



ACT
Government



VICTIM SUPPORT
PROMOTING RIGHTS & RECOVERY

Standard Operating Procedure

Victim Support ACT – Notification and Review of Eligibility Decisions

Purpose

This Standard Operating Procedure (SOP) outlines the legislative processes that Victim Support ACT is required to adhere to in relation to the notification and review of eligibility decisions, as set out in the *Victims of Crime Act 1994* and *Victims of Crime Regulation 2000*.

This SOP also outlines the process for the individual who has been assessed as ineligible, to apply to the Victim of Crime Commissioner to have the decision internally reviewed and if not satisfied by the outcome of the internal review to submit an application to seek a review by the ACT Civil and Administrative Tribunal (ACAT).

Scope

This SOP applies to all VSACT staff members who make decisions regarding a person's eligibility for the Victims Services Scheme in accordance with the *Victims of Crime Regulation 2000*.

This SOP only applies to individuals who are deemed ineligible to receive **any** services under the victim services scheme. In other words, it does not apply to decisions relating to granting level 2 or level 3 hours of service or additional services that might be offered under exceptional circumstances.

Background

The first point of contact with Victim Support ACT (VSACT) is through the Early Intervention Team where a determination is made as to whether an individual seeking services is deemed as eligible or ineligible for the Victim Services Scheme. A decision made that a person is not eligible for the Victims Services Scheme by a staff member on behalf of the Victims of Crime Commissioner is an **internally reviewable decision**.

Important Concepts

Eligibility

Eligibility for the Victims Services Scheme is determined by the Regulation.

Any **eligible victim**¹ is entitled to some service under the Victims Services Scheme.

¹ S34 Victims of crime regulation 2000.

An eligible victim has experienced a crime in the ACT². The crime does not need to be reported to police.

Ineligibility

A person who **experienced harm as a result of committing an offence is not an eligible victim**.

A person who is **a victim of a motor vehicle offence** is generally not an eligible victim, one exception being that should there be a charge of culpable driving causing serious injury or death, the victim or related victims **would** be eligible to receive services from the victim services scheme.

Another exception would be where a person was driving in a dangerous or reckless manner to intimidate a person in the car with them who had a relevant relationship with them, the definition of relevant relationship being contained within the provisions of the *Domestic Violence and Protection Orders Act 2008*.³

Advocacy may be available for people who experience harm caused by, or arising out of the use of a motor vehicle, at the discretion of the Victims of Crime Commissioner. For example a person may contact VSACT to report that they had been present when their motor vehicle was being stolen and they tried to prevent this by standing in front of the vehicle, however were required to move out of the way to avoid injury as the offender drove off in the vehicle. When reporting this to police the person may be dissatisfied with the police response. They then can contact the Victim of Crimes Commissioner to seek advocacy.

If someone who **experienced a crime in another state** makes contact, VSACT will assist them with information and contact details of support services in their state / territory, or make a formal written referral.

Steps to follow if a person is deemed ineligible

Victim Support ACT Responsibilities – initial decision

When it is determined that a person is not eligible to receive services under the Victim Services Scheme, Victim Support ACT must prepare a written internal review notice that must be provided to the individual. It must contain the following information —

- (a) a statement saying they are ineligible to receive services under the victim services scheme
- (b) a rationale as to why this decision has been made
- (c) advice that the person may apply to have this decision reviewed and what they need to do to progress a review of the decision.

The intake worker should make use of the template cover letter and Internal Review Notice as at Appendix A.

The internal review notice must adhere to the requirements of Section 67B (3) of the *ACT Civil and Administrative Tribunal Regulation Act 2009*.

<http://www.legislation.act.gov.au/sl/2009-1/current/pdf/2009-1.pdf>

² 'The Victim must have been the victim of an 'offence' against a law in force in the Australian Capital Territory', Explanatory Memorandum, Victims of Crime Bill 1994, p2.

³ This issue will be articulated in a future VSACT domestic violence policy.

The intake officer will record that an internally reviewable decision has been made and the corresponding action in the client services database against the person's name. Should the person choose not to provide their details they will be registered on the database under anonymous contacts. All internal review notices provided will be photocopied and placed in the Early Intervention Team Confidential Administrative file.

If the person does not wish to provide their contact details and therefore Victim Support ACT cannot send them an internal review notice, they should be informed verbally of their right to seek review. The reasons for not providing the person with an internal review notice must be recorded in the client services database under anonymous contacts.

All internal review notices are to be sent by either email or mail, as requested by the individual, within 7 working days of internally reviewable decision.

Affected Person Responsibilities – in response to initial decision

On receipt of internal review notices the person who was deemed as not eligible (the 'affected person') may apply to the Victim of Crimes Commissioner for a review of the decision.

The affected person must –

- (i) put their application in writing ; and
- (ii) state their name and address; and
- (iii) they must set out their reasons for making the application

The affected person must provide their application for an internal review to the Victims of Commissioner no later than **twenty-eight days** following the receipt of the internal review notice from Victim Support ACT. The Commissioner may grant the affected person an extension of time to submit their application.

Victims of Crime Commissioner Responsibilities – in response to an application for internal review

On receipt of the application for a review of decision the Commissioner must arrange for a person (internal reviewer) to review the decision. The internal reviewer cannot be the same person who made the initial decision about the affected person's eligibility or less senior.

Internal Reviewer Responsibilities - in response to an application for internal review

The nominated internal reviewer must review the decision within twenty-eight days after the day which the Commissioner received the application for the review of the decision.

The internal reviewer must –

- (i) confirm the decision; or
- (ii) vary the decision; or
- (iii) set aside the decision and substitute the reviewer's own decision.

If the decision is not varied or set aside within the 28 day period, the decision is taken to have been confirmed by the internal reviewer.

The internal reviewer is to advise the Commissioner in writing of their decision to set aside the decision and what their substitute decision is. The Commissioner is then to forward that decision to the Early Intervention Team for inclusion on the client's file.

The Early Intervention Team should then contact the client and inform them of the decision.

Affected Person Responsibilities – in response to an internal reviewer’s decision

If the affected person has received the outcome of the internal review in writing and they do not agree with it, they may apply to the ACT Civil and Administrative Tribunal (ACAT) to review the internal reviewer’s decision.

The affected person may also apply to have this decision reviewed by ACAT if Victim Support ACT have not met the required timeframe in which to conduct the internal review.

The affected person must complete the ACT Civil and Administrative Tribunal ‘Application for Review of a Decision’ form which can be accessed via the following hyperlink and see Appendix B

<http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf>

ACT Civil and Administrative Tribunal Responsibilities

The *ACT Civil and Administrative Tribunal Act 2008* defines the processes used by the ACT Civil and Administrative Tribunal (ACAT) in relation to their responsibilities in the review of internal reviewer decisions.

Section 68 of the Act provides the outlines the role and functions of ACAT in the review of decisions. The Tribunal must, by order –

- (i) confirm the decision; or
- (ii) vary the decision; or
- (iii) set aside the decision and – a) make a substitute decision; or b) remit the matter that is the subject of the decision for reconsideration by Victim Support ACT in accordance with any direction or recommendation of the tribunal.

Section 69 of the Act describes the effect of orders for administrative review. Any order made by the tribunal must be taken to be the decision of Victim Support ACT. Orders take effect from the day the tribunal makes the order unless the tribunal orders otherwise.

Evaluations

Outcome Measures and Methods

- Where the person has provided contact details to enable the written internal review notice to be sent, it is documented and a copy kept on the Early Intervention Team Confidential Administrative file.
- All internal review notices are registered on the electronic client database.
- All internally reviewable decisions made without provision of a corresponding internal review notice are registered on the electronic client database with an explanation for why the notice was not provided.
- Biannual audits of administrative files and the electronic database are conducted to monitor and evaluate record keeping regarding internal review notices and decisions.

Related Legislation and Policies

Victims of Crime Act 1994

Victims of Crime Regulation 2000

Victims of Crime (Financial Assistance) Act
Victims of Crime (Financial Assistance) Regulation 1998
Criminal Injuries Compensation Regulations 1938
Victims of Crime (Commissioner) Appointment 2011
Human Rights Act 2004
Human Rights Commission Act 2005
Road Transport (General) Act 1999
ACT Civil and Administrative Tribunal Act 2008
Information Privacy Act 2014
Health Records (Privacy and Access) Act 1997
Freedom of Information Act 1989
Territory Records Act 2002
Annual Reports (Government Agencies) Act 2004
Children and Young People Act 2012
Public Sector Management Act 1994
Public Sector Management Standards 2006
ACT Public Service Integrity Policy



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Appendix A: Internal Review Notice Cover Letter and Review Notice Template

Victim Services Scheme

19 February 2016

<client name & address>

Dear <insert name>

Thank you for recently contacting Victim Support ACT to make enquiries about the range of services we offer the community and to learn about the rights and entitlements of victims of crime in the ACT.

As I advised, one of the main services we offer are therapeutic services, such as counselling, under the victims services scheme. The *Victims of Crime Regulation 2000* prescribes who is an eligible victim for the purposes of accessing the victims services scheme.

After considering your request for services, I regret to advise that I believe you are not eligible to receive that service. Anyone who is found to be ineligible to receive services under the victims services scheme is entitled to apply to have this decision reviewed.

I am required to provide you an **Internal Review Notice**. This notice, which is attached;

- i) Formally states that you have been found ineligible to receive services under the victims services scheme;
- ii) Provides you with reasons why the decision has been made;
- iii) Advises you of your right to apply to have the decision reviewed; and
- iv) Provides information on how you can have the decision reviewed.

Please do not hesitate to contact me on 1800 822 272 or 02 6205 2066 if you have any questions about the internal review notice or wish to discuss this matter further. Once again thank you for contacting Victim Support ACT.

Yours sincerely,

<Insert name and position>

Victim Support ACT

Internal Review Notice

Date Approved: 19 February 2016
Version Number: 1.0
Review Date: 19 February 2017

Date Effective: 22 February 2016
Approved By: John Hinchey, Victims of Crime Commissioner
Expiry Date: 19 February 2018

19 February 2016

Att:

<client name & address>

Re: Victims Services Scheme request for service – internal review notice

As outlined in the cover letter accompanying this notice, you have been deemed as not eligible for services under the Victims Services Scheme.

Reason for ineligibility

<select appropriate explanation – ensure that the reason for ineligibility aligns with the section used>

<for offences outside of the ACT>

Section 6 of the *Victims of Crime Act 1994* (the Act) defines a victim for the purposes of this scheme. It states that a ‘victim means a person who suffers harm because of an offence...’ In the dictionary section of the Act an offence is defined as meaning ‘an offence against a law in force in the ACT...’

This means that the Victims Services Scheme is only available to a person who is a victim of an offence that occurred in the ACT.

<Provide brief description of the person’s situation>

As the crime occurred in <Insert relevant state or territory> we are unable to provide you service through the ACT Victims Services Scheme.

You may be eligible for services in <Insert relevant state or territory> . the contact details for that jurisdiction are <Insert contact information for the relevant interstate or territory victims services scheme>

<applicant was committing a criminal offence>

Section 6 of the *Victims of Crime Act 1994* (the Act) defines a victim for the purposes of this scheme. Section 6(2) states that ‘a victim does not include a person who suffers harm because of an offence he or she committed or is alleged to have committed.’

<Provide brief description of the person’s situation>

As it appears that you suffered harm because of an offence that you are alleged to have committed, we are unable to provide you service through the Victims Services Scheme.

<offence involving a motor vehicle>

To be eligible for the Victims Services Scheme an applicant must be considered to be an eligible victim within the meaning of section 24 (1) of the *Victims of Crime Regulation 2000* (the Regulation). This section states that an eligible victim is a victim other than a victim who suffers harm caused by, or arising out of the use of a motor vehicle.

The rationale for this is that there are other schemes available (such as compulsory third party insurance) which provide assistance for victims where harm was caused by a motor vehicle.

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<Provide brief description of the person's situation>

As the harm suffered in this case arose from the use of a motor vehicle, you will not be eligible for services under the Victims Services Scheme.

If you would like more information about the decision that you are ineligible to receive service you can contact the person who made the decision or the Victim Support ACT Team Leader to discuss on 1800 822 272.

You are entitled to apply for internal review of the decision that you are ineligible to receive service if you wish to do so.

What happens in the internal review process?

An internal review is a process conducted by another officer within the agency who is no less senior than the original decision-maker. The internal review officer is required to consider your application and relevant documents and make a new decision as if the original decision had not been made.

How do I apply for an internal review?

An application for internal review must:

- be in writing
- set out the reasons why you believe you should be eligible to receive services through the Victims Services Scheme
- state your name
- provide an address where correspondence can be sent (this can be an email or a postal address)
- be made within **28 days** from the date when you received the internal review notice; and
- must be sent to
Victim of Crimes Commissioner

Victim Support ACT
GPO Box 158
Canberra ACT 2601

Or email victimsupport@act.gov.au

What are the advantages of an internal review?

There are a number of advantages for applicants applying for an internal review of the original decision:

- it gives you the chance to have your application reviewed at the agency level by another officer
- an internal review decision notice (and possibly more released information) should be provided within **28 days**.
- you can submit new information which you believe will further support your case to receive services through the Victim Services Scheme. This can then be considered by Victim Support ACT which may assist the agency to further consider your application to receive services.
- It allows you to apply for external review of the decision to ACT Civil and Administrative Tribunal if you are not satisfied with the outcome of the internal review.

How long does an internal review take?

Victim Support ACT has **28 days** to give an applicant written notice of the internal review decision.

Fees?

There is no fees payable for an Internal Review Notice.

Access to documents under the Freedom of Information Act 1989

In addition to requesting further information from the Victim Support ACT Team Leader, you are also entitled to request any documents held by Victim Support ACT relating to this decision under the Freedom of Information Act 1989 (FOI Act).

An application for access must:

- Be in writing to the Victims of Crime Commissioner (see address above)
- Provide sufficient information to Victims Support ACT to identify the documents (i.e. all documents relating to the decision that I am not eligible to receive the Victims Services Scheme)

Applications will be acknowledged within 14 days of receipt. A decision about the FOI application must be made by Victims Support ACT within 30 days, but this period may be extended if consultations are required.

External Review Process

If you are not satisfied with the decision made by Victim Support ACT, or the agency did not make a decision within the required timeframe, you may apply to have the decision externally reviewed by the ACT Civil and Administrative Tribunal (ACAT). This process is called **Review of a Decision**.

What is the Review of a Decision Process?

The external review process allows certain decisions made by agencies to be independently reviewed under the [ACT Civil and Administrative Tribunal Act 2008](#). You can seek an application for a **Review of a Decision** if you are not satisfied with the internal review decision made by Victim Support ACT.

Please note you must lodge an application for an Internal Review Notice through Victim Support ACT first before the ACT Civil and Administrative Tribunal can complete a review process, unless Victim Support ACT has not made a decision within the required timeframe of 28 days.

The Review of a Decision process reconsiders all aspects of the original decision including questions of legislation, questions of fact, discretion and policy.

How do I apply for a Review of a Decision?

- You will need to complete the ACT Civil and Administrative Tribunal – Application form for ‘Review of a Decision’ which can be accessed via the following hyperlink <http://www.legislation.act.gov.au/af/2009-278/current/pdf/2009-278.pdf> A copy of the form will also be forwarded with the Internal Reviewer’s written decision.

- This application form must be completed within **28 days** between the date of receiving the internal review notice decision and the date you lodge this application.
- Further information regarding the Review of a Decision process can be found on the ACT Civil and Administrative Tribunal website under the heading of Administrative Review via the following hyperlink
http://www.acat.act.gov.au/administrative_review/administrative_review

If you have not made your application within 28 days you should provide an explanation for the delay as part of your Review of a Decision application. The ACT Civil and Administrative Tribunal will advise if an extension of time will be granted.

How long does an external review take?

The time taken by the ACT Civil and Administrative Tribunal to complete an external review varies depending on the particular circumstances of each application.

Fees?

The ACT Civil and Administrative Tribunal do have fees associated with applications and further information regarding these can be found through the following hyperlink

http://www.acat.act.gov.au/fees/information_about_acat_fees

You may also find information regarding the waiver of fees through the following hyperlink

http://www.acat.act.gov.au/fees/information_about_acat_fees

Or you may choose to contact the ACT Civil and Administrative Tribunal directly to discuss your queries further, please see contact details below.

ACT Civil and Administrative Tribunal Contact Details

The ACT Civil and Administrative Tribunal Registry Counter is open for general enquiries between 9.00am and 4.30pm, each weekday. However, the Counter cannot accept payment of money (filing fees, payments etc) after 4.00pm on any day.

Phone: (02) 6207 1740

Street Address:

ACT Civil and Administrative Tribunal
ACT Health Building
Level 4, 1 Moore Street
Canberra City ACT

Postal Address:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA ACT 2601

ACT Ombudsman

If you remain dissatisfied with the original or internal reviewer's decision, you are entitled to make a complaint to the ACT Ombudsman.

Under the *Ombudsman Act 1989* the ACT Ombudsman can investigate action taken by an agency where that matter relates to a matter of administration, such as the decision that a person is ineligible to receive the Victims Support Scheme.

Please note however that the ACT Ombudsman can only look at the decision made by Victims Support ACT and not any decision made by ACAT at the external review stage.

Complaints to the ACT Ombudsman can be made by phone or writing (including email) at:

ACT Ombudsman

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GPO Box 442,
CANBERRA ACT 2601
OR
1300 362 072
ombudsman@ombudsman.gov.au

Should you wish to apply in writing; a form can be found through the following hyperlink:

<https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=act-complaint-form>

Further information regarding the ACT Ombudsman can be found at:

<http://ombudsman.act.gov.au/>

Judicial Review

A further option for review may also be available to you by way of judicial review under the *Administrative Decisions (Judicial Review) Act 1989* or at common law. A person may be able apply to the Supreme Court for review of an administrative decision which adversely affects their interests in certain circumstances. Unlike the internal review and external review however, judicial review looks only at how the decision was made, i.e. whether it was made legally, rather than looking at the merits of the decision.

If you have any further questions about why you have been found ineligible for service or the internal review process please contact Victim Support ACT on 1800 822 272.