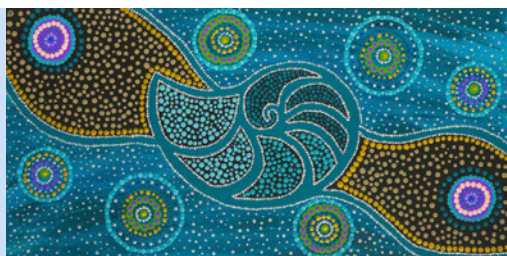


Charter of Rights for Victims of Crime





The ACT Human Rights Commission acknowledges Aboriginal and Torres Strait Islander peoples as First Australians and recognise their culture, history, diversity and their deep connection to the land.

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CHARTER OF RIGHTS FOR VICTIMS OF CRIME

Contents

1. Introduction	2
2. Reporting a crime to police.....	4
3. Police investigation.....	5
4. Charging a person with a crime.....	6
5. Prosecution	8
6. Going to court.....	10
7. Trial.....	14
8. Supports when giving evidence	16
9. Court outcomes	17
10. Sentencing.....	18
11. Appeals.....	21
12. Victims Register	22
13. Parole and release on licence.....	24
14. Restorative justice	26
15. Victim Support ACT.....	27
16. Raising complaints or concerns about justice agencies.....	28
17. Contact details	30
18. Dictionary.....	33
19. Notes	40

1. Introduction

This booklet is written for you, the victim of crime, and your friends and family who may also have been affected by the crime.

Having a crime committed against you can be traumatic. People are affected in different ways, and there is no right or wrong response. It is common to go through responses that change from day to day.

If you choose to report the crime to police, the criminal justice system can be complicated and distressing but you don't have to deal with it alone. Help is available.

This booklet explains what happens:

- > when you report a crime to police
- > when police investigate the crime
- > when police **charge** a person
- > during a **court** case
- > after a court case

In the ACT, there is a Charter of Rights for Victims of Crime to protect and promote your rights in the criminal justice system. These rights are contained in the *Victims of Crime Act 1994* (ACT) ('the Act') and commenced in January 2021. This booklet explains your rights in the blue boxes marked 'Important'. There may be some exceptions to these rights depending on individual circumstances that are not discussed in this booklet. You can find the relevant sections of the Act in brackets in each blue box. If you want more information about the rights, you can look at the Act or contact Victim Support ACT.

As a victim of crime, you also have human rights. The *Human Rights Act 2004* (ACT) protects your human rights when you engage with government organisations, including **justice agencies**. The justice agencies mentioned in this booklet must act consistently with your human rights and give proper consideration to your human rights when making decisions. The core values of human rights, such as equality, dignity, autonomy and respect, are reflected in and reinforced by the rights in the Charter of Rights. You can find more information about your human rights on the ACT Human Rights Commission website.

Victim Support ACT acknowledges the important contribution of victims of crime who report to police to keep the community safe and ensure **offenders** are held accountable. We are here to work with you to help you access your rights and entitlements and assist with your recovery. We provide a range of services that are free and confidential. You do not need to have reported the crime to police to access our services.

As you read this booklet, you may come across legal words you have not heard before. Legal words which are in bold the first time they appear in the booklet are defined in a dictionary at the back. A list of public agencies considered to be justice agencies is also provided in the dictionary. Contact details of justice agencies, support services and complaints bodies are provided at the back of the booklet.

The information contained in this booklet is for victims of crimes committed in the ACT. If you are a victim of a crime committed outside the ACT, there are other victim support services that can help. You can contact Victim Support ACT to be referred to an appropriate service.



Important A justice agency must engage with you respectfully and take into account your personal situation, needs, concerns, rights and dignity. (Section 14C)



Important If you are a child or young person under 18 years, a justice agency must consider your views, wishes and circumstances before engaging with your parent or carer and engage with you in a way that is appropriate for your age. (Section 14D)



Important A justice agency must not share personal information about you or your family member unless the information is allowed to be shared in a court case, by law or with your agreement. (Section 14F)

Victim Support ACT and the ACT Human Rights Commission provide our clients with a safe, nurturing and positive environment where Aboriginal and Torres Strait Islander peoples are respected. Cultural rights and spiritual values accepted by Aboriginal and Torres Strait Islander peoples are supported by our values, processes and policies to ensure culturally safe services.

2. Reporting a crime to police

There are a number of ways you can report a crime to police:

- > in an emergency, you can call Triple Zero (000)
- > if you are not in immediate danger you can:
 - » call the Police Assistance Line on 131 444; or
 - » go to your local police station and speak to a police officer there. You can find the phone number, location and opening times of your local police station on the ACT Police website.
- > if you want to report a crime anonymously, you can call Crime Stoppers on 1800 333 000.



Important If you ask, the police must give you written confirmation of your report, including the name and contact details of the police officer who took your report and another phone number you can call about your report. (Section 16)



Important The police must refer you to a suitable support service unless you say you do not want to be referred. (Section 15)



Important If you ask, the police must give you information about the criminal justice process that will occur after you have made your report. (Section 15D)

3. Police investigation

If you report a crime to the police and they believe there is enough evidence, they may start an investigation into the crime.

If the police start an investigation, they can ask you to provide a **statement**. This is a written document that explains what happened to you and it is signed and dated by you. The police can also record or make a video recording of a conversation between you and the police about what happened.

You do not have to make a statement or participate in a recording or video recording if you do not want to, however the police may not be able to investigate if you choose not to participate.

The police can also take statements from other **witnesses** and collect other evidence related to the crime, such as clothing, property, medical evidence or electronic evidence, for example Closed Circuit Television (CCTV) footage.

The police officer handling the case will keep you informed about the progress of the investigation. The police also have Victim Liaison Officers who can offer support through the investigation stage.



Important If you ask, the police must update you about the progress of the investigation:

- > at least every 6 weeks; and
- > if a person has been charged with the offence or a warrant is issued for the arrest of a person accused of the offence. (Section 16A)



Important If your property is held by police for the purpose of a police investigation or criminal proceedings, it must be handled and stored in a lawful, respectful and secure manner and returned to you after it is no longer needed. (Section 14G)

4. Charging a person with a crime

Once police have completed the investigation, they will decide whether or not to charge a person with a crime.

Sometimes police might close the investigation without charging anyone. If police close an investigation, it does not mean they don't believe you. If an investigation is closed without charging anyone, it is usually because police could not find enough evidence.

If police charge a person, this is an allegation by police that the person has committed the crime. It means that criminal proceedings will commence against the person charged and they will need to attend court where they will be known as the **defendant** or the **accused**.

The defendant, once charged, will either be released on **bail** to appear before the court at a later date or held in **custody** to be taken to court as soon as possible.

Where the police believe that a person has committed an offence but do not believe it is necessary to **arrest** the person, the court will generally issue a **summons** which is a document telling the defendant to go to the court at a date and time.

A defendant held in custody can apply for bail at any time before the case goes to court, and if they do not get bail they can apply again later. Even if the defendant has confessed to the police that they committed the crime, they can still be released on bail. This is because the law says that people are innocent until they are proven **guilty** at court.

If a defendant is on bail, it is likely they will have to follow **bail conditions** made by the court, which may include conditions to help keep you safe. If the defendant on bail does not follow the bail conditions, their bail might be cancelled and they can be taken back into custody.



Important If a court is considering whether to grant bail or review a bail decision, the police or the ACT Office of the Director of Public Prosecutions ('the DPP') must ask you whether you have any concerns about the need for protection from violence or harassment by the defendant. If you express such concerns, the police or the DPP must tell the court about them. (Section 17)



Important If you tell the police or prosecutor that you need to be protected from violence or harassment by the defendant, the police or prosecutor must tell you if the court makes or reviews a decision about bail or if there is a condition of bail to protect you or your family member. (Section 16C)

If the defendant does not get bail, they will be held in custody before the **trial** or **hearing**. This is called being on **remand**. A defendant may be on remand if they are refused bail by the court, do not apply for bail or if they cannot provide a financial deposit or **surety** that they will follow the bail conditions.

If the defendant is later **convicted** of the crime at trial or hearing, the time spent on remand may count towards their **sentence**.



5. Prosecution

Once the police charge a person, they prepare a **brief of evidence** which contains all the **witness** statements, evidence and any other material relating to the charge or charges. The police give the brief of evidence to the **prosecutor** at the **ACT Office of the Director of Public Prosecutions ('the DPP')** and to the defendant's lawyer. The prosecutor applies the DPP Prosecution Policy to determine firstly whether there are reasonable prospects of conviction, and secondly whether it is in the public interest to proceed with the prosecution.

It is important to understand that the prosecutor is not your lawyer and does not represent you in court. If the case proceeds, the prosecutor and the defendant will be the **parties** to the court case and you will be a witness.

Sometimes the prosecutor may decide to discontinue or stop a prosecution or to accept a guilty **plea** for a less serious charge. If this happens, the prosecutor will explain this to you.



Important If you ask, the prosecutor must seek and consider your views if they are considering substantially modifying the case, for example, by discontinuing the prosecution or accepting a guilty plea for a lesser charge. (Section 16B)

Decisions by a prosecutor to discontinue the prosecution can sometimes be reviewed by a more senior prosecutor at the DPP. Depending on the circumstances, the decision may be automatically reviewed or you may be able to request a review. You can look at the DPP website or ask the prosecutor for more information about reviewing the DPP's decisions.



Important The prosecutor must tell you which of their decisions will automatically be reviewed. If there is no automatic review and the prosecutor decides to discontinue with all of the charges in relation to you, the prosecutor must tell you how you can request a review of that decision. (Section 15G)

Sometimes, the prosecutor may apply to the **ACT Civil and Administrative Tribunal** (**'the ACAT'**) for an **assessment order** in relation to the defendant. This may happen if the prosecutor believes that it may not be appropriate to prosecute the defendant considering the nature and circumstances of the offence and the defendant's possible mental disorder or mental illness.



Important If you ask, the prosecutor must seek and consider your views if they are considering applying to the ACAT for an assessment order in relation to the defendant. (Section 16B)



6. Going to court

The police or prosecutor will tell you if you are required to appear in court as a witness. You will be given a court notice called a **subpoena**. The subpoena will tell you the date that you must attend court and which court to go to. If you receive a subpoena, you must attend court as directed.

You can watch a video about going to court on the DPP website. You can also speak to the **Witness Assistance Service** at the DPP about taking a familiarisation tour of the court before you give evidence.



Important If you are required to attend court as a witness, the prosecutor must tell you about the hearing or trial process and the role, rights and responsibilities of witnesses, or tell you where to find information about this. (Section 15E)

Most criminal cases in the ACT are heard in the **Magistrates Court**. The **Supreme Court** hears the most serious cases and the Children's Court normally hears cases where the defendant was under 18 years old at the time of the offence. While a matter may start in the Magistrates Court, it may later move to a different court for trial or sentencing.

Criminal cases generally happen in a step by step process, with each step often referred to as an **appearance**. Court processes will differ depending on the court in which the case is heard, the seriousness of the crime and whether there are special circumstances for you or the defendant.

In the Magistrates Court, the first appearance for the defendant is called a **mention**. Here, the defendant can enter a plea of guilty or **not guilty** or they can request an **adjournment** to allow them time to seek legal advice. They may also apply for bail, and if it is granted, bail conditions may be imposed. You do not need to attend court at this time unless you want to.

If the defendant pleads guilty in the Magistrates Court, they may be sentenced immediately, or the matter may be adjourned for reports to be prepared for sentencing. If the defendant pleads not guilty there might be a **committal hearing** where the **magistrate** decides whether there is enough evidence for the case to proceed to trial.

In the Supreme Court, the first appearance is called a **directions hearing**. A directions hearing is held before a **registrar** who makes orders about what should happen next. If the defendant pleads guilty, a date for sentencing will be set. If they plead not guilty, the Supreme Court may list the case for another directions hearing to make sure that it is ready to go to trial.

It is important to note that the defendant may change their plea from not guilty to guilty at any stage during the proceedings.

People in the courtroom

Judge	The judge is in charge of the courtroom and will decide the sentence. The judge is addressed as Your Honour and wears a robe.
Judge's associate	The judge's associate helps the judge. The associate wears a black robe and sits in front of the judge.
Defence lawyers	The defendant is usually represented by a barrister and a solicitor. A barrister will speak on behalf of the defendant and wears a robe and a wig. The solicitor gives instructions to the barrister.
Defendant or accused	The person who is accused of committing the offence.
The public	The public and media are able to sit in the public gallery to watch the events unless it is a closed court.
Witness	The prosecution or defence call witnesses to give evidence. Both the prosecutor and the defence lawyer will ask the witness questions. The witnesses are not present in court until they give their evidence.
Jury	A jury is made up of 12 people selected from the community. They must make a unanimous decision as to whether the defendant is guilty or not guilty.
Prosecutor	A prosecutor is a barrister or solicitor who works at the DPP.

ACT Magistrates Court



ACT Supreme Court



7. Trial

The trial or hearing is when all witnesses give evidence to the court so that the court can decide whether or not the defendant is guilty **beyond reasonable doubt**.

To give evidence, you normally sit in the witness box at the front of the court room. In some circumstances, you may be able to give evidence from a remote witness room. Before giving evidence, you have to promise the court that you will tell the truth. You can do this by taking an **oath**, which is a religious promise, or making an **affirmation**, which is a non-religious promise.

It is important that you do not discuss your evidence with other witnesses before or during the trial because this could affect the outcome of the case.

The prosecutor will ask you questions about what happened to you. This is called **evidence-in-chief**. Sometimes, your evidence-in-chief might be pre-recorded in a different location or your interview with the police might be played as part of your evidence.

After the evidence-in-chief, the defence lawyer will ask you questions. This is called **cross-examination**. It provides the defence lawyer with an opportunity to challenge or test your evidence. While cross-examination may sometimes feel intimidating or hostile, it is important to remember that it is a normal part of our legal process and is not meant as a personal attack on you. In some cases, if the defendant does not have a lawyer, they may ask you the cross-examination questions themselves. This will not be allowed if the charges relate to sexual offences or family violence or some violent offences. In those cases, a registrar may ask you the cross-examination questions.

The prosecutor may then ask you some further questions regarding any matters that need clarification. This is called **re-examination**.

At any stage in the trial, you may also be asked questions by the **judge** or magistrate. It is important to remember that if you do not understand a question, or you do not hear it properly, you can ask for it to be repeated.

Once the re-examination is finished, you will be excused from the court and you are free to leave if you wish. If you prefer, you can stay to watch the rest of the trial from the public seating area of the court.

If you have concerns for your safety while giving evidence, you should talk to the prosecutor or Witness Assistance Service as soon as possible about how you can stay safe.



Important If a person has been charged with an offence and a court has set a hearing date, the prosecutor must tell you the date, time and place of the hearing. (Section 16D)



Important If you have told the prosecutor or a court administrator that you may need protection from violence or harassment by the defendant, a defence witness or a family member or support person of the defendant, the prosecutor or court administrator must minimise your exposure to that person while in the court building. (Section 14I)



Important You may be present in the court during a proceeding for the offence unless the court directs otherwise. (Section 17C)

In some circumstances, you may be able to give your evidence from a remote witness room that is located away from the courtroom. There is a television, camera and microphone in the remote witness rooms. You will be able to see and hear the judge or magistrate, the prosecutor and the defence lawyer in the courtroom, but you will not be able to see or hear the defendant. Everyone in the courtroom will be able to see and hear you, including the defendant.

Remote witness room



8. Supports when giving evidence

You can take a friend or support person with you when giving evidence as long as they are not also giving evidence in the trial. You can also speak to Victim Support ACT or the Witness Assistance Service to ask them to arrange support for when you go to court.

If you are a child or a person with communication difficulties or a disability, you can ask the police or prosecutor for an **intermediary** to help you to communicate. An intermediary is an independent officer of the court. The intermediary can assess your communication needs and advise justice agencies of the best way for you to communicate so that you can provide your best evidence.

If you find it difficult to speak or understand English, you can ask for an interpreter. If your case is in the Supreme Court, you can ask the DPP for an interpreter. If your case is in the Magistrates Court, you can ask the police for an interpreter.



Important A justice agency must ensure you are able to access any assistance, such as an interpreter or intermediary, reasonably necessary for you to participate in the criminal justice system. (Section 15A)

If you incur expenses or lose income because you have to attend court to give evidence, you may be able to be reimbursed. You can speak to the Witness Assistance Service about this.



Important If you are required to attend court to give evidence as a witness, you may be able to claim reimbursement of expenses incurred or income lost in attending court. (Subsection 15C(1))

9. Court outcomes

After hearing all the evidence, the court will decide if the defendant is guilty beyond reasonable doubt.

If the case is heard at the Magistrates Court or the Children's Court, the magistrate will decide whether the defendant is found guilty. If the case is heard at the Supreme Court, a **jury** or a judge will make this decision.

If a magistrate or a judge makes the decision, they may reserve their decision and hand it down on another day. If there is a jury, the judge will explain the evidence to the jury who may take a few hours or a few days to make their decision. If the case is decided by a jury, their decision must be unanimous. This means that all jury members must agree on the verdict of guilty or not guilty. Sometimes a jury may not be able to unanimously agree. This is known as a **hung jury**.

If the defendant pleads or is found guilty then they are convicted of the charges. They are no longer referred to as the defendant and instead can be referred to as the offender.

It is important to remember that if the defendant is found not guilty, it does not mean that the court did not believe you. It means that the prosecutor could not prove the defendant committed the crime beyond a reasonable doubt. Proving a crime beyond a reasonable doubt can be very difficult and sometimes, despite everybody's best efforts, there is just not enough evidence to meet this strict legal test.

If the defendant has a mental impairment, they may sometimes be found unfit to plead or not guilty by way of mental impairment. If this happens, the court will refer the matter to the ACAT.



10. Sentencing

After a person pleads or is found guilty, the court must decide what penalty to impose on the offender and the court will hold a sentence hearing.

The court can impose a range of penalties on the offender depending on the crime, the offender's circumstances and the impact of the crime on you. Penalties may include imprisonment, good behaviour orders, **intensive correction orders** and fines. The court may find an offender guilty but decide not to record a conviction. This means that the offence is not recorded on the offender's criminal record.

To help the court decide the offender's sentence, the court may order ACT Corrective Services to prepare a **pre-sentence report** or an intensive correction assessment to provide the court with information about the offender, for example information about the offender's psychological or medical history or use of drugs or alcohol.



Important If you ask ACT Corrective Services to contact you about protection from violence or harassment by the offender, ACT Corrective Services must seek and consider your concerns about the need for protection in preparing a pre-sentence report or intensive correction assessment. (Section 17B)

You may choose to make a **victim impact statement** to the court at the sentence hearing. A victim impact statement tells the court about how the crime affected you and the harm you have suffered as a result of the crime. You can read your victim impact statement out in court or ask someone else to read it for you or have your written statement given to the judge to read. Sometimes, your close family members or a carer can also make a victim impact statement.

The court will take your victim impact statement into account when deciding the offender's sentence. Your victim impact statement is evidence and a copy of it will be given to the offender beforehand. In some instances, you can be cross-examined about what you say in your statement.

The DPP website has further information about victim impact statements including a template. You can ask the Witness Assistance Service or Victim Support ACT for assistance in preparing your victim impact statement.



Important The police or the prosecutor must tell you:

- > who can make a victim impact statement
- > what a victim impact statement should include
- > that a victim impact statement can be made orally or in writing
- > about how a victim impact statement can be used, including that a copy of it will be given to the offender, that you can be cross-examined on its contents and that the court must consider it in deciding how the offender should be sentenced. (Section 15F)



Important The prosecutor must ensure that only you decide whether or not to make a victim impact statement. (Section 17A)

At sentencing, if you have suffered loss as a direct result of the offence, the court can order that a **reparation order** be made. A reparation order can require the offender to make reparation either by paying money to you or in another way, for example by having property returned to you.

If you want the court to make a reparation order, you should talk to the prosecutor about this well before the sentence hearing. You should give the prosecutor any documents that relate to your loss, such as medical bills related to the crime.



Important If an offender is convicted or found guilty, but the court has not yet sentenced or made a non-conviction order for the offender, the prosecutor must tell you that a court may make a reparation order against the offender. (Section 16E)



Important If you have suffered loss or incurred expenses as a direct result of the crime or had property stolen you may ask the prosecutor to apply for a reparation order. (Subsection 15C(3))





Important If the prosecutor decides not to apply for a reparation order, the prosecutor must tell you of this decision and the reason for it, unless it is considered this would prejudice the prosecution of an offence. (Section 16E)



Important If you ask, the prosecutor must tell you about the outcome of a trial or appeal, including any sentence imposed on the offender. (Subsection 16F(1)(a))

11. Appeals

Sometimes, one of the parties to a criminal case, that is either the prosecutor or the offender, will **appeal** against a decision or sentence made by the court. A party can only appeal a decision if there is new evidence or they believe that the magistrate or judge made an **error of law** that affected the outcome of the case.



Important If you ask, the prosecutor must tell you if the offender appeals a court decision and about the nature and outcome of the appeal. (Subsection 16F(1)(b))



12. Victims Register

After an offender has been sentenced, you may want to be kept informed about the administration of the offender's sentence, such as when the offender may be released from prison, if the offender is transferred to another prison or other information that is important for your safety.

If you want to be kept informed in this way, you must apply to the **Victims Register**. The kind of information that the Victims Register can give you will depend on whether the offender was an adult or under the age of 18 years at the time the offence was committed.



Important The Victims Register must tell you about how you can become registered on the Victims Register, the rights of registered victims to information about sentenced offenders and the role of registered victims in relation to the release of offenders from imprisonment under a parole order or on licence. (Section 15H)



Important If you are registered, the Victims Register must tell you about the actions you may take to prevent contact from the offender. (Section 14J)



Important If you are registered, the Victims Register may tell you information about the offender if you ask and the Victims Register considers it appropriate in the circumstances. (Section 16I)



Important If you are registered and the offender is to be transferred or released from imprisonment or detention or escapes, the Victims Register must tell you of the transfer, release or escape including of any condition of the release that may affect your safety if appropriate in the circumstances. (Section 16J)



Important If you are registered and an offender is subject to an intensive correction order, the Victims Register must inform you about the following, if this information is likely to affect your safety, or you've expressed concern about your safety:

- > if the offender has breached the order's obligations; or
- > the Sentence Administration Board has decided to suspend, cancel, amend, or discharge the order, or reinstate a previously cancelled order. (Section 16K)

The ACT also has an **Affected Persons Register**. This Register is used when the defendant or offender is considered to be a forensic patient and the court requires the person to go to the ACAT or be reviewed by the ACAT. This may be because the defendant or offender did not have the mental competence or ability to commit the offence or stand trial. The DPP will inform you if this occurs and you can talk with Victim Support ACT for more information about the Affected Persons Register.



Important If you ask, the DPP must inform you about certain court requirements and orders relating to the offender's mental health, such as when an offender is required to submit to the ACAT's jurisdiction or when the Magistrates Court orders an offender be taken to a mental health facility without being required to submit to the ACAT's jurisdiction. (Section 16L)



13. Parole and release on licence

Offenders serving a sentence in prison can sometimes apply for **parole**. Parole is when an offender is released from prison and serves the rest of their sentence in the community under supervision.

If an offender wants to be released on parole, they must apply to the **Sentence Administration Board ('the Board')**. If the Board accepts an application for parole, the Board must conduct an inquiry into the application. The Board will invite submissions from relevant people, including registered victims, and request reports and information about the offender, such as an ACT Corrective Services report and medical records. The Board usually has key court records, including victim impact statements, from the court proceedings.

The Board may grant the offender parole after the inquiry. It may impose any parole conditions on the offender it considers appropriate for the offender to meet, including conditions to protect you from violence or harassment by the offender.

If an offender is serving a sentence of life imprisonment and has served at least ten years of their sentence, the Attorney-General may ask the Board to recommend whether an offender should be released from prison on licence. This called a **release on licence** and the Board must conduct an inquiry into any request by the Attorney-General.



Important The Board or Victims Register must inform you of:

- > an inquiry into an application for parole or release on licence;
 - > how you can make a submission to the Board or raise a concern you may have in relation to the inquiry;
 - > how you can ask the Board not to give your submission or concern to the offender or another person; and
- provide you with information about the offender and assistance available to help you to make a submission or raise a concern. (Section 16G).



Important You may make a submission to the Board about the likely effect on you or your family if parole or a release on licence were granted. You can also tell the Board about your need to be protected from violence or harassment by the offender.

If you ask the Board not to give your submission to a person, and the Board considers that doing so would endanger you or anyone else, the Board must ensure that your submission is not given to that person. If the Board still intends to give your submission to the person, for example if they are legally required to, they must tell you about this. (Section 17D)



Important If you are on the Victim's Register, or have made a submission or raised a concern to the Board, the Board must take steps to inform you about:

- > the Board's decision to make or not make a parole order;
- > if parole is granted, about the offender's parole release date and the offender's parole obligations;
- > the Executive's decision to grant or not grant a release on licence;
- > if a release on licence is granted, about the offender's licence release date and the offender's release on licence obligations. (Section 16H)

14. Restorative justice

Restorative justice is a voluntary process which allows you to communicate with the offender in a safe and structured environment, either face to face or by other means. Opportunities to participate in restorative justice can happen at different stages throughout the criminal justice proceedings depending on the type of crime.

Restorative justice can provide you with an opportunity to:

- > hear the offender take responsibility for the crime
- > tell the offender how you and the people close to you have been affected by the crime
- > tell the offender what, if anything, they can do to make things better.

Restorative justice is facilitated by a person called a convenor from the ACT Restorative Justice Unit. The convenor helps to prepare everyone for restorative justice and to communicate with one another safely. The convenor will ensure that you have the central voice in the restorative justice process and that you are supported. As restorative justice is voluntary you can withdraw from or stop the process at any stage.

You can find out more information about restorative justice by contacting the ACT Restorative Justice Unit. A convenor will talk with you about the potential benefits and risks of restorative justice in your matter.



Important You can ask a justice agency at any time during criminal justice proceedings whether the offence against you can be referred for restorative justice and if so ask the justice agency to refer the offence for restorative justice. (Section 15B)

15. Victim Support ACT

Victim Support ACT provides a range of services to people affected by a crime committed in the ACT. Our services include:

- > confidential information if you are deciding whether to report to police, or would like help making a report
- > free counselling with trained counsellors, psychologists and social workers
- > a Court Support Program delivered by trained, highly skilled volunteers who can provide you with support in both the criminal justice system or when applying for a family violence order or personal protection order
- > help working through other problems that relate to the crime, such as making sure your house is safe, getting access to medical help or sorting out issues at work or at school
- > an Aboriginal and Torres Strait Islander Program to provide culturally responsive services for Aboriginal and Torres Strait Islander people who have been affected by crime.

If you have suffered a physical or mental injury as a result of the crime, you may also be eligible for the Victim Support ACT Financial Assistance Scheme ('the Scheme'). The Scheme may be able to pay for the things you need to help you to recover from the crime, such as:

- > doctors or dentists
- > making your home safe, for example by changing locks
- > moving expenses
- > clothes or other things that were damaged by the crime.

Sometimes the Scheme can make a recognition payment, which is a payment to acknowledge the harm you have suffered from the crime.

Normally, you will need to have reported the crime to police to receive financial assistance.



Important You can apply to Victim Support ACT for financial assistance. (Subsection 15C(2))

16. Raising complaints or concerns about justice agencies

If you believe that a justice agency has not complied with your victim rights as outlined in this booklet, you have a number of options. You can:

1. Make a complaint to the justice agency directly

If you make a complaint to the justice agency directly, the justice agency will do their best to work with you to resolve your complaint. The justice agency will give you information about the process they will use to resolve your complaint and take all reasonable steps to resolve your complaint in a timely way.

You should give the justice agency any document or information which will help to resolve your complaint.

You can raise a complaint with the justice agency orally or in writing. Contact details for justice agencies can be found at the back of the booklet.



Important If you make a complaint to a justice agency, the agency must inform you of your options for the complaint, which include raising a concern with the Victims of Crime Commissioner, making a complaint to the Disability and Community Services Commissioner in the ACT Human Rights Commission and sometimes making a complaint to another complaints entity. (Section 15)

2. Raise a concern with the Victims of Crime Commissioner

You can raise a concern about a justice agency with the Victims of Crime Commissioner. The Commissioner or the Commissioner's staff will give you information about the process that will be used to resolve your concern and take all reasonable steps to resolve your concern in a timely way.

With your agreement, the Commissioner or the Commissioner's staff can talk to the justice agency involved on your behalf or ask them to provide documents or information that will help to resolve your concern. With your agreement, your concern can also be referred to the Disability and Community Services Commissioner or another relevant complaints body.

To raise a concern with the Victims of Crime Commissioner:

- > if you are already in contact with Victim Support ACT you can raise your concern with the staff member that works with you
- > you can fill out the Charter of Victims Rights concern form at www.victimsupport.act.gov.au/victims-rights
- > you can send an email outlining your concern to VictimSupportIntake@act.gov.au or a letter to GPO Box 158 Canberra ACT 2601
- > you can speak to staff at Victim Support ACT on 02 6205 2066.

3. Make a complaint to the Disability and Community Services Commissioner

If you make a complaint to the Disability and Community Services Commissioner, the Commissioner or the Commissioner's staff will give you information about the complaints process and explain the options available to you.

With your agreement the Commissioner or the Commissioner's staff can talk to both you and the justice agency involved to understand what has happened and take steps to try and resolve your complaint. This may involve asking the justice agency for specific information or to provide you with a formal response to your complaint.

In some cases, the Commissioner or the Commissioner's staff may also talk to you about trying to resolve your complaint by conciliation. Conciliation is a voluntary process which allows you to communicate with the justice agency in a safe and structured environment. It provides you with an opportunity to tell the justice agency what has happened and to try and agree on an outcome to resolve your complaint.

It is important to note that the ACT Human Rights Commission is an independent agency and staff who manage complaints cannot be advocates for either you or the justice agency.

To inquire about making a complaint to the Disability and Community Services Commissioner you can:

- > fill out a complaint form at www.hrc.act.gov.au/complaints
- > send an email outlining your complaint to HRCIntake@act.gov.au
- > speak to staff on 02 6205 2222.

4. Make a complaint to another relevant complaints body

Depending on which justice agency your complaint is about, you may also make a complaint to other relevant complaints bodies, for example the Commonwealth Ombudsman or the ACT Integrity Commission. Contact details for these complaints bodies are located in Contact Details.

17. Contact details

Aboriginal Legal Service (ACT Office)

Phone: 02 6120 8800

Address: Level 3 CML Building, 17-21 University Avenue, Canberra ACT 2601

Email: canberra@alsnswact.org.au

Web: www.alsnswact.org.au/als_canberra

ACT Civil and Administrative Tribunal (ACAT)

Phone: 02 6207 1740

Address: Level 4, 1 Moore St, Canberra ACT 2601

Email: tribunal@act.gov.au

Web: www.acat.act.gov.au

ACT Corrective Services

Phone: 02 6207 0888

Postal: ACT Corrective Services, GPO Box 158, Canberra ACT 2601

Web: www.cs.act.gov.au

ACT Human Rights Commission

Phone: 02 6205 2222

Postal: GPO Box 158, Canberra ACT 2601

Web: www.hrc.act.gov.au

ACT Integrity Commission

Phone: 02 6205 9899

Postal: GPO Box 1949 Canberra ACT 2601

Email: info@integrity.act.gov.au

Web: www.integrity.act.gov.au

ACT Magistrates Court

Phone: 02 6205 0000

Address: 4-6 Knowles Place, Canberra ACT 2601

Web: www.courts.act.gov.au/magistrates

ACT Office of the Director of Public Prosecutions (DPP) including Witness Assistance Scheme

Phone: 02 6207 5399

Address: Reserve Bank Building, 20-22 London Circuit, Canberra ACT 2601

Web: www.dpp.act.gov.au

ACT Policing

Phone: Police, Fire, Ambulance in an emergency 000
Police Assistance Line for non-urgent police assistance 131 444
Crime Stoppers report crime anonymously 1800 333 000
Police Victim Liaison Officers 02 5126 9113
Web: www.police.act.gov.au

ACT Restorative Justice Unit

Phone: 02 6207 3992
Postal: GPO Box 158, Canberra ACT 2601
Email: restorativejustice@act.gov.au
Web: www.justice.act.gov.au/justice-programs-and-initiatives/restorative-justice

ACT Supreme Court

Phone: 02 6205 0000
Address: 4-6 Knowles Place, Canberra ACT 2601
Web: www.courts.act.gov.au/supreme

Canberra Rape Crisis Centre

Phone: 02 6247 2525 between 7am and 11pm
Text Only: 0488 586 518
Web: www.crcc.org.au
Nguru Program: www.crcc.org.au/support-services/the-nguru-program.aspx
Service Assisting Male Survivors of Sexual Assault: www.crcc.org.au/support-services/SAMSSA.aspx

Commonwealth Ombudsman

Phone: 1300 362 072
Web: www.ombudsman.gov.au

Disability and Community Services Commissioner

Phone: 02 6205 2222
Postal: GPO Box 158 Canberra ACT 2601
Email: human.rights@act.gov.au
Web: www.hrc.act.gov.au/disability

Domestic Violence Crisis Service (DVCS)

Phone: 24/7 crisis intervention line 02 6280 0900
Text Only: 0421 268 492
Email: crisis@dvcs.org.au
Web: www.dvcs.org.au

Forensic and Medical Sexual Assault Care

Forensic and Medical Sexual Assault Care (FAMSAC) provides a 24 hour, 365 day a year on-call service. Access to the on-call doctor is through: Canberra Rape Crisis Centre available 24 hours on 02 6247 2525; Canberra Sexual Health Centre available business hours on 02 6244 2184; or Canberra Hospital switch board available 24 hours on 02 5124 0000.

Phone: 02 5124 2185

Address: Level 1, Building 5, Yamba Drive, Garran ACT 2605

Email: cfms@act.gov.au

Web: www.health.act.gov.au/services-and-programs/sexual-health/sexual-assault-care

Legal Aid ACT

Phone: 02 6243 3411

Helpline 1300 654 314

Domestic Violence and Personal Protection Order Unit 02 6207 1874

Youth Law Centre 02 6173 5410

Address: 2 Allsop Street, Canberra ACT 2601

Email: legalaid@legalaidact.org.au

Web: www.legalaidact.org.au

Sentence Administration Board

Phone: 02 6207 1563

Postal: GPO Box 158, Canberra ACT 2601

Email: sab.secretariat@act.gov.au

Web: www.justice.act.gov.au/safer-communities/sentence-administration-board

Victim Support ACT

Phone: 02 6205 2066 or 1800 822 272

Postal: GPO Box 158, Canberra ACT 2601

Email: victimsupportintake@act.gov.au

Web: www.victimsupport.act.gov.au

If you need an interpreter, you can call the Translating and Interpreting Service (TIS) on 131 450.

If you are deaf or have a hearing impairment or speech impairment, you can contact the National Relay Service at www.relayservice.gov.au.

18. Dictionary

Accused	A person charged with committing a criminal offence or offences. Other words for accused are “defendant” and “alleged offender”.
ACT Civil and Administrative Tribunal (the ACAT)	The ACAT is an independent body that hears civil and administrative cases, including mental health treatment and care, civil disputes and rental property disputes. The ACAT cannot hear criminal cases or applications for family violence orders or personal protection orders.
ACT Office of the Director of Public Prosecutions (the DPP)	The DPP has responsibility for prosecuting cases of all alleged criminal offences in the courts. Prosecutors from the DPP conduct the prosecution.
Adjournment (during the trial or hearing)	To delay a court hearing. The delay can be until later in the day, to a specified day or indefinitely.
Affected Persons Register	The Affected Persons Register is used when the defendant or offender is considered to be a forensic patient and the court requires the person to submit to the jurisdiction of the ACAT or be subject to a review by the ACAT.
Affirmation	A promise to tell the truth in court.
Appeal	To take a case to a higher court to challenge a decision on a legal basis.
Appearance	Criminal cases generally proceed in a step by step process, with each step often referred to as an appearance.
Arrest	The procedure where a person is taken into police custody to be charged with a criminal offence or to be brought before a court. The person must remain in police custody until granted bail or until a court deals with their charges.
Assessment order	An assessment order is an order made by the ACAT which generally requires the defendant to be assessed at an approved mental health facility.
Bail	Bail is the legal release of a person from prison after they have been charged with an offence.

Accused	A person charged with committing a criminal offence or offences. Other words for accused are “defendant” and “alleged offender”.
Bail conditions	A set of conditions ordered by the court for a person who is on bail to follow.
Barrister	A lawyer who specialises in appearing at court.
Bench	The seat at the front of the court where the judge or magistrate sits.
Beyond reasonable doubt	The test (or standard of proof) used by a jury, judge or magistrate to decide if the accused or defendant is guilty or not guilty.
Breach	To not comply with a court order.
Brief of evidence	Includes statements from witnesses, expert reports, medical reports, photographs and charge sheets that the police give to the prosecutors after they have finished their investigation.
Charge	The allegation that a person has committed a crime. Once the police have charged a person with committing an offence, the offence is also referred to as the charge.
Committal hearing	A hearing of all the evidence in the lower court by a magistrate who then decides if there is enough evidence for the case to go to trial.
Complainant	A term used in court to refer to a victim.
Convicted	An accused is convicted of an offence by pleading guilty or being found guilty by a jury, judge or magistrate.
Counsel	A barrister acting for the defence or the prosecution.
Court	The building where the case is heard.
Court officer	A person who assists with the running of the court.
Cross-examination	When a witness for one party is asked questions by the lawyer for the other party.
Custody	An accused or offender is in custody when they are in a remand centre awaiting a hearing or in prison and serving out a sentence.

Accused	A person charged with committing a criminal offence or offences. Other words for accused are “defendant” and “alleged offender”.
Defence counsel	A barrister who presents the accused or defendant’s case in court.
Defendant	In the Magistrates Court, a person charged with committing a criminal offence. Other words for defendant are “accused” and “alleged offender”.
Directions hearing	A short court appearance where orders are made about what should happen next in a case.
Error of law	Where a principle of law has been misinterpreted or misapplied or an inappropriate principle of law has been applied.
Evidence-in-chief/ Examination-in-chief	When the prosecutor asks the witness questions so that they can tell the court what happened.
Guilty	When a defendant enters a plea of guilty they accept legal responsibility for the offence. When a defendant pleads not guilty in the Magistrates Court, a magistrate will determine the guilt of the defendant. When a defendant pleads not guilty in the Supreme Court a jury or judge will determine the guilt of the defendant.
Hearing	When evidence is presented to the court after the accused or defendant has plead not guilty.
Hung jury	When a jury is not able to unanimously agree on a verdict of guilty or not guilty.
Indictable offence	A serious criminal offence where the accused has a right to be tried by a judge and jury.
Intensive correction order	A court sentence of up two years that the court decides can be served in the community subject to supervision.
Intermediary	An intermediary is an independent officer of the court. They can assess your communication needs and advise justice agencies of the best way for you to communicate so that you can provide your best evidence.

Accused	A person charged with committing a criminal offence or offences. Other words for accused are “defendant” and “alleged offender”.
Instructing solicitor	A solicitor who helps with the preparation of the case and assists the barrister in court.
Judge	The judge makes sure that proceedings are conducted fairly for both sides. The judge is referred to as “Your Honour” and decides the sentence for offenders.
Judge’s associate	A person who helps the judge.
Jury	A group of usually 12 people who are selected at random from the community and who determine whether the accused is guilty or not guilty.
Justice agencies	Justice agencies include: ACT Corrective Services An ACT court or tribunal when acting in an administrative capacity ACT Office of the Director of Public Prosecutions ACT Policing ACT Restorative Justice Unit The Sentence Administration Board Victim Support ACT
Magistrate	A magistrate sits on a lower court without a jury. The magistrate makes decisions including whether the defendant is found guilty and the sentence for offenders.
Magistrates Court	A lower court which hears less serious matters.
Mention	This is where the case appears in court for a brief time and is not the ‘hearing’ of the matter. This includes setting dates and deciding bail. A witness is not usually required to attend court when the matter is for mention.
Not guilty	A plea made by the accused to a criminal charge which then requires the prosecution to prove the person’s guilt in court.
Oath	A religious promise to tell the truth in court.

Accused	A person charged with committing a criminal offence or offences. Other words for accused are “defendant” and “alleged offender”.
Objections	When the defence or prosecution believe a question should not be asked, they can object and the magistrate or judge must decide whether to allow the question.
Offender	A person who is found by a court to have done something which is prohibited by law.
Parole	Parole is when an offender is released from prison and serves the rest of their sentence in the community under supervision.
Party	A person or legal entity who is a participant in a court case. In a criminal case the parties are the Crown (represented by the ACT Office of the Director of Public Prosecutions) and the accused or defendant.
Plea	The accused’s formal response to the charges; when the accused tells the court whether they are guilty or not guilty of the charge.
Pre-sentence report	A report to help the magistrate or judge decide what sentence to give a person who is found or pleads guilty to an offence.
Prosecutor	The lawyer prosecuting a criminal case before the court.
Re-examination	A prosecutor may ask further questions when a person is giving evidence in court regarding any matters that need clarification.
Registrar	The registrar is responsible for particular tasks that assist in the running of the court, including maintaining a list of cases before the court and assisting in the case management through the various steps that a matter takes before trial. The registrar can make some decisions in court. The registrar sometimes sits where the judge or magistrate sits.

Accused	A person charged with committing a criminal offence or offences. Other words for accused are “defendant” and “alleged offender”.
Release on licence	If an offender has been sentenced to a term of life imprisonment and has served at least 10 years of that term, the Attorney-General may ask the Board to recommend whether an offender should be released from prison on licence. Release on licence is when an offender is then released from prison.
Remand	An order that a person who has been charged but not convicted of an offence is detained or imprisoned until that person goes to court for a hearing.
Reparation order	A reparation order can require the offender to make reparation either by paying money or in another way, for example by having property returned.
Restorative justice	Restorative justice is a voluntary process which allows you to communicate with the offender in a safe and structured environment.
Sentence	The penalty imposed on an offender. The range of penalties include imprisonment, community service orders, good behaviour bonds and fines. If the penalty is imprisonment, the magistrate or judge sets a non-parole period.
Sentence Administration Board	The Sentence Administration Board makes decisions about parole orders and breaches, intensive correction orders, breaches and reinstatements and release on licence and breaches.
Statement	A statement is something you tell police, in your own words, about what happened. If the case goes to court, a copy of your statement is given to the accused person’s lawyer.
Subpoena	A court order that says a person must appear in court to give evidence or provide particular documents.
Summary offence	A less serious criminal offence that may be dealt with by the Magistrates Court and not sent for trial before a judge and jury.

Accused	A person charged with committing a criminal offence or offences. Other words for accused are “defendant” and “alleged offender”.
Summons	A summons is a document directing the defendant to go to the court at a date and time.
Supreme Court	A higher court that hears more serious matters such as indictable offences. A judge or judges sit on a Supreme Court matter. There is often a jury.
Surety	A surety is a person who helps a defendant with their bail. The surety promises to pay money to the court when a defendant breaches their bail conditions.
Trial	A hearing in a court where all evidence is heard and a final decision is made. In higher courts a trial is conducted before a judge and jury. In lower courts, a trial is usually called a “hearing” and is heard before a magistrate.
Victim impact statement	A statement written by a victim that may be read or presented to a court after an offender has been found guilty of an offence and before the offender is sentenced.
Victims Register	A victim of an offence can have their name and contact details recorded on the Victims Register in order to receive information about the administration of the offender’s sentence.
Witness	Any person who has to come to court and answer questions in front of a magistrate or judge and jury. A victim of a crime is normally a witness.
Witness Assistance Service	The Witness Assistance Service is part of the DPP and is staffed by witness liaison officers. The Witness Assistance Service helps the prosecutors inform victims and witnesses of their rights and responsibilities in dealing with the DPP and the criminal justice system.

19. Notes



VICTIMS RIGHTS GUIDELINES

CHARTER OF RIGHTS FOR VICTIMS OF CRIME

The Charter of Rights for Victims of Crime (the Charter) protects and promotes the rights of victims of crime when they engage with justice agencies in the criminal justice system. The Charter acknowledges the central role of victims of crime in the criminal justice system and legislates their rights to safety, privacy, dignity and participation. The Charter commenced in January 2021 and is contained in the *Victims of Crime Act 1994* (ACT) (the Act).

The Charter includes specific rights for victims of crime in the following areas:

- Respectful engagement and protections related to safety and privacy
- Access to support services and other forms of assistance
- Provision of information about general administration of justice processes
- Provision of information in regards to investigations, proceedings and decisions
- Participation in proceedings

Victims of crime also have human rights under the *Human Rights Act 2004* (ACT) when they engage with government organisations, including justice agencies. Government organisations must act consistently with human rights and give proper consideration to human rights when making decisions in relation to victims of crime.

The justice agencies that must uphold the Charter of Rights for Victims of Crime include Victim Support ACT, ACT Policing, the ACT Office of the Director of Public Prosecutions, ACT Corrective Services, ACT Courts and Tribunals when acting in an administrative capacity, the Sentence Administration Board and the Restorative Justice Unit.

Victims of crime who believe a justice agency has not complied with their rights under the Charter can:

- Make a complaint to the justice agency directly
- Raise a concern with the Victims of Crime Commissioner
- Make a complaint to the Disability and Community Services Commissioner
- Make a complaint to any other relevant body, for example the Ombudsman

More information about the Charter of Rights for Victims of Crime is available on the Victim Support ACT website and in the [Charter of Rights for Victims of Crime booklet](#).

VICTIMS RIGHTS UPHELD BY VICTIM SUPPORT ACT

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

Victim Support 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. Victim Support 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. Victim Support ACT staff also work closely with the Children and Young People Commissioner and her team where complex children and young people's matters arise.

Victim Support ACT must not disclose their personal information about a victim or a family members 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)

Victim Support 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*.

Victim Support 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.

VICTIMS RIGHTS COMPLAINT PROCESS

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

Where a victim of crime or their representative makes a victims right complaint to Victim Support ACT staff will:

- Acknowledge and seek to understand the complaint.
- Provide information about how the victim of crime can make a complaint to Victim Support ACT and the actions that staff will take to try and resolve the complaint.
- Provide information about other options for making a complaint about Victim Support 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.

CONCERNS RAISED WITH VICTIMS OF CRIME COMMISSIONER ABOUT OTHER JUSTICE AGENCIES

If a victim of crime believes that another justice agency has not upheld their victims rights or if they are dissatisfied with the justice agency's services in relation to victims rights they may raise a concern with the Victims of Crime Commissioner rather than make a formal complaint.

Where a victim of crime or their representative raises a concern about a justice agency the Commissioner or Victim Support ACT staff will:

- Acknowledge and seek to understand the concern raised.
- Provide information to the victim of crime about the actions staff will take to try and resolve the concern.
- Where appropriate provide information about options for 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 concern as soon as practicable. Where the victim of crime consents this may include seeking information from the justice agency involved and liaising with the justice agency on behalf of the victim of crime.
- If the concern cannot be resolved and the victim of crime consents, make referrals to relevant complaints bodies.
- Record the complaint, including actions taken to resolve the concern and any referrals made.

For both complaints and concerns VSACT staff will consider human rights under the *Human Rights Act 2004 (ACT)* and seek guidance from the Human Rights Commissioner and her team where appropriate.

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

CONTENTS

- Introduction** 5
 - Complying with the ACT *Human Rights Act 2004*: Victims of Crime5
- Part 1: Victims of Crime ACT 1994** 7
 - Section 4: Governing Principles7
- Part 2: About the Human Rights Act 2004** 9
 - Why do I need to know about the Human Rights Act?9
 - What are Human Rights? 10
- Part 3: Human Rights Compliance Tools**12
 - Further information on how the flowchart works 14
- Part 4: Key HR Act rights for victims and witnesses**15
 - Overview 15
 - Section 8: Recognition and Equality before the Law 15
 - Section 9: Right to Life..... 17
 - Section 10: Right to protection from torture and cruel, inhuman or degrading treatment 18
 - Section 11: Protection of the Family 19
 - Section 11(2): Right to protection of children and young people21
 - Section 12: Privacy and home22
 - Section 18: Right to security of person.....24
 - Section 21: Fair Trial25

Introduction

Complying with the ACT Human Rights Act 2004: Victims of Crime

This guide has been prepared by the ACT Human Rights and Discrimination Commissioner and the Victims of Crime Commissioner to assist workers in the justice sector in the ACT to understand the rights and obligations contained in the *Victims of Crime Act 1994* (ACT) and the *Human Rights Act 2004* (ACT) (HR Act) that apply to victims of crime. Workers will be able to use information and checklists in the guide to review their policies and practices to ensure human rights are considered when dealing with victims of crime and witnesses in justice settings.

Who is a victim?

A victim is a person who suffers harm because of an offence. This includes a broad range of people who suffer harm including:

- harm suffered during or as a result of the commission of an offence;
- harm as a result of witnessing an offence;
- a family member of a primary, or a person financially or psychologically dependant on the primary victim who suffers harm because of the harm to the primary victim;
- people who fall within the *Victims of Crime (Financial Assistance) Act 1983*.

If the person is a child or legally incompetent person, a guardian of that person¹. A person can be a victim even if the offender has not been convicted of an offence.

Governing Principles for Victims of Crime

The *Victims of Crime Act 1994* clearly specifies principles for the treatment of victims of crime by all agencies involved in the administration of justice. All public authorities have an obligation under the Human Rights Act to treat all people who are the victim of a crime with respect and dignity.

In addition to the Human Rights provided to a person under the *Human Rights Act*, a person who is a victim of crime has a right to be treated in way compatible with the governing principles.

In the explanatory statement for the 2010 amendment of the Act, the Attorney General reaffirmed that 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.”²

Human Rights for Victims of Crime

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. In particular, the vulnerability of victims of sexual assault and child victims has led to law reform in this area including:

¹ *Victims of Crime Act 1994* (ACT) s6(1).

² *Victims of Crime Amendment Bill 2010; Explanatory Statement*. 2010 Simon Corbell, Attorney General.

- Children may be separately represented
- allowing victims and witnesses to give evidence via audiovisual link;
- prohibiting a self-represented litigant from personally cross-examining a victim;
- allowing a support person in court;
- prohibiting cross-examination on the prior sexual activities or sexual reputation of victims of sexual assault.

These legislative changes seek to strike a balance between the interests of an accused with those of a victim. This need for balance was highlighted by Simon Corbell, ACT Attorney General:

“while the right to a fair trial is a central pillar of the criminal justice system, the too long now maintaining the balance of fairness in the prosecution of sexual assault has been heavily weighted against the complainant”³

The European Court of Human Rights 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”⁴

This guide includes real life case studies where human rights have been used to to ensure;

- victims’ rights with regard to a fair trial;
- vulnerable victims such as women and people from culturally and linguistically diverse backgrounds have adequate access to justice;
- victims safety is considered and acted upon in criminal justice matters;
- the protection of children and young people who are victims;
- a person’s right to access to information held about them;
- victims’ right to life are protected.

³ Australian Capital Territory, *Parliamentary Debates*, legislative assembly, 3 July 2008, 2667 (Simon Corbell, Attorney-General).

⁴ *PS v Germany (2003)* 36 EHRR 61 [22].

Part 1: Victims of Crime ACT 1994 –

Section 4: Governing Principles

Why do I need to know about the Governing Principles?

Any person who exercises a function in the administration of justice **must** have regard to these principles when dealing with someone who is a victim of crime.⁵

The Victims of Crime Commissioner monitors and promotes compliance with the governing principles. The Commissioner also deals with complaints relating to non-compliance with these principles.⁶ Agencies must provide any documentation or information required by the Commissioner to resolve a complaint.⁷ Formal complaints are referred to a relevant complaints entity by the Commissioner.⁸

What are the Governing Principles?

Section 4 stipulates that in the administration of justice, the following principles are to, as far as practicable and appropriate, govern the treatment of victims. In addition to the principles below, people who are the victim of a crime are also entitled to have their human rights considered and protected.

All Stages of the Criminal Justice Process

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;

Investigation Stage

b) A victim should be informed at reasonable intervals (generally not exceeding one 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 all the charges laid against the accused and of any modification of the charges;

Court Stage

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;

f) Where any property of the 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;

h) A victim should be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;

5 *Victims of Crime Act 1994* (ACT) s5(1).

6 *Victims of Crime Act 1994* (ACT) s11(c) – (d).

7 *Victims of Crime Act 1994* (ACT) s12(2).

8 *Victims of Crime Act 1994* (ACT) s12(4).

- i) A victim's residential address should be withheld unless court directs otherwise;
- j) A victim should be relieved from appearing at preliminary hearings or committal proceedings unless the court directs otherwise;

Post Court

- k) A victim should be given an explanation of the outcome of criminal proceedings and of any sentence and its implications;
- l) A victim who is known to have expressed a concern about the need for protection from an offender should be informed of the offender's impending release from custody.







Part 2: About the Human Rights Act 2004

Why do I need to know about the Human Rights Act?

The Human Rights Act places two obligations on ACT Public Authorities, which includes ACT Government Agencies, and those doing outsourced Government work. They must:

- **Act** consistently with human rights; and
- **Consider** human rights in decision making:
 Section 40B(1)(b) of the HR Act requires public authorities to give proper consideration to human rights when making decisions and a failure to do so will be unlawful. Public authorities must actively and properly incorporate human rights into decision-making processes where relevant, and should be able to provide documentary evidence of having done so.

Some example of organisations that are public authorities and who would therefore have duties under the HR Act:

	Organisation	Duties
	THE POLICE	Yes
	THE DPP	Yes
	COURTS	Yes, but only the administrative arm of the court.
	CARE AND PROTECTION	Yes
	HEALTH	Yes, but only ACT Government provided health services like the hospital. Private GPs are not included.
	YOU	Do you perform a public service on behalf of the ACT Government?

What are Human Rights?

Human rights are inherent to all of us as human beings, regardless of who we are, where we live or any other characteristic. They are intended to provide an interrelated safety net of protections that ensure we are able to reach our potential and be treated fairly by our Government. The human rights protected in the ACT Human Rights Act are drawn from internationally agreed documents about what rights must be protected by Governments.

Human Rights in the ACT

The human rights protected in the ACT HR Act are:

- Recognition and equality before the law (s.8)
- Right to Life (s.9)
- Right to Protection from Torture and cruel, inhuman or degrading treatment (s.10)
- Right to Protection of the Family and children (s.11)
- Right to Privacy and Reputation (s.12)
- Right to Freedom of Movement (s.13)
- Right to Freedom of Thought, Conscience, Religion and Belief (s.14)
- Right to Freedom of Association (s.15)
- Right to Freedom of Expression (s.16)
- Right to Take Part in Public Life (s.17)
- Right to Liberty and Security of Person (S. 18)
- Right to Humane Treatment when Deprived of Liberty (s.19)
- Rights of Children in the Criminal Process (s.20)
- Right to Fair Trial (s.21)
- Rights in Criminal Proceedings (s.22)
- Right to Compensation for Wrongful Conviction (s.23)
- Right not to be Tried or Punished more than once (s.24)
- Right against Retrospective Criminal Laws (s.25)
- Freedom from Forced Work (s.26)
- Rights of Minorities (s.27)

Are human rights absolute?

The majority of protected human rights are able to be subject to **reasonable and proportionate limitation**. Exceptions in international treaties are generally the right to freedom from torture, slavery and servitude, and the right to recognition before the law.

The human rights of victims of crime may, at times, conflict with those of defendants or other people in a legal context. When this occurs, a human rights analysis should be undertaken to consider whether reasonable limits can be placed on the human rights of either party. This analysis must be adequately documented in order to demonstrate that it has occurred.

Deciding whether a limit is reasonable and proportionate requires a consideration of:

1. the nature of the **right** affected
2. the importance of the **purpose** of the limitation
3. the nature and extent of the **limitation**
4. the **relationship** between the limitation and its purpose
5. any **less restrictive means** reasonably available to achieve the purpose the limitation seeks to achieve.

If the action or decision is not reasonable and proportionate, it may be unlawful, unless the Public Authority can rely on the defence of having no discretion in law to act in a different way.

Defence

Section 40B(2)(a) of the HR Act, provides a defence where a public authority could not have acted differently, or made a different decision because it was required under another Territory or Federal law to act that (non-human rights compliant) way. (s. 40B(2)(a) below)

Interpretation of laws and human rights

Section 30 of the *Human Rights Act 2004* says that:

so far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights

So a Court or Tribunal should adopt a “human rights consistent” interpretation within the “purpose” of the statute.

The ACT Supreme Court held, *In the Matter of an Application for Bail by Isa Islam*⁹, that the ordinary processes of statutory interpretation, including that under section 30 of the HR Act, should be applied when interpreting Territory legislation, with the aim of finding a provision that is both human rights-compatible and consistent with purpose.

9 [2010] ACTSC 147 (19 November 2010)

Part 3: Human Rights Compliance Tools

This section provides a flowchart and checklist to help public authorities apply the HR Act in their decision-making.

Figure 1: Summary of the Public Authority Obligation

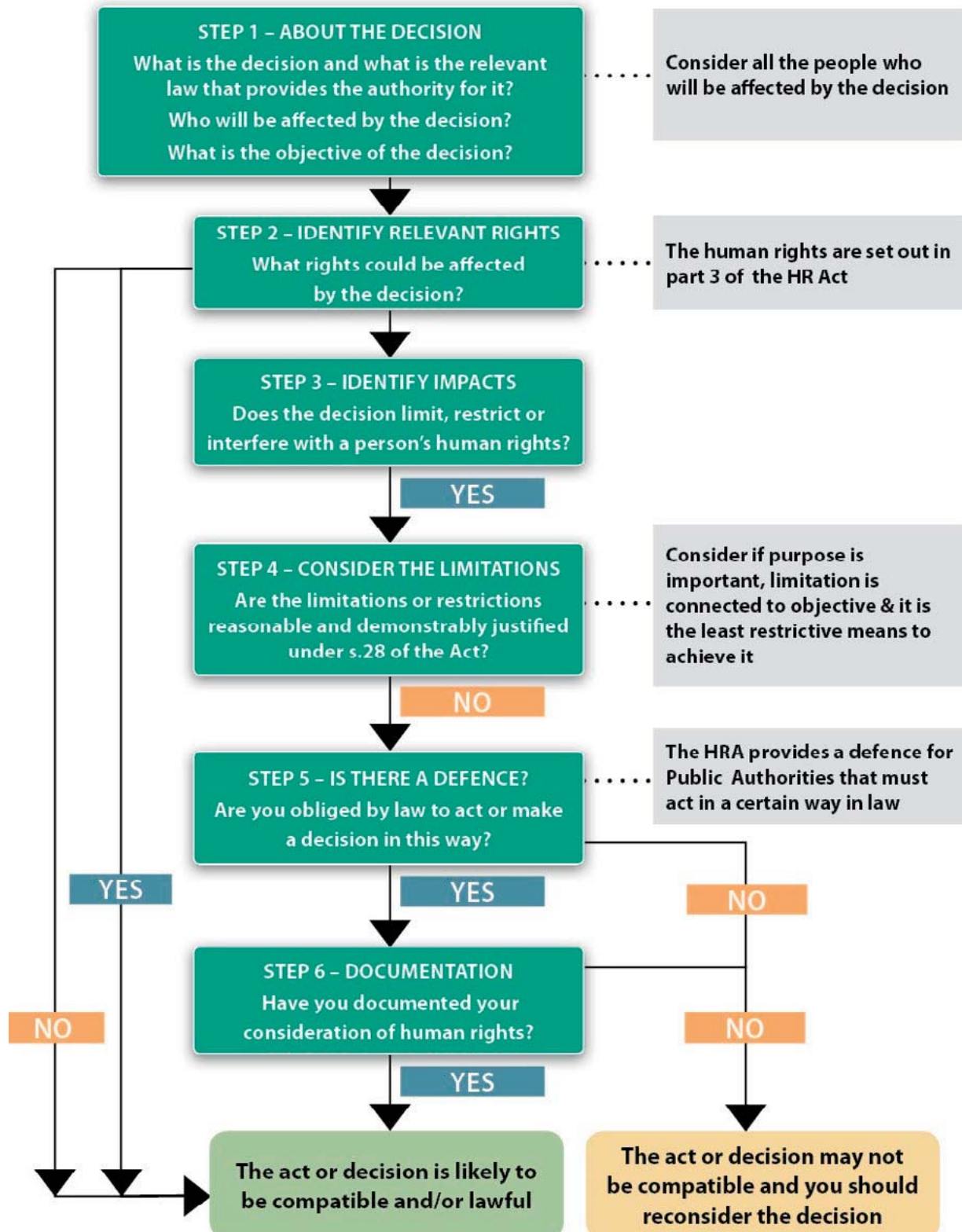
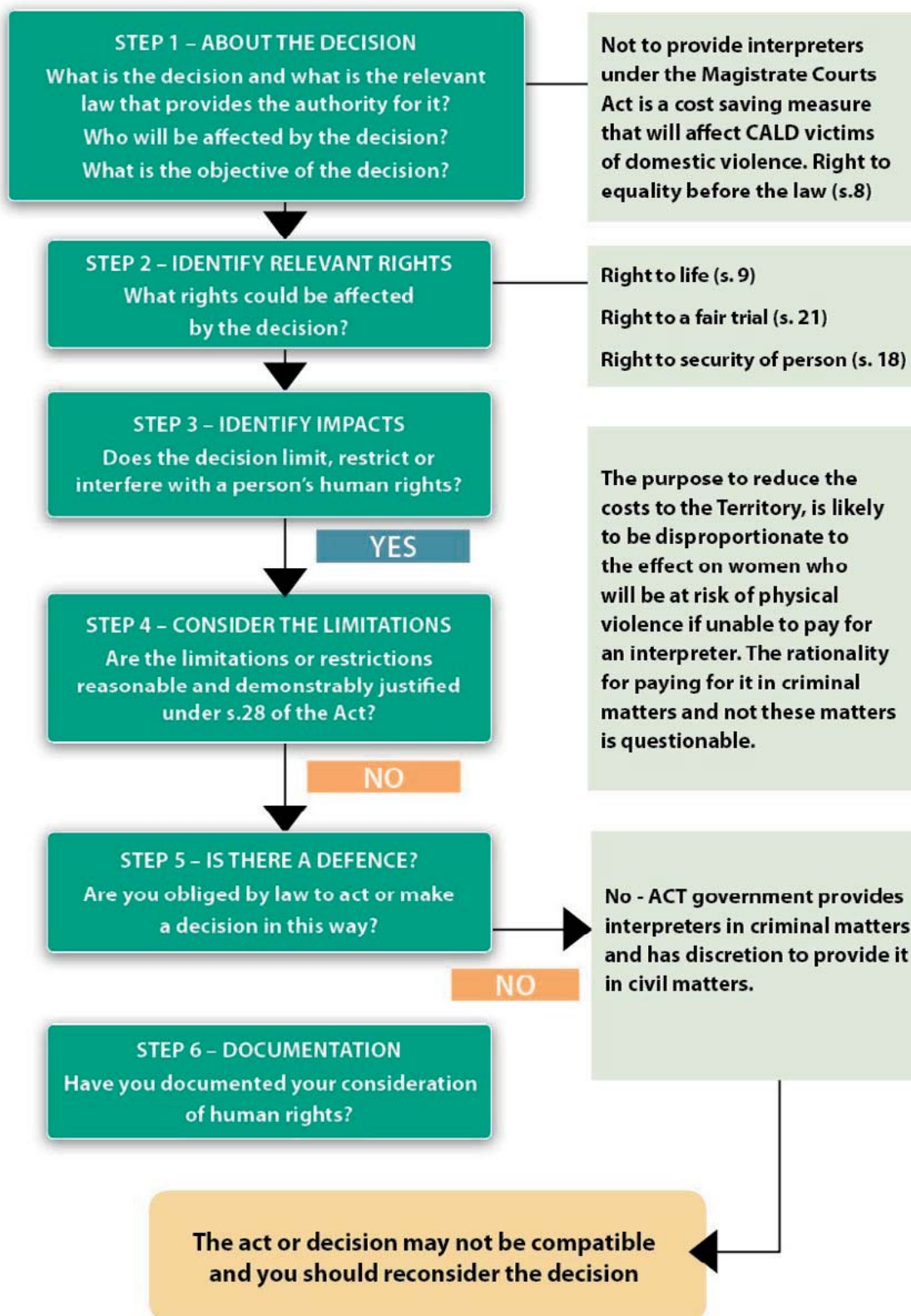


Figure 2: Example of Assessing Compliance

Example: this example considers whether courts not paying for interpreters for women who are victims of domestic violence in a hearing application for a civil domestic violence order is compatible with human rights.



Further information on how the flowchart works

Step 1 : The decision

Who will be affected by the decision?/What is the objective of the decision?

- consider why this decision is being made and what the decision is intending to achieve;
- think broadly about all people who are likely to be affected by the decision;
- identify the legislative basis for the decision.

Example:

The people who would be affected by a decision to grant bail under the Bail Act 1992 (ACT) would be:

- the defendant
- any victims
- witnesses that may be involved
- family, including children of both parties
- the general community.

Step 2: Identify Relevant Rights

What rights could be affected by the decision? Identify the rights.

Consider all the rights contained in the HR Act and consider whether the decision could affect any of those rights. It is possible that a number of rights will be relevant.

Consider who could claim protection of those rights. It is possible that two people may claim the same right, or that different rights might seem to conflict.

Step 3: Identify impacts

Does the decision limit, restrict or interfere with a person's human rights?

This step requires you to consider the impact of your decision. It is important to note both whether the decision will protect or restrict rights.

Look at who might claim a right using your rights to step 2 above. It is possible that one person's right will be restricted in order to protect another person's rights, or the rights of the wider community.

If the decision does affect one or more human rights, consider whether it protects, limits, interferes with or restricts a human right.

Example: the decision whether to grant a defendant bail impacts on a number of rights of both the defendant and a victim. Not granting bail impacts on the defendant's right to liberty (s 18), but it may also impact on a victim or witness's right to security of person (s 18). Refusing bail may impact on a defendant's right to the protection of the family and children (s 11) if he/she is the primary carer of children. If there is a risk of violence, a decision to grant bail may also affect a victim's right to life (s 9).

Step 4: Consider the limitations

Are the limitations or restrictions reasonable and demonstrably justified under s.28 of the Act?

If the decision limits, restricts or interferes with human rights you must ask whether the limitation is reasonable and demonstrably justified under the HR Act.

Part 4: Key HR Act rights for victims and witnesses

Overview

The key human rights relevant to the justice system at all stages of the process including investigation, court and post-court are outlined in this section.

Section 8: Recognition and Equality before the Law

S 8 of the HR Act provides the right to enjoy human rights 'without distinction of discrimination of any kind'

S 8(3) provides:

Everyone is equal before the law and is entitled to the equal protection of the law without discrimination

Everyone has the same rights and deserves the same level of respect. This means that laws, policies and programs should not be discriminatory. It also means that public authorities should not apply or enforce laws, policies and programs in a discriminatory way. These include discrimination because of race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

Human rights law recognises that just treating everybody in exactly the same way (formal equality) can lead to unequal outcomes and to achieve substantive equality sometimes differences of treatment may be necessary for example measures intended to achieve equality under s. 27 of the Discrimination Act 1991.

Investigation stage

Some relevant considerations for victims when considering the concept of recognition and equality before the law during the investigation stage include:

- women have the right to be safe from domestic violence and should therefore have the same access to domestic violence services and police assistance
- police investigators ensuring they provide appropriate support and assistance to people with disabilities to provide statements and to participate in taped records of conversations. Police may need some training to better understand what a person with a disability may require to participate in a formal interview, for example, whether the person may benefit from support during the interview, and whether any technical or other support is needed
- some examples of extra supports a person with a disability may need are:
 - an AUSLAN interpreter, for a person who is deaf;
 - access to large print documents, for a witness with vision impairment;
 - regular breaks during an interview, for a person with intellectual disability;
 - providing for a support person to be with a person with a disability or an Aboriginal or Torres Strait Islander person to assist them to give a witness statement. This role may include the person asking for breaks and helping the person understand what is being asked or pointing out to police if a person may not understand the questions asked.

- providing for an interpreter to assist a person to make a statement to police when that person does not speak English or for whom English is not their primary language.

At Court

Some relevant considerations for victims when considering the concept of recognition and equality before the law during the court stage include:

- courts providing appropriate adjustments for victims/witnesses with disabilities such as the availability of support persons, audiovisual link, frequent breaks in proceedings, and other adjustments;
- providing updates on preparation of cases and information about court processes in accessible formats for people with disabilities;
- giving consideration to limiting the amount of times people with disabilities and other vulnerable witnesses are required to give their evidence – the number of times proofing occurs should be kept to a strict minimum, especially if evidence has been pre-recorded. Asking a witness to recount their story multiple times may create inconsistencies in their evidence and can cause secondary victimisation.¹⁰

Example: A witness in a serious criminal matter is a man who has an intellectual disability. He is very anxious about giving evidence, and has significant difficulty concentrating for extended periods of time. A human rights approach to assist him to give the best evidence he can give, would involve allowing him to have a support person sit with him whilst he is giving evidence, taking frequent breaks in proceedings and avoiding the use of long or confusing questions. It may also involve allowing him to give evidence via audiovisual link.

- providing adjustments to the way in which evidence is given in court, and recognition of the effects of delay. This includes allowing witnesses to give evidence via audiovisual link, as well as allowing an audiovisual recording of a police interview to be admissible as evidence;
- allowing a right of access to alternative dispute resolution processes – e.g. if referral made to restorative justice, victims have the ability to decide whether they would like to participate in the process and meet face to face with the offender. This may include consideration of whether mediation is a suitable option, taking into account any disabilities or vulnerabilities that may affect this;
- providing interpreter services for civil matters, including domestic violence and personal protection order applications and hearings, which are currently not usually provided by the ACT court and must be organised by the applicant at their own cost;
- ensuring early allocation to the prosecutor who will deal with the matter at trial to provide continuity of support.



Case example (right to equality)

A 17 year old girl living in the Philippines who was mute and hearing-impaired alleged that she was raped by a neighbour. She reported the incident to police with her sister interpreting for her using sign language. The affidavit drawn up was in Filipino. However, the education system for the deaf was in English and the complainant could not understand the affidavit, and she was not given an interpreter.

It took almost 5 years for the case to be heard and finalised. Reasons for the delay included: the court's failure to provide an interpreter, leaving it up to the complainant to arrange, placing the case after the other cases scheduled for the day were heard, leading to many adjournments. The accused was acquitted due to insufficient evidence. The court stated that an ordinary Filipina female rape victim

¹⁰ Attorney-General's Department South Australia, *Supporting vulnerable witnesses in the giving of evidence: Guidelines for securing best evidence*, 11.

would try to escape or resist and call out, and that the complainant's demeanour was inconsistent with this casting doubt on her credibility.

The UN Committee on the Elimination of Racial Discrimination found that the court's treatment amounted to a violation of the State's obligation to end discrimination in the legal process, and that its attitude towards the complainant and towards women and rape in general revealed gender stereotyping. The Committee noted that the State's obligations included an obligation to consider the complainant's disability and age. It found that providing a sign language interpreter was essential to ensure the complainant's full and equal participation in proceedings to ensure protection against discrimination.

Source: *RPB v The Philippines*, Committee on the Elimination of Discrimination against Women, Communication No 34/2011 (21 February 2014)

Post Court

Some relevant considerations for victims in the concept of recognition and equality before the law post-court would include:

- ensuring that the outcome of a matter is explained clearly in an understandable format to victims with disabilities, or people who are culturally and linguistically diverse.

Section 9: Right to Life

The right to life is one of the most fundamental human rights, and has two main aspects. Public authorities must:

- not take away anyone's life, except in a very few limited circumstances and only when absolutely necessary;
- take reasonable steps to protect life, including taking steps to protect someone whose life is at risk from another person, where the authorities know or should know of this risk.

Investigation stage

Some relevant considerations for victims when considering the concept of the right to life during the investigation stage would include:

- ACT Policing taking appropriate steps to protect a person when they know there is a real and immediate risk to the life of that individual, including through domestic violence. Police may have a duty to do all that can be reasonably expected of them to prevent a real and immediate risk to life, which they knew or ought to have known;¹¹
- ACT Policing taking steps to protect witnesses, including a duty to warn persons who may be at risk of a life-threatening situation.¹²

11 *Osman v United Kingdom* (1998) 29 EHRR 245.

12 *Van Colle v Chief Constable of Hertfordshire* [2008] UKHL 50.



Case example (right to life)

The applicants employed the defendant in their optical shop in England. When the police found optical equipment at the defendant's house they charged him with theft. The defendant then threatened the applicant's son on a number of occasions, including that he would kill him if he did not withdraw charges. This was reported to police. The applicant's car and business premises were set alight, however this was not linked to the defendant. The defendant shot dead the applicant's son as he was leaving work.

While the court found there was no violation of the right to life (article 2) in this case, it found that there is a positive obligation on authorities to take preventative measures to protect an individual whose life is at risk from the criminal acts of another.

Source: *Van Colle v United Kingdom* [2012] ECHR, Application No 7678/09 (13 November 2012)

Post court

Some relevant considerations for victims when considering this right post-court would include:

- a positive obligation to protect life and a right to the basic necessities of life. This may involve police taking appropriate steps to protect a person they know is at risk of violence, including a risk of violence once an offender is released from custody.

Section 10: Right to protection from torture and cruel, inhuman or degrading treatment

Section 10 of the HR Act provides that:

No-one may be –

- (a) tortured; or
- (b) treated or punished in a cruel, inhuman or degrading way.

Investigation stage

Some relevant considerations for victims when considering the concept of this right during the investigation stage would include:

- police have an obligation to take complaints seriously and conduct investigations in a timely and efficient manner;¹³
- DPP must adequately investigate the possibility of taking the matter to trial if there is sufficient information that a crime has been committed.¹⁴



Case example (prevention of degrading treatment or punishment)

The so-called 'black cab rapist' committed more than 100 drug and alcohol assisted rapes and sexual assaults on women he had been carrying his cab between 2002 and 2008 in London.

The fact that the women had been drugged reduced the likelihood of his apprehension and arrest as he left his victims confused and disorientated, frequently with only a partial memory of their ordeal.

¹³ *Black Cab Rapist (DSD and Anor v Commissioner of Police)* [2015] 1 WLR 1833.

¹⁴ *Valiuliene v Lithuania* [2013] ECHR (application no. 33234/07) (26 March 2013).

The police had guidelines on how to deal with this type of crime. However the guidelines were largely ignored and officers did not receive any training on them. As a result, there was a series of systematic failures in this case which led to the failure to apprehend the attacker at an earlier date.

The police service was found liable to the claimants for a breach of the *Human Rights Act* which imposed a duty upon police to conduct investigations into particularly severe violent acts perpetrated by private parties in a timely and efficient manner.

Source: DSD and Anor v Commissioner of Police [2015] 1 WLR 1833.

Court Stage

Some relevant considerations for victims when considering this right during the court stage would include:

- restricting the ability of counsel to cross-examine vulnerable witnesses in certain circumstances including children and victims of sexual assault, for example; to only asking necessary questions
- assisting witnesses to give evidence to the court through the use of intermediaries.

Section 11: Protection of the Family

The term 'family' has a broad meaning that recognises the many different types of families who live in the ACT. Family life covers close and personal ties of a family kind. It does not just cover blood ties or formal relationships and goes beyond the so-called 'nuclear family'. It includes a right to develop normal family relationships and the right to ongoing contact if a family separates.

This right is a qualified right, which can be limited or restricted in certain circumstances to protect the rights of others or the interests of the wider community. For example, a child may be separated from their parents if there is evidence of child abuse. Any interference with this right must be lawful, necessary and proportionate.

Investigation Stage

Some relevant considerations for victims when considering the concept of protection of family during the investigation stage would include:

- ACT Policing must ensure they consider the victim when making a decision about whether police bail should be granted to a defendant. They must consider the likelihood of the defendant harassing or endangering the safety or welfare of anyone,¹⁵ and take into account any concerns the victim has about their need for protection.¹⁶
- in situations where a victim has expressed concern about their need for protection from violence or harassment from a defendant, the police informant is required to inform the victim liaison officer about any bail decisions by police. The liaison officer is required to take all reasonable steps to tell the victim of bail decisions as soon as practicable.

¹⁵ *Bail Act 1992* (ACT) s 22

¹⁶ *Ibid*, s 23A.

Court stage

Some relevant considerations for victims when considering the concept of protection of family during the court stage would include:

- in Childrens Court – when making decisions about whether a child needs to be removed from the care of a parent, and in considerations of suitable out-of-home care for that child;

Example: A woman living in a domestic violence situation, and Care and Protection Services (CPS) are concerned about the impact of violence on the children. Her children are removed from her care because she is unwilling or unable to guarantee the children will not have contact with the alleged perpetrator. A human rights approach would consider examining the supports and services that would be needed for her to enable the children to remain in her care in a manner that would protect their rights to be safe, and if this is not possible finding a carer placement as close as possible to the family e.g. a grandparent. It would also involve ensuring appropriate resourcing for agencies to provide ongoing services after the “crisis” event to ensure trauma is not exacerbated. Lack of resources post-crisis can lead to victims of domestic violence situation deteriorating , for example becoming homeless.

- in Childrens Court – when making decisions about the child’s contact with family members and significant people in their lives. The *Children & Young People Act 2008* acknowledges that a child’s best interests may involve maintaining contact with a person outside their immediate family;
- when considering whether bail should be granted to a defendant – the Court must consider the likelihood of the person harassing or endangering the safety or welfare of anyone,¹⁷and to take into account any concerns the victim has about their need for protection;¹⁸
- when a decision has been made about the grant of bail or review of bail by a court, if the victim has expressed concern about the need for protection from violence or harassment, the police informant must tell the ACT Policing victim liaison officer and that officer must take all reasonable steps to tell the victim about the bail decision as soon as practicable.¹⁹



Case example (right to equality, rights to family)

A single mother in Victoria, living with cerebral palsy was at risk of having her daughter taken from her by Child Protection. She needed to demonstrate that with the appropriate assistance she would be competent, both emotionally and physically, to care for her daughter. The advocate in this case used the Victorian Charter of Human Rights to communicate the woman’s rights through mediation in the Children’s Court with Care and Protection. These rights included recognition and equality before the law, and protection of families and children. The woman was provided the opportunity to demonstrate that she had adequate supports in place to ensure the safety of her child and to give her the full recognition of her capability of mothering her child, so that Child Protection are no longer involved.

Source: Leadership Plus: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006.

17 *Bail Act 1992* (ACT) s 22

18 *Ibid*, s 23A.

19 *Bail Act 1992* (ACT) s 47A.

Section 11(2): Right to protection of children and young people

This protection extends to any person aged under 18 years of age. The right to protection of children and young people could be interpreted to include a broader range of children's rights recognised in the Convention on the Rights of the Child, including the right to participation. Public Authorities must adopt special measures to protect children and young people, and the best interests of the child must be taken into account in all actions affecting a child.

Investigation stage

Some relevant considerations for victims when considering the concept of the right to protection of children during the investigation stage would include:

- children who are victims have a right to give statements to police if they are mature enough. This should be done in a way that supports them to give the best possible evidence, including having a support person present and asking questions in an age appropriate way.
- public authorities (e.g. ACT policing and Care and Protection Services) may have a positive duty to protect children from physical harm.



Case example (prevention from degrading treatment or punishment, right to respect for private and family life, rights of the child)

The applicant alleged that she was raped by two men when she was 14 yrs old. The police investigated the allegation and referred it to an investigator, but no action was taken until one year later when an investigator proposed that the case be closed. The main reason for this was the lack of resistance on the applicant in response to the alleged rape and that, based on the statements of the alleged perpetrators, the applicant had not shown any signs of distress after having sex.

The European Court of Human Rights found a violation of obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, as the authorities failed to fully investigate all the surrounding circumstances of the allegation, and did not sufficiently assess the credibility of conflicting statements made by different witnesses. It also found that little was done to test the credibility of the version of events of the accused.

The Court criticised authorities for attaching little weight to the particular vulnerability of young persons, and the special psychological factors involved in cases concerning the rape of minors.

Source: M.C. v Bulgaria (Application no. 39272/98) European Court of Human Rights (Date of decision: 4 December 2003)

Court stage

Some relevant considerations for victims who are children would include:

- children who are victims have a right to give instructions to a legal representative if mature enough (*A & B v Children's Court of Victoria*)
- this right may also be relevant when considering whether children can be compelled to give evidence in court: *R v YL*²⁰
- application of section 10 of the Evidence (Miscellaneous Provisions) Act 1991 (ACT) may be a relevant human rights consideration, which applies if a child is not separately represented by someone else, and the court considers that the child should be represented by someone else, the court may:
 - order that the child be separately represented by someone else; and
 - make any other order it considers necessary to arrange the separate representation.



Case example (right of children and young people)

Fitzroy Legal Service (FLS) has protected a young girl from having to testify against her alleged perpetrators in a criminal trial. The young girl and her family believed that testifying and being cross-examined would cause her serious harm. FLS advocated in favour of her choice not to testify and was successful in doing so. They achieved this by raising section 17 of the Charter, which enshrines the protection of families and children. They argued that protection of her rights as a child and protection of the family should be given due regard when determining whether or not the young girl would be required to provide witness testimony. The Tribunal agreed that she should not testify, and consequently provided her with financial assistance in recognition of the trauma suffered by her.

Source: Fitzroy Legal Service, Submission to the Inquiry into the Charter of Human Rights and Responsibilities Act 2006, 15 June 2011

Post Court

- public authorities may have a positive duty to protect children from physical harm; this duty would extend beyond the conclusion of the court process, and may be relevant when an offender is being released from custody after serving their sentence.

Section 12: Privacy and home

Section 12 of the HR Act says that:

Everyone has the right;

- (a) not to have his or her privacy, family, home correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

This right includes a right not to have one's privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Private life includes privacy, personal choices, relationships, physical and mental well-being, and access to personal information. Generally this right has been interpreted as the right to live free from interference, and so includes the right to autonomy.

Arbitrary interference in the right to privacy is interference that may be lawful, but is unreasonable, unnecessary and the degree of interference is not proportionate to the need.

20 [2004] ACTSC 115

Investigation Stage

Some relevant considerations for victims when considering the concept of the right to privacy and home during the investigation stage would include:

- Taking measures to protect the privacy of a victim to ensure that information is not unnecessarily given to other parties involved in the investigation.²¹

Example: Police prepare a brief of evidence for a criminal investigation and provide it to the DPP. The DPP serve this material on the defendant. These documents need to be carefully reviewed and any personal information about a victim or witness (such as home address) should be redacted if this information is provided to the person who is alleged to have committed the offence.

Court stage

Some relevant considerations for victims when considering the concept of the right to privacy and home during the court stage would include:

- when considering subpoenas for the health records of victims. Only the records that are directly relevant to the proceedings, not the entire medical history of the victim, should be able to be subject to a subpoena requiring the production of documents. This could also include a right that persons with sufficient interest be notified of any subpoena issued; and
- suppression of the victim's name may be a relevant consideration if the person is vulnerable or does not wish to be identified.

Example: A criminal defence team issue a subpoena requiring the production of the entire health record of the victim from a medical practitioner. The victim was unaware that their personal medical records had been subpoenaed. The entire medical file, which detailed childhood sexual abuse, suicidal thoughts, and major depression was provided to all the parties without the victim's knowledge. A human rights approach would require the party seeking the subpoena and/or the Court to notify the person that their personal records were being subpoenaed, and provide them with first access to inspect the documents. The prosecution could also support this right by notifying the victim of the documentation that has been subpoenaed, and either making the application themselves, or advising the victim how they can go about challenging the subpoena.



Case example (right to privacy and from torture and inhuman treatment)

The Republic of Moldova's failure to adequately protect a woman and her two daughters from a husband's attacks amounted to a breach of the European Convention on Human Rights. The woman and her daughters have been victims of domestic violence for at least 10 years when she began reporting assaults to the police. After the fifth assault she took out a protection order, which was never enforced and that was breached on a number of occasions. The police pressured the applicant to drop her criminal complaint against her husband. The prosecutor decided not to initiate a criminal investigation. Social workers advised her to reconcile with her husband.

Criminal charges were finally laid with the husband admitting he physically and psychologically abused his wife and daughters. A plea bargain was entered into with the prosecutor defining the offence as "a less

21 *Victims of Crime Act 1994*, s 4(i)

serious offence” and suspending the investigation. An appeal was unsuccessful with the senior prosecutor holding that suspending the investigation would afford better protection to the applicants.

The court held that the failure of the system to provide an adequate response to serious domestic violence amounted to a breach of obligations regarding respect for private life, and gender discrimination.

Source: *Eremia v Republic of Moldova* [2013] ECHR, Application no. 3564/11 (28 May 2013)

Section 18: Right to security of person

Section 18 of the HR Act states that everyone has the right to liberty and security of person.

The right to security requires the ACT to provide reasonable measures to protect a person’s physical security through the work of the police and emergency service for example.

Investigation stage

Some relevant considerations for victims when considering the concept of the right to the security of the person during the investigation stage would include:

- victims have a right to know about whether an offender is being released from custody on bail.²² This should include police custody, and mental health facilities. This may not extend to providing information about the whereabouts of that person if there was a risk of retributive violence to them.²³

Court Stage

Some relevant considerations for victims when considering the concept of the right to security of the person during the court stage would include:

- victims have a right to know about whether an offender is being released from custody.²⁴ This should include both police and correctional custody, and from a mental health facility. This may not however extend to providing information about the whereabouts of that person if there was a risk of retributive violence to them.²⁵
- a victim should be informed about the trial process and the identity of the defendant in situations where they do not know the defendant. This information is public information and, unless the proceedings involve a closed court, it should not be withheld from a victim who wishes to be informed.
- this right could be enlivened in relation to allowing evidence to be given via audiovisual link.

Example: A victim’s right to security may sometimes conflict with an accused’s right to liberty. If there are no less restrictive means to ensure a victim or witness’ security that included giving the accused his or her liberty, then a human rights approach would provide for the accused’s liberty to be curtailed.

Post Court

A person has the right to security under the HR Act.

- victims and witnesses should be provided information about the outcome of court proceedings as soon as possible. This should include situations where a not guilty verdict is handed down and the other party is released from custody;

²² Victims of Crime Act 1994, S4(l)

²³ *Venables v New Group Newspapers Ltd* [2001] 2 WLR 1038.

²⁴ Victims of Crime Act 1994, S4(l)

²⁵ *Venables v New Group Newspapers Ltd* [2001] 2 WLR 1038.

- victims have a right to know about whether an offender is being released from custody.²⁶ Victims should be advised when an offender might be eligible for parole, the outcome of any parole hearings, and the date an offender will be released from custody or a mental health facility. This may not extend to providing information about the whereabouts of that person if there was a risk of retributive violence to them.²⁷



Case example (right to life, prevention from degrading treatment or punishment, right to freedom from discrimination based on gender)

The applicant and her mother were victims of domestic violence perpetrated by the applicant's partner over a number of years, including numerous death threats. Despite a number of complaints being made to police, the behaviour continued, ultimately resulting in the murder of the applicant's mother by the applicant's partner.

The European Court of Human Rights found that the violence in this case was foreseeable. It ruled that the right to life extended in appropriate circumstances to a positive obligation on authorities to take preventative measures to protect an individual whose life is at risk from the criminal acts of another individual.

For a positive obligation to be present the authorities must have known, or ought to have known, at the relevant time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party. An authority is in breach of this obligation if they have failed to take measures within the scope of their powers which might have been expected to avoid that risk.

Source: *Opuz v Turkey* (Application no. 33401/02) European Court of Human Rights (Date of decision: 9 June 2009)

Section 21: Fair Trial

S 21(1) of the HR Act provides for the right to a fair trial. It states:

Everyone has a right to have criminal charges and rights and obligations recognised by law, decided by competent, independent and impartial court or tribunal after a fair and public hearing.

The right to a fair trial has been found in other human rights jurisdictions to include a 'triangulation of interests' which include those of the accused, the victim and his or her family, and the public.²⁸

Investigation stage

Some relevant considerations for victims when considering the concept of fair trial during the investigation stage would include:

- avoiding unnecessary/unreasonable delay in laying charges or investigating a matter if it would be unfair to the victim. A long delay in investigating an incident could impact on the victim's ability to give accurate evidence and negatively affect their credibility as a witness;

Example: The owner of a petrol station is held up by an armed assailant wearing a mask. Police investigated and attempted to identify the offender. There is a significant delay in receiving material back from the forensic lab. The Governing Principles require an officer to inform the victim of the progress of the investigation at regular intervals (generally not more than 1 month) s4(b).

²⁶ *Victims of Crime Act 1994*, S4(l)

²⁷ *Venables v News Group Newspapers Ltd and others; Thompson v News Group Newspapers Ltd and others* [2001] 2 WLR 1038.

²⁸ *Bowden et al*, 558; *Ragg v Magistrates' Court of Victoria and Corcoris* [2008] VSC 1 (24 January 2008) (Bell J).

- giving consideration to informal resolution mechanisms such as alternative dispute resolution if a young person or an Aboriginal or Torres Strait Islander person.

At Court

Some relevant considerations for victims when considering the concept of fair trial would include:

- avoiding unnecessary/unreasonable delay if that would be unfair to the victim, if the delay impacts upon their ability to give evidence. This may affect the victim's credibility as a witness;
- the DPP ensuring they allow views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected;
- prohibiting alleged offenders from personally cross-examining the victim in a domestic violence order or protection order applications as is current practice in criminal matters;
- providing the same right for vulnerable witnesses to give evidence via audiovisual link in civil proceedings as they have in criminal proceedings, particularly for family violence matters;
- consideration of any other matters concurrently occurring in another court.

Example: A man is arrested and charged with seriously assaulting his ex-partner. The victim attended the ACT Magistrates Court on the following day and obtained an interim domestic violence order. The domestic violence order application went to hearing; the woman was cross-examined extensively by her ex-partner's lawyer. The domestic violence order was ultimately granted. The criminal matter went to trial seven months later and the woman was very distressed that she was again cross-examined extensively about the same incident. It would be preferable not to allow a full hearing for a domestic violence order application until the related criminal matter has been completed, to avoid unnecessary trauma for the victim. Legislative amendments should be made allowing an interim order to be put in place during this time to ensure protection for the victim.



Case example (right to a fair trial)

The UK Supreme Court considered two cases where witness statements had been admitted into evidence when the witness was not available for cross examination.

In the first case the victim of an assault died before trial. This statement to police was admitted into evidence. The second case involved a case of kidnapping, where the victim disappeared one day before the trial citing her fear of attending court. Her statement to police was admitted into evidence.

The defendants appealed claiming that they did not receive a fair trial contrary to art 6 of the European Convention on Human Rights.

The Court dismissed the appeal concluding that, provided safeguards and appropriate counter-balancing measures are adhered to, there will be no breach of art 6 of the Convention if the conviction is based solely or decisively on evidence of a statement of a witness without the witness giving evidence.

Source: R v Horncastle & Ors [2009] UKSC 14 (9 December 2009) R v Horncastle & Ors [2009] UKSC 14 (9 December 2009)

Post Court

Some relevant considerations for victims when considering the concept of fair trial post-court would include:

- providing proper assistance to victims and witnesses to understand the legal process and the outcome;
- ensuring adequate restitution and compensation for victims as outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This includes restitution from offenders where appropriate, financial compensation provided to victims who have suffered bodily injury or physical or mental health impairment, and assistance such as medical, psychological and social assistance.²⁹

²⁹ United Nations General Assembly Resolution 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985.





Australian Capital Territory

Victims Rights Legislation Amendment Act 2020

A2020-34

Contents

		Page
Part 1	Preliminary	
1	Name of Act	2
2	Commencement	2
3	Legislation amended	2
Part 2	Human Rights Commission Act 2005	
4	Disability and community services commissioner's functions New section 21 (1) (c) (v)	3
5	New section 41C	3

J2018-822

Contents

	Page	
6	What complaints may be made under this Act? New section 42 (1) (eb)	4
7	Who may make a complaint under this Act? Section 43 (1)	4
8	Section 43 (1), new note	5
9	Consideration without complaint or appropriate complainant Section 48 (1) (a)	5
10	Section 48 (2)	5
11	Referral of advocacy matters Section 51A (1)	5
12	Referral to appropriate statutory office-holder Section 52A (1) (a)	6
13	Compulsory attendance at conciliation Section 59 (4)	6
14	Power to ask for information, documents and other things Section 73 (5)	6
15	Section 73 (7)	7
16	Requiring attendance etc Section 74 (4)	7
17	Section 74 (6)	7
18	Section 74 (8)	8
19	Responding to recommendations New section 85 (1A)	8
20	New section 100B	8
21	Dictionary, note 2	9
22	Dictionary, new definitions	9
Part 3	Victims of Crime Act 1994	
23	New section 3AA	10
24	Part 2	10
25	New sections 7 and 8	11
26	Functions Section 11 (d)	13
27	Section 11 (e)	13
28	New section 11 (2)	13

Contents

		Page
29	Concerns and complaints	
	Section 12	13
30	New part 3A	14
31	New section 29A	60
32	Dictionary, note 2	60
33	Dictionary, definition of <i>administration of justice</i>	61
34	Dictionary, new definitions	61
35	Dictionary, definition of <i>governing principles</i>	61
36	Dictionary, new definitions	61



Australian Capital Territory

Victims Rights Legislation Amendment Act 2020

A2020-34

An Act to amend legislation about victims rights, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

Section 1

Part 1 Preliminary

1 Name of Act

This Act is the *Victims Rights Legislation Amendment Act 2020*.

2 Commencement

This Act commences on 1 January 2021.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the [Human Rights Commission Act 2005](#) and the [Victims of Crime Act 1994](#).

Part 2 Human Rights Commission Act 2005

4 Disability and community services commissioner's functions New section 21 (1) (c) (v)

insert

- (v) a victims rights complaint;

5 New section 41C

insert

41C Victims rights complaints

- (1) This section applies if—
- (a) a person engages with a justice agency; and
 - (b) the person believes the justice agency has not complied with their victims rights; and
 - (c) the person is a victim.
- (2) The person may complain to the commission about the justice agency's conduct (a *victims rights complaint*).

Note Alternatively, a victim may make a justice agency complaint to a justice agency (see *Victims of Crime Act 1994*, s 18D) or may raise a victims rights concern with the victims of crime commissioner (see *Victims of Crime Act 1994*, s 18F).

Part 2 Human Rights Commission Act 2005

Section 6

- (3) If the victims of crime commissioner refers a person's victims rights concern to the commission under the *Victims of Crime Act 1994*, section 18G (3), the victims rights concern is taken to be a victims rights complaint made by the person to the commission under this Act.

Note A person need not have made a justice agency complaint to a justice agency, nor raised a victims rights concern with the commissioner, under the *Victims of Crime Act 1994* before making a victims rights complaint to the commission under this Act.

- (4) In this section:

victim—see the *Victims of Crime Act 1994*, section 6.

victims rights—see the *Victims of Crime Act 1994*, section 14A.

victims rights concern—see the *Victims of Crime Act 1994*, section 18F (2).

6 What complaints may be made under this Act? New section 42 (1) (eb)

insert

- (eb) a victims rights complaint;

Note A victims rights complaint is about the conduct of a justice agency.

7 Who may make a complaint under this Act? Section 43 (1)

omit

act or service

substitute

act, service or conduct

8 Section 43 (1), new note

insert

Note 2 If a person's victims rights concern is referred to the commission, the person is taken to have made a victims rights complaint (see s 41C).

**9 Consideration without complaint or appropriate complainant
Section 48 (1) (a)**

omit

act or service

substitute

act, service or conduct

10 Section 48 (2)

omit

or older people service complaint

substitute

, older people service complaint or victims rights complaint

**11 Referral of advocacy matters
Section 51A (1)**

omit

children and young people complaint

substitute

children and young people service complaint

Part 2 Human Rights Commission Act 2005

Section 12

**12 Referral to appropriate statutory office-holder
Section 52A (1) (a)**

omit

act or service

substitute

act, service or conduct

**13 Compulsory attendance at conciliation
Section 59 (4)**

substitute

- (4) Subsection (3) does not apply—
- (a) if the complaint is a victims rights complaint—to a justice agency; or
 - (b) if the person has a reasonable excuse for not attending the conciliation as required.

**14 Power to ask for information, documents and other things
Section 73 (5)**

substitute

- (5) Subsection (4) does not apply—
- (a) if the complaint is a victims rights complaint—to a justice agency; or
 - (b) if the person has a reasonable excuse for failing to provide the information to the commission as required.

15 Section 73 (7)

substitute

- (7) Subsection (6) does not apply—
- (a) if the complaint is a victims rights complaint—to a justice agency; or
 - (b) if the person has a reasonable excuse for failing to produce the document or other thing to the commission as required.

**16 Requiring attendance etc
Section 74 (4)**

substitute

- (4) Subsection (3) does not apply—
- (a) if the complaint is a victims rights complaint—to a justice agency; or
 - (b) if the person has a reasonable excuse for not attending before the interviewer as required.

17 Section 74 (6)

substitute

- (6) Subsection (5) does not apply—
- (a) if the complaint is a victims rights complaint—to a justice agency; or
 - (b) if the person has a reasonable excuse for failing to continue to attend as required by the interviewer.

18 Section 74 (8)

substitute

- (8) Subsection (7) does not apply—
- (a) if the complaint is a victims rights complaint—to a justice agency; or
 - (b) if the person has a reasonable excuse for failing to answer the question.

**19 Responding to recommendations
New section 85 (1A)**

insert

- (1A) However, subsection (1) does not apply to an entity that is a justice agency if the report is in relation to a victims rights complaint.

20 New section 100B

insert

100B Independence of DPP

- (1) The director of public prosecutions need not comply with a provision of this Act that relates to a victims rights complaint if the director considers that compliance would prejudice—
- (a) the independence of the director of public prosecutions; or
 - (b) the prosecution of an offence.
- (2) If the director of public prosecutions does not comply with a provision of this Act, the director must tell the commission—
- (a) that the director has not complied with a provision of the Act; and
 - (b) the provision not complied with; and
 - (c) the reason for not complying.

- (3) The director of public prosecutions must include in the director's annual report under the *Annual Reports (Government Agencies) Act 2004* the information mentioned in subsection (2) for each occasion on which the director does not comply with a provision of this Act.

21 Dictionary, note 2

insert

- DPP

22 Dictionary, new definitions

insert

justice agency—see the *Victims of Crime Act 1994*, section 8.

victims rights complaint—see section 41C (2).

Part 3 Victims of Crime Act 1994

Section 23

Part 3 **Victims of Crime Act 1994**

23 **New section 3AA**

in part 1, insert

3AA **Objects of Act**

The objects of this Act are to—

- (a) acknowledge the central role of victims in the criminal justice process; and
- (b) contribute to upholding the safety, privacy and dignity of people adversely affected by crime; and
- (c) help victims deal with the effects of criminal offences; and
- (d) acknowledge, promote and uphold the rights and interests of victims in the administration of justice; and
- (e) recognise and establish appropriate ways for agencies involved in the administration of justice to engage with victims in order to minimise adverse outcomes and prevent trauma for victims; and
- (f) establish requirements for monitoring and reviewing victims rights.

24 **Part 2**

omit

25 New sections 7 and 8

in part 2A, insert

7 Meaning of *administration of justice*

In this Act:

administration of justice includes the provision of services by a justice agency.

8 Meaning of *justice agency*

(1) In this Act:

justice agency—

(a) means any of the following entities:

- (i) 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 *adult offenders victims register unit*);
- (ii) the director-general of the administrative unit responsible for maintaining the affected person register under the *Mental Health Act 2015*, part 7.2 (the *affected person register unit*);
- (iii) the chief police officer;
- (iv) the director-general of the administrative unit responsible for the *Corrections Management Act 2007* (the *corrective services unit*);
- (v) a court or tribunal, when acting in an administrative capacity;
- (vi) the director of public prosecutions;
- (vii) a referring entity, when acting in an administrative capacity;

Part 3 Victims of Crime Act 1994

Section 25

- (viii) the director-general of the administrative unit responsible for the *Crimes (Restorative Justice) Act 2004* (the *restorative justice unit*);
 - (ix) the sentence administration board, when acting in an administrative capacity;
 - (x) the victims of crime commissioner;
 - (xi) the director-general of the administrative unit responsible for this Act;
 - (xii) 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 (the *youth justice victims register unit*);
 - (xiii) the director-general responsible for the *Children and Young People Act 2008*;
 - (xiv) an entity prescribed by regulation; but
- (b) does not include any of the following:
- (i) the Chief Justice, a judge or associate judge;
 - (ii) the Chief Magistrate, a magistrate or any office that must be occupied by a magistrate.
- (2) For subsection (1), definition of *justice agency*, paragraph (a), an entity that is a court or tribunal is *acting in an administrative capacity* other than when it is exercising its jurisdiction in relation to any proceeding before it.

Note 1 A director-general may delegate to a public employee or another person a function given to the director-general under this Act (see *Public Sector Management Act 1994*, s 20).

Note 2 An entity that is not a justice agency need not comply with victims rights (see s 18), although the entity should have regard to victims rights (see s 18A).

26 **Functions**
Section 11 (d)

omit

the governing principles

substitute

victims rights

27 **Section 11 (e)**

substitute

(e) to ensure victims rights concerns are dealt with promptly and effectively;

(ea) to promote the prompt and effective resolution of complaints about victims rights made to relevant complaints entities;

28 **New section 11 (2)**

after the notes, insert

(2) In this section:

relevant complaints entity—see section 18G (4).

29 **Concerns and complaints**
Section 12

omit

Part 3 Victims of Crime Act 1994

Section 30

30 New part 3A

insert

Part 3A Victims rights

Division 3A.1 Preliminary

14 Object—pt 3A

The object of this part is to ensure that, in the administration of justice, engagement with victims is governed by the victims rights.

14A Meaning of *victims rights*

In this Act:

victims rights means the rights in the following divisions:

- (a) division 3A.2 (Victims rights—respect, privacy and safety);
- (b) division 3A.3 (Victims rights—access to support, services, legal and financial assistance);
- (c) division 3A.4 (Victims rights—information about administration of justice processes);
- (d) division 3A.5 (Victims rights—information about investigations, proceedings and decisions);
- (e) division 3A.6 (Victims rights—participation in proceedings).

Note The victims rights are not exhaustive. Victims have a range of rights under other territory laws.

14B Definitions—pt 3A

In this part:

authorised officer—see the *Bail Act 1992*, dictionary.

detained offender means an offender who—

- (a) has been sentenced for the offence; and
- (b) is—
 - (i) a detainee within the meaning of the *Corrections Management Act 2007*, section 6; or
 - (ii) a young detainee within the meaning of the *Children and Young People Act 2008*, section 95.

forensic mental health order—see the *Mental Health Act 2015*, dictionary.

forensic patient—see the *Mental Health Act 2015*, section 127.

intensive correction order—see the *Crimes (Sentencing) Act 2005*, section 11 (2).

mental health order—see the *Mental Health Act 2015*, dictionary.

offender means a person convicted or found guilty of an offence by a court.

parole order—see the *Crimes (Sentence Administration) Act 2005*, section 117.

registered affected person, in relation to a forensic patient—see the *Mental Health Act 2015*, section 129.

registered victim, of an offender—see the *Crimes (Sentence Administration) Act 2005*, section 213.

transfer or release, of a detained offender, means—

- (a) the transfer of the detainee from their place of detention; or

Examples

- 1 transporting an offender from a detention place to hospital
- 2 transferring an offender from a correctional centre to an equivalent institution interstate

Part 3 Victims of Crime Act 1994

Section 30

- (b) the release of a detainee from their place of detention, including for a temporary absence.

Examples—temporary absence

- 1 to work or seek work
- 2 to attend a funeral or visit a relative suffering a serious illness
- 3 to attend a place of education or training
- 4 to participate in a prison program that includes release under a pre-release permit scheme

victim impact statement, for an offence—see the *Crimes (Sentencing) Act 2005*, section 47.

young offender—see the *Crimes (Sentence Administration) Act 2005*, dictionary.

Division 3A.2 Victims rights—respect, privacy and safety

14C Respectful engagement with victims

- (1) A justice agency must engage with a victim respectfully and with appropriate regard to the victim's personal situation, needs, concerns, rights and dignity.
- (2) A justice agency must take into account, and be responsive to, the individual needs of a victim, particularly needs relating to any of the following:
 - (a) age;
 - (b) disability;
 - (c) gender identity;
 - (d) race;
 - (e) religion;
 - (f) sex;

- (g) sexuality;
- (h) parental, family, carer or kinship responsibilities.

14D Respectful engagement with child victims

If a primary victim is a child, a justice agency must—

- (a) as far as practicable, 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
- (b) engage with the child in a way that is appropriate for a person of the child's age who is not a victim.

14E Contact with victims

- (1) 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*).
- (2) However, a justice agency need not make a required contact with a victim if—
 - (a) 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
 - (b) another agency has already made the required contact with the victim; or
 - (c) it is not possible or practicable in the circumstances to make the required contact with the victim; or
 - (d) for a person who is a victim under section 6 (1), definition of *victim*, paragraph (b) or (c) (an *associated victim*)—the justice agency—
 - (i) has already made the required contact with the primary victim; and

Part 3 Victims of Crime Act 1994

Section 30

- (ii) considers it unnecessary to also contact the associated victim.

Examples—par (b)

- 1 if the DPP is required to give a victim information, the DPP may arrange with the chief police officer for a police officer to give the information to the victim
- 2 if the ACAT is required to give a victim information, the ACAT may arrange for the commissioner give the information to the victim

Examples—par (c)

- 1 the victim cannot be found after reasonable steps have been taken to find the victim
- 2 the proceedings progress too quickly for the victim to be contacted
- 3 a justice agency is not aware of a victim or cannot reasonably find a victim's contact details

14F Victims' privacy

- (1) A justice agency must not disclose personal information about a victim or a family member of the victim, unless the information is disclosed—
- (a) in the course of a proceeding before a court or tribunal; or
 - (b) under a territory law; or
 - (c) with the victim's consent.

- (2) In this section:

educational institution means a school, college or other educational institution, whether or not operated in the ACT or by or on behalf of the Territory.

personal information, about a person, includes—

- (a) a person's home address and contact details; and
- (b) if the person is employed—the place where the person is employed; and

- (c) if the person is a student—the educational institution the person attends.

14G Storage and return of victims' property

- (1) 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—
 - (a) handled and stored in a lawful, respectful and secure manner; and
 - (b) returned to the victim as soon as practicable after it is no longer needed for that purpose.
- (2) However, for subsection (1) (b)—
 - (a) the property must not be returned to the victim if the victim's possession of the property would be an offence; and
 - (b) the property need not be returned to the victim directly.

Note The *Court Procedures Rules 2006* sets out for how long exhibits put into evidence may be kept by the court in proceedings (see r 6762), including in appeals proceedings (see r 5194), duties on parties to claim exhibits (see r 6763) and disposal of exhibits (see r 6766).

14H Victims' appearance at preliminary or committal hearings

The director of public prosecutions must not require a victim to appear at a preliminary hearing or a committal hearing unless—

- (a) a court directs the victim to appear; or
- (b) the director of public prosecutions considers the victims' appearance necessary in the interests of justice.

Note Under the *Magistrates Court Act 1930*, s 90AA, written statements may generally be admitted as evidence in a committal hearing, however, the court may give leave for evidence to be given in person at the hearing if it considers it necessary in the interests of justice (see that [Act](#), s 90AA (7)).

141 Minimising victims' exposure to accused etc

- (1) This section applies to a victim of an offence if the victim—
- (a) is in a court or tribunal building for a proceeding for the offence; and
 - (b) has told a relevant justice agency that the victim may need protection from violence or harassment by any of the following people:
 - (i) an accused person for the offence;
 - (ii) a defence witness;
 - (iii) a family member of the accused or any person supporting the accused.
- (2) The relevant justice agency must, as far as practicable, minimise the victim's exposure to the person while in the court or tribunal building.

Note The *Evidence (Miscellaneous Provisions) Act 1991*, pts 4.2 and 4.3 set out special requirements that apply in particular proceedings to stated kinds of witnesses, including children and intellectually impaired witnesses, to minimise the exposure of a witness to an accused. Particularly, that *Act* sets out—

- when a stated kind of witness may give evidence by audiovisual link in particular proceedings (see tables 43.1 to 43.4 and div 4.3.5); and
- that a court may order that an accused person be screened from a witness while the witness is giving evidence in a courtroom (see s 47); and
- that a witness in a relevant proceeding must not be examined personally by the accused person (see s 48); and
- that a court may order that the court be closed to the public while a witness is giving evidence (see s 50).

(3) In this section:

exposure, of a victim to another person—

(a) includes—

(i) any form of physical contact between the victim and the other person; and

(ii) face-to-face communication between the victim and the other person; but

(b) does not include—

(i) oral communication by telephone; or

(ii) written communication, including electronic communication.

relevant justice agency means either of the following justice agencies:

(a) the director of public prosecutions;

(b) a court or tribunal, when acting in an administrative capacity.

14J Minimising registered victims' exposure to offenders etc

(1) This section applies if—

(a) an offender is sentenced; or

(b) for a detained offender—the offender is transferred or released from their place of detention.

Part 3 Victims of Crime Act 1994

Section 30

- (2) A relevant justice agency 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.

Examples—actions victim may take

- 1 apply for a personal protection order under the *Personal Violence Act 2016*
- 2 ask that the offender be directed to not contact the victim by phone or mail under the *Corrections Management Act 2007*, s 47 (6) or s 48 (5)
- 3 ask that a young offender be directed to not contact the victim by phone or mail under the *Children and Young People Act 2008*, s 174 (6) or s 175 (4)

- (3) In this section:

relevant justice agency means either of the following justice agencies:

- (a) the youth justice victims register unit;
- (b) the adult offenders victims register unit.

Division 3A.3 Victims rights—access to support, services, legal and financial assistance

15 Referral of victims to support services

- (1) The chief police officer must, as soon as practicable, refer a victim of an offence to a service that provides support or assistance suitable for the victim and the victim's circumstances.

Examples—as soon as practicable

- 1 after a person reports an offence to police
- 2 after police become aware an offence has been committed

- (2) However, a referral need not be made if it would not be appropriate in the circumstances.

Example—not appropriate in the circumstances

the victim does not consent to the referral

15A Provision of aids or adjustments to victims

A justice agency must, unless the court directs otherwise, ensure a victim of an offence is provided with, or is able to access—

- (a) any special requirement the victim is entitled to in relation to a proceeding for the offence under the *Evidence (Miscellaneous Provisions) Act 1991*, part 4.2; and
- (b) any aid or adjustment that is reasonably necessary to enable the victim to fully participate in the administration of justice for the offence.

Examples—aid or adjustment

- 1 assistance animal
- 2 intermediary or support person
- 3 interpreter or translator

Note 1 The *Evidence (Miscellaneous Provisions) Act 1991* sets out—

- (a) when a court may appoint an intermediary in a criminal proceeding for a witness with a communication difficulty (see that *Act*, ch 1B); and
- (b) when a court may order that a witness have a support person in court while giving evidence (see that *Act*, s 49 and s 101).

Note 2 The *Evidence Act 2011*, s 30 sets out when a witness in a proceeding may give evidence through an interpreter.

Note 3 This section applies to a court or tribunal, a referring entity or a member of the sentence administration board only when acting in an administrative capacity, but does not apply to a judge, a magistrate, or a court or tribunal when exercising its jurisdiction in relation to any proceeding before it (see s 8 (1), definition of *justice agency*, par (a) (v), (vii) and (ix) and s (2)).

15B Victims may request referral of offences to restorative justice

- (1) A victim of an offence may—
- (a) at any stage during the administration of criminal justice for the offence, ask a justice agency whether the offence may be referred for restorative justice; and
 - (b) at any stage of the criminal justice process for the offence, ask a referring entity for that stage of the process to refer the offence for restorative justice.

Note 1 The *Crimes (Restorative Justice) Act 2004* sets out eligibility requirements for restorative justice (see that *Act*, pt 5) and the process for referral of offences for restorative justice (see that *Act*, pt 6).

Note 2 Under the *Crimes (Restorative Justice) Act 2004*, s 28A, in stated circumstances, an offence may be referred for restorative justice by a post-sentence referring entity without telling the offender that the offence is being considered for restorative justice.

- (2) In this section:

stage, of the criminal justice process, has the same meaning as in the *Crimes (Restorative Justice) Act 2004*, section 22.

15C Reimbursement and financial assistance for victims

- (1) 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.

Examples—expenses

transport, parking, meals

Note Under the *Court Procedures Rules 2006*, r 4331, a person who attends the Magistrates Court as a witness in the hearing of a criminal proceeding is entitled to be paid witness expenses.

- (2) A victim may apply for financial assistance under the *Victims of Crime (Financial Assistance) Act 2016*.

Note Eligibility requirements apply for financial assistance under the *Victims of Crime (Financial Assistance) Act 2016*, div 3.1.

- (3) 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 director of public prosecutions to apply for a reparation order under the *Crimes (Sentencing) Act 2005*, section 19 or section 20.

Note A victim who suffers loss or expense as a direct result of the commission of an offence may be entitled to reparation from the offender by way of payment of money or otherwise, for the loss or expense (see *Crimes (Sentencing) Act 2005*, s 19). A victim whose property is stolen may be entitled to have the property restored to them or to payment of the value of the property (see that *Act*, s 20).

Division 3A.4 Victims rights—information about administration of justice processes

15D Police to tell victims about administration of justice processes after offence reported

- (1) The chief police officer 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.

Examples—resulting administration of justice processes

- 1 charging and prosecuting an alleged offender
- 2 giving evidence and the burden of proof in a proceeding
- 3 a victim's role in a proceeding as a witness for the prosecution

Part 3 Victims of Crime Act 1994

Section 30

(2) In this section:

relevant offence means—

- (a) an indictable offence; or
- (b) any other offence in relation to which the victim has asked the chief police officer to be given information about administration of justice processes.

15E DPP to give information to victim witnesses

- (1) This section applies 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.
- (2) The director of public prosecutions must, within a reasonable period before the witness is to give evidence, tell the victim about, or where to find information about—
 - (a) the hearing or trial process; and
 - (b) the role, rights and responsibilities of witnesses.

15F Police and DPP to tell victims about victim impact statement

- (1) A relevant justice agency must, within a reasonable period before a victim of an offence would be able to make a victim impact statement, tell the victim the following:
 - (a) who may make a victim impact statement;
 - (b) that a victim impact statement may be made orally or in writing;
 - (c) what information a victim impact statement must and may include;

- (d) how a victim impact statement may be used in court during a proceeding, including that—
- (i) a copy of the victim impact statement will be given to the offender; and
 - (ii) the victim may be cross-examined about the contents of the victim impact statement; and
 - (iii) the court must consider the victim impact statement in deciding how the offender should be sentenced.

Note The *Crimes (Sentencing) Act 2005*, pt 4.3 sets out the requirements for victim impact statements. A victim impact statement may only be made for an offence that is punishable by imprisonment for longer than 1 year (see that [Act](#), s 48).

- (2) In this section:

relevant justice agency means either of the following justice agencies:

- (a) the chief police officer;
- (b) the director of public prosecutions.

15G DPP to tell victims about decisions to discontinue prosecution and review of decisions

- (1) This section applies if a person is charged with 1 or more offences in relation to a victim.
- (2) The director of public prosecutions must tell the victim which of the director's decisions in relation to the charges are automatically reviewed.

Part 3 Victims of Crime Act 1994

Section 30

- (3) If the director of public prosecutions decides to discontinue the prosecution of 1 or more of the charges, the director must, as soon as practicable after making the decision, tell the victim how the victim may request a review of the decision if—
- (a) as a result of the decision, the person is not prosecuted for any charge in relation to the victim; and
 - (b) the decision will not be automatically reviewed.

15H Justice agencies to tell eligible victims about victims register etc

- (1) A relevant justice agency must, as soon as practicable after an offender is sentenced for an offence, tell each victim who is eligible to be registered on the victims register—
- (a) how the victim may become registered on the victims register; and
 - (b) the rights of registered victims to information about offenders who are sentenced; and
 - (c) the role of registered victims in relation to the release of offenders from imprisonment under a parole order or on licence.

Note 1 Registration of victims of offenders is dealt with in the *Crimes (Sentence Administration) Act 2005*, ch 10.

Note 2 Release under parole and on licence are dealt with in the *Crimes (Sentence Administration) Act 2005*, ch 7 and pt 13.1.

- (2) In this section:
- relevant justice agency*** means either of the following justice agencies:
- (a) the youth justice victims register unit;
 - (b) the adult offenders victims register unit.

victims register means—

- (a) the register of victims of offenders kept under the *Crimes (Sentence Administration) Act 2005*, section 215; or
- (b) 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

- (1) This section applies if a victim tells a justice agency that the victim—
 - (a) believes the agency has not complied with their victims rights; or
 - (b) is otherwise dissatisfied with the justice agency’s services in relation to victims rights.
- (2) The justice agency must, as soon as practicable, tell the victim how the victim may—
 - (a) make a justice agency complaint to the justice agency; or
 - (b) if the victim believes the agency has not complied with their victims rights—
 - (i) raise a victims rights concern with the commissioner; or
 - (ii) make a victims rights complaint to the human rights commission; or

Note **Justice agency complaint**—see s 18D (2).
Victims rights complaint—see the *Human Rights Commission Act 2005*, s 41C (2).
Victims rights concern—see s 18F (2).

Part 3 Victims of Crime Act 1994

Section 30

- (c) if another entity has power to deal with the matter—make a complaint about the matter to the other entity.

Examples

- 1 if the matter relates to corrupt conduct, the victim may be able to make a complaint to the integrity commission
- 2 if the matter relates to a member of the Australian Federal Police, the victim may be able to make a complaint to the Australian Commission for Law Enforcement Integrity (ACLEI)

Division 3A.5 Victims rights—information about investigations, proceedings and decisions

16 Police to give written confirmation to victims reporting offences

- (1) If a victim of a relevant offence reports the offence to a police officer, the chief police officer must, as soon as practicable, give the victim written confirmation of the report, including the name and contact details of—
 - (a) the police officer who took the report; and
 - (b) another police officer the victim may contact about the report.
- (2) However, the chief police officer need not give written confirmation of the report if doing so is likely to affect the safety of the victim or another person.
- (3) In this section:

relevant offence means—

 - (a) an indictable offence; or
 - (b) any other offence in relation to which the victim has asked the chief police officer to provide written confirmation of the report.

16A Police to update victims about status of investigations

- (1) If a police officer is investigating a relevant offence, the chief police officer must give a victim of the offence an update about the status of the investigation—
 - (a) as soon as practicable after a change in the status of the investigation; and
 - (b) at least every 6 weeks.
- (2) However, if the victim wishes to be updated less frequently, the chief police officer may update the victim at another time agreed between the chief police officer and the victim.
- (3) Also, if the chief police officer considers that giving the victim an update about the status of the investigation would prejudice the investigation or any other investigation, the chief police officer—
 - (a) must not tell the victim about the status of the investigation; but
 - (b) must tell the victim as much as possible about the progress of the investigation.
- (4) In this section:
change in the status of an investigation, for an offence, includes—
 - (a) a person being charged with the offence; or
 - (b) a warrant being issued for the arrest of a person accused of committing the offence.
relevant offence means—
 - (a) an indictable offence; or
 - (b) any other offence in relation to which the victim has asked the chief police officer to update the victim about the status of the investigation.

16B DPP to consider victims' views about dealing with charges

- (1) This section applies if—
- (a) a person has been charged with a relevant offence; and
 - (b) the director of public prosecutions is considering taking any of the following actions in relation to the charge (a *proposed action*):
 - (i) substantially modifying the nature of the case in a proceeding for the charge, including by—
 - (A) accepting a guilty plea for a lesser charge; or
 - (B) discontinuing the prosecution of the charge;
 - (ii) applying to the ACAT for an assessment order in relation to the person.

Note The DPP may apply to the ACAT for an assessment order in relation to a person alleged to have committed an offence if the DPP believes on reasonable grounds that it may not be appropriate to prosecute the person considering the nature and circumstances of the alleged offence and the person's apparent mental disorder or mental illness (see [Mental Health Act 2015](#), s 35).

- (2) The director of public prosecutions must, as soon as practicable and before taking the proposed action, seek and consider the victim's views about the proposed action.
- (3) However, the director of public prosecutions need not seek the victim's views if the director of public prosecutions considers that it would prejudice the prosecution of an offence.
- (4) In this section:
- assessment order*—see the [Mental Health Act 2015](#), dictionary.
- relevant offence* means—
- (a) an indictable offence; or

- (b) any other offence in relation to which the victim has asked the director of public prosecutions to tell the victim about any proposed action.

16C Police and DPP to update victims about bail decisions

- (1) This section applies if a victim of an offence has expressed concern to a relevant justice agency about the need for protection from violence or harassment by an accused person for the offence.
- (2) The relevant justice agency must, as soon as practicable, tell the victim if—
 - (a) 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
 - (b) 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.

Note The *Bail Act 1992*, s 47A outlines that victims should be given notice of bail decisions if they have expressed safety concerns.

- (3) In this section:

accused person—see the *Bail Act 1992*, dictionary.

relevant justice agency means either of the following justice agencies:

- (a) the chief police officer;
- (b) the director of public prosecutions.

16D DPP to tell victims about hearings

- (1) This section applies if—
 - (a) a person has been charged with an offence; and
 - (b) a court has set a hearing date for the charge.

Part 3 Victims of Crime Act 1994

Section 30

- (2) The director of public prosecutions 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.

Note The DPP need not give the information mentioned in s (2) to the victim if another justice agency has already given the information to the victim (see s 14E (2) (b)).

16E DPP to tell victims about reparation orders

- (1) This section applies if—
- (a) an offender is convicted or found guilty of an offence against a territory law; but
 - (b) the court has not yet sentenced or made a non-conviction order for the offender.
- (2) The director of public prosecutions must tell a victim of the offence—
- (a) that a court may make a reparation order against the offender under the *Crimes (Sentencing) Act 2005* or another territory law; and
 - (b) if the director of public prosecutions decides not to apply for the order—
 - (i) the decision; and
 - (ii) unless the director of public prosecutions considers that it would prejudice the prosecution of an offence—the reason for the decision.

Note 1 Reparation orders are dealt with under the *Crimes (Sentencing) Act 2005*, s 19, s 20 and ch 7. Reparation orders are made on the basis of facts established by evidence given at trial, available documents, admissions by the offender, or submissions made by or for anyone (including the DPP) (see that *Act*, s 110).

Note 2 The DPP need not give the information mentioned in s (2) to the victim if another justice agency has already given the information to the victim (see s 14E (2) (b)).

16F DPP to tell victims about outcomes of trials and appeals

- (1) The director of public prosecutions must, as soon as practicable after a proceeding for a relevant offence has ended, tell a victim of the offence about—
 - (a) the outcome of the proceeding, including any sentence imposed by the court on the offender; and
 - (b) if the offender appeals a decision under paragraph (a)—
 - (i) the nature of the appeal; and
 - (ii) the outcome of the appeal.

Note The DPP need not give the information mentioned in s (1) to the victim if another justice agency has already given the information to the victim (see s 14E (2) (b)).

- (2) In this section:

relevant offence means—

- (a) an indictable offence; or
- (b) any other offence in relation to which the victim has asked the director of public prosecutions to tell the victim about the outcome of the proceeding.

16G Justice agencies to tell victims about inquiries for parole or release on licence

- (1) This section applies if the sentence administration board intends to start an inquiry into an application for—
 - (a) parole by an offender under the *Crimes (Sentence Administration) Act 2005*, chapter 7 (Parole); or
 - (b) the release of an offender on licence under the *Crimes (Sentence Administration) Act 2005*, part 13.1 (Release on licence).

Part 3 Victims of Crime Act 1994Section 30

- (2) A relevant justice agency must, as soon as practicable, tell a victim of an offender—
- (a) about the inquiry; and
 - (b) how the victim may—
 - (i) make a submission to the board; or
 - (ii) tell the board about any concern in relation to the inquiry; or
 - (iii) ask the board not to give the submission or concern to the offender or another person.

Note 1 The sentence administration board must seek a registered victim's views before starting an inquiry for parole (see *Crimes (Sentence Administration) Act 2005*, s 123) or release on licence (see that *Act*, s 292) for an offender.

Note 2 The sentence administration board must ensure, as far as practicable, that documents are not given to a person if it may endanger a victim or someone else, and other reasons (see *Crimes (Sentence Administration) Act 2005*, s 192).

- (3) The relevant justice agency must also give the victim the following information to assist the victim to make a submission or tell the board about a concern:
- (a) information about the offender;
 - (b) information about any assistance available to the victim to make a submission or tell the board about a concern.

Note 1 The *Crimes (Sentence Administration) Act 2005* sets out the information that must be given to a victim for an inquiry for parole (see that *Act*, s 124) or release on licence (see that *Act*, s 292 (6)).

Note 2 Information about an offender may only be disclosed to a registered victim of the offender if the disclosure is appropriate in the circumstances (see s 16I).

(4) In this section:

relevant justice agency means either of the following justice agencies:

- (a) the adult offenders victims register unit;
- (b) the sentence administration board when acting in an administrative capacity.

16H Justice agencies to tell victims about parole or release on licence decisions

- (1) If the sentence administration board 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 each relevant victim of the offender about—
 - (a) the board's decision; and
 - (b) if the board decides to make a parole order for the offender—
 - (i) the offender's parole release date; and
 - (ii) in general terms, the offender's parole obligations.
- (2) 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 reasonable steps to tell each relevant victim of the offender, as soon as practicable, about—
 - (a) the Executive's decision; and
 - (b) if the Executive grants a licence to the offender—
 - (i) the offender's licence release date; and
 - (ii) in general terms, the offender's release on licence obligations.

Part 3 Victims of Crime Act 1994

Section 30

- (3) The relevant justice agency may also tell a relevant victim the general area where the offender will live while on parole or release.

Note The *Crimes (Sentence Administration) Act 2005* sets out the information to be given to victims in relation to parole orders for offenders (see that [Act](#), s 133) and licences granted for release of offenders from imprisonment (see that [Act](#), s 298).

- (4) In this section:

relevant justice agency means either of the following justice agencies:

- (a) the adult offenders victims register unit;
- (b) the sentence administration board when acting in an administrative capacity.

relevant victim, of an offender—

- (a) for a parole order—see the *Crimes (Sentence Administration) Act 2005*, section 133 (6); and
- (b) for a grant of licence for release—see the *Crimes (Sentence Administration) Act 2005*, section 298 (8).

16I Justice agencies may give information about offenders to registered victims

- (1) A relevant justice agency may tell a registered victim of an offender information about the offender if—
- (a) the offender has been sentenced; and
 - (b) the victim asks the relevant justice agency for the information; and

- (c) the relevant justice agency is satisfied the disclosure is appropriate in the circumstances.

Note Under the *Crimes (Sentence Administration) Act 2005*, if an offender has been sentenced, information about the offender may be disclosed to a registered victim of the offender if the disclosure is appropriate in the circumstances (see that *Act*, s 216 and s 216A).

- (2) In this section:

relevant justice agency means either of the following justice agencies:

- (a) the youth justice victims register unit;
- (b) the adult offenders victims register unit.

16J Justice agencies to tell registered victims about transfer etc of detained offenders

- (1) This section applies if—
- (a) a detained offender—
 - (i) is to be transferred or released from imprisonment or detention; or
 - (ii) escapes from custody; and
 - (b) either—
 - (i) 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
 - (ii) the relevant justice agency believes the offender's transfer, release or escape is likely to affect the registered victim's safety.

Part 3 Victims of Crime Act 1994

Section 30

- (2) The relevant justice agency must, as soon as practicable, tell the registered victim—
- (a) if the detained offender is to be transferred or released from imprisonment or detention—
 - (i) of the transfer or release; and
 - (ii) any condition of the release that may affect the registered victim’s safety; and
 - (b) if the detained offender escapes from custody—of the escape.
- (3) However, subsection (2) does not apply if the relevant justice agency is satisfied the disclosure is not appropriate in the circumstances.

Note Under the *Crimes (Sentence Administration) Act 2005*, if an offender has been sentenced, information about the offender may be disclosed to a registered victim of the offender if the disclosure is appropriate in the circumstances (see that *Act*, s 216 and s 216A).

- (4) In this section:

relevant justice agency means either of the following justice agencies:

- (a) the youth justice victims register unit;
- (b) the adult offenders victims register unit.

16K Adult offender victims register unit to tell victim about intensive correction orders

- (1) This section applies if an offender is subject to an intensive correction order and—
- (a) the offender has breached any of the offender’s intensive correction order obligations; or
 - (b) the sentence administration board has decided to—
 - (i) suspend or cancel the offender’s intensive correction order; or

- (ii) amend or discharge the offender's intensive correction order; or
- (iii) reinstate the offender's previously cancelled intensive correction order.

Note Only adult offenders may be subject to an intensive correction order (see [Crimes \(Sentencing\) Act 2005](#), s 11).

- (2) The adult offenders victims register unit 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 intensive correction order if—
 - (a) it is likely to affect the victim's safety; or
 - (b) 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

- (1) If a court requires an offender in relation to a relevant offence to submit to the jurisdiction of the ACAT under any of the following provisions, the director of public prosecutions must, as soon as practicable, tell a victim of the offence about the requirement:
 - (a) the [Crimes Act 1900](#), part 13 (Unfitness to plead and mental impairment);
 - (b) the [Crimes Act 1914](#) (Cwlth), part 1B (Sentencing, imprisonment and release of federal offenders).

Part 3 Victims of Crime Act 1994

Section 30

- (2) 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, the director of public prosecutions must, as soon as practicable, tell a victim of the offence about the order.

Note 1 Under the *Crimes Act 1900*, s 309 the Magistrates Court may order that an accused be taken by a police officer or corrections officer to an approved mental health facility for clinical examination for the purpose of deciding whether the accused needs immediate treatment or care because of mental impairment.

Note 2 The DPP need not give the information mentioned in s (1) or (2) to the victim if another justice agency has already given the information to the victim (see s 14E (2) (b)).

- (3) In this section:

approved mental health facility—see the *Mental Health Act 2015*, dictionary.

offender includes a person—

- (a) who is arrested in connection with an offence; or
- (b) in relation to whom there are sufficient grounds on which to charge the person in connection with an offence; or
- (c) who is charged in connection with an offence.

relevant offence means—

- (a) an indictable offence; or
- (b) any other offence in relation to which the victim has asked the director of public prosecutions to tell the victim about the information mentioned in this section.

16M ACAT to tell victims about mental health orders etc

- (1) If the ACAT is considering making any of the following orders for an offender, the ACAT must, as soon as practicable, tell a registered affected victim of the offender that the ACAT is considering making the order:
 - (a) if section 16L (1) or (2) applies to the offender—a mental health order;
 - (b) a forensic mental health order;
 - (c) an order under the *Mental Health Act 2015*, section 180 to release the offender from custody.
- (2) If the ACAT makes an order mentioned in subsection (1) for an offender, the ACAT must, as soon as practicable, tell a registered affected victim of the offender—
 - (a) that the order has been made; and
 - (b) the nature and length of the order.

Note 1 The *Mental Health Act 2015*, s 134 sets out information in relation to a forensic patient that must be disclosed to a registered affected person if a mental health order has been made (see that *Act*, s 134 (2)). Other information may be disclosed if necessary for the registered affected person's safety and wellbeing (see that *Act*, s 134 (3)). However, identifying information about a child, or a person who was a child when the offence was committed or alleged to have been committed, may only be given in certain circumstances (see that *Act*, s 134 (4)).

Note 2 The ACAT need not give the information mentioned in this section to the victim if another justice agency has already given the information to the victim (see s 14E (2) (b)).

Part 3 Victims of Crime Act 1994

Section 30

(3) In this section:

offender—see section 16L (3).

Note A victim can only be a registered affected person in relation to an offender who is a forensic patient.

registered affected victim, of an offender, means a victim who is a registered affected person for an offence committed or alleged to have been committed by the offender.

16N Affected person register unit to tell victims about affected person register etc

- (1) 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—
- (a) about the affected person register; and
 - (b) the rights of a registered affected person; and
 - (c) if the victim is a registered affected person—
 - (i) when the victim's information will be removed from the register; and
 - (ii) if an order has been made in relation to the forensic patient—
 - (A) the information mentioned in the *Mental Health Act 2015*, section 134 (2) in relation to the forensic patient; and
 - (B) any other information about the forensic patient that the affected person register unit considers necessary for the victim's safety and wellbeing; and
 - (C) whether the ACAT intends to hold a hearing in relation to the order.

(2) In this section:

affected person—see the *Mental Health Act 2015*, section 128 (1).

affected person register—see the *Mental Health Act 2015*, section 130.

Division 3A.6 Victims rights—participation in proceedings

17 Justice agency to present victims' concerns about protection in bail submissions

(1) If a court or an authorised officer is considering whether to grant bail to, or is reviewing a bail decision for, an accused person, a relevant justice agency must—

- (a) 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; and
- (b) if the victim has expressed concern to the relevant justice agency about the need for protection from violence or harassment by the accused person—tell the court or authorised officer about the concern.

Note The *Bail Act 1992*, s 23A outlines that a victim's concern about the need for protection from violence or harassment by an accused person must be considered by a court or authorised officer when making a decision about the grant of bail to the accused person.

(2) In this section:

accused person—see the *Bail Act 1992*, dictionary.

relevant justice agency means either of the following justice agencies:

- (a) the chief police officer;
- (b) the director of public prosecutions.

17A Victims may make victim impact statements

- (1) A victim of an offence may be eligible to make a victim impact statement under the *Crimes (Sentencing) Act 2005*, part 4.3.
- (2) The director of public prosecutions must ensure, as far as practicable, that no one other than the eligible victim decides whether or not to make a victim impact statement.

Note Under the *Crimes (Sentencing) Act 2005*, pt 4.3, a victim of an offence may make a victim impact statement for the offence if the offence is punishable by imprisonment for longer than 1 year. The statement may be made orally or in writing (see that *Act*, s 50) and must be considered by the court in deciding how an offender should be sentenced (see that *Act*, s 53).

17B Corrective services unit to consider victims' views about pre-sentence report or intensive correction assessment

- (1) This section applies to a victim of a relevant offence if a court has ordered that a pre-sentence report or an intensive correction assessment be prepared in relation to the offender.
- (2) In preparing the report or assessment, the corrective services unit must seek and consider the victim's concerns about the need for protection from violence or harassment by the offender.

Note Under the *Crimes (Sentencing) Act 2005*, an assessor who is preparing a pre-sentence report or an intensive correction assessment for an offender may ask a victim of the offender to provide information (see that *Act*, s 43 and s 46E).

- (3) In this section:

intensive correction assessment—see the *Crimes (Sentencing) Act 2005*, dictionary.

pre-sentence report—see the *Crimes (Sentencing) Act 2005*, dictionary.

relevant offence means—

- (a) an indictable offence; or
- (b) any other offence in relation to which the victim has asked the corrective services unit to contact the victim about protection from violence or harassment by the offender.

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.

Note 1 Under the *Court Procedures Act 2004*, s 72 (2), if a child or young person is the subject of a criminal proceeding in a court, the court may exclude a victim to which the proceeding relates from being present at the hearing of the proceeding if the court considers it is appropriate to do so having regard to the victim's behaviour or expected behaviour, or the nature of the victim's relationship with the child or young person.

Note 2 The *Evidence (Miscellaneous Provisions) Act 1991*, pts 4.2 and 4.3 set out when a stated kind of witness may give evidence by audiovisual link in particular proceedings (see tables 43.1 to 43.4 and div 4.3.5).

17D Victims may make submissions for parole or release on licence inquiries

- (1) This section applies if the sentence administration board intends to start an inquiry into an application by an offender for—
 - (a) parole by an offender under the *Crimes (Sentence Administration) Act 2005*, chapter 7; or
 - (b) the release of an offender on licence under the *Crimes (Sentence Administration) Act 2005*, part 13.1.

Part 3 Victims of Crime Act 1994

Section 30

- (2) A victim of an offence to which the offender's application relates may—
- (a) make an oral or written submission to the board 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; or
 - (b) tell the board, 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.

Note Under the *Crimes (Sentence Administration) Act 2005*, the sentence administration board must seek a registered victim's views before starting an inquiry for parole (see that *Act*, s 123) or release on licence (see that *Act*, s 292) for an offender.

- (3) The board, when acting in an administrative capacity, must ensure, as far as practicable, that a victim's submission is not given to a particular person if—
- (a) the victim asks the board to not give the submission to the person; and
 - (b) 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.

Note The sentence administration board must ensure, as far as practicable, that documents are not given to certain people for the reason mentioned in s (3) (b) and other reasons (see *Crimes (Sentence Administration) Act 2005*, s 192).

- (4) If the board intends to give the victim's submission to a particular person after being asked not to by the victim under subsection (3) (a), the board must tell the victim of the board's intention.

17E Victims may give statement to ACAT for mental health orders etc

- (1) This section applies if the ACAT is considering making any of the following orders for an offender:
 - (a) a mental health order;
 - (b) a forensic mental health order;
 - (c) an order under the *Mental Health Act 2015*, section 180 to release the offender from custody.
- (2) The following people 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:
 - (a) a victim who is a registered affected person for an offence committed or alleged to have been committed by the offender;
 - (b) another victim with the leave of the ACAT.

Note 1 In making a mental health order, the ACAT must take into account the views of people appearing in the proceeding (see *Mental Health Act 2015*, s 56). In making a forensic mental health order, the ACAT must take into account any statement by a registered affected person and the views of people appearing in the proceeding (see *Mental Health Act 2015*, s 99).

Note 2 Certain hearings under the *Mental Health Act 2015* must be held in private (see that *Act*, s 194).

Note 3 A victim can only be a registered affected person in relation to an offender who is a forensic patient.

17F Affected person register unit to assist victims to participate in order hearings

- (1) This section applies if the ACAT is considering making any of the following orders for an offender:
 - (a) if section 16L (1) or (2) applies to the offender—a mental health order;
 - (b) a forensic mental health order;
 - (c) an order under the *Mental Health Act 2015*, section 180 to release the offender from custody.
- (2) The affected person register unit must—
 - (a) tell a victim of the offender how the victim may—
 - (i) apply to the ACAT for leave to participate in any hearing in relation to the order; and
 - (ii) if leave is granted—participate in the hearing; and
 - (b) for a victim who is a registered affected person—
 - (i) offer to assist the victim to participate in the hearing; and
 - (ii) if the victim accepts the offer—assist the victim to participate in the hearing.

Note A victim can only be a registered affected person in relation to an offender who is a forensic patient.

- (3) In this section:
participate, in a hearing in relation to an order, includes—
 - (a) appear and give evidence at the hearing of the order; or
 - (b) provide a statement to the ACAT in relation to the order.

17G Victims may participate in restorative justice

- (1) 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—
 - (a) an eligible victim; and
 - (b) a suitable victim.
- (2) In this section:

eligible victim—see the *Crimes (Restorative Justice) Act 2004*, section 17.

suitable victim—see the *Crimes (Restorative Justice) Act 2004*, section 34.

Note The *Crimes (Restorative Justice) Act 2004* sets out when a victim of an offence is an eligible victim (see that *Act*, s 17) and the matters the director-general must consider in deciding whether an eligible victim is a suitable victim (see that *Act*, s 34) for restorative justice in relation to the offence.

Division 3A.7 Implementing victims rights**Subdivision 3A.7.1 Complying with victims rights****18 Justice agencies must comply with victims rights**

- (1) A justice agency must, when engaging with a victim, comply with all victims rights that apply to the victim.
- (2) 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.
- (3) 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

An entity that is not a justice agency should have regard to victims rights when engaging with a victim.

Examples—entities that should have regard to victims rights

- 1 non-government organisations that engage with victims
- 2 government policy areas that engage with victims

18B Victims' representatives

- (1) A victim may nominate a person, in writing, to be the victim's representative (a *representative*) to do any of the following for the victim, as nominated by the victim:

- (a) to exercise some or all victims rights;
- (b) to receive some or all information required to be given to the victim in relation to victims rights;
- (c) to make a justice agency complaint, raise a victims rights concern or make a victims rights complaint for the victim.

Note **Justice agency complaint**—see s 18D (2).

Victims rights complaint—see the [Human Rights Commission Act 2005](#), s 41C (2).

Victims rights concern—see s 18F (2).

- (2) A victim may nominate anyone to be their representative, including—
- (a) a relative or friend of the victim; or
 - (b) an officer or employee of an organisation whose functions include the provision of information, support or services to victims.

Examples—par (b)

- victim liaison officer
- victim support agency

- (3) 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).

18C Justice agencies to tell victims about administration of justice processes

A justice agency must make the following information available to a victim in a way the victim understands:

- (a) 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;
- (b) how to report an offence to a police officer and the administration of justice processes that result from making a report;
- (c) any services that provide support or assistance, including legal and financial assistance, that are available to the victim;
- (d) hearing and trial processes, including the role, rights and responsibilities of witnesses;
- (e) 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*.

Subdivision 3A.7.2 Complaints and concerns about victims rights

18D Victims may make justice agency complaints to justice agencies

- (1) This section applies if—
 - (a) a victim engages with a justice agency; and
 - (b) the victim—
 - (i) believes the justice agency has not complied with their victims rights; or
 - (ii) is otherwise dissatisfied with the justice agency's services in relation to victims rights.

- (2) The victim may make a complaint about the justice agency's conduct to the justice agency (a *justice agency complaint*).

Note Alternatively, a victim may raise a victims rights concern with the commissioner (see s 18F) or make a victims rights complaint to the human rights commission (see *Human Rights Commission Act 2005*, s 41C).

- (3) A justice agency complaint may be made orally or in writing.
- (4) A justice agency must record an oral complaint in writing if—
 - (a) the agency considers the complaint is of a sufficiently serious nature to be recorded in writing; or
 - (b) the victim asks the agency to record the complaint in writing.

Note A complaint may be made for a victim by the victim's representative if nominated to do so by the victim (see s 18B).

- (5) A justice agency complaint may be withdrawn at any time by—
- (a) the victim; or
 - (b) if the victim has nominated a representative to make the complaint—the victim’s representative.
- (6) In this section:
representative—see section 18B (1).

18E Justice agencies to deal with justice agency complaints

- (1) If a victim makes a justice agency complaint to a justice agency, the justice agency must—
- (a) give the victim information about the process that will be used for resolving the complaint; and
 - (b) take all reasonable steps to resolve the complaint as soon as practicable.
- (2) 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 concern with commissioner

- (1) This section applies if—
- (a) a victim engages with a justice agency; and
 - (b) the victim believes the justice agency has not complied with their victims rights.

Part 3 Victims of Crime Act 1994

Section 30

- (2) The victim may raise a concern (a *victims rights concern*) about the justice agency's conduct with the commissioner.

Note 1 Alternatively, a victim may make a justice agency complaint to a justice agency (see s 18D) or make a victims rights complaint to the human rights commission (see *Human Rights Commission Act 2005*, s 41C).

Note 2 A victim need not have made a justice agency complaint to a justice agency before raising a victims rights concern with the commissioner.

- (3) A victims rights concern may be raised orally or in writing.

Note A concern may be raised for a victim by the victim's representative if nominated to do so by the victim (see s 18B).

- (4) A victims rights concern may be withdrawn at any time by—

- (a) the victim; or
- (b) if the victim has nominated a representative to raise the concern—the victim's representative.

- (5) In this section:

representative—see section 18B (1).

18G Commissioner to deal with victims rights concerns

- (1) If a victim raises a victims rights concern about a justice agency with the commissioner—

- (a) the commissioner must—
 - (i) give the victim information about the process that will be used for resolving the concern; and
 - (ii) take all reasonable steps to resolve the concern as soon as practicable; and
- (b) 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.

- (2) However, a justice agency must not give the commissioner a document or information if—
- (a) the victim does not consent to the giving of the document or information; or
 - (b) the director of public prosecutions considers that it would prejudice the prosecution of an offence.

Note The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (3) If the commissioner is unable to resolve a victims rights concern, the commissioner may, with the victim's consent—
- (a) refer the concern to a relevant complaints entity; and
 - (b) if the concern is referred under paragraph (a)—give the entity any information the commissioner has in relation to the concern.
- (4) In this section:

relevant complaints entity means any of the following entities:

- (a) the human rights commission;
- (b) the ombudsman;
- (c) the integrity commission;
- (d) 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

- (1) Each justice agency must make and publish written guidelines on the agency's website (the agency's ***victims rights guidelines***) to—
- (a) assist the agency to comply with victims rights; and

Part 3 Victims of Crime Act 1994

Section 30

- (b) establish appropriate processes and procedures to enable the agency to respond to and resolve justice agency complaints.
- (2) A justice agency must make and publish the guidelines not later than 12 months after the day this section commences.
- (3) Subsection (2) and this subsection expire 12 months after the day they commence.

18I Justice agencies to include justice agency complaints in annual report

- (1) A justice agency must include the following in the agency's annual report under the *Annual Reports (Government Agencies) Act 2004*:
 - (a) a statement of how many written justice agency complaints were made to the agency in the year;
 - (b) for each written complaint made—
 - (i) the right in relation to which the complaint was made; and
 - (ii) whether the agency resolved the complaint.

Note 1 **Justice agency complaint**—see s 18D (2).

Note 2 The DPP may also be required to include other information in relation to victims rights complaints in the DPP's annual report (see *Human Rights Commission Act 2005*, s 100B).

- (2) However, the justice agency must not include any information that would identify a complainant or a victim of an offence.
- (3) In this section:

written justice agency complaint includes a justice agency complaint made orally by a victim and recorded in writing by a justice agency.

18J Commissioner to include victims rights concerns in annual report

- (1) The commissioner must include the following in the human rights commission's annual report under the *Annual Reports (Government Agencies) Act 2004*:
 - (a) a statement of how many victims rights concerns were raised with the commissioner in the year;
 - (b) for each concern raised—
 - (i) the right in relation to which the concern was raised; and
 - (ii) whether the commissioner resolved the concern; and
 - (iii) if the commissioner referred the concern under section 18G (3)—the entity to which the concern was referred.
- (2) However, the commissioner must not include any information that would identify a complainant or a victim of an offence.

18K Legal rights not affected

- (1) The Legislative Assembly does not intend by this part to—
 - (a) create in any person any legal right or give rise to any civil cause of action; or
 - (b) affect in any way the interpretation of any territory law; or
 - (c) affect in any way the operation of any territory law, including a law that deals with the same subject matter as a victims right; or
 - (d) affect the validity, or provide grounds for review, of any judicial or administrative act or omission.
- (2) However, nothing prevents a contravention of this Act from being the subject of disciplinary proceedings against an official.

Part 3 Victims of Crime Act 1994

Section 31

18L Review of victims rights

- (1) The Minister must review the operation of this part as soon as practicable after the end of its 3rd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 12 months after the day the review is started.
- (3) This section expires 5 years after the day it commences.

31 New section 29A

insert

29A Delegation by chief police officer

The chief police officer may delegate a function under this Act to a police officer.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

32 Dictionary, note 2

insert

- ACAT
- associate judge
- Chief Justice
- Chief Magistrate
- chief police officer
- Executive
- indictable offence (see s 190)
- judge
- magistrate
- sentence administration board

33 Dictionary, definition of *administration of justice*

substitute

administration of justice—see section 7.

34 Dictionary, new definitions

insert

adult offenders victims register unit—see section 8.

affected person register unit—see section 8.

authorised officer, for part 3A (Victims rights)—see section 14B.

corrective services unit—see section 8.

detained offender, for part 3A (Victims rights)—see section 14B.

forensic mental health order, for part 3A (Victims rights)—see section 14B.

forensic patient, for part 3A (Victims rights)—see section 14B.

35 Dictionary, definition of *governing principles*

omit

36 Dictionary, new definitions

insert

intensive correction order, for part 3A (Victims rights)—see section 14B.

justice agency—see section 8.

justice agency complaint—see section 18D (2).

mental health order, for part 3A (Victims rights)—see section 14B.

offender, for part 3A (Victims rights)—see section 14B.

Part 3

Victims of Crime Act 1994

Section 36

parole order, for part 3A (Victims rights)—see section 14B.

referring entity—see the *Crimes (Restorative Justice) Act 2004*, dictionary.

registered affected person, in relation to a forensic patient, for part 3A (Victims rights)—see section 14B.

registered victim, of an offender, for part 3A (Victims rights)—see section 14B.

restorative justice—see the *Crimes (Restorative Justice) Act 2004*, section 10.

restorative justice unit—see section 8.

transfer or release, of a detained offender, for part 3A (Victims rights)—see section 14B.

victim impact statement, for an offence, for part 3A (Victims rights)—see section 14B.

victims rights—see section 14A.

victims rights complaint—see the *Human Rights Commission Act 2005*, section 41C (2).

victims rights concern—see section 18F (2).

young offender, for part 3A (Victims rights)—see section 14B.

youth justice victims register unit—see section 8.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2 July 2020.

2 Notification

Notified under the [Legislation Act](#) on 29 July 2020.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Victims Rights Legislation Amendment Bill 2020, which was passed by the Legislative Assembly on 23 July 2020.

Clerk of the Legislative Assembly

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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 provisions 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.

2020

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

VICTIMS RIGHTS LEGISLATION AMENDMENT BILL 2020

SUPPLEMENTARY EXPLANATORY STATEMENT

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

VICTIM RIGHTS LEGISLATION AMENDMENT BILL 2020

INTRODUCTION

This supplementary explanatory statement relates to the Government amendments to the Victims Rights Legislation Amendment Bill 2020 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Government amendments and help inform debate on them. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

This statement is to be read in conjunction with the Government amendments and the Bill. It is not, and is not intended to be, a comprehensive description of the Bill and the Government amendments.

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The purpose of the Government amendments is to clarify the intended operation of the victim right to information about an offender's mental health orders, in relation to an offence to which they have been impacted as a victim.

The amendments will provide that victims who are eligible for information about offender's mental health orders under Section 16M is limited to victims who are Registered Affected Persons (under section 130 of the *Mental Health Act 2015*) in relation to offences committed or alleged to have been committed by forensic patients. This ensures that this information that is provided about offenders is appropriately targeted to relevant victims only.

Two additional notes at 16M have also been included to:

- a) clarify that Section 134 of the *Mental Health Act 2015* sets out circumstances under which information about mental health orders can be disclosed to Registered Affected Persons, for instance that there are limitations and considerations in relation to information being disclosed about young offenders; and
- b) clarify that a victim can only be a registered affected person in relation to an offender who is a forensic patient.

CONSULTATION ON THE PROPOSED APPROACH

This minor and technical amendment is in response to a comment of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role).

CONSISTENCY WITH HUMAN RIGHTS

The victim right to certain information about an offender's mental health orders may limit an offender's rights to privacy and reputation (section 12, *Human Rights Act*

2004). However, access to this information is important for victims to make decisions about their safety based on their knowledge about a mental health order and the offender's whereabouts. It also supports opportunities for victims to participate in the justice process such as providing submissions to ACT Civil and Administrative Tribunal hearings, where allowed.

Constraining access to information about offender's mental health orders to Registered Affected Persons under the *Mental Health Act 2015*, ensures the disclosure of this information is tailored to relevant victims only within the circumstances and limitations set out in that Act.

CLAUSE NOTES—GOVERNMENT AMENDMENTS

Amendment 1 Clarifying eligibility for Registered Affected Persons

Clause 30

Proposed new section 16M(1)

Page 43, line 3

This amendment removes 'a victim of the offender' and replaces this with 'a registered affected victim of the offender'. This clarifies that eligibility for this right is limited to Registered Affected Persons.

Amendment 2 Clarifying eligibility for Registered Affected Persons

Clause 30

Proposed new section 16M(2)

Page 43, line 11

This amendment removes 'a victim of the offender' and replaces this with 'a registered affected victim of the offender'. This clarifies that eligibility for this right is limited to Registered Affected Persons.

Amendment 3 New note linking the provision of information to the *Mental Health Act 2015*

Clause 30

Proposed new section 16M(2), proposed new note

Page 43, line 15

This amendment inserts a note under Section 16M that states that the *Mental Health Act 2015* sets out the circumstances under which information in relation to a forensic patient is disclosed to a registered affected person. This includes the ability to share

information if it is necessary for the person's safety and wellbeing. However, identifying information about a child or young person may only be given in certain circumstances.

Amendment 4 New note clarifying the definition of *offender*

Clause 30

Proposed new section 16M(3), definition of *offender*

Page 43, line 19

Section 43(3) sets out that an offender includes a person who is arrested in connection with an offence; in relation to whom there are sufficient grounds on which to charge the person in connection with an offence; or who is charged in connection with an offence.

This amendment inserts a note clarifying that a victim can only be a registered affected person in relation to an offender who is a forensic patient.

Amendment 5 New definition of *registered affected victim*

Clause 30

Proposed new section 16M(3), new definition of *registered affected victim*

Page 43, line 19

This amendment inserts a definition of *registered affected victim* of an offender, which means a victim who is a registered affected person for an offence committed or alleged to have been committed by the offender.

CLIENT RIGHTS AND RESPONSIBILITIES

CLIENT RIGHTS

As a client of Victim Support ACT you have the right to:

- Be treated respectfully, fairly and without discrimination
- Be treated in a manner that is mindful of your individual circumstances and dignity
- Receive clear information about your rights and responsibilities as a client of Victim Support ACT
- Be provided all the information you need to make decisions about the support and assistance we are offering you
- Refuse any or all of the services offered to you
- Seek a second opinion about your needs and rights
- Know the name of the person providing services and who is responsible for your support and assistance
- Provide feedback about your experience with Victim Support ACT
- Continue to access services after making a complaint
- Access your records in accordance with the *Health Records (Privacy and Access) Act 1997*

CLIENT RESPONSIBILITIES

In order for Victim Support ACT to continue to provide you with effective services, we ask that you:

- Let us, or the service provider, know in advance if you cannot keep an appointment
- Treat the staff and providers of Victim Support ACT in a respectful and non-abusive manner
- Advise us promptly if your contact details change ie mobile, email
- If asked to contact us, then you do so promptly within 5 business days
- Be considerate of the rights of other clients and staff, including the respect of property and a non-smoking environment
- Respect the rights of other clients and staff to privacy and confidentiality

PROVISION AND TERMINATION OF SERVICES

Victim Support ACT may prioritise your needs based on available resources and service demands. This means that you may be subject to a waiting period in some circumstances, or be referred to alternative services for support.

Victim Support ACT will stop providing services to you if:

- Agreed goals are achieved;
- You are unable to be contacted and we have made 3 attempts without any response from yourself;
- Your allocated hours of service have been utilised;
- No further service can be provided; or
- The safety of staff and yourself cannot be assured under the *Work Health and Safety Act 2011*.

CONFIDENTIALITY

In keeping with the *Health Records (Privacy and Access) Act 1997* your information will be kept confidential and will only be disclosed with your written consent. However, there are some situations when information may be disclosed without consent, for example:

- Where it is identified that a child or young person is 'at risk' of serious harm and a report must be made to ACT Child and Youth Protection Services in accordance with mandatory reporting requirements under the *Children and Young People Act 2008*;
- Where client records are subpoenaed (Contact will be made with the client if this occurs); or
- Where disclosure is necessary to prevent or lessen a serious and imminent risk to your life or health or that of another person.



This is what you can expect from us. We will:

THIS DOCUMENT

is about how we must treat you. It also explains what you can do to help us treat you well.

- Listen to you, be helpful and treat you fairly without unlawful discrimination
- Provide you with an accessible and respectful service
- Do what we say we will do
- Tell you if we can't help you, and refer you to other places that might help
- Make any reasonable adjustments to help you access our services
- Provide support so you can be involved in decisions about your life
- Respect your privacy
- Respect your cultural and language needs
- Pursue cultural safety and reconciliation for Aboriginal and Torres Strait Islander peoples



Respect



Collaboration



Integrity



Accessibility



Independence

OUR SPECIFIC SERVICE COMMITMENTS

1 In complaint handling we will

- Keep you informed
- Be independent, impartial and fair
- Act in a timely and efficient way
Provide all parties with necessary information
- Work with all parties towards resolution
- Give reasons for our decisions

2 In advocacy we will

- Make sure we understand the concern you have raised
- Find out what you think needs to happen
- Clearly explain what we can do to help
- Work together with you and others to get effective outcomes
- Work for improvements by service providers

3 In victims services we will

- Be respectful
- Provide timely referrals and accurate information
- Provide access to a wide range of support
- Provide fair treatment and help with access to justice
- Respect privacy and confidentiality

4 In education & training we will:

- Be up to date and relevant
- Be accessible and interactive
- Be informative and respectful
- Provide value for money

HOW YOU CAN HELP US

Let us know if you need help communicating with us, or writing your complaint. We can send you information in different formats or organise an interpreter.

HOW TO MAKE A COMPLAINT ABOUT US

- First, contact the officer/Commissioner who assisted you.
- If you're uncomfortable doing this, or are unhappy with our initial response, contact the Commission President.
- You may also be able to complain about us to the ACT Ombudsman.

FEEDBACK

If you are unhappy with our services, or about a decision, contact us.

If we've made a mistake, we'll acknowledge it and work with you to try and resolve it.

Ph 6205 2222 human.rights@act.gov.au



VICTIM SUPPORT
ACT Human Rights Commission

Victim Services Scheme Service Provider Guidelines 2019-2022

CONTENTS

1. SCOPE	5
2. PURPOSE.....	5
3. DEFINITIONS	5
4. VICTIM SERVICES SCHEME	6
4.1 Levels of Service.....	7
5. Operating Guidelines	7
5.1 Legal and professional requirements	7
Service Provider Qualification Requirements.....	8
Professional Association’s code of conduct, standards and ethics	9
Professional competence and continued professional development	9
Notice of specialisation.....	9
Criminal status	9
5.2 Clinical Supervision (Relevant to all counselling service provision).....	10
Clinical supervision	10
Notify of changes in clinical supervision arrangement	10
5.3 Service provision sessions.....	10
Accepting referrals.....	10
Initial appointment	11
Change of practice details or availability	11
Delivery of Approved Service Provision.....	11
Disclosure of confidential information	11
Approval for Additional Hours.....	12
Shared counselling appointments	12
Counselling via telephone and/or video conferencing	12
Subcontracting.....	13

Referrals to another Approved Provider	13
Client referrals to Victim Support.....	13
Transparency and Information	13
Missed appointments	13
Frequency of sessions.....	14
Duration of counselling sessions	14
Interpreter services	14
Public Sector Approved Service Providers.....	14
5.4 Legal Context	14
Subpoenas	14
Mandatory reporting.....	15
Children	15
5.5 Service Provision Relationship.....	15
Declaration of existing relationship and conflict of interest	15
Maintaining professional boundaries.....	15
External Research	15
Safety concerns for the Approved Service Provider	15
Change of Approved Service Provider	15
5.6 Support, referrals and continuity of care	16
Assistance with Financial Assistance Scheme Applications	16
Other supports.....	16
Crisis referrals	16
5.7 Records Management.....	16
Professional development undertaken	16
Clinical supervision sessions undertaken (relevant to counselling service provision).....	16
Approved service provision hours	16
Service provision sessions	17
Client contact.....	17

Storage of records	17
5.8 Reporting	17
Progress Report	17
Case Closure	17
5.9 Payment.....	17
Invoices.....	18
Invoices should be accompanied by attendance records signed by the client. Error! Bookmark not defined.	
Invoices must not have client names or other personal details recorded on them	19
5.10 Media Enquiries	19
5.11 Complaints.....	19
Victims of Crime Regulation 2000	19

1. SCOPE

This document outlines the operational guidelines for Service Providers working with clients referred by the Victims Services Scheme (VSS), which is administered by Victim Support ACT (VS ACT).

The operating guidelines provide guidance on processes and issues which are unique to delivering services under the VSS

2. PURPOSE

The operating guidelines aim to promote quality and consistency in the delivery of counselling services to clients of the VSS. The Operating Guidelines apply to all Service Providers.

3. DEFINITIONS

Approved Service Provider Means a person approved as a service provider under section 40 *Victims of Crime Regulation 2000*.

Client means a victim of crime who receives a service under the VSS.

Victim is defined in *Victims of Crime Act 1994* section 6 (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) 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.

The *Victims of Crime Regulation 2000* section 24(2) states:

An *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.

Clinical Supervisor means a registered psychologist, qualified social worker, clinical psychologist or other therapist, where applicable, who is accredited by the appropriate Australian professional body or registration body who engages in ongoing supervision of the Approved Service Provider.

Commissioner means the Victims of Crime Commissioner who is the head of VS ACT

Confidential Information means any information whether existing before, on or after commencement of the appointment, that:

- a) is any documentation, information or material supplied by the Commissioner or VS ACT to the Approved Service Provider by whatever means; or
- b) is by its nature confidential; or
- c) the other party knows or ought to know is confidential.

Counselling Services means counselling delivered under VSS.

Professional Association refers to the relevant association the Approved Service Provider must retain membership of for the duration of their appointment which may include but is not limited to The Psychology Board of Australia, The Australian Association of Social Workers, the Australian Counselling Association or the Psychotherapy and Counselling Federation of Australia.

Report means the written reports which Approved Service Providers are required to write and submit in their provision of the Services and in accordance with the form, requirements and timeframes specified in this document.

4. VICTIM SERVICES SCHEME

The Victim Services Scheme (VSS) provides services to individuals who have experienced crime in the ACT with the aim of assisting them to recover from the effects of crime and access their rights as victims. This may include counselling, psychological services, and justice advocacy.

The multidisciplinary VSS team have a range of skills and backgrounds and include Social Workers and Counsellors.

Service Providers are contracted to provide services to VSS clients in the form of contact hours.

The VSS is governed by the *Victims of Crime Act 1994*, and the Victims of Crime Regulation 2000.

The criteria for accessing services through the VSS are set out in section 6 *Victims of Crime Act 1994* and regulation 24 of the Victims of Crime Regulation 2000. In summary, services are available to all eligible victims of crime in the ACT, except for victims who suffer harm as a result of motor vehicle accidents, or as a result of committing an offence.

4.1 LEVELS OF SERVICE

The Victims of Crime Regulation 2000 outlines the availability of three levels of service under the Victims Services Scheme. Service levels determine the number of contact hours a victim of crime is eligible to access per crime, through VS ACT staff or Service Providers. The eligibility for each of the levels is described below.

Level 1

All eligible victims (see above) are entitled to receive Level 1 service under the VSS. Level 1 consists of no more than **2 contact hours**.

Level 2

An eligible victim is entitled to receive Level 2 service if they have completed level 1 service for the crime concerned and the victim:

- is a *primary victim*; or
- is a *related victim*; or
- would have been a related victim if the primary victim had died; or
- is a witness to a violent crime in circumstances in which it is probable that the witness would suffer harm.

Level 2 service consists of not more than 6 contact hours. A recovery care plan will be developed by VS ACT in collaboration with the eligible victim and will be sent to you.

Level 3

An eligible victim entitled to receive Level 2 service is entitled to receive Level 3 service if –

- the victim has completed Level 2 service for the crime; and
- VS ACT 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. VS ACT will develop a revised care plan for level 3 service contact hours in consultation with the eligible victim and this revised care plan will be sent to you prior to Level 3 service commencing.

The maximum hours a victim is entitled to receive is 20 hours other than in exceptional circumstances, as approved by the Commissioner.

5. OPERATING GUIDELINES

5.1 LEGAL AND PROFESSIONAL REQUIREMENTS

Australian Business Number (ABN)

You must have an ABN registration at the time of providing any services.

Insurance requirements

You must have professional indemnity insurance of \$10,000,000 (in respect of each claim) and \$10,000,000 (in the annual aggregate).

You must have public liability insurance of \$10,000,000 (in respect of each claim).

You must have workers compensation insurance (if required) to the extent as required by law of the Commonwealth or Territory.

Statutory obligations

You must comply with all applicable legislation, regulations and all relevant Australian standards (or equivalent standards in your state or territory) applicable to the delivery of approved services.

This may include but is not limited to:

- *Victims of Crime Regulation 2000*
- *Health Records (Privacy and Access) Act 1997*
- *Health Professionals Act 2004*
- *ACT Human Rights Act 2004*
- *Children and Young People Act 2008; and*
- *Standards of Practice for ACT Allied Health Professionals ACT Health 2016*

Service Provider Qualification Requirements

You must have qualifications in one of the following areas:

Psychology

- Unconditional registration as a psychologist with the Australian Health Practitioner Regulation Agency (AHPRA); and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Social Work

- Membership of the Australia Association of Social Workers and hold accreditation as a Mental Health Social Worker with the Australian Association of Social Workers (AASW); and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Counselling

- Registration with Psychotherapy and Counselling Federation of Australia (PACFA) as a clinical member; or
- Registered with the Australian Counselling Association (ACA) as a Level 3 or 4 member; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Massage Therapy

- Accredited membership of the Australian Traditional Medicine Society (ATMS), with a minimum of three (3) years massage therapy experience; or
- Membership of Association of Massage Therapists (AMT) at Senior Level One or above with a minimum of three (3) years massage therapy experience; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Professional Association's code of conduct, standards and ethics

You must:

- at your own cost maintain registration or accredited membership to professional associations, where available;
- comply with all codes of conduct, professional standards and ethics of your professional association;
- consult codes of conduct, professional standards and ethics of your professional association to inform practices relating to ethical conduct, matters of clinical and professional competence, and guidance on working with vulnerable people; and
- notify VS ACT immediately should you be the subject of a complaint or suspended or cancelled Professional Association registration.

Professional competence and continued professional development

You must maintain records about professional development.

Upon request you must provide VS ACT information to demonstrate continuing professional development training as required to maintain professional registration or membership to professional association; and participate in VS ACT information sessions as required.

In addition to service provision you must:

- undertake a minimum of 10 hours of trauma-specific and/or applicable professional training per year; and
- undertake the minimum requirement of professional competence and continuing professional development training required to maintain your registration and/or accreditation as a professional.

Notice of specialisation

You must advise the Commissioner if your professional specialties expand or change.

Criminal status

You must notify VS ACT immediately if you have been charged with a criminal offence in the ACT or in another Australian or International jurisdiction.

5.2 CLINICAL SUPERVISION (RELEVANT TO ALL COUNSELLING SERVICE PROVISION)

Clinical supervision

You must:

- engage the services of a qualified Clinical Supervisor;
- access a minimum of one hour of one-on-one clinical supervision every four to six weeks;
- where possible, increase the frequency of clinical supervision with increased workloads or with more complex cases: and
- maintain records of clinical supervision.

Notify of changes in clinical supervision arrangement

You must advise VS ACT immediately if a clinical supervision arrangement ceases and provide VS ACT with the details of the new clinical supervision arrangement, no later than 10 days following the change.

5.3 SERVICE PROVISION SESSIONS

All referrals to an Approved Service Provider are at the discretion of the Commissioner.

There is no guarantee that the Commissioner will approve the referral or allocation of a victim to an Approved Service Provider.

The Commissioner may cease allocation of victims to Approved Service Providers or transfer any allocated client from the Approved Service Provider.

The Commissioner may at any time, upon written notice vary, or revoke any condition of approval, or impose any new or additional conditions in relation to the approval of services to be provided by the Approved Service Provider.

The Approved Service Provider agrees that immediately following receipt of such written notice, they will not be entitled to make any claim for the payment of any fee, expense or other form of payment arising in connection with the provision of services, or lack thereof.

VS ACT reserves the right to refuse payment, partially or in full, for services, which are delivered outside of the operating guidelines, unless otherwise approved in writing prior to the delivery of the service.

Accepting referrals

You must respond to clients' appointment requests within two working days. In addition, prior to commencing service delivery to a client, you must ensure that:

- VS ACT has provided you with approval to see the client, including checking that the client has sufficient hours of service approved;
- confirm that you have no actual or potential conflict of interest in relation to the client (see Section 5.6, below); and

- advise VS ACT if you do not have the appropriate skills and experience to work with the referred client.

Initial appointment

You must offer clients their initial appointment within 21 working days of the client's request unless another timeframe is agreed with VS ACT.

Change of practice details or availability

You must advise VS ACT if your practice or contact details have changed. Further, please advise VS ACT immediately if you are unable to provide counselling to a referred client. It is also important that you advise VS ACT immediately if your availability to provide counselling services change, for example where you:

- are at capacity and cannot take new referrals;
- have relocated;
- are taking leave; and/or
- are unable to provide new clients who require urgent counselling with appointments within five working days of their request.

VS ACT is happy to amend our provider database to reflect a period of unavailability.

Delivery of Approved Service Provision

All service provision should observe the principles of:

- accessibility;
- confidentiality and privacy;
- safety;
- professionalism; and
- professional boundaries.

Service provision should not occur in a public place or a client's home unless otherwise approved by VS ACT.

You must seek written approval from the Commissioner and the client to allow any other person to observe, or be present at, a session with a client.

Should the focus of the service you are providing shift significantly from the initial presenting issues, you must consult with VS ACT to determine an appropriate plan of action or further referral. Approval for services that are beyond the terms of the Care Plan may be provided VS ACT in exceptional circumstances.

Disclosure of confidential information

This is only permitted with the informed consent of the relevant client.

Approval for Additional Hours

Where a client is approved for Level 2 service and you believe they would benefit from additional sessions, you may make a request to VS ACT for Level 3 service to be granted, so that the client can access up to 12 further contact hours. Requests for Level 3 service should be accompanied by a report indicating the progress made in attaining clinical goals, the interventions used and the plan for case finalisation. VS ACT will not authorise extra hours retrospectively.

A request for additional services under 'exceptional circumstances' may be made where clients have completed Level 3 service, and require further service to reach their therapeutic goals. Requests are made using the 'Request for Exceptional Circumstances Approval Form' which can be obtained from VS ACT. You should state the intervention to date, what is envisioned to be achieved in the additional hours, and what arrangements have been made with the client for future care on conclusion of these hours.

It is expected that in the majority of cases, a client's goals will be finalised either in the Level 2 or Level 3 allocated hours.

Shared counselling appointments

You must seek prior approval from the Commissioner before delivering family or shared counselling sessions.

The Commissioner will only consider family or shared counselling sessions where each client participant is an eligible victim.

Counselling via telephone and/or video conferencing

Approved counselling should primarily be delivered face-to-face.

However, phone and online counselling can be provided with the approval of the Commissioner, based on client needs.

Before delivering phone or online counselling, you must ensure:

- expectations and risks associated with delivering counselling over the telephone or video conference have been identified and discussed with the client, this includes ensuring they are in a safe, private and appropriate environment for counselling;
 - a risk management plan is in place to manage risks around not being able to read behavioural or visual cues whilst providing this mode of counselling;
 - provisions of a dedicated work phone and/or video conference ID for all counselling delivered by these modes - personal devices must not be used;
 - reliable and fast internet connections are required to minimise disruption; and
- you should be in a location and place that is private and conducive to phone counselling. This includes a place where there is minimal distraction, low noise, and access to a means of documenting the counselling session.

Subcontracting

You must not subcontract any part of the approved services to another person, including another Approved Service Provider, trainee, supervisee, colleague, provisional psychologist, student or volunteer. You must not subcontract the writing of reports to another person, including another Approved Service Provider, trainee, supervisee, colleague, provisional psychologist, student or volunteer.

Referrals to another Approved Provider

You must not refer clients to another service provider, approved or otherwise, unless prior approval has been granted by VS ACT.

Client referrals to Victim Support

On occasion a provider may refer a client to VS ACT for a service. We welcome these referrals. Please be aware that VS ACT must determine the client's eligibility for counselling and identify the most appropriate provider for the client'.

Transparency and Information

At the earliest opportunity, you must provide the client with clear, accurate information about:

- how many sessions have been approved; and
- the missed appointment policy for clients receiving Approved Services.

Inform the client about the limitations of client confidentiality, including the Approved Service Provider's obligations to:

- respond to lawful subpoenas;
- report child protection concerns if a mandated reporter; and
- report any imminent threats of suicide or harm to self or others.

You must advise the client in a timely manner of any planned absences, holidays or any other break that may interrupt therapeutic work.

Missed appointments

A missed appointment is defined as a client's failure to attend an appointment, or a cancellation within 24 hours of the scheduled appointment time.

In the event of a missed appointment you should attempt to contact the client within one week to initiate or continue sessions.

If a client has missed two appointments, you must notify VS ACT promptly to discuss future appointments.

You must not charge a client for a missed appointment under any circumstances.

Frequency of sessions

Frequency of sessions should be discussed in relation to the support needs of the client. It is usual practice that clients attend sessions on a fortnightly or monthly basis with the Service Provider.

If a Service Provider determines that sessions are required more frequently than once a fortnight, the Service Provider must discuss this with the Case Coordinator or Client Service Team prior to finalising arrangements with the client.

Duration of counselling sessions

You must seek approval from the Commissioner before undertaking a single service provision session that will exceed two hours.

Interpreter services

You must contact VS ACT to arrange the services of an interpreter when required. The request should specify the date, time and address of the counselling session, as well as the language and preferred gender of the interpreter. Where translating and interpreting services are required, VS ACT will meet the costs, provided the use of such services have been approved by VS ACT.

Please advise VS ACT immediately if you have any concerns about the services provided by the interpreter.

Public Sector Approved Service Providers

If you are a public servant you must:

- abide by all relevant government department guidelines and requirements in relation to undertaking secondary employment or private employment whilst in paid public sector employment in a government department; and
- not use your place of paid public sector employment to conduct a private practice as an Approved Service Provider including not using your workplace telephone contact number.

5.4 LEGAL CONTEXT

You can deliver Approved Services to clients who are undergoing court processes or other legal processes as a victim or witness of crime.

However, in some circumstances therapeutic approaches, specifically, Eye Movement Desensitisation and Reprocessing (EMDR) and Hypnosis can impact on court evidence and outcomes. Approval is required by VS ACT prior to commencing either of these treatments with a referred client.

Subpoenas

You must maintain accurate notes during counselling and other service provision sessions and consider that files and reports may be subject to a subpoena in relation to a court matter.

Mandatory reporting

You must fulfil obligations for mandatory reporting under the *Children and Young Persons Act 2008* or equivalent legislation in relevant state or territory and comply with mandatory reporting requirements of your Professional Association.

Children

You must:

- assess the family context of a client when the client is a child or young person;
- ensure accused parents or caregivers do not attend the child's counselling session;
- obtain relevant information about any court orders that may be in place about the responsibility of the parent(s) and/or guardian(s) of a child client. This may include conditions of any court order that might be relevant to the service provision and parental consent; and
- seek independent legal advice if uncertain about legal obligations. Your professional registration body may be able to assist with advice or please contact VS ACT for assistance.

5.5 SERVICE PROVISION RELATIONSHIP

Declaration of existing relationship and conflict of interest

You must notify VS ACT immediately and await approval to proceed with a referral if:

- a current or former relationship exists between you and the referred client; or
- a conflict of interest may arise if you deliver a service to the referred client.

Where, in the Commissioner's view, the conflict of interest cannot be managed, the Commissioner may change the Approved Service Provider for that client.

Maintaining professional boundaries

You must maintain professional boundaries and comply with all codes of conduct, professional standards and ethics of your professional association.

Do not engage in any financial, intimate, personal or inappropriate relationship with referred clients during or after service provision.

External Research

Do not recruit clients to participate in, or be the subject of, any research activity or case study.

Safety concerns for the Approved Service Provider

You must immediately report any behaviour from clients that leads you to have concerns for your safety. VS ACT will liaise with you to discuss arrangements which could be put in place to ensure your safety or if service provision should cease.

Change of Approved Service Provider

You must advise VS ACT in writing if you or your client wish to change Approved Service Providers. The advice should include:

- the reason for the request;
- the number of approved service hours remaining; and
- how many appointments the client has missed (if relevant).

You will be informed in writing of the outcome of any request for a change of Approved Service Provider.

VS ACT may also initiate a change of Approved Service Provider in the event of a complaint.

5.6 SUPPORT, REFERRALS AND CONTINUITY OF CARE

Assistance with Financial Assistance Scheme Applications

Clients may contact VS ACT for assistance in completing an application to the ACT Victims of Crime Financial Assistance Scheme.

Other supports

When a client needs court support, you should refer the client to VS ACT for assistance.

Crisis referrals

You must refer clients in crisis to an appropriate service such as Access Mental Health or equivalent crisis services in other States or Territory and inform VS ACT immediately if a client has been referred to crisis care.

5.7 RECORDS MANAGEMENT

Professional development undertaken

You must maintain accurate and up-to-date records about professional development undertaken for the purpose of retaining your approval as a Service Provider.

Clinical supervision sessions undertaken (relevant to counselling service provision)

You must maintain accurate and up-to-date records about clinical supervision received for the purpose of Approved Service Provision, including:

- a copy of the clinical supervision contract;
- the date and duration of each clinical supervision session; and
- brief notes on the agenda, discussion points and actions arising out of each clinical supervision session.

Approved service provision hours

You must maintain:

- accurate and up-to-date records regarding delivery of service provision; and
- evidence of the client's attendance at appointments by completing the Attendance Record Template provided by VS ACT.

Service provision sessions

You may commence service provision after receiving the VS ACT letter confirming the relevant level of service and number of approved hours.

Client contact

You must maintain accurate and up-to-date records of all communications with the referred client, including:

- telephone calls;
- emails;
- text messages; and
- invoices.

Storage of records

You must take proactive steps to ensure records, both hard copy and on your computer system, are stored securely. Every effort must be taken to protect the client's personal information from misuse, interference or loss and from unauthorised access, modification or disclosure. Storage of client records must occur in accordance with relevant privacy legislation in your State or Territory.

5.8 REPORTING

Progress Report

If, at any point, the client will be transitioning to a different Service Provider, you should provide a progress report to VS ACT. A progress report template is included in the referral package.

Case Closure

Following case closure, you must provide a closure report to VS ACT. The closure report template is included in the referral package and should include:

- the number of contact hours you have provided;
- the extent to which the goals of the care plan were achieved; and
- your views in relation to any future support needs of the client.

5.9 PAYMENT

VS ACT will only pay for hours approved in writing, as detailed in the referral letter or subsequent approvals.

You have discretion in how you wish to use the approved hours of service. For example, if 4 hours are approved you may have 8 sessions of 30 minutes each or 4 sessions of one hour each. You must seek approval from VS ACT before undertaking individual service provision sessions exceeding two hours and if you wish to undertake sessions more frequently than once a fortnight.

Telephone counselling hours must be approved in advance by VS ACT. Telephone sessions undertaken without prior approval will not generally be paid for other than in exceptional circumstances approved by the Commissioner.

VS ACT will make a payment of 60 minutes for the first time a client does not attend a scheduled appointment without providing advance notice. Please notify VS ACT promptly if a client has missed more than two appointments.

You must not charge clients a missed appointment fee under any circumstances.

You must not charge a client for more than our agreed rate.

A missed appointment will not be paid by VS ACT where you have been able to conduct a session with an alternative client.

In accordance with the *Victims of Crime Regulation 2000*, VS ACT cannot pay for:

- any hours exceeding those approved in writing;
- appointments made in anticipation of referral and without written approval;
- preparation of medico-legal reports. If clients request a report for medico-legal purposes this must be negotiated with the person(s) requiring that report;
- time spent in court as an expert-witness;
- preparation of progress reports;
- preparation of closure reports;
- filing;
- arranging appointments with clients; or
- other administrative tasks.

Invoices

Invoices can only be submitted for clients registered and referred by VS ACT in relation to approved contact hours. Invoices are to be provided on a regular basis with a maximum of five service sessions on one invoice. Please note, all invoices need to be submitted within a three month period of service delivery.

Invoices should be forwarded to:

ATTN: Corporate Team

Victim Support ACT

ACT Human Rights Commission

GPO Box 158

Canberra City ACT 2601

Email: [REDACTED]

Invoices will be processed within 28 days as per the ACT Government Credit Policy.

Invoices must not have client names or other personal details recorded on them

The client Unique Identifier (UI) number should be clearly documented on the invoice.

5.10 MEDIA ENQUIRIES

You must obtain written approval from the Commissioner prior to any media engagement regarding your role as an Approved Service Provider.

5.11 COMPLAINTS

If a client has made a complaint about you to VS ACT, you will be given the opportunity to consider and respond to the content of that complaint, other than in exceptional circumstances where to do so would, for example, impact the client's safety and well-being. If upon the Commissioner's consideration of the matter the complaint requires further action, the following options are available to the Commissioner under the regulation:

Victims of Crime Regulation 2000

Section 42 Suspension of approval

The commissioner may suspend the approval of a service provider if—

- (a) the commissioner is no longer satisfied on reasonable grounds of the matters mentioned in section 41; or
- (b) the service provider is a suspect in an investigation of an indictable offence; or
- (c) the service provider has been the subject of a complaint to the human rights commission and the complaint has not been decided or has been upheld.

Section 43 Cancellation of approval

The commissioner must cancel the approval of an approved service provider if:

- (a) on at least 3 occasions, a ground existed on which the commissioner would have been entitled to suspend the approval of the provider; or
 - (b) if the ground for suspension of the approval of the provider is a state of affairs that has existed for 3 months or longer; or
 - (c) the approved service provider has been convicted or found guilty of an indictable offence; or
 - (d) for an approved service provider who provides a health practitioners service—the provider has ceased to be registered as a health practitioner.
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Victim Services Scheme Service Provider Guidelines 2023-2024

CONTENTS

1. SCOPE	5
2. PURPOSE	5
3. DEFINITIONS	5
4. VICTIM SERVICES SCHEME	6
5. Operating Guidelines	6
5.1 professional and Legal requirements	6
Service provider qualification requirements	6
Professional Association’s code of conduct, standards and ethics	7
Professional competence, continued professional development, clinical supervision and peer-to-peer consultation	8
Notice of specialisation.....	8
Criminal status	8
Australian Business Number (ABN)	8
Insurance requirements	8
Statutory obligations	9
5.2 Allocation of Therapeutic Hours.....	9
5.3 Provision of Therapeutic Hours and report requirements	10
Accepting allocations.....	10
Delivery of therapeutic hours.....	10
Counselling format	10
Initial appointment	11
Approval for additional hours.....	11
Change of practice details or availability.....	12
Disclosure of confidential information	12
Shared counselling appointments	12
Subcontracting.....	13

Client referrals to Victim Support.....	13
Transparency and Information	13
Missed appointments	13
Frequency of sessions.....	13
Duration of counselling sessions	14
Interpreter services	14
Approved services providers who are also government employees.....	14
Commissioner discretion	14
5.4 Legal Context	15
Subpoenas	15
Mandatory reporting.....	15
Children	15
5.5 Service Provision Relationship.....	16
Declaration of existing relationship and conflict of interest	16
Maintaining professional boundaries.....	16
External Research	16
Safety concerns for the Approved Service Provider	16
Change of Approved Service Provider	16
5.6 Support, referrals and continuity of care	17
Assistance with Financial Assistance Scheme Applications.....	17
Other supports.....	17
Crisis referrals	17
5.7 Records Management.....	17
Approved service provision hours	17
Service provision sessions	17
Client contact.....	17
Storage of records	17
5.9 Payment.....	18

Invoices	18
Invoices must not have client names or other personal details recorded on them.....	18
5.10 Media Enquiries	18
5.11 Complaints	19
Victims of Crime Regulation 2000	19

1. SCOPE

This document outlines the operational guidelines for Approved Service Providers working with clients referred by the Victims Services Scheme (VSS), which is administered by Victim Support ACT (VSACT).

2. PURPOSE

The operating guidelines aim to promote quality and consistency in the delivery of services to clients of the VSS. The Operating Guidelines apply to all Approved Service Providers.

3. DEFINITIONS

Approved Service Provider means a person approved as a Service Provider under section 40 *Victims of Crime Regulation 2000*.

Client means a victim of crime who receives a service under the VSS.

Clinical Supervisor means a registered psychologist, registered occupational therapist, qualified social worker, clinical psychologist or other therapist, where applicable, who is accredited by the appropriate Australian professional body or registration body who engages in ongoing supervision of the Approved Service Provider.

Commissioner means the Victims of Crime Commissioner who is the head of agency for VSACT

Confidential Information means any information whether existing before, on or after commencement of the appointment, that:

- a) is any documentation, information or material supplied by the Commissioner or VSACT to the Approved Service Provider by whatever means; or
- b) is by its nature confidential; or
- c) a party knows or ought to know is confidential.

Counselling Services means counselling delivered under the VSS.

Victim as defined in the *Victims of Crime Act 1994* section 6 (1) includes:

- *Primary victim* meaning a person who suffers harm as a result of the commissioning of an offence.
- *Related victim* meaning:
 - a family member of the primary victim, who suffers harm because of the harm to the primary victim.
 - a person who is financially or psychologically dependent on the primary victim and who suffers harm because of the harm to the primary victim.
- *Homicide witness* meaning a witness to a homicide.

The Victims of Crime Regulation 2000 states that an eligible victim is any person that fits within the above categories and excludes victims of crime:

- who suffer harm as a result of committing an offence or

- who suffer harm caused by or arising out of the use of a motor vehicle.

Professional Association refers to the relevant association the Approved Service Provider must retain membership of for the duration of their appointment which may include but is not limited to The Psychology Board of Australia, the Australian Association of Social Workers, the Occupational Therapy Board of Australia, the Nursing and Midwifery Board the Australian Counselling Association or the Psychotherapy and Counselling Federation of Australia.

4. VICTIM SERVICES SCHEME

The Victim Services Scheme (VSS) provides services to individuals who have experienced crime in the ACT with the aim of assisting them to recover from the effects of crime and access their rights as victims. This may include counselling, psychological services, and justice advocacy.

Service Providers are contracted to provide services to VSS clients in the form of contact hours.

The VSS is governed by the *Victims of Crime Act 1994*, and the *Victims of Crime Regulation 2000*.

The criteria for accessing services through the VSS are set out in section 6 *Victims of Crime Act 1994* and regulation 24 of the *Victims of Crime Regulation 2000*.

VSS case coordinators work with clients to determine eligibility for counselling and other therapeutic services.

5. OPERATING GUIDELINES

5.1 PROFESSIONAL AND LEGAL REQUIREMENTS

Service provider qualification requirements

Applicants should nominate the service they will be providing, and supply evidence of the following:

Psychology

- Unconditional registration as a psychologist with the Australian Health Practitioner Regulation Agency (AHPRA); and
- Minimum of three years' experience as a registered provider of clinical mental health services; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Social Work

- Membership of the Australian Association of Social Workers and hold accreditation as a Mental Health Social Worker with the Australian Association of Social Workers (AASW); and
- Minimum of three years' experience as a registered provider of clinical mental health services; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Counselling

- Registration with the Psychotherapy and Counselling Federation of Australia (PACFA) as a clinical member; or
- Registered with the Australian Counselling Association (ACA) as a Level 3 or 4 member; and
- Minimum of three years' experience as a registered provider of clinical mental health services; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Occupational Therapy

- Unconditional AHPRA registration to practice with the Occupational Therapy Board of Australia and hold the Occupational Therapy Better Access to Mental Health endorsement with Occupational Therapy Australia; and
- Minimum of three years' experience as a registered provider of clinical mental health services; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Massage Therapy

- Accredited membership of the Australian Traditional Medicine Society (ATMS), with a minimum of three (3) years massage therapy experience; or
- Membership of Association of Massage Therapists (AMT) at Senior Level One or above with a minimum of three (3) years massage therapy experience; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Mental Health Nurses

VS ACT may also consider applications on a case-by-case basis from suitably qualified mental health nurses. VS ACT will consider the following when reviewing applications:

- Unconditional AHPRA registration as a Registered Nurse Division 1 to practice with the Nursing and Midwifery Board of Australia; and
- Hold a recognised specialist mental health nursing qualification along with a minimum of three years' experience providing clinical mental health services; and/or
- Credentialed as a specialist mental health nurse with the Australian College of Mental Health Nurses; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Professional Association's code of conduct, standards and ethics

You must:

- at your own cost maintain registration or accredited membership to professional associations, where available;

- comply with all codes of conduct, professional standards and ethics of your professional association;
- consult codes of conduct, professional standards and ethics of your professional association to inform practices relating to ethical conduct, matters of clinical and professional competence, and guidance on working with vulnerable people; and
- notify VSACT immediately should you be the subject of a complaint or have registration with your professional association suspended or cancelled.

Professional competence, continued professional development, clinical supervision and peer-to-peer consultation

You must maintain records about professional development.

Upon request you must provide VSACT information to demonstrate continuing professional development training as required to maintain professional registration or membership to professional association; and participate in VSACT information sessions as required.

In addition to service provision, you must:

- undertake a minimum of 10 hours of trauma-specific and/or applicable professional training per year;
- undertake the minimum requirement of professional competence and continuing professional development training required to maintain your registration and/or accreditation as a professional; and
- for social workers and counsellors - engage the services of a qualified Clinical Supervisor and access a minimum of one hour of one-on-one clinical supervision every four to six weeks and maintain records of clinical supervision; or
- for psychologists – engage in peer-to-peer consultation at least 10 times per year and maintain records of this supervision.

Notice of specialisation

You must advise the Commissioner if your professional specialties expand or change.

Criminal status

You must notify VSACT immediately if you have been charged with a criminal offence in the ACT or in another Australian or International jurisdiction.

Australian Business Number (ABN)

You must have an ABN registration at the time of providing any services.

Insurance requirements

You must have:

- Professional Indemnity insurance of \$10,000,000 (in respect of each claim) and \$10,000,000 (in the annual aggregate).
- Public Liability insurance of \$10,000,000 (in respect of each claim).

- Workers Compensation insurance (if required) to the extent required by a law of the Commonwealth or Territory.

Statutory obligations

You must comply with all applicable legislation, regulations and all relevant Australian standards (or equivalent standards in your state or territory) applicable to the delivery of approved services.

This may include but is not limited to:

- *Victims of Crime Regulation 2000*
- *Health Records (Privacy and Access) Act 1997*
- *Health Professionals Act 2004*
- *ACT Human Rights Act 2004*
- *Children and Young People Act 2008; and*
- *Standards of Practice for ACT Allied Health Professionals ACT Health 2016*

5.2 ALLOCATION OF THERAPEUTIC HOURS

The Victims of Crime Regulation 2000 outlines the availability of three levels of service under the VSS. Service levels determine the number of contact hours a victim of crime is eligible to access per crime, through the VSS. The eligibility for each of the levels is described below.

Level 1

All eligible victims (see above) are entitled to receive level 1 service under the VSS. Level 1 consists of no more than **2 contact hours**.

Level 2

An eligible victim is entitled to receive level 2 service if they have completed level 1 service for the crime concerned and the victim:

- is a *primary victim* of a violent crime; or
- is a *related victim* of a violent crime; or
- is a *related victim* to a primary victim who has died; or
- is a witness to a homicide.

Level 2 service consists of not more than 6 contact hours. In practice, if a client is eligible for level 2 service and they are seeking counselling, they will be referred for level 1 and 2 (**8 hours**) at the outset.

Level 3

An eligible victim entitled to receive level 2 service is entitled to receive level 3 service if –

- the victim has completed level 2 service for the crime; and
- a VSS 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 maximum hours a victim is entitled to receive is 20 hours other than in exceptional circumstances, as approved by the Commissioner.

5.3 PROVISION OF THERAPEUTIC HOURS AND REPORT REQUIREMENTS

Accepting allocations

You must respond to clients' appointment requests within two working days. In addition, prior to commencing service delivery to a client, you must ensure that:

- VSACT has provided you with approval to see the client, including checking that the client has sufficient hours of service approved;
- confirm that you have no actual or potential conflict of interest in relation to the client; and
- advise VSACT if you do not have the appropriate skills and experience to work with the referred client.

Delivery of therapeutic hours

All service provision should observe the principles of:

- accessibility;
- confidentiality and privacy;
- safety;
- professionalism; and
- professional boundaries.

Service provision should not occur in a public place or a client's home unless otherwise approved by VSACT.

You must seek written approval from the Commissioner and the client to allow any other person to observe, or be present at, a session with a client.

Should the focus of the service you are providing shift significantly from the initial presenting issues, you must consult with VSACT to determine an appropriate plan of action. Approval for services that are beyond the terms of the Support Plan may be provided by VSACT in exceptional circumstances.

Counselling format

Approved counselling can be delivered face-to-face, online or over the phone.

Before delivering phone or online counselling, you must ensure:

- expectations and risks associated with delivering counselling over the telephone or video conference have been identified and discussed with the client, this includes ensuring they are in a safe, private and appropriate environment for counselling;
- a risk management plan is in place to manage risks around not being able to read behavioural or visual cues whilst providing this mode of counselling;
- provisions of a dedicated work phone and/or video conference ID for all counselling delivered by these modes - personal devices must not be used;

- reliable and fast internet connections are required to minimise disruption; and you should be in a location and place that is private and conducive to phone counselling. This includes a place where there is minimal distraction, low noise, and access to a means of documenting the counselling session.

Initial appointment

You must offer clients their initial appointment within 21 working days of the client's request unless another timeframe is agreed with VSACT.

Approval for additional hours

Where a client is approved for level 2 service and you believe they would benefit from additional sessions, you may make a request to VSACT for level 3 service to be granted, so that the client can access up to 12 further contact hours. Requests for level 3 service must be accompanied by a progress report indicating:

- the progress made in attaining clinical goals;
- the interventions used;
- any revisions to the support plan; and
- the plan for case finalisation.

VSACT will not authorise extra hours retrospectively.

A request for additional services under 'exceptional circumstances' may be made where clients have completed level 3 service and require further service to reach their therapeutic goals. Requests are made using the 'Request for Exceptional Circumstances Approval Form' which can be obtained from VSACT. These requests should be accompanied by a revised support plan and state:

- what has prevented the achievement of the support plan goals;
- why it is impractical or impossible for the client to access another service;
- the interventions used to date;
- what is envisioned to be achieved in the additional hours; and
- what arrangements have been made with the client for future support on conclusion of these hours.

VSACT expects that in the majority of cases, a client's goals will be finalised either in the level 2 or level 3 allocated hours.

Support Plan

A support plan is sent with the allocation package and should be finalised in collaboration with the client at your first appointment.

You must provide the finalised support plan marked to the attention of the Case Coordinator (to [REDACTED]) when you submit your first invoice (invoices should be to [REDACTED]). The support plan is included with the allocation package and should include:

- the client's rehabilitation goals; and

- the number of contact hours and particular services to be provided to achieve those goals.

Progress Report

To request level 3 service or if, at any point, the client will be transitioning to a different Service Provider, you must provide a progress report to VSACT marked to the attention of the Case Coordinator (to [REDACTED]). A progress report template is included in the allocation package and should include:

- the number of contact hours you have provided;
- the progress made to date with the client;
- the therapeutic approaches used;
- your recommendation for further hours;
- any revisions to the support plan; and
- plans for case finalisation.

Closure Report

Following case closure, you must provide a closure report to VSACT. The closure report template is included in the allocation package and should include:

- the number of contact hours you have provided;
- the extent to which the goals of the support plan were achieved; and
- case finalisation including any referrals for ongoing support.

Change of practice details or availability

You must advise VSACT if your practice or contact details have changed. Further, please advise VSACT immediately if you are unable to provide counselling to a referred client. It is also important that you advise VSACT immediately if your availability to provide counselling services changes, for example where you:

- are at capacity and cannot take new allocations;
- have relocated;
- are taking leave; and/or
- are unable to provide new clients who require urgent counselling with appointments within five working days of their request.

VSACT is happy to amend our provider database to reflect a period of unavailability.

Disclosure of confidential information

This is only permitted with the informed consent of the relevant client or as required by law.

Shared counselling appointments

You must seek prior approval from the Commissioner before delivering family or shared counselling sessions. Please send these requests to [REDACTED].

The Commissioner will only consider family or shared counselling sessions where each client participant is an eligible victim.

Subcontracting

You must not subcontract any part of the approved services to another person, including another Approved Service Provider, trainee, supervisee, colleague, provisional psychologist, student or volunteer. You must not subcontract the writing of reports to another person, including another Approved Service Provider, trainee, supervisee, colleague, provisional psychologist, student or volunteer.

Client referrals to Victim Support

On occasion a provider may refer a client to VSACT for a service. We welcome these referrals. Please be aware that VSACT must determine the client's eligibility for counselling and identify the most appropriate provider for the client.

Transparency and Information

At the earliest opportunity, you must provide the client with clear, accurate information about:

- how many sessions have been approved; and
- your missed appointment policy for clients receiving Approved Services.

You must also inform the client about the limitations of client confidentiality, including the Approved Service Provider's obligations to:

- respond to lawful subpoenas;
- report child protection concerns if a mandated reporter; and
- report any imminent threats of suicide or harm to self or others.

You must advise the client in a timely manner of any planned absences, holidays or any other break that may interrupt therapeutic work.

Missed appointments

A missed appointment is defined as a client's failure to attend an appointment, or a cancellation within 24 hours of the scheduled appointment time.

In the event of a missed appointment, you should attempt to contact the client within one week to initiate or continue sessions.

If a client has missed two appointments, you must notify VSACT promptly to discuss future appointments.

You must not charge a client for a missed appointment under any circumstances.

Frequency of sessions

Frequency of sessions should be discussed in relation to the support needs of the client. It is usual practice that clients attend sessions on a fortnightly or monthly basis with the Service Provider.

If a Service Provider determines that sessions are required more frequently than once a fortnight, the Service Provider must discuss this with the Case Coordinator prior to finalising arrangements with the client.

Duration of counselling sessions

You have discretion in how you wish to use the approved hours of service. For example, if 4 hours are approved you may have 8 sessions of 30 minutes each or 4 sessions of one hour each.

You must seek approval from VSACT before undertaking individual service provision sessions exceeding one hour and/or if you wish to undertake sessions more frequently than once a fortnight.

Interpreter services

Where translating and interpreting services are required, VSACT will meet the costs, provided the use of such services have been approved by VSACT. Please contact VSACT to arrange the services of an interpreter at least 7 business days before the session. The request should specify the date, time and address of the counselling session, as well as the language and preferred gender of the interpreter.

Please advise VSACT immediately if you have any concerns about the services provided by the interpreter.

Approved services providers who are also government employees

If you are a public servant, you must:

- abide by all relevant government department guidelines and requirements in relation to undertaking secondary employment or private employment whilst in paid public sector employment in a government department; and
- not use your place of paid public sector employment to conduct a private practice as an Approved Service Provider including not using your workplace telephone contact number.

Commissioner discretion

All allocations to an Approved Service Provider are at the discretion of the Commissioner.

There is no guarantee that the Commissioner will approve the allocation of a victim to an Approved Service Provider.

The Commissioner may cease allocations of clients to an Approved Service Provider or transfer an allocated client from an Approved Service Provider.

The Commissioner may at any time, upon written notice vary or revoke any condition of approval, or impose any new or additional conditions in relation to the approval of services to be provided by the Approved Service Provider.

The Approved Service Provider agrees that immediately following receipt of such written notice, they will not be entitled to make any claim for the payment of any fee, expense or other form of payment arising in connection with the provision of services, or lack thereof.

VSACT reserves the right to refuse payment, partially or in full, for services, which are delivered outside of the operating guidelines, unless otherwise approved in writing prior to the delivery of the service.

5.4 LEGAL CONTEXT

You can deliver Approved Services to clients who are undergoing court processes or other legal processes as a victim or witness of crime.

However, in some circumstances therapeutic approaches, specifically, Eye Movement Desensitisation and Reprocessing (EMDR) and Hypnosis can impact on court evidence and outcomes. Approval is required by VSACT prior to commencing either of these treatments with a referred client.

Subpoenas

You must maintain accurate notes during counselling and other service provision sessions and consider that files and reports may be subject to a subpoena in relation to a court matter.

Please be aware the *Evidence (Miscellaneous Provisions) Act 1991* creates certain obligations and protections for counselling communications (also referred to as protected confidences) in sexual offence or family violence proceedings. Namely, counselling communications **must not** be disclosed for the purposes of a sexual offence or family violence proceeding without the leave of the Court that is dealing with those proceedings.

- A provider cannot be required, in a family violence or sexual assault proceeding, whether by subpoena or any other procedure, to produce a document containing a counselling communication without the Court's leave.
- This is irrespective of whether the counselling communication contains information relating to the alleged offences subject of those proceedings.
- You remain under this obligation whether or not the client consents to the protected confidence being disclosed for the purposes of a sexual offence or family violence proceeding.

If you receive a subpoena for a client allocated by VSACT, please contact your relevant professional association for information and advice. You may also wish to seek independent legal advice if you are uncertain about your legal obligations.

Mandatory reporting

You must fulfil obligations for mandatory reporting under the *Children and Young Persons Act 2008* or equivalent legislation in the relevant state or territory and comply with mandatory reporting requirements of your Professional Association.

Children

You must:

- assess the family context of a client when the client is a child or young person;
- ensure accused parents or caregivers do not attend the child's counselling session;
- obtain relevant information about any court orders that may be in place about the responsibility of the parent(s) and/or guardian(s) of a child client. This may include conditions of any court order that might be relevant to the service provision and parental consent; and

- seek independent legal advice if uncertain about legal obligations. Your professional registration body may be able to assist with advice or please contact VSACT for assistance.

5.5 SERVICE PROVISION RELATIONSHIP

Declaration of existing relationship and conflict of interest

You must notify VSACT immediately and await approval to proceed with an allocation if:

- a current or former relationship exists between you and the referred client; or
- a conflict of interest may arise if you deliver a service to the referred client.

Where, in the Commissioner's view, the conflict of interest cannot be managed, the Commissioner may change the Approved Service Provider for that client.

Maintaining professional boundaries

You must maintain professional boundaries and comply with all codes of conduct, professional standards and ethics of your professional association.

Do not engage in any financial, intimate, personal or inappropriate relationship with referred clients during or after service provision.

External Research

Do not recruit clients to participate in, or be the subject of, any research activity or case study unless prior written approval from the Commissioner has been provided.

Safety concerns for the Approved Service Provider

You must immediately report any behaviour from clients that leads you to have concerns for your safety. VSACT will liaise with you to discuss arrangements which could be put in place to ensure your safety or if service provision should cease.

Change of Approved Service Provider

You must not re-allocate clients to another service provider to deliver the therapeutic hours, unless prior approval has been granted by VSACT.

To seek approval, you must do so in writing and include:

- the reason for the request;
- the number of approved service hours remaining; and
- how many appointments the client has missed (if relevant).

You will be informed in writing of the outcome of any request for a change of Approved Service Provider.

VSACT may also initiate a change of Approved Service Provider in the event of a complaint.

5.6 SUPPORT, REFERRALS AND CONTINUITY OF CARE

Assistance with Financial Assistance Scheme Applications

Clients may contact VSACT for assistance in completing an application to the ACT Victims of Crime Financial Assistance Scheme.

Other supports

When a client needs court support, you should refer the client to VSACT for assistance.

Crisis referrals

You must refer clients in crisis to an appropriate service such as Access Mental Health or equivalent crisis services in other States or Territory and inform VSACT immediately if a client has been referred to crisis care.

5.7 RECORDS MANAGEMENT

Approved service provision hours

You must maintain:

- accurate and up-to-date records regarding delivery of service provision; and
- evidence of the client's attendance at appointments by completing the Attendance Record Template provided by VSACT.

VSACT may seek to review attendance records at any time.

Service provision sessions

You may commence service provision after receiving the VSACT letter confirming the relevant level of service and number of approved hours.

Client contact

You must maintain accurate and up-to-date records of all communications with the referred client, including:

- telephone calls;
- emails;
- text messages; and
- invoices.

Storage of records

You must take proactive steps to ensure records, both hard copy and on your computer system, are stored securely. Every effort must be taken to protect the client's personal information from misuse, interference or loss and from unauthorised access, modification or disclosure. Storage of client records must occur in accordance with relevant privacy legislation in your State or Territory.

5.9 PAYMENT

VSACT will only pay for hours approved in writing, as detailed in the allocation letter or subsequent approvals.

VSACT will pay for no more than two sessions where a client does not attend a scheduled appointment without providing advance notice. A missed appointment will not be paid by VSACT where you have been able to conduct a session with an alternative client.

You must not charge a client for more than our agreed rate.

In accordance with the *Victims of Crime Regulation 2000*, VSACT cannot pay for:

- any hours exceeding those approved in writing;
- appointments made in anticipation of an allocation and without written approval;
- preparation of medico-legal reports. If clients request a report for medico-legal purposes this must be negotiated with the person(s) requiring that report;
- time spent in court as an expert-witness;
- preparation of progress reports;
- preparation of closure reports;
- filing;
- arranging appointments with clients; or
- other administrative tasks.

Invoices

Invoices can only be submitted for clients registered and referred by VSACT in relation to approved contact hours. Invoices are to be provided on a regular basis with a maximum of five service sessions on one invoice. Please note, all invoices need to be submitted within a three-month period of service delivery.

Invoices should be forwarded to:

*ATTN: Corporate Team
Victim Support ACT
ACT Human Rights Commission
GPO Box 158
Canberra City ACT 2601
Email: [v](#) [REDACTED]*

Invoices will be processed within 28 days as per the ACT Government Credit Policy.

Invoices must not have client names or other personal details recorded on them

The Party ID (PT) number should be clearly documented on the invoice.

5.10 MEDIA ENQUIRIES

You must obtain written approval from the Commissioner prior to any media engagement regarding your role as an Approved Service Provider.

5.11 COMPLAINTS

If a client has made a complaint about you to VSACT, you will be given the opportunity to consider and respond to the content of that complaint, other than in exceptional circumstances where to do so would, for example, impact the client's safety and well-being. If upon the Commissioner's consideration of the matter the complaint requires further action, the following options are available to the Commissioner under the regulation:

Victims of Crime Regulation 2000

Section 42 Suspension of approval

The commissioner may suspend the approval of a service provider if—

- (a) the commissioner is no longer satisfied on reasonable grounds of the matters mentioned in section 41; or
- (b) the service provider is a suspect in an investigation of an indictable offence; or
- (c) the service provider has been the subject of a complaint to the human rights commission and the complaint has not been decided or has been upheld.

Section 43 Cancellation of approval

The commissioner must cancel the approval of an approved service provider if:

- (a) on at least 3 occasions, a ground existed on which the commissioner would have been entitled to suspend the approval of the provider; or
- (b) if the ground for suspension of the approval of the provider is a state of affairs that has existed for 3 months or longer; or
- (c) the approved service provider has been convicted or found guilty of an indictable offence; or
- (d) for an approved service provider who provides a health practitioners service—the provider has ceased to be registered as a health practitioner.



Victim Services Scheme Service Provider Application Pack

July 2020

CONTENTS

1. Qualification Requirements of Service Providers
2. Service Requirements
3. Approved Service Provider Information
4. Statement of Expertise Form
5. References
6. Clinical Supervisor Statement
7. Fees Schedule
8. National Police Check (attached)
9. Applicant checklist

Contact for Information:

[Redacted]
Tel: [Redacted]
Email: [Redacted]

Address for Applications:

Victim Support ACT
Justice & Community Safety Directorate
GPO Box 158
CANBERRA CITY
ACT 2601

1) QUALIFICATION REQUIREMENTS OF SERVICE PROVIDERS

Applicants are required to nominate the service they will be providing, have a minimum of three years' experience as a registered provider of clinical services in their profession, and should supply evidence of the following:

Psychology:

- Unconditional registration as a psychologist with the Australian Health Practitioner Regulation Agency (AHPRA); and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Social Work:

- Membership of the Australia Association of Social Workers and hold accreditation as a Mental Health Social Worker with the Australian Association of Social Workers (AASW); and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Counselling:

- Registration with Psychotherapy and Counselling Federation of Australia (PACFA) as a clinical member; or
- Registered with the Australian Counselling Association (ACA) as a Level 3 or 4 member; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

Massage Therapy:

- Accredited membership of the Australian Traditional Medicine Society (ATMS), with a minimum of three (3) years massage therapy experience; or
- Membership of Association of Massage Therapists (AMT) at Senior Level One or above with a minimum of three (3) years massage therapy experience; and
- Expertise in a range of therapeutic interventions and a demonstrated understanding of working with complex trauma.

2) SERVICE REQUIREMENTS

In accordance with *Victims of Crime Regulation 2000* section 41 (1) (a)-(f)

Criteria for approval

(1) The commissioner may approve a person as a service provider only if satisfied that—

(a) the person —

- (i) has qualifications or experience in working with victims and with people from a diversity of ethnic and cultural backgrounds; and
- (ii) has experience or knowledge of working in a multidisciplinary team environment; and
- (iii) holds an appropriate policy of indemnity insurance; and

(b) if the service to be provided is a health practitioners service—the person is an appropriately qualified health practitioner; and

(c) the person has not been convicted of a serious crime; and

(d) the person is capable of satisfying the requirements of this regulation; and

(e) the person will-

- (i) undertake continuing education in the provision of services to victims; and
- (ii) conduct an assessment and evaluation of the services it provides and ensure its services are subject to independent review; and
- (iii) deal with eligible victims in a way that gives proper regard to their dignity, worth, independence, cultural diversity and human rights; and
- (iv) provide services of appropriate quality with respect to safety, risk, health and community care outcomes and the interests of eligible victims; and
- (v) provide services that are consistent with best practice for the particular kind of service; and
- (vi) establish codes of conduct for people engaged or employed by it to promote the highest ethical and professional standards; and
- (vii) ensure premises used by people engaged or employed by it are secure, give eligible victims privacy and comply with occupational health and safety requirements; and
- (viii) take steps to ensure that people engaged or employed by it are familiar with the *Human Rights Commission Act 2005*; and

(f) the person will not use contact hours for the preparation of reports for use in proceedings.

2.1.1. In addition the service provider will agree to provide services in accordance with the Approved Service Provider Guidelines 2019-2022.

3) APPROVED SERVICE PROVIDER INFORMATION

Part A: Personal & Practice Details

Provider Name:	
Company Name:	
ABN Number:	
Practice/s Address:	
Mailing Address:	
Phone Number/s:	
Phone Number for clients to contact (if different from above):	
Email:	
Registered with NSW Victim Services:	(Please circle) YES / NO
Work Premises:	Home Office/Business premises (Please circle) Please complete the attached checklist (Part 9)
Hours available:	
Availability after hours and or on weekends:	Weekends (Please circle) YES / NO After Hours (Please circle) YES / NO
Do you identify as an Aboriginal or Torres Strait Islander?	(Please circle) YES / NO
Are you from a racial, ethnic or ethno-religious group which is a minority in Australian society?	(Please circle) YES / NO/ Prefer not to answer If Yes, please indicate group:
Do you provide counselling in a language other than English?	(Please circle) YES / NO If yes, please list any languages other than English that you can speak at the level required to provide counselling.

Part B: Professional registration details

Profession	
Professional body	
Current registration No.	
Registration status	
Registration expiry date	
Practice restrictions or conditions on practice	
Other relevant registrations and memberships	
Have you had any complaints lodged against you in the last 5 years?	(Please circle) YES / NO If Yes, please provide details and outcome
Are you registered to provide services with Medicare?	(Please circle) YES / NO If Yes, Provider No.
Working with Vulnerable People Registration (ACT only) or equivalent.	Registration No:..... Expiry Date:.....
Permission for Criminal History Check	
Professional Indemnity Insurance <i>Copy attached</i>	Name of Insurer: Policy No: Expiry date:

4) STATEMENT OF EXPERTISE

Indicate your specialist training and clinical experience in working with **victims of crime** of **one or more** of the following:

- | | | | | |
|--|--------|--------------------------|-------|--------------------------|
| Adult survivor of child sexual assault | Female | <input type="checkbox"/> | Male | <input type="checkbox"/> |
| Recent sexual assault | Adult | <input type="checkbox"/> | Child | <input type="checkbox"/> |
| Domestic and family violence | | <input type="checkbox"/> | | |
| Homicide | | <input type="checkbox"/> | | |
| Elder abuse | | <input type="checkbox"/> | | |
| Abduction/kidnapping | | <input type="checkbox"/> | | |
| Armed robbery/hostage | | <input type="checkbox"/> | | |
| Ritual abuse | | <input type="checkbox"/> | | |
| Hate crimes regarding Race, Religion, LGBTIQ | | <input type="checkbox"/> | | |

Outline expertise in a range of interventions and theoretical knowledge informing your practice as related to **victims of crime**.

Indicate your specific expertise in working with **victims of crime** of **one or more** of the following client groups

- Aboriginal or Torres Strait Islander
- Culturally and linguistically diverse backgrounds (please specify)
- Children 0-6 7-16
- Young people 16-18 18-21
- Clients with a history of mental illness
- Clients with an intellectual disability
- Clients with an acquired brain injury
- Clients who identify as LGBTIQ
- Clients who identify as transgender
- Clients with a history of substance abuse
- Clients with a cognitive impairment (other than listed)

Please outline relevant specialist training.

5) REFEREE DETAILS

Please provide one **letter** of reference with your application. The referee must be:

- a clinical supervisor; or
- a previous supervisor; or
- a senior professional peer.

The referee must have known you for a minimum of 12 months and comment on your professional experience and reputation. The referees should also comment on your experience in working with victims and with people from a diversity of ethnic and cultural backgrounds.

Referee Details

Title	
Name	
Occupation	
Relationship	
Contact No.	
Email address	

6) SUPERVISOR'S STATEMENT OF ONGOING CLINICAL SUPERVISION

I (Name of Supervisor),

am providing clinical supervision to (Name of Applicant)

I have been the applicant's supervisor for:

Please tick appropriate boxes

1 month or less

more than 1 month, less than 6 months

6 month to one year

More than one year

Ongoing supervision is provided

Weekly

Fortnightly

Monthly

Quarterly

When requested

Other (please specify).....

Signature.....

Date.....

7) SCHEDULE OF FEES FOR APPROVED PROVIDERS

From 1 July 2020.

Service Code	Discipline	Rate per hour and per unit of service* From 1 July 2020
1	Psychologist	\$162.00 per hour ie \$40.50 per 15 minute unit
2	Counsellor	\$162.00 per hour ie \$40.50 per 15 minute unit
3	Social Worker	\$162.00 per hour ie \$40.50 per 15 minute unit
4	Massage Therapy	\$108.00 per hour ie \$27.00 per 15 minute unit

*Fees are paid in units of 15 minutes if time of service is not exactly 1 hour.
Please state the time of service to the nearest 15 minutes on your invoices.

8) NATIONAL POLICE CHECK

Please complete the following and return as instructed as soon as possible:

1. National Police Check Self Disclosure Form link (**DOCX, 70.9 KB**)
2. Proof of Identity:

Please provide 100 points of Identification which has been “Certified” by an “authorised” person from the categories listed below. For information and a list of authorised persons may be found at <https://www.ag.gov.au/Publications/Statutory-declarations/Pages/List-of-authorised-witnesses.aspx>

At least one of your identification documents must come from Category A as its proof of birth/residency.

Change of Name: If you have had a name change, you are required to provide certified copies of this change i.e.: marriage certificate or change of name by deed poll (This does not count towards the 100 points of ID)

Category A – Each document is worth 70 points – Only one document can be accepted from this category:

Birth Certificate, Passport (current, or expired within the previous two years, but not cancelled), Australian Citizenship Certificate, Other document of identity having same characteristics as a passport e.g. diplomatic/refugee (Photo or Signature)

Category B – The first document is worth 40 points and each additional document is worth 25 points:

Current Licence or Permit (Government Issued), Working with Vulnerable People Registration Card, Public Employee Photo ID card (Government Issued), Centrelink Pensioner Concession Card or Health Care Card, Current Tertiary Education Institution Photo ID

Category C – Each document is worth 25 points:

International Drivers Licence, Proof of Age Card or Seniors Card (Government Issued), Medicare Card/Private Health Care Card, Rates Notice, Property Lease/Rental Agreement, Telephone Account with Name, Address and Phone Number, Credit Card/ATM Card (if Submitting more than one, must be different institutions), Australian Tax Office Assessment, Superannuation Statement.

9) OFFICE CHECKLIST

Address of premises:.....

Number	Element	Yes	No	Comment/s
1	Street number, signage and/or building name clearly visible	<input type="checkbox"/>	<input type="checkbox"/>	
3	Business or residential area	<input type="checkbox"/>	<input type="checkbox"/>	
4	Parking available[indicate if free or pay]	<input type="checkbox"/>	<input type="checkbox"/>	
5	Access to public transport	<input type="checkbox"/>	<input type="checkbox"/>	
6	Accessible for people with a disability [including toilets]	<input type="checkbox"/>	<input type="checkbox"/>	
7	Are practice premises shared? Other services at this location.	<input type="checkbox"/>	<input type="checkbox"/>	
8	Secure separate waiting area?	<input type="checkbox"/>	<input type="checkbox"/>	
9	Child friendly facilities	<input type="checkbox"/>	<input type="checkbox"/>	
10	Rooms are sound proof	<input type="checkbox"/>	<input type="checkbox"/>	
13	Premises are lockable	<input type="checkbox"/>	<input type="checkbox"/>	
14	Secure storage of client files?	<input type="checkbox"/>	<input type="checkbox"/>	
15	Toilet facilities available?	<input type="checkbox"/>	<input type="checkbox"/>	
17	Do you have a safety plan?	<input type="checkbox"/>	<input type="checkbox"/>	
18	Is there an Evacuation Plan in case of an emergency?	<input type="checkbox"/>	<input type="checkbox"/>	

10) APPLICANT CHECKLIST

	Have you completed and enclosed the following documents?	Yes	No
1	Approved Service Provider Information Sheet (parts A and B)	<input type="checkbox"/>	<input type="checkbox"/>
2	Statement of Expertise	<input type="checkbox"/>	<input type="checkbox"/>
3	National Police Check Consent and Self Disclosure Form	<input type="checkbox"/>	<input type="checkbox"/>
4	Certified Copy of Qualifications (If you have professional registration requirements such as psychology you are not required to submit a copy of your qualifications)	<input type="checkbox"/>	<input type="checkbox"/>
5	Professional Indemnity, Public Liability and if relevant Workers Compensation Insurance documentation	<input type="checkbox"/>	<input type="checkbox"/>
6	Copy of Registration / Membership of Professional Association	<input type="checkbox"/>	<input type="checkbox"/>
7	Curriculum Vitae	<input type="checkbox"/>	<input type="checkbox"/>
8	Working with Vulnerable People Registration (ACT Only) or equivalent in relevant State or Territory.	<input type="checkbox"/>	<input type="checkbox"/>
9	Supervisor statement of ongoing clinical supervision	<input type="checkbox"/>	<input type="checkbox"/>
10	Referee Report	<input type="checkbox"/>	<input type="checkbox"/>

This checklist is provided to assist you in ensuring that all required documentation is available to Victim Support ACT to enable a decision to be made regarding your application as an Approved Service Provider. The receipt of your application will be acknowledged, and you will be informed of the outcome in writing, as soon as possible.

PLEASE NOTE:

- (1) If providing photocopies in support of your application these **MUST** be sighted and signed by a Justice of the Peace or another occupation listed in the attached 'Occupations of people who can certify your ID' document.
- (2) Failure to furnish the documents requested will result in a delay in the processing of your application and thus a delay in clients being able to access your services.



ACT
Government



VICTIM SUPPORT
PROMOTING RIGHTS & RECOVERY

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 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 Justice and Community Safety Directorate.

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. All individuals who make contact with VSACT are treated in accordance with the *Human Rights Act 2004* and the *Victims of Crime Act 1994*, which provide governing principles that, as far as practicable and appropriate, govern the treatment of victims. (Appendix B).

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 enables the provision of professional services for victims as prescribed by the *Victims of Crime Regulation 2000* (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 Victims Services Scheme;

- 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 victims services scheme,
- 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 scheme;
- 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 Victims Services Scheme and the complaint procedures; and
- to keep financial records of the Commissioner's operations under the scheme.

The Commissioner also has a broad range of functions under the *Victims of Crime Act 1994* Part 3, Division 3.2 (Appendix C) in addition to those listed above.

Eligibility

Eligibility for the Victims Services Scheme is determined by the Regulation.

Any **eligible victim**¹ is entitled to some service under the Victims Services Scheme.

An eligible victim has experienced a crime in the ACT². 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 Victims Services Scheme. Advocacy may be available for people who experience harm caused by, or arising out of the use of a motor vehicle, at the discretion of the Victims of Crime Commissioner.

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 witnesses of crime who have suffered harm as a result of an offence.

¹ S34 Victims of crime regulation 2000. See Appendix A.

² 'The Victim must have been the victim of an 'offence' against a law in force in the Australian Capital Territory', Explanatory Memorandum, Victims of Crime Bill 1994, p2.

A **Primary Victim**³ is a person who has experienced harm or injury as a direct result of being the victim of a **violent crime**⁴. A primary victim can also be someone who is injured when assisting a police officer in certain situations.⁵

A **Related victim**⁶ includes a close family member of a primary victim; a dependant of a primary victim; or someone who is in an intimate relationship with a primary victim.

Someone who witnesses⁷ 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 Victims Services Scheme. 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 Victims Services Scheme. 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 Victims Services Scheme 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:

³ Defined in s9 *Victims of Crime Financial Assistance Act 1983* – links to s6 *Victims of Crime Act 1994* and S34 *Victims of crime Regulation*. See appendix A.

⁴ Defined in s3 *Victims of Crime Financial Assistance Act 1983*. Full list is available at Appendix A.

⁵ See s9 of *Victims of Crime Financial Assistance Act 1983* in Appendix A.

⁶ Defined in s16 of *Victims of Crime Financial Assistance Act 1983*. See Appendix A.

⁷ S34 *Victims of crime Regulation 2000*.

An eligible victim entitled to receive level 2 service is entitled to receive level 3 service under the Victims Services Scheme 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 benefit⁸ to the victim and it is impossible or impractical to provide further contact hours under a scheme or program other than the victims services scheme, 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.

A Standard Operating Procedure document provides additional guidance on exceptional cases.

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.

Case Closure

⁸ For the definition of this term see s36(6) of the Victims of Crime Regulation 2000

VSACT staff are required by the Regulation to follow prescribed case closure procedures for all eligible victims. These procedures are set out in s39 of the *Victims of Crime Regulation 2000*. When a case closure occurs, the eligible victim should be offered to participate in a discharge interview and/or complete an evaluation survey. The interview seeks to measure the attainment of the victim's rehabilitation goals. The survey provides an opportunity for the victim to evaluate the services they received.

The victim's case coordinator must also complete an evaluation and report about the services provided to the victim.

Service Providers

Under the Victims Services Scheme, 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.

Evaluation

Outcome measures and methods

- All eligible victims receiving level 2 services have been allocated a case coordinator which is identified on the electronic client database.
- All eligible victims receiving level 2 services have a care plan that has been developed collaboratively between the case coordinator and eligible victim, which is identified on the electronic client database or the client's paper file.
- Care plans of all eligible victims receiving Level 2 services have defined rehabilitation goals, the number of contact hours that have been approved and the services to be provided, which are maintained on the electronic client database or the client's paper file.
- All eligible victims receiving level 3 services have a revised care plan which has defined rehabilitation goals, the number of contact hours and the services to be provided, which are maintained on the electronic client database or the client's paper file.
- All eligible victim closure reports have been received from service providers and are stored on the eligible victims file or the electronic client database.
- On the completion of services the eligible victim is provided the opportunity to complete a survey to evaluate the services received.
- Biannual file audits will be conducted to monitor compliance of the requirements stated within the Victims of Crime Regulation 2000

Related Legislation and Policies

Victims of Crime Act 1994

Victims of Crime Regulation 2000

Victims of Crime (Financial Assistance) Act

Victims of Crime (Financial Assistance) Regulation 1998

Criminal Injuries Compensation Regulations 1938

Victims of Crime (Commissioner) Appointment 2011

Human Rights Act 2004

Human Rights Commission Act 2005

Road Transport (General) Act 1999

ACT Civil and Administrative Tribunal Act 2008

Information Privacy Act 2014

Health Records (Privacy and Access) Act 1997

Freedom of Information Act 1989

Territory Records Act 2002

Annual Reports (Government Agencies) Act 2004

Children and Young People Act 2012

Public Sector Management Act 1994

Public Sector Management Standards 2006

ACT Public Service Integrity Policy

Standards

Codes of Ethics, Australian Association of Social Workers (AASW) 2010

Codes of Ethics and Practice, Australian Counseling Association (ACA) 2012

ACT Public Service Code of Conduct

ACT Public Service Code of Ethics



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Appendix A

Legislative Definitions and References

Who is a victim? – S6 Victims of Crime Act 1994

- (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 an eligible property owner within the meaning of the [Victims of Crime \(Financial Assistance\) Act 1983](#), dictionary; 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 victims services scheme if the victim has completed level 1 service under the victims services scheme 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 (s9 Victims of Crime Financial Assistance Act 1983)

A **primary victim** 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.

*This definition is relevant because of a link to section 6 'Who is a Victim' in the Victims of Crime Act and S34 Victims of Crime Regulation.

Definition of a related victim (s16 Victims of Crime (Financial Assistance) Act)

- (1) A **related victim** 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 (s16 Victims of Crime (Financial Assistance) Act)

- (2) **Close family member**, 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 (s16 Victims of Crime (Financial Assistance) Act)

- (2) **Dependant**, 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*? (s3 Victims of Crime (Financial Assistance) Act 1983)

Murder	Abduction
Manslaughter	Female genital mutilation offences
Grievous bodily harm offences	Sexual servitude offences
Wounding	Robbery
Assault offences	Aggravated robbery
Endangering life	
Endangering health	
Culpable driving	
Threat to kill	
Demands with threats	
Forcible confinement	
Stalking	
Torture	
Abduction of young person	
Kidnapping	
Unlawfully taking child	
Exposing or abandoning child	
Child destruction	
Childbirth—grievous bodily harm	
Sexual assault offences	
Sexual intercourse without consent	
Sexual intercourse with young person	
Sexual relationship with young person	
Indecency offences	
Incest	



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APPENDIX B

Governing Principles for the Treatment of Victims – Section 4 of the *Victims of Crime Act 1994*

- (a) a victim should be dealt with at all times in a sympathetic, constructive and reassuring way and with appropriate regard to his or her personal situation, rights and dignity;
- (b) a victim should be told at reasonable intervals (generally not more than 1 month) of the progress of police investigations about the relevant offence, except if the disclosure might jeopardise the investigation, and, in that case, the victim should be told accordingly;
- (c) a victim should be told about the charges laid against the accused and of any modification of the charges;
- (d) a victim should be told about 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 told about any decision not to proceed with a charge against the accused; if any victim's property is held by the Territory for the purposes of investigation or evidence— inconvenience to the victim should be minimised and the property returned promptly;
- (g) a victim should be told about the trial process and of the rights and responsibilities of witnesses;
- (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 home address should be withheld unless the court directs otherwise;
- (j) a victim should not have to appear at preliminary hearings or committal proceedings unless the court directs the victim to appear;
- (k) a victim should be given an explanation of the outcome of criminal proceedings and of any sentence and its implications;
- (l) a victim who is known to have expressed concern about the need for protection from an offender should be told about the offender's impending release from custody.



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APPENDIX C

**Victims of Crime Commissioner - Functions under the *Victims of Crime Act 1994* Part 3,
Division 3.2**

The Commissioner has the following functions in connection with the administration of justice:

- (a) to manage the victim services scheme and any other program for the benefit of victims;
- (b) to advocate for the interests of victims;
- (c) to monitor and promote compliance with the governing principles;
- (d) to ensure concerns and formal complaints about non-compliance with the governing principles are dealt with promptly and effectively;
- (e) to ensure the provision of efficient and effective services for victims;
- (f) to consult on and promote reforms to meet the interests of victims;
- (g) to develop educational and other programs to promote awareness of the interests of victims;
- (h) to distribute information about the operation of the Act and the Commissioner's functions
- (i) to ensure that victims receive information and assistance they need in connection with their involvement in the administration of justice;
- (j) to encourage and facilitate cooperation between agencies involved in the administration of justice with respect to victims;
- (k) to advise the Minister on matters relating to the interests of victims;
- (l) any other function given to the Commissioner under this Act or another territory law



Volunteer Program Standard Operating Procedure for the Provision of Volunteers in Support of Victim Support ACT Clients

Purpose

This Standard Operating Procedure (SOP) outlines the procedures for the Volunteer Program. The SOP covers recruitment and onboarding of volunteers as well as training and practical processes for assigning or requesting volunteers to work in an area of VS ACT.

Scope

This SOP pertains to all processes for recruitment, retainment, and provision of volunteers to assist clients of Victim Support ACT of the ACT Human Rights Commission. Victim Support ACT promotes and supports the rights and interests of victims of crime and their families in the ACT.

Volunteer Program

The Volunteer Program recruits and trains volunteers to provides services to various areas of VS ACT. Volunteers may assist with:

- Research support
- Court support
- Administration support
- FAS application support
- Community engagement

Volunteer recruitment process

Ideal candidates

VS ACT recruits volunteers with some professional experience. Because of the nature of the work that volunteers are expected to undertake, which can range from legal research, filling out Government scheme forms and assisting clients to navigate in the criminal justice system, volunteers are required to be able to deal with one or many of these situations.

In addition, volunteers ideally need to have some experience working with vulnerable people, including holding a Working With Vulnerable People (WWVP) card. The Human Rights Commission will pay for a Police Check for volunteer candidates.

Process of recruitment

VS ACT will place and advert through relevant channels when it is recruiting for volunteers. Applications and job descriptions can be found [here](#).



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Applicants submit their CV and an Expression of Interest to VS ACT. Once candidates have been reviewed, interviews with the most appropriate candidates takes place.

Volunteer onboarding process

Once interviews have been completed and referee checks are finalised, the selected applicants are offered positions as volunteers. In agreeing to become volunteers, applicants are required to sign a [confidentiality agreement](#) as well as a volunteer agreement. Both of these documents are found here. Police checks are also completed during this stage of the process (further information found [here](#)).

Agreeing to a be volunteer

As part of their agreement to be a volunteer for VS ACT, volunteers make a commitment to be available for a certain number of hours per week. However, volunteers are also entitled to stop working at any time.

Volunteers are mandated child protection reports as adults in the community. In addition, VS ACT asks all volunteers to undertake training on mandatory reporting requirements for child protection.

Volunteering training and retention process

Volunteers undertake training to be able to perform their duties and learn about the work that VS ACT undertakes.

Court volunteers undertake two full days of training that covers the court processes, key agencies, their role in the system, and the expectations of the role. Training documents are found here.

In addition to training, court support volunteers are required to undertake 'buddy shifts' as part of their induction process. 'Buddy shifts' involve working with a more senior volunteer or other staff member of VS ACT to help learn the role. Once volunteers are confident of their role, and the Volunteer Coordinator is satisfied that a volunteer can perform their duties, volunteers are able to provide court support on their own.

FAS volunteers undertake a similar 'buddy shifts' induction process to become familiar with completing FAS applications and working with victims of crime in that setting.

Volunteers are also encouraged to undertake further training on a variety of subjects that are open to ACT public service staff. Training is offered throughout the year and VS ACT covers training costs on behalf of volunteers.

Administration

Volunteer training hours are logged in Vira and Resolve by the Volunteer Coordinator. In addition, public liability insurance, phone bills and parking permits for volunteers are all maintained by the Volunteer Coordinator.



Managing volunteer requests

Court support and reporting to police

If there are reasonable grounds for staff to provide court support, Case Coordinators can provide support listed below. Otherwise the volunteer coordinator organises volunteer support to assist clients with:

1. Reporting crimes to police
2. Attending proofing of evidence at the DPP
3. Attending court to give evidence
4. Making a victim impact statement
5. Attending sentencing hearings
6. Attending court to apply for a protection or family violence order

Referring clients for court support

The case coordinator must enter the request into Resolve as soon as practicable to allow enough time for a volunteer to be sourced. Case coordinators must open an Event in Resolve and enter the request as a service.

When requesting the service, case coordinators must enter as many key details as possible. This includes the nature of the support, the date, time, and any additional considerations such as access to a remote witness room. Case coordinators must allocate the request to the volunteer coordinator.

Once the request is received in Resolve, the volunteer coordinator will undertake the following steps to arrange court support

- 1) Identify suitable volunteer based on nature of the request, demographic of the client and availability
- 2) Once a volunteer is confirmed, the volunteer coordinator will contact the client to confirm the support. This includes the following:
 - a. Meeting time and location
 - b. Safety and access considerations i.e. remote witness room and parking permit access
 - c. Seeking a description of the client to be passed onto the volunteer
 - d. Answering any questions the client may have and providing psychoeducation around attending court
- 3) The volunteer coordinator will then send a confirmation email or text (client's preference) confirming the support arrangements
- 4) A confirmation email is then sent to the volunteer

On the day of the support request, the volunteer coordinator is to be available in case the volunteer needs assistance at court. Once provision of support is completed by the volunteer, the volunteer coordinator will seek an update from the volunteer and provide debriefing where needed. This can occur over the volunteers preferred method – in person or via phone.



The volunteer coordinator completes case notes in the clients Event summarizing the support provided and any identified follow up that may be required.

The case coordinator is then responsible for following up with the client in an appropriate time frame and actioning any outstanding tasks.

How to contact the DPP

For clients that are referred by the Witness Assistance Service (WAS), contact the WAS directly. For clients not supported by the WAS, contact DPP reception to speak with a prosecutor on 02 6207 5399. Considerations in speaking with prosecutor include use of a remote witness room, entrance and exit to building, media advice, planning for support people etc. More information can be found here: [DPP information for victims of crime](#).

Hearing/Sentence/Trial dates and planning for court

Once dates are known, if the client is seeking support from VS ACT at court, a referral is made to the volunteer program. The Volunteer Coordinator will organize for the client to be supported by a volunteer. Clients may wish to organize counselling appointments around court dates.

Other volunteer processes

FAS support

If a client is seeking assistance completing a FAS application, case coordinators can offer an appointment with a volunteer. Case coordinators need to assess whether the client's safety circumstances are suitable to wait until the next available appointment. It may not be suitable for clients to wait in some circumstances i.e. a client seeking to relocate imminently to flee family violence.

Case coordinators can book volunteer FAS appointments by following the steps [here](#).

Rights and Reform support

Volunteers conducting research assistance to the Rights and Reform team are to undertake duties as directed by the Rights and Reform manager. These volunteers are required to have an academic background, ideally in law.

Debriefing and performance management

Due to the role volunteers undertake, debriefing and performance management is critical to reduce the occurrence of burnout, vicarious trauma, and stress.



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Debriefing is conducted ad hoc by the Volunteer Coordinator. It is the responsibility of the Volunteer Coordinator to check in with all volunteers on a regular basis to ensure they given the opportunity to debrief as necessary. If volunteers would prefer to debrief with another staff member, other than the Volunteer Coordinator, this is possible with the consent of the requested staff member.

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The Volunteer Coordinator also regularly checks in with volunteers to ensure they are performing within the scope of their role. This might include informal conversations or supervising court visits.

Finally, volunteers and their family members are entitled to access the Employee Assistance Program. This free counselling program allows for a set number of counselling sessions.

If there are concerns about volunteer performance, the Volunteer Coordinator must address these as soon as practicable to limit risk to the volunteer, clients, and the organization. Any concerns relating to conduct with clients or client safety must be brought to the attention of the CST Team Leader and any performance management must be well documented. Volunteering ACT can be contacted for advice and support on managing volunteer performance.

Dear **name**,

Thank you for taking the time to speak to me today, I am sorry to hear about the difficult time you are going through.

As discussed, I have registered you as a client with Victim Support and will request a counselling referral for you, you will receive email notification when it has been accepted.

Please see attached some information on Victim Support ACT (VSACT):

- Victim Support ACT – general information
- Information on the Financial Assistance Scheme (FAS)
- Court Support Program Brochure
- Normal Reactions to Trauma and Severe Stress
- How Can I Help Myself?
- Victims Charter of Rights

Please also see links to additional information on FAS:

- Here is the link to information about eligibility for the Financial Assistance Scheme: <https://www.victimsupport.act.gov.au/financial-assistance-scheme/new-financial-assistance-scheme-1-july-2016/eligibility-for-financial-assistance>
- This is a helpful guide to completing the form: https://www.victimsupport.act.gov.au/_data/assets/pdf_file/0010/1078939/Primary-Victim-GUIDE-TO-COMPLETING-AN-APPLICATION-post-1-July-2017.pdf
- Here is the link to accessing the forms for the Financial Assistance Scheme: <https://www.victimsupport.act.gov.au/financial-assistance-scheme/new-financial-assistance-scheme-1-july-2016/applying-for-financial-assistance>

If you need after hours support you can call:

- Lifeline [24 hours] 13 11 14
- 1 800 Respect [24 hours, sexual assault, DV & Family Violence] 1 800 737 732
- Domestic Violence Crisis Service 6280 0900
- Canberra Rape Crisis Centre 6247 2525
- Mensline 1 300 789 978
- Mental Health Crisis Assessment and Treatment Service 1 800 629 354

Please contact us on 6205 2066 or 1800 822 272 (free calls from a landline) M-F 9am-5pm, if you have any questions or need some support. You can also contact us via email.

Kind regards



VICTIM SUPPORT

COURT SUPPORT PROGRAM

Providing practical assistance to victims of crime

Phone: (02) 6205 2222

Free call: 1800 822 272

Email: victimsupport@act.gov.au

contact us

Victim Support ACT

GPO Box 158,
Canberra City ACT 2601

Human Rights Commission

Level 2, 11 Moore Street,
Canberra City ACT 2600

For more information about the Victim Support Court Support Program, or to arrange court support, please contact Victim Support on

Phone: (02) 6205 2222

Free call: 1800 822 272

Email: victimsupport@act.gov.au

www.victimsupport.act.gov.au

Victim Support ACT also administers the Victims of Crime Financial Assistance Scheme and the Victim Services Scheme. Both programs provide a range of options to assist victims of crime to recover from acts of violence. For more information about these programs, please contact us on the number above.



WHAT IS THE COURT SUPPORT PROGRAM?

Crime impacts people's lives in many different ways, often causing significant stress and trauma.

Victim Support ACT's free, confidential Court Support Program is delivered by highly skilled, trained volunteers who freely give their time to help victims of crime navigate the court system.

Court Support Volunteers provide practical information and assistance to individuals attending the ACT Magistrates Court and the ACT Supreme Court.

Volunteers can help people who are giving evidence in criminal matters or who are applying for a Family Violence Order or a Personal Protection Order.

Court Support Volunteers receive ongoing training and supervision and can provide information on court protocol, emotional support and referrals to other services. Volunteers do not offer legal advice.

ASSISTANCE AND SUPPORT OPTIONS

If you are a victim of crime, Court Support Volunteers can:

- a) Go to court with you to provide support before, during and directly after you give your evidence.
- b) Go to court with you if you are applying for, or responding to, a Family Violence Order or Personal Protection Order.
- c) Meet with you before court to provide information about what to expect from the court process and how the criminal justice system operates.
- d) Show you around the court beforehand so that you are familiar with where you have to go on the day.
- e) Assist you to find information about other services available to victims of crime.
- f) Organise access to a safe waiting area where you can wait before and after you give your evidence.

HOW TO APPLY

Application forms and information guides are on our website

www.victimsupport.act.gov.au

You can call 02 6205 2222 or email FASvsact@act.gov.au to ask for more information or for a form to be sent to you.

Send completed forms to:
FASvsact@act.gov.au
Or via post to: ACT Financial Assistance Scheme
Victim Support ACT
GPO Box 158
Canberra City ACT 2601

HELP APPLYING

Victim Support ACT has a team of professional volunteers who can help you complete your application for financial assistance.

Phone 02 6205 2222 to make an appointment.

OTHER SUPPORTS

Victim Services provides a range of other services to assist people affected by crimes committed in the ACT. We can provide:

- Free counselling
- Information about the criminal justice system and court support
- Advocacy to help you access your rights as a victim of crime.

It is not necessary to have reported the crime to police to be eligible for Victim Services support. Please see our Victim Support ACT brochure for more information.

contact us

Victim Support ACT Financial Assistance Scheme

GPO Box 158, Canberra City ACT 2601
Level 2, 11 Moore Street,
Canberra City ACT 2600

Phone: (02) 6205 2222

Free call: 1800 822 272

Email: FASvsact@act.gov.au

www.victimsupport.act.gov.au



VICTIMS OF CRIME
COMMISSIONER

ACT Human Rights Commission

578

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VICTIM SUPPORT

ACT Human
Rights Commission

FINANCIAL
ASSISTANCE
SCHEME

PROMOTING
RECOVERY FOR
VICTIMS OF CRIME

Phone: (02) 6205 2222

Free call: 1800 822 272

Email: FASvsact@act.gov.au

www.victimsupport.act.gov.au

WHAT IS FINANCIAL ASSISTANCE?

Financial assistance is available to victims of violent crime to help pay for or reimburse the costs of goods or services needed to help in recovery.

You may be eligible to receive financial assistance if you have a physical or psychological injury because of a crime, or because you witnessed or are related to someone who died as a result of homicide.

You can apply for financial assistance even if the person who committed the crime is not charged with or convicted of the crime.

A report to police is generally required to assess an application. We encourage you to report the crime to the police if it is safe to do so.

Applications made after 1 July 2017

The Victims of Crime Commissioner assesses all applications for financial assistance made after 1 July 2017.

Applications made before 1 July 2017

If you made an application for financial assistance at the ACT Magistrates Court before 1 July 2017, then your application will continue to be processed by the ACT Magistrates Court with assistance from the ACT Government Solicitor. If you have any queries regarding your application you will need to contact the ACT Government Solicitor on 02 6205 3716.



WHO CAN APPLY?

You can apply for financial assistance if:

- You were injured as a direct result of a violent crime
- You were injured as a direct result of witnessing a homicide
- You are a family member, a dependent, or someone who had an intimate relationship with a person who died as a result of a homicide
- You paid for the funeral of a person who died as a result of a homicide (up to \$8,000).

To apply for financial assistance, the crime must have occurred in the ACT on or after 1 July 1983.

WHAT HAPPENS WHEN YOU APPLY?

When we receive your application for financial assistance an assessor in the Financial Assistance Scheme team will write to you to acknowledge your application.

The assessor will review your application and may need to seek further information from you or other service providers in order to determine whether you are eligible for financial assistance and if so what payments can be made. This process can take some time.

An assessor will contact you once a decision has been made about your application. You may also contact us with any queries you have about your application.

TYPES OF ASSISTANCE AVAILABLE

Depending on your circumstances and eligibility, financial assistance may be available to cover:

- Personal security, for example, changing locks (up to \$4,000)
- Relocation expenses, for example, hiring a removal van (up to \$4,000)
- Counselling or other psychological support
- Cleaning the scene of a homicide
- Medical or dental expenses related to the injury
- Travel expenses, for example, attending medical treatment
- Justice related expenses, for example, attending court in relation to the crime
- Loss of actual salary or wages (up to \$30,000)
- Reasonable expenses incurred by a parent or primary carer
- Other expenses in exceptional circumstances.

RECOGNITION PAYMENT

In some circumstances a recognition payment can be made to acknowledge the trauma that results from an act of violence.

The amount of a recognition payment depends upon the type of crime and the circumstances, and are set by the regulations. To be eligible for a recognition payment, the crime must have been reported to police.

Not all victims of an act of violence or related victims will be eligible for a recognition payment.

VICTIM SUPPORT ACT - VICTIM INFORMATION GUIDE

HOW CAN I HELP MYSELF?

It is common for victims of crime to experience a range of physical, emotional, behavioural and cognitive reactions in the first days and weeks following a traumatic incident. Whilst most of these are normal and understandable, some have the potential to interfere with healthy functioning and coping.

There are a number of strategies victims can use to help alleviate unpleasant symptoms and build up resilience. Some ideas that might be helpful are listed below.

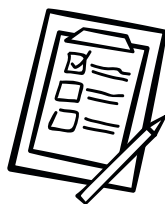
Give yourself permission

- Recognise that you have been through a distressing experience and give yourself permission to experience some reaction to it
- Remind yourself that you are not abnormal and that you can and **are** coping
- Avoid making any major decisions or big life changes in the early days and weeks after the crime
- Allow yourself time to rest if you are feeling tired
- Live one day at a time
- Take time out from difficult situations, e.g. go for a walk, but remember to come back to the situation when calm and address the problem then



Structure your day

- Plan a pleasant activity for every day and allow yourself to enjoy it
- Keep busy and avoid allowing large blocks of time when nothing is planned
- Try to make some progress on the 'jobs' that need doing each day, even if it's only a small job



Let it out

Expressing your feelings and sharing them with supportive people you trust (family, friends and professionals) is an important step in the healing process. If you don't feel comfortable talking about them, try writing them down in a diary



Make relaxation routine

Make time to practice relaxation techniques that will help your body and nervous system to settle and readjust, such as:

- Controlled breathing – Breathe in through your nose to the count of 3 (3 seconds) and say to yourself "in, two, three"; breathe out through your nose, again counting to 3 and say to yourself "relax, two, three"
- Progressive muscle relaxation - progressively tighten and then relax all the muscles of your body. Focus on the release when you let your muscles loosen
- Absorb yourself in a relaxing activity such as gardening or listening to music
- Have a massage
- Meditate



Be mindful of avoidance

It is normal to avoid recollections, activities and places that remind you of the crime. Gradually acknowledging and understanding what has happened will assist in coming to terms with it.

- Try not to block out thoughts of what has happened
- Don't unnecessarily avoid certain activities or places. Instead, take a supportive person with you

Keep up the exercise

Exercise helps reduce symptoms by providing an outlet to let off stress that has built up in your body. It doesn't have to be strenuous, but it needs to be regular. Try to do something every day.

- Walk, swim, garden, team games, yoga, pilates

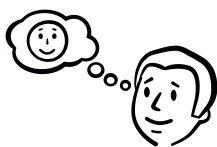
Invest in social relationships

The people around you are very important to help you recover:

- Let your friends and family know of your needs. Help them to help you by letting them know when you are tired, need time out or need a chance to talk or just be with someone
- Spend time with people who care and whose company you enjoy

Look after your psychological health

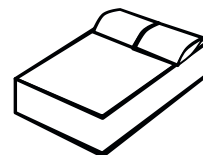
- Notice your 'self talk' and correct negative and unhelpful thoughts. For example, replace 'it has ruined my life' with something more helpful like 'it's understandable that I am upset, but there is help available and each day its getting easier'
- Set aside 15 mins 'worry time' each day, allow yourself to ruminate and when the time stops, leave your worries behind and work on thinking positively. Try to stop yourself from worrying throughout the day and leave it to your designated worry time
- If the trauma that you experience stirs up memories or feelings from a past, unrelated stressful occurrence, or childhood experience, try not to let the memories all blur together. Keep the memories separate and deal with them separately
- Keep your sense of humour and make sure you have fun
- Identify warning signs and triggers to emotions such as anger, anxiety and stress and try to understand what your body is trying to communicate to you. Try to calm yourself using relaxation techniques and ask yourself if there is something you can do to manage the situation that is causing those feelings



Maintain Healthy sleep habits

Regular healthy sleep patterns are important to psychological wellbeing:

- Get up at the same time every day
- Avoid napping and sleeping-in to 'catch up'
- Reduce caffeine to a max of 4 per day and none after 4pm
- Ensure a relaxing pre-sleep routine such as reading, listening to soothing music, or using relaxation techniques. Avoid use of TV and backlit electronic devices prior to sleep
- Go to bed at the same time each evening
- Create a dark space for sleep and open window furnishings during the day



Look after your physical health

- make an appointment with your GP and/or other health professionals
- Avoid use of alcohol and other drugs to cope
- Reduce caffeine intake which can impair sleep and heighten anxiety
- Maintain a healthy balanced diet of regular meals



VICTIM SUPPORT ACT

Victim Support ACT provides services for victims of crime and those people close to victims who are affected by the crime. VSACT provides support, counselling, physical therapies, information, advocacy as well as assistance with the criminal justice system.

Contact us on 1800 822 272 or visit the website at www.victimsupport.act.gov.au

ENGLISH	If you need interpreting help, telephone:
ARABIC	إذا احتجيت لمساعدة في الترجمة الشفوية، إتصل برقم الهاتف:
CHINESE	如果你需要传译员的帮助，请打电话:
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διαμετρήνα, τηλεφωνήστε στο:
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajjuna l'interpretu, compel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
PORTUGUESE	Se você precisar da ajuda de um intérprete, telefone:
SERBIAN	Ako vam je potrebna pomoć prevodionica telefonirajte:
SPANISH	Si necesita la asistencia de un intérprete, llame al:
TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoai:
TRANSLATING AND INTERPRETING SERVICE	
131 450	
<small>Canberra and District: 24 hours a day, seven days a week</small>	



VICTIM SUPPORT ACT - VICTIM INFORMATION GUIDE 2/2012

NORMAL REACTIONS TO TRAUMA AND SEVERE STRESS

If you have experienced a traumatic event, eg, injury, loss of a loved one, a serious threat, loss of property or any overwhelming emotional experience, you may experience some strong emotional or physical reactions. It is normal for people to have these feelings. This Information Guide should help you understand some of what you are experiencing.

Remember that people react differently, so you may not experience any of the symptoms described on this sheet. They are a guide only, intended to help you understand that it is normal to have a range of reactions following an unusual or threatening situation or event.

Symptoms may be divided into categories and the following list is an example of the kinds of reactions that have been described – there may be others that are not listed.

PHYSICAL

- Nausea
- Tremors, twitches
- Aches & pains such as headaches
- Sweating
- Feeling uncoordinated, clumsy
- Lack of appetite
- Change in sexual interest/activity
- Sleep disturbance

COGNITIVE / THINKING:

- Confusion
- Blaming
- Slowed thinking
- Difficulty in concentrating
- Difficulty in making decisions
- Disorientation
- Memory problems
- Hyper vigilance, easily startled
- Nightmares
- Thoughts or images of the incident

EMOTIONAL

- Irritability
- Anxiety
- Anger
- Guilt
- Denial
- Fear
- Depression
- Feeling numb; as if things aren't real
- Shock
- Emotional swings
- Shame
- Grief

BEHAVIOURAL

- Changes in activity
- Withdrawal
- Emotional outbursts
- Increased smoking and/or consumption of alcohol or other drugs

HOW LONG DO THESE REACTIONS LAST ?

Some people's reactions settle within a few days, others may experience them for much longer before they feel they have regained control of their lives.

If these reactions persist and continue to affect your sense of well-being and your normal activities, please contact the Victim Support ACT for assistance.

LOOKING AFTER YOURSELF

There are some simple things you can do to take care of yourself following a traumatic or stressful event –

- Do things that make you feel safe and secure
- Talk to people who are supportive
- Ask for help
- Do things that you enjoy
- Continue normal routines where possible

VICTIM SUPPORT ACT

promoting rights & recovery for victims of crime in the ACT



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ACT
Government

- Physical exercise
- Relaxation
- Adequate rest and diet
- Express or write down your thoughts and feelings

HOW FAMILIES/FRIENDS CAN HELP:

- Be sensitive to the impact that a traumatic event may have on a person
- Let the person talk and recognise that the issues may need to be discussed several times
- Listen – you don't have to have the answers
- Offer to help with practical chores eg. Shopping, meals etc
- Be patient
- Try not to take the emotional responses personally

WHEN PROFESSIONAL HELP MIGHT BE NEEDED

- Difficulty in dealing with the intensity of feelings/ physical symptoms
- Continuing to feel numb and withdrawn
- No-one to share your feelings with
- Continuing nightmares, disturbed sleep and flashbacks—still occurring weeks later
- If you feel your relationships and/or work are suffering

VICTIM SUPPORT ACT

Victim Support ACT provides services for victims of crime and those people close to victims who are affected by the crime. VSACT provides support, counselling, physical therapies, information, advocacy as well as assistance with the criminal justice system.

Contact us on 1800 822 272 or visit the website at www.victimsupport.act.gov.au

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VIETNAMESE	Nếu bạn cần một người thông-ngôn hãy gọi điện-thoại:

TRANSLATING AND INTERPRETING SERVICE

131 450

Canberra and District - 24 hours a day, seven days a week



VICTIM SUPPORT

ACT Human Rights Commission

PROMOTING RIGHTS AND RECOVERY FOR VICTIMS OF CRIME

THE IMPACT OF CRIME

The experience of crime can be traumatic. People are often affected in different ways, and there is no right or wrong response. It is common to go through a range of responses that differ from day to day.

The impact of crime can last a long time and you may experience both physical and emotional responses. Your response to a crime will not always depend on how 'serious' the crime was.

If you have been affected by crime, it can help your recovery to seek the support of professionals, as well as family or friends.

VICTIM SUPPORT ACT

Victim Support ACT provides a range of services to people affected by a crime committed in the ACT. We will work with you to help you recover and access your rights and entitlements.

Our services are free and confidential. You do not need to have reported the crime to police to access our services.

contact us

Victim Support ACT,
Human Rights Commission
GPO Box 158, Canberra City ACT 2601
Level 2, 11 Moore Street,
Canberra City ACT 2601

Phone: (02) 6205 2222
Free call: 1800 822 272
Email: victimsupport@act.gov.au
www.victimsupport.act.gov.au

Our services can be provided over the telephone or by face to face appointments.



VICTIMS OF CRIME
COMMISSIONER
ACT Human Rights Commission

Phone: (02) 6205 2222
Free call: 1800 822 272
Email: victimsupport@act.gov.au

www.victimsupport.act.gov.au

VICTIM SERVICES

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

- Free counselling with trained counsellors, psychologists or social workers
- Information about reporting a crime to police and what to expect at court
- Advocacy to help you access your rights in the criminal justice system
- Assistance to prepare a Victim Impact Statement for court
- Information and support to apply for financial assistance
- Referrals to other specialist services that may assist in your recovery.

COURT SUPPORT

Navigating court processes can be challenging.

If you need to attend court, the Court Support Program can provide you with information and support.

The Court Support Program is delivered by trained, highly skilled volunteers and can provide you with support in both the criminal justice system and when applying for a Family Violence Order or Personal Protection Order.

FINANCIAL ASSISTANCE SCHEME

Financial assistance may be available to help pay for or reimburse the costs of goods or services needed to help you recover from the effects of a violent crime.

You may be eligible to receive financial assistance if you have a physical or psychological injury because of the crime, or because you witnessed or are related to someone who died as a result of homicide.

Please see our Financial Assistance Scheme brochure for more information and to find out if you may be eligible for financial assistance.

ABORIGINAL AND TORRES STRAIT ISLANDER PROGRAM

Victim Support ACT has a program to assist Aboriginal and Torres Strait Islander victims. The program seeks to ensure that:

- culturally responsive services are available to Aboriginal and Torres Strait Islander victims; and
- Aboriginal and Torres Strait Islander communities know about Victim Support ACT services.

If someone has injured you or your family, or you have witnessed a crime (including family violence) call and speak to someone in our Aboriginal and Torres Strait Islander program.

VICTIMS OF CRIME COMMISSIONER

The Victims of Crime Commissioner oversees Victim Support ACT.

The Commissioner promotes the rights of victims of crime and can assist if you have concerns or complaints about the criminal justice system.

CONTACT US

For more information on any of the services provided by Victim Support ACT contact us on 6205 2222.



18 April 2023

<<SendToTitleFirstnameSurname>>

<Address>

Dear <Applicant name>,

Acknowledgement of Application – <Application number>

Thank you for your application to Victim Support ACT for Financial Assistance. This letter is to provide you with some information about your application and the assessment process.

Application details:

Application Number	XXX/XX <i>You can quote this number when contacting us.</i>
Assessor Contact Details	XXXX Phone: 6205 2222 or 1800 822 272 Email: [REDACTED]

Extension of time granted:

We have considered your circumstances and your reasons for taking longer than three years from the act of violence/turning 18 to lodge your application, and we have granted you an extension of time. This means we will assess your application, and there is nothing further you need to do.

What happens next?

1. Review and gather information about the act of violence and your injury:

I will review your application and any documents that you supplied with it. I will also request information from any agency or person you have given us permission to contact. If the act of violence was reported to police, I will also request information from police. I may contact you if I need to check anything or need more information from you.

2. Decide whether financial assistance can be granted:

I will review all the information and decide whether your application can be covered by the Financial Assistance Scheme. You will get a letter from me with my decision and reasons. I may be able to make decisions on some parts of your application before other parts. This means you may receive more than one decision letter.

3. Obtain receipts, invoices, or quotes for your expenses:

If you are found eligible for financial assistance, I may need receipts, invoices, or quotes in order to make payments.

Further information about the assessment of financial assistance applications can be found on our website www.victimsupport.act.gov.au/financial-assistance-scheme.

You can contact me if you have any questions or need to discuss your application.

Yours sincerely

Assessor name

Assessor for the Financial Assistance Scheme



Frequently Asked Questions

How long will the assessment of my application take?

Victim Support ACT receive a very large number of applications for financial assistance. This means it can take a considerable time to assess an application. At present, our processing times are 12-18 months.

A number of factors can also affect how long it takes to assess an application, including whether we are waiting for medical or police information. Delays can also occur if we don't have receipts or invoices.

If you need financial assistance urgently because of immediate safety concerns, we will attend to those expenses as a matter of priority.

Can I claim lawyer's costs?

You do not need to have a lawyer or solicitor to apply for financial assistance. However, if you choose to use a lawyer, these fees can be assessed. The maximum amount you can be charged by a lawyer for an application for financial assistance is \$1,123. If you decide to ask for a review of a decision, the maximum amount you can be charged by a lawyer to assist you for an appeal or review of a decision is \$2,246.

What if some of my expenses are paid by another source (like Medicare, insurance, or workers compensation)?

If you receive a payment of financial assistance and then receive a payment from another source for the same expense (called an 'associated payment'), you are required to repay the financial assistance you were paid.

Examples of the types of payments that are considered associated payments include:

- workers compensation;
- insurance payouts;
- Medicare benefits;
- civil court awards or settlements;
- Centrelink benefits.

It is important that you tell us of any associated payment you receive within 28 days. There may be serious consequences, including criminal prosecution, if you fail to do this. If you have received an associated payment or are unsure if you have received an associated payment, please contact us as soon as possible.

What if I'm not happy with a decision about my application?

You can ask for a review of a decision that you are unhappy with. Some decisions we make are reviewed internally by Victim Support ACT, and some decisions are reviewed in the ACT Civil and Administrative Tribunal (ACAT). We will inform you of all our decisions in writing, and we will send you information about how to ask for a review of the decision at the same time.

Will Victim Support ACT seek to recover money from the offender?

Under the law, we are required to seek to recover from offenders any money paid under this scheme if the offender(s) have been convicted of the offence. This process involves notifying offenders of the amount of their debt and certain details relating to the act of violence. We **must contact you** to seek your views on this before contacting an offender about recovery action, so you will be contacted again if we are seeking to recover from the offender(s).

What other assistance can Victim Support ACT provide?

Victim Support ACT provides a wide range of services to victims of crime in the ACT in addition to the Financial Assistance Scheme. For more information on support available please visit the website www.victimsupport.act.gov.au or call on [REDACTED] or [REDACTED].

ACT FINANCIAL ASSISTANCE SCHEME

589

Primary Victim Application Form

Please complete the relevant sections of this application for financial assistance. Use the [Guide to completing a financial assistance application](#) to assist you in completing the form.

You can either print off this form and complete it by hand, or you can complete it electronically.

Please post your completed application to: Financial Assistance Section, VS ACT, GPO Box 158, Canberra City ACT 2601

or Email it to [REDACTED]

Contact Victim Support ACT for any questions you have about an application for financial assistance

Free call [REDACTED] (email) [REDACTED]

Victims of crime in the ACT may be eligible for financial assistance under the *Victims of Crime (Financial Assistance) Act 2016*. Please fill out this form if you are a primary victim of crime and are applying for an immediate needs payment, an economic loss payment and/or a recognition payment.

A **Primary victim** is the person who has been injured as the direct result of an act of violence done by another person.

Immediate need payments are for cleaning the scene of a homicide, personal security and emergency medical costs.

Economic loss payments are for counselling and other psychological support, medical and dental expenses, travel expenses, loss of earnings and other related expenses.

Recognition payments are a payment based on the offence and injury to acknowledge the harm suffered.

Special assistance payments are a lump sum payment based on the offence and acknowledge the harm suffered by sustaining an extremely serious injury (only available for acts of violence before 1 July 2016).

If you are applying as a **related victim** or **homicide witness** then please use the 'Related Victims/Homicide Witness Application Form', and if you are applying for a **funeral assistance** payment then please use the 'Funeral Assistance Application Form'.

Privacy Notice: The Victims of Crime Commissioner is collecting your personal information in order to assess your application for financial assistance in accordance with section 31 of the *Victims of Crime (Financial Assistance) Act 2016*. This information may be disclosed to The ACT Civil and Administrative Tribunal for the purpose of hearing a review should you ask for a review of the Commissioner's decision.

In general the material in our possession is not released to other people, however we may be required to produce documents to a court where there is a legal requirement to do so. Should you obtain legal representation for your claim, a copy of the application and medical evidence collected may be provided to the solicitor.

The Victims of Crime Commissioner is required to comply with the *Territory Records Act 2002 (ACT)*, the *Information Privacy Act 2014 (ACT)* and the *Freedom of Information Act 1989 (ACT)*.

I am applying for

- An immediate needs payment An economic loss payment A recognition payment or a special assistance payment
-

Have you previously lodged an application for financial assistance? yes no

This includes applications lodged with the ACT Magistrates Court (with assistance from the ACT Government Solicitor)

If yes, please provide details (eg. reference number, date of act of violence, amount of financial assistance received etc.)

Have you previously been required to repay an amount of money under the Financial Assistance Scheme as either recovery from an offender, or repayment as a victim?

yes no

If yes, is there still money owing?

yes no

What is the amount still owing?

SECTION 1 - Primary Victim's details (complete this section if you are the person wanting assistance. If you are applying on someone's behalf, please provide the primary victim's details here).

Title	First Name	Middle name(s)
<div style="border: 1px solid black; height: 25px;"></div>	<div style="border: 1px solid black; height: 25px;"></div>	<div style="border: 1px solid black; height: 25px;"></div>
Surname	Any previous name(s)	
<div style="border: 1px solid black; height: 25px;"></div>	<div style="border: 1px solid black; height: 25px;"></div>	
Gender	Date of Birth	Are you of Aboriginal and/or Torres Strait Islander origin?
<div style="border: 1px solid black; height: 25px;"></div>	<div style="border: 1px solid black; height: 25px;"></div>	<input type="checkbox"/> Yes, Aboriginal <input type="checkbox"/> Yes, Torres Strait Islander <input type="checkbox"/> No

Residential address

Postal address (if different from residential address)

Contact phone number

Alternative contact phone number

E-mail

Do you require the assistance of an interpreter? If so, please specify language

Do you identify as having a disability?

yes no

Do you have any special requirements?

SECTION 2 - Details of a person applying on behalf of the primary victim

If you are applying on the victims behalf and you do not have a formal authority to do so (eg. lawyer, guardian), written consent will need to be provided by the primary victim allowing you to do so. Please refer to the **Guide to completing a financial assistance application** about how the victim can provide written consent.

Are you completing this application on the victim's behalf? yes no

If yes please fill out the below questions.

What is your relationship to the victim?

First name

Surname

Residential address

Postal address (if different from residential address)

Contact phone number

Alternative contact phone number

E-mail

Please explain the reason for assisting the victim to complete the application (e.g the victims age, disability)

If you are formally appointed to act on behalf of the victim please attach a copy of relevant documentation (eg. guardianship documentation).

SECTION 3 - Details of the act of violence

Date the act of violence occurred

OR

Date from

Date to

Where did the act of violence take place?

What was the nature of the act of violence? (please choose closest match)

Assault

Sexual Assault

Domestic/Family Violence

Robbery

Other

Briefly describe what happened

Was anyone charged with the offence yes no unsure

List the name(s) of the offender(s) (if known)

SECTION 4 - Reporting the act of violence

PART A - Reporting the act of violence to Police (Please fill in this part if the act of violence was reported to police)

Was the act of violence reported to police? yes no unsure

What is the name of the Police officer reported to?

What is the police reference number?

When was the act of violence reported to police?

PART B - Reporting the act of violence to other (only fill in this part if the act of violence was not reported to police)

Why wasn't the act of violence reported to police?

Was the act of violence reported to someone other than the police? yes no unsure

When was the act of violence reported to someone other than the police? (if known)

Was the act of violence reported to:

- a Doctor/Psychologist/Social Worker/Counsellor
- a government agency
- a non-government agency (eg. Domestic Violence Crisis Service, Canberra Rape Crisis Centre)

Please list all of the people/agencies you reported the act of violence to including addresses and phone numbers (if known)

You may need to provide evidence of your report being made to these professions/agencies, including any notes or reports that they make. You can also provide consent for your assessor to speak directly to these agencies. Please speak to the individual/agency about how consent should be given.

SECTION 5 - Injury

What type of injury did you sustain? physical
 psychological

Briefly describe your injuries including the details of any person or agency who saw or treated your injury (eg. doctor).

The Victims of Crime Commissioner may be able to assist you to obtain your medical/hospital records for your claim. In order to allow for this please complete the consent form at **SECTION 10**

SECTION 6 - Financial Assistance for an Immediate Need payment

You may be eligible to apply for an immediate need payment for certain expenses under certain conditions. Expenses that may not be considered immediate needs may still be assessed as an economic loss payment. To support your claim for an immediate need please provide receipts and/or invoices and other supporting documentation. Assistance from other sources such as private health insurance, medicare, and other rebates will be taken into account. Please refer to the **Guide to completing a financial assistance application** for information about what can be claimed.

Expense	Service provider/Expense details	Amount
<input type="radio"/> cleaning scene of homicide <input type="radio"/> personal security costs <input type="radio"/> relocation costs <input type="radio"/> emergency medical		
<input type="radio"/> cleaning scene of homicide <input type="radio"/> personal security costs <input type="radio"/> relocation costs <input type="radio"/> emergency medical		

Expense	Service provider/Expense details	Amount
<input type="radio"/> cleaning scene of homicide <input type="radio"/> personal security costs <input type="radio"/> relocation costs <input type="radio"/> emergency medical		

Expense	Service provider/Expense details	Amount
<input type="radio"/> cleaning scene of homicide <input type="radio"/> personal security costs <input type="radio"/> relocation costs <input type="radio"/> emergency medical		

If you require further space to list expenses you can add them to the notes page at **SECTION 11**

SECTION 7 - Financial Assistance for Economic Loss

To support your claim for economic loss please provide receipts and/or invoices and other supporting documentation. Assistance from other sources such as private health insurance, medicare, and other rebates will be taken into account. Please check the paid box if you have paid the expense already. Please refer to the **Guide to completing a financial assistance application** about what can be claimed.

Expense

- | | |
|---|--|
| <input type="radio"/> Counselling/Psychological support | <input type="radio"/> Expenses incurred making the application |
| <input type="radio"/> Medical/Dental | <input type="radio"/> Travel |
| <input type="radio"/> Justice related | <input type="radio"/> Expenses incurred by parent/carer |
| <input type="radio"/> Loss or damage to personal items | <input type="radio"/> Other |

Service provider/Expense details	Amount	Paid
		<input type="checkbox"/>

Expense

- | | |
|---|--|
| <input type="radio"/> Counselling/Psychological support | <input type="radio"/> Expenses incurred making the application |
| <input type="radio"/> Medical/Dental | <input type="radio"/> Travel |
| <input type="radio"/> Justice related | <input type="radio"/> Expenses incurred by parent/carer |
| <input type="radio"/> Loss or damage to personal items | <input type="radio"/> Other |

Service provider/Expense details	Amount	Paid
		<input type="checkbox"/>

Expense

- | | |
|---|--|
| <input type="radio"/> Counselling/Psychological support | <input type="radio"/> Expenses incurred making the application |
| <input type="radio"/> Medical/Dental | <input type="radio"/> Travel |
| <input type="radio"/> Justice related | <input type="radio"/> Expenses incurred by parent/carer |
| <input type="radio"/> Loss or damage to personal items | <input type="radio"/> Other |

Service provider/Expense details

Amount

Paid

		<input type="checkbox"/>
--	--	--------------------------

Expense

- | | |
|---|--|
| <input type="radio"/> Counselling/Psychological support | <input type="radio"/> Expenses incurred making the application |
| <input type="radio"/> Medical/Dental | <input type="radio"/> Travel |
| <input type="radio"/> Justice related | <input type="radio"/> Expenses incurred by parent/carer |
| <input type="radio"/> Loss or damage to personal items | <input type="radio"/> Other |

Service provider/Expense details

Amount

Paid

		<input type="checkbox"/>
--	--	--------------------------

Expense

- | | |
|---|--|
| <input type="radio"/> Counselling/Psychological support | <input type="radio"/> Expenses incurred making the application |
| <input type="radio"/> Medical/Dental | <input type="radio"/> Travel |
| <input type="radio"/> Justice related | <input type="radio"/> Expenses incurred by parent/carer |
| <input type="radio"/> Loss or damage to personal items | <input type="radio"/> Other |

Service provider/Expense details

Amount

Paid

		<input type="checkbox"/>
--	--	--------------------------

If you require further space to list expenses you can add them to the notes page at **SECTION 11**

Loss of earnings

- Are you claiming loss of earnings? yes
 no

Dates absent from work

--

Total number of days absent

--

A medical certificate or statement from a medical professional may be required to support your claim for loss of earnings.

To support your claim for loss of earnings, you **must** provide a statement from your employer that includes their name and address and the dates you were absent from work. The statement from your employer should also include a balance of your holiday or sick leave entitlements as these must be used before you can claim loss of earnings. It should also outline your hourly, weekly or yearly salary.

If you were self-employed, you should provide some form of evidence that shows your absence from work, such as a statement from your accountant and medical records. Any statement to support your claim for loss of earnings will need to be provided before your claim is determined by an assessor.

SECTION 8 - Money received from other sources

Have you received money, or do you intend to make a claim in relation to this matter regarding:

Medicare or private health benefit yes no

Please provide details

an award of damages or a reparation order? yes no

Please provide details

worker's compensation? yes no

Please provide details

civil or other court claim? yes no

Please provide details

insurance payment? yes no

Please provide details

Centrelink payment or other source? yes no

Please provide details

SECTION 9 - Declaration and agreement to conditions (the person who is applying for financial assistance must complete this section unless there is a person [legally acting on their behalf](#)).

The information you provide on your application form is very important to support your claim. You can write to us to add or change information that you provided in this application at any time before an application is finalised.

If you have any questions please contact Victim Support ACT on [REDACTED] or [REDACTED].

I declare that

- the information provided in this application is true and correct

I confirm the above declaration

I understand that

- giving false or misleading information is a serious offence and may adversely affect the result of the application
- the Victims of Crime Commissioner will make relevant enquiries to verify the information provided
- the Victims of Crime Commissioner may request documents to prove identity at any time throughout the claims process

I have read and understand the above conditions

Signature (if submitting this form electronically please type your name)

Date

SECTION 10 - Consent form

The purpose of the consent form is so that **in some circumstances** the Victims of Crime Commissioner can obtain medical records and other information on your behalf. Without your consent we will be unable to collect records on your behalf. Please note that there may be instances where we are unable to collect records on your behalf.

Records release form

I (full name)

of (address)

Date of birth

hereby give my consent for the Victims of Crime Commissioner to contact the people/agencies listed below to obtain any reports, notes or other relevant information relating to examination/treatment for:

Act of violence

committed on (date)

Name of Health Professional/Agency

Address

Contact number

Name of Health Professional/Agency

Address

Contact number

Name of Health Professional/Agency

Address

Contact number

Name of Health Professional/Agency

Address

Contact number

Signature

Date

Any of the information on this page that is not relevant to each individual listed Health Professional/Agency will be blacked out before it is provided to each Health Professional/Agency.

The medical or other information collected will be used to determine any entitlement to financial assistance. The Victims of Crime Commissioner makes no guarantee that any information provided by the Health Professional/person is relevant to your application for financial assistance. This consent form may be provided, in its entirety, to the Health Professional/s/people listed above.

In general the material in our possession is not released to other people, however we may be required to produce documents to a court where there is a legal requirement to do so.

Victim Support ACT and the Victims of Crime Commissioner are required to comply with the *Health Records (Privacy and Access) Act 1997*, the *Territory Records Act 2002 (ACT)*, the *Information Privacy Act 2014 (ACT)* and the *Freedom of Information Act 1989 (ACT)*.

SECTION 11 - Notes

Please add any additional information here that you would like the Commissioner to take in to account when deciding your application. You may attach additional pages if there is insufficient space.



0 XXX 0000

<<SendToTitleFirstnameSurname>>

<Address>

Dear <Name of authorised person>,

Acknowledgement of Application – <application number>

Thank you for your application to Victim Support ACT for Financial Assistance on behalf of <name of applicant>. This letter is to provide you with some information about your application and the assessment process.

If <applicant name> would like to be included in correspondence relating to their application, please let me know and I will direct my correspondence accordingly.

Application details:

Application Number	XXX/XX <i>You can quote this number when contacting us.</i>
Assessor Contact Details	XXXX Phone: [REDACTED] or [REDACTED] Email: [REDACTED]

Extension of time granted:

We have considered <name of applicant's> circumstances and reasons for taking longer than three years from the act of violence/turning 18 to lodge an application, and we have granted an extension of time. This means we will assess the application, and there is nothing further you need to do.

What happens next?

1. Review and gather information about the act of violence and your injury:

I will review your application and any documents that you supplied with it. I will also request information from any agency or person you have given us permission to contact. If the act of violence was reported to police, I will also request information from police. I may contact you if I need to check anything or need more information from you.

2. Decide whether financial assistance can be granted:

I will review all the information and decide whether your application can be covered by the Financial Assistance Scheme. You will get a letter from me with my decision and reasons. I may be able to make decisions on some parts of your application before other parts. This means you may receive more than one decision letter.

3. Obtain receipts, invoices, or quotes for your expenses:

If you are found eligible for financial assistance, I may need receipts, invoices, or quotes in order to make payments.

Further information about the assessment of financial assistance applications can be found on our website www.victimsupport.act.gov.au/financial-assistance-scheme.

You can contact me if you have any questions or need to discuss your application.

Yours sincerely

Assessor name

Assessor for the Financial Assistance Scheme

Frequently Asked Questions

How long will the assessment of my application take?

Victim Support ACT receive a very large number of applications for financial assistance. This means it can take a considerable time to assess an application. At present, our processing times are 12-18 months.

A number of factors can also affect how long it takes to assess an application, including whether we are waiting for medical or police information. Delays can also occur if we don't have receipts or invoices.

If you need financial assistance urgently because of immediate safety concerns, we will attend to those expenses as a matter of priority.

Can I claim lawyer's costs?

You do not need to have a lawyer or solicitor to apply for financial assistance. However, if you choose to use a lawyer, these fees can be assessed. The maximum amount you can be charged by a lawyer for an application for financial assistance is \$1,123. If you decide to ask for a review of a decision, the maximum amount you can be charged by a lawyer to assist you for an appeal or review of a decision is \$2,246.

What if some of my expenses are paid by another source (like Medicare, insurance, or workers compensation)?

If you receive a payment of financial assistance and then receive a payment from another source for the same expense (called an 'associated payment'), you are required to repay the financial assistance you were paid.

Examples of the types of payments that are considered associated payments include:

- workers compensation;
- insurance payouts;
- Medicare benefits;
- civil court awards or settlements;
- Centrelink benefits.

It is important that you tell us of any associated payment you receive within 28 days. There may be serious consequences, including criminal prosecution, if you fail to do this. If you have received an associated payment or are unsure if you have received an associated payment, please contact us as soon as possible.

What if I'm not happy with a decision about my application?

You can ask for a review of a decision that you are unhappy with. Some decisions we make are reviewed internally by Victim Support ACT, and some decisions are reviewed in the ACT Civil and Administrative Tribunal (ACAT). We will inform you of all our decisions in writing, and we will send you information about how to ask for a review of the decision at the same time.

Will Victim Support ACT seek to recover money from the offender?

Under the law, we are required to seek to recover from offenders any money paid under this scheme if the offender(s) have been convicted of the offence. This process involves notifying offenders of the amount of their debt and certain details relating to the act of violence. We **must contact you** to seek your views on this before contacting an offender about recovery action, so you will be contacted again if we are seeking to recover from the offender(s).

What other assistance can Victim Support ACT provide?

Victim Support ACT provides a wide range of services to victims of crime in the ACT in addition to the Financial Assistance Scheme. For more information on support available please visit the website www.victimsupport.act.gov.au or call on [REDACTED] or [REDACTED].



<Date>

<Name>

<Address>

<Email address>

Dear <name>,

Acknowledgement of Application – xx/xx

Thank you for your Financial Assistance Application under the *Victims of Crime (Financial Assistance) Act 2016*. I am writing to you to confirm that we have received your application and to provide you with some information relevant to your application. You are welcome to contact me if you have any questions about your application.

Your Application Number is xx/xx. Please quote this number when contacting the Financial Assistance Section at the ACT Human Rights Commission. Please be advised that this letter is **not confirmation** that you are eligible to receive financial assistance as it has not yet been assessed.

IF AN EXTENSION OF TIME ASSESSMENT IS REQUIRED

Section 32 of the *Victims of Crime (Financial Assistance) Act 2016* provides an application for financial assistance must be made within 3 years of:

- the day of the act of violence;
- if there are 2 or more relevant acts of violence – the day of the most recent act of violence;
- for an application by an individual who was under 18 years old on the day of the act of violence, the day the individual turns 18.

The Victims of Crime Commissioner may extend the time for making an application if the Commissioner believes on reasonable grounds that an extension of time is in the interests of fairness.

We have considered the reasons provided for the delay in lodging your application and advise that your application for an extension of time for making an application has been **granted**.

I have been assigned to assess your application. This means I will review your application and then contact you to discuss your eligibility and any further information required for the assessment process.

Please be advised that the *Victims of Crime (Financial Assistance) Act 2016* requires the Victims of Crime Commissioner to seek to recover money from offenders, who are convicted of committing acts of violence, the financial assistance paid under this scheme. This means that the Commissioner will seek to recover any financial assistance paid to you from the offender(s) if they are convicted of the offence. This process involves notifying offenders of the amount of their debt and certain details relating to the act of violence. The Commissioner must contact you to seek your views on this before

contacting an offender about recovery action so you will be contacted again if the Commissioner is seeking to recover from the offender(s).

During the application process there are decisions that are internally reviewable through the Financial Assistance Section and externally reviewable to the ACT Civil and Administrative Tribunal. The Financial Assistance Section will inform you of these reviewable decisions and we will send you information about how to ask for the review of a decision.

You do not need to have a lawyer or solicitor to apply for financial assistance. However, if you do decide to seek legal assistance, the maximum amount you can be charged by a lawyer for an application for financial assistance is \$1,123. If you decide to ask for a review of a decision the maximum amount you can be charged by a lawyer to assist you for an appeal or review of a decision is \$2,246.

Please note that any grant of financial assistance is conditional. If you receive a payment of financial assistance and then receive a payment from another source for the same expense (called an associated payment), you are required under the Act to repay the financial assistance you were paid.

Examples of the types of payments that are considered associated payments include:

- workers compensation;
- insurance payouts;
- Medicare benefits;
- civil court awards or settlements;
- Centrelink benefits.

It is important that you tell the Financial Assistance Section of any associated payment you receive as it is a criminal offence under the Act to fail to disclose that you have received an associated payment within 28 days of receiving the associated payment. If you have received an associated payment or you are unsure if you have received an associated payment, please contact the Financial Assistance Section at the ACT Human Rights Commission.

Further information about the assessment of financial assistance applications can be found;

- on our website www.victimsupport.act.gov.au/financial-assistance-scheme,
- by calling the Financial Assistance Section on [REDACTED] or [REDACTED], or
- by emailing [REDACTED].

Please note that Victim Support ACT provides a wide range of services to victims of crime in the ACT in addition to the Financial Assistance Scheme. Victim Support ACT connects victims of crime and their families to support services available to assist in their recovery. For more information on support available please visit the website www.victimsupport.act.gov.au or call on [REDACTED] or [REDACTED].

Yours sincerely

Assessor name

Assessor for the Financial Assistance Scheme



Submission to the Victorian Law Reform Commission

Improving the Response of the Justice System
to Sexual Offences

January 2021

Contents

1. Introduction	1
2. The Victims of Crime Commissioner and the Victims' Charter	4
3. About this submission	5
4. The extent of the problem	7
5. A Victorian strategy addressing sexual assault	11
6. A trauma-informed justice and service system response	13
7. A strengthened victims' services system and new Financial Assistance Scheme	15
8. Victim-led choice and control over case progression	18
9. Participation	27
10. Legal advice and legal representation	34
11. Specialised support and justice responses	42
12. Cultural change and education within the legal profession	54
13. Evidence and procedure	64
14. Other aspects of the criminal law	71
Appendix A: Summary of recommendations	78

1. Introduction

I welcome the opportunity to make a submission to the Victorian Law Reform Commission's (VLRC) review: *Improving the Response of the Justice System to Sexual Offences*. I commend the Victorian Government's commitment to reviewing the justice and service systems' response to sexual offences.

Despite the range of reforms introduced over the past few decades,¹ victims continue to perceive, or experience, barriers to seeking justice and an appropriate service system response following sexual assault.

Although one in five women in Australia will experience sexual assault,² research consistently demonstrates that sexual offences are under-reported, under-prosecuted, and under-convicted.³ Sexual assault has been described as an 'invisible crime', one which fails to progress through the justice system almost every time.⁴

It is clear there is still much work to do to meet the needs of victims of sexual assault.

¹ A number of changes to evidence law and court procedure have been implemented to meet the needs of victims of sexual offences including alternative ways to give evidence, prohibitions against asking victims about their sexual history, suppression and closed court orders and restrictions on accessing and using a victim's confidential counselling and medical records. See, for example, Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 18. See also Nicole Bluett-Boyd and Bianca Fileborn, Australian Institute of Family Studies, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions* (Research Report 27, March 2014) vii.

² Australia's National Research Organisation for Women's Safety, *Violence against women: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012* (Research Report, 2016) 50.

³ Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 2; RMIT Centre for Innovative Justice, *Innovative justice responses to sexual offending* (Report, May 2014) 6; Australian Institute of Family Studies and Victoria Police, *Challenging Misconceptions about Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners* (Report, September 2017) 14.

⁴ The attrition rate in sexual assault matters is discussed further below. Naomi Neilson, 'A grim reality: The justice system and sexual assault cases' *Lawyers Weekly* (27 April 2020). See also Georgina Heydon and Anastasia Powell who refer to this as a 'justice gap': Georgina Heydon and Anastasia Powell, 'Written-response interview protocols: an innovative approach to confidential reporting and victim interviewing in sexual assault investigations' (2016) (6) *Policing and Society* 631, 631.

Negative perceptions of the legal system's response to sexual assault—including concerns by victims that they may not be believed or treated seriously—continue to inform victims' decisions not to report sexual assaults.⁵

Around 80 per cent of people who experience sexual assault do not engage with the justice system.⁶

Victims who do report sexual assault may experience traumatising investigative and forensic processes, processes which not only exacerbate their trauma but, in some circumstances, also impact on the likelihood of a successful prosecution.⁷

While many cases will never proceed to trial, for those victims who are required to participate, the criminal trial process can be one of the main sources of victims' secondary trauma. As Professor Anne Cossins asserts, 'for many victims, the sexual assault trial is an ordeal, sometimes described as bad or worse than the original abuse, a place where the complainant's behaviour is on trial'.⁸

Professor Cossins describes sexual assault trials as 'one of the last arenas in which law reformers have been unsuccessful in preventing the sexual assault trial from descending into a character assassination of the complainant'.⁹ In this context, Cossins describes a victim's decision to participate in a sexual assault trial as 'a huge risk'.

It should not be a 'huge risk' for victims to seek justice through our criminal justice system.

Our justice and service system response should not pose more harm than good for victims of sexual assault.

I have been told by victims that the criminal justice process is more traumatising than the sexual assault itself. Victims have told me that they would not have

⁵ Wendy Larcombe et al, 'I think it's Rape and I think He Would be Found Not Guilty: Focus Group Perceptions of (un)Reasonable Belief in Consent in Rape Law' (2016) 25 (5) *Social and Legal Studies* 611, 613; Australia's National Research Organisation for Women's Safety, *Violence against women: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012* (Research Report, 2016) 68.

⁶ Wendy Larcombe, 'Rethinking Rape Law Reform: Challenges and Possibilities' in Ron Levy, Molly O'Brien, Simon Rice, Pauline Ridge and Margaret Thornton (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (Australian National University Press 2017) 146.

⁷ Mohammed M et al, 'Australian stakeholders' views on improving investigative interviews with adult sexual assault complainants' (2019) 26 (5) *Psychiatry, Psychology and Law* 724, 725; Georgina Heydon and Anastasia Powell, 'Written-response interview protocols: an innovative approach to confidential reporting and victim interviewing in sexual assault investigations' (2016) (6) *Policing and Society* 631, 637 who refer to 'aggressive questioning' of victim-complainants.

⁸ Annie Cossins, 'Why her behaviour is still on trial: the absence of context in the modernisation of the substantive law on consent' (2019) 42 (2) *UNSW Law Journal* 462, 462.

⁹ *Ibid* 463.

pursued a criminal justice response had they been aware of the lengthy and traumatic process, particularly the trauma caused by cross-examination.

While key justice institutions may point to legislative and procedural reform as evidence of an improved system response, many victims and specialist victim support workers are far more pessimistic in their assessment of the effectiveness of such reforms.¹⁰ Victims continue to feel traumatised, ignored or dismissed by a system that is meant to address the harm caused to them.

The prevalence of stereotypes and myths surrounding sexual assault, combined with the high burden of proof in criminal trials, compound the difficulties faced by victims in sexual assault cases. Some of these issues feel intractable. However, I believe there are ways to improve victims' experiences of the justice system through a range of reforms that, together, would make the justice system more victim-centric, trauma-informed and culturally safe.

This submission calls for a justice and service system response that recognises victims of sexual assault as active participants in the criminal justice system with different—although no less important—rights and entitlements to the accused. It articulates how each area of law, policy and practice should be reviewed (and reformed) in a trauma-informed way. It envisages a justice system that enables more meaningful participation by victims of crime.

While some of the issues explored in this submission relate specifically to sexual assault victims, many issues also extend to other victims of crime. It is appropriate that consideration be given to how the criminal justice process can better meet the needs of *all* victims. For this reason, some of the recommendations made in this submission may have a broader application than sexual assault victims. As noted by the VLRC in its 2016 report *Victims of Crime in the Criminal Trial Process*, victims are participants in the criminal justice system. Their role is essential to the effective functioning of the criminal justice system.¹¹

The justice system should not only uphold victims' participatory and procedural justice rights as articulated in the *Victims' Charter Act 2006* (Vic) ('Victims' Charter'), but further the Charter's broader intent—that is, balance a justice system that for too long has ignored the needs of victims of crime.¹²

¹⁰ See, for example, Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 47.

¹¹ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 30.

¹² When introducing the Victims' Charter Bill into parliament, the then Attorney-General stated that the Charter would facilitate ongoing cultural change within the criminal justice system. See: Victoria, *Parliamentary Debates*, Legislative Assembly, 14 June 2006, 2047 (Rob Hulls).

2. The Victims of Crime Commissioner and the Victims' Charter

The Commissioner is an independent point of contact for victims who have experienced difficulties or confusion when dealing with the criminal justice system and government and non-government victims' services.

Under the *Victims of Crime Commissioner Act 2015* (Vic), the Commissioner is empowered to advocate for the respect, recognition and inclusion of victims of crime in the justice system by:

- investigating complaints made by victims about their treatment by justice agencies and victims' services
- conducting inquiries into systemic issues that affect victims of crime
- representing the concerns of victims to government
- providing advice to the Attorney-General, the Minister for Victim Support and government departments and agencies about improvements to the justice system to meet the needs of victims of crime.

A key part of the Commissioner's role is monitoring the compliance of justice agencies and victims' services with the Victims' Charter. The Commissioner has a role in holding justice agencies and victims' services to account for their treatment of victims of crime.

The *Victims' Charter Act 2006* requires prescribed agencies to demonstrate compliance with the Victims' Charter and its principles. Prescribed agencies include Victoria Police, the Office of Public Prosecutions, community legal centres and government-funded sexual assault, family violence and specialist victims' support services.

The *Victims of Crime Commissioner Annual Report 2019-20* reports on prescribed agencies' current systems, policies and processes for ensuring compliance with the Charter. The most recent annual report demonstrates that while awareness of

the Victims' Charter is high amongst prescribed agencies, nearly 70 per cent are yet to put systems and processes into place to comply with the legislation.

Prescribed agencies' compliance with the Victims' Charter directly impacts how victims of sexual assault will experience both the justice and service system. It is vital that the Charter leads to the implementation of victim-centric standards, procedures and cultural change within justice institutions and victim support services.

Agencies must increase their capability to comply with the Charter principles. As with many of the legislative reforms introduced to address issues with the criminal justice system's response to sexual assault, the Victims' Charter is only effective when implemented in a meaningful way.

As Commissioner, each year I will monitor and report on agency compliance with the Victims' Charter.

3. About this submission

3.1. Scope

The justice and service system response to sexual offences is complex, encompassing a range of generalist and specialist support services and an array of investigatory, prosecutorial and judicial system responses. Given the scope of this review, this submission outlines relevant information and insight based on the Victims of Crime Commissioner's legislative powers and functions under the *Victims of Crime Commissioner Act 2015* (Vic).

Due to the breadth of issues discussed across the VLRC Issues Papers, and the high-level nature of some issues' exploration, it may be necessary for some issues identified in the Options Papers, and reform options arising, to be subject to further consultation with key stakeholders. Alternatively, some areas of the law may merit their own stand-alone inquiry or review, as in the area of the laws of consent in New South Wales and Queensland.

3.2. Terminology

The way in which those harmed by crime identify themselves, and their experience of crime, is deeply personal. As noted in the VLRC's *Guide to Our Issues*

Papers, those who have experienced sexual harm may use one or more of the following terms:¹³

- victim-survivor
- victim
- complainant or witness

Some people may not identify with any of these terms.

In this submission, the term 'victim' or 'victim of sexual assault' is predominantly used, because it aligns with the Victims of Crime Commissioner's legislative functions and powers under the *Victims of Crime Commissioner Act 2015* (Vic), and the definition of victim in the Victims' Charter. However, it is acknowledged that these terms may not represent all experiences.

In this submission, 'sexual assault' or 'sexual offences' is predominantly used to refer to all forms of sexual touching without consent, including rape. As noted in the VLRC's *Guide to Our Issues Papers*, this is because 'sexual assault' may be more familiar with members of the community.

Some aspects of the law (and associated commentary) use the term 'vulnerable' to refer to some victims that experience barriers to accessing justice or are entitled at law to specific programs or legal protections. The term 'vulnerable' may be used in the context of the literature or specific programs that use this term. It is acknowledged that the terms 'vulnerable' or 'vulnerability' may not represent some people's identity or experience.

¹³ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences: Guide to Our Issues Papers* (2020) 8.

4. The extent of the problem

As briefly outlined above, despite a range of reforms introduced over the past few decades to address concerns relating to sexual assault—and the justice system’s response to it—substantial barriers to justice still exist for victims of sexual assault.

Key issues in relation to sexual assault include:¹⁴

- **Additional barriers to justice for some victims of crime:** as noted in the VLRC’s *Guide to Our Issues Papers* it is more difficult for some people to access the justice system.¹⁵ There continue to be additional barriers to appropriate justice and service sector responses for people with disability, male victims of sexual assault, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, older members of our community, people who identify as LGBTIQ+, people in custodial settings, people experiencing homelessness, people with mental illness and young people, including young people in out of home care.¹⁶ There is evidence of significant under-reporting of sexual assault for particular victims of crime, including Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, children and older people.¹⁷
- **Lack of reporting:** 83 per cent of Australian women did not report their most recent incident of sexual assault to the police.
- **Higher incidents of victimisation for some populations:** young women aged 15–34 accounted for more than half (53 per cent, or 11,000) of all police-recorded female sexual assault victims in 2018; people with disability were 1.7 times as likely to have experienced sexual violence (including assault and threats) since the age of 15; people living in the most disadvantaged areas of

¹⁴ These key issues are all explored in: Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 3-6.

¹⁵ Victorian Law Reform Commission, *Improving the Response of the Justice System to Sexual Offences: Guide to Our Issues Papers* (2020) 3.

¹⁶ See also RMIT Centre for Innovative Justice, *Strengthening Victoria’s Victim Support System: Victim Services Review* (Final Report, November 2020) 74 – 75.

¹⁷ See also Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 230.

Australia are 1.5 times as likely to experience partner violence as those living in areas of least disadvantage.¹⁸

- **Lack of successful prosecution:** national and international research consistently demonstrates that incidents of rape and sexual assault are significantly under-prosecuted and under-convicted.¹⁹ Victorian research estimates that over two thirds of sexual assault incidents recorded by Victoria Police do not progress to court.²⁰

4.1. Attrition

While it can be difficult to track how sexual assault incidents recorded by police progress through the Victorian justice system, it is possible to consider trends over time.

Figure 1 below shows the number of sexual assault incidents recorded by Victoria Police compared with the total number of finalised outcomes for defendants relating to ‘sexual assault and other related offences’.²¹ It shows a growing disparity between the two data sets. Over the eight-year period analysed, the number of sexual assault incidents recorded by Victoria police increased by 72 per cent—more than double the number of cases finalised in Victorian courts.

While the year an incident is recorded by Victoria Police does not always directly correspond to the year that a matter proceeds through the court system, even accounting for a lag between incident date and court finalisation, it is clear that the number of incidents being recorded by Victoria Police is accelerating at a far greater rate compared to court finalisations.

This would suggest the attrition rate for sexual assault remains high.

¹⁸ Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia: continuing the national story* (2019) viii-ix

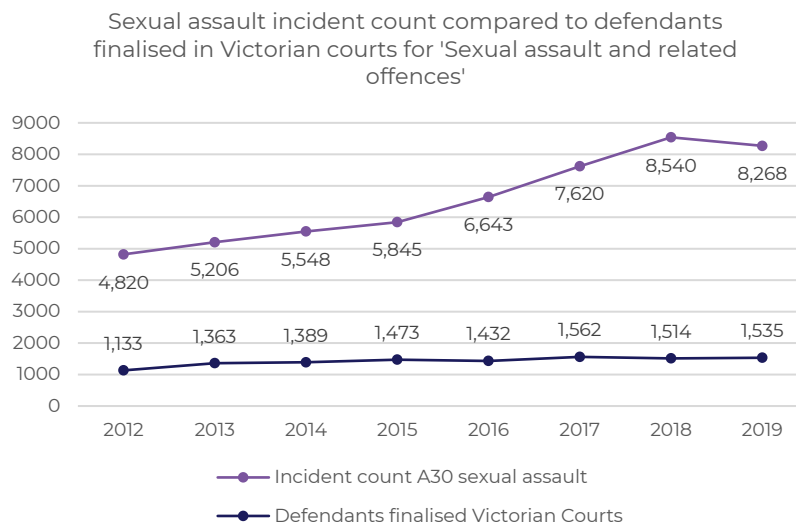
¹⁹ See also Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 2; RMIT Centre for Innovative Justice, *Innovative justice responses to sexual offending* (Report, May 2014) 6; Australian Institute of Family Studies and Victoria Police, *Challenging Misconceptions about Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners* (Report, September 2017) 14.

²⁰ Crime Statistics Agency, *Attrition of sexual offence incidents across the Victorian criminal justice system* (2017) <www.crimestatistics.vic.gov.au/research-and-evaluation/publications/attrition-of-sexual-offence-incidents-across-the-victorian>

²¹ This graph uses data obtained from Australian Bureau of Statistics and Crime Statistics Agency. See Australian Bureau of Statistics, *Criminal Courts Australia, 2018-19 – Table 21* (Catalogue No 45130DO005_201819, 27 February 2020); Crime Statistics Agency, *Criminal incidents and rate per 100,000 population by principle offence – July 2010 to June 2020* (September 2020)

This is consistent with Australia-wide research, which confirms that although reports of sexual offences in Australia have increased over recent years, attrition of sexual offence cases has remained high and conviction rates have remained low.²²

Figure 1. Sexual assault incident count compared to defendants finalised in Victorian courts



4.2. Myths and misconceptions relating to sexual assault

Myths and misconceptions continue to influence the way in which sexual assault is recognised and responded to. These permeate every level of the justice system, influencing initial reporting rates as well as decisions made by legal professionals about whether a case should proceed through the justice system.²³

Prevalent myths and misconceptions in sexual assault relate to:²⁴

- **Perceptions about rates of false allegation:** members of the community, and some members of our justice system, continue to believe that false

²² Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 1.

²³ Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 2; Nicole Bluett-Boyd and Bianca Fileborn, Australian Institute of Family Studies, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions* (Research Report 27, March 2014) 16.

²⁴ Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 3-6; See, generally, Australian Institute of Family Studies, *Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners* (Report, September 2017).

rape allegations are high, and that many people lie and fabricate reports of rape and sexual assault.

- **What constitutes ‘real rape’ or sexual assault:** widespread belief holds that rape and sexual assault involves violent attacks by strangers rather than rapes perpetrated by those known to their victim, often characterised by coercive control and/or grooming behaviours rather than the use of physical force or violence.
- **Trauma responses:** for example, that emotional victims of sexual assault are more credible than unemotional victims.
- **Reliability of evidence by people with disability and mental health issues:** people with disabilities and/or mental health issues are often incorrectly presumed to be ‘unreliable witnesses’, despite evidence confirming people with disabilities and/or mental health issues can reliably relay accurate details of assault when interviewed appropriately.²⁵

4.3. A gendered problem

Sexual offences are overwhelmingly perpetrated by males and most sexual offence victims are female.²⁶ However, as outlined further below, it is important to remember that broader victim cohorts, including people who identify as male, gender diverse or non-binary can also be victims of sexual assault. This submission assumes all victims of sexual assault are entitled to the same justice and service system responses, regardless of gender identity, while also acknowledging the gendered nature of sexual violence.

²⁵ Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 11.

²⁶ Australian Institute of Family Studies, *Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners* (Report, September 2017) 14; Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 9.

5. A Victorian strategy addressing sexual assault

Victoria does not have a dedicated strategy addressing sexual violence. While *Free From Violence: Victorian's Strategy to Prevent Family Violence and all forms of Violence Against Women* relates to all forms of violence against women, of which sexual assault is one form, this strategy does not address non-familial sexual assault for broader victim cohorts including people who identify as male, gender diverse or non-binary.

New South Wales and Queensland both have specific sexual assault strategies.²⁷

In Queensland, the strategy sets out the 'Government's vision for a Queensland where everyone lives free of the fear, threat or experience of sexual violence.'²⁸ It identifies priority areas for action, including both preventing and responding to all forms of sexual violence. While the strategy recognises that sexual violence is a gendered issue, it includes prevention and responses to all people who experience sexual violence.

It is promising that the Victorian government has indicated that a sexual assault strategy will be developed as part of the *Family Violence Rolling Action Plan 2020-2023*.²⁹ This is in recognition of the intersection between sexual assault and family violence. While sexual assault is often experienced within a family violence context, and a sexual assault strategy developed as part of the broader family violence reforms is appropriate because of this intersection, it is also important that the strategy responds to all types of sexual assault. While women and children are overwhelmingly the victims of intra-familial sexual assault,³⁰ it is important other victims are also recognised in Victoria's sexual assault strategy.

²⁷ New South Wales Government, *NSW Sexual Assault Strategy 2018–2021* (2019); Department of Child Safety, Youth and Women, Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2020).

²⁸ Department of Child Safety, Youth and Women, Queensland Government, *Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* (2020) 2.

²⁹ Victorian Government, *Family Violence Reform Rolling Action Plan 2020-2023* (2020).

³⁰ Victorian Government, *Sexual Assault and Family Violence: Sexual assault within a family violence context* (Web Page) <<https://www.vic.gov.au/family-violence-reform-second-rolling-action-plan/sexual-assault-and-family-violence>>

As noted in *Issues Paper A*, the effectiveness of the sexual assault system depends on strong relationships between parts of the system and shared goals.³¹ As the VLRC Issues Papers outline, and as this submission asserts, the extent of the problem suggests significant and sustained reform will be required over time.

Without a dedicated sexual assault strategy assessing the effectiveness of reforms over time, and measuring progress through robust data collection and evaluation, addressing deficits in responses to sexual assault may be ad hoc and disjointed. A dedicated Victorian strategy to prevent and respond to all forms of sexual assault would articulate a shared vision and clear goals, as well as provide a model of governance and accountability to track progress against goals.

It is vital that there be a sustained focus on the justice and service system response to sexual assault over time, guided by an overarching whole-of-government vision. As part of this strategy, the data and research gaps, some of which are highlighted in *Issues Paper A*, should also be identified and strategies implemented to address them.

Recommendation 1: That the Victorian Government develop a Victorian strategy to prevent and respond to sexual assault which:

- **outlines the government's key prevention and response priority areas, including implementation of recommendations arising from the VLRC's review**
- **identifies the data, research and evaluation gaps in relation to sexual assault, and implements strategies to address them to ensure progress can be measured over time**
- **provides a structure and framework for key initiatives to be monitored and evaluated through a model of across-system governance**
- **articulates what 'success' would look like in Victoria's response to sexual assault to guide a continued focus over time.**

³¹ Victorian Law Reform Commission, *Issues Paper A: Working Together to Respond to Sexual Offences: Systems* (2020) 8.

6. A trauma-informed justice and service system response

Much has been said about the need for trauma-informed responses to victims of crime over the past decade.³² One of the objectives of the *Victims' Charter Act 2006* (Vic) is to help reduce the likelihood of secondary victimisation by the criminal justice system.³³ Trauma-informed responses are key to reducing the risk of secondary victimisation by the criminal justice system.

Given the extent of the problem faced by victims of sexual assault, as outlined above, it is clear our justice and service system response to many victims of sexual assault is not trauma-informed. While there are some aspects of the adversarial criminal justice system that, by their very nature, will not be victim-centred, even laws and processes that advance the interests of the state and the rights of the accused should be reviewed with a trauma-informed lens.

To the maximum extent possible, the justice and service system should adopt a trauma-informed approach, uphold victims' rights and entitlements *and* ensure a fair process for the accused. Each area of law, policy and practice as it relates to sexual assault should be reviewed (and reformed) in a trauma-informed way to fulfil the objectives of the Victims' Charter—that is, reduce the likelihood of secondary victimisation by the criminal justice process.

Research suggests that trauma-informed law, policy and practice:³⁴

- realises the impact of trauma and recognises the signs of trauma

³² See, for example, Victorian Law Reform Commission, *Family Violence and the Victims of Crime Assistance Act 1996* (Consultation Paper, June 2017) xiv; Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report, July 2018); Royal Commission into Family Violence, *Volume IV Report and Recommendations* (March 2016) 18.

³³ *Victims' Charter Act 2006* (Vic) s4(1)(c)

³⁴ For discussion of aspects of trauma-informed practice, see generally: Holly Ramsey-Klawnsnik and Erin Miller, 'Polyvictimization in later life: Trauma-informed best practices' (2017) 29 (5) *Journal of Elder Abuse & Neglect*, 339-350; Nicole C. McKenna & Kristy Holtfreter, 'Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness' (2020) *Journal of Aggression, Maltreatment & Trauma* (published online); Blue Knot Foundation, *Trauma-informed Practice: How important is this for domestic and family violence services?* (2016) <<https://www.blueknot.org.au/Home/Front-Page-News/ID/46/Trauma-informed-Practice-in-Domestic-and-Family-Violence-Services>>; Orygen, The National Centre of Excellence in Youth Mental Health, *Clinical practice in youth mental health: What is trauma-informed care and how is it implemented in youth healthcare settings* (2018) <http://orygen.org.au/Training/Resources/Trauma/Clinical-practice-points/What-is-trauma-informed-care-and-how-is-it-implemented/orygen_Trauma_informed_care_CPP?ext=>>.

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- actively seeks to reduce re-traumatisation
 - emphasises physical, psychological, and emotional safety for victims
 - provides victims with voice and choice, including different ways to engage to minimise harm
 - creates opportunities for victims to rebuild a sense of control and empowerment
 - recognises that trauma may impact victims' engagement with the process
 - is responsive to victims' diversity
 - promotes trust and transparency in process and decision making.

These principles should guide the comprehensive review of each area of law, policy and practice as it relates to sexual assault.

Recommendation 2: That sexual assault laws, policies and practice be reviewed by the VLRC according to the extent to which it is trauma-informed, including whether it:

- **realises the impact of trauma and recognises the signs of trauma**
- **actively seeks to reduce re-traumatisation**
- **emphasises physical, psychological, and emotional safety for victims**
- **provides victims with voice and choice, including different ways to engage to minimise harm**
- **creates opportunities for victims to rebuild a sense of control and empowerment**
- **recognises that trauma may impact victims' engagement with the process**
- **is responsive to victims' diversity**
- **promotes trust and transparency in process and decision making.**

7. A strengthened victims' services system and new Financial Assistance Scheme

The November 2020 report *Strengthening Victoria's Victim Support System: Victim Services Review*, by RMIT's Centre for Innovative Justice (on behalf of the Department of Justice and Community Safety), identified the need for a strengthened victims' services system. Amongst its findings, the review suggested the need for:

- a range of access points that recognise the barriers to reporting that are faced by some communities within Victoria and by victims of certain crime types
- ongoing access to a single point of contact for victims as their needs change over time
- stronger connections with, and referrals between, victim services and other specialist responses within the family violence and sexual assault sectors
- access to independent legal advice.

The report articulates a vision for a fully integrated victim support model which includes:

- an integrated, phone-based Victim Support Centre (VSC) that provides a core response to victims of crime including case coordination and proactive, phone-based outreach
- a more intensive, case management model to be delivered through a network of community-based agencies across the state
- a new Victims Legal Advice Service (VLAS) to provide victims of crime with trauma-informed legal information and advice, referrals and discrete task assistance.

The Department of Justice and Community Safety is also progressing work to develop a new Financial Assistance Service (FAS) for victims of crime in response to the Victorian Law Reform Commission's 2018 review of the *Victims of Crime*

Assistance Act 1996 (Vic) (VOCAA) and the operation of the Victims of Crime Assistance Tribunal (VOCAT).

The VLRC's review of the VOCAA found specific barriers to accessing financial assistance for victims of sexual assault because of:³⁵

- the two-year application time limit (given many victims of sexual assault will delay reporting sexual assault)
- the legislative requirement for crimes to be reported to police in order to apply for VOCAT assistance (given many victims of sexual assault will not report sexual assault to police)
- delays in receipt of VOCAT awards, including victims of sexual assault waiting approximately a year for awards for counselling
- legislative requirements requiring alleged perpetrators to be notified about VOCAT applications, despite victims' safety fears
- legislative provisions requiring consideration of a victim's character and behaviour,³⁶ potentially giving rise to victim-blaming stereotypes.

The Victorian Government agreed in principle to implementing all recommendations contained in the VLRC's VOCAA review which would create a new Financial Assistance Scheme (FAS) for victims.

Taken together, these broader victims' services and FAS reforms aim to improve the service system response for *all* victims of crime. If fully implemented, these reforms would undoubtedly improve access to appropriate support for victims of sexual assault and assist them in their recovery process. For this reason, it is vital these reforms are implemented in full, and appropriately funded.

Recommendation 3: To ensure all victims of crime, including victims of sexual assault, have access to a strengthened victim support and financial assistance scheme, the Victorian Government should establish and fund:

³⁵ These issues are summarised in Chapter 5: Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report, July 2018) 48-86.

³⁶ This is a broad character and behaviour consideration and may encompass actions before, during or after an alleged crime. See eg, Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report, July 2018) 60.

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- **the enhanced victim support service model outlined in Strengthening Victoria's Victim Support System: Victim Services Review**
 - **the full rollout of a new Financial Assistance Scheme, incorporating all recommendations of the VLRC's review to enhance access and equity for victims of crime.**

All current, and future victims' services, including the new Financial Assistance Scheme, should be prescribed agencies under the Victims of Crime Commissioner Regulations 2020, to enable appropriate oversight and compliance with Victims' Charter obligations.

8. Victim-led choice and control over case progression

8.1. Alternative pathways to reporting sexual assault

As *Issues Paper A* notes, most people who experience sexual assault do not go straight to police. For some victims of sexual assault, attending a police station to report a crime can be an ‘insurmountable barrier’³⁷ and prevent victims from reporting sexual assault.³⁸

Some victims will experience more complex barriers to attending a police station to report sexual assault. For example, recent research relating to the lived experience of sexual violence among trans women of colour from culturally and linguistically diverse backgrounds found particularly negative experiences with police. Research participants reported feelings of judgement, blame, mistrust and a lack of acknowledgment that sexual violence had occurred when interacting with police and legal professionals. One participant stated: ‘I’d never look at a police officer and feel safe’.³⁹

Discussion in relation to ways to improve police responses to sexual assault and drive ongoing cultural change in Victoria Police are discussed further below at 2.4. These broader cultural changes, which continue to be a focus of Victoria Police, may address some of concerns victims have in reporting directly to police.

However, there is also evidence to suggest alternative forms of reporting, including anonymous or confidential reporting options, might assist victims of crime to disclose sexual assault.⁴⁰

³⁷ Dame Elish Angiolini, *Report of the Independent Review into the Investigation and Prosecution of Rape in London* (30 April 2015) 11.

³⁸ Monash Health and South Eastern Centre Against Sexual Assault & Family Violence, *Keep following the yellow brick road. The trials, tribulations and triumphs of collocated police, child protection and sexual assault workers* (2016) <<https://www.casa.org.au/assets/Documents/keep-following-the-yellow-brick-road.pdf>>

³⁹ Australia’s National Research Organisation for Women’s Safety, *Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia* (Research Report, 14/2020) 10.

⁴⁰ Dame Elish Angiolini, *Report of the Independent Review into the Investigation and Prosecution of Rape in London* (30 April 2015) 11; Georgina Heydon and Anastasia Powell, ‘Written-response interview protocols: an innovative approach to confidential reporting and victim interviewing in sexual assault investigations’ (2016) (6) *Policing and Society* 631.

Confidential and anonymous reporting options are an emerging area of police and service system practice and have not yet been comprehensively evaluated. Nonetheless, research they are now 'generally supported as an important feature of sexual assault policy and responses, given both the prevalence of sexual assault and significant under-reporting of these crimes'.⁴¹

Alternate pathways to reporting crime provide an avenue for victims to express what happened to them in a confidential way and can remove the fear associated with making a formal report to police. Researchers suggest these options 'might provide a mechanism through which victim-survivors might build resilience, access support, and ultimately decide to make a formal report'.⁴² Victoria's South Eastern Centre Against Sexual Assault suggest that safe, anonymous online reporting may encourage victims to report an incident formally to police in the future.⁴³

One of the benefits of confidential and/or anonymous reporting options include the potential for such reports to convert to formal police reports, which in some circumstances has been estimated at around 15 per cent of matters.⁴⁴ Research also suggests 'a well-documented and detailed initial report, even one made confidentially, has the potential to substantially reinforce the quality and credibility of a victim-survivor's testimony in court'.⁴⁵

There are some limited models of alternative reporting in Australia. For example, the Bravehearts Sexual Assault Disclosure Scheme operates nation-wide and is a confidential and anonymous alternative reporting scheme for historical child sexual abuse offences. After victims complete an online form, Bravehearts contacts the victim to discuss options.⁴⁶

In New South Wales, the NSW Police Sexual Assault Reporting Option (SARO) form is available for people who do not want to make a formal report to police. A SARO questionnaire is not the same as making a formal report to police and will not initiate a criminal investigation.⁴⁷ NSW police state that 'The primary purposes of a SARO is to make a record of what occurred, in addition to allowing the NSW Police

⁴¹ Georgina Heydon and Anastasia Powell, 'Written-response interview protocols: an innovative approach to confidential reporting and victim interviewing in sexual assault investigations' (2016) (6) *Policing and Society* 631, 635.

⁴² Ibid 636.

⁴³ Ibid.

⁴⁴ Ibid 641.

⁴⁵ Ibid.

⁴⁶ Bravehearts, *Sexual Assault Disclosure Scheme*, (2021) <<https://bravehearts.org.au/SADS>>.

⁴⁷ New South Wales Police, *Sexual Assault Reporting Option (SARO) Form*, <https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/saro>.

Force to gather information on sexual offences and offending'.⁴⁸ The form can be completed anonymously and victims can choose how much information to include.⁴⁹

Queensland's Alternative Reporting Option (ARO) scheme also enables victims to fill an online form. The information provided can be used to solve other reported offences of a similar nature, but victims can remain anonymous and the information does not initiate a criminal investigation.

In Victoria, an anonymous report can be made online via the Crime Stoppers portal.⁵⁰ Victims of child sexual abuse (historical or current) within a religious or institutional setting can email Victoria Police directly.⁵¹ Otherwise, online reporting is only available to complainants of theft, lost property and property damage of up to \$5,000.⁵²

Given the individual and structural barriers faced by some victims of crime to reporting a crime, anonymous and confidential reporting options should be available as part of a suite of options for victims of sexual assault so that victims can engage with the justice system in a way that best meets their safety and justice needs. This is in acknowledgement that some victims may never want to proceed through the criminal justice system, but may wish to provide anonymous information to assist police investigations. It may also provide some victims with the option of a 'safer' first step towards reporting. This may be particularly important for some victims of crime who may be fearful of police or face structural or physical barriers to attending a police station. Given the additional barriers faced by some victims, as outlined above, alternative pathways to reporting could have particular benefits for people with disability, male victims of sexual assault, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people who identify as LGBTIQ+, people in

⁴⁸ New South Wales Police, *Sexual Assault Reporting Option (SARO) Form*, <https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/saro>. As noted in Georgina Heydon and Anastasia Powell's research, data from anonymous reports can be compiled and analysed to identify localised trends and sexual assault 'hotspots': Georgina Heydon and Anastasia Powell, 'Written-response interview protocols: an innovative approach to confidential reporting and victim interviewing in sexual assault investigations' (2016) (6) *Policing and Society* 631, 636.

⁴⁹ New South Wales Police, *Sexual Assault Reporting Option (SARO) Form*, <https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/saro>.

⁵⁰ <<https://www.crimestoppersvic.com.au/report-a-crime/>> see also <<https://crimestoppers.com.au>> which directs users to the relevant state police to report a crime anonymously.

⁵¹ Victoria Police, *Reporting Sexual Offences to Police* (2020) <https://www.police.vic.gov.au/sites/default/files/2020-03/Reporting%20Sexual%20Offences_A6%20booklet_web.pdf>.

⁵² Victoria Police, *Online Reporting* <<https://onlinereporting.police.vic.gov.au>>.

custodial settings, people experiencing homelessness, people with mental illness and young people, including young people in out-of-home care.

While there are already some options for alternative reporting in Victoria, as outlined above, a more victim-friendly and well publicised alternative pathway for reporting might assist victims who are hesitant to come forward.

A model of online reporting should allow victims to elect how much information they provide and indicate whether they consent to a follow-up conversation undertaken by an appropriately trained and skilled support worker. This support worker should be able to provide advice on reporting options and processes, provide referrals to counsellors and/or specialist police members and provide broader information about victims' services and financial assistance available to victims of crime. This role could be undertaken by sexual assault liaison workers or Independent Sexual Violence Advisors. These roles are discussed further below.

Recommendation 4: Alternative reporting options should be available for victims of sexual assault. These alternative reporting pathways should:

- **be victim-friendly and well publicised**
- **accommodate victim diversity, including diversity in language, culture, gender and sexual identity**
- **allow victims to elect how much information they provide and whether they consent to further contact by an appropriately trained and skilled support worker.**

8.2. Alternative ways of interviewing victims and collecting evidence

There is emerging research suggesting written reporting mechanisms, as opposed to face- to-face police-led verbal interviews, may provide some victim-survivors with a way to provide an initial account of the crime in a less confronting environment. Some research refers to this as a 'self-administered interview' (SAI) or a 'written-response interview protocol' (WRIP).

SAI/WRIPs involve victims answering a set of written instructions that guide them through the same memory enhancing steps of a cognitive interview, but in written form.⁵³

Some of the benefits of a SAI or WRIP are said to include:⁵⁴

- offering victims the opportunity to write their story in their own time, with prompts and guidelines carefully designed to maximise recall and focus on key aspects⁵⁵
- serving as a 'first response' tool where there may be delays (for example, while waiting for a specialist sexual offences investigator to conduct an in-person interview in regional/rural areas)
- the ability to preserve the details of a victim's narrative where there are delays or where a victim makes an initial report to police, but is reluctant to proceed with a formal report at that time.

The SAI or WRIP may also assist with accessibility for culturally diverse people as the form can be translated into community languages which enables victims to document their account as soon as possible in their own words.⁵⁶ It is also suggested there may also be improved accuracy through translating written language compared with interpreting spoken language.⁵⁷

Emerging research suggests anonymous and confidential reporting options, as outlined above, can be combined with SAI/WRIP techniques to capture full accounts from victims. If SAI/WRIP forms are carefully constructed, they can engage victims in the reporting process sensitively, while also providing victims with the necessary guidance about the recall and reporting process consistent with the memory enhancing steps of a cognitive interview.⁵⁸

It is important that any initiatives like this are part of a suite of options for victims.

Recommendation 5: Alternative ways of collecting evidence and interviewing victims should be explored, including:

⁵³ Georgina Heydon and Anastasia Powell, 'Written-response interview protocols: an innovative approach to confidential reporting and victim interviewing in sexual assault investigations' (2016) (6) *Policing and Society* 631, 638.

⁵⁴ See generally, *Ibid* 631.

⁵⁵ *Ibid* 639.

⁵⁶ *Ibid*.

⁵⁷ *Ibid*.

⁵⁸ *Ibid* 641.

- **providing victims with the opportunity to complete a 'self-administered interview' (SAI) or participate in a 'written-response interview protocol' (WRIP)**
- **integrating anonymous and confidential reporting options with SAI/WRIP techniques to save victims from having to repeat their story**
- **looking at how alternative ways of collecting evidence can accommodate victim diversity, including diversity in language and culture.**

8.3. Alternative, parallel, restorative or innovative justice

The appropriateness of restorative or alternative justice models for sexual assault has been the subject of considerable debate for some time.⁵⁹

Opponents to restorative justice pathways suggest victims should not have to seek 'alternative' justice pathways simply because the criminal justice system does not accommodate their interests and needs. This sentiment has been confirmed by research with victims of sexual assault. For example, Hayley Catherine Clark's research with victims of sexual assault found that although some victims did not consider the criminal justice system an appropriate mechanism for addressing their experience of sexual assault, they believed that the criminal justice system *ought* to address their justice needs.⁶⁰

At the same time, there is now a consistent body of work suggesting that some victims perceive restorative justice as fairer, more satisfying, more respectful, and more legitimate than what is offered by the justice system.⁶¹ Restorative justice provides an opportunity to hold offenders accountable and provides victims with an opportunity to tell their story on their own terms.⁶² In this context, Wendy Larcombe suggests 'the criminal law's monopoly on sexual assault must be

⁵⁹ See, for example, Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 177. For the purposes of this submission, I refer to restorative justice as a 'process' (rather than an 'outcome'). This is consistent with other definitions: see, for example, Meredith Rossner 'Restorative justice and victims of crime: Directions and developments' in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Taylor & Francis Group, 2017), 231. The terms 'alternative', 'restorative', 'parallel' or 'innovative' are also referenced due to the ways in which such processes can sit within, alongside or outside the traditional justice system.

⁶⁰ Hayley Catherine Clark, *A Fair Way to Go: Criminal Justice for Victim/Survivors of Sexual Assault* (PhD Thesis, University of Melbourne, 2011) 81.

⁶¹ Meredith Rossner 'Restorative justice and victims of crime: Directions and developments' in Sandra Walklate (ed), *Handbook of Victims and Victimology* (Taylor & Francis Group, 2017), 238.

⁶² Kelly Richards et al, 'What Do Victim/survivors of Sexual Violence think about Circles of Support and Accountability' (2020) *Victims and Offenders* 1, 3.

broken. Rape and sexual assault cannot always, and perhaps should not always, be criminally prosecuted.⁶³

This research is consistent with the approach of Victoria's South Eastern Centre Against Sexual Assault (SECASA) who, as part of their therapeutic support for victims of sexual assault, have facilitated alternative/restorative processes at the request of victims for many years. An evaluation of the SECASA approach found that being heard and having harms acknowledged was the strongest motivation for victims of crime to participate in alternative processes.⁶⁴

Case studies from SECASA's alternative/restorative process reveal victims' strong desire to speak openly with the offender in a way that communicates the harm caused, and provides the offender with an opportunity to acknowledge or, in some cases, apologise for the harm.⁶⁵ This kind of open dialogue is incompatible with the adversarial trial process.

What my office has heard is that not all victims of crime want the same thing. For this reason, it is clear that the conventional criminal justice system, with its single pathway of prosecution through the courts, cannot meet the needs of all victims of sexual assault.⁶⁶ Similar findings were made by the Royal Commission into Family Violence, which observed that with robust safeguards in place, a restorative justice process should be made available to victims who wish to pursue such an option.⁶⁷

Ensuring that sexual assault is treated as criminal conduct by the justice system—where this is a victim's wish—remains paramount. Creating a trauma-informed and victim-centric criminal justice response to sexual assault should not preclude provision of alternative or parallel restorative pathways where this is a victim's

⁶³ Wendy Larcombe, 'Rethinking Rape Law Reform: Challenges and Possibilities' in Ron Levy, Molly O'Brien, Simon Rice, Pauline Ridge and Margaret Thornton (eds) *New Directions for Law in Australia: Essays in Contemporary Law Reform* (Australian National University Press, 2017), 150. See also RMIT Centre for Innovative Justice, *Innovative justice responses to sexual offending: Pathways to better outcomes for victims, offenders and the community* (Report, May 2014) 6.

⁶⁴ Bebe Loff et al, *A Community-Based Survivor-Victim Focused Restorative Justice – A Pilot* (Report to the Criminology Research Advisory Council, July 2019) 20.

⁶⁵ See, for example, Monash Health and South Eastern Centre Against Sexual Assault, *Restorative Justice, sexual assault and family violence* (17 July 2016) <<https://www.casa.org.au/assets/Documents/restorative-justice-sexual-assault-and-family-violence.pdf>>

⁶⁶ RMIT Centre for Innovative Justice, *Innovative justice responses to sexual offending: Pathways to better outcomes for victims, offenders and the community* (Report, May 2014) 6.

⁶⁷ Royal Commission into Family Violence, *Summary and Recommendations* (2016) 31.

wish. As noted by RMIT's Centre for Innovative Justice, victims should have a suite of options available.⁶⁸

The community's denunciation of sexual offending, as provided for through the traditional justice response, should continue where possible. However, the government should undertake a comprehensive consultation process with victim-survivors to seek a range of views on establishing a pilot program providing alternative justice options.

In considering the program's scope, the guidelines previously suggested by the VLRC and the Victorian Royal Commission into Family Violence are informative. The VLRC has previously highlighted that restorative justice for indictable crime must be understood as requiring a different approach to that applied for less serious offending or youth offending and should:⁶⁹

- be supplementary, not diversionary
- only ever proceed with the informed consent of any victims involved
- be tailored to respond to the interests and needs of victims, rather than focusing primarily on the rehabilitation of the offender.

It is vital that any alternative, parallel or restorative practice also be grounded in learnings from the existing programs in Victoria, including:

- the Department of Justice and Community Safety's redress and restorative engagement scheme for victims of workplace sexual harassment and sexual assault at Victoria Police
- the Department of Justice and Community Safety's Family Violence Restorative Justice program
- Youth Justice Group Conferencing
- RMIT's Open Circle
- SECASA's restorative justice practices with sexual assault victims.

⁶⁸ RMIT Centre for Innovative Justice, *Innovative justice responses to sexual offending: Pathways to better outcomes for victims, offenders and the community* (Report, May 2014) 6. Kathleen Daly also refers to this as a 'menu of options': see Kathleen Daly 'Reconceptualising Sexual Victimization and Justice' in Inge Vanfraechem, Antony Pemberton, Felix Mukwiza Ndahinda (eds) *Justice for Victims: Perspectives on rights, transition and reconciliation* (Routledge, 2014) 378-395, 381.

⁶⁹ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 183.

Without a comprehensive external review of the current restorative or alternative justice pathways in Victoria—and robust victim-centric research into the outcomes for victims of crime—it is difficult to determine victims’ satisfaction with the existing pathways. Victims’ views on the ‘success’ of these programs should be the guide. Accordingly, a comprehensive, holistic external review of the existing programs should be undertaken to ensure best practice in restorative justice is shared across the justice and service system. It is vital that victims’ voices and experiences are at the centre of any reviews and learnings from existing programs.

This review should also consider whether these programs continue to exist as stand-alone restorative justice programs, or (in light of the increasing number of programs) whether a more streamlined approach should be developed providing victims with a consolidated, central contact point and a clearer sense of pathways to various restorative justice programs.

Alternative forms of participation or alternative justice responses—such as restorative justice—can meet more of victims’ most commonly articulated needs, including participation, voice, validation, vindication and offender accountability.⁷⁰ The provision of alternative or restorative justice pathways within our justice system should not be viewed as sending a signal to the community that sexual harm is not a serious criminal offence. Providing options for victims of crime acknowledges that victims have a variety of justice needs and not all of them can be met by the traditional criminal justice system.

Recommendation 6: The Victorian government should commence a comprehensive consultation process with victim-survivors to seek a range of views on establishing a pilot program providing alternative justice options in sexual assault matters.

Recommendation 7: The Victorian government should undertake a comprehensive review of existing restorative justice programs in Victoria to:

- **ensure best practice in restorative justice is shared across the justice and service system**
- **ensure victims’ voices and experiences of restorative justice are at the centre of learnings and evaluations of existing programs**

⁷⁰ RMIT Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims’ Experiences and Communication Needs* (Report, April 2019) 38.

-
- **ensure programs respond to victim diversity, including diversity in language, culture, gender and sexual identity**
 - **explore whether these programs should continue to exist as stand-alone programs, or whether a more consolidated, centralised and streamlined approach should be developed providing victims with a central contact point and a clearer sense of pathways to various programs.**

9. Participation

9.1. Statutory recognition of victims as participants in the criminal justice process

Too often, victims of crime feel ignored, silenced and excluded from the criminal justice process. It has been suggested that the criminal trial process gradually ‘overshadows’ the needs of victims of crime as the criminal process progresses.⁷¹

A recent review by RMIT’s Centre for Innovative Justice into Victoria’s victims’ service system found that victims of crime often describe having limited or no opportunity to participate in the criminal justice process. This sense of disconnection from the justice system results in victims feeling that their experience does not matter.⁷² Victims have described their role in the justice system as that of ‘outsiders’ and ‘passive receiver[s] of information’.⁷³

In 2018, the Victims’ Charter was amended to acknowledge the victim’s role as a participant, but not a party, in proceedings for criminal offences.⁷⁴ The statutory recognition of victims as participants in the criminal justice process is key to legitimising the victim’s role and voice.⁷⁵

⁷¹ Nicole Bluett-Boyd and Bianca Fileborn, Australian Institute of Family Studies, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions* (Research Report 27, 2014) vii.

⁷² RMIT Centre for Innovative Justice, *Improving support for victims of crime: Key practice insights* (Report, November 2020) 14.

⁷³ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 33.

⁷⁴ *Victims’ Charter Act 2006* (Vic) s4(1)(ba).

⁷⁵ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 48.

In its 2016 report, *Victims of Crime in the Criminal Trial Process*, the VLRC observed that while Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides guarantees to the accused during the trial process (for example, to be informed of the nature and reason for the charge and to be afforded the right to a fair hearing), there are no rights enshrined for victims of crime. The VLRC concluded that incorporating the interests of victims into section 25 of the Charter of Human Rights and Responsibilities would add to the integrity of what constitutes a fair trial in Victoria.⁷⁶

Consistent with the VLRC's previous recommendation in its report *Victims of Crime in the Criminal Trial Process*, Victoria's Charter of Human Rights and Responsibilities should be amended to recognise the interests of victims in the criminal trial process, and the rights and entitlements that arise as a result of those interests.

Recommendation 8: Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) should be amended to recognise the rights of victims in the criminal trial process as articulated in the Victims' Charter.

9.2. Enabling meaningful participation in the criminal justice process

With increased participation and voice in the criminal justice process, victims perceive a more equitable and impartial justice system.⁷⁷ When victims are excluded from decisions, such as plea resolutions, the trauma of crime victimisation can be exacerbated.⁷⁸

Prosecutorial decision making is a key area of concern for victims. Victims are more likely to feel treated fairly by the criminal justice system when prosecutors give victims an opportunity to express their wishes, take their views into consideration and accord victims recognition and respect.⁷⁹

The Victims' Charter enshrines a number of key participatory rights for victims in relation to prosecutorial decision making. These go beyond information provision and include a positive obligation on the Office of Public Prosecution's (OPP) to

⁷⁶ Ibid 40.

⁷⁷ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 7-8.

⁷⁸ Ibid 20.

⁷⁹ RMIT Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (2019) 9.

seek the views of a victim before making a decision. Under section 9B of the Victims' Charter, the DPP must seek the views of a victim before deciding to:

- substantially modify the charges
- discontinue the prosecution of the charges
- accept a plea of guilty to a lesser charge
- appeal a sentence
- appeal an acquittal.

Research relating to OPP communication with victims during the prosecution process demonstrates that victims want to be appropriately consulted during key stages of the process, not simply 'told' of prosecutorial decisions.⁸⁰

The importance of genuine consultation with victims during the prosecution process is heightened in cases of sexual assault because of the persistent myths and misconceptions that pervade decision making at all stages of the process.⁸¹

Recent Victorian research conducted by RMIT's Centre for Innovative Justice has highlighted that it is not uncommon for the defence to make a plea offer at the start of a trial, placing the prosecution under 'pressure to make a decision quickly, on the "steps of the court"'.⁸² In RMIT's report, it was recommended that further work be undertaken with Victorian courts to highlight the value of providing sufficient time to the prosecution for consultation with victims about plea resolutions.⁸³

Consultation during the criminal justice process is one of the few rights granted to victims of crime. A victim's right to participate and be consulted at key stages of the criminal justice process should not be impacted by a perceived need (or real pressure) to expedite cases. This is even more vital given the current court backlog caused by COVID-19.

While the Victims' Charter enshrines a victim's right to be meaningfully consulted about plea resolutions, the Charter also provides an exception where 'it is not

⁸⁰ Ibid 10.

⁸¹ Mary Iliadis and Asher Flynn, 'Providing a check on prosecutorial decision-making: an analysis of the victims' right to review reform' (2018) 25 *British Journal of Criminology*, 550-568.

⁸² RMIT Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (2019) 14. See also Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 136.

⁸³ RMIT Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (2019) 16.

practical to contact the victim given the speed or nature of the proceeding'.⁸⁴ This exception in the Victims' Charter creates a tension between the intent of the Victims' Charter and victims' actual experience of the trial process. It also places undue pressure on prosecutors to meet their Victims' Charter obligations while facing pressure from defence counsel and judicial officers 'on the steps of the courts'.

The Victorian justice system must adapt to better accommodate victims' participatory rights as provided for by the Victims' Charter. Practices of the court, prosecution and defence must evolve so that victims' participatory rights are respected and implemented in practice. Accordingly, section 9B(2)(b) of the Victims' Charter should be removed so that a victim's right to be consulted under the Victims' Charter at key stages of the prosecution process is an unrestricted entitlement.

Recommendation 9: Section 9B(2)(b) of the Victims' Charter should be removed so that a victim's right to be consulted under the Victims' Charter at key stages of the prosecution process is an unrestricted entitlement and must be accommodated by the criminal trial process.

9.3. Independent Victim Right to Review scheme

Research confirms that attitudes and beliefs held by legal professionals, including police and prosecutors, contribute to case attrition rates in sexual assault matters. Police and prosecutors make decisions about whether a case can proceed based on their perceptions and expectations about the likelihood of a successful prosecution.⁸⁵ Some of these decisions can be based on misconceptions about sexual offences.⁸⁶

These value judgements—including judgements about the reliability and credibility of a victim of sexual assault—are made along a victim's journey through the justice system. In this context, research suggests that the ability to

⁸⁴ *Victims' Charter Act 2006* (Vic) s9B(2)(b).

⁸⁵ Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 2. Discussion about the OPP's perceptions of the likelihood of successful prosecution in a recent sexual assault case can be found at: Richard Baker, 'DPP drops former priest rape case' *The Age*, 14 December 2020, 1.

⁸⁶ Elli Darwinkel, Martine Powell and Patrick Tidmarsh, 'Improve Police Officers' Perceptions of Sexual Offending Through Intensive Training' (2013) 40 (8) *Criminal Justice and Behaviour* 895, 896. For example, research suggests that police investigators tend to perceive emotional victims of sexual assault as more credible than unemotional victims. See: Patrick Tidmarsh and Gemma Hamilton, *Misconceptions of sexual crimes against adult victims: Barriers to justice* (Australian Institute of Criminology, 2020) 6.

independently review police and prosecution decisions may be more crucial in sexual offence cases than other criminal offences.⁸⁷

In the United Kingdom, victims can seek a review of decisions not to charge, to discontinue or otherwise terminate proceedings.⁸⁸ This is known as the Victims' Right to Review Scheme (VRR), which has been in operation since 2014.⁸⁹ The scheme is administered by the Crown Prosecution Service (CPS), broadly equivalent to the Office of Public Prosecutions in Victoria.

The UK's CPS, in outlining the rationale for the VRR scheme, states:⁹⁰

It is an important principle that people should be able to rely on decisions taken by the CPS as being final and that such decisions should not ordinarily be revoked. However, we also recognise that a careful balance must be struck between providing certainty to the public in our decision making and not allowing wrong decisions to stand. It is right therefore, in order to maintain public confidence in the criminal justice system, that the CPS will sometimes have to look again at a prosecution decision, and change it if it is found to be wrong. If a decision is found to be wrong, it may be necessary to commence or re-institute criminal proceedings.

Under the VRR, a request for review proceeds initially via a 'local resolution' pathway. The decision is checked by a local prosecutor who has not been involved with the case. If the matter cannot be resolved at the local level, the decision will proceed to an independent reviewing prosecutor who approaches the case afresh.⁹¹

Noting the challenges that continue to be experienced in successfully prosecuting sexual assault, the case study below is a powerful illustration of the significance of a VRR scheme in sexual assault matters:⁹²

The ability of the VRR to respond to victims' substantive and procedural justice needs can be demonstrated in the following childhood sexual abuse case that resolved because of the VRR. In this case, the victim reported historic sexual offences to police, at which stage the CPS decided there would be no further action and did not proceed with charges. On the victim's behalf, a victim support

⁸⁷ Mary Iliadis and Asher Flynn, 'Providing a check on prosecutorial decision-making: an analysis of the victims' right to review reform' (2018) 25 *British Journal of Criminology*, 550-568.

⁸⁸ Crown Prosecution Service, *Victims' Right to Review Scheme* (2020) <<https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme>>

⁸⁹ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 71.

⁹⁰ Crown Prosecution Service, *Victims' Right to Review Guidance* (2016) 9.

⁹¹ Crown Prosecution Service, *Victims' Right to Review Scheme* (2020) <<https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme>>

⁹² Mary Iliadis and Asher Flynn, 'Providing a check on prosecutorial decision-making: an analysis of the victims' right to review reform' (2018) 25 *British Journal of Criminology*, 550-568, 556.

organization later requested this decision be reviewed using the VRR. After the initial review, the local CPS decided to reinstate the charges and proceed to trial. This trial resulted in a hung jury. A second trial was run in which a unanimous guilty verdict was reached and the offender was sentenced to a maximum 14 years imprisonment.

For sexual assault matters, the VRR offers ‘a way to potentially challenge and limit problematic misperceptions and stereotypes of sexual violence informing prosecuting decisions’.⁹³ In the case study above, the victim’s rape crisis support worker stated that the VRR gave the victim ‘some feeling of control’ and met the ‘victims’ procedural and substantive justice needs’.⁹⁴

The Independent Victims’ Commissioner for London, Claire Waxman, has described the UK’s VRR as ‘an important check and balance, empowering victims to challenge charging decisions that they are not happy with’.⁹⁵ Academic Mary Iliadis contends that independent review mechanisms do not alter the structural position of victims in the criminal justice system, as victims do not become a party to criminal proceedings, but such participatory mechanisms empower victims and increase their satisfaction with the criminal justice system.⁹⁶

In its 2016 report, *Victims of Crime in the Criminal Trial Process*, the VLRC discussed, but ultimately did not recommend, an independent VRR scheme. However, the VLRC recommended that the need for a scheme for independent review of decisions to discontinue a prosecution or proceed with a plea of guilty to lesser charges should be revisited in five years.⁹⁷

Recent media has highlighted the ways in which victims can feel confused and distressed by prosecutorial decision making in sexual assault cases.⁹⁸ Recent media has also suggested Victoria Police decision making may still be inconsistent in sexual assault cases. A former Victoria Police criminologist recently told the media: ‘We are yet to fix the clarity of decision making and getting policing to the point where it makes its own decisions under absolutely clear criteria and

⁹³ Ibid 558.

⁹⁴ Ibid 556.

⁹⁵ Claire Waxman, *Review of Compliance with the Victims’ Code of Practice: Findings, recommendations and next steps* (Report, March 2019) 16.

⁹⁶ Mary Iliadis, *Adversarial Justice and Victims’ Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 163.

⁹⁷ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 76.

⁹⁸ Richard Baker, ‘DPP drops former priest rape case’ *The Age*, 14 December 2020, 1.

authorises, or doesn't authorise, on those criteria and lets the prosecutorial services be the attrition point'.⁹⁹

These are complex decisions. There is no doubt the high burden of proof in criminal trials creates significant challenges for police and prosecutors. While significant work has been done within the Office of the Public Prosecutions to provide victims with better access to reasons for prosecutorial decisions,¹⁰⁰ a VRR would provide victims with an avenue to seek independent review of decisions after proper internal review processes have been exhausted.

A VRR scheme would also address issues concerning some victims of crime who face additional barriers to investigation and prosecution, such as victims with disability and who are often 'presumed to be unreliable witnesses' and 'are twice as likely to have their stories seen by investigators as false reports'.¹⁰¹

The government should introduce an independent VRR scheme in Victoria. Consideration should be given to a VRR scheme sitting independently of both the police and prosecution and reviewing decisions made at both the investigatory and prosecutorial stages of the process.¹⁰² The scheme should be underpinned by new rights in the Victims' Charter.

Recommendation 10: The Victorian Government should introduce a Victims' Right to Review scheme underpinned by new rights contained in the Victims' Charter Act enabling independent review of police and prosecution decisions after internal review options are exhausted.

⁹⁹ Nicole Precel, Rachael Dexter and Eleanor Marsh, 'Are we failing victims of sexual violence?' *The Age*, 13 September 2019 < www.theage.com.au/interactive/2019/are-we-failing-victims-of-sexual-violence/>

¹⁰⁰ Office of Public Prosecutions, *Requesting reasons for decisions* (2017) <<https://victimsandwitnesses.opp.vic.gov.au/witnesses/requesting-reasons-for-decisions>>

¹⁰¹ Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020) 11.

¹⁰² Academics point to the importance of independent review schemes operating separately from the original decision making body. See, for example, Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 163; Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 71.

10. Legal advice and legal representation

Victims' rights and entitlements span multiple pieces of legislation and various government and court policy documents.¹⁰³ Because of this, many victims may be unaware of, or misinterpret, their rights and entitlements.

The VLRC's 2018 *Review of the Victims of Crime Assistance Act 1996* emphasised the wide-ranging legal needs of victims of crime. These needs encompass the various rights and entitlements arising during the criminal justice process (such as Victim Impact Statements and alternative arrangements for giving evidence), but also navigating financial assistance and compensation processes, civil intervention orders, child protection, family law, criminal law and fines.¹⁰⁴

Because victims' needs are diverse, some victims' legal needs will be greater or more complex than others. In some circumstances, victims may only require limited legal advice. This might be advice about how to apply for financial assistance or what their rights are under the Victims' Charter.

In other circumstances, victims' legal needs will be significant. In the case of sexual assault victims, some victims will need to understand their rights and entitlements relating to laws of evidence, such as dealing with applications to access confidential medical or counselling records.

For this reason, it is suggested victims should have:

- access to **specialist legal advice**
- the right to **independent legal representation** in sexual assault cases.

There is currently no pathway in Victoria to specialist victims' legal advice. As outlined further below, **specialist legal advice** should encompass tailored victims' legal information and advice using a trauma-informed approach.

¹⁰³ Including *Sentencing Act 1991* (Vic), the *Victims of Crime Assistance Act 1996* and relevant protections afforded victims under the *Criminal Procedure Act 2009* (Vic), *Evidence (Miscellaneous Provisions) Act 1958* (Vic), *Evidence Act 2008* (Vic), *Public Prosecutions Act 1994* (Vic), *Judicial Proceedings Reports Act 1958* (Vic), and *Open Courts Act 2013* (Vic).

¹⁰⁴ Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996* (Report, 2018) 204.

As also outlined further below, **independent legal representation** in sexual assault cases would be a substantial shift in legal procedure. Legislative reform would be required to enable victims to have an independent legal representative at key stages of the criminal justice process to uphold their rights and interests.

These two approaches are discussed further below.

10.1. Specialist legal advice for victims of crime

The 2020 report *Strengthening Victoria's Victim Support System: Victim Services Review* found considerable unmet demand for specialist, independent legal advice for victims of crime.¹⁰⁵ The report suggested that access to specialist, tailored legal advice for victims would provide for early intervention by way of legal 'issues spotting' and help link victims to suitable organisations for ongoing legal support.¹⁰⁶

While any victim of crime can engage a lawyer, there is currently no dedicated legal advice service for victims of crime. This means victims have no identifiable pathway to specialist victims' legal advice. It also means victims can sometimes engage lawyers who do not specialise in the range of issues that intersect with victims' legal issues, nor do they provide a trauma-informed service.

A victims' legal advice service should be established providing tailored legal information and advice delivered by specialist legal professionals who have a trauma-informed and culturally safe approach. Specialist lawyers would have received specific training and education (and ongoing professional development) in victims' rights and entitlements spanning the relevant criminal, administrative and civil law.¹⁰⁷

The victims' legal service should be well publicised and immediately 'visible' to members of the community. The service should be recognisable as the pathway to specialist victims' advice through clear and consistent branding of the service as the gateway to specialist victims' legal advice. The service should provide accessible entry-points across Victoria, including regional areas where access to legal representation can be more challenging for victims.

¹⁰⁵ RMIT Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 13.

¹⁰⁶ Ibid 152.

¹⁰⁷ Including *Sentencing Act 1991* (Vic), the *Victims of Crime Assistance Act 1996* (Vic) and relevant protections afforded victims under the *Criminal Procedure Act 2009* (Vic), *Evidence (Miscellaneous Provisions) Act 1958* (Vic), *Evidence Act 2008* (Vic), *Public Prosecutions Act 1994* (Vic), *Judicial Proceedings Reports Act 1958* (Vic), and *Open Courts Act 2013* (Vic).

The need for a dedicated, specialist victims' legal advice service has been previously highlighted in the 2020 review *Strengthening Victoria's Victim Support System: Victim Services Review*, as well as in the VLRC's 2016 report *Victims of Crime in the Criminal Trial Process*. The models proposed were different, although, both reports advocated for the establishment of a dedicated victims' legal advice service delivered by a publicly funded legal service.¹⁰⁸ Having regard to previous models and proposals for a victims' legal advice service, the VLRC should consider the best model for delivering a publicly funded victims legal advice service.

Recommendation 11: The Victorian Government should establish a publicly funded victims' legal advice service that:

- **provides tailored legal information and advice delivered by specialist legal professionals using a trauma-informed and culturally safe approach**
- **is well publicised and immediately 'visible' to members of the community as the pathway to specialist victims' advice**
- **has accessible entry-points across Victoria, including regional areas.**

10.2. Independent legal representation for victims of sexual assault

Victims of sexual assault can be shocked to realise that although a state's case would not proceed without their evidence, they are not afforded the same right to legal representation during the court process as an accused. Many victims mistakenly believe prosecutors are 'their lawyers' and can prioritise their rights and needs.¹⁰⁹

A recent study outlining victims' views relating to their interactions with the Office of Public Prosecutions (OPP) highlighted victims' concerns about prosecutors'

¹⁰⁸ *Strengthening Victoria's Victim Support System: Victim Services Review* suggested the legal advice service should integrate with the existing victims' services system operated by the Department of Justice and Community Safety and would be delivered by a 'publicly funded legal service provider co-locating with existing victims' services': Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review (Final Report, November 2020)* 151. In *Victims of Crime in the Criminal Trial Process*, the VLRC recommended Victoria Legal Aid should be funded to establish a service for victims of violent indictable crimes: Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process (Report, 2016)* xxiv.

¹⁰⁹ Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 35.

‘subdued’ advocacy as compared to victims’ perception of the more ‘passionate’ advocacy demonstrated by defence lawyers.¹¹⁰

Similarly, a major review into Ireland’s responses to sexual assault (the ‘Gillen Review’) concluded that:¹¹¹

...for many [sexual assault] complainants, the absence of a legally trained advocate acting on their behalf is both shocking and upsetting. Complainants are often left feeling vulnerable and exposed, merely seen as ‘collateral damage’ in a process in which they are not a party and have no independent voice.

Academic Fiona E Raitt has described victims’ disadvantage during the criminal trial process as follows: ‘Complainants have only a limited voice: they can give evidence but as they cannot canvass their rights, they depend upon another to do so. As neither prosecutors nor judges are equipped to represent these interests, complainants must look elsewhere.’¹¹²

While consideration of independent legal representation for victims of crime is not novel, progress has been slow because of perceived concerns that such representation would erode the structure of the adversarial model where the prosecution represents the state and the defence the accused. There is, however, a growing body of research advocating the benefits of introducing independent legal representation for victims of crime during the criminal trial process.¹¹³ Some academics suggest that limited legal representation for victims during the criminal trial process—within clearly defined parameters—would not necessarily infringe upon the rights of the accused.¹¹⁴

Victims already have existing (but limited) rights to participate at key points in the criminal justice process. For example, in sexual offence cases, victims can seek leave to appear and make submissions in response to applications to access confidential medical or counselling records. However, research suggests that not all victims in sexual assault cases are being advised of their right to seek leave to appear in court in response to an application to subpoena, access or use

¹¹⁰ RMIT Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims’ Experiences and Communication Needs* (2019) 13.

¹¹¹ Sir John Gillen, *Report into the law and procedures in serious sexual offences in Northern Ireland* (Report April 2019) 173.

¹¹² Fiona Raitt, ‘Independent Legal Representation in Rape Cases: Meeting the Justice Deficit in Adversarial Proceedings’ (2013) 9 *Criminal Law Review*, 729-749, 739.

¹¹³ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 71.

¹¹⁴ Mary Iliadis, Submission No 8 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (30 September 2015) 11. See also Sir John Gillen, *Report into the law and procedures in serious sexual offences in Northern Ireland* (Report April 2019) 173.

confidential medical or counselling records.¹¹⁵ Few victims engage their own lawyers to participate in these trial processes.¹¹⁶

The VLRC stated in its 2016 report, *Victims of Crime in the Criminal Trial Process* that at this point of the criminal justice process:¹¹⁷

...victims need legal representation, independent of the prosecution, to ensure that they do not lose the right to protect their confidential communications in a situation where their interest conflicts with the prosecution's. Sometimes prosecutors may be reluctant to oppose an application, even where the victim objects. Sexual assault counsellors told the [VLRC] that conflicts between the interests of the prosecution and the victim can arise frequently.

In New South Wales, the government has introduced a state-funded legal representation scheme for complainants of sexual offences called the Sexual Assault Communications Privilege Service (SACPS).¹¹⁸ SACPS helps protect the privacy of counselling notes and other confidential therapeutic records in criminal proceedings involving sexual offences, supporting sexual assault victims to claim the privilege when their confidential records are subpoenaed.

SACPS lawyers have received specialised training and only represent the interests of the complainant, in contrast to the role of a prosecutor who must represent the interests of the state. SACPS can also guide the court on the operation of the communications privilege and the complainant's right to privacy. A similar scheme exists in Scotland and Ireland.¹¹⁹

Other independent legal representation schemes go further than New South Wales. In England and Wales, a pilot Sexual Violence Complainants' Advocates (SVCA) scheme provides a form of independent legal representation at the following stages of the process:¹²⁰

- reporting to police, including advice on the process and what to expect
- attendance at interviews (to ensure procedures are followed and victims are aware of their options)

¹¹⁵ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 109.

¹¹⁶ *Ibid* 143.

¹¹⁷ *Ibid* 145.

¹¹⁸ Legal Aid New South Wales, *Sexual Assault Communications Privilege Service* (2020) <<https://www.legalaid.nsw.gov.au/what-we-do/civil-law/sexual-assault-communications-privilege-service>>

¹¹⁹ Sir John Gillen, *Report into the law and procedures in serious sexual offences in Northern Ireland* (Report April 2019) 168-169.

¹²⁰ *Ibid* 169.

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- investigation/disclosure
 - pre-trial/trial—acting in the best interests of the complainant at hearings for the right to cross-examine on previous sexual history and attending trial as a silent party to ensure sexual history evidence is not introduced without a successful application.

In Denmark, state-funded legal representation has been extended to all victims of crime. The complainant's legal representative:¹²¹

- can be present at the police interview
- ensures complainants are kept updated about the progress of the case
- has the right to be present throughout the victim's examination and cross-examination and can object to questions put by both the prosecution and the defence
- may call witnesses to address the impact of the crime on the complainant at the sentencing stage.

Ireland may soon introduce legal representation for victims of sexual and other gender-based violence at the early stages of the process (for example, police report stage).¹²²

As with other major victim reforms, such as Victim Impact Statements (including the reading aloud of VISs), alternative arrangements for giving evidence and intermediaries,¹²³ independent legal representation for victims, even in a limited form, may be strongly opposed by some justice stakeholders. Nevertheless, given the overwhelming failings of the current system for victims of sexual assault, proper consideration must be given to more significant reforms such as this.

As noted by Arie Freiberg and Asher Flynn, while legal representation for victims might sit 'in contrast to the traditional model of an adversarial system, it may provide a mechanism to better recognise the needs of victims of crime, without encroaching on the rights of the accused or the role of the court'.¹²⁴

¹²¹ Ibid 170.

¹²² Ibid 168.

¹²³ Intermediaries have been described as 'little short of revolutionary' in that they introduced 'a new participant in the criminal trial process': Natalia Antolak-Saper and Hannah MacPherson, 'Vulnerable Witnesses and Victoria's Intermediary Pilot Program' (2019) 43 *Criminal Law Journal* 325, 337.

¹²⁴ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 105.

Ireland's Gillen Review concluded that 'the current arguments in favour of granting a measure of independent separate representation publicly funded [for victims of crime] far outweigh the objections'.¹²⁵ Academic Fiona E Raitt has suggested that effective participation in the criminal justice system for complainants may never be achieved without some degree of independent legal representation.¹²⁶

Without independent legal representation, victims in sexual assault matters may not be aware of their legal rights and interests, nor in a position to advocate for them to be upheld. Confusion caused by complex legal processes can be compounded by the shock and trauma caused by victimisation, which means many victims are not in a position to advocate for themselves.¹²⁷ In practice, this means that although victims have rights 'on paper' during the criminal trial process, they may not be aware of them, or be in a position to advocate for them.

Victims of sexual assault should have the right to legal representation at key stages of the criminal justice process. Criminal law procedure should be amended to enable victims to be legally represented at key stages of the criminal justice process. This would not elevate victims to be parties to a proceeding, but could provide victims with the right to an independent legal representative in relation to:

- applications to subpoena, access or use confidential medical or counselling records
- applications to be cross-examined on, or admit evidence about, sexual history
- access and eligibility for the intermediary scheme, special protections and alternative arrangements for giving evidence (discussed further below)
- representing victims' rights with respect to Victim Impact Statements at the sentencing phase.

Given the trauma experienced by victims of sexual assault during cross-examination, consideration should also be given to whether it would be appropriate for victims to have independent legal representation during cross-examination, as occurs in Denmark where state-funded legal representatives have the right to be present throughout the victim's examination and cross-

¹²⁵ Sir John Gillen, *Report into the law and procedures in serious sexual offences in Northern Ireland* (Report April 2019) 173.

¹²⁶ Fiona Raitt, 'Independent Legal Representation in Rape Cases: Meeting the Justice Deficit in Adversarial Proceedings' (2013) 9 *Criminal Law Review*, 729-749, 749.

¹²⁷ Arie Freiberg and Asher Flynn, *Victims and Plea Negotiations* (Palgrave Macmillan, 2020) 98.

examination and can object to questions put by both the prosecution and the defence.¹²⁸ Independent legal representation at this stage could assist with compliance with protections under the Evidence Act,¹²⁹ including protecting complainants from questions that are unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive or put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate.

Recommendation 12: Victims of sexual assault should have the right to an independent legal representative to represent their rights and interests at key stages of the criminal justice process including in relation to:

- **applications to subpoena, access or use confidential medical or counselling records**
- **applications to be cross-examined on, or admit evidence about, the sexual activities of the complainant**
- **access and eligibility for the intermediary scheme, special protections and alternative arrangements for giving evidence.**

Consideration should also be given to whether it would be appropriate for victims to have independent legal representation during cross-examination, as occurs in Denmark, to uphold protections under the Evidence Act 2008 (Vic) in relation to inappropriate questions or questioning.

¹²⁸ Sir John Gillen, *Report into the law and procedures in serious sexual offences in Northern Ireland* (Report April 2019) 170.

¹²⁹ *Evidence Act 2008* (Vic) s41(3).

11. Specialised support and justice responses

11.1. Co-located and specialised investigatory and support services

Many victims of sexual assault are daunted and overwhelmed by the prospect of having to walk into a police station to make a report. Evidence suggests that victims regard this as a significant barrier to reporting a crime.¹³⁰

Specialist responses, like Multidisciplinary Centres (MDCs), which locate police and other support services away from publicly identifiable police stations, have been found to improve outcomes for victims of sexual offences.¹³¹ Co-location of support services and increased specialisation of police, as provided for in Victoria's MDCs, has resulted in a more private, user-friendly and streamlined response to sexual assault victims, thereby increasing reporting of sexual assault and the wellbeing of victims.¹³²

The importance of access to specialised support, as provided for by the MDC model, is highlighted in the following case study from South Eastern Centre Against Sexual Assault. The case study emphasises how a non-specialised response can deter victims from progressing with a criminal matter in sexual assault cases:¹³³

[A client] said that at the time she was raped she had attended the local Police Station and spoken to the General Duties member on the desk who the victim felt was not helpful. She had walked out, decided not to report and returned

¹³⁰ Monash Health and South Eastern Centre Against Sexual Assault & Family Violence, *Keep following the yellow brick road. The trials, tribulations and triumphs of collocated police, child protection and sexual assault workers* (2016) <<https://www.casa.org.au/assets/Documents/keep-following-the-yellow-brick-road.pdf>>

¹³¹ Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 225; Department of Justice & Regulation and Victoria Police, *Victorian Government Response to Royal Commission: Current Approaches to policing in child sexual abuse matters* (2015) 13; Success Works Pty Ltd, *Sexual Assault Reform Strategy: Final Evaluation Report* (Prepared for Department of Justice) (2011) 24; Northern Centre Against Sexual Assault (NCASA), Submission No 34 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (28 October 2015) 3.

¹³² Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 226; Monash Health and South Eastern Centre Against Sexual Assault & Family Violence, *Keep following the yellow brick road. The trials, tribulations and triumphs of collocated police, child protection and sexual assault workers* (2016) <<https://www.casa.org.au/assets/Documents/keep-following-the-yellow-brick-road.pdf>>.

¹³³ Monash Health and South Eastern Centre Against Sexual Assault & Family Violence, *Keep following the yellow brick road. The trials, tribulations and triumphs of collocated police, child protection and sexual assault workers* (2016) <<https://www.casa.org.au/assets/Documents/keep-following-the-yellow-brick-road.pdf>>

home...After talking with the [SECASA] counsellor the young woman agreed to meet a SOCIT member. This only entailed walking down the corridor [in the MDC] to see if a Police member was free. The young woman subsequently reported and after some investigation an offender was located.

Before the MDC, the counsellor would have suggested that the young woman might want to talk to local Police. An appointment would have been made for her at the local [police station]. Counsellors are usually too busy to accompany a client to the Police Station. We know that people find it daunting to go to a Police Station and often do not follow through...

Independent evaluations have confirmed that MDCs:¹³⁴

- provide a welcoming environment for victims and families, which is focused on their safety and wellbeing
- streamline responses so victims access help more efficiently, including increased collaboration between services
- improve the range and quality of support for victims, their families and support people
- contribute to increased reporting of sexual crime to police and reduce the number of withdrawals from justice system processes
- lead to more just outcomes through the provision of higher quality investigation briefs.

Evidence suggests the enhanced service response provided by the MDC approach breaks down barriers to reporting and helps to ensure victims of sexual assault receive specialised responses when they wish to disclose.

Despite evidence of MDCs enhancing the wellbeing of victims and improving reporting rates, there are only seven MDCs across Victoria.¹³⁵ This means the specialised MDC response is not universally available to all victims of sexual assault.

Further investment in the MDC model has already been advocated by key stakeholders.¹³⁶ In 2015, the then-Department of Justice and Regulation suggested

¹³⁴ Victoria Police, *Policing Harm, Upholding the Right: Victoria Police Strategy for Family Violence, Sexual Offences and Child Abuse 2018-2023* (2017) 15.

¹³⁵ Victoria Police, *Sexual offences and child abuse investigation teams* (2020) <<https://www.police.vic.gov.au/sexual-offences-and-child-abuse-investigation-teams>>

¹³⁶ Monash Health and South Eastern Centre Against Sexual Assault & Family Violence, *Keep following the yellow brick road. The trials, tribulations and triumphs of collocated police, child protection and sexual assault workers* (2016) <<https://www.casa.org.au/assets/Documents/keep-following-the-yellow-brick-road.pdf>>

as part of its response to the Royal Commission into Institutional Child Sexual Abuse that further consideration be given to expanding the MDC model to additional areas to ensure an effective and consistent approach to responding to sexual offences throughout Victoria.¹³⁷

The MDC model should be expanded across Victoria to enable a consistent approach to responding to sexual offences throughout Victoria.

Recommendation 13: The Multidisciplinary Centres (MDC) model should be expanded to additional areas across Victoria to ensure a consistent approach for all victims of sexual assault across the state.

11.2. Integrated specialist family violence and sexual assault responses

The intersection between family violence and sexual assault is already well known. Addressing this intersection is part of the ongoing reforms responding to the recommendations of the Victorian Royal Commission into Family Violence.¹³⁸

The Victorian Government has been exploring ways to better integrate responses to sexual assault and family violence at a practical level for at least a decade.¹³⁹ The Victorian Royal Commission into Family Violence recommended the Victorian Government undertake a review into the two sectors to consider their integration.¹⁴⁰ A Victorian Auditor-General's Office report from May 2020 stated that 'work is still underway to determine how [Support and Safety] hubs will collaborate with sexual assault services'.¹⁴¹

Sexual Assault Services Victoria (formally known as CASA Forum) and Domestic Violence Victoria 'will shortly complete a joint project exploring how they can better interface with The Orange Door [Support and Safety Hubs] network to

¹³⁷ Department of Justice & Regulation and Victoria Police, *Victorian Government Response to Royal Commission: Current Approaches to policing in child sexual abuse matters* (2015) 15.

¹³⁸ Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 215; Victorian Government, *Sexual Assault and Family Violence* (2020) <<https://www.vic.gov.au/family-violence-reform-second-rolling-action-plan/sexual-assault-and-family-violence>>

¹³⁹ The Victorian Royal Commission into Family Violence noted a 2011 evaluation of the Victorian Government's Sexual assault Reform Strategy which recognised the need to integrate the responses 'at a practice level'. See Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 233.

¹⁴⁰ Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 235.

¹⁴¹ Victorian Auditor-General's Office, *Managing Support and Safety Hubs* (2020) 12.

provide integrated support to victim survivors of family violence where sexual assault has been a feature of their experience.¹⁴²

Improved integration across the specialist family violence and sexual assault sectors would provide victims of sexual assault with a more integrated, connected and state-wide network of specialised support to more seamlessly support victims. I endorse the government's continued work to explore ways in which specialist family violence and sexual assault responses can be integrated.¹⁴³

11.3. Single point of contact – sexual assault liaison/independent sexual violence advisers (ISVAs)

Many victims acutely feel the burden of constantly trying to obtain information and stay informed about the progress of their matter.¹⁴⁴

...the current way that victims of crime navigate through the system involves too many different organisations and parties and it was only after proceedings I actually understood what each person was meant to do...who is meant to be doing what and what is each party's role, and therefore because there's that and then there's a prosecutor and then there's the police and then there's you as victims, how do you navigate all of those people and know who's meant to be providing you with what?

Victims often need to liaise between, and across, systems and services such as police, specialist sexual assault services, witness assistance services and financial assistance services. A victim may need to:

- seek case updates from the police informant
- engage with a Centre Against Sexual Assault (CASA) for counselling
- meet with the Office of Public Prosecution's Victim and Witness Assistance Service about being a witness in an upcoming trial
- engage a lawyer to navigate the Victims of Crime Assistance Tribunal (VOCAT) process.

¹⁴² Victorian Government, *Sexual Assault and Family Violence (2020)* <<https://www.vic.gov.au/family-violence-reform-second-rolling-action-plan/sexual-assault-and-family-violence>>

¹⁴³ Victoria Police, *Policing Harm, Upholding the Right: Victoria Police Strategy for Family Violence, Sexual Offences and Child Abuse 2018-2023* (2017) 16.

¹⁴⁴ RMIT Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs* (2019) 72. See, also, RMIT Centre for Innovative Justice, *Improving support for victims of crime: Key practice insights* (2020) 14.

A recent review of the victim support system in Victoria found that victims were often confused about what supports were available.¹⁴⁵ Without a single point of contact, victims experienced the victim support system as ‘a series of disconnected interactions.’¹⁴⁶

Many victims want a single point of contact—someone who can stay with them throughout the entire justice process and ‘join the dots’ between each of the overlapping, yet often disconnected aspects of the justice and service system.

In the context of sexual assault, the Australian Institute of Family Studies has previously suggested the introduction of a ‘Sexual Assault Liaison’ (SAL), a dedicated support worker who would commence engagement with the victim from the time of first report to police to:¹⁴⁷

- provide information about options and procedures at every stage of the criminal justice process
- establish connections to counsellors, police, prosecution and court support workers
- assist victims with alternative justice options
- organise structured follow-up with victims after the committal or trial process.

In the United Kingdom (UK), a similar role as envisaged by the Australian Institute of Family Studies is undertaken by Independent Sexual Violence Advisers (ISVAs).

ISVAs act as a single point of contact for victims from the point of disclosure and, when relevant, throughout the court process.¹⁴⁸ ISVAs provide impartial information to victims about all of their options, such as reporting to the police, accessing sexual assault services and sexual violence counselling.¹⁴⁹ ISVAs are not legal advisers but they can provide impartial information regarding the criminal justice process.¹⁵⁰

¹⁴⁵ RMIT Centre for Innovative Justice, *Strengthening Victoria’s Victim Support System: Victim Services Review* (2020) 12.

¹⁴⁶ RMIT Centre for Innovative Justice, *Strengthening Victoria’s Victim Support System: Victim Services Review* (2020) 38.

¹⁴⁷ Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) 62.

¹⁴⁸ Home Office, *The Role of the Independent Sexual Violence Adviser: Essential Elements* (2017) 16.

¹⁴⁹ *Ibid* 5.

¹⁵⁰ *Ibid* 13.

ISVAs can:¹⁵¹

- provide impartial information regarding making a report to police
- provide emotional support to the victim as they decide whether to report
- help the victim understand the police investigation process
- support the victim through interviews, hearings and pre-trial meetings with prosecution
- provide accurate and impartial information on the prosecution process and what will happen in the court, for example facilitating pre-trial court familiarisation visits.

During the court process, the ISVA can:¹⁵²

- accompany the victim to the court and provide emotional support
- keep the victim updated on how the court case is progressing
- support the victim in court or while they give evidence remotely.

Some of the functions outlined above in relation to both ISVAs and SALs may already be performed by either generalist or specialist victim support services in Victoria. However, it is not clear that these services are integrated in a way that victims have a single point of contact throughout. Some services may not engage with victims at early stages of the process (such as the OPP's victim and witness service) while other services (such as a CASAs) may be unable to support victims at court throughout an entire trial process. This contributes to victims experiencing disconnected and disjointed support.¹⁵³

Sexual Assault Liaison or Independent Sexual Violence Adviser roles should be introduced to provide victims of sexual assault a single point of contact during their recovery journey. SALs or ISVAs should act as a 'connector' across both the service and justice system, providing victims of sexual assault with a single point of contact from the point of disclosure through to the completion of the criminal process (if relevant). While the proposed new victim support model outlined in *Strengthening Victoria's Victim Support System: Victim Services Review*, if implemented, may improve victims' experience of the support 'system', sexual

¹⁵¹ Ibid 14.

¹⁵² Ibid 15.

¹⁵³ RMIT Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (2020) 38.

assault victims would benefit from a dedicated and specialist 'single point of contact'.

Sexual Assault Liaison or Independent Sexual Violence Adviser roles would enhance victims' information and participatory rights, as provided for under the Victims' Charter. The availability of an impartial third party who is able to provide victims with advice regarding the criminal justice process and their rights under the Victims' Charter would encourage a more genuine participatory role for victims of crime as envisaged by the VLRC's 2016 report *Victims of Crime in the Criminal Trial Process*.

Sexual Assault Liaison or Independent Sexual Violence Adviser roles could assist with encouraging compliance with victim consultation obligations under the Victims' Charter, ensuring agencies consult with victims in a meaningful and respectful way. This could include ensuring a victim is provided with sufficient time and information (in an accessible way) to consider their participatory rights, for example, during plea processes.

Although Sexual Assault Liaison or Independent Sexual Violence Adviser roles would not be a victim's legal representative, they would be able to provide victims with general advice about their rights and entitlements during key stages of the criminal justice process, as well as refer victims to independent legal advice where it is considered necessary to protect a victim's rights and entitlements.

Careful consideration would need to be given to the role's scope (ensuring it does not duplicate existing services) and its location. For example, these roles could form part of the suite of victims' services operated by the Department of Justice and Community Safety,¹⁵⁴ or be funded as part of existing community-based specialist sexual assault services, such as the Centres Against Sexual Assault.

Recommendation 14: The Victorian Government should establish and fund a dedicated sexual assault liaison service to provide victims of sexual assault a single point of contact during the criminal justice process and their recovery journey.

¹⁵⁴ Integration with government-administered victim support services was suggested by Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) 62.

11.4. Police culture, training and education

Police are the ‘gatekeepers’ to the criminal justice system.¹⁵⁵ Like the general population, police ‘are not immune to the misconceptions found in the broader community regarding sexual assault, including problematic gendered scripts and victim-blaming attitudes.’¹⁵⁶ Research has found that police bias ‘shares an uncanny resemblance to the public stereotype and myths of how rapes occur’.¹⁵⁷

These misconceptions impact on the ways in which victims of sexual assault are treated when they report a crime, the way in which a complaint is handled and the likelihood of police authorising a sexual assault case to proceed. For example, police expectations about how survivors ‘should look and act’ have directly affected victims’ first contacts with police and contributed to case attrition.¹⁵⁸

When victims are met with blame or disbelief, trauma symptoms are exacerbated and victims are less likely to participate in the formal criminal justice process.¹⁵⁹

A recent ABC news investigation, which elevated the voices of victims of sexual assault, suggested problematic police attitudes towards sexual assault still exist.¹⁶⁰

Sandra¹⁶¹ was gang-raped in 2016 by a group of men she met in a nightclub while out with some friends and her adult son in a coastal town in eastern Victoria. She says Victoria Police detectives treated her with suspicion and disbelief throughout the nine-month investigation.

On the night of the assault, the 48-year-old recalls being given one drink by the men and dancing with two of them before telling her son that she was going home. Her next memory is of waking up in a motel room, being “violently ill”, vomiting and urinating on herself, and being used “like a rag doll” by a group of up to five men.

¹⁵⁵ Franklin et al, ‘Police Perceptions of Crime Victim Behaviours: A Trend Analysis Exploring Mandatory Training and Knowledge of Sexual and Domestic Violence Survivors’ Trauma Responses’ (2020) 66 (8) *Crime & Delinquency* 1055, 1059.

¹⁵⁶ Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) 58.

¹⁵⁷ Elli Darwinkel, Martine Powell and Patrick Tidmarsh, ‘Improve Police Officers’ Perceptions of Sexual Offending Through Intensive Training’ (2013) 40 (8) *Criminal Justice and Behaviour* 895, 896

¹⁵⁸ Franklin et al, ‘Police Perceptions of Crime Victim Behaviours: A Trend Analysis Exploring Mandatory Training and Knowledge of Sexual and Domestic Violence Survivors’ Trauma Responses’ (2020) 66 (8) *Crime & Delinquency* 1055, 1056-1057.

¹⁵⁹ Ibid.

¹⁶⁰ [Inga Ting, Nathanael Scott and Alex Palmer, ‘Rough justice: How police are failing survivors of sexual assault’ ABC News \(online\) 3 February 2020 <https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364?nw=0>](https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364?nw=0)

¹⁶¹ Not real name.

She reported the attack six days later. The detective assigned to her case told her she “looked fine” and “because I’d remembered so much detail of the night, in her opinion [that] means I wasn’t drugged, just drunk,” Sandra says.

Deferral to myths and misconceptions are directly linked to a lack of specialised knowledge and education on how trauma manifests.¹⁶² Conversely, police specialisation results in improved practice in sexual assault matters.¹⁶³ Intensive classroom-based training on the dynamics of sexual offending alter police responses to sexual assault complaints and increase the likelihood of police case authorisation.¹⁶⁴ Police who have undergone intensive class-room training make fewer negative comments in relation to a victims’ behaviour as well perceived evidentiary barriers in a case.¹⁶⁵

Appropriate police responses mitigate trauma and encourage victim engagement with the criminal justice process.¹⁶⁶ For this reason, victims of sexual assault should have access to a specialised police response grounded in contemporary understandings of sexual assault dynamics and the impacts of trauma from the first point of contact.

As outlined above, the specialist response provided for by an MDC should be universally available to victims of sexual assault in Victoria. Victims of crime should not receive different outcomes based on their postcode. If specialist responses, such as MDCs, provide victims with a safer space to seek help and report crime,¹⁶⁷ these responses should be available to all victims of crime.

In addition, there should continue to be an ongoing focus on embedding cultural change in Victoria Police, particularly with respect to addressing gender equality and sexual harassment in the workplace. Research undertaken by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) in 2015 found many

¹⁶² Franklin et al, ‘Police Perceptions of Crime Victim Behaviours: A Trend Analysis Exploring Mandatory Training and Knowledge of Sexual and Domestic Violence Survivors’ Trauma Responses’ (2020) 66 (8) *Crime & Delinquency* 1055, 1057.

¹⁶³ Patrick Tidmarsh, *Training Sexual Crime Investigators to get the “Whole Story”* (2016) (PhD Thesis, Deakin University, 2016) 17.

¹⁶⁴ Elli Darwinkel, Martine Powell and Patrick Tidmarsh, ‘Improve Police Officers’ Perceptions of Sexual Offending Through Intensive Training’ (2013) 40 (8) *Criminal Justice and Behaviour* 895, 904; Franklin et al, ‘Police Perceptions of Crime Victim Behaviours: A Trend Analysis Exploring Mandatory Training and Knowledge of Sexual and Domestic Violence Survivors’ Trauma Responses’ (2020) 66 (8) *Crime & Delinquency* 1055, 1074.

¹⁶⁵ Elli Darwinkel, Martine Powell and Patrick Tidmarsh, ‘Improve Police Officers’ Perceptions of Sexual Offending Through Intensive Training’ (2013) 40 (8) *Criminal Justice and Behaviour* 895, 904-905.

¹⁶⁶ Franklin et al, ‘Police Perceptions of Crime Victim Behaviours: A Trend Analysis Exploring Mandatory Training and Knowledge of Sexual and Domestic Violence Survivors’ Trauma Responses’ (2020) 66 (8) *Crime & Delinquency* 1055, 1057.

¹⁶⁷ Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 2, 225; Department of Justice & Regulation and Victoria Police, *Victorian Government Response to Royal Commission: Current Approaches to policing in child sexual abuse matters* (2015) 13.

of Victoria Police's female employees were experiencing sexual discrimination and harassment at work.¹⁶⁸ Just as these types of behaviours in our community can be directly linked to violence against women,¹⁶⁹ these types of behaviours in Victoria Police directly impact the way in which victims of sexual assault experience the justice system.

Victoria Police has a critical role in responding to gender-based violence against women. There must continue to be a sustained effort to embed cultural change and address gender equity and sexual harassment.

VEOHRC has monitored Victoria Police's progress towards gender equality and their responses to sexual harassment in the workplace since 2015. Victoria Police engaged VEOHRC to complete an independent review into sex discrimination and sexual harassment, not only to address workplace safety, but because 'Victoria Police knew that addressing workplace harm in its own organisation would also improve its response to gendered violence in the community'.¹⁷⁰

In its final report in 2019, VEOHRC found that 'Victoria Police is transforming into a modern policing organisation that is disrupting its deeply entrenched culture of systemic discrimination and high tolerance for gendered harm'. At the same time, VEOHRC also acknowledged that 'transformative change will require time, steadfast commitment and enduring leadership'.¹⁷¹ VEOHRC made 16 new recommendations to help embed gender equality across Victoria Police by 2030 and also provided Victoria Police with a 10-year outcome monitoring framework to assess its progress towards gender equality. It is important this work continues to be a priority for Victoria Police if responses to sexual assault are to be improved.

11.5. Specialised court responses

As noted in VLRC *Issues Paper B*, in Victoria, most courts have specialist lists to deal with sexual offences. The County Court of Victoria, Magistrates' Court of

¹⁶⁸ Victorian Human Rights and Equal Opportunity Commission, *Independent Review of Victoria Police* <www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/police-review/>

¹⁶⁹ Victorian Government, *Free from violence: Victoria's strategy to prevent family violence and all forms of violence against women* (2017) iii.

¹⁷⁰ Victorian Human Rights and Equal Opportunity Commission, *Independent Review of Victoria Police* <www.humanrights.vic.gov.au/legal-and-policy/research-reviews-and-investigations/police-review/>

¹⁷¹ Victorian Human Rights and Equal Opportunity Commission, *Independent Review Into Sex Discrimination and Sexual Harassment including Predatory Behaviour in Victoria Police: Phase 3 audit and review* (Executive Summary, 2019) 3.

Victoria and Children's Court¹⁷² have Sexual Offences Lists.¹⁷³ This means that courts specialise within their overall structure.¹⁷⁴

The County Court describes the primary function of the Sexual Offences List as 'pre-trial management'. Specialist judges manage matters relating to trial duration, resolution prospects, filing of documentation, bail variations, applications to adjourn pleas by consent, filing of indictments and filing of notices of discontinuance.¹⁷⁵

While such specialised pre-trial management no doubt benefits victims of crime by reducing delays and streamlining pre-trial procedures, it is not clear whether specialist lists more specifically assist victims of sexual assault during the trial process.

Significant progress has been made to alter court infrastructure to accommodate the features and dynamics of family violence through specialist and dedicated family violence courts. Specialist family violence courts have been designed with victims' wellbeing and safety in mind, providing separate court entrances for victim-survivors, safe waiting spaces and interview rooms, remote witness facilities, child-friendly spaces and culturally safe spaces. Court staff undertake specialised professional development to ensure they meet the needs of victim-survivors and other court users.

In New Zealand, the Sexual Violence Court Pilot was found to have reduced the risk of secondary victimisation through the justice process for victims of sexual assault.¹⁷⁶ Features of the Sexual Violence Court Pilot included:¹⁷⁷

- designated case managers proactively managing files
- earlier allocation of cases and earlier trial scheduling

¹⁷² Magistrates' Court of Victoria, *Practice Direction No. 2 of 2015 Sexual Offences List Suburban Magistrates' Courts Summary Offences Involving Child Complainants* (4 February 2015).

¹⁷³ County Court of Victoria, *Sexual Offences List* (2020) <<https://www.countycourt.vic.gov.au/going-court/criminal-division/criminal-division-court-lists/sexual-offences-list>> See also Victorian Government *Criminal Justice Report (2017)* (2019) <<https://www.vic.gov.au/victorian-government-annual-report-2018-royal-commission-institutional-responses-child-sexual-abuse/criminal-justice-report-2017>>

¹⁷⁴ Professor Patrick Parkinson AM, 'Specialist Prosecution Units and Courts: A Review of the Literature' (Report for the Royal Commission into Institutional Responses to Child Sexual Abuse, March 2016) 8.

¹⁷⁵ County Court of Victoria, *Sexual Offences List* (2020) <<https://www.countycourt.vic.gov.au/going-court/criminal-division/criminal-division-court-lists/sexual-offences-list>>

¹⁷⁶ Gravitas Research and Strategy Limited (for the Minister of Justice), *Evaluation of the Sexual Violence Court Pilot* (2019) 3.

¹⁷⁷ *Ibid* 3.

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- courtrooms prioritised for pilot cases
 - increased communication between stakeholder organisations involved in pilot cases
 - greater use of alternative modes of evidence
 - close attention to application of the guidelines to cross-examinations
 - use of separate court entrances and secure waiting spaces
 - communication assistants
 - pre-trial meetings with the presiding judge
 - pre-trial court education visits
 - assistance from independent victims' advocates and support from a Sexual Violence Victim Advisor operating within the court

Building on the experience of specialist family violence courts in Victoria, and learnings from New Zealand's Sexual Violence Court Pilot, specialised court responses should be introduced in Victoria.

Recommendation 15: The Victorian Government should introduce specialised court responses for sexual offences to provide for:

- **specially trained and dedicated court staff**
- **mandatory judicial education for judicial officers presiding over sexual assault cases**
- **victim-centric court environments, including safe entries and exits and safe waiting areas.**

12. Cultural change and education within the legal profession

12.1. Victims' experiences of cross-examination

While the Victims' Charter Act requires victims to be 'treated with courtesy, respect and dignity' by investigatory, prosecuting and victims' services agencies',¹⁷⁸ this Victims' Charter right does not extend to a victims' experience in court more broadly.

While many victims of crime understand the need to test evidence in open court and for an accused to receive a fair trial, they also experience the court process to be unnecessarily demeaning, disrespectful, intimidating and re-traumatising. Research has confirmed that victims subject to cross-examination feel humiliated, distressed, confused, bullied, intimidated, harassed, patronised and embarrassed.¹⁷⁹

There is legislation aimed at protecting witnesses from improper questions or questioning. Witnesses are to be protected from questioning that:¹⁸⁰

- is misleading or confusing
- is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive
- is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate
- has no basis other than a stereotype (for example, a stereotype based on the witness's sex, race, culture, ethnicity, age or mental, intellectual or physical disability).

¹⁷⁸ *Victims' Charter Act 2006* (Vic) s6.

¹⁷⁹ Natalia Antolak-Saper and Hannah MacPherson, 'Vulnerable Witnesses and Victoria's Intermediary Pilot Program' (2019) 43 *Criminal Law Journal* 325, 326.

¹⁸⁰ *Evidence Act 2008* (Vic) s41(3).

However, research suggests victims are still regularly subjected to aggressive cross-examination tactics to ‘test “the credibility and the veracity of the witness” and to elicit probative evidence’.¹⁸¹

One victim who recently spoke to the media anonymously felt that during the committal hearing, the defence lawyer was trying to get her to ‘break’ by ‘exploring what tactics would work on her’.¹⁸²

Research also suggests rape myths continue to be relied upon by defence counsel to undermine witness credibility.¹⁸³ In a recent high-profile sexual assault case heard in the Magistrates’ Court, the Magistrate was critical of defence counsel’s questioning of the four female complainants.¹⁸⁴

On the issue of cross-examination, the court was not assisted in its task by questions put by defence counsel Mr Littlemore QC such as the length of the average female labia majora, or whether a complainant was proud of her figure or other troubling and outdated stereotypes of sexual assault victims...Times have changed....It was perturbing that defence appeared unfamiliar with section 41 of the Evidence Act which prohibits such inappropriate questions...I was not assisted by the lines of questioning by defence that called into question the reputations of the complainants, sexual or otherwise, the poses they struck in photographs on social media, or their appearance or what they were wearing.

Many victims report that the ‘sexual assault trial is an ordeal, sometimes described as bad or worse than the original abuse, a place where the complainant’s behaviour is on trial’.¹⁸⁵ Victims of sexual offences in particular have indicated that

¹⁸¹ Mary Iliadis, *Adversarial Justice and Victims’ Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 6.

¹⁸² Nicole Precel, Rachael Dexter and Eleanor Marsh, ‘Are we failing victims of sexual violence?’ *The Age*, 13 September 2019 < www.theage.com.au/interactive/2019/are-we-failing-victims-of-sexual-violence/ >

¹⁸³ Olivia Smith and Tina Skinner, ‘How Rape Myths are Used and Challenged in Rape and Sexual Assault Trials,’ *Social & Legal Studies* (2017) Vol 26(4), 441-466. See, eg, Jacqueline Horan and Jane Goodman-Delahunty, ‘Expert Evidence to Counteract Jury Misconceptions about Consent in Sexual Assault Cases: Failures and Lessons Learned’ (2020) 43 (2) *UNSW Law Journal* 707, 716-717; Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020); Mary Iliadis, *Adversarial Justice and Victims’ Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020), 9; Jane Goodman-Delahunty, et al ‘What Australian Jurors Know and Do Not Know about Evidence of Child Sexual Abuse’ (2017) 41 (2) *Criminal Law Journal* 86-103.

¹⁸⁴ Elise Kinsella ‘Magistrate critical of “troubling” and “outdated” questions from Craig McLachlan’s lawyer to female complainants’ *ABC News* (online), 16 December 2020 <<https://www.abc.net.au/news/2020-12-16/magistrate-criticises-craig-mclachlan-lawyer-over-questioning/12985916>>

¹⁸⁵ Annie Cossins ‘Why her behaviour is still on trial: the absence of context in the modernisation of the substantive law on consent’ (2019) 42 (2) *UNSW Law Journal* 462-499, 462.

they are more upset and stressed by cross-examination than anything else that happens in relation to their cases.¹⁸⁶

Victorian Centres Against Sexual Assault have drawn attention to victims being:

- questioned about aspects of their sexual history¹⁸⁷
- questioned about their alcohol consumption¹⁸⁸
- subjected to lengthy cross-examinations involving repeated questions which the victim has already answered¹⁸⁹
- placed under undue stress by lengthy periods of cross-examination which results in deliberate attempts and increased opportunity to discredit and marginalise their legitimate testimony¹⁹⁰
- subjected to cold and offensive treatment during evidentiary processes¹⁹¹
- forced by defence counsel's closed questioning to agree to an insulting premise or to a premise apparently contradicting their previous testimony without an opportunity to provide answers beyond 'yes' or 'no' to provide context.¹⁹²

The VLRC's 2016 report *Victims of Crime in the Criminal Trial Process* found that many victims felt the judicial officer presiding over their case did nothing, or too little, to protect their legitimate interests.¹⁹³ It was suggested that in some cases, judges have permitted 'practices that further humiliate and traumatise victims, as well as wasting time.'¹⁹⁴

The VLRC was told by the Law Institute of Victoria, the Victorian Bar and Criminal Bar Association that improper questioning of witnesses was rare and that judicial

¹⁸⁶ Hamlyn, B. et al. 2004. *Are Special Measures Working? Evidence from Surveys of Vulnerable and Intimidated Witnesses*. Home Office Research Study 283, London, in Samantha Fairclough and Imogen Jones, 'The Victim in Court' in Walklate, Sandra (ed) *Handbook of victims and victimology* (Second edition) (2018), 211-228, 215.

¹⁸⁷ Northern Centre Against Sexual Assault (NCASA), Submission No 34 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (28 October 2015) 3.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Loddon Campaspe Centre Against Sexual Assault, Submission No 30 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (20 October 2015) 1.

¹⁹¹ Ibid 2.

¹⁹² Ibid 5.

¹⁹³ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 34.

¹⁹⁴ Ibid 45.

officers are adequately enforcing existing protections.¹⁹⁵ In contrast, victims, victim support workers, legal professionals and some members of the judiciary told the VLRC that judicial intervention is not always adequate and improper questioning still occurs.¹⁹⁶ The VLRC concluded there was 'clearly a gap between what victims and the legal profession consider appropriate questioning'.¹⁹⁷

As noted by Loddon Campaspe Centre Against Sexual Assault in their submission to the VLRC's *Victims of Crime in the Criminal Trial Process*: 'There is a great deal of discretion for judges in which words or which lines of questioning they can find objectionable. Frequently judges do not intervene to protect the witness from unfair, unreasonable and offensive lines of questioning, even though judges do already have the power to intervene.'¹⁹⁸

An active and interventionist judicial officer is fundamental to protecting victims of sexual assault in the courtroom. As noted by Loddon Campaspe Centre Against Sexual Assault, judges already have the power to intervene¹⁹⁹ but victims' experiences of protection against unfair, unreasonable and offensive lines of questioning are variable. It is clear that further work is required to protect victims of sexual assault from such traumatic and distressing cross-examination. The justice system should ensure witnesses do not feel harassed, bullied or intimidated, and that the trial process facilitates the most reliable evidence from witnesses.²⁰⁰

A comprehensive, professional development program should be mandatory for all judicial officers presiding over sexual assault matters. Such training should feature victim-survivors voices and their lived experience of the trial process. This education program should also elevate the voices of specialist support workers and advocates who can expertly highlight the ways in which appropriate judicial recognition and intervention can radically alter a victim's perceptions of 'justice'.

Mandatory training for all judges designated to preside over sexual assault cases in New Zealand's Sexual Violence Court Pilot was found to have high rates of participant satisfaction. An evaluation of the pilot found that 'despite having

¹⁹⁵ Ibid 96.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Loddon Campaspe Centre Against Sexual Assault, Submission No 30 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (15 October 2016) 7.

¹⁹⁹ Ibid.

²⁰⁰ Natalia Antolak-Saper and Hannah MacPherson, 'Vulnerable Witnesses and Victoria's Intermediary Pilot Program' (2019) 43 *Criminal Law Journal* 325, 327.

presided over sexual violence cases for many years, this was [judicial officers'] first insight into the perspectives of complainants'.²⁰¹

This education should continue the important work of the Judicial College of Victoria in increasing competency in victim-centric court craft.²⁰² As previously suggested by the VLRC, judicial education should focus on:

- evidence-related provisions designed to protect victims, including how to ensure such measures are enforced consistently
- how to determine whether questioning is improper or inappropriate and how to intervene when this occurs.

It is possible that mandatory judicial education for judicial officers presiding over sexual assault cases may be best enabled through the creation of a dedicated specialist sexual assault court, as discussed above. The legislation establishing the specialist court could mandate minimum training and experience for judicial appointments, similar to the appointment of Magistrates to the Family Violence Court Division who must have 'relevant knowledge and experience' in relation to family violence.²⁰³ It is also vital training and education is part of an ongoing professional development program.

Recommendation 16: A comprehensive, mandatory professional development program should be introduced for all judicial officers presiding over sexual assault matters. The program should feature:

- **victim-survivor voices and their lived experience of the criminal justice system**
- **the views and experiences of specialist support workers and advocates**
- **in depth guidance in relation to all legislative provisions designed to protect victims, specifically protections relating to giving evidence**
- **practical exploration of how to determine whether defence counsel questioning is improper or**

²⁰¹ Gravitas Research and Strategy Limited (for the Minister of Justice), *Evaluation of the Sexual Violence Court Pilot* (2019) 14.

²⁰² See, for example, Judicial College of Victoria, *Victims of Crime in the Courtroom* <www.judicialcollege.vic.edu.au/resources/victims-crime-courtroom>

²⁰³ *Magistrates' Court Act 1989* (Vic) s41A.

inappropriate, and how to intervene when this occurs.

12.2. Victims' treatment by prosecutors and defence counsel

As victims of sexual assault do not have their own legal representation, they are reliant on prosecutors enforcing legislative protections against unlawful or inappropriate questioning by defence counsel. However, evidence suggests not all prosecutors adopt interventionist approaches during the cross-examination of a victim of sexual assault.²⁰⁴

A recent sexual assault case in Victoria also suggests prosecutors are not immune to deferring to myths and misconceptions relating to sexual assault. Comments made in this case illustrate the broader cultural issues that must be addressed in the legal profession. In this case, the prosecutor stated:²⁰⁵

She's [the alleged victim] exposed herself and made herself vulnerable, unwisely and of course, boys will always be boys. That's an ancient truth which she may well have forgotten. Boys will always be boys. And she's exposed herself to that...

It is troubling that 'an experienced prosecutor'²⁰⁶ has referred to a victim of alleged sexual assault as 'making herself vulnerable', being 'unwise' and 'expos[ing] herself to that', as well as appearing to further promulgate outdated notions of gendered sexual behaviour with the phrase 'boys will always be boys'. If prosecutors hold such beliefs to be true or are willing to tender them in support of a prosecution case, it does not engender confidence that a prosecutor would recognise inappropriate questioning by defence counsel—or object to that questioning to protect a victim of sexual assault during cross-examination.

As outlined above, research suggests victims are still regularly subjected to aggressive cross-examination tactics²⁰⁷ and that rape myths continue to be relied upon by defence counsel.²⁰⁸ Without active intervention by the prosecutor or judicial officer, victims are still being subjected to:

²⁰⁴ Loddon Campaspe Centre Against Sexual Assault, Submission No 30 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (20 October 2015) 8.

²⁰⁵ *Hubbard v The Queen* [2020] VSCA 303.

²⁰⁶ The Supreme Court of Appeal noted the experience of the prosecutor in their judgment.

²⁰⁷ Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020) 6.

²⁰⁸ Olivia Smith and Tina Skinner, 'How Rape Myths are Used and Challenged in Rape and Sexual Assault Trials,' *Social & Legal Studies* (2017) Vol 26(4), 441-466. See, eg, Jacqueline Horan and Jane Goodman-Delahunty, 'Expert Evidence to Counteract Jury Misconceptions about Consent in Sexual Assault Cases: Failures and Lessons Learned' (2020) 43 (2) *UNSW Law Journal* 707, 716-717; Patrick Tidmarsh and Gemma Hamilton, Australian

- lengthy cross-examinations involving repeated questions which the victim has already answered²⁰⁹
- undue stress by lengthy periods of cross-examination which results in deliberate attempts and increased opportunity to discredit and marginalise victims' legitimate testimony²¹⁰
- cold and offensive treatment during evidentiary processes²¹¹
- a constant barrage of accusations with little space to answer²¹²
- answer yes or no to, without the opportunity to provide context.²¹³

Research by the Australian Institute of Family Studies has suggested an 'educational gap' for some defence practitioners in relation to sexual offence reforms and the necessary cultural change, specifically, with respect to vigorous cross-examination.²¹⁴

12.3. Addressing problematic attitudes and practices in the legal profession

12.3.1. Training and education

The 2019 report, *Sexism and Gender Inequality in the Victorian Legal and Justice Sector* found evidence of 'attitudes that excuse, trivialise or condone violence against women.' Respondents to the survey remarked that members of the judiciary, barristers and lawyers sometimes downplayed family violence or colluded with perpetrators in court. Respondents also described victim-blaming

Institute of Criminology, *Misconceptions of sexual crimes against adult victims: Barriers to Justice* (No. 611, November 2020); Mary Iliadis, *Adversarial Justice and Victims' Rights: Reconceptualising the Role of Sexual Assault Victims* (Taylor & Francis Group, 2020), 9; Jane Goodman-Delahunty, et al 'What Australian Jurors Know and Do Not Know about Evidence of Child Sexual Abuse' (2017) 41 (2) *Criminal Law Journal* 86-103.

²⁰⁹ Northern Centre Against Sexual Assault (NCASA), Submission No 34 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (28 October 2015) 1.

²¹⁰ Loddon Campaspe Centre Against Sexual Assault, Submission No 30 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (20 October 2015) 1.

²¹¹ Ibid 2

²¹² Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) 13.

²¹³ Loddon Campaspe Centre Against Sexual Assault, Submission No 30 to Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (20 October 2015) 5

²¹⁴ Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) 50.

attitudes and hearing ‘jokes’ involving sexual assault.²¹⁵ This report highlights the continued need to focus on broader cultural change within the legal profession, including addressing gender equality and problematic views about violence against women.²¹⁶

Just as these types of views held by members of our community can be directly linked to violence against women,²¹⁷ these types of views held by members of our legal sector directly impact the way in which victims of sexual assault experience their interactions with the justice system.

The VLRC’s 2016 report *Victims of Crime in the Criminal Trial Process* highlighted the ongoing concerns of victims of crime (and their support workers) in relation to problematic attitudes towards victims of crime in the courtroom.

While the VLRC’s report was not limited to victims of sexual assault, it highlighted the need to improve the attitudes and understanding of those within the criminal justice system to victimisation, trauma and the ways in which the justice system can cause additional harm to victims of crime. The VLRC noted that ‘almost all of the comments made to the Commission about the need for cultural change through education and training were directed at lawyers, judges and magistrates.’²¹⁸

This is consistent with previous research relating solely to sexual assault, which emphasised the need for those involved in the criminal justice process, including prosecutors, defence practitioners and members of the judiciary to undertake further education in relation to:²¹⁹

- the nature and extent of sexual assault in society
- problematic misconceptions regarding sexual assault

²¹⁵ Women’s Legal Service Victoria, *Sexism and Gender Inequality in the Victorian Legal and Justice Sector* (Phase One Discussion Paper, 2019) 18.

²¹⁶ This will also be the focus of the current Review of Sexual Harassment in Victorian Courts which was initiated jointly by the Victorian Government, the Chief Justice of the Supreme Court of Victoria and Chair of the Courts Council, the Hon Anne Ferguson. See Review of Sexual Harassment in Victorian Courts, Context and scope (2020) <www.shreview.courts.vic.gov.au/about-the-review/>.

²¹⁷ Victorian Government, *Free from violence: Victoria’s strategy to prevent family violence and all forms of violence against women* (2017) iii.

²¹⁸ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 49.

²¹⁹ Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) vii.

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- the contexts in which sexual assault occurs and the varying relationships between victims and offenders
 - the psychological and social effects of sexual assault on victims
 - the ongoing effects of sexual assault on victims, specifically as this relates to their ability to engage with the criminal justice process.

The VLRC has previously recognised the need for all legal professionals to undergo training to improve victims' experience of the criminal trial process: 'Training and education about victims should be directed towards everyone within the criminal justice system, in particular judicial officers, defence and prosecution lawyers.'²²⁰

The VLRC suggested legal professionals should undergo training and education in relation to:²²¹

- understanding the origins of, and addressing, problematic attitudes towards victims of sexual assault and family violence
- evidence-related provisions designed to protect victims, to ensure such measures are enforced consistently
- how to test victims' evidence in an appropriate manner
- how to determine whether questioning is improper or inappropriate and how to intervene when this occurs.

Similarly, the Royal Commission into Institutional Child Sexual Abuse recommended that state and territory governments 'support and encourage the judiciary, public prosecutors, public defenders, legal aid and the private Bar to implement regular training and education programs for the judiciary and the legal profession in relation to understanding child sexual abuse and current social science research in relation to child sexual abuse.'²²²

The Royal Commission into Institutional Child Sexual Abuse recommended that the relevant state education bodies be 'adequately funded to provide leadership in making relevant information and training available in the most effective forms to the judiciary and, where relevant, the broader legal profession so that they

²²⁰ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 48.

²²¹ *Ibid* 48-79.

²²² Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report Recommendations (2017) 111.

understand and keep up to date with current social science research that is relevant to understanding child sexual abuse.'

There is a need for a continued focus on requiring legal professionals, including judicial officers, to undergo training to improve attitudes and understanding of victimisation, trauma and the ways in which the justice system can cause additional harm to victims of crime. Due to the various bodies and organisations across Victoria responsible for regulating and educating legal professionals and the judiciary, including universities, professional associations/bodies and statutory entities, this is a complex task. There may need to be a range of approaches to education and training focusing on different professionals.

To the maximum extent possible, collaborative work should be undertaken by responsible bodies, including the Law Institute of Victoria, Judicial College of Victoria, Victorian Bar, Criminal Bar Association, Victorian Legal Services Board and Commissioner, Victoria Legal Aid and the Director of Public Prosecutions, to improving victim-centric legal practice. Possible approaches to training and education may include:

- in-depth training programs on victim-related court craft for judges
- trauma-informed and victims' rights training for prosecutors and defence barristers (run collaboratively by professional bodies/organisations that contribute towards Continuing Professional Development (CPD) requirements)
- specialist accreditation in victim-related legal practice
- enhancing victim-related content in undergraduate and post-graduate legal degrees, including incorporating information into mandatory units such as criminal law procedure.

Recommendation 17: That the VLRC determine how relevant legal bodies across Victoria can implement training and education for judicial officers, defence and prosecution lawyers in relation to:

- **the rights and experiences of victims of crime during the criminal trial process**
- **addressing problematic attitudes towards specific kinds of crime, including family violence and sexual assault**

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- **ways in which victims' evidence can be tested in an appropriate manner in sexual assault cases while reducing the risk of secondary victimisation, in line with the objectives of the *Victims' Charter Act 2016* (Vic)**
 - **appropriate prosecutorial and judicial intervention to protect victims from inappropriate questions or questioning.**

13. Evidence and procedure

13.1. Extending the intermediary program

Funding has recently been provided in the Victorian State Budget for the continuation of the Intermediaries Pilot Program (IPP). The IPP provides specialist communication assistance to victims and witnesses in sexual or homicide offences if they have a cognitive impairment or are under 18 years of age.²²³

An intermediary assists the court by facilitating communication in the court room and providing input during ground rules hearings.²²⁴ The intermediary can advise on the appropriate formulation of questions for the witness and can intervene during questioning to ensure that cross-examination is trauma-informed and appropriate.²²⁵

It is now understood that the techniques used by counsel during cross-examination, such as putting propositions to the witness to force 'yes/no' answers and asking questions in an unpredictable sequence, 'prevent vulnerable witnesses

²²³ *Criminal Procedure Act 2009* (Vic), s389A. Natalia Antolak-Saper and Hannah MacPherson, 'Vulnerable Witnesses and Victoria's Intermediary Pilot Program' (2019) 43 *Criminal Law Journal* 325, 330.

²²⁴ A ground rules hearing aims to ensure questions are appropriate and tailored to a victim's needs. See Judicial College of Victoria, *Ground Rules Hearings* (2019) <<https://www.judicialcollege.vic.edu.au/resources/working-child-and-vulnerable-witnesses-courtroom>> <<https://www.judicialcollege.vic.edu.au/resources/working-child-and-vulnerable-witnesses-courtroom>>

²²⁵ The Judicial College of Victoria has provided best practice videos for Ground Rules Hearings with and without an intermediary. See Judicial College of Victoria, *Ground Rules Hearings* (2019) <<https://www.judicialcollege.vic.edu.au/resources/working-child-and-vulnerable-witnesses-courtroom>>

from giving “full, accurate and coherent” evidence because questions are often too complex or confusing, and at times, counsel can be intimidating’.²²⁶

While it is now accepted that the questioning techniques used by counsel during cross-examination affect young victim-survivors and victim-survivors with disability from giving ‘full, accurate and coherent’ evidence, this same proposition could be extended to a broader cohort of victim-survivors in sexual assault cases. Trauma can affect cognition, resulting in alternations to cognitive processes such as memory, attention, planning and problem-solving.²²⁷ For this reason, any victim-survivor of sexual assault who is likely to experience distress, confusion and secondary trauma while being cross-examined should have access to the safety and structure of the intermediary program.

One of the benefits of the intermediary program is the culture shift it engenders within the legal professional. It requires legal counsel to become more skilled at simplifying their questions and adapting their practices to the needs of the witness through the use of ground rules hearings.²²⁸

Academics contend that there are no fair trial issues with the use of intermediaries: ‘The role of the intermediary is not to convince a jury either way as to the credibility of the witness, but merely to ensure that they are questioned in a forensically safe way so as to preserve the accuracy and reliability of their evidence.’²²⁹

The extension of the pilot program in Victoria suggests intermediaries have not undermined the adversarial process. Accordingly, there should be no barriers to extending its use to any victim-survivor of sexual assault who is likely to experience distress, confusion and secondary trauma while being cross-examined.

Consistent with the VLRC’s previous recommendation in its final report *Committals*, the *Criminal Procedure Act 2009* (Vic) should be amended to allow for an intermediary to be appointed following an application by a party or on the court’s own motion.²³⁰ This should include victim-survivors in sexual assault matters where a trauma-response might impact on a victim-survivor’s ability to

²²⁶ Natalia Antolak-Saper and Hannah MacPherson, ‘Vulnerable Witnesses and Victoria’s Intermediary Pilot Program’ (2019) 43 *Criminal Law Journal* 325, 326.

²²⁷ Jasmeet P. Hayes, Michael B. VanElzakker and Lisa M Shin, ‘Emotion and Cognitive Interactions in PTSD: a review of neurocognitive and neuroimaging studies’ (2012) 6 *Frontiers in Integrative Neuroscience* 1, 1.

²²⁸ Natalia Antolak-Saper and Hannah MacPherson, ‘Vulnerable Witnesses and Victoria’s Intermediary Pilot Program’ (2019) 43 *Criminal Law Journal* 325, 335.

²²⁹ *Ibid* 336.

²³⁰ Victorian Law Reform Commission, *Committals* (Report, March 2020) xxi.

provide evidence. The criteria of ‘protected victim’, as discussed further below, might provide appropriate guidance and criteria.

Recommendation 18: The intermediary program should be extended to any victim-survivor of sexual assault who is likely to experience distress, confusion and secondary trauma while being cross-examined.

13.2. Special protections and alternative arrangements for victim-witnesses

13.2.1. Special protections for giving evidence

Special protections²³¹ for certain victim-witnesses include:

- using audio-visual recordings (VARE) of the victim’s statement to police as evidence-in-chief
- cross-examining the victim at a special hearing
- prohibiting the victim’s cross-examination at a committal hearing for child victims and victims with a cognitive impairment in sexual offence cases.²³²

Research has previously suggested special protections could be made available for all victims of sexual offences.²³³ The VLRC in its 2016 report, *Victims of Crime in the Criminal Trial Process*, did not recommend that all victim-witnesses in sexual assault cases be automatically eligible for special protections. However, the VLRC did determine that victims’ eligibility for special protections should be triggered by a finding that a person is a ‘protected victim’—that is, a person who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.²³⁴

In making this recommendation, the VLRC noted it would have significant practice implications for police, prosecutions and the courts. Legislating for special protections for a broader cohort of victims would require police to implement audio-visual recording (VARE) in more cases. It would require more special hearings for cross-examination and would prohibit a larger number of victims

²³¹ ‘Special protections’ was the term the VLRC used in its 2016 report, Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016).

²³² Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 197.

²³³ Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) 63.

²³⁴ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 203.

from being cross-examined at committal hearings. The VLRC also noted that prosecutors would need to have an expanded role in assessing whether a victim may be eligible for special protections and applying to the court for these protections to be put in place.

Consistent with the VLRC's previous recommendation, victims' eligibility for special protections should be triggered by a finding that a person is a 'protected victim'—that is, a person who is likely to experience unnecessary trauma, intimidation or distress as a result of giving evidence.²³⁵ Should the recommendation above relating to extending the availability of the intermediary program be adopted, consideration would need to be given to circumstances where special protections might be sufficient, versus where the use of an intermediary is required.

This is an area where independent legal representation for victims of sexual assault could be of particular benefit. Should an independent legal representative be available early in the process, a victim's entitlement to special protections and the intermediary program could be established early.

Recommendation 19: A victim's eligibility for special protections should be triggered by a finding that a person is a 'protected victim'. The law should provide for the use of an intermediary and/or special protections as necessary to protect sexual assault victims from trauma and distress while giving evidence.

13.2.2. Alternative arrangements for giving evidence

The legislative provisions regarding alternative arrangements for victims of sexual assault are comprehensive. They require the court to direct that alternative arrangements, such as the use of remote witness facilities and the use of screens to remove the accused from the direct line of vision of the complainant, be made available in sexual offence matters unless the victim does not wish for these arrangements to be used.²³⁶

Nonetheless, the Victims of Crime Commissioner's office has been told of cases where victims' rights to alternative arrangements may not have been upheld. The VLRC, in its 2016 report, *Victims of Crime in the Criminal Trial Process* confirmed it

²³⁵ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 203. This could be following an application by a party or on the court's own motion.

²³⁶ *Criminal Procedure Act 2009* (Vic) s359 – 365.

was not able to access data on how consistently alternative arrangements were put in place for victims.²³⁷

In addition, despite the positive effects of access to alternative arrangements for many victims, research has suggested that alternative arrangements may unfairly exclude victims from the criminal trial process. There have been suggestions that the accused should be removed from the court for a victim-survivor's testimony, with audio-visual technology facilitating the accused's viewing of evidence.²³⁸ This idea was raised again in the 2020 book, *Witness: An investigation into the brutal costs of seeking justice*, by investigative journalist Louise Milligan.²³⁹

In light of the data limitations and lack of evaluation in relation to alternative arrangements, there should be a comprehensive evaluation of the law and procedure relating to alternative arrangements for giving evidence.

Recommendation 20: There should be a comprehensive evaluation of the law and procedure relating to alternative arrangements for giving evidence including:

- **the frequency/rate of their use and how victims' views are sought during the process**
- **whether alternative arrangements are achieving their purpose in protecting witnesses from trauma and distress, including victim/witness consultation on their experiences of using alternative arrangements**
- **whether it would be appropriate, having regard to an accused's right to a fair trial, to remove the accused from the court, with audio-visual technology facilitating the accused's viewing of the complainant's evidence**
- **whether there are other alternative arrangements that could be introduced to minimise trauma to victim witnesses while giving evidence.**

²³⁷ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 80.

²³⁸ Nicole Bluett-Boyd and Bianca Fileborn, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*, Research Report 27 (Australian Institute of Family Studies, 2014) 50.

²³⁹ Louise Milligan, *Witness* (Hachette Australia, 2020) 362.

13.3. Protection from cross-examination on sexual history

Under the *Criminal Procedure Act 2009* (Vic), the complainant must not be cross-examined, and the court must not admit any evidence, as to the sexual activities (whether consensual or non-consensual) of the complainant (other than those to which the charge relates), without the leave of the court.²⁴⁰

The VLRC previously suggested that applications to cross-examine victims on sexual activities 'are rarely made, and cross-examination in relation to sexual activities occurs infrequently'.²⁴¹ Notwithstanding this, as advocated by the former Victims of Crime Commissioner, Mr Greg Davies in his submission to the VLRC's *Victims of Crime in the Criminal Trial Process*, victims should have the opportunity to be heard in relation to applications to lead evidence about their sexual history. This right should be provided for through legislative change to the *Criminal Procedure Act 2009* (Vic) and the independent legal representation scheme proposed above should assist victims to uphold this right.

Recommendation 21: Victims should be provided with the opportunity to be heard in relation to applications to lead evidence about their sexual history and have independent legal representation to do so.

13.4. Protection of confidential medical or counselling records

In sexual offence cases, victims can seek leave to appear and make submissions in response to applications to access confidential medical or counselling records. As outlined above, research suggests that not all victims in sexual assault cases are being advised of their right to seek leave to appear in court in response to an application to subpoena, access or use confidential medical or counselling records.²⁴² Few victims engage their own lawyers to participate in these applications.²⁴³

Victims should have the right to a dedicated and specialist legal representative to represent their rights and interests at key stages of the criminal justice process, including in relation to applications to subpoena, access or use confidential medical or counselling records.

In 2016, the VLRC also recommended giving victims the right to be heard automatically in relation to applications to access confidential medical or

²⁴⁰ Criminal Procedure Act 2009 (Vic) s.342.

²⁴¹ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process* (Report, August 2016) 98.

²⁴² Ibid 109.

²⁴³ Ibid 143.

counselling records, and to give evidence about the harm in affidavit form.²⁴⁴ The VLRC also recommended that the court should be satisfied that the victim was made aware of their right to be heard.²⁴⁵

Recommendation 22: Consistent with VLRC recommendation 25 in the report *Victims of Crime in the Criminal Trial Process*, Division 2A of Part 2 of the *Evidence (Miscellaneous Provisions) Act 1958 (Vic)* should be amended to:

- **require the prosecution to notify the victim of their right to appear and the availability of legal assistance in relation to an application to subpoena, access and use their confidential communications**
- **require the court to be satisfied that the victim is aware of the application and has had an opportunity to obtain legal advice**
- **prohibit the court from waiving the notice requirements except where the victim cannot be located after reasonable attempts or the victim has provided informed consent to the waiver**
- **provide victims with standing to appear**
- **permit victims to provide a confidential sworn or affirmed statement to the court specifying the harm the victim is likely to suffer if the application is granted.**

²⁴⁴ Currently the legislation only enables 'the protected confider' to appear and make submissions only with the leave of the court: *Evidence (Miscellaneous Provisions) Act 1958 (Vic)* s32(c)(2)(5).

²⁴⁵ Recommendation 25: Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Report No 34, August 2016) 147.

14. Other aspects of the criminal law

Due to the high-level nature of some issues explored in the VLRC's Issues Papers, the VLRC should consider whether further consultation is required with key stakeholders in relation to any proposed reforms to some of the more substantive areas of law. As also noted at 2.1, some areas of the law may merit their own stand-alone inquiry or review, as has occurred in the area of the laws of consent in New South Wales and Queensland.

Some high-level observations and comments are provided below.

14.1. Jury trials

Juries are intended to represent a broad cross-section of the community, bringing 'the values, standards and expectations of our community into the courtroom.'²⁴⁶ They are a central feature of Victoria's justice system.²⁴⁷ However, the prevalence of stereotypes and myths surrounding sexual assault mean that some members of the community may hold views in relation to sexual assault that may be out of step with current standards relating to sexual assault. This has led to suggestions that jury trials should be replaced with judge-alone trials.

For example, academic Wendy Larcombe contends that judge-alone trials would 'ensure decision-making [is] based on legally relevant factors and evidence', suggesting the following advantages:²⁴⁸

- transparency of published (written) reasons for decisions
- reduction in complexity of trials by eliminating jury directions
- enabling prosecution and defence counsel to focus on testing evidence, rather than on jury persuasion.

²⁴⁶ Juries Victoria, *What is jury service?* (2020) *Juries Victoria* <www.juriesvictoria.vic.gov.au>

²⁴⁷ Victorian Law Reform Commission, *Inclusive Juries – Access for People Who Are Deaf, Hard of Hearing, Blind or Have Low Vision* (Consultation Paper, 2020) 4.

²⁴⁸ Wendy Larcombe, 'Rethinking Rape Law Reform: Challenges and Possibilities' in Rony Levy et al (ed), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017), 149.

As with other members of the community, judges are not immune to applying outdated attitudes and assumptions in sexual assault cases,²⁴⁹ as demonstrated by recent analysis of judge-alone decision making in a recent high profile New South Wales case.²⁵⁰

Judge Tupman's reasons for decision disclosed that the judge relied upon erroneous but common sexual assault myths that genuine victims of sexual assault will say 'stop' or 'no' and will attempt to escape or fight back.

Recent Victorian cases have demonstrated that juries have the capacity to place appropriate weight on a complainant's evidence and reject outdated myths and misconceptions in relation to sexual assault. In fact, there have been recent sexual assault cases where juries have found an accused guilty of sexual assault, but this has been overturned on appeal by judge-alone appeals.

There is no evidence to suggest judge-only trials in Victoria would necessarily result in lower acquittal rates in sexual assault cases. In New South Wales, the average acquittal rate for judge only trials in sexual assault cases over the past five years was slightly higher than jury trials (55.1 per cent versus 51.1 per cent).²⁵¹

As the decisions in *Pell v The Queen*,²⁵² (Victorian Supreme Court of Appeal) and *Pell v The Queen*,²⁵³ (High Court of Australia) illustrate, individual judges can have different views of the same evidence in sexual assault cases.

Given juries are a central feature of Victoria's justice system, there should be compelling evidence for departing from this approach in sexual assault cases specifically. Without comprehensive analysis of a sample of Victorian cases indicating significant concerns about juror decision making, it is not possible to definitively determine that judge-alone trials would lower the attrition rate in sexual offence cases in Victoria.

At the same time, any reforms that can improve jury education and comprehension, such as provision of guidance or reference materials before and

²⁴⁹ Wendy Larcombe et al, 'I think it's Rape and I think He Would be Found Not Guilty: Focus Group Perceptions of (un)Reasonable Belief in Consent in Rape Law' (2016) 25 (5) *Social and Legal Studies* 611, 615.

²⁵⁰ Jacqueline Horan and Jane Goodman-Delahunty, 'Expert Evidence to Counteract Jury Misconceptions about Consent in Sexual Assault Cases: Failures and Lessons Learned' (2020) 43 (2) *UNSW Law Journal* 707, 708 – 710.

²⁵¹ Based on data from June 2015 - June 2020: Email from NSW Bureau of Crime and Statistics Research to Victims of Crime Commissioner's Office, 23 December 2020.

²⁵² [2019] VSCA 186.

²⁵³ *Pell v The Queen* [2020] HCA 12.

during the trial should be explored. As suggested in *Issues Paper B*, this might take the form of video briefings for jurors on various aspects of sexual harm.

14.2. Jury directions

Significant reforms have been implemented in Victoria to streamline and simplify jury directions. Research suggests this has led to a reduction in successful appeals based on errors in directions and a much shorter summing up time.²⁵⁴ At the same time, other research suggests reforms to jury directions may only have made modest improvements.²⁵⁵

It is important to have a comprehensive understanding of the current application of jury directions in sexual assault cases, specifically in relation to timing and language of directions. Academic research has confirmed that jury directions delivered at the conclusion of a trial ‘come too late to disrupt rape myths’²⁵⁶ and that the intent of jury directions to disrupt such myths are ‘better met if the directions are implemented in early judicial decision-making.’²⁵⁷ It is not clear, without further case analysis, whether recent jury direction reforms are working to disrupt rape myths.

Further analysis is required in relation to the implementation of recent jury direction reforms in Victoria. The VLRC should consider whether further consultation is required with key stakeholders following consideration of submissions from key stakeholders.

14.3. Elements of sexual offences—consent

The way in which the law relating to consent operates is fundamental to the ‘success’ (or not) of the justice system’s response to sexual assault. As noted by Wendy Larcombe et al, ‘competing and evolving conceptualizations of sexual consent are likely to remain central to disputed accounts of sexual assault’.²⁵⁸

²⁵⁴ Chris Maxwell and Greg Byrne, ‘Making trials work for juries: pathways to simplification’ (2020) 11 *Criminal Law Review* 1034, 1047.

²⁵⁵ Jonathan Clough et al, ‘The Judge as Cartographer and Guide: The Role of Fact-based Directions in Improving Juror Comprehension’ (2018) 42 *Criminal Law Journal* 278, 297.

²⁵⁶ Emma Henderson and Kirsty Duncanson, ‘A little judicial direction: can the use of jury directions challenge traditional consent narratives in rape trials’ (2016) 39 (2) *UNSW Law Journal* 750-778, 750.

²⁵⁷ *Ibid* 751.

²⁵⁸ Wendy Larcombe et al, ‘I think it’s Rape and I think He Would be Found Not Guilty: Focus Group Perceptions of (un)Reasonable Belief in Consent in Rape Law’ (2016) 25 (5) *Social and Legal Studies* 611, 622.

Recent reforms have focused on legislating ‘communicative’ consent and integrating objective fault elements in sexual assault—that is, requiring a person to ‘reasonably’ believe the other person was consenting.

In Victoria, this objective fault standard is represented by the last element of the law relating to rape:

- A person (A) intentionally sexually penetrates another person (B)
- B does not consent to the penetration, and
- **A does not reasonably believe that B consents to the penetration.**

When Victoria introduced this new definition of rape in 2015, it was said to facilitate a ‘communicative model of consent’.²⁵⁹ Communicative models of consent were intended to ‘shift attention away from the victim and onto the perpetrator’.²⁶⁰ However, the law in Victoria does not require a person to take specific steps to ensure the other person is consenting.²⁶¹ Academics Rachael Burgin and Asher Flynn explain it as follows:²⁶²

...there is no requirement that reasonable belief is based on any steps the perpetrator took to ensure the victim consented, undermining the goal of shifting focus toward the perpetrator’s actions in committing the offense. Accordingly, this definition does not provide protection to victims, nor does it place responsibility on perpetrators to prove they took steps to ensure the other party consented to sex, as would be expected of a truly affirmative standard.

Burgin and Flynn conclude that Victorian rape law is not achieving an affirmative consent standard because it does not mandate a person seeking sexual activity to ‘take steps’ to ascertain consent.²⁶³

Similar issues have been raised by Wendy Larcombe et al’s research, which has examined the views of professionals working in the sexual assault sector in relation to reasonable belief in consent. Participants in Larcombe et al’s study suggested

²⁵⁹ Department of Justice and Regulation (Criminal Law Review), Victoria’s New Sexual Offence Laws: An Introduction (2015) 12.

²⁶⁰ Rachael Burgin and Asher Flynn, ‘Women’s Behaviour as Implied Consent: Male “Reasonableness” in Victorian Rape Law’ (2019) 00 (0) Criminology and Criminal Justice 1, 17.

²⁶¹ Although, any steps that an accused took to find out whether the other person consented to the act will be relevant to considerations of whether there was a reasonable belief on the part of the accused that the victim was consenting. See Crimes Act 1958 (Vic) s36A(2).

²⁶² Rachael Burgin and Asher Flynn, ‘Women’s Behaviour as Implied Consent: Male “Reasonableness” in Victorian Rape Law’ (2019) 00 (0) Criminology and Criminal Justice 1, 4.

²⁶³ Ibid 3.

Victoria's articulation of rape 'all hinges on what the perpetrator believes' and 'defines rape according to the perpetrator rather than the victim'.

In Larcombe et al's study, the definition of rape:²⁶⁴

was perceived in almost all of the research's focus groups as placing the onus on the alleged victim to communicate refusal of consent. As one participant stated: 'the way that it's going to play out is that the victim again is going to be asked to prove that she or he was very clear in stating that they didn't want sexual intercourse'.

Participants in Larcombe et al's study 'complained that no actions were legally required of A to find out at the time whether B was consenting and later, if accused of rape, there was no requirement for A to explain why he/she might have reasonably believed in consent'.²⁶⁵

Consent is a complex area of law. In New South Wales and Queensland, the law relating to consent was the subject of stand-alone reviews by their respective law reform commissions. The VLRC's *Issues Paper C* sets out the law in relation to consent in Victoria and seeks feedback on the strengths and weaknesses of the communicative consent model however, without in depth analysis of the current interpretation of this aspect of the law, it is difficult to ascertain the true extent of the problem in Victoria. It is possible that the 2015 reforms, as Burgin and Flynn contend, have not resulted in the establishment of an affirmative consent standard because the law does not mandate a person seeking sex to 'take steps' to ascertain consent.

If this is the case, consideration could be given to alternative formulations of rape. For example, Larcombe et al suggest 'alternative formulations of rape that focus on the perpetrator's actions, rather than his/her belief in consent and the grounds for such a belief' suggesting these formulations 'may set clearer standards for sexual conduct'.²⁶⁶ As part of their review of the law of consent, the NSW Law Reform Commission considered whether the law could clarify that the accused's belief in consent would not be considered reasonable if they did not take steps to determine consent.²⁶⁷ Some submissions to that review asserted that such an approach would require the accused to point to the actions they took to

²⁶⁴ Wendy Larcombe et al, 'I think it's Rape and I think He Would be Found Not Guilty: Focus Group Perceptions of (un)Reasonable Belief in Consent in Rape Law' (2016) 25 (5) *Social and Legal Studies* 611, 618.

²⁶⁵ Wendy Larcombe et al, 'I think it's Rape and I think He Would be Found Not Guilty: Focus Group Perceptions of (un)Reasonable Belief in Consent in Rape Law' (2016) 25 (5) *Social and Legal Studies* 611, 623.

²⁶⁶ *Ibid.*

²⁶⁷ New South Wales Law Reform Commission, *Consent in relation to sexual offences* (Consultation Paper, 2018) 81.

determine whether the other party was consenting, thereby diverting the focus from the complainant's actions to the accused.²⁶⁸

Without comprehensive case analysis, particularly in relation to cases concerning events after 2015,²⁶⁹ it is difficult to assess whether the law in relation to consent requires amendment. Accordingly, the VLRC should consider, in formulating their options and recommendations in this area, whether further consultation is required with key stakeholders following consideration of submissions relating to this matter.

14.4. Tendency and coincidence evidence

The Royal Commission into Institutional Child Sexual Abuse made several recommendations relating to the admissibility of tendency and coincidence evidence. The Victorian Government has noted that 'Tendency and coincidence evidence can link different complainants, allowing their cases to be heard together and bolstering their credibility. Permitting the use of this evidence in more cases is expected to increase the number of successful prosecutions for child sexual offending.'²⁷⁰

The Council of Attorneys-General agreed in 2019 to implement a Model Bill to reform the Uniform Evidence Law in relation to tendency and coincidence evidence in criminal proceedings. The Model Bill was developed through consultation with judicial, legal and other stakeholders across jurisdictions.

The Model Bill aims to increase the admissibility of tendency evidence in child sexual offence prosecutions by introducing:²⁷¹

- a rebuttable presumption that tendency evidence of an accused person's sexual interest in children has significant probative value, and
- guidance on considering that presumption.

The Victorian Government should proceed with its intentions to implement the Model Bill in 2021.

²⁶⁸ Ibid 82.

²⁶⁹ Reforms commenced in 2015. Any cases concerning events prior to 2015 must be determined in line with the laws in force at that time.

²⁷⁰ Victorian Government *Criminal Justice Report (2017)* (2019) <<https://www.vic.gov.au/victorian-government-annual-report-2018-royal-commission-institutional-responses-child-sexual-abuse/criminal-justice-report-2017>>

²⁷¹ Ibid.

14.5. Committals

I reiterate the comments made in my previous submission to the VLRC in relation to committals. In summary that:

- case management processes would provide for a more trauma-informed response to victims
- Victoria should abolish the test for committal
- there be a presumption against victims and witnesses having to give evidence twice during a criminal proceeding
- there be a prohibition on cross-examination of complainants in sexual or family violence offences at committal.

As stated in my previous submission to the VLRC in relation to committals, many of the procedural reforms introduced in Victoria and other jurisdictions in recent decades have been aimed at reducing secondary victimisation however, numerous elements of the current committals process risk secondary victimisation and trauma for the victims (and witnesses) required to participate in them, particularly victims of sexual assault.

14.6. Appeals

VLRC *Issues Paper E* outlines the appeal process in Victoria. It suggests that there may be evidence that reforms to jury directions have led to fewer appeals based on errors in directions.²⁷² The *Issues Paper* does not outline the frequency of, and reasons for, appeals in sexual assault cases.

Further analysis is required to comprehensively assess the frequency of, and reasons for, appeals in sexual assault cases. This is particularly important given the complexity of some elements of sexual assault offences, including the construction of 'reasonable belief' in consent as it pertains to matters of consent, as outlined above.

²⁷² Victorian Law Reform Commission, *Issues Paper E: Sexual Offences: The Trial Process* (2020) 9.

Appendix A: Summary of recommendations

Recommendation 1: That the Victorian Government develop a Victorian strategy to prevent and respond to sexual assault which:

- outlines the government's key prevention and response priority areas, including implementation of recommendations arising from the VLRC's review
- identifies the data, research and evaluation gaps in relation to sexual assault, and implements strategies to address them to ensure progress can be measured over time
- provides a structure and framework for key initiatives to be monitored and evaluated through a model of across-system governance
- articulates what 'success' would look like in Victoria's response to sexual assault to guide a continued focus over time.

Recommendation 2: That sexual assault laws, policies and practice be reviewed by the VLRC according to the extent to which it is trauma-informed, including whether it:

- realises the impact of trauma and recognises the signs of trauma
- actively seeks to reduce re-traumatization
- emphasises physical, psychological, and emotional safety for victims
- provides victims with voice and choice, including different ways to engage to minimise harm
- creates opportunities for victims to rebuild a sense of control and empowerment
- recognises that trauma may impact victims' engagement with the process
- is responsive to victims' diversity

-
- promotes trust and transparency in process and decision making.

Recommendation 3: To ensure all victims of crime, including victims of sexual assault, have access to a strengthened victim support and financial assistance scheme, the Victorian Government should establish and fund:

- the enhanced victim support service model outlined in Strengthening Victoria's Victim Support System: Victim Services Review
- the full rollout of a new Financial Assistance Scheme, incorporating all recommendations of the VLRC's review to enhance access and equity for victims of crime.

All current, and future victims' services, including the new Financial Assistance Scheme, should be prescribed agencies under the Victims of Crime Commissioner Regulations 2020, to enable appropriate oversight and compliance with Victims' Charter obligations.

Recommendation 4: Alternative reporting options should be available for victims of sexual assault. These alternative reporting pathways should:

- be victim-friendly and well publicised
- accommodate victim diversity, including diversity in language, culture, gender and sexual identity
- allow victims to elect how much information they provide and whether they consent to further contact by an appropriately trained and skilled support worker.

Recommendation 5: Alternative ways of collecting evidence and interviewing victims should be explored, including:

- providing victims with the opportunity to complete a 'self-administered interview' (SAI) or participate in a 'written-response interview protocol' (WRIP)
- integrating anonymous and confidential reporting options with SAI/WRIP techniques to save victims from having to repeat their story
- how alternative ways of collecting evidence can accommodate victim diversity, including diversity in language and culture.

Recommendation 6: The Victorian government should commence a comprehensive consultation process with victim-survivors to seek a range of views on establishing a pilot program providing alternative justice options in sexual assault matters.

Recommendation 7: The Victorian government should undertake a comprehensive review of existing restorative justice programs in Victoria to:

- ensure best practice in restorative justice is shared across the justice and service system
- ensure victims' voices and experiences of restorative justice are at the centre of learnings and evaluations of existing programs
- ensure programs respond to victim diversity, including diversity in language, culture, gender and sexual identity.
- explore whether these programs should continue to exist as stand-alone programs, or whether a more consolidated, centralised and streamlined approach should be developed providing victims with a central contact point and a clearer sense of pathways to various programs.

Recommendation 8: Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) should be amended to recognise the rights of victims in the criminal trial process as articulated in the Victims' Charter.

Recommendation 9: Section 9B(2)(b) of the Victims' Charter should be removed so that a victim's right to be consulted under the Victims' Charter at key stages of the prosecution process is an unrestricted entitlement and must be accommodated by the criminal trial process.

Recommendation 10: The Victorian Government should introduce a Victims' Right to Review scheme underpinned by new rights contained in the Victims' Charter Act enabling independent review of police and prosecution decisions after internal review options are exhausted.

Recommendation 11: The Victorian Government should establish a publicly funded victims' legal advice service that:

- provides tailored legal information and advice delivered by specialist legal professionals using a trauma-informed and culturally safe approach

-
- is well publicised and immediately 'visible' to members of the community as the pathway to specialist victims' advice
 - has accessible entry-points across Victoria, including regional areas.

Recommendation 12: Victims of sexual assault should have the right to an independent legal representative to represent their rights and interests at key stages of the criminal justice process including in relation to:

- applications to subpoena, access or use confidential medical or counselling records
- applications to be cross-examined on, or admit evidence about, the sexual activities of the complainant
- access and eligibility for the intermediary scheme, special protections and alternative arrangements for giving evidence.

Consideration should also be given to whether it would be appropriate for victims to have independent legal representation during cross-examination, as occurs in Denmark, to uphold protections under the *Evidence Act 2008* (Vic) in relation to inappropriate questions or questioning.

Recommendation 13: The Multidisciplinary Centres (MDC) model should be expanded to additional areas across Victoria to ensure a consistent approach for all victims of sexual assault across the state.

Recommendation 14: The Victorian Government should establish and fund a dedicated sexual assault liaison service to provide victims of sexual assault a single point of contact during the criminal justice process and their recovery journey.

Recommendation 15: The Victorian Government should introduce specialised court responses for sexual offences to provide for:

- specially trained and dedicated court staff
- mandatory judicial education for judicial officers presiding over sexual assault cases
- victim-centric court environments, including safe entries and exits and safe waiting areas.

Recommendation 16: A comprehensive, mandatory professional development program should be introduced for all judicial officers presiding over sexual assault matters. The program should feature:

- victim-survivor voices and their lived experience of the criminal justice system
- the views and experiences of specialist support workers and advocates
- in depth guidance in relation to all legislative provisions designed to protect victims, specifically protections relating to giving evidence
- practical exploration of how to determine whether defence counsel questioning is improper or inappropriate, and how to intervene when this occurs.

Recommendation 17: That the VLRC determine how relevant legal bodies across Victoria can implement training and education for judicial officers, defence and prosecution lawyers in relation to:

- the rights and experiences of victims of crime during the criminal trial process
- addressing problematic attitudes towards specific kinds of crime, including family violence and sexual assault
- ways in which victims' evidence can be tested in an appropriate manner in sexual assault cases while reducing the risk of secondary victimisation, in line with the objectives of the *Victims' Charter Act 2016* (Vic)
- appropriate prosecutorial and judicial intervention to protect victims from inappropriate questions or questioning.

Recommendation 18: The intermediary program should be extended to any victim-survivor of sexual assault who is likely to experience distress, confusion and secondary trauma while being cross-examined.

Recommendation 19: A victim's eligibility for special protections should be triggered by a finding that a person is a 'protected victim'. The law should provide for the use of an intermediary and/or special protections as necessary to protect sexual assault victims from trauma and distress while giving evidence.

Recommendation 20: There should be a comprehensive evaluation of the law and procedure relating to alternative arrangements for giving evidence including:

- the frequency/rate of their use and how victims' views are sought during the process
- whether alternative arrangements are achieving their purpose in protecting witnesses from trauma and distress, including victim/witness consultation on their experiences of using alternative arrangements
- whether it would be appropriate, having regard to an accused's right to a fair trial, to remove the accused from the court, with audio-visual technology facilitating the accused's viewing of the complainant's evidence
- whether there are other alternative arrangements that could be introduced to minimise trauma to victim witnesses while giving evidence.

Recommendation 21: Victims should be provided with the opportunity to be heard in relation to applications to lead evidence about their sexual history and have independent legal representation to do so.

Recommendation 22: Consistent with VLRC recommendation 25 in the report *Victims of Crime in the Criminal Trial Process*, Division 2A of Part 2 of the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) should be amended to:

- require the prosecution to notify the victim of their right to appear and the availability of legal assistance in relation to an application to subpoena, access and use their confidential communications
- require the court to be satisfied that the victim is aware of the application and has had an opportunity to obtain legal advice
- prohibit the court from waiving the notice requirements except where the victim cannot be located after reasonable attempts or the victim has provided informed consent to the waiver
- provide victims with standing to appear
- permit victims to provide a confidential sworn or affirmed statement to the court specifying the harm the victim is likely to suffer if the application is granted.





VICTIM SUPPORT
PROMOTING RIGHTS & RECOVERY



Policy – Case Management

Purpose

This policy outlines how case management and service planning for clients within Victim Support ACT (VS ACT) will be implemented. It aims to reflect contemporary best practice case management approaches to victims of crime by providing trauma-informed, strengths-based, solution-focused, tailored support, within the context of the criminal justice system.

Scope

This policy applies to Health Professional Officers in VS ACT working in a case management role, including Case Managers working in the Intake and Assessment team, and students on placement at VS ACT.

Background and Rationale

The *Victims of Crime Regulation 2000* established the Victim Services Scheme which underpins the services provided to victims of crime within VS ACT.

The object of the Victim Services Scheme is to provide assistance to victims of crime using a multidisciplinary approach, in ways that are:

- timely;
- accessible;
- solution focused;
- professional;
- individualised; and
- appropriate to the victim.¹

Research suggests that people dealing with multiple legal, health, social and financial difficulties benefit from case management². Case management is intended to meet the multiple needs of clients in a coordinated and comprehensive manner and is therefore a central component in the provision of person-centered services at VS ACT.

¹ 20(c) Victims of Crime Regulation 2000

² Matrix Research & Consultancy. Intensive help for vulnerable people: Applying case management models in the justice system. Ministry of Justice, 2009.

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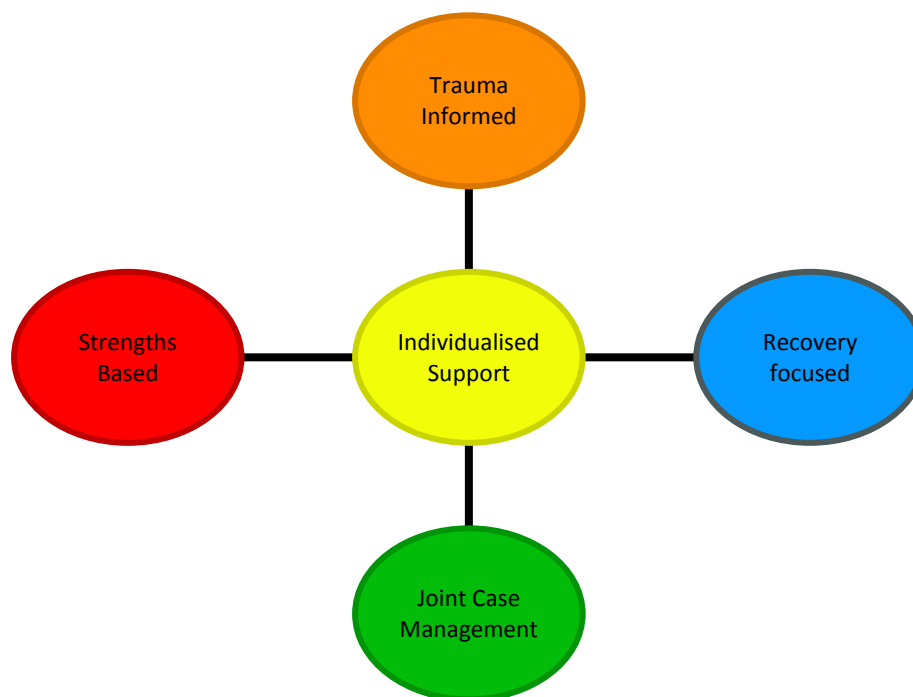
VS ACT provides case management and service planning to support clients in their recovery from the impact of a violent crime, and to enable their recovery through participation in the social, economic and cultural life of their community.³

*Case Manager*⁴ is the position title of the health professional officer employed by VS ACT whose primary role and function is to facilitate the process of case management.

It is important to note that people experience a variety of responses to being victims of crime and these responses may be influenced by a range of individualised circumstances, including people's social, economic and cultural backgrounds. Therefore within each phase of the case management process, the case manager must carefully assess the client's individual, diverse and special needs, including choices, expectations, motivations, preferences and values, and available resources, services and supports.

Traumatic experiences affect individuals and those close to them, including children, in a lot of different ways, including physical, cognitive, emotional, behavioural and social. Victims of crime, particularly those impacted by incident(s) of a serious and/or complex nature, will require case management where strengths are recognised and they are linked to appropriate services.

Case Management Theories and Practice Frameworks



³ 20 (a) Victims of Crime Regulation 2000

⁴ Also called care coordinator in the Victims of Crime Regulation 2000

Trauma Informed Case Management

Trauma is defined as a state of high arousal that impairs integration across many domains of learning and memory⁵. Trauma stems from activation of the instinctive 'fight-flight' response to an overwhelming threat. Mobilisation of this biological 'survival' response leads to a 'freeze' response when the danger cannot be escaped, and the normal impulse for action is arrested. Experience need not literally be life threatening to qualify as traumatic.

Complex trauma, in contrast to 'single-incident' trauma, is cumulative, repetitive and inter-personally generated, and includes ongoing abuse which has occurred in the context of the family and intimate relationships. Unlike a one-off event, the cumulative impact of premeditated and multiple episodes of abuse involves compounded dynamics and entails pervasive effects. Complex trauma places the person at risk; for not only recurrent mental health issues/ illness, but also interruptions and breakdowns in the most fundamental outcomes of healthy psychobiological development⁶.

VS ACT is a **trauma informed service** where Case Managers are trained in, and sensitive to, trauma related issues affecting clients. In a trauma informed service environment, clients and their behaviour are viewed through a trauma aware lens, all staff respond accordingly, and the day to day delivery of services is conducted to meet the individual needs of the client.⁷

VS ACT is committed to and acts upon key principles of trauma informed care including safety, trustworthiness, choice, collaboration and empowerment⁸. Interactions with clients and delivery of services will be undertaken in a way that avoids inadvertent re-traumatisation and facilitates capacity building for clients in treatment.

Trauma specific services operate from the premise that 'recovery cannot occur in isolation', and that it needs to be assisted in a context which does not replicate elements of the initially traumatising experience.

As a **trauma informed service**, VS ACT offers treatment approaches which are designed to directly address the treating of trauma experiences and related symptoms, within a criminal justice context.

⁵ Cozolino, L. (2002). *The neuroscience of psychotherapy: Building and rebuilding the human brain*. New York: Norton.

⁶ Courtois, C. & Ford, J. (2009). *Treating complex traumatic stress disorders: An evidence-based guide*. New York: Guildford Press.

⁷ Jennings, A. (2004). *Models for developing Trauma-informed behavioural health systems and Trauma-specific services*, US: NASMHPH & NTAC, pg 5.

⁸ Falot, V. & Harris, M. (2009). *Creating cultures of trauma-informed care: A self-assessment and planning protocol*. Washington DC: Community Connections, p3.

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Strengths-based, Solution Focused Case Management Approach

Strengths-based approaches to assessment and service planning emphasise the existing resources of the client, which fosters client options and empowerment, and which is explicitly non-pathologising. Needs do not define the whole person, therefore focusing on a person's assets, resilience and their capacity for self-direction is important⁹.

A strengths-based model of case management focuses on helping clients to build on their capacity and strengths. This may be suitable for clients with individual capacity to learn and develop¹⁰. Focusing on a client's ability to help themselves combined with effective interventions to manage their specific issues seems to have positive outcomes but this 'self-motivating' approach is unlikely to suit all client groups.

Strengths spotting > Discovering hidden resources > Setting goals

A **solution focused** approach as a problem solving practice method is designed to link the needs of individuals to a range of service providers. Based on assessed needs, services are tailored based on the client's unique capabilities, goals, and circumstances. It is therefore important that the case manager is skilled in all aspects of case management as a problem solving practice method.

Joint Case Management Approach

Delivering a trauma informed service requires close collaborative interagency relationships. Joint case management requires working in partnerships and joint planning with other related agencies involved in the care and wellbeing of the client. This involves ongoing analysis, decision-making and record-keeping to ensure that the identified needs of the client are being met.

A joint case management approach includes:

- Developing a shared understanding of a client's needs and a common focus
- Negotiating roles and tasks to be undertaken by each worker which articulates boundaries
- Managing differences in expectations
- Establishing clear and responsive communication channels

⁹ Rapp, R. (2006). Strengths-based case management, in *The strengths perspective in social work practice, 4th ed.* D Saleebey (ed). Boston: Pearson Education; Case Management Society of America. (2010). *Standards of practice for case management*. Arkansas: CMSA.

¹⁰ Matrix research & Consultancy, 2009

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Components of Case Management

Case management is a process aimed at co-coordinating services and support on behalf of an individual to achieve identified goals¹¹. It is an interactive and dynamic process with an emphasis on building relationships with clients to facilitate change. Services are identified based on assessed needs which enable clients to navigate the criminal justice and other service systems.

Case management encompasses key consecutive and collaborative components, including initial intake, assessment, recovery care planning, implementation, monitoring, transitioning / closure and evaluation.

These components allow for the development of an individualised recovery care plan that will promote recovery using a trauma informed, strengths-based, solution-focused/ recovery-focused approach.

Initial Intake:

An initial intake is conducted by the VS ACT Intake and Assessment team to determine eligibility and suitability for VS ACT services.

Clients may request assistance and information about practical support as well as emotional and psychological support. Practical support with dealing with the immediate effects of the crime can include arranging and receiving medical treatment or making funeral arrangements. There may also be justice related priorities such as reporting to police and obtaining a protection order. A client may request access to therapeutic services, including psychological services and complementary therapies, to recover from the impact of the crime.

Clients may also request information about, or assistance with the criminal justice system, the operation of the Victim Services Scheme, their rights as victims of crime or how to make a complaint about an agency or a person.

Clients' specific needs, requirements and goal preferences are identified in order to determine whether VS ACT is able to assist them, or whether a referral to a more appropriate service is required.

A preliminary plan is developed at this stage based on the initial intake. This preliminary plan can make recommendations as to whether a client should be allocated a Case Manager at VS ACT for further support, advocacy and assistance.

¹¹ Marfleet, F., Trueman, S. & Barber, R. (2013). 3rd Edition, *National Standards of Practice for Case Management*, Case Management Society of Australia & New Zealand

Key Outcomes:

- Engage client
- Identify presenting needs
- Assess risk and safety issues
- Determine eligibility
- Provide information
- Identify support services already involved with client
- Develop preliminary plan:
 - Provide necessary client or service referral
 - Recommend allocation to Case Manager as required

Assessment:

The assessment process involves the Case Manager and client identifying the presenting issues, client strengths and service requirements that will inform the planning process.

In collaboration with the client, significant others and, where appropriate, other agencies involved, information is collected about the individual's physical, mental, social, and psychological functioning, their physical environment including strengths and resources.

An assessment of needs and strengths should include cultural considerations, employment status, education and training, health and wellbeing, housing and accommodation, interpersonal relationships (family and social systems), personal safety planning, daily living requirements and financial and legal requirements.

This multidimensional assessment¹² will guide the development of the recovery care plan.

Key Outcomes:

- Assess all life domains
- Collate information and observations
- Provide support, information and assistance where required and appropriate
- Identify existing supports and services being accessed by the client and how multiservice collaboration will be recognised and co-ordinated.

¹² Green, D & Roberts, A. (2008) *Helping Victims of Violent Crime: Assessment, Treatment and Evidence Based Practice*. Springer Publishing, New York.

Recovery Care Planning:

Recovery care planning is a multifaceted exercise that sets the scene for what follows between a client, the case manager and formal and informal supports.

The recovery care plan is a document that reflects the assessment of the client's situation as well as their needs and goals. The recovery care plan is developed in collaboration with the client, based on identified goals, and tailored to the unique needs and circumstances of the client. The recovery care plan will include therapeutic goals, as well as information and assistance required to navigate the criminal justice system as appropriate. The recovery care plan must outline the client centred recovery goals and the number of contact hours and particular services to be provided, to support the client to achieve those goals.

Goals and objectives are developed based on assessed need, and in collaboration with the client. Identified goals and objectives should be specific, measurable, achievable, relevant and time-related (SMART)¹³. They may relate to physical and psychological health (therapeutic), relationships and family, education and employment, social/ community engagement and financial assistance¹⁴.

Key Outcomes:

- Determine specific goals
- Determine strategies to achieve outcomes
- Clarify all roles and timeframes
- Identify and respond to risk and safety issues

Implementation:

Implementing the recovery care plan involves conscious, deliberate and purposeful activity with and for the clients in order to promote recovery.

The Case Manager acts as a broker to negotiate, mediate, and advocate on behalf of clients to ensure they have access to the needed services identified as required to address their individual needs and goals.

Planning and linking to resources are interdependent functions. Both formal and informal resources and appropriate service providers are identified. Specific services as well as the frequency and duration of contact with the service provider are agreed on by the client and Case Manager, and followed up as appropriate.

Case Managers may provide *in-house counselling* in certain circumstances. This will relate to clients with eligibility limited to Level 1 services as victims of non-violent crime, including property crime, theft or burglary. It will also relate to clients who may not be suitable to be referred to an external service provider for therapeutic support due to complex needs or upcoming justice processes. In-

¹³ Based on the SMART theory of goal setting, Dr Edwin Locke

¹⁴ Through the Victims of Crime Financial Assistance Schemes, 1983 & 2016

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house provision of psychological services will also enable Case Managers to utilise and strengthen their skills in therapeutic interventions.

Referrals: Where appropriate, referrals are made to approved Panel Service Providers for provision of psychological and complimentary therapies. Referrals to appropriate agencies may be required for assistance with more practical or specialised needs for clients, which may include, but not limited to mental health, alcohol and other drug services, children and young people services, older persons, employment, housing, financial, legal and/or other mainstream or specialist services.

Advocacy: The provision of specialised advocacy services is an essential function of VSACT to address the problems of 'secondary victimisation'¹⁵ that is experienced by victims of crime when they are involved in criminal justice processes. Secondary victimisation can occur during reporting, investigative and prosecution stages. Advocacy will assist clients to understand their rights and entitlements across a range of service systems.

Key Outcomes:

- Deliver on recovery care plan tasks
- Provide referral and advocacy
- Facilitate collaboration and coordination of services
- Provide regular communication and information sharing

Monitoring:

Monitoring progress of recovery care plans is a vital, ongoing and proactive process. Monitoring of the recovery care plan with the client will help to identify progress, prioritise next steps and ensure efficiency in achieving goals. This will ensure the client is receiving the expected level and quality of service provision during the period of service with VS ACT.

Information can be ascertained through:

- regular contact with approved Panel Service Providers to determine if services are responsive in meeting identified recovery goals
- monitoring progress towards the identified recovery goals
- the client's observations regarding the level of progress and satisfaction with the Panel Service Provider to whom they have been referred.

It is particularly important to be sensitive to changes in client's needs and to adjust or modify the recovery care plan as indicated. Reviews of progress can be formal or informal and should be completed at a minimum of three monthly intervals. The information gathered can also determine change since the initial assessment.

¹⁵ Wemmers, J. (2013) Victims experiences in the criminal justice system and their recovery from crime. *International Review of Victimology* 19(3), 221-233. DOI: 10.1177/0269758013492755

Key Outcomes:

- Reviewing progress
- Identifying and responding to change
- Celebrating milestones
- Planning for transition or exit stage

Transitioning/ Closure:

At the end of VS ACT's case management service provision, where possible, the Case Manager should assess satisfactory progress and identified recovery goal attainment; ensure that client is able to implement strategies as learnt and is linked to services for ongoing support according to their individual needs if required.

While therapeutic services are capped, Case Managers may need to provide psychological support to clients who are involved in ongoing criminal justice processes until matters are resolved/ finalised.

Where goals have been achieved, case finalisation and file closure is undertaken in consultation with client.

Transitioning can occur internally, for example a change of Case Manager, or externally should a client no longer require the services of a particular service provider. Transitions and case closures need to be carefully planned and implemented.

Key Outcomes:

- Provide recognition of achievements
- Plan next steps

Evaluation

An outcomes evaluation should be conducted to ensure services provided are meeting/ have met the needs of the client. The client should be involved and is central to the evaluation of the adequacy of the service. Evaluating the contributions of the Case Manager is an important part of the process.

The evaluations will be used to further inform the future of case management in VS ACT to evaluate practice approaches currently utilised.

Key Outcomes:

- Evaluate progress and outcomes
- Identify continuous improvement opportunities
- Recognise contributors

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Related Legislation and Policies

Crimes Act 1900

Human Rights Act 2004

Victims of Crime Act 1994

Victims of Crime Regulation 2000

Victims of Crime (Financial Assistance Act 1983

Standards

Case Management Society of Australia's (CMSA) National Standards of Practice of Case Management

Codes of Ethics, Australian Association of Social Workers (AASW) 2010

Codes of Ethics and Practice, Australian Counseling Association (ACA) 2012

Australian Psychological Society (APS) Code of Ethics 2007

ACT Public Service Code of Conduct

ACT Public Service Code of Ethics

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VICTIM SUPPORT
PROMOTING RIGHTS & RECOVERY



Appendix A

Case Management Guiding Principles at Victim Support ACT

Case manager - client relationship: A respectful and collaborative relationship is developed as the foundation on which the case management process is based

The focus: Needs-based support is provided to achieve identified goals

Single point accountability: Case manager acts as the single point of contact for the agency

Client safety: Promote optimal client safety

Trauma Informed: Case managers recognise the impact of trauma on clients and act upon key principles of trauma informed care (Fallot & Harris, p3)

Strengths-based: Emphasise the existing resources of the client, which fosters client empowerment, and is explicitly non-pathologising

Empowerment: Support and enable clients to make informed choices and decisions and to achieve their optimal level of independence and wellbeing within their community

Facilitator of communication: Assist client to navigate complex criminal justice and social service systems.

Advocacy: Promote the interests of victims of crime, particularly on behalf of clients from diverse population groups

Flexibility: Services is provided in a flexible way in response to the changing needs of the client

Timeliness: Timely service delivery is provided as needed and accepted by client

Comprehensive assessment: Holistic assessment of all physical, social, cultural, spiritual and practical aspects of a client is undertaken

Confidentiality: Maintained at all times in accordance with legislative requirements

Joint Case Management/ Co-Case Management: Working in partnerships and joint planning with other related agencies involved in the care and wellbeing of the client

Effective documentation: Maintained at all times in accordance with legislative requirements

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VICTIM SUPPORT
PROMOTING RIGHTS & RECOVERY



Appendix B

Case Management Skills and Training, VSACT Induction Package

4 components of essential skills and knowledge to be included as part of VSACT Induction Package to strengthen casework practice:

1. Required Knowledge, which provides a foundation for victim services:

- Victims' rights - governing principles¹⁶
- Understanding the criminal justice system
- Understanding the financial assistance scheme¹⁷

2. Core Competencies and Skills:

- Communication skills (eg trauma informed interactions, skills in conversational assessment)
- Goal setting¹⁸
- Understanding confidentiality and informed consent
- Advocacy function
- Professional documentation requirements

3. Crimes Section:

- Characteristics and Prevalence of Crime
- Other information about specific crime categories, including sexual assault, domestic violence, stalking, property crime

4. Specialist Knowledge:

- Information and skills to better serve diverse populations such as clients from CALD background, LGBTIQ, client living with disability, domestic and family violence
- Understanding of Vicarious trauma and the importance of appropriate and regular supervision

¹⁶ *Victims of Crime Act 1994*

¹⁷ *Victims of Crime Financial Assistance Schemes, 1983 & 2016*

¹⁸ Based on the SMART theory of goal setting, Dr Edwin Locke

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