- carrying out inquiries on systemic victim of crime matters;
- reporting to the Attorney-General on any systemic victim of crime matter; and

- providing advice to the Attorney-General and government departments and agencies regarding improvements to the justice system to meet the needs of victims of crime.

The initial powers granted to the Commissioner (e.g. ability to access records and require assistance from other agencies) are focused on enabling the Commissioner to carry out the second and third aspects of the role listed above: inquiring into and reporting on systemic victims' issues. The 2018/19 annual report defines a systemic victim issue as:

Any issue/s identified to be a problem within a government department, victims' service agency or body that is likely to be ongoing and affect many victims of crime (Victims of Crime Commissioner, 2019, p9).⁵³

The role appears therefore to be focused on making justice system improvements to better meet the needs of victims of crime.

Limitations of the role – The Commissioner's website makes clear the limits of the role, including that the Commissioner cannot provide legal advice or direct support to victims of crime. However, the Commissioner can provide individual victims with information and refer them to a victims' support service, and with recent amendments to the VOCC Act, the Commissioner can review outcomes of individual complaints as detailed on page 34 above). Other exclusions are similar to other Commissioner roles (i.e. cannot act in a way to influence a criminal proceeding or change the outcome of a case).

Staff – According to the 2017/18 annual report the Commissioner has a team of three full-time staff members to assist in the performance of his/her functions and powers – two Senior Research and Policy Advisers and an Executive Assistant. All three staff members are employees of the Department of Justice and Regulation pursuant to the Public Administration Act 2004 (Vic), however they report directly to the Commissioner. It is unclear if staffing has been increased with the recently expanded role to review outcomes of complaints.

Other victim-focused bodies

In Victoria government-funded agencies play a key role in providing support services to victims. The Victims Support Agency (VSA), within the Department of Justice and Community Safety, has been a longstanding centre for victims, and traditionally was the central point of contact for victims. The VSA coordinates and funds state-wide support services for victims, conducts research, and provides resources. It also operates the Victims of Crime Helpline. The VSA used to receive complaints but no longer does, following new responsibility given to the Commissioner to review outcomes of complaints.

Victims of Crime Consultative Committee – The VOCC Act also establishes the Victims of Crime Consultative Committee (the Committee). The primary function of the Committee is to provide an opportunity for victims of crime along with criminal justice agencies and victim service agencies to meet and discuss ways to improve policies, practices and service delivery for victims of crime. The committee meets four times a year but may be called upon to meet more frequently if the need arises.

The Committee is not a part of the structure of the Office of the Victims of Crime Commissioner. However, the VOCC Act specifically requires the Commissioner to be a member of the

⁵³ https://www.parliament.vic.gov.au/file_uploads/Report_-_Annual_Report_Final_-_Victims_of_Crime_Commissioner_2018-19_LhC1p9kN.pdf

Committee, which is also made up of a Chairperson and representatives of the judiciary, the Office of Public Prosecutions, the Adult Parole Board, Victoria Police and victims' service agencies. Most importantly, there are seven victims' representatives on the Committee who represent the interests of victims of crime. These representatives are appointed as members of the Committee for two years.

4.4 Australian Capital Territory (ACT)

ACT was the first jurisdiction in Australia to see the value of an independent statutory officer with the appointment of a Victims of Crime Coordinator in 1994, later becoming the current Victims of Crime Commissioner (VOCC) role. The ACT VOCC is unique for being a formal member of the ACT Human Rights Commission, supporting a focus on "vulnerability and diversity". Another unique feature of VOCC is the direct involvement in support services for victims through also being the manager of the territories main support service for victims. In terms of the complaints process ACT is the only state or territory that statutorily distinguishes between victims' concerns compared with a formal complaint, with the VOCC able to assist with the former.

The VOCC office is described as a "one stop shop": co-locating frontline services, financial assistance, an individual complaints process and systemic advocacy in one office.⁵⁴

Complaints mechanism

In ACT section 11(e) of the Victims of Crime Act 1994 (the VC Act) authorises the VOCC to ensure concerns and formal complaints about non-compliance with the governing principles laid out in the VC Act are dealt with promptly and effectively. Section 12 details the process which differentiates between the VOCC's role in relation to a "concern" versus a "formal complaint".

The formal complaints process is similar to that used in Aotearoa New Zealand. However, a point of difference is that the VOCC office is available as a central point of contact to assist with concerns and refer on complaints.⁵⁵ In 2018-19 the office worked directly with over 60 clients who had concerns about breaches to the governing principles.

Victims can submit either a "concern" or "formal complaint" to the VOCC's office (in either case a victim is encouraged to first speak with the relevant agency). The respective role for the VOCC differs for each:

- **Concerns** – The VOCC is authorised to try and resolve a concern raised by a victim, and with the victim's permission, the agency involved must provide relevant information. The Commissioner and her team then work with individuals and their families to clarify concerns, gather information and resolve concerns quickly and informally.⁵⁶
- **Complaints** – If the matter becomes a formal complaint about non-compliance the VOCC must refer the complaint to the relevant complaints entity to be dealt with through their formal complaints process (e.g. the human rights commission, the ombudsman or any other entity authorised to investigate a complaint relating to the administration of justice).

⁵⁴ http://anzsocconference.com.au/wp-content/uploads/2020/01/C.Benda_Commissioners-for-Victims-of-Crime.pdf

⁵⁵ Victims can also take up their concerns or make formal complaints directly to the agency concerned

⁵⁶ Concerns and who they differ from formal complaints are not defined in the VC Act.

The appropriate agency will depend on the nature of the concern and jurisdiction of each body (e.g. privacy issue, or treatment by criminal justice official).

The VOCC office also engages in activities to promote awareness around the complaints process. According to the 2017/18 annual report the VOCC's team undertook a range of community engagement and training activities to ensure people were aware of the complaints process and of the individual and systemic outcomes that can be achieved through effective complaint handling. The team focused on ensuring the process was accessible to vulnerable community members, which was reflected in an increase in overall complaint numbers.

Monitoring – The VOCC has obligation under the VC Act to monitor and promote compliance with the VC Act's governing principles. Similar to other jurisdictions this involves publishing details of concerns raised with the office in an annual report.

Future directions – A consultation is currently underway in ACT to develop a Charter of Rights for Victims. In response, the VOCC submitted a report containing a range of recommendations, following the VOCC's own consultation with victims of crime and criminal justice representatives.⁵⁷ It was noted that current entitlements for victims lack enforceability making them “both symbolically and practically weak” (Hinchey, 2017, p.17). This resulted in the VOCC making several recommendations relating to the complaints process including that:

- formal complaints about victims' access to their rights under the new Charter should be dealt with by the Discrimination, Health Services, Disability & Community Services Commissioner in the Human Rights Commission (rather than the Ombudsman);
- a restorative approach to alternative dispute resolution should be available as the first level of redress for victims' rights complaints;
- victims' rights complaints should be integrated into section 48 of the Human Rights Commission Act 2005 for commission-initiated considerations and reporting to the Minister (s87);
- each right contained in the Charter should specify the criminal justice agency responsible; and
- criminal justice agencies and victims' support services should be obligated to provide transparent and accessible complaints processes, with appropriate remedies.

Of note, the VOCC supported amendments of the Human Rights Act 2004 to incorporate rights that were specific to victims of crime, similar to the recommendation of Victorian Law Review Commission following the in-depth review carried out in Victoria (VLRC, 2016).

Independent bodies

The Victim of Crime Commissioner (VOCC) – The VOCC is the primary independent body for victims of crime in ACT. The position was established in 2011 following amendments to the VC Act, replacing the previous Coordinator role. Heidi Yates is the current VOCC appointed by the ACT Attorney-General in March 2019. Ms Yates has a background as a human rights lawyer.

⁵⁷ https://www.victimsupport.act.gov.au/__data/assets/pdf_file/0006/1136976/Victims-Charter-Consultation-Report-11-December-2017.pdf

Following a restructure of the Human Rights Commission in 2016, the VOCC became one of four Commissioners operating out of the Human Rights Commission.⁵⁸ The VOCC is an independent statutory position, however, under the VC Act the Commissioner is also responsible for managing the government's victim services scheme (VSS) and financial assistance scheme (FAS), both of which are delivered through Victim Support ACT (also co-located within the Human Rights Commission).⁵⁹ This co-location and synthesis of roles effectively creates a "one-stop shop" for victims.

VOCC's managerial role of Victim Support ACT means the VOCC is one of the few Commissioners with direct involvement with victim support services including therapeutic interventions and financial assistance for victims. Under the Victims of Crime Regulation 2000, Part 3, section 22, the VOCC's functions are outlined in relation to the VSS, this includes (but not limited to): deciding eligibility of people for different levels of services; the provision of these services; and to develop and maintain a volunteer program to provide practical assistance and support to victims and to train and supervise volunteers for the program.

Managing the VSS and FAS is one of 13 functions set out in section 11 of the VC Act 1994. Others, summarised below, include:

- advocating for the interests of victims of crime;
- advising the Minister for Justice on matters relating to the interests of victims;
- ensuring access to appropriate services and information;
- promoting reforms to meet the interest of victims;
- development of educational and awareness programmes;
- encouraging cooperation between agencies;
- monitoring and promoting compliance with the principles of the Act; and
- ensuring victim concerns and formal complaints are dealt with promptly and effectively.

Under section 13 of the VC Act, the VOCC is entitled to be present at court hearings, but this entitlement does not extend to making a submission, as occurs in South Australia.

Finally, to add to the long list of functions, the Victims of Crime Commissioner is also appointed as the Domestic Violence Project Coordinator under the Domestic Violence Agencies Act 1986 and is responsible for facilitating cooperation between agencies providing health, crisis or welfare services to victims of family violence, and people who perpetrate such violence.

Having the VOCC co-located with the Human Rights Commission has supported a focus on improving access to services for vulnerable and diverse community members. For example, in the 2018/19 annual report the following achievements of the VOCC were highlighted:⁶⁰

⁵⁸ Other Commissioners include the Human Rights Commissioner (and president of the Commission), the Discrimination, Health Services, Disability and Community Services Commissioner; and the Public Advocate, Children and Young People Commissioner.

⁵⁹ Victim Support ACT appears to be a government agency within the Justice and Community Safety Directorate but also operates a volunteer programme similar to the New Zealand's Victim Support organisation that is an independent incorporated society.

⁶⁰ <https://hrc.act.gov.au/wp-content/uploads/2019/10/191138-HRC-Annual-Report-2018-19-web.pdf>

- successfully advocated for introduction of an intermediary programme to minimise trauma for vulnerable witnesses and ensure their best evidence is available to Police and Courts;⁶¹
- secured resources to employ two full-time, permanent Aboriginal and Torres Strait Islander victim liaison officers;
- on-going work to establish a new Aboriginal and Torres Strait Islander program within Victim Support ACT to provide a safe point of contact for community and to lead our culturally responsive work with indigenous clients;
- the trialling of a designated cultural liaison officer position with the aim of strengthening Victim Support ACT's ties with diverse communities and to ensure that the service model and service offerings meet the needs of clients from different cultural backgrounds; and
- stronger engagement with front-line workers in the disability sector and strengthening connections with LGBTIQ+ organisations

Limits of the role – There are few limits on the role of the ACT VOCC, although there appear to be no provisions for providing legal advice or assistance to victims and there is no mention in the VC Act to suggest the VOCC should carry out research and reviews.

Staffing – According to the Human Rights Commission annual report, the VOCC and Victim Support ACT team works collegially amongst a large team employed at the Human Rights Commission. A recent conference presentation suggested the VOCC had a large team of 26 members reflecting the broad range of functions assigned to the office.⁶²

Other victim-focused bodies

Victims' Advisory Board – Part 4A of the VC Act also establishes a Victims' Advisory Board to advise Ministers on victims of crime-related matters. There are around 13 members, the majority of which are criminal justice agency representatives, however, the VC Act stipulates 3 members should be "people who, in the Minister's opinion, represent the interests of victims services groups". It is unclear if these include individuals with direct experience of crime victimisation.

4.5 Canada

The federal/provincial system of government of Canada is quite different to the unitary political system of Aotearoa New Zealand, which like Australia creates a more complex picture for understanding how victims' rights are addressed. At the federal level there are rights applicable to all Canadian victims of crime, but additional rights are afforded in some cases via provincial-level legislation. In general, the high-level picture is not dissimilar to that of Aotearoa New Zealand, with somewhat similar complaints mechanisms, rights not legally enforceable, and victims' complaints dealt with in the first instance by agencies' internal complaints processes. One interesting difference in the model operating in Canada is the victim-specific Ombudsman, who has a role in dealing with federal complaints that are escalated (Office of the Federal Ombudsman of Victims of Crime (OFOVC))

⁶¹ This is similar to Communication Assistance scheme that operates in the courts of Aotearoa New Zealand.

⁶² http://anzsocconference.com.au/wp-content/uploads/2020/01/C.Benda_Commissioners-for-Victims-of-Crime.pdf

Complaints mechanism

Federal jurisdiction – The Canadian Victims’ Bill of Rights⁶³ came into effect on 23 April 2015. Unlike the earlier 1988 Statement of Basic Principles of Justice for Victims of Crime (the Bill), the Bill is binding on all of the individual provinces. The Bill outlines four principal rights applicable generally to victims of crime: information; protection; participation; and restitution. The Bill also specifies a complaint mechanism for breaches of these rights. However, common to most other common law systems, the Bill includes a clause that specifies there is no legal recourse for any breach of rights (s28).

Section 25 of the Bill lays out the complaints process that is applicable to all federal departments, agencies or bodies (the Federal Ombudsman cannot review complaints about violations of provincial victims’ rights legislation). As in Aotearoa New Zealand, when a victim believes that his or her rights have been breached, the victim must first file a complaint with the appropriate federal department or agency. The Bill includes a requirement for all federal departments and agencies that have responsibilities to victims to maintain internal complaint mechanisms accessible to victims. These must include the ability to receive and process complaints, make recommendations to correct any infringement, and notify victims about the results of the review.

If the victim is not satisfied with the decision, like in Aotearoa New Zealand it is possible to escalate the complaint. This can include via review mechanisms within individual agencies, with final recourse to request the Federal Victims’ Ombudsman to review their complaint.

Having an Ombudsman dedicated to the interests of victims appears to enable a more focused approach. In her annual reporting to Canada’s Ministry of Justice, the Ombudsman provides details of complaints handled by her office. In 2017/18, there were 377 files opened relating to crime victims, of which 101 were complaints or inquiries related to victims’ rights. In comparison the 2018/19 annual report of New Zealand’s Ombudsman has no specific mention of “victims” and no breakdown/details of complaints from them. The Canadian Victims’ Ombudsman also comments on what has been learnt from complaints received, she further noted the complaints process caused similar challenges to those observed in Aotearoa New Zealand and elsewhere:

“Victims often tell us that complaint-handling mechanisms are difficult to navigate. The systems are confusing, and the process is overwhelming. Victims say they do not have clarity on how these processes work or the expected outcomes. Each department has its own form, language and definition of complaint, with little consistency across departments. Victims must also tell their stories multiple times between departments.” (OFOVC, 2018, p.10)⁶⁴

The Bill outlines a separate process for complaints regarding a provincial or territorial agency, including police, Crown, or victim services, that are addressed in accordance with the applicable provincial or territorial legislation (see below).

Provincial jurisdiction – Many provinces have their own provincial victims’ legislation, with various forms of a Victims’ Bill of Rights being common across the provinces. This provincial legislation can afford additional rights to victims over and above those afforded by the federal legislation. For example, one of the more progressive and comprehensive forms is the Manitoban Victims’ Bill of Rights, introduced in 2011. This specifies additional rights to victims of serious

⁶³ <https://laws-lois.justice.gc.ca/eng/acts/C-23.7/index.html>

⁶⁴ <https://www.victimfirst.gc.ca/pdf/ar1718-ra1718.pdf>

crime including detailed responsibilities upon law enforcement authorities as well as on prosecution and court administration agencies (Wemmers, 2012). The legislation also enables victims in Manitoba, who feel that their rights have not been respected, to complain to the provincial director of Justice Victim Services.⁶⁵

Monitoring compliance – In their annual report, the OFOVC report on complaints made to them, and subsequent referrals made by them onwards to other federal departments. As in other jurisdictions there appears to be no attempt to collate a national picture of the complaints made, which might indicate the overall level of compliance. However, the annual report does highlight emerging issues and trends, based on a review of all complaints made directly to the OFOVC's office.

Individual federal departments provide brief but dedicated annual reports of complaints made to them under the Canadian Victims' Bill of Rights. For example the Policy Centre for Victim Issues at the Department of Justice Canada prepares a brief (4-page) annual report on complaints made to the Department.⁶⁶ These reports present the number of complaints (and enquiries) made, how complaints were addressed, and the average length of time to address complaints and enquiries.

Independent bodies

Office of the Federal Ombudsman for Victims of Crime (OFOVC) – The role of Federal Ombudsman for Victims of Crime is currently held by Heidi Illingworth. The Office was created in 2007 to ensure the federal government meets its responsibilities to victims of crime.

The Office can work both with the individual victims who contact them, but also collectively on behalf of victims, to effect positive change to Canada's federal laws, policies and procedures. Their mandate is exclusively to matters within the federal jurisdiction, and includes (OFOVC, 2018):

- promoting and facilitating access by victims to federal programmes and services for victims;
- address complaints from victims of crime
- promoting awareness of the needs and concerns of victims of crime and the applicable laws that benefit them; and
- identify and respond to emerging and systemic issues.

Individual victims can contact the Office to learn more about their rights under federal law and the services available to them, or to make a complaint about any federal agency or federal legislation dealing with victims of crime. In addition to its direct work with victims, the Office also works to ensure that policy makers and other criminal justice personnel are aware of victims' needs and concerns, and to identify important issues and trends that may negatively impact victims. Where appropriate, the Ombudsman may also make recommendations to the federal government. This can be done via a number of means including through letters to a Minister or parliamentary committees, as part of an annual report, or via special reports to, and meetings with responsible authorities.

⁶⁵ <https://www.gov.mb.ca/justice/crown/victims/pubs/complaintprocess.pdf>

⁶⁶ <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/cvbrcm-mtpccdv/19/cvbrcm-mtpccdv.pdf>

Limits of the role – The Ombudsman has a broad range of functions, although, unlike some Victim Commissioners, there appears to be no mandate to review the operation of relevant victim-focused legislation.

Staff – According to the 2017/18 annual report, the OVOVC employs nine full-time staff across three dedicated units: Case Management, Policy and Research, and Communications

Canadian Resource Centre for Victims of Crime (CRCVC)⁶⁷ – Since 1993, the Canadian Resource Centre for Victims of Crime (CRCVC) has provided support, research and education to victims of serious crime, and other stakeholders in Canada. On 1 January 2017, it became a charitable organization. The centre is located in Ottawa, Ontario and operates bilingual services. All services are free of charge and confidential.

Association Québécoise Plaidoyer-Victimes (AQPV)⁶⁸ – The AQPV is a non-profit organisation set-up in 1984 to promote and defend the rights and interests of victims of crime. The AQPV develops information tools, refers victims to the appropriate services, advocates for the collective rights and interests of victims, offers training for the people who work with victims, and coordinates the activities of various actors dedicated to defending victims' rights.

Other federal government victim-focused centres – Non-independent resources include the Policy Centre for Victims' Issues; this agency implements the Federal Victim Strategy which has the objective of giving victims of crime a more effective voice in the criminal justice system,⁶⁹ and the National Office for Victims, which offers information services and referrals to victims of federal offenders.⁷⁰

4.6 United States

The United States also operates a federal/state system of government, where victims' rights and their means of enforcement are largely governed by laws of the jurisdiction where the crime is investigated and prosecuted. This can be federal, state, tribal government, or military.⁷¹ The complexity and variability that accompanies this system of government renders it of limited relevance or applicability to Aotearoa New Zealand. However, of interest is the fact that the United States is the only common law jurisdiction considered in this report that operates a model that includes legally enforceable rights through the Crime Victims' Rights Act 2004 (CVR Act).

Manikis (2014) notes that the approach to victim rights in the United States emerged following victim movements of the 1970s that differed to those elsewhere. Arguably, a predominantly punitive criminal justice approach to victims' rights lent support for a greater role for the victim in criminal proceedings. In contrast, the victims' movements in the United Kingdom focused less on sentencing and outcomes of criminal proceedings, and more on offering support services to victims. This reflected an over-riding concern in the United Kingdom that excessive involvement

⁶⁷ <https://crcvc.ca/about-us/>

⁶⁸ <https://aqpv.ca/en/welcome-to-the-aqpv/#>

⁶⁹ <https://www.justice.gc.ca/eng/cj-jp/victims-victim/index.html>

⁷⁰ <https://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/ntnl-ffc-vctms-en.aspx>

⁷¹ <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victims'-rights>

of victims in the criminal justice process can have undue and adverse impact on the accused person's "due process" protections. This may have a bearing on the applicability of this approach to Aotearoa New Zealand with a similar victims' rights context to United Kingdom as opposed to that of the United States.

Complaints/enforcement mechanism

Federal jurisdiction – In federal criminal cases, victims' rights are established through the CVR Act.⁷² Of particular interest is that this CVR Act provides mechanisms for victims to legally enforce these rights, with victims and/or prosecutors given standing in court to assert victims' rights. However, the CVR Act does not confer victims "party" status more generally within the trial, and in practice victims must rely on prosecutors and judges to uphold their obligations to inform and afford them their rights.

The type of rights provided for under the CVR Act include the right to notice of proceedings, attendance and participation (e.g. the right to be "reasonably heard" in court proceedings relating to bail, a plea bargain, sentencing, or parole). If a victim perceives their CVR Act rights to have been breached, they have the right to seek an order from a district court requiring the right to be upheld. If unsuccessful, they may apply to a higher court (court of appeals) for a review. This can result in court cases being put on hold while victims test their rights in court and, if upheld, can even result in outcomes being revoked and cases re-heard.

The process can be illustrated through a practical example (see the case of *Kenna v United States District Court*, cited by the VLRC, 2015).⁷³ In this case the Court of Appeals upheld a fraud victim's complaint about not being permitted to speak at a sentencing hearing in a district court when he attempted to assert the CVR Act right to be heard. The Court of Appeals returned the matter to the district court but considered that the only way to give effect to the victim's right to speak would be to conduct a new sentencing hearing, in which the victim would be afforded his right to be heard, hence the outcome of the initial sentencing hearing was revoked, and a new hearing scheduled.

While legal redress is possible and desirable for certain types of breaches, according to Manikis (2014), she and others (Human Rights Watch, 2007) also note a number of limitations to this legal enforcement process:

- **variable interpretation** – courts are entitled to use discretion, which means the application of the CVR Act can be interpreted differently across courts. This means victims' experiences can vary widely in terms of their rights being upheld;
- **cost of legal representation creates an accessibility barrier** – the process is lengthy and complex and therefore heavily reliant on legal representation. With no government funding available, these costs can create a significant accessibility barrier for many victims; and

⁷² A federal crime or federal offense is an act that is made illegal by U.S. federal legislation. This is applicable to only certain offences such as tax evasion, kidnapping, bank robbery, computer crimes and certain drug-related offences. Prosecution happens at both the federal and the state levels and so a "federal crime" is one that is prosecuted under federal criminal law and not under state criminal law under which most of the crimes committed in the United States are prosecuted.

⁷³ *Kenna v United States District Court* 435 F.3d 1011 (9th Cir.2006), 1017-18. Cited in VLRC, (2015), Info paper 4

- **no adequate redress for some types of breaches** – Manikis (2014) also argues the efficacy of the approach is dependent on the type of breach, with only certain rights able to be remedied. Some rights, such as the right to be heard (see Kenna case above) can be addressed retrospectively, such as when courts are ordered to revoke sentencing outcome until the victim has been heard. However, other breaches cannot be remedied retrospectively, for example, the right to be notified about investigations *before* any formal charges are made, or timely notice of parole proceedings, release or escape of an accused offender. With damages or compensation for breaches explicitly unavailable under the CVR Act, there are no other means of redress available for certain rights, making them symbolic only.

Complaints against criminal justice officials – In addition to legally enforceable rights, the CVR Act provides a second enforcement mechanism, whereby the Office of the Victims' Rights Ombudsman (authorised through Department of Justice) is designated to receive and investigate complaints of rights violations relating to criminal justice officials. The complaints mechanism is not designed for the correction of an individual victim's rights violation but is instead used to request corrective or disciplinary action against specific Department of Justice official who is deemed to have failed to provide crime victims with their rights under the CVR Act.⁷⁴

State jurisdiction – The rights outlined in the CVR Act do not apply to the victims of state crimes.⁷⁵ The majority of criminal prosecutions are state prosecutions, for violations of state law, for an offence that is not included in the federal criminal code (not a national or federal issue). All 50 states have their own statutes to protect victims' rights, with around two-thirds of states adopting amendments to their state constitutions, affecting permanence and enforceability of victims' rights.⁷⁶ This includes who can be defined as a victim, the rights they are entitled to, and the availability and type of enforcement mechanisms. On each of these dimensions there is inter-state variation. Law Professor Douglas Beloof reviewed the status of crime victims' rights in 2005 across different states and argued that the rights of victims in state constitutions are "illusory" because victims are often without standing, with inadequate access to remedies, or to nondiscretionary review mechanisms. Whilst this was Beloof general impression, he noted that there may be exceptions in some individual states.⁷⁷

At least 12 out of the 50 states have put in place some form of compliance mechanism, including victims' rights ombudsmen or compliance officers.⁷⁸ For example, the Crime Victim Justice Unit (CVJU) in Minnesota has a victims' rights compliance officer (formally Ombudsman). The CVJU has the authority under Minnesota Statutes (sections 611A. 72-74) to investigate complaints from crime victims about mistreatment or rights violations by criminal justice officials.

⁷⁴ An official of the Department includes any attorney, investigator, law enforcement officer, or other personnel employed by any division or office whose regular course of duties includes direct interaction with crime victims (not including a contractor).

⁷⁵ A federal constitutional amendment to the Bill of Rights would be needed to deliver consistent victim rights nationally (Beloof, 2005).

⁷⁶ <https://victimlaw.org/victimlaw/pages/victimsRight.jsp>

⁷⁷ For more details on how state legislation varies see either Beloof (2005) 'The Third Wave of Crime Victims' Rights or the Office of Justice Programs VictimLaw database <https://victimlaw.org/victimlaw/>

⁷⁸ <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/State%20victim%20rights%20compliance%20programs.pdf>

In Alaska, the Office of Victims' Rights⁷⁹ in addition to investigating complaints, also provides free legal services to victims of crime. This is intended to assist victims obtain the rights they are guaranteed under the Alaska constitution and statutes with regard to their contacts with police, prosecutors, judges, and other criminal justice agencies in this state. It is also intended to advance and protect those victim rights in court "when necessary and authorized by law".

Independent bodies

In terms of bodies upholding victims' rights, at least at the federal level, this is primarily the role of the United States courts. While other key roles, such as distribution of victim compensation and financial assistance, are undertaken by government bodies (e.g. Office for Victims Centre, U.S. Department of Justice).⁸⁰ However, many other victim-related roles (e.g. advocacy, training, legal advice, promoting victims' rights) appear to be carried out by independent not-for-profit organisations (see below). The independent bodies with roles in upholding victim rights are described below.

- **Federal - Office of the Victims' Rights Ombudsman** – As noted above this office was established by the Department of Justice to receive and investigate complaints filed by victims of federal crimes against its employees.
- **State** – Also as noted above, a number of states have their own independent bodies/Ombudsman roles to investigate victims' rights violations and mistreatment. The first such office, created in 1985 was the Crime Victim Justice Unit of Minnesota (formerly the Office of Crime Victim Ombudsman).⁸¹ The centre has published a useful resource of victims' rights compliance and enforcement programmes in other states.⁸² The Department of Justice also publishes as U.S. Resource Map of state offices where victims' rights violations can be reported.⁸³

Other independent not-for-profit national victim centres with a role in promoting, or direct assistance in upholding, victim rights include:

- **National Crime Victim Law Institute (NCVLI)**⁸⁴ – This unit is a national non-profit legal advocacy organization based at the Lewis & Clark Law School in Portland, Oregon. The organization was founded in 1997 by Professor Doug Beloof. It seeks to enhance victims' rights through a combination of legal advocacy, training and education, and public policy work. NCVLI provide legal advice, representation and run victim legal clinics. They connect crime victims with free attorneys who fight to secure their rights (see NAVRA below). NCVLI also hosts an annual two-day Crime Victim Law conference, and maintains a Victim Law Library, which contains laws and educational resources related to victims' rights.

⁷⁹ <https://ovr.akleg.gov/>

⁸⁰ <https://www.ovc.gov/about/index.html> (the OVC also provides victims' rights information and resources)

⁸¹ <https://dps.mn.gov/divisions/ojp/help-for-crime-victims/Pages/crime-victim-rights-enforcement.aspx>

⁸² <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/State%20victim%20rights%20compliance%20programs.pdf>

⁸³ <https://www.ovc.gov/map.html>

⁸⁴ https://law.lclark.edu/centers/national_crime_victim_law_institute/

- **National Alliance of Victims' Rights Attorneys (NAVRA)⁸⁵** – This is a membership alliance of attorneys and advocates dedicated to the promotion of crime victims' rights. It is a project of the National Crime Victim Law Institute. Membership in NAVRA provides access to expert services for crime victims, including a searchable database of case summaries, amicus briefs, and sample pleadings, as well as a directory of victims' rights professionals
- **National Organization for Victim Assistance (NOVA)⁸⁶** – This organisation is a private non-profit organization dedicated to promoting rights and services for victims of crime. Founded in 1975, NOVA is the oldest national victims' rights organization. The organization is focused both on national advocacy and on providing direct services to victims.
- **National Centre for Victims of Crime⁸⁷** – This is a non-profit organization operating since 1985, based in Washington, D.C. The centre advocates for victims' rights, trains professionals who work with victims, and provides information on victims' issues.

⁸⁵ <https://navra.org/>

⁸⁶ <https://www.trynova.org/>

⁸⁷ <https://victimsofcrime.org/>

5 Conclusion

The last few decades have seen significant progress for victims' rights, with many jurisdictions introducing victims' rights legislation to guide the treatment of crime victims. However, despite this progress, victims here in Aotearoa New Zealand and elsewhere around the globe are still feeling frustrated with their treatment within the criminal justice system and continue to feel that 'the system is failing them'.

Further reforms utilising a range of approaches appear necessary to achieve the cultural change across the criminal justice system that will instil greater respect for victims and wider recognition of their rights and entitlements. While debates around the shape and characteristics of these future reforms continue, there is an emerging consensus that one area requiring particular attention is in improving agency compliance with the rights afforded victims in existing legislation. A key means of achieving this is a robust complaints process, with oversight and monitoring by an independent body dedicated to the interests of victims. This report focuses on two of these strategies: having an independent body with a focus on agency compliance with existing legislation, and improved complaints monitoring and handling.

It is difficult to draw conclusions around the comparative merits of one model over another, with the limited evidenced-based analysis available. However, it is possible to conclude with a summary of the positive features that emerged.

Independent bodies

From a review of six common law jurisdictions it appears the most common approach is the establishment of a victims of crime commissioner. Various models were identified which share the common interest of promoting and advocating for the interests of victims and upholding their rights, while other features and areas of focus vary. Some take on more of a legal focus with the ability to make submissions relevant to victims' rights in criminal proceedings (e.g. South Australia), some centre their efforts on the delivery of efficient and effective victim support services (e.g. ACT), while others are mandated to focus on identifying and remedying systemic victim issues (e.g. Victoria, England and Wales). Across jurisdictions, there appears increasing recognition of the importance of such bodies monitoring, and having oversight of, compliance with victims' rights.

Features identified as strengths included:

- **statutory independent position** – having the authority and capacity to communicate its work openly to the wider public, to government, and to other bodies; and through its independence, enabling victims to feel sufficiently confident and trusting to access support, and share their concerns;
- **ensuring necessary statutory powers to fulfil its functions** – including powers to investigate complaints, and compel agencies to provide information, and assist in resolving complaints; the Victims' Commissioner for England and Wales described this as having the "statutory clout to call others to account";⁸⁸

⁸⁸ See Victims' Commissioner for England and Wales, 2019, p.21)

- **responsibility for review of operation of victims’ rights legislation** – assigning responsibility and giving mandate to propose amendments. This responsibility supports an overall aim of upholding victims’ rights and monitoring compliance (e.g. England and Wales, Victoria);
- **resources and mandate to conduct research and reviews** – providing the opportunity for victims’ views to be heard and be central in the independent advice to government. Research and review are also the primary means to identify areas for improvement and to promote best practice (see work of the Victims’ Commissioner of England and Wales);
- **access to a victims’ advisory board** – where established, these groups provide a forum for victims to have a voice in the development of victim-related policy. In some jurisdictions groups of this type are established by Victims’ Commissioners to provide independent advice (e.g. England and Wales, South Australia) while in other cases advisory groups are established through legislation (e.g. ACT, Victoria);
- **mandated role in complaint handling** – the ability to support victims to navigate and make complaints (e.g. ACT, South Australia, Canada); and a role in reviewing complaints where victims are not satisfied with the outcome (e.g. Victoria, South Australia, Canada);
- **responsibility for system-wide monitoring of compliance** with rights and principles included in victims-focused legislation (i.e. “what gets counted, gets done”), including:
 - mandate to establish arrangements for collection of system-wide data on compliance (e.g. Victoria);
 - identification of systemic issues and trends that need addressing (e.g. Canada)
 - mandate to publish overall results in annual report on number of complaints made and processed, and outcomes of the complaints, to ensure transparency (e.g. Victoria).
- **bi-cultural model** – in Aotearoa New Zealand a bi-cultural or two-whare model would be appropriate to the Crown’s responsibilities under Te Tiriti o Waitangi, and be key to effectively advocate for, and address the special needs of Māori who represent the highest risk group for being a victim of crime. Māori have stated that the current criminal justice system does not work for them and in the report ‘Inaia Tonu Nei’, call for Government to work towards strengthening an enduring equal relationship with Māori that will enable the development of a true, equal partnership in any reform of the criminal justice system.^{89 90} One working example of bi-cultural model in Aotearoa New Zealand is the two-whare governance structure utilised successfully by TOAH-NNEST (see Appendix 1).

Complaints mechanisms

An effective complaints mechanism provides the opportunity for timely and impartial resolution and remedies, in cases where rights are breached. These can also be the primary source of

⁸⁹ E Tu Wāhine, E Tu Whānau; Wāhine Māori Keeping safe in unsafe relationships, (2019), Denise Wilson

⁹⁰ See further detail in: Te Ohu Whakatika, (2019), *Ināia Tonu Nei – Hui Māori Report*.

feedback on failures in service delivery; when handled well, complaints provide an opportunity for bodies to improve their service and public reputation.

All jurisdictions other than the United States relied on criminal justice agencies' internal complaints processes as the primary means for victims to seek resolution for a breach of their rights; this typically included the option to escalate the matter if an individual was not satisfied with how their complaint was handled. Whilst each agency may be best placed to understand their business and able to resolve a concern, the system can appear complex to navigate, and be challenging for victims to access. Additionally, challenging is having to raise concerns with the very people they feel have wronged them in the first place.

A key difference in other jurisdictions was the varying support available through a victim-focused independent body to help victims navigate through, and make complaints (see above). This type of support appears essential if there is to be reliance on agencies' internal complaints processes.

Positive features of complaints mechanisms are listed as follows (see also Appendix 1, the standards for complaint handling published by the Victims' Commissioner for England and Wales):

- **support role of victim-focused independent body**
 - as a “gateway” or “single-point-of-contact” for victims to negotiate with; reducing barriers associated with having to complain directly to the agency which the concerns relates to (e.g. ACT, South Australia)
 - able to provide mediation and/or liaison roles to help resolve concerns quickly and fairly and, where possible, to avoid unnecessary escalation of complaints (e.g. ACT);
 - review of complaints when victims are not satisfied with the outcome (e.g. Canada, Victoria, South Australia), ensuring this is carried out by a victim-focused body, best placed to understand victims' issues, and subsequently able to monitor and address emerging patterns and trends.
- **provide and enforce good practice complaint guidelines on agencies** including (see Appendix 4 - England and Wales, and also Victoria for guidelines on good complaint handling):
 - opportunity for dialogue with a victim to discuss concerns;
 - processes that differentiate between “concerns” (e.g. victims who want to voice a concern, or request clarification or further information) compared to those wanting to formally complain (e.g. ACT); and
 - build in continuous improvement practices to ensure agencies change their practice in response to recurrent forms of complaint; and provide feedback to victims when changes are implemented.
- **more prescriptive legislation** – provide detailed and specific information on the complaint processes and required features in relevant legislation. For example, in Aotearoa New Zealand this could include timeframes for a response; requirements of agencies to be proactive in disseminating information on their complaints process; requiring agencies to include more specific details of complaints received in their annual report, for example including reference to the particular section of the Act that has been breached in each instance;

- **establishment of a cross-sector victim complaints forum** – opportunity for representatives from agencies to meet and discuss their respective victim-specific complaint handling processes, publish and share resources, and develop training to improve practices (see England and Wales).

In Aotearoa New Zealand there are several examples of independent bodies with effective complaint resolution currently in operation. In the health and disability area, the HDC provides a good example of an independent dedicated complaints mechanism, with a nationwide community outreach advocacy service, which has resulted in good public awareness and accessibility.

The high public profile of the current Children's Commissioner appears useful in facilitating public awareness and uptake of support for children, youth, families and whānau with concerns. In the area of human rights, the HRC offers a useful example of how the provision of a free, confidential complaints resolution service, is able to informally resolve, largely through mediation, all but a very small proportion of complaints. This service seems to significantly reduce the stress and resources required for the more formal processing of complaints through the Human Rights Review Tribunal. Finally, the HRC also provides an example of where an independent body acting as the single point of contact for all enquiries and concerns is able to monitor trends and issues and bring about required systemic change.

In conclusion, despite significant progress over the last two decades or more towards the identification and legislation of victims' rights, Aotearoa New Zealand remains out of step with a range of common-law jurisdictions in that it does not provide victims of crime with an independent body that could promote improvements in the monitoring and compliance of victim rights. Poor compliance by victims' rights internationally has been linked to the lack of monitoring and a lack of sanctions in place when breaches occur. An effective complaints mechanism has the potential to improve the system response to victims and promote the trust and confidence in the criminal justice system.

References

- Backbone Collective. (2018). Continuous improvement of the family and sexual violence System. A national collaborative backbone agency is the critical component. Discussion paper produced by The Backbone Collective Retrieved from <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5be8fcad4ae23793ccac1634/1541995697759/Continuous+Improvement+paper+FINAL+1+Nov.pdf>
- Be loaf, D. (2005). *The third wave of crime victims' rights: Standing, remedy, and review*. 2005 BYU L. Rev. 255 (2005).
- Chief Victims Advisor. (2019a). *Strengthening the criminal justice system for victims: survey report*. August 2019. Chief Victims Advisor to Government, Wellington. Accessed from <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/8dhfd3-Criminal-Justice-Victims-Survey-report.pdf>
- Chief Victims Advisor. (2019b). *Te Tangi o te Manawanui: Recommendations for Reform*. September 2019, Wellington: Chief Victims Advisor to Government. Accessed from <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/Te-Tangi-Final-PDF.pdf>
- Chief Victims Advisor. (2020a). Victims' Rights Act 2002: How was the Act implemented and how is compliance with the Act monitored? Unpublished.
- Chief Victims Advisor. (2020b). Recognition and use of the Victims Code by government and non-government agencies who have contact with victims of crime in Aotearoa New Zealand. Unpublished.
- Children's Commissioner, (2019). 2018-19 Annual Report. Office of the Children's Commissioner. Wellington: Office of the Children's Commissioner. Retrieved from <https://www.occ.org.nz/assets/Uploads/AnnualReport-FINAL-web.pdf>.
- Colmar Brunton. (2016). *Public perceptions of crime 2016 – survey report*. Wellington: Ministry of Justice.
- Cram, F., Pihama, L., & Karehana, M. (1999). *Meeting the needs of Māori victims of crime*. Wellington: Te Puni Kokiri and Ministry of Justice.
- Davis, R. C. (2012). *No more rights without remedies: an impact evaluation of the National Crime Victim Law Institute's victims' rights clinics*. Santa Monica, CA: Rand.
- FRA (European Union Agency for Fundamental Rights). (2019). *Victims' rights as standards of criminal justice. Justice for victims of violent crime Part I*. Luxembourg: FRA European Union Agency for Fundamental Rights
- Groenhuisen, M. (2014). The development of international policy in relation to victims of crime. *International Review of Victimology* 20(1): 31-48.
- Hall, M. (2009). *Victims of crime. Policy and practice in criminal justice*. Cullompton, Devon: Willan Publishing
- Health and Disability Commissioner. (2019). Annual report for the year ended 30 June 2019. Wellington: Health and Disability Commissioner
- Hinchey, J. (2017). A charter of rights for victims of crime. Consultation report. Canberra, ACT: Victims of Crime Commissioner. Retrieved from https://www.victimsupport.act.gov.au/__data/assets/pdf_file/0006/1136976/Victims-Charter-Consultation-Report-11-December-2017.pdf
- HM Government (2018). *Victims Strategy*. London, HM Government.

- Holder, R. L., & Kirchengast, T. (2020). Crime victims' rights commissioners: public interest entities in a regulatory regime. *International Journal of Comparative and Applied Criminal Justice*, 1-21. doi:10.1080/01924036.2020.1719527
- Human Rights Commission (NZ) (2019). Annual Report. Pūrongo ā Tau, 2018/19. Human Rights Commission and The Office of Human Rights Proceedings. Retrieved from https://www.hrc.co.nz/files/6315/7655/2929/HRC_Annual_Report_2019_ONLINE.pdf
- Human Rights Commission (ACT). (2019). *Annual Report 2018-19*. Canberra, ACT: ACT Human Rights Commission.
- Hui Māori (2019). *Ināia Tonu Nei – The Time is Now: We Lead, You Follow*. Safe and Effective Justice. Accessed from <https://safeandeffectivejustice.govt.nz/about-this-work/hui-Māori/>
- Justice and Electoral Committee. (2007). *Inquiry into victims' rights Report of the Justice and Electoral Committee*. Retrieved from: <https://www.parliament.nz/resource/en-NZ/00PlibCIP101/5eb7fa381ef68d22d4df44240ed03abf0b4caed5>
- Kirchengast, T., Iliadis, M., & O'Connell, M. (2019). Development of the office of commissioner of victims' rights as an appropriate response to improving the experiences of victims in the criminal justice system: Integrity, access and justice for victims of crime. *Monash University Law Review*, 45(1), [1]-28.
- Law Commission. (2015). *The Justice response to victims of sexual violence: Criminal trials and alternative processes*. Wellington: Law Commission.
- Manikis, M. (2014). Rhetoric or reality?: Victims' enforcement mechanisms in England and Wales and the United States, ProQuest Dissertations Publishing.
- Manikis, M. (2019). Contrasting the emergence of the victims' movements in the United States and England and Wales. *Societies*, 9(2): 35.
- Ministry of Justice. (2009). Regulatory Impact Statement. Enhancing Victims' Right Review. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/Regulatory-Impact-Statement-Enhancing-Victims-Rights-Review.pdf>
- Ministry of Justice (2019). Tāhū o te ture. Annual Report 1 July 2018 to 30 June 2019. Wellington: Ministry of Justice
- Ministry of Justice. (2020). *Key findings: Cycle 2 (October 2018 – September 2019) Descriptive statistics*. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-Y2-core-report-for-release.pdf>.
- Mossman, S.E. (2012). *Victims of Crime in the Adult Criminal Justice System. A stocktake of the literature*. Wellington: Ministry of Justice.
- O'Connell, M (Commissioner for Victims' Rights South Australia). (2011). *Victims' Rights: Integrating victims in criminal proceedings*. Retrieved from Accessed 21/3/12, from http://https://www.voc.sa.gov.au/sites/default/files/OConnell_Integrating%20Victims.pdf
- OFOVC, (2018). *Annual report 2017-2018*. Office of the Federal Ombudsman for Victims of Crime. Accessed from <https://www.victimfirst.gc.ca/pdf/ar1718-ra1718.pdf>
- Parliamentary and Health Service Ombudsman (PHSO). (2009). *Principles of good complaint handling*. London: The Parliamentary and Health Service Ombudsman. Retrieved from <https://www.ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Complaint-Handling-bookletweb.pdf>
- Ross, S. (2015). Victims in the Australian criminal justice system: principles, policy and (distr)action. *Crime, Victims and Policy International Contexts, Local Experiences*. D. Wilson and S. Ross (Eds), London: Palgrave Macmillan UK: 214-239.

- Swarbrick, N. 'Victims of crime', Te Ara - the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/victims-of-crime/print> (accessed 5 December 2019)
- Victims' Commissioner for England and Wales. (2015). *A review of complaints and resolution for victims of crime*. London: Victims' Commissioner for England and Wales.
- Victims' Commissioner for England and Wales. (2019). 2018/19 Annual report. London: Victims' Commissioner for England and Wales.
- Victims of Crime Commissioner. (2019). Victims of Crime Commissioner Annual Report 2018-2019. Melbourne, Victoria: Office of the Victims of Crime Commissioner.
- Victorian Law Reform Commission (2015). *The role of victims of crime in the criminal trial process: victims' rights and human rights: the international and domestic landscape*, Information Paper 4. Melbourne, Victoria: Victorian Law Reform Commission.
- Victorian Law Reform Commission. (2016). *The role of victims of crime in the criminal trial process: report*. Melbourne, Victoria: Victorian Law Reform Commission.
- Waxman, C. (2019). Review of compliance with the Victims' Code of Practice (VCOP): findings, recommendations and next steps. London: Independent Victims' Commissioner of London.
- Wedlock, E. and J. Tapley (2016). *What works in supporting victims of crime: A rapid evidence assessment*. London: Victims Commissioner's Office.
- Wemmers, J.-A. (2012). Victims' rights are human rights: The importance of recognizing victims as persons. *Temida* 15(2): 71-83.

Appendices

Appendix 1: TOAH-NNEST governance, structure and Te Tiriti Relationship Agreement

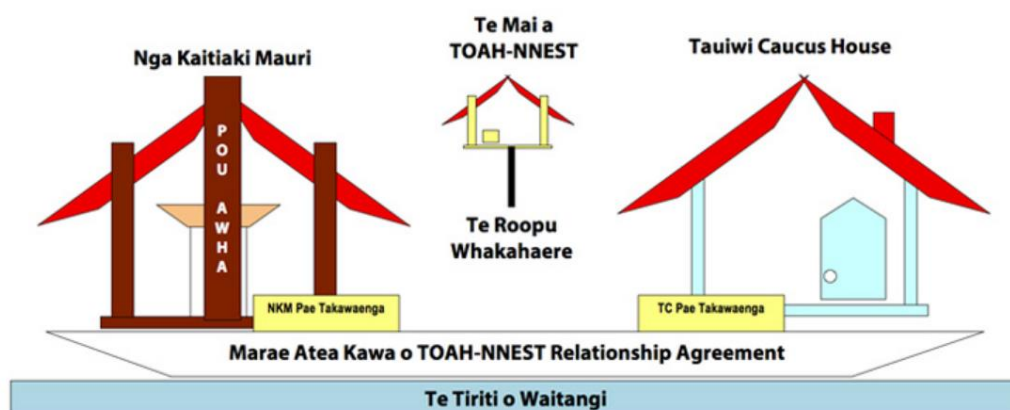
Sourced directly from <https://www.toah-nnest.org.nz/about-us/governance> (Accessed 22 May 2020).

GOVERNANCE

The governance structure of TOAH-NNEST reflects the Te Tiriti o Waitangi-based partnership of the two whare or houses, Ngā Kaitiaki Mauri and Taiuiwi Caucus.

The three-part structure enables Ngā Kaitiaki Mauri, the tangata whenua whare, to operate substantially within a Māori worldview, while ensuring that TOAH-NNEST meets its legal responsibilities.

- Ngā Kaitiaki Mauri and Taiuiwi Caucus each govern their own specific affairs in keeping with their own worldviews and priorities. Ngā Kaitiaki Mauri governs within the nine guiding kaupapa of the framework Te Ohaakii a Hine. Governance of Taiuiwi Caucus is through the society TOAH-NNEST Taiuiwi Caucus Incorporated, and its objects, principles and values.
- The overall governance body of the national network is the Paetakawaenga, which has representatives from each whare.
- The Maimoa, or the charitable entity TOAH-NNEST Trust, has the ultimate responsibility for legal and financial matters. Trustees representing Ngā Kaitiaki Mauri and Taiuiwi Caucus govern as the body Te Roopu Whakahaere.



TE OHAAKII A HINE – NATIONAL NETWORK ENDING SEXUAL VIOLENCE TOGETHER
RELATIONSHIP AGREEMENT DOCUMENT (December 2008).

Sourced directly from <https://www.toah-nnest.org.nz/images/pdfs/TeTiritiRelationship.pdf>,
(Accessed 22 May 2020).

Relationship Agreement

for

Te Ohaakii a Hine

- National Network for Ending Sexual Violence Together

Te Ohaaki a Hine – National Network for Ending Sexual Violence Together (TOAH-NNEST) is a network committed to ending sexual violence within our communities.

The Network consists of two “Houses” designed to reflect the relationship envisioned in Te Tiriti o Waitangi. One “House” will therefore be known as the tikanga Māori House or Nga Kaitiaki Mauri a Te Ohaakii a Hine – National Network Ending Sexual Violence Together and the other will be known as Te Ohaakii a Hine – National Network Ending Sexual Violence Together – Taiwi Caucus Incorporated.

1. We affirm that our relationship will be based upon the following;

- a) A shared agreement that Te Tiriti o Waitangi is the founding document for relationships between Tangata whenua within Aotearoa and Taiwi (The Treaty Relationship).
- b) A shared agreement that the members of both “Houses” are entitled to be guided by the values and practices which derive from their respective world views,
- c) A shared belief that together those values and practices can be positively used to eliminate sexual violence within our communities.

2. Together we understand that the Treaty Relationship;

- a) Involves whānau, hapu and iwi who have whakapapa to a shared Māori ancestry and Taiwi who are all those people of other cultures who have chosen to make this land their home,
- b) Means mutual respect and a willingness to use our collective wisdom and power to build a stable relationship,
- c) Requires equitable and adequate access to resources and decision making so that both “Houses” may properly participate in the elimination of sexual violence within our communities.

3. Together we agree to work within the Treaty Relationship to achieve the following collective aims:

- 1) To promote social, political and institutional change so that all people can live free of sexual violence and its effects,
- 2) To promote the right of āto receive and deliver services which work with the entire whānau to address the adverse effects of sexual violence,

- 3) To provide and promote for capacity building of kaupapa Māori services, response to sexual violence,
- 4) To work with the diverse range of groups and communities to identify appropriate responses and solutions to dealing with the issues of sexual violence,
- 5) To promote capacity building of services for all cultures affected by sexual violence,
- 6) To promote the right of children and young people to have their family and community involved in addressing the adverse effects of sexual violence,
- 7) To publicly advocate against all forms of sexual violence and to give voice to the needs of those who are harmed by sexual violence,
- 8) To raise the political and social profile of sexual violence as a significant social problem,
- 9) To expand and disseminate knowledge and understandings about why sexual violence happens, the effects it has, and effective responses and preventative actions,
- 10) To increase our knowledge and information about the nature and needs of the sexual violence response sector so that we may attract and develop additional resources,
- 11) To work against the divisive effects of the competitive environment in which the sexual violence response sector is currently invited to operate in,
- 12) To increase the resources, especially monetary, available to the sexual violence response sector, through the sharing of information, lobbying at a national level, and inter-agency cooperation,
- 13) To foster cooperation, communication and accountability, both within the sector, and between the sector and other agents,
- 14) To advance education in the community around the issues of Sexual Violence by sharing information within and between agents in the sexual violence response sector.

4) Together we acknowledge that;

- a) Each “House” has the right to conduct all of its affairs in ways that are consistent with their world view or views.

5) To give life to the Treaty Relationship we also acknowledge that;

- a) The two „Houses” will come together at agreed and appropriate times to make joint decisions on common issues of sexual violence,
- b) The two “Houses” together are the constituent bodies for TOAH-NNEST,
- c) The two “Houses” together will provide strategic direction for TOAH-NNEST and advocate on common issues of sexual violence,
- d) The two “Houses” together develop appropriate procedures to govern the meetings and dialogue between them.

6) To further enhance the Treaty Relationship we together agree;

- a) That during joint meetings both “Houses” are entitled to caucus and discuss particular issues,

b) That the time and place requested for caucus shall be reasonable and respectful of the different perspectives and world views involved.

7) To also enhance the Treaty Relationship we together acknowledge;

a) That from time to time differences may arise between us which will require resolution and the mending of relationships,

b) That a process of reconciliation is best suited to the maintenance of a good Treaty Relationship and most relevant to the work to which we are all committed,

c) That the relationship mending process shall therefore require from each "House" 1 kaumatua/kuia or wise person plus 1 other representative to facilitate discussion and restore the integrity of the relationship.

d) That both "Houses" will engage in the spirit of the relationship document to enhance the working relationship, together with the common goal of having a society free of sexual violence.

Appendix 2: Complexity of navigating victims' rights in under the Victims' Rights Act 2002

The table below presents the various agencies responsible for upholding one of ten rights afforded by the Victims' Rights Act 2002 as a victim progresses through the criminal justice system. It highlights the challenge for victims in working out which agency is responsible for a possible breach of rights, and who they should therefore submit their complaint to. Note, this table is limited to the rights of those victims who enter into the criminal justice system.

Source: Table taken from Chief Victim Advisor (2020a). Victims' Rights Act 2002: How was the Act implemented and how is compliance with the Act monitored? Unpublished.

	Agency and/or specific staff (if named in the Act) with statutory responsibility to uphold the right	Specific staff involved in the current operational process to uphold the right
1	Right to be informed about programmes, remedies and services	
	<ol style="list-style-type: none"> 1. Police 2. Ministry of Justice 3. Department of Corrections 	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Ministry of Justice Court Victim Advisors 3. Department of Corrections Manager of the Victim Notification Register 4. Staff at non-government agencies which are contracted by government agencies to provide support services to victims
2	Right to express views on applications by offenders for bail	
	<ol style="list-style-type: none"> 1. Police Prosecutors 2. Crown Prosecutors 	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Police Prosecutors 3. Crown Prosecutors 4. Ministry of Justice Court Victim Advisors
3	Right to be informed about the release of offenders on bail	
	<ol style="list-style-type: none"> 1. Commissioner of Police 2. Secretary of Justice 	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Police Prosecutors 3. Crown Prosecutors 4. Ministry of Justice Court Victim Advisors
4	Right to be informed about the Police investigation and court proceedings	
	<ol style="list-style-type: none"> 1. Investigating authorities 2. Members of court staff 3. Police Prosecutors 4. Crown Prosecutors 	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Ministry of Justice Court Victim Advisors
5	Right to request a restorative justice conference	
	<ol style="list-style-type: none"> 1. Police employee 2. Member of court staff 3. Probation officer 	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Ministry of Justice Court Victim Advisors 3. Ministry of Justice Court Registry Officers 4. Staff at non-government agencies which are contracted by government agencies to facilitate restorative justice conferences

6	Right to express views on applications by offenders for name suppression	
	<ol style="list-style-type: none"> 1. Police Prosecutors 2. Crown Prosecutors 	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Ministry of Justice Court Victim Advisors 3. Police Prosecutors 4. Crown Prosecutors
7	Right to express views on the impact of the offending	
	Police or Crown Prosecutors or other persons on behalf of Prosecutors	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Ministry of Justice Court Victim Advisors 3. Police Prosecutors 4. Crown Prosecutors
8	Right to have property returned that is held by the state	
	Law enforcement agencies	Police Officers in Charge
9	Right to be informed about the offender post sentencing	
	Chief Executive of the Department of Corrections	<ol style="list-style-type: none"> 1. Police Officers in Charge 2. Department of Corrections Manager of the Victim Notification Register 3. Department of Corrections - designated staff at individual prisons 4. Ministry of Health - designated staff
10	Right to express views on applications by offenders for parole	
	No agency or agency staff specified	Department of Corrections Manager of the Victim Notification Register

Appendix 3: Standards for Complaints Handling (Victims' Commissioner for England and Wales)

Source directly from: Annex C – Victims' Commissioner's Standards: Complaints Handling, Victims' Commissioner for England and Wales. (2015). *A review of complaints and resolution for victims of crime*. London: Victims' Commissioner for England and Wales

Victims' Commissioner's Standards – victims should receive under the Victims' Code:

- clear information from agencies and service providers on how they will support them in raising a concern or making a complaint about the service they have received;
- information on how informal concerns can be submitted and dealt with, in addition to processes for the submitting of formal complaints;
- details on how agencies and service providers will keep victims informed of the progress of their complaint at all stages;
- the option to state their preferred method of communication with an agency or service provider when raising a concern or making a complaint;
- clear information to understand what to do if not happy with the response that has been received, including details about the role of the Parliamentary and Health Service Ombudsman and the right to complain to them; and,
- information on how they might be able to be involved in developing, reviewing and improving an agency's or service provider's complaints process.

Agencies and service providers should ensure they offer to all victims:

- a clear statement about the support they will provide to victims who wish to raise a concern or make a complaint about the service that has been provided;
- processes to deal with concerns swiftly and informally where appropriate, in addition to processes to deal with more formal complaints;
- a commitment that they will deliver mandatory training and development plans for all staff who deal with victims' complaints;
- commitment to ensure that all staff who interact with victims, have in place a performance objective
- reflecting how they will be held accountable for treating victims with empathy, dignity and respect;
- properly defined processes and recording practices which enable victims' complaints to be handled proactively and appropriately;
- a published statement on whether they will apply the Parliamentary and Health Service Ombudsman's Principles of Good Complaint Handling in their complaints processes; and,
- publish information illustrating how complaints from victims have led to improvements in services.

Appendix 4: Principles for Good Complaint Handling (Parliamentary and Health Service Ombudsman - England and Wales)

Summary of principles taken directly from page 5 of the summary booklet 'Principles of Good Complaint Handling' published by The Parliamentary and Health Service Ombudsman (2009). Retrieved from <https://www.ombudsman.org.uk/sites/default/files/page/0188-Principles-of-Good-Complaint-Handling-bookletweb.pdf>. The booklet expands on each principle in subsequent pages.

Principles of Good Complaint Handling

Good complaint handling by public bodies means:

1 Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

2 Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

3 Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

4 Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

5 Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

6 Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair and proportionate results in all the circumstances of the case. The Ombudsman will adopt a similar approach when considering the standard of complaint handling by public bodies in her jurisdiction.

The supporting text for each Principle follows.