

POSITION DESCRIPTION - VICTIMS OF CRIME COMMISSIONER

Directorate:	Justice and Community Safety
Position Title:	Victims of Crime Commissioner (and Domestic Violence Project Coordinator), ACT Human Rights Commission
Position Number:	P43257
Classification:	Remuneration for all positions within the Human Rights Commission is set by the ACT Remuneration Tribunal. Further details are available from the contact officer.

Context

The Human Rights Commission is an independent, statutory body established under the *Human Rights Commission Act 2005* to provide an independent, fair and accessible process for resolving complaints about disability services, children and young people services, community services, health services, services for older people, access and privacy of health information and discrimination. The Commission is located in Canberra, and reports to the ACT Attorney-General.

The role of the Commission is to resolve complaints and promote rights through the provision of an independent, fair and accessible process for resolving individual complaints; promotion of service improvement; promotion of the human rights and welfare of people; and fostering understanding of particular legislation.

The Human Rights Commission is made up of four statutory office holders:

- President of the Human Rights Commission (also the Human Rights Commissioner)
- Discrimination, Health Services and Disability and Community Services Commissioner
- Public Advocate and Children and Young People Commissioner
- Victims of Crime Commissioner (and Domestic Violence Project Coordinator)

The President and Commissioners work in a collegiate manner to determine the actions of the Human Rights Commission. These pivotal roles are supported by a number of specialist staff including conciliators, legal advisors, complaints officers and administrative officers.

The Role

As determined by the Commission, the Victims of Crime Commissioner (and Domestic Violence Project Coordinator) will:

- Provide leadership and advice to all staff, relevant professions, and the community regarding the operation and future development of victims of crime services in the ACT, including Victim Support ACT.
- Manage and administer the Victims of Crime Financial Assistance schemes for the provision of financial assistance to victim
- Encourage collaboration, efficiency and effectiveness in the provision of services to victims.
- Assist government and non-government agencies involved in law enforcement, criminal justice, health, education, crisis or welfare services to improve the delivery and coordination of responses to victims or perpetrators of crime.
- Ensure victims of crime receive timely and accurate information and assistance necessary to participate in the criminal justice system from the time of offence up until and beyond parole and release.
- Ensure effective delivery of all victims and related services.

The role is also the Domestic Violence Project Coordinator established in accordance with the *Domestic Violence Agencies Act 1986*, and is responsible for:

- Monitoring and promoting compliance with the policies of the ACT and Commonwealth governments
- Assisting government and non-government organisations involved in law enforcement, health services, education, crisis or welfare services to victims or perpetrators of domestic violence
- Providing high level services to assist and encourage these agencies to provide appropriate educational programs, facilitate cross-agency cooperation, and develop and implement policies and program directed by the Domestic Violence Prevention Council.

This dual role will be achieved through:

- Managing victims' services, the Victims of Crime Financial Assistance schemes and other programs for the benefit of victims, ensuring the provision of efficient and effective services for victims under the new protection of rights framework, and advocating for their interests.

- Reporting on the consideration of complaints and outcomes of inquiries and reviews referred by the Discrimination, Health Services and Disability and Community Services Commissioner in an appropriate manner to all stakeholders.
- Contributing to developing and maintaining the Commission's strategic intelligence capability by promoting reforms to meet the interests of victims, and advising on education initiatives for victims, service providers and the community.
- Ensuring that victims receive information and assistance they need in connection with their involvement in the administration of justice, including information about the operation of protection of rights and its constituent Acts.
- Encouraging and facilitate cooperation between agencies involved in the administration of justice with respect to victims, including effective and timely engagement with the Victims Advisory Board.
- Supporting the Commission through active participation in the evolution of its new role.

Selection Criteria

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Please respond to the following job specific criteria:

1. Demonstrated superior knowledge and expertise in the provision of support services to victims, including in both a protection of rights and health setting.
2. Demonstrated ability to implement and manage financial-based systems to ensure the effective delivery of the Victims of Crime Financial Assistance schemes.
3. Superior advocacy, communication, consultative, interpersonal and negotiating skills applicable to an environment of change.
4. Ability to support intra-agency functions such as reporting on the consideration of complaints and outcomes of inquiries and reviews referred by the Discrimination, Health Services and Disability and Community Services Commissioner in an appropriate manner to all stakeholders.
5. Understanding of, and familiarity with relevant legislation (located at [ACT Legislation Register - Acts](#)), including:
 - *Human Rights Commission Act 2005*
 - *Victims of Crime Act 1994*

- *Victims of Crime (Financial Assistance Act) 2016*
 - *Domestic Violence Agencies Act 1986*
 - *Human Rights Act 2004*
 - *Discrimination Act 1991*
 - *Children and Young People Act 2008*
 - *Health Records (Privacy & Access) Act 1997*
 - *Health Practitioner Regulation National Law (ACT) Act 2010*
 - *Health Practitioner Regulation National Law (ACT)*
 - *Mental Health Act 2015*
6. As a member of a leadership team, demonstrated ability to work collaboratively to achieve outcomes and to work in a collegiate manner in the provision of services.
 7. Demonstrated ability in facilitating community awareness through delivery of the Commission's priority engagement and education activities, and information sessions to support clients and raise awareness.
 8. The Commissioner will be required to undergo a Working with Vulnerable People check in accordance with the *Working with Vulnerable People (Background Checking) Act 2011*.

Successful candidates will also demonstrate the following Executive Capabilities:

Leads and values people

- Motivates and develops people
- Values diversity and respects individuals
- Builds a culture of improving practice

Shapes strategic thinking

- Inspires a sense of purpose and direction
- Encourages innovation and engages with risk
- Thinks broadly and develops solutions

Achieve results with integrity

- Develops organisational capability to deliver results

- Manages resources wisely and with probity
- Progresses evidence based policies and procedures
- Shows sound judgement, is responsive and ethical

Fosters collaboration

- Listens and communicates with influence
- Engages efficiently across government
- Builds and maintains key relationships

Exemplifies citizen, community and service focus

- Understands, anticipates and evaluates client needs
- Creates partnerships and co-operation
- Works to improve outcomes

Information on Executive Capabilities for the ACTPS is available at <http://www.cmd.act.gov.au/governance>

Australian Capital Territory

Human Rights Commission (Victims of Crime Commissioner) Appointment 2018*

Notifiable instrument NI2018–72

made under the

Human Rights Commission Act 2005, s 18D (Appointment of commission members)

1 Name of instrument

This instrument is the *Human Rights Commission (Victims of Crime Commissioner) Appointment 2018*.

2 Commencement

This instrument commences on the day after its notification day.

3 Acting appointment of Victims of Crime Commissioner

- (1) The Australian Capital Territory Executive appoints Heidi Yates to act in the position of Victims of Crime Commissioner.
- (2) The appointment commences on the commencement of this instrument and ends when the appointment of the Victims of Crime Commissioner under NI2016-144 ends.

4 Appointment of Victims of Crime Commissioner

- (1) The Australian Capital Territory Executive appoints Heidi Yates as the Victims of Crime Commissioner.
- (2) The appointment commences when the acting appointment under section 3 ends and ends 5 years after the commencement of this instrument.

Shane Rattenbury
Minister for Justice, Consumer
Affairs and Road Safety
13 February 2018

Mick Gentleman
Minister

14 February 2018

*Name amended under Legislation Act, s 60

Australian Capital Territory

Human Rights Commission (Victims of Crime Commissioner) Appointment 2023

Notifiable instrument NI2023–33

made under the

Human Rights Commission Act 2005, s 18D (Appointment of commission members)

1 Name of instrument

This instrument is the *Human Rights Commission (Victims of Crime Commissioner) Appointment 2023*.

2 Commencement

This instrument commences on 19 March 2023.

3 Appointment of the Victims of Crime Commissioner

The Executive appoints Heidi Yates as the Victims of Crime Commissioner until 18 March 2028.

Tara Cheyne MLA
Minister for Human Rights
9 January 2023

Andrew Barr MLA
Chief Minister
11 January 2023



**ACT HUMAN RIGHTS
COMMISSION**

Australian Capital Territory

Operations Protocol

June 2019 (updated April 2021)

The Vision of the ACT Human Rights Commission is:

An inclusive community that respects and realises the rights of everyone

Table of Contents

1. Overview and Structure of ACT Human Rights Commission.....	4
<i>Dr Helen Watchirs – President and Human Rights Commissioner</i>	<i>4</i>
<i>Ms Jodie Griffiths-Cook - Public Advocate and Children and Young People Commissioner</i>	<i>4</i>
<i>Ms Karen Toohey - Discrimination, Health, Disability and Community Services Commissioner</i>	<i>5</i>
<i>Ms Heidi Yates - Victims Support and Victims of Crime Commissioner.....</i>	<i>5</i>
2. Introduction.....	5
3. How to access the Commission	5
4. Relevant Governance Documents	6
<i>Strategic Plan 2017-20</i>	<i>6</i>
<i>Client Service Charter</i>	<i>7</i>
<i>Governance and Corporate Support Protocol</i>	<i>7</i>
5. What happens at Commission meetings.....	7
<i>Agenda & Minutes.....</i>	<i>7</i>
<i>Voting</i>	<i>8</i>
<i>Statutory rules for meetings.....</i>	<i>9</i>
6. Advocacy.....	9
7. Systemic Reviews.....	10
8. Enquiries.....	12
9. Confidentiality	13
<i>Third Party Disclosure.....</i>	<i>13</i>
<i>Internal Discussions.....</i>	<i>13</i>
10. Children’s participation and engagement.....	13
11. Services for Victims of Crime	14
<i>Concerns and Complaints.....</i>	<i>14</i>
<i>Victim Support ACT.....</i>	<i>14</i>
<i>Victim Services</i>	<i>15</i>
<i>Court Support Program</i>	<i>15</i>
<i>Financial Assistance Scheme</i>	<i>15</i>
12. Complaints handled by the Commission.....	16
<i>Who can make a complaint?.....</i>	<i>16</i>
<i>Complaints dealt with by the Commission</i>	<i>17</i>
<i>Complaints referred within the Commission or to other agencies.....</i>	<i>17</i>
<i>Conciliation.....</i>	<i>17</i>
<i>Closure of a Complaint</i>	<i>18</i>

13. Commission-initiated consideration.....	18
<i>Recommendations and Adverse Comments.....</i>	<i>19</i>
14. Sharing Resources	19
<i>Communications/Media.....</i>	<i>20</i>
Branding	20
<i>Legal Support.....</i>	<i>20</i>
Advice to MLAs.....	21
15. Recruitment.....	21
APPENDIX 1: Statutory rules for meetings.....	22

1. Overview and Structure of ACT Human Rights Commission

The ACT Human Rights Commission (the Commission) is an independent agency established by the [Human Rights Commission Act 2005](#) offering a range of services, including:

- oversight of systemic issues, review of laws, and advice to government and others regarding human rights compliance;
- independent complaint handling covering a range of service providers, and discrimination matters;
- advocacy for children, young people and adults experiencing vulnerability;
- consultation with children and young people to enable their participating in decision-making about matters that affect them;
- advocacy, information, therapeutic services and support to victims of crime; and
- community education, training and information about human rights.

The ACT was the first jurisdiction in Australia in 2004 to enact a [Human Rights Act](#), which provides an explicit statutory basis for respecting, protecting and promoting most civil and political rights, and some economic, social and cultural rights. Human rights are universal and enjoyed by everyone in the ACT regardless of gender, religious belief, nationality, race or any other status.

Human rights underpin all of the Commission's activities in each area of our work. There are eight distinct roles at the Commission, which are held by four Commissioners. Commission members are required to act in a way that promotes the collegiate nature of the Commission. The current members of the Commission are:

Dr Helen Watchirs – President and Human Rights Commissioner

The President is responsible for the Commission's governance, finance, resources and corporate administration, with specific statutory functions for systemic matters and reporting obligations. The President of the Commission is also the Human Rights Commissioner. The role of the Human Rights Commissioner is to promote discussion and educate the community about human rights; to provide systemic oversight and advice to Government and others on compliance with human rights; to review the effect of Territory laws on human rights, including monitoring places of detention, and to seek leave to intervene in significant court and tribunal human rights cases.

Ms Jodie Griffiths-Cook - Public Advocate and Children and Young People Commissioner

The role of the Public Advocate and Children and Young People Commissioner (PACYPC) is to protect and promote the rights and interests of people in the ACT whose condition or circumstances make them vulnerable to abuse, exploitation or neglect; and to consult with, listen to and seriously consider the views of children and young people in ways that promote their participation in decision-making. The responsibilities of the PACYPC are underpinned by a range of functions including advocacy (individual and systemic), representation, investigation, and monitoring. Some of these functions are specific to children and young people, and others encompass people with complex disability needs, including those with mental health conditions and/or forensic patients.

Ms Karen Toohey - Discrimination, Health, Disability and Community Services Commissioner

The role of the Discrimination, Health, Disability and Community Services Commissioner is to consider complaints about unlawful discrimination, sexual harassment and vilification under the [Discrimination Act 1991](#); as well as complaints about the provision of health services; services for people with a disability, services for children and young people and services for older people. The Commissioner also considers complaints about breaches of the [Health Records \(Privacy and Access\) Act 1997](#).

Ms Heidi Yates - Victims Support and Victims of Crime Commissioner

The role of the Victims of Crime Commissioner is to protect and promote the rights of victims of crime in the ACT. This includes monitoring and promoting compliance with the governing principles for victims of crime, administering the financial assistance scheme for victims of crime, and overseeing Victim Support ACT which delivers a range of advocacy and support services for victims. The Victims of Crime Commissioner also performs the statutory functions of the Domestic Violence Project Coordinator.

2. Introduction

This Protocol is required under s 18C of the [Human Rights Commission Act 2005](#), which provides that the President of the Human Rights Commission must develop and publish an Operations Protocol every three years, after consulting with the other Commissioners. The Protocol is available on the Commission's website at www.hrc.act.gov.au and it provides information about:

- How to access the Commission's services
- What are relevant Governance documents
- What happens at Commission meetings
- How we undertake advocacy functions
- How we report on systemic matters
- How enquiries and complaints generally will be received by the Commission
- How complaints are dealt with within the Commission
- How complaints are referred within the Commission, or to other complaint handling entities; and
- How we deal with Commission-initiated considerations

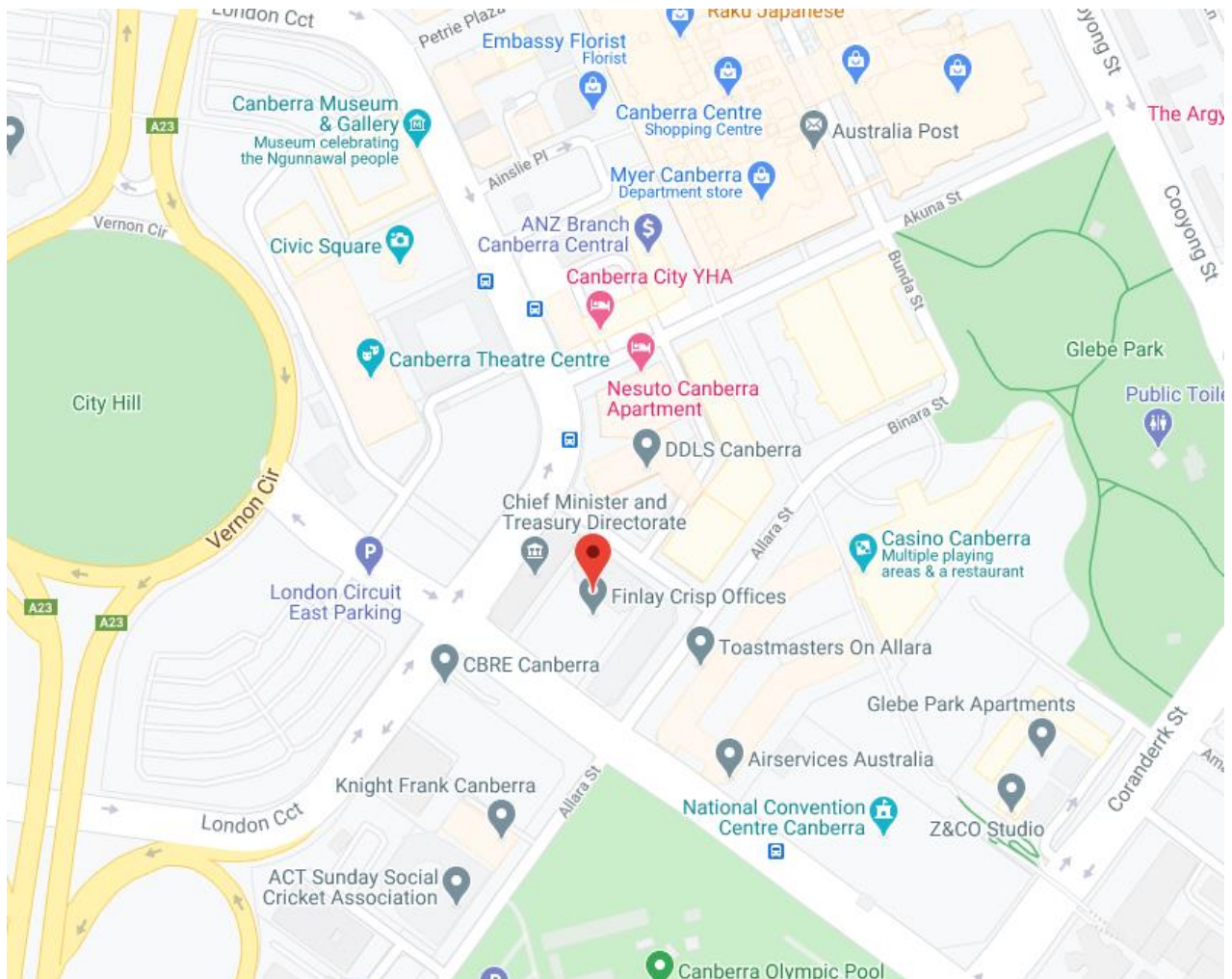
3. How to access the Commission

The Commission is committed to making any reasonably needed adjustments so that you can engage with us. This includes the use of interpreters, assistive technology and involving support people of your choosing.

The Commission is located at 5 Constitution Avenue, Canberra ACT (see map below) with reception on the plaza level. The Commission is open Monday to Friday, between 9:00am-5:00pm, except on public holidays.

It is recommended that you call or email to make an appointment before visiting the Commission.

Making an appointment ensures that a staff member is free to speak with you. Appointments can be made Monday to Friday between 9.00am-4.30pm by phoning on (02) 6205 2222, or (02) 6205 1666 to use TTY, or emailing to human.rights@act.gov.au.



When you arrive at 5 Constitution Avenue, please proceed to the Commission’s reception on the left-hand side of the lobby. If the counter is unattended during business hours, please go the security desk and they will ask someone from the Commission to meet you at the Commission’s reception to assist you.

4. Relevant Governance Documents

The Commission’s six signature **Values** of Respect, Collaboration, Integrity, Innovation, Accessibility and Independence guide the day-to-day actions, behaviours and decisions in the delivery of services to the community. As well as this Operations Protocol, the Commission is required under the Human Rights Commission Act to develop other governance documents, details of which are set out below.

Strategic Plan 2017-20

Our *Strategic Plan 2017-20* sets out our Vision, Mission, Values, Priorities and areas of developing our capabilities. It is [published on our website](http://www.hrc.act.gov.au) at www.hrc.act.gov.au. Our **Mission** is to achieve our **Vision** of ‘an inclusive community that respects and realises everyone’s rights’ by:

- leading positive systemic change
- engaging and educating the community
- delivering accessible services that empower and support people and
- providing effective oversight.

Our **Priorities** are to:

- **Make human rights relevant to everyone** – helping the community understand and exercise their rights and fulfil their obligations; and raising awareness of what we do, our impact and how to access help and support;
- **Lead systemic change to address vulnerability** – reforming laws, policies and practices that impact on rights; having effective oversight that promotes accountability; and proactive monitoring to improve systems and address concerns;
- **Enhance services and service delivery** – ensuring our service provision recognises and realises everyone’s rights; delivering accessible and client-centred services; having timely and effective complaint handling;
- **Increase community engagement** – taking a strategic approach to engagement activities and event participation; and providing the community with opportunities to engage and express their views to develop solutions together.

Client Service Charter

The Commission believes that all people deserve to be treated with dignity, and we are committed to ethical, prompt, respectful and helpful client service. Our *Client Service Charter 2020-2022* was developed under s18B of the HRC Act and explains what clients can expect from the Commission, how we provide services and how to offer feedback to help improve our services. You can access the Charter on our website at <https://hrc.act.gov.au/>

Governance and Corporate Support Protocol

The Commission developed a *Governance and Corporate Support Protocol 2017-20* under s18A of the HRC Act in 2017 that articulates our respective roles and responsibilities as an independent statutory authority which relies on the Justice and Community Safety Directorate to provide assistance with some corporate support functions, such as financial accounting, auditing, human resources, information management and technology support. You can access our Governance and Corporate Support Protocol at <https://hrc.act.gov.au/>

5. What happens at Commission meetings

The Commissioners meet at least once a month at the Commission Conference Room for approximately 90 minutes. A whole of Commission staff meeting is also usually held monthly. The President, all Commissioners, and the Administrative Assistant to the President as minute-taker, should normally be present at Commission meetings. There will be a quorum if three Commissioners holding office are present, and attendance may be via telephone or video-link if necessary. The Finance and Administration Manager will present a Report on corporate issues. Staff members can be invited to the meeting to address a proposal that the Commission will be making a decision about (e.g. the Communications Officer).

Agenda & Minutes

The draft Agenda is circulated at least forty-eight (48) hours in advance of the meeting.

Items to be considered and, if necessary, voted on at Commission meetings include:

- Minutes of previous meetings
- Corporate Report by Finance and Administration Manager, including:
 - finances/budget
 - staffing and recruitment
 - workplace health and safety
 - information and communications technology
 - Policies and Procedures
 - FOI, Risk Register and Business Continuity Plan
 - HRC Strategic and Performance Indicators
- Priority areas identified in Strategic Plan 2017-2020:
 - *Community engagement*: Activities and media/communications
 - *Systemic Change to Address Vulnerability*: Oversight of detention facilities, pending/completed Commission legal/policy submissions, and responses to external consultation processes
 - *Service Delivery*: Statistics on team operations (e.g. enquiries and complaint numbers, Financial Assistance Scheme applications)
 - Cultural Safety Charter
 - Social Inclusion Plan
- Other Business
- Media, communications and branding
- Commission-initiated considerations
- Systemic reviews
- Requests for policy advice and law reform
- Reports and Recommendations
- Requests for advice from MLAs
- Proposals for changes to the HRC Act and related legislation

Draft Minutes are provided to Commission members for approval within ten (10) working days of the meeting. The Commission members should provide amendment or approval within three (3) working days of receipt.

Voting

The President presides at all meetings at which they are present. If the President is not present, the Commissioners may elect someone else to preside. Questions arising at a meeting are determined by a majority of the President and Commissioners present and voting. The President has a deliberative vote and, in the event of an equality of votes, has a casting vote.

Statutory rules for meetings

Division 3.9 of the [Human Rights Commission Act 2005](#) sets out the Commission meeting rules, which are attached to this Operations Protocol (Appendix 1).

6. Advocacy

There are two main types of advocacy performed by Commissioners, systemic and individual.

- **Systemic advocacy** occurs where Commissioners advocate on behalf of a group of people experiencing vulnerability to achieve an outcome that is in the interests of many people in the community. This usually means facilitating change in the way a service is provided so that service improvements can benefit people both now and in the future. It can involve conducting an investigation and/or evidence-based research, which can then inform and influence legislative and policy reform, programs and practices to improve the outcomes and opportunities for people experiencing vulnerability.
- **Individual advocacy** occurs where Commissioners advocate on behalf of an individual person to achieve an outcome that upholds their rights and is in their interests, such as providing or obtaining services, or changing the way services are provided. Individual advocacy may be undertaken in different ways and includes brokering services such as counselling, and attending court or a tribunal hearing, participating in case conferences or meetings, convening multi-agency panel meetings or by negotiating with, fostering and supporting agencies to achieve improved services that uphold the rights and interests of people experiencing vulnerability, and who may be subject to abuse or exploitation.

All Commissioners perform advocacy roles, but two Commissioners have specific statutory advocacy roles – the Public Advocate and Children and Young People Commissioner; and the Victims of Crime Commissioner. Referrals for individual advocacy can be made by contacting the Commission, and a member of the relevant team will be allocated to assist you.

The **Public Advocate and Children and Young People Commissioner** has legislative responsibility under the [Human Rights Commission Act 2005](#) for promoting, protecting, upholding and advocating for the rights and interests of people in the ACT who are experiencing vulnerability. This role extends to all persons whose situation or condition gives rise to a need for protection from abuse, exploitation or neglect, or a combination of those things, such as people involved with mental health services, disability services and children and young people with child youth protection services.

Under s 27B of the [Human Rights Commission Act 2005](#), the Public Advocate has the following advocacy functions for people with a disability and children and young people:

- Fostering the provision of services and facilities;
- Supporting the establishment of organisations that support people with a disability and children and young people;
- Encouraging the development of programs benefitting people with a disability;
- Promoting the protection of people from abuse and exploitation.

The role of the Children and Young People Commissioner under s 19B(3) is to:

- help improve services for children and young people in the ACT,
- promote the rights of children and young people,
- consult with children and young people in ways that promote their participation in decision making,
- encourage other organisations to listen to children and young people, and seriously consider their views in decision making, and
- provide advice to government and community agencies about legislation, policies, practices and services that affect children and young people.

The **Victims of Crime Commissioner** engages in systemic and individual advocacy for victims of crime. Section 11 of the *Victims of Crime Act 1994* sets out the Commissioner's advocacy functions including:

- advocating for the interests of victims of crime;
- advocating for the interests of affected people under the *Mental Health Act 2015*;
- consulting on and promoting reforms to meet the needs or priorities of victims of crime;
- developing educational and other programs to promote awareness of the interests of victims of crime;
- ensuring victims receive information and assistance they need; and
- advising the Minister on matters in relation to the interests of victims of crime.

The Victims of Crime Commissioner is also responsible for trying to resolve concerns in relation to non-compliance with the Governing Principles for the Treatment of Victims of Crime.

7. Systemic Reviews

A systemic review looks into broader system-wide issues in areas such as justice, health, children, disability, community, older persons and other services, as well as places of detention. A systemic review can take several forms, and there may be overlap in the statutory powers under which it is performed by Commissioners.

A **systemic review**, which generally looks into broader system-wide issues, is different to a **Commission-initiated consideration** (see part 10 below), which is generally about the particular circumstances of an individual.

The Commission and President will consider the following particular issues when identifying matters for Systemic Review:

- whether the issue involved a limitation of rights under the [Human Rights Act](#)
- where the Minister has directed the Commission to Review a matter
- whether the issue is relevant to the work of more than one Commissioner, and may be a focus for collaboration between Commissioners
- where a third-party report is warranted (see part 10 below)

- whether the issue is a matter of public importance, or involves serious public safety or other public interest issues eg violence
- the detriment potentially suffered by individuals if the Commission did or did not take such action
- the vulnerability of the group affected, eg children, people with certain types of disability, or detainees
- where the issue is a matter affecting the system for the protection of the rights of users of prescribed services (or a class of user) as a whole, rather than a matter affecting an individual alone
- whether it is a matter affecting the system for the provision of prescribed services (or a class of prescribed services) as a whole, rather than a matter affecting an individual alone; and
- The scope of the systemic review and the capacity, including available resources, of the Commission to undertake that review.

While all Commissioners are able to undertake reviews, the President has explicit statutory functions in relation to systemic reviews, including:

- reporting to the Minister and other appropriate entities about a Review arising from the complaints jurisdiction of the Commission (section 14(1)(d))
- reporting to the Minister and other relevant entities regarding a Report arising from a Minister's direction (section 17)
- a Commission-initiated report – where the Commission elects to undertake a consideration of a matter that could be the subject of a complaint, or any other matter relevant to the Commission's functions, such as section 41 of the [Human Rights Act 2004 \(section 84\)](#)
- an own-initiative report to the Minister about any matter of public importance related to the Commission, its functions or a matter that may be complained about (section 87); or
- providing a third party a Report that arises from a complaint consideration process, where such a Report is in the public interest, as well as other specific criteria (section 83).

The President may also report in writing to the Minister about:

- a matter of public importance relating to the commission, including how the commission handles complaints under the Act;
- a matter affecting the system—
 - for the protection of the rights of users of prescribed services (or a class of user) as a whole, rather than a matter affecting an individual alone; and
 - for the provision of prescribed services (or a class of prescribed services) as a whole, rather than a matter affecting an individual alone.

Section 6A of the HRC Act defines a 'prescribed service' as a:

- health service;
- disability service;

- service for children and young people;
- service for older people;
- service for victims of crime.

The President will consult with other Commissioners and take into account the factors listed above in considering such a systemic review.

Similarly, Commissioners have separate specific functions to advise on systemic matters including:

- The Victims of Crime Commissioner's functions under the Victims of Crime Act to advise the Minister on matters relating to the interest of a victim.
- The Discrimination Commissioner's functions to promote the right of people to be free from unlawful discrimination and related functions.
- The functions of the Public Advocate to encourage the development of programs that benefit people with a disability and related functions.
- The Human Rights Commissioner's functions regarding providing advice to government on matters relevant to the operation of the Human Rights Act.

Generally individual Commissioners are able to instigate such systemic reviews or advice using their existing resources, although, as a courtesy, all other Commissioners will be notified prior to a systemic review commencing. With the consent of the relevant Commissioner, resources may be provided from one area of the Commission to another. This is further discussed below in relation to shared resources.

The President will generally make the findings of a systemic review public and in some cases it will be tabled in the Legislative Assembly by the Minister (for example a human rights audit under section 41 of the Human Rights Act). However, publication will not always proceed and will be determined by how best to address the issues identified and the legislative powers used to conduct the review.

8. Enquiries

Anyone can contact the Commission with an enquiry. Reception staff will seek basic information so that they can direct the enquiry to the most appropriate part of the Commission. Depending on the nature of your enquiry, you may be directed to any of the four Commissioner's teams that make up the Commission: President and Human Rights Commissioner; Public Advocate and Children and Young People Commissioner; Discrimination, Health, Disability and Community Services Commissioner; and Victims of Crime Commissioner.

The amount of information provided about the enquiry to the Reception staff is up to the person. The person can choose not to provide information about why they are making an enquiry; however without providing some basic information it is hard for the Reception staff to direct the call within the Commission.

Reception staff are not able to provide information about a matter that the Commission is handling to a third party.

The Commission staff may ask questions about your enquiry and if you identify as:

- an Aboriginal and/ or Torres Strait Islander person;
- a person from a Culturally and Linguistically Diverse background; and/or
- a person with a disability.

This information is collected to enable us to help you with any assistance or accommodation you may require, such as an interpreter, and is reported in our databases to generally monitor the accessibility of our services. A hearing loop is available in our reception, interview and conference room areas, and we strive to make our premises fully accessible. You are also entitled to reasonable assistance from our staff to put a complaint in writing. If you need help in filling out our forms, you can ask for an appointment with one of our Intake officers. More information about the Commission is available on the website at <https://hrc.act.gov.au/>.

9. Confidentiality

Third Party Disclosure

Consistent with our Privacy Policy, personal information collected by the Commission is not released to third parties, unless disclosure is permitted.

Personal information will generally only be released to third parties when consent is provided to share the information, or otherwise permitted, or required, under relevant legislation including:

- [Information Privacy Act 2014](#)
- [Health Records \(Privacy and Access\) Act 1997](#)
- [Children and Young People Act 2008](#)
- [Victims of Crime Act 1994](#)
- [Victims of Crime \(Financial Assistance\) Act 2016](#); and
- [Human Rights Commission Act 2005](#).

Internal Discussions

The Commission may share the information a person provides to us *within* the Commission, including for the purposes of:

- assessing the best area of the Commission to handle your enquiry
- determining if you have already contacted the Commission about your matter
- informing other areas of our work including systemic reviews and commission-initiated considerations.

Children's participation and engagement

The Commission is committed to a child-safe, child-friendly Canberra. The Commission has statutory functions to consult with children and young people in ways that promote their participation in decision-

making, and to listen to and seriously consider the views of children and young people. The Commission is also committed to ensuring the Commission is accessible to children and young people, and to being sensitive to the cultural diversity of children and young people.

The more that we encourage children and young people to be vocal about issues that matter, the more likely it is that children and young people will feel that they will be listened to if they raise concerns about things that they personally experience. Giving children and young people a voice is the first step to empowering them; to giving them the strength to speak out about both societal issues and about personal issues.

Children and young people are more likely to seek assistance, speak up about their concerns, or to make a complaint, if they feel their views are valued and welcomed. The Commission affirms a child or young person has the right to participate in all aspects of social life and the shared understanding that empowering them to do so will have positive effects on the broader Australian community.

The Commission encourages approaches both from children and young people directly, and from those supporting children and young people.

10. Services for Victims of Crime

The Commission is also committed to ensuring the provision of efficient and effective services for victims of crime in the ACT and monitoring and promoting compliance with the governing principles for the treatment of victims. The Victims of Crime Commissioner's role includes advocating for the interests of victims as well as overseeing Victim Support ACT (VSACT) services.

The Victims of Crime Commissioner is appointed as the ACT Domestic Violence Project Coordinator. In this capacity, the Commissioner is a member of the ACT Domestic Violence Prevention Council, the peak advisory body to the Minister on matters relating to domestic violence. Ms Yates also Chairs the ACT Family Violence Intervention Program Coordinating Committee and is a member of the ACT Victims Advisory Board and the Liquor Advisory Board.

Concerns and Complaints

The [Victims of Crime Act 1994](#) (s 4) outlines the governing principles for the treatment of victims of crime. These principles apply to agencies who are responsible for the administration of justice. The Victims of Crime Commissioner must try to resolve concerns raised by a victim in relation to non-compliance with the governing principles. The Victims of Crime Commissioner can require the agency involved to provide certain documentation to assist in resolving the concern.

A victim can raise a concern with the Commissioner by contacting Victim Support ACT. Existing clients of Victim Support ACT who identify a concern in relation to the Governing Principles may also be referred to the Commissioner for assistance. The Commissioner's Executive Officer is usually the primary contact for such concerns.

Victim Support ACT

Victim Support ACT helps people who have experienced a crime in the ACT. This includes victims, their families and people who witness a crime. Our main services are:

1. Victim Services

2. Court Support Program; and
3. Financial Assistance Scheme

All Victim Support ACT services are free and confidential.

Victim Services

We support victims of crime and their families in many ways including:

- Counselling
- Helping you with your rights in the criminal justice system
- Giving you information about reporting crime to police
- Giving you information about what to expect at court
- Helping you to apply for financial assistance
- Helping you prepare a Victim Impact Statement for court
- Referring you to other services

You do not need to report a crime to police to get help from Victim Services.

Most people contact Victim Support ACT by phone (02 6205 2222) for an initial conversation with an intake team member. Sometimes you will be referred to Victim Support ACT by the police or another agency. Someone from Victim Support ACT will call you to have a chat about what supports you might need.

If you would prefer to speak to someone face-to-face, you can also attend the office.

Court Support Program

The Court Support Program can help if you need support attending court to give evidence. We may also be able to provide you with support if you are applying for a Family Violence Order or Personal Protection Order. Court Support is delivered by highly skilled, trained volunteers.

If you are interested in court support, please contact Victim Support.

Financial Assistance Scheme

Financial assistance is available to victims of crime in the ACT to help pay for goods and services that they need to help them recover. You may be eligible to receive financial assistance if you had an injury (physical or psychological) because of a violent crime. You may also be able to receive financial assistance if you are related to someone who has experienced crime.

In most cases, a report to police is required to access financial assistance.

If you would like more information about how to apply for the Financial Assistance Scheme you can phone Victim Support. We can send you an application pack or help you to find the online application form. If you would like assistance to complete an application, one of our trained volunteers can meet with you or assist you over the phone. Some people also choose to get legal advice when they are making a Financial Assistance Scheme Application. Free advice is available from agencies including Legal Aid ACT.

11. Complaints handled by the Commission

We believe that all people deserve to be treated with dignity and respect. Like all public servants in the ACT, our staff have obligations under the [Human Rights Act](#) to take human rights into account in their decision-making and actions. The Commission provides an independent, fair and accessible process for the resolution of complaints. We can deal with complaints about:

- Disability services
- Discrimination
- Health services (including Victim Support ACT)
- Services for children and young people
- Services for older people
- Sexual harassment
- Victimisation
- Vilification.

Who can make a complaint?

You can make a complaint to the Commission directly, or in some cases on behalf of someone else. Parents, carers or guardians can make a complaint on behalf of their children or a person they have guardianship for. The Commission can also authorise a person to act on your behalf if we are reasonably satisfied that you are not able to make a complaint yourself, and you are unable to authorise somebody else to do it for you. If the complaint is about discrimination, the incident must have happened to you or the person on whose behalf you are complaining.

Complaints are usually made in writing, and the complaint forms are available on the Commissions website at <http://hrc.act.gov.au/complaints/>. Commission staff are able to help put the complaint in writing. If you, or someone else, need help filling out the complaint form please make an appointment and a staff member will assist you.

When handling complaints, the Commission follows the principles of natural justice, which means that:

- the person who handles the complaint is impartial and unbiased;
- the person or organisation the complaint is about has the right to know about the complaint and to provide a response to your allegations; and
- the complainant and the person or organisation the complaint is about have the right to know the information that the Commission relies on to make decisions.

The Commission generally only accept complaints that are less than two years old. If the issue happened before that timeframe, please speak with Commission staff as there may be exceptional reasons we can take into account that prevented the complaint being made earlier.

Complaints dealt with by the Commission

To decide if the complaint falls within the Commission's jurisdiction, Commission staff will ask if the issue occurred in the ACT, when it happened, what happened, and what you would like as an outcome.

When the Commission accepts a complaint for consideration, it will be provided to a complaint handler, who will manage the complaint by seeking information from the person or organisation the complaint is about, and will provide updates on the progress of the complaint.

During the review process the Commission can ask the complainant, or anyone involved in the complaint to provide information, eg witnesses or experts. There are times when the Commission may issue a formal direction for someone to provide information or documents that are relevant to the complaint.

The complainant will also be given information provided to the Commission from the person or organisation the complaint is about. The complaint handler will provide information to all parties when a decision has been made at the conclusion of the process.

Complaints referred within the Commission or to other agencies

Sometimes a complaint has more than one issue that may need to be looked at. For example, if a complaint is made about a disability service and the person needs advocacy, the Disability Services Commissioner and Public Advocate may jointly look at the complaint.

If the Commission forms the view that a complaint needs to be referred to another Commissioner, the complainant will be contacted. Commission staff will explain why the decision was made and ask permission to refer the matter to the other Commissioner.

There are times when information provided by a complainant may be provided to another agency without the consent of the complainant. This will only occur where there is a risk to the safety of the complainant or someone else, or a risk to the general public.

There may be times when the Commission cannot investigate a complaint because it is outside the Commission's jurisdiction. If that occurs, Commission staff will contact the complainant and explain why referring the complaint to another agency is appropriate. For example:

- a discrimination complaint relating to a Commonwealth agency in the ACT may be referred to the Australian Human Rights Commission;
- a complaint about ACT Policing may be referred to the ACT Ombudsman;
- a complaint relating to a matter that occurred in another State or Territory may be referred to the corresponding complaint handling body in that State or Territory or to the Australian Human Rights Commission; or
- a matter involving unfair dismissal, but which does not involve discrimination may be referred to the Fair Work Commission.

Conciliation

The Commission seeks to provide an independent and fair process for the resolution of complaints by the process of conciliation. Sometimes the best way to resolve the complaint is for the complainant and the person or organisation the complaint is about to meet and talk, if they agree - this is called conciliation.

The purpose of conciliation is to find a resolution that can be agreed. Conciliation is led by an expert conciliator from the Commission who will make sure that both the complainant and the person or organisation the complaint is about have the opportunity to be heard. Conciliation will generally cover:

- the issues outlined in the complaint and the impact that these have had;
- other issues that may have arisen; and
- possible solutions to reach a resolution of the complaint.

Having conciliation does not mean the complaint has been proven. The aim of conciliation is to talk about the complaint to seek agreement and a resolution.

The Commission can also continue to look into a complaint that we have referred for conciliation but the conciliation process is separate from this process. We will not use any information discussed in the conciliation process, unless all parties explicitly agree to this.

Closure of a Complaint

At the end of the complaint process the Commission will close the complaint. When the Commission closes a complaint, a letter is sent to the complainant and to the person or organisation the complaint is about. This letter explains why the complaint has been closed and if there are any more steps that the Commission will take, or that the person or organisation complained about needs to take.

If an agreement or resolution has been made the Commission staff can help draft that agreement. A copy of the agreement will be provided to both the complainant and the person or organisation the complaint is about.

If the complaint was about discrimination, written agreement has to be provided by all parties and it is registered with the ACT Civil and Administrative Tribunal (ACAT) and becomes an order. If a discrimination complaint is closed, has been withdrawn, or not successfully resolved, the Commission must offer the complainant the option to take their complaint to the ACAT. A complaint can only be referred to ACAT if the complainant agrees. ACAT can formally assess that facts and law relevant to the case, and is empowered to provide resolution of the matter, which is binding on the parties.

The Commission aims to have a resolution to a complaint within 70 days from receipt of the complaint. That timeframe may be extended if there are delays in the provision of information, or more information is required. If conciliation is used or attempted to reach a resolution, the timeframe for resolution is within 250 days.

12. Commission-initiated consideration

The Commission can look into matters on its own initiative and commence an investigation. A commission-initiated consideration does not have an individual complainant, but the investigation would be of public interest. Factors the Commission considers to determine if a commission-initiated consideration should occur include:

- The matter raises systemic issues, or may significantly affect an individual;
- The matter raises serious public safety or other public interest issues;
- The matter has a particular impact on a vulnerable group of people; and

- The outcome available as a result of the Commission looking into a matter on its own initiative.

The HRC Act requires that a commission-initiated consideration must, as far as practicable, be conducted as if it were a consideration of a complaint. Therefore, commission-initiated considerations will generally be managed by the Discrimination, Health, Disability and Community Services Commissioner and her team. As a courtesy, the Commissioner will notify other Commissioners of a commission-initiated consideration. As with systemic reviews, resources may be provided from another area of the Commission with the prior consent of that Commissioner.

Recommendations and Adverse Comments

At the conclusion of a complaint about a service, or a commission-initiated consideration, a report may be written and this may include recommendations. The person or agency that the recommendation relates to must provide a response to the Commission about the actions taken to comply with the recommendations.

If the Commission makes a recommendation, it must state a reasonable time within which the action should be taken. It can be an offence if the person or agency fails to tell the Commission what action has been taken about the recommendation. The Commission can publish or report about an entity's failure to do something recommended, or attend an interview or provide information to the Commission. However, prior to doing so, the Commission must give the entity a written notice that—

- give details of the entity's failure to which the notice relates;
- explain that the Commission proposes to publish the entity's name and details of the entity's failure; and
- invites submissions about the proposed publication within the time stated in the notice (not less than two weeks after the day the entity is given the notice).

There may be times when the outcome of a complaint or commission-initiated consideration may include adverse comments about a person. Before the adverse comment is included in a report, the Commission will contact the person to advise them of the intention to make the adverse comment and provide that person an opportunity to provide a response.

13. Sharing Resources

The Commission strives at all times to act collegiately and share expertise and resources across teams to further the strategic aims of the organisation. This is particularly so for the President's team whose functions are to support the work of the whole organisation.

The President's Team includes central corporate functions, administration, finance, communications and Aboriginal and Torres Strait Islander liaison.

To ensure the organisation can meet its strategic goals, all Commissioners should be kept informed of how resources are being utilised across the organisation. Commissioners will, as far as practicable, notify all Commissioners about:

- Media liaison, ideally in advance
- Social media messages

- Commission-initiated considerations, systemic reviews or other work that is likely to require significant resources
- Meetings and correspondence with Ministers and Directors-General
- Advice requests from Members of the Legislative Assembly

The Commission strives at all times to act collegially, however if there is a disagreement as to the allocation of resources, this is settled at a meeting of Commissioners.

Communications/Media

The President will endeavour to make centralised resources available for communication and media activities. This will include managing whole-of-commission branding. The Commission's [Governance and Corporate Support Protocol](#) with the Justice and Community Safety Directorate requires the President to notify the Minister and Directorate of media contact. To facilitate this, Commissioners will inform the President and relevant members of her team of any media liaison.

Branding

The Human Rights Commission Act and Victims of Crime Act contemplate individual Commissioners roles including promotion of specific functions and services. Commissioners may elect to use individual brands, consistent with the overall Commission-brand and key messages. However, communication and correspondence referring to, or signed by, more than two Commissioners should be presented under Human Rights Commission branding.

Legal Support

The Commission's [Governance and Corporate Support Protocol](#) with the Justice and Community Safety Directorate requires the President to provide advice on behalf of the Commission to the Directorate in relation to draft Cabinet Submissions. The Protocol also notes that it is desirable for the President, on behalf of the Commission, to provide the Director-General with an information copy of any brief or other material submitted to the Minister.

Many law reform and policy proposals will also engage human rights. As well as obligations to act and make decisions consistently with human rights as a public authority,¹ section 15 of the HRC Act also places a specific obligation on the Commission to act in accordance with human rights when exercising its functions. Any legislative or policy proposal advanced by the Commission will satisfy the minimum requirements for compatibility with the HR Act

Therefore, the Human Rights Commissioner's legal team provides coordination and legal policy support including:

- Assessing Cabinet Submissions that come to the Commission for comment for issues that are relevant to other Commissioners
- Coordinating responses to Cabinet Submissions and government proposals to be signed-off by the President
- Providing advice, training and support on human rights issues

¹ Part 5A of the Human Rights Act.

- Providing initial and general advice on legal issues as they arise (noting that formal advice should be sought from the Government Solicitor's Office)

To assist in this work, Commissioners will make the Human Rights Commissioner's legal team aware of proposals regarding law reform, policy change or requests for advice from MLAs. This includes proposals they initiate, or that come to their attention from outside the organisation.

Advice to MLAs

Under the Commission's Governance and Corporate Support Protocol with the Justice and Community Safety Directorate the President may, on behalf of the Commission, provide advice directly to Members of the Legislative Assembly without the need to notify the Attorney-General, the Minister for Justice or JACS.² The Protocol notes that if the President/HRC provides formal written advice on a draft Bill to any Member of the Assembly, it will normally be posted on the Commission website at the appropriate time.

14. Recruitment

Commissioners will be responsible for recruitment of staff within their own teams, in consultation with the Finance and Administration Manager to confirm such recruitment is within their funding envelope. As required under ACT Government legislation and policies, where Commissioners chair recruitment panels, the President must sign off as delegate.

² As specified in the ALP and Greens Agreement for the Ninth ACT Legislative Assembly, Appendix 3 – Executive Reform, section (4).

APPENDIX 1: Statutory rules for meetings

30 Time and place of commission meetings

- (1) Meetings of the commission are to be held when and where it decides.
- (2) However, the commission must meet at least once each month.
- (3) The president may call a meeting of the commission.
- (4) The president, when calling a meeting, must give the other members reasonable notice of the time and place of the meeting.

31 Presiding member at meetings

- (1) The president presides at all meetings at which the president is present.
- (2) If the president is absent, the member chosen by the members present presides.

32 Quorum at meetings

Business may be carried on at a meeting of the commission only if at least 3 members of the commission are present.

33 Voting at meetings

- (1) At a meeting of the commission each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has the deciding vote.

34 Individual with more than 1 role

- (1) This section applies if—
 - (a) a person holds 2 or more positions under this Act; and
 - (b) the person is a member of the commission because of each of the positions.

Example

The disability and community services commissioner may be appointed as the health services commissioner.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The person is only entitled to 1 vote at commission meetings.
- (3) In working out whether 3 members are present at a meeting for section 32 (Quorum at meetings), the number of members is taken to be the number of individuals who are members.

Example

If the discrimination commissioner is also the human rights commissioner, the number of members is taken to be 4. Therefore, 2 members (rather than 3) would need to be present at a meeting to carry on business.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

35 Conduct of meetings etc

- (1) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a commission member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link, an internet or intranet link

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) A commission member who takes part in a meeting conducted under subsection (1) is taken, for all purposes, to be present at the meeting.
- (3) A resolution is a valid resolution of the commission, even if it is not passed at a meeting of the commission, if—
- (a) notice of the resolution is given under procedures decided by the commission; and
 - (b) all members agree, in writing, to the proposed resolution.
- (4) The commission must keep minutes of its meetings.



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Crime victims' rights commissioners: public interest entities in a regulatory regime

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ABSTRACT

The legal force of crime victims' rights is ambiguous: are they service standards or legal rights? This question has created confusion about the nature of compliance and bifurcates the enforcement mechanism as administrative or legal. Regulatory analysis creates a wider lens to this debate. In this article, we conceive victims' rights charters as part of a regulatory regime designed to influence the conduct of state agencies in discharging their functions. Rights compliance and enforcement as a regulatory challenge provides a framework for systematic analysis of regulatory instruments, tools and strategies chosen by key actors. We use a case study of statutory crime victims' rights commissioners in Australia to illustrate the implications of these choices. We suggest that clearer articulation of the techniques of compliance show the coexistence of administrative and legal sanctioning. Our argument turns attention to the duties imposed on public institutions of criminal justice and their accountability.

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Introduction

Over the past three decades, many jurisdictions have introduced standards, called victims' 'rights' or victim charters, for criminal justice institutions to guide their treatment of crime victims. Victims' rights scholarship has examined the scope of these guidelines and the extent to which they create a platform for people as crime victims to participate meaningfully in legal proceedings (Davis & Mulford, 2008; Doak, 2008; Manikis, 2012; Kirchengast, 2017). The legal force of the guidelines is ambiguous: are they service standards or legal rights? This in turn has created confusion about the nature of compliance and bifurcates the enforcement mechanism as administrative or legal. It leaves open questions about the role and impact of victims' "rights". In this article we use regulatory analysis to apply a wider lens to this debate. We conceive victims' rights charters as part of a regulatory regime designed to influence the conduct of state agencies in discharging their functions. Approaching rights compliance and enforcement as a regulatory challenge provides a framework for systematic analysis of regulatory instruments, tools and strategies chosen by key actors. We use a case study of Australian victims' rights commissioners; statutory entities established to promote and protect the interests of crime victims to illustrate the implications of these choices and to identify soft to hard regulatory forms. Our argument turns attention to the duties that rights impose on public institutions of criminal justice. As a way forward, we develop an exemplar victims' rights compliance strategy that shows the coexistence of administrative and legal sanctioning.

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Regulation and compliance

Regulatory scholarship is vast and its meanings and implications are much debated.¹ At its simplest, regulation “influenc[es] the flow of events” (Parker & Braithwaite, 2003, p. 119). The actors involved and the range of regulatory activities are context sensitive. We develop our regulatory analysis of victims’ rights commissioners later in this article but, to assist readers unfamiliar with the literature, introduce some key ideas and terms and how we use them. Regulation poses that,

... any control system in art or nature must by definition contain a minimum of the three components ... There must be some capacity for *standard-setting*, to allow a distinction to be made between more or less preferred states of the system. There must also be some capacity for *information-gathering* or monitoring to produce knowledge about current or changing states of the system. On top of that must be some capacity for *behaviour-modification* to change the state of the system (italics in original). (Hood, Rothstein, & Baldwin, 2001, p. 23)

In this article, the criminal justice system is the focus of a regulatory “regime” involving a “complex of institutional geography, rules, practice, and animating ideas that are associated with the regulation of a particular risk or hazard” (Hood et al., 2001, p. 9).² The geography of criminal justice includes institutions of police, prosecution, courts and corrections. One animating idea central to criminal justice, especially for due process and access to justice, is fairness. Thus, the risk or hazard is the variable application or absence of fairness. Civilians in criminal justice are categorised as accused or victim but, in a regulatory analysis, are also understood as citizens, consumers, taxpayers, and as social and political agents. Different criteria for fairness – such as equality, equity or deservingness – are emphasised from different of these standpoints (Sen, 2009).

Various legal rules govern the application of fairness to citizens accused of crimes.³ A victims’ charter is a set of minimum rules or standards applying fairness to citizens as victims of, and possibly a witness to, crimes. The rules are to influence the behaviour of criminal justice institutions and professionals towards citizens as victim in their engagements with the administration of justice. We describe these institutions as ‘regulated entities’. Further, governments have put in place rights-promoting entities as ‘regulators’ to shape, nurture, and sustain criminal justice institutions’ adherence to victims’ charter standards. These regulators or regulatory bodies use a variety of methods based on information gathered in pursuit of that goal. These ‘regulatory instruments’ and ‘regulatory tools’ are largely, but not exclusively, pre-selected by governments in their design of the regulator. The instruments and tools are adopted in varying formal and informal ways by regulatory bodies to produce behaviour acceptable to the preferred standards of fairness the legislature has enacted.

Design of the regulatory regime is not the only concern for regulatory scholarship. It is also concerned with compliance. The term has surface simplicity but has different associations. One is that compliance is a matter of obeying the rules or standards set. Another equates compliance with a formal legal process that follows an alleged breach of a standard and which is capable of imposing a sanction and/or mandating a specific required behaviour. Summarising debates, Hutter argues that compliance is as much “a process as an event.” “Regulatory officials”, she writes “may regard compliance both as a matter of instant conformity and an open-ended and long-term process which may take several years to attain” (Hutter, 1997, p. 12). Regulation deals with messy, dynamic interactions. It is relational as well as transactional, where rules are in any case often indeterminate and open to interpretation (Black, 1997). Compliance is as much about informal practice as formal process.

Such ambiguity is small comfort to citizens who believe their individual rights have been violated. While victims’ rights may be decried as “illusory” (Belooof, 2005; Kirchengast, 2016a), citizens may reasonably assume *both* the duty of regulated entities of police, prosecution, courts and corrections to comply with legislatively specified standards *and*, should they not, the citizen has some way of requiring compliance; that there will be fair review and possible enforcement of the right at issue. Thus, we conceive of enforcement as a component of compliance.

Given the central place of implementation and compliance in the regulation literature, it is surprising that victims’ rights scholars have not engaged with it more frequently.⁴ Addressing this gap, we consider both design and compliance strategies in this article. We discuss victims’ rights

commissioners as a regulator. We examine the various tools in their regulatory toolkit. Rights commissioners are a design choice made by governments. Their functions and powers in turn direct the strategies they deploy to produce and monitor compliance with victim charter standards by the regulated entities of police, prosecution, courts, and corrections. We simplify our analysis of Australian victims' rights commissioners by mainly focusing on their performance as regulators of public prosecutors.

One clear choice made by governments in Australia in creating a regulatory regime governing victim charters is to specify that the standards are not *legal rights* notwithstanding the use of rights language in statutes and public discourse (Kirchengast, 2016b). The content of the charters generally lists 'rights' to respectful treatment, access to information, and adequate notification of case progression amongst others. In truth, these are "legitimate expectations" of citizens" interacting with public authorities (Thomas, 2000, p. 1; see also Shapland, 2000, pp. 147–64). Nonetheless, in this article we use the terms 'standards' and 'rights' interchangeably. We first expand on this context in a brief outline of the emergence of victims' charters before turning to set out some of the key terms and approaches in regulatory analysis.

Crime victims and criminal justice

Presently, crime victims are dealt with in dispersed ways whether in an individual or public policy context. Therefore, it is important to know how a victims' rights regulatory regime emerges. Its history and context are central to understanding the contours and content of a regime in its present form. A victims' rights regime has two basic origin stories within common law countries. The first is a centuries long story where initiating prosecution of the vast bulk of criminal conduct was the responsibility of private individuals (Langbein, 2003; Kirchengast, 2006); a feature of English law that continued as criminal justice developed in colonial settler countries such as the United States (US) (Cardenas, 1986), Canada (Stenning, 1986) and Australia (Woods, 2002). These histories show that the institutional geography of criminal justice has not always looked as it does today. The institution of public prosecution is a relatively recent innovation notwithstanding the longer history to the public nature of the criminal law (Hetherington, 1989). It is a Weberian success story of the centralising and modernising state. A dominant prosecution authority creates efficiencies in the use of public resources, filters and smooths out the diverse experiences' citizen-victims bring to criminal justice and standardises a state perspective on the public interest (Rock, 2004a). Nonetheless, this "competition for control of access to the legal resources inherited from the past" (Bourdieu, 1987, p. 817) has resulted in a state monopoly. Citizen-victims who seek adjudication of alleged criminal conduct have no realistic access to criminal courts other than through the public prosecutor.

The second story is more recent. Researchers examining the contemporary conduct of police and prosecutors in different legal systems have consistently found evidence of abuse of power in persisting discourtesies, inadequate provision of information, and limited assistance and consultation with crime victims (Fundamental Rights Agency [FRA], 2019; Sebba, 1996; Shapland, Willmore, & Duff, 1985). These procedural variables, along with inconsistent case outcomes, are associated with victim dissatisfaction with criminal justice (Whitehead, 2001; Laxminarayan, Bosman, Porter, & Sosa, 2013). Those victimised by particular types of offending have especially poor experiences with criminal justice: both child and adult sexual assault victims find giving evidence traumatic and difficult,⁵ victims of domestic violence say their concerns and safety are not taken seriously (Buzawa & Buzawa, 2003), victims of crimes of bias or hate find their experiences misunderstood (Hall, 2005), and families of homicide victims feel marginalised by the process (Englebrecht, Mason, & Adams, 2014).

In combination, these two stories say a couple of things: overwhelming dominance of state entities enables a system for system-convenience, and, with "capacity and authority to act unbound" (Holder, 2018a, p. 25), facilitates oppressive practices against citizens, whether accused or victim. In this context, regulation protects the public from an abuse of monopoly power (Ogus, 2004).

A regulatory response to the situation appeared at an international level with the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power [herein the Victims' Declaration]. The Victims' Declaration was adopted by the General Assembly of the United Nations (UN) as a set of standards for countries to adopt for their criminal justice institutions. Although General Assembly declarations are non-binding, they "carry the weight of world opinion as well as the moral authority of the world community" (Brienen & Hoegen, 2000, p. 10). The Victims' Declaration was unanimously adopted by countries in the General Assembly and has since been adopted into the laws of many countries including members of the European Union. In federal systems of the US, Australia, and Canada, the Victims Declaration has been incorporated within the federal criminal jurisdiction and at state or provincial levels.⁶ Supra-national organisations such as the Council of Europe⁷ and the Commonwealth of Nations⁸ also adopted the Victims' Declaration as minimum standards on the rights, support and protection of victims of crime.

However, adoption of a law "in the books" is different to its implementation "in action". An analysis of 22 European countries found the overall rate of implementation of the first 1985 victims' declaration to be "disappointing" (Brienen & Hoegen, 2000, p. 3), a finding supported by research in the US (Hillenbrand & Smith, 1989; Kilpatrick, Beatty, & Howley, 1998; Government Accountability Office [GAO], 2008), Canada (Manikis, 2012), and Australia (Holder, 2008). Reflecting on these findings, Groenhuijsen argues that implementation of victims' rights charters is actually "a real challenge" for governments requiring "drastic changes" to legal and welfare systems in some countries (2005, p. 338; and see; Groenhuijsen & Pemberton, 2009). For example, across many European countries there is "paper compliance" and no "purposefully devised properly costed budgets, plans, aims, objectives, targets or timetables for implementation" of victims' charters.⁹ US research similarly identified inadequate funding and training as part of the implementation problem (Davis et al., 2002; Office for Victims of Crime [OVC], 1998). In addition, researchers have long identified that the 'rights' themselves were diminished by institutional resistance including "providing no enforcement mechanisms" (Lamborn, 1987).

However, a regulatory regime and the actors within it – including regulator and regulated entity – have a range of capabilities to enforce and comply with the standards they support. At this point we turn to develop further the ideas that regulatory analysis brings to understanding the challenge of influencing institutional behaviour through victims' rights charters. The charters are the standards set by governments in pursuit of the policy goal of better treatment of crime victims by criminal justice institutions. But, assuming the actors in the regulatory regime agree with the policy goal, how are the standards given effect and by what means?

Regulatory instruments and regulatory tools

To reprise our introductory remarks, regulation is an effort to "influence socially valuable behaviour which may have adverse side-effects by establishing, monitoring and enforcing legal rules" (Morgan & Yeung, 2007, p. 3). Of course, rules do not have to be 'legal'. They may be formal or informal. Either way, regulatory instruments and tools are components of a regulatory regime designed to give effect to specified standards. Much regulatory research has explored the actors within pluralistic regulatory ecologies.¹⁰ This research asks who and what then contribute to which patterns of outcome, and by what means. It examines a wide range of domain from, for example, regulation of private markets (Ogus, 2004), regulation of professions (Wolf, 2017), health and safety (Gunningham & Grabosky, 1998), and environmental crime (Ayling, 2017).¹¹

In whichever domain, a simplified regulatory relationship is between the regulator and regulated entity/ies. Obvious examples of regulator are the US Securities Exchange Commission (SEC) or the Australian Securities and Investments Commission (ASIC). Each has a regulatory relationship with regulated entities such as corporations, banks and other financial institutions. A regulator, as in the SEC and ASIC examples, most often takes some institutional form. A tripartite regulatory framework, however, recognises third parties (Ayres & Braithwaite, 1992). For our topic, the tripartite

regulatory relationship is between victim commissioners as regulator, the public prosecutor as the regulated entity, and the third party (individual crime victims or representative victim, aggregated groupings of victim or victim activists) (Figure 1).

Before we explore the array of regulatory instruments that governments have put in place to promote victims' charter standards, there are other key concepts to set out; in particular, some idea of the regulatory instrument's scope, the range of tools in the regulator's toolkit, and the strategies they deploy in their regulatory mission. The literature is disorganised with terms instruments, tools and strategies describing similar things. Recognising the problem, Morgan and Yeung (2007) suggest a heuristic categorisation to explore the characteristics of and contexts to instruments and tools that is based on "the underlying 'modality' through which behaviour is sought to be controlled". They offer five broad categories relevant across diverse domain: command, competition, consensus, communication and code (or architecture) (2007, p. 80).

- *Command* is a 'classic' regulatory model of state-promulgated rules backed by some sanction.
- *Competition* usually refers to market mechanisms operable or created between like units whether commercial or non-commercial.
- *Consensus* modes of regulation are diverse and consent-based.
- *Communication*-based modes of regulation draw upon norms or normative expectations of behaviour.
- *Code* refers to various means and mechanisms for designing in desired behaviours or expected standards and designing out undesirable behaviours.

These are descriptions at a high degree of generality. However, how the modalities and associated techniques contribute to a victims' charter regulatory regime are set out in Table 1. Our table summarises a wide range of scholarship and our own work in an analytic matrix considering form, strategy, and tools; and provides examples of how they have been engaged in the regulatory regime of victims' charters. The examples traverse different contexts but are drawn primarily from common law countries.

The analysis could be read as showing separate and competing approaches to regulating victims' rights standards. This is not the case. The instruments, techniques and tools can be (and usually are) amalgamated and used in different ways to achieve a specific outcome within the overall goal of shaping and directing the conduct of regulated entities under a victims' rights charter. For example, self-regulation (Bardach & Kagan, 1982) by the office of the public prosecutor may involve internal policy (consensus), creating victim case management templates for use in prosecution files (code), stipulating prosecutor actions (consensus), disciplining staff who fail to comply with these requirements (command), and reporting to government and the public on the annual performance of these requirements (communication).

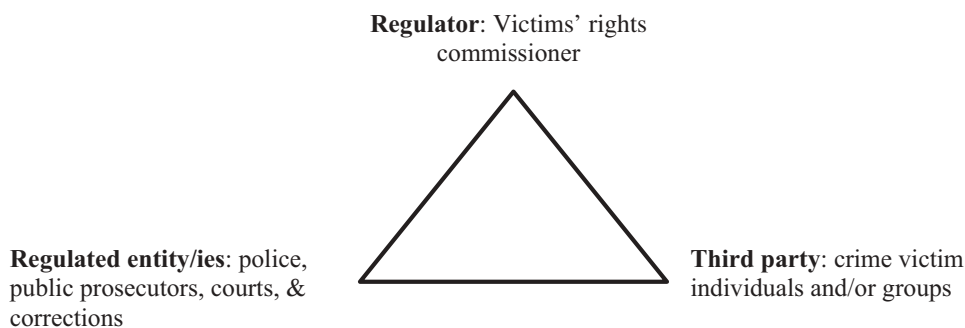


Figure 1. The tripartite regulatory relationship in a victims' charter regulatory regime.

Table 1. Mode and techniques through which regulation is directed (the 'toolkit'), and victim charter examples.

Category	Form	Strategy	Tools	Victims' charter examples
Command	Law, legal rules	Compulsion Prohibition Imposed duties	Coercion Threat Sanction Ostracism	Court-ordered remedial action/redress Complaint finding Disciplinary action Fines Apology Dismissal
Competition	Market	Harness rivalry (internal or external "like" units)	Incentives/subsidies Charges Liabilities	Victim-centred agencies/services as new source of expertise/authority Increased resources for charter functions Enabling third parties (eg private prosecution, private security) Code of Practice
Consensus	Self-regulation Social consensus	Cooperation Consent-based Contract	Professional rules Contracting (formal/informal) Protocols & guidelines	Inter-agency agreement Agency policies, performance targets, and service standards Information briefings about victim-relevant topics
Communication	Indirect social pressure	Negotiation Persuasion Education	Inform target audience Public education for consumers Media Research & monitoring Reporting (mandated or voluntary disclosure)	Professional training Consumer information about their rights Research, evaluation, audit Annual reports including performance on meeting victim charter standards
Code	Institutional architecture	Designing out/in undesirable/desirable conduct	Bilateral/multi-lateral partnerships Information technology systems Procedural/form changes Building/office design New technology	Victim Advisory Council/Board Criminal justice/victim agency strategy meetings Forms for victim personal details, risk assessment and case plan Agency database adapted to include victim contact information & agency actions New secure entryway for victims to court Victim waiting areas in justice agencies/court CCTV/other special measures for witness testimony

SOURCE: Categorisation from Morgan and Yeung (2007) and authors' work

Some may also argue that one regulatory technique is gentler and more lenient than another; that ‘command’ is a more efficient and effective way of shaping behaviour to the desired standards of a victims’ charter. Again, this is not necessarily so. A regulatory regime will likely make “tailored use of a graduated scale of regulatory instruments as a means of achieving regulatory goals” (Chang & Brewer, 2018, p. 9). This idea of graduated regulation is captured in Ayres and Braithwaite’s enforcement pyramid with softer consensus and communication approaches at the base, elevating towards hard sanction at the top (Figure 2).

A victims’ rights compliance strategy may employ different of these approaches in any given jurisdiction, but compulsion and sanction will be there somewhere in some form, either in the background or the foreground. The techniques constitute a ‘toolkit’. Thus, we understand compliance is a strategic objective in which design, persuasion, communication, incentives, and enforcement may all be available to support the institutional changes sought under a victims’ charter. Thus, compliance and implementation are two sides of the one coin. Which tools are used and when will respond to particularities of the regulatory context (here criminal justice), the nature of the compliance concern(s), and the nature of the regulatory body.

Regulatory bodies

Regulatory bodies come in different forms with different legal identities. In Australia most regulators, across different domain, are independent statutory authorities; “a public sector entity created by legislation” (Uhrig, 2003, p. 16). In their study of Australian business regulators, Grabosky and Braithwaite (1986) define these as entities established by government, independent of the regulated sector, and with responsibilities to promote desirable behaviours and for acting on undesirable behaviours counter to those determined by the legislature to be in “broader community interests”. Regulators administer or work to legislation (p. 3) and often face of an “infinite number of [regulatory] offences” (p. 204). While business regulators such as ASIC or the Australian Competition and Consumer Commission (ACCC) have “a big stick”, they share with less powerful entities such as the Australian Human Rights Commission (AHRC) a range of regulatory techniques and strategies.

Regulators may be ‘independent’ in different ways and to different extents. They may be independent of executive direction in discharging their functions which are set out legislatively. This is standard for “diagnostic inspectors” (Grabosky & Braithwaite, 1986, p. 221) in areas such as

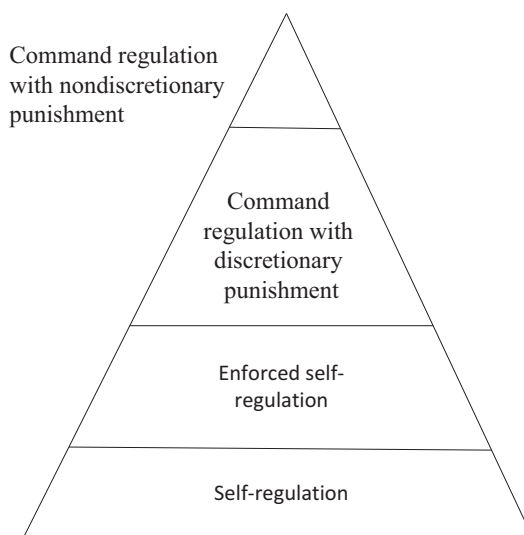


Figure 2. Example of a pyramid of enforcement strategies (Ayres & Braithwaite, 1992, p. 39).

food safety or fair trading but who remain part of a government department. A regulator may also be established as an independent statutory entity where governments wish to place a function 'at arm's length' such as an Auditor-General's Office or an Ombudsman's Office; each of whom are also headed by an independent statutory officer. These offices may act as a general regulator of government functions, services and performance. Others, such as ASIC and the ACCC are external to government and designed to regulate non-government functions. Still others such as a Human Rights Commission, has a specific remit with both government and non-government application. Regulators are watch-dogs.

All these bodies are part of the architecture of state administration but are not of the machinery of government and its bureaucracy. At various times, regulators of different types have been described as "an indispensable aid to accountability",¹² "political puppets",¹³ and as "gentle" (Grabosky & Braithwaite, 1986) in their compliance endeavours. These assessments may arise when regulators use some of the powers and strategies in their toolkit (see Table 1) more than others; or when circumstances in the regulatory environment influence them to do so. Nonetheless, a critical feature of independence is having the authority and capacity to communicate its work openly to the wider public, to the legislature, and to other bodies.

Victims' rights regulators

The capacity to speak publicly is a critical power of victims' rights regulators as we shall see. As instruments in a regulatory regime they take different forms. Some of these forms overlap with bodies designed to promote a victims' rights charter and those designed to serve people as crime victims and those designed to assist communication between government and crime victim representatives. Some embody all these functions.

Of course, victims' rights regulators, established within the state architecture, have a different character to those working 'outside the system'. Outsiders may undertake a wide range of work for crime victims including helping them access their 'rights' and justice. They may be funded by government, philanthropy or may function as if a private entity such as a law firm. Outsiders include community legal centres, advocacy organisations, campaign groups or legal clinics. They may also include the media or professional bodies such as a Law Society. As 'rights advocates', the non-government actors may focus specifically on legal tools and formal enforcement of rules. Exemplars are the National Crime Victim Law Institute's Victims' Rights Clinics previously operating in eight locations across the US (Davis, Anderson, Howley, Dorris, & Whitman, 2012, p. 2009). Or they may emphasise non-legal advocacy for crime victims as a compliance strategy like Victim Support UK (Rock, 1990) and like most domestic violence advocacy efforts in the US (Davies & Lyon, 2014).

Formal victims' rights regulatory bodies were established directly from the enactment of victims' charters. In their earliest forms, these were idiosyncratic creatures born of local circumstances. In the UK, legislators prioritised the notion of impartiality for the mechanism to assess complaints from crime victims and nominated the Parliamentary Ombudsman (PO), a body that provides Members of Parliament with an avenue to investigate complaints from constituents about issues of maladministration by government entities. The PO, rather than being a "champion" of victims, was considered an "impartial" arbiter of crime victims' complaints (Manikis, 2012; Rock, 2004b, p. 553). New Zealand followed a similar path.¹⁴ In the US, the committee structure devised to promote and enforce compliance with victims' rights legislation in Colorado reflected the state's "decentralized" service structure and existing "collaborative working relationship[s]". The Minnesota Office of the Crime Victims Ombudsman was part of a unique tradition in that state of "speciality" ombudsmen targeting "underserved populations" and overseeing specific government agencies (OVC, 1998, pages 5, 18 and 27). In Alaska, an office was created by the legislature to provide "free legal services to victims of crime to help them protect their guaranteed constitutional and statutory rights with regard to their contacts with police, prosecutors, defense counsel, judges, and criminal justice agencies in the state" (Branchflower, 2004, p. 259). Federal legislators in the US and Canada also established a specific

Crime Victim Ombudsman to investigate and resolve allegations of victims' rights breaches for those jurisdictions (Manikis, 2015; GAO, 2008). A review of state-sanctioned bodies in the US concluded that "although broadly categorised",

the primary differences in the [compliance enforcement] programs studied relate to the investigative and sanctioning powers of the program officials; the role of the program or office as either an impartial liaison or an advocate for victims; the range of services provided; and the role of the compliance enforcement program in the provision of training and outreach to the public and the criminal justice community. (OVC, 1998, p. 57).¹⁵

We build on these categories to analyse the regulatory role of Australian victims' rights commissioners. Sourcing data from public records and websites, our analysis first examines the status of the commissioners and whether they are multi-service. We then examine the commissioners' functions, divided into three areas: educative/promotional, enquiry/monitoring, and investigative and enforcement, and then examine transparency of their performance. Finally, from this analysis we sketch an exemplar victims' rights compliance regime and return to discuss the tension identified for regulators between advocacy and impartiality.

Australian victims' rights commissioners

Australia is comprised of nine jurisdictions: federal and eight states and territories. The earliest victims' rights charters were legislated in 1994 Western Australia (WA) and the Australian Capital Territory (ACT). Following those were South Australia (SA, 2001), New South Wales (NSW, 1996), Victoria (2006), Queensland (2009), Tasmania (2001) and the Northern Territory (NT, 2002). At a federal level, the Commonwealth of Australia adopted an administrative victims' charter in 1996.

Initially only two of the states and territories legislated for rights compliance mechanisms in their victims' charter. In the ACT a statutory office-holder, the Victims of Crime Coordinator, had authority to investigate allegations of a breach of the rights. Following an investigation, the office-holder could report findings to the Minister.¹⁶ NSW required that the Victims of Crime Bureau, newly established within the Department of Justice and Attorney General, receive and resolve complaints. The NSW *Victims' Rights Act* specified that the rights did not give rise to any cause of action but did not preclude disciplinary action.¹⁷ Since enactment in 1994 and 1996 respectively, both statutes have changed (in 2011 and 2013 respectively) and each now establishes a Commissioner. Similarly named positions were also created in SA (2006), Victoria (2015) and WA (circa 2014). Although the WA Commissioner has responsibilities to monitor and review the criminal justice system response to victims,¹⁸ it is not included in our analysis because it has no statutory basis.¹⁹

Status

Four commissioners are each established in legislation. The ACT, NSW and SA legislation also sets out the standards comprising victims' rights. The Victorian Commissioner has its own enacting legislation²⁰ separate to the *Victims Charter Act 2006*. The ACT Commissioner, enacted to replace the Coordinator in 2011, was also subsequently incorporated into the ACT Human Rights Commission in 2016.²¹ Three victims' commissioners are independent of the executive though through slightly different appointments. The SA and Victorian Commissioners are appointed by the Governor-in-Council upon recommendation by the state Attorney General while the ACT Commissioner is appointed by the Attorney General. The NSW Commissioner, as a public servant, is not independent. An independent statutory appointment is not subject to the direction of a Minister or head of department. They may discharge their functions as they see fit subject to the usual ethical, financial and other performance requirements of the public service. A key feature of statutory independence is the authority to speak publicly without prior government approval and even critically, on topics relevant to crime victims and their treatment within criminal justice and elsewhere by government entities.

Service functions

The SA, ACT and Victorian office-holders were initially enacted solely as rights-promoting entities. Over time, some have had service functions added. By service functions we mean help and assistance to individuals that are separate to oversight of the charter 'rights'. Since 2007 the ACT office-holder has progressively had added responsibility to deliver various services for victims.²² In NSW, the office-holder has always been situated in and responsible for multiple services for crime victims administered within the Department of Justice and has also had service functions added to its mandate over time.²³

Functions

A division of functions into three key areas of educative/promotional, enquiry/monitoring, and investigative and enforcement shows some consistencies across the commissioners and some variation (Table 2). The distribution of functions is a "regulatory mix" (Gunningham & Grabosky, 1998) and, for the Australian commissioners, are reasonably balanced.

We have not included all statutory provisions in the analysis of commissioners' functions. Legislative language can be oblique. For example, how do we understand a function that is "to assist victims in their dealings with prosecution authorities and other government agencies" (*Victims of Crime Act SA 2001 s16(3)b*); or another "to ensure that victims receive information and assistance they need in connection with their involvement in the administration of justice" (*Victims of Crime Act ACT 1994 s11(j)*). These can appear passive functions. Equally, however (and discussed below), these could be precisely the activities that enable individual crime victims to access their rights or constitute early intervention on a victim concern about a justice agency that forestalls a potential breach or could entail an informal conciliation with a regulated entity to resolve a victim concern.

Transparency

Transparency of the commissioners' performance of their functions varies. From 2004 to 2016 the ACT office-holder published and made available online annual reports on the performance of statutory functions.²⁸ From 2016, performance is described as a specific section alongside sections from other commissioners in the Human Rights Commission annual report. Different projects and services of the NSW Victims Services Scheme, managed by the Victims Commissioner, are reported in the NSW Department of Justice annual reports. The Victorian Commissioner publishes an annual report of which 2017–2018 is available online.²⁹ From 2002 to 2008, the SA office-holder reported within the annual report of the Attorney General's Department with a standalone annual report made by the SA Commissioner in 2008–2009.³⁰

Annual reports by public entities often discuss their performance in high-level language and without detail. Nonetheless, they are critical sources of information for the public and politicians. Transparency can be achieved through stand-alone reports and a scan of the websites of the Australian commissioners reveal a number. However, these tend to be on topics other than the commissioners' own functions. Any future research examining how commissioners' legislative functions have been translated on the ground in the jurisdictions and with what impact would likely use annual reports as a data source. The regulator's transparency about their activities is essential to assess effectiveness.

Understanding victims' commissioners' enforcement functions and sanctions

In a regulatory analysis, there are a number of ways to consider enforcement and sanctioning as means of behaviour modification when understanding compliance as both a process and an event.

Table 2. Australian victims' rights commissioners functions.

Juris	Educative/Promotional Functions	Equity/Monitory Functions	Investigative & Enforcement Functions
ACT ²⁴	Develop educational and other programs to promote awareness of the interests of victims (s11(h)) Distribute information about the operation of this Act and the commissioner's functions (s11(i))	Monitor and promote compliance with the governing principles (s11(d)) Consult on and promote reforms to meet the interests of victims (s11(g)) Encourage and facilitate cooperation between agencies involved in the administration of justice with respect to victims (s11(k)) Advise the Minister on matters relating to the interests of victims (s11(l))	Advocate for the interests of victims (s11(b)) Advocate for the interests of affected people under the <i>Mental Health Act 2015</i> (s11(c)) Ensure concerns and formal complaints about non-compliance with the governing principles are dealt with promptly and effectively (s11(e)) The commissioner must try to resolve any concern raised with the commissioner by a victim about non-compliance with the governing principles by an agency involved in the administration of justice (s12(1))
NSW ²⁵	Promote and oversee the implementation of the Charter of Victims' Rights, including by publishing codes, guidelines and other practical guidance on the implementation of the Charter (s10(1)c) Conduct, promote and monitor training, public awareness activities and research on victims of crime (s10(1)g)	Make recommendations to assist agencies to improve their compliance with the Charter of Victims' Rights, including but not limited to conducting training and recommending changes to policies and procedures (s10(1)d) Conduct reviews and inquiries, or both, on issues relating to victims of crime at the request of the Attorney General (s10(1)h) Marshal available government resources so they can be applied for the benefit of victims in the most efficient and effective way (s16(3)a) Monitor and review the effect of the law and of court practices and procedures on victims (s16(3)c) Carry out inquiries on systemic victim of crime matters (s13(1)b) Provide advice to the Attorney-General and government departments and agencies regarding improvements to the justice system to meet the needs of victims of crime (s13(1)d)	Receive complaints from victims of crime (and members of the immediate family of missing persons) about alleged breaches of the Charter of Victims' Rights and to use the Commissioner's best endeavours to resolve the complaints (s10(1)e) Recommend that agencies apologise to victims of crime for breaches of the Charter of Victims' Rights (s10(1)f)
SA ²⁶			Make submissions in any proceedings – to make such submissions (either personally or through counsel) (s16(3)e)
Victoria ²⁷	Advocate for the recognition, inclusion, participation and respect of victims of crime (s13(1)a)		Report to the Attorney-General on any systemic victim of crime matter (s13(1)c) May review an agency's response to a victim complaint (Victims Charter 2006 s19A [3(b)])

Thus, we make a further distinction between commissioners' compliance functions that are reactive and narrow, and those which are proactive and broadly focused.

Here, we return to Morgan and Yeung's categorisation of "the underlying 'modality' through which behaviour is sought to be controlled" in the regulatory regime and first focus discussion on command or reactive enforcement where a specific sanction may be imposed in direct relation to a specific event following a formal investigative process. Second, we consider competition, consensus, communication, and code modalities that victims' rights commissioners may use to enforce and sanction.

Command enforcement and sanctioning

The analysis of commissioners' enforcement functions in [Table 2](#) (right column) shows that a breach of victims' 'rights' is primarily characterised as a service complaint. Indeed, the victim charters provide that victims should first attempt to resolve the issue with the agency or official in question. Should the matter be brought to the attention of the ACT and NSW Commissioners, these are also required to attempt to "resolve" the complaint through timely early intervention. The Victorian *Victims Charter Act* 2006 and the SA *Victims of Crime Act* 2001 similarly emphasise early intervention and resolution. Only the SA Commissioner has powers approaching legal intervention (Kirchengast, Iliadis and O'Connell, 2019).³¹ The Commissioner may make a submission in a proceeding (s 16(3)e) and may act as a victim representative in exercising rights to information, compensation or a sentence submission (s 32A(3)b).

The emphasis on treating an alleged breach as a complaint is consistent with 'rights'-enforcing mechanisms in the US, Canada, the UK, and New Zealand. Indeed, it is consistent with the "complaints-conciliation focus" of other Australian human rights and equal opportunity commissions (Gardner, 2008, p. 43). To emphasise the point, the Australian victims' charters specify that the 'rights' are not legally enforceable or give rise to any right to damages for breach (SA), provide no grounds for judicial review (NSW, Victoria), or other liability (Victoria).

As for the sanctioning that may occur at the end of a complaints process, two statutes (Victoria and NSW) provide that disciplinary proceedings may proceed against a relevant official.³² NSW, SA and Victoria provide for an apology from a public agency or official, which may be recommended by the Commissioners.³³ The ACT legislation is silent about any sanction or penalty against a public agency or official. Other types of sanction such as a guarantee of non-repetition or commitment to address the substantive problem complained of, whether through enforceable or unenforceable undertakings, are absent from any of the Australian victims' charters.

Reporting publicly on complaints of a breach of rights, investigations and outcomes is another form of sanctioning, especially if reporting adverse findings. Here the commissioners' powers again vary. The SA victims' charter includes provisions concluding a complaints process. After issuing a "notice in writing" to a public agency or official recommending an apology (s 16A2), the Commissioner must provide a copy of the notice to the relevant victim (s 16A3). Additionally, the Commissioner must report publicly in an annual report the number of notices issued and the agencies and officials to whom the notices were given (s 16A4). In 2008–2009 the Commissioner reported that, of the 159 complaints he had received, no notices were issued. He writes that he is aware of "several occasions" when an official spoke privately to a victim and of two occasions where an apology was made (SA Victims' Rights Commissioner, 2009, p. 20). The NSW Commissioner is authorised to make a "special report" to the Minister for tabling in Parliament on "any matter" (s 13(1) and "with respect to any breaches by an agency" of the victims' charter (s13(2)). However, we could find no record of any special reports. For the ACT we found one report setting out a summary of 10 exemplar grievances.³⁴ Of course, reports of investigations into individual complaints and the findings made by a commissioner and the outcomes arrived at with a regulated entity may be confidential and unavailable to the public. It may also be necessary to protect the privacy of a private

citizen. At the same time, the lack of public information can undermine transparency and act to protect the reputation of a public agency or official.

In summary, the Australian victims' commissioners have sketchy, insubstantial, and limited reactive and targeted enforcement processes other than conciliation practices arising from service complaints. They also have very limited types of sanctioning powers that are usually present within 'command' compliance.

Competition, consensus, communication, and code enforcement and sanctioning

However, the broader functions of the Australian victims' commissioners offer another means to assess their enforcement and sanctioning powers. These educative and enquiry functions (Table 2, left and middle columns) have been described as "facilitation measures" for rights-promoting public entities (Gardner, 2008, p. 46). These may enable compliance in proactive and broad ways and require use of other institutional, social and political levers to shape and direct change. The examples we provide here derive from the websites and annual reports of the commissioners.

Competition as enforcement is easily understood in the private market when a company or service may be put out of business or wither away for poor custom. Within a public system, competition can be less clear. In the criminal justice system, where it can seem that police and prosecutors are the only defenders of the public interest, the victims' commissioners create another source of information, expertise, and perspective. They enrich and deepen the notion of public interest (Holder, 2018b). The state monopoly view that 'this is the only way to do justice' becomes contestable. However, giving this concrete effect through, for example, private prosecution is rare. One example discussed earlier, is the SA Commissioner's unique capacity, through access to a legal fund, to engage counsel to assert recognition of a particular 'right' brought forward by an individual.³⁵ This authority creates the possibility of a direct victim voice in proceedings separate to the views presented by prosecutors.³⁶ The various public scandals about non-prosecution that periodically erupt across the Australian states and territories have provided another avenue through which the public prosecutor's decisions can be challenged.³⁷ The independent victims' commissioners have all, at various times, spoken publicly (if carefully) on victims' right to seek justice. The sanctioning of a regulated entity such as the public prosecutor in a competition modality could involve, for example, having the relevant function taken away by government and re-assigned or a reduction in budget.

Consensus as enforcement is also less visible. However, all the Australian victims' commissioners use a range of mechanisms to build a higher level of acceptance of the standards within victims' charters. For example, influencing and shaping preferred institutional behaviour is conducted through establishing Advisory or Strategic bodies to produce, through cooperation, detailed plans and policies for the implementation of a victims' charter. The Australian commissioners also build consensus within regulated entities to comply with victims' standards through professional briefings, training, and other educational sessions for officials. Sanctioning within consensus approaches to compliance is about shaping practice in deliberate and purposeful ways, emphasising what is preferred behaviour and what is not preferred. Social consensus for compliance standards beyond the institutions is also nurtured through the informational sessions and publications that the commissioners produce.

Communication is not commonly discussed as an enforcement strategy but is one of the most powerful. A victims' commissioner communicating directly to the public (and politicians) via the media about a persisting area of concern or a non-compliant agency is enforcement and sanction in one. The commissioners may communicate the poor performance of regulated entities with charter standards in special reports or in special enquiries such as those conducted by law reform commissions.³⁸ It is to these enquiries that commissioners may make submissions documenting the extent of complaints and concerns that victims have brought to them. Other communication strategies are "information gathering" and monitoring. The compilation of victims' grievances, the

conduct of agency audits, own motion reviews, or the commissioning of research and evaluation are all activities coming within commissioners' educative, promotional, advocacy, enquiry, and reporting functions. Communication through accountability channels via annual reports, submissions to parliamentary inquiries, and reports of findings on individual or systemic concerns represent formal ways of identifying and combatting systematic injustice and chronic institutional failings to treat victims by the enacted standards. From these communication activities sanctioning can be the decisions of government or parliament to approve one programme over another or to institute a new strategy to address the injustice.

Code or design approaches to compliance fall within the rights-promoting and advocacy functions of commissioners. Design compliance can 'nudge' officials to perform their functions in particular ways. Some are obvious, such as the installation of closed-circuit television and other communication aids at court for victim-witnesses, and others are less so. The commissioners have contributed to the re-design of forms and database modules that record details of cases reported by victims to authorities. It may sound simple, but if the names and addresses individuals as victim are not recorded in institutions' information-gathering, then they will literally not be part of a case (Douglas & Laster, 1994). Sanctioning in design approaches to compliance can also involve restriction. For example, prior practice that undermined the standards in a victims' charter, such as, the routine inclusion of a victim's address on a public court document that effectively breached a victim's privacy, can be eliminated by introducing a new document template without that inclusion.

Discussion: regulating victims' rights in criminal justice

Regulating the conduct of public functions and the performance of public officials is an accepted feature of governance in advanced liberal democracies. The regulation of criminal justice institutions introduces particular challenges however. Its institutions defend their independence (Cowdery, 1995). While the criminal justice system provides services, it is primarily established to investigate, prosecute and adjudicate alleged breaches of the criminal law. A criminal justice 'case' involves a number of individual citizens, the accused, victim, or witness, plus professionals each with particular interests. Therefore, rather than a single regulatory framework, criminal justice carries a range of inter-connecting regulatory instruments; one of which is a victims' rights charter. For victims' rights, this context requires a skilled specialist regulator, willingness on the part of the regulated entities to engage constructively, and a shared commitment to realising the public good envisaged by the legislature (Black, 1997).

A victims' rights regulator may perform all her activities only in this manner. Indeed, a 'soft' regulator, established as part of government bureaucracy, may be restricted to these educative and promotional functions. A 'harder' victim rights regulator secures independence from government in a founding statute. Further, a 'hard' regulator will have enforcement powers however sparingly used. In this categorisation of soft to hard regulators, statutory enactment has a number of benefits: it makes plain the design features, functions and powers of a victims' regulator; it situates the victim constituency within the broader public interest; places ethical and performance obligations on the regulator similar to other public entities; provides political and structural authority to the regulator; and can make more difficult any attempts to undermine or abolish a victims' regulator. Our Australian case study has examined a particular regulatory form of statutory public-interest commissioners. However, our analysis makes more transparent the design choices that governments elsewhere could make for a rights watchdog.

We have also discussed compliance as a creature of design and function; a mix of formal and informal practice, and both process and event. In analysing enforcement and sanctioning approaches from five underlying modalities in regulation, we have moved beyond the usual categorising of victims' rights enforcement as *either* administrative *or* legal. Instead we have showed compliance and enforcement as two sides of one coin and comprising reactive and proactive elements. However, our analysis also shows gaps in the design of specialist victims' rights regulators

in Australia and patchy or limited regulatory powers that are likely found in others such as the UK victims commissioner.³⁹ Victims' rights regulators, working with government legislators, could develop a more systematic approach to their work producing compliance in regulated entities with the victim charters. For this objective, we offer a victims' charter compliance pyramid (Figure 3) that builds and communicates social consensus for rights at its base and moves to command enforcement through use of notices and undertakings. These latter sanctions could require a regulated entity such as the public prosecutor to, for example, implement routine measures to protect victim privacy or to consistently require consultation of victims by prosecutors. Some other targeted compliance activities, such as undertakings and amicus briefs, are currently available in the barest forms in the jurisdictions we studied. However, their use in other rights-protecting areas suggest considerable scope for future development.⁴⁰

Our victims' rights compliance pyramid can be read in two ways. First, as a depiction of a regulatory strategy it shows how government in any given jurisdiction, working with the three parties of regulators, regulated entities and victim representatives, can put in place graduated levels of activity to implement victims' rights charters. Second, it can be read as an exemplar design of the functions and powers for a victims' rights regulator. On both readings, an exemplar victims' compliance pyramid shows that the choices of regulatory instrument and tools that are made by

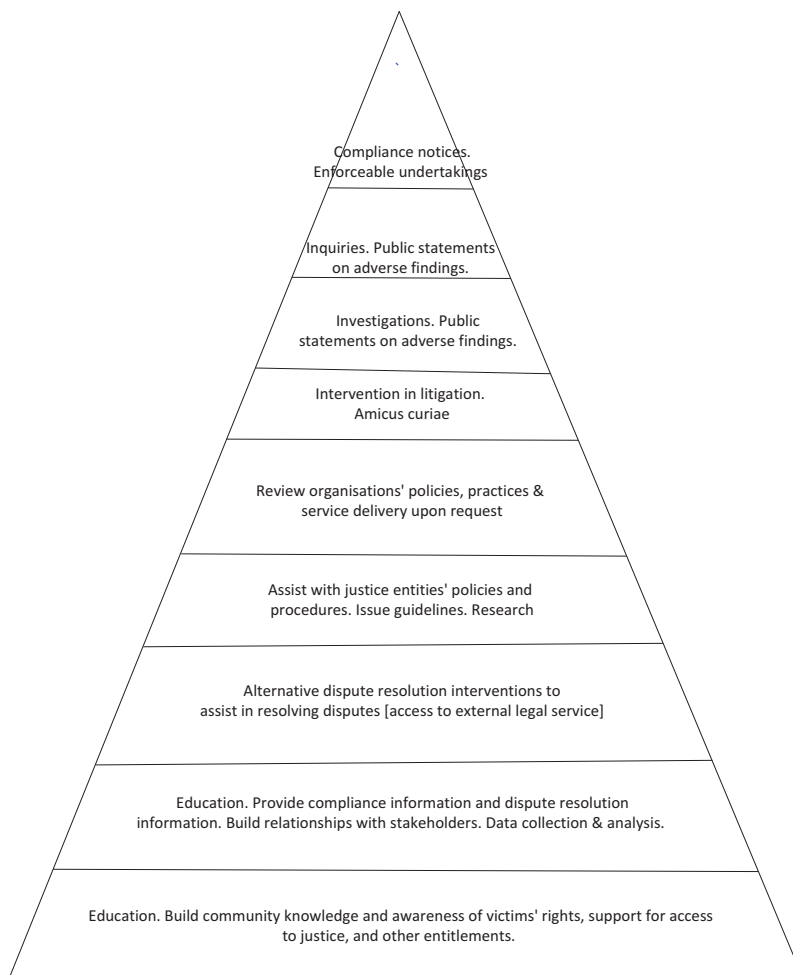


Figure 3. Victims' rights compliance pyramid (adapted from Ayres & Braithwaite, 1992; Gardner, 2008, p. 45).

governments and regulators can result in the strong regulation of victims' rights or weak regulation. An effective regulator requires the right functions, specification of compliance processes, a range of enforcement powers, and the resources to do the job.

Our analysis of the regulatory regime for victims' rights in Australia has revealed these as less than our exemplar, albeit with highlights. The non-command enforcement and sanctioning approaches to compliance with victims' charters at the base of the pyramid are those mostly used by victims' commissioners. These can appear weakly indirect. Governments are adept at setting symbolic policy goals such as bringing victims "to the heart of criminal justice" (Jackson, 2003). They are also renowned for under-resourcing regulatory bodies (Smith, 2006). Thus, a regulator that emphasises a proactive and broad compliance strategy to victims' rights may simply reflect a power imbalance with the regulated entities of criminal justice. A conciliatory approach can operate as "a means of sustaining the consent of the regulated where there is ambivalence about the enforcement agency's mandate" (Hawkins, 1984 cited in Morgan & Yeung, 2007, p. 186). Gaming the regulator, here a victims' commissioner, preserves the business of criminal justice for known and more powerful state players such as the public prosecutor.

Nonetheless influencing criminal justice to achieve the institutional and behavioural changes necessary for practical recognition, inclusion and fairness for crime victims is "a real challenge". Our victims' compliance pyramid brings strategic robustness to this challenge. While victims' rights' regulators may presently sit at the periphery of the criminal justice system, simultaneously removing and containing victims in an administrative space, they also work to constructively connect victims to the police, prosecutions, and the courts. In doing so the Australian victims' commissioners act as a bridge, a translator, a guide, and as an advocate for crime victims in a highly complex technical system. On a day-to-day basis, this may be how rights-promotion and rights-protection works. It is, said one commissioner, "difficult to differentiate a victims' request for advocacy and a victim's grievance or complaint" (SA Commissioner, 2009, p. 20). A fluid and negotiable approach to compliance that seeks positive outcomes for individual victims and victims as a constituency requires specialist knowledge and skill on the part of the regulator.

These regulatory practices raise a question over the role that advocacy plays for a rights-protecting and rights-promoting victims' regulator and the tension it creates with the complaints' management function (OVC, 1998; Rock, 2004b, p. 553). This tension is a feature of other rights-protecting entities such as human rights commissions (Gardner, 2008, p. 43; Commonwealth Secretariat, 2007). Future research could shed light on the circumstances in which rights regulators deploy these functions: do they come from a position of strength or weakness, what other factors are at play? The informality of the practices needs a high degree of specification and transparency for parties in the regulatory regime otherwise there can be accusations of "capture", of "game playing", or of the regulator's submission before a more powerful entity (Ayres & Braithwaite, 1992). The discretion upon which informal practice rests always require a delicate, though deliberate, balancing between achieving outcomes and transparency and consistency. Ultimately, such discretion – offering 'gentle' pathways to compliance – requires at least the possibility of 'a big stick', especially in an environment of monopoly state power as in criminal justice. An effective victims' rights regulator may choose to use a big stick infrequently and with strategic intent, but it should be available.

Conclusion

Crime victims are a diverse constituency and their preparedness to cooperate with criminal justice entities in the investigation and prosecution of crime has been taken for granted. Victims' charters are one means whereby governments have attempted to set standards for the fair and proper treatment of individuals and groups of victims in the administration of justice. To date, researchers have focused on the availability to victims themselves of effective complaint or rights enforcement processes. Our regulatory analysis has widened the lens to take account of a broader range of

instruments, tools, and strategies available for victims' rights compliance. A next step is to locate more information on regulators' activities in order to assess the effectiveness of compliance strategies. In this endeavour, regulatory analysis provides more precise terminology with which to analyse the role of specialist regulators such as statutory victims' commissioners. A regulatory analysis de-constructs the design of the regulatory regime for victims' rights. This then provides a clearer picture of the duties of regulated entities to properly implement victims' rights, and sharper definition of their accountabilities in doing so.

Notes

1. In our discussion we draw heavily on the text and materials brought together in Bronwen Morgan and Karen Yeung's book, *An introduction to law and regulation* (Cambridge University Press, 2007).
2. Another term encompassing the sector or domain coverage is "regulatory space" (Hancher & Moran, 1989).
3. For the United Kingdom (UK) see, Emmerson et al. (3rd Ed) (2012). *Human rights and criminal justice*. London, Sweet & Maxwell; for the US see, Bodenhamer (2008). *Fair trial: Rights of the accused in American history*. OUP USA; and for Australia see, Bronitt and McSherry (2017). *Principles of criminal law* (4th Ed.). Sydney, Australia: Thomson Reuters, Lawbook Company.
4. Other rights-promoting reform literature has done so. Australian examples include a review that promoted a regulatory model for the Human Rights and Equal Opportunities Commission in Victoria (Gardner, 2008, p. 43–47); and analysis of the regulatory mechanisms in federal anti-discrimination law (Smith, 2006).
5. Issues that were extensively canvassed in the Australian Royal Commission into Institutional Responses to Child Sexual Abuse [RCIRCSA] (2017).
6. All 50 states in the US have some form of victims' rights legislation, and 32 states have constitutional amendments guaranteeing certain rights (Davis et al., 2012, p. 2). At the federal level in Australia, the Standing Committee of Attorneys General (SCAG) adopted a "national charter of victims' rights" in 1996 (Holder, 2008, pp. 33–34). The first state legislation was 1994 with the passage of a *Victims of Crime Act* in Western Australia (WA) and separately in the Australian Capital Territory (ACT). In 1988, all Federal, Provincial and Territorial Ministers responsible for justice in Canada agreed a Statement of Principles (Waller, 1996, p. 100).
7. Recommendation (85)11, later strengthened by the Council Framework Decision 2001/220/JHA, and in turn replaced by Directive 2012/29/EU of the European Parliament and of the Council in October 2012.
8. In 1985, the Commonwealth of Nations Secretariat produced Guidelines, followed in 2005 by the communiqué of the Commonwealth Senior Law Officers comprising a Statement of Basic Principles of Justice for Victims of Crime.
9. The excerpt is an assessment of an expert inspection team examining actions to implement the European Framework Decision on Victims by 10 countries joining the European Union from May 2004 (Phare Report, 2002, p. 53 quoted in Groenhuisen, 2005, p. 341). Similarly, identifying "tasks" and "budget lines" was found in research on UK criminal justice agencies implementation of victims' rights to be necessary (Shapland, 2000, p. 154).
10. We thank Peter Grabosky for this phrase.
11. The collection edited by Peter Drahos, *Regulatory theory: Foundations and applications* (ANU Press, 2017) provides chapters that discuss regulation across different domain.
12. The phrase is from Harry Evans, Clerk of the Australian Senate, in prefacing remarks to a Senate Seminar called "Unchaining the Watch-Dogs". The proceedings were later published as one of the Papers on Parliament Series: POP7-Unchaining the Watch-Dogs. See https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop07 retrieved 21 February 2019.
13. Journalist Verona Burgess writing for *The Canberra Times* (2002) and cited in Wettenhall (2004, p. 63).
14. *Victims' Rights Act* (New Zealand) 2002 s10. Complaints (s49) by victims may be made to the Ombudsman, Police Conduct Authority or to the Privacy Commissioner.
15. This earlier assessment of diversity of programs in the US persists. A 2017 list of 11 state crime victim compliance and enforcement programs plus the Federal Crime Victim Ombudsman shows programs located within Governor's office, within the legislature, and inside and outside government. Retrieved 27 March 2019 from <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/State%20victim%20rights%20compliance%20programs.pdf> This earlier assessment of diversity of programs.
16. *Victims of Crime Act* (ACT) 1994 s.9 (unamended).
17. *Victims' Rights Act* (NSW) 1996 No 114 s.11 (repealed).
18. The WA Commissioner for Victims of Crime has responsibility to ensure that members of the public and government agencies are "aware" of the *Victims of Crime Act* 1994 and their corresponding rights and responsibilities. See, https://department.justice.wa.gov.au/C/commissioner_for_victims_of_crime.aspx [retrieved 27 February 2019].

19. The Acting WA Commissioner advised that as it “is not an independent office there is no requirements for specific annual reports, the commissioner makes comments in the Department of Justice and previous Department of the Attorney General annual reports”. Email communication, 17 January 2019.
20. *Victims of Crime Commissioner Act* (Victoria) 2015.
21. *Human Rights Commission Act* (ACT) 2005 (amended 2016) s.12.
22. The addition of functions to the independent office holder’s remit are described in ACT Victims of Crime Coordinator, *Victims of Crime Support Program Annual Report 2007–2008*. Canberra, Department of Justice & Community Safety.
23. The NSW service framework is described at <https://www.victimsservices.justice.nsw.gov.au/> [retrieved 27 February 2019].
24. Located at <https://www.victimsupport.act.gov.au/who-we-are/annual-reports> [retrieved 27 February 2019].
25. Located at https://www.victimsofcrimecommissioner.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/09/6d/1baca1ab7/Report%20-%20Annual%20Report%20-%20Victims%20of%20Crime%20Commissioner%202017-18%20.pdf [retrieved 27 February 2019].
26. Sections from annual reports of the SA Attorney General’s Department for years from 2002 to 2008 and the 2009 Victims Rights’ Commissioner’s Annual Report were sourced through the SA Parliamentary Library (22 January 2019). At s16F *Victims of Crime Act* (SA) 2001, specifies that, upon presentation of a report to the Attorney-General, the latter must table the report before each House of Parliament within 12 sitting days.
27. We make this assertion in relation to a commissioner’s power to intervene in criminal proceedings to protect a victim right. The ACT Commissioner is authorised to “attend” proceedings (s13) and has done so in proceedings where the accused is subject to mental health or other forensic matters.
28. *Victims Charter Act* (Victoria) 2006 s22(2) and *Victims Rights and Support Act* (NSW) 2013 Sch 2 – Cl 19 (3).
29. Sections 10(1)f in NSW and s16A(2) in SA; and *Victims Charter* (Vic) 2006 s19A Note.
30. Victims of Crime Coordinator (ACT), *Annual Report 2009–1010* (pp. 10–12).
31. The SA Victims’ Rights Commissioner reports funding five matters in one year (Annual Report 2008–2009, p.19).
32. Another legal intervention strategy used by victim advocates in international criminal tribunals is amicus briefs. These have been developed further for domestic courts in the US by the National Crime Victim Law Institute (Davies, et al., 2012).
33. The public scandals are too numerous to list. Some have resulted in governmental inquiries. For example, Crime and Misconduct Commission 2003 (Queensland), Kourakis 2004 (SA), and Samuels 2002 (NSW). The Australian Royal Commission into Institutional Responses to Child Sexual Abuse is a recent example of a major systematic review of extensive and long-standing system failures with regard to victims (2017).
34. For example, the Victorian Law Reform Commission enquiry into *The Role of Victims of Crime in the Criminal Trial Process: Report* (2016) and fn30.
35. Established in 2010 as the Commissioner for Victims and Witnesses in the *Domestic Violence, Crime and Victims Act* 2004 s48.
36. For example, amicus briefs are used extensively in the US by the National Crime Victim Law Institute (see https://law.lclark.edu/centers/national_crime_victim_law_institute/projects/legal_advocacy/ retrieved 25 November 2019) and in international criminal tribunals (Williams, Woolaver, & Palmer, 2020).
37. *Victims of Crime Act* (ACT) 1994 (amended).
38. *Victims’ Rights and Support Act* (NSW) 2013.
39. *Victims of Crime Act* (SA) 2001.
40. *Victims of Crime Commissioner Act* (Vic) 2015.

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VICTIM SUPPORT ACT Human Rights Commission

Victim Support ACT

Policy and Standard Operating Procedure (SOP) – Justice Advocacy

Purpose

The purpose of this Policy and Standard Operating procedure is to:

- Articulate Victim Support ACT's (VS ACT) policy in relation to the provision of justice advocacy services;
- Describe justice advocacy in the context of VS ACT; and
- Provide clear procedures for conducting justice advocacy.

Policy Statement

Justice advocacy is embodied in the legislation that governs the Victims of Crime Commissioner (the Commissioner), Victim Support ACT (VS ACT), and the Victim Services Scheme. Under the governing legislation,¹ the Commissioner has the following functions in relation to justice advocacy:

- Advocate for the interests of victims of crime;
- Monitor and promote compliance with victims rights;
- Ensure that victims rights concerns are dealt with promptly and effectively;
- To encourage and facilitate cooperation between agencies involved in the administration of justice with respect to victims;
- As appropriate, to refer victims to other entities who provide other assistance and support to victims; and
- To provide victims with information and assistance they need in connection with their involvement in the administration of justice.

Whilst the Commissioner retains responsibility for these functions, all staff of VS ACT, whether they are permanent, temporary, casual or a volunteer, are expected to engage in justice advocacy on behalf of victims as appropriate within their role and in accordance with the procedures below. It is particularly important to note that justice advocacy is an integral aspect of case coordination.

¹ Section 11, *Victims of Crime Act 2016* and the *Victims of Crime Regulation 2000*.

Scope

This SOP applies to the Victims of Crime Commissioner and all VS ACT staff, whether they are permanent, temporary, casual or a volunteer. It is noted that different procedures apply to different work areas as outlined below.

For the purposes of this Policy and SOP the word “staff” denotes both paid employees, whether casual, temporary or permanent, and volunteers.

Addressing justice related priorities may sometimes involve engaging in the process for managing concerns and complaints in relation to non-compliance with the *Charter of Rights for Victims of Crime*.

Background

What is justice advocacy?

Advocacy in all its forms seeks to ensure that people, particularly those who are most vulnerable in society, can have their voice heard, promote their rights, and have their views and wishes genuinely considered when decisions are being made that will affect their lives.

To be a justice advocate means to ensure that victims know about and have access to their rights and entitlements, to support and enable victims to participate in the justice system, and to advocate for their interests on an individual and systemic level. Justice advocacy in the context of VS ACT’s operations can be broken down into two main components: individual justice advocacy, and systemic justice advocacy.

Individual justice advocacy

Individual justice advocacy relates to empowering individual clients to achieve positive justice outcomes on a case by case basis. This might include, but is not limited to, the following activities:

- informing victims of their rights and entitlements as victims of crime;
- providing general information about justice processes—including police investigation, prosecution, the court system, mental health tribunals, sentence administration, victims registers and other processes;
- referrals to support specialists;
- liaising with other justice agencies on victims’ behalf where they are unable to do so for themselves;
- providing court support;
- assistance in drafting victim impact statements;
- assistance in applying for financial assistance; and
- assistance in safety planning and information about crime prevention.

It is important to note that individual justice advocacy does not include the provision of legal advice. Where clients require legal advice they should be referred to an appropriate service. This should not however, obstruct the provision of general information on justice processes and other support where required.

It is also important to note that victims should be encouraged to seek information and make connections on their own behalf in order to maintain their own strength, agency and independence. It is where there are obstacles to obtaining information or making contact that staff are expected to advocate on their behalf.

Systemic justice advocacy

Systemic justice advocacy involves advocating for changes in the justice system that would have a positive impact for multiple victims of crime. This might include, but is not limited to, the following activities:

- consulting with victims of crime to identify key issues of concern in relation to their experience of the justice system;
- drawing on the service provision experiences of VS ACT staff to identify key systemic justice issues;
- identifying policies that may benefit victims of crime through analysis of current literature and the practices of other jurisdictions;
- advocating for the interests of victims of crime with individual agencies;
- advocating for the interests of victims of crime with the ACT and Commonwealth governments; and
- representing the interests of victims of crime in policy development at both the ACT and Commonwealth levels.

Overlap between individual and systemic advocacy

Cases that require individual advocacy can often be indicative of a need for systemic change. For example, there may be certain barriers victims are facing on a frequent basis, or a victim may face an issue that requires a change in law, policy or practice in order to be addressed. In these cases, both individual and systemic advocacy is required. Individual advocacy will address that particular victim's needs as far as possible, while systemic advocacy will draw on that victim's experience to achieve better outcomes for victims of crime more broadly.

Standard Operating Procedure

Client Services Team and Outreach Case Coordinators

1. The intake process should identify and record any *individual justice advocacy issues*, such as information and assistance in relation to reporting to the police, attending court, obtaining a protection order or making an application under the Financial Assistance Scheme.
2. Any immediate *individual justice advocacy issues* will be addressed by the Client Services Team. For example, a client may require some information on justice processes, how to obtain a Domestic Violence Order, or how to access legal representation, as well as a range of other immediate needs.
3. The Case Coordinator should seek to address remaining *individual justice advocacy issues*.
4. However, in the following circumstances the case coordinator should consult their Team Leader, the Rights and Reform Team or Senior Director:
 - the concern raised involves a serious breach of the *Charter of Rights*;
 - the concerns raised require intensive justice advocacy in relation to multiple rights under the *Charter of Rights* and multiple agencies; or
 - a client's safety is at serious risk as a result of non-compliance with a Charter Right.
5. After consultation, the responsibility for justice advocacy may, by discretion and consideration of the circumstances, be escalated to the Team leader- Rights and Reform, the Senior Director or the Commissioner.
6. Where clients require court support or assistance in applying for financial assistance, they may be offered assistance from the volunteer program.
7. Where the Case Coordinator identifies what could be a potential *systemic justice advocacy issue*, they must raise the issue with the team Leader, Rights and Reform or the Commissioner.

Volunteers and Volunteer Coordinator

1. The Volunteer Coordinator will arrange court support on behalf of clients by request of a Case Coordinator or a Rights and Reform Team member.
2. The Volunteer Coordinator will arrange assistance for clients applying to the Financial Assistance Scheme.
3. Volunteers may provide justice advocacy assistance through the provision of court support, or assistance in applying to the Financial Assistance Scheme.
4. Volunteers may also engage in individual justice advocacy insofar as it is relevant for the provision of court support, or assistance in applying to the Financial Assistance Scheme.
5. Where volunteers are unable to address an individual justice advocacy issue that is relevant to the provision of court support or assistance in applying to the Financial Assistance Scheme, they will relay those concerns to the Volunteer Coordinator who will address the issue or escalate the issue as appropriate.
6. Where volunteers become concerned that there are other individual or systemic justice advocacy issues that need to be addressed, they will raise their concerns with the Volunteer Coordinator.
7. The Volunteer Coordinator will relay any *individual justice advocacy issues* to the client's

Case Coordinator.

1. However, where an issue involves a serious breach of the Charter of Victims Rights or a client's safety is at serious risk, the Volunteer Coordinator should immediately consult with the Team Leader- Rights and Reform, the Senior Director or the Commissioner.
2. The Volunteer Coordinator will relay any *systemic justice advocacy issues* to the Team Leader-Rights and Reform, the Senior Director or the Commissioner.

Team Leader/ Director

1. Team Leaders may receive referrals about individual justice advocacy issues from Case Coordinators in the Client Services Team.
2. If Team Leaders are unable to resolve an issue that is referred to them, it should be referred to the Team Leader-Rights and Reform, the Senior Director or the Commissioner.
3. However, if the issue involves a serious breach of rights under the *Charter of Rights* or a client's safety is at serious risk, they should immediately refer the issue to the Senior Director or the Commissioner.
4. Team Leaders and the Senior Director should remain alert to any common trends in *individual justice advocacy issues* which may be indicative of systemic justice advocacy issues and raise these with the Team Leader-Rights and Reform, or the Commissioner.

Financial Assistance Scheme

1. Financial Assistance Assessors will facilitate access to victims' entitlements under the Financial Assistance Scheme (FAS). Financial Assistance Assessors may engage in *individual justice advocacy* insofar as it is related to these activities.
2. Where a Financial Assistance Assessor becomes aware of an *individual justice advocacy issue* beyond the provision of financial assistance, they will refer the matter to the applicant's Case Coordinator as appropriate, or raise the matter with the FAS Team Leader.
3. However, where an issue involves a serious breach of the *Charter of Rights* or a client's safety is at serious risk, they should immediately refer the issue to the Senior Director or the Commissioner.
4. Where a Financial Assistance Assessor identifies what could be a potential *systemic justice advocacy issue*, they must raise the issue with their Team Leader, who may assist them to discuss the matter with the Senior Director, the Rights and Reform Team or the Commissioner.

Rights and Reform Team

1. The Rights and Reform Team will be alert to systemic issues facing victims of crime as identified through their direct contact with clients, government and non-government literature, consultations, the policies and practices of other jurisdictions and anecdotal evidence obtained by Case Coordinators and FAS.
2. The Rights and Reform team will develop, in consultation with the Commissioner, strategies to advocate for systemic change to advance the interests of victims of crime in the justice system.
3. The Rights and Reform team will keep a record of systemic issues raised with the

Commissioner.

4. The Rights and Reform team will also engage in individual justice advocacy as directed by the Commissioner.
5. The Rights and Reform team will support the Commissioner in relation to the Commissioner's other justice advocacy roles, including:
 - chairing the ACT Family Violence Intervention Program Coordinating Committee
 - assisting the Domestic Violence Prevention Council as advised;
 - contributing to the Victims Advisory Board; and
 - contributing to the work of the Liquor Advisory Board.

Victims of Crime Commissioner

1. The Victims of Crime Commissioner retains responsibility for the justice advocacy functions outlined in the governing legislation as described above, as well as responsibility for administering the Financial Assistance Scheme.
2. The Commissioner will address *systemic justice advocacy issues*, as well as *individual justice advocacy issues*, including where these cannot be resolved by other staff .

Evaluation

The following measures will be used to evaluate the justice advocacy activities of VS ACT:

- The degree to which clients are accessing individual justice advocacy support from VS ACT, and which team within VS ACT has provided that support;
- Client satisfaction with the provision of individual justice advocacy support;
- The number of *systemic justice advocacy issues* brought to the attention of the Commissioner;
- The number of consultations conducted with victims of crime;
- The number of positive outcomes achieved for victims of crime at a systemic level.

Data for assessing these measures may be collected through client satisfaction surveys, as well as direct information gathered by the Client Services, FAS and Rights and Reform team. Evaluation against these measures will be conducted regularly, as resources allow.

Related Legislation and Policies

Legislation

Victims of Crime Act 1994

Victims of Crime Regulation 2001

Victims of Crime (Financial Assistance) Act 2016

Domestic Violence Agencies Act 1986

Policies

Case Management Policy

Case Management SOP

Concerns and complaints regarding non-compliance with Governing Principles SOP Initial Intake, Assessment and Registration of VS ACT Clients SOP.

Working with People with Intellectual Disability.

FEBRUARY 19TH 2021

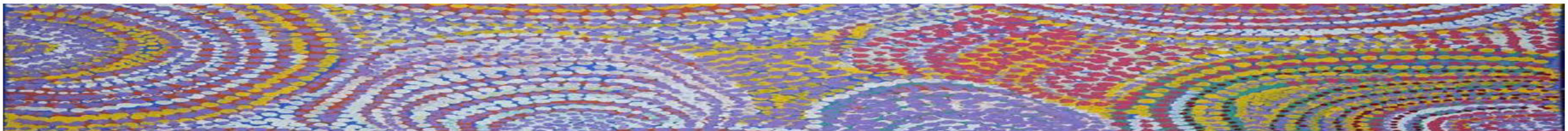




We wish to acknowledge the Traditional Custodians of the land on which this event is taking place, the Ngunnawal people.

We wish to pay respect to Elders past, present and emerging.
And acknowledge the important role First Nations Peoples continue to play within our community.

We acknowledge those who are participating today, and all of the collective wisdom in our collective spaces.



WWILD-S.V.P. Assn. Services

Sexual Violence Prevention Program:

- ▶ Individual support and counselling
- ▶ Therapeutic and psycho-educational groups
- ▶ Advocacy, information and referral
- ▶ Community Education

Disability Royal Commission Program:

- ▶ Counselling
- ▶ Case management support

The Victims of Crime Program:

- ▶ Information and referral
- ▶ Case Management
- ▶ Community and Professional Education and Training
- ▶ Court Support and Advocacy.



Warning

- ▶ This topic can be upsetting, we need to look after ourselves and it is an adult learning space. So feel free to take a break if needed.
- ▶ It's important to seek support for ourselves to avoid burn out and/or vicarious trauma – especially if personal memories are triggered.
- ▶ If this session raises anything for you, please feel free to contact WWILD or 1800Respect. 1800 Respect supports workers as well.

What we will be discussing today:

- ▶ Living with an intellectual disability
- ▶ Myths & Personal values
- ▶ Trauma informed practice
- ▶ Concrete communication
- ▶ Responding to disclosures
- ▶ Grounding/Emotional regulation activities

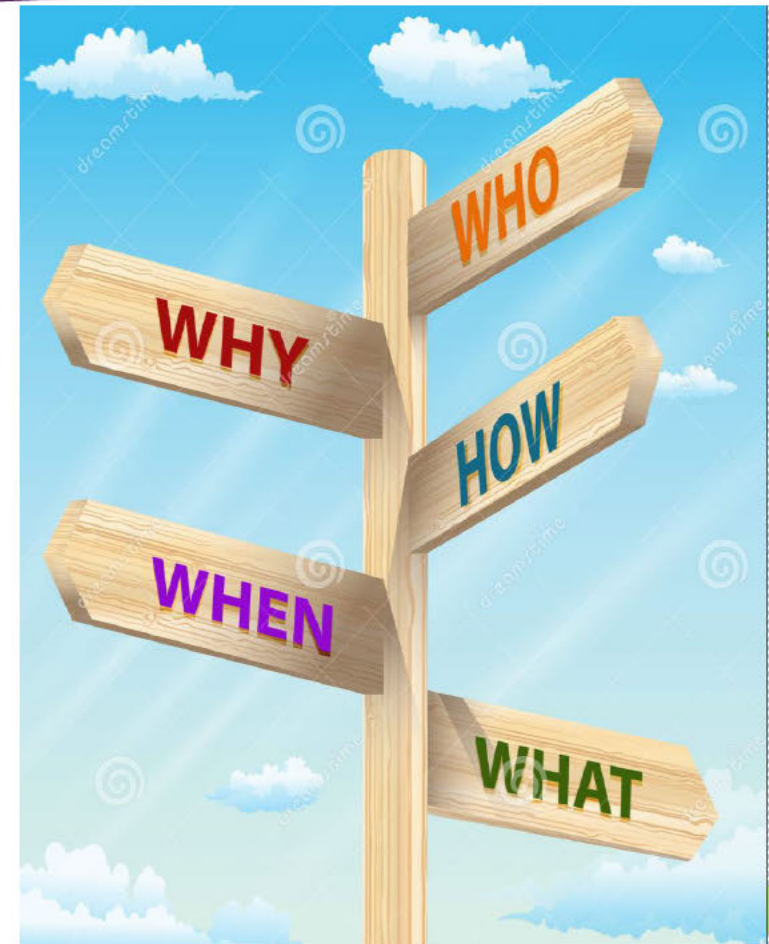
Disclaimer

- ▶ This workshop is based on assumption you have completed the 2 online WWILD courses – Introduction to Intellectual Disability and Responding to Disclosure of Sexual Violence.
- ▶ We are also only discussing counselling practice which is unique to our client group. If you wish to learn more about the various theories and practice knowledge discussed or Sexual and Domestic/Family Violence, please utilize further PD before moving forward in your practice.

Introductions - Signpost cards

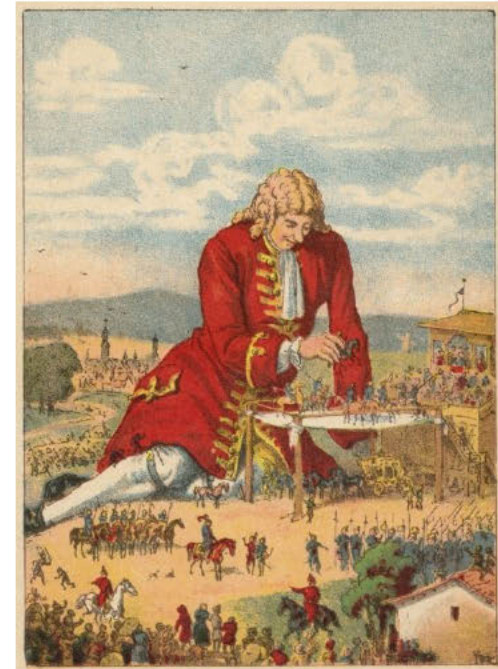


- ▶ Pick out a card which appeals to you and is about how you are feeling about today.
- ▶ Introduce yourself to the group - your name and a little about your background, and share which card you have chosen.



Experiential exercise: Gulliver's Story

- ▶ What are you feeling in Gulliver's world?
- ▶ How do you behave as a result?
- ▶ How do you think it impacts on your emotional and mental well being ?



Identifying Intellectual Disability

- ▶ Person may not self-identify or minimise disability. e.g. “ I have a learning disability” or “ I just have trouble with forms”
- ▶ People are good at masking or hiding their disability - Have good verbal skills and may “present well”. Stigma and wish to be ‘normal’ means people may not tell you.
- ▶ They may not have any physical signs of disability.
- ▶ Many people have never had a formal diagnosis/assessment
- ▶ ID and trauma presentation may be similar .e.g. trouble retaining information, trouble sequencing, trouble focusing, high levels of anxiety.



Social indicators

A person with an intellectual disability may:

- ▶ Receive a disability pension or DSP
- ▶ Have attended special school or a special class at school
- ▶ Receive ongoing employment agency support
- ▶ Attend some kind of respite/activity group during the day
- ▶ Be involved with multiple service systems, including CJ system
- ▶ Live in supported accommodation, hostels or been homeless
- ▶ Have support staff/hours or NDIS

Intellectual Disability Definition

American Association on Intellectual and Developmental Disabilities *2014 definition*:

Intellectual disability characterized by significant limitations in:

- ▶ **Intellectual functioning** - reasoning, learning, problem solving, memory, planning, comprehension, abstract thinking
- ▶ **Adaptive behaviour** – conceptual, social and practical skills
- ▶ **Originates** before the age of 18. (*WHO 2007*)

Adaptive Behaviours

Conceptual

- Language
- Reading
- Writing
- Money
- Sequencing
- Time
- Reasoning
- Knowledge
- Memory
- Planning
- Problem solving
- Literal thinking
- Humour and sarcasm
- Abstract thinking
- Generalising learning from one situation to another

Social

- Empathy
- Reading social situations and cues
- Interpersonal communication skills
- Ability to make and retain friendships
- Suggestibility
- Compliance
- Masking

Practical

- Personal care
- Travel skills
- Safety
- Use of money
- Schedules and routines
- Use of phone
- Occupational skills

What do workers need to know about people who have an intellectual disability?

- ▶ “People need to know that people who have a disability take a lot longer to process things. People who have a disability don’t get it straight away”.
- ▶ “People should ask what type of disability they have and what help they need”.
- ▶ “I went to talk to someone about DV a few years ago. She talked about DV really quickly and then just moved on. I didn’t feel comfortable to tell her she was going too fast. I just wanted to get out of there”.
- ▶ “Understand that people with a disability will blame themselves straight up. The perpetrator will tell them this – 9 times out of 10 people with a disability will believe them because they have been bullied everyday of their life”.
- ▶ “People with disabilities don’t always understand, but that they feel like its not alright. I learnt to trust my gut feelings”.
- ▶ Makes them feel safe, makes them feel cared for and respected. People with a disability have been bullied every day of their life. They need to understand that it’s not the victims fault.

Myths & Attitudes About Disability

The Daily Telegraph WE'RE FOR SYDNEY

\$1.30 // THURSDAY, MAY 22, 2014 DAILYTELEGRAPH.COM.AU

NSW DSP RECIPIENTS: 270,415 **NATION'S WAR WOUNDED: 226,016**



NSW Disability Support Pensioners now outnumber Australia's total war wounded by more than 44,000

SLACKERS & SLOUCH HATS

EXCLUSIVE
68077 CLAIMERS

THE state's army of disability pensioners has hit record levels with NSW's tally of DSP claimants soaring almost 200,000 in the past three years to 270,415, outnumbering Australia's war-wounded by more than 44,000.

FULL REPORT PAGES 5-9



Myths/Assumptions... Some examples:

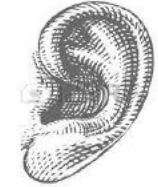
- ▶ They are all the same, with all the same needs and abilities.
- ▶ No one would take advantage of a person with an intellectual disability.
- ▶ They primarily live in institutions where they are protected.
- ▶ They are lazy. They don't work hard.
- ▶ They don't have sex, nor can they manage intimate relationships of any kind.
- ▶ They will be protected from sexual abuse if they are sterilized.

Myths/Assumptions... Some examples:

- ▶ They are sexually promiscuous, seeking out sexual contact.
- ▶ They should be grateful for any sexual relationship.
- ▶ They are prone to making up stories, or lying.
- ▶ They can't distinguish fantasy from fact.
- ▶ They wouldn't know what has happened, therefore won't be affected in any way - they don't experience emotional trauma and psychological injury.
- ▶ They won't be able to handle going to the police to report any crimes.

Barriers to Communication

While communication, we need to be aware within ourselves...



- ▶ Values
- ▶ Assumptions
- ▶ Potential for judgement and misunderstanding while communicating

IT IS OUR JOB TO MAKE OURSELVES UNDERSTOOD and TO UNDERSTAND WHAT PEOPLE ARE SAYING, NOT THE CLIENT'S JOB.

Personal Values

Being aware of our personal values can help us see our strengths and understand what drives us.



Abstract & Concrete Thought

All emotions and relationships are abstract things we can feel but are hard to put in a box. They are things we can't use our senses to identify...

Anxiety Respect Rumours

Consequence Pride Confidentiality

Pretend Difference Rights Agitation Wishes

Jealousy Tough Like Fun Hopes

Future Happiness Confusion Goals

Ability Choices Tolerance Anger

Concrete vs. Abstract Thought

Imagine the
inside of your
head as a
whiteboard...



Abstract vs concrete thinking

- ▶ People who think concretely process information literally based on the here and now and according to the facts at hand - what they can see, touch, hear, etc.
- ▶ A concrete thinker will look at the statue of liberty and see a woman holding a torch whereas an abstract thinker will see a symbol of freedom.



Masking, Suggestibility & Avoiding Stigma

- ▶ **Masking** – e.g. agreeing when not understanding or deflecting questions/tasks. A survival skill for person living with disability living with stigma/shame.
- ▶ **Suggestibility** - not understand; be easily led; don't know to or can't ask more questions or say no to something they don't want. they don't want to appear 'stupid', so they mask and pretend that they do understand.

It is really important to be mindful of this, to ensure clear communication and support real Choice and Voice in counselling.

What do we mean by Non-verbal?

Non-verbality comes in three forms.

- ▶ 1. Physical.
- ▶ 2. Cognitive – Verbal expression and being able to articulate thoughts and use words appropriately.
- ▶ 3. Emotional – overwhelmed by fear, trauma

Vulnerability to Violence

People with Intellectual Disability are:

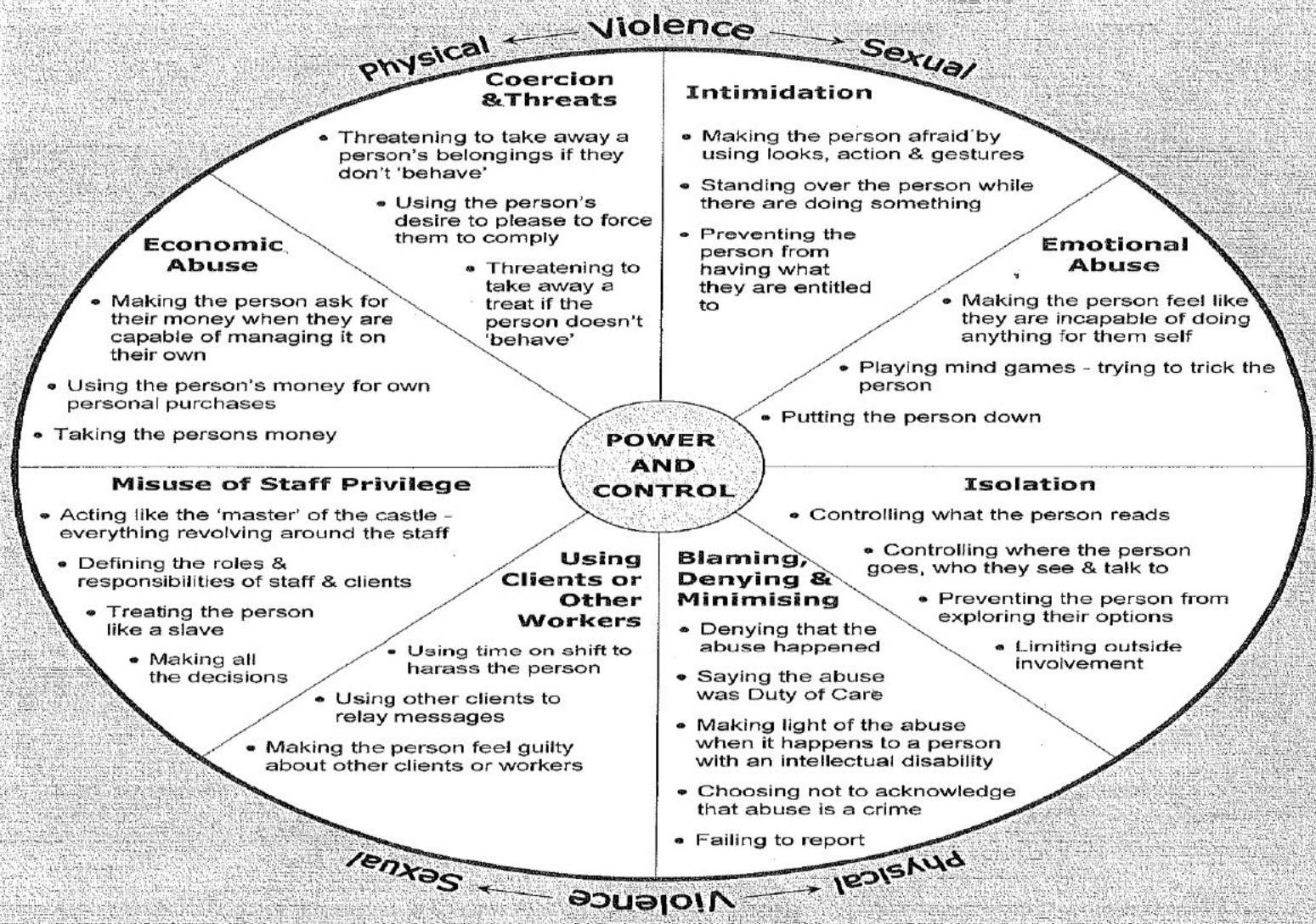
- ▶ Often reliant on care therefore more vulnerable to threats by abusers
- ▶ Less likely to understand their rights in relation to violence
- ▶ Less likely to seek help, masking, suggestibility, lack of self esteem, loneliness,
- ▶ Less likely to have received sex education and therefore remain ignorant of their rights in relation to sexual assault/sexual activity
- ▶ More likely to be financially dependent on perpetrators of violence and social isolation may be intensified
- ▶ Likely to have limited capacity to organise/access supports in a crisis
- ▶ Less likely to be believed.

Broadening Definitions of DFV & SV

- ▶ **Sexual abuse** – unwanted touching by caregivers, forced sterilisation, demands for sexual activity in return for assistance
- ▶ **Emotional/psychological abuse** – forced social isolation, threats to withdraw services or support
- ▶ **Physical abuse** - withholding disability related equipment or medication, deprivation of food or water, heating a bath too hot,
- ▶ **Financial abuse** – using the person's disability as an excuse to control their finances
- ▶ Not all perpetrators may be covered by government legislation (e.g. a co tenant, paid carers)

(PWDA, 2014)

Caregiver Abuse The Power and Control Wheel



People with intellectual disability and trauma

- ▶ Research shows they are more likely to experience trauma events especially sexual and physical abuse - 3 or 4 times more likely to experience abuse than those without disability. (Sobsey, 2008, Mitchell & Clegg, 2005.)
- ▶ Women with physical and cognitive disabilities experience higher rates of intimate partner violence than those without disabilities, and those with cognitive disabilities are particularly vulnerable (Brownridge 2006; Cohen et al 2005).
- ▶ Women with intellectual disabilities are often subject to unique forms of violence and perpetrators that are specifically relevant to their disability. This can include destruction of assistive devices, deliberately incorrect administration or stopping people taking medication, theft, or neglect in performing personal care (Platt et al., 2017).
- ▶ Vulnerability to abuse is likely to increase with the severity of a person's disability (Plummer & Findley, 2012).

Trauma-informed practice principles in Disability Support:

Fallot and Harris' (2006) foundational principles have been adapted for the *Taking Time framework* which is disability specific (Jackson & Waters, 2015, p.19)

- ▶ Voice – prioritising the person's voice being heard and heeded
- ▶ Safety – ensuring physical and emotional safety
- ▶ Relationships – maximising trustworthiness through relationships, task clarity, consistency and interpersonal boundaries
- ▶ Collaboration – maximising collaboration
- ▶ Choice – maximising choice and control
- ▶ Person-centred practice – ensuring the person's needs, goals and wishes guide practice

First Nations Groups

- ▶ Do they identify as Aboriginal or Torres Strait islander;
- ▶ Importance of taking time - yarning circles & group participation; peer group, mentoring
- ▶ What country are they from, the area, elders, family not always 'biological' family, Family history; Totems, Creative spirit; Men's and Women's business.

First Nations Groups

- ▶ Intergenerational trauma - institutionalization, child removal, stolen generation; Some people with disabilities were institutionalized and removed from family and community.
- ▶ Involvement in cultural activities/building of identity, relationships e.g. Sorry day, NAIDOC week; Art/craft; Help them link in with local elders.
- ▶ Helpful healing activities e.g. bush therapy, use of healers, smoking ceremonies

Cultural and Linguistically Diverse groups

- ▶ Take time to listen and learn - what is an appropriate greeting, age protocols, posture, eye contact, gestures, physical contact, dress, what's ok to talk about and any cultural beliefs that would help;
- ▶ Seek language & translations services;
- ▶ Clients or parents migrant experience – positives/negatives

Cultural and Linguistically Diverse groups

- ▶ Appropriate communication - silence, speech patterns, body language, facial expression, tone of voice, person's status, gender roles and relationship building – learn about unwritten rules alongside words.
- ▶ Recent history e.g. refugees, signs of trauma; symptoms of PTSD, grief/loss.
- ▶ Use of cultural healers, cultural activities that build self esteem, community inclusion and relationships, safety, identity.

Gender Considerations

- ▶ Men with an ID more likely than men (In Aust.) to have been affected by violence – either as children, young people or adults.
- ▶ A gendered analysis and intersectionality theories recognize power imbalance within gender and disability.
- ▶ As with women, the majority of perpetrators who abuse men with disability are men.
- ▶ In the counselling/social work context, gender and disability operate as structures of oppression for people with a disability – to be a disabled man can be a failure to measure up to definitions of masculinity of strength, physical ability, status, authority and autonomy (WWILD, 2012)

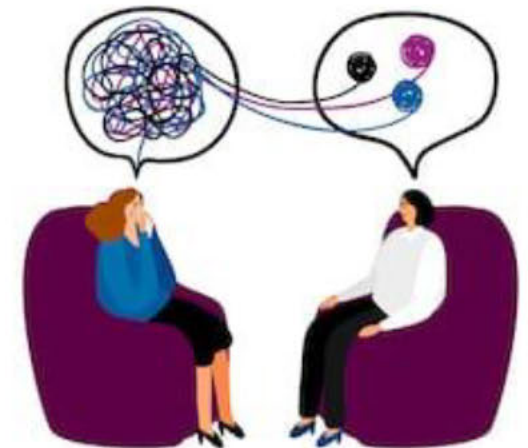
Gender Considerations

When Working with men consider:

- ▶ Masculinity - their beliefs and values, what behaviours are learnt from role models. Use concrete examples. Be positive about male roles.
- ▶ Activities based on positive relationships with other men, having a valued role and self esteem building.
- ▶ Can lessen anxiety, anger, social isolation & loneliness.
- ▶ Slowly build an understanding of our patriarchal society, and the position of men with a disability

General Considerations for working with people with Intellectual Disability

- ▶ Myths, Assumptions, Impact of Stigma
- ▶ Appropriate Communication
- ▶ Vulnerability/risk and Building capacity
- ▶ Recognising and responding to trauma
- ▶ Different cultural backgrounds
- ▶ Working with men
- ▶ Capacity and Decision making
- ▶ Accessibility



Responding to Disclosures

- ▶ Respond calmly, Reassurance
- ▶ Rapport Building, Trust, Choice & Voice
- ▶ Promote the feeling of Safety – in room, building, home, community
- ▶ Information, advice, safety planning, risk assessments
- ▶ Record the story – don't change words, don't interpret, word for word, note place, time and who present.



Responding to Disclosures

- ▶ Reporting to police, sharing with others
- ▶ Confidentiality, Rights & complaints conversation, consent forms - easyread
- ▶ Safe family and friendships – risk, supports, safety planning
- ▶ Role of advocacy.



Case study – Kate.

- ▶ Kate experienced childhood domestic violence.
- ▶ She was sexually assaulted by an uncle and her brothers.
- ▶ As a 13 yo she was taken into care by Child Safety where she experienced multiple foster homes and physical and emotional abuse.
- ▶ She was labelled angry and uncontrollable.
- ▶ As an 18 yo after leaving the dept., she became homeless and spent some time on the streets.



Kate

- ▶ Female – 34 years old
- ▶ Mild to moderate ID, Autism, Depression.
- ▶ Self-harming, poor physical and mental health.
- ▶ Lives in Community Housing, there are 12 units. She gets daily assistance with medication, twice a week assistance with shopping & meal prep, 4 hours a week of community support through NDIS.
- ▶ Has had a history of violent male partners. Current protection notice in place after recent physical and sexual assault. Contacts you wanting some assistance after most recent assaults.



Concerns for Kate.

Current Behaviours.

- ▶ She is the Aggrieved in a Protection Order recently Applied for by Police
- ▶ She invites strangers to her unit, or takes off from the unit to the streets for a few days at a time.
- ▶ Self-harming, frequent visits to Emergency Dept at various hospitals. Medical history has reports of various physical injuries
- ▶ Previously been admitted to Mental health unit but we don't know much about circumstances.
- ▶ She says she has lots of nightmares. She only sleeps on the couch.
- ▶ She has no identified positive supports in her life currently accept for paid workers. She gets angry at them at times, with threatening behaviour and they find it difficult to respond appropriately to her behaviour.

Small group case study discussion

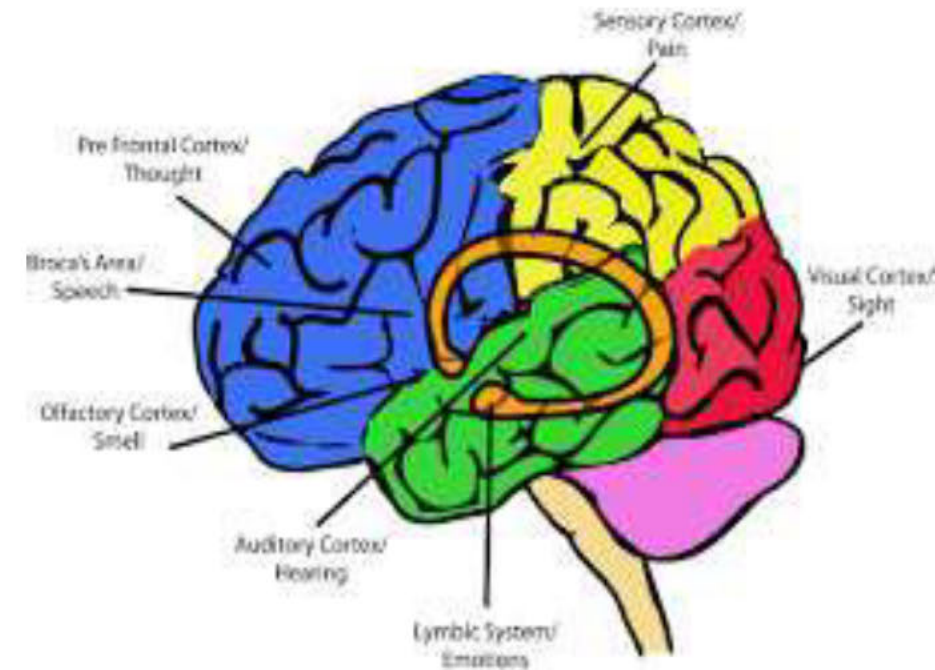
Get into pairs or small groups and discuss this case

- Where do we start with Kate?
- What are some of the likely complex trauma issues that you have to consider?
- What are some of the actions or options you could discuss with Kate?
- What type of support might she need?

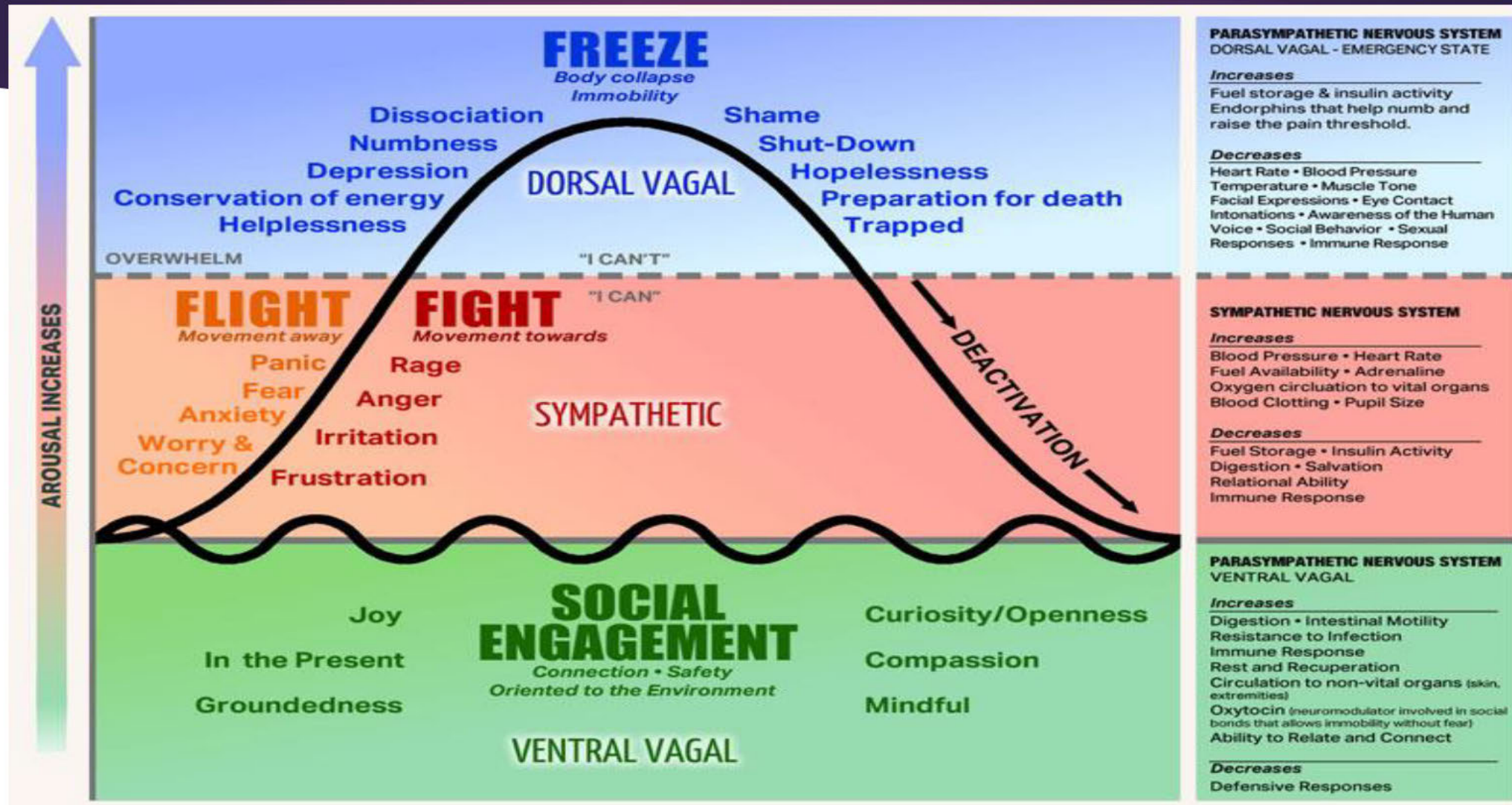


Trauma & Neuro Psychological Strategies

- ▶ A trauma event may cause a rush of adrenalin to the brain that helps us to survive. To keep us safe our brain is looking out for signs that this may happen again – triggers
- ▶ Our senses of sight sound smell touch and taste tell our **Feeling brain (Limbic system – emotions, memory)** about possible danger based on past experiences or triggers.
- ▶ When the Feeling brain tells the **Survivor brain (Brainstem)** when we are triggered, there is a rush of adrenalin/ hormones to the Survivor brain.
- ▶ This causes the **Rational/Thinking/Smart brain (Pre frontal cortex)** to shut down and stop working.
- ▶ The Survivor brain and body responds with a **fight, flight or freeze** response that protects you from what is scaring you.



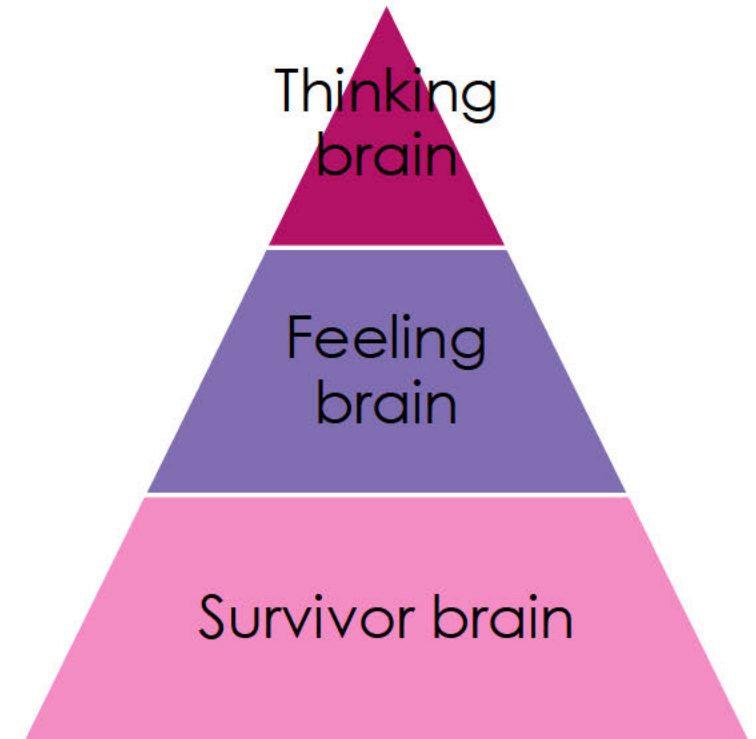
Polyvagal Theory and Trauma – Dr. Stephen Porges



Trauma & Neuro Psychological Strategies

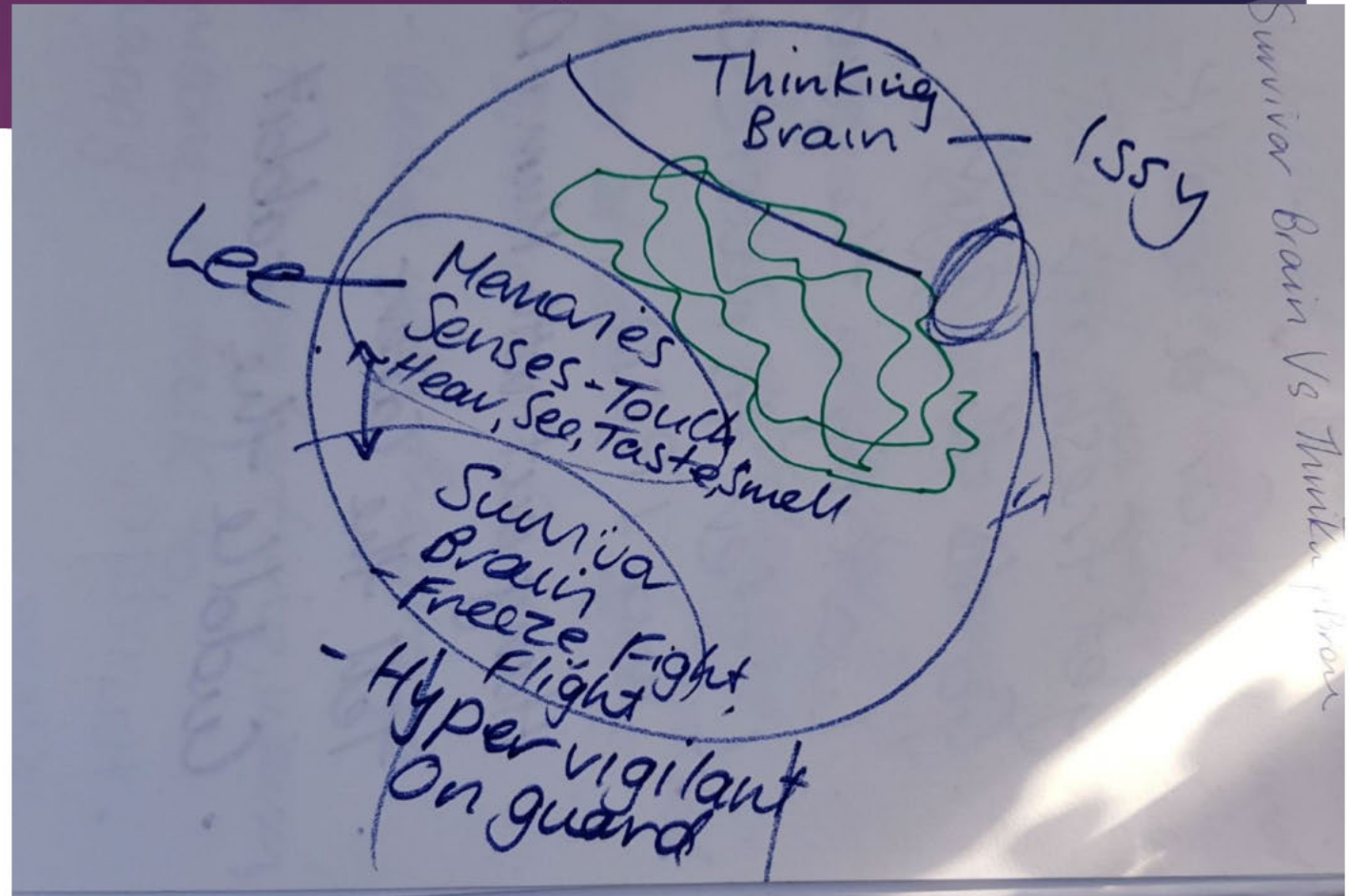
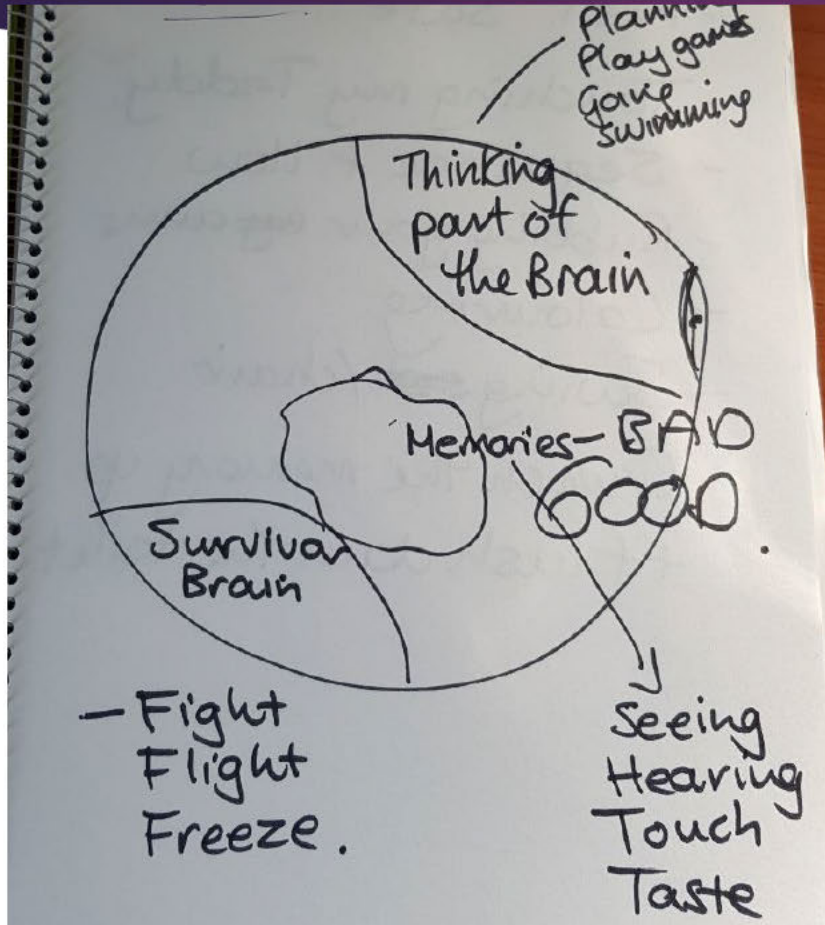
We need to work with people bottom up according to how triggered they are:

- ▶ Brain stem or Survivor brain
 - Detects threats & safety, trauma is stored
 - Autonomic nervous system e.g. blood pumping, breathing, digestion, sweating
- ▶ Limbic system or Feeling brain
 - Senses, emotions, memory, attachment
- ▶ Prefrontal cortex or Thinking brain
 - Planning, problem solving, decision making.



(Bruce Perry 2017)

It doesn't have to be too complicated!



Somatic Practice and Window of Tolerance

- ▶ **Theory:** Mindfulness based Cognitive Behaviour Therapy, Attachment theory, Neurobiology (Dan Siegel, 2012)
- ▶ **Aim:** To help people feel safe, bring people back from 'Survivor' brain to the 'Thinking' or Cortex part of the Brain, and lessen the survivor brain's fight, flight or freeze responses. People appear hyper or hypo aroused and in order to work therapeutically you need to bring them back to the Window of Tolerance.

Somatic Practice and Window of Tolerance

Fight, Angry, Frustrated, Exuberant, Really happy, Laughing, Over Excited, Flight, Anxiety, Panic, Flashbacks, Nightmares, Addictions, Over eating, OCD behaviours.

Window of Tolerance

Withdrawn, Flat Affect, Not talking/engaged, Freeze, Controlling, Fade out, Memory loss, Disconnect between mind, feelings and body (Siegel,D.J. 2011,2012)

You want to bring them down or up to window before you do any therapy work.

Somatic Practice and Window of Tolerance

You are helping them practice emotional regulation in session and getting them to practice it outside whenever they are triggered. Mindful activity that focuses on breathing, repetitive, focusing, using the senses and being present. Examples of this:

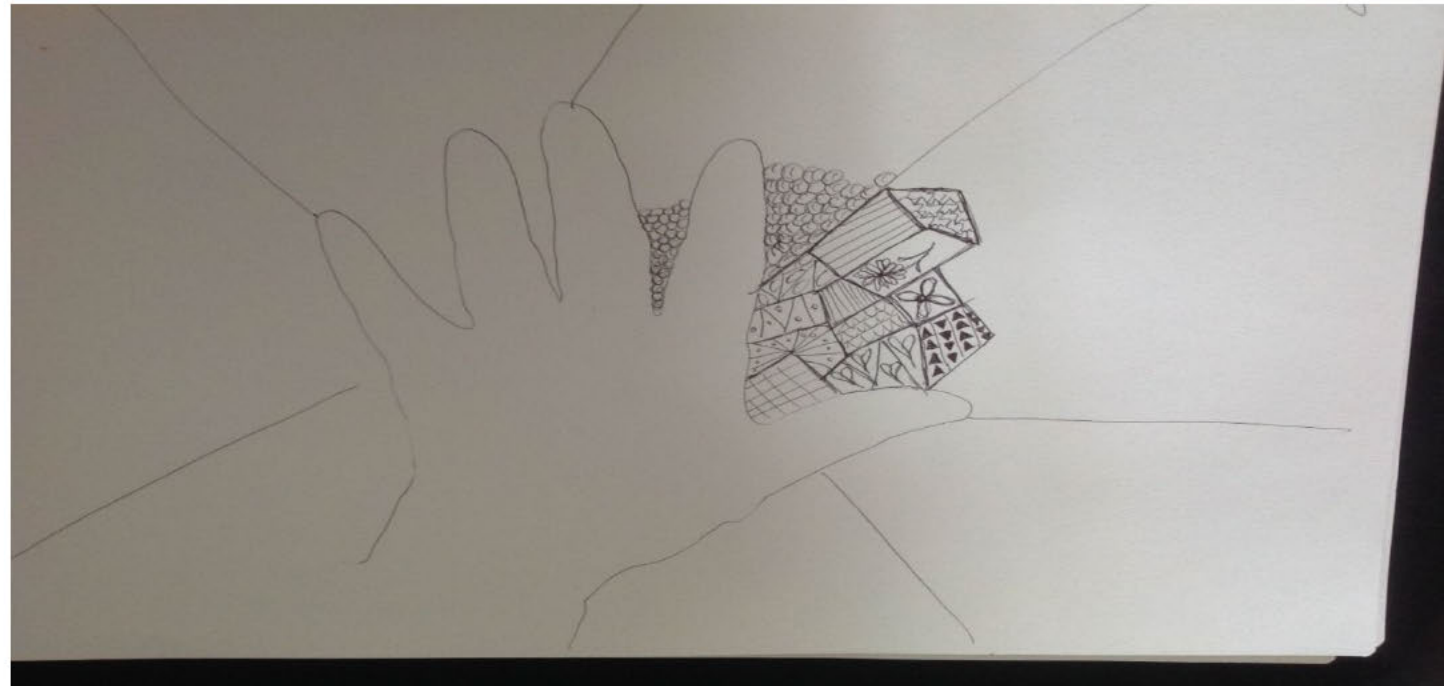
- ▶ Breathing exercises 2-3 counts in & 4-6 counts out; sighing, singing a fun song, yawning,
- ▶ Practicing Concrete Meditation, Different Apps on phone. Sleep and Good nutrition.
- ▶ Grounding Exercises using Senses – Sound (music); Smell, taste (vegemite, mints), Touch (soft blankets, pillows, pets, play dough), Sight (colours)

Somatic Practice and Window of Tolerance

- ▶ Mindful movement – Yoga, stretching activities, Going for a Walk while talking; Sitting outside in garden; rhythmic movement activities (settles nervous system, self regulation)
- ▶ Repetitive activities - Drawing Colouring or Craft activity, Puzzles; structured Doodling, exercise
- ▶ High cardio physical exercise assist with burning off cortisol and increases positive hormones
- ▶ Pets, Equine therapy works really well (can get under NDIS).

Structured Doodling.

- ▶ Use the hand as a starting point- tracing the clients hand, this gives them ownership.

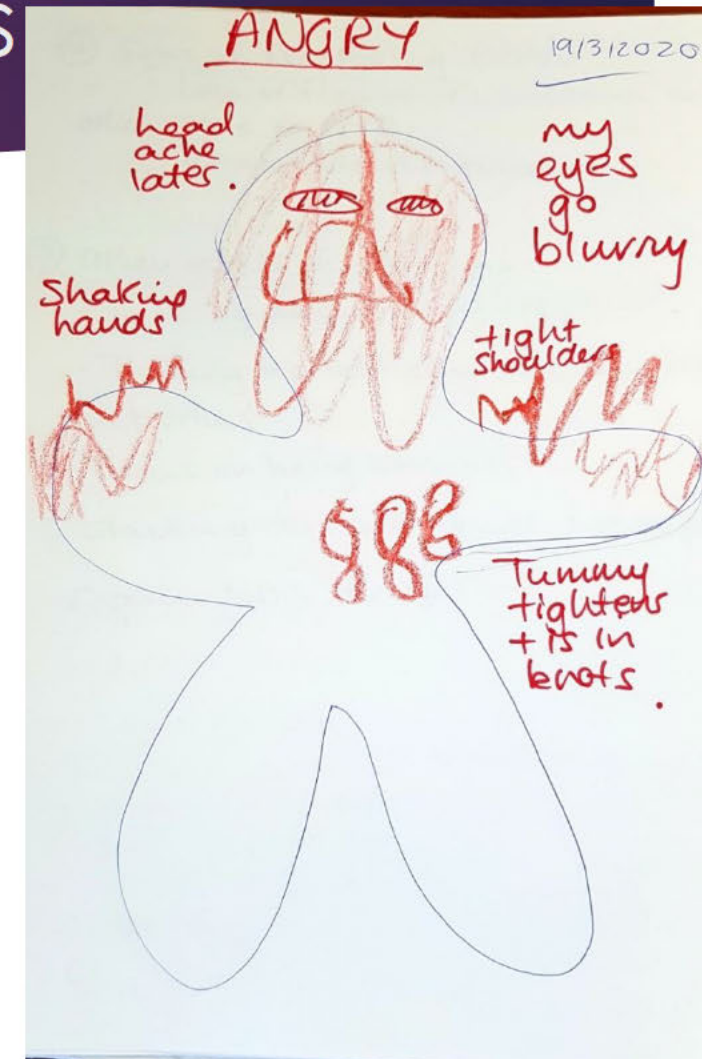


Visual activity – Gingerbread woman/man – Unpacking concepts

Theory – Creative and Expressive therapy, Play therapies

Aim: To draw what feelings are happening in her body when talking through incident, good or bad experience.

- ▶ You can ask the client to choose pen colour,
- ▶ You ask specific questions about what is happening in the body – e.g. 'What your hands doing when this was happening?'



Visual activity – Gingerbread woman/man – Unpacking concepts

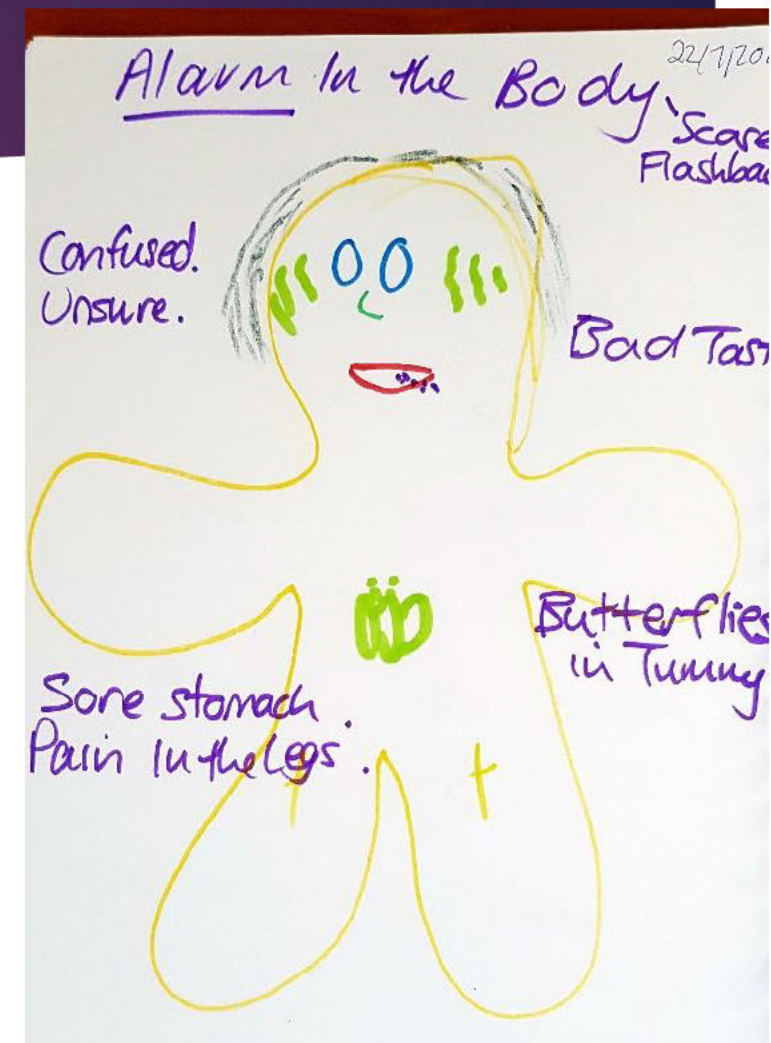
- ▶ Write down what words used describing each of those things in drawing.
- ▶ Normalize the feelings of being angry/mad and its what we do with those feelings that's important.
- ▶ You can do this again with other feelings or if it's the same feelings may use the existing picture and expand into behaviours.



Visual Activity: Alarm in My Body

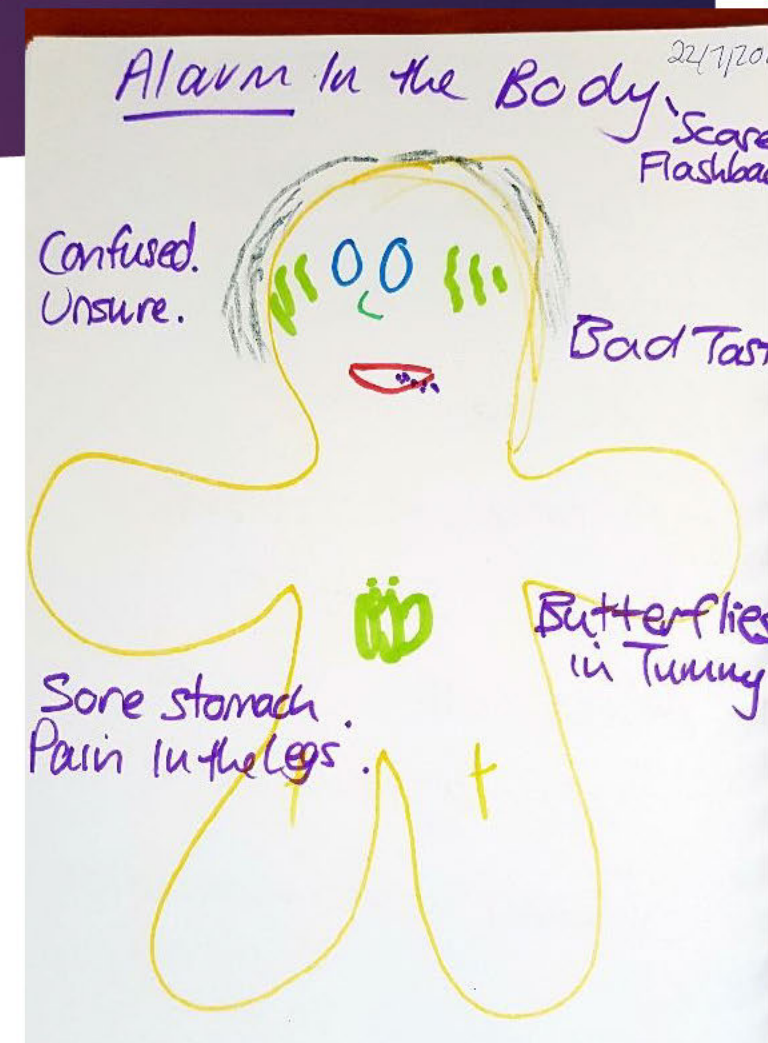
Aim: Similar idea. To teach people to recognize their gut instinct, signs that they don't like something, feel unsafe and can act on that. Brainstorm safety strategies.

- ▶ Introduce the idea, demonstrate it. Good to have already done previous activity using linking feelings/body.
- ▶ Relate it to a story they may have shared previously



Visual Activity: Alarm in My Body

- ▶ Ask them when they get worried or scared what happens in different parts of their body, similar to previous activity
- ▶ Get them to draw it, maybe see if they use words around those feelings, write them down. They may not have words – its ok.
- ▶ Talk about what they can do when they feel the alarm going off.
- ▶ Keep a record in diary or piece of paper so you can bring them back to it and reinforce, or when they use their alarm in future.



4 W Exercise – Insight for client (and you)

Aim: May use when clients aren't elaborating/explaining, using masking and giving you 'I don't knows'. Helps them tell their story. Assists clients with gaining insight into feelings/behaviours and makes more sense of the 'jigsaw puzzle' their story may feel like. Ask questions based on:

- ▶ Who
- ▶ What
- ▶ When
- ▶ Where

Avoid the Why



DFV Education & Insight

- ▶ **Only do when person is feeling safe** – You need some sensory grounding resources practiced and ready - soft pillow, blanket, adult colouring
- ▶ What is DFV – Sharing experiences using verbal and creative techniques when ready – use that context; it's not their fault, they are not to blame.
- ▶ Types of DV - group incidents together; concretise it, don't use jargon, relate incidents to DV cycle e.g. honeymoon period, eggshells, explosion – Unpacking Feelings, strengths cards; Visual reframe
- ▶ Signs – Concretise activities - Alarm in the Body, What is a Good Relationship/ Bad Relationship

DFV Education & Insight

- ▶ Relationships education - Different types, what's a respectful relationship – Relationship cards activity – useful when there are family perpetrators & IPV
- ▶ Why do they do it – excuses, blaming, guilt, power, control, upbringing, role modelling, gender roles. Activities – Is it ok Cards, Role plays -figures acting out, sandtray.
- ▶ Some people remember own parents/other family experiences
- ▶ Grief and loss work re loss of different relationships, kids

DFV Education & Insight

- ▶ Parenting – kids physical/emotional safety, what is good Mum/Dad, attachment
- ▶ Staying safe – what are they already doing? When to leave, planning to leave, Alarm in body activity
- ▶ Recovery and new relationships – what's a good relationship, Strengths work, self esteem, roles, values & beliefs, mental well being, physical health.

Narrative Therapy

“The problem is the problem – the person isn’t the problem.”

Michael White

Very useful when discussing ‘blame’ and ‘guilt’ process. People’s identity become entrenched in their negative experience.

- ▶ Scaffolding - Finding people’s own strengths, Use symbols show power imbalance; Who are the people on your team?
- ▶ Externalising – give the problem its own identity
- ▶ Looking for acts of resistance.

Narrative Therapy

- ▶ Alternate story line, listening for the story waiting to be heard.
- ▶ Rocks and flowers activity, Tree of Me activity, Poetics
- ▶ Use projected and embodied expression activities such as symbols, figures, soft toys as a way to share story and look for acts of resistance
- ▶ First nations and other cultural activities – Dance, Art, Smoking ceremonies etc.

Rocks and Flowers Activity; Figures, symbols



Creative and Expressive Therapies – Movement, Sound, Storytelling, Silence

Theory – Play Therapy, Expressive Therapies, Mindfulness CBT, Psychotherapy, Sandtray Play.

Aim: Gives people space to share their story non-verbally, express feelings, concretise feelings and self beliefs, and work through emotions/trauma from the subconscious. Non directive preferred.

Projected Expression:

- ▶ Visual Art Therapy – Painting, Drawing, Doodling, Clay - Use of colour, textures, shapes – expresses feelings out of the body.
- ▶ Sandtray and Symbol work (figures), Drama (Mark Pearson, Helen Wilson)
- ▶ Poetics, Written and illustrated stories
- ▶ Drama and use of external character

Creative and Expressive Therapies.

- ▶ Bush Therapy – Connection to our natural environment, art, story sharing.

Embodied expression:

- ▶ Use of music & music therapy – Emotional expression.
- ▶ Mindful movement, Dance
- ▶ Role play – Practicing, Acting out a story.
- ▶ Use of Face Masks - A safe way to express feelings. People can decorate it.
- ▶ First nations and other Cultural activities – Smoking ceremonies etc

Go to the below online training module for further information - Topic 6 video and activity examples <https://wwild.org.au/module-3-supporting-recovery-from-trauma/>

Face masks/ Sand Tray examples



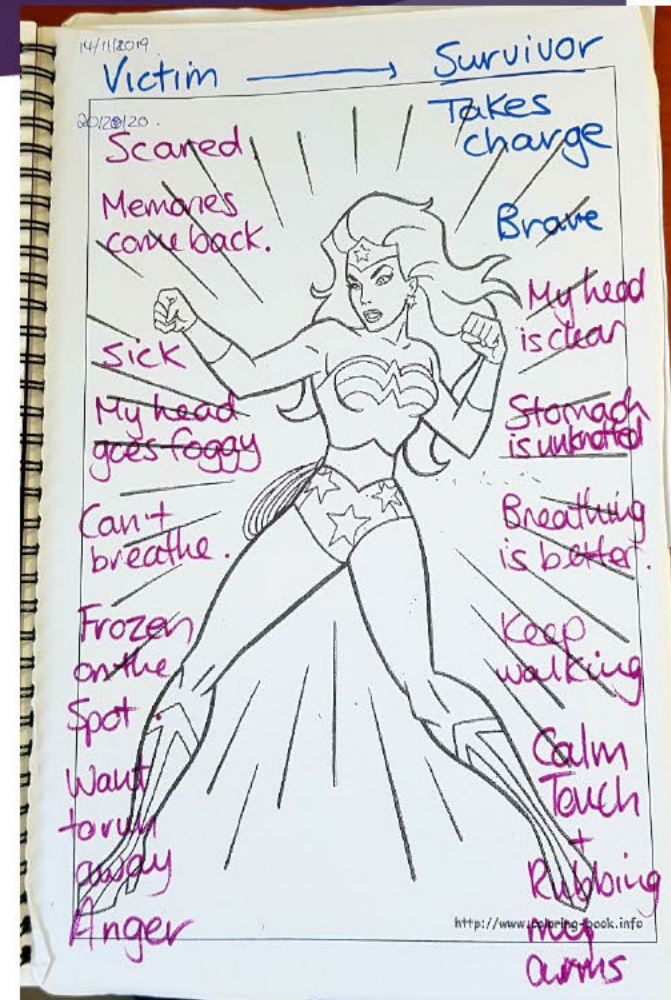
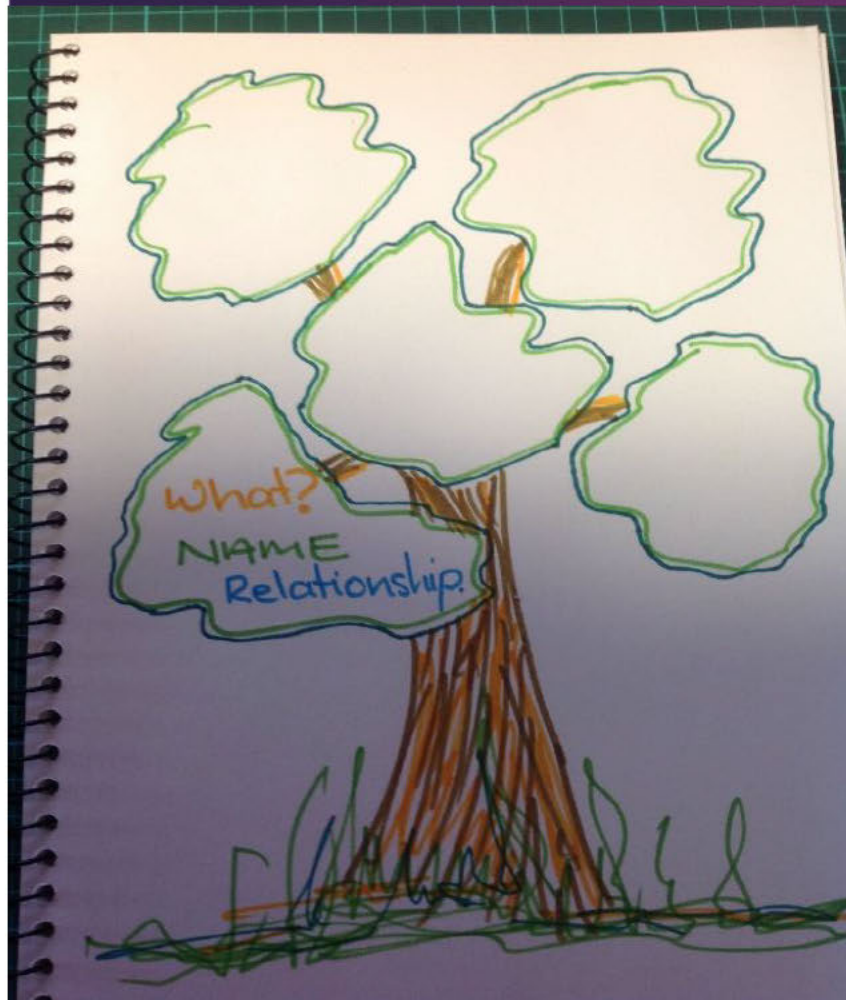
Self-esteem and recovery activities: Theories & Approaches

- ▶ Strengths building activities
- ▶ Narrative practice techniques – Alternative story, Crossing the River, Self esteem Tree
- ▶ Creative & Expressive techniques – e.g. Victim & Survivor
- ▶ Positive psychology & MBCBT - talk about good things in life & not just the bad stuff, new narratives around identity, values.

Self-esteem and recovery activities: Theories & Approaches

- ▶ Community development – Capacity building - Focus on roles (e.g. helping others), safe relationships, new skills, new knowledge, groups.
- ▶ Physical/Mental well being activities e.g. exercise, nutrition, good sleep, regular GP, self soothing, relaxation
- ▶ Experiential – e.g. Equine therapy, pets – non judgemental, feedback/mirroring, externalising feelings, first safe connection supports building future safe relationships.

Self Esteem Tree/ Faces/ Victim Survivor activity



Useful resources:

- ▶ Carey, Lois (ed.) (2006) Expressive and Creative Arts Methods for Trauma Survivors. 2006
- ▶ Denborough, David. (2014) Retelling the Stories of our lives- everyday Narrative Therapy to draw inspiration and transform experiences.
- ▶ <https://dulwichcentre.com.au/training-in-narrative-therapy/> - Online training – Narrative & Aboriginal Narrative Practice.
- ▶ Pearson, M. & Wilson, H. (2003) Sandplay and Symbol Work – Emotional healing and personal development with children, adolescents and adults.
- ▶ Perry, Bruce, D. & Szalavitz Maia, (2017) The Boy who was Raised as a Dog. - what traumatised children can teach us about loss, love and healing

Useful resources:

- ▶ Smith, Sheila Dorothy, (2012) Sandtray Play and Storymaking.
- ▶ White, M., (2007) Maps of Narrative Practice.
- ▶ Wingard, B. & Lester, J. (2001) Telling our stories in ways that make us stronger.
- ▶ Kids Help line has some good visual resources - <https://kidshelpline.com.au/>
- ▶ WWILD's How to Hear Me Book (2012) - <https://wwild.org.au/counselling-people-with-intellectual/>
- ▶ WWILD's You and Me Program – Contact WWILD
- ▶ WWILD's Recovery from Trauma Online Training videos - <https://wwild.org.au/>

References

- ▶ Australian Bureau of Statistics (2017). Personal Safety, Australia, 2016. (Cat. No. 4906.0). Retrieved November 14, 2017 from <http://www.abs.gov.au/ausstats/abs@nsf/mf/4906.0>
- ▶ Brownridge, D. (2006). Partner Violence Against Women With Disabilities. *Violence against women*, 12
- ▶ Thames Valley Police & Emmeline May & Blue Seat Studios, 2015 Tea Consent. <https://www.youtube.com/watch?v=fGoWLWS4-kU>
- ▶ Jackson, A. L., & Waters, S. E. (2015). Taking Time – Framework: A trauma-informed framework for supporting people with intellectual disability. Melbourne, Australia: Berry Street. Available at <https://learning.berrystreet.org.au/sites/default/files/2018-05/Taking-Time-Framework.pdf>
- ▶ Mitchell, A., & Clegg, J. (2005). Is Post-Traumatic Stress Disorder a helpful concept for adults with intellectual disability? *Journal of Intellectual Disability Research*, 49(7), 552–559.
- ▶ Platt, L., Powers, L., Leotti, S., Hughes, R. B., Robinson-Whelen, S., Osburn, S., Ashkenazy, E., Beers, L., Lund, E. M & Nicholaidis, C. (2017). The Role of Gender in Violence Experienced by Adults With Developmental Disabilities. *Journal of Interpersonal Violence*, 32(1). 101-129. DOI: 10.1177/0886260515585534.
- ▶ Plummer, S. B., & Findley, P. A. (2012). Women with Disabilities' Experience with Physical and Sexual Abuse: Review of the Literature and Implications for the Field. *Trauma, Violence and Abuse*, 13 (1) 15–29.
- ▶ Sobsey, D. (2014, April 29). Violence and disability. Retrieved August 16, 2016, from <http://eugenicsarchive.ca/discover/encyclopedia/535eee9d7095aa0000000262>
- ▶ Dr Lenore Walker (1979) 'Cycle of Violence' in *The Cycle of Violence*, Micah Projects Inc.

Contact WWILD

Phone –



Email –



Website – www.wwild.org.au

Course in Recognising and Responding to Sexual Violence - 0994NAT

VOCATIONAL

Recognise experiences of sexual violence and provide trauma-informed responses to survivors.

[Apply](#) (/study-with-us/levels-of-study/vocational-study/vocational-graduate-certificates/course-in-recognising-and-responding-to-sexual-violence-c0052/apply-how.html)

[Enquire](#) (/content/rmit/au/en/contact/contact-us)

Student type:

✓ Domestic

International

Learning mode:

Online

Entry score:

Not applicable

Duration:

Part-time 15 weeks

Fees:

Free for 2023

Next intake:

February

Location:

Online

Overview

Sexual violence is prevalent in Australia, occurring across all groups and communities.

In Australia, 2.2 million women (23%) and 718,000 men (8.0%) aged 18 years and over have experienced sexual violence in their lifetime since the age of 15[^]. Women living in rural and remote locations are particularly at risk, as are Aboriginal and Torres Strait Islander people, refugees and migrants, LGBTQ+ community members, older and young people, and sex workers.

These figures and facts mean that you are likely to work with victim/survivors of sexual violence. Knowledge of and skills in identifying and responding to sexual violence will enable you to support others.

This course will enable you to provide responses to victim/survivors that prevent re-traumatisation, promote recovery and reduce the risk of re-victimisation. You will explore the sociological drivers of sexual violence, its prevalence and its impacts on individuals and society.

Teachers with experience in working with victim/survivors will support you in developing your skills to identify the indicators and effects of sexual violence and to collaborate with victim/survivors to determine and address their recovery needs and preferences.

[^]Source: 2016 Australian Bureau of Statistics (ABS) Personal Safety Survey.

f-stud course-in-recognising-and-responding-to-sexual-violence-c0052/apply-now.html)

“ I now feel confident that I can effectively respond to clients and meet their needs for safety and response by having completed a thorough deep dive into sexual violence and its effects on victim/survivors, their families, and the larger community. ”

Course in Recognising and Responding to Sexual Violence student

The course is funded by the Commonwealth Department of Social Services under the *Fourth Action Plan of the National Plan to End Violence against Women and Children 2022-2032*.

Why study sexual violence at RMIT?



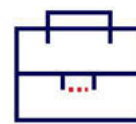
Industry relevant

This course was designed under the National Plan to Reduce Violence against Women and their Children 2010-2022.



Academic experts

Learn from experienced professionals who prepare you for responses to disclosures of sexual violence.



Work relevant

Gain the knowledge and skills to provide trauma-informed responses to a range of people in need.

Details

Expand all sections ∨

How you will learn ∧

Throughout this course, you will learn about the forms, contexts and prevalence of sexual violence.

You will build knowledge of the impacts on those who experience sexual violence, those close to them and on society. You will develop skills to facilitate and respond to disclosure, applying the principles of trauma-informed care and practice to address intersectional barriers to disclosure and support.

During your training, you will complete self-paced, digital learning activities and participate in facilitated workshops. You will undertake knowledge-based assessment to demonstrate your knowledge and your response skills through practical tasks. You will also reflect on your experiences to develop self-awareness and practice.

You'll learn from professionals who share their knowledge and experience to help you prepare for responses to disclosures of sexual violence.

Industry connections ∧

The Course in Recognising and Responding to Sexual Violence is an initiative under the National Plan to Reduce Violence against Women and their Children 2010-2022.

Funding for students' fees is provided by the Commonwealth Department of Social Services under the Fourth Action Plan of the National Plan to End Violence against Women and Children 2022-2032.

Following extensive consultation with service providers to Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse (CALD) community members, people with disability, LGBTQ+ community members, older adults, young people and sex workers, Monash University's Department of Forensic Medicine and the Victorian Institute of Forensic Medicine led the development of the course. Development of content, learning and assessment materials was in partnership with CASA House, No to Violence, Yarrow Place – Rape and Sexual Assault Service, Laurel House – Sexual Assault Support, National Aboriginal Community Controlled Health Organisation, University of the Sunshine Coast and RMIT University.

Contact hours and study load ^

Throughout your studies, you will be required to attend weekly online facilitated 3 hour-long workshops, plus digital self-paced and community of learning engagement.

Time spent on self-paced learning activities is dependent on your current level of knowledge and experience. Workshops will include time for assessment work but some tasks may need to be completed in your own time.

Electives and course plan ^

NAT10994001 – Develop and apply knowledge of the impacts of sexual violence

This subject focuses on understanding the forms, contexts, drivers, and risks of sexual violence with an understanding of the impact of vicarious trauma, values, and biases on practice. Through eLearning and across four workshops, this subject will equip workers with skills to work within legal, ethical, and trauma-informed frameworks for sexual violence.

NAT10994002 – Respond to individuals who disclose sexual violence

This subject will develop your ability to apply trauma-informed care and practice principles to facilitate and respond to disclosures of sexual violence. You will also develop skills to take an intersectional approach to identify victim/survivors' needs and preferences and support their access to specialist and targeted services. This subject is delivered through eLearning and six workshops.

Course structure

Choose a plan below to find out more about the subjects you will study and the course structure.

Course in Recognising and Responding to Sexual Violence

Program code: C0052

National curriculum code: 10994NAT

Course in Recognising and Responding to Sexual Violence

Location

Duration

City Campus
 Overview **▼**
 Plan code
 C0052

15 weeks part-time

CRICOS

[View plan \(/study-with-us/levels-of-study/vocational-study/vocational-graduate-certificates/course-in-recognising-and-responding-to-se:](/study-with-us/levels-of-study/vocational-study/vocational-graduate-certificates/course-in-recognising-and-responding-to-sexual-violence-c0052/apply-now.html)

Career

On completion of the Course in Recognising and Responding to Sexual Violence, you will have the knowledge and skills to recognise and facilitate disclosures from your students, colleagues, clients, service users or community members. You will also be able to provide trauma-informed responses to support victim/survivor physical, emotional and cultural safety.

Admissions

You need to satisfy all of the following academic (entry) requirements to be considered for entry into this course.

Expand all sections **▼**

Academic requirements **▼**

Prerequisites **▼**

Selection tasks **▼**

Pathways



Understanding pathways

Undertaking a certificate, diploma, advanced diploma or associate degree can help you meet the entry requirements for your preferred degree. These qualifications often provide credit, reducing the duration of your bachelor degree.

Explore the pathway finder [> \(https://pathways.rmit.edu.au/\)](https://pathways.rmit.edu.au/)

Fees

Enrolments in this course are 100% government subsidised for eligible students. Funding is provided by the Commonwealth Department of Social Services under the Fourth Action Plan of the National Plan to End Violence against Women and Children 2022-2032. Students who study this course will not be charged a tuition fee.

Frequently Asked Questions (FAQs)

Looking for answers or more general information?

Use our Frequently Asked Questions to learn about the application process and its equity access schemes, find out how to accept or defer your offer or request a leave of absence, discover information about your fees, refunds and scholarships, and explore the various student support and advocacy services, as well as how to find out more about your preferred program, and more.

Visit our Frequently Asked Questions (</study-with-us/applying-to-rmit/frequently-asked-questions>)



Acknowledgement of Country

RMIT University acknowledges the people of the Woi wurrung and Boon wurrung language groups of the eastern Kulin Nation on whose unceded lands we conduct the business of the University. RMIT University respectfully acknowledges their Ancestors and Elders, past and present. RMIT also acknowledges the Traditional Custodians and their Ancestors of the lands and waters across Australia where we conduct our business.

More information [»\(/about/our-values/respect-for-australian-indigenous-cultures\)](/about/our-values/respect-for-australian-indigenous-cultures)



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[Study with Us \(/study-with-us\)](/study-with-us)

[Life at RMIT \(/life-at-rmit\)](/life-at-rmit)

[Research \(/research\)](/research)

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~~TEQSA provider number: PRV12145 | RTO Code: 3046~~

Open Universities Australia (<https://www.open.edu.au/online-courses/rmit-university>)

Study with us

Course Title: Develop and apply knowledge of the impacts of sexual violence

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[Study at RMIT](#)

[Current students](#)

Part A: Course Overview

Program: C0052 Course in Recognising and Responding to Sexual Violence

Course Title: Develop and apply knowledge of the impacts of sexual violence

Portfolio: Vocational Education

Nominal Hours: 50

Regardless of the mode of delivery, represent a guide to the relative teaching time and student effort required to successfully achieve a particular competency/module. This may include not only scheduled classes or workplace visits but also the amount of effort required to undertake, evaluate and complete all assessment requirements, including any non-classroom activities.

Flexible Terms

Course Contact: [REDACTED]

Course Contact Phone: [REDACTED]

Course Contact Email: [REDACTED]

Course Description

This course describes the skills and knowledge required to work with individuals who are experiencing or have experienced sexual violence.

It focuses on understanding the forms, contexts, drivers, and risks of sexual violence with an understanding of the impact of vicarious trauma, values, and biases on practice. This course will equip workers with skills to work within legal, ethical, and trauma-informed frameworks for sexual violence.

This course applies to frontline health and community service workers and other workers providing services to adults and young people. These workers may not be specialised sexual violence practitioners.

Pre-requisite Courses and Assumed Knowledge and Capabilities

N/A

National Competency Codes and Titles

National Element Code & Title: NAT10994001 Develop and apply knowledge of the impacts of sexual violence

Elements:

1. Apply knowledge of the context and drivers of sexual violence
2. Recognise the indicators and impacts of sexual violence

3. Apply legal and ethical frameworks to practice
4. Work within a trauma-informed care and practice framework
5. Reflect on perceptions

Learning Outcomes

On successful completion of this course, you be able to:

- apply knowledge of the contexts and drivers of sexual violence
- recognise the indicators and impacts of sexual violence
- apply legal and ethical frameworks to practice
- work within a trauma-informed care and practice framework
- reflect on perceptions.

You will have:

- analysed, evaluated, and reported on two instances of sexual violence
- engaged in processes of self-reflection to identify and address own values and biases and develop strategies to prevent and manage the impacts of vicarious trauma and stress.

Overview of Assessment

Assessment is ongoing throughout the course and will include knowledge questions, case study analyses and a critical reflection task. Full assessment briefs will be provided and can be found on Canvas.

Print version

URL: <http://www1.rmit.edu.au/courses/c0052054924>

Study with us

Course Title: Respond to individuals who disclose sexual violence

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[About RMIT](#)

[Study at RMIT](#)

[Current students](#)

Part A: Course Overview

Program: C0052 Course in Recognising and Responding to Sexual Violence

Course Title: Respond to individuals who disclose sexual violence

Portfolio: Vocational Education

Nominal Hours: 70

Regardless of the mode of delivery, represent a guide to the relative teaching time and student effort required to successfully achieve a particular competency/module. This may include not only scheduled classes or workplace visits but also the amount of effort required to undertake, evaluate and complete all assessment requirements, including any non-classroom activities.

Flexible Terms

Course Contact: [REDACTED]

Course Contact Phone: [REDACTED]

Course Contact Email: [REDACTED]

Course Description

This course describes the skills and knowledge required to respond to the needs and preferences of victim/survivors who have experienced sexual violence.

This course develops workers' ability to apply culturally safe, trauma-informed care and practices to facilitate and respond to disclosures of sexual violence. It also requires workers to develop skills to take an intersectional approach to identify victim/survivors' needs and preferences and support their access to specialist services.

This course applies to frontline health and community service workers and other workers providing services to adults and young people. These workers may not be specialised sexual violence practitioners.

No occupational licensing, certification or specific legislative requirements apply to this unit at the time of publication.

Pre-requisite Courses and Assumed Knowledge and Capabilities

NAT10994001 Develop and apply knowledge of the impacts of sexual violence

National Competency Codes and Titles

National Element Code & Title: NAT10994002 Respond to individuals who disclose sexual violence

Elements:

- 1 Facilitate a safe environment
2. Establish needs and preferences
- 3 Facilitate referrals for intervention and specialist support

Learning Outcomes

On successful completion of this course, you will be able to:

- facilitate safe disclosure of sexual violence
- establish victim/survivors' needs and preferences
- facilitate referrals for interventions and specialist support.

You will have:

- facilitated and responded to the disclosures of sexual violence of two victim/survivors applying trauma-informed care and practice principles
- engaged in a process of critical reflection on practice.

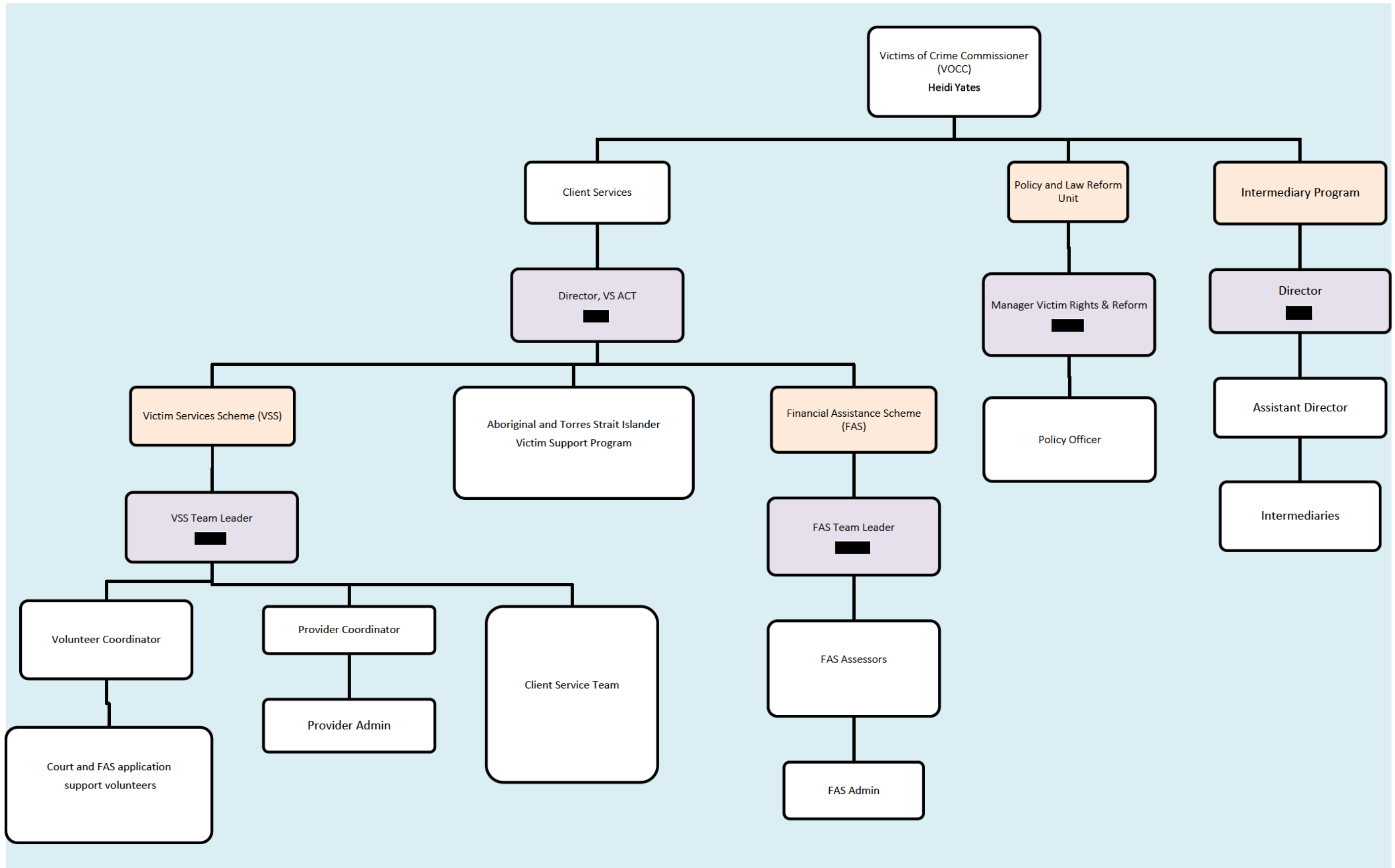
Overview of Assessment

Assessment is ongoing throughout the course and will include knowledge questions, case study analyses and a critical reflection task. Full assessment briefs will be provided and can be found on Canvas.

Print version

URL: <http://www1.rmit.edu.au/courses/c0052054925>

VICTIM SUPPORT ACT ORGANISATIONAL CHART



**Victims of Crime
Commissioner (VOCC)
Heidi Yates**

**Senior Director VS ACT
1**

**Admin Officer
1**

**Systems & Strategy
1**

**Financial Assistance
Scheme**

**Victim Services
Client Services Team**

Outreach

Policy Unit

**Team Leader
1**

**Team Leader
1**

**Team Leader
1**

**Multicultural
Officer
1**

**Aboriginal &
Torres Strait
Islander
Program
2**

**Manager
Victims Rights & Reform
1**

**Sexual Assault Police
Review (SAPR) Advisor
1**

**Project Officer
1**

**FAS Assessors
5**

**FAS Admin
2**

**Case Coordinators
6**

**Case
Coordinators
2**

**Senior Case
Manager
1**

**Disability
Liaison Officer
1**

**Victims Register
Manager
1**

**Advocates
3**

**SAPR Unit Staff
2**

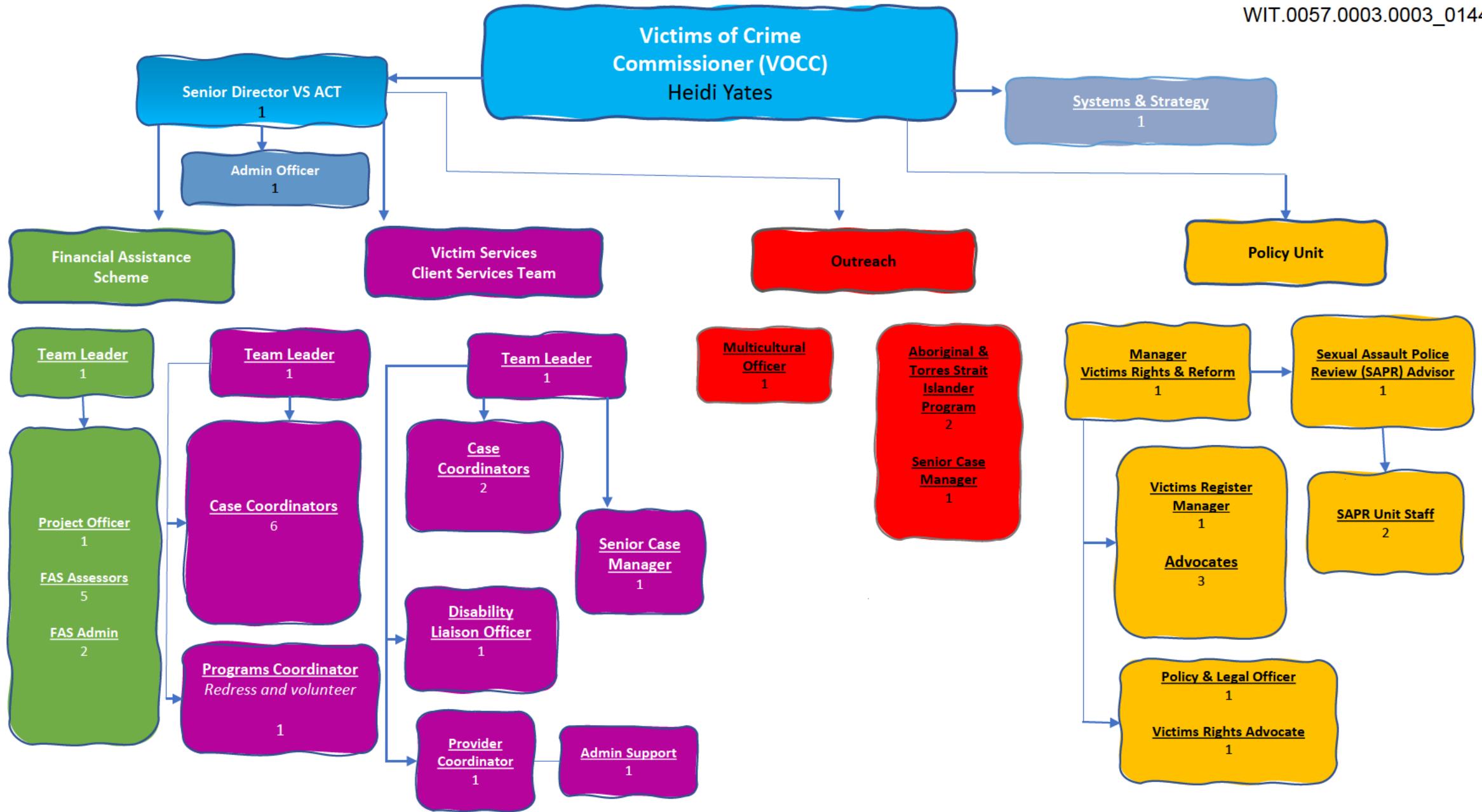
**Programs Coordinator
Redress and volunteer
1**

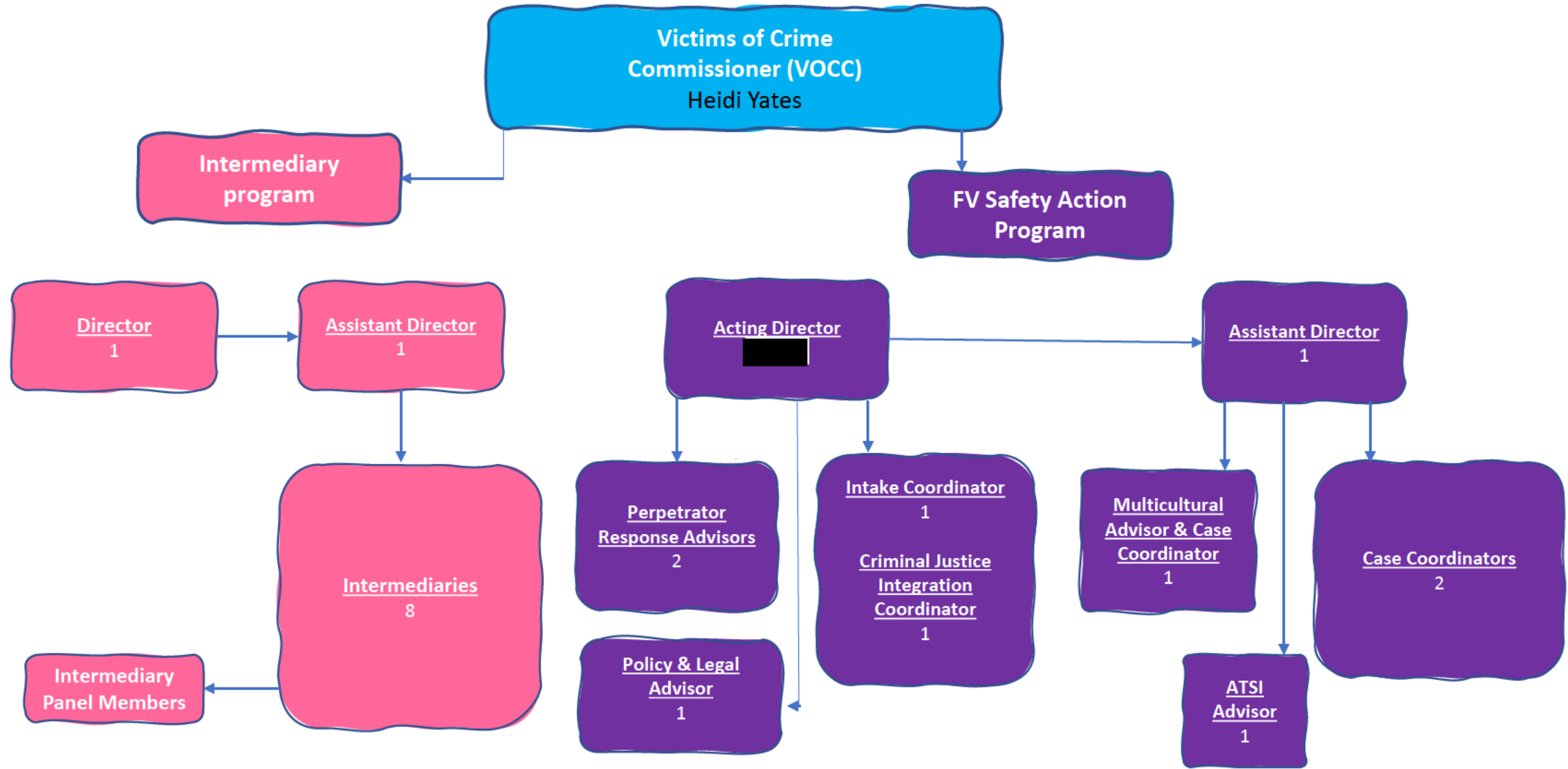
**Provider
Coordinator
1**

**Admin Support
1**

**Policy & Legal Officer
1**

**Victims Rights Advocate
1**





Terms of Reference

SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM – LAW REFORM WORKING GROUP

PURPOSE

The Law Reform Working Group will focus on progressing the [parliamentary agreement](#) commitment to reform consent laws and other sexual assault law reform. The goal of the working group is to identify key recommendations in a timely manner to inform the Steering Committee in how to improve sexual assault prevention and responses for victims in the ACT.

ROLE OF THE WORKING GROUP

The *Working Group* will:

1. Develop their scope for consideration by the Steering Committee Chair by July 2021.
2. Work collaboratively with other members to provide regular advice and input to the Working Groups to support them in providing recommendations to the Steering Committee on key areas for action and reform by early August 2021.
3. Incorporate the perspectives of the Aboriginal and Torres Strait Islander community to ensure that their experiences inform all aspects of the ACT's Sexual Assault work.
4. Consider the views and experiences of sexual violence across the community including people with disability, children, and young people, the LGBTIQ+ community, and communities that are culturally and linguistically diverse.
5. the input from the Workplace Reference Group to ensure the expertise and advice from this group is considered in the recommendations provided to the Steering Committee. Support the Reference Group in providing this advice by regularly sharing information with them including copies of agendas and minutes – in line with the following structure:

ROLE OF MEMBERS

The *Working Group* members are responsible for:

1. Supporting the achievement of the Working Group's purpose and bringing a strong commitment to sexual assault law reform in the ACT.
2. Providing advice to the Steering Committee to inform areas for future action and reform. Advice will be evidence based, draw from the lessons from other jurisdictions and reflect the needs of a diverse Canberra community.
3. Complete actions as delegated by the Chair.
4. Share specialist expertise in matters relevant to the sexual assault law reform in the ACT.
5. Attending all meetings when scheduled. Where absence is unavoidable, the member may nominate a suitable proxy from the same organisation (or as agreed by the Chair) to attend on their behalf.

MEMBERSHIP

Members are appointed by the Coordinator General for Family Safety.

Position	Organisation
	ACT Human Rights Commission
	Office of the DPP
	ACT Courts
	Canberra Chambers
	JACS
	ANU
	ACT Police
	Domestic Violence Crisis Service
	Independent experts
Office for Family Safety (Secretariat)	ACT Government

FREQUENCY OF MEETINGS

As agreed to at the first working group meeting.

SECRETARIAT

The Secretariat role will be provided by the Office of the Coordinator-General for Family Safety. The Secretariat will:

- Schedule all meetings and set the agenda with the Chair;
- Ensure members are invited and available to attend all meetings, including additional attendees at the request of the Chair;
- Circulate the agenda and other relevant information to members at least one week prior to the meeting; and
- Prepare minutes that record key decisions and actions. Ensure minutes are circulated within one week of the meeting. Maintain a log of the actions.

Terms of Reference

SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM – RESPONSE WORKING GROUP

PURPOSE

The Response Working Group will focus on service provision and police responses and will be informed by victim survivor experience of accessing support, advocacy, counselling, health and medical care. The goal of the working group is to identify key recommendations in a timely manner to inform the Steering Committee in how to improve sexual assault responses for victims in the ACT.

ROLE OF THE WORKING GROUP

The *Working Group* will:

1. Develop their scope for consideration by the Steering Committee Chair by July 2021.
2. Work collaboratively with other members to provide regular advice and input to the Working Groups to support them in providing recommendations to the Steering Committee on key areas for action and reform by early August 2021.
3. Incorporate the perspectives of the Aboriginal and Torres Strait Islander community to ensure that their experiences inform all aspects of the ACT's Sexual Assault work.
4. Consider the views and experiences of sexual violence across the community including people with disability, children, and young people, the LGBTIQ+ community, and communities that are culturally and linguistically diverse.
5. Consider the input from the Workplace Reference Group to ensure the expertise and advice from this group is considered in the recommendations provided to the Steering Committee. Support the Reference Group in providing this advice by regularly sharing information with them including copies of agendas and minutes – in line with the following structure:

ROLE OF MEMBERS

The *Working Group* members are responsible for:

1. Supporting the achievement of the Working Group's purpose and bringing a strong commitment to improving responses to sexual assault in the ACT.
2. Providing advice to the Steering Committee to inform areas for future action and reform. Advice will be evidence based, draw from the lessons from other jurisdictions and reflect the needs of a diverse Canberra community.
3. Complete actions as delegated by the Chair.
4. Share specialist expertise in matters relevant to improving responses to sexual assault.
5. Attending all meetings when scheduled. Where absence is unavoidable, the member may nominate a suitable proxy from the same organisation (or as agreed by the Chair) to attend on their behalf.

MEMBERSHIP

Members are appointed by the Coordinator General for Family Safety.

Position	Organisation
	Forensic and Medical Sexual Assault Care (FAMSAC)
	Canberra Rape Crisis Centre
	Child at Risk Health Unit, Canberra Health Services
	Women with Disability ACT
	Domestic Violence Crisis Service
	Child at Risk Assessment Unit, Canberra Health Services
	Victim Support ACT (Human Rights Commission)
	Winnunga Nimmityjah Aboriginal Health Service
	ACT Policing Sexual Assault and Child Abuse Team
	Legal Aid ACT (School lawyer – lots of sexual assault disclosures through health justice partnership)
	A Gender Agenda
	Women's Legal Centre
Office for Family Safety (Secretariat)	ACT Government

FREQUENCY OF MEETINGS

As agreed to at the first working group meeting.

SECRETARIAT

The Secretariat role will be provided by the Office of the Coordinator-General for Family Safety. The Secretariat will:

- Schedule all meetings and set the agenda with the Chair.
- Ensure members are invited and available to attend all meetings, including additional attendees at the request of the Chair.
- Circulate the agenda and other relevant information to members at least one week prior to the meeting; and
- Prepare minutes that record key decisions and actions. Ensure minutes are circulated within one week of the meeting. Maintain a log of the actions.

Terms of Reference

SEXUAL ASSAULT PREVENTION AND RESPONSE STEERING COMMITTEE

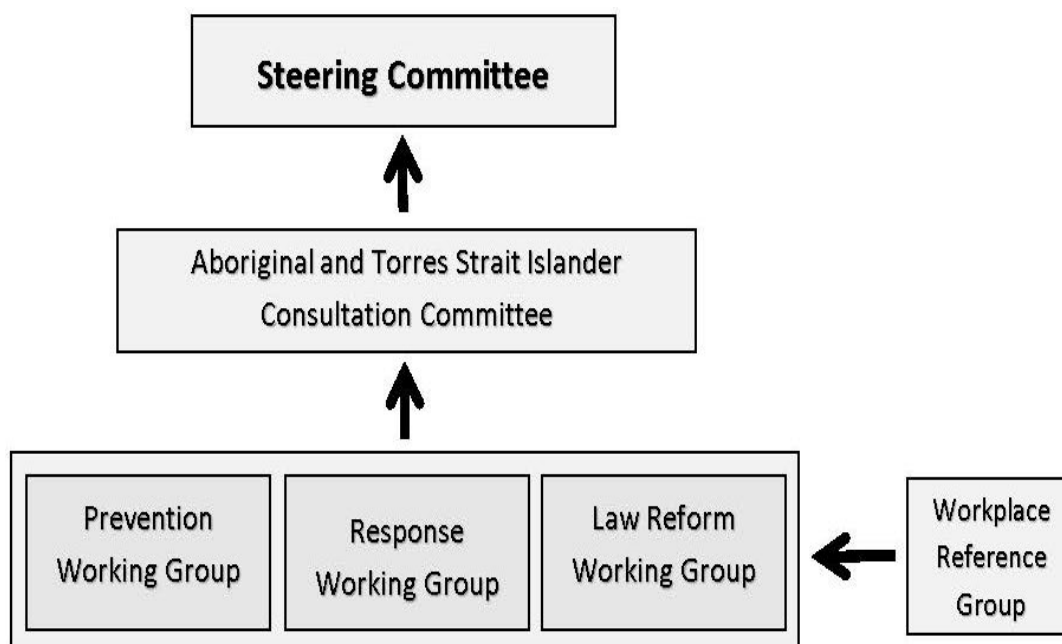
PURPOSE

The Steering Committee will oversee the ACT’s Sexual Assault Prevention and Response program. The Steering Committee will provide formal recommendations to the Minister for the Prevention of Domestic and Family Violence and to the Coordinator-General for Family Safety on how to improve sexual assault prevention and responses to victims in the ACT.

ROLE OF THE COMMITTEE

The *Steering Committee* will:

1. Oversee the operation of the three Working Groups and Workplace Reference Group.
2. Ensure the Working Groups and Workplace Reference Group are focused on delivering within their agreed scope.
3. Establish additional Working Groups as needed with the endorsement of the Minister.
4. Prepare independent recommendations to the Minister on key sexual assault reforms. This will be done by:
 - a. Listening to and incorporating the perspectives and advice of the Aboriginal and Torres Strait Islander Consultation Committee.
 - b. Considering the advice from the Working Groups and Workplace Reference Group.
 - c. Considering the views and experiences of sexual violence across the community including people with disability, children, and young people, the LGBTIQ+ community, and communities that are culturally and linguistically diverse.



ROLE OF MEMBERS

The *Steering Committee* members are responsible for:

1. Supporting the achievement of the Steering Committee’s purpose and bringing a strong commitment to preventing sexual assault and improving responses to victims.
2. Working collaboratively with other members to develop advice on areas for future action and reform. Advice will be evidence-based, drawn from the lessons from other jurisdictions and reflect the needs of a diverse Canberra community.
3. Attending all meetings as scheduled. Where absence is unavoidable, the member may nominate a suitable proxy to attend on their behalf. Should a member be absent for three consecutive meetings, their ongoing membership will be referred to the Minister for consideration.

ROLE OF THE CHAIR

The *Steering Committee* Chair will:

1. Attend Steering Committee meetings and provide strategic leadership and guidance to members;
2. Attend Working Group meetings when required and provide support to the Chairs;
3. Support and lead the Steering Committee in achieving its purpose; and
4. Liaise closely with the Office for the Coordinator-General for Family Safety.

MEMBERSHIP

Members are appointed by the Minister for the Prevention of Domestic and Family Violence.

Position	Organisation
Chair: [REDACTED]	Independent
Member: [REDACTED]	Community member
Member: [REDACTED]	Community member
Member: [REDACTED]	Sexual Health and Family Planning ACT
Member: [REDACTED]	Canberra Rape Crisis Centre
Member: Heidi Yates	Victims of Crime Commission
Member: [REDACTED]	Forensic and Medical Sexual Assault Care
Member: Peter Crozier	ACT Policing
Member: [REDACTED]	Unions ACT
Coordinator-General Family Safety (observer)	ACT Government

FREQUENCY OF MEETINGS – As agreed to by the Steering Committee.

SECRETARIAT

The Secretariat will be provided by the Office of the Coordinator-General for Family Safety, Community Services Directorate. The Secretariat will:

- Schedule all meetings and set the agenda with the Chair;
- Ensure members are invited and available to attend all meetings, including additional attendees at the request of the Chair;
- Circulate the agenda and other relevant information to members at least one week prior to the meeting; and
- Prepare minutes that record key decisions and actions. Ensure minutes are circulated within one week of the meeting. Maintain a log of the actions.

Sexual Assault Review – Terms of Reference

Review of cases to understand attrition rates – Sexual Assault Review

Background & context

Sexual violence is a pervasive and unacceptable problem in the ACT. In December 2021 the Sexual Assault Prevention and Response Steering Committee released the *Listen. Take action to prevent, believe and heal* report, which provided an evidence based, extensive and thorough analysis of the current problems in systemic responses to sexual violence in the ACT and the systems failure to address the needs of victim survivors and the community more generally – both from a procedural and cultural perspective.

In particular, the Report found that the supports and responses available to victim survivors are inadequate – both the response by the community sector (specialist response services) and by government agencies. It further identified inadequacies within the Justice system.

The Report made 24 recommendations to Government, encompassing a wide range of reforms necessary to prevent sexual violence and to urgently address the current failures within the non-government specialist response service sector, within government agencies and within the Justice system.

One of the issues the Report identified within the overall systems response to sexual violence was the high attrition rates of sexual offence complaints following an initial report to ACT Policing. To further understand this issue and the barriers preventing cases from progressing in the criminal justice system, the Report recommended:

The ACT Government establish and fund an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn.

The initial phase of the review to focus on reports made from 1 July 2020 to present. Subject to the outcomes of this initial phase, the review is to be extended to all reports made since 1 January 2015 that have not progressed to charge.

Further any victim survivor whose matter has not progressed to charge outside of this stated review period may also request a review of their matter. (Recommendation 15)

In its formal response to the Report, released in June 2022, the ACT Government agreed to this Recommendation and committed to funding the implementation of this Recommendation through the establishment of a multidisciplinary team to review sexual assault cases reported to ACT Policing between 1 July 2020 and 31 December 2021 which were not progressed to charge, including those deemed unfounded, uncleared, or withdrawn.

Establishment of the Review & its purpose

An **Oversight Committee** is established to oversee an independent review of sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn.

The initial phase of the review is to focus on all reports made from 1 July 2020 to present. Subject to the outcomes of this initial phase, the review may be extended, in further phases, to reports made since 1 January 2015 that have not progressed to charge.

Sexual Assault Review – Terms of Reference

At the conclusion of each phase of the review, the Oversight Committee is to provide a report to the Attorney-General, the Minister of Police and the Minister for the Prevention of Domestic and Family Violence summarising the findings of the Review, including any identified systemic issues, and, if required, proposing the extension of the review for other periods and/or for identified classifications of cases.

The Oversight Committee will be supported by a **Review Team** which will provide practical assistance in the undertaking of the review of reports and support the considerations of the Oversight Committee, as directed by the Co-Chairs. It is noted that it is ultimately a matter for the Director of Public Prosecutions to determine if further investigation is required and whether there would be a reasonable prospect of conviction of any resulting charges.

Review Terms of Reference

The purpose of the Review is:

1. better understand the reasons for the low number of sexual offence reports proceeding to the point of charge including but not limited to:
 - a. identifying whether current police processes are being adhered to and whether any changes should be made to police processes in relation to the conduct of investigations;
 - b. identifying whether decisions are legally sound in all cases and whether those decisions are clearly recorded, reviewed and communicated to the Director of Public Prosecutions and the complainant;
 - c. Identifying any systemic cultural or practical changes or additional services that may be required to better support child and adult complainants and uphold their rights under the Victims Charter;
 - d. any other relevant matter.
2. for each case reviewed:
 - a. identify what, if any, further investigation should be undertaken;
 - b. identify whether there is a reasonable prospect of conviction after the investigation; then
 - c. consider whether criminal charges should be laid.

Membership of the Oversight Committee & its Co-Chairs

Members of the Oversight Committee to include:

- Independent Co-Chairs: [REDACTED] and [REDACTED]
- Director of Public Prosecutions Mr Shane Drumgold
- Chief Police Officer, ACT Policing Deputy Commissioner Neil Gaughan
- Coordinator-General, Family Safety [REDACTED]
- Victims of Crime Commissioner Ms Heidi Yates

Review Methodology

The methodology for the Review will be finalised by the Oversight Committee having regard for the provision, use and security of the information to be reviewed and the priority areas of focus appropriate to the review of individual reports.

Sexual Assault Review – Terms of Reference

Proposed specific areas of focus for the Review will be considered by the Oversight Committee and applied to each individual case by the relevant Review Team to the extent appropriate.

The role of members of the Oversight Committee will be clarified in the context of finalising the methodology for the Review. There may be certain aspects of the Review work – for instance, assessing the decision making about whether a matter is charged and prosecuted – which would not appropriately involve all members of the Oversight Committee.

The approach to contacting and consulting victims in any cases to be further investigated / prosecuted will be developed collaboratively between the Chief Police Officer, the Director of Public Prosecutions, and the Victims of Crime Commissioner, to reflect a trauma-informed approach and ensure ongoing support is available to those who choose to have their matter re-opened.

STANDARD OPERATING PROCEDURES
Delivery of client services under the Victims Services Scheme
Victim Support ACT

Responsible team: Client Services Team

Approved by: [REDACTED], Senior Director Victim Support ACT

Date: 6 July 2022

[REDACTED]

Signature

[Contents](#)

Document properties	2
Definition of key terms	3
1. Purpose	8
2. Scope	9
3. Legislative framework	9
4. Objectives and functions of the Victim Services Scheme (VSS)	9
5. Eligibility for the VSS and levels of service	10
6. Client Services Team (CST)	11
7. Referrals to CST	12
7. Providing VSS Services	17
8. Interagency collaboration	23
9. Records	23
8. Supporting staff	28
Appendix 1: Meeting with clients at the 56 Allara Street Civic	29
Appendix 2: Consent for children and young people to access therapeutic services	32
Appendix 3: Victims rights under the Charter of rights for victims of crime upheld by VS ACT ...	33
Appendix 4: Raising a complaint under the Charter of rights for victims of crime with respect of	34
VS ACT	34
Appendix 5: Accessing ICMS	35

Document properties

Date approved	July 2022
Date effective	July 2022
Review date	July 2023
Document location	G:\Victim Support ACT\CLIENT SERVICES\VSS guidelines and processes
Policy name	Delivery of client services under the Victims Services Scheme

Custodian	Client Services Team, Victim Support ACT
Document References and/or Legislation	<p><i>Victims of Crime Act 1994</i></p> <p><i>Victims of Crime Regulation 2000</i></p> <p><i>Victims of Crime (Financial Assistance) Act 2016</i></p> <p><i>Crimes Act 1900</i></p> <p><i>Health Records (Privacy and Access) Act 1997</i></p> <p><i>Human Rights Commission Act 2005</i></p> <p><i>Human Rights Act 2004</i></p> <p><i>Family Violence Act 2016</i></p> <p><i>Personal Violence Act 2016</i></p> <p><i>Charter of rights for victims of crime</i></p>

Definition of key terms

Term	Definition
Aboriginal and Torres Strait Islander Program	VS ACT has a program to assist Aboriginal and Torres Strait Islander people affected by crime. The program seeks to ensure that culturally responsive services are available to Aboriginal and Torres Strait Islander people affected by crime; and that Aboriginal and Torres Strait Islander communities know about Victim Support ACT services.
Case Coordinator	Case Coordinators are responsible for working with clients to facilitate the coordination of services and to assist clients to attain their goals for recovery.
Charter of rights for victims of crime (the Charter)	The Charter of rights for victims of crime protects and promotes the rights of victims of crime when they engage with justice agencies in the criminal justice system. It also recognises the central role that victims of crime play in the criminal justice system and upholds their rights to safety, privacy, dignity, and participation. Refer to Appendix 3 for rights upheld by VS ACT.

MLO	Multicultural Liaison Officer at VS ACT assist people from culturally and linguistically diverse backgrounds who may not speak English as their first language or who may be unfamiliar with the systems in place to support victims of crime.
Case Manager	Health professionals at VS ACT who deliver direct therapeutic supports, outreach, and other intensive/longterm services.
CRCC	Canberra Rape Crisis Centre
CST	Client Services Team The team at VS ACT staff who undertake initial intake, assessment, provider referral, case management and case coordination for clients under the VSS.
CYPS	Child and Youth Protective Services
DLO	Disability Liaison Officer at VS ACT is the dedicated case coordinator available to assist people with a disability to access our services and ensure they receive the assistance they are entitled to.
DVCS	Domestic Violence Crisis Service
Eligible victim	An eligible victim is defined in section 6 of the Victims of Crime Act 1994 and Regulation 24 of the Victim of Crimes Regulation 2000 . The services provided under the VSS are legislated in the Victim of Crimes Regulation 2000 Division 3.3.

	<p>Under section 6 (1) an eligible victim is a person who suffers harm because of an offence and includes:-</p> <ul style="list-style-type: none"> (a) a person (the primary victim) who suffers harm- <ul style="list-style-type: none"> (i) in the course of, or as the result of, the commission of an offence; or (ii) as a result of witnessing an offence; and (b) a family member, of the primary victim, who suffers harm because of the harm to the primary victim; and (c) a person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim; and (d) the following people under the <i>Victims of Crime (Financial Assistance) Act 2016</i>: <ul style="list-style-type: none"> (i) a primary victim; (ii) a related victim; (iii) a homicide witness and (e) if the person mentioned for this definition is a child or legally incompetent person – a guardian of the child or legally incompetent person. <p>Under s 6(2) a victim does not include a person who suffers harm because of an offence he or she committed or is alleged to have committed.</p> <p>Under Regulation 24 a victim does not include a victim:</p> <ul style="list-style-type: none"> (a) who suffers harm caused by, or arising out of the use of, a motor vehicle or (b) who suffers harm (directly or indirectly) as a result of committing an offence.
Event (in Resolve)	An Event is the section of the Resolve record management system used by the CST to document ongoing service provision with a client including monitoring the use of their approved therapeutic hours.
FAS	Financial Assistance Scheme
FVIP CT	Family Violence Intervention Program Case Tracking is an interagency case tracking process established in 1998. The purpose of FVIP CT is to ensure that justice agencies share information with a view to keep victims safe during the lead up to criminal justice proceedings and to provide an effective inter-agency response to victims and offenders in the prosecution of criminal family violence matters.

FVSAP	Family Violence Safety Action Pilot is a program within VS ACT that brings together ACT Government and nongovernment sectors to collaboratively identify, assess and
	respond to high-risk DFV matters, with a focus on perpetrator accountability.
Family violence	<p>Section 8(1) of the Family Violence Act 2016 states that family violence means any of the following behaviour by a person in relation to a family member of the person:</p> <ul style="list-style-type: none"> • physical violence or abuse; • sexual violence or abuse; • emotional or psychological abuse; • economic abuse which means behaviour by a person that is coercive, deceptive or that unreasonably controls the family member without the family member's consent including by the person's exploitation of power imbalances between the person and the family member • threatening behaviour; • coercion or any other behaviour that <ul style="list-style-type: none"> ○ controls or dominates the family member; and ○ causes the family member to feel fear for the safety or wellbeing of the family member or another person; or • behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour. • sexually coercive behaviour • damaging property • harming an animal • stalking • deprivation of liberty. • technological abuse
DFV	Domestic and family violence
DPP	Director of Public Prosecutions

Harm	Harm includes 1 or more of the following: (a) physical injury (b) mental injury or emotional suffering (including grief) (c) pregnancy (d) economic loss (e) substantial impairment of a person's legal rights.
	<i>(Victims of Crime Act 1994 Sec 6.3)</i>
HAART	Home Assessment and Acute Response Team
Homicide Witness	A person who was present when the homicide occurred or is a witness in a criminal proceeding related to the homicide.
HRC	ACT Human Rights Commission
Justice agency	Any entity listed under Sec 8.1.a of the <i>Victims of Crime Act 1994</i> including the DPP, Corrections ACT, ACT Policing, VSACT, CYPS. Chief justice, chief magistrate, supreme court judges and magistrates are not defined as a justice agency.
Primary victim	A person who suffers harm in the course of, or as a result of, the commission of an offence; or as a result of witnessing an offence. (<i>Victims of Crime Act 1994 Sec 6.1.a</i>)
Provider Administrator	Staff member in the CST responsible for managing the administration associated with therapeutic services including placing clients with service providers.
Referral (in Resolve)	Location in the Resolve record management system whereby new enquiries and requests for service from CST are recorded.
Related victim	A family member, of the primary victim, who suffers harm because of the harm to the primary victim. (<i>Victims of Crime Act 1994 Sec 6.1.b</i>) A person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim. (<i>Victims of Crime Act 1994 Sec 6.1.c</i>)
Resolve	File management system used by VS ACT for the storage of client records.

SAB	Sentence Administration Board. An independent body that makes decisions about whether an offender is suitable for release on parole and makes recommendations to the Attorney-General about the release of offenders on licence. The Board also decides the consequences of sentenced offenders failing to comply with parole orders, intensive corrections orders and licences. Victims of crime can make submissions to the Board about an offender's possible release on parole or licence.
SOP	Standard Operating Procedure
Supportlink	The community-based agency responsible for managing referrals from the police to Victim Support ACT via an electronic referral system.
VIS	Victim Impact Statement is a statement made to the Court by or for a victim that contains details of any harm suffered by a victim because of the offence. It is provided to the Court after a person is convicted or pleads guilty to an offence. It is the victim's choice whether to make a VIS. It may be important for some to do so, but not for others. A VIS is a good way to let the court know exactly how the offence has impacted on the lives of the victim and their families.
Volunteer Coordinator	VS ACT Senior Case Coordinator with responsibilities for managing the VS ACT Volunteer Program.
VOCC	Victim of Crime Commissioner
VS ACT	Victim Support ACT
VSS	Victim Services Scheme
WAS	Witness Assistance Service at the DPP

1. Purpose

This Standard Operating Procedure (SOP) outlines the procedures for the delivery of client services under the Victim Services Scheme (VSS) (see [Victim of Crimes Regulation 2000](#)).

2. Scope

This SOP pertains to all Case Coordinators in the the Client Services Team (CST) at Victim Support (VS ACT) who deliver and administer services under the [Victim of Crimes Regulation 2000](#). Case Coordinators follow these procedures to ensure all individuals who contact VS ACT are treated in accordance with the [Human Rights Act 2004](#) and the [Victims of Crime Act 1994](#).

3. Legislative framework

Case Coordinators in the CST perform their functions in the context of a diverse range of legislative instruments.

The [Victims of Crime Act 1994](#) recognises the central role of victims of crime in the criminal justice process, and their rights and interests including through the [Charter of rights for victims of crime](#). It places obligations on VSACT to take steps to resolve concerns raised by victims of crime about justice agencies under the Charter. The legislation also outlines the role and functions of the Victims of Crime Commissioner (VOCC), and the Victims Advisory Board, and establishes the scope of the VSS that aims to help victims deal with the effects of crime.

The [Victims of Crime \(Financial Assistance\) Act 2016](#) establishes the system of giving financial assistance to victims of crime to assist them to recover from acts of violence, contribute to their safety, and acknowledge the harmful effects of the violence. This includes outlining the administration of the scheme, eligibility for the scheme, and the types of payments and the amounts of money available.

The [Crimes Act 1900](#) is the legislation that sets out the majority of criminal offences in the ACT. These include offences against the person, sexual offences, intimate image abuse, female genital mutilation, sexual servitude, and offences related to property. It also outlines the procedures for investigations, evidence, fitness to plea and mental impairment, and proceedings after sentence. This legislation is particularly useful for Case Coordinators in determining [eligibility for VSS](#).

The [Human Rights Act 2004](#) gives recognition in legislation to the fundamental rights and freedoms of all members of the ACT community. The legislation includes rights such as equality before the law, the protection of family life and children, personal freedoms such as freedom of religion, thought conscience and expression, the right not to be arbitrarily detained, the right to a fair trial, the right to education, and the right to work. This legislation allows for these rights to be interpreted and actively applied within the ACT context.

The [Family Violence Act 2016](#) and the [Personal Violence Act 2016](#) regulate the system that protects those who fear or experience personal, workplace, and/or family violence. Both legislative instruments make provisions for applying and granting protection orders, promote mediation for appropriate matters, and create offences to enforce protection orders. By law, violence is defined as a set of behaviours including physical and sexual violence or abuse, stalking, damaging property, and threatening to do any of these behaviours.

4. Objectives and functions of the Victim Services Scheme (VSS)

The [Victim of Crimes Regulation 2000](#) outlines the objects and functions of the VSS.

The **objects** of the VSS are to provide assistance to victims of crime:

that will promote their recovery from the harm suffered because of crime, and allow them to take part in the social, economic, and cultural life of their community.

- using a multidisciplinary approach, and
- in ways that are timely, accessible, solution-focused, professional, individualised, and appropriate to the victim.

The **functions** in the [Victim of Crimes Regulation 2000](#) performed by Case Coordinators include:

- Deciding the eligibility of people for the different levels of services under the VSS including providing clients with options for how they may be supported by VS ACT and allowing them agency to choose what supports they want to engage with.
- Arranging for the provision of professional services for clients and referring onto other entities as needed.
- Keeping records about services are provided.
- Training and supervising those engaged by VSACT to provide services (counselling and massage providers).
- Reporting to the director-general every 6-months on the services the VOCC provide or arranges and evaluate day-to-day operation of the VSS.
- Providing telephone contact for people seeking information about, or services under, the VSS as well as information and assistance about the criminal justice system.
- Developing and maintaining a volunteer program to provide practical assistance and support to victims and to train and supervise volunteers for the program

5. Eligibility for the VSS and levels of service

Eligibility for the VSS and level of service provided is determined based on the criteria set out in the [Victim of Crimes Regulation 2000](#).

To determine a client's eligibility Case Coordinators may:

- Draw on statements made by the person seeking services under the VSS or by someone acting on their behalf.
- Request information from ACT Policing, the Director of Public Prosecutions (DPP), or the Courts about whether or not the person is a suspect or has been convicted or found guilty of an offence arising from the circumstances in which the person suffered harm.

An **eligible victim** is a victim other than a victim who suffers harm caused by or arising out of the use of a motor vehicle or who suffers harm (directly or indirectly) as a result of committing an offence. A victim does not include a person who suffers harm because of an offence he or she committed or is alleged to have committed. For a resource on [relevant Level 2 offences](#) please see here.

VSS clients are eligible for between 2 and 20 contact hours depending on the nature of the crime they experienced. Contact hours are those used for counselling or massage services. There are **three levels of service available**:

- **Level 1 service** consists of no more than 2 contact hours to which all eligible victims are entitled. This is the level of service offered in instances of non-violent crime.

- **Level 2 service** consists of no more than 8 contact hours (which is Level 1 plus 6 hours) where the victim is a primary victim, related victim, or a witness to a violent crime. See Definitions of terms section for further detail.
- Level 3 service** consists of no more than 12 contact hours in addition to Level 1 and 2 contact hours.

A high volume of VSACT clients are victim-survivors of DFV. The CST uses the definition of DFV in the Section 8 (1) of the [Family Violence Act 2016](#). See definitions of terms section.

Pathways to review decisions around eligibility for the VSS are available to those seeking services through the VSS. For a client to request a review, the request must be in writing, they must state their name and contact details, and advise the reasons for their request for a review of decision.

6. Client Services Team (CST)

The Client Services Team (CST) is the intake point-of-contact within VS ACT for community members affected by crime. The CST's **business hours** are 9:00-17:00 Monday to Friday, excluding public holidays.

As per the [Victim of Crimes Regulation 2000](#), Case Coordinator's **provide telephone contact** for people seeking information about the VSS and assistance with the criminal justice system. As such, the CST has a daily phone [roster](#) and rostered staff are available to respond to new enquiries from clients and other agencies via the VS ACT phone line. Case Coordinators are also available for faceto-face meetings with those seeking services. Please see Appendix 1 for guidance in responding to 'Walk ins'.

Case Coordinators provide services under the VSS within the framework of **trauma-informed practice**. These include working within the following principles:

- Being aware of the possibility that any person seeking support could have an experience of trauma.
- Applying the six core principles of safety, choice, trustworthiness, collaboration, empowerment, and respect for diversity.
- Accommodating the vulnerabilities of trauma survivors including people from diverse backgrounds.
- Minimising the risk of re-traumatisation.
- Promoting healing.
- Encouraging physical and emotional safety for everyone.
- Recognising coping strategies as attempts to cope.
- Collaborating with clients (doing with clients instead of doing for clients).
- Understanding the importance of respect, dignity and hope.
- Focusing on the whole context in which a service is provided and not just on what is provided.

For more information about applying trauma-informed practice in the delivery of the VSS please refer to the [CST practice principles](#).

7. Referrals to CST

Making a referral to the CST

The CST receives referrals to assist those affected by crime from a variety of sources. Referrals can be made by clients themselves via self-referral or by another agency. Some of the agencies that the CST regularly receives referrals from include:

- ACT Policing via Supportlink and Victim Liaison Officers.
Office of the DPP.
- Wraparound, the coordinated ACT wide response for victims of sexual assault facilitated by ACT Policing.
- Other agencies, both government and non-government, such as Domestic Violence Crisis Service (DVCS) and Canberra Rape Crisis Service (CRCC).
- Through the VOCC.
- VS ACT service providers.
- Referrals from the Disability and Community Services Commissioner; often via the ACT Human Rights website

To make a referral, the following are the preferred procedures:

- **Referrals received from other agencies** are best received in writing to the VS Intake Inbox ([REDACTED]) using [the VSACT referral form](#). Please note there is a specific referral form to be used by [DVCS that can be found in the G-Drive](#).
- **Referrals from ACT Policing including Victim Liaison Officers** should be made via the Supportlink Portal.
- **Self-referrals** can be made verbally or in writing. Clients can contact VSACT:
 - via phone on [REDACTED] to speak to a Case Coordinator on intake or to leave a voice message.
 - via the Human Rights Commission (HRC) contact form ○ via email to [REDACTED]
 - or by presenting in person to the HRC Offices at 56 Allara Street Civic. Please see Appendix 1 for CST procedures meeting with clients face-to-face.

Allocating referrals

Referrals received to the CST Inbox

When a referral is received by the CST, there are both administrative and triaging processes that occur. Please refer to the section on Records later in this SOP for the administrative procedures associated with receipt of a referral.

Referrals are **triaged** and prioritised based on the following:

- The referral indicates that it is a priority (Supportlink).
- The serious nature of the crime (e.g. involving weapons or the person using violence is known to the victim).

- The age of the person, particularly if the referral indicates minimal other supports.
- Imminent court dates or pending release of offender from custody.
- Requirement for safety planning.
- Suicide risk assessment.

Referrals to the CST inbox are reviewed by the CST Team Leader and **allocated** to Case Coordinators through Resolve.

Self-referrals via the VS ACT switchboard

Should a client contact VS ACT and be responded to by a Case Coordinator rostered on intake, it is best practice that that Case Coordinator action that referral and be the ongoing contact person for the client at VS ACT. There may be situations where this is not appropriate and should be discussed with a Team Leader as needed. **Responding to referrals**

Contact policy for referrals

Referrals should be **actioned within 5 working days of receipt** (current key performance indicator (KPI)). An action is defined as any action taken to directly communicate with the person who is referred to VS ACT, such as a phone call, email or SMS.

Case Coordinators will attempt to contact all clients referred to VS ACT by phone initially. This is done by sending an SMS message (where appropriate and safe to do so) advising a call will be made. **Three attempts** (SMS and phone call) will be made at different times of the day over a **1 5-working day** period with no more than 2 attempts in one 5 working day period. Where appropriate and safe to do so, voice mail messages will be left inviting the client to call VSACT. Where appropriate and safe to do so, an SMS will also be sent to the client providing VSACT contact details and inviting them to call.

Wherever possible, calls and emails to the HRC Victim Support Intake will be responded to within 24 hours.

There are times when **referrals are labelled priority** in Resolve. The Team Leader may ask a Case Coordinator to contact these people on the day the referral is accepted. If a priority referral is allocated without additional directions from the Team Leader, they should be contacted within 1-3 working days. Should the Case Coordinator be unable to contact the client, the referring party should be advised.

Intake/Client registration

To action a referral, Case Coordinators will need to complete intake or registration with a client. It is at the Case Coordinators and/or client's discretion whether this occurs at the point of first contact or booked in for a later date. There is a [form in G-Drive](#) used by staff to assist them in this process.

The **purpose of intake/registration** is to:

- Determine a person's eligibility for the services through the VSS including the level of counselling hours (Level 1 or Level 2). Please refer to Section 5 of this SOP for guidance around eligibility.
- Discuss the impacts of the crime experienced by the client.
- Explore the client's support needs and interest in VSS service including counselling, court support, advocacy, and financial assistance.
- Attend to risk and safety concerns including child protection, family violence, and mental health.
- Collaboratively develop a support plan including a client's preferences for counselling and their goals. This includes obtaining the client's informed consent. There are protocols that should be followed by Case Coordinators in obtaining informed consent for children and young people to access counselling. See Appendix 2.
- Address the potential for more tailored support at VSACT including through referrals to the Aboriginal and Torres Strait Islander Program, the Cultural Liaison Officer (CLO), the Disability Liaison Officer (DLO) and/or for case management.

- Consider any reasonable adjustments by completing the Needs Identification which is found [here](#).
- Explain the [Charter of rights for victims of crime](#) and ascertain whether there have been any issues faced by the client in their engagement with the justice agencies that they may wish to explore further including through the provision of advocacy.

During registration, Case Coordinators must **provide information to VS ACT clients about data collection and privacy** and **ask permission to register the client with VS ACT**. The client should be informed that VS ACT will collect and record private information and add it to an electronic database. The information will remain confidential and will not be shared with anyone outside VS ACT without the client's permission unless authorised by legislation including the [Information Privacy Act](#), [Crimes \(Sentencing\) Act](#) and the [Health Records Act](#) (see Appendix or VS ACT believes that sharing the information is necessary to avoid harm to the client or a third party or unless subpoenaed by a Court. Clients are also advised about the **limits of confidentiality**. VS ACT staff are mandated child protection reporters and must report to Child and Youth Protection Services where they believe a child has suffered abuse.

After a client has been registered with VS ACT, it may be appropriate to send a follow up email confirming their registration, providing information about other services including the Financial Assistance Scheme (FAS) and the [Charter of rights for victims of crime](#), and drawing their attention to the out of hours crisis phone lines. See below for an email template.



Intake letter email template msg

Common safety concerns

Child safety

Case Coordinators at Victim Support ACT are mandated reporters which means there is a legal requirement they make a Child Concern Report to Child and Youth Protective Services (CYPS) if through the course of their work they believe on reasonable grounds that a child has been:

- Being or has been sexually abused
- Experiencing or has experienced non-accidental physical injury (physical abuse).

Case Coordinators should also make a Child Concern Report if through the course of their work they believe on reasonable grounds that a child has experienced abuse and/or neglect. More information can be found [here](#).

In addition, Case Coordinators have a positive obligation to report sexual abuse experienced by children or young people aged under 18 years to Police. Failing to do so is a criminal offence under the *Crimes Act 1900*. When the alleged perpetrator is a family member a Child Concern Report must be made to CYPS. When the alleged perpetrator is not related to the child or young person (e.g., a teacher, sports coach, adult friend), the Case Coordinator should work with the child and/or young person, and their family to report to Police. Please consult with a Team Leader should further guidance be required.

There is a useful online training offered by CYPS that new staff may wish to review. The training can be accessed [here](#).

Domestic and family violence

Working with people who experience DFV is a major component of the Case Coordinator's work. This work includes:

- Working with clients to identify risk, safety plan and support needs.
- Working collaboratively with Family Violence specialist agencies such as DVCS and the Family Violence Unit at ACT Policing.
- Assisting clients to access information about and to apply for Family Violence Orders including referrals to Legal Aid ACT or the Women's Legal Centre.
- Participating in family violence case tracking meetings each week for criminal matters. Please refer to the procedure for this in the below section.
- Working closely with the FAS team to support clients where needed to apply for an immediate needs payment to cover relocation costs and/or security upgrades
- Exploring a potential referral to the FVSAP in consultation with the Coordinator and Assistant Coordinator of the FVSAP.
- Referring clients to the Volunteer Program for support at court matters.

Mental health: Suicide and Self Harm

Being affected by crime often brings feelings of distress and for some VS ACT clients this can include thoughts of suicide and self-harm. Case Coordinators have a duty of care to ensure VS ACT clients are supported to enhance their safety and manage their distressing emotions. There are a variety of ways Case Coordinators can assist with this.

First, during the intake/registration call, **all VSACT clients are asked about suicide and self-harm (past and current)**. To assist Case Coordinators in responding to disclosures of suicidality and/or selfharm, please refer to the Suicide and Self-Harm Vulnerability Assessment Tool (SVAT) (which is found [here](#)). When suicide and/or self-harm risk is established, SVATS should be included on the client's Resolve file and be reviewed by a Team Leader.

There may be times when Case Coordinators may need to **contact Access Mental Health or emergency services (000)**. Briefly, [Access Mental Health](#) is the ACT Government's phone-based triage mental health service that aims to assist people who are experiencing a moderate to severe mental health crisis. Access Mental Health can also refer clients to the Home Assessment and Acute Response Team (HAART) for home based mental health crisis assessment, short term treatment and support, and referrals for ongoing hospital and/or community care.

Part of the role of the Case Coordinators is to assess whether to contact Access Mental Health or emergency services 000 for their client is required.

In instances where there is **imminent risk** contact 000 immediately. Imminent risk can include that suicide is in progress, or that the client has the means and a plan to act on their thoughts. This can be done without the clients consent in line with VS ACT's duty of care.

In instances where there is **not imminent risk but there is a need for a crisis mental health intervention**, contact Access Mental Health. Please consider the following in information decision making:

- Persistent thoughts of suicide or self-harm, access to means, and/or a plan to act on their thoughts at some point in the future.
- Underlying mental health difficulties including a formal diagnosis that impact an individual's functioning.
- Emotional and psychosocial context including isolation, impulsivity, hopelessness, fear of judgement, and in ability to cope.

- Limited social and community supports and protective factors.

As a trauma-informed service, Case Coordinators to the greatest extent possible should respect the client's agency and empower them to take action to enhance their safety. In practice, this can include working with the client in the first instance to reach out to Access Mental Health or 000 themselves before a decision is taken for the Case Coordinator to initiate an intervention.

Support to respond to crisis calls

To assist Case Coordinators to respond to crisis calls, the CST has a daily debrief and crisis call [roster](#). This is raised in every morning meeting. The rostered staff members are available to support a Case Coordinator on a crisis call via Teams (remotely) or can sit alongside them in the office. Assistance can include:

- Contacting Access Mental Health in the event of mental health concerns to explore a potential intervention.
- Contacting 000 for an ambulance in the cast of physical or mental health concerns or police in the event of safety concerns.
- Developing a potential intervention if appropriate and the client can be placed on hold. This could include conferencing in additional services such as the DVCS Crisis Line on () using the following instructions: [Calls - Webex | Start a Conference Call](#)
- Providing debriefing support after the call has concluded.

7. Providing VSS Services

Therapeutic services

VS ACT clients access therapeutic services (counselling and massage) via referral to approved service providers (providers) in private practice (qualified counsellors, mental health social workers, psychologists and/or massage therapists). Providers do not work for VS ACT but are required to undergo an application process to become an approved provider and meet certain criteria. A list of current VSACT providers can be [found here](#).

The role of the Provider Administrator exists to support the administrative functions associated with the provision of therapeutic services. These functions are dealt with in a separate SOP.

In the provision of therapeutic services, Case Coordinators are responsible for:

1. Placing a client with an appropriate provider.

The logistics associated with sourcing an available provider for a client is undertaken by the Provider Administrator. To assist with this, Case Coordinators assign an *Action* in Resolve to the Provider Administrator and provide at a minimum the following information:

- Crime type
- Mental health information including diagnosis, medication, and existing supports
- Alcohol and drug use
- Diversity information including whether they identify as Aboriginal or Torres Strait Islander, Cultural and linguistically diverse or as a person with disability.
- A copy of the SVAT if relevant.
- Logistics of accessing counselling including location, telehealth, timing, and gender preference.

- Client's goals for counselling.
- Specific requirements including the need for priority placement and/or preferences for therapeutic approach.
- Any information needed to ensure that the client is not required to re-tell their story to the provider.
- Reasonable Adjustment Questionnaire

When an appropriate and available provider has been identified, the Provider Administrator will contact both the provider and the client (with the Case Coordinators signature) to advise of the placement.

2. Monitoring and overseeing therapeutic services provided to VSACT clients

- Providers are required to send a '[Progress Report](#)' to VSACT before Level 2 approved hours (8 contact hours) are exhausted. Case Coordinators review the report and seek clarification from the provider or the client as necessary. The Case Coordinator then approves the release of Level 3 hours to the provider by assigning an 'Action' to the Provider Coordinator in Resolve. The paperwork for Level 3 hours is prepared and sent by the Provider Coordinator.
- When a client has concluded their engagement with a VSACT provider, a '[Closure Report](#)' is provided to VS ACT. This usually occurs when Level 2 and 3 approved hours (20 contact hours) have been exhausted.
- To assist in the monitoring of VS ACT client's approved hours, Case Coordinators receive reminder *Actions* in Resolve titled *Service used up reminders* when a client's approved hours have been exhausted.

3. Requesting exceptional circumstances

The [Victim of Crimes Regulation 2000](#) includes provisions that allow the VOCC (through its delegates) to approve additional contact hours for clients in exceptional cases.

Case Coordinators make a recommendation to the VOCC for exceptional circumstances by completing [this form](#), drawing on information provided by the provider (via [this form](#)). In a recommendation, particular attention should be paid to:

- How would additional contact hours create substantial therapeutic benefit?
- Evidence that it is impossible or impractical to access therapeutic support through another service.

A request for exceptional circumstances is made to the VOCC or their delegate. The CST Team Leader can approve up to 12 contact hours in exceptional circumstance. Requests for approval beyond 12 hours of exceptional circumstances hours are to be approved by the Director, requests are sent to the team leader for escalation.

Support to access the Financial Assistance Scheme

Case Coordinators perform certain functions in relation to assisting clients to access the FAS. These include:

- Provision of information about FAS payments and the application process. Further information can be found [here](#).

- Support via phone or in person to complete the application form including support via the VS ACT Volunteer Program.
- Responding to requests for information about the physical and psychological injury sustained by the applicant after the application has been submitted.
- Working collaboratively with the FAS team to progress applications for financial assistance in particular applications for immediate needs payments.

Advocacy under the Charter of Rights for Victims of Crime (the Charter)

The [Victims of Crime Act 1994 \(Subdivision 3A.7.2\)](#) provides that victims of crime have access to pathways to resolve concerns and/or complaints that may arise in their engagement with a justice agency. Supporting victims of crime in this is a core part of the Case Coordinator's role.

There are a variety of pathways available to victims of crime to facilitate resolution to these concerns/complaints:

- **Raise a Concern with VS ACT** : This is a pathway that aims for an informal resolution of a victim of crime's concern guided by advocacy undertaken by Case Coordinators and other VS ACT staff.
- **Make a Complaint to the justice agency involved** (e.g. ACT Police [Professional Standards](#)).
- **Make a Complaint under the [Charter of rights for victims of crime](#) to the [Disability and Community Services Commissioner](#) at the HRC.**
- **Make a Complaint to another relevant complaints body** (e.g Ombudsman or Integrity Commission).

Should a victim of crime wish to raise a Concern or make a complaint with respect of VS ACT under the [Charter](#) refer to Appendix 4 for further information.

Information provision

Case Coordinators must provide information to victims of crime about their rights under the [Charter](#) throughout their engagement with VS ACT and along their journey through the criminal justice process. This should start at the point of initial intake/registration and be continually revisited at each appropriate opportunity. The reason for this is that many rights under the [Charter](#) are not activated unless the victim of crime engages directly with the relevant justice agency.

Resolving a concern under the Charter

Case Coordinators are actively involved in facilitating a timely resolution to Concerns raised with VS ACT by victims of crime. Depending on the nature of the Concern, this can also be done in consultation with the Team Leader and/or the Victims' Rights and Reform Team at VS ACT.

The Case Coordinator should ensure at a minimum the following information is collected to inform decision making about resolving the concern.

- Summary of the concern, including specific examples if appropriate and possible.
- Relevant justice agency.
- What steps, if any, have been taken by the client or another agency to resolve the concern to date?
- What outcome is the client seeking, if any?
- The relevant right/s under the [Charter](#).
- Obtaining their written consent to act on their behalf.

- Record the concern in Resolve.

Resolving Concerns raised under the [Charter](#) can take a variety of forms and will differ according to the issues involved and the client's needs and preferences. For all clients however, Case Coordinator must convey to the victim of crime information about the process that will be used for resolving the Concern.

Some examples of resolving a concern can include:

- Obtaining information from a relevant justice agency on behalf of a client.
 - Under the [Victims of Crime Act 1994](#), justice agencies with the victim of crime's consent must provide information that is requested to VS ACT to facilitate resolution to the concern.
- Facilitating and participating in meetings with the client and the relevant justice agency.
- Supporting a client to have their safety concerns addressed including referrals to access support to apply for a protection order.
- Assisting clients to apply to access their rights in relation to the ACT Adult Offenders Register, Affected Persons Register and/or the Young Persons Register.
- Liaising with other justice agencies for instance the Victim Liaison Officers, Witness Assistants Service at the DPP, Prosecutors, ACT Policing Contact Officers, Service and Processing in ACT Policing, and the Family Violence Unit in ACT Policing.

There are a variety of resources available to assist Case Coordinators in the provision of advocacy under the [Charter](#). These include pro-forma email templates and flow chart resource guides. Please speak with the Victims' Rights and Reform team for the most up to date resources.

Complaints under the Charter of Rights for Victims of Crime (the Charter)

In line with the [Victims of Crime Act 1994](#), if VS ACT is not able to resolve a Concern, the Case Coordinator may wish to refer the victim of crime to make a complaint in relation to a justice agency, either with the Disability and Community Services Commissioner, the justice agency themselves or with another complaint's entity.

Case Coordinator can support clients to lodge their complaint. This support can be tailored to the client's needs and can be provided in person or via phone. If the Case Coordinator meets the client in-person refer to Appendix 1. When preparing a complaint, the Case Coordinator must ensure it is written using the client's language and that they are given the opportunity to review and approve before it is submitted.

Case coordination and advocacy

Case Coordinators provide a range of other services to VSACT clients. These can include but are not limited to:

- Advocating for clients to access other services including public housing and the [Escaping Violence Payment](#). This may involve providing letters of support.
 - VSACT may also advocate for clients to have their ambulance fees waived where a crime has taken place. The process for doing this can be found [here](#).
- Warmly referring clients for a variety of legal, health, welfare, and therapeutic services including:

- Legal assistance (Legal Aid ACT, Canberra Community Law or the Women’s Legal Centre).
 - [Emergency Childcare](#) through ACT Government Children Services Program ○ Family support program including through the [Child and Family Centres](#).
 - Case management support including to Keeping Women Safe in their Home at DVCS or the YWCA DV Program ○ Crisis support and safety planning including to the DVCS crisis line
 - Referrals to other teams within VS ACT.
- Attending client care team meetings at their request/invitation.
 - Liaising with criminal justice, health, and welfare agencies to work towards supporting the client’s recovery.
 - Providing advocacy to clients by liaising with justice and crisis support agencies (e.g., Police, the ACT Intermediary Scheme, DVCS) to support increase safety and risk mitigation or assist them in their access to justice.
 - Supporting clients to prepare Victim Impact Statement (VIS), and/or a submission to the Sentence Administration Board (SAB). These documents must be written in the client’s words exactly.

Referrals to other areas of VS ACT

Family Violence Safety Action Pilot (FVSAP)

The FVSAP is a program within VS ACT that aims to enable the ACT Government and nongovernment sectors to collaboratively identify, assess and respond to high-risk DFV matters, with a focus on perpetrator accountability. This is achieved via short term DFV informed case coordination, and where needed discussion at fortnightly collaborative meetings currently attended by ACT Police, Legal Aid ACT, Toora Women, Everyman, DVCS, ACT Housing, ACT Corrective Services, CYPS and VS ACT. For further information about the role and scope of the FVSAP, resources can be found [here](#).

There may be times when a referral to FVSAP may be appropriate. Case Coordinators should initially contact the Coordinator or Assistant Coordinator of the FVSAP for triaging. After this, complete and provide the relevant [referral documentation](#) and [risk assessment](#).

If a referral is accepted by the FVSAP team, the Case Coordinator may be required to attend fortnightly collaborative meeting and/or to work alongside the FVSAP Case Coordinator to progress actions to meet the client’s goals.

Case management

VS ACT employs both Case Coordinator and Case Managers in order to both meet the diverse needs of victims of crime as well as respond to the significant demand for the VSS. The practice framework that guides the provision of case management at VS ACT is dealt with in a separate document. This section only provides a brief description of the nature of the Case Manager’s role and details how a Case Coordinator can refer a client for case management.

Case Managers provide flexible and tailored support to VS ACT clients who require more intensive and longer-term assistance. This can include the provision of direct counselling support where a referral to an external provider is not necessary or appropriate.

In consultation with the Team Leader, Case Coordinators can refer a client for case management at any point in their engagement with VS ACT. Some considerations for clients who may wish to be referred for case management includes:

- a need for complex co-ordinated inter-agency approach.
- complex mental health concerns.
- disability needs that require more support.
- a lack of social and other supports.
- high risk, vulnerability or need for therapeutic assistance or scaffolded/wraparound support.
- the client is a key or other witness in a trial.
- early childhood trauma including sexual abuse

Volunteer Program

The [Victim of Crimes Regulation 2000](#) provides for the establishment of the VS ACT Volunteer Program including the recruitment, experience, and training of volunteers. The Volunteer Program is run and managed by the Volunteer Coordinator. The procedures that guide the functions of this role are dealt with in a separate SOP.

VS ACT clients can be referred to receive support from a volunteer when:

- Reporting crimes to police.
- Attending court to give evidence.
- Making a victim impact statement.
- Attending sentencing hearings.
- Attending court to apply for a protection or family violence order.
- Completing an application for financial assistance.

Case Coordinators should convey to VS ACT clients the volunteer's role is to provide emotional and practical support to engage in the criminal justice process. Volunteers do not provide legal advice or court advocacy.

There are several processes for making a referral to the Volunteer depending on the service being requested. Please refer to the following [document](#) and [resource](#) on how to make these referrals.

Aboriginal Unit

VS ACT has a program to assist Aboriginal and Torres Strait Islander people affected by crime. The program seeks to ensure that:

- Culturally responsive services are available to Aboriginal and Torres Strait Islander people affected by crime
- Aboriginal and Torres Strait Islander communities know about Victim Support ACT services.

Referrals to the Aboriginal Unit can be made via the CST Team Leader.

Multicultural Program

VS ACT has a Multicultural Liaison Officer (MLO) to assist people from migrant, refugee and asylumseeking backgrounds need support to access our service. The program seeks to ensure that:

- Clients receive a culturally appropriate service
- Clients are supported to report a crime to the police

- Clients are supported to access recovery services such as counselling, physical therapy and other supports to help them recover from a crime
- Clients are supported through the justice system before, during and after court appearances
- Providing information and arranging referrals of clients to appropriate agencies
- Assisting clients to complete applications for the financial assistance scheme.

Referral to the MLO can be made in several ways:

- An allocation can be made by the CST Team Leader should the electronic referral received indicate a preference to work with the MLO.
- A team member can refer their clients to the MLO directly if needed.

Disability Liaison Officer

VS ACT has a dedicated Disability Liaison Officer (DLO) to assist people with a disability to access our services and ensure they receive the assistance they are entitled to. The DLO can work directly with clients with disability or work alongside a Case Coordinator. To make a referral to the DLO, it is most appropriate to reach out via email or via an informal conversation.

Victims' Rights and Reform

Some clients may need to be referred to the Victims' Rights and Reform team including clients seeking direct support from the VOCC or who are involved with ACT Civil and Administrative Tribunal (ACAT) matters. Case Coordinators should flag these matters with the Team Leader as these referrals are made by the CST Team Leader to the Rights and Reform Manager.

8. Interagency collaboration

Family Violence Intervention Program Case Tracking

VSACT is involved in the FVIP CT process to provide information relating to client risk and interventions, identify and respond to existing client's experiencing risk, and to advocate for a positive, and victim-centric culture. For more information on the Case Tracking process – see [here](#).

Overnight arrests

Overnight arrests are sent through to the VS Intake Inbox from the ACT Policing. VS ACT receives this information as a part of its role as a justice agency and to support the provision of services to victims of crime. See Section 9 Records for further information on how this information is recorded Resolve.

NB: you may get updated Overnight lists throughout the day with added parties or amended details. Review these as relevant and follow the above steps if new parties are added to the list

9. Records

A key function of the VOCC under the [Victim of Crimes Regulation 2000](#) is to keep records about victims of crime for which services are provided. The CST collects and maintains records in line with the [Health Records \(Privacy and Access\) Act 1997](#).

Consent to request and share information

As a voluntary service VS ACT must seek consent from clients before sharing or requesting their private and confidential information. Informed consent is best obtained in writing via email. If this is not possible, Case Coordinators should ensure they record verbal informed consent in Resolve including the date consent was provided. Every 12 months, Case Coordinators need re-confirm that consent is still valid with the client directly.

Victim Support Intake Inbox

The VS Intake Inbox plays a central communication function in the CST. All referrals to the CST are received through this account as well as it being the primary communication tool used by Case Coordinators to communicate with clients and other agencies.

The inbox is monitored several times per day either by an Administration Officer or a rostered Case Coordinator.

Inbox management follows a colour coding system to assign emails to the relevant staff member. Case Coordinators are required to check the inbox regularly to attend to emails that have been assigned to them.

In triaging emails, inbox management consists of reviewing the emails for:

- Urgency – if an email is urgent, it will be assigned to a manager for allocation.
- The relevant staff member – this consists of reading the email to assess which staff member is the most appropriate person to be allocated responsibility.
 - Some emails will be from clients and the Inbox manager will need to review the email and assign it to the responsible Client Coordinator.
- The relevant area within the HRC if the email is not for Victim Support Intake – this is relevant where an email was mistakenly sent to the VS inbox and consists of reading the email to assess which other branch of the HRC is best placed to respond to the email.
- Referrals – some emails will contain referrals for clients. These will need to be actioned and placed into Resolve (see below sections).

Special procedure: Supportlink referrals

The Supportlink portal is the electronic referral tool used by ACT Police. The administrative process for retrieving, updating and uploading Supportlink referrals to Resolve is found [here](#).

Updates added by the CST to the Supportlink portal are accessed by referring police officers.

Case coordinators are responsible for adding updates to Resolve so that the Admin Officer can provide updates in the Supportlink tool. The person doing allocations in Resolve is responsible for creating the first 'update Supportlink' action. The steps and responsibilities are as follows:

1. When assigning a case coordinator to a Supportlink referral in Resolve, the Team Leader will create an action 'update supportlink' and assign it to the case coordinator. The case coordinator will add contact attempts or a successful contact to that action, then assign it to an admin officer to update it in Supportlink.
2. The admin officer will login to Supportlink and create a contact log and note the date of contact attempt ('contact attempt register' tab); OR if contact has been successful close the referral ('close referral' tab)
3. The admin officer will note that the information has been added to Supportlink and 'complete' (tick) the action.
4. If the first contact attempt was not successful, the admin officer should create a new 'update supportlink' action and assign it to the case coordinator (do not complete the action). If a second attempt is made the case coordinator will note this in the action item and reassign to the admin officer.
5. The admin officer follows steps 2 and 3 until 3 contact attempts have been made. At 3 contact attempts (or after **30 days**) the referral should be closed in Supportlink. The case

coordinator or the admin officer can then close the referral (changing the status to 'closed – unable to be contacted').

Resolve

Resolve is the secure record management system used by all areas within the HRC including VS ACT. For further resources on using Resolve, click on *Help* in the top left corner of the opening screen, and select *Contents*. The guide will open in a word document.

Party

A *Party* is the location in Resolve where contact details and identifying information for clients are located. All parts of the HRC have access to *Party* records.

Before creating a *New Party*, the client's name, phone number, and other searchable details should be checked in Resolve to ensure that an entry does not already exist.

If a search reveals that no *Party* exists for a client, then use the *New Party* button in Resolve to create a new profile. Team members need to pay careful attention to ensuring the *Party* details are as complete as possible including whether it is safe to leave a message or send a text message, and information about client's cultural identity and/or identification of disability status.

It is also possible in Resolve to create an *Organisation Party*. This is a record of an agency or an agency contact. Please use the same process as creating a *New Party* to create a *New Organisation Party*.

Referral and Events

In Resolve, the CST uses *Referrals* and *Events* to help manage client records. A ***Referral*** is used to record a request for, or enquiry relating to, VS ACT services from an individual or agency. An ***Event*** is used to document ongoing service provision with a client including monitoring the use of their approved therapeutic hours.

Referrals

To create a new *Referral*, click on the *New Referral* button in Resolve. Once the referral screen is open, you will need to follow these steps:

1. *Client* - click *Find* to either create a *New Party* or search for the client's name within Resolve. If they have more than one *Party* ID in Resolve identify which, if any, is a CST ID. Dates of birth and phone numbers are helpful to confirm that the client being entered matches an existing *Party* in Resolve.
2. *Referred by* You will also need to provide the *Referrer*. Type the service name in the box or search using *Find*. If the agency is not automatically generated, this means the *Organisation Party* does not exist within the Resolve and you need to create a *New Organisation Party*.
3. *Case source* – select the type of referral it is.
4. *What happened* – provide a short summary of the key information that is required for the Team Leader to assign this client a Case Coordinator. Also note if the referrer has indicated that the referral is a priority.
5. *Is there anything else you would like us to know* – in this box, put anything that you think the Team Leader should be aware of. For example:
 - a. If you searched the client and they have previous *Referrals* or *Events*, you should note this here and indicate the assigned Case Coordinator.

- b. If the client has safety concerns or the referral is urgent, you may note this here.
6. Save the case and then add and *Issue* by right clicking in the box. An *Issue* is where the crime type in the *Referral* is recorded. If there is no discernible crime type, then leave this empty.
7. Switch to the next tab *All Actions* and then right click to add the relevant *Action*. Select the appropriate *Action* description depending on the nature of the referral. (E.g. if it is a phone message from a client use *Incoming contact with client*. If it is a referral from another agency use *Coordinated interagency response required*). Infill this box with the text 'To be contacted.'
8. Finally, drag the referral information into the bottom section of the *Action* so that any referral documents, or emails, are now attached. Add 15 minutes to the 'Time taken to complete task' section and then CLOSE the action.
9. Important – do not close the referral, simply exit.

After a Case Coordinator has been allocated a *Referral* in Resolve, they will seek to action the referral within five business days (see Section 7) and record work undertaken via *Actions* in the *Actions* tab.

Case Coordinators should ensure that the **following information is included in the *Referral* record:**

- Complete the 'first contact date' located on the front screen.
 - If contact is made outside the 5-day KPI, add a 'Note' action detailing a brief reason for this.
- Ensure that the information in the *Party* record is accurate and up to date.
- Document the crime type clearly.
- Include the relationship with the accused if known AND the name of the accused person.

To **close a *Referral*** in Resolve, Case Coordinators need to:

- Ensure all mandatory fields including the crime type are completed.
- All open actions are closed.
- The *Status* is changed from *Open* to the relevant *Closure reason*.
- The referral is closed using the *Close* button at the top of the front screen.

Events

After a client consent to being registered with VS ACT, Case Coordinators open *Events* in Resolve when any service other than information provision or referral is provided to an eligible client.

An *Event* must be linked to a *Referral*. On the *Referral* front screen in Resolve, there is a *New Event* button that can be used to **open a new *Event***.

If a client has an existing *Event* and there is a new *Referral* created in Resolve for the same crime, the existing *Event* number can be copied into the *New Event* tab on the *Referral*. This links this *Referral* to the existing *Event* and allows for continuity in record keeping. Please also place an action *Note* in the *Actions* tab in the *Referral* documenting that an existing *Event* is open.

After opening an *Event*, Case Coordinators should ensure that the information on the main screen is completed and kept up to date regularly. This includes:

- Under the *Details* free text, provide a summary of the client's background, the crime type, and the services being accessed. Case Coordinators should consider the principles of traumainformed practice and the strengths perspective when drafting this section.

- Complete the *Related Parties* section linking the *Event* to other relevant *Parties* in Resolve. This may include the perpetrator, the client's children, or other relatives – particularly those that have other files in Resolve. There is a function to populate the client's relationship to the *Related Party*.
- *Service Level* tab should be changed to the relevant Level (1 or 2) if the client is accessing therapeutic services.
- Under the *Case Comments* section, information that is deemed critical can be recorded. This can include eligibility for future counselling hours, safety concerns, and communication preferences.

As the Case Coordinator continues their engagement with the client, new *Actions* and documents can be added to the *Event* as a record of engagement with the client.

For data collection purposes, Case Coordinators must **record concerns or complaints** raised under the [Charter of Rights for Victims of Crime](#) in Resolve.

- Under the *Services* tab on the *Event* screen click on the *Concern tab*.
- Select the relevant justice agency from the drop-down bar and tick the relevant right/s that the concern has been raised about.
- Populate the free text area with the following information:
 - Client PT Number: ○ Summary of concern: ○ Justice agency the concern is about:
 - Is the concern resolved?
 - If no, what steps are you currently taking? (One or two sentences is enough):
- Please ensure that you remember to continue to update and finalise the concern once it is resolved, referred, or closed.

An Event can be closed, in the following circumstances:

- A *Closure report* is received from a VS ACT service provider indicating that counselling services have been exhausted and the client is not accessing any other services from VS ACT.
- A client has not engaged with counselling services or with VS ACT directly in three months or more.
 - Please ensure to request a *Closure report* from the service provider if the client was engaging in counselling. If the client has not engaged in counselling for longer than six months, there is no need to request a *Closure report* from a provider.

When closing an *Event*, Case Coordinators should provide a summary of the services including:

- Client was registered for services after presenting in (date) for (crime) after being referred from (agency).
- Services client accessed through Victim Support ACT:
 - Counselling
 - Support through a justice process/information about the justice system ○ Support to resolve a concern/complaint under the [Charter of Rights for Victims of Crime](#).

- Financial assistance/support to complete a financial assistance application ○ Case Coordination
- Assistance from the Victims of Crime Commissioner ○ Support through the Volunteer Program ○ Others – please specify
- Any positive outcomes that have occurred for the client due to services provided.
- Reason for closure. E.g. completed counselling/ attended 6/8 sessions etc. Client is aware they can contact the service to access further counselling as required.
- Close the referral to the provider

8. Supporting staff

Professional Supervision

VSACT has a [Professional Supervision Policy](#) that aims to ensure that staff are assisted in maintaining their ongoing professional learning and development, and in planning and monitoring of their own health and wellbeing. The policy supports workforce growth, efficiency, and productivity by providing staff with appropriate access to practical opportunities for professional development. The HRC has a [Vicarious Trauma Prevention Policy](#) that also supports staff wellbeing.

Debriefing

Debriefing is a conversational intervention, intended to support staff of VS ACT to manage the effects of listening to detailed accounts of traumatic material while engaging empathically with the client.

Successful debriefing recognises the immediacy of the need to offload the impacts of a call and VS ACT understands this will assist in the prevention of compassion fatigue, moral injury (burnout), and vicarious trauma.

VS ACT request staff adhere to the organisational debriefing model to minimise the transfer of traumatic content between staff. Additionally, debriefing should be conducted in a private location for this reason. VS ACT is committed to training new staff in this model as part of their induction.

VS ACT encourage workers to offer and receive debriefing in a peer support context. This may include a debriefing 'buddy', opportunistic availability and/or a decision by a team leader/manager.

Meetings in the CST

The CST has a number of regular meetings that are included in its business practice to enhance collaboration and connection between staff members.

The **morning meeting** is held daily at 9:00am and chaired by a staff member as per a rotating [roster](#). During the meeting, staff members are invited to provide an update on their day ahead and team leaders delivery important information that staff should be aware of. The meeting duration is between 20-30 mins.

The **team meeting** is held fortnightly and is an opportunity for CST staff to gather for longer discussion outside the morning meeting. The theme of discussion is usually more administrative or around addressing business practices within the team.

On each alternate fortnight CST staff members come together for **reflective practice**. The purpose of these meetings is to allow dedicated time on a regular basis for staff to critically reflect on their practice and the way they deliver services to clients. Some examples of reflective practice include:

- A presentation from an external agency on a program or service relevant to VS ACT's work.
- A presentation from a CST staff member on a topic/area of practice of interest to them.
- Informal conversation on a chosen theme whereby staff are invited to share their views and experiences.

Appendix 1: Meeting with clients at the 56 Allara Street Civic

From time-to-time, Case Coordinators will be required to meet with clients face-to-face at 56 Allara Street Civic. The safety of staff and clients is a paramount consideration for VS ACT.

When responding to a walk-in enquiry:

- **if the client is not known to VS ACT** two staff should always be present, and the Team Leader alerted. These meetings should occur in the open meeting room to the right as you enter the reception area.
- **if the client is known to VS ACT** consult with the relevant Case Coordinator and Team Leader about the most appropriate response.
- Remain conscious of the nature of the conversations and if information that is sensitive or personal arises ensure that that privacy is maintained. This may include ensuring the door is closed, and/or suggesting to the client to move to another room (if safe to do so).

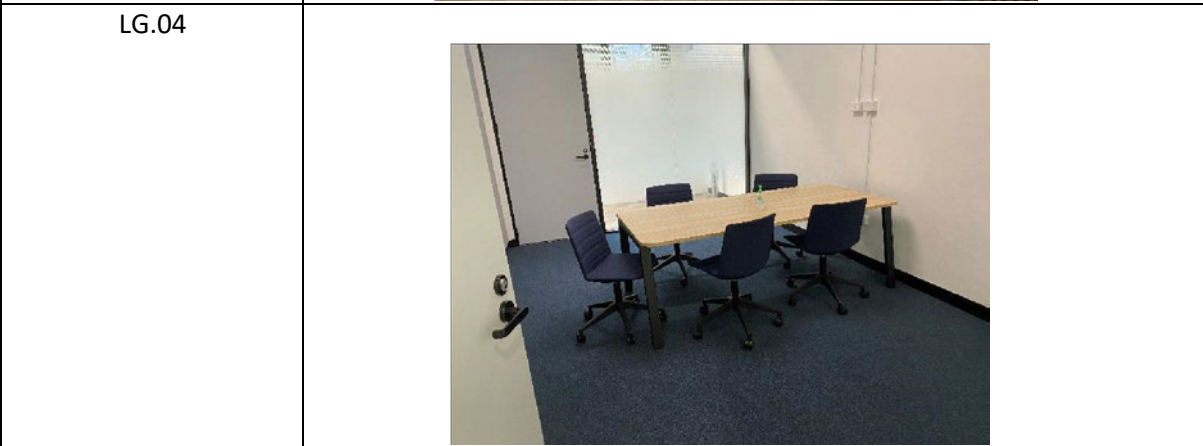
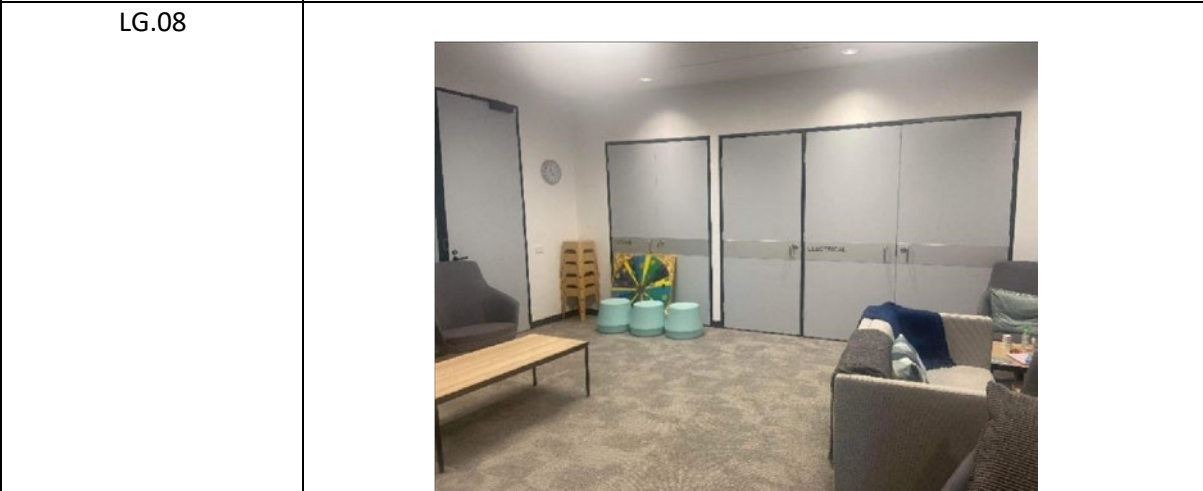
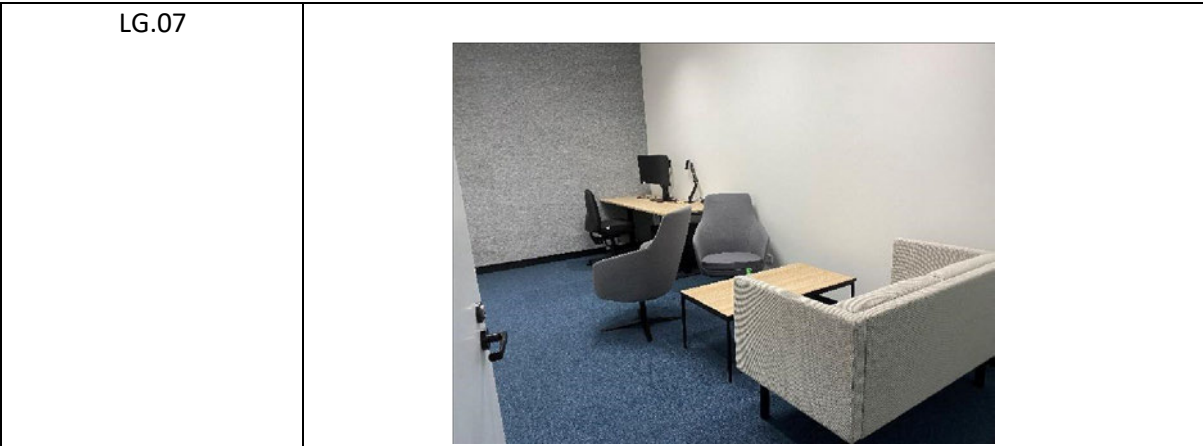
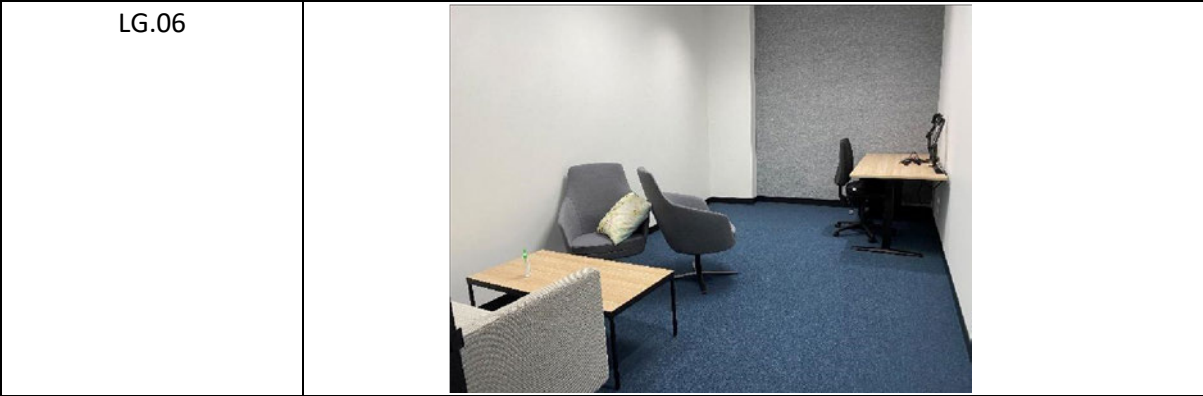
When planning a face-to-face meeting with a client, please consider:

- Making relevant logistical arrangements including booking an appropriate room. See below for images of the spaces available at 56 Allara Street Civic.
- Ensuring the client has necessary supports including an interpreter or support person as needed.
- Attending to a client's accessibility requirements.
- Advising other staff members in the CST morning meeting of the time and duration of the appointment.

Safety considerations

- Please make use of the distress alarms that are available through the HRC Corporate Team.
- Should a client become escalated or abusive towards VSACT staff, they can be asked to leave the premises. Staff members that have this authority include the Director of the HRC Corporate Team, the Director of VSACT and all Commissioners.
- Police or emergency services should only be contacted as a last resort.

Room	Photo
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<p>LG.03</p>	
<p>LG.05</p>	
<p>LG.01</p>	
<p>Kitchen Supplies (BYO Milk from level 5)</p>	

Appendix 2: Consent for children and young people to access therapeutic services

If a child or young person is under 16 years of age, parental consent should be obtained before they access therapeutic services.

- If they live with both parents, consent can be supplied by one parent.
- If they are in a shared care arrangement and no parenting orders are in place, consent must be obtained from both parents.
- If they are in a shared care arrangement and parenting orders are in place, consent should be obtained in line with the court orders.
- Sometimes it is not appropriate to seek consent from both parents and therapeutic services can be provided with only one parent's consent. These circumstances may include:
 - there is an order such as an FVO against a parent protecting the child.
 - there is documented risk to the child from this parent by a statutory authority.
 - a parent of the child is not contactable or unknown.
 - the child will be at risk if this consent is sought.

Consent for children and young people to access therapeutic services can be a complex field to navigate especially in the context of DFV and family court proceedings. Team leaders are always available for consultation and review of proposed consent arrangements.

Appendix 3: Victims' rights under the Charter of rights for victims of crime upheld by VS ACT

All VS ACT staff receive regular and ongoing training about the Charter and the victim rights that staff must uphold.

- *VS ACT must engage with victims of crime in a respectful manner and have regard to their personal situation, concerns, rights and dignity and their needs, including age, disability, gender identity, race, religion, sex, sexuality and parental, family, carer or kinship responsibilities. (s14C of the Act)*

Staff receive diversity training to support the needs of different community members, for example, Aboriginal and Torres Strait Islander Inclusion, Disability Inclusion, LGBTIQ+ Inclusion and Culturally and Linguistically Diverse Inclusion training. VS ACT has an Aboriginal and Torres Strait Islander Program to assist Aboriginal and Torres Strait Islander clients access services in a culturally appropriate way, a Multicultural Outreach Program to assist meet the needs of clients from diverse cultural backgrounds and a Disability Outreach Project to improve visibility and access to services for people who live with disability.

- *Where the primary victim is a child, Victim Support ACT must consider the child's views, wishes and circumstances before engaging with their parents or carers and engage with the child in a way that is appropriate for the child's age. (s14D of the Act)*

Training about the Charter and victim rights includes guidance about engaging with children and young people in a way that is consistent with the Charter. VS ACT staff also work closely with the Children and Young People Commissioner and her team where complex children and young people's matters arise.

- *VS ACT must not disclose their personal information about a victim or a family member of the victim unless the information is disclosed during a court or tribunal matter, under a law, and/or with the victim's consent. (s14F of the Act)*

VS ACT has strict privacy protocols in place with records stored in secure and password protected locations. Staff and volunteers are trained in client confidentiality and to maintain records in accordance with the Victims of Crime Regulation 2000, the Territory Records Act 2002 and the Health Records (Privacy & Access) Act 1997.

- *VS ACT must ensure victims of crime are provided with, or able to access, special requirements they are entitled under the Evidence (Miscellaneous Provisions) Act 1991, part 4.2 and any aids or adjustments reasonably necessary to enable the victim to fully participate in the administration of justice unless a court directs otherwise. (s15A of the Act)*

Staff work closely with the Court's administration team, the Office of the DPP Witness Assistance Service, Translating and Interpreting Service and the Intermediary Program to ensure that victims of crime have access to supports required to enable participation in the justice system. Staff receive training about victim rights to aids and adjustments and where appropriate receive support from the Multicultural Outreach Program and Disability Liaison Officer.

For further information [click here](#).

Appendix 4: Raising a complaint under the Charter of rights for victims of crime with respect of VS ACT

If a victim of crime believes that VS ACT has not upheld their victims' rights or if they are dissatisfied with VS ACT's services in relation to victims' rights, they may make a victims rights complaint directly to VS ACT.

Where a victim of crime or their representative makes a victim's right complaint to VS ACT, staff will:

- Acknowledge and seek to understand the complaint.
- Provide information about how the victim of crime can make a complaint to VS ACT and the actions that staff will take to try and resolve the complaint.
- Provide information about other options for making a complaint about VS ACT, such as raising a concern with the Victims of Crime Commissioner or making a complaint to the Disability and Community Service Commissioner or any other relevant body, for example the Ombudsman.
- Take all reasonable steps to resolve the complaint as soon as practicable.
- If the complaint cannot be resolved and the victim of crime consents, make referrals to another relevant complaints body.
- Record the complaint, including actions taken to resolve the complaint and any referrals made.

Appendix 5: Accessing ICMS

VS ACT role is criminal justice entity for the purpose of information exchanges under section 136 of the *Crimes (Sentencing Act 2005)* enabling VS ACT staff to access ACT Courts Integrated Court Management System. ICMS is the ACT Courts and Tribunal portal where information about charges, court dates, bail conditions and court outcomes can be found.

ICMS can be used by CST staff including Case Coordinators for a variety of reasons:

- As a source of information to check on questions of eligibility for the VSS.
- Provide information to the SAB to facilitate contact with at victim of crime.
- Assist in safety planning and provision of information about court outcomes to victims of crime.

VS ACT staff are only to make use of ICMS for a legitimate purpose related the delivery of services to clients.

Due to the way that personal details are recorded on ICMS, it is best practice to look up an offender by using their date of birth. On occasion, it can be difficult to locate the person without this due to records sometimes being listed with a middle name, hyphenated surname etc. It is important to note that some people may appear more than once in the list, and you may need to select each entity to find the record you are looking for.

Charges

By selecting *Accused Charges* this will show each of the charges that a person, under the selected entity, has been charged with. This will show current and historic charges in some instances.

By selecting the *Charge*, this will show you what the offence is and will list the charge in detail. In some circumstances the charge may be suppressed, this usually happens when there is a suppression order in place or when the accused/victim are under the age of 18.

Bail Conditions and remand status

By selecting *Bail(s)* this will show the accused's current bail status, whether they are remanded in custody or are subject to bail conditions.

It is important that you pay attention to the dates reflected in *Bail undertaking* and *Next Appearance* to ensure you are looking at the most accurate bail status and conditions. The charges associated to the bail conditions or remand status are also listed in this screen, which is helpful in situations where an accused person may have more than one matter currently before the court.

We are unable to share all bail conditions with clients, and they must be the listed victim of crime to be able to access information. Bail conditions that can be shared are only those that relate directly to the victim of crime. These may include no contact orders, to not be at the address of the victim etc. If you are unsure about what can be shared with the victim, it is best to contact the DPP WAS.

Court Outcomes

By selecting *Outcome* this will show the most recent court outcome, including whether any pleas were entered to the charges before the court. Like the *Bail conditions* tab, the charges associated to each appearance will be listed on this screen. This tab will also show the next in court date, what court list the matter will be listed in and the hearing type.

By selecting the *Hearing(s)* tab this will show a quick summary of what each future and past court appearance was listed for. More detail for each of these appearances can be found under the *Outcomes* tab.

Appendix 6: Information sharing legislation**CRIMES (SENTENCING) ACT 2005 - SECT 136**

Information exchanges between criminal justice entities

(1) This section applies to any information in relation to an offence (including an alleged offence) in a record of a [criminal justice entity](#), including information about—

- (a) a person charged with the offence; and
 - (b) a [victim](#) of the offence; and
 - (c) a person convicted or found guilty of the offence.
- (2) The [criminal justice entity](#) may give the information to another [criminal justice entity](#) for the purposes of the other entity.
- (3) This section is additional to any other Act that provides for information to be given by, or to, a [criminal justice entity](#).

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act , s 104).

(4) In this section:

"criminal justice entity" means any of the following:

- (a) the Supreme Court;
- (b) the Magistrates Court;
- (c) the director-general responsible for this Act;
- (d) the CYP director-general;
- (e) the sentence administration board;
- (f) director of public prosecutions;
- (g) the chief police officer;
- (h) the [victims](#) of crime commissioner;
- (i) any other entity prescribed by regulation. "victim", of an offence—see section 47.

CRIMES (SENTENCING) REGULATION 2006 - REG 3

Criminal justice entities—Act, s 136 (4) def criminal justice entity Each

of the following is a criminal justice entity:

- (a) the Aboriginal Legal Service (NSW/ACT) Limited (ACN 118 431 066);
- (b) the Canberra Mens Centre Incorporated [nb. now operating as 'Everyman]
- (c) the Canberra Rape Crisis Centre Inc
- (d) the Domestic Violence Crisis Service Inc
- (e) the Domestic Violence Project Coordinator appointed under the Domestic Violence Agencies Act 1986
- (f) the director-general responsible for administering the Disability Services Act 1991

[INFORMATION PRIVACY ACT 2014](#)

SECT 9 Meaning of public sector agency

INFORMATION PRIVACY ACT 2014 - SECT 9

Meaning of public sector agency

For this Act, a "public sector agency "means—

- (a) a Minister; or
- (b) an administrative unit; or
- (c) a statutory office-holder and the staff assisting the statutory office-holder; or
- (d) a territory authority; or
- (e) a territory instrumentality; or
- (f) ACTTAB Limited; or
- (g) an ACT court; or
- (h) an entity prescribed by regulation.

SECT 19 Meaning of permitted general situation in relation to the collection, use or disclosure of personal information

INFORMATION PRIVACY ACT 2014 - SECT 19

Meaning of permitted general situation in relation to the collection, use or disclosure of [personal information](#)—sch 1

(1) For schedule 1, a ***permitted general situation*** exists in relation to the collection, use or disclosure by a public sector agency of [personal information](#) about an individual if— (a) both of the following apply:

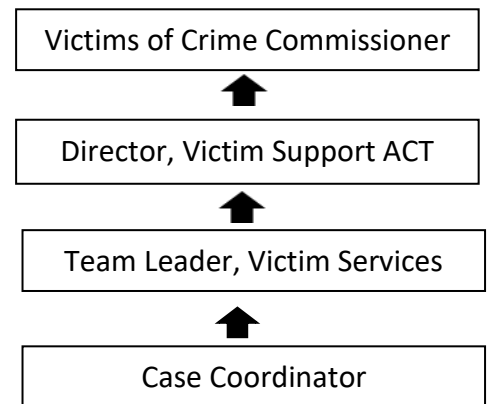
- (i) it is unreasonable or impracticable to obtain the individual's consent to the collection, use or disclosure;
- (ii) the agency reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of an individual, or to public health or safety; or ...



POSITION DESCRIPTION

Directorate	Justice and Community Safety
Business Unit/Agency	Human Rights Commission
Branch	Victim Support ACT
Position Number	46587 and 41867
Position Title	Case Coordinator
Classification	Administrative Support Officer Class 5 (ASO 5)
Location	Canberra, ACT
Last Reviewed	21 October 2021

Reporting Relationships



The Australian Capital Territory Public Service is a values based organisation where all employees are expected to embody the prescribed core values of respect, integrity, collaboration and innovation, as well demonstrate the related signature behaviours.

DIRECTORATE OVERVIEW

The Justice and Community Safety Directorate (the Directorate) seeks to maintain a safe, just and resilient community in the ACT.

This will be realised by working with the ACT government, key stakeholders and the community to:

- Strengthen community safety;
- Protect people's rights and interests;
- Care for and support vulnerable people;
- Enhance access to justice; and
- Build community resilience to emergency.

To achieve our vision for a safe, just and resilient community, the Directorate aims to be community-minded; human-rights focussed; inclusive and diverse; passionate about its work; and committed to making a positive difference.



The Directorate advises and supports the following ministerial portfolios:

- Chief Minister
- Attorney-General
- Minister for Gaming
- Minister for Consumer Affairs
- Minister for Police and Emergency Services
- Minister for Corrections
- Minister for Human Rights, and
- Special Minister of State.

BUSINESS UNIT/AGENCY OVERVIEW

The ACT Human Rights Commission is an independent agency established by the *Human Rights Commission Act 2005*. The Commission works to:

- Provide an independent, fair and accessible process for resolving individual complaints;
- Promote the human rights and welfare of all;
- Provide advocacy for children, young people and adults experiencing vulnerability; and
- Provide victim support, advocacy and assistance.

The Commission includes four statutory officer holders:

- President and Human Rights Commissioner
- The Children & Young People Commissioner and Public Advocate
- The Discrimination, Health, Disability & Community Services Commissioner
- Victims of Crime Commissioner

BRANCH OVERVIEW

The Victims of Crime Commissioner is the agency head for Victim Support ACT (VS ACT).

VS ACT supports the recovery of victims of crime in the ACT. We do this by delivering a holistic range of services, including:

- Information, referral, case coordination, counselling and other therapeutic supports as required by the individual.
- Advocacy and support to navigate the criminal justice system, and ensure victim rights are upheld under the Charter of Rights for Victims of Crime.
- Delivery of the victims of crime financial assistance scheme.
- A court support program.
- Specialist Aboriginal and Torres Strait islander, multicultural and disability outreach programs.

These services are delivered under the *Victims of Crime Act 1994*, the *Victims of Crime Regulation 2000* and the *Victims of Crime (Financial Assistance) Act 2016*.

The Victims of Crime Commissioner is also responsible for delivery of the independent 'Intermediary Program' which provides expert communication advice to police, lawyers and courts to minimise additional trauma for vulnerable witnesses and enable these individuals to give their best evidence.



POSITION OVERVIEW

Within the Victim Services Team, the Case Coordinator is responsible for working with clients to promote their recovery from crime-related harm and ensure their rights are upheld in any engagement with the justice system. This support and advocacy work includes initial contact with new clients and ongoing case coordination. VS ACT works with clients of all ages, backgrounds and identities, over half of whom seek support in the context of family, domestic and/or sexual violence.

WHAT YOU WILL DO

Under the general direction of the Team Leader, Victim Services, the Case Coordinator will:

1. Provide timely, accessible, individualised support and advocacy to victims of crime. This includes provision of information, support and advocacy in relation to:
 - a. assisting victims to recover from the impacts of the crime; and
 - b. protection of victim rights (as outlined in the Charter) when individuals engage with the justice system.
2. Determine client eligibility for different levels of service and coordinate the provision of professional services in accordance with the Regulation.
3. Participate in community engagement activities to promote understanding of victim rights and access to VS ACT services.
4. Maintain records in accordance with the Victims of Crime Regulation 2000, the *Territory Records Act 2002* and the *Health Records (Privacy & Access) Act 1997*.
5. Undertake other duties appropriate to this level of classification which contribute to the effective and efficient operation of VS ACT.

This position does not involve direct supervision of staff.

WHAT YOU REQUIRE

The following capabilities are required to perform the duties and responsibilities of this position.

Professional / Technical Skills and Knowledge

1. Experience, or the ability to work with victims of crime and/or vulnerable people from diverse communities who have experienced trauma.
2. Experience or the ability to identify client needs, respond to client safety concerns and advocate with justice and other agencies to uphold client rights and interests.
3. Experience, or the ability to provide support and advocacy to people who have experienced family, domestic and/or sexual violence.
4. The ability to contribute to ongoing review of work practices to aid continuous improvement of client service delivery.



Behavioural Capabilities

1. High level written and verbal communication skills, including the ability to rapidly produce accurate workplace documents and to engage confidently with clients and stakeholders.
2. The ability to work collegially and effectively as part of a high-paced, cooperative team, along with the ability to take initiative and work autonomously.
3. Sound organisational skills, including the ability to manage a complex workload of diverse client matters in a fast-paced environment.
4. The ability to work productively in an environment which frequently includes exposure to client stories associated with traumatic events such as homicide, sexual assault and family violence.
5. The ability to apply sound judgment and maintain confidentiality in sensitive matters.

Compliance Requirements/Qualifications

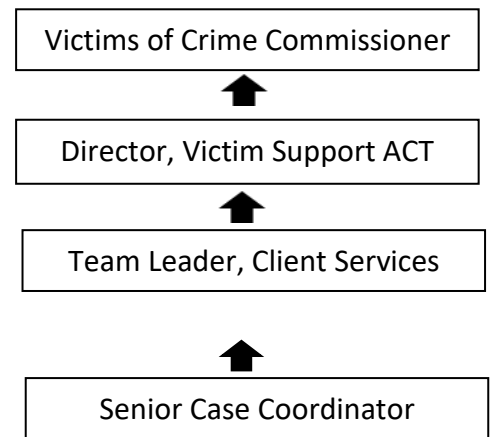
1. Qualifications in social work, psychology, human services delivery, law or related disciplines is highly desirable.
2. Security clearance checks will be conducted.
3. This position does not require a pre-employment medical.
4. This position does require a Working with Vulnerable People Check.



POSITION DESCRIPTION

Directorate	Justice and Community Safety
Business Unit/Agency	Human Rights Commission
Branch	Victim Support ACT
Position Number	29072 (several)
Position Title	Senior Case Coordinator
Classification	Administrative Services Officer Class 6 (ASO 6)
Location	Canberra, ACT
Last Reviewed	April 2021

Reporting Relationships



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This will be realised by working with the ACT government, key stakeholders and the community to:

- Strengthen community safety;
- Protect people's rights and interests;
- Care for and support vulnerable people;
- Enhance access to justice; and
- Build community resilience to emergency.

To achieve our vision for a safe, just and resilient community, the Directorate aims to be community-minded; human-rights focussed; inclusive and diverse; passionate about its work; and committed to making a positive difference.

The Directorate advises and supports the following ministerial portfolios:

- Chief Minister
- Attorney-General
- Minister for Gaming
- Minister for Consumer Affairs
- Minister for Police and Emergency Services
- Minister for Corrections
- Minister for Human Rights, and
- Special Minister of State.



BUSINESS UNIT/AGENCY OVERVIEW

The ACT Human Rights Commission is an independent agency established by the *Human Rights Commission Act 2005*.

The Commission works to:

- Provide an independent, fair and accessible process for resolving individual complaints;
- Promote service improvement;
- Promote the human rights and welfare of people;
- Foster understanding of particular legislation;
- Provide advocacy for children, young people and adults experiencing vulnerability; and
- Provide victim service & financial assistance.

The Commission includes four statutory officer holders:

- President and Human Rights Commissioner
- The Children & Young People Commissioner and Public Advocate
- The Discrimination, Health, Disability & Community Services Commissioner
- Victims of Crime Commissioner

BRANCH OVERVIEW

Victim Support ACT (VS ACT) supports the recovery of victims of crime in the ACT. We do this by delivering a holistic range of services, including:

1. information, referral, case coordination, counselling and other therapeutic supports as required by the individual.
2. advocacy and support to navigate the criminal justice system.
3. the victims of crime financial assistance scheme.
4. a court support program.

The Victims of Crime Commissioner, Ms Heidi Yates, is the agency head of VS ACT. VS ACT delivers services under the *Victims of Crime Act 1994*, *Victims of Crime Regulation 2000 (Regulation)* and the *Victims of Crime (Financial Assistance) Act 2016*.

POSITION OVERVIEW

The Senior Case Coordinator supports the Victims of Crime Commissioner's functions under the *Victims of Crime Act 1994* and *Victims of Crime Regulation 2000 (the Regulation)*.

The Senior Case Coordinator, within the Client Services Team, will be responsible for working with clients to promote their recovery from crime-related harm. This includes initial contact with new clients and ongoing case coordination in delivery of the Victim Services Scheme. Over half of the clients who receive support from VS ACT do so in the context of family violence or sexual assault.



WHAT YOU WILL DO

Under the general direction of the Team Leader, Client Services, the Senior Case Coordinator will:

1. Provide timely, accessible, individualised assistance to victims of crime. This includes provision of information, referrals, and advocacy in relation to their engagement with the justice system.
2. Determine eligibility in accordance with the Regulation, needs assessment, brokering of services from scheme providers and trauma-informed case coordination of clients with complex support needs.
3. Facilitate victim access to Victim Support's Court Assistance Program and the Victims of Crime Financial Assistance Scheme, where appropriate.
4. Provide support to the Client Services team leader, including supervision and management of less experienced Client Services team members.
5. Contribute to community engagement activities to raise community awareness about the rights of victims and available support.
6. Participate in the development, analysis, evaluation and planning of services as required.
7. Maintain records in accordance with the *Victims of Crime Regulation 2000*, the *Territory Records Act 2002* and the *Health Records (Privacy & Access) Act 1997*.
8. Undertake other duties appropriate to this level of classification which contribute to the effective and efficient operation of the Branch.

WHAT YOU REQUIRE

The following capabilities are required to perform the duties and responsibilities of this position.

Professional / Technical Skills and Knowledge

1. Experience or the ability to work with victims of crime and/or vulnerable people from diverse communities who have experienced trauma.
2. Experience or the ability to work in services supporting people who have experienced family and domestic violence or sexual assault.
3. Demonstrated experience in delivering and monitoring client services to vulnerable client groups.

Behavioural Capabilities

1. Ability to develop and maintain effective relationships with a wide range of internal and external stakeholders.
2. Demonstrated high-level verbal and written communication skills, including the ability to communicate sensitively with clients, colleagues and external agencies.
3. Demonstrate experience in contributing to a productive, cooperative team environment, and also, the ability to work autonomously.



Compliance Requirements/Qualifications

1. Qualifications in social work, human services delivery, or related disciplines is highly desirable.
2. A police check will be conducted
3. This position does not require a pre-employment medical
4. This position does require a Working with Vulnerable People Check.



WORK ENVIRONMENT DESCRIPTION

The following work environment description outlines the inherent requirements of the role of Senior Case Coordinator, (P29072) and indicates how frequently each of these requirements would be performed. Please note that ACTPS is committed to providing reasonable adjustment and ensuring all individuals have equal opportunities in the workplace.

ADMINISTRATIVE	FREQUENCY
Telephone use	Frequently
General computer use	Frequently
Extensive keying/data entry	Frequently
Graphical/analytical based	Never
Sitting / standing at a desk	Frequently
Standing for long periods	Never
Designated workstation	Frequently

STANDARD HOURS	FREQUENCY
Flexible working hours (access to flex time)	Frequently
Fixed or specified start/finish times	Frequently
Expected to work extensive hours over a significant period due to the nature of the duties	Never
Access to Accrued Days Off (ADO's)	Never
Peaks and troughs	Frequently
Frequent overtime	Never
Rostered shift work	Never

SOCIAL DEMANDS	FREQUENCY
Work with others towards shared goals in a team environment	Frequently
Work in isolation from other staff (remote supervision)	Never
Working in a call centre environment	Never
Working directly with the public	Frequently

PHYSICAL DEMANDS	FREQUENCY
Distance walking (large buildings or inter-building transit)	Never



Working outdoors	Never
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MANUAL HANDLING	FREQUENCY
Lifting 0 – 5kg	Never
Lifting 5 – 10kg	Never
Lifting 10kg+	Never
Climbing	Never
Reaching	Never
Bending/squatting	Never
Push/pull	Never
Sequential repetitive movements in a short amount of time	Never

TRAVEL	FREQUENCY
Frequent travel – multiple work sites	Never
Frequent travel – driving	Occasionally
Frequent travel – interstate	Never

SPECIFIC HAZARDS	FREQUENCY
Working at heights	Never
Exposure to extreme temperatures	Never
Operation of heavy machinery e.g. forklift	Never
Confined spaces	Never
Excessive noise	Never
Low lighting	Never
Handling of dangerous goods/equipment	Never
Working with asbestos	Never
Potential to encounter agitated customers	Occasionally
Exposure to potentially distressing case material	Frequently

OTHER	FREQUENCY
Uniform required	Never



Personal Protective Equipment (PPE) required	Never
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2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

EXPLANATORY STATEMENT

and

HUMAN RIGHTS COMPATIBILITY STATEMENT

(Human Rights Act 2004, s 37)

Presented by
Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety

VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

Outline

Outline.....	1
VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020	2
Overview and purpose of the Bill	2
Human Rights implications.....	5
Detail.....	24
Part 1 – Preliminary	24
Part 2 – Human Rights Commission Act 2005	24
Part 3 – Victims of Crime Act 1994	27

VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

Overview and purpose of the Bill

This Bill provides victims of crime with rights that seek to ensure victims are treated appropriately in the justice process and are provided with information and opportunities to participate wherever possible, recognising that they are central to the justice process.

This Bill:

- a) replaces the ‘governing principles for the treatment of victims of crime in the administration of justice’ in the *Victims of Crime Act 1994* (VOC Act) with the Charter of Rights for Victims of Crime (the Charter), and
- b) introduces an accountability framework in the VOC Act and the *Human Rights Commission Act 2005* (HRC Act), that will give victims access to processes for making justice agency complaints and raising victims rights concerns where a victim right in the Charter has not been upheld by an obligated agency.

Charter of Rights for Victims of Crime

Victim rights in the VOC Act provide detailed guidance to victims and agencies about victim entitlements.

Existing provisions and entitlements for victims can be inconsistently applied and at times challenging for victims to access. Many victims experience difficulty navigating the justice system due to a lack of information and not being included in criminal justice processes.¹ This can lead to re-traumatisation, putting pressure on the victim support and health systems,² and can deter people from reporting crimes and cooperating with prosecutions.³

The ACT Human Rights Commission (HRC) notes that “people who have been victims of crime have limited influence on the course of investigation, prosecution and sentencing of crimes committed against them. They do not usually have lawyers to protect their interests and guide the prosecution process – their primary role in the criminal justice system is as witnesses. There is now recognition that vulnerable victims can be re-victimised through the trial and court processes.”⁴

¹ Holder R., *The Quality of Justice: Operation of the Victims of Crime Act in the ACT*, 2008, p. 53; ACT Victims of Crime Coordinator, *Thanks for giving us a voice: The experience and views of victims of crime with their rights in the ACT justice system. A report of a survey for the review of the ACT victims of crime Act 1994*, August 2008.

² Ashworth (1998) in Wedlock, E., and Tapley, J., *What works in supporting victims of crime: A rapid evidence assessment*, 2016.

³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017; Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, p. xvii, 2016; Murphy and Barkworth (2014) in Wedlock, E., and Tapley, J., *What works in supporting victims of crime: A rapid evidence assessment*, 2016.

⁴ Victim and Witness Rights under the ACT Human Rights Act 2004: A Practical guide for the justice sector on the Human Rights Act (ACT) 2004, ACT Human Rights Commission, <https://hrc.act.gov.au/wp-content/uploads/2015/03/Web-Version-Victims-Guide-Final.pdf>, p. 5.

The purpose of the Charter is to establish legislated rights for victims of crime and obligations for justice agencies when dealing with victims, along with an accountability framework for ensuring those obligations are met. The Charter provides detailed, clear operational guidance to victims and agencies about victim engagement and obligations and introduces rights in the following areas:

- a) respectful engagement and protections related to safety and privacy,
- b) access to support, services and assistance,
- c) information about general administration of justice processes,
- d) information in relation to investigations, proceedings and decisions, and
- e) participation in proceedings.

Accountability framework

Linking rights to an accountability framework where a victim has a concern about a breached right, provides a robust victim rights framework.

Victim rights in the Charter (new part 3A of the VOC Act) are linked to an accessible and restorative process where a victim can raise a concern about a breached right and there is system of accountability when this occurs. The accountability framework for the Charter aims to meet two key outcomes:

- a) to provide an opportunity for victim concerns to be heard and acknowledged in a restorative framework, and
- b) to support changes to justice agency practice so that people are less likely to experience a breach of Charter rights in the future, and to monitor and evaluate how agencies are complying with victim rights and highlight where systemic issues are occurring.

The accountability framework for the Charter provides justice agencies with the ability to monitor their own compliance with the Charter; alongside a centralised system to support victims to resolve concerns in a supported and trauma-informed environment, and to provide systemic advocacy and monitoring through three key mechanisms:

1. Justice agency complaint resolution – A victim may choose to raise any issue directly with a justice agency who may address the complaint through internal complaints policies and processes (see new s18D and 18E). A justice agency must report on complaints raised that are recorded in writing because of their seriousness or where the victim has requested, in the agency’s annual report (see new s18I).
2. VOCC resolution of informal concerns - A victim may choose to raise a concern directly with the VOCC who can assist to resolve these concerns by asking a justice

agency to, with the victim's consent, provide any document that the justice agency can provide to the victim which is reasonably required to resolve the concern (see new s18F and 18G). The VOCC must report on concerns in the HRC annual report (see new s18J) and if the concern is unable to be resolved, the VOCC may refer the concern to a formal complaints entity and give the entity any information to assist in relation to the concern. This includes the ACT Human Rights Commission (HRC); the Ombudsman; the Integrity Commission; or any other entity authorised to investigate a complaint relating to the administration of justice.

3. Consideration of complaint by the ACT Human Rights Commission – A victim rights complaint may be raised with the ACT Human Rights Commission (HRC) and considered in line with how other service complaints are managed such as complaints about services for children and young people, or older people in the Human Rights Commission Act 2005 (HRC Act). This includes complaint investigation (Division 4.4, HRC Act), referral for conciliation (Division 4.3, HRC Act); and making reports and recommendations to an agency or the Minister, however it must not include adverse comments unless an agency has been given the opportunity to respond (Division 4.5, HRC Act). However, the impartiality of justice agency decision-making is protected in the proposed framework through the following provisions.
 - a) A justice agency not committing an offence if the agency does not comply with a requirement to participate in complaint consideration processes under the HRC Act.
 - b) The DPP need not comply with a provision of the HRC Act in relation to victim rights complaints if it considers this would prejudice the independence of the DPP or the prosecution of an offence. The DPP must report on each occasion it declines to participate in the agency's annual report (new s100B, HRC Act).

Development of the proposed approach

The ACT Government committed to a Charter of Rights for Victims of Crime (the Charter) in the Parliamentary Agreement for the ninth Legislative Assembly (PA 7.6). The Victims Advisory Board (VOC Act, s22B) provided advice to Government on the development of the Charter along with key stockholders. This Bill has been informed by extensive consultation with justice agencies, the Victims of Crime Commissioner (VOCC) and HRC, community members, including victims of crime and members of diverse groups, and legal sector professionals.

The Bill presents a balanced approach towards victim rights to ensure:

- a) victim rights meet the needs of victims of crime and do not raise expectations about entitlements,

- b) victim rights are specific, aligned with existing legislation and able to be implemented and upheld in practice by justice agencies,
- c) victim rights are balanced with the rights of the accused and offenders, and
- d) victim rights respect that at times, justice agencies are required to have discretion and independence in relation to victim engagement where this impacts on investigations and prosecutions.

Human Rights implications

This is a significant Bill which has been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004* (HR Act). During the Bill's development due regard was given to its compatibility with human rights as set out in the HR Act.

Human Rights Engaged

The Bill expands the HR Act to include victim rights, and many Charter rights support and promote human rights. The Bill promotes the following rights under the HR Act:

- Section 8 – Recognition and equality before the law
- Section 10 – Protection from torture and cruel, inhuman or degrading treatment
- Section 11 – Protection of family and children
- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement
- Section 16 – Freedom of expression
- Section 17 – Taking part in public life
- Section 18 – Right to liberty and security of person
- Section 21 – Right to a fair trial
- Section 27 – Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

The Bill may be seen to limit the following rights under the HR Act:

- Section 12 – Right to privacy and reputation
- Section 13 – Freedom of movement

- Section 21 – Right to a fair trial

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society, and that one individual's rights may need to be weighed against another individual's rights.

Section 28 (1) of the HR Act provides that human rights may be subject only to reasonable limits and section 28 (2) provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected,
- b) the importance of the purpose of the limitation,
- c) the nature and extent of the limitation,
- d) the relationship between the limitation and its purpose, and
- e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

An individual's rights and freedoms may, in some cases, be limited by this Bill on the basis that it is limiting the rights of an accused to uphold the rights of victims. Any restrictions or impositions applied to individual rights have been chosen on the basis that they are necessary and that they represent the least restrictive approach possible in order to achieve a safe justice system for both victims of crime and accused persons. A full assessment of the Bill against section 28 of the HR Act is provided below.

Human Rights Promoted

Recognition and equality before the law

Section 8 of the HR Act provides that everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination. The Bill promotes this right through:

- Providing victims of crime with rights in the Charter supports victims to participate, and where appropriate, alongside accused persons and offenders in the justice process.
- The Charter provides victims with the right to being engaged respectfully with, and with appropriate regard to their personal situation, needs, concerns, rights and dignity (clause 29, new s14C (1)).
- The Charter provides a specific obligation for justice agencies to take into account and be responsive to particular diverse victim needs in relation to age; disability; gender identity;

race; religion; sex; sexuality; and parental, family, carer or kinship responsibilities (clause 29, new s14C (2)).

Protection from torture and cruel, inhuman or degrading treatment

Section 10 of the HR Act provides that no one may be treated in an inhuman or degrading way. The Bill promotes this right through:

- The Charter encourages respectful engagement with victims of crime, and recognises and establishes appropriate ways for justice agencies to interact with victims in order to minimise adverse outcomes and prevent trauma for victims (clause 23, new section 3AA(e)).
- The Charter encourages the provision of information, case updates and opportunities to participate and seek safety for victims in the justice system, engaging with victims as central to the justice process.

Protection of family and children

Section 11 (2) of the HR Act provides that ‘every child has the right to the protection needed by the child because of being a child, without distinction or discrimination or any kind’. Minors are entitled to special protection in recognition of their vulnerability because of their status as a child. This is not limited to the treatment within the family but extends to treatment by others and public authorities.⁵ The Bill promotes this right through:

- The definition of victim in the VOC Act (s6) that applies to the Charter recognises that a person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim, is considered to be a victim.
- The definition of victim in the VOC Act (s6) that applies to the Charter provides that if a person mentioned for this definition is a child, then a guardian of the child is considered to be a victim in regards to accessing rights.
- The Charter includes a right to respectful engagement with child victims whereby as far as practicable, justice agencies are obligated to consider the child’s views, wishes and circumstances before engaging the child’s parent or carer as the victim in relation to victims rights; and engage the child in a way that is appropriate for a person of the child’s age who is not a victim (clause 29, new s14D).

Right to privacy and reputation

Section 12 of the HR Act provides that everyone has the right to not have his or her privacy interfered with unlawfully or arbitrarily. The Bill promotes this right through:

⁵ Department of Justice and Community Safety, *Guidelines for ACT Departments: Developing Legislation and Policy*, February 2010, p 27.

- The Objects of the VOC Act recognising that one of the key aims of the legislation is to contribute to upholding the safety, privacy and dignity of people adversely affected by crime (clause 23, new s3AA(b)).
- The Charter includes a right reflecting that a justice agency must not disclose personal information about a victim or a family member of the victim, unless the information is disclosed in a proceeding before a court or tribunal; under a territory law; or with the victim's consent (clause 29, new s14F).
- The accountability framework for the Charter includes the ability for the VOCC to ask for documents that would be available to a victim to assist in resolving a concern, and seeks the victim's consent before the VOCC refers an unresolved concern to a formal complaints body (clause 29, new s18G).

Freedom of movement

Section 13 of the HR Act provides that everyone has the right to move freely within the ACT, meaning that a person cannot be arbitrarily forced to remain in, or move to or from, a particular location. The Bill promotes this right through:

- Charter rights providing victims with information, where appropriate in the circumstances, about offender whereabouts (after sentencing) to assist in victims to move freely with a sense of safety (clause 29, new s16G-M).
- Charter rights including a right that victims have assistance to minimise exposure to and prevent contact with accused and defence when in a court or tribunal building for a proceeding for the offence (clause 29, new s14I).

Freedom of expression

Section 16 of the HR Act provides that everyone has the freedom to seek, receive and impart information and ideas of all kinds. The Bill promotes this right through:

- The Charter providing an obligation on justice agencies to seek victim views on certain actions and decisions in the course of a justice process, including in regards to certain prosecution actions (clause 29, new s16B, 16G, 17, 17B).
- The Charter reflecting existing legislative entitlements and provides an accountability framework for victims to participate, where eligible, to provide submissions in relation to bail decisions, inquiries on release on parole or licence proceedings, Victim Impact Statements, restorative justice processes, and statements to the ACT Civil and Administrative Tribunal (ACAT) on relevant mental health orders (clause 29, new s15B, 15F, 16 G, 17, 17A, 17D-G).

- The accountability framework for the Charter providing that victims can raise a concern or complaint and participate in resolution of these in relation to a breached Charter right (clause 5, new s41C in the HRC Act; clause 29, new s18D and 18F in the VOC Act).

Taking part in public life

Section 17 of the HR Act provides that every citizen has the right to take part in the conduct of public affairs, directly or through freely chosen representatives. The Bill promotes this right through:

- One of the Objects of the Act acknowledging the central role of victims in the criminal justice process (clause 23, new s3AA(a)).
- The Charter including victim rights to participate in justice processes and places an accountability mechanism on this to ensure that victims have access to entitlements and a complaints process where a breach occurs (clause 5, new s41C in the HRC Act; clause 29, new divisions 3A.6 and 3A.7 in the VOC Act).

Right to liberty and security of person

Section 18(1) of the HR Act provides that everyone has the right to liberty and security of person. The Bill promotes this right through:

- A key object of the VOC Act is to contribute to upholding the safety of people adversely affected by crime (clause 23, new s3AA(b)).
- A Charter right that seeks to minimise a victim's exposure to and contact with the accused and defence (clause 29, new s14I).
- A Charter right that minimises registered victims' exposure to and contact with the offender by providing an obligation for justice agencies to give registered victims information about how to do this (clause 29, new s14J).
- Ensuring that Charter rights do not have unintended consequences on the safety of victims, such as police not giving written confirmation to a victim of reporting an offence if this is likely to affect the safety of the victim or another person, for example in instances of family violence (clause 29, new s16 (2)).
- The Charter right that provides that justice agencies tell the victims about bail decisions if the victim has expressed a concern about the need for protection from violence or harassment by an accused person for the offence (clause 29, new s16C).
- The Charter right that provides that justice agencies tell registered victims of the intended transfer or release from imprisonment or detention or escapes from custody where a registered victim of an offender has expressed concern about their safety or the need for protection from the offender to a relevant justice agency (clause 29, new s16J).

- The Charter right that provides that justice agencies tell victims about breach of or changes to Intensive Corrections Orders (ICOs) if it is likely to affect the victim's safety or the victim has expressed concern about their safety or the need for protection from the offender to the adult offenders victims register unit (clause 29, new s16K).
- The Charter rights that provides that that a victim who is an affected person is told information in relation to a forensic patient that is necessary to the victim's safety and wellbeing (clause 29, new s16N).

Right to a fair trial

Section 21 of the HR Act provides that everyone is entitled to rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This Bill promotes this right through:

- The Objects of the VOC Act that acknowledge the central role of victims in the criminal justice process; acknowledge, promote and uphold the rights and interests of victims in the administration of justice; and recognise and establish appropriate ways for agencies involved in the administration of justice to interact with victims (clause 23, new s3AA).

Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities

Section 27 of the HR Act provides that anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language. It also provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights. This Bill promotes this right through:

- Specifying that a justice agency must take into account and be responsive to the particular needs of a victim, particularly needs relating to race (clause 29, new s14C(2)(d)).
- Specifying that a justice agency must, unless the court directs otherwise, ensure a victim of an offence is provided with, or is able to access, any aid or adjustment for which the victim is eligible that is necessary to enable the victim to fully participate in the administration of justice for the offence. This includes examples such as assistance animals, an intermediary or support person or an interpreter or translator (clause 29, new s15A).

Human Rights Limited

Amendments in the Bill engage with and may be seen to limit the rights of accused persons and offenders in regards to privacy and reputation; freedom of movement; and fair trial.

These rights may be impacted in certain circumstances to uphold victim safety and participation in justice processes for the relevant offence.

The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985) (the UN Declaration) sets out non-binding principles for the treatment of victims. The UN Declaration notes that these must be implemented without prejudice to the rights of suspects and offenders.⁶ The *European Union's Minimum Standards on the Rights, Support and Protection of Victims of Crime* (2012) (EU Minimum Standards) recognise that these rights are without prejudice to the rights of the offender.⁷ The Victorian Law Reform Commission (VLRC) also notes that the rights in the Victorian Charter of Human Rights and Responsibilities “are not absolute and must be balanced against each other and against other public and private interests”.⁸

Privacy and reputation

The nature of the right affected

Section 12 of the HR Act states that everyone has the right to not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and not to have his or her reputation unlawfully attacked.

The right to privacy may be impacted for accused persons and offenders in the Bill in relation to Charter rights that interact with the Youth and Adult Victims Registers, and the Affected Persons Register, which provide information to Registered Victims of the offence about offenders, where appropriate in the circumstances (clause 29, new s14J, 16G-K, 16N). Additionally, victims may be told about orders relating to offenders’ mental health by the DPP and the ACAT (clause 29, new s16L-M). Additional Charter rights which may impact on the privacy of accused persons and offenders are those that provide case updates and participation rights to victims during the investigation and prosecution process (clause 29, new s16A, 16C-D, 17, 17C).

While the majority of Charter rights are based on existing legislative provisions that provide victims with information about offenders where relevant, there are a minority of new Charter

⁶ United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (adopted by General Assembly resolution 40/34 of 29 November 1985), Preamble, [1] and [2].

⁷ European Parliament, *Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime*, Directive 2012/29/EU, 25 October 2012, Preamble [12].

⁸ VLRC, *The Role of Victims of Crime in the Criminal Trial Process: Report*, August 2016, Recommendation 2 at p. 35 (3.90).

rights that reflect new areas of practice which ask justice agencies to give additional information to victims about offenders.

More detail about how these Charter rights engage accused and offender's right to privacy, and how the Charter rights are appropriately limited to ensure the impact on accused rights are limited, is described in Table 1.

In addition, certain provisions in the Bill provide for agencies to share or receive personal information about victims of crime, which engages the right to privacy. For example the Bill includes:

- A requirement for the DPP to provide information in their annual report for each occasion on which the Director does not comply with a provision of the HRC Act in relation to participation in the accountability framework (clause 20, new s100B).
- A complaint that a victim makes to justice agency about a breach of a right may be recorded in writing (clause 29, new s18D) and justice agencies are required to include information about complaints received in their annual report (clause 29, new s18I). A victim is also required to give an agency information to assist in addressing the complaint as reasonably required (clause 29, new s18E (2)).
- The VOCC is required to report on concerns raised with them in their annual report also (clause 29, new s18J) and receive information from justice agencies in relation to that complaint (clause 29, new s18G (1)(b)) and if a complaint is passed on to another entity, provide information in relation that complaint (clause 29, new s18G (3)(b)).
- A victim may nominate a person to be the victim's representative to exercise some or all victim rights to receive some or all information required to be given to the victim in relation to victim rights (clause 29, new s18B). This may impact on an accused persons or victims' safety, privacy and reputation where another person receives that information in relation to the victim's case.

More detail about how these requirements for information-sharing are appropriately limited to ensure the impact on victim rights is limited is set out in Table 2.

The importance of the purpose of the limitation

The purpose of this limitation is to provide victims with information relevant to their personal safety and participation in the justice process. Information-sharing about accused persons and offenders, and the case, is key to assist victims to participate in justice processes and to assist victims of crime to make decisions about their personal safety. Ultimately this leads to better prosecution outcomes, improved rates of reporting crime, reduced re-traumatisation as people navigate the justice process, and improved individual and community safety.

Personal safety is a human right under the HR Act, as expressed through the right to life (s9); right to security of person (s18); protection from torture and cruel, inhuman or degrading

treatment (s10); and the right to privacy (s12). Victims of crime are also able to access these human rights alongside the rights of the accused. These are upheld and considered together - they are not mutually exclusive. The *Royal Commission into Institutional Responses to Child Sexual Abuse* noted that victims are central to the justice process and that those who are charged with criminal offences are expected to be brought to trial fairly, impartially and in the public interest; and criminal justice responses must be in the interests of society, including victims.⁹

Internationally and across Australian jurisdictions, community expectations are moving towards an understanding of increased victim participation in justice processes. This is evident in victim rights schemes across Australian states and territories, and with the introduction of reforms in the ACT including the Witness Intermediary Scheme and expansion of the ACT Restorative Justice Unit to sexual and family violence offences.

Information sharing about complaints that victims of crime may raise in relation to a Charter right being breached is also necessary to maintain the accountability framework for the Charter.

The relationship between the limitation and its purpose

Victim rights in the Charter ensure that the relationship between the limitation of the rights of the accused/offender and the purpose, to ensure greater safety and participation for victims, is well-balanced and clear. It does this through:

- a) Providing discretion for justice agencies – Charter rights provide that agencies have discretion in order to consider and weigh-up the privacy of offenders in relation to the safety of victims and the impact of victim participation on the outcomes of the justice process. For example, in several rights, justice agencies may only disclose information if it is believed to be appropriate in the individual circumstances of the case (for example, see clause 29, s16I). A justice agency exercising a function in relation to victims rights need not contact a victim if it is not possible or practicable in the circumstances (clause 29, s14E).
- a) Linking victim rights to existing legislative entitlements – The majority of rights are linked to existing legislative victim entitlements, whereby checks and balances are already in place to ensure that justice agencies are able to appropriately weigh-up the impacts of the provision on both the rights of the victim and accused or offender.
- b) Linking rights to victim safety – Several rights specifically state that information about a case or an accused or offender is only relevant to share with a victim where this information may impact on the victim’s safety or where the victim has expressed

⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017, Recommendation 1a-c.

concern about their safety or the need for protection to the justice agency (clause 29, new s14I, 16C, 16J-K, 16N).

These safeguards have ensured that victim rights schemes have been operating in other Australian jurisdictions without concern about an unfair impact on the rights of the accused. These provision ensure that engagement with an accused person/offender’s right to privacy is not unlawful or arbitrary, and that information is only provided to the victim about an offender if it is relevant to their safety or participation in the justice process, on balance when considering the impact of providing this information on the offender.

A justice agency may weigh-up whether sharing information with a victim may impact on the rights of the accused or offender by considering various factors, including:

- the age of the offender and victim,
- any vulnerabilities of the offender or victim,
- whether or not the victim and offender were known to each other prior to the crime occurring,
- the seriousness of the crime that has occurred, for example whether it was a personal violence offence,
- the geographical location of where the victim and offender live, work or study, or
- if there is a risk of retributive violence to the offender.¹⁰

Table 1: Charter rights impacting on accused or offender’s right to privacy and reputation and the relationship between the limitation and its purpose

Victim right	Limitation in relation to accused or offender rights
Charter rights based on existing legislative provisions that provide victims with information about offenders from the Adult, Youth and Affected Persons Registers	
Justice agencies to tell victims information about inquiries for parole or release on licence, how the victim may make a submission, and provide information to assist the victim to make the submission (clause 29, new s16G).	This right is linked to entitlements in the <i>Crimes (Sentence Administration) Act 2005</i> (CSA Act), which sets out the types of limited information that may be provided to a victim (s124 and s296) and that this information may only be disclosed to a registered victim of an offender if the disclosure is appropriate in the circumstances (s216 and s216A).
Justice agencies to tell victims information about parole or release on licence decisions including the parole release date and, in general terms, parole obligations, and the	This right is linked to entitlements in the CSA Act which sets out the types of limited information that may be provided to a victim in relation to parole orders

¹⁰ *Venables v New Group Newspapers Ltd* [2001] 2 WLR 1038.

Victim right	Limitation in relation to accused or offender rights
general area where the offender will live while on parole or release (clause 29, new s16H).	for offenders (s133) and licences granted for release of offenders from imprisonment (s298).
Justice agencies to tell victims information about the offender in limited circumstances if the victim asks for the information and the agency is satisfied the disclosure is appropriate in the circumstances (clause 29, new s16I).	This right is linked to entitlements in the CSA Act which sets out that if an offender has been sentenced, information about het offender may be disclosed to a registered victim of the offender if the disclosure is appropriate in the circumstances (s216 and s216A).
Justice agencies to tell victims information about the intended transfer, release or escape from custody of an offender, and any condition of the release that may affect the victim's safety (clause 29, new s16J).	<p>This right provides that a registered victim of the offender has expressed a concern about their safety or the need for protection from the offender to a relevant justice agency.</p> <p>This right is linked to entitlements in the CSA Act which sets out that if an offender has been sentenced, information about het offender may be disclosed to a registered victim of the offender if the disclosure is appropriate in the circumstances (s216).</p>
Justice agencies to tell victims who are on the Affected Person Register information in relation to a forensic patient, such as the information in a Mental Health Order, any other information necessary for the victim's safety and wellbeing, and if the ACAT intends to hold a hearing in relation to the order (clause 29, new s16N).	This right is linked to entitlements available in the Affected Persons Register in the <i>Mental Health Act 2015</i> , s130.
Charter rights creating new areas of practice for information provision to victims	
Justice agencies to tell victims information about breach of, or change to, intensive corrections orders (clause 29, new s16K).	<p>This right provides that this information only be provided where the information is likely to affect the victim's safety or the victim has expressed concern about their safety or the need for protection to a relevant justice agency.</p> <p>While this right is not mirrored in the CSA Act, breaches of or changes to ICOs can lead to changes in where an offender is located or whether they are in custody or the community. This information does not always, but can, impact on a victim's safety, and it is in these circumstances only that an agency may consider providing this information to a victim.</p>

Victim right	Limitation in relation to accused or offender rights
<p>Justice agencies to tell victims about information about:</p> <ul style="list-style-type: none"> - the requirement for an offender to submit to the jurisdiction of ACAT under the <i>Crimes Act 1900</i>, - an order that an offender be taken to an approved mental health facility without requiring that the person submit to the jurisdiction of ACAT, - a mental health order that has been made and the nature and length of the order in relation to either of the above circumstances (clause 29, new s16L). 	<p>This right applies to victims of indictable offences only, recognising that in cases of more serious crime, victims may wish to know this information. Other victims can ask for this information on request.</p> <p>While this is a new victim entitlement, information is only provided to a victim where it is clearly relevant to the offence by which the victim was impacted.</p> <p>Victims of crime currently rarely receive information about offenders who enter in the justice mental health stream. This right is intended to address this while balancing the right to privacy for an offender.</p>
<p>Justice agencies to tell victims about information about an order related to an offender's mental health that is being considered, and the nature and length of the order if it is made (clause 29, new s16M).</p> <p>These include forensic mental health orders, orders made under the <i>Mental Health Act 2015</i>, section 180 to release the offender from custody; and if an offender arrives at ACAT through a justice pathway.</p>	<p>While this is a new victim entitlement, information is only provided to a victim where it is clearly relevant to the offence by which the victim was impacted. This information is intended to help victims make decisions about their safety based on their knowledge about an order.</p> <p>Victims of crime currently rarely receive information about offenders who enter in the justice mental health stream. This right is intended to address this while balancing the right to privacy for an offender.</p>
Charter rights providing case updates to victims	
<p>Justice agencies to update victims about the status of investigations (clause 29, new s16A).</p>	<p>While these case updates may provide victims with information about a case that includes information impacting on or about the accused, both victims and offenders are participants of a justice case and have a right to this information.</p> <p>Justice agencies have discretion in the types of information provided through updates, and relevant policies and legislation will ensure only appropriate information about the case is shared. The purpose is to provide victims with an understanding of the case in general, not detailed information about accused persons.</p>
<p>Justice agencies to seek and consider victim views about certain prosecution actions (clause 29, new s16B).</p>	

Victim right	Limitation in relation to accused or offender rights
	This right is limited to victims of indictable offences, and other victims may ask for this information on request.
Justice agencies to provide victims with updates about bail decisions (clause 29, new s16C).	This right applies where a victim of an offence victim has expressed concern about the need for protection from violence or harassment by an accused person for the offence to the justice agency. This right is linked to an existing entitlement in the <i>Bail Act 1992</i> which outlines that victims should be given notice of bail decisions if they have expressed safety concerns (s47A).
Justice agencies to give victims information about the date, time and place of a hearing (clause 29, new s16D).	This information is usually public, and where other legislation does not permit sharing this information, for instance in relation to youth offenders, the right would not required to be upheld. Justice agencies are not required to provide this information if it would be thought to be not possible or practicable in the circumstances (as per clause 29, new s14E).
Justice agencies to give victims information about the outcomes of trials and appeals (clause 29, new s16F).	
Charter rights providing participation rights to victims	
A victim may be present in a courtroom for proceedings (clause 29, new s17C).	This right states that a victim of an offence may be present in the courtroom during a proceeding for the offence, unless the court directs otherwise. This recognises that there are matters where the proceedings may not be public.

Table 2: Requirements regarding information-sharing impacting on victims and the relationship between the limitation and its purpose

Requirements regarding information-sharing impacting on victims	Limitation in relation to victim rights
A requirement for the DPP to provide information in their annual report for each occasion on which the Director does not comply with a provision of the HRC Act (clause 20, new s100B).	The information that is authorised to be provided is details about the provision in the HRC Act provision with which the Director has not complied and the reason for not complying, for instance broadly speaking that it relates to the prosecution of an offence or the independence of the DPP. Information about the complaint or matter itself is not required to be reported on.
A complaint that a victim makes to justice agency about a breach of a right may be	Clause 29, new s18I sets out that the information that should be provided in a justice agency's

Requirements regarding information-sharing impacting on victims	Limitation in relation to victim rights
<p>recorded in writing (clause 29, new s18D) and justice agencies are required to include information about complaints received in their annual report (clause 29, new s18I). A victim is also required to give an agency information to assist in addressing the complaint as reasonably required (clause 29, new s18E (2)).</p>	<p>annual report in relation to victim rights complaints includes a statement of how many written complaints were received, the right to which each relates and whether the agency resolved the complaint (new s18I (1)). New s18I (2) specifies that the justice agency must not include any information that would identify a complainant or victim of an offence.</p>
<p>The VOCC is required to report on concerns raised with them in their annual report also (clause 29, new s18J) and receive information from justice agencies in relation to that complaint(18G(b)) and if a complaint is passed on to another entity, provide information in relation that complaint (18G(3)(b)).</p>	<p>Clause 29, new s18J sets out that the information the VOCC should include their annual report on concerns received should include how many were raised, the right in relation to which the concern was raised, whether the VOCC resolved the concern, and, if the VOCC referred the concern to another entity, the entity to which is was referred (new s18J (1)). It should not include any information that would identify a complainant or victim of an offence (new s18J (2)).</p> <p>While a justice agency must give information to the VOCC on request that is reasonably required to assist in resolving a concern (new s18G), a justice agency must not give the VOCC a document if the victim does not consent or the DPP considers it would prejudice the prosecution of an offence (new s18G (2)).</p> <p>If the VOCC is unable to resolve a victims rights concern they may refer the concern to another relevant complaints entity and give the entity any information the VOCC has in relation to the concern, but only with the victim's consent (new s18G (3)).</p>
<p>A victim may also nominate a person to be the victim's representative to exercise some or all victim rights, to receive some or all information required to be given to the victim in relation to victim rights (clause 29, new s18B). This may impact on an accused person's safety, privacy</p>	<p>A victim must nominate a person to be their representative in writing, ensuring that there is appropriate consent given for information either in relation to all or some victim rights to be given to that person (clause 29, new s18B (1)(b)). A victim's representative must also agree to this nomination (new s18B (3)).</p>

Requirements regarding information-sharing impacting on victims	Limitation in relation to victim rights
and reputation where another person receives that information in relation to the victim’s case.	

Less restrictive means reasonably available to achieve this purpose

The Charter expresses victim rights as legislative obligations, rather than a non-legislated policy, in order to bridge the gap between legal entitlements for victims and victim engagement practice, and introduce victim entitlements with an attached accountability framework.

As described above, safeguards are built into each Charter right to ensure that justice agencies have the appropriate discretion to weigh-up each right, and in what circumstances sharing information with a victim is appropriate and does not impinge on the privacy of the offender to the determinant of them. Each right is also carefully targeted whereby:

- a) Definition of victim of crime – Victims of crime are appropriately defined in alignment with the current definition, which includes the primary victim, a family member or dependent who has suffered harm as a result of the harm to the primary victim, and a homicide witness (s6, VOC Act).
- b) Victims of indictable offences – Justice agencies are obligated to uphold a minority of rights for victims of indictable offences only, and other victims on request, to recognise that those victims who are mostly likely to want information about an accused person and a case have been impacted by more serious crimes.
- c) Definition of Registered Victim – Information that is available to victims through the Victims Registers is governed by an existing body of legislation and practice that protects the privacy and rights of offenders.
- d) Linking the right and provision of information clearly to the relevant offence – Each Charter right is clearly linked to the offence which the victim experienced, to provide boundaries and frameworks within which information should be shared.

Justice agencies are vested with the power of the state to make decisions in the public interest. For example, each justice agency making decisions about the appropriateness of disclosures is likely to ensure that decisions are not “capricious”, “unjust” or “unreasonable”.¹¹ Decisions can be expected to be made in an environment that is free from bias, and while the outcome of each decision may not necessarily be predictable as each decision is made in relation to the particularities of an individual case, it can be predicted that

¹¹ Interference with a person’s right to privacy is arbitrary when it is “capricious, unpredictable or unjust or [is] unreasonable in the sense of not being proportionate to a legitimate aim sought” (*PJB v Melbourne Health* (Patrick’s case) [2011] VSC 327).

reasonable decisions will be made. Section 40B of the HR Act also provides protection in that it obligates public authorities to act consistently with human rights.

The Bill outlines that the Charter will be reviewed after the end of the third year of its operation to ensure that any implementation issues are considered and addressed after a period of operation.

Freedom of movement

Nature of the right affected

Section 13 of the HR Act outlines that everyone has the right to move freely with in the ACT.

Two Charter rights may impact on this by permitting a court to prohibit or attempt to stop an accused or offender from going within a certain distance of a specified place or contacting or going near a victim:

- a) Clause 29, new s14I: Where a victim is in a court or tribunal building for a proceeding for the offence, and the victim has expressed concern to a relevant justice agency about a need for protection from violence or harassment by an accused person for the offence, the relevant justice agency must minimise the victim's exposure to the accused, defence and a family member of supporting person of the accused, and ensure they are prevented from contacting or intimidating the victim.
- b) Clause 29, new s14J: Justice agencies to tell registered victims about how to minimise exposure to and prevent contact from the offender after the offender is sentenced.

The importance of the purpose of the limitation

The individual safety of community members is paramount where a crime has been committed. The purpose of the limitation is to protect the victim of crime from contact with the accused or offender where they choose this because of not feeling safety or another reason, within reason.

The relationship between the limitation and its purpose

Each right is limited in a reasonable and proportionate manner due to the following:

- a) Clause 29, new s14I: This right is linked to the provisions available to victims under the *Evidence (Miscellaneous Provisions) Act 1991*, which states that evidence may be taken or submissions received by audio-visual link or audio link in certain circumstances (s32). It also clearly defines contact as any form of physical contact or face-to-face oral communication, not communication via telephone or text.
- b) Clause 29, new s14J: This right is linked to existing legislative practice such as applying for a personal protection order under the *Personal Violence Act 2016*, asking that the offender be directed to stop calling or sending mail to the victim under the

Corrections Management Act 2007, or asking that a youth offender be directed to not contact the victim by phone or mail under the *Children and Young People Act 2008*. This right obligates agencies to tell victims about these available measures to address contact with the offender after sentencing or being transferred from imprisonment or detention, it does not obligate an agency to ensure that contact is prohibited, recognising that other rules exist around this.

Less restrictive means available to achieve this purpose

These Charter rights are appropriately framed to achieve the purpose of victim safety, within existing legislative frameworks.

Fair trial

Nature of the right affected

Section 21 of the HR Act states that everyone has the right to have criminal charges, and rights and obligations, recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Several victim rights in the Charter reflect existing legislative entitlements that victims have in proceedings, such as to present concerns in bail submissions (clause 29, new s17), make victim impact statements (clause 29, new s17A), be in a courtroom for a proceeding (clause 29, new s17C) and make a statement to ACAT in relation to mental health orders with appropriate leave as required (clause 29, new s17E).

The limitation of the right to a fair trial, if any, resulting from this Bill is highly likely to be reasonable and proportionate.

The importance of the purpose of the limitation

Providing victims with rights in the Charter highlights the importance of victims in the criminal trial process and uplifts their position in the process. The HRC states that: “The omission of victim rights in the [HR Act] means that the Act fails to explicitly recognise the rights that should, at a minimum, attach to a victim’s role as a witness in criminal proceedings. The criminal justice system cannot function without victims. The absence of explicit recognition of victim’s rights in the HR Act also fails to recognise their legitimate interests, as a ‘private’ victim and ‘public citizen’, in the outcome of criminal justice processes.”¹²

The UN Declaration indicates that there is agreement about basic rights for victims. Victims have certain interests which are well recognised by international human rights law, and

¹² ACT Human Rights Commission, Submission to consultations on the Charter of Rights for Victims of Crime, August 2018, https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.act-yoursay.files/7815/4457/2827/Charter_of_Rights_for_Victims_Submission_ACT_Human_Rights_Commission.pdf, p. 7.

certain measures to protect those interests have been accepted as reasonable limitations on the rights of an accused.

The relationship between the limitation and its purpose

Victim and accused rights will be upheld and considered together, they are not mutually exclusive. The interests of victims will be considered as a reasonable limit on the rights of the accused, without detracting from fair trial rights of an accused person or convicted offender.

The right to a fair trial has been found to include a “triangulation of interests” which include those of the accused, the victim and their family, and the public.¹³ As utilised in the HRC’s reference on victims in the HR Act¹⁴, in 2008, former Attorney-General Simon Corbell stated that “while the right to a fair trial is a central pillar of the criminal justice system, for too long now maintaining the balance of fairness in the prosecution of sexual assault has been heavily weighted against the complainant”.¹⁵

The European Court of Human Rights also observed that “principles of fair trial require that the interests of the defence are balanced against those of witnesses and victims called upon to testify, in particular where life, liberty or security of person is at stake”.¹⁶ The European Court of Human Rights notes that “a witness may have interests which can limit the right of an accused to fair trial”¹⁷, and that a state has a positive duty to protect a victim from real and immediate risk.¹⁸ A fair trial is the obligation of the court and essential to the administration of justice, it is not just a ‘right’ to be protected.

Less restrictive means available to achieve this purpose

Victim rights in the Charter largely mirror obligations in existing legislative frameworks and in some instances, are not administrative responsibilities of justice agencies but judicial decisions of the courts.

¹³ *Bowden et al, 558; Ragg v Magistrates’ Court of Victoria and Corcoris* [2008] VSC 1 (24 January 2008) (Bell J).

¹⁴ Victim and Witness Rights under the ACT Human Rights Act 2004: A Practical guide for the justice sector on the Human Rights Act (ACT) 2004, ACT Human Rights Commission, <https://hrc.act.gov.au/wp-content/uploads/2015/03/Web-Version-Victims-Guide-Final.pdf>.

¹⁵ Australian Capital Territory, Parliamentary Debates, Legislative Assembly, 3 July 2008, 2667 (Simon Corbell, Attorney-General).

¹⁶ 4 PS v Germany (2003) 36 EHRR 61 [22].

¹⁷ *Doorson v Netherlands* (1999) 22 EHRR 330 at [70]; *MK v Australia* (1997) 24 EHRR CD59; *SN v Sweden* (2004) 39 EHRR 13 at [52].

¹⁸ *Osman v United Kingdom* (1999) 29 EHRR 45; *Opuz v Turkey* (2010) 50 EHRR 28. See also *Edwards v United Kingdom* (2002) 35 EHRR 19; *Van Colle v Chief Constable of the Hertfordshire Police* (2009) 1 AC 255.

Victims Rights Legislation Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Victims Rights Legislation Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

Victims Rights Legislation Amendment Bill 2020

Detail

Part 1 – Preliminary

Clause 1 – Name of Act

This clause specifies the name of the Act as the *Victims Rights Legislation Amendment Bill 2020*.

Clause 2 – Commencement

This clause provides that the Act will commence on 1 January 2021.

Clause 3 – Legislation Amended

This clause names the legislation amended by this Act:

- *Human Rights Commission Act 2005*
- *Victims of Crime Act 1994*.

Part 3 – Human Rights Commission Act 2005

Clause 4 – Disability and community services commissioner’s functions

New section 21 (1) (c) (v)

This clause adds victims rights complaints to the types of complaints that the Disability and Community Services (DACs) Commissioner can deal with under their functions.

Clause 5 – New section 41C

This clause inserts a new section into the *Human Rights Commission Act 2005* (HRC Act), which outlines the nature and procedures around victims rights complaints.

This section applies if a person who is a victim engages with a justice agency and believes the agency has not complied with their victims rights.

In this case, the person may complain to the HRC about the justice agency’s conduct (this is a “victims rights complaint”). Other procedures if a victim has concerns about conduct in relation to rights also exist within the VOC Act (see clause 29, section 18D for making justice agency complaints to a justice agency, and section 18F for raising victims rights concerns to the Victims of Crime Commissioner (VOCC)).

This section also outlines that, if the VOCC refers a person’s victims rights concern to the HRC under the VOC Act (section 18G (3)), the victims rights concern is taken to be a victims rights complaint made by the person to the HRC under the HRC Act.

This section clarifies that a person does not need to have made a justice agency complaint or raised a victims rights concern before making a victims rights complaints to the HRC under the HRC Act.

Clause 6 – What complaints may be made under this Act?**New section 42 (1) (eb)**

This clause includes the new category of ‘victims rights complaint’ about the conduct of a justice agency in the list of complaints that can be made under the HRC Act.

Clause 7 – Who may make a complaint under this Act?**Section 43 (1)**

This clause ensures that ‘conduct’, as well as an act or service, can be complained about under the HRC Act. This is to ensure that complaints about justice agency conduct can be dealt with by the HRC in the same way as complaints about an act or service.

Clause 8 – Section 43 (1), new note

This clause adds a new note to the section of the HRC Act about who can make complaints. The note clarifies that if a person’s victims rights concern is referred to the HRC, the person is taken to have made a victims rights complaint. This is consistent with new section 41C of the HRC Act.

Clause 9 – Consideration without complaint or appropriate complainant**Section 48 (1) (a)**

This clause outlines that a victim right complaint may be considered by the HRC on its own initiative (a commission-initiated consideration) if it appears to be an act, service or conduct which a person could make but has not made under the Act; or any other matter related to the commission’s functions, for example if it relates to an issue of public interest or safety.

Clause 10 – Section 48 (2)

This clause adds “victims rights complaint” to the types of complaints that the HRC may consider on its own initiative if the person who made the complaint could not have made it under s 43 (1)(a-d) or the HRC does not approve the person under 43 (1)(e) to make the complaint for the aggrieved person.

Clause 11 – Referral of advocacy matters**Section 51A (1)**

This clause rectifies a wording error in the HRC Act. Previously, section 51A (1) referred to a “children and young people complaint”, when the correct term is “children and young people service complaint”. This clause corrects that wording by adding the word “service”.

Clause 12 – Referral to appropriate statutory office-holder**Section 52A (1) (a)**

Similarly to clauses 12 and 14 above, this section ensures that ‘conduct’, as well as an act or service, is included in the types of matters that could potentially be referred to an appropriate statutory office-holder by the HRC.

This is to ensure that complaints about justice agency conduct can be dealt with by the HRC in the same way as complaints about an act or service.

Clause 13 – Compulsory attendance at conciliation
Section 59 (4)

Section 59 states that the HRC may require a party to attend conciliation, and a person commits an offence if attendance is required and they do not attend. This does not apply if the person has a reasonable excuse not to attend as required.

A reasonable excuse in relation to a justice agency may include examples such as a view that participating would impinge on the investigation or prosecution of an offence, a proceeding, or the necessary independence of the judiciary.

This clause states that the offence provision also does not apply in relation to victims rights complaints.

Clause 14 – Power to ask for information, documents and other things
Section 73 (5)

Similarly to clause 13 above, this clause exempts justice agencies from having committed an offence if they fail to provide the HRC with information relevant to a consideration in relation to a victims rights complaint.

Clause 15 – Section 73 (7)

Similarly to clauses 13 and 14 above, this clause exempts justice agencies from having committed an offence if they fail to provide the HRC with a document or other thing for a consideration in relation to a victims rights complaint.

Clause 16 – Requiring attendance
Section 74 (4)

Similarly to clauses 13, 14 and 15 above, this clause exempts justice agencies from having committed an offence if they fail to attend before an interviewer to answer questions relevant to the consideration of a victims rights complaint.

Clause 17 – Section 74 (6)

Similarly to clause 16 above, this clause exempts justice agencies from having committed an offence if they fail to continue to attend before an interviewer to answer questions relevant to the consideration of a victims rights complaint.

Clause 18 – Section 74 (8)

Similarly to clauses 16 and 17 above, this clause exempts justice agencies from having committed an offence if they fail to answer a question when attending before an interviewer to answer questions relevant to the consideration of a victims rights complaint.

Clause 19 – Responding to recommendations
New section 85 (1A)

Similarly to clauses 13-18 above, this clause exempts justice agencies (where the matter in question is a victims rights complaint) from having committed an offence if:

- a final report, a third-party report or HRC-initiated report recommends that a justice agency take action within a stated time; and
- the justice agency has been given a copy of the report; and
- the justice agency fails to tell the HRC in writing about the action the justice agency has taken in relation to the recommendation within 45 days after the later of the following:
 - the end of the stated time or any further period allowed by the HRC;
 - three weeks after the day the justice agency is given the report.

Clause 20 – New section 100B

This clause inserts a new section into the HRC Act which outlines that the DPP need not comply with a provision of the HRC Act that relates to a victims rights complaint if the DPP considers that compliance would prejudice the independence of the DPP or the prosecution of an offence.

If the DPP does not comply with a provision of the HRC Act, the DPP must tell the HRC that they have not complied, the provision not complied with, and the reason for not complying.

The DPP must include in its annual report under the *Annual Reports (Government Agencies) Act 2004* the information mentioned in the paragraph above, for each occasion on which they do not comply with a provision of the HRC Act.

Clause 21 – Dictionary, note 2

This clause inserts the DPP into a list of terms that the HRC Act's dictionary notes are defined in the *Legislation Act 2001*.

Clause 22 – Dictionary, new definitions

This clause inserts references to definitions of 'justice agency' and 'victims rights complaint' into the dictionary of the HRC Act.

Part 4 – Victims of Crime Act 1994**Clause 23 – New section 3AA**

This clause amends the objects of the VOC Act. The purpose of the objects of the VOC Act is to outline the purpose of the legislation and assist to resolve any uncertainty in relation to how clauses are interpreted. The clause does not create new rights or obligations.

The clause states that the objects of the VOC Act are to:

- Acknowledge the central role of victims in the criminal justice process (noting that this does not detract from the central role of accused persons in the criminal justice process),
- Contribute to upholding the safety, privacy and dignity of people adversely affected by crime,
- Help victims deal with the effects of criminal offences,
- Acknowledge, promote and uphold the rights and interests of victims in the administration of justice,
- Recognise and establish appropriate ways for agencies involved in the administration of justice to interact with victims in order to minimise adverse outcomes and prevent unnecessary further trauma for victims, and
- Establish requirements for monitoring and reviewing victims rights.

Clause 24 – Part 2

This clause omits part 2 of the VOC Act, which includes the former Objects of the Act, *Governing Principles for the treatment of victims of crime in the administration of justice*, compliance with principles, and important concepts (which includes explanations of the terms ‘victim’, ‘guardian’, ‘harm’, and ‘legally incompetent person’).

This is to make way for a new objects clause (see new section 3AA above), new terms to be explained including ‘administration of justice’ and ‘justice agency’, and to replace the governing principles with the Charter in new part 3A.

Clause 25 – New sections 7 and 8

This clause inserts two new sections into part 2A of the VOC Act, to define the terms ‘administration of justice’ and ‘justice agency’.

7 Meaning of administration of justice

This provision defines *administration of justice* as including the provision of services by a justice agency.

8 Meaning of justice agency

This provision defines ‘justice agency’, in the VOC Act, as any of the following entities:

- the adult offenders victims register unit (the director-general of the administrative unit responsible for maintaining a register of victims of offenders under the *Crimes (Sentence Administration) Act 2005*, section 215),

- the affected person register unit (the director-general of the administrative unit responsible for maintaining the affected person register under the *Mental Health Act 2015*, part 7.2,
- the chief police officer, noting that an additional clause outlines that the chief police officer can delegate these responsibilities to a police officer,
- the corrective services unit (the director-general of the administrative unit responsible for the *Corrections Management Act 2007*),
- a court or tribunal when acting in an administrative capacity, noting that this does not include a Registrar or ACAT member when acting in a judicial capacity
- the director of public prosecutions,
- a referring entity, when acting in an administrative capacity
- the restorative justice unit (the director-general of the administrative unit responsible for the *Crimes (Restorative Justice) Act 2004*)
- the sentence administration board, when acting in an administrative capacity
- the victims of crime commissioner,
- the victim support unit (the director-general of the administrative unit responsible for this Act),
- the youth justice unit (the director-general of the administrative unit responsible for maintaining a register of victims of young offenders under the *Crimes (Sentence Administration) Act 2005*, section 215A), and
- an entity prescribed by regulation.

However, a justice agency does not include the below, noting that they do not need to comply with victim rights although they should have regard to victims rights (see section 18A).

- the Chief Justice, a judge or associate judge, or
- the Chief Magistrate, a magistrate or any office that must be occupied by a magistrate.

Clause 26 – Section 11 (d)

This clause removes ‘governing principles’ from the description of the VOCC’s functions, and substitutes ‘victims rights’. This is because this Bill removes governing principles from the VOC Act and replaces them with the legislated victims rights in the Charter.

Clause 27 – Section 11 (e)

This clause brings the functions of the VOCC in connection with the administration of justice in line with the Charter, by outlining that the VOCC has a role to ensure victim rights concerns that are raised with the VOCC are dealt with promptly and effectively, and to promote the prompt and effective resolution of victims rights complaints made to the HRC and other complaints about victims rights made to other entities.

Clause 28 – Section 12

This clause omits former section 12 of the VOC Act, which deals with how the VOCC handles concerns and complaints. This is to align with the new mechanism to process concerns and complaints that is introduced in relation to the Charter.

Clause 29 – New part 3A

Part 3A Victims rights

This part sets out the Charter of Rights for Victims of Crime.

Division 3A.1 Preliminary

14 Object – pt 3A

This provision outlines that the object of this part of the VOC Act is to ensure that, in the administration of justice, engagement with victims is governed by victims rights.

14A Meaning of victims rights

This provision defines victim rights as victim rights referred to under divisions 3A.2 to 3A.6 of the VOC Act. This provision notes that victim rights are not exhaustive and victims have a range of rights under other ACT laws, including under the *Human Rights Act 2004*, part 3AA.

14B Definitions – pt 3A

This section provides definitions for a variety of terms used in Part 3A of the VOC Act.

Division 3A.2 Victims rights—respect, privacy and safety

14C Respectful engagement with victims

This right provides that a justice agency must engage with a victim respectfully and with appropriate regard to the victim’s personal situation, needs, concerns, rights and dignity. A justice agency must also take into account, and be responsive to, the particular needs of a victim, particularly needs relating to any of the following specific factors: age; disability; gender identity; race; religion; sex; sexuality; or parental, family, carer or kinship responsibilities.

These categories align with certain protected attributes in the *Discrimination Act 1991*.

14D Respectful engagement with child victims

This right provides that if a primary victim is a child, a justice agency must, as far as practicable, consider the child’s views, wishes and circumstances before engaging the child’s parent or carer as the victim in relation to victims rights; and engage the child in a way that is appropriate for a person of the child’s age who is not a victim.

This right recognises that it is not always possible in practice or consistent with other legislative frameworks to speak with a child victim before an adult by including the words ‘where practicable’.

14E Contact with victims

This right provides that a justice agency that is exercising a function in relation to victims rights that requires the agency to contact a victim must contact the victim. However, the agency is not required to contact a victim if the victim has asked not to be contacted after the agency has told the victim about each required contact and the rights to which it relates; the justice agency is aware the victim has already been contacted in relation to the function; or it is not possible or practicable in the circumstances to contact the victim.

Examples of where another agency may have contacted a victim includes where agencies have information-sharing arrangements whereby the agency who has access to the information provides it to another agency who has contact with the victim, to provide the information to them.

Examples of where it may not be possible or practicable in the circumstances to contact the victim include that the victim cannot be found after reasonable steps have been taken to find the victim; the proceedings progress too quickly for the victim to be contacted; or a justice agency is not aware of a victim or cannot reasonably find a victim's contact details.

Contact means in oral or written form, whether electronically or in hard-copy.

This right is intended to ensure that upholding all rights in the Charter is undertaken where practicable and realistic. It also balances a victim's responsibility to provide up-to-date contact details to an agency if they wish to be contacted.

14F Victims' privacy

This right provides that a justice agency must not disclose personal information about a victim or a family member of the victim, unless that information is disclosed in a proceeding before a court or tribunal, under an ACT law, or with the victim's consent. Personal information includes a person's home address and contact details, place of employment, or the educational institution that a person attends.

14G Storage and return of victims' property

This right provides that if a victim's property is held by a justice agency for the purpose of investigating or prosecuting a criminal offence, the property must be handled and stored in a lawful, respectful and secure manner, and returned to the victim as soon as practicable after it is no longer needed for that purpose.

However, the property must not be returned to the victim if the victim's possession of the property would be an offence, or if the property need not be returned to the victim directly. For example, it may be returned to an agency to return to the victim.

This right is aligned with *Court Procedures Rules 2006* and notes that property must be stored and returned in accordance with this legislation.

14H Victims' appearance at preliminary or committal hearings

This right provides that the DPP must not require a victim to appear at a preliminary hearing or a committal hearing unless a court directs the victim to appear or the DPP considers the victims' appearance necessary in the interests of justice.

14I Minimising victims' exposure to accused etc

This right applies if a victim is in a court or tribunal building for a proceeding for the offence and has expressed concern to a relevant justice agency about the need for protection from violence or harassment by an accused person for the offence. In this case, the relevant justice agency (the DPP, or a court or tribunal when acting in an administrative capacity) must, as far as practicable, minimise the victim's exposure to the accused, defence witnesses, and family members of or anyone supporting the accused.

Contact includes any form of physical contact and face-to-face communication but does not include oral communication by telephone or written communication.

14J Minimising registered victims' exposure to offenders etc

This right applies if an offender is sentenced, or transferred or released from imprisonment or detention.

The youth justice unit (Youth Victims Register) or the adult offenders victims register unit (Adult Victims Register) must, as soon as practicable, tell each registered victim of the offender about actions the victim may take to minimise their exposure to, and prevent contact from, the offender.

Actions might include applying for a personal protection order under the *Personal Violence Act 2016*, asking that the offender be directed to stop calling or sending mail to the victim under the *Corrections Management Act 2007*, or asking that a youth offender be directed to not contact the victim by phone or mail under the *Children and Young People Act 2008*.

Division 3A.3 Victims rights—access to support, services, legal and financial assistance

15 Referral of victims to support services

This right provides that the Chief Police Officer (Police) must, as soon as practicable, refer a victim of an offence to a service that provides support or assistance suitable to the victim and the victim's circumstances. As soon as practicable may include after a person reports an offence to police and after police become unaware an offence has been committed. However, a referral need not be made if it would not be appropriate in the circumstances, for example if the victim does not consent to the referral.

15A Provision of aids or adjustments to victims

This right provides that a justice agency must, unless the court directs otherwise, ensure a victim of an offence is provided with, or is able to access any aid or adjustment for which the victim is eligible that is necessary to enable the victim to fully participate in the administration of justice for the offence (for example, an assistance animal, intermediary or support person, or interpreter or translator) wherever practicable and in line with legislation that governs access to these aid and adjustments.

The agency must also ensure a victim is provided with any special requirement they are entitled to in relation to a proceeding for the offence under the *Evidence (Miscellaneous Provisions) Act 1991*. As an example of where this right may apply, it may relate to relevant justice agencies making an application for access to special measures where appropriate, as access to aids and adjustments in the courtroom are decisions of the judiciary.

15B Victim may request referral of offences to restorative justice

This right provides that a victim of an offence may at any stage during the criminal justice process, ask a justice agency whether the offence may be referred for restorative justice, and ask a referring entity under the *Crimes (Restorative Justice) Act 2004* to refer the offence for restorative justice.

15C Reimbursement and financial assistance for victims

This right provides that a victim who is required to attend court to give evidence as a witness in a criminal proceeding may be able to claim, from the DPP, reimbursement of expenses incurred or income lost in attending court.

This right also provides that a victim may apply for financial assistance under the *Victims of Crime (Financial Assistance) Act 2016*.

Finally, this right provides that a victim who suffers loss or incurs expense as a direct result of the commission of an offence, or has property stolen, may ask the DPP to apply for a reparation order under the *Crimes (Sentencing) Act 2005*.

Division 3A.4 Victims rights—information about administration of justice processes*15D Police to tell victims about administration of justice processes after offence reported*

This right provides that Police must, as soon as practicable, give victims information about the administration of justice processes that result from reporting an offence, for example charging and prosecuting an alleged offender, giving evidence and the burden of proof in a proceeding, or a victim's role in a proceeding as a witness for the prosecution.

This right applies to victims of indictable offences, and all other victims upon request.

15E DPP to give information to victim witnesses

This right provides that if a victim of an offence is required to attend court to give evidence as a witness for the prosecution in a proceeding for the offence, the DPP must, within a reasonable period before the witness is to give evidence, tell the victim about, or where to find information about the hearing or trial process; and the role, rights and responsibilities of witnesses.

15F Police and DPP to give victims information about victim impact statement

This right provides that Police and the DPP must, within a reasonable period before a victim of an offence would be able to make a victim impact statement, tell the victim:

- who may make a victim impact statement;
- that a victim impact statement may be made orally or in writing;
- what information a victim impact statement must and may include;
- how a victim impact statement may be used in court during a proceeding (including that a copy of the victim impact statement will be given to the offender;

- that the victim may be cross-examined about the contents of the victim impact statement; and
- that the court must consider the victim impact statement in deciding how the offender should be sentenced.

15G DPP to tell victims about decisions to discontinue prosecution and review of decisions

This right applies if the DPP decides to charge a person with one or more offences in relation to a victim. In this case, the DPP must tell the victim which of their decisions in relation to the charges are automatically reviewed.

If the DPP decides to discontinue the prosecution of one or more of the charges, it must (as soon as practicable) tell the victim how the victim may request a review of the decision. However, the DPP is only required to do this if it will result in the person no longer being prosecuted for any charge in relation to the victim, and if the decision will not be automatically reviewed.

This right aligns with the DPP's internal policy in relation to review of decisions to discontinue a prosecution.

15H Justice agencies to tell victims about victims register etc

This section provides that the Youth Victims Register or Adult Victims Register must, as soon as practicable after an offender is sentenced for an offence, tell each victim whether, and if so how, the victim may become registered on the victims register; the rights of registered victims to information about offenders who are sentenced; and the role of victims in relation to the release of offenders from imprisonment under a parole order or on licence.

The victims register is the register of victims of offenders kept under the *Crimes (Sentence Administration) Act 2005*, section 215; or the register of victims of young offenders kept under the *Crimes (Sentence Administration) Act 2005*, section 215A.

15I Justice agencies to tell victims about justice agency complaints and victims rights concerns

This right applies if a victim tells a justice agency that the victim believes the agency has not complied with their victims rights, or is otherwise dissatisfied with the justice agency's services in relation to their victims rights.

In this case, the justice agency must, as soon as practicable, tell the victim how the victim may do one of the following:

- make a justice agency complaint (to the agency);
- in the case where the victim believes the agency has not complied with their victims rights, they may raise a concern with the VOCC or make a complaint to the HRC; or
- if another entity has power to deal with the matter, to make a complaint about the matter to that other entity. If, for example, the matter related to corrupt conduct, then the victim might be able to make a complaint to the Integrity Commission, or if the

matter related to a member of the police, then the victim might be able to make a complaint to the Australian Commission for Law Enforcement Integrity.

Providing this information assists in a victim or a nominated representative participating in the complaint process if they wish to.

Division 3A.5 Victims rights—information about investigations, proceedings and decisions

16 Police to give written confirmation to victims reporting offences

This right provides that if a victim of an offence reports the offence to a police officer, Police must, as soon as practicable, give the victim written confirmation of the report, including a summary of the details reported by the victim; and the name and contact details of the police officer who took the report and another police officer the victim may contact about the report.

However this does not apply if giving written confirmation of the report is likely to affect the safety of the victim or another person. Police also need not give a victim written confirmation of a report under this section if the victim has asked not to be contacted or it is not possible or practicable in the circumstances to contact the victim (see s 14E).

This right applies to victims of indictable offences, and all other victims upon request.

Written confirmation can mean electronically or in hard-copy.

16A Police to update victims about status of investigations

This right provides that if Police are investigating an offence, they must give a victim of the offence an update about the status of the investigation as soon as practicable after a change in the status of the investigation or at least every 6 weeks. However, if the victim wishes to be updated less frequently, Police may update the victim at another time agreed between Police and the victim.

If Police consider that giving the victim an update about the status of the investigation would prejudice the investigation or any other investigation, Police must not tell the victim about the status of the investigation but must tell the victim as much as possible about the progress of the investigation.

A change in the status of an investigation, for an offence, includes a person being charged with the offence or a warrant being issued for the arrest of a person accused of committing the offence.

This right applies to victims of indictable offences, and all other victims upon request.

16B DPP to consider victims' views about dealing with charges

This right applies if a person has been charged with an offence and the DPP is considering one of the following proposed actions in relation to the charge:

- substantially modifying the case in a proceeding for the charge (including by accepting a guilty plea for a lesser charge or discontinuing prosecution of the charge);
- applying to the ACAT for an assessment order in relation to the person in relation to the charge. The DPP may take this action, under section 35 of the *Mental Health Act*

2015, if they believe on reasonable grounds that it may not be appropriate to prosecute the person as a result of considerations relating to the offence itself and to the person's apparent mental health issues.

In this case, the DPP must, as soon as practicable and before taking the proposed action, seek and consider the victim's views about the proposed action. However, this does not apply if the DPP considers that it would prejudice the prosecution of the offence.

This right applies to all victims of indictable offences, and all other victims upon request.

16C Police and DPP to update victims about bail decisions

This right applies if a victim of an offence has expressed concern to Police or the DPP about the need for protection from violence or harassment by an accused person for the offence.

In this case, Police or the DPP must, as soon as practicable, tell the victim if a court or an authorised officer makes a decision about a grant of bail, or reviews a bail decision, in relation to the accused person; or if bail is granted to the accused person and a condition is imposed on the grant of bail to protect the victim or a family member of the victim. This right is aligned with entitlements in the *Bail Act 1992 s 47A*.

This right is the responsibility of Police or the DPP depending on the circumstances in which bail is reviewed or made. Responsibility may be clarified between agencies through an information-sharing agreement.

16D DPP to tell victims about hearings

This right applies if a person has been charged with an offence and a court has set a hearing date for the charge.

In this case, the DPP must, as soon as practicable after the hearing date has been set, tell a victim of the offence the date, time and place of the hearing.

16E DPP to tell victims about reparation orders

This right applies if an offender is convicted or found guilty of an offence against an ACT law but the court has not yet sentenced or made a non-conviction order for the offender.

In this case, the DPP must tell a victim of the offence that a court may make a reparation order against the offender under the *Crimes (Sentencing) Act 2005* or another ACT law. If the DPP decides not to apply for the order, they must tell the victim of the decision and the reason for it (unless the DPP considers it would prejudice the prosecution of an offence).

16F DPP to tell victims about outcomes of trials and appeals

This right provides that the DPP must, as soon as practicable after a proceeding for an offence has ended, tell victims about the outcome of the proceeding, including any sentence imposed by the court on the offender; and, if the offender appeals a decision of the proceeding, the nature and outcome of the appeal.

This right applies to victims of indictable offences, and all other victims upon request.

16G Justice agencies to tell victims about inquiries for parole or release on licence

This right applies if the Sentence Administration Board (SAB) intends to start an inquiry into an application for parole or release on licence of an offender under the *Crimes (Sentence Administration) Act 2005*, chapter 7 (Parole) or part 13.1 (Release on licence).

In this case, the Youth Victims Register, Adult Victims Register or SAB must, as soon as practicable, tell a victim of an offender about the inquiry, and tell the victim how they may:

- make a submission to the SAB;
- tell the SAB about any concern in relation to the inquiry; and
- ask the SAB not to give the submission or concern to the offender or another person.

This right also provides that the Youth Victims Register, Adult Victims Register or SAB must also give the victim information about the offender and information about any assistance available to the victim to make a submission or tell the SAB about a concern, to assist the victim to make a submission or share a concern.

16H Justice agencies to tell victims about parole or release on licence decisions

The relevant justice agencies in this right are the Youth Victims Register, the Adult Victims Register and the SAB.

This right provides that if the SAB decides to make, or refuse to make, a parole order for an offender, the relevant justice agency must, as soon as practicable, take reasonable steps to tell the relevant victims of that offender about:

- the SAB's decision; and
- if the SAB decides to make a parole order for the offender:
 - the offender's parole release date; and
 - in general terms, the offender's parole obligations.

This right also provides that if the Executive makes a decision to grant, or refuse to grant, an offender a licence to be released from imprisonment, the relevant justice agency must, in writing and as soon as practicable, take reasonable steps to tell the relevant victims about:

- the Executive's decision; and
- if the Executive grants a licence to the offender:
 - the offender's licence release date; and
 - in general terms, the offender's release on licence obligations.

This right also provides that the relevant justice agency may tell a victim the general area where the offender will live while on parole or release.

All of these entitlements are in line with those in the *Crimes (Sentence Administration) Act 2005*.

16I Justice agencies may give information about offenders to registered victims

This right provides that the Youth Victims Register or Adult Victims Register may tell a registered victim of an offender information about the offender if the victim asks the relevant justice agency for the information; and the relevant justice agency is satisfied the disclosure is appropriate in the circumstances.

16J Justice agencies to tell victims about transfer etc of offenders

This right applies if:

- an offender is to be transferred or released from imprisonment or detention, or escapes from custody; and
- a registered victim of the offender has expressed concern about their safety or the need for protection from the offender to a relevant justice agency, or the justice agency believes the offender's transfer, release or escape is likely to affect the victim's safety.

In this case, the Youth Victims Register or Adult Victims Register must, as soon as practicable, tell the victim if the offender is to be transferred or released from imprisonment or detention—of the transfer or release and any condition of the release that may affect the victim's safety; and if the offender escapes from custody—of the escape.

However, this does not apply if the Youth Victims Register or Adult Victims Register is satisfied the disclosure is not appropriate in the circumstances.

16K Adult offender victims register unit to tell victim about intensive correction orders

This right applies if an offender is subject to an Intensive Correction Order (ICO) and has breached any of the ICO obligations; or if the SAB has decided to suspend, cancel, amend or discharge the offender's ICO, or reinstate the offender's previously cancelled ICO.

In this case, the Adult Victims Register must, as soon as practicable, tell a registered victim of the offender about the breach, suspension, cancellation, amendment, discharge or reinstatement of the offender's ICO if it is likely to affect the victim's safety or if the victim has expressed concern about their safety or the need for protection from the offender to the adult offenders victims register unit.

16L DPP to tell victims about court requirements and orders relating to offender's mental health

This right provides that if a court requires an offender to submit to the jurisdiction of the ACAT under the *Crimes Act 1900*, part 13 (Unfitness to plead and mental impairment) or the *Crimes Act 1914* (Cwlth), part 1B (Sentencing, imprisonment and release of federal offenders), the DPP must, as soon as practicable, tell a victim of the offence about the requirement.

This right also provides that if the Magistrates Court orders that an offender be taken to an approved mental health facility without requiring that the person submit to the jurisdiction of the ACAT, the DPP must, as soon as practicable, tell a victim of the offence about the order.

This right applies to victims of indictable offences, and all other victims upon request.

16M ACAT to tell victims about mental health orders etc

This right deals with situations where ACAT is considering making or makes one of the following orders:

- a mental health order if section 16L(1) or (2) applies to the offender;
- a forensic mental health order;
- an order under the *Mental Health Act 2015*, section 180 to release the offender from custody.

If the ACAT is considering making one of these orders, this right provides that, as soon as practicable, the ACAT must tell a victim of the offender that the ACAT is considering making the order.

If the ACAT makes one of these orders this right provides that, as soon as practicable, the ACAT must tell a victim of the offender that the order has been made, and the nature and length of the order.

It is noted that the ACAT need not give the information in this section directly to the victim if another justice agency has done this.

16N Affected person register unit to tell victims about person register etc

This right provides that the Affected Person Register Unit must tell a victim who is an affected person because of an offence committed, or alleged to have been committed, by a forensic patient:

- about the Affected Person Register; and
- the rights of a registered affected person; and
- if the victim is a registered affected person:
 - when the victim's information will be removed from the register; and
 - if a mental health order has been made in relation to the forensic patient:
 - the information mentioned in the *Mental Health Act 2015*, section 134 (2) in relation to the forensic patient; and
 - any other information about the forensic patient necessary for the victim's safety and wellbeing; and
 - if the ACAT intends to hold a hearing in relation to the order.

Division 3A.6 Victims rights—participation in proceedings*17 Justice agency to present victims' concerns about protection in bail submissions*

This right provides that if a court or an authorised officer is considering whether to grant bail to, or is reviewing a bail decision for, an accused person, the Police or the DPP must ask a victim of the accused person whether the victim has any concerns about the need for protection from violence or harassment by the accused person. If the victim has expressed

concern about the need for protection from violence or harassment by the accused person, then the Police or the DPP must tell the court or authorised officer about the concern.

This right is the responsibility of Police or the DPP depending on the circumstances in which bail is reviewed or made. Responsibility may be clarified between agencies through an information-sharing agreement.

17A Victims may make victim impact statements

Victims of an offence may be eligible to make a victim impact statement (VIS) under the *Crimes (Sentencing) Act 2005*, part 4.3. This right provides that the DPP must ensure that no one other than the eligible victim decides whether or not to make a VIS.

17B Corrective services unit to consider victims' views about pre-sentence report or intensive correction assessment

This right applies to a victim of an indictable offence (or any other victim upon request) if a court has ordered that a pre-sentence report or an intensive correction assessment be prepared in relation to the offender. In this case, in preparing the report or assessment, ACT Corrective Services must seek and consider the victim's concerns about the need for protection from violence or harassment by the offender.

17C Victims may be in courtroom for proceedings

This right provides that a victim of an offence may be present in the courtroom during a proceeding for the offence, unless the court directs otherwise.

17D Victims may make submissions for parole or release on licence inquiries

This right applies if the SAB intends to start an inquiry into an application by an offender for parole by or release on licence of an offender under the *Crimes (Sentence Administration) Act 2005*, chapter 7 or part 13.1 respectively.

In this case, a victim of an offence to which the offender's application relates may make an oral or written submission to the SAB about the granting of parole or a licence for the offender, including the likely effect on the victim, or on the victim's family, if parole or the licence were to be granted. The victim may also tell the SAB, orally or in writing, about any concern of the victim or the victim's family about the need to be protected from violence or harassment by the offender.

Under this right, the SAB must ensure, as far as practicable, that a submission is not given to a stated person if a victim who makes a submission asks the SAB to not give the submission to the stated person; and a judicial officer of the SAB considers there is a substantial risk that doing so would endanger the victim or anyone else.

If the SAB intends to give the victim's submission to a particular person after being asked not to, then the SAB must tell the victim of that intention in the interests of transparency.

17E Victims may give statement to ACAT for mental health orders etc

This right applies if the ACAT is considering making one of the following orders for an offender:

- a mental health order;
- a forensic mental health order;
- an order under the *Mental Health Act 2015*, section 180 to release the offender from custody.

In this case, a victim who is a registered affected person for an offence committed or alleged to have been committed by the forensic patient, or another victim with the leave of the ACAT, may appear and give evidence at the hearing or provide a statement to the ACT in relation to the order.

17F Affected person register unit to assist victims to participate in order hearings

This right applies if the ACAT is considering making an order in relation to a forensic patient. In this case, the Affected Person Register Unit must:

- for a victim who is a registered affected person in relation to the forensic patient:
 - offer to assist the victim to participate in any hearing in relation to the order, and
 - if the victim accepts the offer, assist the victim to participate in the hearing.
- for any other victim in relation to a mental health order in relation to 16L(1) and 2), a forensic mental health order or an order under the *Mental Health Act 2015* section 180, to tell the victim how they may:
 - apply to the ACAT for leave to participate in any hearing in relation to the order, and
 - if leave is granted, participate in the hearing.

In relation to this right, to participate in a hearing in relation to an order includes appearing and giving evidence, or providing a statement to the ACAT.

17G Victims may participate in restorative justice

This right provides that a victim of an offence may take part in a process of restorative justice under the *Crimes (Restorative Justice) Act 2004* in relation to the offence if the victim is an eligible and suitable victim under the *Crimes (Restorative Justice) Act 2004*.

Division 3A.7 Implementing victims rights

Subdivision 3A.7.1 Complying with victims rights

18 Justice agencies must comply with victims rights

This section provides that a justice agency must comply with all victims rights that apply to a victim when engaging with them. If complying with a particular right would support a victim, despite the right not applying to the victim, a justice agency should, as far as practicable, comply with the right in relation to the victim. In considering whether complying with a right would support a victim, the justice agency should have regard to the individual needs of the victim and their circumstances.

18A Other entities should have regard to victims rights

This section provides that an entity that is not a justice agency should have regard to victims rights when engaging with a victim. This includes non-government organisations and government policy areas that engage with victims.

18B Victims' representatives

This section provides that a victim may nominate a person, in writing, to be the victim's representative to exercise some or all victims rights, to receive some or all information required to be given to the victim in relation to victims rights; and/or to make a justice agency complaint, raise a victims rights concern or make a victims rights complaint for the victim.

A victim may nominate anyone to be their representative, including a relative or friend; or an officer or employee of an organisation whose functions include the provision of information, support or services to victims (for example, a victim liaison officer or a victim support agency).

If a victim nominates a representative, and the nominee agrees to be the victim's representative, the representative must be given the information they are allowed to be given and that would otherwise be provided to the victim directly, in relation to victims rights.

Each justice agency may have its own policies and procedures which relate to this right being upheld in practice.

18C Justice agencies to tell victims about administration of justice processes

This section provides that a justice agency must make the following information available to a victim in a way the victim understands:

- victims rights and how a victim may make a justice agency complaint, raise a victims rights concern or make a victims rights complaint if the victim believes a justice agency has not complied with their victims rights;
- how to report an offence to a police officer and the administration of justice processes that result from making a report;
- any services that provide support or assistance, including legal and financial assistance, that are available to the victim;
- hearing and trial processes, including the role, rights and responsibilities of witnesses;
- restorative justice options that are available to victims, including the referral process, and that there are eligibility and suitability requirements for restorative justice under the *Crimes (Restorative Justice) Act 2004*.

In practice, this requirement would be fulfilled if person were able to find links to this information on the websites of other justice agencies from any justice agency website. This is not an obligation under the Charter, however complements the specific obligations for an agency to provide certain information to certain victims at certain points in the justice process by acknowledging that making this information generally available also assists in

encouraging victims to report crime, understand and participate in just processes, and create a more accessible justice system.

Subdivision 3A.7.2 Complaints and concerns about victims rights

18D Victim may make justice agency complaints to justice agencies

This section applies if a victim engages with a justice agency and either believes the agency has not complied with their victims rights, or is otherwise dissatisfied with the justice agency's services in relation to victims rights.

In this case, the victim may make a complaint to the agency about the agency's conduct (a "justice agency complaint"). A complaint may be made orally or in writing. The justice agency must record an oral complaint in writing if the agency considers the complaint of a sufficiently serious nature to be recorded in writing, or if the victim asks the agency to record the complaint in writing. A justice agency complaint may be withdrawn at any time by the victim or their representative.

18E Justice agencies to deal with justice agency complaints

This section provides that if a victim makes a victims rights complaint to a justice agency, the agency must give the victim information about the process that will be used for resolving the complaint, and take all reasonable steps to resolve the complaint as soon as practicable. The victim must give the justice agency any document or information that the victim can provide and which is reasonably required by the justice agency to resolve the complaint.

18F Victims may raise victims rights concerns with commissioner

This section applies if a victim engages with a justice agency and believes the agency has not complied with their victims rights.

In this case, the victim may raise a concern (a "victims rights concern") with the VOCC about the justice agency's conduct. A victims rights concern may be raised orally or in writing, and may be withdrawn at any time by the victim or their representative.

18G Commissioner to deal with victims rights concerns

This section provides that if a victim raises a victims rights concern with the VOCC, the VOCC must give the victim information about the process that will be used for resolving the concern, and take all reasonable steps to resolve the concern as soon as practicable.

The justice agency must, on request, give the VOCC any document or information that the justice agency could provide to the victim and which is reasonably required by the VOCC to resolve the concern.

However, a justice agency must not give the VOCC a document or information if the victim does not consent, or if the DPP considers that it would prejudice the prosecution of an offence.

Subsection 3 provides that, if the VOCC is unable to resolve a victims rights concern, they may, with the victim's consent, refer the concern to a relevant complaints entity and give the entity any information they have in relation to the concern.

A relevant complaints entity means any of the following:

- the Human Rights Commission (HRC);
- the Ombudsman;
- the Integrity Commission;
- any other entity authorised to investigate a complaint relating to the administration of justice.

Division 3A.8 Miscellaneous

18H Justice agencies to make victims rights guidelines

This section provides that each justice agency must make and publish written guidelines on the agency's website to:

- assist the agency to comply with victims rights; and
- establish appropriate processes and procedures to enable the agency to respond to and resolve justice agency complaints.

This section also provides that these guidelines must be made and published not later than 12 months after the day this section commences.

This section contains a subsection which outlines that the provisions around timeframes for the guidelines will expire after 12 months, once they are no longer relevant (i.e. once the required dates have passed).

18I Justice agencies to include justice agency complaints in annual report

This section provides that a justice agency must include the following in the agency's annual report:

- a statement of how many written justice agency complaints were made to the agency in the year; and
- for each written complaint made, the right in relation to which the complaint was made and whether the agency resolved the complaint.

However, the justice agency must not include any information that would identify a complainant or a victim of an offence.

Written complaints include complaints made orally and recorded in writing by the agency.

18J Commissioner to include victims rights concerns in annual report

Similar to 18I above, this section provides that the VOCC must include the following in the HRC's annual report:

- a statement of how many victims rights concerns were raised with the VOCC in the year; and
- for each concern raised:
 - the right in relation to which the concern was raised;

- whether the VOCC resolved the concern; and
- if the VOCC referred the concern under section 18G (subsection 3), the entity to which the concern was referred.

However, the VOCC must not include any information that would identify a complainant or a victim of an offence.

18K Legal rights not affected

This section provides that the Legislative Assembly does not intend by anything in Part 3A to:

- create in any person any legal right or give rise to any civil cause of action; or
- affect in any way the interpretation of any ACT law; or
- affect in any way the operation of any ACT law, including a law that deals with the same subject matter as a victims right; or
- affect the validity, or provide grounds for review, of any judicial or administrative act or omission.

This clause also notes that nothing prevents a contravention of the VOC Act from being the subject of disciplinary proceedings against an official.

18L Review of victims rights

This section provides that the Minister must review the operation of Part 3A of the VOC Act as soon as practicable after the end of its third year of operation. The Minister must then present a report of the review to the Legislative Assembly within 12 months after the day the review is started.

This section outlines that these provisions for review expire 5 years after the day they commence.

Clause 30 – New section 29A

This clause outlines that the Chief Police Officer may delegate a function under this legislation to a police officer.

Clause 31 – Dictionary, note 2

This clause adds four terms to the list of those defined in the *Legislation Act 2001* dictionary: ‘chief police officer’, ‘Executive’, ‘indictable offence’, and ‘sentence administration board’.

Clause 32 – Dictionary, definition of *administration of justice*

This clause establishes a new definition of ‘administration of justice’ in the dictionary of the VOC Act. The new definition references section 7 of the VOC Act.

Clause 33 – Dictionary, new definitions

This clause inserts new defined terms into the VOC Act.

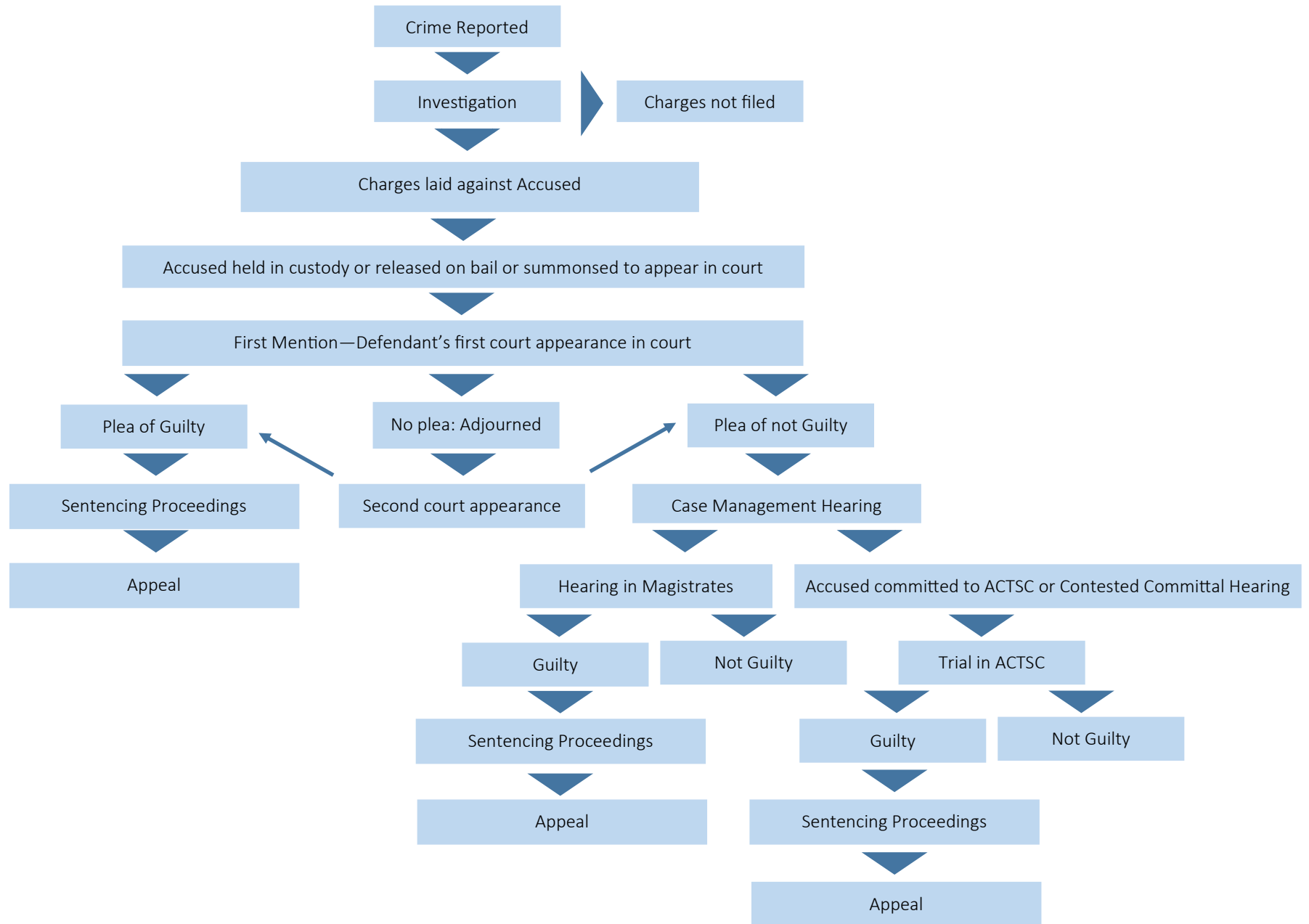
Clause 34 – Dictionary, definition of *governing principles*

This clause omits the definition of ‘governing principles’ from the VOC Act dictionary, as the previous governing principles have been replaced with the victims rights in part 3A.

Clause 35 – Dictionary, new definitions

This clause inserts new defined terms into the dictionary of the VOC Act.

Flowchart of Criminal Justice Process



Police Investigation and Restorative Justice

16 Police to give written confirmation to victims reporting offences

If a victim reports the offence to a police officer, the CPO must give the victim written confirmation of the report, including the name and contact details of the police officer who took the report and another police officer the victim may contact about the report.



15D Police to tell victims about administration of justice processes after offence reported

The CPO must, as soon as practicable, give a victim of a relevant offence information about the administration of justice processes that result from reporting the offence.



15 Referral of victims to support services

The CPO must refer a victim of an offence to a service that provides support or assistance suitable for the victim and the victim's circumstances.

A referral need not be made if it would not be appropriate in the circumstances, eg, where the victim does not consent to the referral.



14G Storage and return of victims' property

If a victim's property is held by a justice agency for the purpose of investigating or prosecuting a criminal offence, the property must be handled and stored in a lawful, respectful and secure manner and returned to the victim as soon as practicable after it is no longer needed for that purpose.



16A Police to update victims about status of investigations

If a police officer is investigating an offence, the CPO must give a victim an update about the status of the investigation after a person is charged or a warrant is issued for the arrest of a person accused and at least every 6 weeks.

If the victim wishes to be updated less frequently, the CPO may update the victim at another time agreed between the CPO and the victim.

15B Victims may request referral of offences to restorative justice

At any stage, a victim can ask a justice agency whether the offence may be referred for restorative justice; and ask a referring entity for that stage of the process to refer the offence for restorative justice.



17G Victims may participate in restorative justice

A victim of an offence may take part in a process of restorative justice if the victim is an eligible victim and a suitable victim.

Charges

16B DPP to consider victims' views about dealing with charges

If a person has been charged with a relevant offence and the DPP is considering substantially modifying the nature of the case for the charge by accepting a guilty plea for a lesser charge or discontinuing the prosecution of the charge; applying to the ACAT for an assessment order— the DPP must, before taking the proposed action, seek and consider the victim's views about the action. The DPP need not seek the victim's views if the DPP considers that it would prejudice the prosecution of an offence.



15G DPP to tell victims about decisions to discontinue prosecution and review of decisions

If a person is charged with one or more offences, the DPP must tell the victim which of the DPP's decisions in relation to the charges are automatically reviewed.

If the DPP decides to discontinue the prosecution of 1 or more of the charges, the DPP must tell the victim how the victim may request a review of the decision if the person is not prosecuted for any charge in relation to the victim and the decision will not be automatically reviewed.



16C Police and DPP to update victims about bail decisions

If a victim has expressed concern to the relevant justice agency about the need for protection from violence or harassment by an accused person, the justice agency must tell the victim if a court or an authorised officer makes a decision about a grant of bail, or reviews a bail decision, in relation to the accused person or bail is granted to the accused person and a condition is imposed on the grant of bail to protect the victim or a family member of the victim.



15E DPP to give information to victim witnesses

If a victim is required to attend court to give evidence as a witness for the prosecution in a proceeding for, the DPP must, within a reasonable period before the witness is to give evidence, tell the victim about, or where to find information about the hearing or trial process and the role, rights and responsibilities of witnesses.



16D DPP to tell victims about hearings

If a person has been charged with an offence and a court has set a hearing date for the charge the DPP must, after the hearing date has been set, tell a victim of the offence the date, time and place of the hearing.

Court Process

14H Victims' appearance at preliminary or committal hearings

The DPP must not require a victim to appear at a preliminary hearing or a committal hearing unless a court directs the victim to appear or the DPP considers the victims' appearance necessary in the interests of justice.



14I Minimising victims' exposure to accused

The DPP or court/tribunal must minimise the victim's exposure to the person while in the court/tribunal building if the victim is in a court/tribunal building for a proceeding for the offence and has told the DPP or the court/tribunal that the victim may need protection from violence or harassment by an accused person, a defence witness, a family member of the accused or any person supporting the accused.



15A Provision of aids or adjustments to victims

A justice agency must ensure a victim of an offence is provided with, or is able to access any special requirement the victim is entitled to in relation to a proceeding for the offence under the *Evidence (Miscellaneous Provisions) Act 1991* and any aid or adjustment that is reasonably necessary to enable the victim to fully participate in the administration of justice for the offence.



17C Victims may be in courtroom for proceedings

A victim of an offence may be present in the courtroom during a proceeding for the offence, unless the court directs otherwise.



15C Reimbursement and financial assistance

A victim who is required to attend court to give evidence as a witness in a criminal proceeding may be able to claim reimbursement of expenses incurred or income lost in attending court.

A victim may apply for financial assistance under the *Victims of Crime (Financial Assistance) Act 2016*.

A victim may ask the DPP to apply for a reparation order.

Sentencing

17B Corrective services unit to consider victims' views about pre-sentence report or intensive correction assessment

If a court has ordered that a pre-sentence report or an intensive correction assessment be prepared, the corrective services unit must seek and consider the victim's concerns about the need for protection from violence or harassment by the offender in preparing the report or assessment.



16E DPP to tell victims about reparation orders

If an offender is convicted or found guilty of an offence against a territory law but the court has not yet sentenced or made a non-conviction order for the offender, the DPP must tell a victim that a court may make a reparation order against the offender.

If the DPP decides not to apply for the order, the DPP must tell a victim the decision and the reason for the decision unless the DPP considers that it would prejudice the prosecution of an offence.



17A Victims may make victim impact statements

A victim may be eligible to make a victim impact statement.

The DPP must ensure that no one other than the eligible victim decides whether or not to make a victim impact statement.



16F DPP to tell victims about outcomes of trials and appeals

The DPP must, after a proceeding has ended, tell a victim about the outcome of the proceeding, including any sentence imposed by the court on the offender. If the offender appeals a decision, the DPP must tell the victim the nature of the appeal and the outcome of the appeal.



15F Police and DPP to tell victims about victim impact statement (VIS)

The CPO or the DPP agency must tell the victim that a VIS may be made orally or in writing, what information a VIS must and may include, how a VIS may be used in court during a proceeding, including that a copy of the VIS will be given to the offender, the victim may be cross-examined about the contents of the VIS and the court must consider the VIS in deciding how the offender should be sentenced.

Affected Persons

16L DPP to tell victims about court requirements and orders relating to offender's mental health

If a court requires an offender in to submit to the jurisdiction of the ACAT, the DPP must tell a victim of about the requirement.

If the Magistrates Court orders that an offender in relation to a relevant offence be taken to an approved mental health facility without requiring that the person submit to the jurisdiction of the ACAT, DPP must tell a victim about the order.

16M ACAT to tell victims about mental health orders

If the ACAT is considering making a mental health order, a forensic mental health order, an order to release the offender from custody, the ACAT must tell a victim that the ACAT is considering making the order.

If the ACAT makes an order, the ACAT must tell a victim that the order has been made and the nature and length of the order.

16N Affected person register unit to tell victims about affected person register

The affected person register unit must tell a victim about the affected person register, the rights of a registered affected person and if the victim is a registered affected person when the victim's information will be removed from the register. If an order has been made in relation to the forensic patient, the unit must tell the victim the information mentioned in the *Mental Health Act 2015*, s 134 (2) and any other information about the forensic patient that the affected person register unit considers necessary for the victim's safety and wellbeing and whether the ACAT intends to hold a hearing in relation to the order.

17F Affected person register unit to assist victims to participate in order hearings

If the ACAT is considering making a mental health order, a forensic mental health order or an order to release the offender from custody, the affected person register unit must tell a victim how the victim may apply to the ACAT for leave to participate in any hearing and if leave is granted—participate in the hearing.

For a victim who is a registered affected person, the register must offer to assist the victim to participate in the hearing. If the victim accepts the offer, the register must assist the victim to participate in the hearing.

17E Victims may give statement to ACAT for mental health orders

If the ACAT is considering making a mental health order, a forensic mental health order or an order to release the offender from custody, a victim who is a registered affected person for an offence committed or alleged to have been committed by the offender or another victim with the leave of the ACAT may appear and give evidence at the hearing in relation to the order or provide a statement to the ACAT in relation to the order.

Post-Sentence

15H Justice agencies to tell eligible victims about victims register

After an offender is sentenced for an offence, a justice agency must tell each victim who is eligible to be registered on the victims register how the victim may become registered on the victims register; the rights of registered victims to information about offenders who are sentenced and the role of registered victims in relation to the release of offenders from imprisonment under a parole order or on licence.

14J Minimising registered victims' exposure to offenders etc

If an offender is sentenced or a detained offender is transferred or released from their place of detention, the youth justice or adult offenders victims register must tell registered victim about actions the victim may take to minimise their exposure to, and prevent contact from, the offender.

16I Justice agencies may give information about offenders to registered victims

The adult offenders or youth justice victims register unit may tell a registered victim information about the offender if the offender has been sentenced and the victim asks the relevant justice agency for the information and the unit is satisfied the disclosure is appropriate in the circumstances.

16K Adult offender victims register unit to tell victim about intensive correction orders (ICO)

If an offender is subject to an ICO and the offender has breached any of the offender's ICO obligations; or the sentence administration board has decided to suspend, cancel, amend or discharge the offender's ICO or reinstate the offender's previously cancelled ICO, the adult offenders victims register unit must tell a registered victim about the breach, suspension, cancellation, amendment, discharge or reinstatement of the offender's ICO if it is likely to affect the victim's safety; or the victim has expressed concern about their safety or the need for protection from the offender to the adult offenders victims register unit.

Parole

16G Tell victims about inquiries for parole or release on licence

If the sentence administration board (the board) intends to start an inquiry into an application for parole or the release of an offender on licence, the board or the adult offenders victims register unit must tell a victim about the inquiry and how the victim may make a submission to the board.

The board or the adult offenders victims register unit must give the victim information about the offender or information about any assistance available to the victim to make a submission or tell the board about a concern to assist the victim to make a submission or tell the board about a concern.

17D Victims may make submissions for parole or release on licence inquiries

If the sentence administration board intends to start an inquiry into an application by an offender for parole or the release of an offender on licence; a victim may make a submission to the board about the granting of parole or a licence, including the likely effect on the victim, or on the victim's family, if parole or the licence were to be granted. The victim may tell the board about any concern of the victim or the victim's family about the need to be protected from violence or harassment by the offender.

The board must ensure that a victim's submission is not given to a particular person if the victim asks the board to not give the submission to the person and a judicial officer of the board considers there is a substantial risk that giving the submission to the person would endanger the victim or anyone else.

16H Adult Offenders Victims Register Unit and Sentence Administration Board to tell victims about parole or release on licence decisions

If the sentence administration board decides to make, or refuse to make, a parole order for an offender, the relevant justice agency must take steps to the victim about the board's decision. If the board decides to make a parole order, the agency must tell the victim the offender's parole release date and the offender's parole obligations.

If the Executive makes a decision to grant, or refuse to grant, an offender a licence to be released from imprisonment, the relevant justice agency must, in writing, take steps to tell the victim about the Executive's decision. If the Executive grants a licence to the offender, the agency take steps to tell the offender's licence release date and the offender's release on licence obligations.

16J Adult and Youth Victim registers to tell registered victims about transfer etc of detained offenders

If a registered victim has expressed concern about their safety or the need for protection from the offender or the registers believe the offender's transfer, release or escape is likely to affect the registered victim's safety, the registers must tell the victim that the detained offender has escaped or is to be transferred or released from imprisonment or detention and any condition of the release that may affect the registered victim's safety.

Complaints

18F Victims may raise victims rights concern with commissioner

If a victim engages with a justice agency and the victim believes the justice agency has not complied with their victims rights, the victim may raise a concern about the agency's conduct with the commissioner.

A victims rights concern may be withdrawn at any time by the victim or the victim's representative if the victim has nominated a representative to raise the concern.



18G Commissioner to deal with victims rights concerns

If a victim raises a victims rights concern with the commissioner, the commissioner must give the victim information about the process that will be used for resolving the concern; and take all reasonable steps to resolve the concern.

The justice agency must, on request, give the commissioner any document or information that the justice agency could provide to the victim and which is reasonably required by the commissioner to resolve the concern.

If the commissioner is unable to resolve a victims rights concern, the commissioner may, with the victim's consent refer the concern to a relevant complaints entity and give the entity any information the commissioner has in relation to the concern.

15I Justice agencies to tell victims about justice agency complaints and victims rights concerns

If a victim tells a justice agency that the victim believes the agency has not complied with their victims rights or is dissatisfied with the services, the justice agency must tell the victim how the victim may make a justice agency complaint to the justice agency.



18E Justice agencies to deal with justice agency complaints

If a victim makes a justice agency complaint to a justice agency, the justice agency must give the victim information about the process that will be used for resolving the complaint and take all reasonable steps to resolve the complaint as soon as practicable.

The victim must give the justice agency any document or information that the victim can provide and which is reasonably required by the agency to resolve the complaint.

General Rights

18 Justice agencies must comply with victims rights

A justice agency must, when engaging with a victim, comply with all victims rights that apply to the victim.

If complying with a particular right would support a victim, despite the right not applying to the victim, a justice agency should, as far as practicable, comply with the right in relation to the victim.

In considering whether complying with a right would support a victim, the justice agency should have regard to the individual needs of the victim and their circumstances.

14C Respectful engagement with victims

A justice agency must engage with a victim respectfully and with appropriate regard to the victim's personal situation, needs, concerns, rights and dignity

A justice agency must take into account, and be responsive to, the individual needs of a victim, particularly needs relating to the age; disability; gender identity; race; religion; sex; sexuality; parental, family, carer or kinship responsibilities.

14D Respectful engagement with child victims

If a primary victim is a child, a justice agency must consider the child's views, wishes and circumstances before engaging with the child's parent or carer as the victim in relation to victims rights; and engage with the child in a way that is appropriate for a person of the child's age who is not a victim.

14F Victims' privacy

A justice agency must not disclose personal information about a victim or a family member of the victim, unless the information is disclosed in the course of a proceeding before a court or tribunal; or under a territory law; or with the victim's consent.

14E Contact with victims

A justice agency must contact a victim if, in exercising a function in relation to victims rights, it is required to do so (a required contact). However, a justice agency need not make a required contact with a victim if the justice agency has told the victim about each required contact (including the right to which each contact relates) and the victim does not want any required contact, or does not want the particular required contact; or another agency has already made the required contact with the victim; or it is not possible or practicable to make the required contact with the victim; or for a person who is an associated victim—the justice agency has already made the required contact with the primary victim; and considers it unnecessary to also contact the associated victim.

18B Victims' representatives

A victim may nominate a person, in writing, to be the victim's representative (a representative) to: exercise some or all victims rights; receive some or all information required to be given to the victim in relation to victims rights; make a justice agency complaint, raise a victims rights concern or make a victims rights complaint for the victim. A victim may nominate anyone to be their representative.

If a victim nominates a representative and the nominee agrees to be the victim's representative, the representative must be given the information they are allowed to be given under subsection (1) (b).

Reporting and Publication

18D Victims may make justice agency complaints to justice agencies

If a victim engages with a justice agency and the victim believes the justice agency has not complied with their victims rights or is dissatisfied with the justice agency's services, the victim may make a complaint about the justice agency's conduct to the justice agency .

A justice agency must record an oral complaint in writing if the agency considers the complaint is of a sufficiently serious nature to be recorded in writing or the victim asks the agency to record the complaint in writing. A justice agency complaint may be withdrawn at any time by the victim; or the victim's representative.

18I Justice agencies to include justice agency complaints in annual report

A justice agency must include the following in the agency's annual report: a statement of how many written justice agency complaints were made to the agency in the year; for each written complaint made—the right in relation to which the complaint was made; and whether the agency resolved the complaint. However, the justice agency must not include any information that would identify a complainant or a victim of an offence.

18H Justice agencies to make victims rights guidelines

Each justice agency must make and publish written guidelines on the agency's website to assist the agency to comply with victims rights and establish appropriate processes and procedures to enable the agency to respond to and resolve justice agency complaints.

A justice agency must make and publish the guidelines not later than 12 months after the day this section commences.

1994
 THE LEGISLATIVE ASSEMBLY
 FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Victims of Crime Bill 1994

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART II—TREATMENT OF VICTIMS OF CRIME

4. Governing principles
5. Observance of principles
6. Disclosures to Coordinator—legal immunity

PART III—VICTIMS OF CRIME COORDINATOR

Division 1—Functions and powers

7. Functions
8. Attendance at criminal proceedings
9. Investigations
10. Powers
11. Secrecy
12. Disclosure of information concerning investigations

84071 1994/156 (T71/94)

ii

*Victims of Crime No. , 1994***TABLE OF PROVISIONS—continued****Section**

13. Legal immunity
Division 2—Office of Coordinator
14. Appointment
15. Terms of office
16. Resignation
17. Termination of appointment
18. Acting Coordinator

PART IV—MISCELLANEOUS

19. Regulations

1994

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Victims of Crime Bill 1994

A BILL

FOR

An Act relating to victims of crime

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Victims of Crime Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

2

Victims of Crime No. , 1994

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

- 5 “administration of justice” includes the provision of police services;
- “Coordinator” means the Victims of Crime Coordinator appointed under subsection 14 (2);
- “harm” includes—
- 10 (a) physical injury;
- (b) mental injury or emotional suffering (including grief);
- (c) pregnancy;
- (d) economic loss; and
- (e) substantial impairment of rights accorded by law;
- “offence” means an offence against a law in force in the Territory;
- 15 “victim” means—
- (a) a person (in this definition called the “primary victim”) who suffers harm—
- 20 (i) in the course of, or as the result of, the commission of an offence; or
- (ii) in the course of assisting a police officer in the exercise of the officer’s power to arrest a person or to take action to prevent the commission of an offence;
- 25 (b) where a primary victim dies as a result of the commission of an offence—any person who was financially or psychologically dependent on the primary victim immediately before his or her death; or
- (c) a person who witnesses the commission of an offence in circumstances in which it is probable that he or she would suffer harm.
- 30

(2) A reference in this Act to the performance of a function shall, unless the contrary intention appears, be read as including a reference to the performance of a duty and the exercise of a power.

PART II—TREATMENT OF VICTIMS OF CRIME**Governing principles**

4. In the administration of justice, the following principles shall, as far as practicable and appropriate, govern the treatment of victims:

- 5 (a) a victim should be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to his or her personal situation, rights and dignity;
- 10 (b) a victim should be informed at reasonable intervals (generally not exceeding 1 month) of the progress of police investigations concerning the relevant offence, except where such disclosure might jeopardise the investigation, and, in that case, the victim should be informed accordingly;
- (c) a victim should be informed of the charges laid against the accused and of any modification of the charges;
- 15 (d) a victim should be informed of any decision concerning the accused to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;
- (e) a victim should be informed of any decision not to proceed with a charge against the accused;
- 20 (f) where any property of a victim is held by the Crown for the purposes of investigation or evidence—inconvenience to the victim should be minimised and the property returned promptly;
- (g) a victim should be informed about the trial process and of the rights and responsibilities of witnesses;
- 25 (h) a victim should be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
- (i) a victim's residential address should be withheld unless the court directs otherwise;
- 30 (j) a victim should be relieved from appearing at preliminary hearings or committal proceedings unless the court directs otherwise;
- (k) a victim should be given an explanation of the outcome of criminal proceedings and of any sentence and its implications;
- 35 (l) a victim who is known to have expressed concern about the need for protection from an offender should be informed of the offender's impending release from custody.

4

*Victims of Crime No. . 1994***Observance of principles**

5. A person who performs a function in the administration of justice shall, in addition to any other matter that is relevant, have regard to the governing principles referred to in section 4.

5 Disclosures to Coordinator—legal immunity

6. (1) Where a person to whom this section applies—

(a) discloses information to the Coordinator which the person believes on reasonable grounds is required by the Coordinator for the purposes of this Act; and

10 (b) the disclosure is made in good faith;

no action, suit or proceeding lies against the person in respect of the disclosure.

(2) Subsection (1) does not affect any liability that the Territory would have, but for that subsection, in respect of the disclosure.

15 (3) This section applies to a person who performs, or has performed, a function in the administration of justice.

PART III—VICTIMS OF CRIME COORDINATOR***Division 1—Functions and powers*****Functions**

20 7. The Coordinator has the following functions in connection with the administration of justice:

(a) to promote the governing principles referred to in section 4;

(b) to encourage the provision of efficient and effective services for victims;

25 (c) to promote reforms to meet the needs of victims;

(d) to develop educational and other programs to promote awareness of the needs of victims;

(e) to disseminate information concerning the operation of this Act and the functions of the Coordinator;

30 (f) to maintain a register of services available to victims;

(g) to ensure, as far as practicable, that victims receive the information and assistance they need in connection with their involvement in the administration of justice;

(h) to advise the Minister on matters relating to victims;

- (i) any other function assigned to the Coordinator by or under any other law of the Territory.

Attendance at criminal proceedings

- 5 8. The Coordinator is entitled to be present at the hearing of a proceeding in a court in respect of an offence, including any part of the proceeding held in private, unless the court directs otherwise.

Investigations

- 10 9. (1) The Coordinator may investigate conduct in the administration of justice which the Coordinator believes on reasonable grounds involves a breach of the governing principles referred to in section 4.

(2) A person who performs, or has performed, a function in the administration of justice shall assist the Coordinator, as far as practicable, in relation to the giving of information requested by the Coordinator for the purposes of an investigation.

- 15 (3) The Coordinator shall report the results of an investigation to the Minister.

Powers

- 20 10. The Coordinator has power to do all things necessary or convenient to be done in connection with the performance of the Coordinator's functions.

Secrecy

11. (1) Subject to subsection (2), a person to whom this section applies shall not—

- 25 (a) make a record of protected information; or
(b) directly or indirectly, divulge or communicate to a person protected information concerning another person;

unless the record is made or the information divulged or communicated in relation to the performance of a function, as a person to whom this section applies, under or in relation to this Act or another law.

- 30 Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) Subsection (1) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of that other person.

- 35 (3) A person to whom this section applies is not required—
(a) to divulge or communicate protected information to a court; or

6

Victims of Crime No. , 1994

(b) to produce a document containing protected information to a court; except where it is necessary to do so for the purposes of this Act or another law.

(4) In this section—

5 “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is, or has been—

10 (a) the Coordinator; or

(b) a person acting under the direction or authority of the Coordinator;

“produce” includes permit access to;

“protected information” means information that—

15 (a) concerns the affairs of a person; and

(b) is disclosed to, or obtained by, a person to whom this section applies because of the performance of a function under or in relation to this Act or another law.

Disclosure of information concerning investigations

20 **12. (1)** Subsection 11 (1) does not prevent the Coordinator from disclosing information to a person or to members of the public about a matter the subject of an investigation under section 9 if the Coordinator is satisfied that the disclosure is necessary and reasonable in the performance of a function under or in relation to this Act or another law.

25 **(2)** In a disclosure referred to in subsection (1), the Coordinator shall not—

(a) express an opinion that is (expressly or impliedly) critical of a person unless the Coordinator has given the person an opportunity to answer the criticism; or

30 (b) identify a person (directly or indirectly) unless it is necessary and reasonable to do so.

Legal immunity

13. (1) No action, suit or proceeding lies against a person who is or has been—

35 (a) the Coordinator; or

(b) a person acting under the direction or authority of the Coordinator; in relation to an act done or omitted to be done in good faith in the performance, or purported performance, of a function of the Coordinator under or in relation to this Act or another law.

- 5 (2) Subsection (1) does not affect any liability that the Territory would have, but for that subsection, in respect of the act or omission.

Division 2—Office of Coordinator

Appointment

14. (1) There shall be a Victims of Crime Coordinator.
- 10 (2) The Coordinator shall be appointed by the Minister in writing.

Terms of office

15. The Coordinator holds office, subject to this Division—
- (a) for the period (not exceeding 3 years) specified in the instrument of appointment, but is eligible for reappointment; and
- 15 (b) on such terms and conditions (if any) in relation to matters not provided for by this Act as are specified in the instrument of appointment.

Resignation

- 20 16. The Coordinator may resign by giving a signed notice of resignation to the Minister.

Termination of appointment

17. The Minister may terminate the appointment of the Coordinator—
- (a) for misbehaviour or physical or mental incapacity; or
- (b) in accordance with the instrument of appointment.

25 Acting Coordinator

18. (1) The Minister may, in writing, appoint a person to act as the Coordinator—
- (a) during a vacancy in the office of the Coordinator, whether or not an appointment has previously been made to the office; or
- 30 (b) during any period, or during all periods, when the Coordinator is for any reason unable to perform the functions of the office.
- (2) A person appointed to act as the Coordinator during a vacancy in the office of Coordinator shall not so act continuously for more than 12 months.

8

Victims of Crime No. , 1994

(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- 5 (a) the appointment was ineffective or had ceased to have effect; or
(b) the occasion to act had not arisen or had ceased.

PART IV—MISCELLANEOUS

Regulations

19. The Executive may make regulations for the purposes of this Act.

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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

VICTIMS OF CRIME BILL 1994

EXPLANATORY MEMORANDUM

**Circulated by authority of
Terry Connolly, MLA
Attorney General**

AUSTRALIAN CAPITAL TERRITORY**VICTIMS OF CRIME BILL 1994****OUTLINE**

This Bill, and the Acts Revision (Victims of Crime) Bill, implement a number of the key recommendations of the ACT Community Law Reform Committee to improve the delivery of justice to victims of crime within the ACT. In particular, the Bill will establish a number of governing principles for treatment of victims of crime. It will also provide for the appointment of a victims of crime coordinator, whose role will be to ensure that the needs of victims of crime are appropriately catered for by the agencies of the criminal justice system.

Financial Considerations:

The appointment of a coordinator will cost \$80,000 in the first financial year, and \$70,000 for each financial year thereafter.

PART I - PRELIMINARY

**Short title and
Commencement
Clauses 1 and 2**

These clauses are formal requirements. They refer to the short title of the Bill, and commencement of the Bill, which is to be on a day fixed by the Minister by notice in the Gazette, or in six months, whichever occurs first.

**Interpretation
Clause 3**

Clause 3 is an interpretation clause.

'Administration of justice' is defined to include the provision of police services. This is to clarify that the Australian Federal Police, in the performance of their functions as defined by the *Australian Federal Police Act 1981*, come within the scope of this Bill.

'Coordinator' is a short form of reference to the Victims of Crime Coordinator, whose appointment is provided for by this Bill.

A 'victim' is defined in terms of his or her relationship to the offence. The victim will often be the person who suffers harm either as a direct result of the commission of the offence or through assisting a police officer in attempting to prevent the commission of the offence. If the person directly victimised dies as a result of the commission of the offence, a 'victim' for the purposes of this Part of the Bill is a person who was financially or psychologically dependant on the person who died. As this will be beneficial legislation, it is intended that the qualification of 'dependence' will be interpreted broadly. A person can also be a victim of an offence through witnessing (which is a broader notion than simply seeing or hearing) the offence being committed in circumstances in which it is probable that he or she would suffer harm. This might include, for example, a child who witnesses the assault of a friend.

The 'harm' suffered by the victim for these purposes is broadly defined in this section to include (and therefore not be limited to) physical injury, mental injury or emotional suffering (including grief), pregnancy, economic loss and substantial impairment of rights according to law.

The victim must have been the victim of an 'offence' against a law in force in the Australian Capital Territory.

Sub-clause 2 provides that a reference to 'function' should be read as including a reference to the performance of a duty or the exercise of a power. This clause is principally focussed on references to persons having a function in the administration of justice.

PART II - TREATMENT OF VICTIMS OF CRIME

Introduction

Part II establishes a standard for the proper treatment of victims of crime within the ACT criminal justice system. It also provides the mechanism by which the Coordinator can obtain information about whether that standard is being implemented by ensuring that officers of the criminal justice system are not subject to civil action for the provision of that information.

Governing Principles Clause 4

The principles set out in this clause will be the governing principles for the treatment of victims of crime. They will apply as far as practicable and appropriate. They are designed to ensure that the needs of victims of crime are, as far as possible, factors in decision-making related to the administration of justice.

Observance of Principles Clause 5

Clause 5 provides the means by which the principles listed in clause 4 will be given practical effect by imposing an obligation upon persons who perform a function in the administration of justice to have regard to the principles.

Disclosures to Coordinator - legal immunity Clause 6

This clause makes it clear that where a person who performs, or has performed, a function directly related to the administration of justice, discloses information in good faith to the Coordinator to assist in the Coordinator's investigations, that person will not be liable to an action under, for example, the Commonwealth *Privacy Act 1988*. Sub-clause (2) will exclude the Territory from the operation of this clause.

PART III - VICTIMS OF CRIME COORDINATOR**Introduction**

Part III provides for the creation of the statutory office of Victims of Crime Coordinator. The Coordinator will ensure that justice is delivered efficiently and effectively to victims of crime in the ACT and that the needs of victims of crime are appropriately catered for by the criminal justice process.

Division 1 - Functions and Powers

This division provides for the functions and powers of the Coordinator.

Functions**Clause 7**

This clause provides that the Coordinator will have certain functions in the connection with the administration of justice. These functions are aimed at enabling the Coordinator to ensure that all victims are made aware of the services available and that those services adequately and efficiently assist all victims; to ensure that the needs of victims, particularly with regard to information, are met by the criminal justice system; to ensure that the principles of the treatment of victims of crime set out in this Bill are promulgated and adhered to by those who deal with victims; and to ensure that awareness of the needs of victims of crime is promoted both within the general community and within Government.

Attendance at criminal proceedings**Clause 8**

The right of the Coordinator to be present in a court, even if the court is closed to members of the public, which is provided by clause 8, will enable the Coordinator to ensure that victims are receiving the information and assistance (including support) that they require. It will also enable the Coordinator to fully exercise the power of investigation and fulfil the practical requirement of monitoring the response of the criminal justice system to victims of crime.

Investigations**Clause 9**

When the Coordinator has reasonable grounds to believe that a victim is not being treated according to the principles for the treatment of victims of crime, clause 9 provides the Coordinator with the power to investigate, to determine whether the system's response to victims needs to be improved and the means by which that improvement can be brought about. Where the Coordinator is conducting an investigation, there is a duty on persons who perform or who have performed a function in the administration of justice to assist in the conduct of the investigation. The findings of the Coordinator are to be reported to the Minister.

Victims of Crime Bill 1994

Explanatory Memorandum

Powers**Clause 10**

Clause 10 provides the Coordinator with the powers necessary and convenient to enable the performance of the functions listed in clause 7.

Secrecy**Clause 11**

When the Coordinator is given personal information in the context of an investigation, for example, clause 11 ensures that the Coordinator, or those who have worked for the Coordinator, cannot reveal, or be made to reveal, that information without the consent of that victim unless that divulgence is necessary for the purposes of this Act or another law. This prohibition includes the divulging of that information to a court, unless it is necessary for the purposes of this Act or another law.

Disclosure of information concerning investigations**Clause 12**

Clause 12 is designed to ensure that the duty of secrecy imposed upon the Coordinator does not hinder the Coordinator from undertaking an investigation or hamper publicising in an appropriate manner the results of an investigation. Therefore, where a matter is or has been under investigation and the Coordinator is satisfied that disclosure is necessary and reasonable in the discharge of the functions, or the exercise of the powers, of that office, clause 12 generally allows such disclosure. There are, however, two conditions which must be met before disclosure can occur. Firstly, the Coordinator cannot make any express or implied criticism of a person without that person having the opportunity to answer the criticism. Secondly, the disclosure must not identify a person unless that identification is necessary and reasonable.

Legal immunity**Clause 13**

Clause 13 provides protection for the Coordinator from civil proceedings where the Coordinator has acted in good faith in the exercise (or, if the Coordinator has been mistakenly been acting beyond the power granted to that office, the purported exercise) of a power or performance or a function or duty under this Act. This clause will not affect any liability of the Territory.

Division 2 - Office of the Coordinator

This division provides the mechanics for the creation of the office of the Coordinator. Many of the provisions are standard to the creation of a statutory office.

Appointment**Clause 14**

Clause 14 provides for the creation of the office of Victims of Crime Coordinator. The office holder will be appointed by the Minister. This provision is subject to the Statutory Appointments Act 1994. Therefore, certain consultation regarding the appointment and gazettal of the notice of the appointment will be

Victims of Crime Bill 1994**Explanatory Memorandum**

required. The notice will be a disallowable instrument, so must be laid before the Legislative Assembly, and can be disallowed by the Legislative Assembly, within a certain period of time.

Terms of Office**Clause 15**

Clause 15 provides that the Coordinator can be appointed for up to 3 years (although the appointee will be eligible for reappointment on expiration of that period), subject to the conditions specified in the instrument of appointment.

Resignation**Clause 16**

Clause 16 provides that the Coordinator may resign by giving a signed notice of resignation to the Minister.

**Termination of
Appointment****Clause 17**

Clause 17 lists certain circumstances in which the Minister has the discretion to terminate the appointment of the Coordinator, and circumstances in which that appointment must be terminated.

Acting Coordinator**Clause 18**

Clause 18 provides for the appointment of an acting Coordinator so long as that appointment does not run continuously for longer than 12 months. The clause also saves the validity of acts done by or in relation to a person purporting to act as Coordinator in the mistaken belief of a valid appointment.

PART IV - MISCELLANEOUS**Regulations****Clause 19**

Clause 19 provides for the making of regulations under this Act.

2010

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

VICTIMS OF CRIME AMENDMENT BILL 2010

EXPLANATORY STATEMENT

Circulated by authority of
Simon Corbell MLA
Attorney General

Victims of Crime Amendment Bill 2010

Outline

The *Victims of Crime Act 1993* was one of the first instances of law reform recognising victims in Australia, but has since been overtaken by reforms in other Australian and overseas jurisdictions. It is important the ACT strive for best practice in the support of victims of crime in our community, particularly given the ACT was Australia's first jurisdiction to adopt a statutory human rights framework.

The Bill inserts an objectives clause into the Act.

The Bill renames the Victims of Crime Coordinator as the Victims of Crime Commissioner and clarifies the Commissioner's statutory role and functions. These functions include managing the Victim Services Scheme and any other program for the benefit of victims.

The Bill removes the complaints and investigation role from the Victims of Crime Coordinator and lets it fall naturally to the ACT Ombudsman and Health Services Commissioner, both of whom currently have the power to investigate complaints by victims in respect of ACT Government agencies (Ombudsman) and health service providers (Health Services Commissioner). The Commissioner retains a role in trying to resolve victims' concerns less formally.

The Bill establishes the Victims Advisory Board. The Board will provide a platform to formulate protocols and procedures for the treatment of victims of crime and advise the Attorney General on the development of policies and plans to promote the interests of victims of crime.

The Bill meets the Government's commitment to victims of crime and builds on the Government's amalgamation of victim advocacy and support services in the entity known as Victim Support ACT to ensure a 'one-stop-shop' for victims of crime, and on a range of initiatives as part of the Sexual Assault Reform Program (SARP) to enhance the criminal justice response to vulnerable victims of crime.

The reforms have been overseen by a reference group comprising representatives from ACT criminal justice agencies.

Victims of Crime Amendment Bill 2010

Detail

Part 1 — Preliminary

Clause 1 — Name of Act

This clause names the short title of the Act. The name of the Act will be the *Victims of Crime Amendment Act 2010*.

Clause 2— Commencement

This clause enables the Act to commence on the day or days fixed by the Minister by written notice.

Clause 3— Legislation amended

This is a technical clause stating that this part of the Bill amends the *Victims of Crime Act 1994* and the *Victims of Crime Regulation 2000*. This clause also identifies other Acts that are being incidentally amended. A full list appears in Schedule 1.

Part 2 — Victims of Crime Act 1994

Clause 4— New section 3A

This is a standard provision which appears in all new Acts (which contain offence provisions) and which is, when the opportunity presents, included in existing legislation that has offence provisions. In this case there is an offence under the secrecy provision, section 29.

Clause 5— Part 2 heading

This clause inserts a new heading and section 3B into the Victims of Crime Act. This new section contains the objects of the Act.

Clause 6—Compliance with principles

This clause omits the words ‘mentioned in section 4’ as the words are not required.

Clause 7—New section 5(2)

This clause introduces a new section 5(2). The new section is intended to ensure that, where a primary victim is a child, their views, wishes and circumstances are considered before treating their guardian as a victim when applying the governing principles. This provision is particularly important where it may not be reasonably practicable in the circumstances to treat a parent or a legal carer as the guardian, for example, where the victim is an older teenager, or where a parent is alleged to have committed an offence against the victim.

Clause 8—Giving information to coordinator – legal immunity

This technical clause omits the current section 6. The section is reinserted later in the Act.

Clause 9—New part 2A

This clause inserts a new part 2A. The new part 2A introduces important concepts into the Act. Essentially the part defines a victim for the purposes of the Act. The definition is inclusive and victim is defined broadly, focusing on the harm suffered because of the offence rather than the relationship of other people to the victim who has suffered the initial, direct harm.

Clause 10—Part 3

Part 3 provides for the creation of the statutory office of the Victims of Crime Commissioner.

Division 3.1 Appointment of CommissionerSection 7

This section provides for the appointment of the Victims of Crime Commissioner. The office holder will be appointed by the Minister for a period of not longer than 5 years. The provision is subject to the *Legislation Act 2001*. Conditions of appointment are agreed between the Minister and the Commissioner but are subject to any determination by the Remuneration Tribunal.

Section 8

This section lists certain circumstances in which the Minister may end the appointment of the Commissioner, including:

- if the Commissioner contravenes an ACT law; or
- for misbehaviour; or
- on bankruptcy; or
- on conviction of an offence attracting a penalty of imprisonment for at least one year or that would, if committed in the ACT, have attracted that penalty.

The Minister must end the Commissioner's appointment if the Commissioner is absent, other than on approved leave, for 14 days in a row or for 28 days in a 12-month period. The appointment must also end if the Commissioner suffers from mental or physical incapacity of a kind that substantially affects the exercise of the person's functions.

Section 9

This section provides for all staff assisting the Commissioner to be employed under the *Public Sector Management Act 1994*, which regulates the employment of ACT Government employees.

Section 10

This section moves the current section 18A which permits the Victims of Crime Commissioner to delegate his or her functions under the Act to a public servant to a more logical place in the Act.

Division 3.2 Functions of the CommissionerSection 11

This section provides that the Victims of Crime Commissioner will have certain functions in the connection with the administration of justice. Essentially, these functions are aimed at enabling the Commissioner to advocate for the interest of

victims; ensuring that all victims are made aware of services available and that those services are provided efficiently and effectively; promoting and resolving concerns raised by victims in regard to the governing principles and interests of victims; ensuring the needs of victims, especially in respect of information, are met by the criminal justice system; and ensuring that awareness of the interests of victims of crime are promoted both within the general community and within Government.

This section also brings the function of managing the program known as the Victims Services Scheme (VSS) and any other program for the benefit of victims into the Commissioner's statutory functions. Currently, the Coordinator manages the VSS under a delegation from the Chief Executive of the Department of Justice and Community Safety. The section now makes this role a statutory function.

The section is consistent with current drafting practice in including a note indicating that a provision of law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function

Section 12

Section 12(1) and (2) provides a facilitative function for the Victims of Crime Commissioner to try to resolve a concern raised by a victim about an agency involved in the administration of justice, in circumstances where the Commissioner considers that the agency has not complied with the governing principles. This section is intended to facilitate the timely resolution by any involved agency of concerns that are raised by a victim with the Commissioner.

Section 12 (2) also provides that the Commissioner will be able to request that an agency provide any document or information reasonably required by the Commissioner to resolve such a concern. The agency is required to provide any information to the commissioner that it could provide to the victim on request, It will be open to the agency to provide such further information as may be permissible and appropriate to assist the Commissioner to resolve the concern. (In this regard it is also relevant to note that s.136 of the *Crimes (Sentencing) Act 2005* (also amended by this Bill – see below) provides that a 'criminal justice entity' may give information the entity holds about an offender or a victim to another criminal justice entity. The Commissioner, DPP and ACT Policing are all criminal justice entities for that Act.)

Examples of the Commissioner's role in resolving a victim's concern

An example demonstrating how section 12 (1) and (2) will operate in practice is in circumstances where a victim has not been provided with information from police about the status of a matter as it progresses through the criminal justice system (as is required by section 4 (b) of the Governing Principles).

If a victim is concerned that he or she is not receiving information about the status of a matter in which they are a victim, the Commissioner will be able to resolve this concern quickly and effectively by contacting the police, ascertaining the status of the matter and providing this information and feedback to the victim. Police will be required to provide case status information as it is information that is reasonably

required by the Commissioner to resolve the victim's concern that could be provided to the victim.

The section also provides for a formal complaint process for victims to refer their matter directly to a relevant complaints authority. In addition it provides that the Commissioner can facilitate the referral of a complaint on a victim's behalf to the relevant complaints authority.

Section 12(4) provides that the Victims of Crime Commissioner must refer any complaint relating to non-compliance with the governing principles to a relevant complaints entity, namely the Human Rights Commission, the ACT Ombudsman or any other entity authorised to investigate a complaint relating to the administration of justice.

The Commissioner does not have a formal investigation function.

Section 12(5) provides that the Commissioner may use his or her discretion to not refer a complaint until the complainant has attempted to resolve the complaint with the appropriate agency or, if the complaint is minor in nature, the Commissioner has tried to resolve the complaint between the complainant and the relevant agency. Hence if the thing complained of is the fact that the agency has repeatedly failed to respond to the victim's approaches, the Commissioner may conclude it is not necessary for the victim to make a further attempt to give the agency an opportunity to respond before referring the complaint.

Section 12(6) provides that if a complaint is referred to a relevant complaints entity, the Commissioner must give the entity all documents and information held by the Commissioner about the complaint. This only relates to information and documentation that is relevant to the complaint and does not include information or documents that the Commissioner may hold that relate to the health of the person making the complaint unless they are to the complaint.

This provision does not prevent a victim of crime from lodging a complaint directly with the complaints entity.

The formal complaints process will be that of the relevant complaints entity.

Section 13

This section has been renumbered from the current section 8. It provides for the Commissioner to be present in court, even if the court is closed to members of the public. It enables the Commissioner to ensure that victims are receiving the information and assistance they require.

Clause 11 – Victims services scheme – establishment

This clause removes the ability for regulations to be made in respect of nominating a service agency to be responsible for managing the VSS and the establishment of the Victims Assistance Board. Management of the VSS is now a function of the

Commissioner. The Victims Assistance Board has been superseded by the Victims Advisory Board.

Clause 12 —Section 19 (2)(e)

This is a technical amendment which changes the word ‘coordinator’ to ‘Commissioner’.

Clause 13 – New Part 4A

Part 4A establishes the Victims Advisory Board.

Section 22A

This section establishes the Victims Advisory Board (the Board).

Section 22B

This section outlines the functions of the Board which include: developing and advising the Minister on policy, protocols and procedures for the treatment of victims; and any other function given to the Board under the Act or another territory law.

Section 22C

This section outlines the membership of the Board, which consists of:

- The chief executive of the Department of Justice and Community Safety;
- The Commissioner; and
- Members appointed under section 22D.

Subsection (2) enables the chief executive to delegate their function in respect of the Board to a public servant. The Board is intended to be a high-level advisory board with members who have decision-making powers for the agency or organisation they represent. The expectation is that this delegation would not ordinarily go beyond a deputy chief executive level.

Section 22D

This section outlines who the Minister must appoint as members of the Board. This includes representatives from:

- The DPP
- AFP
- ACT Courts
- Corrective Services
- Youth Justice, and
- Restorative Justice Unit.

Again the expectation is that representatives would ordinarily be at a high level of seniority.

The Minister must also appoint as board members:

- 3 people who represent the interests of victims services groups
- 1 person from the Indigenous community, and
- 1 person who is a lawyer.

Members must be employed, practise, or live in the ACT. Members appointed by the Minister representing the interests of victims' services groups, and the Indigenous community, and a lawyer, must not be public servants.

This section is governed by the *Legislation Act 2001*.

Section 22E

This section makes the chief executive the chair of the Board.

Section 22F

This section outlines the conditions of appointment to the Board. These include that an appointed member holds the position on a part-time basis and the member holds the position on terms decided by the Minister.

Section 22G

This section outlines the terms of appointment to the Board. These include that a member is appointed for no longer than 3 years.

The Minister must end an appointment if the member is no longer a representative of the entity or if the member no longer represents the interests of the group or community the member was appointed to represent.

The Minister may end the appointment of a member for:

- Misbehaviour or physical or mental incapacity
- Bankruptcy
- Being absent for 3 consecutive meetings
- Conviction of an indictable offence, or
- Failure to comply with the disclosure of interest requirements.

Division 4A.2 Proceedings of Board

Section 22H

This section outlines the time and place of meetings. The Board decides when and where it will meet but must meet twice a year. The chair may call a meeting or the Board must meet when asked to do so by the Minister or at least 7 members.

Section 22I

This section outlines the procedures for meetings. The chair presides at all meetings, except if they are absent. If the chair is absent, the members present choose a member to preside. Seven members of the board constitute a quorum and each member has a vote on each question to be decided. Questions are to be decided on a majority of members present, however if there is a tied vote the member presiding has the deciding vote. The Board must keep minutes of its meetings.

Section 22J

This section provides for members of the Board to disclose any direct or indirect financial interests in an issue being considered by the Board where that interest could conflict with the proper exercise of the member's function.

Clause 14 – part 6

This clause inserts a new part 6.

Part 6 Miscellaneous**Section 28**

This section provides protection for an official from civil proceedings when the official has acted honestly and without recklessness in the exercise of a function or in the reasonable belief that the conduct was in the exercise of a function. This section does not affect any liability of the Territory.

Section 29

This section is a secrecy provision that protects information provided to the Commissioner in relation to the Act. It ensures that the Commissioner and staff assisting the Commissioner are not compelled to reveal information obtained through their work.

This section also creates an offence for the improper disclosure of protected information. This does not apply if the defendant divulged the protected information with the consent of the person to whom the information related or if the defendant divulged a record of protected information about someone else under this Act or another territory law, or in relation to the exercise of a function, as a person to whom the secrecy provision applies, under this Act or another territory law.

The evidential burden in this section lies with the defendant. While the imposition of a burden on a defendant may engage the presumption of innocence in section 22 (1) of the *Human Rights Act 2004*, the burden here is evidential and it can be argued that it does not lie with the vulnerable party, the victim of crime, rather it lies with the Commissioner or a member of staff assisting the Commissioner.

While section 29 of the Bill contains reverse-onus offences and thus limits the right to be presumed innocent until proved guilty according to law (expressed at section 22 of the Human Rights Act), this section also protects the right to privacy (section 12 of the Human Rights Act) afforded to an inherently vulnerable group – victims of crime. It is therefore considered that the reverse onus is a reasonable limitation that can be demonstrably justified in a free and democratic society

It is therefore considered that the placing of an evidential burden on the defence in section 29 of the Bill imposes a proportionate limit on the presumption of innocence.

Section 30

This section provides for the making of regulations under this Act.

Clauses 15- 24 Dictionary

These are technical clauses which either omit surplus definitions from the Act or insert new definitions for the Act.

Part 3 — Victims of Crime Regulation

Given the Victims of Crime Commissioner will now have the statutory function of managing the Victims Services Scheme (VSS), many of the amending clauses outlined below are substituting responsibilities from the ‘relevant service agency’ to the Commissioner. Similarly, many of the clauses are substituting responsibilities from the Victims Assistance Board to the Commissioner, given the roles and responsibilities of the Victims Assistance Board have already been subsumed by the Commissioner in practice.

Clause 25 – Part 2

This clause omits part 2 of the regulations which relate to the Victims Assistance Board. The Victims Assistance Board has been superseded by the Victims Advisory Board and the provisions with respect to the Board now appear in the Act.

Clause 26 – Responsible service agency

This clause removes section 21 of the regulations. This section currently nominates the Chief Executive as the service agency responsible for the management of the victims services scheme. As the management of the VSS has become a function of the Victims of Crime Commissioner, this section is redundant.

Clause 27 – Section 22

This clause substitutes the heading and opening words of section 22 to clarify that the Commissioner is now responsible for managing the VSS.

Clause 28 – Section 22(b)

This clause omits the words ‘and the guidelines made under section 17 (Guidelines)’. Section 17 has been removed due to the removal of Part 2 of the regulation which relates to the Victims Assistance Board.

Clause 29 – Section 22(f)

This clause establishes the reporting requirements for the Commissioner in respect to the VSS. The clause establishes that the Commissioner will report to the chief executive every 6 months on the services the Commissioner provides or arranges.

Clause 30 – section 22 (k) and (l)

This clause rewords current functions in respect to the VSS. Section 22(k) provides for the VSS to provide victims with information and assistance about the criminal justice system, the operation of the VSS and the complaint procedures. Section 22(l) obligates the Commissioner to keep financial records on the operations under the VSS.

Clause 31 – Employment etc of people - contact with eligible victims

This clause relates to the employment etc of people who come into contact with eligible victims. The Commissioner must be satisfied that the person has qualifications or experience with victims and people from a diversity of ethnic and cultural backgrounds and experience and knowledge of working in a multidisciplinary

team. The Commissioner must also encourage the person to undertake continuing education and ensure the person is familiar with the *Human Rights Act 2005*.

The Commissioner must also take reasonable steps to ensure any person employed or engaged who has been convicted of a serious offence does not have contact with an eligible victim.

Clauses 32, 33, and 35 – Sections 24, 25, 25A, 26 and 26A

These are technical clauses omitting the words ‘responsible service agency’ and substituting them with ‘Commissioner’.

Clause 34 – Section 25

This is a technical amendment which substitutes the word ‘committee’ with the words ‘Health Services Commissioner’.

Clause 36 – Section 27(1) and (2)

This is a technical amendment which redrafts a current provision.

Clause 37 – Section 28

The Division in which this section sits relates to applications for internal review. As the process currently stands in the regulation, if the Commissioner decides that a person is not eligible for the victims services scheme, written notice must be given to the person. The notice must be in accordance with the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B(1). In particular, the notice must tell the person that they have the right to apply for an internal review, apply to the eligibility review committee for a review of the internal reviewer’s decision and to apply to the Administrative Appeals Tribunal for a review of the decision of the committee.

This clause removes the eligibility review committee from the process. The review of the internal decision will now lie with the Health Services Commissioner.

Clause 38 – Section 29

This is a technical amendment which removes the word ‘committee’ and replaces it with the words ‘Health Services Commissioner’ to bring into effect the new review provisions.

Clause 39 - Section 30

This clause outlines the process for the Health Services Commissioner to review the internal reviewer’s decision. The Health Services Commissioner has 28 days to review the internal reviewer’s decision. The Health Services Commissioner must either: confirm the decision; vary the decision; or set aside the decision and substitute the Health Services Commissioner’s own decision.

Clause 40 – Section 31

This is a technical amendment which replaces the word ‘committee’ with the words ‘Health Services Commissioner’ to bring into effect the new review provisions.

Clauses 41 and 42 – Sections 33(3) and 34(3)

These are technical amendments which substitute the words ‘responsible service agency’ with the word ‘Commissioner’.

Clause 43 – Section 34 (8)

This is a technical amendment which removes the responsibility of providing a closure report to the case coordinator from the responsible service agency and gives it to the Commissioner.

Clause 44 – Section 35 (5)

This is a technical amendment which removes the responsibility of giving a closure report to the case coordinator from the responsible service agency and gives it to the Commissioner.

Clause 45 – Section 36

This clause provides for how contact hours are provided to an eligible victim who lives in the ACT.

Clause 46 and 47 – Sections 37(1), (2) and (3)

These are technical amendments which remove the responsibility of providing contact hours from the responsible service agency and places it them with the Commissioner. The amendment to 37 (1) redrafts the current provision to make it clearer and easier to understand.

Clause 48 – Section 38

This is a technical amendment which removes the responsibility of referring a disagreement about the content of a care plan to an independent arbitrator nominated by the responsible service agency and places it with the Commissioner.

Clause 49 – Section 40(1) and (2)

This is a technical amendment which removes the responsibility of approving service providers from the Victims Assistance Board and places it with the Commissioner.

Clause 50 – Section 40(3)

This clause removes the requirement for the Victim Assistance Board to issue guidelines for using service providers that are not approved. The Victim Assistance Board will no longer exist.

Clause 51 – Section 41

This is a technical amendment which removes the responsibility for approving a person as a service provider if certain criteria are met, and places it with the Commissioner.

Clause 52 – Section 41 (a)(1)(i)

This clause replaces one of the current criteria for approval of a service provider, namely that the person is trained in the provision of services to victims, and replaces it with a broader criterion that the person needs to have qualifications or experience in working with victims and people from a diversity of ethnic and cultural backgrounds.

This broader criterion better reflects the intended criteria for service providers and aligns with the criteria of employing or engaging people who will have contact with eligible victims (section 23).

Clause 53 – Section 41 (d)

This clause removes the criteria that the person meets the guidelines made under section 17 for approval of service providers. Section 17 has been removed through the removal of Part 2 of the Regulations.

Clause 54 – Section 41 (2)

This clause links back to section 37 (1) and (2) which enables the Commissioner to approve contact hours to be delivered by a non-approved service provider if a person lives outside the ACT, or if a person lives in the ACT but is seeking contact hours from a service provider who is not approved. This may occur if a person is a victim of crime while visiting the ACT and returns to their home jurisdiction or if a person who lives in the ACT is already accessing services from a provider who may not necessarily be approved.

This is a new clause which provides that the Commissioner may only approve the use of a non-approved service provider if the Commissioner is satisfied the service provider meeting the criteria in subsection 41 (1).

Clause 55 – Section 42

This is a technical amendment which removes the responsibility for suspending the approval of service providers from the Victims Assistance Board and places it with the Commissioner.

Clause 56 – Section 43

This is a technical amendment which removes the responsibility for cancelling the approval of service providers from the Victims Assistance Board and places it with the Commissioner.

Clause 57 – Section 45

This is a technical amendment which removes the responsibility for providing a statement and certificate under the *Victims of Crime (Financial Assistance) Act 1983* from the responsible service agency and places it with the Commissioner.

Clause 58 – Section 46A

This is a technical amendment which removes the responsibility for providing written notice of decisions to refuse, suspend or cancel the approval of service providers from the Victims Assistance Board and places it with the Commissioner.

Clause 59 – New section 47A

This clause provides, in Part 4 of the Regulation, that the Commissioner may make guidelines about:

- the way a victim is assessed for eligibility to use the VSS;
- the employment or engagement of people who will have contact with eligible victims;

- the preparation, content and implementation of care plans;
- the eligibility of entities to be approved or used as service providers;
- the referral of victims to service providers or other entities dealing with victims;
- the establishment and operation of volunteer programs;
- the internal review of decisions made by the Commissioner;
- the holding of indemnity insurance by service providers; and
- other matters necessary and convenient to be decided with respect of the VSS.

The guidelines made under this section are notifiable instruments.

Clause 60 – Section 48

This is a technical amendment which removes the responsibility for making guidelines in respect of volunteers from the Victims Assistance Board and places it with the Commissioner.

Clause 61 – New section 48A

This clause inserts a new provision which provides that the Commissioner may approve independent arbitrators for this regulation. A person is approved as an independent arbitrator only if they are an approved service provider. The Commissioner must keep a list of approved independent arbitrators and the Commissioner must keep the list open for inspection by an eligible victim, without charge. If asked, the Commissioner must provide a copy of the list to an eligible victim without charge.

Clauses 62 and 63 – Sections 50 heading and 50(1)

These clauses are updates, and use the words ‘service provider’ rather than ‘approved service provider’.

Clauses 64-72 - Dictionary

These clauses amend the dictionary provisions to align the definitions with other amendments to the legislation.

Schedule 1 makes minor consequential amendments, including to the *Crimes (Sentencing) Act 2005*, mainly reflecting the change in title from Victims of Crime ‘Coordinator’ to ‘Commissioner’.

Australian Capital Territory
Government Solicitor



Our Reference
641900

Contact

11 November 2022

By email: [REDACTED]

Ms Heidi Yates
Victims of Crime Commissioner
ACT Human Rights Commission
56 Allara Street
CANBERRA ACT 2601

Dear Ms Yates

Advice: Definition of ‘victim’ in the *Victims of Crime Act 1994*

We refer to your request for legal advice on 8 November 2022 (supplemented by you on 10 November 2022) in which you seek our urgent advice in relation to the meaning of ‘victim’ in the *Victims of Crime Act 1994* (**Victims of Crime Act**).

Noting the urgency of your request, our advice is necessarily in summary form.

A. Background

1. You seek advice in relation to the meaning of ‘victim’ within the Victims of Crime Act. Specifically, you require advice on the meaning of ‘offence’ in the Victims of Crime Act, including whether ‘offence’ is limited to occasions where an offender has been convicted.
2. You instruct that your office (the office of the Victims of Crime Commissioner (**Commissioner**)) has always adopted the approach that it is your duty to form a view as to whether someone is a ‘victim’ within the meaning of the Victims of Crime Act (and is therefore eligible to receive services under the Act). You explain that in adopting this approach you determine whether, on the balance of probabilities, you are satisfied that an individual who is seeking services has suffered harm because of an offence.
3. Your office’s approach would be inconsistent with a narrow interpretation of ‘offence’ in the Victims of Crime Act, where ‘offence’ is only read to mean an offence in relation to which a court has delivered a finding of guilt.

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4. You further instruct that some in the community have recently expressed the view that victim support services, including advocacy and court support, should not be provided to an individual until an offence has been proved in court.¹ In your supplementary instructions, you have provided us with copies of correspondence variously dated 8 and 9 November 2022 between the office of Mr Peter Cain MLA and your office.

B. Your questions and our answers

5. You have sought advice in relation to the following questions to which we provide our answers.

Does 'offence' when used in relation to victims in the Victims of Crime Act have a narrow meaning (to only mean an offence where a court has delivered a finding of guilt) or a broader meaning (to include an alleged offence)?

6. Given the context of the Victims of Crime Act, in our view 'offence' must undoubtedly be given a broad meaning in that Act.
7. If 'offence' were interpreted to only mean an offence where a court has convicted or found an offender guilty, this would frustrate the operation of the Victims of Crime Act, preventing the Commissioner from exercising her functions and preventing the Act from achieving its objects.
8. Such an interpretation would also be inconsistent with the meaning of offence in Territory laws dealing with the administration of justice in terms of criminal procedure.²

Does the Victims of Crime Act provide for a definition of an 'offence' that differs from Part 2.2 of the *Criminal Code 2002*?

9. Only to the extent that 'offence' in the *Criminal Code 2002* (**Criminal Code**) means an offence against a territory law where 'offence' in the Victims of Crime Act means an offence against a law in force in the ACT.
10. Part 2.2 of the Criminal Code does not define an offence, it prescribes the elements of an offence and how criminal guilt is established. The term 'offence' is defined for the Criminal Code to mean 'an offence against a law'.³ This definition is, in our view, consistent with the relevant definition of the term 'offence' in the Victims of Crime Act.

¹ To the criminal standard, i.e., beyond a reasonable doubt.

² See s 8 of the *Crimes (Sentencing) Act 2005* and the contrasting treatment of 'offenders' from the concept of 'offence', whereby 'offenders' are those convicted or found guilty of an offence by a court, a 'victim impact statement' is made in accordance with pt 4.3 which is defined in s 47 as '... a statement made by or for a victim of the offence that contains details of any harm suffered by the victim because of the offence'. See also Ch. 18 of the *Legislation Act 2001* which provides for matters such as the prosecution of offences and when they can be commenced. The term 'offence' is used throughout Ch. 18 and it does not attract or infer the concept of a finding of guilt. See also s 19 of the *Magistrates Court Act 1930* where the court's criminal jurisdiction is defined to extend to where 'no other provision is made for the trial of the person committing the offence', demonstrating that a person can have committed an offence prior to being found guilty.

³ Criminal Code s 3, Dictionary (def *offence*).

C. Victims

11. Section 6 of the Victims of Crimes Act defines a 'victim', for the purposes of the Act, to mean 'a person who suffers harm because of an offence ...'.⁴ The term 'offence' is relevantly defined for the Victims of Crime Act to mean 'an offence against a law in force in the ACT'.⁵
12. Once a person is a 'victim' for the purposes of the Victims of Crimes Act, they attract rights and positive obligations imposed by the Act on various entities, including the Commissioner.
13. In the Victims of Crime Act, the 'administration of justice'⁶ includes the provision of services by a 'justice agency',⁷ which include: (1) the Chief Police Officer;⁸ (2) a court 'acting in an administrative capacity';⁹ (3) the Director of Public Prosecutions;¹⁰ and (4) you, as the Commissioner.¹¹

D. Functions of the Commissioner

14. Section 11 of the Victims of Crime Act provides the Commissioner with functions including to: (1) 'monitor and promote compliance with victims rights';¹² (2) ensure victims rights and concerns are dealt with promptly and effectively;¹³ (3) 'ensure the provision of efficient and effective services for victims';¹⁴ and (4) 'ensure that victims receive information and assistance they need in connection with their involvement in the administration of justice' (our underlined emphases).¹⁵
15. Section 13 provides that '[f]or the exercise of the commissioner's functions under [the Victims of Crime] Act, the commissioner is entitled to be present at the hearing of a proceeding in a court in respect of an offence, including any part of the proceeding held in private ...'.

E. Objects

16. Section 3AA of the Victims of Crime Act sets out the objects of the Act. Notably, the objects include to: (1) 'help victims deal with the effects of criminal offences';¹⁶ (2) 'acknowledge, promote and uphold the rights and interests of victims in the administration of justice';¹⁷ and (3) 'recognise and establish appropriate ways for

⁴ Victims of Crime Act s 6(1).

⁵ Victims of Crime Act s 2, Dictionary (def *offence* (a)).

⁶ Victims of Crime Act s 7.

⁷ Victims of Crime Act s 8(1).

⁸ Victims of Crime Act s 8(1)(a)(iii).

⁹ Victims of Crime Act ss 8(1)(a)(v) and 8(2).

¹⁰ Victims of Crime Act s 8(1)(a)(vi).

¹¹ Victims of Crime Act s 8(1)(a)(x).

¹² Victims of Crime Act s 11(1)(d).

¹³ Victims of Crime Act s 11(1)(e).

¹⁴ Victims of Crime Act s 11(1)(g).

¹⁵ Victims of Crime Act s 11(1)(k).

¹⁶ Victims of Crime Act s 3AA(c).

¹⁷ Victims of Crime Act s 3AA(d)

agencies involved in the administration of justice to engage with victims in order to minimise adverse outcomes and prevent trauma for victims'.¹⁸

17. Section 6 of the *Victims of Crime (Financial Assistance) Act 2016* (**Financial Assistance Act**), which your office administers, sets out the objects of this Act. Notably, the objects include to: (1) 'help victims of crime by establishing a system for giving [them] financial assistance';¹⁹ (2) assist victims of crime to recover from acts of violence;²⁰ and (3) 'complement other services provided for victims of crime' (our underlined emphases).²¹
18. Significantly, the Financial Assistance Act expressly defines an 'act of violence', for which financial assistance to a victim may be associated and given, to include conduct where the person responsible has not been identified, charged or found guilty of the associated offence.²² The scheme established by the Victims of Crime Act and the Financial Assistance Act suggest a broader interpretation of 'offence' is to be preferred.

F. Rights of Victims

19. Further, a victim has various rights under pt 3A of the Victims of Crime Act. This includes the right to be given information about processes that follow the reporting of an offence and information about the hearing process and role as a witness if required to attend court to give evidence for the prosecution in a proceeding for the offence.²³
20. Justice agencies must comply with victims rights that apply to a victim and have regard to the individual needs of the victim and their circumstances.²⁴

G. Criminal Code

21. As we earlier observed, an 'offence' is defined in the Criminal Code as 'an offence against a law'.²⁵ The 'law' it refers to is limited to a Territory Act or subordinate law, including a provision of those laws.²⁶ Whereas, as we earlier observed, an 'offence' in the Victims of Crime Act is generally defined as 'an offence against a law in force in the ACT'.²⁷ Accordingly, an offence in the Victims of Crime Act covers offences against applicable laws of other jurisdictions such as the Commonwealth.
22. Part 2.2 of the Criminal Code²⁸ codifies the elements of an offence, including physical and fault elements of offences, defining the scope and parameters for each element. Whilst s 12 of the Criminal Code restricts when a person can be found guilty of an

¹⁸ Victims of Crime Act s 3AA(e).

¹⁹ Financial Assistance Act s 6 (prefatory words).

²⁰ Financial Assistance Act s 6 (a).

²¹ Financial Assistance Act s 6(d).

²² Financial Assistance Act s 7(2).

²³ Victims of Crime Act ss 15D and 15E.

²⁴ See Victims of Crime Act s 18.

²⁵ Criminal Code s 3, Dictionary (def *offence*). See paragraph [10] of our advice above.

²⁶ See *Criminal Code* s 3, Dictionary (def *law*). Sections 7 and 8 of the *Legislation Act 2001* define, respectively, an 'Act' as an Act of the Legislative Assembly and a 'subordinate law' as a regulation or rule made under an Act, other subordinate law or power under an Act, subordinate law or otherwise given by law.

²⁷ Victims of Crime Act s 2, Dictionary (def *offence* (a)). See paragraph [11] of our advice above.

²⁸ Part 2.2 of the Criminal Code comprises ss 11 and 12 of the Criminal Code.

offence,²⁹ pt 2.2 does not otherwise define what an offence is other than noting that it consists of physical and fault elements.

23. The question from Mr Cain in relation to the Criminal Code appears to be premised on there being differing definitions of 'offence' in the respective laws, where one requires a finding of guilt and one does not. However, the basis for that suggestion is unclear. The commission of an 'offence' is distinct from the concept of being found criminally responsible for an offence.³⁰ Thus an offence can occur in fact, where as a matter of law the person is not criminally responsible for the commission of that offence.

H. Interpretation principles

24. The task of statutory construction must begin with a consideration of the text and the language that has been employed.³¹ While the natural and ordinary meaning of a word is to be preferred, a provision must be construed consistently with the language and purpose of the statute as a whole.³²
25. These common law principles are given statutory expression by s 139 of the *Legislation Act 2001*. Relevantly, when "working out the meaning of an Act, the interpretation that would best achieve the purpose of the Act is to be preferred to any other interpretation".³³
26. Applying these principles to the Victims of Crime Act and the meaning of 'offence' within the definition of 'victim', an interpretation which best achieves the objects in s 3AA is to be preferred.
27. Meeting the definition of 'victim' in the Act is a threshold issue. If a person is not a 'victim' within the meaning of the Act, they do not gain the benefits of the rights and supports provided by the Commissioner and other justice agencies.
28. If 'offence' in s 6(1) were to be read as an offence for which a person has been convicted or found guilty by a court, this would mean that the Victims of Crime Act could not provide support to a person prior to an accused being found guilty of an offence. Such an interpretation would mean that significant parts of pt 3A of the Victims of Crimes Act would have little work to do as it provides for victims rights during proceedings against an accused.³⁴ That interpretation would also mean that the Commissioner would only be entitled under s 13 to attend appeal proceedings.

²⁹ Section 12(1) of the Criminal Code states that '[a] person must not be found guilty of committing an offence unless the following is proved: (a) the existence of the physical elements that are, under the law creating the offence, relevant to establishing guilt; and (b) for each of the physical elements for which a fault element is required—the fault element or 1 of the fault elements for the physical element'.

³⁰ This distinction is apparent from other sections of the Criminal Code including: (1) Section 25, which states that '[a] child under 10 years old is not criminally responsible for an offence'; and (2) Section 34, which states that '[a] person is not criminally responsible for an offence if the person's conduct making up the offence was as a result of intoxication that was not self-induced'.

³¹ *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (Northern Territory)* (2009) 239 CLR 27 at 46-47 [47] (Hayne, Heydon, Crennan and Kiefel JJ).

³² *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381 [69]-[71] and 384 [78] (McHugh, Gummow, Kirby and Hayne JJ).

³³ *Legislation Act 2001* s 139(1).

³⁴ See, for example, Victims of Crime Act ss 17C, 18, 18B and 18C.

29. Accordingly, a broader interpretation of 'offence' appears to be appropriate and to be preferred in order to best promote the purposes of the Victims of Crime Act and the Financial Assistance Act to ensure they achieve their complimentary legislative objects.

I. Commissioner's role in applying the Act

30. The task of the Commissioner in applying the provisions of the Victims of Crime Act is an administrative one. This means the Commissioner must determine, based upon the available evidence, whether a person is a 'victim' within the meaning of the Act and therefore should be afforded the corresponding rights and support.
31. Given that this task is administrative in nature (as opposed to judicial), the Commissioner must determine, on the balance of probabilities, whether a person has suffered harm because of an offence.
32. Offences are provisions of laws that prescribe certain conduct to be unlawful. As an example, under s 26(1) of the *Crimes Act 1900* '[a] person who assaults another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years'. The provision provides that where a person has made a physical attack on another person (assaulted), they are guilty of an offence.
33. Accordingly, even before a court has made a criminal finding that they are guilty of the offence and convicted them, the accused may have still engaged in conduct that satisfies the elements of the offence under s 26(1). By extension, a person can be a victim of that offence, notwithstanding that there is no finding of guilt by a court.
34. The Commissioner must determine whether he or she believes that facts have occurred, which, on balance, mean that a person is a 'victim' of an 'offence' for the purposes of the Victims of Crime Act. This determination is often made with the benefit of a criminal complaint having already been made and the commencement of charges/proceedings against an accused.
35. It would be inconsistent with the objects of the Victims of Crime Act and inapt for the Commissioner to exercise judicial or quasi-judicial functions in relation to victims by applying criminal legal standards of proof to determine whether an offence has occurred (thereby limiting the extent of the Commissioner's jurisdiction under the Act).

J. Conclusion

36. For the reasons outlined above, we do not consider that 'offence' in s 6 of the Victims of Crime Act should be interpreted as only meaning offences for which a conviction or finding of guilt has been made against a person.
37. As advised, the preferred approach is a broader interpretation of 'offence', when considering the Victims of Crime Act as a whole, is appropriate.
38. Therefore, a person will be a victim for the purposes of the Victims of Crime Act if they have suffered harm because of an offence, regardless of whether a person has been convicted or found guilty of committing that offence.

Definition of 'victim' in the *Victims of Crime Act 1994*

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39. We consider the definition of 'offence' in the Criminal Code to be consistent with the relevant definition of the term 'offence' in the Victims of Crime Act.

Should you have any further questions arising from this advice, please do not hesitate to contact me.

This advice has been second counselled by [REDACTED], Practice Leader – Public and Constitutional Law. It has also been reviewed by [REDACTED], Executive Group Manager – Legal Practice, who agrees with the conclusions.

Yours sincerely

ACT Government Solicitor

[REDACTED]
[REDACTED]
A/g Principal Solicitor

I have applied an electronic signature to this advice

This advice is subject to legal professional privilege, and it and its contents should not be disclosed to any other person without the approval of the Solicitor-General for the ACT.



VICTIM SUPPORT ACT Human Rights Commission

Policy - Victim Support ACT – Victim Services Scheme for Victims of Crime

Purpose

This policy outlines the role and functions of the Victim of Crimes Commissioner and Victim Support ACT as they pertain to the administration of the Victim Services Scheme VSS in accordance with the governing legislative frameworks.

Scope

Victim Support ACT (VSACT) is designated as the ACT Government's one-stop-shop for victims of crime and their families in the ACT. The agency also supports the independent statutory position of the Victim of Crimes Commissioner who is the Ministerial appointed official with powers to oversee and ensure appropriate service delivery and interactions with victims. Victim Support ACT is an agency within the ACT Human Rights Commission.

Victim Support ACT (VSACT), under the Victims of Crime Commissioner (the Commissioner), administers and provides a range of services for victims of crime and their families in the ACT, including:

- Addressing victim concerns about breach of their rights under the Charter of Rights for Victims of Crime, within the *Victims of Crime Act 1994* (VoC Act).
- Case coordination, court support and brokered therapeutic services through the VSS, in accordance with the VoC Act and the Victims of Crime Regulation 2000 (the Regulation).
- Administration of the Victims of Crime Financial Assistance Scheme, pursuant to the *Victims of Crime (Financial Assistance) Act 2016*.
- The provision of expert, independent communication advice to police, courts and lawyers via the Intermediary program.
- Facilitating cooperation between agencies involved in the justice system with respect to victims interests and advocating for systemic reform to uphold victim rights.

All individuals who make contact with VSACT are treated in accordance with the *Human Rights Act 2004* and the VoC Act, and the Charter of Rights for Victims of Crime contained in the VoC Act.

Victims may self refer or be referred to VSACT directly by the police or by the Office of the Director of Public Prosecutions (ODPP), during the prosecution process or by government and non-government organisations.

The Victim Services Scheme (VSS) enables the provision of professional services for victims as prescribed by the Regulation. The objectives of the Victims' Services Scheme are to provide assistance to victims of crime that will promote their recovery from the harm suffered because of crime and allow them to take part in the social, economic and cultural life of their community. This assistance will be provided to victims using a multidisciplinary approach, which is delivered in a timely, accessible, solution focused, professional and individualised approach as appropriate to the victim. The Regulation describes the levels of service which eligible victims are entitled to receive

and the criteria for each level.

The Victims of Crime Commissioner functions relating to the Victims Services

The Victims of Crime Regulation, Part 3, section 22, outlines the Victims of Crime Commissioner's functions in relation to the VSS:

- to decide eligibility of people for the different levels of services;
- to provide, or arrange for the provision of, professional services for victims;
- as appropriate, to refer victims to other entities who provide other assistance and support victims of crime;
- to keep records about victims for which services are provided;
- to train and supervise people engaged by it to provide services;
- to report to the Director-General every six months on the services the Commissioner provides or arranges;
- to evaluate the day-to-day operations of the VSS,
- to establish a victim support network in consultation with community organisations and other entities that deal with victims;
- to provide telephone contact for people seeking information about, or under, the VSS;
- to develop and maintain a volunteer program to provide practical assistance and support to victims and to train and supervise volunteers for the program;
- to provide victims with information and assistance about the criminal justice system, the operation of the VSS and the complaint procedures; and
- to keep financial records of the Commissioner's operations under the VSS.

The Commissioner also has a broad range of functions under the *Victims of Crime Act 1994* Part 3, Division 3.2 and the *Human Rights Commission Act 2005* section 27C in addition to those listed above.

Eligibility

Eligibility for the VSS is determined by s 6 of the *Victims of Crime Act 1994*, Regulation 24 of the *Victims of Crime Regulations 2000* and the *Victims of Crime (Financial Assistance) Act 2016*. This is set out in Appendix A.

Any **eligible victim** is entitled to some service under the VSS.

An eligible victim has experienced a crime in the ACT¹. The crime does not need to be reported to police.

However, a person who is a victim of a motor vehicle offence or experienced harm as a result of committing an offence is not an eligible victim. Victim Support cannot provide support for these people under the VSS.

If someone who experienced a crime in another state makes contact, VSACT will assist them with information and contact details of support services in their state / territory.

More comprehensive services offered by VSACT services are available to **primary victims, related victims** and **witness of violent crime** who have suffered harm as a result of an offence.

¹ 'The Victim must have been the victim of an 'offence' against a law in force in the Australian Capital Territory', see the Dictionary, *Victims of Crime Act 1994*.

A **Primary Victim**² means a person who has been injured or dies as a direct result of an act of violence done by another person.

A **Related victim**³ may include a family member of a primary victim; a dependant of a primary victim; or someone who is an intimate partner of the primary victim. There are three class of related victims set out in sections 13, 14 and 15 of the *Victims of Crime (Financial Assistance) Act 2016*.

Someone who **witnesses**⁴ a violent crime is eligible for comprehensive services if it is probable the circumstances of the violent crime could cause harm to a witness.

Service Levels

The Victims of Crime Regulation 2000 outlines the availability of three service levels under the VSS. Service levels determine the number of contact hours a victim of crime is entitled to. Contact hours are generally counted as hours of brokered service provided.

Level 1 Service:

All **eligible victims** are entitled to receive level 1 service under the VSS. Level 1 service consists of not more than 2 contact hours.

Eligible victims who are not entitled to receive level two services may be provided with information and referrals to appropriate supports in the community as needed.

Level 2 Service:

An eligible victim is entitled to receive level 2 services under the VSS if the victim has completed level one service under the Victim Services Scheme for the crime concerned and the victim is a **primary victim**, a **related victim** or the witness of a **violent crime**.

Level 2 service consists of not more than 6 contact hours in addition to the level 1 service contact hours.

A client receiving level 2 services must be appointed a case coordinator who is responsible for managing the delivery of service to the eligible victim. The case coordinator must develop a care plan in consultation with the eligible victim. The care plan must state the rehabilitation goals for the eligible victim and the number of contact hours and the particular services to be provided to the victim for achieving those goals.

Following the delivery of the level 2 service contact hours, the Commissioner or the service provider who provided the level 2 service contact hours must prepare and give a closure report to the case coordinator. The closure report must include accurate details of the number of contact hours and the extent to which the rehabilitation goals of the care plan were achieved. On receipt of the closure report the case coordinator will then make a determination as to whether the eligible victim would have further therapeutic benefit from receiving level 3 services. If not, the case coordinator must carry out case closure in relation to the victim.

Level 3 Service:

An eligible victim entitled to receive level 2 service is entitled to receive level 3 service under the

² Defined in s11 *Victims of Crime (Financial Assistance) Act 2016*.

³ Defined in s12 of *Victims of Crime (Financial Assistance Act) 2016*. See Appendix A.

⁴ R34 Victims of crime Regulation 2000.

VSS if the victim has completed level 2 service for the crime concerned in accordance with the care plan and the victim's case coordinator has decided that the victim would receive therapeutic benefit from receiving level 3 service.

Level 3 service consists of not more than 12 contact hours in addition to the level 1 and level 2 contact hours. The case coordinator must develop a revised care plan for level 3 service contact hours in consultation with the eligible victim. The revised care plan must state the rehabilitation goals for the eligible victim and the number of contact hours and particular services to be provided to the victim for achieving the goals.

Following the delivery of level 3 service contact hours, the Commissioner or the service provider must prepare and give a closure report to the case coordinator. The closure report must include detailed information regarding the number of contact hours and the extent to which the rehabilitation goals of the revised care were achieved. On receiving the closure report for the eligible victim, the case coordinator must carry out case closure in relation to the victim.

Exceptional Cases

In certain circumstances additional contact hours may be provided to eligible victims who have completed level 3 service contact hours. If the case coordinator believes that further contact hours will provide substantial therapeutic benefit to the victim and it is impossible or impractical to provide further contact hours under a scheme or program other than the VSS, the case coordinator may make a written recommendation to the Commissioner outlining these circumstances.

The Commissioner must consider the recommendation and decide whether or not to carry out the recommendation, or a variation of it. After further contact hours have been given, the Commissioner, or the service provider who provided the services, must prepare and give a closure report to the case coordinator. The case closure must provide detailed information regarding the number of contact hours and the extent to which the rehabilitation goals of the revised care plan have been achieved. On receiving the closure report for the victim, the case coordinator must carry out case closure in relation to the victim.

Contact Hours

Under the Regulation, contact hours for an eligible victim who lives in the ACT must be provided by the Commissioner (or VSACT staff members) or an approved service provider. A person who is not an approved service provider may, by written approval from the Commissioner, provide contact hours.

Contact hours for an eligible victim who lives outside of the ACT may, with the written approval of the Commissioner, be provided by a person that is not an approved service provider.

Victims who are eligible for contact hours under level 2 or level 3 services, should, as far as possible be given choice about completing contact hours with the Commissioner or an approved service provider chosen by the victim.

Service Providers

Under the VSS, the Commissioner may approve service providers, and is required to maintain an up-to-date list of these providers.

The Commissioner may approve a person as a service provider only if satisfied that the person has the qualifications or experience in working with victims and with people from a diversity of ethnic and cultural backgrounds, has experience or knowledge of working in a multidisciplinary team environment, and holds an appropriate policy of indemnity insurance.

If the service to be provided is a health practitioner's service, the person must have appropriate qualifications as a health practitioner, has not been convicted of a serious crime and is capable of satisfying the requirements of the Regulation.

Approved providers are required to undertake continuing education in the provision of services to victims, conduct an assessment and evaluation of the services it provides, and ensure their services are subject to independent review.

Approved providers are required to provide services to eligible victims in a way that gives proper regard to their dignity, worth, independence, cultural diversity and human rights. Services must be provided that are of appropriate quality with respect to safety, risk, health and community care outcomes and the interests of eligible victims.

Approved service providers must be subject to established codes of conduct and work to promote the highest ethical and professional standards and be familiar with the *Human Rights Commission Act 2005*.

Services must be underpinned by evidence based, best practice, or by recognised guidelines through affiliated regulatory bodies for the particular kind of service it delivers. Service providers must ensure that premises used by people engaged or employed by it are secure, give eligible victims' privacy and comply with occupational health and safety requirements. The service provider will not use contact hours for the preparation of reports for use in civil or criminal justice proceedings.

Guidelines - Volunteers

The Commissioner has the authority to establish guidelines about how volunteers can be used to provide services to eligible victims. The established guidelines may define a set of minimum standards of qualifications or experience for people who volunteer to provide practical assistance and support to victims.

There are a number of other activities which volunteers are expected to undertake including participation in continuing education in the provision of services to victims; and increasing their understanding of working with people from a diversity of ethnic and cultural backgrounds. Volunteers must be provided with adequate supervision and will need to participate in assessment and evaluation of the services that they have provided. Volunteers will have access to debriefing and identified forums to discuss other matters concerning the volunteer program.

The guidelines may also acknowledge the occupational health and safety of volunteers and that there is adequate indemnity insurance in place for acts or omissions of volunteers. People who apply to become a volunteer will be excluded if they have committed a serious crime.

Related Legislation and Policies

Victims of Crime Act 1994

Victims of Crime Regulation 2000

Victims of Crime (Financial Assistance) Act 2016

Human Rights Act 2004

Human Rights Commission Act 2005

Health Records (Privacy and Access) Act 1997



VICTIM SUPPORT ACT Human Rights Commission

Appendix A

Legislative Definitions and References

Who is a victim? – S6 Victims of Crime Act 1994

(Victims who are entitled to receive level 1 service – R 33 Victims of Crime Regulation 2000)

- (1) **Victim** means a person who suffers **harm** because of an offence and includes—
- (a) a person (the **primary victim**) who suffers harm—
 - (i) in the course of, or as a result of, the commission of an offence; or
 - (ii) as a result of witnessing an offence; and
 - (b) a family member, of the primary victim, who suffers harm because of the harm to the primary victim; and
 - (c) a person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim; and
 - (d) a primary victim, a related victim or a homicide witness within the meaning of the *Victims of Crime (Financial Assistance) Act 2016*; and
 - (e) if a person mentioned for this definition is a child or legally incompetent person—a guardian of the child or legally incompetent person.

(2) However, a **victim** does not include a person who suffers harm because of an offence he or she committed or is alleged to have committed.

Definition of Harm – S6 (3)

harm includes 1 or more of the following:

- (a) physical injury;
- (b) mental injury or emotional suffering (including grief);
- (c) pregnancy;
- (d) economic loss;
- (e) substantial impairment of a person's legal rights.

Definition of Eligible victim entitled to receive level 2 service – s34 Victims of Crime Regulation 2000

- (1) An eligible victim is entitled to receive level 2 service under the VSS if the victim has completed level 1 service under the VSS for the crime concerned and the victim—
- (a) is a **primary victim**; or
 - (b) is a **related victim**; or
 - (c) would have been a **related victim** if the primary victim had died; or
 - (d) is a witness to a violent crime in circumstances in which it is probable that the witness would suffer harm.

Definition of primary victim -s11 Victims of Crime (Financial Assistance) Act

2016 A **primary victim** is a person who has been injured or dies as a direct result of an act of violence done by another person.

Definition of a related victim - s12 Victims of Crime (Financial Assistance) Act) 2016

A **related victim** means a Class A, B or C related victim.

Related victims include:

- **close family members** or **intimate partners** of the primary victim who are a dependant of the primary victim (class A and B - s13 & 14)
- family members of the victim (class C – s15)

Family and close family members include:

- parents, guardians and step-parents (s17)
- children, step-children (s17)
- siblings, step and half siblings (s15).

Intimate partner is defined in s10 of the *Family Violence Act 2016*.

Offences – act of violence (Schedule 1 *Victims of Crime (Financial Assistance) Act* 2016)

Murder	Inflicting or threatening actual bodily harm
Manslaughter	Assault occasioning actual bodily harm
Culpable driving causing death and grievous bodily harm	Stalking
Maintaining a sexual relationship with a young person	
Incest	
Sexual assault (1 st , 2 nd and 3 rd degree)	
Sexual intercourse with young person under 10 and young person 10-15	
Sexual servitude	
Act of indecency (1 st , 2 nd 3 rd degree)	
Act of indecency without consent	
Removal of child from the ACT for genital mutilation	
Female genital mutilation	
Sexual intercourse without consent	
Sexual intercourse with a young person under care	
Maintain a sexual relationship with a young person	
Use child for production of child pornography	
Using the internet etc to deprave young people	
Intentionally or recklessly inflict grievous bodily harm	
Kidnapping	
Abduction	
Unlawfully taking a child	
Child destruction	
Aggravated robbery	
Robbery	
Demands with threats – to kill or grievous bodily harm	
Acts endangering life	
Endangering health	
Threat to kill	
Forcible confinement	
Torture	
Wounding	
Common assault	

Eligibility for the Victim Services Scheme – Guide for staff in determining eligibility

To be eligible for the VSS you have to be an *eligible victim* (s24 *Victims of Crime Regulation 2000*)

Eligible victim is a victim other than a victim

- (a) who suffers harm caused by, or arising out of the use of, a motor vehicle; or
- (b) who suffers harm (directly or indirectly) as a result of committing an offence.

Who is a *victim*? (s6.1 *Victims of Crime Act, 1994*(ACT))

victim means a person who suffers harm because of an offence and includes—

- (a) a person (the **primary victim**) who suffers harm—
 - (i) in the course of, or as a result of, the commission of an offence; or
 - (ii) as a result of **witnessing** an offence; and
- (b) a **family member, of the primary victim, who suffers harm** because of the harm to the primary victim; and
- (c) a person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim; and
- (d) the following people under the *Victims of Crime (Financial Assistance) Act 2016*:
 - (i) a primary victim;
 - (ii) a related victim;
 - (iii) a homicide witness; and
- (e) if a person mentioned for this definition is a child or legally incompetent person—a guardian of the child or legally incompetent person.

Eligibility for the Victim Services Scheme – Level 1 service (not more than 2 contact hours)

(s33 *Victims of Crime Regulation 2000*)

To be eligible for Level 1 service you have to be an **eligible victim**

Eligibility for the Victim Services Scheme – Level 2 service (not more than 6 contact hours)

(s34 *Victims of Crime Regulation 2000*)

To be eligible for Level 2 service you have to

- have completed level 1 service
- be a **primary victim**; or
- be a **related victim**; or
- be a **related victim** if the primary victim had died; or

- be a witness to a **violent crime** in circumstances in which it is probable that the witness would suffer harm.

Eligibility for the Victim Services Scheme – Level 3 service (not more than 12 contact hours) (s35 Victims of Crime Regulation 2000)

To be eligible for Level 3 service you have to

- have completed level 2 service; and
- be recommended by a case manager to receive therapeutic benefit from receiving level 3 service

Eligibility for the Victim Services Scheme – Exceptional cases (not more than ?? contact hours) (s36 Victims of Crime Regulation 2000)

To be eligible for Exceptional cases you have to

- have completed level 3 service; and
- be recommended by a case manager to receive substantial therapeutic benefit from receiving additional hours; and
- it is impossible or impractical to provide the further contact hours under a scheme or program other than the victims services scheme.

A **primary victim** (from s9 Victims of Crime Financial Assistance Act 1983 – linked to s6 VoC Act & S34 VoC Regulation)

is a person who is injured as a direct result of—

(a) a **violent crime** committed against him or her; or

(b) assisting a police officer in the course of any of the following actions by the police officer:

- (i) an attempt to prevent the commission of an act or omission that the police officer believes on reasonable grounds would constitute an offence;
- (ii) an attempt to arrest another person whom the police officer believes on reasonable grounds to have committed an offence;
- (iii) an attempt to aid or rescue another person against whom the police officer believes on reasonable grounds an offence has been committed.

A **related victim** (s16 of FAS Act)

in relation to a deceased primary victim is a person who, at the time of the primary victim's death, had any of the following relationships with him or her:

(a) the person was a close family member in relation to the primary victim;

(b) the person was a dependant of the primary victim;

(c) the person had an intimate personal relationship with the primary victim.

A **close family member** (s 16 of FAS Act)

in relation to a deceased primary victim, means a person who had a genuine personal relationship with the victim at the time of the victim's death, and who was, at that time—

(a) the domestic partner of the victim; or

(b) a parent, guardian or step-parent of the victim; or

- (c) a child or stepchild of the victim, or some other child of whom the victim is the guardian;
or
(d) a brother, sister, stepbrother, stepsister, half-brother or half-sister of the victim.

A *dependant* (s 16 of FAS Act)

in relation to a deceased primary victim, means—

- (a) a person who was wholly or partly dependent for economic support on the victim at the time of the victim's death; or
(b) a person who would have been wholly or partly dependent for economic support on the victim's income at the time of the victim's death but for the incapacity of the victim because of the criminal injury that resulted in the victim's death; or
(c) a child of the victim born after the victim's death who would have been a dependant of the victim under paragraph (a) or (b) if he or she had been born before the victim's death.

What is a *violent crime*? (s 3 of FAS Act)

Each of the following is a violent crime:

- | | |
|-------------------------------|---------------------------------------|
| Murder | Exposing or abandoning child |
| Manslaughter | Child destruction |
| Grievous bodily harm offences | Childbirth—grievous bodily harm |
| Wounding | Sexual assault offences |
| Assault offences | Sexual intercourse without consent |
| Endangering life | Sexual intercourse with young person |
| Endangering health | Sexual relationship with young person |
| Culpable driving | Indecency offences |
| Threat to kill | Incest |
| Demands with threats | Abduction |
| Forcible confinement | Female genital mutilation offences |
| Stalking | Sexual servitude offences |
| Torture | Robbery |
| Abduction of young person | Aggravated robbery |
| Kidnapping | Abuse of a vulnerable person |
| Unlawfully taking child | |