



**VICTIMS OF CRIME
COMMISSIONER**

ACT Human Rights Commission

A CHARTER OF RIGHTS FOR VICTIMS OF CRIME

Consultation Report

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Executive Summary and Introduction

In 2016, the ACT Government committed to developing a Charter of Victims' Rights (Charter of Rights). This commitment coincided with the re-location of my office, including Victim Support ACT, to sit within the restructured ACT Human Rights Commission. The co-location of my office with the Human Rights Commission and the commitment by the Government to develop a Charter of Rights presents an opportunity to construct a meaningful Charter that recognises the human rights of victims and ensures those rights are consistently delivered.

My office has prepared this consultation report to guide government and assist the community to understand the needs of victims of crime in the ACT. I engaged in my own consultations with victims of crime and representatives of diverse groups (see Appendix A) to identify the issues that should be explored by government in its future community consultations that will be part of the development of a Charter of Rights. I also document views that have been expressed to me by victims since I was appointed the Commissioner in 2011 and during my time as Manager of the ACT's Restorative Justice Unit. Similar concerns are documented elsewhere.¹ This is not a comprehensive report or literature review. My hope is that what victims say in this report will be used as a valid reference by those involved in finalising the Charter of Rights as well as future reforms that relate to victims' interests.

I note that the ACT is not alone in reconsidering the role and rights of victims of crime in the criminal justice system. Several other jurisdictions have produced reports in relation to the rights of victims of crime, and these have been drawn upon where relevant.²

Part 1 of this report is a summary of my recommendations on the legislative rights that should be articulated in the Charter of Victims' Rights and the need for victims' rights to be specifically recognised in the ACT *Human Rights Act 2004*.

Part 2 provides additional background, justifications for my recommendations based on what victims have told me, and recommendations that support the implementation of victims' rights in the ACT. I have provided examples and quotes to place the voices of victims on the public record and assist readers to understand the challenges faced by them.

People do not experience the criminal justice system in isolation from other systems, including the civil justice system, the coronial system, support services, employment and the media coverage of

¹ Victims of Crime Coordinator, 2009, *A Rollercoaster Ride – Victims of Sexual Assault: their experiences with and views about the criminal justice process in the ACT*, ACT Government; Victims of Crime Coordinator, 2008, *The Quality of Justice – The Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996-2007*, ACT Government; Victims of Crime Coordinator, 2008, *The experience and views of victims of crime with their rights in the ACT justice system*, Victim Support ACT; K McGregor, L Renshaw & H Andrevski, 2013, *ACT Victims of Crime Referral Project: final report*, Australian Institute of Criminology

² Broad ranging considerations and recommendations relating to the role of victims in the criminal justice system are contained in: Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Report – Executive Summary and Parts I-II*, Commonwealth of Australia; and Victorian Law Reform Commission, 2016, *The Role of Victims of Crime in the Criminal Trial Process*, Victorian Law Reform Commission.

the crime. Some of the experiences raised with me during my consultations are not areas that can be addressed by a Charter of Rights or indeed even by the ACT Government. I have included some analysis and explanation of these additional areas because of their potential value for future reforms.

During 2017 I worked with an honours student from the Faculty of Law at University of Canberra who prepared a thesis focussing on the legal needs of child victims of crime in the ACT. The work done by Ms Lauren Stewart has been most useful to me in preparing the sections relating to the participation rights for child victims.

A focus on the issues with, and recommendations for, the Victims Registers and Sentence Administration Board makes up part 3 of this report. The operation of the adult victims register and the provision of information to victims relating to parole and licence hearings requires specific attention and I have provided several specific recommendations on this issue.

In relation to terminology, I note that there are understandable objections to the use of the term 'victim'. I find it a disempowering term. One participant I spoke to expressly stated that the term 'survivor' should be used instead of victim because it is more empowering. Nevertheless, I have chosen to use the term 'victim' throughout the document as this is consistent with my title, the governing legislation and legal definitions.

The agencies that are responsible for delivering existing and future rights for victims of crime include: Victim Support ACT (VSACT); ACT Policing; the ACT Director of Public Prosecutions (DPP); ACT Corrective Services; Child and Youth Protection Services; ACT Human Rights Commission and the administrative arm of the ACT Courts and Tribunals.

Part 1. Charter of Rights for Victims of Crime: core recommendations

Human Rights Act 2004

The rights of victims of crime are recognised internationally in the 1985 *Declaration of Basic Principles for Victims of Crime and Abuse of Power*. The ACT *Human Rights Act 2004* recognises the human rights of people charged with criminal offences³ but does not include rights specific to victims of crime.

The Victims of Crime Commission has been a part of the ACT Human Rights Commission since 2016. It is a logical next step to locate the rights of victims of crime within a human rights framework and to provide them specific protection in the *Human Rights Act 2004*. These rights will complement, rather than undermine, the rights of people accused of crime and can be incorporated into a broader understanding of a fair trial. Protecting these rights in the *Human Rights Act* would impose a positive obligation on criminal justice agencies to act consistently with the human rights of victims and to consider victims' human rights in decision making.

The Victorian Law Reform Commission also recommended the specific acknowledgement of victim's rights as part of the right to fair trial in the Victorian *Charter of Human Rights and Responsibilities Act 2006*.⁴

Recommendation 1.1: The Government amend the ACT Human Rights Act 2004 to provide specific recognition of victim rights, drawing on the recommendation of the Victorian Law Reform Commission in relation to the Victorian Charter of Human Rights and Responsibilities Act 2006.

Charter of Victims' Rights

Accessibility

Some groups within our community have had such fraught interactions, historically, with the justice system as victims or offenders that they have come to doubt that they will be treated respectfully and provided with the adjustments they require to engage meaningfully with our justice system.

The *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* specifies the application of the principles as being

*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.*⁵

The Victorian *Victims Charter Act 2006* (s6 (2)) and the South Australian Declaration of Principles Governing Treatment of Victims⁶ also specify that treatment of victims should recognise any special needs they have in relation to diversity.

Recommendation 1.2: The Charter of Rights should include a specific obligation on agencies to be responsive to the particular needs of victims with different needs relating to, at minimum:

³ *Human Rights Act 2004* (ACT), s22, 23, 24, 25.

⁴ Victorian Law Reform Commission, 2016, *The Role of Victims of Crime in the Criminal Trial Process*, Victorian Law Reform Commission, p 41

⁵ https://www.unodc.org/pdf/compendium/compendium_2006_part_03_02.pdf, provision 3

⁶ S6 (b)(i) *Victims of Crime Act 2001* (SA)

Aboriginal and Torres Strait Islander status; physical and intellectual ability; sexuality or gender identity; cultural background and language; and age.

Information

Access to information is critical to victims of crime. Research highlights that the three types of information that victims of crime want are:

- Information about the criminal justice process at all stages of the case.
- Timely and accurate updates about the progress and outcomes of their case.
- Information about the types of support services available and what they can offer them.⁷

Recommendation 1.3: The Charter of Rights should place a positive obligation on criminal justice agencies to provide information to victims on:

- *bail and bail conditions;*
- *the progress of investigations (except where disclosure might jeopardise the investigation);*
- *the charges laid and modification of charges;*
- *any decisions to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;*
- *any decision not to proceed with a charge against the accused;*
- *the trial process and the rights and responsibilities of witnesses;*
- *an explanation of the outcome of criminal proceedings, any sentences and its implications; and*
- *the offender that is relevant to the victim's perception of safety (particularly as it relates to serving of the sentence under supervision from ACT Corrective Services).*

Participation

Many victims seek opportunities to participate in the criminal trial process. Participation is often equated with giving victims a voice in proceedings – the opportunity to tell their story and to feel that they have been heard. Participation can mean interacting with criminal justice agencies that are required to seek and consider views or preferences of victims. Where the interaction is meaningful, it can provide victims with a sense of empowerment and convey official acknowledgement of their interest.⁸

Seeking input and views of victims assists criminal justice agencies to meet their obligations in relation to community and victim safety. Integrating participatory rights and a requirement for meaningful consultation with victims into the charter of rights will recognise the interests of victims of crime and their integral role in the criminal justice system.

⁷ E Wedlock & J Tapley, 2016, *What works in supporting victims of crime: a rapid evidence assessment*, Victims' Commissioner (England and Wales) and University of Portsmouth, p13

⁸ Victorian Law Reform Commission, 2016, *The Role of Victims of Crime in the Criminal Trial Process*, Victorian Law Reform Commission, p xviii

Recommendation 1.4: The Charter of Rights should define consultation.⁹

Recommendation 1.5: The Charter of Rights should place a positive obligation on police and prosecution to attempt to consult with victims of violent crimes about their safety requirements in relation to applications for bail.

Recommendation 1.6: The Charter of Rights should place a positive obligation on criminal justice agencies to consult victims on key decisions including:

- ***Closing an investigation***
- ***Charging the alleged offender with a particular offence***
- ***Amending the charge (including accepting a plea bargain) and not proceeding with a charge***

Recommendation 1.7: The Charter of Rights should place a positive obligation on criminal justice agencies to provide opportunities for victims to prepare and present victim impact statements.

Recommendation 1.8: The Charter of Rights should place a positive obligation on ACT Corrections to consult with victims about their safety requirements in preparation of pre-sentence reports.

Recommendation 1.9: Should it be necessary to limit the applicability of participation rights to victims of certain crimes, ‘primary victim’ and ‘related victim’ as defined in the Victims of Crime (Financial Assistance) Act 2016 is a reasonable approach as this captures victims of physical and sexual violence.

Privacy

Recommendation 1.10: The Charter of Rights should place an obligation on criminal justice agencies to have due regard for the privacy of a victim (including deceased victims and their family).

Accountability and Redress

The Victims of Crime Commissioner’s functions are limited to resolving concerns raised by victims in relation to non-compliance with the governing principles.¹⁰ The Commissioner is required to refer formal complaints to a relevant complaints entity, which in general means the ACT Ombudsman.

Victims who seek to have their rights recognised are met with varying responses to their complaints from criminal justice agencies – some very positive, others negative. Officious, defensive responses (although relatively rare) are dehumanising and dismissive. Victims want to know that their complaints are taken seriously: that they’ll be listened to, acknowledged and respected. They also want an external review mechanism for oversight.

Recommendation 1.11: The Charter of Rights (and supporting legislative amendments) should provide accountability and redress in accordance with the following:

⁹ A basic, but sound, consultation model involves three steps: 1) provision of information; 2) provision of sufficient time to consider the information and access advice about the information; and 3) to be listened to with an open mind.

¹⁰ *Victims of Crime Act 1994* (ACT), s12

- a) *Formal complaints about victims' access to their rights under the Charter should be dealt with by the Discrimination, Health Services, Disability & Community Services Commissioner in the Human Rights Commission¹¹*
- b) *A restorative approach to alternative dispute resolution should be available as the first level of redress for victims' rights complaints*
- c) *Victims' rights complaints should be integrated into section 48 of the Human Rights Commission Act 2005 for commission-initiated considerations and reporting to the Minister (s87).*

Recommendation 1.12: Each right contained in the Charter should specify the criminal justice agency responsible.

¹¹ The Discrimination, Health Services, Disability & Community Services Commissioner currently investigates and resolves complaints about discrimination, health services, disability services and services for older people.

Part 2. Background, justifications and associated recommendations

My consultations have identified a broad range of challenges that victims of crime experience when interacting with the criminal justice system. The development of a Charter of Rights must be supported by reforms to procedures and practices throughout our justice system to effect meaningful cultural and systemic change. This part of the report includes victims' experiences and corresponding recommendations on reforms that support the effective implementation of the Charter of Rights.

I have included quotes from people I interviewed, as well as illustrative case studies that use pseudonyms and altered minor details to protect the identity of individuals.

Current rights for Victims of Crime

Victims of crime in the ACT have inherent rights under the *Human Rights Act 2004* (ACT) (HR Act).¹² Criminal Justice agencies, including ACT Policing; the Director of Public Prosecutions; and the administrative arm of the courts are obliged to act consistently with human rights and to consider human rights in decision making. Several of the rights contained in the HR Act are specifically pertinent to victims of crime. For example, section 8(3) provides:

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

In practice this means that, for example, people with disabilities are provided with appropriate supports and adjustments to ensure they can make a formal statement to police about a crime they have experienced. Section 21 (1) provides the right for a fair trial:

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

In Victoria, the right to a fair trial has been found to include a 'triangulation of interests', which include those of the accused, the victim and their family, and the public.¹³

In addition, the treatment of victims of crime in the ACT is guided by the Governing Principles for the Treatment of Victims of Crime (the Governing Principles).¹⁴ These principles do not, however, constitute enforceable legal rights. Certain victims also have other limited entitlements outlined in various pieces of legislation.

¹² A comprehensive consideration of victims' rights under the Human Rights Act is available in: Human Rights & Discrimination Commissioner & Victims of Crime Commissioner, 2015, *Victim and witness rights under the ACT Human Rights Act 2004*, ACT Human Rights Commission

¹³ *Ragg v Magistrates' Court of Victoria and Corcoris* [2008] VSC 1 (24 January 2008) (Bell J)

¹⁴ *Victims of Crime Act 1994* (ACT), s4

The Governing Principles derive from the (non-binding) United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985*. They define how agencies involved in the administration of justice should, as far as practicable and appropriate, treat victims of crime. The Governing Principles can be described as rights or entitlements to information and services. They are:

1. a victim should be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to his or her personal situation, rights and dignity;
2. a victim should be informed at reasonable intervals (generally not exceeding one month) of the progress of police investigations concerning the relevant offence, except where such disclosure might jeopardise the investigation, and, in that case, the victim should be informed accordingly;
3. a victim should be informed of all the charges laid against the accused and of any modification of the charges;
4. a victim should be informed of any decision concerning the accused to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;
5. a victim should be informed of any decision not to proceed with a charge against the accused;
6. where any property of the victim is held by the Crown for the purposes of investigation or evidence - inconvenience to the victim should be minimised and the property returned promptly;
7. a victim should be informed about the trial process and of the rights and responsibilities of witnesses;
8. a victim should be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
9. a victim's residential address should be withheld unless court directs otherwise;
10. a victim should be relieved from appearing at preliminary hearings or committal proceedings unless the court directs otherwise;
11. a victim should be given an explanation of the outcome of criminal proceedings and of any sentence and its implications;
12. a victim who is known to have expressed a concern about the need for protection from an offender should be informed of the offender's impending release from custody.

A victim who feels that an agency involved in the administration of justice has not had regard for the Governing Principles can make a complaint to that agency. They can also raise their concerns with me, as the Victims of Crime Commissioner, and I can attempt to resolve the concern.¹⁵ Formal complaints must be referred to a relevant complaints entity; typically the ombudsman or the agency who the complaint is against.

If an offence is punishable by imprisonment for longer than one year, a victim may make a victim impact statement (VIS) and the court must consider the statement in deciding how the offender should be sentenced.¹⁶ If an offender is subject to a custodial or community-based sentence, the

¹⁵ *Victims of Crime Act 1994* (ACT), s12

¹⁶ *Crimes (Sentencing) Act 2005* (ACT), Pt 4.3

victim can be registered on the Victims Register (or Youth Justice Victims Register if the offender is a child).¹⁷ Registered victims are entitled to certain information relating to the offender, for example, where the offender is detained or doing community service work. The Sentence Administration Board must take reasonable steps to seek a registered victims views when an offender is being considered for parole¹⁸ or release on licence.¹⁹ These entitlements can be described as rights to information and participation.

Under s10 of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)*, if a child witness is not separately represented by someone else, and the court considers that the child should be represented by someone else, the court may:

- order that the child be separately represented by someone else; and
- make any other order it considers necessary to arrange the separate representation.

I am not aware of any circumstances that this provision has been used.

Victims of crime tell me that the existing entitlements contained in the Governing Principles and other areas of legislation are not consistently providing the protection, information or participation that victims of crime expect and need. Moreover, their lack of enforceability makes them both symbolically and practically weak.

Restorative Justice

The ACT Restorative Justice program is a victim-centric criminal justice response. The explanatory statement acknowledges that despite the high expectations of victims of crime

to report to police; to provide witness statements; to cooperate with investigators and prosecutors; and to perform as effective witnesses at criminal trials... in the context of the prosecution of an offence a victim may have no opportunity to address their needs in relation to the impact of the crime... People who have experienced crime often want a real voice in the process. Victims want the offender to take responsibility for their actions. Victims also want their family, the offender and the community to understand the impact of the crime.²⁰

Restorative justice processes provide victims with the opportunity to:

- get information they want to help them understand why they were harmed (including answers to questions like 'why me?'; 'will he/she target me again?');

¹⁷ *Crimes (Sentence Administration) Act 2005 (ACT)*, Ch10

¹⁸ *ibid*, s123

¹⁹ *ibid* s291

²⁰ Explanatory Statement, *Crimes (Restorative Justice) Bill 2004 (ACT)*, p2

- participate meaningfully and actively in a justice process (including the ability to determine whether to engage at all; when meetings will happen; and a chance to suggest how the offender can atone); and,
- hold the person who harmed them accountable for their actions.

These outcomes are consistent with the outcomes that victims tell me they are seeking from our traditional justice system. Victims experience greater satisfaction and reduced post-traumatic stress symptoms with restorative justice compared with the standard criminal justice process,²¹ directly because they are included in a justice process and have a direct say in that process.

Victims Voices on the Need for Reform

Victims consistently express that some fundamental issues are important to them. They need and want to be heard, to feel they have a voice... one of the most important grievances mentioned by victims is their lack of standing and voice in criminal justice proceedings²²

The people I spoke to reinforced the importance of them of having a voice. They made it very clear that in terms of proposing reforms

This is not about vengeance – all concerns and ideas have been put forward with the intention of protecting the needs and safety of victims.

One woman articulated in writing the impact of being consulted

Firstly, I want to thank you... for extending the invitation to participate in this review. The experience was both positive and inspiring. It provided me the opportunity to be heard and understood by people who cared within the system, validated my experiences and has started the process of reclaiming my confidence and power.

Many participants expressed a perception that the rights of the accused are given much higher regard than the rights of victims within the criminal justice system. They want justice agencies to more consciously and meaningfully recognise and balance their rights with the rights of the accused.

This is not about taking rights away from an offender but about finding a way for victims' rights to be brought up in a fair and equitable way.

Others drew attention to their peripheral role in the system, highlighting how absurd the experience can be when it is their lives that are so heavily impacted by the crime.

As victims we were seen as an irrelevance, as passive observers of a juggernaut dealing with the criminal, not as people who have to live forever with the consequences of a crime committed against them.

Another victim described being treated as though she was 'being annoying' and 'inconvenient' in her efforts to gain information and access to justice. Yet another described feeling 'let down by the current system.'

²¹ L W Sherman & H Strang, 2007, *Restorative Justice: the evidence*, The Smith Institute, P4

²² B Cook, F David & A Grant, 1999, *Victims' Needs, Victims' Rights – Policies and Programs for Victims of Crime in Australia*, Australian Institute of Criminology, p76-77

Because ‘conceptually, victims have no role to play in the modern criminal justice system other than to act as evidentiary cannon fodder’²³, it is easy for those working in the justice system to lose sight of their interests and rights.

Despite their frustrations, the vast majority of participants spoke of positive interactions and support that they had received from agencies involved with the justice system, especially ACT Policing and the Office of the DPP. I have summarised this positive feedback in Appendix B.

Resilience and resourcefulness

I witness strength, resilience and resourcefulness on a daily basis in my work with victims of crime. My consultations for this report were no different. Women who experienced years of domestic violence rebuild their lives and keep their children safe; young people who have been seriously assaulted recover from their injuries and determinedly work towards a bright future; family members of homicide victims engage in advocacy to change systems.

One domestic violence survivor purchased a back to base alarm system (which includes a personal alarm) for her home because her ex-partner would ransack the house every time she went out. She is paying it off in monthly instalments. She spoke of the importance of getting freedom to leave the house knowing it wouldn’t be ‘trashed again’ on her return.

The Aboriginal women I spoke with identified a number of strategies for keeping safe and helping each other when domestic violence is an issue. For example, when visiting a new place, they routinely conduct ‘environmental scans’ to identify possible escape routes to flee from any threat that may arise. They have also formed strong networks for peer support, rather than rely upon professionals to support them. They meet regularly, in cafés and community centres to yarn and give each other emotional support. From each other they gather the strength to keep going.

Many victims spend hours, days, weeks and in some cases years, researching the criminal justice system, identifying ways to seek justice, support and safety for themselves and others. Some engaged legal counsel to assert their rights. And yet, as observed by a Victim Support ACT (VSACT) case manager, so much emotional energy goes into making the system work

Not everyone who experiences serious crime come out of it with this level of resilience, however. Some struggle for years to get back to their day to day functioning; a number may also go on to experience debilitating physical or mental health issues or attempt or successfully take their own lives.

The Reform Priorities Identified by victims

Access to the criminal justice system

*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.*²⁴

In a majority of cases, victims describe being dealt with in a manner consistent with this governing principle. Unfortunately, however, a number of participants in my consultations raised serious concerns in relation to their treatment. VSACT advocates observed that some police officers have sympathised with an offender at the expense of the victim. For example, encouraging victims to make changes to protection orders to make life easier for the respondent.

²³ J Doak, 2008, *Victims’ rights, human rights and criminal justice*, Hart Publishing, p36

²⁴ *Victims of Crime Act 1994* (s4(a))

Multiple participants that I spoke to described not being believed, particularly in relation to reporting domestic or family violence:

I have to fight so hard for people to believe me.

Others described avoiding police involvement for fear of being treated badly. This was particularly expressed by the Aboriginal women I consulted, many of whom had come from interstate and had formed poor opinions of police generally.

A Charter of Rights must acknowledge that certain groups have specific needs and may require various adjustments in order to report crimes and access justice. There is an acute need for system-wide reform to better address the barriers diverse groups experience in relation to reporting crime and participating as best they can in our criminal justice system. In the following sub-sections I summarise some specific issues relating to specific groups that were raised with me in my consultations this year. I acknowledge that each sub-section deserves a great deal more research and consultation to fully articulate the issues that need to be addressed.

Aboriginal and Torres Strait Islander victims of crime

I only went [to police] because I was desperate.

The Aboriginal women I spoke with focussed primarily on their experiences as victims of family violence. Reporting family violence to police was intricately linked with the fear of having their children removed by care and protection services.

The National Family Violence Prevention Legal Services Forum submission to the Parliamentary Inquiry into a Better Family Law System summarises a range of barriers to reporting family violence, including

*inter-generational trauma from the legacy of Australia's colonial history... leading to a profound mistrust in police and the legal system...; Lack of understanding of legal rights...; poor police responses and discriminatory practices within police in relation to the enforcement of family violence orders...; risk of renewed or escalating violence and threats by the perpetrator... to re-exert control over the victim/survivor...; indirect discrimination across the support sector including for example discriminatory practices within police and child protection agencies.*²⁵

The Aboriginal women I interviewed expressed these sentiments, although it must be noted that many of their negative experiences with police occurred in other jurisdictions. For them, involving police in relation to family violence was something to avoid as much as possible. They only called police or attended police stations when in a heightened fear for their lives.

Relating their interstate experiences, several of the women spoke of:

- feeling as though they were treated like the perpetrator of the violence (especially if they 'fought back' in self-defence)
- not being believed
- not getting any help when they did approach the police ('It's well known you're not going to get the help')
- being blamed for being in the situation

²⁵ National Family Violence Prevention Legal Services Forum, 2017, 'Submission to the Committee for Social Policy and Legal Affairs Parliamentary Inquiry into a Better Family Law System to Protect those Affected by Family Violence', p9-10

- being accused of being erratic, ‘under the influence’ or ‘psychotic’ if presenting in an angry or irate mood
- police making a relationship with the perpetrator (one woman described how ‘they let him say goodbye to his children’ before taking him into custody – her baby was in her arms so this meant he was empowered to get very close to her)
- regretting seeking the help (‘I made a mistake coming here’; ‘he [the police officer] treated me like an idiot’).

One woman spoke of her ex-partner entering her property when she was home with her children when she had a protection order (Domestic Violence Order – prior to the *Family Violence Act 2016*). She called the police and was told they would not charge him with breaching the order because the front door was unlocked when he walked in.

It is widely recognised that Aboriginal people, women in particular, are more likely to experience violent crime than non-indigenous people; and that a vast majority of violence will not be reported to police.²⁶

System-wide reform and genuine commitment is required from services and the justice system to work more effectively with the Aboriginal and Torres Strait Islander community. ACT Policing has taken some initiative in this regard, holding a Community Forum in October where it was acknowledged that ‘ACTP need to be respectful, honest, fair and culturally sensitive in their engagement with Aboriginal and Torres Strait Islander people.’²⁷

Recommendation 2.1: Criminal justice agencies work with the Aboriginal and Torres Strait Islander community to build trust and identify achievable strategies to improve access to the justice system for Aboriginal and Torres Strait Islander victims of crime.

Recommendation 2.2: Victim Support ACT, the Victims of Crime Commissioner, other support and justice agencies must raise awareness among Aboriginal and Torres Strait Islander people about their rights as victims of crime and commit to supporting them to access these rights.

Disability

People with disabilities are much more likely to experience violence than people without disabilities.²⁸ Ninety per cent of ‘Australian women with an intellectual disability have been subjected to sexual abuse, with more than two-thirds (68%) having been sexually abused before they turn 18.’²⁹ It is difficult to identify the proportion of those seeking justice responses as criminal justice agencies in the ACT do not consistently collect data relating to disability. Anecdotally however, it appears that people with disabilities are vastly under-represented in terms of reporting crimes and accessing justice.

²⁶ Australian Institute of Criminology, 2011, ‘Complex barriers prevent disclosures of violence by Indigenous victims’, media release: <http://aic.gov.au/media/2011/january/20110119.html>

²⁷ Chief Police Officer Justice Saunders, 2017, ‘Message from Chief Police Officer for the ACT’, CPO Communique 24 October 2017.

²⁸ World Health Organization, 2017, ‘Violence against adults and children with disabilities’, <http://www.who.int/disabilities/violence/en/>

²⁹ C Frohmader, 2014, ‘Fact Sheet: Violence Against Women With Disabilities’, Women with Disabilities Australia, https://www.pwd.org.au/documents/temp/FS_Violence_WWD's.pdf, p1

Disability representatives from Advocacy for Inclusion observed that there has been limited progress in the ACT in terms of providing access to justice for victims with disabilities, however, they are cautiously optimistic about the development of a Disability Justice Strategy flagged in the 2017-18 budget papers.³⁰ The Australian Human Rights Commission recommended this in 2014³¹ and effective access to justice is a core policy direction in the National Disability Strategy 2010-2020.³²

VSACT advocates observed that people with disabilities face a range of difficulties reporting to police and when they do there are barriers to matters being progressed. Stakeholders described a common perception in parts of the community that people with a disability are 'child-like' and therefore unable to make decisions that affect themselves. A perception exists that victims with communication difficulties cannot provide credible evidence to progress to a court setting. The Criminal Justice Report from the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) notes similar issues, as well as issues related to police willingness to investigate allegations and prosecution willingness to make use of legislative provisions to enable credible evidence giving.³³ The inability to access justice leaves 'many people with disabilities being left without protection and at risk of ongoing violence.'³⁴

The Royal Commission provided an illustrative example of a matter reported to police involving a child who was sexually abused by a respite carer in the ACT in 2011. The child's two older siblings (who were witnesses) have disabilities. One was not interviewed at all and no effort was made to use suitable communication methods to enable an interview. The team leader of the Sexual Assault and Child Abuse Team said at the Royal Commission hearing that police should have tried to communicate with the child using appropriate aids.³⁵

Advocacy for Inclusion made the point that people with disabilities who are homeless and/or institutionalised are particularly vulnerable and marginalised in terms of accessing the criminal justice system as victims. Many of these people intersect with the justice system as offenders, though many are also victims of crime as well. This group rarely know their rights and frequently have negative perceptions, and are fearful, of police. The funding models for disability support have led to a decline in advocacy services for people with disabilities and there is a particular gap in services available to advocate for people with disabilities with a focus on their needs within the justice system.

Advocacy for Inclusion provided a case study previously published in a Senate Inquiry Submission, detailed below.³⁶

³⁰ ACT Government, 2017, *Australian Capital Territory Budget 2017-18, Budget Statements D*, ACT Government, p21.

³¹ Australian Human Rights Commission, 2014, *Equal before the Law: Towards disability justice strategies*, p6

³² Council of Australian Governments, 2011, *'2010-2020 National Disability Strategy*, Commonwealth of Australia, p38

³³ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Report – Executive Summary and Parts I-II*, Commonwealth of Australia, p509

³⁴ Australian Human Rights Commission, 2014, *Equal before the Law: Towards disability justice strategies*, p8

³⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Report Parts VII – X and Appendices*, Commonwealth of Australia, pp8-9

³⁶ Advocacy for Inclusion, 2015, 'Submission to the Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings',

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect/Submissions pp23-24

Case Example 1

'Zafir', a young man in his mid-twenties, was physically and verbally assaulted by a senior staff member (Paul) at the day centre he attended. Zafir does not use much verbal communication, but he can express himself using vocal sounds and hand gestures, and occasionally some words.

Zafir's legal guardian (his mother), reported the matter to police. Zafir's mother wanted police to progress the investigation. Two other support workers were willing to provide statements to police as witnesses. Police decided not to charge Paul and instead gave him a warning. The explanation for this was that there was not enough evidence; and Zafir's mother understands that Zafir was considered an unreliable witness because of his cognitive and communication impairments, and could not make a statement in a conventional format. Police also suggested that the process would be too stressful for Zafir and his family and that Paul had expressed remorse.

Another stakeholder provided a useful summary of what victims of crime with a disability should be able to expect when reporting a crime. That is:

- to be believed;
- to be treated as credible unless proven otherwise; and
- to be provided with reasonable adjustment / support so that their disability does not disadvantage them compared to anyone without a disability in a similar situation.

Recommendation 2.3: Government consider implementing the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse as they pertain to vulnerable witnesses for all victims of all violent crimes.

Recommendation 2.4: The Access to Justice Strategy for people with disability must identify specific actions for criminal justice agencies to implement in order to better accommodate a variety of needs of people with disabilities. At minimum, in order to access their rights as victims of crime, people with disabilities should be able to expect the following of the criminal justice system:

- ***Provision of information about reporting a crime, available in Easy English, outlining what to expect, victim rights, and who can provide support and advice to access rights.³⁷***
- ***Public recognition that the criminal justice system is obliged (and willing) to make reasonable adjustments to assist people with disabilities to access justice as victims of crime.***
- ***ACT police officers, particularly those in the Sexual Assault and Child Abuse Team, receive regular training in how to work with and interview people with disabilities.***
- ***Advocates for victims of crime in the ACT have access to training to ensure they are aware of (a) the needs of victims of crime with a disability and how to provide effective decision making support; and (b) the specific rights of vulnerable witnesses.***
- ***ACT Policing should be resourced to establish a Disability Liaison Officer position.***

³⁷ My agency currently summarises information on the justice system for people in the ACT. Resources need to be identified to develop a package of this information in Easy English.

Recommendation 2.5: An intermediary scheme for all vulnerable victims of violence should be implemented - modelled on the Registered Intermediary Scheme in operation in England and Wales.³⁸

Recommendation 2.6: Criminal justice agencies should be required to collect and report on data where a victim identifies as having a disability. Mental illness and disorder should be counted separately to other forms of disability.

Recommendation 2.7: Government amend section 101 of the Evidence (Miscellaneous Provisions) Act 1991 to ensure that people with disabilities are not inadvertently being regarded as child-like because of the association between children and witnesses with disabilities.

Recommendation 2.8: Government amend the Evidence (Miscellaneous Provisions) Act 1991 to ensure that companion / therapy / assistance / disability dogs are accommodated as a reasonable adjustment where the person has their animal certified in accordance with Commonwealth Discrimination Act 1992.

LGBTIQ

People from the Lesbian Gay Bisexual Transgender Intersex and Queer (LGBTIQ) community may experience additional barriers to accessing justice and disproportionately high levels of violence based on homophobia and transphobia.³⁹ Furthermore,

while police now very rarely perpetuate heterosexual and homophobic violence against LGBT people, in comparison with historical contexts, homophobia, and heterosexism may still implicitly contribute to a reluctance of a majority of LGBT communities to report victimisation to police.⁴⁰

An individual interview and a stakeholder interview highlighted that people from the LGBTIQ community may be reluctant to seek support or report violence to police because of the 'burden' of having to come out to the service.

The stakeholder group⁴¹ noted that the AFP's Gay and Lesbian Outreach Liaison Officer (GLLO) initiative is positive in terms of improving reporting to police. However, one victim stated that

I asked the AFP for a GLLO and I saw one but then she referred me to a regular case officer so I don't see the point in having a GLLO. It was hard to locate and then get the opportunity to speak to a GLLO – they are not very available.

In relation to disclosing domestic violence, it is important to recognise that a focus on the gendered nature of domestic violence may be experienced as exclusionary by certain communities.

³⁸ Intermediaries can be used to assist vulnerable witness at both the investigative stage by police and in preparation for a trial. Ideally, the intermediary will also participate in a 'ground rules' hearing before the witness's evidence is taken. In the hearing, the intermediary can report to the court on the witness's requirements and the judge can give guidance to counsel as to which recommendations of the intermediary are to be adopted.

Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Report*, Commonwealth of Australia, p77

³⁹ Law Council of Australia, 2017, 'LGBTI People – Consultation Paper', Law Council of Australia, The Justice Project, p2

⁴⁰ Dwyer, A, 2011, 'Policing lesbian, gay, bisexual and transgender young people: a gap in the research literature', *Current Issues in Criminal Justice*, Vol 22, no 3, p416

⁴¹ Chris Healy and Simon Copland, LGBTIQ Ministerial Advisory Council

[The agency's] website is not friendly to men in terms of its gendered language. It implies exclusiveness. The language used on the website is dated. There is no visibility for gay male victims or gay females on websites. It would help if services had a visible recognition either at their offices or on their websites that acknowledged same sex couples.

Recommendation 2.9: Support services and criminal justice agencies should engage in the rainbow tick service accreditation or engage local LGBTIQ agencies to provide training for their staff to ensure they are visible and sensitive to the needs of LGBTIQ victims of crime.

Recommendation 2.10: Support services should work collaboratively to identify appropriate pathways to for LGBTIQ people to access the justice system.

Children and young people

Children have specific needs in relation to the criminal justice system and increasing their participatory rights of child victims is an area of particular importance. In later sections I will outline the areas of reform that should be rolled out for child victims as a matter of priority.

That crime can have a severe and lasting impact on its victims is especially true in the case of children.⁴²

There is a clear perception in our community that service provision for victims of crime in the ACT is focussed on providing support to adults/ the parents of child⁴³ victims. There are intensive supports available for young offenders, however, if a young person is not a perpetrator of crime (and does not have behavioural issues that suggest risk of offending), there is far less support. Funding is more readily available for services for children and young people who commit crimes than those who are solely victims.⁴⁴

One interviewee highlighted the bind that is placed on parents and children when both are witnesses to a crime. While awaiting the outcome of criminal trials, parents are discouraged from talking about the offence with the child; and parents are disempowered from advocating on behalf of their child in these circumstances. In the ACT, children who experience sexual assault can provide pre-trial recorded evidence (including cross-examination) but the protective parents cannot. In the context of standard trial delays⁴⁵, this inconsistency is illogical and problematic for recovery. This is highlighted in case example 2, below.

In the section on victims with disabilities, I have made a recommendation relating to engaging an intermediary scheme. Such a program may be of assistance in addressing fears of parents in exposing their children to criminal justice processes. In a later section (participation) I argue for the value of legal representation being made available for certain victims in certain situations.

⁴² Australian Institute of Criminology, 2012, *Australian Crime: Facts and figures: 2011*, http://www.aic.gov.au/publications/current%20series/facts/1-20/2011/8_spotlight.html

⁴³ The legal definition of child in the ACT includes anyone under 18 years old, *Legislation Act 2001* (Dictionary)

⁴⁴ Many children and young people who commit crime are themselves victims.

⁴⁵ Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report* (2017) Parts VII to X and Appendices, pp205, 213, 214, 228

Case Example 2

'Lisa's' seven year old daughter was sexually assaulted by a family member. Lisa described reporting her daughter's allegations to police and the challenges they faced. Lisa was unable to attend the police interview with her daughter because she was considered a primary witness to the disclosure and doing so would compromise the criminal process. Lisa was very worried about her daughter's wellbeing during the police interview because her daughter did not have a support person there that she was familiar with. She said that the waiting areas in the Sexual Assault and Child Abuse Team (SACAT) space are very child friendly, however, she worries that the interview room is sterile and unfriendly.

Even after the initial interview with police, Lisa and her daughter were unable to talk about the abuse with each other, because doing so could compromise any criminal process. Following the police interview Lisa did not hear anything about the police investigation for around six months. She was dismayed when she was informed that the alleged perpetrator refused to be interviewed by police. She was upset to be advised that the evidence from her daughter was not considered to be sufficiently detailed for the police to progress the matter.

Lisa would have liked access to more information about what to expect when reporting this crime to police; access to support and guidance to navigate the criminal justice system; and for an intermediary or children's advocate to support and provide legal advocacy for her daughter.

Recommendation 2.11: Criminal justice agencies and support services should consider and make adjustments for the specific needs of child victims of crime.

Recommendation 2.12: Information should be made publically available for articulating how the criminal justice system responds to crimes against children, including what parents can expect from this process.

Recommendation 2.13: Legislative provisions that enable child sexual assault victims to give pre-recorded evidence should be expanded to apply to the protective parents of these victims.

Young Adults

Young people, aged 18-30, are more likely to experience violent crime and may experience more dramatic consequences. A participant spoke of the impacts she had observed in victims in this age group:

- They may lose their career, be unable to continue education, or face major disruptions and delays.
- They are likely to find it more difficult to manage the impact of the crime because they have less life experience and resources to draw on.
- The crime is more likely to impact on their entire outlook on life.

Recommendation 2.14: Criminal justice agencies and support services should consider and make adjustments for the specific needs of young adults who are victims of crime

Culturally and linguistically diverse people

People from culturally and linguistically diverse (CALD) backgrounds who experience crime face an array of obstacles in accessing the criminal justice system. Some have a distrust of police and other government authorities and/or misconceptions about the operation of the justice system due to experiences in their countries of origin or experiences of racism here in Australia.

In relation to domestic and family violence, CALD women share many issues and experiences in common with other Australian women. Many face additional barriers to involving police or accessing support, including:

- social isolation - having few friends or family members in Australia who can provide support;
- difficulty with English;
- having no independent rental history;
- unemployment;
- lack of transport;
- visa issues;
- stigmas around divorce and separation; and
- cultural pressures.

Stakeholders⁴⁶ argued that CALD victims who do report the matter to police may experience overt or covert racism or, due to problems in interpreter provision, difficulties conveying their experience, understanding the process and asserting their rights.

Criminal justice agencies need to work with CALD communities, particularly women, to identify strategies to improve access to justice for victims. Our local CALD communities have a lot to contribute in this endeavour and we must consult with them and listen to them when developing any targeted approach.

Recommendation 2.15: ACT Policing should consider engaging cultural advocates who can translate and interpret language and assist people to understand the criminal justice process.

Recommendation 2.16: Criminal justice agencies and support services should access cultural awareness training that encourages staff to examine their inherent biases and beliefs and the impact these may have on treatment of victims of crime from a CALD background.

Information

Access to information is critical to victims of crime. Many of the victims I spoke with described issues they experienced in terms of information provision.

Even with a law degree there was a lot of stuff I didn't know upfront that I wish I'd known.

People want to know what to expect when reporting a crime. VSACT advocates observed that when reporting a crime, victims frequently do not receive enough information about what to expect from the criminal justice process. They are often unaware at the time of reporting a crime that they may not be able to 'drop the charges' if they change their mind. The Royal Commission identified that 'a significant impediment to reporting is the uncertainty a victim or survivor may have about the consequences of reporting to police.'⁴⁷ Victoria Police have developed two documents that are good examples of information provision to assist victims who are considering making reports of sexual assault: the *Code of Practice for the Investigation of Sexual Crime* and the *Reporting Sexual Assault* Easy English booklet.

⁴⁶ Diana Abdel-Rahman, Canberra Multicultural Community Forum & Laura Aoun, Canberra Multicultural Women's Forum

⁴⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Executive Summary and Parts I - II*, Commonwealth of Australia, p 399

Case Example 3

Tamara was assaulted by her husband when they were in the process of separating. As a result Tamara found herself interacting with three different legal processes: the criminal justice process; family court process and making an application to the financial assistance scheme through the Magistrate's Court.

Tamara is a very resourceful woman and yet she found it overwhelming, difficult and confusing managing these three processes. She described how difficult it was to access helpful information, being told more information than she could retain in some instances, but being unable to access helpful information when she was looking for it. She found it frustrating not knowing when and who to contact for information.

Tamara contacted police on a few occasions to seek advice about what might constitute a breach of bail and domestic violence order (DVO) conditions. She was distressed at being given inconsistent advice on each of these occasions.

For some victims, being able to access the information they need, when they need it, helps to foster a sense of having some control over the process. Attending courts is nerve-racking for most people, so knowing what to expect is important to them.

Several victims I spoke to received limited information about the investigation or court proceedings. One highlighted the irony of the offender being provided with extensive information about the criminal justice process:

I feel alone because no-one keeps me informed unless I chase them. My ex-partner [the perpetrator of DV] knows more than me about what is happening but I'm left in the dark

Another victim who was not informed about the court dates or outcome described remaining 'angry' and feeling 'like just a number'.

Victims want to know when and who to contact for information. And they want the system to share information appropriately to help minimise confusion.

When my ex-partner started breaching the DVO I tried to contact police but found it confusing. There is no clear contact point. In the end I had three case officers assigned to me. Case Officer 1 was for an assault on me by my ex-partner. Case Officer 2 was for the breach of the DVO. Case Officer 3 was for fraud offences committed by my ex-partner using my identity. The Case Officers are from different police stations. It is very hard to hear back from them unless I chase them for updates.

~

The number of different people with similar roles is confusing. The AFP has a VLO who rings me as does VSACT. I don't know what the difference is. I also speak to DVCS, ACT Policing, Court staff, Legal Aid and VSACT FAS [Financial Assistance Scheme] staff.

~

I feel lost in complex and disjointed system. No-one talks to one another.

VSACT advocates would like to see improved collaboration across the system to better support victims. Having to tell their stories over and over again is distressing for victims and can have the effect of re-traumatising them. Better information sharing across systems can alleviate this burden.

Access to and provision of information is an important foundation that enables victims to take a more active role in participating in the criminal justice system and accessing their rights as victims.

Case Example 4

A young man, 'James', experienced an unprovoked attack in daylight by another young person who was not known to him. James was almost 17 at the time of the assault. He was doing well at school, earning money working part time in IT and excelling at sports.

James sustained a serious brain injury, amongst other injuries, as a result of the assault. He was hospitalised for several complications and spent seven months bedridden in severe pain. The pain remains ongoing. Because of the brain injury James has difficulties with his memory and his completion of high school was significantly delayed. He can no longer play the sports he enjoys because there is a risk of exacerbating his brain injury. His friends did not understand the impacts of the brain injury and over time stopped visiting him.

James is a resourceful and resilient young man. He is slowly recovering from the injuries. He has managed to complete his high school education and is now attending tertiary studies and engaging in physical activities. Overall, however, the assault has had long-lasting and broad ranging consequences for him and his family. It is not known whether he will ever fully recover from the effects and at minimum, his career and education have been significantly delayed.

The young person who assaulted James was originally charged with assault occasioning grievous bodily harm, which was downgraded to assault occasioning actual bodily harm. James was informed of the decision to downgrade the charge after it was made and said he was given a limited explanation as to why the charge had been downgraded. The young offender pleaded guilty in the ACT Children's Court to offences relating to three separate assaults and received concurrent custodial sentences. James remains distressed by the minimal sentence that was received by the offender. He said that it is so 'unfair that someone can damage someone's life forever... and gets three to four months [in custody] for assaulting me and two others.'

James and his family were provided very little information about the offender and the court proceedings. A family member notes that the police officer was 'very nice', however, was shocked at how little information they received. They were told they would be informed about when the court proceedings were to take place and would have the opportunity to present a victim impact statement. The police officer told James' support person that 'you don't want to be there' (in relation to court). The young offender went before the court and was sentenced without James or his family's knowledge.

When the police officer informed them of the outcome of the proceedings, and the family member questioned why they were not given the opportunity to tender a victim impact statement, they said they were told 'it doesn't matter, it wouldn't have helped'. James and his family were distressed and dismayed that they had not had the opportunity to present to the Court the significant impacts of the assault on James and his family.

James and his family were not aware of the Youth Justice Victims Register when I interviewed them.

James also said he felt it was unfair that the offender was given his name in Court proceedings but he was not allowed to know the name of the person who had assaulted him because of the additional privacy afforded to him on account of being a young offender.

Recommendation 2.17: ACT Policing should adopt recommendations 4 a; b; c; d; and e⁴⁸ from the Royal Commission into Institutional Responses to Child Sexual Abuse. Being:

To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency:

a. takes steps to communicate to victims (and their families or support people where the victims are children or are particularly vulnerable) that their decision whether to participate in a police investigation will be respected – that is, victims retain the right to withdraw at any stage in the process and to decline to proceed further with police and/or any prosecution

b. provides information on the different ways in which victims and survivors can report to police or seek advice from police on their options for reporting or not reporting abuse – this should be in a format that allows institutions and survivor advocacy and support groups and support services to provide it to victims and survivors

c. makes available a range of channels to encourage reporting, including specialist telephone numbers and online reporting forms, and provides information about what to expect from each channel of reporting

d. works with survivor advocacy and support groups and support services, including those working with people from culturally and linguistically diverse backgrounds and people with disability, to facilitate reporting by victims and survivors

e. allows victims and survivors to benefit from the presence of a support person of their choice if they so wish throughout their dealings with police, provided that this will not interfere with the police investigation or risk contaminating evidence

Consideration should be given to how these actions could be adapted to meet the needs of other vulnerable victims including victims of family violence.

Recommendation 2.18: Victim Support ACT should review the information on its website to ensure that the information is accurate and informative relating to the criminal justice system, protection order applications; and Financial Assistance Scheme applications. Resources should be identified to develop:

- *Easy English guides for priority areas.*
- *Step by step guidelines and/or flow charts relating to protection order application processes and family violence and sexual assault criminal matters.*

Recommendation 2.19: Consideration should be given to developing a centralised system for information relating to victims to enable:

- *a single point of contact for all victims seeking information and updates;*
- *an automated notification system to notify victims of updates in the investigation and upcoming court dates; and*
- *improved information sharing and support for victims.*

⁴⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Executive Summary and Parts I - II*, Commonwealth of Australia, p22

Participation

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by... 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.⁴⁹

Once a victim reports a crime to police, it generally follows that they have limited control over the progression of the matter. Currently in the ACT, victims have limited opportunities to be consulted about key decisions and limited rights to participate in court proceedings.

Victims of crime in the ACT do have some participation rights.

- In relation to subpoenaed documentation: a party or someone having a sufficient interest can make an application to have subpoena completely, or partly set aside; or grant other relief in relation to it⁵⁰ or can object to a document being inspected by a party to the proceeding.⁵¹
- The court must consider, at sentencing, any victim impact statement given.⁵²
- The Sentence Administration Board must seek a victim's view at parole or release on licence hearings if they are on the Victims Register.⁵³
- Participation in restorative justice processes.

Victims also want a right to be consulted at certain decision making points in a criminal matter, such as:

- in relation to closing an investigation or the laying of charges;
- in the consideration of accepting a plea of guilty for lesser charges, modification of charges, or discontinuing prosecution;⁵⁴
- in the consideration of bail applications and conditions; and
- prior to sentencing when ACT Corrective Services prepare pre-sentence reports or Intensive Corrections Order Assessments.

Victims also want to be able to seek leave to access legal counsel and legal representation in certain situations outlined in the 'new rights to representation' section below.

Existing participation rights

Many of the participants I interviewed had experienced difficulties accessing their existing participatory rights.

⁴⁹ United Nations, 1985, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, item 6

⁵⁰ *Court Procedures Rules 2006 (ACT)*, Regs, 6604

⁵¹ *Court Procedures Rules 2006 (ACT)*, Regs, 6609

⁵² *Crimes (Sentencing) Act 2005 (ACT)*, part 4.3

⁵³ *Crimes (Sentence Administration) Act 2005 (ACT)*, s123 & 291

⁵⁴ The Victorian Law Reform Commission recommendation 24 identified the inclusion of prosecution consultation in the *Victims' Charter Act 2006 (Vic)* - Victorian Law Reform Commission, 2016, *The Role of Victims of Crime in the Criminal Trial Process*, Victorian Law Reform Commission, p 142; and The Royal Commission Recommendation 39 addresses prosecution consultation - Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Executive Summary and Parts I - II*, Commonwealth of Australia, p62

In 2015 I prepared an issues paper looking at the privacy of victims in relation to subpoenaed personal health information.⁵⁵ Currently there is no obligation on the prosecution, defence or the court to advise a victim that a subpoena relating to them has been issued. Participants in my interviews, particularly those who experienced family violence, expressed distress at the information that was made available to their ex-partners through subpoenas. None were able to seek to have the subpoena set aside by the Court or object to the applicant being able to inspect the documents as they were either unaware of the subpoena or unaware of legal options to limit access to the documents. I am also aware of instances where victims of family violence have chosen not to engage with the therapeutic services offered at VSACT for fear of their records being subpoenaed.

Victim impact Statements (VIS) are an important part of the sentencing process. The benefits of victim impact statements include:

- providing a useful aid to the sentencing court, especially in circumstances where an offender has pleaded guilty and the court has not had an opportunity to hear the complainants evidence;
- reducing the alienation that a victim may feel in the criminal justice system – without this input, the victim has no real role in the formal process with the exception of being a witness;
- providing a cathartic and psychological benefit to the victim as they can express themselves in their own words with less formality than through their police statements;
- assisting in making the sentencing process more reflective of the community's response to crime; and
- promoting the acceptance of responsibility and motivation for rehabilitation for the offender as they are confronted with the harm caused as a result of their offending.

There is evidence in the ACT that victims are routinely not being given the opportunity to provide VIS in the ACT Magistrates Court. Two victims consulted for this paper wanted to make victim impact statements but were not afforded the opportunity because the offender pleaded guilty and was sentenced on the same day (see case examples 4 and 6). In both instances the victim was unaware that the offender was before the court at all, yet they had been told by police previous to court dates that they may be able to prepare a VIS and had very much wanted to do so.

The Prosecution Policy of the ACT relating to VISs states:

8.6 Victims may make victim impact statements pursuant to Part 4.3 of the Crimes (Sentencing) Act 2005. Prosecutors should ensure that the opportunity to prepare an adequate victim impact statement has been given, and that when one is prepared it contains relevant material to assist the court in the sentencing process. They must also ensure that victims are aware of their right to present the statement as a written statement or a statement given orally in court.⁵⁶

⁵⁵ Victims of Crime Commissioner, 2015, *Protecting the Privacy of Victims in court and tribunal proceedings of subpoenaed personal health information*, <https://www.victimsupport.act.gov.au/victims-of-crime-commissioner/media-releases-issues-papers>

⁵⁶ Office of the Director of Public Prosecutions, 2015, *Prosecution Policy of the Australian Capital Territory*, p18

I understand that ACT Policing Victim Liaison Officers also have contact with victims about preparation of victim impact statements.

Recommendation 2.20: The Evidence (Miscellaneous Provisions) Act 1991 should be amended to explicitly provide victims the right to object to a subpoena or the disclosure of the contents of documents to the court or certain parties.

Recommendation 2.21: The Evidence (Miscellaneous Provisions) Act 1991 should be amended to extend protection of counselling communications for sexual assault to family violence matters.

Recommendation 2.22: Criminal justice agencies should review their practices in relation to how they provide opportunities for preparation and tendering of victim impact statements, to ensure victims can access this existing right.

New rights to consultation

In relation to decisions about whether to proceed with charges, victims at the very least want to know that their views are taken into account in decisions that are directly relevant to them. The Sexual Assault and Child Abuse Team in ACT Policing have a practice of consulting victims before proceeding to prosecution, however, they do not consult when they decide not to proceed.

The Victims of Crime Coordinator's report on the survey of victims found that 98% of respondents were supportive of the statement that 'prosecution lawyers should consult with victims prior to final decisions being made in relation to their case'.⁵⁷ The ACT Prosecutions Policy outlines that, in relation to decisions to discontinue a prosecution:

The final decision... rests with the Director. However, wherever practicable... the views of the victim will be sought and taken into account in making that decision. Of course, the extent of that consultation will depend on the circumstances of the case in question...⁵⁸

And in relation to plea negotiations if public interest is satisfied with consideration for a range of reasons, including

the views of the victim, where those views are available and if it is appropriate to take those views into account.⁵⁹

The DPP policy goes further than the existing Governing Principles require. It remains discretionary, however, whether the Office of the ACT DPP consults with a victim.

Other Australian jurisdictions place stronger obligations on prosecution to consult with victims. For example, the NSW Prosecution Guidelines state that:

The views of victims will be sought, considered and taken into account in making decisions about prosecutions; but those views will not alone be determinative. It is the general public, not any private individual or sectional, interest that must be served. Views expressed should also be recorded on the ODPP file.⁶⁰

The NSW Crimes (Sentencing Procedure) Act 1999 requires a certificate 'verifying that requisite consultation' has occurred be filed before the court takes into account 'any statement of agreed

⁵⁷ Victims of Crime Coordinator, 2008, *The experience and views of victims of crime with their rights in the ACT justice system*, Victim Support ACT, p9

⁵⁸ Office of the Director of Public Prosecutions, 2015, *Prosecution Policy of the Australian Capital Territory*, p7

⁵⁹ Office of the Director of Public Prosecutions, 2015, *Prosecution Policy of the Australian Capital Territory*, pp9-10

⁶⁰ Office of the Director of Public Prosecutions, 2007, *Prosecution Guidelines – guideline 19*,

<http://www.odpp.nsw.gov.au/prosecution-guidelines>

facts that was the subject of charge negotiations'.⁶¹ The South Australian Victims' Charter outlines specific rights for victims of serious offences to be consulted about decisions including; amending charges; withdrawing charges and applications relating to the alleged offender's mental competence.⁶²

Victims also expressed a desire for genuine consultation in relation to bail and bail conditions. Currently

*if a court is making a decision about the grant of bail to an accused person (a) the prosecutor must tell the court about any concern of which the prosecutor is aware expressed by a victim about the need for protection from violence or harassment by the accused person...*⁶³

Some victims expressed a preference for a specific right to be consulted relating to bail, acknowledging that the timeframes may be tight. Attempts should at least be made by police or prosecution to identify a victim's concerns about safety if bail is granted and the bail conditions that may provide additional safety to the victim.

A similar preference was expressed in relation to consultation for pre-sentence reports⁶⁴ and intensive corrections order assessments. Victims have a genuine interest in the sentencing outcome as it relates to their safety – and want community based sentences (including intensive corrections orders) to contain conditions that protect them.

Consultation must be meaningful. A basic consultation model involves three steps:

1. provision of information;
2. provision of sufficient time to consider the information and access advice about the information; and
3. to be listened to with an open mind.

Such a model does not result in the victim determining the outcome, indeed 'studies tend to confirm that victims do not actually seek decision-making power, [rather] they do seem to desire recognition, acknowledgement and some form of participation.'⁶⁵

Placing an explicit obligation on criminal justice agencies to consult with victims at various points in the justice system is not a radical concept that will undermine the rights of the accused. Rather these reforms recognise the integral role and interests victims play in the criminal justice system.

⁶¹ *Crimes (Sentencing Procedure) Act 1999* (NSW) s 35A.

⁶² *Victims of Crime Act 2001* (SA), s9A

⁶³ *Bail Act 1992* (ACT), s23A (1)

⁶⁴ ACT Corrections Officers have explicit powers to ask a victim of the offence for information in preparation of a pre-sentence report (*Crimes (sentencing) Act 2005*, s43 (1)(b)). This power does not appear to be used often.

⁶⁵ J Doak, 2008, *Victims' rights, human rights and criminal justice*, Hart Publishing, p 116-7

Case Example 5

A young man, Peter, was punched by a very intoxicated man at a city nightclub. The offender was not known to him and the assault completely unprovoked. After the assault, two bouncers from the nightclub took him by the arms and escorted him out and sat him on a public seat, then left him there, bleeding heavily from his fractured jaw. Peter's friends helped him and phoned the ambulance. The total lack of concern shown to him by the nightclub employees and their abrogation of their responsibility to him continues to bother Peter. He asked me to note the two recommendations he would like to make in relation to nightclubs improving safety for patrons:

- Commit to improved CCTV systems with clear recordings
- Address training and staffing levels of security staff

Peter's serious injury required surgery. He was off work for several weeks. The consequences to him have been significant. He described feeling fearful of playing the contact sports he loves; ruminating about the assault and struggling with his concentration as a result; struggling with his relationship with his girlfriend and feeling angry; avoiding activities that remind him of the assault; being on guard, watchful and jumpy and losing motivation to do the outdoor activities he used to enjoy.

After the assault he found it difficult to get information from police. He felt like he had to chase them for information. He was keen to prepare a VIS and to present it in court himself. He felt that the prosecutor tried to dissuade him from presenting the VIS himself. With support from his VSACT case manager he insisted on presenting the VIS himself and found the experience positive in terms of having a chance to voice his experience to the court and the offender.

Recommendation 2.23: The Crimes (Sentencing) Act 2005 should be amended to provide explicit requirement for assessors preparing Intensive Corrections Order assessments to consider the protection needs of victims and give the power to ask victims for information, similar to provisions existing for pre-sentence reports.

New rights to representation

Victims should be able to have assistance from a legal advocate to step in when ridiculous questions are being asked [of the victim] and assist in participation.

A number of participants and several of the stakeholders were supportive of the concept of victims of crime having access to legal representation in criminal proceedings. The Victims of Crime Coordinator's survey indicated that 86% of clients who responded agreed with such a proposal.⁶⁶

It can be suggested that in order to make full use of the existing and any future participation rights, some victims may benefit from access to legal counsel for advice and or representation. This is most obviously important in relation to a victim seeking to limit personal health information that can be

⁶⁶ Victims of Crime Coordinator, 2008, *The experience and views of victims of crime with their rights in the ACT justice system*, Victim Support ACT, p 11

obtained by defence.⁶⁷ Objecting to a subpoena or seeking to limit a party's access to documentation that is subpoenaed is legally complex. Victims should be provided with the specific right to assert in court, any objections to subpoenaed information being accessed or provided to the defence. This right must be supported by access to legal representation for these purposes.

Other points within the criminal justice system that may evoke the need for legal representation for victims may include where the offender has made an application to have their identity suppressed and the victim does not agree. One victim I spoke with pointed out that suppressing the identity of alleged child sexual offenders can have the effect of limiting the opportunity for other victims to come forward, and is not necessary for protecting the identity of victims.

Ideally, victims of violent crime should be able to seek leave to access legal representation where their rights as defined in the Charter of Victims' rights are not being addressed. The right to access legal representation needs to be supported by the provision of funding.

Child victims have a particularly compelling need for access to legal advocacy and representation. Many parents I have spoken with are reluctant to report crimes against their children (sexual assault being the predominant concern) because of their realistic fears about the additional trauma they may experience in the criminal justice process. Legal representation of child victims can be engaged to assist them to make informed submissions in relation to consultation rights; minimise improper questioning in cross-examination; and seek to minimise delays.

Recommendation 2.24: A legal provision should be drafted to give the President or an appropriate Commissioner in the ACT Human Rights Commission the right to seek legal counsel on behalf of a victim. The HRC should be provided with a discretionary fund to finance legal counsel.⁶⁸

Recommendation 2.25: Child victims should be given special attention when consideration of the expansion of victims' rights and access to legal advocacy and representation; including consideration of an intermediary scheme.

Accountability and redress

Accountability leads to empowerment. The knowledge that you can do something about it if things aren't working is empowering.

Many of the victims and stakeholders I spoke with raised the issue of accountability and enforceability of victims' rights in the ACT.

One victim commented that errors made within the courts tend to favour the offender and the offender has multiple pathways for recourse, whereas a victim has no way to seek recourse or redress.

The Royal Commission recognise this issue in highlighting the challenge for victims when prosecutorial decisions do not comply with guidelines where 'there is no mechanism for a victim to

⁶⁷ Legal Aid NSW run a Sexual Assault Communications Privilege Service: 'a victims legal service that helps protect the privacy of counselling notes and other confidential therapeutic records in criminal proceedings involving sexual offences.' <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/sexual-assault-communications-privilege-service>

⁶⁸ It is anticipated, based on the experience of the South Australian Commissioner for Victims Rights, that legal representation would only rarely be required.

complain or seek a review and there is no general oversight of ODPP decision-making.⁶⁹ Consideration should be given to developing a 'robust and effective formalised complaints mechanism'⁷⁰ specifically in relation to DPP decisions, in addition to the expansion of victims' participation rights. The Victorian Law Reform Commission recommend imposing 'an obligation on investigatory, prosecuting, and victims' services agencies to provide accessible and transparent complaint-handling systems and offer fair and reasonable remedies.'⁷¹

In essence, there is little point having guidelines, governing principles, or rights if there is limited scope for rights holders to complain, seek review or enforcement; limited transparency and no redress available.

In certain areas, for example in relation to children and young people, the range of existing oversights and mechanisms for accountability create a complex system that makes it challenging for children and young people to make effective complaints and access redress. For example, within the child protection space the oversights include: the Human Services Regulator; Public Advocate; the Ombudsman; and the ACT Human Rights Commission. Any accountability mechanism developed needs to consider the needs of children in accessing their rights.

Recommendation 2.26: Criminal justice agencies and victims' support services should be obligated to provide transparent and accessible complaints processes with appropriate remedies. If victims are unhappy with the outcome of agency complaints the complaint may be referred to the Human Rights Commission in accordance with recommendation 10 in part 1.

Recommendation 2.27: Victims should have the opportunity to seek internal reviews of key prosecutorial decisions and be provided with information about how to do this when being notified of decisions.

Beyond the scope of the Charter of Rights

Privacy and the media

Offenders have many rights around privacy. An example is that media are not allowed to print prior history about an offender prior to a trial as it can be prejudicial to a jury, however a victim and their families are fair game even though that also has the potential to prejudice a jury. The deceased victim literally has no way to defend themselves and the grieving family should not have to.

~

I would like to see in my lifetime that both the offender and the victim are not reported on until after court proceedings to ensure it does not affect the outcome a trial either way.

Victims and stakeholders raised a number of issues with me in relation to their concerns about victims' rights to privacy. I have addressed some of these in earlier sections, for example, in relation to subpoenas.

⁶⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, 2017, *Criminal Justice Report – Executive Summary and Parts I - II*, Commonwealth of Australia, p63

⁷⁰ *Ibid*, p65

⁷¹ Victorian Law Reform Commission, 2016, *The Role of Victims of Crime in the Criminal Trial Process*, Victorian Law Reform Commission, p65

Privacy is also of concern to victims in relation to how the media reports on victims. The media has ethical, and in some instances, statutory obligations to maintain the privacy and reputation of victims, including deceased victims. Victims who are interviewed by the media want to know when their stories will be aired. LGBTIQ victims should not have to fear being 'outed' by media. Our Watch published a guide for media on *Reporting on Sexual Violence* and the ACT Women's Centre for Health matters prepared guides on reporting on domestic and sexual violence.⁷² ⁷³ A similar guide should be available relating to victims of crime.

Recommendation 2.28: The Victims of Crime Commissioner should explore opportunities to work with other agencies towards the development of national guidelines for media reporting relating to victims of crime.

Victim Support Services

Victim support services assist victims through the provision of information, advocacy, support and therapeutic services. They are uniquely placed to provide helpful guidance and assistance to victims in relation to understanding and accessing their rights in the criminal justice system. In order to do this, victim support services need to be flexible and responsive.

Several of the victims that I spoke with were frustrated with the time it took to access services through VSACT with wait times in early 2017 reaching approximately six weeks. For example:

- 'Barbara' was referred to VSACT by ACT Policing. She was really struggling at this time. It was six weeks before she was allocated to a case manager who could provide information about courts and applying for a protection order; and another four weeks before she was able to see the counsellor VSACT referred her to for assistance managing her anxiety. Barbara would have found the court process less daunting if she had had access to the information before the court process started (rather than half way through); and would have preferred to get assistance managing anxiety earlier.
- 'Dave' self-referred to VSACT. After providing his details and circumstances to an intake worker it was seven weeks before he was contacted again. He was allocated to a case manager eight weeks after he initially contacted the service.

The Aboriginal women I spoke with wanted service responses to be flexible to their needs. Aboriginal woman told me they only contacted police when they were in a crisis, fearing for their lives and the lives of their children. They also want to see non-criminal justice responses to their situation where the focus is on stopping the violence and putting into place culturally appropriate supports for themselves, their children and their partners.

VSACT needs to respond to Aboriginal and Torres Strait Islander clients with greater immediacy and flexibility. The recent appointment of an Aboriginal and Torres Strait Islander Victim Liaison Officer will assist VSACT to develop that capacity.

⁷² <http://www.wchm.org.au/resources/guides-to-reporting-on-violence-against-women/>

⁷³ Our Watch, 2014, *Reporting on Sexual Violence*, online resource:

https://www.ourwatch.org.au/MediaLibraries/OurWatch/Images/ourwatch_reporting_on_sexual_violence_aa_v1.pdf

Case Example 6

Wendy was assaulted by a heavily intoxicated, unknown woman twice in a public place. There were multiple bystanders who watched without intervening. The offender was on bail for a similar offence at the time that she assaulted Wendy.

She reported the assault to police and found the police officer compassionate and empathetic.

Wendy was told that she would be able to give a victim impact statement for the assault, however, she was not notified about the court dates or the outcome of the proceedings. Her VSACT case manager contacted police to find out the outcome on Wendy's behalf. The offender had pleaded guilty to common assault and obstructing territory official and was placed on 12 month Good Behaviour Order, with a supervision component and a condition to attend drug and alcohol counselling. Wendy is deeply disappointed that she didn't get to attend any of the court proceedings or deliver her victim impact statement. She is also unhappy with the sentence.

Wendy is working with VSACT and the Restorative Justice Unit in the hope of being able to engage in a face-to-face restorative justice conference with the offender. She hopes to give the offender a letter outlining the impact of the assaults and hopes that this will result in an apology.

Wendy was not always able to access the services she needed, when she needed them. This includes Victim Support ACT where she waited for six to eight weeks to be allocated to a case manager. Wendy has been left with a concern that 'the system will not look after' her or others who experience violent crimes.

Wendy provided some specific thoughts on how the service system could better respond to victims of crime – these can be found at Appendix C.

Recommendation 2.29: ACT Government conduct a review of the operation of the Victims of Crime Regulation 2000 with consideration to improving responsiveness and flexibility in the types of services that can be delivered for victims of crime in the ACT.

Protection order issues

The Charter of Rights will focus on the rights of victims in relation to the criminal justice system. Many victims of crime also intersect with the civil justice system when making applications for protection orders – most commonly in the form of family violence orders, but also personal protection orders.

Recent amendments to the *Family Violence Act 2016* that enable police to make applications for family violence orders on behalf of victims are an important reform that can and should be used widely, with consent from victims.

I spoke with many victims who had applied for family violence orders (formerly known as domestic violence orders)⁷⁴ and one victim who applied for a personal protection order. All expressed

⁷⁴ For the purposes of this report, if the protection order was obtained prior to the commencement of the *family Violence Act 2016* I will refer to it as a Domestic Violence Order.

frustration in the application process, the serving of interim orders and many with the enforcement of breaches. The length of time it takes to finalise orders was raised several times.

The National Domestic and Family Violence Bench book describes how perpetrators 'may use a range of litigation tactics to gain advantage over or to harass, intimate, discredit or otherwise control the other party', known as systems abuse.⁷⁵ One woman I spoke with spent \$30,000 on legal fees and had to agree to mutual consent orders because she ran out of money; another spent \$45,000. One of these victims walked away from the process with a sense that there was a 'deep suspicion of victims' in the whole process.

Case Example 7

'Jill' experienced extreme violence from a partner in another state and fled to Canberra with her children. She is now in hiding. She went to court to try to get her protection order registered in the ACT and was told that she could not get an order here because the perpetrator was in custody so she was considered 'safe'. The perpetrator was phoning her from custody, but this was not recognised as breaching the order because she was in a different jurisdiction. On another occasion she was told she had to put her address on the form so that the perpetrator would know where not to go to avoid breaching.

At least three victims voiced frustrations relating to the serving of the interim order.

Case Example 8

When Jennifer applied for a domestic violence order the respondent was not served with the interim order for three months. During that time, he continually attended her residence and general duties police officers were called out to intervene. These officers told Jennifer that because they did not have access to the subpoena they could not serve it and because it had not been served, he could not be charged with breaching the order.

On two separate dates there was confusion at the court about whether an application to amend the order had been served on the respondent who was in custody at the time. The order had been served (several weeks prior), but the paperwork confirming this was not readily accessible to the registrar. Jennifer had to manage the stress and burden of attending court unnecessarily because of this.

⁷⁵ National Domestic and Family Violence Bench Book, 2017, '3.1.11 Systems abuse', <http://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>

Case Example 9

When 'Barbara' applied for a personal protection order, she assumed that the respondent had been served, only to find out at case conference that it was only served a few days prior. This impacted on her confidence in the system, made her feel that she had 'slipped through the cracks' and in turn her sense of safety – it shocked her to know she would have had no recourse had respondent contacted her before her was served with the order (Barbara has provided a full account of her experience and suggestions for those who attend court for protection orders at Appendix D).

VSACT advocates observed that there was a lack of consistency in the way protection order breaches are responded to – with some officers more likely to regard actions as 'reportable breaches' than others.

Participants frequently expressed their perception that perpetrators used protection order

Case Example 10

'Jessica' was a victim of domestic violence during a 2.5 year relationship. She reported one incident of violence to ACT Policing and subsequently applied for a Domestic Violence Order. Jessica's ex-partner was wealthy and engaged a 'top-tier' lawyer to contest the application. Jessica spent \$45,000 on legal fees pursuing her application. She eventually agreed to consent orders after feeling pressured to finalise her application.

Jessica spoke of feeling as though she were "on trial" during the DVO proceedings. She was extensively cross-examined by a QC. Jessica was deeply distressed by the fact the respondent in her application, (who was facing charges in the Supreme Court for offences against her) was able to subpoena all her medical records, psychologist records, and educational transcripts. She was only made aware of this because her psychologist informed her that he had been served a subpoena to relinquish her records to the Court.

Jessica described her experience in securing a protection order in NSW in stark contrast to her experience in the ACT. There she reported an incident, the police officer recommended the need for a protection order and sought her consent to apply for an order on her behalf. The police officer made the application, which was granted, without Jessica having to attend court, employ legal counsel or face cross-examination.

processes and family law processes to exert control over them. Another very common theme was that women who had experienced family violence felt they needed to prove to police and the courts that they felt unsafe.

Recommendation 2.30: Government should conduct a review of information available for family violence and personal protection order applicants and ensure information for victims is accessible, including information about seeking legal representation.

Recommendation 2.31: ACT Policing should be obligated to contact the victim when the respondent is served with an interim order.

Recommendation 2.32: ACT Policing should collect data on the time it takes from receiving interim orders to serving them.

Recommendation 2.33: The Family Violence Act 2016 should be amended to allow an adult child (over 18) to be a named party on their parent's protection order with their consent.

Part 3. Operation of the ACT Victims' Registers

The *Crimes (Sentence Administration) Act 2005* (CSA Act) governs the adult and young offender victims' registers⁷⁶ and involvement of victims in parole hearings.

The Director-General, Justice and Community Safety Directorate (JACS), must maintain a register of victims of adult offenders. The Director-General must enter in the register, information about a victim of an offender that the victim, or someone acting for the victim, asks the Director-General to enter in the register.

As soon as practicable after entering the victim's information in the register, the Director-General must give the victim information, orally or in writing, about the following:

- (a) the role of the ACT Sentence Administration Board;
- (b) the rights of registered victims to information about offenders who are sentenced;
- (c) the role of victims in relation to the release of an offender from imprisonment under a parole order or licence.

The Director-General, Community Services Directorate, (CSD), must maintain a register of victims of young offenders. The Director-General must enter in the register information about a victim of a young offender that the victim, or someone acting for the victim, asks the Director-General to enter in the register.

As soon as practicable after entering the victim's information in the register, the Director-General must give the victim information, orally or in writing, about the rights of registered victims to information about young offenders who are sentenced.

Some registered victims have expressed concerns about the operation of the ACT Victims' Registers and the refusal by the Director-General and the Sentence Administration Board to give them information about a prisoner's rehabilitation since sentencing.

Recommendation 3.1: The operation of the ACT victims registers should be reviewed, particularly the objects of the Registers and the nature of information that can and should be provided to victims under the current legislation.

Recommendation 3.2: A report on that review should be tabled in the ACT Legislative Assembly to ensure transparency, accountability and the opportunity for community debate.

Adult Offenders Victims Register

ACT Corrective Services operates the adult victims register on behalf of the Director-General, JACS. The CSA Act provides the examples of information that may be disclosed to victims including:

If the offender is serving a community based sentence:

- Any non-association or place restriction order that applies to the offender
- The place where the offender may do community service work or attend a rehabilitation program

If the offender is service a custodial sentence:

- The correctional centre where the offender is detained

⁷⁶ Chapter 10

- The offender’s security classification in detention
- The offender’s parole eligibility date
- The death or escape, or any other exceptional event relating to, the offender

The CSA Act states that the Director-General (JACS) may also disclose ‘information about the offender to a registered victim of the offender if satisfies the disclosure is appropriate in the circumstance.’⁷⁷

In a survey conducted by the Victims of Crime Coordinator in 2008, 84% of victims in the Victims of Crime Coordinator’s survey agreed that ‘victims of crime should be allowed to know more about the rehabilitation of the offender in their case’.⁷⁸

Sentence Administration Board

The Sentence Administration Board makes decisions about breaches of intensive corrections orders and the release of offenders on parole or on licence⁷⁹ The CSA Act⁸⁰ requires the Board to provide victims (including but not limited to registered victims) an opportunity to:

- make a submission to the board about a parole order being made for an offender, including the likely effect on the victim (and their family) of the offender being released on parole; or
- tell the board about any concerns relating to the need for protection from violence or harassment by the offender.

Unlike victim impact statements that are limited to addressing the impact of the crime,⁸¹ submissions to the Board can address all matters relevant to the Board’s consideration of the ‘public interest’ test in assessing parole. Accordingly, the CSA Act allows the Board to provide information about the offender to assist the victim to make their submission. An example in the Act includes ‘the offender’s conduct while serving the sentence.’

In deciding whether to make a parole order for an offender, the board must consider any submission made to the board by a victim of the offender and the likely effect of the offender being paroled on any victim of the offender, and on the victim’s family, and, in particular, any concern, of which the board is aware, expressed by or for the victim, or the victim’s family, about the need for protection from violence or harassment by the offender.

Conduct of parole inquiries

The Board is required to observe natural justice in the conduct of parole inquiries, and that requirement is not limited to providing natural justice just to the prisoner.⁸² The requirement for natural justice applies to victims because victims have a particular interest in, and can be adversely affected by, a Board’s parole decision.

⁷⁷ 216 (1) CSA Act.

⁷⁸ Victims of Crime Coordinator, 2008, *The experience and views of victims of crime with their rights in the ACT justice system*, Victim Support ACT, p 10. NB The research and report were prepared in for the ACT Government’s Review of the *Victims of Crime Act 1994*. Surveys were sent to 265 clients of Victim Support ACT, 56 surveys were completed and returned.

⁷⁹ More information is available here: <http://cs.act.gov.au/page/view/921/title/victim-involvement-with-parolelicence-decisions>

⁸⁰ S124 (1)

⁸¹ delivered by victims at sentencing proceedings in Court

⁸² Ss. 196(1) & 180(a)(ii)

Victims are denied natural justice if the Board refuses them access to the documents and reports relevant to a prisoner's progress in relation to rehabilitation and upon which the Board will consider the prisoner's parole application.

Examples of the information that victims need to make informed submissions are:

- progress in the prisoner's rehabilitation or other behavioural changes in assessing the likely impact on the victims if the prisoner is granted parole;
- matters raised in reports and other material relied on by the Board in their decision making, for example, differing expert views.
- errors of fact or omissions that may occur in reports or other evidentiary material presented to the Board

That type of information is not being given to victims. The information that is given is strictly limited to the core examples set out in the Act⁸³ and the Director-General's discretion to release other information that is 'appropriate in the circumstance' has to my knowledge, never been exercised.

Definition of victims

Victims may only be registered for the duration of an offender's sentence. If the offender goes on to commit offences against other people, any 'former' victims are not considered victims of that offender any longer.

A victim's experience of crime does not end when the offender completes their sentence. Many carry the effects of the crime for the remainder of their lives and retain an interest in whether the offender has made genuine attempts at rehabilitation. A degree of discretion should be available to those making decisions about what information to provide to victims, both past and present.

Young Offenders Register

The Victims Register that is maintained by the Community Services Directorate has never functioned properly since it was established in 2005. A very small number of people have been registered in that time mainly because little or no resources are applied to its operation.

Conclusion

Victims registers can serve a valuable purpose in our justice system. They provide opportunities for victim participation in decision making; they assist our correctional and releasing authorities to exercise their functions properly and they work to promote the safety of our community.

Victims of crime consistently tell us they want information that will help them recover from crime and protect their safety. They want to be kept informed and they want to be able to meaningfully participate in justice procedures. The CSA Act sets out a framework that allows victims those opportunities; opportunities that are being denied them by the current narrow interpretation of the provisions.

The operation of the Registers need to be reviewed to give full effect to the intention of their existence.

⁸³ Although there is resistance to give even this information at times.

Appendices

Appendix A: The consultation process

In preparing this report, I conducted interviews with individuals and stakeholder representatives for the specific purpose of exploring with them what a Charter of Rights might contain. During April to September 2017, I conducted 10 interviews and two focus groups. In total I spoke with 24 individuals – 19 females and five males. Just over half the people I spoke with were victims of domestic and family violence (one male and 14 females). One of the focus groups was with a group of 10 Aboriginal women. I also spoke with:

- three family members of homicide victims;
- two family members of children who were sexually assaulted;
- two adult sexual assault survivors;
- an adult who had experienced sexual harassment and stalking; and
- three people assaulted by persons previously unknown to them.⁸⁴

Many participants were previous or current clients of Victim Support ACT. I have provided advocacy for some in the past; others were identified by case managers as people who had an interest in voicing their experiences in the hope of contributing to positive reforms. All were briefed on the project, ensured that the personal information they shared would be treated as confidential and given the opportunity to opt out at any time.

To recognise the specific issues experienced by certain groups I interviewed:

- two people representing the interests of the culturally and linguistically diverse (CALD) community;
- three people representing the interests of children and young people;
- two people representing the interests of the LGBTIQ community; and
- two people representing the interests of people with disabilities.

Throughout this report I have referred to these individuals as advocates for their particular community, e.g. advocates for the CALD community.

I also conducted stakeholder meetings with groups of victim advocates: case managers and intake workers from my agency (Victim Support ACT); and Michael O’Connell, South Australian Commissioner for Victims’ Rights and a group of defence lawyers who work with Mr O’Connell.

I took an informal approach to interviewing participants and stakeholders, basing my questions on the Interview Guide below, with variations for advocates of particular communities. All participants were provided with the opportunity to provide feedback on the draft report.

⁸⁴ Several victims had experienced more than one crime type.

Victims Charter Interview Guide

Welcome & introduction:

Background

Totally confidential discussion – opt out at any time

General discussion: the frustrations you experienced whilst dealing with the situations you faced with the justice system

General discussion: the areas you felt were dealt with well

What areas do you feel should be streamlined or adjusted to make the dealings you had with the justice system easier?

Existing rights contained in the following acts (DO NOT NEED TO COVER ALL THESE):

- VoC Act
- Bail Act
- Victims Registers

Ask these questions:

1. Are these rights being delivered adequately
 2. Where should they be strengthened or extended
 3. Identify any new rights you feel would enable you to deal with authorities more effectively
-

Is there anything further to add in relation to the following:

1. Privacy
 2. Participation
 3. Support
 4. Information (timeliness/accuracy/conveying information sensitively and respectfully)
 5. Advocacy
 6. The needs of child victims
 7. The needs of victims who are participating as witnesses.
-

Wrap up:

The next steps, development of the Consultation Report, timeframe

Call me if you think of anything else to add to today's discussion

Appendix B: Positive feedback from victims

In relation to ACT Policing, VSACT advocates pointed out that there are many examples of police going out of their way to be helpful and supportive of victims of crime. Other positive feedback relating to police included statements by victims that 'police do a fabulous job' and 'were mostly helpful and supportive'.

Many people who had experienced domestic violence mentioned the work of the Domestic Violence Crisis Service (DVCS):

- I get more updates from DVCS... who keep me updated via text messaging as part of the case tracking. That is good and I can ring them if I want more information.
- DVCS are great
- DVCS were particularly helpful providing guidance about how to address financial and privacy issues.

Other services were mentioned for their good work included:

- Victim Support ACT and the volunteer court support program;
- Legal Aid ACT;
- Canberra Rape Crisis Centre;
- 1800 RESPECT (national counselling helpline); and
- Diversity ACT.

Two participants specifically mentioned how supportive their workplaces were, for example:

My workplace was very good to me. They have a DV policy that they promoted (I was their first 'customer'), although the language in the policy is very gender neutral. DV training is mandatory for all managers. They gave me time off work to hide my black eyes and broken nose from my colleagues. They kept that confidential so I didn't feel ashamed in front of my colleagues when I returned to work. They gave me a salary advance to help cover the costs I incurred as a result of my injuries. I work for a Commonwealth Dept.

Appendix C: Wendy's recommendation for service reform

First line support officer – to follow up with the survivor within 24 to 48 hours to check in and see how they are doing and how this event may impact on them. This support officer can assist the survivor to access any services they need urgently, for example immediate needs payments in the Financial Assistance Scheme.

As the first line of support what would be beneficial for them to assist with;

- Helping the survivor to understand the process end to end process including;
 - i. The agencies that provide support
 - ii. What type of support will be given
 - iii. When to expect the agency to make contact and what the timeframe for that is
 - iv. Who to contact if they agency(s) do not make contact
 - v. Advise of general information, like the 'Restorative Justice System' and the 'Victims Register' and maybe a take away pamphlet on what they are and why the survivor may want to participate
- Provide crisis numbers
- Organise initial medical appointments
- Liaise with the survivors work if they are not able to attend – etc. if the survivor hasn't already done so
- Following up with police and DPP on the court proceedings, outcomes and if attendance is required and when that might be
- Assist with writing a victims statement and/or attending court
- Helping them with applying for compensation – escalating to the appropriate person if urgent financial assistance is required

Once an ACT Victims Support case manager is assigned, the first line support officer arranges a meeting with the case manager, survivor and themselves, to introduce the survivor to the case manager. This ensures continuity and less impact to the survivor due to moving to the case manager. I.e. it is likely they have built up trust with support officer, so if they were just handed over without a meeting like this, they could experience anxiety.

Appendix D: Applying for a personal protection order

Barbara put together a summary of her experience applying for a personal protection order related to sexual harassment and stalking. This content will be uploaded to the VSACT website to help guide others:

My need for a protection order stemmed from a professional relationship with a male colleague 30 years older than me. After a year working together he attempted to make a sexual advance toward me and physically restrained me when I rebuffed. Unsure what to do, I brought the incident to the attention of my employer, who terminated his employment. After a couple of weeks I began to receive regular text messages, Facebook messages and phone calls from him which I ignored. I also blocked him on all social media. I began to get increasingly worried over the months as the tone of the messages changed from regret and anxiety to blame and anger.

After three months, he was waiting for me outside work one morning with a handwritten letter. That morning I feared for my life. A part of me worried that he would run me over with his car. I was hysterical, and phoned the police to lodge a report. The police recommended I get a protection order against him and referred me to Victim Support ACT.

I went straight to the Magistrates Court and was granted an interim order against him. Despite having the order in place, I struggled to be at work because he knew where I was. I suffered with anxiety, found it difficult to sleep and lost my appetite. I'd take different routes to work or organise appointments for first-thing in the morning so I wouldn't have to go straight there. I began to suffer from frequent migraines and had to keep missing work to see my doctor. Eventually I went on stress leave because I had worn myself down to a shadow of the person I was, and the employee my work had come to expect.

Five weeks after my first court date, I returned for a mediation with him. I was terrified. I already hadn't been sleeping well, and that morning I was a nervous wreck. I wasn't sure if I was more worried that he would arrive or that he wouldn't. I felt underprepared, even though I had done as much research online as possible and had spoken to an acquaintance who had used to work with victims of crime.

When it was my turn, the registrar told me the order hadn't been served so there wasn't much we could do. I felt a range of emotions - mostly anger, fear and disappointment. In that five weeks I had believed I was safe from him, but the reality was if he had contacted me or confronted me, there would've been little I could actually do. I felt betrayed, like my case wasn't really worth the time. Despite the registrar assuming he wasn't there, he had been served only days before and had turned up. He refused to discuss the matter further until he had sought legal advice, so my case was adjourned for another two weeks.

When I returned to the court two weeks later, he offered a letter of undertakings but refused to accept responsibility, instead chiding me for my "interpretation" of events. I realised that despite him doing the wrong thing, he still held all the power, as he warned me that if I did not agree, he would be "forced" to take me to court. I refused to accept his offer and decided to proceed with a hearing in front of a magistrate. Our court date was set for nearly three months later, so I relaxed a little bit. The interim order was still in place.

Three days after this court appearance, I met with my case manager from Victim Support for the first time. She was knowledgeable, supportive and helpful, and in retrospect it would've been better to see her much, much earlier. She recommended counselling and referred me to a psychologist, who I

saw six times over the coming months. Meeting with the psychologist greatly relieved my anxiety, as she helped me to find coping techniques. In the end, I had to change jobs because I just found it too hard to continue to be there, day after day, knowing that he knew where I was.

I began to find my sanity, and before I knew it, three months had passed and the court date loomed ahead.

I hadn't updated my LinkedIn profile with my new job details because I hadn't found a way to block him on that particular platform and I knew he could view my profile if he so chose. A couple of weeks after leaving my job, I got a notification that he had indeed viewed my LinkedIn profile. My first reaction was despair. It was eight months since the first incident when he'd been fired, nearly three months since we were last in court, and I had hoped he had calmed down and moved on. This notification, his name staring at me from my phone, announcing he'd viewed my profile, hit me like a train: he was still obsessed, he was still looking for me, he still wanted to know where I was. My second reaction was determination. I had fears that the magistrate wouldn't take my case seriously, that it was an infatuation and nothing more, and this gave me the drive to continue, to fight for my case, to have my day in court.

The court process was terrifying. I felt like it was designed to intimidate me, when I was already in a vulnerable position. Despite the general feeling of the courts, my interactions with everyone there - from Legal Aid to security to registrars and the magistrate - were positive.

There were so many times where I wanted to just drop the case. It would've been easier to just shrug it off, to just put up with the harassment - I kept telling myself that it wasn't like he was hitting me - but to look at it objectively, he was still a man, much older than myself, who I'd only ever had a professional relationship with, and who had become fixated on me to the point where I feared for my safety. And my stubbornness got the better of me because I wanted him to know that his behaviour wasn't okay.

Looking back, it was one of the hardest things I have ever gone through. It took up the better part of a year of my life. It took my job, because I found it hard to continue to work there. It affected my physical health and my mental wellbeing. It affected my relationships with people. By the time I got to the hearing with the magistrate, it was the first time I had been face-to-face with him in six months, and I remember thinking, "Really? You're going to let this guy ruin your life?" Being in the room with him was not as terrifying as I had imagined in. In fact, a sense of calm washed over me, because I knew that I was doing the right thing.

No matter what the outcome, I think it's important to know that you've done the right thing. You've made a stand against something that's unacceptable. I am glad that the services provided by Victim Support are available, but I think there needs to be more awareness and a faster intake process. I didn't get to see my case manager until two months after the matter had been taken to the police and by that stage I had already been to court three times. If I hadn't known a friend of a friend who could assist me through the process, particularly with what to expect and literally what to do the day of court, I know I would've felt completely overwhelmed and lost. Once I had my case manager, though, the communication was excellent. She continued to check up on me, which is what you need, because it validates that what you're feeling and what you've experienced is something that deserves some kindness and support.

My Day in Court - What I wish I'd known

- 1. Alternative car parking.** My car is very noticeable and I was concerned about the defendant recognising it and possibly damaging it. While parking at the Courts is convenient, I opted instead to park on the roof of the Canberra Centre building. It cost \$11 for all day parking; that way I knew my car was safe and I wouldn't need to run out to the machine to put in extra money. The walk to the Courts helped me prepare and clear my head too.
- 2. Headspace.** I brushed off my psychologist when she warned me of this, and despite being relatively calm and prepared, I was in a completely different headspace on the morning of court, making lots of tiny little mistakes like leaving my car keys in the house and taking the wrong exit. Your mind will be so preoccupied with the court process and what might happen, that it's a good idea to limit other tasks. If possible, have someone drive you or catch public transport.
- 3. Court support volunteer.** Whether you have support or not, it is helpful to accept the offer of a court support volunteer through Victim Support ACT as they understand the court system.
- 4. Arrive early.** Upon arriving at the Courts, you must go through a security check and then take a ticket from a machine to register at the counter. It's a good idea to arrive as early as possible, to avoid confrontation in the foyer.
- 5. Legal Aid office.** Once registered, you can wait in the Legal Aid office behind the reception area. This space is locked and staffed by Legal Aid officers, so you can wait in peace without being intimidated by the defendant. There isn't any access to toilets though, but Legal Aid officers or security can escort you if you need to use the facilities.
- 6. Bring a snack and water.** The court process can take all day, so it's a good idea to pack a snack and a bottle of water, to keep blood sugar levels up and your mind focused.
- 7. Representation.** I ended up visiting the court three times before my case was presented to a magistrate for ruling. At no point was it clear that I could hire a lawyer to represent me, or that I could submit evidence or bring along witnesses.
- 8. Fees.** There are no fees concerned with applying or implementing a protection or domestic violence order, unless you choose to be represented by a lawyer, in which case you must pay the lawyer's fees.
- 9. Write a statement.** I ended up writing down my experience and feelings in the form of a Victim Impact Statement, and while I didn't need it in court, I had it in front of me and when I was being asked questions I could refer to it so that I didn't forget anything I wanted to be known. It is so overwhelming, particularly once you're in the court confronted by the defendant, so it was helpful to have that with me.