



CHARTER OF RIGHTS FOR VICTIMS OF CRIME

OPTIONS PAPER

JUSTICE AND COMMUNITY
SAFETY DIRECTORATE

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MINISTERIAL FOREWORD



All victims of crime matter and should be treated properly at every point in the criminal justice process. Although there are many common reactions to crime, each individual is different and will have their own unique experience.

Many victims show great resilience and strength, while others struggle for years to recover or suffer ongoing debilitating physical or mental health issues as a result of their experience.

We need to ensure that the justice system supports and values all victims, and does not cause further trauma or compound their experience. The ACT has a strong history of supporting victims of crime and upholding human rights. A Charter of Rights for Victims of Crime and robust accountability mechanisms will ensure that the ACT continues to strive to deliver best practice in victim participation, services and rights.

The ACT Government is committed to introducing a Charter for Rights for Victims of Crime to ensure that victims have a clear understanding of their rights; are treated with respect and consistently in their interactions with the criminal justice system; and have access to complaints resolution and remedy if their rights are breached.

The ACT has led Australian jurisdictions with the introduction of legislated governing principles for the treatment of victims of crime in the administration of justice (1994); the establishment of the *Human Rights Act 2004*; the introduction of the statutory Victim of Crime Commissioner role (2010) and its integration into the Human Rights Commission (2016).

Victim rights have developed in Australia and internationally since the introduction of the governing principles for the treatment of victims in the *Victims of Crime Act 1994*. The *Royal Commission into Institutional Child Sexual Abuse Criminal Justice* recommendations also call for all Australian governments to ensure better responses to child victims of sexual abuse.

I want to take this opportunity to thank the justice and victim support agencies who work on the front line to enhance safety, provide support and achieve justice for the Canberra community every day, for their ongoing commitment to victims of crime.

I acknowledge the work of the Victims Advisory Board in assisting to identify the options under consideration in this paper. I particularly thank the outgoing Victims of Crime Commissioner Mr John Hinchey for his contribution and recommendations contained in *A Charter of Rights for Victims of Crime: Consultation Report* (December 2017).

I encourage you to consider the questions raised in this options paper and provide your views on how we can implement a Charter of Rights for Victims of Crime that best responds to the needs and interests of victims of crime in the ACT justice system.

Shane Rattenbury MLA

Minister for Justice, Road Safety and Consumer Affairs

SUBMISSIONS

The primary audience for this Options Paper is justice agencies and the legal sector.

Written submissions are invited from stakeholders on the questions and implementation options presented in this paper. The ACT Government invites written submissions via email (preferred) or in writing.

Email: jacslpp@act.gov.au (with the subject Charter of Rights for Victims of Crime)

In writing: Charter of Rights for Victims of Crime
Legislation, Policy and Programs
Justice and Community Safety Directorate
GPO Box 158
Canberra ACT 2601

The closing date for submissions is: 6 August 2018.

All submissions will be treated as public and may be published unless the author indicates that it is to be treated as confidential. All requests for the submission to be treated confidentially will be respected and dealt with in accordance with any applicable laws, including freedom of information legislation.

Broader consultation with victims of crime and community members about how they would prefer to interact with the justice system is taking place.

For further information please contact Laura on 6207 3997.

ABBREVIATIONS AND DEFINITIONS

ACAT	ACT Civil and Administrative Tribunal
ACTCS	ACT Corrective Services
ACTP	ACT Policing
ADACAS	<i>ACT Disability, Aged and Carer Advocacy Service</i>
ALO	Aboriginal Liaison Officer
ALS	Aboriginal Legal Service (NSW/ACT) Limited
CALD	Culturally and Linguistically Diverse
England and Wales Code of Practice	Code of Practice Governing Service Provision to Victims of Crime in England and Wales
Courts	ACT Courts and Tribunal
CPS	England and Wales Crown Prosecution Service
CRCC	Canberra Rape Crisis Centre
CSD	ACT Community Services Directorate
DPP	Office of the ACT Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
FAS	Financial Assistance Scheme
FVIP	Family Violence Intervention Program
GLLO	Gay and Lesbian Liaison Officer
HRC	ACT Human Rights Commission
ICC	International Criminal Court
ICO	Intensive Corrections Order
ICT	Information and Communication Technology
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
PACT	Protect All Children Today
PSR	Pre-Sentence Report
RJU	ACT Restorative Justice Unit
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report
SAB	Sentence Administration Board
SACP	Sexual Assault Communications Privilege
SARP	Sexual Assault Reform Program
TIS	Translating and Interpreting Service
VAB	Victims Advisory Board
VLO	Victim Liaison Officer
VLRC	Victorian Law Reform Commission
VOCC	ACT Victims of Crime Commissioner
VSACT	Victim Support ACT
WAS	Witness Assistant
WLC	Women's Legal Centre ACT

Definitions

This options paper uses the term **victim** as described in the *Victims of Crime Act 1994*. A victim is a person who suffers harm because of an offence and includes a victim who has been the subject of or witnessed an offence (a primary victim); or a victim who is a family member or dependant of the primary victim (a related victim). It is acknowledged there is slight variation between the definition of victims in different legislation and different terminology is used across the justice system such as witness or complainant.

People who have experienced crime and the broader community may view the term victim as disempowering and have a preference for other terms, such as survivor. This options paper uses 'victim' to maintain consistency with legislation. However, it is acknowledged that the term is problematic and that people who have experienced crime each have individual circumstances and strengths.

In this options paper, **vulnerable victim** is a term used to describe groups who have specific needs when accessing the criminal justice system, and can be more vulnerable to crime and the impacts of the criminal justice system. While Table 2 (p31) discusses groups who can experience additional barriers as victims of crime, it is acknowledged that each victim responds to crime differently and each diverse group also demonstrates resilience. This is also not an exhaustive list, and other victim groups may require special consideration such as people who have experienced crime who are in custody and have also offended.

This paper uses the term **serious crime** to describe victims of violent and sexual offences against the person resulting in injury or death (a primary victim) and family members of homicide victims (a related victim). Definitions of violent crime and related victims can be taken from the *Victim of Crime (Financial Assistance Act) 2016*¹.

¹ The *Victim of Crime (Financial Assistance Act)* outlines that 'act of violence' means conduct that results in a person's injury or death in the course of an offence (s.7). It also outlines three categories of related victims that rely on the primary victim to have died (s.13-15).

EXECUTIVE SUMMARY

The ACT Government is introducing a Charter of Rights for Victims of Crime (the Charter) to ensure that victims of crime are treated fairly and consistently. The Charter will outline the rights of victims of crime, justice agency obligations, and a complaints resolution process where the Charter is breached.

The Charter is likely to replace the governing principles for the treatment of victims in the administration of justice (*Victims of Crime Act 1994* s4, Appendix A). While each state and territory has its own principles outlining how victims should be treated, the Charter will include actionable victim rights. Rights will place obligations on justice agencies and be attached to an accountability mechanism so that victims can make a complaint and there are options for remedy if a right is not received.

There are a broad range of victim of crime supports available in the ACT, and our jurisdiction leads the way in many instances including special measures to assist some victims to give evidence in a more efficient and trauma-informed way. However, the ACT Government and justice and victim support agencies share an ongoing commitment to addressing gaps and improving processes for victims of crime as their case progresses through the justice system.

This Options Paper includes options for the Charter's implementation developed in close consultation with the Victims Advisory Board, ACT justice agencies and the ACT Victims of Crime Commissioner (VOCC). Examples from other jurisdictions are drawn on, however the focus remains on the context of the ACT and projects underway including responses to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

This Options Paper identifies three key issues for victims of crime and justice agencies in the development of the Charter:

1. the availability and provision of information to victims of crime on justice processes generally as well as specific updates about their case;
2. opportunities for victims of crime to participate in justice processes by being consulted on key decisions and having their voice heard; and
3. complaint processes and accountability mechanisms to help implement the Charter and victims to access rights.

The ACT Government is taking a dual approach to developing the Charter. Firstly, feedback is being sought on what outcomes the ACT community wants for victim rights, which groups should access these rights and which justice agencies should uphold certain rights.

For example, questions under consideration include: at what points in the justice process should victim rights to information and consultation be included in the Charter, and which rights should be accessed by certain victims only, for instance victims of the most serious crime or members of diverse groups who may be particularly vulnerable when involved in the justice system?.

Feedback is being sought on what practical and legislative barriers and challenges exist to delivering victim rights; and what system-wide initiatives could support victims to access their rights and ensure justice agencies support them.

Initiatives under consideration include:

- data and information sharing systems to support communication between agencies and victims, for example a centralised database or automatic notification of victims;
- different models for providing support to victims as they interact with justice processes, for example providing a single point of contact or access to legal advice; and
- ways to improve access to justice processes for victims from diverse groups, for example specialist support officers and an overarching interpreter scheme.

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Issues under consideration also include how the Charter could be recognised in legislation, for example in the *Victims of Crime Act 1994* and the *Human Rights Act 2004*; and what oversight, complaint management and restorative remedy mechanisms can provide a direct response to victims of crime when a right is not met, and support systemic change.

INTRODUCTION

ACT Government commitment

The ACT Government has committed to introducing a Charter of Rights for Victims of Crime. The Charter is likely to replace the governing principles for the treatment of victims in the administration of justice outlined in section 4 of the *Victims of Crime Act 1994* (Appendix A). The Charter will outline rights of victims of crime, specify justice agency obligations when dealing with victims, and establish a complaints resolution process where the Charter is breached.

Each state and territory has its own principles or charter of rights, and in 1996 all Australian jurisdictions endorsed a national Charter for Victims Rights in Australia. The aim of the ACT Charter and associated implementation initiatives is to recognise the centrality of victims in justice processes and ensure victims receive reliable and consistent treatment in the criminal justice system, by ensuring system accountability for victims of crime.

Purpose of the options paper

The options paper outlines key consultation questions that the ACT Government is seeking feedback on in the development of the Charter. Options for consideration have been shaped by the Victims Advisory Board (VAB)², the Victims of Crime Commissioner's (VOCC) consultations with victims of crime and representatives of diverse groups³, and best practice in other jurisdictions.

The introduction of a Charter must be accompanied by practical initiatives to support the justice system to meet victim rights. Therefore, this paper focuses on key implementation questions that will shape how victims access rights. Feedback is being sought on the practical, legislative and resource challenges and opportunities for achieving rights for victims in the ACT. Further discussion about resource implications for stakeholders will occur as part of the consultation process.

The purpose of this options paper is to seek feedback from justice and victim support stakeholders, although anyone may make a submission. Other opportunities for community members to engage in consultation will be provided, particularly targeting people who have experienced crime and members of diverse and marginalised groups.

Justice and victim support agencies are dynamic and constantly responding to identified needs, and the ACT criminal justice system is a changing landscape. This options paper is intended to be a contribution towards the discussion on how we can improve the experiences of victims of crime as we develop a Charter.

Considerations in Charter development

There are a number of issues that are being considered in the development and implementation of the Charter, as outlined below.

A victim-focused criminal justice system

The rights of the accused as contained in the *Human Rights Act 2004* will be balanced with the growing recognition of the centrality of victim rights in criminal justice. The rights of victims and rights of the accused are not mutually exclusive.

² According to the *Victims of Crime Act 1994* (part 4A) the role of the Victims Advisory Board is to advise the Minister on policies for the acknowledgement, protection and promotion of the interests of victims in the administration in justice. Members include representatives of victims services groups, justice agencies, an Indigenous communities representative and a lawyer member.

³ Victims of Crime Commissioner, ACT Human Rights Commission, *A Charter of Rights for Victims of Crime: Consultation Report*, December 2017, prepared by John Hinchey.

Policing and prosecution agencies deliver services independent of the state and play a key role in moving to a more victim-focused justice system. 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 victims⁴.

ACT Government initiatives: Implementation of the Royal Commission recommendations

There are a number of current and future ACT Government policy directions which intersect with victim rights and are highlighted in this options paper. In particular, consideration of the *Royal Commission into Institutional Responses to Child Sexual Abuse Criminal Justice Report recommendations* (2017, the Royal Commission) is currently underway in the ACT, with an initial focus on criminal law reform⁵.

There is cross-over between the Charter and recommendations that are focused on criminal justice agency responses to, treatment of, and communication with victims of sexual offences and vulnerable witnesses. The work of the Charter is responding to and being integrated with the Royal Commission criminal justice recommendations as much as possible, to ensure coordinated consultation and implementation of reforms. Relevant recommendations are cited in this options paper⁶.

A central question in relation to the Charter and the recommendations is whether improvements in existing legal provisions or processes for child sex abuse victims or victims of sexual offences may be extended to other victim groups, and this is considered in this options paper where relevant.

Key issues for the Charter

Three key issues have been recognised for the Charter that this options paper is seeking further feedback on:

1. providing information in an accurate and timely manner to victims of crime about justice processes and their case
2. opportunities for victims to participate in the justice process
3. appropriate complaint management, remedy and oversight mechanisms for victims of crime.

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017, Recommendation 1a-c.

⁵ The ACT Government has published a discussion paper that identifies areas where the existing ACT law is already consistent with the approach recommended by the Royal Commission, and considers options for legislative reforms in the ACT to meet Royal Commission recommendations. Key areas of reform under consideration include the repeal of limitation periods (a technical issue only); new offences of failure to report, failure to protect and course of conduct; judicial directions reform; sentencing standards in historical cases; broaden rights of appeal for DPP in relation to interlocutory decisions in child sexual abuse cases; Evidence Act reform around tendency and coincidence evidence, and special measures in regards to extending pre-trial hearings to all victims of child sexual abuse and intermediaries.

⁶ A summary of the Criminal Justice Report recommendations can be found in the Executive Summary (https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_executive_summary_and_parts_i_to_ii.pdf) and a brief outline of recommendations is provided in this fact sheet (https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/factsheet_-_criminal_justice_report_-_outline_of_recommendations_0.pdf).

THE ACT IN CONTEXT: JURISDICTIONAL OVERVIEW

Existing safeguards, legislative provisions and agencies support victims of crime in the ACT. The task for the ACT is to recognise these achievements while responding to identified gaps and areas for improvement through drawing on relevant examples from other jurisdictions, and leading innovations to strengthen victim rights.

Existing victims of crime provisions in the ACT

ACT justice agencies work with victims of crime every day to reduce crime, achieve justice, and provide support. The following brief summary of justice agency, victim support, legal and ACT Government provisions acknowledges that there is a strong network of existing programs, organisations and agencies that deliver services to victims as they progress through the justice process.

ACT Government commitment

The ACT has a strong history of supporting the rights of victims of crime. In:

- 1994 - the ACT introduced legislation outlining the treatment of victims of crime, one of the first Australian jurisdictions to take this step.
- 2007 - Victim advocacy and support services were amalgamated to provide a one-stop-shop in Victim Support ACT (VSACT).
- 2010 - the ACT was the first jurisdiction to introduce an independent, statutory Victims Of Crime Commissioner (VOCC) to promote and protect the interest of victims.
- 2011 - Victims were formally recognised as ministerially-appointed stakeholders in the criminal justice system with the establishment of the Victims Advisory Board (VAB).

Information and support

Victims of crime receive information and support from a range of justice and victim support agencies in the ACT. *Information is chiefly provided via the VSACT website. Other agencies, including ACT Policing (ACTP) and the Office of the ACT Director of Public Prosecutions (DPP), sometimes provide victims with their own materials. Specialised support for victims is provided through:*

- *Investigation phase: ACTP*
 - *ACTP informants and specialised family violence officers provide referrals to victim support service providers for a range of victims and assistance with Domestic Violence Order and Protection Order applications;*
 - *ACTP Victim Liaison Officers (VLOs) offer support, information and case updates, counselling referrals, and assistance with Victim Impact Statement (VIS) submissions.*
- *Prosecution phase: DPP and ACT Courts and Tribunal (Courts)*
 - *DPP Witness Assistants (WAS) provide support to victims for all sexual offence matters and a range of other matters;*
 - *Prosecutors communicate with witnesses about their case.*
- *Post-sentencing phase: ACT Corrective Services (ACTCS)*
 - *ACTCS VLOs liaise with and provide information to registered victims when an offender is convicted and sentenced to a period of supervision, either custodial or community-based.*
- *Victim support services*
 - *VSACT provides case management and volunteer court support services;*
 - *the Domestic Violence Crisis Service (DVCS) provides court advocacy and case management, and participates in inter-agency case tracking;*
 - *Canberra Rape Crisis Centre (CRCC) provides counselling, case management and participation in case-tracking meetings.*
- *Legal advice services for victims of crime*
 - *Legal Aid ACT provides a helpline and duty appointments; assistance with Financial Assistance Scheme (FAS) applications; and has a Family Law Duty Service, Family Advocacy Support Service, and the Domestic Violence and Personal Protection Unit at the Magistrates Court;*

- *the Women's Legal Centre ACT (WLC) assists victims of crime including with FAS applications, and has an Aboriginal and Torres Strait Islander Women's Program and Culturally and Linguistically Diverse (CALD) Women's Divorce Clinic;*
- *the Aboriginal Legal Service NSW/ACT (ALS) specialise in criminal law, care and protection and family law matters in addition to providing information and advice;*
- *the Law Society of the ACT operates the Legal Advice Bureau which provides free initial legal advice to members of the public;*
- *a number of organisations provide general legal information to victims of crime including DVCS, CRCC, VSACT and the ACT Disability, Aged and Carer Advocacy Service (ADACAS);*
- *Canberra Community Law targets support towards people on low incomes or facing other disadvantage, and has a Street Law service for people who are homeless or at risk of homelessness. Victims of crime are not a target group;*
- *the Tenants' Union ACT Inc. provides free tenancy advice, advocacy and referrals for tenants in private residential, community and other forms of accommodation. Advice is not provided on victim of crime issues.*

Victim participation

Well-established processes for victim participation in criminal justice processes exist in the ACT, including that:

- the safety and views of victims can be taken into consideration in bail hearings⁷;
- a party or someone with sufficient interest can apply to the court to have a subpoena completely or partly set aside, grant other relief⁸ or object to a document being inspected by a party to the proceeding⁹;
- a Victim Impact Statement (VIS) by victims and/or family members can be tendered and read out in court during sentencing proceedings¹⁰;
- applications for reparation can be made;
- victims of sentenced offenders can register to receive certain information about an offender's incarceration and parole through the ACT Victims Register managed by (ACT Correctional Services (ACTCS), and victims of young offenders through the Youth Justice Victims Register managed by the Community Services Directorate (CSD)¹¹
- registered victims can provide a submission if a detainee becomes eligible for unescorted leave programs such as the Transitional Release Program;
- registered victims of adult offenders can provide a submission to the Sentence Administration Board (SAB) when parole and licence applications are being considered¹².

Restorative justice

The ACT Restorative Justice Unit (RJU) provides eligible¹³ victims with the opportunity to engage in an active, supported process to understand the crime and the offender's behaviour, and express the effect of the crime. As a result of the restorative process the offender may commit to engage in tasks that contribute to making amends, healing described harm or meet a need of the victim. As well as benefits

⁷ *Bail Act 1992.*

⁸ *Court Procedures Rules 2006, Regs, 6604.*

⁹ *Court Procedures Rules 2006, Regs, 6609.*

¹⁰ *Crimes (Sentencing Act) 1995.*

¹¹ *Crimes (Sentence Administration) Act 2005.*

¹² *Crimes (Sentence Administration) Act 2005.*

¹³ Victims can request and access restorative justice conferencing pre or post sentencing for adult and youth offences. A victim of an offence is eligible if they are 10 years or older and capable of agreeing to take part in restorative justice. Parents or family members can substitute for children under 10 or for those incapable of adequately understanding or responding to the experience of the offence. With the exception of family violence and sexual offences, all other offence types can be referred to RJU, including matters in the Galambany Circle Sentencing Court (*Magistrates Court Act 1930*, Magistrates Court of the Australian Capital Territory, Galambany Court, Practice Direction, No. 1 of 2012, https://courts.act.gov.au/_data/assets/pdf_file/0003/975045/practice_direction_1_of_2012_galambany_court.pdf), as long as they are active within the criminal justice system and agree to participate. Planning is underway for the referral and management of family violence and sexual offences to RJU (phase 3) and this is expected to occur in 2018.

such as reducing recidivism, victims indicate overall satisfaction with conferencing processes and experience reduced trauma symptoms¹⁴.

Family violence and sexual assault reforms

ACT Government and justice agency initiatives have increased responses to sexual assault and family violence victims, including:

- the Domestic Violence and Personal Protection Unit at the Magistrates Court where Legal Aid ACT provides information and application assistance to victims;
- the Family Violence Intervention Program (FVIP) coordinated by the VOCC, including case tracking between agencies with the aim of providing a coordinated interagency response to criminal and civil justice responses to family violence (from 1998);
- initiatives as part of the Sexual Assault Reform Program (SARP)¹⁵, including legislative changes about how victims of sexual and family violence give evidence (see 'special measures' below, 2007 onwards);
- wrap-around interagency case tracking meetings for sexual assault matters, coordinated by ACT Policing (from 2007);
- establishment of the ACTP Family Violence Coordination Unit to continue to provide a specialist response to family violence (from 2015);
- Office of the Coordinator-General for Family Safety initiatives including the co-design of responses to family violence to improve service integration and coordination (from 2016); and
- planning is underway for the referral and management of family violence and sexual offences to RJU (phase 3) and this is expected to occur in 2018.

Special measures for certain victims

The ACT is at the forefront in legislating to protect and reduce trauma for victims when giving evidence¹⁶, and the DPP advocates for and facilitates access to these processes. Certain victims such as children, people with an intellectual disability and sexual and violent offence victims can access the following special measures¹⁷ in certain circumstances:

- give evidence and be cross-examined in a pre-recorded hearing which takes place prior to the trial (available for all child witnesses in sex offence matters);
- provide evidence to the court via audio-visual link (CCTV - available to the majority of family violence victims, all child witnesses, all victims of sexual offences and serious violent offences);
- use police interviews as evidence in chief for child witnesses in sexual and violent offences¹⁸ and for adult victims of sexual and violent offences;

¹⁴ Strang, H., Sherman, L. W., Mayo-Wilson, E., Woods, D., and Ariel, B., The Campbell Collaboration, *Restorative Justice Conferencing (RJ) using face-to-face meetings of offenders and victims: Effects on Offender Recidivism and Victim Satisfaction, A systematic review*, 2013.

¹⁵ The SARP was established in response to the DPP and Australian Federal Police's report *Responding to sexual assault: The Challenge of change* (2005, http://www.justice.act.gov.au/resources/attachments/RespondingtoSexualAssault_report_DPP_20051.pdf). Objectives included:

- 'improving the processes and support for victims of sexual offences as they progress through the criminal justice system
- reducing attrition in sexual offence matters in the criminal justice system
- improving coordination and collaboration among agencies involved in the criminal justice system.' (Anderson, J., Richards, K., Willis, K., Australian Institute of Criminology, *Evaluation of the ACT Sexual Assault Reform Program (SARP): Final report*, Technical and Background Paper 51, 2012, p. 1)

¹⁶ *Evidence (Miscellaneous Provisions) Act 1991*.

¹⁷ When used generally, the term special measures is used to describe positive actions taken to assist or protect disadvantaged groups. The Australian Human Rights Commission states that 'some groups do not enjoy human rights equally with others and special measures allow them to be assisted' (<https://www.humanrights.gov.au/guide-law-special-measures>). In this options paper the term 'special measures' refers to the legal provisions that are available to assist vulnerable witnesses to give their best evidence in the ACT.

¹⁸ There is the potential for evidence in chief interviews to be conducted with all victims of sexual or violent offences who have to give evidence.

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- pre-trial hearings for adult victims if the court is satisfied that they must give evidence as soon as possible due to emotional distress;
- the court can admit evidence of experts with specialist knowledge (this is often relevant to delay in complaint in child sexual offences)¹⁹;
- a support person can be present for a range of victims, and all child witnesses when they give evidence;
- there is a prohibition on cross-examination by the accused and on prior sexual activities in sex offence cases; and
- the court can be closed to the public at the discretion of the judicial officer.

In addition, therapy dogs or companion animals for people with disabilities are increasingly accepted as a therapeutic tools including in court rooms, and the *Discrimination Act 1991* provides for a person with a disability to use an assistance animal, disability aid or support person where necessary.

Financial Assistance Scheme (FAS)

Under the new FAS introduced in July 2016²⁰, certain victims can apply for financial assistance relating to a crime committed in the ACT to assist in recovery and acknowledge the harmful effects of violence²¹. Victims of violent crimes, a witness or family member of a victim of homicide (related victims), and victims of violent and non-violent family violence offences in the ACT can apply. The scheme is managed by the VOCC to improve accessibility for applicants.

Victim rights as human rights

The ACT was the first human rights jurisdiction in Australia, and general human rights provisions contained in the *Human Rights Act 1994* (including the right to privacy, the right to security and the right to a fair trial) also apply to victims of crime²². The incorporation of the VOCC within the ACT Human Rights Commission (HRC) in 2016 supported the view that human rights apply to everyone, including victims.

In developing the Charter, the abovementioned network of information and support, participation, legislative and financial assistance provisions and protections for victims of crime are recognised. The Charter and associated implementation initiatives aim to integrate with and leverage these systems, recognising where they are working well and where there is opportunity to strengthen victim rights.

Victim rights across other jurisdictions

In enhancing victim rights, the ACT Government is looking to and learns from relevant examples from Australian and international jurisdictions, and international standards as cited throughout this options paper. Overall, the Government seeks to lead the delivery of victim rights in a way which is consistent with and a good fit for the ACT context.

Australian jurisdictions

As part of a broader commitment by the Australian community to recognise the needs of victims of crime in the criminal justice process, jurisdictions endorsed a national *Charter for Victims' Rights in Australia* in 1996. Each state and territory has its own principles or charter of rights which are declaratory in nature and linked with complaints mechanisms. It is anticipated the ACT Charter will go beyond principles and introduce an actionable Charter linked with obligations and remedies. Table 5 (Appendix C) compares existing Charters across Australian jurisdictions including compliance mechanisms. The ACT Government

¹⁹ *Evidence Act 2011* (ACT) s79(2) and s108c.

²⁰ *Victims of Crime (Financial Assistance) Act 2016*.

²¹ The scheme offers a number of different types of payments including immediate needs payments, economic loss payments, recognition payments and funeral expense payments (<https://www.victimsupport.act.gov.au/financial-assistance-scheme/new-financial-assistance-scheme-1-july-2016/types-of-financial-assistance>).

²² ACT Human Rights Commission and Victim Support ACT, *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.

is seeking to introduce rights in response to locally identified needs and priorities, and to ensure that these are able to be supported by justice agencies.

International guidelines

The United Nations' *Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power* (1985) (Appendix B) outlined for the first time on the international level how victims should be treated with compassion and respect for dignity, and victim entitlements to mechanisms of justice and redress for harm suffered. The basic principles are outlined in four key areas:

1. access to justice and fair treatment;
2. restitution from the offender;
3. compensation from the state; and
4. assistance - material/practical, medical, psychological and social.

The following international standards are also drawn on in this options paper where relevant:

- the United Nations' *Handbook on Justice for Victims: On the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1999), a companion to the Declaration outlining how victim-centred programs, services and justice agencies should operate;
- the *Commonwealth Guidelines on Treatment of Victims of Crime* (2003), establishing best practice for victims at various stages of the criminal justice system;
- the European Union's *Minimum Standards on the Rights, Support and Protection of Victims of Crime* (2012).

International jurisdictions

In England and Wales the *Justice for All* (2002)²³ white paper led to the introduction of the revised *Code of Practice Governing Service Provision to Victims of Crime in England and Wales* (2015, Code of Practice). The Code of Practice clarifies victim entitlements throughout the justice process, eligibility for enhanced entitlements, and duties on service providers. However, it is the role of justice agencies to provide information about how to make a complaint to victims of crime, and there are no clear obligations placed on agencies to comply with entitlements.

Initiatives to transform the UK criminal justice system and support the delivery of victim rights are referred to in this options paper and are considered to be useful examples. These include:

- the England and Wales Intermediary Scheme to support communication in court with people with intellectual disabilities or related communication needs²⁴;
- the online resource *The Advocate's Gateway: Responding to communication needs in the justice system*²⁵, providing guidance on communicating with vulnerable witnesses and defendants; and
- the Crown Prosecution Service Victims' Right to Review Scheme²⁶ which provides victims with an automatic right to review decisions not to charge or to end all proceedings.

In Canada, victim complaints under the *Canadian Victims Bill of Rights Act 2015* are referred to the Ombudsman, and responsibility is mostly placed on victims of crime to seek information rather than justice agencies to provide it. Except for Manitoba – which links victims of crime with clear remedies – victim charters across Canadian provinces and territories provide policies that do not have to be implemented rather than statutory rights.

²³ <http://brdo.com.ua/wp-content/uploads/2016/01/Justice-for-All-WPUK.pdf>.

²⁴ Intermediaries are independent clinical experts who assess the victim's communication abilities and needs; provide guidance on how to elicit the best evidence; and explain questions and answers in investigation and trial phases. Intermediaries have a responsibility to the court, they are not victim advocates.

²⁵ <https://www.theadvocatesgateway.org/>.

²⁶ <https://www.cps.gov.uk/legal-guidance/victims-right-review-scheme>.

CHARTER OF RIGHTS FOR VICTIMS OF CRIME OPTIONS PAPER

Under New Zealand's *Victims Code 2006*, victim entitlements, agency responsibilities and complaint pathways are clearly outlined. However, there is no clear detail in terms of how the Code is administered and remedy options.

Treatment of victims of crime in the United States is governed federally by basic principles contained in the *Crime Victim's Rights Act (2004)*. States take varying approaches to recognising victim rights. Internationally, California²⁷ and Illinois²⁸ have some of the strongest approaches to enforceable provisions, including the right to:

- be informed, present and heard at all stages of the criminal justice process;
- have an advocate at court proceedings and be represented by counsel of the victims' choosing;
- communicate with prosecution and have prosecution inform victims' employers of their absence from work;
- receive a transcript of court proceedings;
- prevent the release of confidential information or refuse to provide evidence as requested by the defendant; and
- a speedy trial.

Some of the enforceable rights in California and Illinois are transferrable to the ACT context and may be sought to be introduced, for instance in relation to rights to information and victim participation in justice processes.

The International Criminal Court (ICC) allows victims to express opinions independently of the prosecution and the defence by participating in proceedings through a lawyer. The lawyer may:

- be notified of submissions;
- attend hearings and question the witness;
- make oral and written submissions to the judges and prosecutors; and
- apply for reparations.

The timing and manner of participation are determined by judges depending on the stage of the proceeding. While the ICC operates in a vastly different justice system context to the ACT, it provides an example of how victim participation can be supported in a systematic way.

The task for the ACT is to deliver a Charter that has realistic and deliverable rights linked with clear obligations and remedies in order to meet and manage the expectations of victims of crime. It is important to draw on relevant practice examples from other jurisdictions and consider different views on what victim participation in justice processes looks like, while also considering the needs and landscape of the ACT Justice system.

²⁷ *Marsy's Law 2008*.

²⁸ *Illinois Crime Victims' Bill of Rights 2015*.

THE RIGHT TO INFORMATION AND PARTICIPATION

Lack of information and being left out of the criminal justice process are two of the most common issues reported by victims of crime in the ACT currently and reported in previous research findings^{29,30}. As previously outlined, there are existing mechanisms to provide information, support and participation opportunities for victims. However, ACT victims of crime and stakeholders indicate that:

- justice processes are difficult to navigate and it is often the responsibility of victims to do so;
- information provided to victims is often inconsistent;
- there is confusion about agency roles and barriers to information sharing between agencies; and
- there are gaps in existing legal provisions which can be inconsistently applied and difficult to access in practice.

It is likely the Charter will outline all victim rights to access information about justice processes, their case and stages of the criminal justice process. In addition, it is likely certain victims will have rights to consultation and participation.

Evidence to support enhancing procedural justice for victims

Procedural justice³¹ for victims is about how victims are treated in the justice system: – being respected, receiving information, having opportunities for a voice and to engage in justice processes - and whether they perceive the system to be fair³². Victims of crime may enter the justice system seeking a range of outcomes, including:

- justice and restoration;
- healing;
- public acknowledgement;
- offender accountability and deterrence; and
- to protect themselves or others from the harm they have experienced³³.

However, evidence shows that many victims are more interested in procedural justice rather than the final outcome of the case or punishment³⁴.

In a recent ACT Restorative Justice Program therapeutic jurisprudence³⁵ workshop, participants agreed that justice professionals should give validation to victims; keep victims informed and create a sense of participation throughout the criminal justice process³⁶. The Royal Commission also outlines recommendations for police and prosecution agencies to treat victims with respect, maintain regular contact with victims, and provide opportunities for consultation. Evidence shows that enhancing

²⁹ Holder R., *The Quality of Justice: Operation of the Victims of Crime Act in the ACT*, 2008, p. 53.

³⁰ A 2008 survey with victims of crime in the ACT showed the majority of respondents disagreed or strongly disagreed (58%) that they were told at reasonable intervals (generally not more than one month) about the progress of police investigations, and half were not told about charges and charge modifications (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).

³¹ The term procedural justice describes fairness and transparency in the application of laws in legal proceedings and the administration of justice, rather than the content of the laws themselves (The Oxford Reference, Oxford University Press, <http://www.oxfordreference.com/view/10.1093/oi/authority.20110810105646844>).

³² Laxminarayan, Malini et al., 2003 in Victorian Law Reform Commission, *Victims of Crime: Information paper 2: Who are victims of crime?*, May 2015, <http://lawreform.vic.gov.au/projects/victims-crime-criminal-trial-process/victims-crime-information-paper-2-who-are-victims>.

³³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017.

³⁴ Victorian Law Reform Commission, *Victims of Crime: Information paper 2: Who are victims of crime?*, p. 14; Tapley 2003 in Wedlock, E., and Tapley, J., *What works in supporting victims of crime: A rapid evidence assessment*, March 2016.

³⁵ The philosophy of therapeutic jurisprudence seeks to promote wellbeing and consider the human impact of criminal justice processes on offenders, victims and social issues.

³⁶ Justice Reform Strategy, core design workshop on 'therapeutic jurisprudence', 10 February 2015.

opportunities for information and participation for victims of crime leads to better outcomes across the justice system.

Reducing trauma for victims of crime

Procedural justice enhances victim wellbeing and safety, reduces distress, and lowers the risk of secondary victimisation. Re-investing resources at the front-end of system responses helps victims recover as early as possible by preventing secondary trauma. This in turn reduces demand for trauma-related health services and complaints from victims³⁷.

Encouraging the reporting of crimes and increasing offender prosecution

Victims make a significant contribution to ensuring that offenders are held accountable for the harm the crime caused to themselves and the community. However, if a victim proceeds to being a witness in a criminal trial:

- the process can be disempowering and distressing;
- private details about their lives may be publicly scrutinised; and
- prosecution decisions about how to manage a case can feel minimising or offensive to the victim³⁸.

Victims may be deterred from reporting crimes, assisting with police investigations or appearing as a witness due to the detrimental effect this could have on their wellbeing. This is particularly the case for victims that are members of vulnerable groups. Victims may even be advised not to pursue or participate in criminal justice processes due to the harm this could cause³⁹.

Procedural justice for victims also leads to improved justice and prosecution outcomes as victims feel more confident to report crimes, give their best evidence and cooperate with justice processes⁴⁰.

Increasing system efficiency

Enhanced procedural justice for victims may lead to increased system efficiency by reducing under- or over-servicing victims of crime through well-targeted support, easier system navigation and more information sharing between agencies.

Best practice in providing information to victims of crime

The Charter aims to clarify justice agency responsibilities when communicating with and informing victims of crime. There are four key types of information:

1. general information about the criminal justice process at all stages of the victim journey including reporting and court processes, restorative justice, rights, advocacy and complaint procedures, and applications for financial assistance and reparation;
2. information about support services, including eligibility for special measures and translating services;
3. updates about the progress of a victims' case including relevant court dates and times; where appropriate, opportunities to ask questions or provide input; and
4. information post-sentence about an offender's sentence including a right to participate in decisions around release and parole.

Best practice in communication with victims is to:

- provide and reinforce information as soon as possible after the crime⁴¹;

³⁷ Ashworth, 1998 in Wedlock et al., *What works in supporting victims of crime: A rapid evidence assessment*.

³⁸ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, November 2016, Section 3.24.

³⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017.

⁴⁰ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, p. xvii; Murphy and Barkworth (2014) in Wedlock et al., *What works in supporting victims of crime: A rapid evidence assessment*.

⁴¹ US Department of Justice (1998), *A New Direction for Services and Rights for Victims of Crime*, Office of Victims of Crime <http://www.ojp.usdoj.gov/ovc/new/directions/pdf/text/direct.pdf>; Victorian Law Reform Commission, *Victims of Crime: Information paper 2: Who are victims of crime?*, p. 19.

- clarify with victims when and how often they would like to receive information, and provide the option to opt in or out⁴²;
- provide information targeted at different age groups, literacy levels, cultures and victim groups of different offences⁴³;
- provide both oral and written information;
- explain jargon and ensure that information is understood⁴⁴; and
- provide details of who to contact if further information is required.

1. INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) SYSTEMS

Providing accurate and timely information and opportunities for consultation and participation for victims in criminal justice processes must be supported by information management mechanisms. The Office of the Coordinator-General for Family Safety - Family Safety Hub co-design process has identified that reducing the coordination burden for services is essential when finding solutions to information sharing and connecting between agencies⁴⁵. Therefore, the following are options when considering ways in which the ACT justice system can be supported to uphold rights to information about justice processes and their case to victims of crime.

1.1. Central information portal or information package

An online portal could provide information about all stages of the justice process, including accessible versions of material (eg short videos) targeted towards particular audiences. This could involve upgrading the VSACT website or developing a standalone online resource.

Another option to support an online information portal is for information to be sent to all victims of crime soon after they are identified, providing access to information on justice processes, available supports, and encouraging victims to opt-in to supports if necessary.

1.1.a What are the challenges and opportunities in establishing a central, online information portal or information package for victims of crime?

1.2. Centralised database

While ACT justice agencies share some data there is no single mechanism or agency that routinely captures personal or case data to keep victims of crime informed. A centralised database would allow for data sharing between agencies and case tracking leading to less duplication and better notification of protection and bail orders⁴⁶. A centralised database would also enhance monitoring and reporting capabilities, building a system that better meets the needs of victims⁴⁷. Alternatively, wider access to

⁴² Irazola, Williamson, Niedzwiecki and Debus-Sherrill, *Evaluation of the Statewide Automated Victim Information and Notification Programme: Final Report*, 2013, in Wedlock, E, and Tapley, J., *What works in supporting victims of crime: A rapid evidence assessment*.

⁴³ Cussen, T., and Lyneham, M., Australian Institute of Criminology, *ACT Family Violence Intervention Program Review*, Technical and background paper series 52, 2012.

⁴⁴ Ashworth (1998) in Wedlock et al., *What works in supporting victims of crime: A rapid evidence assessment*.

⁴⁵ Office of the Coordinator-General for Family Safety, *Family Safety Hub Design: Insights report*, July 2017, Version 0.9, p. 45.

⁴⁶ Attorney-General's Department, Government of South Australia, *Criminal Justice discussion paper: Connecting the criminal justice system through information management*, March 2016.

⁴⁷ Cussen et al., Australian Institute of Criminology, *ACT Family Violence Intervention Program Review*.

existing agency databases would enable communication between agencies and provide enhanced information to victims.

EXAMPLE

In South Australia, the Commissioner for Victims' Rights is notified when a new victim is entered into the police database. This triggers an automatic letter to the victim providing information and a unique identifying number that links to the offender for case tracking purposes.

CONSIDERATIONS

A joint database relies on agencies capturing and recording data in an accurate and timely manner and consistent definitions across agencies⁴⁸. Legislative change or clarification may be required to implement a centralised database and it may be necessary to develop strong protocols around data ownership, use and access between agencies. This option for sharing information with victims may not be appropriate for all victim groups, such as people who are in custody.

1.2.a Would a centralised database support better communication between agencies and victims of crime?

1.2.b What information sharing already occurs between justice and victim support agencies and how could we leverage this?

1.2.c What are the challenges associated with a centralised database?

1.3. Automated notification system

A centralised database could facilitate an automated notification system for victims to receive case updates including information about court dates, including via text message or email. Alternatively, rather than automatically receiving information, victims could log on to a secure profile to receive information

Victims of serious crime could be automatically referred to receive updates with an opt-out option, or be given the opportunity to opt-in.

EXAMPLES

Automated notification programs have been successful in a number of other jurisdictions. In the United States, there are 47 states with automated victim information and notification programs, and 76% of victims report satisfaction, including feeling more empowered to make decisions about safety, and improved participation in the legal case⁴⁹.

New Zealand recently introduced a similar text messaging system. England and Wales have introduced a 'track my crime' system where people log in and opt-in to receive alerts, and in Canada victims have access to a secure website to obtain information about offenders who harmed them.

CONSIDERATIONS

Privacy issues including legislative barriers to information sharing and an individual's right to privacy must be considered. While there may be restrictions to access sensitive data, there are also legislative

⁴⁸ Ibid.

⁴⁹ Irazola et al (2013) in Wedlock et al., *What works in supporting victims of crime: A rapid evidence assessment*, p. 17.

limitations allowing agencies to share information where there is a risk to safety or in particular cases⁵⁰. It would benefit victims and reduce the burden on agencies to provide this information.

There are potential linkages with cross-government information recording and sharing initiatives, such as the ACT Domestic and Family Violence Data Project which is laying the foundation for improving data collection and sharing information between agencies, and the Courts Integrated Management System review.

1.3.a Would an automated notification system be an appropriate method for victims to receive information and reduce the burden on agencies?

1.3.b What are the challenges and opportunities associated with an automated notification system?

2. HUMAN RESOURCE MODELS

Providing information to victims via technology is not a replacement for other forms of communication and relies on people having access to technology. Accessing information and participating in the criminal justice system requires effective key support personnel.

Many victims in the ACT report having a good relationship with a key justice official⁵¹, cross-agency collaboration processes are well received by many victims of crime, and referrals to victim support services are higher in the ACT than other Australian jurisdictions⁵². However, issues include:

- a lack of clarity about agency roles and responsibilities⁵³;
- victims may prefer professional support rather than volunteer services⁵⁴;
- long wait times for accessing victim support services have been recorded⁵⁵;
- the Royal Commission reports there is a high turnover of police and prosecution agency staff allocated to a case, and recommends continuity where possible⁵⁶; and
- the Royal Commission recommends increased focus on police referrals to support services⁵⁷.

The following options consider enhancing how victims of crime are supported by human resources in the ACT justice system and victim support agencies.

2.1. Single point of contact/case management

VSACT can be described as a one-stop-shop for victims of crime in the ACT, providing case management and volunteer court support. There are also a variety of other points of information and support for victims throughout the justice system. Some of the key challenges for existing services include:

⁵⁰ Contained in the *Human Rights Act 2004 (ACT)*, *Information Privacy Act 2014 (ACT)*, and *Commonwealth Privacy Act 1988*.

⁵¹ ACT Victims of Crime Commissioner, *A Charter of Rights for Victims of Crime: Consultation Report*.

⁵² McGregor, K., Renshaw, L., and Andreovski, H., Australian Institute of Criminology, *ACT victims of crime referral project: Final report*, Technical and Background Paper 55; Australian Government Australian Institute of Criminology, 2013.

⁵³ ACT Victims of Crime Coordinator, *We Don't Shoot our Wounded: Aboriginal and Torres Strait Islander victims of family violence access to justice and access to services in the ACT*, March 2009, p. 172-3.

⁵⁴ In the UK, research shows that victims prefer services affiliated with statutory criminal agencies and trained professionals rather than volunteers, who can find it hard to establish relationships with justice agencies (Wedlock et al., *What works in supporting victims of crime: A rapid evidence assessment*).

⁵⁵ In 2013 it was found that referrals to SupportLink can take up to 10 days, and anecdotally long wait times were reported for VSACT (McGregor et al., *ACT victims of crime referral project: Final report*).

⁵⁶ Royal Commission recommendations 7a and 37b.

⁵⁷ Royal Commission recommendation 3c.

- they are often confined to one part of the justice process and this affects the ability to access and share information between agencies;
- an immediate or crisis response cannot be provided due to resources; and
- victims may be in contact with multiple support persons across agencies which can create confusion and over servicing.

Rather than seeking information and support from various agencies at different points in the justice process, one case management service would be a single point of contact for the victim, assisting to navigate multiple systems and reduce overlap. It would also reduce the number of times a victim has to re-tell their story. Case managers may sit within a single agency or victims could choose or be allocated to an agency as their main point of contact. Another option is for victims to start by accessing an initial case manager and move to another key point of contact if their case progresses to court.

A single point of contact model could link in with systems to assess and triage victim needs, advocate models to support victims, outreach to vulnerable groups or as a way to deliver information to hard-to-reach victim groups, including those in custody.

SUPPORTING EVIDENCE

During Justice Reform Strategy stage two consultations⁵⁸ stakeholders agreed that a single case management approach in the criminal justice system may lead to a number of benefits for offenders.

These benefits may also be extended to victims and include:

- the ability to link individuals to services;
- accurate legal advice and information at an earlier stage;
- reminding individuals of forthcoming court hearings;
- the potential to increase criminal justice system efficiency; and
- earlier and better outcomes for the offender and the wider community.

In the ACT, existing examples of single case management programs include the ACTCS Extended Throughcare program and the CSD's Strengthening Families program⁵⁹. CSD's Human Services Blueprint, Blueprint for Youth Justice, and associated OneLink initiative also aim to provide individualised support and the 'right services at the right time', a philosophy that could be extended to the justice system for victims of crime. The Office of the Coordinator-General for Family Safety is also considering how system capacity can be built to include pathways to safety, options for accessing the system without burdening individual services, and how to reach target groups who are not necessarily interacting with the justice system⁶⁰.

The 'We Don't Shoot our Wounded' report on family violence in ACT Aboriginal and Torres Strait Islander communities (2009) also recommends that:

- advocacy, assistance and support is provided to Aboriginal and Torres Strait Islander victims from the time they report to police through prosecution and court processes;
- a case management service recognises the more complex and intensive requirements to support Aboriginal and Torres Strait Islander victims; and
- a specific service for Aboriginal and Torres Strait Islander women be established where a range of legal, advocacy, practical and healing activities can be delivered⁶¹.

⁵⁸ Justice Reform Strategy, core design workshop on 'therapeutic jurisprudence', 10 February 2015.

⁵⁹ In the Strengthening Families program, a lead worker assists families with complex needs who are involved with multiple services, by providing a single point of contact, and developing an agreed plan and package of supports based on family needs.

⁶⁰ Office of the Coordinator-General for Family Safety, *Family Safety Hub Design: Insights report*, July 2017, Version 0.9, p. 57.

⁶¹ ACT Victims of Crime Coordinator, *We Don't Shoot our Wounded: Aboriginal and Torres Strait Islander victims of family violence access to justice and access to services in the ACT*, p. 2.

Other options to support diverse and vulnerable victim groups in the criminal justice system are further discussed below.

A single point of contact model for victims of crime may be provided through an advocacy model. New Zealand implements a universal advocate scheme. In the United States, victims are appointed an advocate at the time of reporting a crime. Their role is to:

- remain involved with the victim until conclusion of the matter;
- enable access to counselling and provide welfare support;
- assist with submission on behalf of victims and compensation claims;
- attend hearings;
- provide advice where justice officials may not be able to due to breach of duty; and
- liaise between justice agencies⁶².

A single point of contact model may also support assessment of victim needs early in the process and system. The England and Wales Code of Practice has created a victim entitlement to access a needs assessment to:

- ascertain victim support and protection needs, and eligibility for special measures;
- identify victim preferences for information and communication;
- provide appropriate referral pathways including to restorative justice; and
- assist the system to process victims effectively via a triage model⁶³.

Benefits of assessing victim needs early in their contact with the justice system are: the early and correct allocation of resources; and enhanced access to justice processes for victims of crime.

CONSIDERATIONS

A hub model that co-locates multi-disciplinary victim services is another option, although some victims of crime have indicated they preferred to build and maintain their relationship with a service of their choice, rather than attend a one-stop-shop. A multi-agency model with co-located police and support organisations, such as those operating in the United Kingdom, may assist in information sharing and streamline processes for victims⁶⁴.

A single point of contact/case management service or hub service must consider the needs of sections of the community who are particularly vulnerable to crime or when in the justice system. This is further discussed below.

A further consideration is the point at which a single point of contact scheme would end. For example, some victims of serious offences remain on the victims register for extended periods of time, so consideration would need to be given to how assistance may be provided for people to prepare SAB submissions. Regular client reviews could be considered, as trauma recovery times vary for victims of crime.

2.1.a What are the challenges in establishing a single point of contact/case management system?

2.1.b What would the benefits to agencies and victims be?

⁶² Kirchengast, T., *Participation of victims of crime in New South Wales Court Processes, A Study Commissioned by Victims Services, NSW: Final Report*, November 2014, p. 138 & 143; Cussen et al., *Australian Institute of Criminology, ACT Family Violence Intervention Program Review*, p. 46-47.

⁶³ Cussen, et al., *ACT Family Violence Intervention Program Review*.

⁶⁴ James-Hanman (2000) in Wedlock et al., *What works in supporting victims of crime: A rapid evidence assessment*.

2.2. Legal information, advice and/or representation for victims in criminal proceedings

Victims are currently able to seek legal information, education and advice about their role and rights in the criminal justice system from private lawyers or community legal services where. However, this is not common practice in the ACT, partially due to the lack of awareness from victims about the services available, how they might assist, and a lack of targeted and accessible victims' services.

Providing victims with independent legal information, advice and representation:

- de-politicises the role of victim support, as information and advocacy is provided by an independent legal professional rather than a victim support organisation or personnel;
- maintains the independence of the prosecution whose key role is to represent the interests of the community; and
- enhances victims' access to, and voice in, justice processes as there is a targeted avenue through which to discuss participation options and decisions, and seek advice.

OPTIONS FOR VICTIM/LAWYER INTERACTION

Table 1 outlines the different types of interactions lawyers can have with victims in the criminal justice system. These options are discussed in more detail below. They are largely based on Victorian Law Reform Commission (VLRC) research into the role of victims in the criminal trial process⁶⁵, and a NSW Government paper on the participation of victims in court⁶⁶.

While international models where victims are a party to proceedings have been included in the analysis, this option is not under consideration in the ACT due to the fundamental changes which would be required to the legal system. Options for consideration include victims having access to legal advice and representation in certain elements of legal proceedings where this is allowed for in legislation.

The consultation questions ask whether there should be extensions to the currently available systems of legal information, advice and/or representation for victims, and specifically for vulnerable victims who are giving evidence in court.

Options are not either/or, but may be a combination of the options below.

Table 1: Options for legal interaction with victims and justice processes

Option 1	Option 2	Option 3	Option 4	Option 5
Maintain the current level of legal information and advice that is available to victims	Extend the current level of legal support given to victims by increasing access to specifically resourced and tailored legal advice	Provide victims with access to legal representation where legislation allows for victim representation in proceedings i.e., disputed elements of the case or to assist judicial officers to understand victim rights	Vulnerable victims are represented in legal proceedings	Victims are a party to proceedings <i>This option is not being considered in the ACT but is included in this analysis for comparative purposes</i>

⁶⁵ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*.

⁶⁶ Kirchengast, T., *Participation of victims of crime in New South Wales Court Processes, A Study Commissioned by Victims Services, NSW: Final Report*.

Option one - Maintain the current level of legal information and advice that is available to victims

DEFINITION

In this option, victims are offered generic information and education about the justice process by lawyers or non-lawyers. Information can be provided to victims of crime on a range of topics including general criminal justice processes, a victims' role and rights in these processes, and how to prepare for proceedings or structure submissions.

CONSIDERATIONS

Legal information and advice is currently available in the ACT through existing legal and support services for eligible victims.

The view of the VLRC is that a specific victim legal information service may not be warranted given that the goal is for justice agencies to communicate regularly and effectively with victims of crime, and funding a separate service may remove incentives for this.

The ACT Charter also aims to increase information delivery to victims of crime in a way that uses and supports existing legal and justice agency mechanisms and expertise. However, consideration may be given to ensuring information about legal services is better targeted, accessible and advertised more broadly.

Option two – Extend the current legal support given to victims by increasing access to specifically resourced and tailored legal advice

DEFINITION

Legal advice takes legal information and support to the next level by applying the law to an individual's circumstances. Legal advice is given by qualified lawyers working in conjunction with other support services.

In this option, generic information about the justice system is tailored into specific legal advice relevant to the specific circumstances of each victim. Currently available legal advice may be advertised more broadly so that victims are more aware of how to access these legal services and how they can assist. Alternatively, currently available legal advice may be extended with specific funding.

CONSIDERATIONS

Legal advice may be provided to victims by a private lawyer, existing service or specifically funded service. Allowing victims of crime to more broadly access legal advice may assist victims to:

- prepare for proceedings;
- structure submissions including VIS and submissions to the SAB; and
- access legal entitlements.

Option three – Provide victims with access to legal representation where legislation allows for victim representation in proceedings

DEFINITION

Legal representation can involve representing a victim during discussion with other parties and/or in court during criminal proceedings. Currently in the ACT, legal representatives may speak on behalf of a vulnerable victim such as a child. In certain limited circumstances, legal representation may be made available to a victim.

In this option, current legal representation is extended to allow appropriate and adequately funded legal representation to represent a victim's views in relevant proceedings. For example, where the victim's position may conflict with the defence or prosecution, or where the judicial officer asks for clarification of the victim's rights in the proceedings. Such representation would only extend to circumstances where the victim has a legal right to be heard, or is party to the proceedings. Legal representation would only be made by qualified lawyers who have the right to appear in court.

EXAMPLES FROM OTHER JURISDICTIONS

In South Australia victims have access to legal advice and representation via a discretionary fund administered by the Commissioner for Victims' Rights. Victims have received funding in matters including applications for restitution, apprehended violence orders and in relation to privacy issues including subpoenas and the recovery of property. Other possibilities for proceedings where victims may be represented in court to ensure their views are taken into account may include:

- applying for an adjournment in proceedings so that victims can seek support or advice; or
- challenging an offender's application to have their identity suppressed.

NSW reforms enacted in 2010 established a new right for victims, or their lawyer, to assert the privilege in court to participate in decisions affecting the confidentiality of their counselling records⁶⁷. For the first time in Australia, victims were represented in court arguments about subpoenas. In 2012, NSW Legal Aid was funded to provide the Sexual Assault Communications Privilege (SACP) Service which provides legal advice and representation to sexual assault complainants and other 'protected confiders', to protect the confidentiality of counselling notes or consent to releasing documents to court.

In the United States victim advocates have the capacity to assert victim rights under the federal *Crime Victims' Rights Act 2004*. Advocates enforce victim rights, file papers, provide legal advice, explain the criminal justice system and support the victim through the process. Some international jurisdictions have also implemented victim lawyer schemes for certain groups, such as sexual assault and violent offence victims.

The Family Court of Australia has seen positive results with independent children's lawyers. Lawyers are obliged to consider the views of the child but ultimately provide their own, independent perspective about what arrangements or decisions are in the child's best interest.

CONSIDERATIONS

The view of the VLRC is that legal representation should be allowed in certain circumstances where non-parties, including victims, appear in proceedings.

Subpoenas

For example, victim representatives may object to subpoenas or the disclosure of contents of documents to the court or certain parties where attempts to access records may deny victims privacy.

The ACT VOCC notes that broad subpoenas can be used as a mechanism to intimidate victims and advocates for increasing the privacy protections afforded to victims in court where past health records can be subpoenaed without a victim's knowledge. The VLRC considers that restrictions on access to the personal records of sexual assault victims should also be expanded.

In the ACT, section 126B of the *Evidence Act 2011* allows the court to direct that evidence not be presented in a proceeding if the court finds that presenting it would disclose a protected confidence. This

⁶⁷ Since the 1990s all Australian jurisdictions have enacted legislation to limit the subpoena and disclosure of communications made in the context of counselling for sexual assault. In the ACT, this is reflected in section 57 of the Evidence (Miscellaneous Provisions) Act 1991. Changes in NSW required parties to ask permission (leave) from the court before issuing a subpoena; expanded the factors the court must consider before granting leave to disclose records; allow the court to consider a 'confidential harm' statement; and expanding the range of sexual assault victims who can claim the privilege.

privilege is based on the court's discretion and the court may give this direction on its own initiative or on application of the protected confider or confidant (whether or not either is a party).

Further, the *Court Procedure Rules 2006* (Rules 6604, 6609) provide for a party or someone with sufficient interest to apply to have a subpoena completely or partly set aside. A victim is not a party to proceedings and so is not notified that health records have been subpoenaed. However, they may be considered a person with sufficient interest as the health record relates to them.

Once the victim is notified, they would then have to demonstrate to the court that the disclosure could cause harm. While there may be grounds to object to a subpoena, victims may not know of or have access to this right without legal advice. The application to set aside the subpoena aside would also likely require court attendance and the presentation of evidence.

Option four – Vulnerable victims are represented in legal proceedings

DEFINITION

In this option, victims who are more vulnerable when in the justice system, for example children or people with disability, may be provided opportunities for legal intervention and being a party to particular proceedings. Legal representation may:

intervene in cross-examination of witnesses;

- put additional questions to witnesses;
- contest evidence at trial; and
- provide additional evidence or make a statement

Legal representation would be available to certain vulnerable victims in order to ensure that the judicial officer fully understands the victims' rights in the proceedings.

CONSIDERATIONS

Legal representation for vulnerable victims provides additional protection for victims who are more vulnerable to re-traumatisation, experience barriers to accessing legal entitlements or have communication or developmental difficulties.

The Royal Commission and VLRC found that victims who give evidence as witnesses can experience cross-examination that is aggressive and confusing. While there are legal provisions in place to stop improper questioning of vulnerable victims in the ACT, the VLRC recommends that judicial officers intervene more actively and frequently when a victim is asked an improper question, and the Royal Commission noted that this section is often not used.

Legal representation is often sought for vulnerable victims such as children, where a victim may be pre-disposed to experiencing a higher level of trauma in court proceedings and the actions of prosecution or defence may expose the victim to harsher questioning or doubt during the trial. The ACT VOCC advocates that victims should have access to a legal advocate who is able to step-in when witnesses are being cross-examined and in order to access current and any future participation rights.

Currently in the ACT, the court can order a child witness to be represented by someone else if it considers this should be the case and the child is not already separately represented. However, this provision is not frequently used, and it is unclear what circumstances would need to be present for the court to make such an order.

In addition, therapy dogs or companion animals for people with disabilities are increasingly accepted as a therapeutic tools including in court rooms, and the *Discrimination Act 1991* provides for a person with a disability to use an assistance animal, disability aid or support person where necessary.

To ensure the accused has rights to a fair trial and that the independent role of the prosecution is protected, any victim representative must have a defined procedural role in hearings that affect victim wellbeing, and the VLRC recommends that a victim representative does not have the power to make submissions on facts or an issue.

Option five – Victims are a party to proceedings

DEFINITION

In some international jurisdictions, victims are a party to all proceedings and have the general right to participate in court proceedings during the criminal trial process. In some circumstances, lawyers representing victims act as co-counsel with crown prosecutors.

This option is not under consideration in the ACT as the legal system operates in a vastly different way to these overseas jurisdictions. However, these models are worth acknowledging in an analysis of ways in which lawyers and victims interact with the criminal justice system.

EXAMPLES FROM OTHER JURISDICTIONS

In Japan, lawyers act for victims as co-prosecutors whereby they sit alongside the prosecutor and ask witnesses and defendants questions in certain cases. In some parts of the United States lawyers are appointed to ensure the rights of victims are represented in sentencing; and in Europe some jurisdictions, such as Germany, have victims or representatives of victims as auxiliary/subsidiary prosecutors with a right to be present at all stages of the process, put additional questions to witnesses, provide additional evidence, make a statement, or present a claim for compensation. In the ICC, victims also have the option to apply to participate in proceedings and share their views and concerns independently of prosecution and defence, through representation by a lawyer.

CONSIDERATIONS

The view of the VLRC is that allowing victims to apply to the court to have their views presented at certain stages including introducing evidence, cross-examining witnesses and making statements, would introduce a significant complexity to the trial, pose a risk to a fair trial for the accused, and overlap with the role of the prosecutor.

Summary

In the ACT there are a range of legal and support services that provide free or subsidised legal advice and support to victims of crime. Each service has its own eligibility criteria, and there appears to be a gap for middle-income earners who may not have funds to purchase services. For example, Legal Aid ACT can provide initial advice and assistance to all victims without means testing, but ongoing assistance generally requires the victim to have a grant of legal aid⁶⁸⁶⁹.

Victim awareness of these services, and their accessibility to all victims, needs to be considered. Which group of victims, if any, should be able to access legal information, advice and/or representation and at what level? How could these services be resourced to better respond to victims' needs?

Ideally, legal information would be provided through existing information mechanisms and agency sources, although these may need to be advertised more broadly. A specifically funded legal service or fund may need to be considered for victims not eligible for existing legal services or who cannot afford

⁶⁸ A grant of legal assistance is money used to pay a Legal Aid ACT or private lawyer. Applications for legal assistance are subject to means, legal merit and matter tests governed by the *Legal Aid Act 1977* and guidelines under the Act (<http://www.legalaidact.org.au/whatwedo/legalrepresentation/>).

⁶⁹ While Legal Aid ACT may represent the person charged with the offence, this does not prevent providing legal advice, assistance or representation to the other party of victim of the offence. If this cannot be done internally due to a conflict of interest, one party's matter is referred to an external legal practitioner.

private legal advice and/or representation. Options to address the needs of this cohort could include providing a service through:

- an existing legal agency⁷⁰;
- a clinic service based in existing legal services or community organisations which support groups that experience barriers accessing legal advice; and
- or a discretionary fund that sits with the ACT VOCC.

2.2.a How could legal information, advice and/or representation be made more accessible to victims of crime?

2.2.b What groups of victims would benefit the most from these services?

2.2.c If introduced, how would victim's lawyers interact with the justice system providing legal advice and/or representation to victims?

3. TARGETED SUPPORT FOR VICTIMS WITH SPECIFIC NEEDS

Under the ACT *Human Rights Act 2004* section 8 'Everyone is equal before the law and is entitled to the equal protection of the law without discrimination'⁷¹. However, victims who face barriers when seeking to access and participate in the justice system can be particularly vulnerable to crime, and while they may be entitled to enhanced services, they are more likely to feel they have been treated disrespectfully by the system⁷². The Family Safety Hub co-design process recognised that designing solutions focused on people with the greatest barriers to accessing justice and victim services ultimately improves access for the broader community, including access to justice issues for offenders⁷³.

Key barriers to accessing justice

Victims of crime have the right to equal access to justice processes and trauma-informed support they can trust. Justice agency responses must acknowledge the vast needs, experiences and strengths of communities. The key issues and barriers to participating in justice processes for victims more vulnerable to crime, and when are briefly outlined in Table 2.

Table 2: Summary of access to justice barriers that may be experienced by different community groups

Group	Key issues and barriers
Aboriginal and Torres Strait Islander people	• feel they are treated as an offender or perpetrator, are not believed or are to blame • distrust police and the legal system, and are hyper-vigilant around child protection issues • experiences of intergenerational discrimination and social disadvantage, poor responses from authorities, and forced removal from family and cultural ties⁷⁴

⁷⁰ The VLRC recommended that Victoria Legal Aid be funded to establish a service for victims for those who cannot afford private advice.

⁷¹ s8.3.

⁷² Wedlock et al., *What works in supporting victims of crime: A rapid evidence assessment*.

⁷³ Office of the Coordinator-General for Family Safety, *Family Safety Hub Design: Insights report*.

⁷⁴ Aboriginal Legal Service (NSW/ACT) Limited, *Criminal Justice Consultation Paper: Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse*, October 2016, p. 1.

Group	Key issues and barriers
	under-reporting of crime and under-identification of Indigenous people who are a victim⁷⁵
Children and young people	- heightened risk of trauma requiring enhanced protection, representation, and early referrals to counselling support⁷⁶ - different needs according to age and stages of development - possible involvement with child protection or youth justice systems⁷⁷
Culturally diverse people	- possible mistrust or misconceptions about crime and authorities due to different cultural norms or experiences - experiences of racism - difficulty accessing interpreter services and procedural fairness⁷⁸
LGBTIQ people	- mistrust of authorities due to historically negative experiences - experiences of discrimination or lack of education in service responses⁷⁹
People living with a disability (including severe mental health issues)	- negative stereotypes about being uncredible or unreliable - difficulty accessing appropriate adjustments, modifications and aids - lack of education and appropriate responses from justice agencies about the impacts of the range of disabilities including intellectual, physical and mental health related issues⁸⁰
Young adults aged 18-25	- vulnerable to negative impacts of the crime on participation in education and employment - developmentally vulnerable to the impacts of justice system involvement⁸¹ - not eligible to access additional services or measures available to children and young people

Royal Commission Criminal Justice Report recommendations

The Royal Commission recommended areas where the justice system could improve its responses to all sections of the community. These should be considered in developing an ACT Charter:

- Police should work to build good relationships with Aboriginal and Torres Strait Islander communities and provide alternative reporting channels for child sexual abuse victims from those communities⁸²;

⁷⁵ Arabena K., and Milward, K., ACT Law Courts and Tribunal, *Access to the ACT Law Courts for Aboriginal and Torres Strait Islander People in the ACT: Consultation Report, Summary of the Access to Courts Workshop held on 9 May 2017*, 8 June 2017, p. 18.

⁷⁶ Child victims of sexual assault offences are eligible for special measures intended to offer increased protection.

⁷⁷ Anderson et al., *Evaluation of the ACT Sexual Assault Reform Program (SARP): Final report*.

⁷⁸ Judicial Council on Cultural Diversity, *Recommended National Standards for working with Interpreters in Courts and Tribunals*, 2017.

⁷⁹ Gay and Lesbian Health Victoria, *Coming Forward: The underreporting of heterosexual violence and same sex partner abuse in Victoria*, 2008.

⁸⁰ Based on preliminary consultations with disability advocacy groups.

⁸¹ Australian Institute of Health and Welfare, Australian Government, 'Australia's Welfare 2015, Feature Article 4.8, Vulnerable young people (aged 15-24)'.

⁸² Royal Commission recommendations 5a-b.

- Police who come into contact with sexual abuse survivors should take into account relevant cultural safety issues and work sensitively with CALD and Aboriginal and Torres Strait Islander groups⁸³;
- Police and prosecution should ensure responses to victims with a disability are non-judgmental and free of adverse assessments of credibility, reliability or ability to report and participate⁸⁴; and
- prosecution agencies should recognise that children with a disability are at significant risk of abuse, and take this into consideration when making decisions about prosecuting child sex abuse offences⁸⁵.

ACT Government initiatives

The Charter would link with appropriate existing initiatives seeking to address issues for marginalised groups in the justice system, including:

- the Aboriginal and Torres Strait Islander Justice Partnership working to address the over-representation of Indigenous communities in the ACT justice system, including the treatment of and services provided to victims of crime;
- the ACT Disability Justice Strategy currently under development. Preliminary findings echo similar justice system gaps that exist for victims of crime, including difficulty accessing information, rights and legal assistance; and the importance of an initial assessment of needs;
- the CSD's range of service delivery responses to protect at risk children and young people.

Victims of crime have the right to understand and be understood⁸⁶, and some victims may be particularly disadvantaged during investigative phases and court proceedings in this regard. The ACT Government is considering how to implement recommendations from the Royal Commission, including establishing an intermediary scheme⁸⁷. Different communication assistant schemes are operating overseas and within Australia and consultations are underway regarding an appropriate model for the ACT. An intermediary scheme has the potential to enhance access to justice for all, including victims of crime, and may be reflected as a right to access in the Charter for certain groups of victims, for example:

- people with an intellectual disability or communication related needs;
- children; and
- people from culturally and linguistically diverse backgrounds or Aboriginal Torres Strait Islander communities who experience communication barriers.

3.1. Specialist support officers

Justice officials are highly skilled, expected to provide safe environments for all community members, and can increase their knowledge about responding to specific population groups through training. However, there is a vast amount of knowledge to be mindful of in daily practice, and justice officials cannot be expected to have specialist knowledge in all fields. Specialist support officers could:

- build trust and encourage reporting with victims of crime;
- provide advocacy, information and support for victims throughout the justice process;
- provide training to justice officials and increase overall understandings about specific population groups;

⁸³ Royal Commission recommendation 3bii and 4d.

⁸⁴ Royal Commission recommendations 13a-b.

⁸⁵ Royal Commission recommendation 37f.

⁸⁶ European Union, Directive 2012/29/EU of the European Parliament and of the Council, 25 October 2012, *Establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*.

⁸⁷ Intermediaries are communication experts who assist in assessing the victims' communication abilities and needs, and provide guidance to other parties to elicit the best evidence during the investigation and trial preparation phases. Intermediaries are independent, neutral communication experts and are responsible to the court rather than to the victim – they are not advocates or support workers.

- ensure access to required adjustments and legal provisions to ensure equal participation and procedural fairness;
- provide support for police when collecting evidence and prosecution when working with witnesses;
- support victims of crime to access their rights; and
- support children (in cases where parents/carers are witnesses to a crime against a child, the parent cannot advocate and the child cannot talk about the offence with the parent).

SUPPORTING EVIDENCE

Evidence suggests that specialist support officers can enable equal access to justice for victims of crime. The Royal Commission recommends that witness assistant services based in prosecution agencies include specially trained staff for Aboriginal and Torres Strait Islander people and children⁸⁸. The Judicial Council on Cultural Diversity also recommends Indigenous court liaison officers and cultural court liaison officers to assist people to better understand the court system, complete paperwork, navigate procedures and arrange an interpreter if necessary⁸⁹.

One study showed that while only 40% of LGBTIQ respondents who reported violence to the police felt they received a positive response, 75% found police Gay and Lesbian Liaison Officers (GLLOs) to be supportive⁹⁰. In a 2017 study of GLLOs in QLD, NSW and WA, LGBTIQ victims identified important functions of GLLOs as, building relationships between the community and the police, and working to reduce homophobia and transphobia within organisations⁹¹.

CONSIDERATIONS

In the ACT, specialist officers could sit within justice agencies or link with existing community policing models, similar to Aboriginal Liaison Officers (ALOs) or GLLOs within ACTP. Alternatively, they could sit in a centralised location and attend when required, or link in with victims of crime and justice agencies when required. Some agencies servicing victims already have specialist support officers, such as the cultural liaison officers at Legal Aid ACT, ALO with VSACT and previously discussed officers at ACTP. However, there is a gap in targeted support for people with disabilities in the justice system which a Disability officer may assist to address.

Aboriginal and Torres Strait Islander community members who attended the ACT Courts and Tribunal 'Access to Courts Workshop' in May 2017 recommended that a male and female ALO sit within an Aboriginal Hub at the Court for victims and offenders. The Hub would guide people through court processes, interpret the legal system, provide a sense of cultural safety, liaise with support and service providers and Judiciary⁹².

Specialist officers who work within justice agencies require adequate support and supervision. They can experience feelings of isolation, cultural differences within the organisation, and high community expectations leading to burn-out⁹³. Centralising specialist officers may offer more avenues for support for specialist officers, although decentralising officers may offer more opportunities for cultural change and training within organisations.

⁸⁸ Recommendation 37d.

⁸⁹ Judicial Council on Cultural Diversity, *National Framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women*, 2011.

⁹⁰ Gay and Lesbian Health Victoria, *Coming Forward: The underreporting of heterosexual violence and same sex partner abuse in Victoria*, p. 9.

⁹¹ Dwyer, A., Ball, M., Bond, C., Lee, M and Crofts, T, Exploring LGBTI Police Liaison Services: Factors influencing their use and effectiveness according to LGBTI people and LGBTI police liaison officers, July 2017.

⁹² Arabena et al., *Access to the ACT Law Courts for Aboriginal and Torres Strait Islander People in the ACT: Consultation Report, Summary of the Access to Courts Workshop held on 9 May 2017*, p. 7.

⁹³ ACT Office for Coordinator General for Family Safety.

3.1.a How could specialist officers support the participation of specific victim population groups?

3.1.b Are additional specialist officers required, and for which population groups?

3.2.c What are the benefits and challenges of centralising specialist officers vs officers working within individual agencies?

3.2. Interpreter scheme

Interpreters in the legal setting require a high skill level and there is no consistency across agencies or established practices regarding accessing interpreters. Establishing an overarching interpreter scheme for use in the criminal justice system as a consistent approach will benefit victims and ensure access to interpreters at all times.

SUPPORTING EVIDENCE

The Royal Commission recommends that the importance of interpreters be recognised in justice system responses, including for some Aboriginal and Torres Strait Islander victims, survivors and other witnesses⁹⁴, and that interpreting services are provided for any witness in a child sexual abuse prosecution. Some issues reported in the ACT include that victims of crime, particularly when they speak some English, are not always offered or provided with an interpreter service.

CONSIDERATIONS

Individual agencies currently access and fund interpreting services through the Translating and Interpreting Services (TIS), or utilise someone who shares the same language as the victim such as a relative or staff member which is not best practice due to issues around confidentiality and accuracy

If an interpreter is required for the accused or for a witness, they are funded and arranged by ACTP in the Magistrates Court or the DPP in the Supreme Court (*Human Rights Act 2004*⁹⁵). This is in contrast to other jurisdictions, such as NSW, where the court arranges and funds interpreters. The ACT Government *Safer Families* budget is investing in interpreting by providing funding for TIS to courts and tribunals, and to specialist domestic and family violence services, for family violence applications for protection order matters as required. The program also allows victims of family violence to access interpreting services in their interactions with any specialist or community service which is meeting a family violence need, for instance in relation to housing, financial counselling or crisis accommodation.

If an interpreter scheme is established for the criminal justice system in the ACT, a key consideration would be how this would interact with TIS to ensure that there is not confusion over multiple pathways. Specialist training and support for interpreters who operate in the legal system may also be required to ensure interpreters have a basic level of understanding of the legal context and technical language, and support. Victims of family violence have also indicated that they prefer to access interpreting services over the phone rather than face-to-face, given this offers more anonymity and confidentiality.

An interpreter scheme would most likely consist of an overarching policy and practice framework for the access of interpreters for victims of crime, rather than a physically located service. Any scheme would also improve access to interpreting services for offenders, and utilise The Judicial Council on Cultural Diversity's Recommended National Standards for Working with Interpreters in Courts and Tribunals⁹⁶.

⁹⁴ Royal Commission recommendations 9i and 63.

⁹⁵ *Human Rights Act 2004* s22 (2h).

⁹⁶ <https://www.naati.com.au/media/1680/mca04694-national-standards-web-171025pdf.pdf>.

3.2.a If the Charter includes rights related to access to interpreters, is there a need for an overarching interpreter scheme in the ACT criminal justice system?

3.2.b How could the scheme be administered?

4. PROVIDING INFORMATION AND CONSULTING WITH VICTIMS THROUGHOUT JUSTICE PROCESSES

While information and consultation processes with victims of crime currently occur, they are at the discretion of a victim or a justice agency official⁹⁷. The Charter will most likely outline information and participation rights for victims of crime at different stages of the justice process. The initiatives outlined above to support information sharing and communication in the ACT justice system (ICT initiatives, human resource models and targeted support for people with specific needs) will also support victim participation and consultation.

In order for the Charter to meet victim of crime expectations and keep justice agencies accountable, the Charter must be specific about:

1. what is meant by information, consultation and participation
2. for which victims of crime these rights may apply
3. at what points in the system this will occur.

Defining participation

Three levels of participation are outlined in Table 3 based on VLRC research into the role of victims in the criminal trial process⁹⁸, and a NSW Government paper on the participation of victims in court⁹⁹.

Table 3: Levels of victim participation in justice processes

	Low	Medium	High
Type of participation	A victim of crime receives information and is informed about justice processes.	Justice agencies seek and consider the view of victims in a meaningful way, and provide victims with a sense of acknowledgement and empowerment without giving victims a direct role in prosecutorial decisions (many victims do not seek this responsibility).	Victims have opportunities for direct participation with a voice in proceedings, and participation in decision-making through direct representation.

⁹⁷ Kirchengast, T., *Participation of victims of crime in New South Wales Court Processes, A Study Commissioned by Victims Services, NSW: Final Report*, p. 19.

⁹⁸ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, November 2016, p. 48-52.

⁹⁹ Kirchengast, T., *Participation of victims of crime in New South Wales Court Processes, A Study Commissioned by Victims Services, NSW: Final Report*.

	Protected witness	Participating witness	Prosecuting witness
Type of witness	A protected witness is treated fairly and with respect with the aim of reducing trauma.	A participating witness has their interests and views taken into account, and has opportunities to be heard.	A prosecuting witness has some or all of the functions, rights and obligations as a prosecutor.

Based on these categories, the ‘medium’ or ‘participating witness’ model of participation is most likely to be supported in the Charter, and the VLRC also found broad stakeholder support for this model¹⁰⁰. Meaningful consulting with victims requires that they have sufficient information, time, access to advice and opportunity to participate in decision-making, even though their views may not determine the outcome of decisions¹⁰¹. Consultation is more than providing information - it is about seeking and hearing the views of victims and factoring these into decision making.

It is recognised that in cases of family violence, consulting with victims and providing an opportunity to influence decision-making may be limited because of power dynamics in these offences. ACT government and ACT Policing approaches also aim to pro-actively respond to family violence. However, there may still be room to improve the communication around policing and prosecution.

4.1. Tiered access to information and consultation rights

Certain rights such as consultation rights may only apply to victims of serious crimes¹⁰² or could be extended to certain vulnerable victims. Victims who don’t meet the threshold for some information rights could be ‘informed, on request’ rather than automatically. Other considerations for limitations to providing information to victims could be providing information ‘as soon as reasonably practicable’, or ensuring there are ‘attempts’ to contact the victim or ascertain their whereabouts.

It is also recognised that information provided must be consistent with the requirements of the law, the public interest, and the privacy of the offender or the investigation. As outlined by the *Human Rights Act 2004* all rights have conditions and limitations and must be balanced, to ensure that the rights of all parties are acknowledged and protected (s 28). For instance, there may be security considerations when providing information to a victim where a registered victim is also a convicted offender in cases of organised crime, or where both the victim and offender are in detention.

EXAMPLES

England and Wales’ Code of Practice¹⁰³ outlines three categories of victims who are more likely to require enhanced support and service entitlements:

1. vulnerable victims including those are under 18; people who have a diagnosis of a mental health disorder, impairment in intelligence or social functioning, or physical disability or disorder; and intimidated victims who experiencing fear or distress at testifying in court
2. victims of the most serious crime
3. persistently targeted victims who are deliberately targeted over a period of time.

The NSW Code of Practice¹⁰⁴ includes a section on roles and responsibilities of victims of crime including:

- advising how they like to be contacted
- providing current contact details and updating their contact details

¹⁰⁰ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, p. 134.

¹⁰¹ ACT Victims of Crime Commissioner, *A Charter of Rights for Victims of Crime: Consultation Report*.

¹⁰² Violent crimes are defined in the *Victims of Crime (Financial Assistance) Act 2016*.

¹⁰³ Ministry of Justice, *Code of Practice for Victims of Crime*, October 2015, p. 13.

¹⁰⁴ NSW Government Justice Sentencing Council, *Victims’ involvement in sentencing: Consultation paper*, September 2017, p. 40.

- providing consent for information sharing between agencies
- nominating a person who can represent them if they are a child or a family member of a victim of homicide (a related victim)
- advising police if they do not want to collect property within 28 days.

Appropriate initial assessment, communication and contact systems must operate to expect victims to provide this information and advice, and for it to be properly utilised by justice agencies.

CONSIDERATIONS

While many rights such as access to information and psychological support should be applied to all victims, it would be problematic for the justice system to expect that all victims can access all rights at all times, particularly consultation and participation rights which may be more time and resource intensive. The aim is to find an approach that balances practical considerations for the justice agency to uphold rights, while acknowledging that different crimes affect people differently depending on their background or previous experiences of trauma. The Charter will ideally provide some opportunities for victim flexibility and choice, and recognise that enhancing rights for some victims may assist in improving access to justice for all victims.

4.1.a What should the crime type threshold be for victims to access consultation and participation rights?

4.1.b Are there other victims that require access to consultation and participation rights because they are more vulnerable?

4.2. At what points in the justice process should information and consultation rights be provided?

Some victims want information about the progress of their case and the opportunity to provide input at all stages of the criminal justice process. This needs to be balanced with practical considerations including the rights of offenders, the ability of justice agencies to meet service demands, and questions about whether there are victims of certain crimes who require more information and support.

This section provides an overview of stages of the justice process, existing mechanisms, possible areas of enhancement for information and participation rights, and key questions for stakeholders. We are seeking feedback on existing agency processes, identification of gaps, and feedback on challenges and barriers to implementing the initiatives discussed.

4.2.a At what points in the justice process should some or all victims of crime receive information and be consulted as a right?

4.2.b What challenges does this present for justice and victim support agencies?

4.2.1. When the crime is being reported to ACTP

When a victim reports a crime to ACTP, they are provided with a job reference number. Victims of serious crimes are followed-up by VLOs, and if a victim is asking for or agrees, referrals are provided.

THE RIGHT TO INFORMATION

Should victims have a right to be provided with a written acknowledgement of reporting a crime to the police, including the basic details of the offence?

This occurs in the England and Wales Code of Practice.

THE RIGHT TO CONSULTATION AND PARTICIPATION

Should victims have a right to automatic referrals to victim support services from police or should victims have a right to consent to receiving information about justice processes and support services in an opt-in fashion?

4.2.2. When the court is considering bail conditions

According to the *Bail Act 1992* (s23A), victims have the right to have their safety concerns taken into consideration in bail applications and to be given notice of bail decisions if they have expressed safety concerns (s47A).

THE RIGHT TO INFORMATION

How can victims be better notified of applications for bail, bail variation or revocation, or if bail is granted with any special conditions that are intended to protect the victim or family members, in order to improve safety for victims?

The NSW Charter of Victims Rights outlines that a victim will be informed of any special bail conditions designed to protect the victim or the victims' family; and the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence offences. A comparison of bail entitlements for victims across jurisdictions is contained in Table 5 (Appendix C).

Who should be responsible for notifying victims of information about bail applications, revocations or bail granted especially around special conditions that are intended to improve victim safety?

Should victims have the right to provide a submission or be consulted with when an offender is applying for bail?

How can courts more routinely provide the opportunity for victims or other justice agency officials to fact-check offender claims in bail applications?

While the ability for victim safety concerns to be taken into consideration in bail applications is provided for in legislation, stakeholder feedback is that this rarely occurs in practice.

4.2.3. When ACTP is considering laying charges or the DPP is modifying charges

ACTP currently consults with some victims, including victims of sexual assault offences, about whether they want to make a complaint or proceed with charges.

THE RIGHT TO INFORMATION

Should victims have a right to information from police or prosecution about charges laid or not proceeded with in their case?

How do victims want to receive information about charges laid, modified or not proceeded with ie, verbally and/or through a written explanation?

The Royal Commission recommends that prosecution agencies have and publish decision-making and consultation with victim policies, and provide victims with the opportunity to seek written reasons for key decisions as well as verbally¹⁰⁵.

Should there be timeframes in place for victims to receive this information?

The England and Wales Code of Practice specifies five working days unless the victim discusses and agrees with different timings.

THE RIGHT TO CONSULTATION AND PARTICIPATION

Should victims have a right to consultation when police are in the process of deciding what charge to proceed with?

Should police discuss the difference between complaints and charges with all victims of serious crime, so that victims can make an informed decision about whether to proceed and/or police decisions are informed by this preference?

The Royal Commission recommends sexual offence victims retain the right to withdraw from the process or decline to take part in proceedings with police and prosecution¹⁰⁶. The VLRC recommends that victim's views may be considered but the decision to charge a suspect is based on an assessment of the evidence, the law and the public interest¹⁰⁷.

Should victims have a right to consultation if the prosecution is considering modifying a charge?

Note that what constitutes consultation may be different in family violence matters, where the ACT Government supports proactive responses as outlined in the *Family Violence Act 2016*.

¹⁰⁵ Royal Commission recommendation 40a-c.

¹⁰⁶ Royal Commission recommendation 12b and 4a.

¹⁰⁷ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, p. 254.

4.2.4. When ACTP or the DPP are considering not proceeding with charges against the accused

DPP prosecution policy states that 'wherever practicable, the views of the police (or other referring agency) and the views of the victim will be sought and taken into account in making that decision' to discontinue a prosecution. The extent of the consultation will depend on the circumstances of the case and in some cases the views of the victim will have greater relevance¹⁰⁸. The prosecution policy states that 'A victim should be told about any decision not to proceed with a charge against the accused'¹⁰⁹.

THE RIGHT TO INFORMATION

Consultation questions are at 4.2.3.

THE RIGHT TO CONSULTATION AND PARTICIPATION

Should victims have a right to be consulted when police and prosecution are considering not proceeding with a charge or to close an investigation?

The VLRC recommends prosecutors be required to offer conferences before and after important court dates to groups with specific needs and on request to other victims of crime¹¹⁰. The England and Wales Code of Practice requires prosecution conferencing when a decision is made not to charge¹¹¹.

In QLD, NSW and WA victim consultation is required to be recorded and considered before any discontinuation. In the NT prosecution guidelines require a discontinuance report to be prepared which includes, among other things, the views of the investigating police officer and the victim¹¹².

Should the Charter include a right for victims to seek internal review of certain prosecution decisions?

The Royal Commission recommends that prosecution agencies should have written and publicly available policies for decision-making and victim consultation; provide a right for complainants to seek written reasons for key decisions; and establish a formal complaints mechanism to allow victims to seek internal review of decisions and ensure audit processes are in place to review decisions made against policies for instance through file audits.

In England and Wales the Crown Prosecution Service (CPS) introduced a Victims' Right to Review Scheme in 2013.

The ACT could introduce a right for victims to access an internal review process of certain DPP decisions, for instance to stop or not start a prosecution. This would provide enhanced knowledge of the review process for victims and the oversight mechanism attached to the Charter would ensure the right is accessible to victims.

¹⁰⁸ ACT Office of the Director of Public Prosecutions, *The prosecution policy of the ACT*, 2015, p. 7, section 2.21.

¹⁰⁹ ACT Office of the Director of Public Prosecutions, *The prosecution policy of the ACT*, p. 18, section 8.2.

¹¹⁰ Groups with specific needs includes family members of deceased victims, victims of sexual offences, family violence offences, child victims, victims with disabilities, Aboriginal and Torres Strait Islander victims, and victims whose first language is not English.

¹¹¹ Ministry of Justice, *Code of Practice for Victims of Crime*, p. 23

¹¹² Commonwealth Government, Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report (2017) Parts III to VI, 323-346 in Stewart, L., Supervised by Dr Gregor Urbas, University of Canberra, *Participatory rights for child victims of crime: What reforms are required to improve and further participatory rights for child victims of crime in the Australian Capital Territory?*, 2017, p. 25.

The review and communication of prosecution decisions is an internal process to the DPP and any external oversight mechanisms or agencies would not have the power to influence decisions. Further considerations would include working with the DPP to ascertain in what circumstances victims of crime could access this right.

Risks to the inclusion of a victim right to review certain prosecution decisions in the Charter are that this will impact on the resources of the DPP, and it may be viewed as impacting on the independence of the prosecution. An alternative approach is to not include the right to review in the Charter.

4.2.5. When the DPP is considering accepting a plea of guilty for lesser charges

ACT DPP prosecution policy states that a plea of guilty may be accepted following consideration of a range of matters including ‘the views of the victim, where those views are available and if it is appropriate to take those views into account’¹¹³.

RIGHT TO INFORMATION

Should victims have a right to information about the outcome of a plea negotiation?

How should the prosecution provide information about the outcome of a plea negotiation to victims?

RIGHT TO CONSULTATION AND PARTICIPATION

Should victims have a right to be consulted with by the prosecution about their views on plea negotiation prior to a final decision being made?

The Royal Commission recommends that in relation to charging and plea decisions for child sexual abuse offences, public prosecution agencies recognise that the charges for which a guilty plea is accepted reasonably reflect the true criminality of the abuse; prosecutors allow adequate time to consult with the complainant who has time to consult with a witness/advocacy/support service; and police liaise with DPP regarding any proposal to downgrade, withdraw charges, or accept a negotiated plea¹¹⁴.

Since 2010 in NSW it is required that the views of the police officer and victim be sought at the initial formal discussions of plea negotiations before a formal position is communicated to the defence. This is accompanied by a process requiring the prosecution to file with the court a certificate verifying that consultation has occurred with the victim and police¹¹⁵. Where consultation has not taken place, reasons must be given.

¹¹³ ACT Office of the Director of Public Prosecutions, *The prosecution policy of the ACT*, p. 10, section 3.13.

¹¹⁴ Royal Commission recommendation 39.

¹¹⁵ Section 35A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) states that ‘a court cannot take into account any statement of agreed facts that was the subject of charge negotiations unless the prosecution has filed a certificate verifying that requisite consultation has occurred with the victim and police’ in Stewart, L., *Participatory rights for child victims of crime: What reforms are required to improve and further participatory rights for child victims of crime in the Australian Capital Territory?*, p. 33-34.

The SA Commissioner for Victims' Rights suggests that in order to ensure compliance with a victims' right to consultation, courts should have the power to 'inquire on whether victims' rights have been honoured'¹¹⁶.

4.2.6. When accessing special measures

Certain victims are eligible to access a range of special measures in the ACT with the aim of protection from trauma when giving evidence. This includes CCTV which is available to a broad range of witnesses; pre-trial hearings for child witnesses in sexual offence matters, and on application of adult victims; and closed courts for sexual offences on application.

Counselling communications in sexual offence matters are protected from disclosure to the defence according to the *Evidence (Miscellaneous Provisions) Act 1991*¹¹⁷ and are not admissible in court unless leave is given¹¹⁸.

This is not the case for counselling communications for family violence victims or for applications for financial assistance or compensation. The risk of being cross-examined on this information may deter victims from seeking counselling, providing accurate disclosures or reporting matters to the police.

RIGHT TO INFORMATION

Should victims have a right to information about special measures eligibility and processes?

How can information about special measures be best provided to victims?

Should there be a right that a person with sufficient interest in a subpoena (according to Court Procedure Rules 2006, Rules 6604 and 6609) be notified of the subpoena as soon as practicable after it is issued?

This would require the issuing party to serve the subpoena on any interested parties including the person whom the health record is sought. The person would then have the opportunity to challenge or object to documents being produced.

Should there be a right for a person to whom the subpoenaed health records relate, to have the first right of access to inspect the documents that are produced to determine whether they will lodge an objection?

RIGHT TO CONSULTATION AND PARTICIPATION

Should there be a right for victims to access special measures for which they are eligible for in the Charter?

A legal entitlement to access special measures already exists for eligible victims, and it is routine prosecution practice that all eligible victims access these. A right included in the Charter would mirror this

¹¹⁶ M. O'Connell, Submission to Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Consultation Paper, 22 November 2016, 7 in Stewart, L., *Participatory rights for child victims of crime: What reforms are required to improve and further participatory rights for child victims of crime in the Australian Capital Territory?*, p. 34.

¹¹⁷ *Evidence (Miscellaneous Provisions) Act 1991*, Division 4.3.5.

¹¹⁸ *Evidence (Miscellaneous Provisions) Act 1991*, s58(3)b.

entitlement for victims and provide victims with an avenue of complaint in any cases where special measures were not accessed. Alternatively, it may be viewed as doubling up on legislative provisions that exist elsewhere.

Should special measures protecting some witnesses in court be made available for all victims or be expanded to other groups of victims who are likely to be traumatised?

Court technology and resources have been improved in the new court building which is nearing completion. Therefore, it may be timely to review which victims are eligible for special measures such as CCTV and pre-recorded evidence.

Extending special measures eligibility could encourage more certain evidence from victims, the DPP to provide more complete advice on cases, and earlier access to counselling services for victims with flow on benefits for system efficiency.

Two areas in which special measures can be extended are:

- Pre-trial hearings for all child witnesses in violent offence proceedings¹¹⁹.
- Recording the evidence of victims of serious violent offences so their evidence can be replayed at trial¹²⁰.

There may also be other areas that warrant inclusion¹²¹.

The Royal Commission is of the view that pre-recorded cross-examination should be extended to other witnesses as prosecution considers necessary, such as family members. The Royal Commission provides 12 recommendations to improve special measures and courtroom experiences for complainants and witnesses in child sexual abuse prosecutions. The majority of these are existing provisions in the ACT.

Outstanding recommendations regarding extending recorded pre-trial hearings to all victims that the prosecution considers necessary; and ground rule hearings for pre-recorded cross-examination and intermediaries, are being considered in the ACT Government response to the Royal Commission¹²².

Should pre-trial hearings be extended to all child witnesses in violent offence proceedings?

Should evidence of victims of serious violent offences be recorded so their evidence can be replayed at trial?

Should/how could the process for special applications be simplified?

Prosecutors can make an application for a witness to give evidence via CCTV if they do not meet other criteria for special measures, according to s32 of the *Evidence (Miscellaneous Provisions) Act*. The majority of these applications are granted although they are time consuming for the DPP and Court and the process could be simplified.

¹¹⁹ The DPP reports that while a child witnesses in sexual offence proceedings can access the pre-trial hearings, this is not the case for a child witness in other violent offence proceedings such as a murder prosecution.

¹²⁰ The DPP reports that if a retrial is ordered, a sexual assault victim's evidence which has been pre-recorded can be replayed. This is also the case for children giving evidence at pre-trial hearings. However, this is not the case in other violent crimes where the victim must attend and give evidence again at re-trial.

¹²¹ For instance, the DPP reports that an intellectually impaired witness can have their police interview played as evidence in chief, but is not entitled to give evidence via CCTV.

¹²² Royal Commission recommendation 52b.

Should some sections of applications for special measures, for instance counselling records, be protected from being provided to the defence?

Evidence used to support special measure applications, for instance reports from health professionals, must be disclosed to the accused which may provide a disincentive for the victim to apply.

Should counselling communication protections for sexual offence matters be extended to family violence victims or other types of victims?

In Tasmania there is an absolute privilege for medical communications in civil proceedings under s 127A (1) of the Evidence Act 2001 (Tas), whereby a medical practitioner must not divulge in any civil proceeding, any communication made in a professional capacity, unless the sanity of the patient is the matter in dispute¹²³.

Should counselling communication protections for sexual offence matters be applied to claims for financial compensation?

4.2.7. When giving evidence as a witness

The DPP meets with witnesses for a proofing session prior to giving evidence. Victims also have the opportunity to opt-in to a court familiarisation session with VSACT case managers or Witness Assistant (WAS). WAS also provide information about trial processes.

The *Evidence Act 2011* s41 outlines where the court must disallow a question put to a witness in cross-examination that is misleading, confusing, harassing or offensive.

Certain victims are eligible to access a range of special measures in the ACT with the aim of protection from trauma when giving evidence.

RIGHT TO INFORMATION

Should there be a victim right to information about giving evidence as a witness?

How should a victim be informed about what to expect when appearing as a witness, what support will be received when giving evidence, and court processes?

The Royal Commission recommends that standard material be developed by public prosecutions to provide information to victims explaining giving evidence within a framework that is fair and does not risk rehearsing the witness¹²⁴.

RIGHT TO CONSULTATION AND PARTICIPATION

Are there any other measures that should be made available to victims participating in trial processes as a witness when giving evidence in court?

¹²³ <https://www.alrc.gov.au/publications/15.%20Privilege%3A%20Other%20Privileges/privileges-protecting-other-confidential-communications>.

¹²⁴ Royal Commission recommendations 38a-c.

The new court building in the ACT includes witness and waiting room facilities that provide some protections for victims. There may be other recommendations or measures, particularly for groups who require additional support when attending court.

For example some jurisdictions allow for the removal of wigs and gowns by judicial or legal officers. In the ACT only criminal lawyers appearing in the Supreme Court wear wigs.

Should there be a requirement that the court be closed where the victim of a sexual offence indicates they do not want to give evidence in open court?

A court may order it to be closed to the public while all or part of the witness's evidence is given in a sexual or violent offence proceeding, or if the witness has a vulnerability that affects the person's ability to give evidence because of the circumstances of the proceeding or the persons circumstances. One of the factors the court must take into account is whether the witness wants to give evidence in an open court. However, there is no requirement that the court be closed where the witness indicates this¹²⁵.

Should there be a requirement that the court be closed when the evidence of the child victim is played?

There is a requirement that the court be closed when a child gives pre-trial evidence. However, this does not extend to when their pre-recorded evidence is played.

Should legislation specifically permitting therapy dogs/companion animals to be present with vulnerable witnesses in the ACT be introduced?

The *Discrimination Act 1991* provides for a person with a disability to use an assistance animal where necessary. However, there is no legislative right in the ACT for therapy dogs to be present when a witness gives evidence. There has only been one instance in a criminal trial in the ACT where the prosecutor sought an order permitting a therapy dog be present¹²⁶. It was opposed by the accused's lawyers arguing that it would interfere with the right to a fair trial. A ruling was made in favour of the order permitting the dog but ordered that the dog must not be visible to the jury.

Therapy dogs are being used to support children and vulnerable victims in a trial in NSW and in Victoria therapy dogs have been used to accompany witnesses and victims as they give evidence, include in remote witness rooms at Victoria's Office of Public Prosecutions.

4.2.8. Prior to sentencing when ACTCS prepare a pre-sentence report (PSR) or Intensive Corrections Order (ICO) assessment

PSR and ICO reports include detailed information about an offender including social and health background; history of engagement with treatment and therapy; and risk assessments about offender attitudes, likelihood of re-offending, and the need to protect victims.

¹²⁵ Evidence (Miscellaneous Provisions) Act 1991 s39.

¹²⁶ R v BL [2016] ACTSC 209.

RIGHT TO INFORMATION

Should victims be provided with PSR or ICO reports, or with certain information contained in these reports (for instance regarding risks to victim safety)?

What particular information contained in PSR or ICO reports is relevant or of interest to victims?

Previous ACT Government consultation findings have supported providing ICO and PSR reports to victims, to provide the opportunity to build understanding and accept the facts through viewing and discussing the offence¹²⁷.

The offender's rights to privacy needs to be considered to ensure that only information relevant to the victim is provided, as the reports contain information such as social and medical history which is confidential in nature. Legislative change would be required as victims are not currently eligible for registration on the victims register – and are therefore not known to ACTCS - until an offender is sentenced.

RIGHT TO CONSULTATION AND PARTICIPATION

Should victims have a right to be consulted with regarding their safety requirements in the preparation of ICO and PSRs?

While victims are currently consulted with by ACTCS in the preparation of these reports through liaison with ACTP VLOs, without registration of victims on the victims register until sentencing, it is difficult for victims to be routinely accessed to fulfil this requirement.

How can victims' protection needs be taken into account by a court when sentencing offenders who do not have a PSR?

4.2.9. At sentencing in the form of a Victim Impact Statement (VIS)

Not all victims can make a VIS and there are limitations imposed on their preparation including who can prepare them and what offences warrant a VIS. However, all victims of sexual and other violent offences can give a VIS.

According to the *Crimes (Sentencing Act) 2004*, a VIS may be tendered in sentencing proceedings in court by a victim or a family member of the victim where a crime is an offence that is punishable for longer than one year, and the court must consider the statement in deciding how the offender should be sentenced. A victim can choose to read out the statement or the prosecutor can read it out on their behalf. If a victim chooses to read it, they can do so via CCTV. The statement may include information about the impact of the crime as well as any injury, loss or damage suffered by the victim.

An FVIP review¹²⁸ found that VIS are often under-utilised by victims of family violence. Previous practice was for victims to prepare a VIS shortly after the incident of violence to maximise the number of VIS obtained. However, defence lawyers were able to subpoena these prior to the hearing and the complainant would be cross-examined.

¹²⁷ Justice Reform Strategy, Second Stage Report, 31 July 2016, ACT Government, p. 36 from Report on Core Design Workshop 1.

¹²⁸ The Family Violence Intervention Program coordinating committee reviewed 28 finalised family violence matters in 2015-2016.

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To avoid this, current practice is that a VIS is sought after the defendant has pled guilty or been found guilty. As sentencing is often finalised on the day, there is often no opportunity to obtain a VIS from the victim prior to sentencing.

THE RIGHT TO INFORMATION

Should victims have a right to access information about VIS processes?

How can we improve how victims receive information about what can be included in a VIS, knowledge that they may be cross-examined about the VIS, options about how it can be delivered, and expectation management about the role of the VIS?

Who should provide information about the VIS to victims and support them to prepare this submission?

The Royal Commission recommends improving the information and support for victims making a VIS, and that public prosecutions ensure victims understand the content that may be objected to¹²⁹.

THE RIGHT TO CONSULTATION AND PARTICIPATION

Should victims have a right to provide a VIS, even if the offender has pleaded guilty or it requires a delay in court processes?

Should it be made possible for victims to pre-prepare a VIS at the time when the original charge is laid or prior to sentencing, and for this VIS to be protected from the defence and non-admissible until guilt has been determined?

The VLRC recommends it should be possible for victims to prepare a VIS prior to a finding or plea of guilty, but that it should be admissible only after guilt has been determined. The view is that when victims have to wait until guilt is found, this limits their capacity to access this substantive legal entitlement.

The FVIP also advocates that a protection, similar to the sexual offence communications privilege, be enacted to prevent access to a pre-prepared VIS by the defence, to increase the use of VIS in family violence matters.

Should the VOCC be able to submit a VIS, representing victims on a community or social level where crimes impact more than the primary victim?

The South Australian Commissioner for Victims' Rights has the ability to deliver neighbourhood impact statements which deal with the harm done by a specific offence to people living or working in the area where the offence was committed, or a social impact statement which deals with the effect of an offence/offences on the community generally.

¹²⁹ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, p. 74–78.

In Canada an individual may make a community impact statement on behalf of the community. In England and Wales, community impact statements are made under a general provision which allows local police authorities to collect written statements and ensure they are valid and admissible.

Concerns about allowing neighbourhood or social impact statements may include:

- judicial officers usually already recognise the effects of offences like drug offences or domestic violence on community members
- it may be difficult to verify the content of statements
- statements may be used to vent frustrations rather than provide useful information
- statements may lead to inconsistency in sentencing¹³⁰.

4.2.10. When a sentence is delivered or an appeal is instituted

At the time of sentencing to a custodial or community-based order, victims are invited to register on the Victims Register via letter. When sentence details are changed for an offender, registered victims are notified.

In the ACT the Crown appeals a sentence in limited circumstances. Case law indicates that Crown appeals should be rare, and there are limited circumstances in which the Crown can appeal an acquittal¹³¹.

RIGHT TO INFORMATION

Should there be a right for victims to receive information about the sentence delivered if they are a registered victim or for all victims?

Should/how should a victim receive information about the limited grounds of Crown appeals to a sentence in the ACT, and any notice of appeal by the defendant including the grounds on which it has been commenced; the date, time and location of any appeal hearing; and the outcome of that appeal?

RIGHT TO CONSULTATION AND PARTICIPATION

Should/how could it be made possible for victims to have the ability to request an appeal against a determination in the ACT?

In SA, a victim who is dissatisfied with a determination (for example the sentence) may request the prosecution consider an appeal against the determination within 10 days, and the prosecution must then give due consideration to that request.

4.2.11. When the Sentence Administration Board (SAB) considers an application for parole or release on licence

The *Crimes (Sentence Administration) Act 2005* outlines the SAB must give notice to victims, seek victim's views via submission to be considered in decision-making, and give notice on decisions of parole and licence applications.

¹³⁰ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*.

¹³¹ The *Supreme Court Act 1933* (s.37E) permits appeals. However, the courts have articulated an approach recognising that they are anomaly and should be instituted sparingly. Principles relating to Crown appeal against a sentence are set out in *R v Clarke (1996)*.

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Written information is provided to victims regarding breaches, cancellations and reinstatements. Victims may provide a submission in oral or written form and it may be sealed for the SAB only or made available to the offender.

s124(c) outlines that a notice to victims for parole inquiry must include information about the offender to assist the victim to make a submission. Examples of information include the offender's conduct while serving the sentence and the core conditions of a parole order¹³². Corrections provides information to inform submissions on request of victims.

A victim registered on the ACT Youth Justice Register, who has been a victim of an offender under the age of 18 years old, is a dependent of the victim, or has been nominated to act on the victim's behalf can receive a range of information¹³³.

The legislation does not specify the length of time a victim may remain on the register, and registration currently ends at the time that the offender is released for the offence relating to the victim.

RIGHT TO INFORMATION

How should information about SAB processes (including possible ways of providing representation and information) be provided to victims, and should there be a victim right to this information?

How can information best be provided to victims about the victims registers including how to register, their rights, and privacy and confidentiality protections to address any concerns victims may have about registering, such as concerns about anonymity? Should there be a victim right to this information?

When victims of crime receive information about the victims register, should an option be provided for them to opt-in to not being contacted by the offender when in custody if a protection order is not already in place?

¹³² ACTCS notes examples of information about the offender's conduct whilst serving a sentence and the core parole conditions include:

- any non-association order or place restriction order that applies to the offender
- if the offender is under an intensive correction order—the place where the offender may do community service work or attend a rehabilitation program
- if the offender is under a good behaviour order—the place where the offender may do community service work or attend a rehabilitation program
- if the offender is serving a sentence of imprisonment by full-time detention
- the correctional centre where the offender is detained
- the offender's classification in detention
- the transfer of the offender between correctional centres, including NSW correctional centres
- the offender's parole eligibility date
- any unescorted leave given to the offender under the Corrections Management Act 2007
- the death or escape of, or any other exceptional event relating to, the offender.

¹³³ CSD notes that information that a registered victim can receive from the youth justice victims register includes:

- the type of sentence the young offender is subject to, including any combination sentence
- the conditions of the sentence
- the length of the sentence including dates of imprisonment and release
- the name of the place of detention or correctional centre the young offender will be detained in or transferred to
- the nature of supervision of the young offender and any programs they are participating in as a condition of their sentence
- any changes in the conditions of the sentence, eg, a transfer to another state
- the escape, death or, any other exceptional event relating to the young offender provided disclosure is considered appropriate.

Currently if a protection order is not included in the sentencing proceedings, victims can request to not be contacted by the offender in custody in writing to ACTCS. This is not an automatic process and information about this process is not routinely available.

Do agencies support an opt-out system for victims of serious crime (or another threshold) to be referred to the victims registers?

This may address barriers to registration for groups who may under-utilise the registers and SAB submission processes, including:

- Those who have concerns about their privacy and interacting with authorities and bureaucracies (this may include CALD, Aboriginal and Torres Strait Islander, and other diverse groups)
- Those who don't have information about the registers (this may include victims of youth offenders and other diverse groups)
- Those who don't identify themselves as victims of crime (this can include young men¹³⁴ and other diverse groups)

Should victims be allowed to access certain information from the ACT Victims Register and the ACT Youth Justice Victims Register as a right?

Should victims be allowed to remain on the victims register and receive certain information about subsequent offences to that which pertains to the victim?

What information do victims want to receive about subsequent offences?

Some victims report that there are negative impacts on their experiences of trauma and feelings of safety when they do not receive information from the victims register about subsequent crimes, such as release dates, and instead learn information from the media.

RIGHT TO CONSULTATION AND PARTICIPATION

What legislative changes to the victims register, if any, are required to allow for greater victim participation in pre-sentence reporting processes?

Victims are currently asked to opt-in to the victims register during court proceedings after sentencing. In order for ACTCS to consult with victims about their safety requirements in preparing a PSR or ICO, victims would have to be registered earlier in the process or victim information would need to be shared with Corrections.

Is there any other information that is not currently available to victims that should be provided to assist with the preparation of submissions to the SAB?

While the *Crimes (Sentence Administration) Act 2005* includes examples of information that may be disclosed, the focus of the Victims Register is to provide information about the location of an offender while they are serving a sentence and when they may be eligible for release parole or unsupervised

¹³⁴ The Australian Institute of Criminology reports that men in the ACT, particularly those under the age of 30, are less likely to self-identify as victims of crime and therefore less likely to trigger referrals to victim services or opt-in to available victim participation mechanisms (McGregor et al., *ACT victims of crime referral project: Final report*).

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external leave. It does not specifically address information about the rehabilitation of an offender. The legislation may benefit from being more prescriptive to assist decision makers provide rights to both victims and offenders.

ACCOUNTABILITY

The ACT Charter of Rights for Victims of Crime aims to provide strong accountability for agencies to meet obligations contained within the Charter. A key component of this is ensuring that rights are specific and achievable for justice system agencies, as outlined in the first half of this options paper which focuses on:

- in what parts of the criminal justice system information and participation rights can be introduced
- for which victims of crime
- what supporting mechanisms and initiatives may support agencies to uphold these rights.

Another key component of an accountable Charter is ensuring that complaint, investigation, remedy and oversight mechanisms are appropriate for the ACT context and accessible for victims of crime. Key options for strengthening accountability are considered below.

Other avenues for system-wide monitoring and accountability may be considered in ongoing discussions and implementation planning, for instance requiring agencies to publish data in their annual report, periodic agency review by the VOCC (this occurs in NSW and WA), an interagency mechanism to maintain accountability, or feedback channels from victims to agencies about their performance¹³⁵.

Current accountability mechanisms

The *Victims of Crime Act 1994* requires the VOCC to 'try to resolve any concern raised about non-compliance with the governing principles', by requiring information from an agency. Alternative dispute resolution options are not available unless the complaint is referred to the HRC or ACT Ombudsman under the restricted jurisdictions available to those agencies. In practice, few formal complaints are referred to the Ombudsman and there is little authority for the VOCC to compel agencies to comply with the governing principles.

The *Human Rights Act 2004* provides protections for all citizens which can be applied to the treatment of victims in the criminal justice system such as the right to life, security of a person, privacy, protection of the family, and protection from degrading treatment. However, these are not specific to victims' rights and are difficult for victims to invoke.

The ACT Judicial Council can consider complaints about the behaviour or capacity of a judge of the ACT Supreme Court or a magistrate of the ACT Magistrates Court, including conduct in court. Complaints may also be referred to individual justice and victim support agencies who the complaint is against, via internal formal complaint procedures.

5. COMPLAINT MANAGEMENT SYSTEMS

A consistent aspect of all Charters of Rights and guiding principles for the treatment of victims of crime across jurisdictions are clear complaint pathways. Information about complaint pathways and processes must be clear, and should aim to:

- ensure victims feel heard and have access to timely and trauma-informed processes which reduce re-telling their story to multiple agencies or people
- reduce the administrative burden for victims of crime and justice system agencies
- create opportunities for system change.

¹³⁵ The QLD program [Protect All Children Today](#) (PACT) provides a program whereby feedback from child victims about their experiences in justice system are fed back to criminal justice agencies.

5.1. Centralised complaints management process

Currently in the ACT there is no one clear complaint pathway for victims of crime who feel the guiding principles for the treatment of victims of crime have been breached. A clear complaints management process could be established that outlines that victims should first access internal agency processes. If a victim remains dissatisfied, options for escalating the complaint can be provided.

A centralised complaints officer could:

1. provide information and support to victims of crime about how to access internal justice agency complaint processes
2. provide mediation after victims have attempted to resolve concerns through agencies directly
3. escalate a complaint to the VOCC or another complaints body if necessary.

A similar model currently exists for victims of serious crime in Victoria within the office of the VOCC, where the Victims' Charter Enquiries and Complaints Line acts as a central information source for complaints against the Charter.

CONSIDERATIONS

A formal complaint mechanism, including investigation protocol, procedures and timelines, would increase accountability and transparency of complaint management processes for victims of crime and justice system agencies. Alternatively, flexibility in complaint investigation and resolution can lead to creative outcomes, and the small jurisdictional size of the ACT may not warrant a centralised complaints management process.

5.1a Is there a need for a centralised complaints management system and/or protocol for victims of crime in the ACT?

5.2. Interagency complaints body

An inter-agency complaints body could support a centralised complaints management system and may be a platform for acknowledgement and apology to victims of crime and accountability between justice system agencies. Having an interagency body involved in accountability and remedy may identify system improvements that can be made and allow the victim to hear a consistent message from all agencies. This could both potentially reduce the administrative burden for victims and agencies. Members may include representatives of justice and victim support agencies.

5.2a Would an interagency complaints body be an appropriate mechanism for accountability and remedy in relation to the Charter?

6. OVERSIGHT POWERS

Oversight arrangements introduced for the Charter must be appropriate and considered in the ACT context. The below options take into consideration existing oversight mechanisms in the VOCC, HRC and

ACT Ombudsman, and how these roles can be strengthened to ensure appropriate investigation of victim of crime complaints against the rights contained in the Charter.

6.1. Expand the VOCC role to investigate complaints

The VOCC has the power to ‘resolve concerns’ about justice agencies complying with the governing principles for the treatment of victims of crime, and to refer complaints to the HRC or the Ombudsman. The introduction of broader investigatory powers would allow the VOCC to compel agencies to engage with investigation processes when complaints about not receiving rights under the Charter are made.

If increased investigatory powers are given to the ACT VOCC, the complaints handling power could sit with the VOCC under the *Victims of Crime Act 2004*, or within the existing complaints commissioner¹³⁶ under the *Human Rights Commission Act 2005*.

CONSIDERATIONS

Utilising the existing complaints handling commissioner to investigate victim of crime complaints against the Charter could streamline complaints processes within the HRC and separate the advocacy and investigation roles of the VOCC. There may be a perceived conflict of interest between the statutory role of the VOCC to oversee criminal justice system responses involving victims; and the administrative role as Director of VSACT which includes administration of the FAS.

The independence of the VOCC ensures victims’ interests and rights are upheld and allows effective and objective engagement in government systems. Alternatively, office holders who balance dual functions exist in other areas of the ACT and better outcomes for victims may be attained through the streamlined delivery of both advocacy and wellbeing services.

Situating complaints management with the complaints handling commissioner may require additional specialised knowledge, because justice system and victim of crime complaints differ to the service areas the commission currently works in. However, the complaints handling commission has a high level of expertise in the administration and processing of complaints across a range of service areas, and the position of the VOCC within the HRC could assist with knowledge sharing.

The ACT VOCC recommends that ‘formal complaints about victims’ access to their rights under the Charter should be dealt with by the Discrimination, Health Services, Disability and Community Services Commissioner in the Human Rights Commission’¹³⁷.

The VLRC recommends a slightly different model whereby the VOCC is empowered to review the outcomes of complaints where the victim is dissatisfied with the criminal justice agency’s response to their initial complaint, in order to provide an opportunity to investigate and remedy system issues.

6.1a Is expanding the role of the VOCC or the existing complaints handling commissioner within the Human Rights Commission the best option for handling victims of crime complaints?

¹³⁶ The complaints handling commissioner within the HRC investigates complaints in relation to:

- services for children and young people, and their carers
- services for people with a disability, and their carers
- health services
- services for older people
- discrimination.

¹³⁷ Victims of Crime Commissioner, *A Charter of Rights for Victims of Crime: Consultation Report*, p. 8, Recommendation 1.11 a).

6.2. Role of the ACT Ombudsman in Charter of Rights for Victims of Crime oversight

The ACT Ombudsman is currently responsible for investigating complaints referred by the VOCC, although this rarely occurs in practice. The Commonwealth Ombudsman can investigate complaints from victims of crime in relation to its role overseeing the Australian Federal Police including ACTP. If the VOCC is provided with investigatory powers for the Charter, the Ombudsman may continue to provide oversight for victims of crime complaints, or this may be considered unnecessary.

CONSIDERATIONS

The ACT Ombudsman reviews administrative compliance for public sector agencies. The office does not have the power to investigate actions taken by ministers, judges, magistrates or tribunals.

The Ombudsman is an existing oversight body with well-established mechanisms to conduct investigations including on an 'own motion' basis, and recommend remedial action both on an individual basis and in regards to legislation and administrative procedures. If agencies do not act on recommendations, the Ombudsman can report to relevant ministers or publicly report on the matter. An example of where the Ombudsman's role has benefited victims of crime is the office's role in recommending the FAS review, leading to the introduction of the *Victims of Crime (Financial Assistance) Act 2016*.

Situating complaint management within the Office of the VOCC or the HRC may provide a response to victims of crime that is more focused on alternative dispute resolution and compliance with Charter principles. According to the *Ombudsman Act 1989* (ACT), the ACT Ombudsman does not have jurisdiction over complaints referred to the HRC in relation to disability, health, children and young people, and older people services. If victims of crime complaints are included under the *Human Rights Commission Act 2005* the Ombudsman may not have shared jurisdiction in order to reduce overlap in accountability mechanisms.

6.2a What oversight, if any, should the Ombudsman provide in relation to ACT Government agencies upholding victim rights?

7. OPTIONS FOR REMEDY

7.1. Remedies for victims of crime

Providing victims of crime with a remedy when a complaint is made is a vital part of procedural justice. If a victims' complaint about treatment in relation to the Charter has not been satisfactorily resolved through other mechanisms, options for remedy include conciliation as provided under the HRC model, or the VOCC may request a written apology.

EXAMPLES

In South Australia the VOCC has the ability to formally request a written apology which is tabled in Parliament. This rarely occurs in practice and matters are more commonly resolved before a formal request for an apology is required.

Financial reparation is a strong approach to redress and is not common across jurisdictions. However, in England and Wales the Parliamentary Ombudsman can order a conciliatory payment to redress any harm caused by the system.

CONSIDERATIONS

Justice agencies may be reluctant to provide an apology if it is viewed as admitting negligence. In the ACT, it is anticipated that non-compliance with a right could lead to a legislative consequence such as alternative dispute resolution mechanism based on restorative approaches. However, it would not create a criminal cause of action against a public official or agency.

7.1a What are appropriate avenues for remedy and dispute resolution?

7.2a Are conciliation, an apology and/or financial reparation appropriate avenues for remedy?

7.2. Avenues for systemic change

Under the *Victims of Crime Act 1994* the VOCC has functions related to the administration of justice including to:

- advocate for the interests of victims
- monitor and promote compliance with the governing principles
- ensure the provision of efficient and effective services for victims
- advise the Minister on matters relating to the interests of victims¹³⁸.

However, the VOCC has no formal powers to make recommendations to justice agencies regarding changes in policies or practices. The VOCC may release reports publicly. However, without explicit legislative instructions and protections, may be exposed to accusations of defamation or other criticism. The VOCC could be provided with the ability to make recommendations to justice agencies, or other mechanisms such as submitting a report to the Minister for Justice to table in the Legislative Assembly or oblige a response from the agency in question. This would strengthen the VOCC's ability for systemic advocacy.

CONSIDERATION

The HRC and the Ombudsman also have a role to play in criminal justice system oversight through systemic advocacy, and may even be seen as more powerful independent voices than the VOCC as they operate separately to the criminal justice system.

¹³⁸ *Victims of Crime Act 1994*, Part 3 s11.

7.2a Should the VOCC be able to table recommendations for justice agencies publicly or in the Legislative Assembly through the Minister for Justice?

8. LEGISLATIVE FRAMEWORKS

The introduction of the Charter of Rights for Victims of Crime may require changes to the governing principles for the treatment of victims in the administration of justice contained in the *Victims of Crime Act 1994*. Rights introduced for victims of crime may also affect other pieces of legislation. In this options paper feedback is being sought on the legislative barriers or challenges to implementing rights for victims, and consultation on this will continue. Given the ACT is a human rights jurisdiction, a further question is whether the *Human Rights Act 2004* should be amended to include a reference to victims' rights.

8.1. Options for recognising the Charter in legislation

The Charter may replace the existing governing principles in the *Victims of Crime Act 1994* through replacing the aspirational guidelines with new obligatory rights, and including a strengthened oversight mechanism.

Another alternative is rather than creating obligatory rights, the Charter could link guiding principles to associated legislation that gives recognition to those rights. The South Australian *Victims of Crime Act 2001* is an example of this.

8.1a How should the Charter be recognised in legislation?

8.2. Reference victim rights in the *Human Rights Act 2004*

The *Human Rights Act 2004* could be amended to include a specific reference to victims' rights based on the United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (Appendix B). This would:

- link victims with remedy and oversight processes including conciliation or proceedings in the ACT Supreme Court
- create more opportunities for systemic advocacy
- ensure that all legislation is consistent with victims' rights provisions
- provide symbolic weight to victims' rights, particularly as the rights of the accused are already included in the *Human Rights Act 2004*.

Including victims' rights in the *Human Rights Act 2004* could be alongside changes to the guiding principles in the *Victims of Crime Act 1994* to ensure that a general provision regarding victims standing is supported by detailed and specific information about the treatment of victims across stages in the justice process and specific agency obligations.

SUPPORTING EVIDENCE

The VLRC recommends that Victoria's Human Rights Charter specifically refer to victims of crime as participants in the criminal trial process in order to expressly recognise the interests of victims, and

actively protect and promote these in legislation and the actions of public authorities. The recommendation is for the following minimum guarantees:

- a) *to be acknowledged as a participant (but not a party) with an interest in the proceedings*
- b) *to be treated with respect at all times*
- c) *to be protected from unnecessary trauma, intimidation and distress when giving evidence*¹³⁹.

CONSIDERATIONS

Including victims' rights in the *Human Rights Act 2004* would, as with all rights, recognise that human rights are not absolute, and the majority of protected human rights are subject to reasonable and proportionate limitations¹⁴⁰. Careful consideration would be given to how the inclusion of victims might affect criminal proceedings, and remain consistent both with the right to a fair trial for defendants and victims' interests.

Human rights can be pursued within the trial, and VLRC recommends this approach rather than allowing victims to commence proceedings in the civil and administrative tribunal which may delay criminal proceedings.

If victims do experience a breach of a human right in the ACT, it may be difficult for them to access and participate in legal proceedings as this requires Supreme Court action and proceedings are not supported by Legal Aid. If a discrimination complaint remains unresolved, the HRC complaints handling commissioner can refer it to the ACT Civil and Administrative Tribunal (ACAT) for investigation and remedy and, if necessary, orders can be monitored by a third party. If victims of crime complaints are included with the complaints handling commissioner, the question of whether unresolved complaints may be referred to ACAT will be a consideration.

8.2a Should the Human Rights Act 2004 be amended to include a specific reference to victims' rights?

¹³⁹ Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, p. 36-41.

¹⁴⁰ ACT Human Rights Commission and Victim Support ACT, *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*, p. 10-11.

CONCLUSION

This options paper focuses on key implementation questions that will shape how victims access rights through the ACT Charter of Rights for Victims of Crime. A summary of areas that feedback is being sought on include:

- outcomes we want to achieve for victims of crime in the ACT
- challenges and/or legislative barriers to delivering information and participation rights for victims
- appropriate accountability mechanisms to support justice agencies to meet obligations and victims to access complaints and remedies
- practical initiatives that can support the justice system to uphold rights.

Other rights not discussed in this options paper also may be included in the Charter, and are outlined below. Other mechanisms may also be introduced to support system wide changes in victim rights in the ACT justice system, such as training.

9. OTHER VICTIM RIGHTS

Some areas of victim rights that may be included in the Charter are not discussed extensively in this options paper as they are less controversial and require less change to current practices and systems. These include:

- Respectful treatment of victims
- Protection from unnecessary contact with the offender and defence witnesses during the trial
- Privacy of victim information
- Return of property being held for investigation or evidence
- A victim should not have to appear at preliminary hearings or committal proceedings unless the court directs otherwise¹⁴¹

9a Are there are other rights that should be considered for inclusion in the Charter?

10. SUPPORTING THE ACT JUSTICE SYSTEM

Other system-wide initiatives may also be considered to support the ACT justice system to uphold victims' rights. For instance:

- the development of a supporting standard of practice detailing competencies and quality service provision to victims of crime (similar to the England and Wales or NSW codes of practice)
- public education about victims' rights and services
- training and support for victim and justice agencies and officials.

Training will be considered, particularly in regards to meeting the needs of specific population groups. The Royal Commission recommends training for police and prosecutors who come into contact with certain groups of victims and about how trauma affects them¹⁴². Justice officials from judicial officers to administration staff are also at high risk of experiencing vicarious trauma. Therefore, ensuring there is appropriate support and training for justice system agencies to meet the needs of victims is a consideration when introducing the Charter.

¹⁴¹ Changes to the committal hearing process in the ACT took effect in 2009. Victims of crime are generally no longer required to give evidence at committal proceedings and there is a complete prohibition on victims in sexual offences giving evidence in committal proceedings.

¹⁴² Recommendations 3a, 3i and 37a.

10a What training do justice and victim support agencies currently provide and participate in related to supporting victims?

10b What areas of training would be beneficial to support victims' rights?

11. SUMMARY OF CONSULTATION QUESTIONS

THE RIGHT TO INFORMATION AND PARTICIPATION

1. ICT systems

1.1 Central information portal or information package

1.1.a What are challenges and opportunities in establishing a *central, online information portal or information package for victims of crime*?

1.2. Centralised database

1.2.a Would a centralised database support better communication between agencies and victims of crime?

1.2.b What information sharing already occurs between justice and victim support agencies and how could we leverage this?

1.2.c What are the challenges associated with a centralised database?

2.3 Automated notification systems

1.3.a *Would an automated notification system be an appropriate method for victims to receive information and reduce the burden on agencies?*

1.3.b *What are the challenges and opportunities associated with an automated notification system?*

2. Human resource models

2.1 Single point of contact/case management

2.1.a What are the challenges in establishing a single point of contact/case management system?

2.1.b What would the benefits to agencies and victims be?

2.2 Legal information, advice and/or representation for victims in criminal proceedings

2.2.a How could legal information, advice and/or representation be made more accessible to victims of crime?

2.2.b What groups of victims would benefit the most from these services?

2.2.c If introduced, how would victim's lawyers interact with the justice system providing legal advice and/or representation to victim?

3. Targeted support for victims with specific needs

3.1. Specialist support officers

3.1.a How could specialist officers support the participation of specific victim population groups?

3.1.b Are additional specialist officers required, and for which population groups?

3.1.c What are the benefits and challenges of centralising specialist officers vs officers working within individual agencies?

3.2. Interpreter scheme

3.2.a If the Charter includes rights related to access to interpreters, is there a need for an overarching interpreter scheme in the ACT criminal justice system?

3.2.b How could the scheme be administered?

4. Providing information and consulting with victims throughout justice processes

4.1. Tiered access to information and consultation rights

- 4.1.a What should the crime type threshold be for victims to access consultation and participation rights?
- 4.1.b Are there other victims that require access to consultation and participation rights because they are more vulnerable?

4.2 At what points in the justice process should information and consultation rights be provided?

- 4.2.a At what points in the justice process should some or all victims of crime receive information and be consulted as a right?
- 4.2.b What challenges does this present for justice and victim support agencies?

4.2.1 When the crime is being reported to ACTP

RIGHT TO INFORMATION

- Should victims have a right to be provided with a written acknowledgement of reporting a crime to the police, including the basic details of the offence?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should victims have a right to automatic referrals to victim support services from police or should victims have a right to consent to receiving information about justice processes and support services in an opt-in fashion?

4.2.2 When the court is considering bail conditions

RIGHT TO INFORMATION

- How can victims be better notified of applications for bail, bail variation or revocation, or if bail is granted with any special conditions that are intended to protect the victim or family members, in order to improve safety for victims?
- Who should be responsible for notifying victims of information about bail applications, revocations or bail granted especially around special conditions that are intended to improve victim safety?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should victims have the right to provide a submission or be consulted with when an offender is applying for bail?
- How can courts more routinely provide the opportunity for victims or other justice agency officials to fact-check offender claims in bail applications?

4.2.3 When ACTP is considering laying charges or the DPP is modifying charges

RIGHT TO INFORMATION

- Should victims have a right to information from police or prosecution about charges laid or not proceeded with in their case?
- How do victims want to receive information about charges laid, modified or not proceeded with ie, verbally and/or through a written explanation?
- Should there be timeframes in place for victims to receive this information?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should victims have a right to consultation when police are in the process of deciding what charge to proceed with?
- Should police discuss the difference between complaints and charges with all victims of serious crime, so that victims can make an informed decision about whether to proceed and/or police decisions are informed by this preference?
- Should victims have a right to consultation if the prosecution is considering modifying a charge?

4.2.4 When ACTP or the DPP are considering not proceeding with charges against the accused

RIGHT TO INFORMATION

- Consultation questions are at 4.2.3.

RIGHT TO CONSULTATION AND PARTICIPATION

- Should victims have a right to be consulted when police and prosecution are considering not proceeding with a charge or to close an investigation?
- Should the Charter include a right for victims to seek internal review of certain prosecution decisions?

4.2.5 When the DPP is considering accepting a plea of guilty for lesser charges

RIGHT TO INFORMATION

- Should victims have a right to information about the outcome of a plea negotiation?
- How should the prosecution provide information about the outcome of a plea negotiation to victims?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should victims have a right to be consulted with by the prosecution about their views on plea negotiation prior to a final decision being made?

4.2.6 When accessing special measures

RIGHT TO INFORMATION

- Should victims have a right to information about special measures eligibility and processes?
- How can information about special measures be best provided to victims?
- Should there be a right that a person with sufficient interest in a subpoena (according to Court Procedure Rules 2006, Rules 6604 and 6609) be notified of the subpoena as soon as practicable after it is issued?
- Should there be a right for a person to whom the subpoenaed health records relate, to have the first right of access to inspect the documents that are produced to determine whether they will lodge an objection?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should there be a right for victims to access special measures for which they are eligible for in the Charter?
- Should special measures protecting some witnesses in court be made available for all victims or be expanded to other groups of victims who are likely to be traumatised?
- Should pre-trial hearings be extended to all child witnesses in violent offence proceedings?
- Should evidence of victims of serious violent offences be recorded so their evidence can be replayed at trial?
- Should/how could the process for special applications be simplified?
- Should some sections of applications for special measures, for instance counselling records, be protected from being provided to the defence?
- Should counselling communication protections for sexual offence matters be extended to family violence victims or other types of victims?
- Should counselling communication protections for sexual offence matters be applied to claims for financial compensation?

4.2.7 When giving evidence as a witness

RIGHT TO INFORMATION

- Should there be a victim right to information about giving evidence as a witness?
- How should a victim be informed about what to expect when appearing as a witness, what support will be received when giving evidence, and court processes?

RIGHT TO CONSULTATION AND PARTICIPATION

- Are there any other measures that should be made available to victims participating in trial processes as a witness when giving evidence in court?
- Should there be a requirement that the court be closed where the victim of a sexual offence indicates they do not want to give evidence in open court?

- Should there be a requirement that the court be closed when the evidence of the child victim is played?
- Should legislation specifically permitting therapy dogs/companion animals to be present with vulnerable witnesses in the ACT be introduced?

4.2.8 Prior to sentencing when ACTCS prepare a pre-sentence report (PSR) or Intensive Corrections Order (ICO) assessment

RIGHT TO INFORMATION

- Should victims be provided with PSR or ICO reports, or with certain information contained in these reports (for instance regarding risks to victim safety)?
- What particular information contained in PSR or ICO reports is relevant or of interest to victims?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should victims have a right to be consulted with regarding their safety requirements in the preparation of ICO and PSRs?
- How can victims' protection needs be taken into account by a court when sentencing offenders who do not have a PSR?

4.2.9 At sentencing in the form of a Victim Impact Statement

RIGHT TO INFORMATION

- Should victims have a right to access information about VIS processes?
- How can we improve how victims receive information about what can be included in a VIS, knowledge that they may be cross-examined about the VIS, options about how it can be delivered, and expectation management about the role of the VIS?
- Who should provide information about the VIS to victims and support them to prepare this submission?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should victims have a right to provide a VIS, even if the offender has pleaded guilty or it requires a delay in court processes?
- Should it be made possible for victims to pre-prepare a VIS at the time when the original charge is laid or prior to sentencing, and for this VIS to be protected from the defence and non-admissible until guilt has been determined?
- Should the VOCC be able to submit a VIS, representing victims on a community or social level where crimes impact more than the primary victim?

4.2.10 When a sentence is delivered or an appeal is instituted

RIGHT TO INFORMATION

- Should there be a right for victims to receive information about the sentence delivered if they are a registered victim or for all victims?
- Should/how should a victim receive information about the limited grounds of Crown appeals to a sentence in the ACT, and any notice of appeal by the defendant including the grounds on which it has been commenced; the date, time and location of any appeal hearing; and the outcome of that appeal?

RIGHT TO CONSULTATION AND PARTICIPATION

- Should/how could it be made possible for victims to have the ability to request an appeal against a determination in the ACT?
- Should victims have a right to be consulted with by the prosecution about their views on plea negotiation prior to a final decision being made?
-

4.2.11 When the Sentence Administration Board (SAB) considers an application for parole or release on licence

RIGHT TO INFORMATION

- How should information about SAB processes (including possible ways of providing

representation and information) be provided to victims, and should there be a victim right to this information?

- How can information best be provided to victims about the victims registers including how to register, their rights, and privacy and confidentiality protections to address any concerns victims may have about registering, such as concerns about anonymity? Should there be a victim right to this information?
- When victims of crime receive information about the victims register, should an option be provided for them to opt-in to not being contacted by the offender when in custody if a protection order is not already in place?
- Do agencies support an opt-out system for victims of serious crime (or another threshold) to be referred to the victims registers?
- Should victims be allowed to access certain information from the ACT Victims Register and the ACT Youth Justice Victims Register as a right?
- Should victims be allowed to remain on the victims register and receive certain information about subsequent offences to that which pertains to the victim?
- What information do victims want to receive about subsequent offences?

RIGHT TO CONSULTATION AND PARTICIPATION

- What legislative changes to the victims register, if any, are required to allow for greater victim participation in pre-sentence reporting processes?
- Is there any other information that is not currently available to victims that should be provided to assist with the preparation of submissions to the SAB?

ACCOUNTABILITY

5. Complaint management systems

5.1. Centralised complaints management process

- 5.1a Is there a need for a centralised complaints management system and/or protocol for victims of crime in the ACT?

5.2 Interagency complaints body

- 5.2a Would an interagency complaints body be an appropriate mechanism for accountability and remedy in relation to the Charter?

6. Oversight powers

6.1 Expand the VOCC role to investigate complaints

- 6.1a Is expanding the role of the VOCC or the existing complaints handling commissioner within the Human Rights Commission the best option for handling victims of crime complaints?

6.2 Role of the ACT Ombudsman in Charter of Rights for Victims of Crime oversight

- 6.2a What oversight, if any, should the Ombudsman provide in relation to ACT Government agencies upholding victim rights?

7. Options for remedy

7.1 Remedies for victims of crime

- 7.1a What are appropriate avenues for remedy and dispute resolution?
- 7.1b Are conciliation, an apology and/or financial reparation appropriate avenues for remedy?

7.2 Avenues for systemic change

- 7.2a Should the VOCC be able to table recommendations for justice agencies publicly or in the Legislative Assembly through the Minister for Justice?

8. Legislative frameworks

8.1 Options for recognising the Charter in legislation

- 8.1a How should the Charter be recognised in legislation?

8.2 Reference victim rights in the Human Rights Act 2004

**CHARTER OF RIGHTS FOR VICTIMS OF CRIME
OPTIONS PAPER**

8.2a Should the *Human Rights Act 2004* be amended to include a specific reference to victims' rights?

CONCLUSION

9. Other victim rights

9a Are there other rights that should be considered for inclusion in the Charter?

10. Supporting the ACT justice system

10a What training do justice and victim support agencies currently provide and participate in related to supporting victims?

10b What areas of training would be beneficial to support delivery of victims' rights?

APPENDIX

Appendix A: *Victims of Crime Act 1994* - Sections 3B, 4, 5, 12, and 22B

PART 2 OBJECTS AND PRINCIPLES

3B Object of Act

The object of this Act is to –

- (a) acknowledge, protect and promote the interests of victims in the administration of justice; and
- (b) establish appropriate ways for the treatment of victims by agencies involved in the administration of justice; and
- (c) help victims deal with the effects of criminal offences.

4 Governing principles

In the administration of justice, the following principles are to, as far as practicable and appropriate, govern the treatment of victims:

- (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;
- (f) 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.

5 Compliance with principles

- (1) A person who exercises a function in the administration of justice must have regard to the governing principles, as well as other relevant matters.
- (2) If a primary victim is a child, the person must consider the child's views, wishes and circumstances before treating a guardian of the child as a victim when applying the governing principles.

PART 3 VICTIMS OF CRIME COMMISSIONER

11 Functions

The commissioner has the following functions in connection with the administration of justice:

- (a) to manage the victims services scheme, the financial assistance scheme and any other program for the benefit of victims;
- (b) to advocate for the interests of victims;
- (c) to advocate for the interests of affected people under the *Mental Health Act 2015*;
- (d) to monitor and promote compliance with the governing principles;

- (e) to ensure concerns and formal complaints about noncompliance with the governing principles are dealt with promptly and effectively;
- (f) to ensure the provision of efficient and effective services for victims;
- (g) to consult on and promote reforms to meet the interests of victims;
- (h) to develop educational and other programs to promote awareness of the interests of victims;
- (i) to distribute information about the operation of this Act and the commissioner's functions;
- (j) to ensure that victims receive information and assistance they need in connection with their involvement in the administration of justice;
- (k) to encourage and facilitate cooperation between agencies involved in the administration of justice with respect to victims;
- (l) to advise the Minister on matters relating to the interests of victims;
- (m) any other function given to the commissioner under this Act or another territory law.

Note 1 The commissioner is a member of the human rights commission appointed under the *Human Rights Commission Act 2005*, s 18D.

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def entity).

12 Concerns and complaints

- (1) The commissioner must try to resolve any concern raised with the commissioner by a victim about non-compliance with the governing principles by an agency involved in the administration of justice.
- (2) An agency must, with the victim's consent, give the commissioner any document or information that the agency could provide to the victim and which is reasonably required by the commissioner to resolve a concern under subsection (1).
- (3) Nothing in subsection (1) prevents a victim or the commissioner from making a formal complaint about a concern, or requires a victim to raise a concern with the commissioner before making a formal complaint.
- (4) If the commissioner receives a formal complaint about non-compliance with the governing principles by an agency involved in the administration of justice, the commissioner must refer the complaint to a relevant complaints entity.
- (5) If a complaint is referred to a relevant complaints entity, the commissioner must give the entity all documents and information held by the commissioner about the complaint.
- (6) In this section:
relevant complaints entity means—
 - (a) the human rights commission; or
 - (b) the ombudsman; or
 - (c) any other entity authorised to investigate a complaint relating to the administration of justice.

13 Attendance at criminal proceedings

For the exercise of the commissioner's functions under this Act, the commissioner is entitled to be present at the hearing of a proceeding in a court in respect of an offence, including any part of the proceeding held in private, unless the court directs otherwise.

Appendix B: United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

A/RES/40/34
29 November 1985
96th plenary meeting

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power The General Assembly,

Recalling that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that the United Nations should continue its present work on the development of guidelines and standards regarding abuse of economic and political power,

Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

Recognizing that the victims of crime and the victims of abuse of power, and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

1. Affirms the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power;
2. Stresses the need to promote progress by all States in their efforts to that end, without prejudice to the rights of suspects or offenders;
3. Adopts the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, annexed to the present resolution, which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power;
4. Calls upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavour:
 - (a) To implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress;
 - (b) To promote community efforts and public participation in crime prevention;
 - (c) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power;
 - (d) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes;
 - (e) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns;
 - (f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises;
 - (g) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention;

(h) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims;

5. Recommends that, at the international and regional levels, all appropriate measures should be taken:

(a) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses;

(b) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing;

(c) To render direct aid to requesting Governments designed to help them curtail victimization and alleviate the plight of victims;

(d) To develop ways and means of providing recourse for victims where national channels may be insufficient;

6. Requests the Secretary-General to invite Member States to report periodically to the General Assembly on the implementation of the Declaration, as well as on measures taken by them to this effect;

7. Also requests the Secretary-General to make use of the opportunities, which all relevant bodies and organizations within the United Nations system offer, to assist Member States, whenever necessary, in improving ways and means of protecting victims both at the national level and through international co-operation;

8. Further requests the Secretary-General to promote the objectives of the Declaration, in particular by ensuring its widest possible dissemination;

9. Urges the specialized agencies and other entities and bodies of the United Nations system, other relevant intergovernmental and non-governmental organizations and the public to co-operate in the implementation of the provisions of the Declaration.

ANNEX

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

A. Victims of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - (c) Providing proper assistance to victims throughout the legal process;
 - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. Victims of abuse of power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or commissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.

21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

Appendix C: Table 5: Australian jurisdictional analysis of victim charters

State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Legislation and Victim Principles	<i>Victims of Crime Act 1994</i> Governing principles for the treatment of victims of crime	<i>Victims Rights and Support Act 2013</i> Charter of Victims' Rights	<i>Victims of Crime Rights and Services Act 2014</i> Your rights after a crime	<i>Victims of Crime Assistance Act 2009</i> Declaration of Fundamental Principles of Justice	<i>Victims of Crime Act 2001</i> Declaration of Principles Governing Treatment of Victims	Non-legislated Charter of Rights for victims of crime	<i>Victims Charter Act 2006</i>	<i>Victims of Crime Act 1994</i> Guidelines to protect and support victims
Who must comply with the principles	s5.1 'A person who exercises a function in the administration of justice must have regard to the governing principles, as well as other relevant matters'.	Agencies or persons in the administration of justice and victims services, including state funded NGOs and not including those with judicial functions.	-	A government entity must implement the principles.	A public agencies and officials.	-	Investigatory, prosecuting and victims' services agencies and related policy areas must have regard to the Charter principles.	All State Government agencies and staff including all those who deal with offenders or victims, Ministers and judicial officials.
Oversight mechanism	s12.1 The commissioner must try to resolve any concern raised with the	The Commissioner for Victims Rights may receive and resolve	-	A victim may make a complaint to the victims services coordinator	A victim can deal with a grievance for the victim who has experienced non- recognition or	-	Agencies must provide information about complaint processes to	The Commissioner for Victims of Crime monitors and reviews the justice system

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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
	commissioner by a victim about non-compliance with the governing principles by an agency involved in the administration of justice. S12.4 If the commissioner receives a formal complaint about non-compliance with the governing principles by an agency involved in the administration of justice, the commissioner must refer the complaint to a relevant complaints entity.	complaints about alleged breaches of the Charter and recommend that agencies apologise, after an issue has first sought to be resolved through an agency directly.		who facilitates the complaint by informing or referring to the government entity, according to a legislated complaints process. Principles do not give legal rights or affect legal rights or obligations.	inadequate recognition of a right. The Commissioner can compel public agencies to consult regarding victims issues. If the Agency has failed to comply with the principles and has not dealt with the matter satisfactorily or provided an apology, the Commissioner may give notice in writing recommending an apology. An annual report tabled in Parliament specifics the agencies or officials to whom notices were given.		victims if they believe the Charter principles have not been upheld. A Victims Charter complaints line is also available.	and advocates for victims. A victim can complain to the Ombudsman if they feel their rights could have been better met.

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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Bail	The current governing principles do not discuss notifying victim of decisions in regards to bail.	1. Protection from accused: A victim's need or perceived need for protection will be put before a bail authority by the prosecutor in any bail application by the accused. 12. Information about special bail conditions: A victim will be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family. 13. Information about outcome of bail application:	You have the right to be informed about: - whether bail has been granted - any bail conditions relating to protecting witnesses	Not specifically covered	Principle 4 A victim should be informed, on request, if an application for bail is made by the alleged offender—the outcome of the application. If a police officer or a person representing the Crown in bail proceedings is made aware that the victim feels a need for protection from the alleged offender— (a) the police officer or other person must ensure that the perceived need for protection is brought to the attention of the	11. To have his/her need or perceived need for physical protection put by the prosecutor before a bail authority which is determining and application for bail by the accused person. 12. To be advised upon request of the outcome of all bail applications and be informed of any conditions of bail which are designed to protect the victim from the accused.	5. To be told (if you request it) about the outcome of any bail application and any special conditions of bail which are intended to protect you.	As a victim of crime, you can request to be kept informed about: a) the progress of the investigation into the offence (unless the police believe that to provide that information would jeopardise the investigation) b) charges laid c) any bail application made by the accused person d) variations to the charges and the reasons for variations.

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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
		A victim will be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.			bail authority; and (b) reasonable efforts must be made to notify the victim of the outcome of the bail proceedings and, in particular, any condition imposed to protect the victim from the alleged offender (unless the victim indicates that he or she does not wish to be so informed).			

Comparing the National Charter of Victims' Rights and State/Territory statutory provisions

1. Victims to be treated with courtesy, compassion and respect for their dignity.	✓	✓	✓	✓ All government agencies must take into	✓ A victim should be treated with courtesy, respect	✓	✓ s6(2)	✓
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**CHARTER OF RIGHTS FOR VICTIMS OF CRIME
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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
				account and be responsive to particular needs of the victim including the victim's age, sex, race, cultural or linguistic background, impairment, sexuality or religious belief.	and sympathy; with due regard to any special need that arises; because of the victim's age, sex, race or ethnicity, or cultural or linguistic background or for any other reason.			

2. Victims and their families should have access to welfare, health, counselling, medical and legal assistance responsive to their needs.

Not stated

✓

Not stated

✓
The victim must be given timely information on relevant services available to them, including welfare, health, counselling, legal help and financial assistance.

✓
Commissioner for Victims' Rights has authority to appear in limited circumstances for which legal funds are allocated

Not stated

✓

✓

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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
3. Inconvenience to victims should be minimised and their privacy respected.	✓ If a victim's property is held for investigation or evidence – inconvenience to the victim should be minimised and the return of property returned promptly. A victim's home address should be withheld unless the court directs otherwise. A victim should not have to appear at preliminary hearings or committal proceedings unless the court directs the	✓	✓	✓	✓	✓	✓	✓

**CHARTER OF RIGHTS FOR VICTIMS OF CRIME
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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
	victim otherwise.							
	✓							
4. Victims should be afforded all necessary protection from violence and intimidation by the accused.	A victim should be protected from unnecessary contact with the accused and defence witness during the course of the trial. Not required to appear at preliminary or committal hearings unless the court directs otherwise.	✓ Not required to attend preliminary hearings	✓	✓ Inconvenience minimised in relation to timing of proceedings	✓ Not required to attend preliminary hearings	✓	✓	✓ Be informed about the availability of lawful protection. This is broader than protection in the court.
5. Victims should be kept informed about the progress of the investigation of	✓	✓	✓ 'You have the right to	✓	✓	✓ 'To be advised, on request...'	✓	✓

**CHARTER OF RIGHTS FOR VICTIMS OF CRIME
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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
the crime and prosecution of the offence.			be informed about...'					

**6. Views and
concerns of
victims should
be considered
at all
appropriate
stages of the
investigation
and
prosecution of
the offence.**

✓
Bail hearings,
VIS

✓
Vail hearings,
charge
bargaining, VIS
and parole

✓

For serious
crimes that
are likely to
go to the
Supreme
Court,
victims
should be
consulted
before any
major
decision
about the
charges.

Victims can
ask to have
the charges
dropped, but
a prosecutor
must take
into account
public

✓
Bail hearings,
VIS

✓

Victims of a
serious offence
should be
consulted before
a charge decision
is made by a
prosecutor.

Vail hearings, VIS
and parole.

✓

✓
Vail hearings,
VIS

✓

WA legislation
requires that
victims are
informed
during
investigation
and
prosecution of
the offence but
doesn't provide
for their views
to be
considered.
Victim's views
should be
considered in
decisions about
an offender's
release from
custody.

Bail hearings
and VIS.

**CHARTER OF RIGHTS FOR VICTIMS OF CRIME
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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
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interest in
doing this.

Bail hearings
and VIS.

7. Victim who is a witness in a trial should be informed about the trial process and the role of the victim as a witness in the prosecution of the offence.	✓	✓	✓	✓	✓	✓	✓	✓
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8. Effects of the crime upon the victim should be placed before the court, particularly where the offence involves sexual or other personal violence.

✓	✓	✓	✓	✓	✓	✓	✓	✓
	Limited to a relevant victim				Right of allocation for all victims/any person affected by the offence(s)			

**CHARTER OF RIGHTS FOR VICTIMS OF CRIME
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State/ territory	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
9. Victims, who so request, should be kept informed about the disposition of the offender.	✓	✓	✓	✓	✓	✓	✓	✓
10. Where compensation is not available from the offender, the victim of crime involving sexual or other personal violence should have recourse to a criminal injuries compensation scheme provided by the state.	✓ Financial assistance	✓ Financial assistance; recognition payments	✓ Financial assistance	✓ Financial assistance; special assistance payments	✓ Compensation for victims of violent crime; discretionary payments for victims in need	✓ Compensation for victims of violent crime	✓ Compensation for victims of violent crime	✓ Compensation for victims of violent crime

CHARTER OF RIGHTS FOR VICTIMS OF CRIME

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READING LIST

Aboriginal Legal Service (NSW/ACT) Limited, *Criminal Justice Consultation Paper: Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse*, October 2016, <https://www.childabuseroyalcommission.gov.au/policy-and-research/our-policy-work/criminal-justice/submissions-on-criminal-justice-consultation-paper>.

ACT Human Rights Commission and Victim Support ACT, *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*, <http://hrc.act.gov.au/humanrights/publications-education/human-rights-brochures/victim-witness-rights/>.

ACT Office of the Director of Public Prosecutions, *The prosecution policy of the ACT*, 2015, https://www.dpp.act.gov.au/_data/assets/pdf_file/0006/715506/PROSECUTION-POLICY-OF-THE-AUSTRALIAN-CAPITAL-TERRITORY.pdf

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.

ACT Victims of Crime Coordinator, *We Don't Shoot our Wounded: Aboriginal and Torres Strait Islander victims of family violence access to justice and access to services in the ACT*, March 2009, https://www.victimsupport.act.gov.au/_data/assets/pdf_file/0010/793396/We_dont_shoot_our_wounded.pdf.

ACT Victims of Crime Commissioner, *Position Paper 2: Protecting the privacy of victims in court and tribunal proceedings of subpoenaed personal health information*, July 2015, https://www.victimsupport.act.gov.au/_data/assets/pdf_file/0005/753620/Issues-Paper-Subpoenas-For-Publications-17July15.pdf.

ACT Victims of Crime Commissioner, ACT Human Rights Commission, *A Charter of Rights for Victims of Crime: Consultation Report*, December 2017, prepared by John Hinchey, <https://www.victimsupport.act.gov.au/>.

Anderson, J., Richards, K., Willis, K., Australian Institute of Criminology, *Evaluation of the ACT Sexual Assault Reform Program (SARP): Final report*, Technical and Background Paper 51, 2012, <http://www.aic.gov.au/publications/current%20series/tbp/41-60/tbp051.html>.

Arabena K., and Milward, K., ACT Law Courts and Tribunal, *Access to the ACT Law Courts for Aboriginal and Torres Strait Islander People in the ACT: Consultation Report, Summary of the Access to Courts Workshop held on 9 May 2017*, 8 June 2017.

Attorney-General's Department, Government of South Australia, *Criminal Justice discussion paper: Connecting the criminal justice system through information management*, March 2016, <https://www.agd.sa.gov.au/sites/g/files/net2876/f/tcjinformationsharingpaperwebfinal.pdf?v=1491969445>.

CHARTER OF RIGHTS FOR VICTIMS OF CRIME OPTIONS PAPER

Australian Human Rights Commission, *Equal Before the Law: Towards disability justice strategies*, 2014, <https://www.humanrights.gov.au/our-work/disability-rights/publications/equal-law>.

Australian Institute of Health and Welfare, Australian Government, 'Australia's Welfare 2015, Feature Article 4.8, Vulnerable young people (aged 15-24)', <https://www.aihw.gov.au/getmedia/419adf38-dc20-4e73-b17d-a2af1fd505a6/AW15-4-8-Vulnerable-young-people-aged-15-24.pdf.aspx>.

Braun, K., 'Legal Representation for Sexual Assault Victims: Possibilities for law reform', *Current Issues in Criminal Justice*, no 25, 2013, 819-821.

Commonwealth of Australia, Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, August 2017, <http://www.childabuseroyalcommission.gov.au/policy-and-research/our-policy-work/criminal-justice>.

Commonwealth Secretariat, *Guidelines for the Treatment of Victims of Crime: Best practice*, 2002, https://childhub.org/en/system/tdf/library/attachments/commonwealth_secretariat_20_0.pdf?file=1&type=node&id=16541.

Cussen, T., and Lyneham, M., Australian Institute of Criminology, *ACT Family Violence Intervention Program Review*, Technical and background paper series 52, 2012, <http://www.aic.gov.au/publications/current%20series/tbp/41-60/tbp052.html>.

Dwyer, A., Ball, M., Bond, C., Lee, M and Crofts, T, *Exploring LGBTI Police Liaison Services: Factors influencing their use and effectiveness according to LGBTI people and LGBTI police liaison officers*, July 2017, <http://crg.aic.gov.au/reports/1718/31-1112-FinalReport.pdf>.

European Union, Directive 2012/29/EU of the European Parliament and of the Council, 25 October 2012, *Establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>.

Gay and Lesbian Health Victoria, *Coming Forward: The underreporting of heterosexual violence and same sex partner abuse in Victoria*, 2008, <http://www.glhv.org.au/report/coming-forward-underreporting-heterosexual-violence-and-same-sex-partner-abuse-victoria>.

Judicial Council on Cultural Diversity, *National Framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women*, 2011, http://jccd.org.au/wp-content/uploads/2017/09/JCCD_National_Framework.pdf.

Judicial Council on Cultural Diversity, *Recommended National Standards for working with Interpreters in Courts and Tribunals*, 2017, <http://jccd.org.au/wp-content/uploads/2017/11/Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals.pdf>.

McGregor, K., Renshaw, L., and Andrevski, H., Australian Institute of Criminology, *ACT victims of crime referral project: Final report*, Technical and Background Paper 55; Australian Government Australian Institute of Criminology, 2013, <http://www.aic.gov.au/publications/current%20series/tbp/41-60/tbp055.html>.

CHARTER OF RIGHTS FOR VICTIMS OF CRIME OPTIONS PAPER

Ministry of Justice, *Code of Practice for Victims of Crime*, October 2015, https://www.cps.gov.uk/legal/assets/uploads/files/OD_000049.pdf.

National Framework for Rights and Services for Victims of Crime Standing Council on Law and Justice, *National Framework of Rights and Services for Victims of Crime – 2013-2016*, March 2014, http://www.victimsupport.org.au/UserFiles/File/SCLJ_Framework-2013-16.pdf.

NSW Government Justice Sentencing Council, *Victims' involvement in sentencing: Consultation paper*, September 2017, http://www.sentencingcouncil.justice.nsw.gov.au/Documents/Current-projects/Victims/CP_Victims.pdf.

Office of the Coordinator-General for Family Safety, *Family Safety Hub Design: Insights report*, July 2017, Version 0.9, <https://www.communityservices.act.gov.au/home/safer-families/files/Family-Safety-Hub-Design-Insights-Report.pdf>.

Kirchengast, T., *Participation of victims of crime in New South Wales Court Processes, A Study Commissioned by Victims Services, NSW: Final Report*, November 2014, http://www.victimsclearinghouse.nsw.gov.au/Documents/Kirchengast_Victim%20Participation%20Study%20Final%20Report.pdf.

Standing Council on Law and Justice, *National Framework of Rights and Services for Victims of Crime – 2013- 2016*, March 2014, http://www.victimsclearinghouse.nsw.gov.au/Documents/nat-frame_2013-16_SCLJ.pdf.

Strang, H., Sherman, L. W., Mayo-Wilson, E., Woods, D., and Ariel, B., *The Campbell Collaboration, Restorative Justice Conferencing (RJC) using face-to-face meetings of offenders and victims: Effects on Offender Recidivism and Victim Satisfaction*, A systematic review, 2013, http://www.crim.cam.ac.uk/people/academic_research/heather_strang/rj_strang_review.pdf.

Stewart, L., Supervised by Dr Gregor Urbas, University of Canberra, *Participatory rights for child victims of crime: What reforms are required to improve and further participatory rights for child victims of crime in the Australian Capital Territory?*, 2017.

The Council of the Inns of Court College of Advocacy, *The Advocates Gateway*, 2017, <http://www.theadvocatesgateway.org/intermediaries>.

United Nations General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, November 1985, <http://www.un.org/documents/ga/res/40/a40r034.htm>.

United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention, *Handbook on Justice for Victims: On the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 1999, https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf.

Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The Experiences of people with disabilities reporting crime*, July 2014, <https://www.humanrightscommission.vic.gov.au/our-resources-and-publications/reports/item/894-beyond-doubt-the-experiences-of-people-with-disabilities-reporting-crime>.

Victorian Law Reform Commission, *Victims of Crime in the Criminal Trial Process*, November 2016, <http://www.lawreform.vic.gov.au/all-projects/victims-crime-criminal-trial-process>.

CHARTER OF RIGHTS FOR VICTIMS OF CRIME OPTIONS PAPER

Wedlock, E., and Tapley, J., *What works in supporting victims of crime: A rapid evidence assessment*, March 2016, <https://s3-eu-west-2.amazonaws.com/victimscmm-prod-storage-clhgxgum05k1/uploads/2014/10/What-works-in-supporting-victims-of-crime.pdf>.

Women's Legal Service NSW and Legal Aid NSW, Sexual Assault Communications Privilege Service, *Subpoena Survival Guide: What to do when a court wants confidential client information in NSW*. September 2016, <http://lacextra.legalaid.nsw.gov.au/PublicationsResourcesService/PublicationImprints/Files/753.pdf>.



Justice and Community Safety Directorate

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