

AUSTRALIA

The State of Victoria

Version No. 001

Victims' Charter Act 2006

Act No. 65/2006

Version as at 1 November 2006

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Victims' Charter Act 2006
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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

- (a) to recognise principles that govern the response to persons adversely affected by crime by investigatory agencies, prosecuting agencies and victims' services agencies; and
- (b) to establish requirements for the monitoring and review of the principles set out in this Act.

2. Commencement

This Act comes into operation on 1 November 2006.

3. Definitions

(1) In this Act—

"Charter principles" means the principles set out in Part 2;

"criminal offence" means an offence, or a series of related offences, committed at any time, whether or not a person has been accused or convicted of that offence, and in relation to a victim, is the offence that gave rise to the injury suffered by the victim;

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"domestic partner" has the same meaning as in the **Crimes (Family Violence) Act 1987**;

"family member", in relation to a person, means—

- (a) the spouse or domestic partner of that person; or
- (b) a person who has or has had an intimate personal relationship with that person; or
- (c) a person who is or has been a relative of that person; or
- (d) a child who normally or regularly resides with that person; or
- (e) a child of whom that person is a guardian; or
- (f) another person who is or has been ordinarily a member of the household of that person;

"injury" means—

- (a) actual physical bodily injury; or
- (b) mental illness or disorder or an exacerbation of a mental illness or disorder, whether or not flowing from nervous shock; or
- (c) pregnancy; or
- (d) grief, distress or trauma or other significant adverse effect; or
- (e) loss or damage to property; or
- (f) any combination of matters referred to in paragraphs (a), (b), (c), (d) and (e);

"investigatory agency" means—

- (a) a member of the police force; or
- (b) a person authorised by an enactment to investigate a criminal offence;

"person adversely affected by crime" means—

- (a) a natural person who has suffered injury as a direct result of a criminal offence, whether or not that injury was reasonably foreseeable by the offender; or
- (b) a family member of a person referred to in paragraph (a); or
- (c) a witness to a criminal offence;

"prosecuting agency" means—

- (a) the Director of Public Prosecutions for Victoria; or
- (b) a member of the police force; or
- (c) a person authorised to bring proceedings for a criminal offence against an enactment;

"Secretary" means the Secretary to the Department of Justice;

"victim" means—

- (a) a natural person who has suffered injury as a direct result of a criminal offence, whether or not that injury was reasonably foreseeable by the offender; or
- (b) if a person has died as a direct result of a criminal offence committed against that person, a family member of that person; or

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- (c) if the person referred to in paragraph (a) is under 18 years of age or is incapable of managing his or her own affairs because of mental impairment, a family member of that person;
- "victims' services agency"** means—
- (a) an entity established under an enactment that is responsible for the provision of services to persons adversely affected by crime; or
- (b) a public official within the meaning of the **Public Administration Act 2004** who is responsible for the provision of services to persons adversely affected by crime; or
- (c) an entity that is publicly funded to provide services to persons adversely affected by crime.
- (2) For the purposes of the definition of "family member" in sub-section (1), a relative, in relation to a person, means—
- (a) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law of that person; or
- (b) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law of that person; or
- (c) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law of that person; or
- (d) an uncle, aunt, uncle-in-law or aunt-in-law of that person; or
- (e) a nephew or niece of that person; or
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(f) a cousin of that person—
and includes, in the case of domestic partners, a person who would be such a relative if the domestic partners were married to each other.

4. Objects

- (1) The objects of this Act are—
- (a) to recognise the impact of crime on the victims of that crime, including the impact on members of victims' families, witnesses to the crime and in some cases, the broader community;
 - (b) to recognise that all persons adversely affected by crime, regardless of whether they report the offence, should be treated with respect by all investigatory agencies, prosecuting agencies and victims' services agencies and should be offered information to enable them to access appropriate services to help with the recovery process;
 - (c) to help reduce the likelihood of secondary victimisation by the criminal justice system.
- (2) The objects referred to in sub-section (1) are based on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly of the United Nations by resolution 40/34 of 29 November 1985.

5. Nomination of representatives

- (1) A victim may nominate a person to be his or her representative for the purposes of this Act, and if a representative is nominated the representative is to be provided with information that, in accordance with the Charter principles, is required to be provided to the victim.

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- (2) If a person has died or suffered injury as a direct result of a criminal offence committed against the person and the person has more than one family member, the family members of the person may nominate one or more family members to be the representative of the family for the purposes of this Act.
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**PART 2—CHARTER PRINCIPLES GOVERNING RESPONSE
TO VICTIMS**

6. Treatment of persons adversely affected by crime

- (1) All persons adversely affected by crime are to be treated with courtesy, respect and dignity by investigatory agencies, prosecuting agencies and victims' services agencies.
- (2) Investigatory agencies, prosecuting agencies and victims' services agencies are to take into account, and be responsive to, the particular needs of persons adversely affected by crime, particularly needs relating to differences such as—
 - (a) race or indigenous background;
 - (b) sex or gender identity;
 - (c) cultural or linguistic diversity;
 - (d) sexual orientation;
 - (e) disability;
 - (f) religion;
 - (g) age.

7. Information to be given to persons adversely affected by crime

Investigatory agencies, prosecuting agencies and victims' services agencies—

- (a) are to provide clear, timely and consistent information about relevant support services, possible entitlements and legal assistance available to persons adversely affected by crime; and
 - (b) if appropriate, are to refer persons adversely affected by crime to relevant support services and to entities that may provide access to entitlements and legal assistance.
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8. Information to be given to victim about investigation

- (1) An investigatory agency is to inform a victim, at reasonable intervals, about the progress of an investigation into a criminal offence unless—
 - (a) the disclosure may jeopardise any investigation of that offence or any other offence; or
 - (b) the victim requests not to be provided with that information.
- (2) If the disclosure of information under subsection (1) may jeopardise any investigation, an investigatory agency is to inform the victim about the progress of the investigation of the criminal offence relevant to the victim, to the extent possible without jeopardising any investigation.
- (3) If the disclosure of information under subsection (1) would jeopardise an investigation, an investigatory agency is to inform the victim that no information can be provided at that stage due to the ongoing nature of the investigation.

9. Information regarding prosecution

The prosecuting agency is to give a victim, as soon as reasonably practicable, the following information—

- (a) the charges filed against the person accused of the criminal offence;
- (b) if no charge is filed against any person, the reason why no charge was filed;

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- (c) if charges are filed, any decision—
 - (i) to substantially modify those charges;
or
 - (ii) not to proceed with some or all of those charges; or
 - (iii) to accept a plea of guilty to a lesser charge;
 - (d) details about how to find out the date, time and place of the hearing of the charges against the accused person;
 - (e) the outcome of the criminal proceeding against the accused person, including any sentence imposed;
 - (f) if an appeal is instituted, the fact of the appeal, the grounds of the appeal and the result of the appeal.

10. Applications for bail

- (1) A prosecuting agency, on request by a victim, is to ensure that the victim is informed of—
 - (a) the outcome of any application for bail by the person accused of the criminal offence;
and
 - (b) if bail is granted, any special conditions imposed on the accused person by the court that are intended to protect the victim or family members of the victim.

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- (2) In having regard to the safety or welfare of members of the public in accordance with the **Bail Act 1977**, the safety or welfare of the victim or family members of the victim and the attitude of a victim towards the granting of bail may be taken into account by a court in determining whether to grant bail to a person accused of a criminal offence.

Note: See section 4 of the **Bail Act 1977**.

11. Information about court process

- (1) A prosecuting agency is to ensure that a victim is informed about the court process and the victim's entitlement to attend any relevant court proceedings, unless the court otherwise orders.
- (2) If a victim is to appear as a witness for the prosecution, the prosecuting agency is to ensure that a victim is informed about the trial process and the victim's role as a witness for the prosecution.

12. Contact between victim and accused in court building to be minimised

So far as is reasonably practicable, a prosecuting agency and the courts should, during the course of a court proceeding and within a court building—

- (a) minimise a victim's exposure to unnecessary contact with the person accused of the criminal offence, defence witnesses and family members and supporters of the accused person; and
- (b) protect a victim from intimidation by the accused person, defence witnesses and family members and supporters of the accused person.

13. Victim impact statements

- (1) A victim of a criminal offence may make a victim impact statement to the court sentencing the person found guilty of the offence, and unless the court orders otherwise, that statement may be considered by the court in determining the sentence of the offender.

Note: See Division 1A of Part 6 of the **Sentencing Act 1991** in relation to victim impact statements.

- (2) If a victim expresses a wish to make a victim impact statement, a prosecuting agency should refer the victim to an appropriate victims' services agency for assistance in preparing the victim impact statement.

14. Victims' privacy

A victim's personal information, including his or her address and telephone number, is not to be disclosed by any person except in accordance with the **Information Privacy Act 2000**.

Note: Section 10 of the **Information Privacy Act 2000** provides that the Act does not apply in respect of the collection, holding, management, use, disclosure or transfer of personal information by a court, tribunal, judge, magistrate or registry staff in relation to their judicial or quasi-judicial functions.

15. Storage and return of property held by the State

If property of a victim is in the possession of an investigatory agency or a prosecuting agency for the purpose of the investigation or prosecution of a criminal offence—

- (a) the agency is to handle and store the property in a lawful, respectful and secure manner;
and
- (b) if possible and in consultation with the victim, the property is to be returned to the victim as soon as reasonably practicable.

16. Compensation and financial assistance for victims

- (1) A victim may apply to a court for an order that the person convicted of or found guilty of the criminal offence that gave rise to the injury suffered by the victim pay compensation to the victim.

Note: See Division 2 of Part 4 of the **Sentencing Act 1991** in relation to applications for compensation for victims of crime.

- (2) In accordance with the **Victims of Crime Assistance Act 1996** a person eligible under that Act may apply to the State for compensation and financial assistance.

17. Information about offender

- (1) A victim of a criminal act of violence within the meaning of section 30A of the **Corrections Act 1986** may apply to be included on the victims register established under that Act.

Note: See sections 30A to 30I of the **Corrections Act 1986** in relation to the victims register.

- (2) The Secretary may give to a person included on the victims register certain information concerning the offender such as the length of sentence, the likely date of release and the making of an extended supervision order.
- (3) If the Adult Parole Board is considering ordering the release on parole of an imprisoned offender who has committed a criminal act of violence—
- (a) a person included on the victims register may make a submission to the Board about the effect of the offender's potential release on the victim; and
 - (b) the Board is to consider any submission received.

Note: See sections 74A and 74B of the **Corrections Act 1986** in relation to victim submissions to the Adult Parole Board.

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- (4) A person included on the victims register may make a submission to the Adult Parole Board for consideration in determining any instruction or direction it may give to an offender subject to an extended supervision order.

Note: See sections 16A and 16B of the **Serious Sex Offenders Monitoring Act 2005** in relation to victim submissions.

PART 3—GENERAL

18. Implementation of Charter principles

- (1) If an investigatory agency, a prosecuting agency or a victims' services agency is aware, or should reasonably be aware, that a person is a victim, the agency must have regard to the Charter principles when dealing with the person.
- (2) A person or body responsible for the development of criminal law policy, the development of victims' services policy, the administration of criminal justice or the administration of victims' services must, where relevant, have regard to the Charter principles.

19. Information regarding complaints process

If a person adversely affected by crime informs an investigatory agency, a prosecuting agency or a victims' services agency that he or she believes that the agency has not upheld the Charter principles, the agency should inform the person about the processes available for making a complaint.

20. Monitoring operation of Act

To ensure that the objectives of this Act are met, the Secretary must—

- (a) develop policies and plans to promote the Charter principles;
- (b) monitor, evaluate and review the operation of this Act and its benefits for victims;
- (c) ensure that appropriate processes are established for complaints to be made by persons adversely affected by crime if the Charter principles are not upheld;

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- (d) do anything else the Secretary considers appropriate for the purposes of this Act.

21. Report of operations

The Attorney-General must each year cause to be included in the report of operations of the Department of Justice under Part 7 of the **Financial Management Act 1994** the following information—

- (a) the steps taken to promote the Charter principles;
- (b) a report on the operation of this Act.

22. Legal rights not affected

- (1) The Parliament does not intend by this Act—
- (a) to create in any person any legal right or give rise to any civil cause of action; or
- (b) to affect in any way the interpretation of any law in force in Victoria; or
- (c) to affect the validity, or provide grounds for review, of any judicial or administrative act or omission.
- (2) Sub-section (1) does not prevent a contravention of this Act from being the subject of disciplinary proceedings against a relevant official.

23. Regulations

The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed to give effect to this Act.

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Endotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 14 June 2006

Legislative Council: 22 August 2006

The long title for the Bill for this Act was "to recognise principles governing the response to victims of crime by the criminal justice system and for other purposes."

The **Victims' Charter Act 2006** was assented to on 29 August 2006 and came into operation on 1 November 2006: section 2.

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Endnotes

2. Table of Amendments

There are no amendments made to the **Victims' Charter Act 2006** by Acts and subordinate instruments.

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Endnotes

3. Explanatory Details

No entries at date of publication.