ISSUES PAPER FOR THE CHIEF VICTIMS ADVISOR TO GOVERNMENT

VICTIMS RIGHTS ACT 2002

How was the Act implemented and how is compliance with the Act monitored?

April 2020

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EXECUTIVE SUMMARY

1. The introduction of the Victims of Offences Act in 1987 signalled a turning point for the New Zealand Government with respect to victims of crime. This landmark legislation was the first to encourage Police, the Ministry of Justice, Crown Law and the Department of Corrections to engage with victims during the criminal justice process. These agencies were encouraged to provide victims with information and the opportunity to express their views on certain matters. However, the drafting of the Act eventually came under criticism for giving government agencies too much discretion as it merely recommended, as opposed to mandated, how agencies ought to work with victims. The Victims of Offences Act 1987 (Victims of Offences Act) was eventually repealed and replaced with the Victims Rights Act 2002 (Victims Rights Act) which provided victims with statutory rights for the first time.

2. The ten main rights in the Victims Rights Act come into effect from the time a victim reports an offence to Police through to the outcome of any subsequent court proceedings. There are also specific rights that come into effect where the offender is sentenced to a term of imprisonment or psychiatric treatment. These are listed below:

    1. Right to be informed about programmes, remedies and services.
    2. Right to have views ascertained on applications by offender for bail.
    3. Right to be informed about the release of offenders on bail.
    4. Right to be informed about the Police investigation and court proceedings.
    5. Right to request a restorative justice conference.
    6. Right to have views ascertained on applications by offenders for name suppression.
    7. Right to have views ascertained on the impact of the offending.
    8. Right to have property returned that is held by the state.
    9. Right to be informed about the offender post sentencing.
    10. Right to have views ascertained on applications by offenders for parole.

3. Eighteen years on from the passing of the Victims Rights Act, this paper asks the question: to what extent is the Victims Rights Act upheld by Police, the Ministry of Justice, Crown Law and the Department of Corrections? In other words, what percentage of victims have their rights upheld compared to those who do not? The main conclusion of this paper is that it is not possible to answer this question at present – we are quite simply in the dark. Agencies either have systems in place to collect relevant data which could shed some light on this but for a range of resourcing and staffing reasons do not, or the systems currently in place do not enable staff to collect relevant data which can then be usefully reported. This finding needs to be

urgently addressed by the Ministry of Justice, which has ultimate responsibility for administering the Act in conjunction with Police, Crown Law, and the Department of Corrections. This issues paper recommends that agencies be subject to mandatory reporting on their compliance with the Victims Rights Act as this will provide agencies with a clear incentive to improve their data collection practices and systems.

4. Another significant finding is that as of 2020 there is still no independent entity with responsibility for monitoring how agencies have collectively implemented the Victims Rights Act and ultimately, their level of compliance with the Act. When the Victims Rights Act was introduced, the Government announced that it would establish a watchdog committee to ensure that the rights enshrined in the Act would be implemented to full effect.[1] However, this committee did not have a statutory basis under the Act and it is unclear whether this committee was ever established, or if it was the nature of the work it undertook, as there is no publicly available information or clear records about the committee held by the Ministry of Justice.

5. It is recommended that some sort of independent entity be established to effectively fulfil the original intention of the Government back in 2002. This could be a committee with an operational basis comprised of representatives from the relevant government agencies. Another option is to bring the Victims Rights Act on to equal footing with the Human Rights Act 1993 by establishing a Victims Rights Commission with similar functions to the Human Rights Commission. Such a commission would require a statutory basis.

6. Further, this research highlights that the Victims Rights Act fundamentally lacks teeth. It looks impressive on paper given that it provides victims with statutory rights which must be upheld by government agencies. In this respect it is similar to New Zealand's other rights-based legislation, namely the previously discussed Human Rights Act 1993 as well as the Bill of Rights Act 1990. However, the Victims Rights Act contains a specific statutory bar which expressly prevents victims from seeking financial compensation from government agencies which have failed to uphold their rights. In contrast, the Human Rights Act and the Bill of Rights Act do not contain a statutory bar to citizens seeking financial compensation; this can be obtained through proceedings in the Human Rights Review Tribunal and the High Court respectively.

7. It is of note that when the Act was passed the Government did not provide a principled basis for barring victims from seeking compensation. The statutory bar was a last-minute addition to the Act shortly before it was passed in 2002 solely for the purpose of providing agencies with a lee-way period to implement the necessary operational processes to uphold the rights contained in the Act. It was assumed that without this lee-way period agencies would be inundated with litigation initiated by victims who did not have their rights upheld.

[1] Towards Equality in Criminal Justice: Final Report of the Victims Taskforce 1993 see page 75.

8. Overall, this paper and the notable lack of data collection by government agencies demonstrates that these agencies do not regard the monitoring of their compliance with the Victims Rights Act as a priority. While only speculative, agencies may have put less effort into monitoring their compliance with the Act given the lack of an entity with oversight able to hold agencies accountable. Further, the statutory bar preventing victims from seeking compensation where their rights have been breached remains in place which again has inherently led to less agency accountability. Careful consideration also needs to be given to whether the Act should be amended to strengthen the complaints process for victims to bring it on equal footing with the Human Rights Act 1993 and the Bill of Rights Act 1990. This may help ensure that the purpose of the Victims Rights Act – to improve provisions for the treatment and rights of victims of offences – is fully realised.

HOW THIS RESEARCH WAS UNDERTAKEN

PURPOSE

1. The main purpose of this issues paper is to advise the Chief Victims Advisor to Government on whether it is possible to determine the extent to which Police, the Ministry of Justice, Crown Law the Department of Corrections and the Ministry of Health currently uphold the rights of victims. It appears to be the first research of its kind to be undertaken since the Victims Rights Act was introduced in 2002.

TERMINOLOGY

2. The terms *victim* and *offender* are used throughout paper, regardless of the specific stage of the criminal justice process being discussed, in order to mirror the terminology in the Victims Rights Act and for consistent ease of reference. However, it is acknowledged that the operational terminology often used by Police Officers and Prosecutors, Ministry of Justice staff, judges and counsel is *complainant* and *defendant*, up until such time (if any) that a conviction is entered. From that point on, the complainant is referred to as a *victim* and a defendant as an *offender*. It is also acknowledged that the term *survivor* is often used, particularly by non-government agencies who provide support and counselling.

SCOPE

3. This paper focusses on the two largest cohorts of victims. First, victims of offences that are committed by adult offenders and prosecuted in the District Court. Second, victims of family violence who apply for a protection order in the Family Court.

4. The Victims Rights Act provides all victims of offences prosecuted in the District Court with six rights, regardless of the type of offence. Victims of 'specified offences' are provided with four additional rights. 'Specified offences' are defined in section 29 of the Victims Rights Act as:
   a. an offence of a sexual nature that is contained in Part 7 of the Crimes Act 1961 and sections 216H to 216J of the Crimes Act 1961

b. an offence of serious assault;
c. an offence that has resulted in serious injury to a person, in the death of a person, or in a person becoming incapable; or
d. an offence of another kind, and that has led to the victim having ongoing fears, on reasonable grounds for his or her physical safety or security; or for the physical safety or security of 1 or more members of his or her immediate family.

5. Table 1 below lists the 10 rights in the approximate order that these come into effect during the criminal justice process.

Table 1. Eligibility of victims to each right depending on offence type

	RIGHT	ELIGIBILITY
1	To be informed about programmes, remedies and services	Victims of all offences
2	To have views ascertained on applications by offender for bail	Victims of specified offences
3	To be informed about the release of offenders on bail	Victims of specified offences
4	To be informed about the Police investigation and court proceedings	Victims of all offences
5	To request a restorative justice conference	Victims of all offences
6	To have views ascertained on applications by offenders for name suppression	Victims of all offences
7	To have views ascertained on the impact of the offending	Victims of all offences
8	To have property returned that is held by the state	Victims of all offences
9	To be informed about the offender post sentencing	Victims of specified offences
10	To have views ascertained on applications by offenders for parole	Victims of specified offences

6. In contrast to victims of offences prosecuted in the District Court, the Victims Rights Act has very limited application to victims of family violence who apply for a protection order in the Family Court. Only the principles guiding the treatment of victims by agencies in sections 7 and 8 of the Victims Rights Act apply to victims in this cohort; they are not provided with any specific rights. However, the Family Violence Act 2018 does provide victims with three statutory

entitlements. Table 2 below lists these in the approximate order that these come into effect during the family justice process.

Table 2. Statutory entitlements of victims who apply for a protection order in the Family Court

	RIGHT
1	Entitlement to be informed about safety programmes
2	Entitlement to be informed about safety concerns
3	Entitlement to be informed about the completion of non-violence programme by respondent

CONSULTATION UNDERTAKEN WITH GOVERNMENT AGENCIES

7. The agencies with statutory responsibility for upholding the rights of victims are: New Zealand Police, the Ministry of Justice, the Department of Corrections, Crown Law, the Ministry of Health and Immigration New Zealand. For clarity, the term Crown Law is used in this paper for ease of reference to refer to the Crown Solicitor network of 17 private law firms throughout New Zealand which hold crown warrants to prosecute offences, not Crown Law national office in Wellington. However, the Crown Law national office is responsible for national oversight of these private law firms.

8. In respect of each right, the Victims Rights Act usually specifies either the agency that is responsible for upholding the right or the specific role of the staff member at the responsible agency. In practice, additional and/or different staff at other agencies are sometimes involved the operational process to uphold each right. This is outlined in the table below.

9. In order to gain an understanding of the current operational process implemented by agencies to uphold the rights of victims, consultation was undertaken with managers of the front-line staff members listed in the right column who worked with victims in the District Court at Manukau and Tauranga. The two locations of Manukau and Tauranga were chosen to obtain a sample of views from those working in both a high volume and medium volume Police precinct/court system. Overall, the operational processes in both locations were relatively similar as they are standardised nationwide processes.

Table 3. Agency and/or specific staff with statutory responsibility to uphold the right compared with agency and/or specific staff involved in the current operational process to uphold the right

	AGENCY AND/OR SPECIFIC STAFF (IF NAMED IN THE ACT) WITH STATUTORY RESPONSIBILITY TO UPHOLD THE RIGHT	AGENCY AND/OR SPECIFIC STAFF INVOLVED IN THE CURRENT OPERATIONAL PROCESS TO UPHOLD THE RIGHT
1	**Right to be informed about programmes, remedies and services**	
	1. Police 2. Ministry of Justice 3. Department of Corrections	1. Police Officers 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**	
	1. Police Prosecutors 2. Crown Prosecutors	1. Police Officers 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**	
	1. Commissioner of Police 2. Secretary of Justice	1. Police Officers 2. Police Victim Advisors 3. Police Prosecutors 4. Crown Prosecutors 5. Ministry of Justice Court Victim Advisors
4	**Right to be informed about the Police investigation and court proceedings**	
	1. Investigating authorities 2. Members of court staff 3. Police Prosecutors	1. Police Officers 2. Ministry of Justice Court Victim Advisors

	4. Crown Prosecutors	
5	**Right to request a restorative justice conference**	
	1. Police employee 2. Member of court staff 3. Probation officer	1. Police Officers 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**	
	1. Police Prosecutors 2. Crown Prosecutors	1. Police Officers 2. Ministry of Justice Court Victim Advisors 3. Police Prosecutors 4. Crown Prosecutors
7	**Right to express views on the impact of the offending**	
	1. Police or Crown Prosecutors or "other persons on behalf of Prosecutors"	1. Police Officers 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**	
	1. Law enforcement agencies	1. Police Officers
9	**Right to be informed about the offender post sentencing**	
	1. Chief Executive of the Department of Corrections	1. Police Officers 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 5. Immigration New Zealand – designated staff

10	**Right to express views on applications by offenders for parole**	
	No agency or agency staff specified	1. Department of Corrections Manager of the Victim Notification Register

10. Each agency identified the appropriate managers to participate in the consultation process. Each manager was then provided with an initial feedback document to discuss with their staff and complete before an in person or phone interview. They were then interviewed for around two and a half hours and answered further questions via email. Upon the suggestion of individual managers the researcher also spoke with a small sample of front-line staff members at some agencies in each location.

11. The consultation undertaken to obtain an understanding of the operational processes used in the Family Court was undertaken in Christchurch with a centralised team that manages the process nationwide in respect of all Family Courts.

12. Each agency also appointed one liaison for the research from the senior management team at their respective national offices. Consultation was undertaken with these liaisons to ascertain further information about nationwide operational processes to uphold the rights of victims as well as the monitoring of compliance with the Victims Rights Act through the collection and reporting of data. The researcher met with each of these liaisons in person at least twice during the research and they also answered questions via email.

13. Finally, consultation was also undertaken with staff who have expertise in the data collection and reporting of each agency. This consultation was conducted over email.

14. All initial consultation took place in 2017 and 2018 with follow-up checks in 2019 and 2020. Although we have undertaken at all times to be as accurate and up to date as possible, agencies will inevitably have updated some of the processes detailed in this paper.

FRAMEWORK OF THIS PAPER

15. This paper begins by providing the political background to the enactment of the Victims Rights Act in 2002. Each of the ten rights provided to victims involved in criminal proceedings in the District Court are then discussed in ten individual chapters using the same framework. First, the right as described in the Victim Rights Act is outlined. Second, an overview of the nationwide

operational process that has been implemented by the relevant government agencies to uphold the right is outlined. Third, the nationwide monitoring process implemented by agencies regarding the collection and reporting of data is discussed. A chapter is then dedicated to the three statutory entitlements provided to victims under the Family Violence Act 2018. Following discussion of each of the specific rights and statutory entitlements, common themes are discussed which inform the recommendations provided in the final chapter.

BACKGROUND TO THE VICTIMS RIGHTS ACT

VICTIMS OF OFFENCES ACT (1987)

16. The Victims of Offences Act 1987, spearheaded by the then Labour led Government, was the first victim focussed legislation enacted in New Zealand. The Act set out a number of general principles to guide those working in the justice sector on how to treat victims of crime during the criminal justice process and set the foundation of what would eventually become the Victims Rights Act 2002.

17. The Victims of Offences Act included the general principles that victims should be treated with courtesy, compassion and respect by Police, Judges, court staff and lawyers and have access to welfare, medical and legal services. The Act also set out specific principles concerning various stages of the criminal justice process. Like the general principles, these specific principles were drafted in aspirational as opposed to mandatory terms, for example victims *should* as opposed to *must*:

    a. be provided with information about the police investigation and court proceedings
    b. have any property held for evidentiary purposes returned as promptly as possible
    c. have the ability to provide a victim impact statement to a judge
    d. have the ability to express their views on bail in certain cases
    e. not have their residential address disclosed in court
    f. be notified in certain cases when an offender escapes or is released from custody.

18. The Victims of Offences Act also established a Victims Task Force comprised of the Secretary for Justice as Chair, the Commissioner of Police and four further government officials appointed by the Minister of Justice. The Victims Task Force had wide ranging statutory functions designed to ensure the successful implementation of the Act and improve victims' experiences of the criminal justice system. The specific statutory functions of the Victims Task Force were as follows:

    a. to work with judges, registrars, prosecutors, government departments and community organisations to develop guidelines to promote the principles set out in the Act
    b. to assess the adequacy of existing services available to victims and identify any shortcomings

c. to co-ordinate and promote the distribution of comprehensive information about services and facilities available to victims
d. to consider whether further measures are needed to assist victims
e. to receive requests for financial assistance from community organisations working to assist victims and to make recommendations on those requests to the Secretary for Justice
f. to consider, when a victim has been awarded reparation, whether the Crown should make an immediate advance to the victim of part of the sum of reparation ordered
g. to consider any other matter relating to victims referred to it by the Minister of Justice
h. to make recommendations to the Minister of Justice, as it sees fit, on any matters relating to victims.

19. Under the Victims of Offences Act, the Secretary for Justice was required to establish a fund to meet the operating costs of the Victims Task Force. The funding model provided that one percent of all money received by the Crown from the payment of fines was redirected into the fund.

20. In 1993 the Task Force published a final report on its five-year work programme before it was disestablished in accordance with a sunset provision in the Act. It is of note that the Task Force was of the view that its functions did not include the implementation of the Act. Rather, its main focus was to socialise and educate government agencies and politicians about the concept of victims and victims' issues and to reassure (or convince) them that the rights of offenders were not under threat. The Task Force stated that:[2]

> *A great deal of fundamental education and awareness raising work had to be done before those responsible were ready to work on the implementation of the Act, or fulfilment of the Task Force Functions could even begin. The Task Force now believes that the climate of opinion has reached the stage where full implementation of the substantive sections is conceivable. At the very least, we are at the stage where all the members of the criminal justice system and most politicians realise they cannot dismiss victims' issues out of hand.*

21. The Task Force also noted that it did not have the power to require action by any agency and was clearly concerned that the momentum it had built up would drop away if there was no entity to replace it. The Task Force recommended to the Minister of Justice that a commissioner for victims be established to take over its statutory functions[3] and continue to encourage the relevant government agencies to implement the Act. However, this recommendation was not accepted and the implementation of the Act was left solely to the discretion of the relevant government agencies.

[2] Towards Equality in Criminal Justice: Final Report of the Victims Taskforce 1993 see page 75.
[3] Towards Equality in Criminal Justice: Final Report of the Victims Taskforce 1993 see page 83.

REFERENDUM ON THE RIGHTS OF VICTIMS AND THE VICTIMS RIGHTS BILL (1999)

22. In 1999, a law and order petition was initiated by a member of the public whose elderly mother was assaulted. The petition asked for reform of the justice system with greater emphasis on the needs of victims, the provision of restitution and compensation, as well as minimum sentences for all serious violent offences. Around 250,000 New Zealanders signed the petition which subsequently resulted in a referendum that received overwhelming support with 97.5% of voters voted in favour.

23. The Victims Rights Bill was introduced by the National Government in 1999. This Bill expanded the obligations of government agencies that were established in the Victims of Offences Act although these obligations remained discretionary. The Bill required that victims *should* as opposed to *must* be treated by government agencies in a certain manner.

24. The Labour Opposition criticised the National Government for not making the rights mandatory. Labour MP Phil Goff expressed the view in parliament that:[4]

'In 1987 the Victims of Offences Act was a revolutionary piece of legislation, but it deliberately created discretionary rights until agencies and officials were sufficiently familiar with their obligations that they could be relied upon to carry them out. Twelve years after that legislation it is time to change the "shoulds" and the "mays" in the Act to "must". The rights of victims need to be entrenched and have the ability to be legally enforced. Under this Bill that has not happened.'

25. Labour MP Phil Goff also expressed the view in parliament that this discretionary wording had hindered the effective implementation of the Victims of Offences Act:[5]

> *'The lack of statutory responsiveness after 12 years of operation suggests that the discretionary language in the Victims of Offences Act has not been effective and it is now time to introduce mandatory compliance with this statute.'*

26. The Minister of Justice subsequently released a supplementary order paper which proposed amendments to most of the Bill.[6] Significantly, it proposed recasting the rights as duties that agencies must perform, with the terminology in the Bill changed from "should" to "must".

[4] 5 October 1999, Victims Rights Bill Second Reading.
[5] 5 October 1999, Victims Rights Bill Second Reading.
[6] Supplementary Order Paper No 112.

27. The Victims' Rights Bill 1999 was referred to the Justice and Electoral Committee in December 2000 and the Committee agreed with this proposal, expressing the view that converting the principles into mandatory rights would improve the quality and extent of service that agencies provide to victims.[7] However, the Committee also recommended a significant restriction on remedies available to victims where the quality and extent of service fell below normal standard. In other words, restrictions on the remedies available to victims where their rights were not upheld. These restrictions took the form of a statutory bar to prevent victims from seeking "financial compensation, damages or otherwise" from government agencies.[8] The justification provided by the committee for this statutory bar was to avoid the potentially high cost to government agencies of litigating and paying out compensation claims. The Committee was of the view that putting resources into improving agency processes would be a more effective way of ensuring that agencies upheld victims' rights.[9]

INTRODUCTION OF THE VICTIMS RIGHTS ACT (2002)

28. The Victims Rights Act was passed in 2002 under a now Labour led government which adopted the Justice and Electoral Committee's recommendation to include a statutory bar to victims seeking financial redress.[10]

29. At the time the Victims Rights Act was introduced, the Human Rights Act had been in force since 1993. This Act established the Human Rights Commission and the Human Rights Review Tribunal where victims could seek redress where their rights had not been upheld. No equivalent Victims Rights Commission or Victims Rights Review Tribunal was established under the Victims Rights Act.

30. However, the Government did announce that it would establish a "watchdog committee" to ensure that rights enshrined in the Act could be implemented to full effect.[11] Unlike the Victims Task Force established under the Victims of Offences Act, this watchdog committee did not have a statutory basis but merely an operational basis. It is unclear whether this committee was ever established, or if it was the nature of the work it undertook, as there is no publicly available information about the committee or clear records about the committee within the Ministry of Justice.

AMENDMENTS TO THE VICTIMS RIGHTS ACT (2008 – 2014)

[7] Victims Rights Bill 2001 (331-2) as reported from the Justice and Electoral Committee, see page 3.
[8] This statutory bar is contracted in s 50 of the Victims Rights Act.
[9] Victims Rights Bill 2001 (331-2) as reported from the Justice and Electoral Committee, see page 28.
[10] Victims Rights Act 2002, s 50. The only minor exception to the statutory bar is that victims can seek financial compensation if one of their rights is breached but only if this breach also results in a corresponding breach of privacy under the Privacy Act.
[11] 8 October 2002, Victims Rights Bill, Consideration of Report of Justice and Electoral Committee.

31. Since the Victims Rights Act was enacted in 2002 it has been amended three times in 2008, 2011 and 2014. The 2008 and 2011 amendments were very minor and simply amended some of the technical wording in the Act. The 2014 amendments were far more substantial and included the introduction of new rights such as the right of victims to request a restorative justice conference. The right to make a victim impact statement was also further clarified and enhanced as well as the right of victims to receive information about offenders post-sentencing.

32. The 2014 amendments were also aimed at creating greater transparency in regard to the type of services offered by government agencies and complaints made by victims who were of the view that their rights had not been upheld. Agencies were now required to publish, in their respective annual reports, a summary of the services provided to victims by the agency. Government agencies were also now required to publish statistical information in their respective annual reports about the number, type and disposition of complaints made by victims to each agency.

33. The definition of "victim" in the Victims Rights Act was also amended to include a victim of "domestic violence" which in turn had its own definition in the Domestic Violence Act 1995 (now "family violence" in the Family Violence Act 2018). The purpose of this amendment was to make sections 7 and 8 of the Victims Rights Act applicable to victims of domestic violence who have applied for a protection order in the Family Court. Sections 7 and 8 are principles guiding treatment of victims, as opposed to rights, and provide that:

    a. Any person who deals with a victim (for example, a judicial officer, lawyer, member of court staff, Police employee, probation officer, or member of the New Zealand Parole Board) should treat the victim with courtesy and compassion; and respect the victim's dignity and privacy.
    b. A victim or member of a victim's family who has welfare, health, counselling, medical, or legal needs arising from the offence should have access to services that are responsive to those needs.

34. Finally, the 2014 amendments included a new requirement that the Secretary for Justice publish a Victims Code as soon as practical.

INTRODUCTION OF THE VICTIMS CODE (2015)

35. In September 2015 the Victims Code was published by the Ministry of Justice. The rights contained in the Victims Code mirror the rights contained in the Victims Rights Act although they are worded in less technical language that is more accessible to the public. A further "right" was added to the Victims Code which gave victims of offences committed by young people the right to attend family group conferences arranged by Oranga Tamariki. This "right" has an operational basis and has not been added to the Victims Rights Act through legislation.

CREATION OF THE ROLE OF CHIEF VICTIMS ADVISOR TO GOVERNMENT (2015)

36. In November 2015, the National Government established the role of Chief Victims Advisor to Government. The Chief Victims Advisor is an independent advisor appointed by, and accountable to, the Minister of Justice. The role is at the discretion of the Minister with no statutory basis in the Victims Rights Act or other legislation. The work programme of the Chief Victims Advisor is supported by a small team of staff at the Ministry of Justice and a modest budget to commission research undertaken by external researchers.

CURRENT SITUATION (2020)

The Victims Rights Act has been in force for around 18 years. There is currently no independent entity, for example an inter-agency "watchdog committee" or a Human Rights Commission, with responsibility for overseeing the implementation of the Act and the monitoring of compliance by agencies with the Act. There is also no equivalent of the Human Rights Tribunal, for victims to seek redress where their rights have not been upheld by government agencies. The statutory bar on victims from seeking financial compensation from government agencies where their rights have not been upheld remains in place.

RIGHT 1: TO BE INFORMED ABOUT PROGRAMMES, REMEDIES & SERVICES

STATUTORY FRAMEWORK

37. Section 11 of the Victims Rights Act states that victims of any offence type must be provided with information by the personnel of six specified government agencies about "programmes, remedies, or services" available through the agency. The three justice sector agencies specified in section 11 are:
    a. Police
    b. Ministry of Justice
    c. Department of Corrections.

38. Information about the programme, remedy, or service must be provided as soon as practicable after a victim comes into contact with the agency. The victim can then decide if they want to attend the programme or receive the remedy or service.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

39. In practice, the first justice sector government agency that victims come into contact with is Police when they report an offence. Police does not consider that it provides any programmes, remedies or services directly to victims although it does play a key role in informing victims about programmes, remedies and services provided by other government and non-government agencies.

Support services provided by Victim Support and other non-government agencies

40. There is a nationwide referral agreement between Police and non-government agency Victim Support which provides that when a victim reports any type of offence they will be informed

about Victim Support. A Police Officer is to provide a brief verbal overview of the type of support that Victim Support can provide and then ask the victim whether they want to be referred to the service. If so, a phone or email referral is made by the Police Officer. The victim is then contacted by Victim Support. Police will make referrals to Victim Support immediately for serious crime, fatal or serious injury crash, completed suicide or other sudden traumatic events including violence offences with a seriousness greater than common assault and dishonesty offences of a serious magnitude; or if a victim is significantly affected by the incident; or the victim is likely to be involved with the justice system for an extended period. For family and sexual violence events, Police will often refer victims to a specialist agency, which may include Victim Support. All referrals relating to homicides are made to Victim Support as soon as practicable.

41. Police also has various nationwide and region-specific referral agreements with a wide range of other non-government agencies that are contracted by the Ministry of Justice and Ministry of Social Development to provide support services for victims. These agencies generally focus on providing specialist support to victims of family or sexual violence. Again, the same process outlined above in respect of Victim Support is to be followed by Police Officers who make the referral. This referral is then picked up by the non-government agency which contacts the victim.

Ministry of Justice Court Services for Victims

42. There is a nationwide referral agreement between Police and the Ministry of Justice which provides that all victims must be referred to Court Services for Victims where the offender has been charged and will therefore appear in court. The referral process differs to that used by Police with respect to non-government agencies like Victim Support as Police Officers do not ask victims if they want to be referred, instead this is to be done automatically.

43. Police Officers are to fill in a *CSV1 form* and email it to the Ministry of Justice Court Victim Advisors assigned to the local District Court. This form contains the victim's contact information and information about the nature of the offence(s). Immediately after the offender's first appearance in court, where an offender's application for bail may have already be determined, a Court Victim Advisor cold calls each victim who has been referred by Police, explains the service, and asks the victim if they would like to receive the service. If agreed, the service continues until the offender is either found not guilty or is convicted and sentenced.

Ministry of Justice Strengthening Safety Service

44. There is a nationwide referral agreement between the Ministry of Justice and non-government agencies contracted to the Ministry of Justice to provide the Strengthening Safety Service[12]. This agreement provides that all victims must be informed of the service by a Court Victim Advisor. As discussed above, all victims are to be cold called by a Court Victim Advisor following the defendant's first appearance in court and asked if they wish to receive Court Services for Victims. It is during this initial phone call that victims are informed about the Strengthening Safety Service. If the victim wants to receive the service, the Court Victim Advisor will make a referral. The victim will then be contacted by the relevant non-government agency contracted to provide the service. The victim then decides if they want to engage.

Ministry of Justice Restorative Justice Process

45. In cases where an offender pleads guilty and the criteria outlined in section 24A of the Sentencing Act 2002 have been met, the Judge must adjourn the proceedings to enable inquiries to be made by a suitable person about the appropriateness of a restorative justice process. Following this direction, a Court Registry Officer will generate a report containing a summary of facts, the offender's criminal conviction history, and an initial victim impact statement if this is already on file. The Court Registry Officer will also obtain the contact details of the victim from the database used by Court Victim Advisors and add this to the file. This file is then provided to a local restorative justice provider that is contracted to the Ministry of Justice. This provider then makes contact with the victim to inform them that they have the option of attending a restorative justice process and what this involves. The victim can then decide whether they want to engage in the process.

46. If the victim does engage, and the offender agrees, the restorative justice service provider will arrange and facilitate pre-conferences with the victim and offender separately to explain the process in detail and assess the safety and suitability of all parties to participate in the restorative justice conference. If all parties consent and are safe to proceed, the conference occurs and the restorative justice facilitator then prepares a report which is sent to a court registry officer and then passed on to the judge assigned to sentence the offender. If the victim or the offender does not wish to attend a restorative justice conference, or the facilitator determines that it's not safe to proceed, the provider submit a memo to the Court advising that the case did not proceed to conference.

47. Prior to being contacted by a restorative justice provider the victim is also supposed to have been informed by their Court Victim Advisor (if they have opted to receive Court Services for

[12] Non-violence programmes contracted by the Ministry of Justice in family violence cases.

Victims) of their right to request a restorative justice conference. However, Court Victim Advisors have no involvement in the referral process.

Department of Corrections Victim Notification Register

48. Finally, there is a nationwide referral agreement between Police and the Department of Corrections which provides that Police Officers are to inform victims of specified offences, as defined in section 29 of the Victims Rights Act, about the Victim Notification Register. This register is administered by specialist staff at the Department of Corrections who contact victims to provide them with information about the offender while they are on home detention, in prison, are about to appear before the Parole Board, or have been released by the Parole Board.

49. Eligible victims are informed about the register by Police Officers after the offender is charged and can request that they be added to the register at any time from that point on. If the victim wishes to be added to the register, the Police Officer fills in a *Victim Notification Register Application Form* and emails this to the Manager of the Victim Notification Register at the Department of Corrections. This Manager then contacts the victim to explain how the register operates and to answer any questions.

MONITORING OF THIS OPERATIONAL PROCESS

Support service provided by Victim Support and other non-government agencies

50. Each time a victim is a victim of an offence, Police create a victimisation profile, the National Intelligence Application (NIA). In this profile Police Officers can record if the victim has been informed about a particular support service and then chosen to be referred. The table below outlines the total number of victimisations nationwide in the calendar years 2015, 2016 and 2017 compared with the total number of victimisations where the victim was informed of and referred to: Victim Support, a “local sexual assault service”, Women’s Refuge or “other”.

51. It is important to bear in mind that the number of referrals will never amount to 100% because a victim may choose not to be referred to the service for a range of reasons, for example they may feel they don’t want the support, or don’t think the service will assist them (based on the overview provided by the Police Officer, or they would prefer to get support solely from friends and family. However, the number of victimisations where victims were recorded as referred to support services is still very low.

Table 4. Total number of victimisations compared with the number of victimisations where the victim was informed of and referred to Victim Support, a "local sexual assault service", Women's Refuge or "other"

	CALENDAR YEAR		
	2015	**2016**	**2017**
TOTAL VICTIMISATIONS NATIONWIDE	258,832	270,128	267,648
VICTIMISATIONS WHERE "VICTIM SUPPORT REFERRAL" RECORDED	8,258 (3.2%)	7,557 (2.8%)	6,682 (2.5%)
VICTIMISATIONS WHERE "LOCAL SEXUAL ASSAULT SERVICE REFERRAL(S)" MADE	29 (0.0%)	412 (0.2%)	1,391 (0.5%)
VICTIMISATIONS WHERE "WOMEN'S REFUGE REFERRAL"	556 (0.2%)	560 (0.2%)	611 (0.2%)
OTHER REFERRAL	7,082 (2.7%)	5,743 (2.1%)	4,548 (1.7%)

52. The appointed Police liaison for this research expressed the view that the data in the above table is unlikely to reflect the actual number of referrals that occur in practice and the table is merely a reflection of inadequate data collection by Police Officers. Reasons provided for insufficient data collection include inadequate staff training resulting in Police Officers being unaware they need to record the data. Alternatively, Police Officers are aware they need to record the data but do not due to high workloads and competing priorities.

53. Family Harm related referrals to Womens Refuge are not always completed by the Police Officer attending the call for service. A high percentage of referrals are made by multiagency safety assessment meetings held the following day, (or a Monday following a weekend) by Police Family Violence Coordinators. This data would be difficult to capture as there are various ways across the country where this information is recorded.

54. Further, the Police Liaison advised that it is important to bear in mind that not all victimisations will have a corresponding referral to Women's Refuge and Local Sexual Assault Services because this will only be made if the offence is family or sexual violence related and concerns an adult female victim. Children would be referred to Oranga Tamariki and there are not many services for male victims to be referred to (and no means to collect this type of data). It is therefore not appropriate to compare the total number of these referrals to the total number of victimisations which relate to all offence types such as theft, fraud, damage and other assaults.

Ministry of Justice Court Services for Victims

55. As previously discussed, Police Officers do not ask victims if they want to be referred to the Ministry of Justice Court Services for Victims, instead this is meant to be done automatically. A local Court Victim Advisor cold calls each victim after the offender's first appearance to inform the victim of the service. Court Victim Advisors are reliant on Police Officers to refer all of victims using a *CSV1 form* so that they have correct up to date contact details and are able to cold call them and offer the victim Court Services for Victims.

56. Where a Police Officer refers a victim to Court Services for Victims using a CSV1 form, they are able to record a data type called "CSV1 emailed to court**".** The table below outlines the total number of victimisations nationwide in the calendar years 2015, 2016 and 2017 compared with the total number of victimisations where this data type was recorded. As previously discussed, currently there is an expectation that Police will automatically refer 100%, of victims to this service.

57. As demonstrated above, the number of recorded referrals is very low. Again, the appointed Police liaison for this research expressed the view that the above data is unlikely to reflect the actual number of referrals that occur in practice and the table is merely a reflection of inadequate data collection by Police Officers. Again, reasons provided for insufficient data collection include inadequate staff training resulting in Police Officers being unaware they need to record the data. Alternatively, Police Officers are aware they need to record the data but do not due to high workloads and competing priorities.

Table 5. Total number of victimisations compared with the number of victimisations where a CSV1 was emailed to court

	CALENDAR YEAR		
	2015	**2016**	**2017**
TOTAL VICTIMISATIONS NATIONWIDE	258,832	270,128	267,648
VICTIMISATIONS WHERE "CSV1 EMAILED TO COURT" RECORDED	6,217 (2.4%)	9,077 (3.4%)	11,012 (4.1%)[13]

[13] This data has been retrieved from the Police NIA application only. Processes differ across the country. For example, in Northland there is a high compliance of CSV1 referrals to Justice, as Police Officers will email the CSV1 and summary of facts directly to Justice themselves. This transaction will not be recorded in NIA.

Ministry of Justice Strengthening Safety Service

58. As previously discussed, victims are informed of this service during the initial cold call from a Court Victim Advisor. Court Victim Advisors currently record notes in the victim's respective online file on the type of information that has been provided to them about programmes, remedies and services. However, because this information is recorded in note form, as opposed to quantitative data that can be reported, it is not possible to determine the percentage of victims who are informed about the Strengthening Safety Service compared to those who are not.

59. Quantitative data is collected on the number of referrals made by the Ministry of Justice to government agencies contracted to provide the Strengthening Safety Service, although this data does not demonstrate the percentage who have been informed of the service, just the uptake of the service.

Ministry of Justice Restorative Justice Process

60. As discussed above, victims are to be informed of their right to attend a restorative justice process by a Court Victim Advisor (if the victim has opted to receive Court Services for Victims) and a restorative justice provider contracted to the Minister of Justice. However, the Ministry of Justice does not record quantitative data in a reportable format that would demonstrate the number of victims who have been informed of this right compared to those who have not.

61. However, the Ministry does collect data on the number of cases that were closed due to victim details or court documents not being received by restorative justice providers from Court Registry Officers. Because it was not possible for restorative justice providers to contact these victims, it logically follows that these victims were not informed of their right to attend a restorative justice process by a restorative justice provider. This data is outlined in the table below.

Table 7. Percentage of referrals closed due to the provider not receiving victim contact details or court documents

FINANCIAL YEAR	PERCENTAGE OF REFERRALS CLOSED DUE TO PROVIDERS NOT RECEIVING VICTIM DETAILS OR COURT DOCUMENTS
2015/16	2.7%
2016/17	3.1%
2017/18	2.2%

62. The Ministry also collects data in the situation where the contact details and court documents are provided to the restorative justice provider, but the provider is unable to then contact the

victim. When this occurs, the referral is closed. The table below outlines the number of referrals closed due to restorative justice providers being unable to contact victims.

Table 8. Number and percentage of referrals closed due to providers being unable to contact victim/s

FINANCIAL YEAR	TOTAL REFERRALS	NUMBER OF REFERRALS CLOSED DUE TO PROVIDERS BEING UNABLE TO CONTACT VICTIM/S	PERCENTAGE OF REFERRALS CLOSED DUE TO PROVIDERS BEING UNABLE TO CONTACT VICTIM/S
2015/16	12,577	1,449	11.5%
2016/17	12,867	1,707	13%
2017/18	12,518	2,020	16%

Department of Corrections Victim Notification Register

63. Where a Police Officer provides a victim with information about the Victim Notification Register they are able to record a data type in the victim's victimisation profile called "VNR information provided**".** This data was requested for this issues paper although Police advised that it would not accurately reflect the number of times eligible victims were provided with information about the register in practice. On this basis, the data was not provided by Police for this paper.

RIGHT 2: TO EXPRESS VIEWS ABOUT APPLICATIONS BY OFFENDERS FOR BAIL

STATUTORY FRAMEWORK

64. Section 30 of the Victims Rights Act states that Police Officers and Crown Prosecutors must make all reasonable efforts to ascertain any views of victims about applications by offenders for bail. These views must then be provided to the court.

65. This right only applies to victims of specified offences which are defined in section 29 of the Victims Rights Act as:
    a) an offence of a sexual nature that is contained in Part 7 of the Crimes Act 1961 and sections 216H to 216J of the Crimes Act 1961
    b) an offence of serious assault;
    c) an offence that has resulted in serious injury to a person, in the death of a person, or in a person becoming incapable; or
    d) an offence of another kind, and that has led to the victim having ongoing fears, on reasonable grounds for his or her physical safety or security; or for the physical safety or security of 1 or more members of his or her immediate family.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

66. While section 30 states that it is the responsibility of Prosecutors to ascertain the views of victims, there is a nationwide understanding that in practice, Police Officers are responsible for undertaking this task due to logistical reasons. Victims are asked for their views immediately or shortly after the offence is reported to Police and the offender(s) is arrested. This discussion usually takes place in person at the scene or Police Station, otherwise over the phone.

67. If the victim wants to provide their views, the Police Officer notes the victim's views on a *Grounds for Opposing Bail Form POL 128.* This form is then forwarded to the local Police Prosecution Unit or Crown Solicitor's firm depending on whether the Police or Crown are prosecuting the offence. The Police or Crown Prosecutor assigned to respond to the offender's application for bail, by opposing or not opposing it on behalf of the Crown, then provides the victim's views to the judge at the offender's first appearance in court. If the victim's views are not provided to the Prosecutor in the first instance they can follow up with the Police Officer

prior to the offender's first appearance if time and resources allow and ask them to contact the victim.

68. While offenders usually apply for bail at their first appearance, for a range of reasons some offenders opt to apply at their second appearance. This may take place several weeks or months later. By this stage victims who have been referred to Court Services for Victims and have opted to receive the service may have their views ascertained by a Court Victim Advisor, who will then provide these to the Police/Crown Prosecutor. On some occasions, judges will specifically request that a Court Victim Advisor ask for the victim's views because of their impartiality. However, Police Officers can also ascertain the victim's views and provide these to the Police/Crown Prosecutor. This can result in the victim being asked twice, by both their Court Victim Advisor or the Police Officer. Alternatively, the victim might not be asked at all because the Court Victim Advisor assumes the Police Officer will do this and vice versa.

69. Consultation undertaken for this issues paper indicates that there is variation amongst Police Officers in Charge as to their approach. Some explicitly ask victims what their views are whereas others do not and simply inform victims of the standard bail conditions that the Prosecutor is likely to seek (these vary according to the type of offence). In the latter scenario, the Police Officer in Charge either does not record the victim's views on the Grounds for Opposing Bail Form POL 128 or assumes what the victim's views are and notes these on the form.

70. It appears that where the victim's views are not provided to the court, judges do not generally make an adjournment to provide further time for this information to be ascertained. Instead, the offender's application for bail is determined in the absence of the victim's views.

MONITORING OF THIS OPERATIONAL PROCESS

71. Police Officers are able to record whether an individual victim's views on bail have been ascertained on the victimisation profile in the NIA. The table below outlines the total number of victimisations nationwide in the calendar years 2015, 2016 and 2017 compared with the total number of victimisations where the victim's views were ascertained by Police.

72. It is important to note that this right only applies to victims of specified offences, not all offences. Given that the total number of victimisations in the table above relate to all offences, not just specified offences, a direct comparison between the total number of victimisations and the number of victimisations where the victim's views on bail were ascertained is not appropriate. However, even with this in mind the number of victimisations where views on bail were recorded are still very low.

Table 10. Total number of victimisations compared with the number of victimisations where the victim's views on bail recorded

	CALENDAR YEAR		
	2015	**2016**	**2017**
TOTAL VICTIMISATIONS NATIONWIDE	258,832	270,128	267,648
VICTIMISATIONS WHERE "VIEWS ON BAIL" RECORDED	954 (0.4%)	974 (0.4%)	1,487 (0.6%)

73. The appointed Police liaison for this research expressed the view that the above data is unlikely to reflect the actual number of victims who had their views on bail recorded by Police in practice. Again, reasons provided by Police for what appears to be inadequate data collection include inadequate staff training resulting in Police Officers being unaware they need to record it or Police Officers choosing not to record it due to high workloads, time constraints and competing priorities.

74. At present, neither Police or Crown Prosecutors record any reportable data on the number of bail applications where the victim's views are provided to them by a Police Officer in Charge. It is therefore not possible to determine the number of bail hearings where judges are deciding whether to grant bail in the absence of the victim's views.

75. Finally, where the offender's application for bail is decided at their second appearance, Court Victim Advisors are unable to record any quantitative data on the number of victims who have been contacted and given the opportunity to provide their views because the database does not have this functionality. This data is only recorded in note form in the profiles of victims and cannot be used to produce quantitative reporting.

RIGHT 3: TO BE INFORMED ABOUT THE RELEASE OF OFFENDERS ON BAIL

STATUTORY FRAMEWORK

77. Section 34 of the Victims Rights Act states that victims must, as soon as practicable, be notified whether the offender has been released on bail and if so, on what conditions. If the offender's application for bail was opposed by the Police or Crown Prosecutor, it is the delegated responsibility of the Commissioner of Police to inform the victim. However, if the application for bail was not opposed by the Police or Crown Prosecutor it is the delegated responsibility of the Secretary for Justice to inform the victim.

78. This right only applies to victims of specified offences which are defined in section 29 of the Victims Rights Act as:
    a. an offence of a sexual nature that is contained in Part 7 of the Crimes Act 1961 and sections 216H to 216J of the Crimes Act 1961
    b. an offence of serious assault;
    c. an offence that has resulted in serious injury to a person, in the death of a person, or in a person becoming incapable; or
    d. an offence of another kind, and that has led to the victim having ongoing fears, on reasonable grounds for his or her physical safety or security, or for the physical safety or security of 1 or more members of his or her immediate family.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

79. At present, there are three different processes for informing victims of the release of offenders on bail. The first two are used in the circumstances where the offender's application for bail is opposed by the Police or Crown Prosecutor and the third is where the offender's application is not opposed by the Police or Crown Prosecutor.

Process 1 – Police Prosecutors

80. Police Prosecutors nationwide have an app on their smartphones and are able to input information on whether the offender has been released and if so on what conditions. Victims

are phoned within a few hours to ensure they get the information as soon as possible and there is a nationwide policy that the Police Prosecutor will attempt to contact all victims by the end of the day. All Police Prosecutors are on a national roster and are assigned shifts to undertake this work.

Process 2 – Crown Prosecutors

81. In contrast, Crown Prosecutors update the individual Police Officer in Charge assigned to the victim on the same day or the next day to inform them if the offender has been released on bail and if so, on what conditions. Police have appointed Police Victim Advisors who are specifically responsible for notifying victims under section 29 of the Victims Rights Act. The Police Officer in Charge or the Police Victim Advisor contact the victim to pass on the information about the bail decision. This may take place on the same day the information is provided or it may be the next day if there is a high workload.

Process 3 – Court Victim Advisors

82. If the application for bail was not opposed by the Police or Crown Prosecutor, a Court Registry Officer will update the Case Management System (CMS) database with the outcome of the bail hearing which then notifies the Court Services for Victims (CSV) database, enabling the relevant Court Victim Advisor to contact the victim.

83. In some cases, the Court Victim Advisors also notify victims when bail is opposed by Prosecutors.

MONITORING OF THIS OPERATIONAL PROCESS

84. Data was requested from Police on the percentage of victims informed of the outcome of bail hearings under processes 1 and 2. The table below outlines the total number of victimisations nationwide in the calendar years 2015, 2016 and 2017 compared with the total number of victimisations where it was recorded on the victimisation profile in the NIA that the victim was informed of the outcome of the offender's application for bail. This data type is called "advised of bail conditions".

85. It is important to note that this right only applies to victims of specified offences, not all offences. Given that the total number of victimisations in the table above relate to all offences, not just specified offences, a direct comparison between the total number of victimisations and the number of victimisations where the victim was informed would be misleading. However, even with this in mind the number of victimisations where views on bail were recorded are still very low.

Table 11. Total number of victimisations compared with the number of victimisations where the victim advised of bail conditions recorded

	CALENDAR YEAR		
	2015	**2016**	**2017**
TOTAL VICTIMISATIONS NATIONWIDE	258,832	270,128	267,648
VICTIMISATIONS WHERE "ADVISED OF BAIL CONDITIONS" RECORDED	2,598	2,916	3,433
PERCENTAGE OF VICTIMISATIONS WHERE "ADVISED OF BAIL CONDITIONS" RECORDED	1%	1.1%	1.3%

86. The appointed Police liaison for this research expressed the view that the above data is unlikely to reflect the actual number of victims who have been advised by Police of the offender's bail conditions in practice. Again, reasons provided by Police for what appears to be inadequate data collection include inadequate staff training resulting in Police Officers being unaware they need to record it or Police Officers choosing not to record it due to high workloads, time constraints and competing priorities.

87. Further, Court Victim Advisors are unable to collect any reportable data on the number of victims who have been advised of the outcome of the bail hearing by a Court Victim Advisor where bail was not opposed by the Police or Crown Prosecutor. This is because the current database does not have this functionality. This data is only recorded in note form in the profiles of victims and cannot be used to produce quantitative reporting.

RIGHT 4: TO BE INFORMED ABOUT THE POLICE INVESTIGATION AND COURT PROCEEDINGS

STATUTORY FRAMEWORK

88. Section 12 of the Victims Rights Act states that victims of any offence type must, as soon as practicable, be informed about the investigation of the offence and subsequent court processes. In total, the Act specifies 19 different types of information that victims must be informed of depending on the circumstances of their case. These are set out in Table 12 below.

89. Section 12 does not specify the role of the staff member at the relevant government agency that is responsible for informing victims, rather states that victims must be informed either by "investigating authorities, members of court staff or a prosecutor".

Table 12. Type of information victims are eligible to receive under s 12 of the Victims Rights Act

	TYPE OF INFORMATION
1	The progress of the investigation of the offence
2	The charges filed
3	Any changes to charges filed (e.g. charges added, reduced or withdrawn)
4	Reasons for not filing charges
5	The victim's role as a witness in the prosecution of the offence
6	The date and place of the first appearance in court of the person accused of the offence
7	The date and place of any preliminary hearing relating to the offence
8	Any plea of guilty
9	Any finding that an accused is unfit to stand trial
10	The date and place of any trial relating to the offence
11	Any finding that the charge was not proved

12	Any conviction entered
13	The date and place of any hearings set down for sentencing
14	Any sentence imposed
15	The possibility of the court making an order prohibiting the publication of identifying information about the victim, and the steps that the victim may take in relation to the making of that order
16	The date and place of any appeals against conviction or sentence or both
17	Any acquittal or deemed acquittal
18	The date and place of any hearing concerning a prerogative or mercy and any subsequent appeal
19	Any grant of free pardon

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

90. Consultation undertaken for this research indicates that at present there is no nationwide memorandum of understanding between "investigating authorities" (i.e. Police Officers), "members or court staff" (i.e. Court Victim Advisors) and "prosecutors" (i.e. Police and Crown Prosecutors) as to who has responsibility for informing victims of the type of information listed in section 12. However, there is an informal nationwide understanding that in practice Police Officers and Court Victim Advisors have shared responsibility for informing the victim.

91. Generally speaking, Police Officers inform victims of type 1 – 4 (as this concerns the investigation of the offence) and Court Victim Advisors inform victims of types 6 – 19 (as this concerns the court proceedings). Victims are informed using their preferred method of communication, which is primarily over the phone or via email. However, where a victim opts to not receive the service offered by a Court Victim Advisor, it will be the responsibility of the Police Officer in charge of the file to keep the victim informed. The frequency, timeliness and detail of the information provided can depend on the seriousness of the offence.

92. Both Police Officers and Court Victim Advisors have responsibility for informing victims about information type 5 which is the victim's role as a witness in the prosecution of the offence.

93. Crown Prosecutors aim to meet with all child and adult victims prior to the hearing to answer any questions the victim has about their role as a witness. Depending on the workload of the Crown Prosecutor this may take place anywhere from several weeks to just days before the victim gives evidence in court. On some occasions Crown Prosecutors are only able to meet with victims on the day of the trial. Police Prosecutors usually meet with child victims anywhere from several weeks to several days before the victim gives evidence in court but usually only meet

with adult victims for the first time on the day of the hearing in court. As a result, there is very limited time to prepare the victim to give evidence and answer any questions they may have. Police Prosecutors advised that their workload is simply too high to meet with all adult victims for a sufficient amount of time prior to the hearing.

MONITORING OF THIS OPERATIONAL PROCESS

94. At present, Police Officers and Court Victim Advisors record notes in the victim's respective online files on the type of information that has been provided to them and on what dates. Given that this information is recorded in note form, as opposed to quantitative data, it is not possible the determine what percentage of victims are receiving each of the above information types relevant to their case compared with those who are not.

RIGHT 5: RIGHT TO REQUEST A RESTORATIVE JUSTICE PROCESS

STATUTORY FRAMEWORK

95. Section 9 of the Victims Rights Act 2002 states that if a victim of any offence type requests to meet with the offender to resolve issues relating to the offence, a Police employee, a member of court staff or if appropriate a probation officer, must, if satisfied that the necessary resources are available, refer the request to a suitable person who is available to arrange and facilitate a restorative justice process.

96. The Sentencing Act 2002 also contains a corresponding provision about restorative justice processes which must be read in conjunction with section 9 of the Victims Rights Act. Section 24A of the Sentencing Act states that where a case is before the District Court, an offender pleads guilty to the offence, no restorative justice process has previously occurred in relation to the offending, there are one or more victims of the offence, and the Registrar has informed the court that an appropriate restorative justice process can be accessed, the court must then adjourn the proceedings to allow for a restorative justice process to be explored.

97. During the adjournment, inquiries are to be made by a "suitable person" to determine whether a restorative justice process is appropriate in the circumstances of the case. This person must consider the wishes of the victim. Following the restorative justice process, if this does ultimately take place, the offender is sentenced. The fact that an offender has participated in a restorative justice process must be considered by the judge when determining the offender's sentence in accordance with section 10 of the Sentencing Act.

98. As stated above, section 9 of the Victims Rights Act specifies that a probation officer may refer a victim's request to a suitable person who is available to arrange and facilitate a restorative justice process. This implies that a victim can make a request for a restorative justice process after an offender has been sentenced and the court proceedings have concluded. However, there is no provision in the Parole Act 2002 or Corrections Act 2004 which sets a statutory referral process for restorative justice post-sentence similar to that in Section 24A of the Sentencing Act.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

Pre-sentencing

99. In cases where an offender pleads guilty and the criteria outlined in section 24A of the Sentencing Act have been met, the Judge must adjourn the proceedings to enable inquiries to be made by a suitable person about the appropriateness of a restorative justice process. Following this direction, a Court Registry Officer will generate a report containing a summary of facts, the offender's criminal conviction history, and an initial victim impact statement if this is already on file. The Court Registry Officer will also obtain the contact details of the victim from the CSV database used by Court Victim Advisors and add this to the file. This file is then provided to a local restorative justice provider that is contracted to the Ministry of Justice. This provider then makes contact with the victim to inform them that they have the option of attending a restorative justice conference and what this involves. The victim can then decide whether they want to engage in the process.

100. If the victim does engage, and the offender agrees, the restorative justice service provider will arrange and facilitate pre-conferences with the victim and offender separately to explain the process in detail and assess the safety and suitability of all parties to participate in the restorative justice conference. If all parties consent and are safe to proceed, the conference occurs, and the restorative justice facilitator then prepares a report which is sent to a court registry officer and then passed on to the judge assigned to sentence the offender. If the victim or the offender does not wish to attend a restorative justice conference, or the facilitator determines that it's not safe to proceed, the provider submits a memo to the Court advising that the case did not proceed to conference.

101. Prior to being contacted by a restorative justice provider the victim is also supposed to have been informed by their Court Victim Advisor (if they have opted to receive Court Services for Victims) of their right to request a restorative justice process. However, Court Victim Advisors have no involvement in the referral process.

Post-sentencing

102. Both the Ministry of Justice and the Department of Corrections contract Project Restore New Zealand to accept referrals post-sentencing for sexual violence cases. These can occur as community referrals from non-government agencies, or even be initiated directly by victims, offenders or their whānau.

103. The Department of Corrections also contracts other restorative justice providers directly to provide restorative justice processes. There is currently limited funding for Corrections to enable post-sentence restorative justice.

MONITORING OF THIS OPERATIONAL PROCESS

104. The Ministry of Justice does not record quantitative data in a reportable format that would demonstrate the number of victims who have been informed of their right to attend a restorative justice conference.

105. However, the Ministry does collect data on the number of cases that were closed due to victim details or court documents not being received by restorative justice providers from Court Registry Officers. Because it was not possible for restorative justice providers to contact these victims, it logically follows that these victims were not informed of their right to attend a restorative justice conference by a restorative justice provider. This data is outlined in the table below.

Table 7. Percentage of referrals closed due to the provider not receiving victim contact details or court documents

FINANCIAL YEAR	PERCENTAGE OF REFERRALS CLOSED DUE TO PROVIDERS NOT RECEIVING VICTIM DETAILS OR COURT DOCUMENTS
2015/16	2.7%
2016/17	3.1%
2017/18	2.2%

106. The Ministry also collects data in the situation where the contact details and court documents are provided to the restorative justice provider, but the provider is unable to then contact the victim. When this occurs, the referral is closed. Table 8 below outlines the number of referrals closed due to restorative justice providers being unable to contact victims.

107. The Ministry's data reporting does not indicate whether the referrals were made pre or post-sentence.

Table 8. Number and percentage of referrals closed due to providers being unable to contact victim/s

FINANCIAL YEAR	TOTAL REFERRALS	NUMBER OF REFERRALS CLOSED DUE TO PROVIDERS BEING UNABLE TO CONTACT VICTIM/S	PERCENTAGE OF REFERRALS CLOSED DUE TO PROVIDERS BEING UNABLE TO CONTACT VICTIM/S
2015/16	12,577	1,449	11.5%
2016/17	12,867	1,707	13%
2017/18	12,518	2,020	16%

RIGHT 6: TO EXPRESS VIEWS ABOUT APPLICATIONS BY OFFENDERS FOR PERMANENT NAME SUPPRESSION

STATUTORY FRAMEWORK

108. Section 28 of the Victims Rights Act provides that if an offender applies for permanent name suppression the Prosecutor must make all reasonable efforts to ensure that any views the victim has on the application are ascertained. The Prosecutor must then inform the court of the victim's views. This right applies to victims of all types of offences.

109. This section must be read in conjunction with section 201(1) of the Criminal Procedure Act 2011 which states that the identity of the defendant is automatically suppressed if the defendant is convicted of incest or sexual connection with a dependant family member. The section states that the purpose of this automatic suppression is to protect the victim.

110. Offenders of any other offence type must apply for permanent name suppression in order for it to be granted. It is only granted under section 200 of the Criminal Procedure Act if publication of the offender's name would be likely to meet any of the criteria in subsection (2), for example by causing extreme hardship to the offender or any person connected with the offender or create a real risk of prejudice to a fair trial.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

111. Although section 28 of the Victims Rights Act states that is the responsibility of Prosecutors to ascertain the views of victims, there is a nationwide understanding that in practice Police Officers in Charge undertake this task. Victims are asked for their views which usually takes place shortly before sentencing, either over the phone or in person. If the victim wants to provide their views, the Police Officer in Charge notes the victim's views on a form which is then emailed to the local Police Prosecution Unit or Crown Solicitor's firm. Alternatively, the Police or Crown Prosecutor meets with the victim in person in the presence of the Police Officer in Charge to discuss their views. The Police or Crown Prosecutor assigned to the file then provides

the victim's views to the judge responsible for determining the offender's application for permanent name suppression.

112. There also appears to be a dual process whereby Court Victim Advisors may inform victims (who have opted to receive Court Services for Victims) of their right to provide their views on the offender's application for name suppression. If the victim opts to provide their views, the Court Victim Advisor notes these views in a memorandum and provides this directly to the judge. A copy is also provided to the Prosecutor involved and the offender's counsel. It is more common for a Court Victim Advisor to become involved in this process when it is a sexual violence case and a specialist Sexual Violence Court Victim Advisor has been assigned to help the victim.

MONITORING OF THIS OPERATIONAL PROCESS

113. At present, Police are not able to record any quantitative data on whether the victim has been informed of their right to express their views and whether they then opted to provide their views. Further, Court Victim Advisors are unable record any quantitative data on the number of victims who have been informed of their right to express their views because the current database does not have the required functionality. In both instances, data is only recorded in note form in the profiles of victims and cannot be used to produce quantitative reporting.

RIGHT 7: TO EXPRESS VIEWS ABOUT THE IMPACT OF OFFENDING

STATUTORY FRAMEWORK

114. The right of victims to make a victim impact statement in court as part of the sentencing process is set out in sections 17AA – 28 of the Victims Rights Act. Victims of all offence types have the right to make a victim impact statement. The most relevant sections for the purposes of this paper are set out below.

115. Section 17 of the Victims Rights Act states that if a victim wishes to make a victim impact statement, the prosecutor must make all reasonable efforts to ensure that the following information is ascertained from the victim:

    a. any physical injury or emotional harm suffered by the victim through, or by means of, the offence; and

    b. any loss of, or damage to, property suffered by the victim through, or by means of, the offence; and

    c. any other effects of the offence on the victim; and

    d. any other matter consistent with the purpose of victim impact statements set out in section 17AB.

116. Section 19 of the Victims Rights Act states that the above information must be put in writing or recorded in some other way (for example an audio or video recording). The information in the statement must be provided to the victim so that the victim can verify that the information is true to the best of the victim's knowledge and belief. The statement must then be signed or approved by the victim using some other means.

117. Section 21 of the Victims Rights Act states that if a victim impact statement has been prepared, it must then be submitted by the prosecutor to the judge responsible for sentencing the offender.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

118. Section 17 states that is the responsibility of Prosecutors to explain the rules regarding victim impact statements to victims and to ascertain relevant information from victims to include in the victim's impact statement. However, there is a nationwide understanding that in practice Police Officers in Charge undertake this task. Where a victim wishes to provide a victim impact statement, the Police Officer notes the information the victim wishes to provide in a *POL392 form*.

119. There is an expectation that the victim's impact statement must be provided to the Police or Crown Prosecutor before the offender's first court appearance which may be as early as the day following the reporting of the offence and the arrest of the offender. If this is not possible, the statement must be provided to the Police or Crown Prosecutor before the offender's second court appearance. If the offender pleads guilty, the victim impact statement will be taken into account at sentencing, usually several weeks or months later at the conclusion of the court proceedings. If the offender pleads not guilty, the matter may not go to trial for several months to a year.

120. Between the time of the offender's first court appearance and sentencing, which may be substantial, the views of the victim may change. Police Officers are responsible for checking whether victims would like to update their victim impact statement or write a new statement before sentencing.

121. There is a nationwide understanding that Police and Crown Prosecutors are responsible for reviewing victim impact statements to ensure that it does not contain material inconsistent with the statutory purpose of a victim impact statement, as outlined in section 17AB of the Victims Rights Act. Any information that does not meet these requirements will need to be redacted. It is the responsibility of Police Officers to explain any redactions to the victim.

MONITORING OF THIS OPERATIONAL PROCESS

122. In terms of data collection, Police Officers are able to record whether a victim impact statement has been prepared/updated in respect of an individual victimisation. The table below outlines the total number of victimisations nationwide in the calendar years 2015, 2016, and 2017, compared with the total number of victimisations where the Police Officer recorded on the victimisation profile in the NIA that a victim impact statement had been prepared/updated. While these are two separate tasks there is only one data type that can be recorded in the Police database.

Table 14. Total number of victimisations compared with the number of victimisations a victim impact statement had been prepared/updated

	CALENDAR YEAR		
	2015	**2016**	**2017**
Total victimisations nationwide	258,832	270,128	267,648
Victimisations where "victim impact statement (preparation, update)" recorded	5,457 (2.1%)	5,123 (1.9%)	5,069 (1.9%)

123. It is important to note that for a range of reasons a victim may not want to make a victim impact so the percentage of victims who choose to do so is unlikely to ever be 100%. However, the percentage in the table above across all three years is still very low.

124. The appointed Police liaison for this research expressed the view that the above data is unlikely to reflect the actual number of victims who opted to make a victim impact statement. Again, reasons provided by Police for what appears to be inadequate data collection include inadequate staff training resulting in Police Officers being unaware they need to record it. Alliteratively, Police Officers choose not to record it due to high workloads, time constraints and competing priorities.

125. Further, Court Victim Advisors are unable to record any quantitative data on the number of victims who have opted to make a victim impact statement because the current database does not have the required functionality. This data is only recorded in note form in the profiles of victims which cannot be used to create quantitative reporting.

RIGHT 8: TO BE HAVE PROPERTY RETURNED THAT IS HELD BY THE STATE

STATUTORY FRAMEWORK

126. Section 51 of the Victims Rights Act provides that law enforcement agencies that hold the property of a victim for evidentiary purposes must, to the extent that it is possible to do so, return it to the victim as soon as practicable after they no longer need to hold it for those purposes. The item does not need to be returned if the victim advises that they do not wish for it to be returned.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

127. Police Officers are responsible for reviewing property held as evidence in exhibit rooms and determining whether it can be returned to the victim. If so, the victim is contacted by phone or email. There appears to be no policy with set timeframes within which evidence needs to be reviewed and the victim contacted, instead it is done on an ad hoc basis when Police time and resources allow.

MONITORING OF THIS OPERATIONAL PROCESS

128. In terms of data collection, Police Officers in Charge are able to record on the victimisation profile in the NIA whether property has been returned to a victim. This data was requested for this research although Police advised that the police database is not able to provide the total number of individual victimisations where property was confiscated from a victim to be used as evidence in the first place, only the total number of victimisations. Comparing the number of victimisations where property was returned to the victim to the total number of victimisations would therefore not provide an accurate comparison and be misleading. On this basis the data was not provided by Police for this issues paper.

RIGHT 9: TO BE INFORMED ABOUT OFFENDERS AFTER SENTENCING

STATUTORY FRAMEWORK

129. Sections 35 – 39 of the Victims Rights Act states that victims are entitled to be notified of significant events concerning the offender, for example if the offender:
    a) has an upcoming parole hearing;
    b) is released from prison, a secure mental health facility or home detention;
    c) is granted temporary unescorted releases from prison; or
    d) escapes from prison or dies.

130. This right only applies to victims of specified offences which are defined in section 29 of the Victims Rights Act as:
    a) an offence of a sexual nature that is contained in Part 7 of the Crimes Act 1961 and sections 216H to 216J of the Crimes Act 1961;
    b) an offence of serious assault;
    c) an offence that has resulted in serious injury to a person, in the death of a person, or in a person becoming incapable; or
    d) an offence of another kind, and that has led to the victim having ongoing fears, on reasonable grounds for his or her physical safety or security; or for the physical safety or security of 1 or more members of his or her immediate family.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

131. There is a nationwide referral agreement between Police and the Department of Corrections which provides that Police Officers will inform victims of specified offences about the option of registering for the Victim Notification Register. In practice, victims are informed about the register by the Police Officer in Charge after the offender is charged and can request that they be added to the register at any time from that point on.

132. If the victim wants to be added to the register, they must fill in and sign a *Victim Notification Register Application Form* or a Police Officer can do this on their behalf. Not all victims who apply to be added to the register will be eligible under the criteria set out in the Victims Rights Act. The form is then emailed to the Department of Corrections. If a victim is added to the

register before the conclusion of the court proceedings and the offender is subsequently found not guilty, the victim will need to be removed from the register. If the offender is convicted the victim will remain on the register and continue to receive notifications until such point that they want to be removed from the register.

133. The Victim Notification Register Manager at the Department of Corrections (assisted by one other staff member) is responsible for communicating all notifications to victims on the register using the victim's preferred method of contact. All notifications provided to this Manager come from Department of Corrections staff at individual prisons, Department of Corrections staff which provide administrative support to the New Zealand Parole Board, Ministry of Health staff at secure mental health facilities and Immigration New Zealand staff.

134. The Victim Notification Register Manager is reliant on a range of staff members at the Department of Corrections and other agencies to provide the notifications. It appears that communication generally works well between Department of Corrections staff and the Manager, although there can be breakdowns in communication. Every effort will be made to contact the victim using their preferred method of contact (phone, email, letter). In urgent situations where the victim cannot be contacted directly, the Manager can contact Police and ask them to locate the victim in person. However, there is no shared database system between Police, the Department of Corrections, the Ministry of Health and Immigration New Zealand. It is a very manual process that requires excellent communication between staff at the different agencies to function well.

MONITORING OF THIS OPERATIONAL PROCESS

135. In terms of data collection, the data in the Victims Notification Register cannot be reported in a manner which demonstrates the percentage of victims who have received all relevant notifications compared to those who have not. This is recorded in note form in victims' individual files and cannot be used to produce quantitative reporting.

RIGHT 10: TO EXPRESS VIEWS ON APPLICATIONS BY OFFENDERS FOR PAROLE

STATUTORY FRAMEWORK

136. Section 47 of the Victims Rights Act states that victims may participate in the Parole Board's decision making process about the offender's potential release from prison under sections 43(3), 43(5), and 49(4) (and any other relevant provisions) of the Parole Act 2002. Section 43(5) states that after being notified by the Parole Board that a hearing is pending, victims provide their views in writing to the Parole Board to inform their decision.

137. Where the hearing relates to an offender who is subject to a long-term sentence, section 43(3) states that victims must be advised that they may request information on the offender under section 44 to inform their views. This information includes:
    a) a list of any programmes that the offender has attended since commencing his or her sentence, and a list of any programmes that the offender has completed;
    b) a statement of the offender's current security classification;
    c) a list of any convictions received by the offender since commencing his or her sentence; and
    d) a statement that the purpose of providing the victim with information about the offender is to assist the victim to make submissions, and that the information is not to be used for any other purpose.

138. Section 49(4) states that victims are entitled to appear and make oral submissions to the Board for the purpose of assisting the Board to reach a decision. With the leave of the Board, victims may be represented by counsel[14] and be accompanied by 1 or more support persons (subject to any limitation on numbers imposed by the Board), who may, with the leave of the Board, in support of the victim and with the permission of the victim, speak on behalf of the victim.

[14] Paid for by the victims.

CURRENT OPERATIONAL PROCESS TO UPHOLD THIS RIGHT

139. All victims who are on the Victim Notification Register are notified by the Manager of the Victims Notification Register at the Department of Corrections when the offender is due to have a hearing before the Parole Board. Contact is made via the victims preferred method of contact. Victims are also informed that they have the right to make a written and/or verbal submission to the Parole Board and request certain information about the offender to inform their submissions. The Manager of the register then provides victims with the contact details of the administrative team that is supporting the relevant Parole Board. This team handles requests for information about the offender, receives the written submissions of victims and makes arrangements for victims to make verbal submissions.

MONITORING OF THIS OPERATIONAL PROCESS

140. Data in the Victims Notification Register is recorded in note form and cannot be used to produce quantitative reporting which demonstrates the percentage of victims who have been informed of their right to express their views on applications by offenders for parole. Further, the administrative staff supporting the Parole Board do not collect any quantitative data on the percentage of victims who go on to request information about the offender and/or make written and/or verbal submissions. Again, this information is all recorded in note form.

THE VICTIMS RIGHTS ACT AND VICTIMS OF FAMILY VIOLENCE IN THE FAMILY COURT

STATUTORY FRAMEWORK

141. In 2014, the definition of "victim" in the Victims Rights Act was amended to include a victim of "domestic violence" which in turn has its own definition in the Family Violence Act 2018. The purpose of this amendment was to make sections 7 and 8 of the Victims Rights Act applicable to victims of domestic violence who have applied for a protection order in the Family Court. Sections 7 and 8 are principles guiding treatment of victims – as opposed to rights - and provide that:

> **7 Treatment**
> Any person who deals with a victim (for example, a judicial officer, lawyer, member of court staff, Police employee, probation officer, or member of the New Zealand Parole Board) should—
> (a) treat the victim with courtesy and compassion; and
> (b) respect the victim's dignity and privacy.
>
> **8 Access to services**
> A victim or member of a victim's family who has welfare, health, counselling, medical, or legal needs arising from the offence should have access to services that are responsive to those needs.

Entitlement to be informed about safety programmes

142. When a judge grants an interim protection order in the Family Court, the judge must also direct the respondent to undertake an assessment and attend a court mandated non-violence programme. These programmes aim to reduce or eliminate further violence behaviour and are delivered by non-government agencies contracted to the Ministry of Justice. It is a criminal offence if the respondent does not complete the programme.

143. Section 186 of the Family Violence Act states that if the service provider has concerns about the safety of the applicant while the respondent is undergoing the assessment or attending the non-violence programme, the service provider must advise the registrar of the court where the protection order was granted without delay. A service provider may have such concerns following comments made by or the behaviour of a respondent during the course of the programme.

144. Once the registrar has been advised by a service provider that they have concerns, the registrar must, without delay, exercise the powers under section 169, as if the registrar were the court referred to in that section, to call the respondent before the court. Alternatively, the registrar must bring the matter to the attention of a judge so that the judge can consider whether to exercise the power conferred by section 209 in relation to the respondent. Namely, make another order or direction on the papers or call the respondent before the court.

Entitlement to be informed about safety concerns

145. When a judge grants an interim protection order in the Family Court, the judge must also direct the respondent to undertake an assessment and attend a court mandated non-violence programme. These programmes aim to reduce or eliminate further violence behaviour and are delivered by non-government agencies contracted to the Ministry of Justice. It is a criminal offence if the respondent does not complete the programme.

146. Section 186 of the Family Violence Act states that if the service provider has concerns about the safety of the applicant while the respondent is undergoing the assessment or attending the non-violence programme, the service provider must advise the registrar of the court where the protection order was granted without delay. A service provider may have such concerns following comments made by or the behaviour of a respondent during the course of the programme.

147. Once the registrar has been advised by a service provider that they have concerns, the registrar must, without delay, exercise the powers under section 169, as if the registrar were the court referred to in that section, to call the respondent before the court. Alternatively, the registrar must bring the matter to the attention of a judge so that the judge can consider whether to exercise the power conferred by section 209 in relation to the respondent. Namely, make another order or direction on the papers or call the respondent before the court.

Entitlement to be informed about the completion of non-violence programme by respondent

148. Section 204 of the Family Violence Act states that when a respondent has completed a non-violence programme, the service provider must provide to the Registrar a report that states whether, in the opinion of the service provider, the respondent has achieved the objectives of the non-violence programme; and advises of any concerns that the service provider has about the safety of the applicant (and any other person known to the applicant, such as the applicant's children).

149. On receiving a report the Registrar must arrange for the applicant to be notified that the respondent has completed a non-violence programme; and that a report has been provided by the service provider of that non-violence programme under subsection and of any concerns that the service provider has about the safety of the applicant advised in that report.

CURRENT OPERATIONAL PROCESS TO UPHOLD THESE STATUTORY ENTITLEMENTS

Entitlement to be informed about safety programmes

150. In practice, all applicants (both represented by a lawyer and unrepresented) who apply for and are granted an interim protection order in the Family Court are informed of their entitlement to request a safety programme by a Ministry of Justice staff member in the Domestic Violence Programmes team. Applicants are informed by a letter which is posted within 48 hours of the interim protection order being made to the address provided in the interim protection order application. Together with a copy of the Protection Order, a letter and information on Safety Programmes is also sent to the Applicant by the Registry staff.

151. The Domestic Violence Programmes team is comprised of 7 processing officers and 6 Family Court Co-ordinators (FCC). The team is centralised and manages this process nationwide. The processing officers mainly focus on administration whereas FCCs undertake more contact work with applicants in the more complex cases.

Entitlement to be informed about safety concerns

152. Non-violence programme providers raise safety concerns using a standardised Ministry of Justice form which is emailed to a centralised email address managed by the Domestic Violence Programmes Team. All emails are triaged, and applicants are contacted by phone to be notified of safety concerns within 24 hours. The FCC will determine who would be best to inform the Applicant of the Safety Concern. The staff member explains to the applicant the nature of the safety concern based on the information provided by the programme provider in the form. Safety Concerns can also be filed when an Applicant attends a Safety Programme. In those instances, the information is usually obtained from the Applicant and therefore the requirement to inform the applicant falls away.

153. In some regions of New Zealand, where an applicant does not answer their phone and therefore cannot be informed of the safety concern, staff in the Domestic Violence Programmes Team are able to contact Police who will then do a welfare check by attending the address of the applicant. However, this is not a nationwide service. In some regions Police do not have the capacity to do this or consider it a lower priority compared to other work undertaken by Police. The Family Violence Act 2018 now requires the Provider to advise the Police if a Safety Concern is filed. This does not preclude the FCC from also contacting the Police if they feel that is it necessary for the safety of the Applicant.

154. Each time a safety concern is provided by a non-violence programme provider to the Domestic Violence Programmes Team, the team must also bring the safety concern to the attention of a Family Court Judge. The Judge may make such orders or directions as the Judge thinks fit in the circumstances. These orders or directions are then communicated to both the applicant and the

respondent. The directions are not always communicated to the parties – this is assessed on a case by case basis and depends on the specific direction of the Judge.

Entitlement to be informed about the completion of non-violence programme by respondent

155. When a non-violence programme provider notifies the Domestic Violence Programmes Team that a respondent has completed the court mandated programme, the team then notifies the applicant via letter. If the objectives haven't been met then the judge can refer the respondent to attend another non-violence programme. The applicant does not get notified when this occurs, they only get notified if and when the respondent ultimately completes that programme.

MONITORING OF THIS OPERATIONAL PROCESS

156. At present the Ministry of Justice collects data about:
    a. the number of victims who have chosen to be referred to a safety programme;
    b. the number of safety concerns made by service providers in respect of individual victims; and
    c. the number of non-violence programmes that have been completed by respondents.

157. However, data is not collected about the number of victims who have actually been informed of each of the above. For example, when a respondent completes a non-violence programme, this is recorded by the Ministry of Justice and quantitative reports can be produced on the number of respondents who have completed a non-violence programme in a given year. However, data on the number of victims who were then informed that the respondent had completed a non-violence programme is not recorded by the Ministry of Justice in a format which can then be reported in a quantitative report. Instead this information is recorded in note form in a victim's file.

EMERGING THEMES

THEME 1: MONITORING BY AGENCIES OF THEIR COMPLIANCE WITH THE VICTIMS RIGHTS ACT IS INADEQUATE AS AGENCIES DO NOT COLLECT SUFFICIENT DATA TO ACCURATELY DETERMINE TO EXTENT TO WHICH THE RIGHTS OF VICTIMS ARE UPHELD

158. Each of the chapters of this issues paper have discussed the type of data (if any) that agencies currently collect to monitor their compliance with the Victims Rights Act. The main theme to emerge across all ten rights is that based on the available data that is currently collected by Police, the Ministry of Justice, Crown Law and the Department of Corrections, it is not possible to determine the number of eligible victims who have each right upheld compared to those who do not.

159. The table below outlines the current state of the data collection for each right which falls into two broad categories. Either agencies are currently able to collect some quantitative data which could be used to determine what percentage of victims have each right upheld compared to those who do not, but due to a lack of staff training or resourcing issues, sufficient data is not currently collected by staff and as a result accurate reporting cannot be produced. Second, relevant data is collected in a victim's individual file by staff, but this data is in note form and is not quantitative data which could be used to produce accurate reporting.

160. Based on the findings in the table below, it is a reasonable conclusion that monitoring of compliance with the Victims Rights Act does not appear to be a high priority for the Ministry of Justice, Police, Crown Law or the Department of Corrections. This has the knock-on effect that agencies are unable to accurately measure how effective their operational processes are, or whether improvements need to be made. Decisions regarding whether improvements are required are presumably made solely based on anecdotal evidence.

161. Finally, it is of note that while Police, Ministry of Justice and the Department of Corrections all at least make the effort to collect some data about their compliance with the Act, it is of note that Crown Law does not collect any data. Crown Law appears to be of the view that even though Prosecutors may have statutory responsibility to uphold a certain right, they are not under an obligation to record any data concerning compliance with this right. Instead, this is

the responsibility of Police, who have ultimate responsibility for the file and act as a conduit for all communication between the victim and Crown Prosecutors.

	RIGHT	BASED ON AVAILABLE DATA IS IT POSSIBLE TO DETERMINE WHAT PERCENTAGE OF VICTIMS HAVE THIS RIGHT UPHELD?
1	To be informed about programmes, remedies and services	No - minimal data is collected making reporting inaccurate
2	To have views ascertained on applications by offender for bail	No - minimal data is collected making reporting inaccurate
3	To be informed about the release of offenders on bail	No - minimal data is collected making reporting inaccurate
4	To be informed about the Police investigation and court proceedings	No - no data is collected in a reportable format
5	To request a restorative justice conference	No - minimal data is collected making reporting inaccurate
6	To have views ascertained on applications by offenders for name suppression	No - no data is collected in a reportable format
7	To have views ascertained on the impact of the offending	No - minimal data is collected making reporting inaccurate
8	To have property returned that is held by the state	No - minimal data is collected making reporting inaccurate
9	To be informed about the offender post sentencing	No - no data is collected in a reportable format
10	To have views ascertained on applications by offenders for parole	No - no data is collected in a reportable format

THEME 2: THERE IS A LACK OF TRANSPARENCY BETWEEN GOVERNMENT AGENCIES AND VICTIMS IN REGARD TO COMPLIANCE WITH THE VICTIMS RIGHTS ACT

162. Due to the poor state of the data collection by agencies discussed above, a consequence is there is very little transparency between government agencies and victims in regards to compliance with all ten rights in the Victims Rights Act. For example, it is not possible for the media, academics and non-government agencies to be provided with useful responses to Official Information Act requests on government agencies' compliance with the Victims Rights Act to

use in media coverage or in research. Presumably, when such requests are made the response is that data is not collected in a manner which can easily be reported. Further, agencies do not voluntarily publish compliance related data in their respective annual reports which is perhaps not surprising given the poor state of current data collection.

THEME 3: THE OPERATIONAL PROCESSES IN PLACE TO UPHOLD THE MAJORITY OF RIGHTS ARE COMPLEX AND REQUIRE CO-COPERATION BETWEEN TWO OR MORE GOVERNMENT AGENCIES

163. As discussed in the previous chapters of this issues paper, the Victims Rights Act stipulates which government agencies in the justice sector are responsible for upholding each of the rights, namely: Police, the Ministry of Justice, Crown Law and the Department of Corrections. The table below outlines which agencies have responsibility for upholding each of the rights as well as whether an external service provider contracted by one of those agencies is also involved.

	RIGHT	POL	MOJ	CROWN LAW	DOC	EXTERNAL SERVICE PROVIDER
1	To be informed about programmes, remedies and services	✓	✓		✓	✓
2	To have views ascertained on applications by offender for bail	✓	✓	✓		
3	To be informed about the release of offenders on bail	✓	✓	✓		
4	To be informed about the Police investigation and court proceedings	✓	✓	✓		
5	To request a restorative justice conference		✓			✓
6	To have views ascertained on applications by offenders for name suppression	✓	✓	✓		
7	To have views ascertained on the impact of the offending	✓	✓	✓		
8	To have property returned that is held by the state	✓				
9	To be informed about the offender post sentencing	✓			✓	
10	To have views ascertained on applications by offenders for parole				✓	

164. Some of the 10 rights are relatively straightforward to uphold as only one agency has responsibility for upholding the right. For example, the right of a victim to have their property returned to them post-trial, is the responsibility of Police and more specifically, the Police Officer in charge of the individual file. Other rights are also the ultimate responsibility of a single agency although these are more complex where both staff at a government agency and staff at a non-government agency contracted to the government agency have responsibility for upholding the right. For example, the right to request a restorative justice conference involves Court Registry Officers employed by the Ministry of Justice and external restorative justice service providers contracted to the Ministry of Justice.

165. However, this research has identified that the operational processes in place to uphold the majority of rights are complex and involve co-operation between two or three agencies. For example, the right of a victim to express their views on a defendant's application for bail is the joint responsibility of Police, Crown Law and the Ministry of Justice. Where two or more agencies have responsibility for upholding a right, it follows that more staff are involved in handling a victim's file, more paperwork and data entry is required and there is an increased chance of human error or IT systems error. One error, or multiple errors along the way can result in a delay in the right being upheld or the right not being upheld at all.

THEME 4: THERE IS NO HIGH LEVEL OVERSIGHT OF THESE OPERATIONAL PROCESSES IN PLACE TO UPHOLD THE VICTIMS RIGHTS ACT

166. As previously discussed in the chapter detailing the background to the Victims Rights Act, when the Act was introduced the Government announced that it would establish a "watchdog committee" to ensure that rights enshrined in the Act could be implemented to full effect.[15] However, it is unclear whether this committee was ever established, or if it was the nature of the work it undertook, as there is no publicly available information about the committee or clear records about the committee within the Ministry of Justice. Despite the inherently complex nature of upholding the majority of rights due to the number of government agencies involved, as of 2020, there is still no one entity with clear responsibility for monitoring the rights of victims of crime.

167. Perhaps due to the fact that there is no single entity responsible, all agencies currently work off their own internal guidelines on how to uphold each of the rights. These outline the individual steps that staff at the agency are responsible for before the file is passed on to the next relevant agency (and potentially back again further on in the process). There are no inter-agency guidelines which outline the operational process from start to finish and each of the steps to be

[15] 8 October 2002, Victims Rights Bill, Consideration of Report of Justice and Electoral Committee.

completed by each agency (and the staff within those agencies) to ensure all agencies are working off the same page. The absence of inter-agency guidelines could increase the likelihood of gaps or loopholes in the operational processes which are the joint responsibility of two or more agencies. This could in turn result in delays and increased rates of non-compliance with the Act.

168. However, consultation undertaken for this research demonstrated that there are existing pockets of inter-agency co-operation to improve existing operational processes. The research liaisons for Police and the Department of Corrections advised that they identified that a significant number of eligible victims have not been informed by Police Officers in recent years about the right to be added to the Victim Notification Register and informed about offenders after sentencing. Police and the Department of Corrections commenced a work programme in 2017 to identify these victims and make contact with them to ascertain if they want to be added to the register. At the time of undertaking the consultation with the Department of Corrections in 2018, 1,800 eligible victims had been identified who were not on the register. This is a good example of two agencies identifying a problem and working together to find a joint solution.

THEME 5: NONE OF THE RIGHTS IN THE VICTIMS RIGHTS ACT ARE LEGALLY ENFORCEABLE RESULTING IN LESS ACCOUNTABILITY BETWEEN GOVERNMENT AGENCIES AND VICTIMS

169. Finally, as previously discussed in the chapter detailing the background to the Victims Rights Act, the Act contains a significant restriction on the remedies available to victims where their rights have not been upheld. The statutory bar in section 50 of the Act prevents victims from seeking financial "compensation, damages or otherwise" from government agencies. The justification provided by the Justice and Electoral Committee for the inclusion of this statutory bar (which was accepted by the Government when the Act was passed in 2002) was to avoid the potentially high cost to government agencies of litigating and paying out compensation claims made by victims. The Committee was of the view that putting resources into improving agency processes would be a more effective way of ensuring that agencies upheld victims' rights.[16]

170. As a result of this statutory bar, the only remedy available to victims whose rights have not been upheld is to make a complaint to the relevant government agency and if the complaint is upheld, receive an apology. In this respect, the Victims Rights Act is inherently different from the only other rights-based legislation – the Human Rights Act – which does allow people to seek a range

[16] Victims Rights Bill 2001 (331-2) as reported from the Justice and Electoral Committee, see page 28.

of remedies including compensation where they believe their human rights have not been upheld[17].

THEME 6: VICTIMS OF FAMILY VIOLENCE IN THE DISTRICT COURT HAVE RIGHTS UNDER THE VICTIMS RIGHTS ACT BUT VICTIMS OF VIOLENCE IN THE FAMILY COURT DO NOT

171. Victims of family violence engage with the criminal justice process where the offender has been charged with a family violence related offence in the District Court, or the family justice process where the victim applies to the Family Court for a protection order. Some victims will engage with both processes concurrently or at different times depending on their individual circumstances.

172. This report has detailed the ten main rights that victims have under the Victims Rights Act in the District Court. In 2014, the definition of "victim" Act was amended to include a victim of "domestic violence" which in turn has its own definition in the Family Violence Act 1995. The purpose of this amendment was to make sections 7 and 8 of the Victims Rights Act applicable to victims of domestic violence who have applied for a protection order in the Family Court. However, sections 7 and 8 are merely principles that guide government agencies in respect of their treatment of victims – these principles are not rights.

173. Instead of rights under the Victims Rights Act, victims of family violence in the Family Court have a small number of entitlements under the Family Violence Act. These are entitlements to be informed about safety programmes, to be informed about safety concerns, and to be informed about the completion of non-violence programmes by respondents. However, it is of note that in reality victims in the Family Court are not worse off than victims in the District Court. Due statutory bar in the Victims Rights Act on victims seeking compensation from government agencies where their rights are not upheld, the entitlements of victims in the Family Court essentially have the same legal status as the rights of victims in the District Court under the Victims Rights Act – neither are legally enforceable.

[17] Human Rights Act 1993 sections 92I – 92U

RECOMMENDATIONS

RECOMMENDATION 1: ESTABLISH A SEPARATE ENTITY TO MONITOR COMPLIANCE WITH THE VICTIMS RIGHTS ACT

174. While the Ministry of Justice has statutory responsibility for administering the Victims Rights Act 2002, as of 2020 there is still no independent entity or mechanism with responsibility for monitoring how agencies have collectively implemented victims' legislative rights and ultimately, their level of compliance with the Act. It is recommended that such an entity be established as soon as possible to effectively fulfil the original intention of the Government back in 2002.

175. This entity could have a purely operational basis, or the Victims Rights Act could be amended to provide it with a statutory basis. As previously discussed, the predecessor to the Victims Rights Act, namely the Victims of Offences Act 1987, established a Victims Task Force comprised of the Secretary for Justice as Chair, Commissioner of Police and four further government officials appointed by the Minister of Justice. The Victims Task Force also had clearly prescribed statutory functions. This option would require amendments to the Victims Rights Act.

176. Another option is to establish an independent Victim Commission or Commissioner[18] to undertake this monitoring function using a similar model to the Human Rights Commission. This would bring the Victims Rights Act onto equal footing with the only other comparable rights-based legislation – the Human Rights Act – under which the Human Rights Commission was established. Again, this option would require substantial amendments to the Victims Rights Act.

177. Whatever form the entity takes, it should have responsibility for receiving quantitative data reporting from agencies on their level of compliance with the Act (discussed in further detail in the following recommendation). Based on this reporting, and relevant qualitative feedback from agencies, this entity will then be able to identify which operational processes currently in place to uphold the rights of victims are effective or require improvement. In collaboration with relevant staff at the agencies, the operational detail of these improvements can then be formulated and implemented.

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

RECOMMENDATION 2: INTRODUCE ANNUAL MANDATORY DATA REPORTING ON THE LEVEL OF COMPLIANCE WITH THE VICTIMS RIGHTS ACT

178. In order to improve the quality of data reporting, it is recommended that agencies be *required* to provide quantitative data reporting annually on their level of compliance with the Victims Rights Act. This data will provide a clear national snapshot of the percentage of victims who have their rights upheld compared to those who do not. It will also provide clear evidence on whether the existing operational processes in place to uphold the rights of victims are effective or require improvement.

179. At a base line level, it is recommended that agencies be required to collect data in respect of all ten rights and in respect of each individual victimisation, as opposed to each individual victim. A victimisation records each time an individual victim is the victim of an offence. Examples of the sort of data needed to be recorded across agencies for each relevant right include:

a. which right is involved
b. is the victim eligible for that right
c. whether the victim has been informed of the right
d. whether they wish to exercise the right
e. the date of each contact with the victim
f. who contacted the victim
g. the views of the victim, if relevant
h. the information provided to the victim, if relevant.

180. Some rights are applicable to victims of all offences, whereas other rights are only applicable to victims of specified offences. It is important that data is collected on which victims are eligible for each right so that agencies have an accurate total number of eligible victims in their reporting as a baseline, something which is currently lacking. Also, it is the clear intention of the Act that victims are able to choose which rights they exercise so while a percentage of victims may choose to exercise a particular right, there will also be a percentage who do not. For example, some victims may decide they don't want to exercise the right to receive notifications about the offender post sentencing as they find receiving this information very triggering and upsetting. Other victims may wish to receive the information because they feel more comfortable and in control if they are kept informed. It is important that this data types are collected to ensure that accurate recording is produced. If the victim wishes to exercise the right, data on whether and how the right was in fact upheld then needs to be collected.

181. Once all the data has been aggregated, annual reporting could be produced in a similar format:

a. total number of eligible victims for each right in each financial year
b. number of victims who chose to exercise the right
c. out of the total number of victims who chose to exercise the right, the number of victims who had the right upheld.

182. The reporting of this data could be done internally amongst agencies and provided to the separate entity discussed above in recommendation 1. In addition, agencies could be required to report this data in their respective annual reports. As previously discussed, in 2014 the Victims Rights Act was amended to include a new requirement that justice sector agencies are required to publish, in their respective annual reports, statistical information about the number, type and disposition of complaints made by victims to the agency. The purpose of this was to hold agencies more accountable to the public through greater transparency regarding the number of complaints. A similar requirement could be introduced with respect to agencies' compliance with the Act. This would similarly would increase transparency between the relevant government agencies and victims. It could also be used by the Ministry of Justice to track the administration of the Victims Rights Act as part of its role to uphold the legislation.

RECOMMENDATION 3: SURVEY VICTIMS ON WHETHER THEY ARE OF THE VIEW THAT THEIR RIGHTS ARE UPHELD

183. No survey has been undertaken which specifically asks victims of crime whether, in their view, their rights were upheld or not. Consideration should be given to creating a new standalone survey with an appropriately sized sample of victims. Alternatively, this survey could be incorporated into an existing victimisation survey, such as the New Zealand Crime and Victims Survey which is undertaken annually. The results of these surveys could then be compared with the data collected by government agencies to see if there are significant consistencies or inconsistencies.

RECOMMENDATION 4: RE-LAUNCH OR PROMOTE THE VICTIMS CODE

184. As previously discussed, in September 2015 the Victims Code was published by the Ministry of Justice. The rights contained in the Victims Code mirror the rights contained in the Victims Rights Act although these are worded in less technical language that is more accessible to the public. The code is assessible online and can be found here.

185. It is recommended that effort be made to promote the use of the Victims Code across the criminal justice system and by all justice sector agencies and relevant non-government agencies.

Currently there is very little recognition or use of the Victims Code by agencies[19]. Increased promotion of the Victims Code, including the provision of materials and training where required, would lead to increased use of the Victims Code by agencies. Ideally, all victims should be provided with a copy of the Code when they first encounter an agency to get help for a victimisation. This could be Police or non-government agencies providing support services. In time victims would become increasingly aware of their rights and what they can expect from justice sector agencies.

RECOMMENDATION 5: STRENGTHEN THE COMPLAINTS PROCESS UNDER THE VICTIMS RIGHTS ACT 2002

186. The Victims Rights Act has now been in place for 18 years and arguably agencies have had sufficient time to implement the necessary operational processes to uphold the rights contained in the Act. The justification provided in 2002 by the Justice and Electoral Committee and accepted by the Government - that agencies needed a lee-way period to implement these operational processes – is no longer valid.

187. Significant work should be undertaken to strengthen and streamline the complaints process under the Victims Rights Act. While the Independent Police Conduct Authority (IPCA), Privacy Commissioner and Ombudsman can provide a solution for some complaints[20], an independent entity responsible for monitoring victims rights could provide a victim-friendly mechanism for victims to contact. Such an entity could undertake investigations where necessary, and provide an impetus for continuous system improvements for victims.

[19] See upcoming Chief Victims Advisor research report *Recognition and use of the Victims Code by government and non-government agencies who have contact with victims of crime in New Zealand.*– due May 2020.

[20] While the IPCA does handle many victims' complaints every year, informal feedback from the Ombudsman and Privacy Commissioner to queries by the Chief Victims Advisor indicates that very few victims' complaints are referred through to either agency.